1966

CONSOLIDATED DIGEST

OF THE

CIVIL AND REVENUE CASES

REPORTED IN THE

PUNJAB RECORD,

1866 TO 1911.

BY

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AND

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Lahore:

PRINTED AT THE "CIVIL AND MILITARY GAZETTE" PRESS

1914.

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ABANDONMENT OF EASEMENT

Easement—Abandonment—Discontinuance of right.

In a suit brought by plaintiff to close certain water spouts belonging to the defendant the facts found were that the defendant had formally two water spouts on the roof of his house, the rainfall of which was thereby discharged on to land, which now belonged to the plaintiff; that about 40 years ago, the part of the roof from which the rainfall was thus discharged fell in, and continued a ruin, until recently the defendant having restored it, set two new water spouts (the subject of this suit) in the very position where the old ones existed. It further appeared that during the period the defendant's house remained unroofed, plaintiff made erections on his own land which would suffer by the defendants' restored spouts.

Held, that the question for decision on the above facts was, whether or no there had been an abandonment by defendant of the easement which once existed, and the point to be determined was whether the long period that the site remained in a dismantled condition was enough to show either that the defendant abandoned at a former time the intention to rebuild or gave the plaintiff reasonable cause for believing he had so done. (CHURRUT SINGH *v.* SIMBOO, 68 P. R. 1880 cited). GHULAM MUHAMMAD *v.* GULSHAIR MUHAMMAD KHAN. **38 P R 1886**

ABANDONMENT OF LAND.

See DECLARATORY DECREE.

ABANDONMENT.—1. *Sixteen years' absence.*

Held, per Boulnois, J., with reference to the Punjab Civil Code, section 21, clause 7 ("absentee sharers are usually held to be entitled to re-admission within a reasonable time"), that returning after an absence of 16 years was not returning within a reasonable time. KISHEN LAL *v.* MOOTSADDEE.
52 P R 1866

2. Plaintiff's father deserted his village for more than 15 years, and on his return obtained the land which afterwards came into plaintiff's possession. Defendant had held his larger share for more than 12 years. At settlement it was recorded that the land and *jama* were divided according to "shares."

Held, that this did not mean ancestral shares, and that defendant could not now be disturbed. MEHNDOO *v.* PHULLEE KHAN.
5 P R 1868 Rev

3. *Re-admission—Absence of 40 years.*

Plaintiff returning to his village after an absence of 40 years, claimed re-admission to his ancestral share of land under a clause in the *Wajib-ul-arz* by which sharers in possession at last settlement agreed to restore the shares of absent proprietors on their re-appearance. The lower Courts held that the claim was barred by limitation, as the claimant had been more than 12 years out of possession.

Held, by the Financial Commissioner in appeal, that as plaintiff's name was recorded at last settlement as an absent proprietor, and defendant agreed to give up the land on re-appearance of the absentee, their possession was not adverse and the claim was within time. GURMUKH SINGH *v.* PREM SINGH.
7 P R 1868 Rev

4. *Adverse possession—limitation.*

Plaintiffs sued for share of land in possession of defendant according to ancestral shares. At last settlement both parties were recorded as holding in common. Defendant admitted plaintiff's claim so far as it related to land inherited from a common ancestor,

ABANDONMENT—*contd.*

but as regards the rest he pleaded that it belonged to kindred who had deserted it, and that he had held adverse possession since S. 1908.

Found, as regards the disputed portion, that defendant's possession had been adverse beyond the period of limitation the entry in the settlement record notwithstanding; and *held* accordingly that the plaintiff's claim was barred by time. GULAB RAI *v.* JEYDIAL.
32 P R 1868

5. *Estoppel.*

Where plaintiffs sued to establish proprietary rights in land in defendant's possession, defendants pleaded that the claim was barred, (1) by limitation, in that plaintiffs had been out of possession ever since the land was thrown up by river action 15 years ago; (2) by abandonment, in that at last settlement, more than 11 years ago, they refused to occupy the land or engaged for the Government revenue; it was held by Boulnois and Simson, JJ., on the first plea, that plaintiffs were within time, as their cause of action accrued when the land was settled with defendants, and on the second plea, that after abandoning their rights for so long a period, and thereby inducing defendants to expend labour and money on improving the land and bringing it under cultivation, plaintiffs were estopped from asserting the title which they previously had. MEHTAB *v.* HEERA.
115 P R 1868

6. Wajib-ul-arz—*Re-admission at any time.*

Held, per Lindsay and Cunningham, JJ., that where the *Wajib-ul-arz* provided that the absentees might return and recover their share after any lapse of time, the clause must be taken to mean a reasonable time, and that 17 years absence barred plaintiffs' claim. ATU *v.* LABA. **67 P R 1870**

7. *Right of absentee's sons to restoration of the land.*

In the *ikrar khewat* certain shares were recorded to be in the possession of J. K. and others, on condition that the shares should be restored to the absentee or fugitive proprietors on their return to the village, provided such

ABANDONMENT—*contd.*

proprietors made good to the holders any loss sustained by them during the absence of the proprietors. The defendant purchased the shares from J. K. and the other shareholders. About 14 years after this purchase, the sons of the absentee proprietors returned to the village and claimed their father's shares from the defendant.

Held, that the sons were entitled under the *ikrar khewat* to possession of the shares (per Lindsay and Cunningham, JJ.). CHANDER BHAN *v.* BALDEO SINGH. **4 P R 1871**

8. Thirty, *years' absence—trust.*

Where the *Wajib-ul-arz* provided that absentee proprietors should on their return receive their proper shares from the holders, without regard to any profit or loss to such holders, that the *held*, holders took in trust the shares of the absentees, and that the claim of a proprietor after 30 years' absence was not barred by limitation (per Lindsay and Chunningham, JJ.). RULDO *v.* KESARA SINGH. **5 P R 1871**

9. *Settlement record not binding on those who did not assent to it.*

A mere entry by a Settlement Officer which is not proved to have been accepted as correct by those in possession of the absentee's land, establishes no right in favour of the absentee—(per Lindsay and Cunningham, JJ.). But, per Lindsay, J., where there is clear and undoubted evidence of proprietors having admitted that they held the shares of absentee proprietors in trust for them till their return, such absentees and their children ordinarily, at any rate during the term of settlement, had a legal claim to obtain possession on the terms entered in the record. SHIB DIAL *v.* RAMCHAND.

6 P R 1871

10. *Suit by representative of absentee—Limitation.*

It was recorded at settlement 20 years before suit, that on the return of A, an absentee, he should receive back possession of his land. A died upwards of 12 years before suit without having returned to the village and his son died after him without having made any claim to the land. A month or so after the death of the last surviving, son the plaintiffs, the distant kindred of A, sued for the land.

Held, that it did not follow from the defendant's agreement to restore the land to A, that the plaintiff's suit was maintainable even if A's sons could have claimed the land under the agreement, and that the 12 years' limitation had run against the plaintiffs (per Boulnois and Campbell, JJ.). HAKIM *v.* KANHA

40 P R 1871

11. *Trust—Expiration of trust.*

Ten years after settlement, and about 28 years before suit, plaintiff's father absented himself and settled in Patiala. When the plaintiff was 10 years old his father died, and the father of the defendant, Jodh Sigh, who was also plaintiff's uncle, took the plaintiff into his family, where he was brought up

ABANDONMENT—*contd.*

and remained until Jodh Singh's death, which took place in 1871. At settlement it was recorded on the part of Jodh Singh that he agreed to surrender to his brother (plaintiff's father) his share of the land on his return to the village. Plaintiff now sued Jodh Singh's sons for his father's share.

Held, that the question to be determined was whether the trust recorded at settlement had, under the circumstances, expired or not; and that the circumstances of Jodh Singh's having brought up the plaintiff as one of his family vitally affected the question (per Boulnois and Melvill, JJ.). MEGHA SINGH *v.* CHETA. **46 P R 1872**

12. Plaintiff sued to recover land of which he was recorded 18 or 20 years ago as an absentee proprietor; he alleged that he returned to the village about 2 years after settlement, and had lived in it ever since, cultivating with a relation of the defendant. There was evidence that the plaintiff occupied land of which the *jama* was Rs. 20 but for which he paid Rs. 32 as rent.

Held, that he had abandoned his rights as proprietor, and the defendant's long possession barred his suit (per Boulnois and Campbell, JJ.). JODHA *v.* GHULAMI.

15 P R 1873

13. About 45 years before suit, the village owned by 3 brothers, A, M and H, was burnt and they went off in different directions. A returned and at settlement agreed to restore to his brothers their shares when they returned. In 1864 A died and his sons took possession in 1868 M and H's son (H being then dead) came to the village and took from A's sons two *ghumaos* of M and H's shares (their full shares being 46 *ghumaos*). Up to 1868, the absentees had lived in a village a few miles distant, as tenants of the proprietor. In 1870 a dispute arose and A's sons ejected M and H's son from the two *ghumaos*. M, and H's son then sued A's sons for the full 46 *ghumaos*.

Held, that the plaintiffs had lost their proprietary rights (per Lindsay and Melvill, JJ.). MEDU *v.* BAHADUR. **34 P R 1874**

14. *Right of Representative to benefit of agreement made with absentees.*

On 11th August 1864, defendants admitted before Superintendent of settlement that F. D. was an absentee sharer in the land held by them and that when he returned to the village he should be re-admitted. Within 12 years from the above date, and 60 years after F. D. had left the village, his descendants sued defendants for their share as F. D's. heirs.

Held, that plaintiffs were entitled to F. D.'s share (per Melvill and Thornton, JJ.). BUDHAN *v.* SHARAFU. **68 P R 1874**

15. *Trust.*

Plaintiff left his village 26 years before suit, and married and took service in Jammu. He occasionally returned to the village to see his relatives. Two years after he left his village, his father died. Defendants took

ABANDONMENT—*contd.*

possession of the land now sued for, which was recorded in both regular settlements in the name of plaintiffs; in the first settlement, he was entered as absconded proprietor and in the second, an absentee.

By the *Wajib-ul-arz* absconders might regain their lands on paying up losses

Held, that he had not relinquished his land and that defendants held in trust for him (per Boulnois and Melvill, JJ.). GHODAR *v.* GURBAKASH. **73 R P 1874**

16. *Trust.*

Plaintiff sued to recover his father's share in a village. At the time of settlement, about 1860, plaintiff's father was absent (having left his village through poverty and taken up his residence in another village about two *kos* distant) and had then been absent some ten years. The defendants were present at the settlement, when it was recorded that they would restore Murad Bakhsh (plaintiff's father) his share on his return. Murad Bakhsh died 4 years before suit, and the fact of the entry in the settlement record came to plaintiff's notice two years later.

Held, that the defendants held in trust for Murad Bakhsh, and the plaintiff having sued within 12 years of his father's death was entitled to possession (per Boulnois, Lindsay and Melvill, JJ.).

The judgment of Lindsay, J. in Khazan Singh *v.* Dhyan Singh (page 264, P. R. 1874) approved of, *viz.*, that the inference to be drawn from such entries at settlement is that the land is held in trust for the absentee; but that the party in possession may convert his possession from permissive to adverse, by taking sufficient steps to signify that he holds for his own benefit alone, and that the absentee may by his conduct show abandonment of his rights.

Per Boulnois, J.—The lapse of a very long period is some evidence of an intention on the part of the absentee of actual abandonment. HAJI AHMED *v.* SHEKH AHMAD.

84 P R 1874

16*a* Plaintiffs, sons of the recorded absentee proprietor, sued for possession after an absence of about 30 years. Plaintiffs' father died in Bombay 14 years before suit, but the plaintiffs themselves went no further than Ferozepore, where they were in the service of a Bania, and every year visited, for about 3 weeks or a month, their native village. The *Wajib-ul-arz* signed by the defendants in 1851 in the absence of plaintiffs and their father, contained an undertaking on the part of defendants and others to restore the lands of absentee proprietors on their return.

Per Boulnois, J.—The reasonable construction of the *Wajib-ul-arz* did not permit the plaintiffs to return after such acts as theirs.

Per Campbell, J.—This was not a case in which a trust could be inferred, and the defendants' possession had been adverse for upwards of 12 years.

Per Lindsay, J.—The defendants, in subscribing to the *Wajib-ul-arz*, created a trust

ABANDONMENT—*contd.*

in favour of the absentee proprietor and his lineal descendants ; but the trust could be determined (and not otherwise) by an overt act or omission of the trustees showing that they intended to hold adversely or by some act or omission on the part of the recorded absentee or his lineal descendants, showing a relinquishment of claim. KHAZAN SINGH *v.* DHIAN SINGH. **P R 1874 p. 264**

17. *Abandonment—Limitation.*

N., plaintiff's father, in 1856, left his village, where he owned land and was cultivating with his uncle, H. S., and settled in a neighbouring village where he adhered to H. S.'s enemies. In 1859, N. died in the village to which he had removed. In 1874, plaintiff, who was then about 20 years old, sued defendant, son of H. S. (deceased), for N's share, of which he, N. had been recorded proprietor at the settlement in 1856 shortly after he left his village.

Held, that plaintiff's claim was not barred by limitation, and that he was entitled to recover his father's share (per Boulnois and Lindsay, JJ.). GYAN SINGH *v.* HAZARA SINGH. **37 P R 1875**

18. *Acknowledgment.*

D., the father of plaintiff, died in 1843, in possession of his land. The plaintiff was then an infant; he came of age in 1861.

In 1846, an entry was made at settlement that D's brothers, who had absconded taking plaintiff with them, were D's heirs and that his share was held by the proprietors of the Pana, who would restore the land to the absconders on their return upon payment of what was due. The brothers died, one in 1847, the other in 1852. In 1853 plaintiff and his mother returned to the village, when plaintiff and H, a son of one of the brothers, were entered as sharers in the *abadi*. H. died, and plaintiff and his mother again left the village is 1863. The proprietors of the Pana had the names of the deceased brothers of D erased from the settlement record and themselves substituted as proprietors of D's share. In 1873, plaintiff claimed his father's share.

Held, that plaintiff had not abandoned D's shares and having sued within 12 years of the proprietors asserting adverse possession he was entitled to recover (per Boulnois and Lindsay, JJ.). HAIT RAM *v.* CHAITAN. **46 P R 1875**

19. *Admission.*

Admission by *locum tenens* does not enure to the benefit of the son of absentee. In 1855 defendant admitted the proprietary right of P and S, absentees. At the second settlement of 1863 the absentee had not returned, and defendant the *locum tenens* did not repeat his admission or make any engagement to restore the land to the absent owners. In 1875 P's son sued defendant for his father's shares, P and S having died more than 12 years before suit.

Held, that plaintiff's claim was barred by time (per Boulnois and Campbell, JJ.).

Per Boulnois, J.—The admission by the *locum tenens* does not do more than prevent

ABANDONMENT—*contd.*

limitation running against the absentee; and on the death of the absentee, the possession of the *locum tenens* immediately becomes adverse, unless the admission expressly relates to the absentee's descendants. NOOR MUHAMMAD *v.* SHARFU. **75 P R 1875**

20. *Entry personal to actual absentee.*

In 1850, the land in suit was in possession of the defendant's father, when an entry was made in the settlement record to the effect that defendant's father held possession of A B's share, who was absent, and that, as nothing was due from the absentee for revenue, he (defendant's father) agreed to restore him the land when he returned. A B never did return, but died in 1872 in a neighbouring village, holding land there. His son then sued for the land referred to in the above entry.

Held, that A B had abandoned the land, and the plaintiff had no action (per Boulnois and Campbell, JJ.).

Per Boulnois, J.—*Semble*—the entry was personal to the actual absentee. ROSHAN-UD-DIN *v.* FATTA. **78 P R 1875**

21. Plaintiffs, who had been out of possession for more than 20 years, were absent at the time of settlement, when it was recorded that upon their return and paying Rs. 200 they should get possession. In April 1851, plaintiffs returned and applied to the Settlement Court for possession. Defendants who were holding the land opposed the application and plaintiffs were referred to a regular suit.

More than 12 years from April 1851, plaintiffs sued.

Held, that their claim was barred by defendants' adverse possession (per Boulnois and Lindsay, JJ.). DALEL SINGH *v.* BIRBAL. **21 P R 1876**

22. At settlement (about 17 years before suit) the land in dispute was recorded in the names of M. S. and K. (who had then been absent since 30 years), and was in the possession of G. R. their cousin ; it was then recorded that when M. S. and K. or their descendants returned, the land should be given up to them. The land was a joint ancestral *khata* ; M. S. and K. resided some 25 or 30 *kos* from the village, and died without making any claim. In 1873, the son of S. and grandsons of K. (M. died without issue) sued for the land. M. S. and K. died within 12 years of the action brought.

Held, per Campbell, J. (Boulnois, J., hesitating), that the land had been abandoned, and plaintiff's suit failed. MAKHAN *v.* DADU. **47 P R 1876**

23. In 1842, at settlement, A. C. being present and in possession as proprietor of a plot of land, it was recorded that it was the custom of the village that absconders might return at any time and recover their land. In 1847, A. C. left his land without making any arrangements concerning it and defendants took possession. A. C. died about the

ABANDONMENT—*contd.*

year 1867, and within 8 years of his death (in 1875) his son sued for possession.

Held, by Lindsay, J., that with regard to the entry at settlement, defendants held in trust for A. C., and plaintiffs' suit was not barred.

Held, by Boulnois and Campbell, JJ., that A. C. abandoned the land in 1847, and was not merely an absentee and his son's claim was barred by limitation. JAIMAL *v.* YADU. **49 P R 1876**

24. The land in suit was acquired by the grandfather of plaintiff and defendant, who was first cousin, and at the settlement of 1852 was recorded as belonging to plaintiff and his brother deceased. Plaintiff for nearly 20 years was absent in Patiala, where he held land during that period, and in no way concerned himself about the land in suit, which was occupied by defendant. There was no provision in the *Wajib-ul-arz* for the return of absentees. *Held,* per Boulnois and Campbell, JJ., that defendant's possession had been adverse ; plaintiff's suit dismissed. BURA SINGH *v.* VIR SINGH. **54 P R 1876**

25. Per Plowden and Fitzpatrick JJ.—An entry at settlement that certain absent persons are owners of land, and that whenever the absentees return and make demand, their shares shall be restored without demur on the part of the occupants, does not necessarily prevent the law of limitation (12 years' adverse possession) from running against the absentees ; and even if the claim is not barred by limitation, it is a question of fact in every case, whether the absentees have so conducted themselves as to evince an intention to retain or abandon their property. The law of limitation operates upon a proprietor's rights independently of his will :—A proprietor, however, may so conduct himself that by an act of his own volition, he loses his right of ownership ; intention is as essential to the continuance of ownership as it is to the acquisition of it. The mere fact that an absentee is ignorant of a recorded entry, in his favor or his belief that there is no such entry, is not an absolute bar to a conclusion that he has relinquished his rights. The latter fact might tend to influence him to conduct from which it might fairly be inferred that he had resolved to abandon his rights. GANDA *v.* GURMUKH SINGH. **115 P R 1876**

26. *Limitation.*—Where plaintiffsa bandoned the land claimed in 1861, and defendants promised to restore it within 12 years. *Held,* per Lindsay and Campbell, JJ., that a suit brought to recover the land after the lapse of 12 years from 1861 was barred by limitation. MAHTAB *v.* RAHMAT. **25 P R 1877**

27. *Abandonment*—F. & A. were absentees at first settlement and their land was entered as in possession of defendants, with an agreement to restore the land to the absentees on their return. At second settlement, defendants again agreed to restore

ABANDONMENT—*contd.*

the absentees land when they returned. After settlement defendants divided the land. The absentees, who were living 18 *kos* from the land in suit, never returned. In a suit by S, son of F and nephew of A, to recover the land. *Held*, Per plowden and Smyth, JJ., affirming the order of the Commissioner that F and A had abandoned the land, and, therefore, that S had no claim. Long absence by an absentee, who though residing near the land takes no steps to assert his claim, raises a strong presumption that the absentee has relinquished all claim to the land recorded in his name, and this presumption is not affected by the conduct of those who permit the absentee's name to be borne in the settlement papers. ROSHAN-UD-DIN *v.* FATTA (78 P. R. 1875), approved and followed. SHERA *v.* QUTBA. **38 P R 1878**

28. *Absentee—Adverse possession.*

The land in suit originally belonged to plaintiff's father (who died before the first settlement) and to plaintiff's uncle (who died during the same settlement) in equal shares. Plaintiff was an absentee at both settlements, but his land was recorded as being in possession of the defendant who agreed to restore it on the absentee's return. Defendant, who was brother of plaintiff's uncle's wife, acted as her agent as regards the land which belonged to her husband. Some ten years before suit plaintiff returned to his village and obtained eventually his full half share of the land to cultivate, since which time he cultivated jointly with defendant and on the death of his uncle's widow brought the present suit to be confirmed in proprietary possession of his own half share and to recover the other half which defendant had been cultivating as agent of the widow.

Held, reversing the order of the lower appellate court, that plaintiff was entitled to succeed in the whole of his claim, as no portion of it was shown to be barred by adverse possession on the part of defendant. GOHAR *v.* FATTEH DIN. **75 P R 1880**

29. *Agreement at first settlement and repeated at second settlement—Limitation—Abandonment.* N. and S., two brothers, were out of possession of their lands at the first settlement, the former residing in the village and the latter being recorded an absentee. In the *wajib-ul-arz* of this settlement, which was for a term of 10 years to which period the operation of its provision was expressly limited, there was a provision that absentees on their return would be entitled to recover their land on payment of losses, and with regard to N. there was a distinct agreement on the part of two of the proprietors, who held a portion of his share, that they would restore it to him when he was in a position to cultivate the land with his own plough and cattle.

In the second settlement, which took place in 1865, neither of the above agreements was repeated. Both N. and S. died more than 12 years before the present suit the latter without heirs. In a suit by the two sons of N. to

ABANDONMENT—*contd.*

recover their father's and uncle's share of the land held by defendants.

Held, (1) that as regards S's land the suit was barred by limitation, as S had died 12 years before suit and hence the suit of his nephews would not lie; and (2) as regards N's land the plaintiffs were not in a position to enforce the special agreement which only enured for the term of the first settlement.

Held further, that plaintiffs had shown by their conduct that they had abandoned their right in the land claimed. ARORA *v.* MOHRA. **114 P R 1880**

30. *Absentee—Suit for re-entry—Adverse possession—Abandonment—Effect of admission at settlement in favour of absentee by party in possession.*

In a suit by an absentee for re-entry on land of which the defendants were recorded as in possession, in which the defendants pleaded long adverse possession, the lower appellate Court, on the ground that at the time of settlement the defendants had themselves admitted the plaintiff's right to re-entry in a statement recorded by them, which completely disposed of the pleas of adverse possession, confirmed the decision of the first Court, which had decreed the plaintiffs' claim.

Held, that the lower Court had attached undue weight to the statement recorded by the defendants at settlement; that the presumption, arising from long continued absence and the omission to take steps to keep alive a once existing right that the absentee had relinquished all claim to his land, is not affected by a promise on the part of the person in possession of the land to restore it on the return of the absentee to the village; and that the question whether the absentee can be deemed to have abandoned his right to the land is one of fact to be determined with reference to the circumstances of each case, an enquiry into which should not be excluded by the mere existence of such a promise as that relied upon in the present case. SHERA *v.* QUTBA (38 P. R. 1878), cited and followed. FAZL DIN *v.* SHAH MOHAMED. **141 P R 1883**

Following JIWAND SINGH *v.* SANT SINGH. **141 P R 1883 Note**

31. *Adverse possession.*

Held, following the previous decisions of the Court, that the question of abandonment in absentee cases is one of fact, to be determined on the circumstances of each case as it arises, and such abandonment may be found as a fact, notwithstanding the existence of entries in one or more settlement records, which show that the possessor is not holding adverse possession.

On the facts of the present case, *held*, that abandonment was not affirmatively established. GANGU *v.* JAWAHAR SINGH. **121 P R 1884**

Compare GHULAM MOHAMED *v.* QADAR. **121 P R 1884 Note**

ABANDONMENT—*contd.*

32. *Burden of proof.*

In a suit by certain absentee proprietors to recover possession of their land it appeared that at the first settlement the plaintiff's ancestors were recorded as the absentees, while, on behalf of the defendants in possession the condition was laid down that when the absentees should come and settle in the village, they (the holders) would make the land over to them. At the revised settlement the plaintiffs were recorded as absentees from 16 years, but a petition was taken from the defendants by the settlement officer in which they promised to give the plaintiffs their share when they came and settled in the village. It was found in the present suit, contrary to the plaintiff's own account, that during the 19 years preceding the suit they had neither demanded the land nor taken rent from it, nor settled in the village nor obtained possession, but had remained absent all along in a village some ten *kos* away.

Held, that on the above facts the lower Courts were justified in inferring that the plaintiffs had abandoned the land and given up their rights to it.

In all cases of absenteeism of more than 12 years' standing in the absence of an express and direct trust, the *onus* of proving that they have not abandoned the land rests with the plaintiffs. SHERA *v.* QUTBA (38 of 1878) and GANGU *v.* JAWAHAR, 121 P R 1884 cited. NIHAL SINGH *v.* DULA SINGH. **38 P R 1885**

33. The garden in dispute was recorded in 1861 as the property jointly of the plaintiff and defendants, who formed a joint Hindu family. In 1861, plaintiff mortgaged to a third party some house-property belonging to the family, and entered in the deed a clause to the effect that if the defendants were to redeem it, he, plaintiff, would have no further claim to it. In the same year plaintiff left the village and went in to foreign territory where he married and settled, taking no further interest in the property or its management for 21 years, when, hearing that at the new settlement the defendants had recorded their own names as owners and excluded his, he returned and brought the present suit for possession of the garden.

Held, that the facts as found in the case were not sufficient to warrant the inference of abandonment. GANGU *v.* JAWAHAR SINGH, 121 P R 1884 cited. MEHAR CHAND *v.* DUNI CHAND. **18 P R 1886**

34. *Abandonment of land—Suit for possession of land—Previous dispossession—Abandonment—Limitation Act, 1877, 2nd Schedule, article 142.*

See LIMITATION ACT, 1877, 2ND SCHEDULE, ARTICLE 142.

Letter intimating that plaintiff did not wish to purchase certain land—Abandonment—Extinction of right to immovable property—Compulsory registration.

See REGISTRATION ACT, 1877, SECTION 17.

ABANDONMENT—*contd.*

35. *Abandonment of land—Absentee—Adverse possession.*—In cases in which an absentee seeks to be restored to his share in the ancestral land in possession of his co-sharers, inasmuch as mere absence from possession for a length of time does not work a loss of any rights unless an adverse title has been set up, the only other ground ordinarily to be considered is, whether the plaintiff has, as evidenced by his conduct, voluntarily given up his share, intending that his right to it should cease. Such intention is not manifested merely by absence, though long absence, coupled with an entire severance from all concern with the land, might be a strong circumstance to be taken into consideration in determining the question.

In cases where it is not shown that there has been any real burden on the land borne by the holder thereof for the time being, or that the holder could make out any account which would show himself a loser in the whole transaction, the indications of a final surrender of right by the plaintiff would have to be very clear. KASU *v.* LANGAR.
84 P R 1888

36. *Exclusion—Adverse possession.*—A. and B. were joint owners of land. In 1857 A. sued B. for his share and got a decree. In execution formal possession was given. In 1861 A. asked for partition. B. then contended that A.'s share was one-third, of which he offered to give over possession, but A. would not consent to this. Subsequent to this A. was never in joint possession.

Held, that A. had abandoned his rights in the land. SAIYAD ALI NAWAZ *v.* SAIYAD ABDUL HUSSAN. **104 P R 1889**

37. *Suit to recover possession—Abandonment.*—At the first settlement, plaintiffs' grandfather was recorded as absent. At the second settlement, the plaintiffs' father was entered as present and in possession. In 1872, when a portion of the common land was required by Government for public purposes, one of the plaintiffs received the plaintiffs' share. But in 1879, when more land was taken up by Government, the compensation was paid to defendants, who, however, took it on behalf of the plaintiffs, absentees.

In a suit to recover possession, it was pleaded that plaintiffs had abandoned their land.

Held, that there had been no abandonment. In cases of absenteeism, the question of abandonment should be decided on a consideration of the particular facts of each case and other cases should not be appealed to as precedents for a proper decision. JHANDA SINGH *v.* ISHAR SINGH. **9 P R 1890**

38. *Adverse possession.*

Plaintiff's father owned property in both the Amritsar and the Umballa Districts. He resided sometimes in one and sometimes in the other district, but more frequently in the latter. It was not shown that he had at any time personal possession of his lands in the

ABANDONMENT—*contd.*

Amritsar District, or realized any profits therefrom. At the first settlement he was recorded as absentee (having been temporarily absent), but he was present at the second settlement and was recorded as a shareholder along with the defendants.

On the above facts *held*, that the abandonment or adverse possession had not been established.—LAKHA SINGH *v.* GURMUKH SINGH.
62 P R 1890.

39. *Abandonment of land—Extinguishment of proprietary right.*

Held, by the Full Bench, that an owner of land who has abandoned it within 12 years previously to the institution by him of a suit for possession thereof, does not by such mere act of abandonment lose his proprietary rights. His title will prevail, provided that it has not been extinguished by the operation of the law of limitation. SAIN DITTA *v.* GHULAMA.
85 P R 1892 F B

40. *Absentee—Abandonment*—Mauza *Daliki, Amritsar District.*

Where, for more than a whole generation, namely, since 1854, the plaintiff and his father, who resided in a village only 5 *kos* off, in which they possessed ancestral land, had taken no concern with the land in suit, of which they had been recorded as owners but absent at the settlements of 1852 and 1865.

Held, that these facts were sufficient to justify the presumption that the land had been abandoned.

Punjab Record, No. 121 of 1884, No. 18 of 1886, No. 84 of 1888, and No. 62 of 1890, referred to. MUSSAMMAT NIHAL KOUR *v.* CHANDA SINGH. **118 P R 1893**

41. *Absentee—Abandonment—Abandonment of land—Extinguishment of proprietary rights.*

Where the plaintiff's father left the village before 1869 and neither he nor plaintiff made any claim for, or interested themselves in, the land of which they had been recorded as owners until he brought this suit in 1899, when he was some 40 years of age.

Held, that these facts constituted a clear abandonment and were not affected by the promise recorded by the defendants in the settlement of 1869, but not repeated in the revised settlement of 1897, that they would restore the property on the return of the absentee to the village. MEHR CHAND *v.* DUNI CHAND (18 P. R. 1886), KASU *v.* LANGAR (84 P. R. 1888), DAS *v.* MAYA DAS (118 P. R., 1889), LAKHA SINGH v. GURMUKH SINGH (62 P. R., 1890), SAIN DITTA *v.* GHULAMA (85 P. R., 1892), and FAZAL DIN v. SHAH MUHAMMAD (141 P. R., 1883), referred to. JODHA *v.* DHANI RAM. **30 P R 1901**

42. *Abandonment of land—Extinguishment of proprietary rights—Limitation—Reversioners, suit by—Adverse possession—Successive female heirs—Possession adverse to the female adverse to the reversioners—Limitation Act,* 1887, *Schedule II, articles* **141, 142.**

ABANDONMENT—*contd.*

On the death of the original owner about twenty years ago his widow succeeded him, she being unable to pay a sum of Rs. 98-10-0 due to Government, on account of land revenue, left the village and went away to her parents. The plaintiffs being the reversioners were asked to take up the land and pay the revenue, due which had been realized from the defendant as lambardar, who was also a distant relation, declined saying that after the death of the widow they would set up their claim in the form they might consider proper. The defendant then asked to be put in possession of the land as he had already paid the amount due from the defaulter, and agreed to give it up after cutting the standing crop whenever the widow paid him Rs. 98-10-0. Thereupon the widow was entered as absent and the defendant in possession of her land. Shortly after the widow died without having made any effort to regain her land. In 1885 the land was mutated in the name of the widow's husband's mother, who was also an absentee, defendant being recorded in possession as before. The mother-in-law died ten years before the present suit, and the plaintiffs now claimed possession from the defendant on payment of the sum of Rs. 98-10-0 paid by him on account of the land. The defendant pleaded limitation and also abandonment of their rights by the plaintiffs on the widow's leaving the village and the land being offered to them by the Revenue authorities.

Held, that no abandonment had been proved either on the widow's or plaintiffs' part. The fact of the widow's going to her parents at a time of distress did not indicate any intention to give up her life interest in her land, but even had any such intention on her part been proved, the plaintiffs would not have been bound as they did not derive their title from or through her. The plaintiffs declining to take land in 1879, when called upon by the Revenue authorities, cannot be held to amount to an abandonment, as their title to possession had not accrued at that time.

Held further, that the circumstances under which the defendant obtained possession of the widow's property in 1879 and the mutation in her mother-in-law's name in 1885 after her death indicated the nature of the defendant's possession. In order to be adverse the possession must be like that of an owner, and with an intention on the part of the holder to hold the property for himself as such. The mere holding of the property without such intention does not confer a prescriptive title or extinguish that of the original proprietor out of possession.

Held also, that article 141 of the Second Schedule of the Limitation Act, 1877, was applicable, and that the plaintiffs' suit would not have been barred even if adverse possession of defendant in the lifetime of the widow had been proved, as plaintiffs' right to sue did not accrue until after the death of the mother-in-law of the widow, and that the discontinuance of possession which might have been fatal had the person absconding in 1879 been a male could not for the same reason bar the application of Article 141, and therefore Article 142

ABANDONMENT—*contd.*

had no application. BAZ KHAN AND OTHERS *v.* SULTAN MALIK AND OTHERS. **43 P R 1901**

43. *Abandonment of land—Suit to recover possession—Absentee—Adverse possession.*

Held, that mere non-occupation and non-cultivation of unculturable land for a long period does not in the absence of a motive or evidence of intention to abandon or of adverse possession for the statutory period, constitute abandonment. SHAHABAL SHAH *v.* GANESH DAS. **53 P R 1907**

44. *Common land—Possession of one co-sharer—Adverse possession.*

Held, that as in common holding the possession of one co-sharer is the possession of all, mere occupation and enjoyment by one to whatever period it may extend to does not constitute an adverse possession as against the other co-sharer, unless the one in possession is able to show most clearly and emphatically his own adverse possession or abandonment by other.

An absentee in a common holding who leaves his property in the hands of a co-sharer, asserts his rights to succeed to a relative on the opening out of a succession in the village and objects on the first invasion of his rights by the person left by him in charge of his share of the holding, cannot be deemed to have abandoned his property, as in such cases mere length of time or absence does not affect his rights. RAM CHAND *v.* KIRPA RAM.

120 P R 1908

45. *Absentee—Entry in* Wajib-ul-arz *subsequent to abandonment—no trust—Adverse possession.*

Held, that an entry in the record of rights providing that when the plaintiffs absentees (who left their land 20 years previously without making any arrangements for the payment of the revenue return and want the land, they can take it back) does not constitute a trust, and antedating to the original abandonment by the plaintiffs, and that the plaintiffs having failed to prove that during the last 40 years they have had any connection with the land or shared its profit, the respondents have acquired title by adverse possession. DHAN SINGH AND OTHERS *v.* HAR NARAIN AND OTHERS. **85 P R 1909**

See ALSO 86 P. R. 1909.

46. *Absentee—Joint holding—Abandonment—Adverse possession—Indian Limitation Act XV of 1877, section 28, articles 142 and 144—Propositions applicable in such cases.*

Plaintiff sued to recover certain shares in a joint holding from defendants, who had been absent and whose ancestors had been absent from the village for a very long period, alleging that defendants had returned lately and taken possession of the shares, the right to which had lapsed through long dispossession.

Held, that in such a case the circumstances and specially the long silence and inaction of

ABANDONMENT—*contd.*

defendants and their ancestors, are evidence of abandonment, and therefore the possession of defendants and their ancestors, ceased when they left the village and ceased to take a share of the profits, and so forth. Hence, inasmuch as limitation began to run against defendant more than 12 years before suit their rights are under article 142 of the Indian Limitation Act extinct, and plaintiff's claim must be decreed. (The judgment also lays down certain propositions applicable in such cases). SHAHZADA SURAYA JAH *v.* AZIM AND OTHERS. **29 P R 1910**

ABANDONMENT OF OCCUPANCY RIGHTS.

See PUNJAB TENANCY ACT, SECTION 38.
See OCCUPANCY RIGHTS.

ABANDONMENT OF WIFE.

Suit by husband for custody of wife whom he had deliberately abandoned—Custom—Hindu Jats of Jullundur District.

See CUSTODY OF WIFE.

73 P. R. 1893

ABANDONMENT OF WORLDLY AFFAIRS.

1. *Udasi Faqirs—Abandonment of worldly affairs—Loss of rights of inheritance.*

See HINDU LAW—INHERITANCE.

7 P R 1892

2. *Udasi Sadhs.*

See RELIGIOUS INSTITUTIONS.

101 P R 1905

3. *Udasi Faqirs of Jullundur—Self-acquired property—*Onus *of proof.*

Where deceased, though an *udasi* faqir, traded and married.

Held, it was incumbent on defendant to prove that, by custom, self-acquired property could not be alienated. LACHMAN DAS *v.* MUSSAMMAT THAKURI. **29 P R 1881**

4. *Custom—Succession—Abandonment of worldly affairs*—Gossains.

A broad distinction is to be drawn as regards the powers of inheriting property between *faqirs* or members of a religious order who have, and those who have not, entirely renounced the world, the latter class not being disqualified from succession in their natural families.

In a case where it appeared that the plaintiff though he left his village and joined a religious order (Gossains) had not renounced the world, but, on the contrary, was the father of three children who appeared to be grown up.

Held, that plaintiff had never reached the stage of complete asceticism which would disqualify him from inheritance, and that he was entitled to succeed to the estate of his nephew in preference to the defendant, who, if a relation at all, was a distant one. SADHU *v.* MISRI. **93 P R 1898**

ABATEMENT.

1. Of Appeal.
2. Of Execution Proceedings.
3. Of Suit.

I—ABATEMENT OF APPEAL.

1. *An order directing an appeal to abate is appealable.*

See APPEAL. **165 P R 1882**

2. *As to limitation for application to substitute.*

See LIMITATION ACT, 1877, SCHEDULE II, ARTICLE 171 B.

113 P R 1882
165 P R 1882
133 P R 1884
81 P R 1886
103 P R 1886

3. *Death of one of two judgment-debtors while appeal of decree-holders was pending—Absence of application to enter representative of deceased on the records—Abatement of appeal, sections 362, 368, 582, 587,* Civil Procedure Code (X of 1877).

Where during the pendency of a special appeal to the Chief Court by the decree-holder from an order passed in execution proceedings, one of the two judgment-debtors (respondents) died, and no application was made to enter the legal representative of the deceased on the record.

Held, that by the combined operation of Sections 582 and 587 of Act X of 1877, the provisions of Chapter XXI of the Code extended to the present appeal, and that section 368 and not section 362 applied to the circumstances of the case, as the word "alone," in both sections means "exclusively" or to the "exclusion of all other persons."

Held, therefore, that the appeal abated under the last clause of section 368 of the Code as amended by Act XII of 1879. SHEO GOPAL *v.* BISHEN SINGH. **30 P R 1880**

4. *Civil Procedure Code (Act X of 1877), section 363.—Suit to cancel gift of hereditary land against donor and donee—Death of one appellant (the donor-defendant) after filing of appeal—Absence of application to place legal representatives on record.*

In a suit brought by a collateral relative of a tenant with right of occupancy to set aside a deed of gift executed by the latter in favour of his daughter's son, both the Lower Courts decreed in plaintiff's favour. It appeared at the hearing of a second appeal in the Chief Court that one of the appellants, the donor-defendant, had died between the date of the filing of the appeal and the date of the hearing, and that no application had been made within the period prescribed by law (Article 171, Schedule II, Act XV of 1877) to have the names of the legal representatives of the deceased entered on the record in his place.

Held, that the appeal did not abate with reference to section 363 of Act X of 1877, as amended by Act XII of 1879, as by virtue of the gift the donor's interests in the property in suit, as between him and the donee, must be

ABATEMENT OF APPEAL—*contd.*

held to have vested in the latter, and the donee alone could have instituted and carried on the appeal quite independently of whether the donor joined him in doing so as a co-appellant. KARM DIN *v.* ISMAIL.

109 P R 1881.

5. *Civil Procedure Code (Act X of 1877), sections 368, 372—Death during pendency of appeal of defendant-respondent—Appellant omitting to apply within 60 days to place deceased's legal representative upon the record—Suit for immovable property—Abatement of appeal—Limitation Act (XV of 1877), Schedule II, articles 171 B., 178.*

During the pendency of an appeal by the plaintiffs in asuit for cancellation of a mortgage of immoveable property, one of the defendant respondents died, and no application was made till after the lapse of 60 days from the date of the respondent's death by the appellants to place the names of the legal representatives of the deceased on the record in his stead, nor was the case one in which the cause of action could be held to have survived against the surviving respondent alone.

Held, by the Full Bench, that section 368 of the Civil Procedure Code of 1877 and not section 372 was applicable to the above case, as the expression "cause of action" in Chapter XXI of the Code means any cause of action whether the suit be for damages, or for personal property, or for immovable property, or for some peculiar relief, and the expression "a cause of action which survives" means a cause of action which is not extinguished by the death of the plaintiff or of the defendant, as the case may be. BENODE MOHINI CHOWDHRAIN *v.* SHARRAT CHUNDER DEY (10 Calc. L. R. 449), not followed.

Held, therefore, by the Division Bench (Plowden and Smyth, JJ.), that Article 171 B., and not Article 178, of the 2nd Schedule of the Limitation Act applied to the above case, and accordingly under section 368 of the Code the appeal abated. JAFAR *v.* JAWAYA. (Plowden, Smyth, Elsmie, Burney and Powell, JJ.)

76 P R 1884 F B

6. *Civil Procedure Code (Act XIV of 1882), sections 368, 371—Abatement of appeal owing to death of respondent—Application to set aside order of abatement.*

Section 371 of the Code of Civil Procedure, 1882, does not allow an application by an appellant to set aside an order of abatement, where the appeal has abated by reason of the death of the respondent in the case; nor is there any provision in the law for setting aside such an order, though, under the last clause of section 368 of the Code of 1882, explanation of delay in applying to substitute on the record the representative of a deceased respondent may be offered at the hearing of the appeal. SHAM SINGH *v.* SANT SINGH.

22 P R 1885

7. *Civil Procedure Code (Act XIV of 1882), section 368—Death of respondent—Omission to apply within 60 days to place representative of deceased on record—"Sufficient cause" for not applying within such period.*

Where, pending an appeal, one of the respondents died and it appeared that the right to sue did not survive against the other respondents alone, and no application was presented within the period allowed by law to substitute the legal representative of the deceased on the record in his stead, *held*, that the excuse that the heir was not put on the record because the plaintiffs-appellants did not know the requirements of the Code and the Limitation Law, could not be accepted as 'sufficient cause' in the terms of sections 368 of the Civil Procedure Code for the appellant's omission. ALLADITTA *v.* ZIADAT.

39 P R 1885 *cf.* **Note to 39 P R 1885**

8. *Civil Procedure Code 1882, sections 366, 372—Death of appellant during pendency of appeal—Suit against Sovereign as ruler of state—Public functionary—Evidence Act, 1872, section 57 (8).*

During the pendency in the Chief Court of an appeal from a decree given against the Maharaja of Kashmir during the lifetime of the late Maharaja, the Maharaja died, and as no application was made within 60 days to put a representative of the deceased appellant upon the record, it was contended for the respondent that the appeal abated under section 366, Civil Procedure Code. It appeared that the suit was not to enforce any liability contracted by the defendant personally, but that the decree must be taken to have been passed against the Maharaja as Ruler of Kashmir, and that he must be regarded as having appealed against it in that capacity.

Held, that as the Court was bound, under section 57, clause 8 of the Evidence Act, to take judicial notice of the facts that the State of Kashmir existed, and that the Maharaja was its Sovereign recognized as such by the British Crown, and as the decree was against the Maharaja in his capacity as Ruler of the State, and was appealed from by him in that capacity, the appellant must be regarded as a public functionary who was sued under, and appealed by, his official designation, and the appeal did not therefore abate under section 366 of the Code, as the true appellant was not dead, the decree not being against the Maharaja in his private capacity, and the State, which he represented for the purposes of the suit, still existing. MAHARAJA OF KASHMIR *v.* MOHAN LAL. **51 P R 1886**

9. *Civil Procedure Code (Act XIV of 1882), section 368—Application to make the representative of a deceased respondent a respondent—Sufficient cause for not applying within the prescribed period—Ignorance of law.*

The question referred for the decision of the Full Bench was whether for the purpose of ascertaining what is "sufficient cause" within the meaning of section 368, Civil Procedure Code, and other similar provisions of the Code, it is necessary to exclude altogether from consideration mistakes arising from ignorance of law.

Held, per Burney, Tremlett and Smyth, JJ., that it cannot be laid down as a general proposition that ignorance of law can never be considered but that the principle laid down in ALLADITTA *v.* ZIADAT, 39 P R 1885, *viz.*, that the excuse that the heir of a deceased respondent was not put on the record, within the prescribed period, because the appellant did not know the requirements of the Code and the Limitation Law, could not be accepted as "sufficient cause" in the terms of section 368 of the Code for the appellant's omission should only be departed from under special circumstances.

Held, per Barkley, J. (while otherwise concurring in the reply to the reference made), that it is inexpedient to lay down any general rule to control the discretion of the Court in dealing with each case with reference to its particular facts. GHULAM SHAH *v.* MALIK and MUZAFFAR. **81 P R 1886**

See NOTE TO THE ABOVE RULING.

10. *Civil Procedure Code 1882, sections 362, 368—Death of respondent during pendency of appeal—Omission to apply within time to substitute legal representatives of deceased—Right to sue surviving against surviving respondents alone—Suit for partition of undivided estate of joint family—Necessity for placing divided brother or widow of deceased co-parcener on the record.*

During the pendency of an appeal by plaintiff in the Chief Court, arising out of a suit for partition of what he (plaintiff) alleged to be the undivided estate of a Hindu joint family, one of the defendant-respondents died, and no application having been made within the 60 days prescribed by Article 171 B., Schedule II, Act XV of 1877, to put his heir on the record, it was contended on behalf of the remaining respondents that the appeal abated. It appeared that after the period of limitation for such an application had expired the appellant did put in an application, praying that, in addition to one B. D., brother of the deceased already on the record, one R. C., another brother, and also the widow of the deceased should be placed on the record as respondents, but in a subsequent application it was pointed out that neither R. C., who had separated from the family, nor the widow were entitled to be regarded as the legal representatives of the deceased, and the appellant therefore prayed that the suit be proceeded with under section 362, Civil Procedure Code, without adding any parties to those already on the record.

As regards R. C., *held*, that the suit having hitherto proceeded on the footing that he would have no claim to a share in the property on division, the Court would not be justified in assuming in a case where no custom modifying the Hindu law had been pleaded or proved, that a custom allowing separated brothers to share with associated brothers in the property of a deceased brother was applicable to the parties, and that R. C. was not therefore a necessary party to the appeal. ABNASHI RAM *v.* MUL CHAND.

44 P R 1884 referred to

ABATEMENT OF APPEAL—*contd.*

As regards the widow, *held*, that in a suit for partition brought by one member of an undivided family against another, the widows of deceased brothers and cousins are not necessary parties, though in many cases it might be convenient that they should be made parties, in order to ascertain what provision should be made for their claims against the estate.

The right to sue was, therefore, held to survive against the surviving respondents, against whom the appeal was directed to proceed under section 362, Civil Procedure Code. BUDHA MAL *v.* BHAGWAN DAS.

86 P R 1883

11. *Application to place legal representative of deceased defendant-respondent on the record—" Sufficient cause" for failure to apply within time—Section 368, Civil Procedure Code (Act XIV of 1882).*

Held, that the proper period for an application to place the legal representative of a deceased defendant-respondent on the record is 60 days under section 171 B., 2nd schedule of the Limitation Act (XV of 1877). 133 P. R. of 1884 and 133 P. R. of 1886, followed.

Held also, that ignorance by an appellant of the fact of a respondent's death may be a "sufficient cause" for not applying within 60 days, within the meaning of the last clause of section 368 of the Civil Procedure Code. GAMAN *v.* BAKSHA.

42 P R 1887

12. *Abatement of appeal abatement of cross-objections—sections 362, 368, Civil Procedure Code (Act XIV of 1882).*

In a case in which defendant-respondents had filed cross-objections—it was ascertained at the hearing of the appeal that one of the respondents had died more than six months previously—plaintiff-appellants urged that he had a right to proceed against the remaining respondents.

Held, that the appeal in the circumstances of the case, had abated as against the remaining respondents.

Held also, that as there could be no hearing on the merits after abatement, the cross-objections had also abated. RAO GHULAM MUHAMMAD KHAN *v.* S. NAHAR ALI.

53 P R 1893

See ALSO CASES UNDER (1) CIVIL PROCEDURE CODE, SECTIONS 365, 368 (2), PARTIES.

13. *Appeal—abatement of, on death of one of two representatives of the body of respondents when more than six months have elapsed before application is made to have legal representatives of deceased made a party.—Civil Procedure Code, 1908, order XXII, rule 4 (3).*

Held, that on the death of one of two representatives of the body of respondents, an appeal abates where no application has been made within six months to have the legal representatives of the deceased made a party.

ABATEMENT OF APPEAL—*concld.*

Held also, that the plea of ignorance of the death until after the expiry of limitation does not justify departure from the rule laid down in order XXII rule 4 (3) of the Civil Procedure Code 1908, which is imperative. SAYAD MIR NAWAB, ETC., *v.* HARDEO, ETC.

60 P R 1911

II.—ABATEMENT OF EXECUTION PROCEEDINGS.

See CIVIL PROCEDURE CODE, SECTION 230.

Execution of decree—Death of decree-holder—Abatement of execution proceedings—Admission of application to set aside abatement after time—Sufficient cause—Civil Procedure Code, 1882, sections 365, 371, 372 A—Limitation Act, 1877, section 5.

In an execution proceeding the decree-holder having died in September 1898, the judgment-debtor, on the 18th October 1899, obtained an order from the executing Court for the removal of the attachment on the ground that no application in accordance with the provisions of section 365, Civil Procedure Code, had been made by the representative of the deceased decree-holder within the prescribed period of limitation. The circumstances were that the decree.holder who was a Sikh Jat had died and left a will probate of which having been keenly contested by his heirs was not granted to the executors until April 1900. In May 1900 two out of the three executors filed an application for execution, but the judgment-debtor contended that by section 365 of the Civil Procedure Code the application was time-barred.

Held, that the word " suit " includes all proceedings in a suit including the proceedings in execution, and that the executors were bound to make and capable of making the application at the time of the death of the testator, but that, under the peculiar circumstances of the case, there was sufficient cause preventing them from continuing the execution proceedings originated by the testator within the meaning of section 371, Civil Procedure Code, and that therefore under the provisions of section 372 A, Civil Procedure Code, and of section 5 of the Limitation Act they were entitled to an extension of the time for making the application to set aside the abatement order.

MOOSA *v.* ESSA (I. L. R. VIII BOM. 241), KHAN BAHADUR NAWABZADA SHAMSHER ALI KHAN *v.* MUSSAMMAT AHMAD ALLAHDI BEGAM (9 P. R., 1901), RAM KIRPAL *v.* RUP KUARI (I. L. R. VI ALL. 269), and J. C BOSE *v.* RANI BHAGWAN KOUR (63 P. R., 1900), referred to. PRICE *v.* GOLAK NATH.

39 P R 1903

III.—ABATEMENT OF SUIT.

1. *Luntaic defendant—Abatement of suit until appointment of manager—Act XXXV of 1858*—The defendant was sane when he contracted the debt sued upon, but became insane before the suit was instituted.

Held, that his wife could not be summoned as his legal representative to appear and defend until she had been appointed manager of her husband's estate under section 9 of

ABATEMENT OF SUIT—*contd.*

Act XXXV of 1858, and that until the appointment of a manager the suit must abate. GHASSEE KHAN *v.* ELDRED.

89 P R 1869

2. *Custom—Alienation—Alienation by a Jat proprietor of ancestral property—Suit by the son of the alienor to declare the alienation invalid and not binding after the alienor's death—Competency of the reversioners of such son to continue the suit or appeal on the death of the son.*—A. sued for a declaration that a sale made by his father K of ancestral property for Rs. 11,151-14 would not affect his reversionary rights, on the ground that there was no valid necessity for the alienation, and that K was not competent to effect it. The District Judge found that the alienation was valid to the extent of Rs. 5,794. Both parties being dissatisfied, the vendees preferred an appeal, and the plaintiff filed cross-objections against the decree of the District Judge. During the pendency of the appeal in the Chief Court the plaintiff died. The vendees applied for the substitution of the plaintiff's parents, and the Court brought his mother and uncles on to the record as representatives for the purposes of the appeal and the uncles alone for the purposes of the cross-objections. At the hearing of the appeal, the vendees contended that the claim being personal to the plaintiff, the cause of action did not survive, and that the suit should, therefore, be dismissed. The parties were Sidhu Jats of Attari, Tahsil Tarn Taran in the Amritsar District.

Held, that the cause of action survived to the plaintiff's uncles who were entitled to defend the appeal and to support the cross-objections filed by the deceased ; that under the Punjab Customary Law a reversionary heir does not derive his title from or through the last male owner of the estate, but from the customary rule which places a restriction upon the owner's power of disposition of ancestral property and renders him liable to be controlled in that respect by his collateral heirs, and that a suit for the declaration of such a right consequently does not abate on the death of a plaintiff who leaves reversioners, as that right can be exercised by those reversioners. RAM RAKHA MAL *v.* BALWANT SINGH.

58 P R 1905

See CUSTOM—ALIENATION.

3. *Husband and wife—Suit by husband for dissolution of marriage—Death of respondent—Abatement of suit.*

Held, that a suit by a husband for dissolution of marriage abates on the death of the respondent pending the suit and that such abatement entails the abatement of a claim for damages against the co-respondent. S. *v.* S. and B.

60 P R 1906

See DIVORCE ACT.

4. *Application for substitution—Death of one of several defendants—" Sufficient cause" for not applying within the time prescribed—Limitation Act (XV of 1877)—Civil Procedure Code (Act XIV of 1882), section 368.*

II.—ABATEMENT OF SUIT—*concld.*

Held, that ignorance of defendant's death is sometimes "sufficient cause" for not applying for legal representatives to be brought on the record in place of the deceased within the period prescribed therefor and a plaintiff can successfully plead his ignorance of the fact as a justification for such delay where defendants are numerous and live in a different village from plaintiff. DADU *v.* KADU.

See PARTIES. **113 P R 1907**

ABSENCE FROM BRITISH INDIA.

See BRITISH INDIA.

ABSENTEE.

See ABANDONMENT.
ALLUVION AND DILUVION.
LAMBARDAR.
LIMITATION ACT (XV OF 1877,) SECTION 26.
MORTGAGE—POSSESSION UNDER.
OCCUPANCY RIGHTS.

ACCEPTOR.

See NEGOTIABLE INSTRUMENTS ACT, 1881, SECTIONS 5, 7, 33, 88.
71 P R 1910

ACCOMMODATION BILL.

See BILLS OF EXCHANGE
HUNDI.

ACCOUNTS.

See CIVIL PROCEDURE CODE (ACT VIII OF 1859), SECTION 181.
CONSTRUCTION OF DOCUMENT.
INSOLVENCY.
JURISDICTION OF SMALL CAUSE COURT.
RELIGIOUS INSTITUTION.

ACCOUNT, BALANCE OF—

See CONTRACT ACT, 1872, SECTION 25.
102 P R 1911
119 P R 1911

ACCOUNT BOOKS.

See HINDU LAW, JOINT FAMILY.
SPECIFIC RELIEF ACT, 1877, SECTION 39.

1. *Books—Evidence.*—Account books were admissible as corroborative, but not as independent evidence, under Act II of 1855, *Rulla* v. *Soonam (No. 37 of 1867, Civil)*; *Mokhum Das* v. *Buldeo Das (No. 61 of 1868, Civil)*. The force or utility of Judicial Circular of March 14th, 1859 ("no account books shall be accepted as evidence which do not comprise a day-book as well as a ledger") questioned. GUNGA RAM *v.* KISHEN LAL.
34 P R 1866

2. Plaintiff's claim was on a bond, unregistered. The bond was held therefore inadmissible. He kept no day-book, and the amount of the bond was not brought down

ACCOUNT BOOKS—*concld.*

as a balance in any subsequent account. Roberts, J. dismissed the suit. MISSUROO DHERA *v.* BHUGWAN SINGH. **81 P R 1866**

3. *Held*, that Judicial Circular of 14th March 1859, regarding a day-book as well as a ledger, was not to be too strictly construed or enforced SHEOKURN *v.* KHODA BAKHSH. **93 P R 1866**

4. Claims based on account, *held*, proper for reference to arbitration or assessors. GOONA MULL *v.* KHEMA MULL (No. 5 *P. R.* 1866), and MOBARIK KHAN *v.* SEWA RAM. **35 P R 1867**

5. *Re-opening accounts stated.*
The defence that accounts have been taken and settled is a good one; but it is open to a party to show error in the accounts, the *onus* of proving the error resting on the party who alleges it. KOKOO MULL *v.* SHEIKH NUTHA.
47 P R 1866

6. *Account Books—Evidence.*
In a suit for balance of account, account books kept in the ordinary course of business are admissible only as corroborative and not as independent evidence of the balance claimed as due. But to let in the books as corroborative evidence, it is not essential for plaintiff to show that defendant attested or acknowledged the balance; it is sufficient for plaintiff himself, or some one else acquainted with the fact, to testify that the balance claimed was due by the defendant to plaintiff. MOHKUM DASS *v.* BULDEO DASS. **6 P R 1868**

7. *Evidence Act, 1872, Section 34. Account Book—Revision—Small Cause Court Act* 1887, *Section* 25.
The Small Cause Court gave plaintiff a decree on his account books and the evidence of his book-keeper, who deposed that the books were kept by him from memoranda supplied to him by plaintiff, the entries in the books being made on the days on which memoranda were supplied. The plaintiff did not himself give evidence in support of his claim, nor was his absence from the witness-box accounted for.

Held, that plaintiff having declined to support his claim by the best evidence available was not entitled to succeed. HIRA BHAGAT *v.* GOBIND RAM. **63 P R 1897**

ACCOUNT, LIABILITY TO.

Managing Agent and Company—Liability to account.
Held, that the relationship between a Company and its Managing Agent being that of principal and agent, it is the duty of the latter to render proper accounts to the former. The fact that an Agent of a Company was paid by commission or was subordinate to the control of its Directors, or that he had delivered up to them all the account books of the Company, does not exonerate him from the liability to account. *Harinath Rai* v.

ACCOUNT, LIABILITY TO—*concld.*

Krishna Kumar Bakhshi (I.L.R., XIV Cal., 147 P. C.,) and *Lawless v. Calcutta Landing and Shipping Company, Ld. (I.L.R. VII Cal., 627)*, referred to. ANDERSON *v.* DELHI COTTON MILLS CO., LD. **69 P R 1903**

ACCOUNT STATED.

See ACCOUNTS.
CONTRACT ACT (IX OF 1872) SECTION 25.
LIMITATION ACT (XV OF 1877), SECTION 19.
LIMITATION ACT (XV OF 1877), SECTION 20.
LIMITATION ACT (XV OF 1877) 2ND SCHEDULE, ARTICLES 62 AND 115.

ACCOUNT, SUIT FOR—

See ACCOUNTS.

Against representative of deceased Agent.
See LIMITATION ACT (1877), SCHEDULE II, ARTICLE 62.
LIMITATION ACT (1877), SCHEDULE II, ARTICLE 89.
RIGHT TO SUE.

Suit by Agent for adjustment of.
See CONTRACT ACT 1872, SECTION 213.

Debtor and Creditor.
See RIGHT TO SUE.

Partners.
See PARTNERSHIP.

1. *Suit for account—Value of relief sought—Jurisdiction—Course of appeals.*
See APPEAL, CIVIL.
86 P R 1892

2. *Suit for dissolution of partnership and rendition of accounts—Value of suit—Suits Valuation Act*, 1887, *Sections* 8, 11.—*Course of Appeal—Punjab Courts Act, 1884, Section 39.*
See APPEAL, CIVIL.
58 P R 1902

3. *Act XXVII of* 1860—*Power of third parties to compel grantee to render accounts—Court Fees Act*, 1870, *Schedule 1*, No. 12.
See CERTIFICATE UNDER ACT XXVII OF 1860. **94 P R 1887**

4. *Suit for recovery of moveable property and for an account—Plaintiffs claiming as owners by succession and as principals who had appointed defendants to manage their property—Statement by plaintiff, that she had never appointed defendants as her agents—Dismissal of suit—Principles which should guide Courts in such cases.*
See DISMISSAL OF SUIT.
85 P R 1896

5. *Suit for dissolution of partnership and for rendition of accounts—Suit by*

ACCOUNT SUIT FOR—*concld.*

adopted son of widow of deceased partner—Joint Hindu family—Limitation Act, 1877, *2nd Schedule, Articles* 106, 120—*Hindu Law—Devolution of ancestral trade.*

See Hindu Law—Inheritance.

20 P R 1897

6. *Suit by minor against guardian for an account and for possession of immovable property—Trustee—Parties to suit—Limitation Act,* 1877, *2nd Schedule, Articles* 120, 132, 144, 147, *and Sections* 7, 22.

See Limitation Act, 1877, Section 7.

33 P R 1897

7. *Guardian and Ward—Suit by ward after attaining majority for accounts—Limitation.*

See Limitation Act, 1877, 2nd Schedule, Article 120. **84 P R 1891**

8. *Contract Act,* 1872, *Section* 265—*Suit to wind up partnership—Power to pass decree against plaintiff in settling accounts—Defendants disclaiming order in his favour.*

See Partnership.

65 P R 1888

9. *Partnership—Suit by partner against co-partner, who was also manager of the business to have an account rendered of his stewardship—Accounts without dissolution—Contract Act,* 1872, *Sections* 213, 258.

See Partnership.

40 P R 1901

10. *Suit for balance of partnership account.*

See Small Cause Court Act, 1887, Schedule II, Article 29.

64 P R 1895

ACCOUNT, SUMMARY ORDER FOR.

Act XL of 1858—*Recall of certificate—Summary order to account for moneys received and disbursed—Reference to civil suit.*

See Guardian. **66 P R 1890**

ACKNOWLEDGMENT.

See Limitation Act, 1877.

52 P R 1909

See Stamp Act, 1899, Schedule I, Article I. **68 P R 1904**

ACKNOWLEDGMENT OF DEBT.

See Duress.
Evidence.
Limitation Act (XIV of 1859), Section 4.
Limitation Act (IX of 1871), Section 20.

1. *Acknowledgment suit for balance of account—Promise to pay—entry by debtor in books of creditor.*

See Limitation Act (XV of 1877), Section 19. **33 P R 1882**

2. *Acknowledgment of liability—Balance struck—no express or implied promise to pay.*

ACKNOWLEDGMENT OF DEBT—*contd.*

Held, insufficient to bring barred items within limitation.

See Limitation Act (XV of 1877), Section 19. **36 P R 1886**

3. *Acknowledgment of existing liability—Letter written within limitation—connected with previous correspondence out of limitation.*

See Limitation Act (XV of 1877), Section 19. **2 P R 1886**

4. *Power of Guardian to sign acknowledgment of liability—Act XL of* 1858.

See Limitation Act (XV of 1877), Section 19. **25 P R 1886**

5. *Signature by affixing seal or stamp bearing name impressed.*

Held, a sufficient signing. **185 P R 1883**

See Limitation Act (XV of 1877), Section 19.

6. *Acknowledgment of decree-holders' right to execute.*

See Limitation Act (XV of 1877), Section 19. **28 P R 1885**

7. *Contained in unregistered document.*

See Registration Act (III of 1877), Section 49. **17 P R 1881.**
131 P R 1883

8. *Acknowledgment of liability—Set off.*

See Limitation Act, 1877, Section 19.

60 P R 1887

9. *Acknowledgment by one partner—Liability of other partners.*

See Limitation Act, 1877, Section 19.

140 P R 1889

10. *Acknowledgment signature by dictation—Balance struck.*

See Limitation Act, 1877, Section 19.

122 P R 1889

11. *Acknowledgment—Duly authorized agent—sale of goods to firm represented by minors—appointment of two joint guardians by Court under Act XL of* 1858—*Power of one guardian to sign acknowledgment on his own behalf and on behalf of his co-guardian.*

See Limitation Act, 1877, Section 19.

7 P R 1890

12. *Guardian and ward—acknowledgment of debt by Court of Wards as guardian of minor.*

See Limitation Act, 1877, Section 19.

1 P R 1897

13. *Acknowledgment by part payment of principal—endorsement by debtor.*

See Limitation Act, 1877, Section 20

124 P R 1894

14. *Balance entered in account book professing to have been struck by a certain person—Written instrument—Cancellation of*

ACKNOWLEDGMENT OF DEBT—*concld*

instrument—Threat of civil suit—Reasonable apprehension of injury—Discretion of Court.

See Specific Relief Act, 1877, Section 39. **12 P R 1890**

15. *Acknowledgment of liability—suit for balance of account—Contract Act, Section* 25 (*c*).

See Limitation Act (XV of 1877), Section 19. **68 P R 1904**

16. *Unsigned statement of account in defendant's books—acknowledgment.*

See Limitation Act (XV of 1877), Section 19. **132 P R 1907**

17. *Admission of liability contained in a "jawabdawa" of one of the debtors.*

Held, not binding on other debtors.

54 P R 1908

See Limitation Act (XV of 1877), Section 19.

18. *Suit on balance of account—Acknowledgment of liability—Promise to pay barred debt—Contract Act,* 1872, *Section* 25 (*c*).

See Limitation Act (XV of 1877), Section 19. **102 P R 1908**

19. *Suit for balance admitted due—Acknowledgment of liability—promise to pay—new contract.*

See Contract Act, 1872, Section 25 (c). **119 P R 1908**

20. *Acknowledgment by agent.*

See Contract Act, 1872, Section 230.

43 P R 1910

See Principal and Agent.

55 P R 1910

ACKNOWLEDGMENT OF LIABILITY.

See Acknowledgment of Mortgage and Mortgagor's Title.

53 P R 1905 F B

ACKNOWLEDGMENT OF MORTGAGE AND MORTGAGOR'S TITLE.

1. *Mortgage—Acknowledgment by one of several mortgagees.*

See Limitation Act, IX of 1871, Schedule II, Article 148.

64 P R 1877

2. *Redemption of mortgage—Acknowledgment—Signature—Seal.*

See Limitation Act, IX of 1871. Schedule II, Article 148.

93 P R 1877

3. *Acknowledgment of mortgage—admission in deposition signed by mortgagee—Elder brother acting on behalf of younger brother.*

See Limitation Act IX of 1871, Schedule II, Article 148

78 P R 1878

ACKNOWLEDGMENT OF MORTGAGE AND MORTGAGOR'S TITLE—*concld.*

4. *Suit for redemption of mortgage—Acknowledgment made after lapse of 60 years from date of mortgage—effect of such.*
See LIMITATION ACT XIV OF 1859, SECTION 1. **109 P R 1884**

5. *Suit for redemption of mortgage—acknowledgment—Agreement to refer to arbitration.*
See LIMITATION ACT (XV OF 1877), SECTION 19. **97 P R 1884**

6. *Acknowledgment of mortgagor's title by minor insufficient.*
See LIMITATION ACT (XV OF 1877), SECTION 19. **59 P R 1901**

7. *Acknowledgment of mortgage—Entry in Settlement—Redemption—Signature.*
See LIMITATION ACT (XV OF 1877), SECTION 19.
53 P R 1905, F. B.

8. *Mortgage entry in settlement record—signature of one of the mortgagees and of Settlement Officer.*
See LIMITATION ACT, 1877.
39 P R 1910

ACKNOWLEDGMENT OF PATERNITY.

Child born more than 280 *days after the dissolution of his mother's marriage but less than six months after second marriage—acknowledgment of paternity.*
See MUHAMMADAN LAW. **78 P R 1910**

ACKNOWLEDGMENT OF RECEIPT OF CONSIDERATION.

1. *Suit on unregistered mortgage—Defendant admitting amount due on mortgage but pleading payment—Inadmissibility of document.*
See REGISTRATION ACT (III OF 1877), SECTION 17. **52 P R 1883**

2. *Suit to enforce bond—Defendant denying receipt of consideration—Onus of proving consideration—Recital of receipt of consideration in bond—Acknowledgment before registering officer—Presumption of truth of such acknowledgment—Rebuttal of such presumption.*
See BURDEN OF PROOF. **17 P R 1888**

ACKNOWLEDGMENT OF RIGHT TO REDEEM MORTGAGE.

1. *Acknowledgment—Entry in Settlement Records—Mortgage—Redemption—Signature.*
See LIMITATION ACT, 1871, SECTION 20.
145 P R 1889

2. *Suit for redemption of mortgage—Acknowledgment of mortgagor's right to deerem.*
See LIMITATION ACT, 1877, SECTION 19.
20 P R 1887

ACKNOWLEDGMENT OF RIGHT TO REDEEM MORTGAGE—*concld.*

3. *Acknowledgment of right to redeem—Entry in Settlement Records.*
See LIMITATION ACT (1877), SECTION 19.
63 P R 1888

4. *Acknowledgment in writing—Statement recorded by Court Reader—Signature.*
See LIMITATION ACT (1877), SECTION 19.
16 P R 1891

5. *Acknowledgment of the title of the mortgagor by a person claiming under the mortgagee—Hindu Law.*
See LIMITATION ACT (1871). SCHEDULE II, ARTICLE 148.
62 P R 1900

ACKNOWLEDGMENT OF SON.
See CUSTOM (INHERITANCE).
MUHAMMADAN LAW (ACKNOWLEDGMENT).

ACQUIESCENCE.

1. *Civil Procedure Code,* 1882, *Section* 396—*Commission to make partition after disposal of suit—Irregularity in procedure—Estoppel of party acquiescing—Appeal.*
See CIVIL PROCEDURE CODE, 1882, SECTION 396.
124 P R 1893

2. *Suit for removal of wall and* dähliz—*Co-sharers have no right to exclusive possession of joint property or to alter the condition of any portion thereof without the consent of the proprietary body—Acquiescence in Wrongful Act.*
See COMMON LAND. **121 P R 1885**

3. *Acquiescence—Suit for cattle-enclosure—long possession by plaintiff—Power of village proprietors to evict where possession less than* 12 *years.*
See COMMON LAND.
36 P R 1882

4. *Purchase by bank of its own shares—ultra vires—void transaction—Acquiescence.*
See COMPANIES ACT X OF 1866, SECTION 128. **38 P R 1881**

5. *Suit for restitution of conjugal rights and custody of wife—defendants pleading acquiescence and connivance on the part of husband—refusal to grant decree.*
See CUSTODY OF WIFE.
150 P R 1884
6 P R 1885

6. *Alienation by widow—necessity—duty of purchaser from widow—Effect of consent by one of several reversioners, equally entitled, to alienation by widow—Consenting reversioner when bound as regards his individual interest.*
See CUSTOM. **39 P R 1889**

ACQUIESCENCE—*contd.*

7. *Alienation by widow—consent of next reversioner, effect of—suit for declaration of invalidity by remoter reversioners.*
See CUSTOM.
99 P R 1889

8. *Alienation by widow—Suit by reversioners in seventh degree—acquiescence of next collaterals who had sons living—Judicial discretion.*
See CUSTOM.
7 P R 1893

9. *Alienation by sonless proprietor—acquiescence of next reversioners who had sons living—*Locus standi *of more remote reversioners to contest alienation.*
See CUSTOM.
81 P R 1896

10. *Sale of occupancy rights by widow—Acquiescence—Punjab Tenancy Act,* 1887, *Section* 59.
See CUSTOM.
68 P R 1894
2 P R 1900 Rev.

11. *Transfer of occupancy rights by tenant—effect of acquiescence on part of landlord—Facts constituting acquiescence.*
See CUSTOM.
1 P R 1898 Rev.

12. *Suit for pre-emption—foreclosure of mortgage—omission of mortgagee to take preliminary proceedings under section* 8, *Regulation XVII of* 1806—*acquiescence by mortgagor in such omission.*
See ESTOPPEL.
155 P R 1882

13. *Pre-emption—Suit by pre-emptor with superior right against pre-emptor with inferior right who had obtained a decree—Waiver of right—Acquiescence—Estoppel—Collusion between plaintiff and vendor.*
See ESTOPPEL. **139 P R 1894**

14. *Suit for possession on ground that a certain sale was invalid as against plaintiff—plea by defendant that plaintiffs acquiesced in sale—Acquiescence—Estoppel.*
See ESTOPPEL. **81 P R 1898**

15. *Custom—Alienation—Gift of land inherited by daughter in favor of her adopted son—plea of estoppel, by conduct, of acquiescence.*
See ESTOPPEL. **1 P R 1907**

16. *Guardian and Wards Act,* 1890, *Sections* 7, 8, 17—*Conduct of natural guardian—Application by father, who had changed his religion, for guardianship of minor sons who had been brought up with his acquiescence as Muhammadans—Waiver of right.*
See GUARDIAN.
84 P R 1894

ACQUIESCENCE—*contd.*

17. *Irregularities in procedure of Insolvency Court Acquiescence of parties.*
See INSOLVENCY. **19 P R 1900**

18. *Adverse possession—landlord and tenant—non-payment of rent—repudiation of landlord's title—acquiescence by landlord.*
See LIMITATION ACT, 1877, 2ND SCHEDULE, ARTICLE 139.
18 P R 1888

19. *By a Muhammadan female who is* sui juris—*marriage.*
See MARRIAGE. **73 P R 1909**

20. *Suit by landlord to enforce clause in* Wajib-ul-arz *providing for forfeiture of occupancy tenure by reason of alienation by tenant—Power to enforce such provision—Delay in suing—Long acquiescence in mutual disregard of such provision.*
See OCCUPANCY RIGHTS.
6 P R 1889

21. *Occupancy rights—unauthorised alienation—Acquiescence.*
See OCCUPANCY RIGHTS.
7 P R 1901 Rev.

22. *Rival claimants—acquiescence—waiver suit for pre-emption.*
See PRE-EMPTION. **20 P R 1881**

23. *Pre-emption—custom—effect of acquiescence by proprietors in previous sales.*
See PRE-EMPTION. **189 P R 1883**

24. *Pre-emption—custom—sale to a stranger—acquisition of pre-emptor with superior rights—suit by a pre-emptor with inferior rights against the stranger—acquiescence.*

See PRE-EMPTION. **34 P R 1903**

25. *Mortgage of occupancy rights—suit by proprietor to eject mortgagee—delay in suing—acquiescence.*
See PUNJAB TENANCY ACT, 1868, SECTION 34. **82 P R 1881**

26. *Unauthorized alienation by tenant—Landlord's acquiescence.*
See PUNJAB TENANCY ACT, 1868, SECTION 34. **100 P R 1887**

27. The owner of a plot of land who stands by and does not interfere to prevent others building a house thereon, is estopped from demanding that the house be pulled down. All that he can claim is rent or compensation. BHEKKA SINGH *v.* HURJUS.
7 P R 1866, Ref.

28. *Erection of Buildings—Compensation.*

Where buildings are erected upon or improvements made to property by the party in possession, *bona fide*, and without notice of any adverse title, compensation is allowed for such buildings and improvements to the party making them as against the rightful owner. If the owner of the land induces the person to build, there may be an equitable transfer of property from the former to the latter. KUNHYA LAL *v.* KISHEN CHUND. **42 P R 1866**

ACQUIESCENCE—*contd.*

29. A tenant cannot claim compensation who improves his lessor's property for his own pleasure, and not at the request of the lessor. YAR MAHOMED *v.* MUSSUMMAT RUHMOON. **48 P R 1866**

30. Where a man plants and cultivates on the land of another, the latter not objecting, the former is entitled to compensation. RUMZAN *v.* GOOL MAHOMED BUKSH.
61 P R 1866

31. Where plaintiff, the owner of a fourth share in a piece of building ground, sued to eject the defendants, who had built on the land with the consent of the proprietors owning a half share.

Held, that plaintiff was entitled to possession of her fourth share on her paying compensation to the defendants. MUSSUMMAT ZUHOORAN *v.* BUNSEE. **21 P R 1867**

32. Where property was sold in execution of a decree by a Court that had no jurisdiction to hear the suit, and the judgment-debtor sued to recover the property (house and premises), the sale was cancelled, mesne profits were allowed to the plaintiffs, as the purchaser had full notice from plaintiff, and the purchaser was allowed compensation for improvements. HAMILTON *v.* PATTERSON.
8 P R 1868

33. According to the general usage in rural villages, the proprietor cannot oust the occupier of a house at pleasure on payment to the latter of the value of the materials of the building. BUKSHA *v.* FEEDA.
20 P R 1868

34. Defendant began to build on land to which his title was not disputed at the time and when the building was nearly finished, plaintiff came forward and objected.

Held, that where an owner of land omits to sue for demolition of buildings, when the infringement of his right is first threatened or commenced, he is estopped from claiming demolition, and is only entitled to compensation. MUSSUMMAT BHAGU *v.* NADIR ALI.
57 P R 1871

35. *Possessor with knowledge of defective title—Right to compensation for improvements.*

A person in possession of the land of another with knowledge of his defective title is not entitled to compensation for improvements where such improvements, not being necessarily of any direct advantage to the real owner, were objected to by him at the time when made. BABA KHEM SINGH *v.* DHUNNA SINGH. **7 P R 1872**

36. *Ejectment—Rent.*

A piece of land was given by the plaintiff to defendants more than twelve years before suit, for the purpose of building a house upon it, not as an absolute grant, but with a reservation of plaintiff's proprietary right in the land. The defendants built upon the land, and occupied without paying any rent. Plaintiff sued either to eject the defendants, allowing them to remove the building materials or pay them compensation, or to receive rent for their occupation of the land.

ACQUIESCENCE—*contd.*

Held, that it would not be equitable to allow the plaintiff to eject the defendants, but that the plaintiff was entitled to a fair rent so long as the defendants continued to use and occupy the land. MOULVI SADID-UD-DIN KHAN *v.* AGHA MIR. **19 P R 1875**

37. *Occupation of land by person without title—Erection of buildings—Delay on part of owner in bringing suit—Relief to which occupier without title is entitled.*

Defendants occupied and erected *katcha* buildings upon land belonging to the plaintiffs. After a period of 6 or 7 years plaintiffs sued to eject the defendants from the land.

Held, that defendants were not entitled to continue in possession of the *katcha* buildings, but were entitled to remove the materials thereof.

Mere delay on the part of an owner of land in suing a person in possession without title, who erects buildings on the land he has illegally occupied, does not entitle the possessor to be maintained in possession. The particular relief to which a possessor so situated is entitled must depend upon the circumstances of the case. GOUHAR *v.* FAZLA.
53 P R 1878

38. *Custom—M. Saroki, Gujrat district—Sale of houses by non-proprietary residents.*

By the custom of the village of Saroki in the Gujrat district, non-proprietary occupants of houses cannot sell them unless they hold the sites by purchsse or gift from the proprietors.

The fact that the proprietors silently acquiesced in some 18 sales of houses and sites by non-proprietary residents between 1864 and 1877.

Held, not to deprive them of the right of objecting to a particular sale; as the mere non-assertion of a discretionary right in certain instances does not necessarily imply a renunciation of it for all time and in all cases.

The decision in *Punjab Record*, No. 25 of 1875, cited and approved. ALLA DITTA *v.* DINA. **125 P R 1879**

39. *Consent to jurisdiction—Acquiescence.*

Held, by the Full Bench, that the consent and acquiescence of the parties to a suit cannot give jurisdiction to a Court of limited jurisdiction. HAMA *v.* RAN SINGH.
36 P R 1902 F B

40. In matters of alienations under customary law subsequent long silence sometimes amounts to conduct precluding a suit to

ACQUIESCENCE—*concld.*

set aside the alienation, but where the collaterals not only delayed to attack the alienation, but were also concerned either in purchasing from the alienor to the exclusion of other collaterals, or cultivating under or exchanging with the defendants-alienees the disputed lands.

Held, that they had acquiesced in the alienation, and were estopped from bringing the suit. NIHALA *v.* BHIKAM RAM (81 P. R. 1898), approved. AMIR AND OTHERS *v.* MUSSAMMAT ZEBO AND OTHERS. **42 P R 1902**

41. *Occupancy right—Sale of, without consent of landlord—Acquiescence—Right of tenant under section 5 not less than that of one under section 6—Punjab Tenancy Act*, 1887, *sections* 5, 53, 55, 60.

In a suit instituted in 1903 by a landlord to set aside a sale made by occupancy tenants holding under section 5 of the Punjab Tenancy Act on the ground that it had been effected without his previous consent and was therefore void, it appeared that the sale deed was registered on 27th February 1890 and mutation effected in the following April, and that the rents were paid by the alienee after that and accepted by the plaintiff.

Held, that the landlord's conduct and acts amounted to acquiescence and he was estopped from contesting the sale. JIWAN SINGH *v.* MAHARAJA JAGGAT SINGH (1 P. R. 1898, Rev.), and BAKHSH *v.* FATEH MUHAMMAD (2 P. R. 1898, Rev.), referred to. BHAGA AND OTHERS *v.* KRISHAN DEO. **8 P R 1904 Rev.**

42. *Held*, that a proprietor, by attesting the sale-deed of a non-propietor and appearing before the Sub-Registrar, acquiesces in the alienation and is debarred from afterwards contesting it.

MALLA *alias* MAL SINGH, etc., *v.* MUNSHI RAM, etc. **69 P R 1910**

ACQUIRED PROPERTY.

See CUSTOM II—ALIENATION, GIFT.
See HINDU LAW, ALIENATION.

1. *Muhammadan Jats of the Ghumman tribe—Ferozepore district.*

Found, by custom, that only a son could object to the alienation of acquired property. JAWAN *v.* ESA. **2 P R 1877**

2. *Bedi Khatris of Pak Pattan—Self-acquired property—Gift of extra share to youngest son—Will.*

Found, that among Bedi Khatris of Pak Pattan in the Montgomery district, there is no established custom whereby a proprietor's power of alienation of self-acquired property is limited—where therefore, a Sikh father of the above tribe disposed of two shares of his self-acquired property by will in favour of his youngest son, to the exclusion of the two elder ones.

Held, that such disposition was valid. BABA NATHA SINGH *v.* WAZIR SINGH. **63 P R 1880**

3. *Hindus of Kapuria caste—Property, ancestral and acquired.*

ACQUIRED PROPERTY—*contd.*

Found, that no custom was established restricting either the alienation of acquired property or of property derived from the maternal line by inheritance.
SONU *v.* LOKU. **2 P R 1881**

4. *Udasi Faqirs of Jullundur—Self-acquired property—onus of proof.*

In a suit to succeed as heir under a will of one B. D, an Udasi faqir, to his self-acquired property, where the defendant, the disciple of the deceased, alleged that he was incapable of disposing of such property as he pleased, and it appeared that the deceased B. D., was not one of those Udasi faqirs who have totally renounced worldly affairs, but who both trade and marry.

Held, that it lay upon the defendant to establish a custom among Udasi faqirs of this class overriding the general rules of law as to the acquisition and disposition of property by private persons, which in this case he had failed to do. LACHMAN DAS *v.* MUSSAMMAT THAKUR. **29 P R 1881**

5. *Pathans of Dipalpur tahsil, Montgomery district—Will—Acquired property.*

Found, in a suit the parties to which were Pathans of the Dipalpur *tahsil* in the Montgomery District, that the parties were governed by custom and not by Muhammadan Law, and that under the custom a disposition by a proprietor of his acquired property by will was valid. MUSSAMMAT BUBU BEGAM *v.* ASADULLA. **170 P R 1888**

6. *Awans of Peshawar district—Will—Acquired property—Bequest with remainder.*

A will by which a proprietor bequeathed his self-acquired property to the defendant's mother with remainder to the defendants, *found*, not to be invalid by the custom of Awans of the Peshawar district. MUSSAMMAT KHEMO *v.* FAZAL DIN. **176 P R 1888**

7. *Chib Rajputs of mauza Chak Natha, district Gujrat—Gift by a sonless proprietor of his self-acquired property to a daughter's sons.*

Found, that no custom exists among Chib Rajputs of the Gujrat district which prevents a childless proprietor from making a valid gift of his self-acquired immovable property to his daughter's sons in the presence of near agnates. SHARAF ALI *v.* KARIM-ULLAH. **125 P R 1890**

8. *Custom—Alienation—Ancestral land—Non-ancestral house and movable property—Arains of Ferozepore district—Will.*

The plaintiffs sued their half-brother to recover their share of the property left by their father, an Arain of the Ferozepore district, consisting of (*i*) ancestral land, (*ii*) a non-ancestral house and (*iii*) movables. The defendant set up a will, the validity of which as exceeding the power of the donor, was denied by the plaintiffs.

Held, that the alienation of the ancestral land in favour of one son to the exclusion of

ACQUIRED PROPERTY—*contd.*

the others, without their assent, was invalid; but that the bequest of the rest of the property in dispute should be maintained. ACHHA *v.* GAMAN. **120 P R 1893**

9. *Custom—Gift by sonless proprietor to daughter's husband—Puriwal Jats of Daska* tahsil, *Sialkot district.*

Found, that by custom among Puriwal Jats of *mauza* Noiki, *tahsil* Daska, Sialkot district, where ancestors had migrated from the Raya *tahsil*, a sonless proprietor is not competent to make a gift of his property, whether ancestral or self-acquired, to his daughter's husband without the consent of the persons who would otherwise succeed to the property. SAHIB DITTA *v.* SURJAN. **17 P R 1894**

10. *Bans Jats of Ludhiana* tahsil—*Custom—Alienation—Gift by sonless proprietor to daughter—Ancestral and acquired property.*

Found, that the plaintiff had failed to prove that by custom among Bans Jats of Ludhiana sonless proprietor was incompetent to gift his *acquired* estate to his daughters. DULA *v* BUTA. **53 P R 1897**

11. *Self-acquired property—Gift during lifetime with possession—Sister's son.*

Found, that a gift of self-acquired property followed by possession and mutation of names by donor in his lifetime to his sister's son was not invalid by custom. JOWAHIR SINGH *v.* DIAL SINGH. **76 P R 1898**

12. *Awans of Khushab* tahsil, *district Shahpur—Custom—Gift of immovable property.*

Found, that by custom among Awans of Khushab *tahsil*, district Shahpur, in the absence of male lineal descendants, a male proprietor has an unrestricted power of gifting his immovable property, whether ancestral or acquired, to his daughter, daughter's son, sister, sister's son, son-in-law, or to one of his agnates to the exclusion of the rest and without their consent. SHER MUHAMMAD *v.* PHULLA. **9 P R 1899**

13. *Alienation of property acquired from income of ancestral property—Custom.*

As under customary law property acquired from income or profits of ancestral property does not constitute it ancestral, the *onus* of proving that such property cannot be alienated by the last full owner at his pleasure rests on the person alleging such a custom. SHER SINGH *v.* KISHEN SINGH (4 P. R. 1900, cited). MEHR KHAN *v.* KARM ILAHI. **13 P R 1902**

14. *Alienation by Hindu widow of self-acquired property of her husband—right of reversioner to question such alienation.*

Held, that there is no distinction between ancestral and acquired property inherited by a Hindu widow from her husband, and a re-

ACQUIRED PROPERTY—*concld.*

versioner has as much right to contest her alienation of the one as of the other. KIRPA RAM *v.* RAKHI. **114 P R 1907**

15. *Competency of father over self-acquisition—Validity of a testamentary disposition of his share by a member of a joint Hindu family—Effect of partition by testator before death.*

Held, that a Hindu father is competent to dispose of all his self-acquired property at pleasure, and his sons cannot dispute the disposition even though it be in favour of a stranger.

Held, also, that a testamentary disposition of his share of the joint property by a member of an undivided family would not be invalid if the interest of the testator had been separated off by means of a partition before his death. SOHAN LAL *v.* LABHU RAM. **150 P R 1907**

16. *Awans of Pind Dadan Khan* tahsil—*Custom—Inheritance—Rights of daughters succeeding to their father's property.*

In a suit the parties to which were Awans of Pind Dadan Khan *tahsil*,

Held, that the defendants, on whom the burden of proof lay, had failed to establish a custom under which the daughter of a sonless proprietor, who has succeeded to the non-ancestral property of her father by *inheritance* has an unlimited estate or has full power of disposition in the presence of collaterals related to the deceased in the ninth degree. Distinction between a *gift* by a father of his self-acquired land to his daughter and the *inheritance* of such land by her in absence of male lineal descendants explained. BAHADUR *v.* ABDULLAH. **121 P R 1908**

17. *Hamdani Sayads of* tahsil *Talagang—Custom—Bequest by male proprietor—Ancestral and acquired property.*

Found, that among Hamdani Sayads of Talagang *tahsil*, in the Jhelum district, a bequest by a male proprietor of his immovable property is valid by custom so far as it affects only his self-acquired property. AHMAD SHAH *v.* FATEH BIBI. **132 P R 1908**

18. *Custom—Inheritance—Right of daughter to inherit in presence of near male collaterals—Hindu Rajputs of Kangra district.*

Found, that defendant had failed to prove that by custom among Hindu Rajputs of the Kangra district, near male collaterals were entitled to succeed to the self-acquired property of a sonless proprietor held by him in a different village in preference to the daughter. NIDHU *v.* RAM SINGH. **2 P R 1909**

"ACQUIRED" AND "ANCESTRAL" PROPERTY.

Acquired and ancestral property—Profits of ancestral immovable property and purchases effected with such profits—Custom—Unequal distribution of such profits and purchases among sons.

"ACQUIRED" AND "ANCESTRAL" PROPERTY—*concld.*

Held, that the profits of ancestral immovable property and purchases effected with such profits are not ancestral property, under Customary Law in such a sense that descendant of the ancestor from whom such property devolved can interfere with the disposal of such profits or purchases. SHER SINGH *v.* KISHAN SINGH. **4 P R 1900**

See ALSO No. 13 P. R. 1902 in which this case was cited.

ACQUISITION.

See LAND ACQUISITION ACT, 1884.
See OCCUPANCY RIGHTS.
1 P R 1907 Rev.

ACTS.

Act XXXII of 1839.
See INTEREST.
37 P R 1867
36 P R 1894
104 P R 1901
75 P R 1909

Act XIX of 1841.
See JURISDICTION.
203 P R 1889
See POSSESSION.
7 P R 1904

1. *Sections* 3, 4, 15—*Court giving effect without enquiry to a will the validity of which was disputed—"Legal directions."*

Where on an application being preferred under Act XIX of 1841, the Court, considering itself bound by the existence of directions in the will of the deceased proprietor for the possession of the property after his death to give effect to these directions, ordered with reference to section 15 of the Act that the applicant should be put in possession, but did not consider whether the directions contained in the will, the validity of which was disputed, were legal directions, nor take any evidence except the examination of the applicant and of the parties in possession, who denied the truth of the applicant's allegation, *held*, that the enquiry made was not such as to satisfy section 3 of the Act, but that the case must be remanded for the Court to determine summarily the right to possession after determining whether the directions, contained in the above mentioned will were legal directions, and, if not, whether the applicant was entitled to be put in possession on the grounds specified in section 3, or the opposite party to be restored to possession. GORAKH NATH *v.* BISHAMBER NATH. **66 of 1882**

2. *Sections 3 and 4, Act XIX of* 1841 *—Possession—Complaint of wrongful possession over the estate of a deceased upon pretended claim—Issuing citation under section 4 without observing procedure laid down in section 3—Competency of Judge to rectify procedure.*

ACTS—*contd.*

Held, that the mere fact that a Judge issued citation under section 4 of Act XIX of 1841, without in the first instance satisfying himself whether the party in possession had no title and that the applicant was likely to be prejudiced if left to the ordinary remedy of a regular suit as contemplated by section 3 of the Act, does not bar that officer or his successor from arriving on the evidence at a conclusion that the party in possession should not be disturbed. RAJJI *v.* LAL CHAND. **138 P R 1906**

Act XX of 1847.
See COPYRIGHT.
15 P R 1893

Act XIII of 1848.
See LIMITATION ACT IX OF 1871, SCHEDULE II, ARTICLE 44.
41 P R 1881

Act XVIII of 1850.
See CANTONMENTS.
71 P R 1873
Judicial Officers, Protection to.
57 P R 1870
58 P R 1871

Act XXI of 1850.
See CUSTOM.
63 P R 1895
See MUHAMMADAN LAW—MARRIAGE.
24 P R 1876

1. *Section* 1.
Interpretation of the expression "rights."

Held, that the expression rights in section 1 of Act XXI of 1850, includes something more than actual rights in property, and that the right to the guardianship and custody of his children by a Muhammadan who has been converted to Christianity is a right within the meaning of Act XXI of 1850. GUL MUHAMMAD *v.* MUSSAMMAT WAZIR BEGAM. **60 P R 1901**

2. Act XXI of 1850 does not apply only to a convert himself, but affords relief to the descendants of that convert. Where under that Act, the convert could have succeeded to the property notwithstanding his conversion there is no reason why his descendants who derived their rights through him should not be entitled to succeed to it. BHAGWANT SINGH *v.* KALLU, I. L. R. XI All. 100, and GULAB *v.* MUSSAMMAT ISHAR KAUR, 63 P. R. 1895, cited. KANSHI RAM *v.* JIWAN, 82 P. R. 1890, not approved. MAHNA *v.* CHAND. **104 P R 1902**

Act XXVI of 1850.
See MUNICIPAL COMMITTEE.
36 P R 1869
39 P R 1870

Act V of 1852.
See HINDU LAW—MARRIAGE.
54 P R 1870

Act XVIII of 1854.
See RAILWAY ACT XVIII OF 1854.

Act XII of 1855.
See CIVIL PROCEDURE CODE, 1882, SECTION 368.
4 P R 1897

Act XIII of 1855.
See CAUSE OF ACTION.
85 P R 1894
See DAMAGES.
56 P R 1905

ACTS—*contd.*

Act XXVIII of 1855.
See INTEREST. 110 P R 1879
145 P R 1879
36 P R 1894
99 P R 1894
96 P R 1901
104 P R 1901
110 P R 1908

Act XV of 1856.
See CUSTOM.
46 P R 1891

See HINDU LAW—MARRIAGE.
49 P R 1903
4 P R 1905
61 P R 1905

Act XIX of 1857.
See COMPANY.
38 P R 1868

Act XXXV of 1858.
See ABATEMENT OF SUIT.
89 P R 1869

See LUNACY ACT, 1858.
31 P R 1905
94 P R 1906

See MUHAMMADAN LAW—JOINT FAMILY.
91 P R 1897

Act XL of 1858,
See APPEAL, CIVIL. 62 P R 1883
32 P R 1888 F. B.

See COURT OF WARDS.
71 P R 1886

See CUSTOM.
83 P R 1889

See GUARDIAN.
45 P R 1872
23 P R 1878
25 P R 1881
181 P R 1888
105 P R 1889
202 P R 1889
124 P R 1889
117 P R 1889
15 P R 1889
73 P R 1890
56 P R 1890
66 P R 1890

See LIMITATION ACT XV OF 1887, SECTION 19.
25 P R 1886

See MINOR.
25 P R 1886

Act VIII of 1859.
See ARBITRATION.
74 P R 1894 F B

See CIVIL PROCEDURE CODE—ACT VIII OF 1859.
See LIMITATION. 73 P R 1880
See MORTGAGE.
32 P R 1905

Act IX of 1859.
See ACT OF STATE.
12 P R 1874

Act X of 1859.
See OCCUPANCY RIGHTS.
39 P R 1881

ACTS—*contd.*

Act XIV of 1859.
See LIMITATION ACT XIV OF 1859.

Act XV of 1859.
See PATENT. 15 P R 1889
24 P R 1896

Act VII of 1860.
See COMPANY. 38 P R 1868

Act XXI of 1860.
See INCORPORATED SOCIETY.
41 P R 1897

Act XXVII of 1860.
See APPEAL, CIVIL. 50 P R 1868
50 P R 1871
76 P R 1881
117 P R 1881
58 P R 1883
78 P R 1886
38 P R 1888
103 P R 1888 F B

See CERTIFICATE UNDER ACT XXVI OF 1860.
See JUDICIAL ASSISTANTS.
54 P R 1877 F B

Act IX of 1861.
See APPEAL, CIVIL. 106 P R 1876

See COURT FEES ACT VII OF 1870.
6 P R 1873
See GUARDIAN. 23 P R 1867
140 P R 1879
See MINOR, CUSTODY OF.
42 P R 1882
26 P R 1886
15 P R 1887
44 P R 1887
113 P R 1888
146 P R 1888
163 P R 1889

Act XXIII of 1861.
See APPEAL, CIVIL. 62 P R 1877

See APPELLATE COURT, JURISDICTION OF.
80 P R 1870
80 P R 1873
See EXECUTION OF DECREE.
51 P R 1870
32 P R 1879
See MESNE PROFITS.
44 P R 1869
72 P R 1875
See REVIEW OF JUDGMENT.
23 P R 1872
36 P R 1872
See REVISION, CIVIL.
36 P R 1872

See SMALL CAUSE COURT, JURISDICTION OF.
75 P R 1877

Act X of 1862.
See STAMP. 5 P R 1866
63 P R 1869
47 P R 1869
44 P R 1881

Act II of 1863.
See EXECUTION OF DECREE.
3 P R 1872 P C

Act XX of 1863.
See RELIGIOUS ENDOWMENTS ACT, 1863.
7 P R 1908

ACTS—*contd.*

Act XX of 1863—*concld.*
See RELIGIOUS INSTITUTION.
35 P R 1871
95 P R 1900
7 P R 1908
See RIGHT TO SUE.
75 P R 1884

Act III of 1865.
See CARRIERS. 13 P R 1866

Act X of 1865.
See SUCCESSION ACT X OF 1865.

Act XI of 1865.
See EXPARTE SUITS.
26 P R 1879
See PLAINT. 126 P R 1881
See REVIEW OF JUDGMENT.
29 P R 1879
60 P R 1881
See REVISION, CIVIL.
102 P R 1886

See SMALL CAUSE COURT.
14 P R 1866
95 P R 1877

See SMALL CAUSE COURT ACT, 1865.
See SMALL CAUSE COURT, JURISDICTION OF. 25 P R 1869
64 P R 1878
29 P R 1870
63 P R 1877
80 P R 1877
41 P R 1878
88 P R 1877
97 P R 1881
158 P R 1884
37 P R 1886
8 P R 1883
5 P R 1886
143 P R 1884
11 P R 1886
28 P R 1882
177 P R 1882
87 P R 1883
50 P R 1886
5 P R 1882
38 P R 1882
8 P R 1885
4 P R 1883
52 P R 1889

Act XIX of 1865
See JUDICIAL ASSISTANT.
54 P R 1877 F B

See JURISDICTION OF SETTLEMENT COURT.
39 P R 1874
50 P R 1873
4P R 1877 Rev
20 P R 1880 Rev.

See REVIEW OF JUDGMENT.
38 P R 1869
16 P R 1871

Act XX of 1865.
See PLEADER AND CLIENT.
26 P R 1874
5 P R 1878
37 P R 1869

Act XXVII of 1865.
See REVIEW OF JUDGMENT.
16 P R 1871

ACTS—*contd.*

Act IV of 1866.
See Appeal, Civil.
41 P R 1867
62 P R 1877
123 P R 1876
See Arbitration.
19 P R 1869
See Review of Judgment.
38 P R 1869
See Revision, Civil.
50 P R 1876
Act X of 1866.
See Companies Act X of 1866.
Act XX of 1866.
See Registration Act XX of 1866.
Act XXI of 1866.
See Divorce Act, 1869.
44 P R 1871
Act XV of 1867.
See Municipal Committee.
59 P R 1872.
Act I of 1868.
See General Clauses Act, 1868.
See Limitation Act XV of 1877, Schedule II, article. 144.
112 P R 1884
See Mortgage.
171 P R 1882
See Punjab Tenancy Act XXVIII of 1868, section 36.
34 P R 1883
Act VII of 1868.
See Appeal, Civil. **50 P R 1871**
See Review of Judgment.
38 P R 1869
Act XXVIII of 1868.
See Custom.
69 P R 1900
See Occupancy Rights.
96 P R 1889
155 P R 1889
145 P R 1890
1 P R 1904
See Punjab Tenancy Act, 1868.
See Punjab Tenancy Act, 1887.
Act IV of 1869.
See Divorce Act, 1869
Act V of 1869.
See Arrest. **43 P R 1871**
See Articles of War.
See Execution of Decree.
85 P R 1870
41 P R 1882
Act XVIII of 1869.
See Stamp.
26 P R 1876
82 P R 1870
33 P R 1873
2 P R 1878
Act VII of 1870.
See Court Fees, Act 1870.
Act X of 1870.
See Compensation. **21 P R 1871**
See Land Acquisition Act, 1870.
Act XXI of 1870.
See Hindu Wills Act, 1870.
Act I of 1871.
See Cattle Trespass Act, 1871.
92 P R 1877

ACTS—*contd.*

Act VIII of 1871.
See Registration Act, 1871.
Act IX of 1871.
See Limitation Act, 1871.
Act XXIII of 1871.
See Pensions Act, 1871.
Act XXX of 1871.
See Punjab Land Revenue Act, 1871.
See Jurisdiction of Revenue Court.
121 P R 1880
Act I of 1872.
See Evidence Act, 1872.
Act IV of 1872.
See Punjab Laws Act, 1872.
Act VI of 1872.
See Oaths.
Act IX of 1872.
See Champerty. **26 P R 1906**
See Contract Act, 1872.
See Partnership. **107 P R 1907**
Act IV of 1873.
See Limitation. **79 P R 1884**
See Municipal Committee.
8 P R 1875
58 P R 1875
Act VIII of 1873.
See Northern India Canal and Drainage Act, 1873.
Act IX of 1873.
See Appeal, Civil **48 P R 1878**
——— Further.
88 P R 1875
57 P R 1878
77 P R 1877
79 P R 1876
——— Special.
See Repeal of Act. **4 P R 1878**
Act X of 1873.
See Oaths. **72 P. R 1874**
See Oaths Act, 1873.
Act III of 1874.
See Married Women's Property Act, 1874.
Act IX of 1875.
See Majority Act, 1875.
Act XIII of 1875.
See Administration.
Act XIV of 1875.
See Civil Procedure Code, 1882, section 433. **51 P R 1886**
See Judicial Assistants.
54 P R 1877
Act I of 1877.
See Custom.
72 P R 1906
See Specific Relief Act, 1877.
Act III of 1877.
See Registration Act, 1877.
Act X of 1877.
See Civil Procedure Code, 1877.
See Civil Procedure Code, 1882, section 102. **177 P R 1888**
Act XV of 1877.
See Limitation Act, 1877.
See Possession.
102 P R 1907
See Punjab Loans Limitation Act, 1904. **97 P R 1905**

ACTS—*contd.*

Act XVII of 1877.
See Appeal, Further.
See Punjab Courts Act, 1877.
See Repeal of Act.
Act I of 1878.
See Opium Act, 1878.
Act VII of 1878.
See Forest Act, 1878.
Act XII of 1878.
See Court of Wards.
18 P R 1884
See Pee-emption.
52 P R 1880
82 P R 1880
112 P R 1882
17 P R 1884
20 P R 1881
12 P R 1884
See Punjab Laws Act, 1872, section 10.
Act XVII of 1878.
See Northern India Ferries Act, 1878.
Act I of 1879.
See Stamp Act, 1879.
Act IV of 1879.
See Railway Act, 1879.
Act XII of 1879.
See Appeal, Civil. **45 P R 1880**
75 P R 1881
See Revision, Civil.
78 P R 1880
Act XVIII of 1879.
See Legal Practitioners' Act, 1879.
Act V of 1881.
See Administration Expenses.
31 P R 1906
See Probate and Administration Act, 1881.
Act XXVI of 1881.
See Negotiable Instruments Act, 1881.
Act II of 1882.
See Trust Act, 1882.
Act IV of 1882.
See Transfer of Property Act, 1882.
Act V of 1882.
See Easement Act, 1882.
Act VI of 1882.
See Companies Act, 1882.
Act XIV of 1882.
See Civil Procedure Code, 1882.
See Principal and Agent.
109 P R 1907
Act XIII of 1884.
See Nuisance.
106 P R 1888
103 P R 1892
See Punjab Municipal Act, 1891.
9 P R 1905
Act XVIII of 1884.
See Punjab Courts Act, 1884.
Act VII of 1887.
See Appeal, Civil.
130 P R 1906
See Appeal, Privy Council.
60 P R 1905
See Suits Valuation Act, 1887.
Act IX of 1887.
See Small Cause Court Act, 1887.

ACTS—*contd.*

Act XVI of 1887.
See Punjab Tenancy Act, 1887.
See Jurisdiction of Civil or Revenue Courts.
Act XVII of 1887.
See Punjab Land Revenue Act, 1887.
Act V of 1888.
See Patent. **24 P R 1896**
Act VII of 1888.
See Civil Procedure Code, 1882, section 318. **14 P R 1893**

Act XIII of 1888.
See Punjab Courts Act, 1884.
Act VII of 1889.
See Succession Certificate Act, 1889.
Act XIII of 1889.
See Cantonment Act, 1889.
Act VIII of 1890.
See Custody of Minor.
10 P R 1897
13 P R 1897

See Guardian and Wards Act, 1890.
Act IX of 1890.
See Railways Act, 1890.
Act XX of 1891.
See Punjab Municipal Act, 1891.
Act III of 1893.
See Government's Tenants Act, 1893.
Act IV of 1893.
See Partition.
Act I of 1894.
See Land Acquisition Act, 1894.
Act XII of 1896.
See Excise Act. **114 P R 1906**

Act X of 1897.
See General Clauses Act, 1897.
Act I of 1898.
See Punjab General Clauses Act, 1898.
Act II of 1899.
See Stamp Act, 1899.
Act IX of 1899.
See Arbitration Act, 1899.
Act XI of 1899.
See Court Fees Act, 1870, section 19.
26 P R 1900

Act XXV of 1899.
See Punjab Courts Act, 1884.
Act I of 1900.
See Punjab Limitation Act, 1900.
Act IV of 1900.
See Punjab Descent of Jagirs Act, 1900.
Act XIII of 1900.
See Punjab Alienation of Land Act, 1900.
Act II of 1902.
See Cantonment (House Accommodation Act, 1902).
Act II of 1903.
See Punjab Court of Wards Act, 1903.
Act I of 1904.
See Punjab Loans Limitation Act, 1904.
Act II of 1905.
See Punjab Pre-emption Act, 1905.

ACTS—*concld.*

Act I of 1907.
Punjab Alienation of Land Act, 1907.
Act III of 1907.
Provincial Insolvency Act, 1907.
Act V of 1908.
See Civil Procedure Code, 1908.
Act IX of 1908.
See Limitation Act, 1908.

ACT OF STATE.

1. *Hostile seizure—Jurisdiction—Regulations III of 1793 and II of 1803.*

No Municipal Court has jurisdiction to adjudge upon a transaction the character of which is that of hostile seizure made, if not *flagrante*, yet *nondum cessante, bello*. Nor can the fact that military occupation does not, according to the rules of modern warfare, work a transfer of private immovable property, render the matter one of forensic jurisdiction. Those rules belong to the law of nations, which, like the moral law is part of the law of England, but only to the extent that the Court will not help those who break it.

The property of a person resident in a place under the control of rebellious subjects treated by the Government as enemies, whether that person is attached to the rebel cause or not may be seized by the State as enemies' property.

A declaration by Government of its intention to restore, or an order issued by Government to the Executive Authorities to restore property seized in war, gives no legal title or right of suit to the former owner, nor does it confer any jurisdiction upon the Municipal Court.

By Regulation III of 1793 and Regulation II of 1803, Government subjects itself and its officers to the jurisdiction of the Civil Courts only in regard to the matters specified in those Regulations, and in no other matters; and the jurisdiction thus conferred has not been extended by any subsequent Regulation, Act, or Order. The Secretary of State for India in Council *v.* Wagentrieber.

6 P R 1867

2. *Act of War—Rebellion.*

A Government may exercise the rights of war in suppressing a rebellion of its subjects, and the seizure of property in the exercise of those rights is an act of power in a matter of State over which no Municipal Court has jurisdiction. Every direct consequence of the seizure is excluded from forensic jurisdiction; and a Civil Court cannot declare as to property seized by the Government after a mortgage thereof, that the mortgagee's interests are not affected by the seizure. Salig Ram *v.* The Secretary of State for India in Council. **7 P R 1867**

3. *Confiscation of Ex-King of Delhi's Estates—Jurisdiction of Civil Court—Power of Ex-King to charge his estate—Recognition of creditors' claims by British Government.*

Plaintiffs sued to recover Rs. 68,853, alleged to be due for principal and interest on certain bonds executed by the late King of Delhi.

ACT OF STATE—*contd.*

The bonds did not mention the property by which the debts were secured; but the late King had, as far as he lawfully could, assigned and appropriated to the discharge of the debts certain amounts which the Resident at the Court of Delhi was requested to pay yearly out of the revenues of certain of the royal Taiyool villages. In October, 1857, the British Government attached and took possession of the Ex-King's lands, who had been already captured by the Government and made a prisoner of war shortly after the Mutiny. By a Circular of the Judicial Commissioner of the Punjab, under the order of the Supreme Government, (No. 112 of 1859), all mortgages effected by the King on those estates which the Government thus confiscated were to be paid: but by a letter from the Government of India to the Government of the Punjab, dated 28th December 1860, published in Circular of 12th January 1861, in continuation of Circular 112, "the Governor-General was of opinion that neither Salig Ram and Devi Singh's [plaintiff] claim, nor that of any other creditor of the Ex-King, who had been convicted of rebellion, to the liquidation of their claims from the revenue of the Crown lands, should be admitted." Upon the Circular of the Judicial Commissioner plaintiffs based their claim, also contending that the King had only a right to that which remained after satisfying the plaintiffs' claim, and to this alone was Government entitled by virtue of the confiscation.

Held, by the Privy Council (*affirming*) the judgment of the Chief Court—No. 7 P. R. 1867) that the seizure or confiscation of the property of the late King was an act of State or war, in respect of which the Municipal Courts had no jurisdiction; that the King of Delhi had no such ownership or power of disposition in respect of his estates in British territory as to enable him to create charges upon them which survived his deposition, but that the territory was assigned to his grandfather, Shah Alum, for the support of his royal dignity and the due maintenance of himself (Shah Alum) and family, and all charges and incumbrances created out of that estate fell with the estate itself; and that even if Circular 112 of the Judicial Commissioner were a legislative recognition of the creditors' rights (which it was not) the Circular of 12th January 1861 was of equal validity and divested the plaintiffs of their claim. Salig Ram *v.* The Secretary of State for India in Council.

2 P R 1872 P C

4. *Jurisdiction—Sovereignty.*

The assumption by Government, upon taking possession of conquered or ceded territories, of a *jagir* granted by former Rulers, is an act of sovereign power over which no Municipal Court has jurisdiction.

And if, when taking possession of conquered or ceded territories, the Government so limits the act of conquest as to exempt the lands of a particular jagirdar from being brought under its administration, the effect of such exemption is to maintain the jagirdar in political relations to the State, and to prevent

any act of the Government towards the jagirdar or his property, whether public or private, from being made the subject of enquiry in a Municipal Court.

Perfect independence is not a necessary attribute of sovereignty, and the fact that a territory has been conquered makes no difference as regards the political independence of its ruler if such independence is recognized by the Government. FORESTER *v.* THE SECRETARY OF STATE FOR INDIA IN COUNCIL. **13 P R 1867**

5. This judgment of the Chief Court in what was termed the "Badsha-pore suit," was affirmed by the Judicial Committee of the Privy Council, on the ground that the plaintiffs had failed to prove the title asserted by them; their Lordships differing from the Chief Court as to the first ground of defence, (*viz.*, that the Government took possession of the *jagir* in question as an act of State, the propriety and validity of which were not cognizable by any Municipal Court.) FORESTER *v.* THE SECRETARY OF STATE FOR INDIA IN COUNCIL. **1 P R 1872 P C**

6. In what was termed the "Arms suit," the Chief Court held that the Begum Sumroo was a sovereign. **14 P R 1867**

7. *Begum Sumroo.*

The judgment of the Chief Court holding the Begum Sumroo to be a sovereign, No. 14 P. R. 1867, *reversed* by the *Privy Council.* FORESTER *v.* THE SECRETARY OF STATE FOR INDIA IN COUNCIL. **1 P R 1872 P C**

8. *Seizure of property in time of war—Qualified or absolute restoration—Evidence.*—Plaintiff sued the Government for certain marble forming part of a tomb which was taken into the possession of Government by way of hostile seizure at the capture of Delhi in 1857,—the tomb being near the walls of the fort and within the space taken up after the occupation of Delhi by the British troops for the purpose of the defence of the fort. The tomb remained undisturbed, being respected as a tomb by the Government. In 1866, the Government sanctioned plaintiff's repairing the tomb, and in 1869 paid a purchaser from the plaintiff the value of certain marble then taken away; and it also appeared that the plaintiff had been permitted to burn a light in the tomb and take general charge of it. Upon these facts the plaintiff contended that though the original seizure in 1857 was beyond the province of forensic litigation, the plaintiff's rights in the tomb had been since restored to her by the Government.

Held, that though a slight amount of evidence is sufficient to show restoration of private rights in immovable property seized in time of war, there was in this case an absence of evidence showing an intention to restore, and that accordingly plaintiff's suit was untenable.

Per BOULNOIS, J.

That the Government had so acted in derogation of its absolute title, that the plaintiff, though not entitled to claim the

possession or value of the materials, might restrain Government from disposing of them or diverting them from the purposes of the tomb. MUSSAMMAT IKRAMAL NISSA *v.* THE SECRETARY OF STATE FOR INDIA IN COUNCIL. **14 P R 1872**

9. *Seizure of property in time of war—Restoration of property so seized—Public Agent—Scope of authority—Ratification—Act IX of 1859.*

Plaintiff, a Mahomedan, was with all the residents turned out of Dehli in September 1857, after the fall of the city. The place was held by military occupation until January 11th, 1858, when the management of the city was transferred to the Civil authorities. On the 27th September 1857, the Collector, Mr. Egerton, recorded a proceeding to the effect that by a general order the houses of the Mahomedans in the city of Delhi had been attached, and the Kotwal had been instructed to seal up each house. On the 26th January 1858, Mr. Egerton issued a proclamation to the effect that as by general order the houses and lands of the Mahomedans had been attached, and it was desired to release the property of those who were not concerned in the mutiny, Mahomedans might prove their loyalty within one month, failing which their houses and lands would be confiscated to Government. A list of persons who had joined the rebellion was prepared, and in this list the plaintiff's name appeared, with the entry that Rs. 50 was offered as a reward for his capture. In March 1858, plaintiff was taken by the police from Sonepat, where he was then residing, to Panipat and there detained in custoly until 3rd April 1858, when he was released by the Magistrate of Panipat and allowed to return to Sonepat on entering into a personal recognizance of Rs. 400. In May 1858 he was again arrested and sent to the Deputy Commissioner of Panipat, who forwarded him to Delhi with other prisoners. At Delhi he was tried by the Special Commission, who, on the 10th July 1858, ordered that he should be released on security of Rs. 100 for one year, or in default suffer imprisonment for that period. The security was given, and plaintiff was released. On the 17th July 1858, on the petition of plaintiff, Mr. Egerton one of the Special Commissioners and Deputy Commissioner of Delhi, ordered plaintiff's name to be struck off the list of rebels. By the Queen's proclamation of 1st November 1858, there was promised to all, save those who had been or should thereafter be convicted of having taken part in the murder of British subjects or of having knowingly given asylum to such murderers or instigated revolt, unconditional pardon, on their return to their homes and peaceful pursuits.

In December 1858, plaintiff petitioned the Commissioner of Delhi for a restoration of his houses; the petition was sent to the Deputy Commissioner for report. A report was made, but no order passed on it. On the 29th December 1859, the Governor-General informed the Lieutenant-Governor

of the Punjab of his (the Governor-General's) desire that the attachment upon the houses of the Mahomedans of Delhi should be removed. A copy of this letter (No 848) was sent by the Governor-General to the Commissioner of Delhi for information and guidance, and by the Commissioner to the Deputy Commissioner. On the 24th January 1860, the Deputy Commissioner was informed by the Kotwal that plaintiff was applying for the release of his property, with reference to the "general order of release." The Deputy Commissioner passed an order on the 9th March 1860, that plaintiff should be "informed through the Kotwal that he cannot take advantage of the general order of release, and that it cannot affect his property." On the 11th March 1860, plaintiff petitioned the Deputy Commissioner for a release of his property; on the 12th the Deputy Commissioner referred the matter to the Kotwal to inquire whether there were sufficient grounds for the release. The Kotwal reported on March 22nd to the effect that there were sufficient grounds for release. On the 27th March, Mr. Plowden, Officiating Deputy Commissioner, passed an order that the plaintiff's "property be released; Kotwal to put him in possession and give him a ticket as usual." On the 28th April, the Kotwal reported that plaintiff was in possession. In March 1861 plaintiff petitioned the Punjab Government for permission to travel where he pleased in search of employment, and sent with his petition certificates, one of which, signed by the Commissioner of Delhi, stated that plaintiff "had been cleared of all complicity in rebellion and all his property had been restored to him." The permission to travel was granted. In July 1861, Mr. Cooper, Deputy Commissioner of Delhi, reported to the Commissioner that Mr. Plowden had apparently released the property of the plaintiff without sufficient reasons. The Commissioner forwarded the papers to the Judicial Commissioner of the Punjab, who in July 1861, replied that Mr. Plowden had no authority to release the property, and that the release was void from the non-competency of the party who released." On this the plaintiff's property, by order, dated 5th August 1861, was re-attached, and he was ousted. Against this the plaintiff protested in a petition, which was sent up to the Local Government, but the Government declined to interfere with the order of the Judicial Commissioner. Again plaintiff petitioned, and the Government of India in January 1869, "disallowed the claim" of the plaintiff. Plaintiff then memorialized the Secretary of State for India, who refused to interfere. Plaintiff thereupon sued the Secretary of State for India to recover possession and for mesne profits; and the following issues were fixed:—

1. Was the original act of seizure in 1857 an act of State, and has the Civil Court jurisdiction in regard to a complaint arising out of it?

2. What is the effect on the plaintiff's rights of the order of restoration, dated 27th

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ACT OF STATE—*contd.*

March 1860, and the effect of the counter-order of the 5th August 1861, and the actual possession enjoyed by the plaintiff between those dates ?

3. What is the effect on plaintiff's rights of Act IX of 1859 ?

4. What, if any, mesne profits are to be allowed ?

Held, per MELVILL, J.

That the plaintiff lost all title to the property in suit by the act of seizure of 1857, which was an act of State, and the subsequent refusals to restore it, and he could only acquire a fresh title by the voluntary action of the Government performed with full knowledge of what it was doing. That the letter of the Governor-General (No. 848) could have no higher force than the Queen's amnesty ; that the latter had no retrospective effect, and therefore the former had no such effect ; that Mr. Plowden had no authority to put his own construction on the letter No. 848, and release the plaintiff's property ; for these reasons, that the letter was addressed to the Punjab Government, and not to the Deputy Commissioner ; the fact that a copy of it was sent to the Commissioner did not confer on the local officers any power which they would not have had if no such copy had been sent ; and the power of the local officers was not to release property at their pleasure, but to do so after reference to and in subordination to the Punjab Government. That Mr. Plowden's act was not ratified by the Government, the fact of the release being merely mentioned in correspondence the object of which was to ascertain whether plaintiff should be allowed to travel at his pleasure, and the Government tacitly accepting the statement regarding the release of the property without full knowledge of all the circumstances ; that the Government, as soon as it was aware of Mr. Plowden's unauthorized act, repudiated it. That Act IX of 1859 did not affect the case one way or the other ; for the reasons that, with regard to plaintiff's case, first, plaintiff had not surrendered himself for trial, but had been involuntarily arrested at Sonepat ; secondly, because he had not been acquitted by the Special Commission ; and, thirdly, because Her Majesty's proclamation was not retrospective : —and with regard to defendant's case, that Section 20 of the Act did not bar the suit on the ground of limitation, as the Act referred only to attachments and seizures made before the passing of the Act. That for these reasons plaintiff's suit should be dismissed.

Per BOULNOIS, J.—That although the Government had, before plaintiff became re-possessed of the property in March 1860, the matter entirely in their own hand to retain possession of plaintiff's property as well as every part of the captured city of Delhi, the fact that plaintiff became so re-possessed entitled him to put Government to the proof of their proprietary title ; in 1861, when he was ousted he was entitled to be maintained in possession until dispossessed in due course of law, and it was for the Government in this suit to show that they took back the property,

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ACT OF STATE—*contd.*

from the plaintiff in 1861 by reason of the strength of their own title. That Government could not rely upon the original seizure alone, but must show that the act of restoration to the plaintiff in March 1860 was unauthorized and inoperative. That the restoration of the property by Mr. Plowden was not without legal operation with regard to a third party, one of the public, for the reasons that the Government did not establish any official department for dealing with the immovables of the conquered city of Delhi ; from the first the Deputy Commissioner, *ex officio* exercised no little control over the questions relating to the immovables and the disposal of them ; the general attachments of September 1857 and January 1858 were effected by the Deputy Commissioner ; the order of the Governor-General (No. 848) to the Commissioner was sent by the latter to the Deputy Commissioner, who seemed as much authorized to carry it out as the Commissioner, there being no organized department to which it was issued, no instructions from the Government of the Punjab as to the mode of carrying out the intention of the Governor-General, and no system of application for sanction in cases of restoration of property. That if Mr. Plowden exceeded his authority, the Government tacitly consented to and acquiesced in his act, as it was not to be presumed that for the space of a year the Government remained ignorant of what was done, while the plaintiff had, to a certain extent, brought home to the Government actual notice of the restoration of the property when he applied for leave to travel. That plaintiff was therefore entitled to a decree, unless his suit was barred by Act IX of 1859, and that it was not so barred, for if the Act applied at all the plaintiff had not been convicted of rebellion neither had he kept out of the way to evade justice : but that Act IX did not apply to the case, as the Act contemplated property actually remaining under seizure in the hands of Government, while the plaintiff, as soon as he recovered possession in 1860, was so placed that it would have been useless, if not impossible, for him to have taken proceedings to have his title declared.

Per LINDSAY, J.—That all property was not actually confiscated in 1857, but was appropriated for a time for various reasons and liable to be forfeited. That plaintiff's property was never formally adjudged to have been forfeited nor declared forfeited on conviction, and plaintiff was entitled to a restoration of his property as soon as he was released. That it was open to doubt whether Mr. Plowden had full authority to order the restoration of the property in 1860, but that under the circumstances Government could not equitably refuse to ratify that order, and in fact did ratify it with full knowledge of the facts.

Per BOULNOIS and LINDSAY, JJ.—That the plaintiff was entitled to mesne profits for 6 years previous to date of institution of suit until he should obtain possession under the decree, the actual amount to be adjusted in

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ACT OF STATE—*contd.*

execution of decree. HAKIM SAAD-UD-DIN *v.* THE SECRETARY OF STATE FOR INDIA IN COUNCIL. **12 P R 1874**

10. *Resumption of rent-free lands by the British Government in* 1849—*Jurisdiction of Civil Courts.*

Plaintiff claimed possession of a rakh which had been granted by the Maharajah Runjeet Singh to plaintiff's father. The rakh was held rent-free for the purpose, chiefly, of supplying fodder to a contingent of cavalry which the owner was bound to supply for the service of the Government. Plaintiff alleged that the *rakh* upon the death of his father devolved by inheritance upon his brother, who was killed at the battle of Ferozepore in arms against the British troops ; that upon his brother's death his uncle, Raja Teja Singh, took possession of the *rakh* as his (plaintiff's) guardian, and that a grant of it was made by the British Government, after the conquest of the territory, to Teja Singh for his life. Teja Singh died in 1863, whereupon the property was resumed by the Government. Plaintiff sued for possession of the *rakh* as heir of his deceased brother.

In March 1849, a proclamation was issued by the British Government, that "*jagirs* and all the property of Sirdars or others who had been in arms against the British should be confiscated to the State ;" and two days later (31st March 1849) a Board of Administration was constituted, with special directions with respect to rent-free lands. Those directions stated that "by our occupation of the country, after the whole Sikh nation had been in arms against us, we have acquired the absolute right of conquerors, and would be justified in declaring every acre of land liable to Government assessment. There is no reason why we should maintain in perpetuity an alienation of the Government revenues which would not have been maintained by the power we have succeeded. All grants were resumed by the Sikh rulers at will, without reference to the terms of the grant. On the death of the grantor, they lapsed as a matter of course. Every holder of rent-free land, who is confirmed in his tenure by the Government, must yield up every document in his possession which entitled him to the exemption from revenue, and a grant must be given to him under the Board's seal, &c., declaring that the grant is "a free gift of the British Government."

Held (affirming the judgment of the Chief Court—*See Punjab Record* for 1875, Privy Council, p. 7, *Note*), that the Governor-General made as an act of State, a *tabular rasa* of these rent-free tenures, and that the grant to Teja Singh was made in pursuance of the right of conquest referred to in the proclamation, and was an act of State not questionable by any Municipal Court. Plaintiff's suit dismissed. SIRDAR BHAGWAN SINGH *v.* THE SECRETARY OF STATE FOR INDIA IN COUNCIL. **1 P R 1875 P C**

11. *Ferry rights—Jurisdiction.*

Plaintiff purchased the ferry leases of the

ACT OF STATE—*contd.*

Chenab and Pulkhu rivers at Wazirabad for the years 1870-74, the leases entitling him to collect all tolls. He sued the defendant for damages, for that the Government in constructing that part of the Northern State Railway which crossed the Chenab and Pulkhu, had established their own ferry and by that means conveyed their material trucks and employés across those rivers.

Held, that the rights to establish a ferry and take tolls were State rights; but that plaintiff's suit was cognizable by a Municipal Court, as the Government had, by Regulation III of 1793 submitted, in regard to such a suit, to the jurisdiction of the Courts; and that the submission was not abrogated or taken away, as to the Punjab Courts, by the repeal of the Regulation by Act IV of 1872.

Held, upon the facts, that as the Railway Department had used the plaintiff's ferry as far as they possibly could, and had used their own ferry for carrying plant and materials which were too heavy for the plaintff's boats or bridges, and for carrying men and materials to places in the river to which plaintiff's ferry did not go, a cause of action had not been made out. SUJAN SINGH *v.* THE SECRETARY OF STATE FOR INDIA IN COUNCIL. **56 P R 1876**

12. *Jurisdiction of British Courts to re-open executive orders of Foreign States.*

The defendants entered into a timber contract with the Bahawalpur State, the plaintiff being surety for its due performance. The Bahawalpur State cancelled the contract, as it considered that there had been a breach on the part of the defendants, and plaintiff was compelled to pay to the State the amount of advances made, to the defendants, which had not been worked off. Plaintiff thereupon sued to recover from defendants the sum he had been compelled to pay as their surety to the Bahawalpur State. The defendants pleaded that there had been no breach of contract on their part with the Bahawalpur State, and that, therefore, thay were not liable, the plaintiff having wrongfully paid that State. The order rescinding the contract and compelling the plaintiff to pay was an executive one, passed by the Political Agent and Superintendent of Bahawalpur, and was an order which the plaintiff could not disobey.

Held (Boulnois, J., dissenting) that the order of the Superintendent of Bhawalpur which found a breach of contract was conclusive between the parties, and could not be questioned by the British Courts, and that the plaintiff having under that order been compelled as surety to refund advances made to defendants was equitably entitled to recover.

Per Boulnois, J.—The Courts of one country have never done more than recognize judgments of the Courts of another country as, under some circumstances, conclusive, and no committee requires that executive orders should be treated as conclusive in regard to facts proper for establishment.

ACT OF STATE—*contd.*

Held, therefore, that the British Courts were bound to enquire into and decide the question whether or not there had been a breach of contract, the order of the Superintendent not being conclusive.

Held further, that the defendants not having committed any breach, the plantiff could not recover, the payment by him not having been rightfully made, notwithstanding that the order of the Superintendent of the Bahawalpur State was supposed by that officer to be right and by the plaintiff to be irresistible. SUJAN SINGH *v.* HARDYAL SINGH. **36 P R 1877**

13. *Jurisdiction of British Courts to take cognizance of an act done by a Foreign State in the exercise of its Sovereign powers and not professing to be justified by Municipal Law.*

Held, PER RIVAZ, J, That the British Courts had no jurisdiction to question the legality of an act done by a Foreign State in the exercise of its Sovereign powers and not professing to be justified by Municipal Law. GHOLU SHAH *v.* PANDIT KIRPA SHANKER. **21 P R 1894**

14 *Act of State—Act done in exercise of Sovereign powers—Jurisdiction of Civil Courts.*

Plaintiffs purchased certain standing trees in Ghund State from the Rana of Ghund. They felled the trees and brought over the timber to Sanjoli, a village in the Koti State. The Superintendant of the Hill States, acting under the authority of rule 8 of the rules regarding the conservancy of forests in the Simla Hill States which had been sanctioned by the Punjab Government on the 5th February 1904, confiscated the timber, it not having been marked by the State Forest Official with the State hammer mark as required by said rule, and sold it by auction for Rs. 5,115.

Thereupon the plaintiff sued in the Court of the District Judge of Simla for the restitution of the timber or for its value.

Held, that the act complained of having been passed by the Superintendent of the Hill States in his political capacity in respect of the property of a Foreign State in foreign territory was an Act of State, and as such was not liable to be questioned in a Municipal Court in British India. The fact that an Act of State, directed towards a foreign state, and done in foreign territory affected indirectly a subject of the state doing the Act, did not prevent that act from being an Act of State. KHEMBO *v.* THE SECRETARY OF STATE FOR INDIA. **105 P R 1908**

ACTS PURPORTING TO BE DONE UNDER AN ENACTMENT.

See LIMITATION ACT (XV of 1877).

ACTION, CAUSE OF.

See CAUSE OF ACTION.

ACTION, FORMS OF—

Civil Procedure Code 1882—*Forms of Action—Statement of facts in plaint.*

See PLEADINGS. **11 P R 1891**

ACTIONABLE WRONG.

See DAMAGES.
See DEFAMATION.
See MALICIOUS PROSECUTION.

1. *Act XIII of* 1855—*Death caused by actionable wrong—Cause of action—Contributory negligence.*

See CAUSE OF ACTION. **85 P R 1894**

2 *Suit for damages for malicious prosecution—Cause of action accruing in Foreign State, but suit instituted in British India—Discharge of plaintiffs in former proceedings—Death of defendant pending appeal—Civil Procedure Code,* 1882, *sections* 368, 582—*Act XII of* 1855.

See CIVIL PROCEDURE CODE, 1882, SECTION 368, **4 P R 1897**

3. *Application for attachment before judgment—Suit by former defendant for compensation on ground that such application was made maliciously and without reasonable cause—Burden of proof.*

See CIVIL PROCEDURE CODE, 1882, SECTION 483. **86 P R 1895**

ACTOR SEQUITUR FORUM REI.

See FOREIGN JUDGMENT.

112 P R 1894 P C

ACTUAL POSSESSION.

See LIMITATION ACT IX OF 1871.
See SCHEDULE II, ARTICLE 10.

ADDING PARTIES.

To Appeal.

See APPELLATE COURT, POWER OF.

To Suit.

See JOINDER OF PARTIES.
See LIMITATION ACT XV OF 1877, SECTION 22.
See PARTIES.

ADHLAPI TENURE.

1. Adhlapi *transaction—Sale—Punjab Laws Act, section* 9.

Held, that a transfer of half a well with the land attached thereto in *adhlapi* tenure, *i. e.*, in proprietary right in consideration of the transferee restoring a ruined well and paying a cash premium, is a sale within the meaning of section 9 of the Punjab Laws Act, so as to be subject to the right of pre-emption. MUL CHAND *v.* MANSA RAM.

157 P R 1883

See ALSO NOTE TO THE SAME RULING.

2. Adhlapidar—*Agreement—Custom.*

In a suit to establish occupancy rights in half a well, it appeared that the well in suit was sunk under the *adhlapi* custom, by which the sinker becomes owner of half the well and cultivator of the other half, the proprietary right in which belongs to the original owner of the land. The plaintiff's claim related to the latter or proprietor's half, of which it appeared he had held possession for 50 years, during which period he had cleared the, waste, and otherwise incurred charges for the improvement of the land.

ADHLAPI TENURE—*contd.*

Held, that the Lower Courts had rightly awarded the plaintiff rights of occupancy. SHER BAKHSH *v.* KHUDA BAKHSH.

110 P R 1885

See CASE UNDER OCCUPANCY RIGHTS.

3. Adhlapi *tenure—Construction of deed of grant—Declaratory decree.*

According to the terms of certain deeds of grant, executed more than forty years before suit by the father of defendant in favour of plaintiffs' ancestors, portions of a large tract of waste land were conveyed to the grantees on condition of their breaking up the waste, bringing it under cultivation and constructing embankments for storage of water, it being provided that on fulfilment of these conditions one-half of the area in each case was to become the property of the grantees. In the Revenue papers the latter were, in each instance, shown as proprietors, half and half, of the land.

Held, that according to the terms of the deeds of grant and the entries in the Revenue papers, plantiffs were *adhlapidars* and full proprietors of the lands concerned. S. BAHADUR KHAN *v.* JIWAN. **27 P R 1899**

See CASE UNDER SPECIFIC RELIEF ACT, 1877, SECTION 42.

ADHSALIDAR.

Adhsalidar—*Kangra District—status of.*

Held, that the plaintiff *adhsalidar* had failed to prove that his status was higher than that ascribed to *adhsalidars* in paragraph 58, Lyall's Kangra Settlement Report, and that he was consequently not a full co-proprietor with defendant, the Ghirth cultivator. GADDU *v.* RIGHA, ETC.

75 P R 1911

ADJACENT.

Meaning of "adjacent" in Pre-emption Act, 1905.

See PRE-EMPTION. **90 P R 1909 F.B.**

ADJUSTMENT OF DECREE.

1. *Petition to Court to recognize arrangement in satisfaction of decree—Document not creating, declaring, or assigning any right in immovable property—Registration.*

See REGISTRATION ACT III OF 1877, SECTION 17. **51 P R 1885**

2. *Adjustment of decree—Execution of decree—Agreement to make payments at a certain date—Civil Procedure Code,* 1882, *section* 258.

See LIMITATION ACT XV OF 1877, SCHEDULE II, ARTICLE 179.

61 P R 1886

3. *Execution of decree—Payment by instalments—Agreement to give time for satisfaction of judgment-debt.*

See CIVIL PROCEDURE CODE, 1882, SECTIONS 210-257 A. **26 P R 1894**

ADJUSTMENT OF DECREE OUT OF COURT.

1. *Adjustment out of Court.*—A obtained a decree against 'B' in a Civil suit, and subsequently B instituted Criminal proceedings against A for Criminal breach of trust. In consideration of B's withdrawing this prosecution. A gave B a receipt purporting to acknowledge payment by the latter to the former of Rs. 16,120, the amount of the decree mentioned. C, a servant of B, filed this receipt in the Court whose duty it was to execute the decree and the Court recorded an adjustment of the decree. Afterwards, A applied for execution of the decree, which was refused.

Held, that as it was found to be a fact that A authorized or permitted the receipt to be filed as a certificate of adjustment of the decree, the adjustment could not be questioned. RUTTONJEE CURSETJEE BUTTLEBHOY *v.* HORMUSJEE COWASJEE. **1 P R 1870**

See CASE UNDER CAUSE OF ACTION.

2. *Court executing decree of another Court, power of, to inquire into adjustment.*

Section 11 of Act XXIII of 1861 does not allow a Court executing the decree of another Court to determine questions relating to sums alleged to have been paid in satisfaction of the decree. INNIS *v.* THE DELHI BANK.

51 P R 1870

See CASE UNDER EXECUTION OF DECREE.

3. *Adjustment certified to Court.*

Kishen Chand was liable, as surety, for the payment of the amount of a certain money decree. The decree-holder gave Kishen Chand, out of Court, a receipt for Rs. 1,150, stating in the receipt that the matter was settled as far as Kishen Chand was concerned. Subsequently the judgment-creditor applied for execution against Kishen Chand for the full amount of the dceree, Rs. 1,350. Kishen Chand produced the receipt in Court with a view to stay execution, and the judgment-creditor on being questioned, admitted he had signed the receipt, but urged that he had done so because Kishen Chand threatened to become bankrupt. The Court disallowed execution against Kishen Chand.

Held, that the adjustment was virtually certified to the Court under section 206, Act VIII of 1859, and that the order of the lower Court was correct. BHOWANI DASS *v.* KISHEN CHAND. **32 P R 1871**

4. *Suit by judgment-debtor to have adjustment of decree recognised by decree of Court —Civil Procedure Code (Act X of* 1877*), section* 258.

Held, that no suit will lie by a judgment-debtor against his decree-holder to have an alleged adjustment of a decree out of Court recognised by decree of Court. The plaintiff must take proceedings under section 258 of the Civil Procedure Code, if he wishes the adjustment to be recognised. KARM SINGH *v.* AMIR CHAND. **(47 P. R. 1881).**

overruled by 83 P R 1884 F B

ADJUSTMENT OF DECREE OUT OF COURT—*concld.*

5. *Suit to recover money paid out of Court in satisfaction of decree—Civil Procedure Code (Act X of* 1877*), section* 258.

Held, that no suit will lie to recover money paid out of Court in satisfaction of a decree, section 258 of the Civil Procedure Code, as amended by Act XII of 1879, providing that no such payment shall be recognised by any Court unless it has been certified. KARM SINGH *v.* AMIN CHAND (47 P. R. 1887), followed. ALA BAKSH *v.* MUHAMMAD SHAH **(11 P. R. 1883)**

overruled by 83 P R 1884 F B

6. *Civil Procedure Code (Act X of* 1877*), section* 258*—Bond executed in satisfaction of decree—Failure to certify satisfaction of decree—Right to sue on bond—New contract.*

Plaintiff sued on a bond executed by defendant in satisfaction of a decree passed in favour of plaintiff's husband.

Held, that the suit was not liable to be dismissed in accordance with the last sentence of section 258 of the Civil Procedure Code because plaintiff had failed to certify satisfaction of the decree to the Court, as the decree having been superseded by a valid contract between the parties, there was no reason why plaintiff should not sue on the new bond. MUSSAMMAT KISHEN DEVI *v.* UMR DIN. **182 P R 1882**

7. *Civil Procedure Code (Act XIV of* 1882*), section* 258*—Suit to recover money paid in satisfaction of decree, but not certified to the Court by the decree-holder.*

Held, by the Full Bench, that the language of the last clause of section 258 of the Civil Procedure Code does not exclude a suit to recover the money paid to a decree-holder and not applied in satisfaction of the decree, because he failed to certify the payment to the Court whose duty it was to execute the decree, as the words "*any Court*" in the above clause are to be construed as restricted to the Court executing the decree, and the Courts having jurisdiction over the execution proceedings as such. KARM SINGH *v.* AMIN CHAND (47 P. R. 1881) and ALA BAKHSH *v.* MUHAMMAD SHAH (11 P. R. 1883), overruled. MAMU *v.* KALU MAL (66 P. R. 1877), referred to. MULA MAL *v.* RAHMAN. **83 P R 1884 F B**

ADJUSTMENT OF SUIT.

See ARBITRATION.
See COMPROMISE.

ADMINISTRATION.

See CERTIFICATE OF ADMINISTRATION.

Succession Act (X of 1865*), sections* 180, 212,213*—Administration with copy annexed of authenticated copy of will proved abroad —Grant to attorney of absent executor—Attorney residing outside the jurisdiction of the Court to which application is made.*

On an application for letters of administration with a copy of an authenticated copy of the will annexed, by the attorney of the absent executors under sections

ADMINISTRATION—*contd.*

180 and 213 of Act X of 1865, it appeared that the attorney as well as his proposed surety were residing outside the jurisdiction of the Chief Court, in which the application was made.

Held, that since Act XIII of 1875 has extended the operation of grants by High Court throughout British India it was sufficient to justify such a grant if the application was made by an attorney who was residing at the time in some part of British India, the language of section 212 of the Succession Act notwithstanding. IN THE GOODS OF MAJOR GENERAL CAUTLEY.

28 P R 1883

ADMINISTRATION BOND.

Stamp Act (I of 1879), schedule I, article 2—Administration bond—Court-fees Act (VII of 1870), schedule II, article 16.

Held, that an administration bond requires a stamps under article 2, schedule I, of the Stamp Act of 1879, as that Act by necessary implication repeals the provision in article 16, schedule II, of the Court-fees Act of 1870. IN THE GOODS OF TROWARD.

165 P R 1879

ADMINISTRATION EXPENSES.

Administration expenses—Surety—Amount agreed to be paid, as consideration for standing surety—Probate and Administration Act, 1881, sections 78, 102.

Held, that the amount due to a person as consideration for his becoming surety for the due administration of the estate of a deceased person is an expense in odministerting the estate within the purview of section 102 of the Probate and Administration Act and as such is a first charge against the estate. IMAM BAKHSH *v.* PURAN MAL.

31 P R 1906.

ADMINISTRATION, LETTERS OF.

See PROBATE AND ADMINISTRATION ACT, 1881.
See SUCCESSION ACT (X OF 1865).

ADMINISTRATION SUIT.

Administration suit—Succession Act (X of 1865)—Jurisdiction of Civil Court.

Section 213 of the Code of Civil Procedure (Act X of 1877) does not purport to create any jurisdiction, but it recognises the possibility of administration suits being instituted and tried under the Code, and provides for them accordingly.

The jurisdiction to entertain such a suit does not depend upon whether the deceased person is one to whose estate the Indian Succession Act applies. MUSSAMMAT RUKMAN *v.* BRIJ MOHAN LAL.

68 P R 1881

ADMINISTRATION OF INSOLVENTS' ESTATE.

Administration of Insolvents' estate—Punjab Laws Act, 1872, section 27, Imperial Act of Parliament 11 and 12, Vict. C. 21—Conflict of jurisdiction between two Courts having insolvency jurisdiction—Proceedings under Punjab Laws Act—Vesting order under Imperial Act, effect of.

On 12th December 1906 a firm of traders carrying on their business at Amritsar and other places in the Punjab and also at Bombay were, on the application of a creditor, declared insolvent by the Insolvency Court, Amritsar, and a receiver of their property was appointed on the same date under section 27 of the Punjab Laws Act. On 31st May 1907, certain other creditors applied to the Bombay High Court in its insolvency jurisdiction praying that the said traders be adjudicated insolvent under 11 and 12 Vict. C. 21. This application was granted and at the same time a vesting order vesting the property of the insolvent in the Official Assignee, was passed. On this the Official Assignee applied to the Amritsar Insolvency Court to abstain from realizing the property of the insolvents and asked that the property be made over to him. This was refused on the ground that the property in the Punjab had vested in a receiver appointed by the Court, and that there was, therefore, no property in the Punjab upon which the subsequent vesting order of the Bombay High Court could take effect. This order was confirmed by the Chief Court on revision, on the ground that the property vested in the Court itself, though not in the receiver. On appeal by the Official Assignee to the Privy Council,

Held, that under section 27 of the Punjab Laws Act, 1872, what is entrusted to the Punjab Court is merely administration, and that under that Act no transfer of property takes place.

Held, also that under the Imperial Acts 11 and 12, Vict. C. 21 when an adjudication is made by the High Court the estate of the insolvent vests in the Official Assignee, and he is the person to administer it. THE OFFICIAL ASSIGNEE, BOMBAY, *v.* THE REGISTRAR, SMALL CAUSE COURT, AMRITSAR.

45 P R 1911 P C

ADMISSION.

See ABANDONMENT.
See ESTOPPEL.
See EVIDENCE.
See EVIDENCE ACT, 1872.
See LIMITATION.
See LIMITATION ACT, 1859.
See LIMITATION ACT, 1871.
See OCCUPANCY RIGHTS.
See ONUS PROBANDI.
See PRINCIPAL AND AGENT.
See REGISTRATION ACT, 1877.
See TENANCY ACT, 1868.

ADNA AND ALA MALIK.

See ALA AND ADNA MALIK.

ADOPTED SON.

See CUSTOM—ALIENATION.
See CUSTOM—INHERITANCE.
See LAMBARDAR.
See RELIGIOUS INSTITUTION.

94 P R 1909

ADOPTION.

See CIVIL PROCEDURE CODE, 1882.

93 P R 1909 P C

See CUSTOM—ADOPTION.
See CUSTOM—ALIENATION.
See ESTOPPEL.
See HINDU LAW—ADOPTION.
See JURISDICTION.
See JURISDICTION OF REVENUE COURT.
See LAMBARDARS.
See LIMITATION ACT, 1877, SCHEDULE II ARTICLES 91, 118, 119, 120.
See MUHAMMADAN LAW—ADOPTION.
See OCCUPANCY RIGHTS.
See PRE-EMPTION.
See TENANCY ACT, 1868, SECTION 36.

ADULTERY.

See CONTRACTS.
See CUSTOM—MARRIAGE AND DIVORCE.
See DIVORCE.
See DIVORCE ACT, 1869.

Exclusion of unchaste wife from inheritance in absence of divorce or proved custom.

By Muhammadan Law the wife is one of those heirs who are not liable to exclusion under any circumstances and the wife cannot be deprived after her husband's death (in the absence of a proved custom of exclusion) of the share which the law allows her by right of inheritance. MUHAMMAD BAKHSH *v.* HAYAT KHAN.

37 P R 1888

See MUHAMMADAN LAW—INHERITANCE.

ADVERSE POSSESSION.

See ABANDONMENT OF LAND Nos. 2, 12, 20, 22, 25, 27, 29, 31, 32, 35, 36, 38, 42, 43, 44, 45.
See BURDEN OF PROOF.
See COMMON LAND.
See CONSTRUCTION OF DOCUMENT.
See CUSTOM—ADOPTION.
See INHERITANCE.
See EASEMENT.
See LIMITATION ACT, 1871, SCHEEULE II, ARTICLE 44.
See LIMITATION ACT, 1877, SECTION 28, SCHEDULE II, ARTICLES 120, 127, 134, 135, 139, 141, 142, 144, 148.
See MORTGAGE—REDEMPTION.
See OCCUPANCY RIGHTS.
See POSSESSION.
See REGISTRATION ACT, 1877.

1. *Mortgage by person without title.*

Where the plaintiff sued for possession of a house, as heir to his brother G. S., which defendant was in possession of, defendant pleaded that the wife of G. S. had mortgaged the house to him 17 years before suit, and that he (defendant) had been in possession ever since, paying no rent.

ADVERSE POSSESSION—*contd.*

Held, that G. S.'s wife having no legal power to effect the mortgage, defendant's title was defective *ab initio*, and had not been cured by long possession, and that plaintiff was entitled to possession without paying off the mortgage debt. KISHEN SINGH *v.* THOOLA SINGH. **2 P R 1863**

2. *Joint Hindu Family.*

In the case of a joint undivided Hindu family, the possession of one member or more cannot be adverse as against an absent member. LALLA *v.* JEYGOPAL. **49 P R 1870**

3. *Joint proprietorship.*

Where the parties were entered at settlement as joint proprietors, and as entitled to equal rights in the disputed land,

Held, that the possession of one of the parties could not be regarded as adverse to the other. NIZAM-UD-DEEN *v.* GAHIA. **61 P R 1870**

4. *Lahore City wall.*

The Sikh Government exercised the power of turning out occupiers of houses erected on land within 30 feet of the Lahore city wall, but the British Government having failed to assert its right to control the alienation of the land from date of annexation until the present suit, a period of 21 years, and there being nothing to show that the occupation of the land was permissive, the Chief Court held that the land had been held adversely, and that the Government had lost its right. THE SECRETARY OF STATE FOR INDIA IN COUNCIL *v.* SOWAYA RAM. **56 P R 1871**

5. *Minority—Limitation*—Dakhil-kharij.

In 1857, plaintiff, then 15 years of age, was sued by C, the father of defendant, for Rs. 25 on account of revenue due on the plaintiff's moiety of a well, the defendant's father being proprietor of the other moiety. Plaintiff, being unable to pay, stated before the Peshkar of the Tahsil that he had surrendered his share in the well to C, who gave in a *razinamah* to the effect that he had abandoned his claim for Rs. 25 in consideration of plaintiff giving him his share in the well and lands. This agreement was ratified by the Deputy Commissioner on the 26th August, 1857, and, plaintiff consenting, C took possession of the entire well and lands, *dakhil-kharij* however not being effected or applied for. In 1871, plaintiff sued for the half-share of which he was still recorded proprietor.

Held, that the possession of C (and through him, of the defendant) of plaintiff's half share had been adverse since 1857, and that consequently plaintiff's suit was barred by limitation.

Per MELVILL, J.—*Dakhil-kharij* is merely an administrative act–a record of an accomplished fact; and its performance or omission neither creates nor destroys a right. PATHAN *v.* SHEIKH AHMED. **34 P R 1872**

6. *Suit to establish right to land, based upon adverse possession for upwards of twelve years.* –

ADVERSE POSSESSION—*contd.*

Plaintiffs sued to have their right declared to the possession of certain land, and the settlement record altered in their favour alleging that they had held adverse possession for thirteeny ears.

Held, by the Chief Court (over-ruling the orders of the lower Courts), that adverse possession was not merely a good ground of plea in bar of a suit, but was also a good ground of action when plaintiff claimed to have his title declared and recorded. KARIM KHAN *v.* BAHADAR KHAN. **48 P R 1872**

7. Makkhan, plaintiff, was son of Hassan. Kandhal, defendant, was grandson of Hassan, and son of Sulehman, who died during the mutiny; Hassan died some years later. Plaintiff sued for his father's shares of Sulehman's landed property.

Held, that if Hassan did not take possession at Sulehman's death, limitation then began to run against the plaintiff; but if Hassan did take possession, plaintiff's cause of action arose when Hassan died. MAKKHAN *v.* KANDHAL. **2 P R 1873**

8. *Decree for possession of land unexecuted—Subsequent suit by plaintiff for possession—Fresh cause of action—Adverse possession of defendant.*

Plaintiff in 1855 obtained a decree for possession of certain land on the ground that defendant's possession of it was permissive. This decree was never executed. He again sued in 1874 for possession, alleging, *inter alia*, that he had, within twelve years of suing, removed one of the four trees on the land.

Held, that plaintiff's allegation as to removing the tree was not proved, and therefore defendant's possession, since the decree of 1855, had been undisturbed and adverse, and plaintiff's suit would not lie. BURA *v.* JOWAHIRA. **53 P R 1875**

9. *Arrears of revenue—Lease or Farm.*

In 1856, plaintiff being unable to pay the Government revenue, his land was leased to the defendant for fifteen years (to the close of the settlement), it being recorded by the Collector conferring the lease that at the end of fifteen years plaintiff would be entitled to recover his land. The defendant fell into arrears, and a lease was given to S. This was after the mutiny had broken out. A short time subsequently the land was restored to the defendant. Plaintiff sued for possession of the land in 1874, and defendant pleaded that from the time the land was given back to him after the mutiny, he held it in proprietary possession adversely to the plaintiff.

Held, that defendant's possession had not been adverse, and plaintiff was entitled to recover the land. SARFARAZ ALI *v.* ASAD ALI. **63 P R 1875**

10. *Gift by Hindu widow—Suit by daughter for possession of property gifted—Adverse possession by donee.*

Plaintiff sued for possession of land held by her mother, M. R., a Hindu widow, holding

ADVERSE POSSESSION—*contd.*

apparently on a life tenure. The first Court, —the Commissioner, on appeal, concurring,— dismissed the suit as barred by limitation, on the ground that defendant had held adverse possession of the land for 19 or 20 years under a deed of gift from M. R.

M. R. was the elder of two widows of Misr Ramji, the original owner of the property, and she died eight years before this suit was instituted.

Held, reversing the orders of the Courts below, that the claim was not barred by limitation, as the plaintiff's right to sue only arose on the death of her mother M. R., and it was not competent to the defendant, who admittedly held by virtue of a gift from M. R., to plead that his possession was adverse during her lifetime. MUSSAMMAT JAI DEVI *v.* SHIB DYAL. **15 P R 1879**

11. *Widow in possession of life interest in her husband's property.*

A widow, while she herself retains possession of property in which she has a life interest, cannot by merely asserting an absolute proprietary title, in course of time acquire such title by prescription against the reversionary heirs of her husband who are not entitled to receive possession till the widow's death. MUSSAMMAT ANAND KOUR *v.* SODI NARINDAN SINGH. **83 P R 1881**

12. *Adverse possession—title.*

The rule laid down by the Privy Council in GUNGA GOBIND MANDAL *v.* THE COLLECTOR OF THE 24 PARGUNNAHS (12 Moo. I. A. 345), decided in 1867, that as between private owners the law has established a limitation of 12 years, after which time it declares not simply that the remedy is barred, but that the title is extinct in favour of the possessor, is consistent with the law as contained in the Limitation Act, 1877, and applies equally to cases where the possession still continues and where it has been terminated. DAYA RAM *v.* BADRI MAL. **16 P R 1886**

13. *Adverse possession—Mortgagee in possession—Adverse possession as regards mortgagee, effect of, upon rights of mortgagor.*

Held, that inasmuch as a mortgagor, who has transferred possession of the mortgaged land to the mortgagee, has no right to possession thereof until he has redeemed the mortgage, the possession of a third party, though adverse as regards the mortgagee whom he has ousted, does not, when unaccompanied by further acts of aggression upon the mortgagor's rights, give any cause of action to the latter during the continuance of the mortgage, and that, therefore, the burden of proving that his possession was adverse as against the mortgagor no less than as against the mortgagee rests upon such third party. I. R. L., XVIII BOM. 51, followed.

Held, upon the facts of the case, that defendants had failed to prove that their possession was adverse as against the plaintiff-mortgagor. KHANU MAL *v.* KHAN MUHAMMAD. **6 P R 1898**

ADVERSE POSSESSION—*contd.*

14. *Limitation Act, 1877, schedule II, article 144—Adverse possession.*

By a mortgage entered into between the plaintiff's ancestors and defendant, Kaka, in 1879, it was agreed that the whole amount should be repaid by instalments, and in default of payment of any instalment, the possession of the mortgaged property was to be taken by the mortgagee. In 1885 the mortgagor sold a certain portion of the mortgaged property to defendants 1 and 2, and in 1886 the mortgagee sued the mortgagor for possession without making the first two defendant parties to that suit and obtained a decree in 1886 for possession, but never got actual possession. Subsequent to the decree the mortgagor sold the remainder of the mortgaged property to the other defendants. In 1895 the mortgagee's heirs filed the present suit for possession of the land.

Held, that as the period for plaintiff's claim as regards the first two defendants could only be reckoned from the date of the original default in payment of instalment under the mortgage-deed of 1879, which could not have been later than 1882, and they having been in possession at the time of the prior suit to which they were not made parties and were therefore not bound by that decree and as with respect to that portion of the land, the mortgagor had no right, title or interest left in it subsequent to their sale in 1895, the suit was barred by limitation. But as regards those defendants who acquired their title subsequent to the decree of 1886 against the mortgagor that decree stands against them and they can claim no title by adverse possession, the suit having been instituted within twelve years from their obtaining possession. KESAR SINGH AND OTHERS *v.* THAKAR DAS. **10 P R 1901.**

15. *Adverse possession—Joint owners, landlord and tenant—Non-payment of rent—Burden of proof—Limitation Act, 1877, schedule II, article 142.*

The plaintiffs as proprietors sued for the possession of half the area of three wells in which the defendant who was owner of the other half share was occupancy tenant. The land having been washed away by the action of the river re-appeard in 1880. Since then the defendant got himself recorded as proprietor of the whole of the land, and had paid no produce to the plaintiffs, although there had been some partial cultivation by his tenants. The defendant resisted the claim, and raised a plea of adverse possession for more than twelve years.

Held, that although the defendant got his name recorded as proprietor of land, of which he was only occupancy tenant, there was nothing to show that plaintiffs were aware of the entry, and the fact of the defendants being owner of the other half of the land would afford no notice of an adverse claim, there being no alteration in the apparent character of the defendant's possession from which plaintiffs could become aware that

ADVERSE POSSESSION—*contd.*

defendant had set up a proprietary title, and also it was uncertain when his possession commenced to be adverse; that being so the burden of proof was on the defendant to prove a proprietary title by adverse possession, which he had failed to discharge. RAM CHANDER SINGH *v.* MODHO KUMARI (I. L. R., XII Calc., 484), TOLA *v.* SOKOTIA (18 P. R., 1888), and TULSI RAM *v.* JHANDU (186 P. R., 1888), followed. MOHIMA CHUNDER MOZOOMDAR *v.* MOHESH CHUNDAR NEOGHI (I. L. R., XVI Calc., 473), JAFAR HUSSAIN *v.* MASHUQ ALI (I. L. R., XIV All., 193), FAKI ABDULLA *v.* BABAJI GUNGAJI (I. L. R., XIV Bom., 458), and ALIMA *v.* KUTTI (I. L. R., XIV Mad., 96), referred to. HONDA *v.* BHAKU AND OTHERS. **65 P R 1901.**

16. *Limitation—Article 144—Suit for possession of immovable property—Adverse possession—Burden of proof.*

A plaintiff who had sued for possession of his share of certain immovable property left by his paternal grandfather having no right of inheritance under his personal law (his father having predeceased his grandfather) relied on a testamentary document under which his title, together with the defendants, originated some twenty-eight years before suit, but was unable to prove any possession of the property in dispute, either actual or constructive, *held*, that the *onus* of proof that his claim was within time being on him, and he having failed to prove jointness of possession, the suit must be held barred under Article 144 of the Limitation Act. KHUIDAD *v.* ALAMGIR (116 P. R., 1900) and LACHMAN SINGH *v.* SOHAN SINGH (97 P. R., 1890), referred to. DIN MUHAMMAD *v.* MEHR BAKHSH AND OTHERS. **30 P R 1902**

17. *Limitation—Suit by reversioner on death of widow—Possession adverse to the widow.*

Held, that in the Punjab adverse possession of a widow's estate by a trespasser during her life, cannot be adverse against a reversioner, and that limitation will begin to run against such reversioner only from the *death* of the female. RULIA *v.* RULIA. **41 P R 1903**

18. Where a widow, who had no title to succeed as such in the presence of the plaintiff holding the character of an adopted son of her deceased husband, and was allowed to succeed for life, and remained in possession of the property for more than twelve years prior to the institution of the suit, *held*, that her possession was adverse to the adopted son to the fullest extent of ownership, and that the adopted son had no right of succession to the property belonging to her. RAM NARAIN *v.* MAHARAJ NARAIN. **3 P R 1904**

19. *Adverse possession—Suit by reversioner on death of widow against her tenant.*

Held, that the possession of a tenant at will holding over the estate of a widow after her death is not adverse to her

ADVERSE POSSESSION—*contd.*

reversioners until the expiration of his tenancy. GHUDU SINGH *v.* KHUSHAL SINGH. **90 P R 1906**

20. *Adverse possession—Possession adverse to reversioner—Suit by more remote reversioners on death of such reversioner.*

Held, that a person who has held possession of agricultural land adversely against the next reversioner of a deceased proprietor is competent, in a suit for possession, to set up such adverse possession against the more remote reversioners. KAKA *v.* LABH CHAND. **106 P R 1906**

21. *Adverse possession—Possession of widow in lieu of maintenance.*

Held, that the mere fact that a widow of a predeceased son entitled to maintenance from the estate of her father-in-law had been in possession of the latter's estate for a long time would not in the absence of an assertion of any rival rights or pretention to adverse possession by her, raise the ordinary presumption that she had been in possession adversely to the real heir: especially where there was evidence that she had been in possession with the consent of the distant reversioners in lieu of maintenance. BURA MAL *v.* NARAIN DAS. **102 P. R. 1907**

22. *Adverse possession—Mortgage—Conditional sale—Void decree in foreclosure suit.*

Held, that a mortgagee by conditional sale cannot, by obtaining a decree in and illegal foreclosure suit, or by asserting himself to be the proprietor and thereby obtaining mutation to that effect in his favour, alter the character of his original title, nor can he rely on a possession adverse to the mortgagor to deprive him of his right to redeem the property. INDAR *v.* ASA SINGH. **65 P R 1908**

23. *Occupancy rights, resumption of—Suit by landlord for, on the death of the widow of a deceased tenant—Competency of person holding under widow to plead adverse possession.*

Held, that in a suit to resume land held on an occupancy tenure, instituted immediately after the death of the widow of the tenant, it is not competent for the person holding under the widow as her successor to set up adverse possession, based on mutation of names effected in his favour during the widow's lifetime, which had been unsuccessfully objected to by the predecessors in title of the plaintiffs, or subsequent long and uninterrupted enjoyment of the tenure. The landlords were not bound to sue until after the widow's death, as her occupancy rights could have been successfully pleaded against a suit for possession, and where lapse of time does not *ipso facto* create a right of adverse possession. GANDA SINGH *v.* KAIM. KHAN. **60 P R 1908**

24. *Indian Limitation Act, 1877, articles 142, 144—Absentee—Adverse possession in joint holding.*

ADVERSE POSSESSION—*concld.*

Where plaintiffs-absentees had, 29 years before the present suit for possession, brought a suit for a declaration that they were co-sharers, the cause of action being, that in consequence of the hoodwinking of the *patwari* by a defendant, the former had omitted plaintiffs' names from the list of proprietors in the *naqsha girdawari* (which suit was dismissed in default without defendants being summoned).

Held, that the conduct of the defendants which led to the previous suit, amounted to an overt act of dispossession and denial of title and so set limitation running, and that the defendants' possession was adverse, though ordinarily the possession of a sharer is the possession of his co-sharer. NAND SINGH *v.* NATHA SINGH. **86 P R 1909**

25. *Adverse possession—alienation by widow not challenged by nearest reversioner—suit for possession by remote reversioner after death of nearest reversioner—Limitation Act* 1908, *Section* 2 (8), *Schedule II, Articles* 140, 141, 142, 144.

The last male owner of agricultural land died leaving a widow, who died in 1876, and a mother who died in 1892. The widow, without necessity, had alienated, part of the land and had placed the alienee in possession. The nearest reversioner B, great grandson of K., the great grand father of the last male owner, died in 1903, without challenging the alienation or expressly assenting to it. The descendants of the brother of K. sued in 1909 the heirs of the alienee for possession of the land alienated. The question submitted to the Full Bench was whether plaintiffs' suit was within time.

Held, following the principles underlying 18 P. R. 1895, F. B. and dissenting from 106 P. R. 1906 that the claim was not barred under Article 144 of the Limitation Act, 1908, inasmuch as the plaintiffs' right to sue for possession was not derived from or through B, (*vide* definition of " plaintiff " in section 2 (8) of the Act), and consequently the defendants' possession, though adverse to B, could not be adverse to the plaintiffs until after his death, when their right to possession accrued.

Held also, tkat articles 140 and 141 had no application to the case. SUNDER *v.* SALIG RAM, etc. **26 P R 1911 F. B**

26. *Suit for land which fell to plaintiff's share on partition—Adverse possession—Limitation—Punjab Land Revenue Act* 1887, *section* 122.

Held, that when partition of land takes place and a particular field allotted to B, remains in possession of A, the latter holds adverse possession from date of partition. B can during the first 3 years move the Revenue Courts under section 122, Punjab Land Revenue Act 1887, to be put in possession, and during the following 9 years sue for possession in a Civil Court. FATEH DIN, ETC., *v.* NIKKA, ETC. **81 P R 1911**

ADVOCATE.

See LEGAL PRACTITIONERS ACT, 1879.

1. *Appeal filed by Advocate—Appeal dismissed by lower Appellate Court on ground that it was unauthorised by appellant.*
See APPEAL, CIVIL. **54 P R 1896**

2. *Entry as Advocate of any High Court—Stamp—Stamp Act*, 1879, *Schedule I, Article* 27, *Schedule and section* 11, *Exemption* 11 *—Court of Judicial Commissioner of Burma.*
See STAMP ACT, 1879, 1ST SCHEDULE, ARTICLE 27. **14 P R 1889**

3. An Advocate cannot sue or be sued in respect of his fees or other matters *ex contractu* but he is liable to an action for damages at the suit of his client for a *malâ fide* breach of duty or wrong independent of contract. (*Per Bulnois and Melvill JJ., Lindsay J.* dissenting). MUKDUM SHAH ALI MUHAMMAD *v.* PLOWDEN. **20 P R 1874**

4. An Advocate cannot sue for his fee. No. 20 P. R. 1874 followed. VAN CORTLANDT *v.* SKINNER. **89 P R 1875**

5. *Suit for money deposited with Advocate to be paid over to him if the result of the case is successful—Stake-holder—Privilege as Barrister.*

In a suit against the defendant, a Barrister, to recover from him a sum of money alleged to have been deposited by the plaintiff, his client, under an agreement that the defendant should only retain the money in the event of his winning the plaintiff's case which as plaintiff alleged had not happened, the Lower Court held the suit not to be maintainable against the defendant by reason of his privilege as a Barrister.

Held, that the plaintiff was entitled to a decision on the merits of the case : that the claim was one to recover back from a stakeholder money deposited with him to be paid over on the happening of a contingency which, according to the plaintiff had never occurred and that it was immaterial that in the present case the defendant was the plaintiff's Advocate as well as the stake-holder, as if he had in the latter capacity, without the occurrence of the contingency specified handed over to himself in the capacity of Advocate money which *ex hypothesi* he should have returned to the plaintiff, he could not set up as a sufficient answer to the plaintiff's claim his character of Advocate and the receipt by him of the money in that capacity. MUHAMMAD BAKHSH *v.* MORTON. **194 P R 1883**

6. *Advocates and pleaders—Receipts given for money paid for professional services in litigation—Stamp.*

On a reference by the Financial Commissioner, Punjab, under section 46 of the Stamp Act (1 of 1879).

Held, that a receipt given for money paid for services in litigation by an Advocate is not necessarily exempt from duty as being a " payment for money without consideration."

Reference by Financial Commissioner, Punjab. **85 P R 1885**

ADVOCATE—*contd.*

But *see* SHIRCORE *v.* Q. E., No. 15 P. R. 1897, Cr., in which it was held by the F. B. that no stamp was required to be affixed on a receipt given by a Barrister in respect of his fees.

7. *Vakalatnamas—Advocate of Chief Court.*

An Advocate of the Chief Court, who is not an Advocate of a Chartered High Court, is bound to file a power-of-attorney to enable him to appear in civil cases—*In re an Advocate.* **103 P R 1890**

(*Note.*—Owing to the amendment of section 39, Civil Procedure Code, 1882, by Act VII of 1895, the above ruling is no longer applicable).

See NOW O 3 R. 4 (3) ACT V OF 1908.

8. *Advocate and client—Suit for recovery of sum of money deposited with Advocate to abide certain event—Stakeholder—Privilege of Barrister.*

Plaintiff sued on the allegation that he had engaged the services of the defendant, who was an Advocate of the Chief Court, in a certain criminal case and had deposited a sum of money with the defendant on the condition that, if the accused in the criminal case were released, the defendant should be entitled to retain the deposit, otherwise it should be returned to plaintiff; that the accused had not been released and the defendant had, nevertheless, retained the deposit. The Judge, Small Cause Court, dismissed his claim on the sole ground that " defendant being an Advocate of the Chief Court, the suit would not lie against him "

Held, that no question of the privilege of an Advocate arose in this case, inasmuch as the defendant was sued merely as a stakeholder who was bound to refund the deposit to the depositor if the event upon which alone he was authorized to retain the money had not occurred.

No. 194, *Punjab Record*, 1883, cited and followed. BHUP SINGH *v.* F. BEECHEY. **52 P R 1894**

9. *Contract—Suit by a barrister, enrolled as an Advocate of the Chief Court, in respect of his fees—Enrolment as Advocate, effect of, upon status of barrister—Ancillary services*—"Quantum meruit"—*Contract Act*, 1872, *sections* 11, 70.

Plaintiff, who was a Barrister-at-Law and enrolled as an Advocate of the Chief Court and practising in the Punjab as such Advocate, sued in respect of fees for services rendered in his capacity as an Advocate and for services ancillary thereto.

Held, by a majority of the Full Bench (*Frizelle, Stogdon* and *Chatterji*, JJ.) that the suit was not maintainable, as the plaintiff was incapacitated from making a contract of hiring as an Advocate by the usage and constitution of his Bar.

Held, per *Roe* and *Rivaz*, JJ., *contra*, that the suit was maintainable, as no such incapacity attached to the plaintiff.

ADVOCATE—*contd.*

Held further, *per curiam*, that if the principal service rendered could not be the subject of a contract, no service which was merely ancillary thereto and of no value without the principal service, could be the subject of a contract or give rise to any independent cause of action. MR. ARTHUR GREY *v.* DIWAN LUCHMAN DASS.

51 P R 1895 F B

10. *Costs—Suit for declaration of title to property—Counsel's fee—Rules and Orders of Chief Court, No. XXXI, Rules* 3, 4, 5 *and* 17.

In a suit for declaration of title to property, the Court has a discretionary power to award to the successful party by way of counsel's fee a sum not exceeding that provided for by Rule 3 of the Rules regulating counsel's fees in subordinate Courts, and the fact that the suit has eventually been referred to arbitration does not limit the discretion so allowed to the Court. NAGAR *v.* JHANDU. **61 P R 1896**

11. *Advocate and client—Advocate's fee—Suit or money deposited with Advocate—Revision—finding of fact by Small Cause Court.*

Plaintiff sued on the allegation that he had retained defendant as counsel for defending a certain appeal in the Chief Court on the terms that he was to be paid Rs. 50 as his advance fee and a similar sum as his back-fee on his winning the case; that subsequently he deposited Rs. 200 with defendant, on the understanding that he was to retain Rs. 150 as his back-fee in the event of success, the remainder being the back-fee for another counsel on the same terms; that the said case was lost and that defendant refused to return the Rs. 150. Defendant, in answer to the claim, admitted his liability to refund the Rs. 50, but pleaded that as respects the balance of Rs. 150 there was an arrangement between him and plaintiff by which he was allowed to retain it as his advance-fee for filing an application for review of judgment in the case which had been lost; that he was ready and willing to file the said application, but that plaintiff had engaged some one else to do the work. Defendant, therefore, contended that no suit lay for refund of the Rs. 150, as he was a barrister. The Judge of the Small Cause Court found that defendant had failed to prove the argument set up, and decreed the claim, less a deduction of Rs. 50, which he allowed the defendant on equitable grounds for the trouble which he might have taken in thinking out the grounds of review, though none had been actually drawn up, and no copy of the judgment of the Chief Court applied for or obtained.

Held, that the award of Rs. 50 must be disallowed, and plaintiff's claim decreed without any deduction. KIRPA RAM *v.* SARDAR KRISHNA SINGH.

32 P R 1897

ADVOCATE—*concld.*

12. *Contempt of Court by advocate and Barrister in his individual and private capacity as a suitor—Dismissal or suspension of such Advocate from practice.*

Held, that although any action taken as a private individual in the prosecution of a case or the setting up of a defence would not, under ordinary circumstances, justify a Court in taking notice of such action as a breach of professional good conduct merely because the individual concerned happened to be an advocate, yet conduct which is in itself indefensible and amounts to gross misconduct in an advocate is not taken out of the purview of section 41 of the Legal Practitioners Act by a mere colourable pretence that it is as the conduct of a suitor or accused in that capacity. In the matter of Thomas James Wallace (L. R. I., P. C. 383) referred to—*In the matter of an Advocate.*

5 P R 1902 F. B.

13. *Back-fee—Payment to be made contingent on success—Illegal and improper conduct—Public Policy.*

Held, by a majority (Chatterji and Lal Chand, JJ., dissenting) that agreements between legal practitioners and their clients making the remuneration of the legal practitioner dependent to any extent whatever on the result of the case in which he is retained are illegal as being contrary to Public Policy, and legal practitioners entering into such agreements are therefore guilty of professional misconduct and render themselves liable to the disciplinary action of the Court. *Per* Lal Chand and Chatterji, JJ. *Contra* that the practice of receiving a back-fee is neither opposed to Public Policy nor improper as regards a legal practitioner other than members of the English Bar, enrolled under the Legal Practitioners Act, 1879. GANGA RAM *v.* DEVI DAS.

61 P R 1907 F. B.

AFFIDAVIT.

Examination of party—Indian Divorce Act, 1869, *section* 51.

A party to a suit for dissolution of marriage is not entitled, as of right, to give evidence by affidavit. SKINNER *v.* SKINNER.

See CASE UNDER DIVORCE ACT 1869, SECTION 51. **13 P R, 1891**

AGENT.

See PRINCIPAL AND AGENT.

1. *Seizure of property in time of war—Restoration of property so seized—Public Agent—Scope of authority—Ratification—Act IX of* 1859.

See ACT OF STATE.

12 P R 1874

2. *Civil Procedure Code,* 1882, *sections* 36, 541—*Presentation of memo. of appeal by pleader's clerk—Legal Practitioners Act,* 1879, *section* 10—" *Recognized Agents.*"

See APPEAL, CIVIL. **6 P R 1896**

AGENT—*contd.*

3. *Civil Procedure Code,* 1882, *sections* 36, 506—*Recognized Agent—Reference to arbitration.*

See ARBITRATION. **51 P R 1893**

4. *Suit by person carrying on business on behalf of Native Prince—Specially appointed agent—Civil Procedure Code,* 1882, *sections* 37, 432.

See CIVIL PROCEDURE CODE, 1882, SECTION 37. **165 P R 1889**

5. *Recognized Agent—Am-mukhtar appointed by party residing within the jurisdiction of the Court in which the suit or appeal is pending—Validity of the appointment of a pleader by such Am-mukhtar—Written authority, necessity for.*

See CIVIL PROCEDURE CODE, 1882, SECTION 37. **134 P R 1890**

6. *Agent—personal liability of Company.*
See COMPANY. **3 P R 1867**

7. *Powers of chief headmen and headmen to alienate portions of common land—Suit by other co-sharers to set aside sales and for possession—Previous sales by headmen of* shamilat *plots without objection.*

See COMMON LAND. **191 P R 1889**

8. *Jurisdiction—Place of suing—Contract with Commission Agent for supply of goods—Contract made by letters—Contract Act,* 1872, *sections* 4, 5, 91—*Civil Procedure Code,* 1882, *section* 17.

See CONTRACT ACT, 1872, SECTION 4.
76 P R 1896

9. *Suit for recovery of money paid to Agent for unlawful purpose—Suit instituted before execution of unlawful object—Principal and Agent—Contract Act,* 1872, *section* 23—Locus penitentiæ.

See CONTRACT ACT, 1872, SECTION 23.
63 P R 1898

10. *Wagering transaction—Claim by Commission Agents to recover by way of set-off sums due to them for losses incurred by Principal—No proof of actual payment of such sums, but Agents making themselves liable for the amount as a matter of account—Agents' liability not enforceable at law—Brokerage fees in respect of wagering transaction—Contract Act,* 1872, *sections* 30, 222.

See CONTRACT ACT, 1872, SECTION 30.
80 P R 1895

11. *Principal and Agent—Liability of Agent to render accounts to his Principal—Contract Act* 1872, *sections,* 30, 213.

See CONTRACT ACT 1872, SECTION 30.
46 P R 1901

12. *Husband and wife—Power of wife to pledge husband's credit—European Christians.*

See CONTRACT ACT, 1872, SECTION 187.
63 P R 1899

AGENT—*contd.*

13. *Suit by agent against principal for adjustment of account.*
See CONTRACT ACT, 1872, SECTION 213. **60 P R 1899**
See ALSO CONTRACT ACT, 1872, SECTION 230. **43 P R 1910**

14. *Unincorporated Club—Principal and Agent—Honorary Secretary—Personal liability as Honorary Secretary and as member of Club.*
See CLUB. **15 P R 1891**

15. *Suit for recovery of movable property and for an account—Plaintiffs claiming as owners by succession and as principals who had appointed defendants to manage their property—Statement by one plaintiff that she had never appointed defendants as her agents—Dismissal of suit—Principles which should guide Courts in such cases.*
See DISMISSAL OF SUIT. **85 P R 1896**

16. *Contract made by Military Officer invested with certain powers as Forest Officer—Unauthorized contract—Contract Act, 1872, section 237.*
See FOREST ACT, 1878, SECTION 2. **16 P R 1899**

17. *Effect of acknowledgment of right to redeem by agent.*
See LIMITATION ACT, 1871, 2ND SCHEDULE, ARTICLE 148. **157 P R 1888**

18. *Power of guardian to sign acknowledgment of liability—duly authorised agent.*
See LIMITATION ACT, 1877, SECTION 19. **25 P R 1886**

19. *Acknowledgment of debt—Duly authorized agent—Sale of goods to firms represented by minors—Appointment of two joint guardians by Court under Act XL of 1858—Power of one guardian to sign acknowledgment on his own and his co-guardian's behalf.*
See LIMITATION ACT, 1877, SECTION 19. **7 P R 1890**

20. *Suit against representative of deceased agent for account—money received to plaintiff's use.*
See LIMITATION ACT, 1877, SCHEDULE II, ARTICLE 62. **96 P R 1886**

21. *Principal and agent—Suit against agent for movable property received and not accounted for.*
See LIMITATION ACT, 1877, 2ND SCHEDULE, ARTICLE 89. **31 P R 1891**

22. *Regulation XVII of 1806—Application to foreclose served on minor mortgagee's brother with whom he lived—Petition presented by agent.*
See MORTGAGE—FORECLOSURE. **94 P R 1892**

23. *Farmer of monopoly of sale of drugs appointing agent to sell drugs for him—*

AGENT—*concld.*

Validity of agreement made with such agent.
See OPIUM ACT (1 OF 1878). **105 P R 1883**

24. *Written authority—Punjab Government Notification No. 2357, dated 3rd October 1877—Recognised Agent.*
See RECOGNISED AGENT. **191 P R 1883**

25. *Suit by plaintiff on allegation that defendant being an agent of third parties received certain money from plaintiff which he omitted to pay over to his principals—Obligation between debtor and the agent of the creditor that the latter should pay over money received to his principal—Discharge of debtor by payment to agent of creditor.*
See RIGHT TO SUE. **57 P R 1887**

26. *Person carrying on business for parties out of jurisdiction—Recognised Agent—Agent without special authority cannot sue on contract entered into by him on behalf of his principal—Civil Procedure Code, 1882, sections 37, 51.*

Held, that a manager of a branch office of an export agency carrying on business in the name of the owners of the firm resident in England, under the instructions of a Chief Manager, cannot be regarded a recognised agent of the firm within the meaning of section 37 of the Code of Civil Procedure, and that, in the absence of a special authority on this behalf, he cannot either subscribe or verify a plaint or sue for the enforcement of a contract entered into by him on behalf of his principals. FATEH DIN *v.* RALLI BROTHERS. **109 P R 1907**

27. *Mortgage entry in Settlement Record—Signature of Settlement Officer in the* Muntakhib Khewat.

For the purpose of acknowledgment within the meaning of section 19, Limitation Act, 1877, it must be shown that the Settlement Officer was an agent duly authorised by the mortgagee. GANGA RAM *v.* POKHAR DASS, ETC. **9 P R 1910**

AGISTMENT.

Agistment—Deposit.
See LIMITATION ACT, XIV OF 1859, SECTION 1, CLAUES 8. **23 P R 1872**

AGREEMENT.

See COMPROMISE.
CONTRACTS.
CONTRACT ACT, 1872.

1. *Agreement by father not to alienate—Attachment.*
See ANCESTRAL PROPERTY. **50 P R 1877**

2. *Agreement to liquidate decree by instalments—Validity of Contract—Appeal by judgment-debtor subsequent to agreement.*
See APPEAL. **161 P R 1879**

AGREEMENT—*contd.*

3. *Implied agreement to abide by award of Umpire or of the majority.*
See ARBITRATION. **9 P R 1869**

4. *Agreement in writing—Act X of 1877, section 523, application under.*
See ARBITRATION. **17 P R 1880**

5. *Agreement to refer signed by one of two plaintiffs and the defendant, but purporting to be made by all the parties.*
See ARBITRATION. **53 P R 1880**

6. *Agreement to refer made out of Court during pendency of suit—Act X of 1877, sections 375, 523—Dismissal of suit as barred by such agreement—Agreement to forego further legal proceedings.*
See ARBITRATION. **130 P R 1882**

7. *Application to file agreement to refer—Absence of provision for difference of opinion—Court appointing umpire on difference of opinion taking place.*
See ARBITRATION. **191 P R 1882**

8. *Agreement to refer which includes matters beyond the jurisdiction of the Civil Court—Power to file such agreement.*
See ARBITRATION. **5 P R 1883**

9. *Application to file agreement to refer—Civil Procedure Code, 1882—Court omitting to pass legal order of reference.*
See ARBITRATION. **67 P R 1886**

10. *Agreement to refer to Arbitration—Application to file such agreement—Civil Procedure Code, 1882, sections 522, 523, 591.*
See ARBITRATION. **134 P R 1888**

11. *Agreement to refer containing provision for appointment of umpire.*
See ARBITRATION. **46 P R 1889**

12. *Agreement—Umpire not conferring with arbitrators.*
See ARBITRATION. **6 P R 1891**

13. *Reference to arbitration made out Court during a pending suit—effect of.*
See ARBITRATION. **50 P R 1891**

14. *Agreement to refer to arbitration—Civil Procedure Code, 1882, section 523—Application to file such agreement.*
See ARBITRATION. **49 P R 1893**

15. *Civil Procedure Code, 1882, sections 36 and 506—Recognized Agent—reference to arbitration.*
See ARBITRATION. **51 P R 1893 F B**

16. *Arbitration, reference of case to—award of arbitrators—acceptance of award—subsequent objections to award.*
See ARBITRATION. **15 P R 1899**

AGREEMENT—*contd.*

17. *Reference and award—Construction.* See ARBITRATION. **65 P R 1899**

18. *Bond executed by lunatic—Burden of proving execution during lucid interval where general condition is shown to be that of insanity.* See BURDEN OF PROOF. **87 P R 1888**

19. *Agreement to give time to judgment-debtor—Civil Procedure Code,* 1882, *section* 257 A. See CIVIL PROCEDURE CODE, 1882, SECTION 257A. **61 P R 1886**

20. *Execution of decree—Court compelling decree-holder to grant time to judgment-debtor.* See CIVIL PROCEDURE CODE, 1882, SECTION 257A. **127 P R 1886**

21. *Execution of decree—agreement to give time for satisfaction of judgment-debt.* See CIVIL PROCEDURE CODE, 1882, SECTIONS 210, 257A. **26 P R 1894**

22. *Agreement at marriage not to remove wife from parents' house—custody of wife—Public Policy.* See CONJUGAL RIGHTS. **20 P R 1878**

23. *Agreement to pay money to third party.* See CONSTRUCTION OF DOCUMENT. **3 P R 1900**

24. *Contract with minor.* See CONTRACT ACT, 1872, SECTIONS 11, 65. **96 P R 1888**

25. *Marriage dues—agreement at Settlement.* See CUSTOM—CESSES. **140 P R 1883**

26. *Agreement made under threat of arrest.* See DURESS. **62 P R 1873** **83 P R 1875**

27. *Between landlord and tenant.* See ENHANCEMENT OF RENT. **5 P R 1895 Rev.**

28. *Exclusion of evidence of oral agreement to vary or contradict written instrument.* See EVIDENCE ACT, 1872, SECTION 92. **14 P R 1889**

29. *Agreement varying decree.* See EXECUTION OF DECREE. **16 and 85 P R 1876**

30. *Agreement to liquidate decree.* See EXECUTION OF DECREE. **48 P R 1880**

31. *Agreement by third parties to liquidate decree.* See EXECUTION OF DECREE. **59 P R 1880**

AGREEMENT—*contd.*

32. *Agreement as to how decree should be carried out—effect of,* See EXECUTION OF DECREE. **195 P R 1882**

33. *Breach of agreement by Insolvent.* See INSOLVENCY. **44 P R 1877**

34. *Agriculturists—Interest—Equitable rate.* See INTEREST. **42 P R 1872**

35. *Money-lender and Zamindar—usurious rate of interest—undue influence—presumption.* See INTEREST. **110 P R 1879**

36. *Agriculturists—Rate of interest—undue influence.* See INTEREST. **145 P R 1879**

37. *Interest—Agreement to pay at Rs. 36 per cent.—Immoral agreement.* See INTEREST. **40 P R 1882**

38. *Implied agreement to pay interest—Act, XXXII of* 1839 *and XXVIII of* 1855. See INTEREST. **36 P R 1894**

39. *Implied agreement to pay interest—No objection to notice on Contract—Promise to pay.* See INTEREST. **55 P R 1901**

40. *Absence of express agreement to pay interest—Implied agreement.* See INTEREST. **104 P R 1901**

41. *Agreement to sell.* See JURISDICTION OF SMALL CAUSE COURT. **2 P R 1866 (S. C. C. Ruling)**

42. *Agreement—Pleader and client.* See LEGAL PRACTITIONERS ACT, 1879, SECTION 28. **54 P R 1881**

43. *Agreement altering decree.* See LIMITATION ACT (IX OF 1871), SCHEDULE II, ART. 167. **46 P R 1876**

44. *Agreement to pay instalments not embodied in decree.* See LIMITATION ACT (XV OF 1877) SCHEDULE II, ARTICLE 179. **190 P R 1882**

45. *Agreement to make payments at a certain date—execution of decree.* See LIMITATION ACT (XV OF 1877) SCHEDULE II, ARTICLE 179. **61 P R 1886**

46. *Agreement to divorce—Muhammadan Law.* See MUHAMMADAN LAW—DIVORCE. **193 P R 1889**

47. *Agreement by purchaser of equity of redemption to pay mortgage.* See MORTGAGE. **54 P R 1902**

AGREEMENT—*contd.*

48. *Agreement—compromise at Settlement.* See OCCUPANCY RIGHTS. **67 P R 1880**

49. *Agreement—Occupancy rights in* Shamilat. See OCCUPANCY RIGHTS. **155 P R 1889**

50. *Agreement regulating rights of pre-emption.* See PRE-EMPTION—*Wajib-ul-arz.* **44 P R 1892**

51. *Agreement between Pleader and client.* See PLEADER AND CLEINT.

52. *Agreement to sell.* See REGISTRATION ACT, 1871, SECTION 17. **8 P R 1877**

53. *Inadmissibility in evidence of unregistered document.* See REGISTRATION ACT, 1877, SECTION 17.

54. *Agreement for term of Settlement.* See SETTLEMENT. **5 P R 1877**

55. *Agreement—entries in Settlement Records* See SETTLEMENT RECORDS. **5 P R 1887, Rev.**

56. *Suit for money due for use of masonry outlet—Rent—agreement.* See SMALL CAUSE COURT ACT, 1887, SCHEDULE II, ARTICLE 8. **164 P R 1888**

57. *Specific Performance—Agreement.* See SPECIFIC RELIEF ACT, 1877, SECTIONS 12, 22.

58. *Agreement—absence of consideration.* See TENANCY ACT, 1868, SECTION 2. **16 P R 1872**

59. *Agreement—Alienation.* See TENANCY ACT, 1868, SECTION 2. **20 P R 1873**

60. *Agreement.* See TENANCY ACT, 1868, SECTION 2. **2 P R 1876**

61. *Agreement—uncertainty.* See TENANCY ACT, 1868, SECTION 2. **81 P R 1876**

62. *Agreement made prior to Tenancy Act—effect of that Act on agreement.* See TENANCY ACT, 1868, SECTION 2. **112 P R 1880**

63. *Agreement—Enhancement of Rent.* See TENANCY ACT, 1868, SECTION 2. **1 P R 1880 Rev.**

64. *Agreement between landlord and tenant.* See TENANCY ACT, 1868, SECTIONS 2, 5, 8.

AGREEMENT—*concld.*

65. *Held*, that a suit based on an agreement containing a clause for reference of disputes to arbitration was not barred under section 21, Specific Relief Act unless the defendant proves that the plaintiff refused to submit the matter in dispute to arbitration. UDHE SINGH, &c., *v.* S. BISHEN SINGH, ETC.
25 P R 1911

AGRICULTURAL LAND.

No right of pre-emption arises on the foreclosure of a right to redeem in respect of agricultural land.
See PUNJAB PRE-EMPTION ACT.
82 P R 1909

AGRICULTURAL TRIBE.

1. *Kharals* of Hissar district are not members of an agricultural tribe for the purposes of the Punjab Alienation of Land Act, 1900. MANSA RAM *v.* GHULAM MUHAMMAD.
117 P R 1908

2. *Mahtams* of the Muzaffargarh district are not members of an agricultural tribe for the purposes of the Pre-emption Act, 1905. SONUN *v.* RUPAN BAI. **24 P R 1908**

3. A Kureshi had no right of pre-emption until 1904 when the Kureshis were notified as an agricultural tribe under Act XIII of 1901. MUHAMMAD KHAN *v.* SARDAR, ETC.
7 P R 1910

AGRICULTURIST.

1. *Agriculturist—Attachment in execution—Civil Procedure Code*, 1882, *section* 266 *(c)*
See CIVIL PROCEDURE CODE, 1882, SECTION 266 *(c)*. **1 P R 1889**
47 P R 1897

2. Fodder required for the owner's cattle is exempt, under clause *(n)* of section 266 of the Civil Procedure Code, 1882, read with section 70 of the Punjab Land Revenue Act, 1887, from attachment in execution of a decree against an agriculturist. GUR BAKSH *v.* KHAIRATI. **82 P R 1907**

3. *Equitable rate of interest—agriculturist.*
See INTEREST. **42 P R 1872**

AIR AND LIGHT.
See EASEMENTS.

ALA LAMBARDAR.

1. *Betrothal fees—Right of Ala Lambardar to levy from Khatri.*
See CUSTOMS—CESSES. **11 P R 1833**

2. *Power of chief headmen and headmen to alienate portions of common land—Suit by other co-sharers to set aside sale and for possession.*
See COMMON LAND. **191 P R 1889**

3. *Partition*—Shamilat taraf *and* shamilat deh—Muafi *land held by ala lambardar in which he had no proprietary right.*
See COMMON LAND. **15 P R 1892**

ALA LAMBARDAR—*contd.*

4. *Suit for land alleged to have been granted to plaintiff, revenue free, as Ala Lambardar—Punjab Tenancy Act*, 1887, *section* 77 (3) *(m)*.
See JURISDICTION OF CIVIL OR REVENUE COURTS. **66 P R 1893**
123 P R 1893
104 P R 1894
105 P R 1894
23 P R 1895
28 P R 1895

5. *Grant of land to office of Ala Lambardar—Acquisition of occupancy rights in such land—Punjab Tenancy Act*, 1887, *sections* 5 (1) *(d) and* 77 (3) *(m)*.
See JURISDICTION OF CIVIL OR REVENUE COURTS. **123 P R 1893**
23 P R 1895

6. *Suit to recover land from person holding it in virtue of his office as Ala Lambardar.*

See JURISDICTION OF CIVIL OR REVENUE COURTS. **28 P R 1895**

7. *Grant of a portion of the village common land to a person holding the office of ala lambardar rent free—Suit for dispossession by the proprietor of the land—Landlord and tenant—Punjab Tenancy Act*, 1887, *section* 4, *clause* (5), *Jurisdiction.*
See JURISDICTION OF CIVIL OR REVENUE COURTS. **101 P R 1901**

8. *Ala Lambardar—Rule* 3, *Punjab Government Notification No.* 883, 25*th June* 1872.

Upon the death of the chief headman or ala lambardar, the candidates for the office were M. B. (the eldest son of the deceased), H. B., B.; and M.—H. B. polled 645 votes; B polled 562, and M. B. 548. The Deputy Commissioner confirmed the election of H. B., after which B and M gave in their adhesion to M. B.

Held, (reversing the orders of the Deputy Commissioner and Commissioner) that, though the office of chief headman was not hereditary, it was desirable to appoint the son if he were not inferior to the other candidates; and that there was not such a preponderance of votes in favour of H. B. as warranted his being appointed over the head of M. B. MIRAN BAKSH *v.* HAYAT BAKSH. **5 P R 1873 Rev.**

9. *Chief Lambardar, office of—Grant at Settlement—Rights in land thus allotted.*

Plaintiff, the chief lambardar of the village, sued for the produce of certain land set apart at Settlement for his remuneration. The defendants in the suit were the tenant, who cultivated the land on condition of paying half the produce to plaintiff, and the proprietors of the land, to whom such produce had actually been paid, instead of to plaintiff. One of the pleas urged by the defendants was, that the rights of the proprietors were not affected by the grant made at Settlement, which only extended to the revenue assessed on the land.

ALA LAMBARDAR—*contd.*

Held, that the allotment of a plot of common land to a Chief Lambardar by way of remuneration for his services to the village was usually a matter of arrangement by the Settlement Officer in consultation with the village community and with their consent, and that, while it was usual to make over the land to the Chief Lambardar and to allow him to cultivate it for his own benefit without payment of revenue or *malikana*, this was not necessarily always the case, and, therefore, the terms upon which any particular grant was made must be gathered from the circumstances of the particular case.

Held, further, that by the terms of the grant in this case, the Chief Lambardar was entitled to realize from the cultivator what the proprietors could have realized: *i. e.*, he was not merely the *mafidar* of the land, but also entitled to take the rent or the proprietor's share of the produce.

The office of Chief Lambardar, and the correspondence relating thereto, considered. GURBAKSH SINGH *v.* QUTBUDDIN.
105 P R 1879

10. *Chief Lambardarship—Succession.*

The real meaning of Revenue Judgment No. 5 of *Punjab Record* for 1873 is, that in cases of succession to the Chief lambardarship where both candidates are equally fit and the votes nearly equal, the preference should be given to a son of the deceased Chief Lambardar.

Where the son of the deceased Chief Lambardar secured the most votes, but it appeared that the other candidate was the older Lambardar and otherwise fit, the Financial Commissioner (reversing the order of the Commissioner, and upholding that of the Deputy Commissioner) maintained the appointment of the latter candidate. JOWAHIR SINGH *v.* GURDIT SINGH. **6 P R 1880 Rev.**

11. *Chief lambardarship—Procedure where lambardarship and sarpanchship are both vacant—Separate enquiries.*

Held, by the Financial Commissioner, that the questions of the succession to the office of lambardar, and to that of sarpanch or chief headman, are two separate matters for which separate procedures are laid down in the rules, and which, therefore, should not be decided simultaneously. All vacant lambardarships should be separately filled up before a sarpanch is appointed, and there should be a separate file for the appointment of the sarpanch. PHALLU *v.* KALU.
9 P R 1881 Rev.

12. *Chief lambardarship—Succession—Questions for consideration when votes are nearly equal.*

Held by the Financial Commissioner, that in cases of succession to the chief lambardarship, when the votes are nearly equal, the preference should be given to the son of the deceased chief lambardar, provided he is otherwise fit for the post.

ALA LAMBARDAR—*contd.*

The son of the last chief lambardar appointed, in a case where the difference in the number of votes obtained by the rival candidates was not great; where both the parties appeared equally fit, and where it appeared that the full proprietors of the villages, 10 in number, all supported the claim of the son of the deceased, while the 14 persons who voted for the other claimant were merely proprietors of their own holdings. ABDULLA *v.* BUDHA.

4 P R 1884 Rev.

See ALSO MEHR DAD KHAN *v.* PIR MAHI.

4 P R 1884 Rev. Note.

13. *Chief lambardarship—Mode of weighing value of the voting.*

Held, by the Financial Commissioner, that in weighing the votes obtained by rival candidates for a chief lambardarship, regard should always be had to the stake the voters have in the village, and due allowance be made for this. SHER MUHAMMAD *v.* PIRANDITTA.

8 P R 1885 Rev.

14. *Chief lambardarship—Succession—Right of claimant who has obtained substantial majority of votes.*

In a case relating to the succession to the office of chief lambardar, it appeared that the Commissioner had reversed the order of the Deputy Commissioner, under which the candidate, who obtained 22 votes, representing Rs. 254 of revenue, was appointed and had appointed the rival candidate who obtained 15 votes, representing Rs. 228 of revenue, holding that the difference was slight, and that as the respondent was the son of the late chief lambardar, he should be appointed.

Held, reversing the order of the Commissioner, that a majority of 7 votes over 15 votes was hardly a slight difference, and the difference of revenue was substantial, and that the appellant, who headed the poll by the above majority of votes, and who was described by the Deputy Commissioner as by far the most capable man in the village, and who was also strongly recommended for the post by the Tahsildar, should be appointed. JOWAHIR SINGH *v.* GURDIT SINGH (6 *P. R.* 1880, Rev.), and ABDULLA *v.* BUDHA (4 *P. R.* 1884, Rev.), cited. WADHAWA *v.* GUNDA.

8 P R 1888 Rev.

15. *Chief lambardar—Succession—Preference to be given to son of deceased where votes nearly equal.*

In cases of succession to the office of chief lambardar, when the votes are nearly equal, the preference should be given to the son of the deceased chief lambardar, provided he is otherwise fit for the post. MIRAN BAKHSH *v.* HAYAT BAKSH (5 *P. R.* 1873, Rev.), JOWAHIR SINGH *v.* GURDIT SINGH (6 *P. R.*, 1880, Rev.) and ABDULLA *v.* BUDHA (4 *P. R.*, 1884, Rev.), cited. ALI GAUHAR *v.* JHANDA.

10 P R 1888 Rev.

16. *Ala lambardars—Succession—Question for consideration.*

The Commissioner held, revising the order of the Deputy Commissioner, that *primâ facie*

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the office of chief headman should go to the lambardar of longest standing.

Held, that this view was untenable. The considerations to be followed in appointing a chief headman are those stated in Rule 31 subject to this qualification that no special regard should be paid to hereditary claims (Rule 38). LABH SINGH *v.* JUALA SINGH.

10 P R 1890 Rev.

17. *Chief lambardar—Minority.*

The duties of chief lambardar should be discharged in person and not by deputy, and therefore a minor should not ordinarily be appointed. 1 *P. R.*, 1886, Rev., followed. MEHR *v.* CHANNU. **7 P R 1891 Rev.**

18. *Grant of land to office of ala lambardar—Suit for dispossession of such ala lambardar by proprietors—Tenant.*

The Lower Courts having granted plaintiff a decree dispossessing defendant from certain land which had at the previous settlement been assigned to him rent-free in virtue of his office of ala lambardar, defendant applied to the Financial Commissioner's Court on the revision side on the ground that his possession of such land not being that of a "tenant" could not be disturbed by the proprietors of the land so long as he remained ala lambardar.

Held, upholding the orders of the Lower Courts, that an arrangement whereby the village proprietors allow an ala lambardar in virtue of his office to cultivate, free of rent, a piece of their common land, is one which the proprietors are at liberty to revoke at any time, should they insist on so doing either by taking back their land or demanding rent for it, and at most, could not be held to be binding on them beyond the term of the settlement current at the time. Civil Judgment 123 *P. R.*, 1893, dissented from. JHANDA SINGH *v.* DHANA SINGH. **1 P R 1896 Rev.**

19. *Ala lambardar, appointment of absentee as—Rules under Punjab Land Revenue Act, 1887—Rule 187.*

Held, that an absentee lambardar is not eligible for appointment as a chief lambardar. MIT SINGH *v.* BAISAKHA SINGH.

2 P R 1896 Rev.

20. Occupancy right—grant of muafi to ala lambardar.

See OCCUPANCY RIGHT.

1 P R 1897 Rev.

ALA AND ADNA MALIK.

1. *Ala and adna maliks—Re-appearance of submerged land—Right of possession—*Wajib-ul-arz.

See ALLUVION AND DILUVION.
CONSTRUCTION OF DOCUMENT.

125 P R 1889

2. *Custom—succession—Ala and adna maliks,* Mauza *Nauabad,* Tahsil *Moga, Ferozepur district.*

See CUSTOM.

9 P R 1898

ALA AND ADNA MALIK—*concld.*

3. *Mortgage by sonless adna malik—such charge not binding on ala malik after death of mortgagor without heir.*

See MORTGAGE BY SONLESS ADNA MALIK.

175 P R 1888.

4. Pre-emption—village divided into two *pattis*—sale of adna rights in one *patti* to *ala* proprietor—Suit by *adna* proprietor of other *patti*—Respective rights of *ala* and *adna* proprietor.

See PRE-EMPION. **72 P R 1897**

ALIEN.

See JURISDICTION OF CIVIL COURTS.

ALIENATION.

See ANCESTRAL PROPERTY.
ASSIGNMENT OF CHAOS IN ACTION.
CAUSE OF ACTION.
CAVEAT EMPTOR.
COMMON LAND.
CUSTOM.
DECLARATORY DECREE.
FRAUD.
HINDU LAW—ALIENATION.
—ANCESTRAL PROPERTY.
—JOINT FAMILY.
—MAINTENANCE OF MINOR.
—MAINTENANCE OF WIDOW.
INSOLVENT.
ISTAMRARI ESTATE.
LIMITATION ACT, 1877, SECTION 7, SCHEDULE II, ARTICLES 142, 144.
MORTGAGE.
MUHAMMADAN LAW—ALIENATION.
MULTIFARIOUSNESS.
OCCUPANCY RIGHTS.
PRE-EMPTION.
RELIGIOUS INSTITUTION.
RIGHT TO SUE.
TENANCY ACT, 1868, SECTION 34.

1. *Attachment and sale of ancestral property of absconding offender subject to Punjab Customary Law—Effect of such sale upon the rights of inheritance of the absconder's male lineal descendants and collaterals—Criminal Procedure Code,* 1898, *sections* 87, 88.

Held, by a majority of the Full Bench (Johnstone, J. dissenting), that where ancestral immovable property held by a person subject to Punjab Customary Law is attached and sold by order of a Criminal Court under section 88 of the Code of Criminal Procedure the sale conveys the life interest of that person only and does not extinguish the right of inheritance after his death of his male lineal descendants or of collaterals descended from the original holder of the property. SADHU SINGH *v.* SECRETARY OF STATE.

18 P R 1908 F B.

ALIENATION OF LAND ACT.

See PUNJAB ALIENATION OF LAND ACT, 1900.
APPEAL, REVENUE.

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ALIMONY.

Indian Divorce Act, 1869—Permanent Alimony—order for, when to be made by District Judge.

See DIVORCE ACT, 1869, SECTION 37.

ALLEGANS CONTRARIA, NON-AUDITUR.

1. *Pleadings—plaintiff's claim based on alternative sets of facts.*

See PLAINT—FORM OF

109 P R 1887

2. *Inconsistent Pleas.*

See PLEADINGS. **4 P R 1900**

ALLUVION AND DILUVION.

See JURISDICTION OF CIVIL COURTS. OCCUPANCY RIGHTS.

1. *Custom—Regulation XI of* 1825.

Where two adjoining estates are divided by a river, questions as to proprietorship arising from accretion or dereliction by the action of the stream will be decided primarily by the well established usage of those two villages ; but if the usage be doubtful, then according to the rule laid down by Regulation XI of 1825. SHERA *v.* SAHIBA (53, *P. R.* 1867) ; CHUNGAR *v.* BAHADOOR SINGH (47 *P. R.* 1868) ; HUQ NEWAZ KHAN *v.* KHANUM (72 *P. R.* 1869) ; RAMA *v.* SHERE SINGH (15 *P. R.* 1872).

2. *Identification of land—Regulation XI of* 1825.

If there be no custom to the contrary land carried away to the opposite bank of the river may be followed by its owners, provided it be identifiable. RAMA *v.* SHERE SINGH (15 *of* 1872), and YOOSUF *v.* SIRDAR DEWA SINGH (12 *of* 1870).

The re-forming of land which has been removed by sudden avulsion in a river to which Regulation XI of 1825 applies, does not render the land re-claimable unless its identity is proved ; and it is not to be presumed that land lost to an owner by the erosion of the river bank is recovered when an equal quantity of land is left dry by the river taking another course. Independently of custom, a title to such re-formed land is not necessarily established by mere proof of general inclusive boundaries at a time long preceding the re-forming of the land, but if a custom is proved it is to be followed. HUQ NEWAZ KHAN *v.* KHANUM (72 *of* 1869). In CHUNGAR *v.* BAHADOOR SINGH (47 *of* 1868), the Chief Court held that land could not be identified by the laying down of survey boundaries ; the mode of identification was indicated in clause 2, section 4 of the Regulation.

3. Plaintiffs, zemindars of *Mouza* B, on the Sialkote side of the Chenab, sued the defendants (zemindars of *Mouza* M, on the Gujrat side of the river) for alluvial land situated on the Sialkote side. The parties admitted that the case was governed by section 4, Regulation XI of 1825. The land had been carried across from *Mouza* M, but not bodily, and its identity was

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destroyed. The defendants as well as the plaintiffs were entitled to take by accretion, any land which was thrown up between their land and the main stream. Another piece of land besides that in dispute had come bodily across from *Mouza* M to *Mouza* B, of which the defendants still kept possession. The land in dispute did not lie between this piece of land and the river.

Held, that plaintiffs were entitled to the land sued for. NOORDEEN *v.* FUTTEH ALI.

65 P R 1869

4. *Custom—Kishtibunna—Alteration of custom by contract.*

The parties to the suit were proprietors respectively of *Mouza* Soomrao and *Mouza* Thalee, between which the Beas flowed. From annexation up to the commencement of 1867 claims to alluvial land between villages on opposite banks of the Beas were uniformly decided by the Courts of both districts according to the *Kishtibunna* or deep stream rule, *i. e.*, the transfer both of proprietary right and of cultivating possession followed the transfer of the land from one bank of the deep stream to the other, and this change of property and cultivation took place even when the land was transferred bodily to the opposite bank by a sudden change in the course of the river which did not carry away the surface of the ground or destroy its identity. On the 5th February 1867, a meeting was convened by the Deputy Commissioner at Noushera Ghat of the zaildars of other villages similarly situated, but none of the lambardars or proprietors of either Soomrao or Thalee were present at this meeting. From the answers of the zaildars thus assembled to questions put in reference to the *Kishtibunna* rule, it appeared that the rule had existed from time immemorial. The zaildars agreed that the rule was bad and should be abrogated ; and they put their seals and signatures to a document agreeing to lay down boundaries for themselves which they would abide by in future irrespective of changes in the course of the river.

Held, that the custom of *Kishtibunna* was established, and that it governed this case ; and that the agreement of the 5th February 1867 was not in any away binding upon the parties to the suit.

Held also, that the custom of *Kishtibunna* could be altered by contract between the parties interested, *i. e.*, proprietors of two coterminous villages on opposite banks. SODHA *v.* FUTTEH KHAN. **56 P R 1869**

5. Plaintiff's village was on the west side of an old bed of the river Indus, and this old bed was made the eastern boundary of the plaintiff's village long after the river had changed its course, in proceedings taken in 1859. Defendant had for many years cultivated the land situated between this old bed and the main stream. Plaintiff in this suit claimed this land on the ground

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that it had accreted to his village by change of the course of the river.

Held, that under the circumstances the question was not one of alluvion and diluvion, but one of boundaries only. MULLICK SOHARA *v.* GHOLAM MAHOMED. **23 P R 1869**

6. *River boundaries between British and Independent Territory.*

With regard to river boundaries between British and independent territory, in the case of alluvion, the main stream forms the boundary irrespective of other circumstances ; but in cases of avulsion, the boundary question should in each case be determined on its own merits. YOOSUF *v.* SIRDAR DEWA SINGH. **12 P R 1870**

7. *Submersion.*

Village Kalu-wal was entirely submerged about nine years before suit, and the river (Sutlej) flowed along the boundary of village Ajayab Singh-wala, cutting away a portion of that village. Three years before suit, land began to re-appear as the river receded from village Ajayab Singh-wala. To this land plaintiff laid claim, alleging that it formed a part of village Kalu-wal. The Lower Courts found that the land was identified as having belonged to village Kalu-wal, and that by custom plaintiff (proprietor of the village) was entitled to it.

The Chief Court (Lindsay and Melvill, JJ.) remanded the case, not being satisfied with the evidence as to the custom, and holding that by law the land belonged to village Ajayab Singh-wala, and that, if it belonged by custom to village Kalu-wal, still village Ajayab Singh-wala was entitled to a portion of the land equivalent to that which it had lost.

Found, after remand (by Boulnois and Lindsay, JJ.), that by custom as well as law plaintiff had no right to the land. SHERE SINGH *v.* KALU. **7 P R 1873**

8. *Hereditary cultivator.*

Where land which has been submerged re-forms and forms by accretion part of a particular estate, the owner of that estate is entitled to it. This rule refers to accretions to the land cultivated by a tenant with right of occupancy and gives the tenant the right to take possession of and cultivate the land so re-forming. Such tenant has distinct rights of property, qualified though they be, in the land of which he is tenant. The fact that the land remained submerged or unclaimed for several years, *held*, not to affect the tenant's right ; for, though cultivating rights are lost by abandonment or voluntarily ceasing to occupy, ordinarily the only legal bar is the twelve years' limitation. SAHIB RAI *v.* KHAIR SHAH. **19 P R 1876**

9. *Hereditary cultivator.*

About ten years before suit the land of the plaintiffs (hereditary cultivators) was carried away by the river, with the exception of a small piece of *banjar* which the plaintiffs

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gave up. Two years afterwards land appeared in the same place where the plaintiffs' land had been submerged and accreted to the piece of *banjar*. The defendants took possession of and cultivated the newly formed land, and held possession for eight years, when plaintiffs sued

Held, that plaintiffs were estopped from claiming the land, as having relinquished it. SAHIB RAI *v.* KHAIR SHAH (No. 19 *of* 1876, Civil), observed upon. BAKHTAWAR *v.* SULTAN AHMED. **83 P R 1876**

10. *Hereditary Tenants—Abandonment—Estoppel.*

Where land has been submerged and forms by accretion part of a particular estate, hereditary tenants have the right to take possession of the land. Delay in taking possession or in asserting occupancy rights may operate as an equitable estoppel, and bar the claim, without regard to the law of limitation. RUTTU *v.* MAL SINGH.

122 P R 1876

11. *Alluvial lands—Abandonment—Estoppel.*

The plaintiff, an hereditary tenant, between the years 1863 and 1866, lost part of his land by the action of the river Jhelum. The land was submerged for a considerable period, and the river having receded, re-appeared *in situ* in 1868 and 1869. When the land re-appeared, the defendants, the proprietors, took possession and made arrangements for its cultivation. The land which was not carried away became *banjar* of the village, and the revenue on it was paid by plaintiff. The revenue on the land submerged was paid by defendants.

The land in dispute was, at the time of its submersion, not land bounded by a shifting river bank, but land bounded by fixed lines and susceptible of being at any moment ascertained. It was not claimed immediately on its re-appearance because tenants did not know until recently, that they retained any rights in land after it was once submerged; such non-claim was not shown to have induced the proprietor to alter his position for the worse, the fact being that both parties were under a mistaken impression as to their respective rights.

In a suit instituted by the plaintiff, a tenant, to recover the occupancy of his land recovered from the river, *held* by BOULNOIS, LINDSAY and FITZPATRICK, JJ.), no custom to the contrary being proved, that the tenant did not lose his occupancy rights (by reason of the land being submerged.

Held, further that the tenant had not voluntarily abandoned his land on its re-appearance.

Held, further, that under the above circumstances, the tenant was not estopped from asserting his rights merely by reason of his having stood by and allowed the proprietor to act as if those rights had been abandoned. --SULTAN KHAN *v.* SYAD MAHOMED SHAH.

59 P R 1877

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12. *Occupancy rights in alluvial lands—Jhelum river.*

Found that by the custom of *Mauza* Kachwala, *Tahsil* and Zillah Shahpur, tenants with right of occupancy lose their rights in lands carried away by the action of the river, and that such rights cannot be claimed on the lands being again thrown up by the action of the river.—MIAN MAHOMED SHARAF *v.* KHODA BAKSH. **89 P R 1877**

13. *Lands gained by alluvion—Hereditary cultivators, right of, to share in—Practice—Absence of provision in* wajib-ul-arz *as to rights in alluvial land.*

Plaintiffs, hereditary cultivators, held 16½ ploughs, and defendants, proprietors, 18 ploughs of the village of Jodhwal, the revenue of the village being assessed on ploughs. On several previous occasions plaintiffs obtained a share of the land added to the area of the village by alluvion, the revenue payable by them being proportionately increased, but there was no provision in the *wajib-ul-arz* or settlement papers as to the distribution of alluvial lands.

The proprietors having now refused to divide the land added by alluvion, according to former practice, plaintiffs sued for a share, alleging that they were entitled to it by the custom of the village and surrounding locality.

Held, that the practice hitherto followed, was insufficient, in the absence of express provision in the *wajib-ul-arz*, to raise a presumption of right in plaintiffs, hereditary cultivators, to share in the land added by alluvion, and that the proprietors were competent to object to division, discontinuing at the same time the rule to charge plaintiffs with additional revenue.—JHARRA *v.* KASHI RAM. **52 P R 1879**

14. *Sutlej river—Lahore and Ferozepur districts—*Mauzas *Machiwara and Gholam Hoseinwala—*Kishtibunna *Custom.*

Certain land belonging to *Mauza* Gholam Hoseinwala, on the Ferozpure side of the Sutlej river, was thrown up in a recognizable form before *Mauzah* Machiwara on the Lahore side of the deep stream, which the proprietors claimed to retain.

Found that the *Kishtibunna* custom, or deep stream rule, did not prevail at the part of the Sutlej where the land in dispute was affected by the action of the river and *held* therefore that the original proprietors of Gholam Hoseinwala were entitled to recover the land. BHANA *v.* BALANDA. **48 P R 1879**

15. *Mafidar, Agreement at Settlement to pay* batai *to—Submersion of mafi land—Effect of, in respect to right of* Mafidar.

Plaintiff claimed from defendants value of half produce of certain lands cultivated by the latter. Plaintiff at Settlement was recorded mafidar of 37 *ghumaos* 6 *kanals* 10 *marlas* of land (of which defendants were recorded proprietors, and which was cultivated in part by tenants with occupancy

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rights, and in part by tenants-at-will) with the right to take *batai*, and levied revenue accordingly, until 1869 when the land was submerged.

In 1873 a considerable portion of it re-appeared and was taken possession of by the proprietors, and had since been cultivated in part and in part used by them as grazing lands, the revenue being fixed at Rs. 10-12-0 which the defendants did not dispute their liability to pay in cash.

Held, by PLOWDEN AND SMYTH, JJ. (ELSMIE, J., dissenting) that the mutual rights and obligations of the parties survived in their integrity notwithstanding the occurrences above described, and, therefore, that plaintiff was entitled to recover the value of the half produce as claimed, until the completion of a new settlement. KARIM BAKSH *v.* ALLA JOWAYA KHAN. **61 P R 1879**

16. *Custom*—Mauza *Khairpur,* Tahsil *Khushab,* Zillah *Shahpur—Rights of hereditary cultivators in submerged lands.*

Found that there is no established uniform and general custom in the Shahpur district among the villages affected by river action by which the right of occupancy of a hereditary cultivator in his holding is destroyed upon its submersion.

Where plaintiffs, who were hereditary cultivators of *Mauza* Khairpur, *Tahsil* Khushab in the Shahpur district, sued to recover, from the proprietors certain lands which had been submerged by river action and had subsequently re-appeared, *held*, (reversing the orders of the lower Courts), that notwithstanding an entry in the *wajib-ul-arz* in favour of the proprietors, no established custom was shown to exist in the village in question by which the plaintiffs had lost their hereditary right of cultivation in the lands in suit, and that, therefore, there was no obstacle to the operation of the general rule laid down by Full Bench judgment in Civil Ruling No. 59, *Punjab Record* for 1877, and that the plaintiffs were entitled to recover their lands. LAL SHAH *v.* KARIM BUKSH **96 P R 1879**

17. *Rights of occupancy tenant in submerged land on re-appearance—Custom—*Mauzah, *Chak Ramdas,* Tahsil *Bhera, Zillah Shahpur—Condition in* wajib ul-arz.

Plaintiff, a tenant with rights of occupancy, sued to recover certain land situated in *Mauza* Chak Ramdas, *Tahsil* Bhera, in the Shahpur district, which had been submerged by river action and had subsequently re-appeared. It was found that no custom prevailed in the village in question which was opposed to plaintiff's claim, but there was a provision in the *wajib-ul-arz* that in cases of submersion of tenant's holdings the tenant should receive an equivalent out of the *banjar hamilat*, and should pay revenue to the Maliks according to the Khewat of the submerged holding. Previous to this suit the present plaintiff issued the

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equivalent of his share in the submerged holding to be made good out of the *shamilat* land but his suit was dismissed on the ground that there was no *banjar shamilat* to give him, and that he had not paid the revenue on the submerged holding. Subsequently the present suit was brought to recover the holding itself which had re-appeared in whole or in part from the river.

Held (following the decision in *Punjab Record*, Civil Ruling No. 59 of 1877), that, there being no custom to the contrary, the plaintiff's title to the right of occupancy claimed was not extinguished, but still attached to the land now that it had re-appeared: that the provision in the *Wajib-ut-arz* was not inconsistent with the right claimed, though if the defendant had given the plaintiff an equivalent for the land submerged, the plaintiff's right in that land would have been transferred to the defendant; that the non-payment of revenue on the land during the period of its submersion was not fatal, as the plaintiff was not bound to pay that except in case of being supplied with land in its place, and that the plaintiff was therefore entitled to recover the land in suit conditionally upon payment of the revenue paid upon it by the proprietor, the defendant, since the date of its re-appearance. MORID *v.* MUSSAMMAT RAM DAVI.

127 P R 1879

18. Malik Kabza—*Right to submerged land on re-appearance—Custom*—Mauza *Shergarh, Shahpur district.*

Found, that there is no established custom in *Mauza* Shergarh, *tahsil* Khushab, in the Shahpur district, whereby a *Malik Kabza* loses his right in lands which have been submerged by river action.

Held, therefore, applying the general principles laid down in *Sultan Khan* v. *Syad Mushammad Shah* No. 59 of 1877, Civil, that a *Malik Kabza* whose land has been submerged and has afterwards emerged, is entitled to recover, on its re-appearance, whatever proprietary interest he had in the land before its submersion. CHIRAGH *v.* TUREL KHAN.

1 P R 1880

19. *Custom*—Mauza *Sadda Kambo, Shahpur—Occupancy tenant's right to land carried away by diluvion on its re-appearance—General rule—Special custom—Tenant preserving his right by payment of revenue during period of submersion.*

The plaintiffs, residents of the village of Sadda Kambo in the Shahpnr *tahsil* of the Shahpur district, sued to enforce their occupancy rights in certain lands which had been carried away by diluvion, and which, on their re-appearance, had been taken possession of by the defendants, the proprietors. The defendant pleaded that, according to the custom as stated in the *Wajib-ul-arz* of the village, the tenants lost all their rights on the submersion of lands held by them on a right of occupancy, and the lower Courts finding the custom proved dismissed the plaintiffs' claim.

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Held, that the general rule to be applied in dealing with cases of the above description is that, no custom to the contrary being proved, an occupancy tenant does not lose his occupancy rights by reason of the land being submerged; that though there did exist in the plaintiffs' village a custom by which occupancy tenants became liable, under certain circumstances, to lose their rights on the submersion of their lands, still under that custom the tenants could preserve their rights intact, notwithstanding the submersion of their land, by paying the revenue assessed thereon during the period of submersion, though if they failed to do so during such period, their right of occupancy ceased to exist; and that on the facts of the present case the plaintiffs were entitled to succeed. RAJA *v.* SARFARAZ.

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20. *Custom prevailing in villages on the Soan river in the Una* tahsil *of the Hoshiarpur district—Kishtibanna or deep stream rule.*

Plaintiffs, who represented the proprietors of Panjawar, a village on the right bank of the Soan river in the Una *tahsil* of the Hoshiarpur district, sued to obtain from the proprietors of Bhera, a village on the left bank of the same river, certain land which had been transferred by avulsion from the Bhera to the Panjawar side. Defendants pleaded, *inter alia*, that, though the rule that the deep stream should be the boundary was prevalent on the Soan, the rule was only applicable as regards land which had been transferred from one bank to another by gradual accretion, and that it was not applicable when the land had been transferred by avulsion.

Held, that the general custom in the tract in question was proved to be in accordance with a strict observance of the deep stream rule, whether or not the land had come over by avulsion and was identifiable. MAHAR SINGH *v.* ACHRA.

164 of 1883

21. *Naubaramad (new alluvial) land—Manner in which such land should be recorded in the Patwari's annual papers—Entries in settlement record—Jurisdiction of Revenue Courts to entertain suit for correction of Patwari's papers.*

The appellants applied to the Deputy Commissioner for correction of the Patwari's papers in respect of certain new alluvial land alleged to be held by them under an entry in the Settlement record as owners, but which the Patwari had entered as *shamilat*. The Deputy Commissioner decided that the ownership of the land in question should be recorded as laid down in the Settlement record. The Commissioner, on appeal, reversed the Deputy Commissioner's order, and, in effect, directed that the Patwari's papers should stand as drawn up, even though, in so drawing them up, the Patwari had made entries which could not be reconciled with the Settlement record, and the Commissioner informed the parties who were

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dissatisfied with the Patwari's entries, that their only remedy was by suit in the Civil Courts.

Held, by the 2nd Financial Commissioner, that the Patwari was bound to draw up his annual papers and all other revenue papers in general conformity with the entries in the Settlement record, and in cases of doubt or error the owners of land were entitled to apply to the Deputy Commissioner for an order directing the Patwari to do so. The Patwari and all Revenue Officers are bound to presume that the entries in the Settlement record are correct, and further, it is rarely right for a Revenue Officer to refer parties to a Civil suit, as, if the subject-matter of the application is not within the jurisdiction of the Revenue authorities, it is sufficient for the Revenue Officer to say so. But the case urged by the appellants was one in respect of which the Revenue authorities only could give them relief. NAURANG *v.* NABI BAKHSH.

7 of 1886 Rev.

22. *Rule of* "mahaz."—The meaning of the term "*mahaz*," aa used in a rule laid down in the Settlement Record that in cases of alluvion each of two or more adjoining villages is entitled to the land in front of (*mahaz*) such village discussed. *Haider Shah* v. *Shujawal* (No. 67 of 1887, Civil), referred to. FAZAL *v.* GHULAM ALI SHAH.

45 P R 1888

23. *Limitation Act*, 1877, *section* 13, *and* 2*nd Schedule, articles* 142, 144—*Alluvion and diluvion—Custom of Beas river—Land taken over by avulsion—Dispossession or discontinuance of possession—Exclusion of time of defendants' absence from British India.*

Plaintiffs, the proprietors of a village on the Amritsar side of the Beas, claimed certain land lying between their village and the present deep stream, alleging that the said land originally formed part of their village but was transferred in Sambat 1923 to the Kapurthala side of the river, returning to the Amritsar side in Sambat 1927-28, but remained part of Kapurthala Territory till Sambat 1937 or 1938. The transfer on each occasion was found to be by a sudden change in the course of the river or what is generally called "avulsion," and it was found by the lower Courts (and the finding was accepted as correct by the Chief Court) that by the custom of the Beas, when land is transferred from one side of the river to another by a sudden change, there is no disturbance of proprietary right; but the lower Courts considered that plaintiffs had lost their rights, because they had not been in possession of the land, or any part of it, within twelve years before suit.

On the question of limitation, *held*, that the case was governed by article 142 of the 2nd Schedule of the Limitation Act, as plaintiffs were certainly dispossessed or discontinued possession in Sambat 1923 when the land went over to Kapurthala.

ALLUVION AND DILUVION—*contd.*

But *held* further, that in reckoning limitation plaintiffs were entitled to deduct the period from Sambat 1923 to Sambat 1937-38, during which the land remained part of the Kapurthala territory under section 13 of the Limitation Act, as the defendants were certainly absent from British India during that period and the fact that the subject-matter of the suit was also so absent was rather an additional than a less reason for holding that the section applied. GULAB KHAN *v.* PEERA.

34 P R 1889

24. Ala *and* adna malik—*Land submerged—Re-appearence—Right of possession*—Wajib-ul-arz.

The parties to the case were *ala* and *adna maliks* of *mauza* Thoa in the Dera Ismail Khan district. As regards the preservation or loss of rights of *adna maliks* in cases of alluvion and diluvion, the *Wajib-ul-arz* provided that the land attached to wells will on restoration belong to the former owner (*adna malik*); that in case of lands not attached to wells, if a *portion* of a field or plot be carried away and be again thrown up opposite the remaining land, the former *adna maliks* will take so much of it as is required to make up his old holding; but if the *whole* field or land be carried away, it will belong on restoration to the *ala maliks* as *shamilat* and the *ala maliks* will have full power to give it to *adna maliks* or not, and for its cultivation those powers and rules will come into force which are laid down for the *shamilat*. It also contained the following clause:—*Lekin jis malik adna ki zamin amum burd hogi banisbat digar malikan adna uska pahle hak hai ki banjar shamilat se ya zamin baramad shuda se baqadar rakba burd shuda ke usko mile our aisi zamin ke liye malik adna ko jadid jhuri jo ek rupaya fi acre se ziada na howe deni hogi aur khilaf dastur ala malikan ko aisi zamin ke liye jhuri lene se inkar karne ka ikhtiyar na hoga.*

Held, that the proper interpretation of this clause was that, if the *ala maliks* did not require the lands themselves, and it became a question of letting them out, then the first persons entitled to admission were the *adna maliks* who had lost a good deal of land (*amum*). Both those who had lost all their land and those who had lost a considerable part (and who might not wish to wait for the chance of a restoration—*mahaz*) would come under this head, and might claim to be accepted in preference to other *adna maliks* or outsiders on payment of the fair customary rent which the *ala maliks* might not refuse to accept on the plea that they could get a higher rent by competition. MUBARAK SHAH *v.* ABDULLA.

125 P R 1889

25. *Alluvion and diluvion—Title to land acquired by accretion—Land subsequently retransferred by avulsion—Identification of site.*

ALLUVION AND DILUVION—*contd.*

Owing to changes in the course of the river Chenab, certain land, which was identified as having originally belonged to plaintiffs, after being submerged, gradually re-appeared on the Muzaffargarh side as the river receded, but was subsequently bodily transferred to the Mooltan side by a sudden change in the course of the river. While the land was on the Muzaffargarh side, the defendants brought a few detached plots under cultivation, and were still cultivating them at the time of suit. The burden of suing for possession of the said land was in consequence upon plaintiffs. The latter instituted a suit and obtained a decree in the first Court, which was, however, reversed on appeal by the Divisional Judge.

Held, in accordance with the principle laid down in *Lopez' case* (5 *B. L. R.*, 521), that inasmuch as the site of the land in question had been duly identified as plaintiffs', the latter were entitled to succeed, and that the mere facts that they did not follow the land when it went to the Muzaffargarh side, and that the defendants had brought a few scattered plots thereof under cultivation, did not affect plaintiffs' rights as owners of the site. *I. L. R. XIX All.* 238, not followed. CHUNDAR BHAN *v.* AHMAD YAR KHAN.

36 P R 1898

26. *Custom—Alluvion and diluvion—"Deep-stream rule"*—Mauza *Mianwal*, tahsil *Phillour, and* mauza *Bholewal*, tahsil *Ludhiana*—Riwaj-a-am.

Found, that by custom obtaining in the villages of Mianwal, *tahsil* Phillour, and of Bholewal, *tahsil* Ludhiana, if any area, though capable of identification, lying on one side of the river (the Sutlej) is in consequence of a change in the course of the river, washed up and thrown on the other side, the proprietors of the village to which it has been so annexed come into proprietary possession thereof.

The weight to be given to the *Riwaj-i-am* discussed. HASHIM *v.* NATHU.

13 P R 1900

27. *Regulation XI of* 1825, *section* 4—*Alluvion—Title to land acquired by accretion—Identification of site.*

Where, upon the facts, it was found that a certain area, which was some 30 years ago submerged in the river, and which had recently emerged owing to the recession of the river, and which had mainly, if not entirely re-appeared in one year and was identifiable *in situ* as the tract of land which belonged to the plaintiff.

Held, that the re-appearance not being a gradual accession within the meaning of the 1st clause of section 4 of Regulation XI of 1825, and the land being identifiable *in situ* the plaintiffs who owned it prior to its submersion were entitled to its possession under the 5th clause of that section on the general principles of equity and justice. *Lopez* v. *Madan Mohan Thakoor* (*V B. L. R.* 521) *and Chunder Bhan* v. *Ahmad Yar Khan* (36 *P. R.* 1898), followed. *Debi Bakhsh Singh* v. *Tri-*

ALLUVION AND DILUVION—*contd.*

bhawan Singh (*I. L. R. XIX All.* 238), explained. HASHMAT AND OTHERS *v.* DULLA AND OTHERS.

66 P R 1901

28. *Alluvion and diluvion—Rights of* adna maliks *in submerged land—Custom—*Mauza *Bullewahan*, tahsil *Muzaffargarh—Effect of entry in* Wajib-ul-arz—*Burden of proof.*

The plaintiffs, who were *adna maliks* in *mauza* Bullewahan, *tahsil* Mauzaffargarh, sued to recover from the *ala maliks* certain lands which had been submerged by river action, and on their re-appearance had been taken possession of by the *ala maliks*. The defendants pleaded that under the provisions of the *Wajib-ul-arz* of 1879 the plaintiffs' rights had been lost in consequence of the submersion. The first Court finding the custom set up by the defendants not to be ancient, and against justice, equity and good conscience, decreed plaintiffs claim. The Divisional Judge found that the entry in the *Wajib-ul-arz* being in favor of defendants, held that the *onus* of burden of contradicting and setting aside its provisions was on the plaintiffs, and finding that they had failed to discharge it, dismissed their claim.

Held, that as the rule, that the owner of land which is under water retains his rights to the site, is a principle not peculiar to any system of Municipal Law, but is one founded on universal law and justice, the burden of proving the custom under which deluviation works forfeiture was on defendants, and that the evidence produced in its support which consisted chiefly of the provision in the *Wajib-ul-arz*, which was a one-sided entry opposed to all principles of law and justice, was quite insufficient to establish it.

An entry in a *Wajib-ul-arz* should not be considered as conclusive of a custom, especially where the custom set up is one opposed to the principles founded on universal law and justice. *Lopez* v. *Madan Mohan Thakoor* (*V Beng. L. R.*, 521), *Sultan Khan* v. *Syad Mahomed Shah* (59 *P. R.* 1877 *F. B.*), *Lal Shah* v. *Karim Bakhsh* (96 *P. R.*, 1879), *Raja* v. *Sarfraz* (152 *P. R.* 1883), *and Secretary of State for India* v. *Krishna Moni Gupta* (*I. L. R. XXIX Calc.* 518), followed. *Dilsukh Ram v. Nothu Singh* (98 *P. R.* 1894 *F. B.*), *and Mubarik Shah* v. *Abdulla* (125 *P. R.* 1889), distinguished. GHULAM MOHAY-UD-DIN *v.* FAIZ BAKHSH.

97 P R 1902

29. *Alluvion and diluvion—Rights of* adna maliks *in submerged land—Custom—*Mauza *Muradpur*, tahsil *Alipur, Muzaffargarh district*—Wajib-ul-arz,—Haq Juri.

The plaintiffs who were *adna maliks* in *mauza* Muradpur, *tahsil* Alipur, in the Muzaffargarh district, sued for a declaration of *adna malkiyat* rights in certain land which had been submerged by river action which, on its re-appearance in accordance with a provision of the *Wajib-ul-arz*, had

ALLUVION AND DILUVION—*contd.*

been recorded as the sole property of the defendants. The provision of the *Wajib-ul-arz* was to the effect: " that in this village there are two kinds of property, *ala* and *adna*. If the land belonging to any *adna malik* is washed away, at the time of its being thrown up it becomes the property of *ala malik*. The *adna maliks* retain no right in the land. The *adna maliks* after paying *haq juri* to the *ala maliks* will be entitled to get possession. Without paying *haq juri* they will have no right. If the *ala maliks* intentionally refuse to take *juri*, the *adna maliks* are not entitled to take possession. The arrangement as to *juri* is to depend upon the value of the land and the *status* of the *adna malik*. But it shall not be less than Re. 1 per *bigha* or more than Rs. 2 per *bigha*. The *adna maliks* shall have the same power whether the whole or a portion of any wells are carried off."

Held, that as the payment of *haq juri* or an institution fee for the recovery of land cannot be considered opposed to the principles founded on universal law and justice, it was for the *adna maliks* to rebut the presumption in favour of the correctness of the entries after record of custom and to prove that they were not bound to pay it.

Held, on the evidence, that the plaintiffs have failed to rebut the entry in question or to prove that they were entitled to the land without payment of *haq juri*. *Ghulam Mohay-ud-din* v. *Faiz Bakhsh* (97 *P. R.* 1902) and *Mubarik Shah* v. *Abdulla* (125 *P. R.* 1889), referred to. AHMAD SHAH *v.* KHUDA BAKHSH. **33 P R 1903**

30. *Alluvion and diluvion—Title to land transferred by gradual accretion—Custom with respect to land bordering the Sutlej river between Jullundur and Ferozepore districts.* —Riwaj-i-am.

Found, that by custom prevailing in respect of land bordering the Sutlej river between the Jullundur and Ferozepore districts, the proprietors of a village become entitled to any area of land, whether it is the whole or a portion of a village, which, in consequence of a change in the course of that river, is thrown up by gradual accretion.

Held that, as in the river Sutlej between the Jullundur and Ferozepore districts, the changes of deep-stream are more considerable and sudden than in English and Italian rivers, the rules applicable to gradual accretions of the descriptions contemplated by the English and Roman Law should not be followed.

All disputes relating to such accretions should be decided by giving full effect to the provision of the *Riwaj-i-am* of the villages concerned.

Ghulam Mohy-ud-din v. *Faiz Bakhsh* (97 *P. R.* 1902), *Hasim* v. *Nathu* (13 *P. R.* 1900), *Chundar Bhan* v. *Ahmad Yar Khan* (36 *P. R.* 1898), and *Lopez* v. *Madan Thakur* (5 *Beng. L. R.* 521 *P. C.*) referred to. BANDU KHAN *v.* MUSSAMMAT UMRI. **63 P R 1903**

ALLUVION AND DILUVION—*concld.*

31. *Alluvion and diluvion—Land submerged—Re-appearance—Right of the owner in submerged land on re-appearance—Custom* —Wajib-ul-arz—Mauza *Khanpur, Gujrat.*

Held, that in cases of alluvion and diluvion, according to the custom prevailing in *mauza* Khanpur, a proprietor loses all his rights on the submersion of his land, as such land on restoration becomes *shamilat deh* and not the property of the proprietor to whom it belonged at the time of its submersion. SAHIB DIN *v.* ILAM DIN. **15 P R 1904**

32. *Occupancy rights—Rights of occupancy tenant in submerged land on reappearance—Custom*—Mauza *Pakhiwan, Gurdaspur district.*

Found, that by custom of the village Pakhiwan in the Gurdaspur district an occupancy tenant does not lose his right by reason of the land of his holding being submerged and is entitled to claim his rights on the land being again thrown up by the action of the river. DEWA SINGH *v.* BISHAMBER DAS. **80 P R 1905**

ALTERATION.

Material alteration after execution in a bond—effect of.
See BOND. **91 P R 1900**
Joint promissory notes—Marginal entry.
See CONTRACT. **118 P R 1885**

ALTUMGAH GRANT.

See JURISDICTION OF CIVIL COURT.

AMENDMENT OF DECREE.

See DECREE, AMENDMENT OF.

1. *Variance between decree and judgment must be patent on the documents—Power of lower Court to amend decree confirmed on appeal by higher Court.*
See CIVIL PROCEDURE CODE, 1882, SECTION 206. **94 P R 1888**

2. *Duty of Court executing decree—Clerical error—Amendment of decree—Stay of execution.*
See CIVIL PROCEDURE CODE, 1882, SECTION 206. **75 P R 1889**

3. *Decree not in conformity with judgment—Application by decree-holder to amend decree rejected as time-barred.*
See CIVIL PROCEDURE CODE, 1882, SECTION 206. **32 P R 1896**

4. *Decree silent as to instalments fixed by judgment—Power of executing Court to go behind decree—Stay of proceedings to allow amendment of decree.*
See CIVIL PROCEDURE CODE, 1882, SECTION 206. **61 P R 1887**

5. *After it has been upheld by the Chief Court—Jurisdiction.*
See CIVIL PROCEDURE CODE, 1882, SECTION 206. **12 P R 1897**

AMENDMENT OF DECREE—*concld.*

6. *Decree of Appellate Court confirming decree of District Court—Jurisdiction of District Court to amend decree.*
See DECREE, AMENDMENT OF. **101 P R 1888**
See also No. 1 *supra*.

7. *Suit for pre-emption—Deposit of purchase-money—Power of Appellate Court to extend time for deposit.*
See PRE-EMPTION—PAYMENT INTO COURT. **137 P R 1894**

8. *Amendment of decree—Appeal—Revision.*
See REVISION IN CIVIL CASES. **101 P R 1888**

9. *Amendment of decree—Civil Procedure Code,* 1882, *section* 206—*Appeal or revision from order amending decree—Meaning of "Haqiyat."*

Held, that no appeal lies from an order made under section 206, Civil Procedure Code, 1882, amending a decree not in conformity with the judgment, but that an appeal lies from the amended decree.

Held also, that an objection that the amended decree is not in conformity with the compromise, on which the decree is based, can only be taken in appeal from the decree and not in revision from the order amending the decree.

Held further, that the word "Haqiyat" means rights in immovable property and though used as a rule in connection with landed property there is nothing to prevent its application to house property also. *Mailathi Auni* v. *Subbaraya Mudaliaro* (1901) *I. L. R.* 24 *Mad.* 646, dissented from; *Brojo Lal Rai* v. *Tara Prosanna Battacharji* (1905) 3 *Cal. L. J.* 188, followed. BAWA SINGH *v.* LACHMAN SINGH, etc. **24 P R 1911**

AMENDMENT OF PLAINT.

See JOINDER OF PARTIES. **175 P R 1882**
See PLAINT, AMENDMENT OF.
110 P R 1882
186 P R 1882
131 P R 1883
68 P R 1886
161 P R 1888
106 P R 1893
113 P R 1894
1 P R 1900

1. *Pre-emptor suing for portion only—Insisting on his correctness—not entitled to amend plaint.*
See PRE-EMPTION. **10 P R 1909**

2. *Held*, that where the Courts below have refused to exercise in favour of the plaintiff their discretion to allow an amendment of the plaint after a very full consideration of the circumstances of the case, and the consequences of such refusal are in no way serious, the Chief Court should not interfere with that discretion. ABDUL GHAFUR *v.* MUSSAMMAT MEHR-UN-NISA. **101 P R 1909**

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ANCESTRAL LAND.

See ANCESTRAL PROPERTY.

ANCESTRAL PROPERTY OR ESTATE.

1. *Ancestral property—Liability for deceased father's debts—Burden of proof.*
See BURDEN OF PROOF.
16 P R 1878

2. *Ancestral house property—Khatris of Jullundur.*
See CUSTOM—ALIENATION.
51 P R 1878

3. *Ancestral property—Alienation of, by childless proprietor—Athwal Jats, Nawashahr, Jullundur.*
See CUSTOM—ALIENATION.
159 P R 1879

4. *Sindhu Jats of* tahsil *Kasur—Sonless proprietor selling his land for valuable consideration—necessity—General Custom.*
See CUSTOM—ALIENATION.
108 P R 1884

5. *Dhuriwal Jats of Ferozepur district—Sale by childless proprietor without necessity—Ancestral property.*
See CUSTOM—ALIENATION.
137 P R 1884

6. *Ancestral property—Manj Rajputs of the Gurdaspur district—necessity—vendee's lien.*
See CUSTOM—ALIENATION.
52 P R 1884

7. *Ancestral property—Warias of Gujrat—Power of childless proprietor to alienate.*
See CUSTOM—ALIENATION.
163 P R 1884

8. *Ancestral and acquired property—Arains of Lahore district—Proprietor—Alienating in the presence of sons.*
See CUSTOM—ALIENATION. **17 P R 1886**

9. *Ancestral property—Syads of Gujrat—Gift to one son of larger share.*
See CUSTOM—ALIENATION.
51 P R 1883

10. *Ancestral property—Jats of Varaitch* got *of* Mauza *Mahrala,* tahsil *Phalian—Gift to associated nephews.*
See CUSTOM—ALIENATION.
126 P R 1883

11. *Ancestral property—Gift by father to one son in presence of other sons—Sindhu Jats of Amritsar.*
See CUSTOM—ALIENATION.
164 P R 1884

12. *Khatris of Gujrat—Gift of ancestral house to sister's daughter's son.*
See CUSTOM—ALIENATION.
107 P R 1884

13. *Ancestral and acquired property—Hindus of Kapuria caste—Onus of proving property ancestral.*
See CUSTOM—ALIENATION.
2 P R 1881

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ANCESTRAL PROPERTY OR ESTATE—*contd.*

14. *Ancestral property—Aroras of Multan—Will in favour of daughter's son.*
See CUSTOM—ALIENATION.
7 P R 1886

15. *Ancestral property—Dhewal Jats of* tahsil *Jagraon—Religious gift.*
See CUSTOM—ALIENATION.
51 P R 1884

16. *Ancestral land—Religious gift—Randhawa Jats of Batala* tahsil.
See CUSTOM—ALIENATION.
159 P R 1884

17. *Ancestral property—Religious gift—Bahal Rajputs of the Hoshiarpur district.*
See CUSTOM—ALIENATION.
3 P R 1885

18. *Gift of occupancy rights with landlord's consent to adopted son—Custom—Alienation of ancestral land.*
See CUSTOM.
68 P R 1894

19. *Custom—Alienation—Gift in favour of eldest son—Land given in dowry by donor's wife's mother—Ancestral property.*
See CUSTOM.
40 P R 1896

20. *Will by sonless proprietor in favour of nephews—Validity of will as against the widow of testator's deceased first cousin—Ancestral property.*
See CUSTOM—ALIENATION.
76 P R 1898

21. *Ancestral land, alienation of, by a proprietor without proved necessity—Burden of proof—Undue influence—Rawals of* Mauza *Budala,* tahsil *Nurpur, district Kangra.*
See CUSTOM—ALIENATION.
6 P R 1902

22. *Ancestral and acquired property—Alienation—Awans of* Mauza *Uchhali,* tahsil *Khushab, Shahpur district.*
See CUSTOM—ALIENATION.
13 P R 1902

23. *Ancestral property—Alienation—Bhabrahs of Rawalpindi city.*
See CUSTOM—ALIENATION.
15 P R 1902

24. *Ancestral property—Alienation—Childless proprietor—Muhummadan Rajputs of Amritsar district.*
See CUSTOM—ALIENATION.
42 P R 1902

25. *Ancestral and non-ancestral property—Alienation by sonless proprietor—Muhammadan Rajputs of the Mair Mana tribe of Chak Naurang in the Chakwal* tahsil *of the Jhelum district.*
See CUSTOM—ALIENATION.
50 P R 1902

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ANCESTRAL PROPERTY OR ESTATE—*contd.*

26. *Ancestral property—Gift by sonless proprietor to daughters or daughters and their husbands—Ghakkars of Domeli, Jhelum district.*
See CUSTOM—ALIENATION.
53 P R 1902

27. *Ancestral land—Gift to a son-in-law in presence of a son—Hatar* Jats of *Goga,* tahsil *Bhera, Shahpur district.*
See CUSTOM—ALIENATION.
77 P R 1902

28. *Ancestral property—Gift to daughter—Sials of Maghiana, Jhang district.*
See CUSTOM—ALIENATION.
82 P R 1902

29. *Ancestral Estate—Alienation of, for religious purposes.*
See CUSTOM—ALIENATION.
40 P R 1907

30. *Ancestral Estate—Alienation of, in order to carry on speculative suits for pre-emption.*
See CUSTOM—ALIENATION.
65 P R 1907

31. *Ancestral urban immovable property—Alienation—Non-agricultural Rajputs.*
See CUSTOM—ALIENATION.
55 P R 1908

32. *Alienation of ancestral property—Right of son to contest—Hindu Law.*
See CUSTOM—ALIENATION.
59 P R 1908

33. *Ancestral property—Alienation of.*
See CUSTOM—ALIENATION.
8 P R 1908
56 P R 1908
69 P R 1908
78 P R 1908
125 P R 1908
126 P R 1908
132 P R 1908
11 P R 1908
58 P R 1908
70 P R 1908
48 P R 1908
67 P R 1908
149 P R 1908
135 P R 1908

34. *Hindu Jat—Atwal got—Amritsar district—Ancestral property—Gift by childless proprietor to son-in-law.*
See CUSTOM—GIFT. **66 P R 1879**

35. *Ancestral property—Sindhu Jats—Amritsar district—Gift to sister's son.*
See CUSTOM—GIFT. **166 P R 1879**

36. *Ancestral land—Paswal Gujars of Kharian* tahsil*—Gift to sister's son.*
See CUSTOM—GIFT. **18 P R 1880**

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ANCESTRAL PROPERTY OR ESTATE—*contd.*

37. *Ancestral land—Sindhu Jats of Muktsar* tahsil—*Gift to wife's brother.*
See CUSTOM—GIFT. **20 P R 1880**

38. *Ancestral property—Succession to.*
See CUSTOM—INHERITANCE.

39. *Guardian and ward—Lease of ward's property to guardian—Introduction of stranger into management of ancestral holding.*
See GUARDIAN. **78 P R 1892**

40. *Ancestral property—Alienation of—Hindu Law.*
See HINDU LAW—ALIENATION.
36 P R 1866
68 P R 1866
89 P R 1866
11 P R 1867
40 P R 1867
53 P R 1869
11 P R 1871
64 P R 1873
67 P R 1873
21 P R 1879
166 P R 1882
153 P R 1882

41. *Execution of Decree—Sale of ancestral property in satisfaction of father's debts—Liability of son's shares.*
See HINDU LAW—ALIENATION.
87 P R 1887

42. *Brahmans of Lahore—Alienation of ancestral property—Liability of son's interest—Son's right to enforce partition in father's lifetime—Alienation of son's undivided interest in family estate—Custom—Hindu Law.*
See HINDU LAW—ALIENATION.
109 P R 1888

43. *Ancestral property—Mortgage—Decree—Sale in execution.*
See HINDU LAW—ALIENATION.
1 P R 1888 P. C.

44. *Son's right to obtain declaration that he is not bound by his father's mortgage of ancestrat property—Debts contracted for immoral purposes—Notice to mortgagee that they were so contracted.*
See HINDU LAW—ALIENATION.
93 P R 1888

45. *Son's suit to set aside his father's alienation of ancestral property—Distinction between cases when consideration is by way of present payment and antecedent debt—*Onus probandi—*Legal necessity—Liability of son for father's debts.*
See HINDU LAW—ALIENATION.
152 P. R. 1888

46. *Sale of ancestral house in execution of decree—Widow's right of residence.*
See HINDU LAW—ALIENATION.
39 P. R 1896

47. *Partition of joint property—Suit for partition of portion only of the ancestral*

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ANCESTRAL PROPERTY OR ESTATE—*contd.*

property—Right to maintain such suit without the assent of the defendant.
See RIGHT TO SUE. **77 P R 1887.**

48. *Attachment—Agreement by father not to alienate.*

One K. B., a Mahomedan, agreed with his son not to alienate ancestral property. Subsequently, in execution of a decree obtained against K. B., such property was attached. In a suit brought by the son of K. B. to have the property released from attachment, *held*, that the decree-holder of K. B. was entitled to have the ancestral property sold in satisfaction of his decree, notwithstanding the agreement not to alienate. ELAHI BAKSH *v.* MUSSAMMAT JHANDI. **50 P R 1877.**

49. *Custom—Succession—"Ancestral land"—Land devolving on descendant of commom ancestor by abandonment of it by near relation.*

Property originally belonging to a common ancestor does not cease to be "ancestral property" because it comes to a descendant of that common ancestor through abandonment of it by a near relation rather than by simple inheritance. NATHA SINGH *v.* HARNAM SINGH.
31 P R 1894.

50. *Custom—Alienation—Succession of daughter, effect upon character of property—"Ancestral property"—Brahmans of* mauza *Thanawal, Gurdaspur District*—Riwaj-i-am.

The parties in this case were Brahmans of the Mehta *qaum* of Gurdaspur District, and plaintiffs, who were the sons of one S., sued, *inter alia*, for a declaration that an alienation of land by Mussammat I., the widow of S.'s brother D., would not affect their reversionary rights on the death of the said widow. It was admitted that both S. and D. had succeeded to their respective property through their mother Mussammat A., who had inherited it, in default of heirs male, from their grandfather S. C. Defendants pleaded that the property in suit, having been inherited through a female, was not "ancestral," and that the alienation was lawful and for necessity.

Held, by the Full Bench (Roe, S. J., and Rivaz, J.; Chatterji, J., dissenting) that in a village community where a daughter succeeds, either in preference to, or in default of, heirs male, to property which, if the descent had been through a son, would be "ancestral" property, she simply acts as a conduit to pass on the property as ancestral property to her sons and their descendants, and does not alter the character of the property simply because she happens to be a female.

Per Chatterji, J.—The word "ancestral" can only be used in a relative and not in a fixed or absolute sense in Customary Law, and before this character can be predicated of any property in the handsof a male owner, it must be found that it has descended to him from a male ancestor, and, in the case of a claim by collaterals, from a male ancestor

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ANCESTRAL PROPERTY OR ESTATE—*contd.*

common to him and the claimants. LEHNA *v.* MUSSAMMAT THAKRI.
32 P R 1895 F. B.

51. *Custom—Alienation—Perpetual lease of occupancy rights—"Ancestral property"—Illegitimacy of descendants, effect of upon character of inherited property—"necessity"—Sodhi Khatris of Muktsar* tahsil, *Ferozepore District—Marriage of Muhammadan woman to Sikh Guru, validity of.*

One Guru Fatteh Singh, a childless Sodhi Khatri of the Muktsar *tahsil*, Forezepore District, shortly before his death executed certain perpetual leases in favour, severally, of the defendant and others in consideration of certain sums paid in cash as fines and certain rents payable by the lessees, who were thereby constituted occupancy tenants, but with plenary and uncontrolled powers of alienation and right of succession lineally as well as collaterally in the male line. Plaintiffs, who were the nephews of the alienor, thereupon sued for a declaration that the leases were alienations of ancestral property by a childless male proprietor or without necessity, were invalid by custom and would not affect their reversionary rights. In the Chief Court it was urged on behalf of the respondent lessee that (i) the lease should be regarded merely as an act of management within the capacity and competency of the late proprietor—the alienor having died after the institution of the suit—and not as an act of alienation; (ii) that the property having descended through illegitimate children was not ancestral; (iii) that by custom the right of Guru Fatteh Singh to alienate in the presence of such agnates as the plaintiffs was not restricted to cases of necessity; and (iv) that, if the leases were held to be acts of alienation, there was necessity.

Held, (i) that no necessity had been proved; (ii) that the intention of the lessor being to prejudice the reversioners when he knew that his life was drawing to a close, and that he himself would not long be able to enjoy full proprietary interest in the land to which he has tenaciously clung until that period, the leases could not be regarded as mere acts of management of the cultivation on the part of the late proprietor, but were acts of alienation; and (iii) that even if it were conceded that the children of the common ancestor through whom the property had descended, were illegitimate and could not have succeeded in the presence of other legitimate sons, there would not necessarily be an insuperable legal objection to plaintiffs proving that they were descendants of the same ancestor, and that the property coming from him was ancestral property

Found, that by custom among Sodhi Khatris of the Muktsar *tahsil*, Ferozepore District, a childless male proprietor is not competent to alienate ancestral property without necessity in the presence of nephews. SODHI KARTAR SINGH *v.* SHER SINGH.
50 P R 1895

ANCESTRAL PROPERTY OR ESTATE—*contd.*

52. *Custom—Alienation—Gift to sister's son followed by possession and mutation of names—"Ancestral property."*

In a case in which the property in dispute had been acquired by one K. jointly with his brothers, but had never been held by their father, *held,* that the said property was not ancestral property *qua* K's collaterals.

Held, therefore, that a gift of such property, followed by possession and mutation of names, by K in his lifetime to his sister's son was not invalid by custom.

Mutation of names by itself does not in every case constitute a valid transfer, but it is good evidence of such transfer. JOWAHIR SINGH *v.* DIAL SINGH. **76 P R 1898**

53. *Custom—"Ancestral" property—Ancestral and acquired property—Profits of ancestral immovable property and purchases effected with such profits—Unequal distribution of such profits and purchases among sons.*

Held, that the profits of ancestral immovable property and purchases effected with such profits are not ancestral property, under Customary Law in such a sense that a descendant of the ancestor from whom such property devolved can interfere with the disposal of such profits or purchases.

Held, therefore, that it was competent for a proprietor from the profits of his ancestral property to effect a mortgage of certain land in the names and for the benefit of three of his four sons. SHER SINGH *v.* KISHEN SINGH **4 P R 1900**

54. *Ancestral property—Piragheb,* tahsil *and district Jhelum.*

Held, that when the lands of a village are held by various races and were given simply to any one who would undertake their burdens a portion of such land cannot be considered ancestral, merely because an ancestor may have held it or other land in the village in past time. FAKIR AND OTHERS *v.* DAULAT AND OTHERS. **81 P R 1901**

55. Self-acquired property of an uncle inherited by his nephews on his dying childless was not ancestral property *qua* the sons of those nephews, as it was not inherited from a direct male ancestor. JHANDA SINGH AND OTHERS *v.* GURMUKH SINGH.

93 P R 1901.

56. Under Customary Law property acquired from income or profits of ancestral property does not constitute it ancestral. MEHR KHAN *v.* KARAM ILAHI.

13 P R 1902

57. *Purchases effected with profits of ancestral immovable property—Re-acquisition of ancestral property by one member of the family possession of which had been discontinued for a long time*

ANCESTRAL PROPERTY OR ESTATE—*contd.*

Held, that purchases effected with profits of ancestral immovable property and property once acquired by an ancestor common to parties (possession of which had been discontinued for a long time) and then re-acquired by a member of the family not in the position of a common ancestor could not be regarded as ancestral property. HAIDAR KHAN AND OTHERS *v.* JAHAN KHAN.

50 P R 1902

58. There is no distinction between ancestral and acquired property inherited by a Hindu widow from her husband. KIRPA RAM *v.* RAKHI. **114 P R 1907**

59. *Ancestral land—Land purchased by one of the descendants from another descendant of a common ancestor.*

Held, that land ceases to be ancestral if it comes into the hands of an owner otherwise than by descent or by reason merely of his connection with the common ancestor. SRI RAM, etc., *v.* RAMJI DAS, etc. **59 P R 1909**

60. *Held,* that land acquired by pre-emption, the price of which was raised by mortgage of part of ancestral land, is not itself ancestral. NABIA *v.* MUSSAMMAT FATTO, etc.

2 P R 1910

61. *Ancestral and self-acquired property—Onus of proof.*

In a suit to set aside a sale of immovable property effected by the plaintiff's father, who had succeeded to it as the next reversionary heir on the death of the widow of the last male owner, the plaintiff alleged that the land sold was ancestral property, and that the alienation had been made without legal necessity and was therefore void.

The evidence showed that the last male owner had acquired some lands in the district by purchase and others on abandonment by collateral relation, but there was no evidence defining the boundary of these portions respectively, that being merely a matter of conjecture.

Held, that the *onus* of proving that the property alienated was not self-acquired in the hands of the last male owner, was on the plaintiff, who could not under the circumstances derive any assistance from conjecture, however reasonable, in the place of positive proof. ATAR SINGH, ETC., *v.* THAKAR SINGH. **42 P R 1910 P C**

62. *Ancestral property—Land taken in exchange for ancestral land.*

Held, that in the case of an exchange the character of the land acquired is that of the land parted with and if the latter was ancestral, the acquired land is equally ancestral. GHAUNS *v.* IMAM DIN.

57 P R 1910

63. *Nature of immovable property acquired out of savings from income of "ancestral" property.*

Held, that a mortgage of land acquired by a female subject to Punjab Custom, is not

ANCESTRAL PROPERTY OR ESTATE—*concld.*

"ancestral" property because the mortgage money was paid by her out of savings from her income derived from ancestral property. MUSSAMMAT ISHAR KAUR *v.* RAJA SINGH.

29 P R 1911

"ANCESTRAL SHARES, VILLAGE HELD ON."

1. *Division—Shares—Suit for division of land according to ancestral shares.*

Plaintiff's father deserted the village for 15 years, and on his return got the land now in plaintiff's possession. Defendant had held his larger share for more than 12 years. At settlement it was recorded that the land and *jama* were divided according to "shares."

Held, that this did not mean *ancestral* shares and that defendant could not now be disturbed. MEHNDOO KHAN *v.* PHULLEE KHAN. **5 P R 1868 Rev**

2. *Punjab Laws Act,* 1872, *section* 12 (*b*)—*Pre-emption—Villages held on ancestral shares—Meaning of the term.*

A village held on ancestral shares within the meaning of section 12 (*b*), Punjab Laws Act, 1872, as amended by Act XII of 1878 (regarding rights to pre-emption in villages) must be a *zamindari* village. If there has been a territorial division into *pattis*, the village (by which is meant the whole village) is no longer held on *shares* but by *pattis.* The land in the *pattis* may be still held upon ancestral shares, but this is insufficient to bring the village within the description in clause (*b*) of the section. JALAL *v.* MAZHAR ALI. **13 P R 1893**

3. *Punjab Laws Act,* 1872, *section* 12, *clause* (*b*)—"*Village held on ancestral shares*"—*Pre-emption.*

Held, by the Full Bench, that a village cannot be said to be "held on ancestral shares" within the meaning of clause (*b*) of section 12 of the Punjab Laws Act, 1872, unless the dominant feature of the tenure is a primary division of the village upon fractional shares ascertained with reference to ancestral right, such primary division being commonly, but not necessarily, a territorial division and importing, at least, a definite separation of interests in the village, as an entirety, in accordance with the customary rules of inheritance.

In the case of joint immovable property the fact that portions of its area are separately cultivated by the persons recorded as having specified interests therein indicates no more than the fractional share to which such persons or group would become entitled on a partition being made either by a definite separation in interest by agreement among the co-owners or by a division of the area itself. Until the group of co-owners is thus separated, the thing, which is the subject of their co-ownership, is joint undivided immovable property within the meaning of clause (*a*) of section 12 of the Punjab

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Laws Act, 1872, whether it be an entire village, or a portion of a village, or a house, and the co-owners are co-sharers in such property for the purpose of that clause. 13 *P. R.* 1893, overruled. CHAMPA MAL *v.* BAISAKHI MAL. **87 P R 1894 F B**

ANCIENT DOCUMENT.

Indian Evidence Act, 1872, section 90—Ancient document.

Held, that section 90, Indian Evidence Act, 1872, is not limited to cases in which the document is actually produced in Court, and consequently secondary evidence of an ancient document is admissible without proof of the execution of the original when the document is shown to have been lost and to have been last heard of in proper custody. SAWAN SINGH *v.* KARIM BAKSH. **93 P R 1910**

ANTECEDENT JUST DEBTS.

See CUSTOM—ALIENATION.
See HINDU LAW—ALIENATION.

APOSTACY.

See HINDU LAW—MARRIAGE.
See MUHAMEDAN LAW—ACKNOWLEDGMENT.
——————————MARRIAGE.

A. Effect of apostacy on marriage in case of Hindus.

1. Apostacy of a Hindu wife does not dissolve the marriage union. CROWN *v.* MUSSAMMAT GHOLAM FATIMA. **32 P R 1870 Crim**

2. Among Singha Jats of Tarn Taran there is no custom whereby apostacy caused a dissolution of marriage. NARAINA *v.* HUKAM SINGH. **152 P R 1890**

3. Apostacy of one of the parties does not in the case of Hindus *per se* dissolve their marriage. JAMNA DEVI *v.* MUL RAJ. **49 P R 1907**

B. Of Muhammadans.

1. By Muhammadan Law, apostacy from Islam by one of a married pair cancels the marriage *ipso facto* without a judicial decree. Penitence or returning to the faith does not restore the marriage tie, nothing short of a re-marriage can do that. Reviling or speaking blasphemously of the Prophet Mahomed is an act of apostacy. NOWROZ ALI *v.* MUSSAMMAT AZIZ BIBI. **124 P R 1876**

2. According to Muhammadan Law when one of the parties to a Muhammadan marriage adopts *bonâ fide* the Christian religion, that party renounces Islam, and such renunciation *ipso facto* terminates the relation of husband and wife. MUSSAMMAT KHAN BIBI *v.* PIR SHAH. **132 P R 1884**

3. The mere use of disrespectful language regarding the law and the Prophet, without any intention thereby to let it be

APOSTACY—*concld.*

understood that the person had no belief in Muhammad with respect to all that came down to him from Almighty God, or that there was any intention on his part to apostatise does not dissolve a marriage. MUSSAMMAT NANI JAN *v.* HUSSAIN BAKSH. **106 P R 1891**

4. Under Muhamadan Law the deliberate repudiation of the Muhammadan religion by one of the parties to a marriage effects a dissolution of such marriage. ALLAH BAKSH *v.* MUSSAMMAT AMIR BEGAM. **61 P R 1899**

APPEAL.

See also ABATEMENT.
APPELLATE COURT, DUTIES, JURISDICTION AND PROCEDURE OF.
ARBITRATION.
CAUSE OF ACTION.
CIVIL PROCEDURE CODE.
COSTS.
COURT FEES ACT.
INSOLVENCY.
JOINDER OF PARTIES.
JURISDICTION.
LANDLORD AND TENANT.
LIMITATION ACT.
LIS PENDENS.
MORTGAGE.
PRE-EMPTION.
PRINCIPAL AND AGENT.
PROBATE ACT.
PUNJAB COURTS ACT.
RELIGIOUS INSTITUTION.
REPEAL OF ACT.
RES JUDICATA.
REVIEW.
REVISION IN CIVIL CASES.
SMALL CAUSE COURT.
SPECIFIC RELIEF ACT.
STAMP ACT.

I.—APPEAL, CIVIL.

1. Ex-parte *order against respondent.*

Where on appeal to the Commissioner's Court the decision was passed in favour of the appellant in the absence of the respondent, *held*, that the respondent could either have applied for a rehearing of the appeal under section 37 of Act XXIII of 1861, or at once preferred an appeal to the Chief Court without getting rid of the *ex-parte* judgment. SODHA SINGH *v.* KESUR. **8 P R 1871**

2. *Order on review.*

Plaintiff's suit was dismissed by the Original Court. He petitioned for review of judgment, whereupon notice was given to the defendant under section 378, Civil

I.—APPEAL, CIVIL—*contd.*

Procedure Code. The Court, after hearing the parties, affirmed its judgment. Plaintiff appealed to the Deputy Commissioner, who dismissed the appeal on the ground that "the order rejecting the application for review was final." On special appeal, the Chief Court *held*, that the appeal to the Deputy Commissioner would lie, and remanded the case to be disposed of by him on its merits. MUSSAMMAT PREM KOUR *v.* PUNJAB SINGH. **3 P R 1873**

3. The Tahsildar decreed plaintiff's claim, and defendant applied for review of judgment. Notice was issued to plaintiff, and after hearing the parties, the Tahsildar recorded "decree as before. Application rejected."

Held (MELVILL, J., dissenting), that an appeal lay from the Tahsildar's order on review, as it was a judgment on review affirming his previous judgment, and not a mere order rejecting a petition for review. SOWAYA *v.* PIR BAKHSH. **31 P R 1875**

4. *Agreement to liquidate decree by instalments—Validity of contract—Appeal by judgment-debtor subsequent to agreement—Dismissal of appeal.*

Plaintiff having obtained an *ex-parte* decree against defendant, which was appealed unsuccessfully to the Commissioner, proceeded to attach defendant's property in execution, whereupon a written agreement was entered into by the parties by which defendant undertook to liquidate the decree by specified instalments, which agreement was ratified before the execution Court, and proceedings in execution stayed. Two days after such ratification, defendant filed a petition for revision (for which an appeal was afterwards substituted) in the Chief Court, praying for reversal of the Commissioner's judgment.

Held, that the appeal must be dismissed, as the arrangement entered into to liquidate the decree was not a voidable contract, but a reasonable arrangement for a good consideration, and one which should be enforced. SIRDAR AMRIK SINGH *v.* RAMBHAJ. **161 P R 1879**

5. *Appeal by one defendant as to the disposal of certain money decreed to be paid by plaintiff—Separate suit.*

Where in a suit for specific performance of a contract of sale, the lower Court ordered a sum of money to be paid by plaintiff, which money he thereupon deposited in Court, *held*, that an appeal by one defendant, lodged against the other defendants and the plaintiffs as respondents, on the ground that the money should be paid to him (the appellant) alone, and not to all the defendants jointly, could not be entertained, there being no dispute between the appellant and the original plaintiff.

Held further, that such a dispute could form the subject of a separate suit. SARUP SINGH *v.* JOWAHIR SINGH. **37 P R 1881**

I.—APPEAL, CIVIL—*contd.*

6. *Punjab Courts Act, 1884 (as amended)—Suit for declaration of proprietary title to a share in a well—Land-suit—Provisions of the law for obtaining a final decision as to whether a suit is cognizable by the Civil or Revenue Courts.*

S. K., a Nari Rajput, who had four sons and one daughter, married his daughter in the time of the Sikhs to Sale Khan, a Bhati Rajput, who came to reside with him.

N.K., one of S. K.'s sons, died without male issue, but leaving a daughter: the descendants of the other three sons of S. K. were defendants in the present suit.

Three sons were the issue of the marriage between Sale Khan and S. K.'s daughter, of whom only two, Kesar and Sharfu, had male issue.

Kesar married the daughter of N. K., and the issue of this marriage were also defendants in the present suit.

Sharfu had three sons who were the plaintiffs in the suit.

The plaintiff's case was that S. K. gave one-fourth share of a well and the land belonging to it to his son-in-law, Sale Khan, from whom it devolved on his two sons in equal shares; and plaintiffs asked for a declaration, as sons of Sharfu, son of Sale Khan, of their proprietary title to a one-thirteenth share in the well on the ground of gift of a share by S. K. to Sale Khan.

Held, that this was a land and not an unclassed suit No. 62 *P. R.*, 1891, followed.

Attention drawn to the provisions of the law for obtaining a final decision, in cases of doubt, whether a suit is cognizable by the Civil or Revenue Courts, *viz.* :—

Section 99, Punjab Tenancy Act, 1887.
Section 44, Punjab Courts Act, 1884 (as amended by Act XIII of 1888).
Section 617, Civil Procedure Code, 1882.

DHANI KHAN AND OTHERS *v.* MAHTAB KHAN AND OTHERS. **40 P R 1893**

7. *Certificate appeal—Succession—Daughters—Suit by reversioners to contest daughters' succession—Compromise—Subsequent suit by same reversioners to set aside alienation by daughters—Civil Procedure Code, 1882, section 43.*

One K. S., a Hindu Jat, died leaving a son Kh., two daughters, the present petitioners and certain immovable property. Kh. married and had a son L., who survived him. After the death of Kh. and the re-marriage of his widow, the daughters of K. S. went to the house left by K. S. to reside with, and take care of, their minor nephew L. On the death of L., the reversionary heir of K. S. sued the said daughters who had taken possession of both the land and houses left by K. S., but in 1860 this suit was compromised, one-third of the land and houses being left with the daughters. On the 28th January 1893, the daughters having sold part of the said house property to B. S. and C. S, the reversioners again sued, praying for a declaration that the sale should not affect their rights after the death of the female vendors, and they pleaded that the sale was

I.—APPEAL, CIVIL—*contd.*

not for a necessary purpose and that the consideration was fictitious. The defendants, who were the daughters and the vendees pleaded that the daughters had inherited the property in dispute from K. S.; that they were full owners and had been in possession for the preceding 27 years, and that the sale was for necessity and for full consideration.

The lower Courts found that in the absence of evidence to the contrary, the presumption was that the daughters were not full owners but merely life tenants; that their possession was permissive and not adverse to the plaintiffs; that the sale was not for necessity or for consideration, and that the plaintiffs were not barred, under section 43 of the Civil Procedure Code, from suing by reason of their suit in 1860, and decreed plaintiffs' claim. A certificate to appeal having been refused by the Divisional Judge, the defendant daughters applied to the Chief Court on the Revision side, to admit a further appeal on the following grounds :—

" *i* That the certificate should have been granted as there is a point of law and custom involved ; (*a*) does section 43 apply or not ? (*b*) have, or have not, the daughters by custom more than a life tenancy ?

" *ii* The daughters have full power to " alienate.

" *iii* There was necessity."

Held, that the real question was not whether the daughters by custom took more than a life tenancy, but what were their rights under the compromise of 1860, and that there was no ground for admitting an appeal upon that question.

Held, further, that the present suit being upon an entirely new cause of action was not barred under section 43 of the Civil Procedure Code by the omission to claim the house in the former suit. MUSSAMMAT IND KAUR *v.* SUJAN SINGH. **47 P R 1894**

8. *Lower Court refusing to grant probate of will to executor, but granting letters of administration without the will annexed to testator's representative—No appeal by executor—*Locus standi *of party interested in will to appeal against grant of letters of administration.*

One A. K. propounded a will and applied, as executor, for probate to the District Judge, and the appellant, who was the representative of one of the legatees under the will, the legatee himself being dead, supported the application for probate. The application was opposed by the widow of the testator's deceased son, who also applied for letters of administration without the will annexed. The lower Court disposed of both applications, and, after drawing up issues, *inter alia* as to the effect of the will if proved, as to how far it was valid, and as to what property it might or might not affect, held the will not proved, and granted administration to the said widow. The deceased legatee's representative appealed to the Chief Court.

I.—APPEAL, CIVIL—*contd.*

Held, that it is competent to a person, who is a party to the proceedings in the lower Court and interested in having a will propounded and maintained as a will, to appeal against the grant of letters of administration without the will annexed, even if the executor does not appeal and abandons his application for probate. MUSSAMMAT BALI *v.* MUSSAMMAT HUSSAIN BIBI. **55 P R 1894**

9. *Punjab Alienation of Land Act, 1900, section 9—Effect of, on appeals from decrees declaring conditional sales absolute.*

Held, that the Punjab Alienation of Land Act does not apply to appeals pending in the Civil Courts before the Act came into force from decrees declaring conditional sales absolute. MAYA MAL *v.* JAIMAL. **47 P R 1902**

10. *Partition—Order declaring the right of parties and the property to be partitioned in a partition suit—Omission to appeal from such order—Effect of as regards appeal from final decree—Civil Procedure Code, 1882, section 396*

In a suit for partition of immovable property a Munsif, on the 11th December 1899, passed an order declaring the specific shares of the parties and the property to be partitioned, and on the 10th January 1900, under section 396, Civil Procedure Code, appointed a commission to make the partition in accordance with his order. The partition was effected through arbitrators, and a decree was drawn up on the 31st May 1900 in accordance with the award. On the 30th July 1900 the defendant appealed to the Divisional Judge, and amongst other objections, questioned the correctness of the preliminary order of the Munsif excluding a certain house from partition. The Divisional Judge rejected the appeal as time-barred on the grounds that the order of the 11th December 1899, declaring the rights of the parties and the property to be paritioned was a decree and that the defendant was not at liberty to question the correctness of the said order, not having appealed from that order within the prescribed period.

Held, that the order of the Divisional Judge was erroneous, inasmuch as the preliminary order of the 11th December 1899 could be questioned on appeal from the final decree even if it was itself appealable as a decree.

Beswa Nath Chaki v. *Bani Kanta Dutta (I. L. R., XXIII Cal.,* 406), *and Jagna and others* v. *Gaindu Mal and others* (62 *P. R.,* 1897), *cited Bhola Ram Dey* v *Ram Chand Dey (I. L. R., XXII Cal.,* 279) *and Dulhin Gulab Koer* v. *Radha Dulari Koer (I. L. R., XIX Cal.* 463). referred to RUSTAM KHAN *v.* LATIF KHAN AND OTHERS. **49 P R 1902**

11. *Surety for an executor—Release of surety on ground of waste of estate by the executor—Appeal from an order refusing discharge—Probate and Administration Act.* 1881, *section* 86.

Held, that a surety of an executor is entitled to be discharged from his liability as regards the future transactions of the latter when the executor for whom he is surety wastes the estate, and as the effect of his

I.—APPEAL, CIVIL—*contd.*

discharge would be to revoke the probate, if fresh security is not furnished, an appeal lies against an order refusing to such discharge.

Rajnarain Mookerjee v. *Ful Kumari Debi* (*I. L. R., XXIX Calc.*, 68), cited. *Brojo Nath Pal* v. *Dasmony Dasee* (*II Calc. L. R.*, 589), *Abhiram Dass* v. *Gopal Dass* (*I. L. R., XVII Calc.*, 48), *Khettramoni Dasi* v. *Shyama Churan Kundu* (*I. L. R., XXI Calc.*, 539), and *Bai Somi* v. *Chokshi Ishwardas* v. *Mangaldas* (*I. L. R., XIX Bom.*, 245), referred to. SHAHABUDDIN *v.* FAZAL DIN. **52 P R 1902**

12. *Civil Procedure Code,* 1882, *section* 336—*Release of judgment-debtor on finding a surety undertaking that he should apply to be declared an insolvent—Dismissal of application for want of prosecution—Execution of decree against surety—Appeal—Revision—Court Fees Act, Schedule II, Article* 11.

H. M. became surety under section 336 of the Code of Civil Procedure for a judgment-debtor, and undertook to produce him in Court when called upon, and that he should within one month file an application to be declared an insolvent. The judgment-debtor duly applied to be declared an insolvent, but his application was rejected in default of prosecution after one appearance. The decree-holder thereupon applied for the execution of his decree against the surety, which was refused by the District Judge on the ground that the obligation of the surety was discharged. The decree-holder preferred an appeal to th Chief Court on a two-rupee stamp. The respondent took two preliminary objections : first, that no appeal lay ; second, that in any case an *ad valorem* Court fee was leviable.

Held, that an order refusing an application under section $\frac{336}{253}$ of the Code of Civil Procedure for recovery of the amount decreed from a surety is not appealable, the decree-holder's remedy being by application for revision, and that such order not being a decree nor an order having the force of a decree, within the meaning of Article II of the Second Schedule to the Court Fees Act, an *ad valorem* fee was not leviable. LILLO MAL *v.* HARJI MAL. **72 P R 1902**

13. *Appeal from order refusing to make appointment of receiver—Discretionary power of First Court not lightly interfered with by Appellate Court—Receiver not to be appointed on mere apprehension of waste.*

Held, on the authorities cited, that an appeal lies from an order refusing to appoint a receiver under Civil Procedure Code, 1908, order XL, rule 1.

Held also, that the exercise of the jurisdiction to appoint a receiver is not a matter *ex debito justitiæ*, and it is for the Court, to which the application is made, to decide in its discretion whether or not it will act upon that application and the Appellate Court should not interfere with the opinion of the First Court unless it finds such opinion to be either arbitrary, vague or fanciful.

Held further, that a receiver should not be appointed, when the application is based,

I.—APPEAL, CIVIL—*concld.*

not upon any specific allegation of misconduct, but upon a mere apprehension that the defendant, though he has done nothing in the past, will after the institution of the suit forthwith proceed to waste the property, and that this principle is applicable also to the case where one of three Hindu brothers seeks partition of the joint family property. SANT RAM *v.* RAM CHAND. **36 P R 1910**

14. *Appeal—abatement of, on death of one of two representatives of the body of respondents when more than six months have elapsed before application is made to have legal representative of deceased made a party—Civil Procedure Code, order XXII, rule* 4 (3).

Held, that on the death of one of two representatives of the body of respondents an appeal abates, where no application has been made within six months to have the legal representative of the deceased made a party.

Held also, that the plea of ignorance of the death until after the expiry of limitation does not justify departure from the rule laid down in order XXII, rule 4 (3), Civil Procedure Code, which is imperative. SAYAD MIR NAWAB, &c., *v.* HARDEO, &c., **60 P R 1911**

II.—APPEAL, COMPETENCY OF.

1. *Appeal after execution of decree.*

Where a plaintiff obtains a decree for part only of his claim, and sues out execution of that decree, his right of appeal against the order disallowing the remainder of his claim is barred. MUHAMMAD KHAN *v.* FIDA MUHAMMAD. **82 P R 1868**

2. *Dismissal for default.*

An order dismissing an appeal for default cannot be reviewed. FOUJOO SINGH *v.* MEHTAB SINGH (No. 100 of 1867, Civil). Nor is an order refusing to re-admit an appeal dismissed for default open to review. BASUNT SINGH *v.* KESUR SINGH. **92 P R 1868**

3. No appeal lies against an order rejecting an application for the re-admission of an appeal dismissed for default. MUSSAMMAT MAHAR BUKSH *v.* GHAUSI KHAN (No. 87 of 1876, Civil), SULTAN MAHMUD *v.* OOJUL KHAN (No. 23 of 1871, Civil), ALLUM DIN *v.* MUSSAMMAT BUDDEE (No. 32 of 1869, Civil). But an appeal will lie if the appellant did not receive notice or sufficient notice of the place of hearing. AMBYA *v.* UMRA (No. 48 of 1875, Civil). And an appellant is entitled to have a day fixed for hearing the appeal. MUSSAMMAT UTTER KAUR *v.* UTTER SINGH (No. 60 of 1869, Civil). In the absence of any such day having been fixed, his non-appearance is not a "default." An appeal will therefore lie from an order dismissing an appeal for alleged default when no such day has been fixed. KAIM *v.* KASIM. **79 P R 1869**

4. *Act VIII of* 1859, *section* 371.

No appeal lies from an order refusing to allow an appeal *in formâ pauperis*. HURRIE SINGH *v.* JEET SINGH. **62 P R 1870**

II.—APPEAL, COMPETENCY OF—*contd.*

5. *Section* 12, *Act VII of* 1870—*Appeal from order rejecting plaint for want of proper stamp.*

Plaintiffs sued for a declaratory decree, and wrote their claim on a stamp of ten rupees. The Court of first instance held that the plaint also asked for consequential relief, and required the plaintiffs to value their claim accordingly. The plaintiffs failed to comply with this requisition, and the Court rejected their plaint under section 31, Act VIII of 1859.

Held, that an appeal on the ground that the original Court had wrongly construed the plaint would lie under section 36, Act VIII of 1859, from the order rejecting the plaint, notwithstanding section 12, clause 1 of the Court Fees Act, although the appeal involved the determination of the amount of the stamp fee. PIR MUHAMMAD *v.* GHULAM HYDER. **42 P. R. 1874**

6. *Execution—Imprisonment.*

An appeal does not lie from an order of imprisonment in execution of a decree. GOOLDAD KHAN *v.* KARIM KHAN. **22 P R 1871**

7. *Notification* 1225 *of* 1866—*Refusal of Commissioner to sanction sale—Appeal from order—Power of superintendence of Chief Court.*

An appeal does not lie (LINDSAY, J., dissenting) from an order of the Commissioner refusing his sanction to a sale of immovable property in execution of a decree ; section 11 of Act XXIII of 1861 does not apply to such an order.

Per BOULNOIS, J.—The Chief Court, under section 44 of Act IV of 1866, has superintendence over subordinate Courts ; but its powers are limited to (1) directing the exercise of the power or jurisdiction disclaimed by a subordinate Court, and (2) setting aside an order made without jurisdiction ; the Chief Court cannot interfere on the ground that an order made by a Court having jurisdiction is erroneous. KARAM CHAND *v.* KARAM DIN. **123 P R 1876**

8. *Civil Procedure Code (Act X of* 1877), *section* 588, *clause (j)—Order refusing in execution to attach land, or releasing it.*

Held, that an appeal lies, under section 588, clause (*j*) of Act X of 1877, from an order refusing in execution of decree to attach the land of a judgment-debtor, or releasing it from attachment on the ground that it is insufficient for the judgment-debtor's support. POHLO MAL *v.* MUSSAMMAT GOWRI. **4 P R 1879**

9. *Civil Procedure Code (Act X of* 1877), *sections* 556, 558, 584 *and* 588—*Order dismissing appeal for default—Decree—Appealable order.*

The order of a Court dismissing an appeal under section 556, Act X of 1877, for appellant's default, is not a decree within the meaning of section 584, and therefore no appeal lies from such an order, it not being included in the list of appealable order, contained in section 588. MUHAMMAD ALI *v.* HYAT. **113 P R 1879**

II.—APPEAL, COMPETENCY OF —*contd.*

10. *Act X of* 1877, *sections* 558 *and* 588 (*v*) —*Appeal—Order refusing to re-admit appeal dismissed for default—Act XV of* 1877, *Schedule II, Art.* 163, *extension by Court of time prescribed by.*

Under section 588 (*v*) of Act X of 1877, an appeal lies from an order under section 558, refusing re-admission of an appeal dismissed for default, even though the application for such re-admission was not presented within the thirty days prescribed by Act XV of 1877, Schedule II, Article 163.

The Courts have no power to extend the time prescribed by the last mentioned article. MAHI *v.* JIWAN. **141 P R 1879**

11. *Civil Procedure Code* (*Act X of* 1877), *sections* 230, 540—*Act XII of* 1879, *section* 2, —"*Decree.*"

Held, that an order in execution of decree determining the question whether the decree-holder had used due diligence in the execution of his decree within the meaning of section 230, Act X of 1877, appealable under section 540 of the Code, such order being a "decree" within the definition given in section 2 of the Code, as amended by Act XII of 1879. BALMOKAND *v.* MUERJOO.

45 P R 1880

12. Ex-parte *decree.*

An appeal from an *ex-parte* decree lies under the general provision of section 540, Act X of 1877, as no express provision is to be found in the said Act precluding such appeal. MUSSAMMAT SAHIB DAI *v.* JAGA SINGH. **105 P R 1880**

13. *Order refusing to rehear* ex-parte *case—Order passed before Act XII of* 1879 —*Appeal filed after Act XII of* 1879.

The law governing an appeal is the law in force when it is instituted. Where, therefore, an appeal was filed after the passing of Act XII of 1879 (under which an appeal was allowed) against an order refusing to rehear a case decided *ex-parte*, and the Commissioner held that as the decision appealed against was passed before the said Act came into force, no appeal lay to his Court *held*, reversing the order of the Commissioner, that such an appeal was admissible, and must be heard and disposed of. COURT OF WARDS *v.* FATEH SINGH.

75 P R 1881

14. *Act XXVII of* 1860, *sections* 3, 6—*Appeal from order granting certificate.*

No appeal lies against an order granting a certificate under section 3 of Act XXVII of 1860, where the certificate has been granted before the appeal was filed: under section 6 of the Act an appeal only lies to suspend the granting of the certificate; after it has been granted the only course open to the objector is a petition for a fresh certificate. MAKHAN MAL *v.* MUSSAMMAT PREM KOR.

76 P R 1881

II.—APPEAL, COMPETENCY OF —*contd.*

Followed in MUSSAMMAT PREMI *v.* WADHAWA SINGH.

34 P R 1885

15. *Order refusing application to be made insolvent—Act X of* 1877, *sections* 344, 588, *clause* 17—*Appealable order.*

Held, that an order refusing to grant an application under section 344 of the Civil Procedure Code to be made an insolvent is appealable under clause 17, section 588 of the same Code. GOPAL *v.* GIDAR.

124 P R 1882

16. *Order directing appeal to abate—Act X of* 1877, *section* 588 (18)—*Appealable.*

Held, that an order directing an appeal to abate in consequence of the death of one of the plaintiff-respondents, on the ground that no application had been made within the time allowed by law to substitute the legal representative of the deceased, is an appealable order under section 588, clause (18) of the Civil Procedure Code. GOPAL SINGH *v.* NAURANG SINGH.

165 P R 1882

17. *Civil Procedure Code (Act X of* 1877), *section* 556—*Order dismissing appeal for default.*

Held, that no appeal lies from an order dismissing an appeal for default under section 556 of the Civil Procedure Code. *Muhammad Ali* v. *Hyat* (No. 113 of 1879, Civil) cited. MUSSAMMAT AMNA *v.* MUSSAMMAT ASKARI BEGAM.

9 P R 1883

18. *Insolvency proceedings—Act IV of* 1872, *section* 28—*Order rejecting objections to composition-deed—"Decree."*

Held, that an order of a Court exercising Insolvency jurisdiction under Act IV of 1872, rejecting under section 28 of that Act a petitioner's objections to a composition agreed upon between the debtor and the majority of the creditors, is not an adjudication upon any right claimed, so as to satisfy the definition of a "decree" given in section 2 of the Code, and accordingly no appeal lies from such order. *Simla Bank* v. *Tavenor* (No. 65 of 1882, Civil) followed. THAKUR DAS *v.* KIDARNATH.

33 P R 1883.

19. *Act XXVII of* 1860, *section* 3—*Appeal from order refusing to grant certificate.*

Held, following *Mussammat Gujri* v. *Natha Singh* (No. 117 of 1881, Civil), that an appeal lies from an order refusing to grant a certificate under Act XXVII of 1860 to any of the contending claimants. BAGA SINGH *v.* KHERA.

58 P R 1883

20. Ex-parte *decree—Act X of* 1877, *section* 10.

Held, following *Mussammat Sahib Dai* v. *Jaga Singh* (No. 105 of 1880, Civil), and other rulings, that an appeal will lie by the defen-

II.—APPEAL, COMPETENCY OF —*contd.*

dant from an *ex-parte* decree against him, notwithstanding that he has not applied under section 108 of the Civil Procedure Code to set it aside.

The ruling of the majority of the Full Bench in *Lal Singh* v. *Kunjan (I. L. R.,* 4 *All.,* 387) dissented from. RADHA PRASHAD *v.* HIRDE.

60 P R 1883

Followed in PREM SINGH *v.* KHARAK SINGH. **60 of 1883 Note**

And CHUNI LAL *v.* BODAR MAL.

20 P R 1886

21. *Civil Procedure Code (Act XIV of* 1882), *sections* 588, 591—*Appeal—"Any such order."*

Held, that the proper construction of the words "any such order" in section 591 of the Civil Procedure Code, is to take them as referring to the words "any order passed by any Court in the exercise of its original or appellate jurisdiction," and not merely to the orders against which no appeal is provided. MUSSAMMAT JATAN *v.* HIRA NAND.

156 P R 1883

22. *Court Fees Act (VII of* 1870), *section* 12, *clause II—Appellate Court rejecting appeal for failure to pay Court-fees required for first Court—"Decree"—Civil Procedure Code (Act XIV of* 1882), *section* 2.

The lower Appellate Court dismissed under section 12, clause II of the Court Fees Act the plaintiffs' appeal to his Court upon their failure to comply with an order to file within a certain period Court-fee stamps both for the Court of first instance and for the Appellate Court.

Held, that the order of the Lower Appellate Court was a "decree" within the meaning of section 2 of the Civil Procedure Code, an order dismissing a suit or an appeal being adjudication upon a right claimed, which decides the suit or appeal so far as the Court expressing it is concerned. MELA MAL *v.* HARBHAJ.

115 P R 1884

23. *Civil Procedure Code (Act XIV of* 1882), *sections* 244, 588—*Order refusing to release judgment-debtor arrested in execution of decree—Appealable order.*

Held, that an order refusing to release a judgment-debtor arrested in execution of a decree is not appealable, as it is not among those orders enumerated as appealable in section 588 of the Civil Procedure Code, nor is it an order falling under section 244 of the same Code; and if it be regarded as an order for imprisonment, it is expressly excepted from the orders appealable under clause 29 of section 588. HISSAM-UD-DIN *v.* MUHAMMAD UMR.

55 P R 1886

24. *Act IV of* 1872—*Insolvency Proceedings.*

Held, that no appeal lies against an order passed in Insolvency proceedings under Act

II.—APPEAL, COMPETENCY OF —*contd.*

IV of 1872. *Simla Bank* v. *Tavenor* (*No.* 65 *of* 1882, *Civil*), *and Thakur Das* v. *Kidarnath* (*No.* 33 *of* 1883, *Civil*) followed. RAM MAL *v.* LADHA SINGH.

62 P R 1886

25. *Act XXVII of* 1860, *sections* 3, 6—*Appeal from order refusing to grant certificate.*

Quære, whether an appeal lies from an order refusing a certificate under Act XXVII of 1860? MUSSAMMAT GUJRI *v.* NATHA SINGH (No. 117 of 1881, Civil) and BAGA SINGH *v.* KHERA (No. 58 of 1883, Civil) cited. MUZAFFAR HAMID *v.* MUSSAMMAT RAHIMAN.

78 P R 1886

26. *Act XXVII of* 1860, *section* 5—*Appeal from order to find security.*

Held, that no appeal lies from an order to find security under section 5 of Act XXVII of 1860. MAYA DAS *v.* CROWN.

38 P R 1888

27. *Act XXVII of* 1860—*Appeal from order refusing to grant certificate.*

Held by the full Bench that no appeal lies from an order of a District Judge under Act XXVII of 1860 refusing, after due enquiry, to grant a certificate of administration to any claimant. *Mussammat Gujri* v. *Natha Singh* (*No.* 117 *P. R.*, 1881, *and Baga Singh* v. KHERA (*No.* 58 *P. R.*, 1883), *overruled. Muzaffar Hamid* v. *Mussammat Rahiman* (*No.* 78 *P. R.*, 1886), cited. RAM CHAND *v.* MUSSAMMAT RUKMAN DEVI.

103 P R 1888 F B

28. *Appeal from decree passed by inadvertence against, or in favour of, a dead party.*

Held, that a decree passed by inadvertence against, or in favor of, a dead party, is one from which no appeal lies, because in such case the heir of the deceased party, or the opposite party, has no *locus standi*, as an appellant, or as a respondent, as the case may be. GOHAR *v.* MUHAMMAD.

7 P R 1889

29. *Land-suit—Land not occupied as the site of any building but occupied or let for agricultural purposes—Fruit garden.*

Held, that a suit for land occupied as a fruit garden is a "land-suit" within the meaning of the Punjab Courts Act, 1884, unless such land be the courtyard or the compound of a house. JHANDA KHAN *v.* FATEH DIN.

111 P R 1890

30. *Appeal—Review of judgment—New decree.*

An appeal will not lie from a decree a review of which has been granted, and which has merged in a new decree. NAWAB GHULAM MAHBUB SUBHANI *v.* PANDIT PREM NARAIN.

85 P R 1891

II.—APPEAL, COMPETENCY OF —*contd.*

31. *Right to use of water—Land-suit—Punjab Courts Act*, 1884, *section* 3—*Appeal.*

The plaintiff sued to establish his right to the use of water of the Dabgana Canal for irrigating land as defined in section 4 of the Punjab Tenancy Act, 1887 : no claim was made to any share in the land occupied by the canal, or in the canal as a whole.

Held (Roe, J., doubting), that the suit was not a "land-suit" as defined in section 3, Punjab Courts Act, 1884 (as amended). SULTAN ALI SHAH *v.* KADIR BAKHSH.

1 P R 1892 F. B.

32. *Land Acquisition Act*, 1870, *section* 29—*Agreement of Judge and assessors as to compensation—Finality of decision.*

In case the Judge and one or both of the assessors agree as to the amount of compensation in a reference made to the Court under the provisions of Part III of the Land Acquisition Act, 1870, their decision thereon shall be final, and no appeal lies, even if they differ upon minor points not falling within the scope of their jurisdiction. IMAM BAKHSH *v.* COLLECTOR OF MUZAFFARGARH.

36 P R 1892

33. *Appeal by plaintiffs to Chief Court who did not appeal to Divisional Judge—Competency of appeal.*

Eighteen persons instituted a suit for an account against seventeen others. The first Court dismissed the suit.

Two of the plaintiffs appealed to the Divisional Court, and, after a remand under secsion 566, Civil Procedure Code, a decree was made in their favour against defendant 1 for Rs. 103-8-0, being the proportion to which they were held entitled out of a total sum of Rs. 1,457-5-0 for which defendant was found to be liable.

Some of the other plaintiffs, who had not appealed to the Divisional Court, then preferred a further appeal to the Chief Court urging that the Divisional Judge should have given them a decree for their proportionate share.

Held, that such further appeal was not competent, the appellants not being parties to the appeal before the Divisional Judge, nor affected in any way by the decree made by him. [Cf. No. 46 *P. R.* 1892]. MAHBUB SINGH *v.* KAHNA.

123 P R 1892

34. *Punjab Courts Act*, 1884—*Pre-emption suit—Value for purposes of appeal—Punjab Laws Act*, 1872, *section* 9—*Pre-emption—Sale of immovable property—Exchange.*

In a pre-emption suit, of which the value for purposes of jurisdiction was found to be less than Rs. 1,000, the decree of the first Court, affirmed upon appeal, was for possession of the land in suit on payment of the sum of Rs. 2,822, the plaintiff having claimed it on payment of Rs. 2,500, and the deed of sale showing the price to be Rs. 4,500 and one *ghumao* of land.

II.—APPEAL, COMPETENCY OF —*contd.*

Held, that the decree involved directly some claim to or question respecting property of the value of Rs. 1,000 or upwards, namely, the price to be paid for the land in suit by the plaintiff in his character of pre-emptor, and that an appeal therefore lay under the second part of clause, (*a*), section 40, sub-section (1), of the Punjab Courts Act, 1888, without a certificate.

Held, also, that a permanent transfer of land in a village for a sum of money, *plus* something that is not money, does not, merely because of such addition, of necessity cease to be a sale within the meaning of section 9, Punjab Laws Act.

P. R., Nos. 12 of 1884, 111 of 1885 and 54 of 1889, referred to. GUL MUHAMMAD KHAN *v.* KHAN AHMAD SHAH.

29 P R 1893

35. *Punjab Courts Act, section* 3—*Jurisdiction—Appeal—Land-suit—Claim for date trees.*

A suit for date trees—no claim being made in respect of the land upon which the trees stand—is not a "land-suit" within the definition of that term contained in section 3, Punjab Courts Act, 1884 (as amended). No 15, *P. R.*, 1892 (F. B.), referred to. YARO *v.* ADIL.

46 P R 1893

36. *Civil Procedure Code, section* 320—327—*Intervention of Collector—Sanction of Civil Court—Appeal.*

Held, that though it is open to either the decree-holder or the judgment-debtor to appeal to a superior Civil Court from the order of a Civil Court authorising or refusing to authorise the Collector to make an arrangement under section 326 of the Code, no appeal lies to the superior Civil Court from any order made by the Collector when acting under section 326 of the Code. DARYA SINGH *v.* MAHTAB.

25 P R 1894

37. *Civil Procedure Code*, 1882, *Chapter XIX* (*i*) *and sections* 2, 244 (*c*) *and* 588 (29)—*Order by execution Court for imprisonment of judgment-debtor—Appeal—Revision.*

Held, that an order passed by the Court executing a decree under Chapter XIX (*i*) of the Civil Procedure Code for the imprisonment of the judgment-debtor, though not appealable *as an order* under section 588 (29), is appealable as a *decree* inasmuch as the question decided by such order is one relating to the execution of the decree within the meaning of section 244 (*c*) of the Code. SEVA SINGH *v.* DHAUNKAL.

69 P R 1895

38. *Civil Procedure Code*, 1882, *section* 622—*Revision—Appeal dismissed by lower Appellate Court on ground that it was unauthorised by appellant—Appeal filed by advocate—Power of Chief Court to revise order of the lower Appellate Court—"Failure to exercise jurisdiction vested by law"—Appeal also dismissed as contrary to "rule of equity, justice and good conscience"—Material irregularity.*

II.—APPEAL, COMPETENCY OF —*contd.*

Plaintiff's suit for Rs. 825, the price of a horse alleged to have been sold by him to defendant, having been dismissed by the District Judge, an appeal from the decree was filed by a certain advocate in the Court of the Divisional Judge. At the hearing of the suit, an advocate of the Bombay Bar stated that he appeared on behalf of the appellant, but the respondent urged as preliminary objections (1) that the appeal was, as shown by certain letters written by the appellant after the date of the decree of the District Judge unauthorised by the appellant; and (2) that inasmuch as the plaintiff had, after the decision of the first Court, advertised the horse for sale as his own property for a smaller sum than that he claimed from defendant as its price, he had deprived himself of any right of appeal even if the appeal were otherwise duly authorised and valid. The Divisional Judge considered both objections, and, holding that they were well founded, dismissed the appeal with costs against the appellant, who thereupon applied to the Chief Court on the revision side. For the petitioner it was contended that the Divisional Judge, in dismissing the appeal (*a*) on the ground that it was unauthorised, had "failed to exercise a jurisdiction vested in him by law"; and (*b*) on the ground that it was contrary to some unspecified "rule of equity, justice and good conscience," had acted with material irregularity. The respondent, while admitting that the order of the Divisional Judge as to costs could not be supported, contended that there had been no failure to exercise jurisdiction or acting with material irregularity in the exercise of jurisdiction on the part of the lower Appellate Court, and that the Chief Court was incompetent to touch the decision on either point on the revision side.

Held, that the Chief Court has full power in an application for revision under section 622, Civil Procedure Code, to go into the merits of the decision of the Court, whose proceedings are being revised on the question of jurisdiction.

Held, further, that the lower Appellate Court, in deciding the first preliminary objection, had adjudicated on a question relating to its jurisdiction over the case, and in dismissing the appeal on the erroneous finding that it was unauthorised had "failed to exercise a jurisdiction vested in it by law."

Held, also, that the lower Appellate Court, in dealing with the second preliminary objection, must be held to have taken cognizance of the appeal and in dismissing the appeal upon the assumption that there was some rule of equity, justice and good conscience, not, however, specified in the judgment, which barred the institution of the appeal, had acted with material irregularity in the exercise of its jurisdiction. ROEBUCK *v.* HENDERSON.

54 P R 1896

39. *Application by guardian for custody of minor—Appeal—Guardian and Wards Act,*

II.—APPEAL, COMPETENCY OF —*contd.*

1890, *sections* 12, 25, 47, (*c*)—*Revision—Right of guardian to custody of minor.*

An application by a duly appointed guardian for custody of the minor was rejected by the Additional District Judge on the ground that the proper course for the guardian would be to bring a civil suit against the respondent if she refused to make over the minor to his custody. The guardian appealed to the Chief Court.

Held, that the order of the lower Court was not appealable.

But *held*, that the said order was open to revision on the ground that the lower Court should have directed the respondent to produce the minor with a view to his being made over to the petitioner, and that in failing to do so, the lower Court failed to exercise a jurisdiction vested in it by law. WADHAWA SINGH *v.* MUSSAMMAT MALAN.

13 P R 1897

40. *Appeal from order of Appellate Court returning plaint for amendment or for presentation to proper Court—Civil Procedure Code*, 1882, *sections* 53, 582, 588 (6).

Held, following *I. L. R., III All.*, 456, that an order of an Appellate Court returning a plaint for amendment or for presentation to the proper Court is not appealable under section 588 (6) of the Civil Procedure Code, that clause being applicable only to orders passed by Courts of first instance. NIDHU *v.* NIHALA.

15 P R 1898

41. *Civil Procedure Code*, 1882, *section* 136—"*Decree*"—*Appeal.*—An order under section 136 of the Civil Procedure Code, dismissing a suit, is a decree from which an appeal lies. KHUSHALI MAL *v.* PALA MAL.

43 P R 1898

42. *Punjab Courts Act, section 9—Appeal from decree of Judge in Chambers refusing probate of will.*

An appeal lies under section 9 of the Punjab Courts Act, 1884, from the decree of a Judge in Chambers refusing probate of a will. THADDEUS *v.* THADDEUS.

6 P R 1899

43. *Suit instituted before passing of Act XXV of* 1899—*Right of appeal, how far affected by new Act—Act XVIII of* 1884, *section* 40—*General Clauses Act*, 1897, *section* 6.

Held, by the Full Bench, that the enactment of Act XXV of 1899, which came into force on the 13th October 1899, has not the effect of depriving parties to suits, instituted before that date, of the right or privilege of appeal allowed by section 40 of the Punjab Courts Act, 1884, as it existed prior to its amendment by Act XXV of 1899. CHAUDHARI NARSINGH DAS *v.* LALA DHOLAN DAS.

12 P R 1900 F B

44. *Civil Procedure Code*, 1882, *sections* 588 (24), 622 *and* 647—*Appeal—Guardian*

II.—APPEAL, COMPETENCY OF —*contd.*

and Wards Act, 1890, *sections* 12 *and* 48—*Order of District Judge fixing the fee of a custodian of the property of the ward appointed under section* 12—*Revision—Punjab Courts Act*, 1884, *section* 70.

Held, that no appeal lies from an order of a District Judge fixing the fee of a custodian of the property of a ward appointed under section 12 of the Guardian and Wards Act, 1890, but that such an order can be revised under the authority of section 48 of that Act, section 70 of the Punjab Courts Act of 1899, although it repealed re-enacted in a modified form section 622 of the Civil Procedure Code. MINA MAL *v.* RAI BAHADUR HARDHIAN SINGH.

48 P R 1901

45. *An order declining to review a previous order was not appealable.* CHAUDHARI GURMUKH SINGH *v.* MUSSAMMAT MIRZA NUR.

63 P R 1901

46. *Civil Procedure Code*, 1882, *sections* 562 *and* 588—*Scope of such appeal.*

Held, that under section 588, Civil Procedure Code, no appeal lies from an order of remand where the party does not seek either to traverse the remand order passed by the Appellate Court, or its finding upon the preliminary point as to which it has differed from the first Court, but seeks to traverse the decision as to a preliminary point in which both the Courts have concurred and in regard to which no reference has been made under section 562. SAYAD MUHAMMAD ISHAQ *v.* MOHRU MAL.

28 P R 1902

47. *Appointment of Receiver—Refusal of Court's nominee—Appeal.*

Held, that where a Court after hearing both sides has decided that a Receiver should be appointed, such order is appealable under section 588 (24), Civil Procedure Code, even though, owing to the refusal of the Court's nominee no one has actually been appointed to the office. MUSSAMMAT BUDHWANTI *v.* MUSSAMMAT BISHEN KAUR.

73 P R 1902

48. *Civil Procedure Code*, 1882, *section* 244—*Question in execution of decree—Question arising between the parties or their representatives—Appeal.*

The holder of a decree for pre-emption duly deposited the purchase money, amounting to Rs. 1,475, in Court as directed. Subsequently a reversioner of the vendor brought a suit to have it declared that the sale was without necessity and should not be allowed to affect his rights except in respect of Rs. 300 and obtained a decree. The pre-emptors then asked the Munsif for the return of their purchase money, as they no longer wished to go on with the purchase, as their decree of pre-emption had been superseded by the declaratory decree. The Munsif without informing the vendee ordered the refund of the money. The vendee appealed to the Divisional Judge, who declined to interfere,

II.—APPEAL, COMPETENCY OF —*contd.*

on the ground that the procedure for paying money into Court in pre-emption cases was not a procedure in execution of a decree, and that he had no jurisdiction to hear an appeal from such an order.

Held, that as the effect of the Munsif's order was to deprive the vendee of his money which he was entitled to under a decree of Court, it fell within the scope of clause (c) of section 244, Civil Procedure Code, as a question arising between the parties to the suit or their representatives, and relating to the execution, discharge or satisfaction of the decree, and that an appeal lay as if from a decree. ABDULLA *v.* AMIR-UD-DIN. **76 P R 1902**

49. *Civil Procedure Code*, 1882, *sections* 372, 588 (21)—*Application to be brought on to record in substitution for plaintiff—Dismissal of such application—appeal.*

Held, that there is no appeal from an order dismissing an application to be made a party under section 372 of the Code of Civil Procedure. Section 588 (31) only allows an appeal from an order disallowing objections to an application under that section. *Indo Mati* v. *Gaya Prasad (I. L. R., XIX All.,* 142*), Moti Ram* v. *Kundan Lal (I. L. R., XXII All.,* 380*)*, and *Commercial Bank of India* v. *Sabju Saheb (I. L. R., XXIV Mad.,* 252*)*, distinguished. *Jumna Bibi* v. *Sheikh Jhau (I. L. R., XXIV All.,* 532*)* and *Lalit Mohan Roy* v. *Shebock Chand Chowdhury (IV Calc. W. N.,* 108*)*, cited. MUSSAMMAT SAHIB NUR *v.* MUHAMMADJI. **57 P R 1903**

50. *Civil Procedure Code*, 1882, *sections* 503, 588 (24)—*Appeal—Appeal from order specified in paragraphs (a) to (d) of section* 503.

Held, that the appeal allowed by section 588 (24), Civil Procedure Code, against an order under section 503 only extends to orders specified in paragraphs (*a*) to (*d*) of that section. WALI RAM *v.* ISHAR CHAND. **26 P R 1904**

51. *Appeal—Application for judicial separation on the grounds of adultery and cruelty—Decree on the ground of cruelty only —Right of petitioner to have the finding as to adultery set aside—Indian Divorce Act,* 1869, *section* 55.

On a petition for judicial separation filed by the wife on the ground of her husband's adultery and cruelty, the District Judge found the first charge unproved but the second charge proved, and granted her a decree on that ground alone. The petitioner preferred an appeal to the Chief Court to set aside the finding of the District Judge as to the first charge.

Held, that inasmuch as the finding against the petitioner on the issue as to adultery could not affect her remedy for subsequent misconduct by her husband, the existence of that finding did not entitle, her to appeal or

II.—APPEAL, COMPETENCY OF —*contd.*

to have that finding specially embodied in the decree for the purposes of appeal. *Koyalash Chunder Koesari* v. *Ram Lal Nag (I. L. R., VI Calc.,* 206*)*, *Niamat Khan* v. *Phadu Buldia (I. L. R., VI Calc.,* 319 *F. B.)*, *Mrs. Mary Eliza Stephenson* v. *Unnoda Dossee (6 W. R., Mis.,* 18*)*, *Jamait-un-Nissa* v. *Lutf-un-Nissa (I. L. R., VII All.* 606*)*, *Jamna Das* v. *Udey Ram (I. L. R., XXI All.,* 117*)*, *Thakur Magum Deo* v. *Thakur Mahadeo (I. L. R., XVIII Calc.,* 647*)*, *Run Bahadur Singh* v. *Luche Koer (I. L. R., XI Calc.,* 301, *P. C.)*, *Bland* v. *Bland (35 L. J. P. and M.* 104*)*, *Green* v. *Green (43 L. J. P. and D.,* 6*)*, *Tomkins* v. *Tomkins (I. S. and T.* 168*)*, *Curtis* v. *Curtis (28 L. J. P.* 55*)*, and *Milford* v. *Milford (37 L. J. P.,* 77*)*, referred to. WINGROVE *v.* WINGROVE. **53 P R 1904**

52. *Appeal—Appeal from an order setting aside an* ex-parte *decree—Civil Procedure Code*, 1882, *section* 588 (9).

Held, that there is no appeal from an order setting aside an *ex-parte* decree. *Shama Das* v. *Harbuns Narain (I. L. R., XVI Calc.,* 426*)* cited and followed. BURA RAM *v.* MITHA RAM. **103 P R 1905**

53. *Pre-emption—Decree in favour of pre-emptor—Payment of purchase-money into Court—Withdrawal of such money by vendee —Effect of such withdrawal—Right of vendee to maintain appeal on substantive right.*

Held, that in a pre-emption suit a vendee does not forfeit his legal right to appeal from a decree passed against him or to proceed with his appeal on substantive right merely because he had withdrawn the purchase-money paid in Court by the pre-emptor for his benefit. SUNDER DAS *v.* DHANPAT RAI. **16 P R 1907**

54. *Civil Procedure Code*, 1882, *sections* 312, 313, 588 (16)—*Confirmation of sale in execution of decree—Application to set aside sale dismissed in default—Fresh application for same relief dismissed on merits—Such orders of dismissal not appealable.*

Held, that, where an auction sale under a decree has been confirmed under section 312, Civil Procedure Code, in the absence of objection under section 311, and an application to set aside the sale has been *thereafter* put in and dismissed for default, and further application asking (*a*) that the dismissed application be restored to the file, or (*b*) that the application be treated as a fresh application, or (*c*) as a petition for review of the order, dismissing the first application, has been also dismissed, no appeal lies against either of the orders of dismissal, neither of which comes under section 588 (16), Civil Procedure Code, or is an order under section 312. BISHAMBAR DAS *v.* UDHO RAM. **25 P R 1907**

55. *Decree in favour of plaintiff for a part of his claim—Execution of such decree by plaintiff—Subsequent appeal for remainder—Estoppel.*

II.—APPEAL, COMPETENCY OF —*contd.*

Held, that a plaintiff who has obtained a decree for a part of his claim and has executed the same is not by the mere fact of his having taken out execution of that decree debarred from prosecuting the appeal as regards the remainder of his claim which had been disallowed by the first Court. *Mahomed* v. *Fida Mahomed* (82 *P. R.* 1868), over-ruled). RAGHU MAL *v.* BANDU. **31 P R 1907 F B**

56. *Appeal from an order returning plaint for amendment—Remand by Appellate Court—No appeal from such order of remand—Civil Procedure Code*, 1882, *sections* 562, 588.

Held, that there is no further appeal from an order of remand passed under section 562 of the Code of Civil Procedure when such order is made by an Appellate Court on an appeal under section 588 of the Code. RAJ BHAI *v.* YAQUB ALI. **120 P R 1907**

57. *Appeal from order dismissing suit for non-appearance of plaintiff.*

Held, by the Full Bench (Reid, C. J., and Chatterji, J., dissenting) that an order dismissing a suit for default of prosecution under section 102 of the Code of Civil Procedure is not a decree as defined in section 2 and is not appealable.

Per Reid, C. J., and Chatterji, J., contra, that an order passed under section 102 is a decree within the meaning of section 2, and as such is appealable. KANHAYA LAL *v.* THE NATIONAL BANK OF INDIA, LD., DELHI. **121 P R 1907 F B**

58. *Execution of decree—Order rejecting application for stay of execution—Appeal—Civil Procedure Code*, 1882, *section* 545.

Held, that an order under section 545 of the Code of Civil Procedure refusing to stay execution of a decree is not appealable. CAMERON *v.* BULAKI MAL. **146 P R 1907**

59. *Appeal—Land suit—Suit for declaration that plaintiff is the sole owner of an orchard on a portion of the village* shamilat *—Punjab Courts Act*, 1884, *sections* 3, 40.

Plaintiffs sued for a declaration that a certain orchard on a portion of the village *shamilat* was planted by him alone at his own expense and that he was in sole possession thereof. No claim was made with respect to the land occupied by the orchard or the *shamilat* as a whole. Relief sought was valued at Rs. 400.

Held, that the suit was not a " land suit " within the meaning of section 3 of the Punjab Courts Act, 1884, and that therefore no further appeal lay. DEVI DIAL *v.* AHMAD KHAN. **4 P R 1908**

60. *Succession Certificate Act*, 1889, *sections* 7, 9, 19—*Order granting certificate conditional upon furnishing security—Appeal.*

Held, that an order granting a certificate of succession under the Succession Certificate Act, 1889, conditional on giving security is

II.—APPEAL, COMPETENCY OF —*contd.*

an order "granting a certificate" within the meaning of section 19 of the Act, and is therefore appealable. BIRI *v.* BARKHURDAR.
139 P R 1908

61. *Matrimonial jurisdiction—Appeal from order of single Judge of Chief Court sitting on original side—Divorce Act (IV of 1869), section 55—Punjab Courts Act (XVIII of 1884), section 9 (a)—Civil Procedure Code, section 2.*

Held, that an order by a single Judge of the Chief Court sitting on the original side, refusing to strike off the record the name of a person impleaded as a co-respondent to a petition for dissolution of marriage and damages, is not appealable. T. *v.* B.
98 P R 1909

62. *Suits based on award—right of appeal.*

Held, that a suit can be brought upon an award independently of the summary procedure authorized by section 525 of the Civil Procedure Code 1882, at any period which the law for the limitation of suits permits, and a decree made in such a case is appealable though there would be no appeal from a similar decree made in the summary proceedings under Chapter XXXVII of the Code. WAZIR ALI *v.* SHEIKH MALKYAR.
34 P R 1910

63. *Probate and Administration Act, V of 1881, section 86—Appeal from interlocutory order—Revision—Ground for.*

Where upon an application being made for letters of administration under the Probate and Administration Act (V of 1881), it was objected that the District Judge had no jurisdiction to entertain the application and that officer decided against the objection—

Held, that no appeal lay from the order of the District Judge under section 86 of the Act, inasmuch as the order was not one made by the District Judge by virtue of the powers expressly conferred upon him by the Act.

Held also, that the order being an interlocutory one on point of jurisdiction no revision lay in the Chief Court. SHIB DIT SINGH *v.* DEVINDAR SINGH.
70 P R 1910

64. *Execution of decree—Application by judgment-debtor to set aside sale after the auction sale had taken place—Refusal of such application—Appeal—Civil Procedure Code Act V of 1908, Order XXI, rules 83 and 89, and Order XLIII, rule 1 (j).*

Held, that an application made by the judgment-debtor to have a sale of immovable property set aside after the auction sale had taken place without, at the same time, making a deposit, does not fall within the purview of either rule 83 or rule 89 of Order XXI of the Civil Procedure Code, 1908, and consequently under Order XLIII, rule 1 (j) an appeal does not lie from the order of the First Court refusing to set aside the sale.—GHANIA LAL *v.* POHL MAL.
72 P R 1910

II.—APPEAL, COMPETENCY OF —*contd.*

65. *Civil Procedure Code, 1908, Order XLIII, rule 1 (u)—Order of remand under section 562, Civil Procedure Code, 1882—Appeal—Punjab Courts Act, XVIII of 1884, section 70 (1) (b)—Revision.*

Held, that under Order XLIII, rule 1, clause (*u*), Civil Procedure Code, 1908, no appeal lies to the Chief Court from the order of the Divisional Judge, remanding a case under section 562 of the Code of Civil Procedure, 1882, in a case where an appeal would not lie from the final decree of the Divisional Judge.

Held, also that in the circumstances of the case the Court must decline to interfere with the order of remand under clause (*b*) of section 70 (1) of the Punjab Courts Act, 1884. ALI BAKHSH *v.* CHUHAR SINGH.
101 P R 1910

66. *Held*, that no appeal lies, as of right, to the Chief Court from an order passed by the Divisional Court upon an application made by the Deputy Commissioner under section 21A (2) of the Punjab Alienation of Land Act for revision of the order of an executing Court sanctioning the sale of the judgment-debtor's mortgage rights in agricultural land to the decree-holder. ASA SINGH *v.* BUTA, etc.
12 P R 1911

See CASE UNDER PUNJAB ALIENATION OF LAND ACT.

67. *Suit for share of offerings.*

Held, that the suit was in the nature of a Small Cause, and as the value of it was less than Rs. 1,000 no appeal lay under section 70 (1) (*b*) of the Punjab Courts Act. SARDAR ARUR SINGH *v.* DAYAL SINGH.
20 P R 1911

68. *Held*, that no appeal lies from an order made under section 206, Civil Procedure Code, 1882, amending a decree not in conformity with the judgment, but that an appeal lies from this amended decree. BAWA SINGH *v.* LUCHMAN SINGH.
24 P R 1911

69. *Held*, that no appeal lies from an order refusing to entertain a plea. KASHI NATH *v.* NATHU RAM.
41 P R 1911

70. *Appeal from order of remand under order XLI, rule 23, Civil Procedure Code, 1908,—section 105 and Order XLIII, rule 1 (u)—Punjab Courts Act, XVIII of 1884, section 40.*

There were 3 appeals before the Chief Court against orders of remand by the Divisional Judge under order XLI, rule 23, Civil Procedure Code, 1908, *viz.*,

(1) in a land suit of jurisdictional value of Rs. 707-2-0;

(2) in a pre-emption case of jurisdictional value (*i.e.* 30 times *jama*) of Rs. 406-10-6;

(3) in a small cause suit, value Rs. 1,170.

In all these three cases a further appeal would lie to the Chief Court under section 40 of the Punjab Courts Act, if the Divisional Judge's decree varied or reversed, otherwise than as to costs, the decree of the Court below and not otherwise.

II.—APPEAL, COMPETENCY OF —*contd.*

Held, that as it was impossible to say whether the decree which might have been passed by the Divisional Judge, had he not remanded the case, would have "varied or reversed otherwise than as to costs," the decree of the Court below and whether a further appeal would lie or not from the Divisional Judge's decree, no appeal lay under order XLIII, rule 1 (*u*) of the Civil Procedure Code, against the orders of remand in these three cases. FAIZ AHMAD *v.* BADAR DIN.
50 P R 1911

III.—COURSE OF APPEAL.

1. *Orders under Act XXVII of 1860.*

Held, that an appeal from the order of a Deputy Commissioner granting a certificate under Act XXVII of 1860 lies to the Chief Court, and not to the Commissioner. *Adjoodia Pershad* v. *Juggannath (No. 50 of 1868, Civil)*. But, *held*, after the passing of the Punjab Appeals Act (VII of 1868) and following Book Circular No. IX of 1869, that such appeal lies to the Commissioner. MOOL CHUND *v.* LAL CHUND.
50 P R 1871

2. *Act IX of 1861—Custody of children.*

The principal Civil Court of original jurisdiction, referred to in section 1 of Act IX of 1861, is the Court of the Deputy Commissioner from whose decision an appeal lies direct to the Chief Court, and not to the Commissioner. FIROZ *v.* RAMDITTA.
106 P R 1876

3. *Order refusing to grant certificate under Act XXVII of 1860.*

Held, that an appal lies to the Chief Court from an order refusing to grant a certificate under Act XXVII of 1860 to any of the contending claimants. MUSSAMMAT GUJRI *v.* NATHA SINGH.
117 P R 1881

4. *Appellate Court reversing judgment of first Court for want of jurisdiction—Order—Decree—Act X of 1877, sections 2, 588 (6), 589.*

Where the Appellate Court (the Judicial Assistant) reversed the order of the first Court on the ground that the value of the property in suit exceeded the value of suits which that Court was competent to try, and further returned the case to plaintiff in order that he might present it to the proper Court, *held*, that the appeal from the judgment of the Judicial Assistant lay to the Commissioner, and not to the Chief Court, such judgment not being merely an order as described in clause 6, section 588 of the Civil Procedure Code, and therefore appealable to the Chief Court under the last clause of section 589, but a decree disposing of the appeal. GURANDITTA *v.* JAGGU SHAH.
185 P. R. 1882

5. *Civil Procedure Code (Act X of 1877), sections 353, 588 (17), and 589—Order revers-*

ing on review previous order granting appellant priority in distribution of assets of insolvent—Appealable order.

An order reversing on review of judgment a previous order granting the appellant's priority in the distribution of assets of an Insolvent in proceedings conducted under Chapter XX of the Civil Procedure Code, *held*, to be an order passed on an application such as is contemplated by the second clause of section 353 of the Code, and therefore to be appealable under section 588 (17), the appeal lying, under section 589, to the Chief Court. ALLIANCE BANK OF SIMLA *v.* WALSH.

66 P R 1883

6. *Civil Procedure Code (Act XIV of* 1882), *sections* 586, 588 (27)—*Appeal from order refusing to re-admit appeal dismissed for default in suit cognizable by Small Cause Court.*

An appeal lies to the Chief Court under clause (27) of section 588 of the Civil Procedure Code from an order of an Appellate Court refusing to re-admit an appeal dismissed for default; and is not affected by the provisions of section 586 of the Code, which exclude a second appeal in suits of the nature cognizable by a Small Cause Court. MUSSAMMAT KAHNO *v.* SOHEL SINGH.

100 P R 1883

7. *Order in execution by Munsiff in suit other than Small Cause not exceeding Rs.* 500 —"*Decree*"—*Act XVIII of* 1884, *section* 39 —*Civil Procedure Code (Act XIV of* 1882), *sections* 2, 540.

Where in execution of a decree for Rs. 1,250, payable by instalments, an Extra Assistant Commissioner having the powers of a Munsiff passed an order which was a "decree" within the definition in section 2 of the Civil Procedure Code, *held*, that under section 39, Act XVIII of 1884, the appeal from such decree lay to the Divisional Judge, and not to the District Judge, it not being a decree in a suit cognizable by a Court of Small Causes not exceeding Rs. 500 in value. TULSI RAM *v.* GOBIND.

115 P R 1886

8. *Punjab Courts Act (XVIII of* 1884), *section* 39—*Order passed by Munsiff in execution of decree in suit not cognizable by Small Cause Court—"Decree"—Civil Procedure Code (Act XIV of* 1882), *section* 2—*Course of appeal.*

Held, that the appeal from an order of a Munsiff passed in execution of a decree in a suit other than a small cause, which order falls within the definition of a "decree" in section 2 of the Civil Procedure Code, lies to the Divisional Court, and not to the Court of the District Judge, under Section 39 of the Punjab Courts Act, 1884. MUKAND LAL *v.* HARBHAJ RAI.

4 P R 1887

9. *Act XL of* 1858, *section* 28—*Subject-matter—Course of appeal.*

Held, by the Full Bench, that there is only one appeal from orders passed under Act XL of 1858, and that such appeal lies to the Chief Court or to the Divisional Court according as the subject-matter does or does not exceed Rs. 5,000 in value. FIRDAUS KHAN *v.* BAHRAM KHAN.

32 P R 1887 F B

10. *Order passed in execution of decree in small cause—Decree giving effect to compromise dealing with immoveable property —Course of appeal.*

On an application for revision of an order passed in execution proceedings it appeared that the original decree in the suit was intended by the Court to give effect to a compromise made between the parties which had been fully recorded under section 375, Civil Procedure Code, and which included a mortgage by way of "*lekha mukhi*" from defendant to plaintiff of certain lands for the payment of the sum acknowledged to be due, but that the suit in which such decree was made was one of a nature cognizable by a Small Cause Court, and under Rs. 500 in value.

Held, that as any appeal from the decree in the original suit lay to the District Court under clause (1) of section 40 of the Punjab Courts Act, and not to the Divisional Court, the nature and value of the suit rather than of the decree determining the Court of appeal, it followed that the appeal from an appealable order made in execution of the decree lay to the same Court. TOLA RAM *v.* DEVI DITTA.

55 P R 1887

11. *Act IX of* 1887, *Schedule II, clause* 38—*Suit for arrears of maintenance—Punjab Courts Act (XVIII of* 1884, *and XIII of* 1888)—*Jurisdiction of District Judge—Unclassed suit.*

Under Act XVIII of 1884, a District Judge was not competent to hear an appeal in a suit for arrears of maintenance, such suit not being cognizable by a Small Cause Court (clause 38, Schedule II, Act IX of 1887). Act XIII of 1888 has, however, made a change in the law inasmuch as a suit for maintenance is according to it an unclassed suit, and the appeal will, subject to the other provisions of the Act as to value, lie to the District Judge. DHIRTA *v.* NIHAL DEVI.

123 P R 1889

12. *Succession Certificate Act,* 1889, *sections* 19, 26—*Investiture of inferior Courts with jurisdiction of District Court—Punjab Government Notification No.* 570, *dated 4th November* 1889—*Punjab Courts Act,* 1884, *section* 23, *proviso (b).*

Appeals from all orders under section 7 of the Succession Certificate Act, 1889, whether passed by a District Judge or a Subordinate Judge in the Punjab, lie to the Divisional Court and not to the Chief Court under Government Notifications Nos. 570 and 571 of 4th November 1889. TIKAYA MAL *v.* LAUNGA MALIK.

124 P R 1890

13. *Share in well for irrigating agricultural land—Land-suit—Course of appeal.*

A suit for a share in a well sunk for the purpose of irrigating agricultural land is a "land-suit," and the course of appeal is to the Divisional Court.

The land on which the well is sunk is used "for purposes subservient to agriculture," and the well itself is a "structure on such land," within the definition of "land" in section 4, sub-section (1), Punjab Tenancy Act, 1887. IMAM DIN *v.* MAHKU.

62 P R 1891

14. *Jurisdiction—Suit for redemption of mortgage—Course of appeal—Punjab Courts Act, section* 39.

The plaintiffs instituted a suit for redemption of certain property from mortgage, fixing the mortgage debt at Rs. 43-12-0.

While the suit was pending in the Court of a Munsiff, 2nd class, the plaintiffs amended their plaint to one for redemption on payment of Rs. 43-12-0, or such other sum as the Court might determine.

The defendants pleaded that Rs. 681 was the amount of the mortgage debt.

The Munsiff decreed redemption on payment of Rs. 63-14-0.

Held, that the appeal from the Munsiff's decree lay to the Divisional Court and not to the District Judge.

The jurisdiction is to be determined with reference to the claim made, and not to the decision upon the claim, and when once the appeal had been properly instituted in the Divisional Court, it was immaterial that that Court found less than Rs. 100 to be due, and such finding did not oust its jurisdiction.

The value of the suit was not altered by the plea of the defendants. (No. 169 *P. R.*, 1888). HAZARA SINGH *v* LAL SINGH.

63 P R 1891

15. *Punjab Courts Act, section* 39 *(b) and (c), Value of suit—Mesne profits—Course of appeal.*

The plaintiffs sued for mesne profits alleged to have been realised by a Receiver. The plaintiffs, for the purposes of section 50, Civil Procedure Code, valued the relief sought approximately, at Rs. 2,000. They were decreed Rs. 3,405-15-6, and they appealed for Rs. 1,946 more. The defendants also appealed against the whole decree.

Held, that the appeal from the District Judge's decree lay to the Divisional Court and not to the Chief Court.

No. 63 *P. R.*, 1891, referred to. SARDAR KIRPAL SINGH *v.* NAWAB KHAN.

40 P R 1892

16. *Jurisdiction—Suit for redemption of mortgage—course of Appeal—Punjab Courts Act,* 1884, *section* 39.

Plaintiff sued for redemption of an $\frac{11}{30}$th share of a mortgage of certain lands and houses for a total sum of Rs. 10,500, alleging that Rs. 2,000, more or less were due upon the said share, and prayed for a decree for redemption on payment of any sum which might be found to be due thereon

after proper adjustment of the accounts. Defendants pleaded that about Rs. 10,000 were due upon the said share and the first Court decreed redemption upon payment of Rs. 7,558. Plaintiff appealed to the Divisional Judge, who entertained the appeal, and, in modification of the decree of the first Court, allowed redemption upon payment of Rs. 3,850. The question referred to the Full Bench was whether the Divisional Judge had jurisdiction to hear the appeal.

Held, by the Full Bench, that the Divisional Judge had jurisdiction to hear the appeal, there being nothing upon the plaint to show that the value of the suit exceeded Rs. 5,000, and the question of jurisdiction having to be determined with reference to the claim made and not to the decision upon the claim. 44 *P. R.*, 1888 (F. B.), 169 *P. R.*, 1888, 91 *P. R.*, 1889, and 63 *P. R.*, 1891, cited. 56 *P. R.*, 1892 (F. B.), explained. MUHAMMAD KHAN *v.* ASHAK MOHAMMAD KHAN.

106 P R 1895 F B

17. *Decree directing registration of mortgage deed—Appeal, Registration Act, 1877, section 77—Further appeal—"Land-suit."*

Plaintiff sued under section 77 of the Registration Act, 1877, for a decree directing registration of a deed whereby certain land was mortgaged for Rs. 199. The suit was decreed in the first Court and the deed was duly registered, but subsequently the Divisional Judge, on appeal dismissed the suit. Plaintiff, thereupon preferred a further appeal to the Chief Court, and it was contended, on his behalf, that no appeal lay from the decree of the first Court, and that, even if an appeal did lie, it must be infructuous, as the document had been already registered and there was no provision of law for the cancellation of registration once effected. For the defendant it was objected that a suit under section 77 of the Registration Act was not a "land-suit" within the terms of section 3 (2) of the Punjab Courts Act, 1884, and that, therefore, no further appeal lay from the decree of the Divisional Court.

Held, that an appeal lay to the Divisional Court from the decree of the first Court, and that the fact that registration had already been effected under that decree was no bar to such appeal being heard.

Held, further, that inasmuch as the mortgage operated to create an interest in land, a suit under section 77 of the Registration Act to secure legal efficacy for the mortgage transaction, was a suit "relating to a right of interest in land," and that, therefore, a further appeal lay to the Chief Court. DEVI DITTA *v.* AHMAD KHAN.

43 P R 1896

18. *Civil Procedure Code, 1882, section 622—Punjab Courts Act, 1884, sections 40,70—"Rules and Orders of the Chief Court," No. LV, Rule IV—Unclassed suit of less than Rs. 100 in value—Appeal.*

Section 70 of the Punjab Courts Act, 1884, must be read specially in connection with proviso (*ii*) to sub-section (*i*) of section 40 of that Act, and generally with the whole of the latter section. Its object is to provide that no application for revision under section 622, Civil Procedure Code, should be entertained until the procedure laid down in clause (*d*) of sub-section (*i*) had been complied with, and a certificate refused by the Divisional Judge. Until this is done, it is not to be held that no appeal lies.

The use of section 70 is now limited to cases in which an application for revision from the order refusing a certificate is not made within the time prescribed by sub-section (*ii*) of section 40 of the Punjab Courts Act, 1884.

In an unclassed suit of less than Rs. 100 in value an appeal lies to the District Judge, and the Divisional Judge, though the superior Court, is not competent to entertain an appeal *direct* from the first Court in such a suit. SALIG RAM *v.* MUNICIPAL COMMITTEE, SONEPAT

86 P R 1896

19. *Appeal, course of—Provincial Small Cause Courts Act (IX of 1887), Schedule II, Article 4.*

A suit for possession of immovable property being excepted under Article (4) of the Second Schedule of the Provincial Small Cause Courts Act from the jurisdiction of a Court of Small Causes, a suit to recover Rs. 200, the price of materials of a house, and also to obtain possession of a small plot of building, is not a "small cause suit" within the meaning of section 3 of the Punjab Courts Act, and not being a "land-suit" must be an unclassed suit, and under section 39 of the Punjab Courts Act, the appeal from the decree of a Munsif lies to the Divisional Court and not to the Court of the District Judge. JOWAHIR MAL AND OTHERS *v.* FATTU MAL.

60 P R 1900

20. *Application for recovery of mesne profits which accrued between the date of decree and of delivery of possession—Jurisdiction—Value of suit—Course of appeal—Punjab Courts Act, 1884, section 39.*

Held, that when an appeal from the decree in the original suit lay to the Divisional Court, the appeal from an order in execution of that decree lay to the same Court, and the fact that the decree-holder wrongfully claimed in execution proceedings mesne profits in excess of the appellate jurisdiction of that Court does not oust that Court's jurisdiction. *Tola Ram* v. *Deviditta* (55 *P. R.*, 1887), and *Sardar Kirpal Singh* v. *Nawab Khan* (40 *P. R.*, 1892), cited. KHAZAN SINGH AND OTHERS *v.* KHUSHAL SINGH AND OTHERS.

29 P R 1902

21. *Appeal—Appeal from order granting a review of judgment—Small Cause Court suit valued at less than Rs. 500—Civil Procedure Code, 1882, section 629.*

Held, that under section 629 of the Civil Procedure Code, an appeal from the District Judge's order granting a review of judgment in a small cause, valued at less than Rs. 500, lies to the Chief Court, though an appeal from the final decree would be barred. *Gayanand Asram* v. *Bepin Mohan Sen* (*I. L. R., XXII Calc.*, 734), *Ghulam Husain Muhammad* v. *Sayad Musa* (*I. L. R., VIII Bom.*, 260), and *Bhai Wazira* v. *Chuhar Mal* (85 *P. R.*, 1895), cited. *Mahadeo Narsukh* v. *Ragho Keshao* (*I. L. R. VII Bom.*, 292), *Chaudhri Ranjit Singh* v. *Jafar Ali Khan* (*I. L. R., III All.*, 18), *Gosaon* v. *Nanak* (79 *P. R.*, 1890), *Dharam Singh* v. *Dewa Singh* (62 *P. R.*, 1895), *Hansraj* v. *Jhandu Mal* (7 *P. R.*, 1890), *Baroda Charn Ghose* v. *Gobind Prashad Tewai* (*I. L. R., XXII Calc.*, 984), *Harnandan Sahai* v. *Behari Singh* (*I. L. R., XXI Calc.*, 3, and *Gopal Das* v. *Ala Khan* (*I. L. R., XI All.*, 383) referred to. ASA *v.* GOPAL DAS.

33 P R 1902

22. *Appeal—Course of, in a suit for mesne profits where the value of the subject matter in dispute is less than Rs. 500—Provincial Small Cause Court Act, 1877, Schedule II, Article 31.*

Held, by the Full Bench, that a suit for damages sustained by plaintiff on account of his having been kept out of possession of two-thirds of a house purchased by him at an auction sale by the defendant (who was owner of the remaining third) and prevented by her from access to it for twenty-five months, did not fall within the purview of clause 31, Schedule II of the Small Cause Court Act, 1887, and was of a nature cognizable by Courts of Small Causes, and that therefore the appeal lay to the District and not to the Divisional Judge. *Kunjo Behari Singh* v. *Madhab Chandra Ghose* (*I. L. R., XXIII Calc.*, 884), *Seshagiri Ayyar* v. *Marakothammal* (*I. L. R., XXII Mad.*, 196), *Dul Singh* v. *Bhupa* (80 *P. R.*, 1896), and *Ishar Singh* v. *Wosawa Singh* (94 *P. R.* 1900), cited. *Antone* v. *Mahadev Anant* (*I. L. R., XXV Bom.*, 85), and *Nizam* v. *Joti Mal* (119 *P. R.*, 1894) disapproved. MUSSAMMAT KISHEN KOUR *v.* TULSA SINGH.

35 P R 1902 F. B.

23. *Civil Procedure Code, 1882, sections 562, 588 (28)—Appeal from order of remand—Completion of proceedings under remand order.*

Held, that under section 588 (28), Civil Procedure Code, an appeal lies from an order of remand under section 562, and the mere fact that such order has been carried out by the Lower Court does not bar the jurisdiction of Chief Court to entertain the appeal. JAG LAL *v.* SHIB LAL.

37 P R 1902

24. *Value of suit—Suit for dissolution of partnership and rendition of accounts—Suits Valuation Act, 1887, sections 8, 11—Course of appeal—Punjab Courts Act, 1884, section 39.*

The plaintiffs sued for dissolution and winding up of a partnership, rendition of accounts by the defendants and a decree for such sums as the plaintiff may be found entitled to against the parties. They valued the claim approximately at Rs. 2,000, but were decreed Rs. 6,410 by the District Judge.

III.—COURSE OF APPEAL—*contd.*

The defendants appealed to the Divisional Judge, who modified the decree on certain points. On further appeal to the Chief Court it was objected that the Divisional Judge had no jurisdiction to hear the appeal, which lay to the Chief Court.

Held, that as the value of a suit means the value of the subject-matter of such suit, which in the present case exceeded Rs. 5,000, the appeal lay to the Chief Court, and that therefore the decree of the Divisional Judge was without jurisdiction. *Ibrahimji Issaji* v. *Bijanji Jamsedji* (*I. L, R., XX Bom.*, 265), *Harnam Singh* v. *Kirpa Ram* (1) *P. R.*, 1887, *F. B.*), *Hazara Singh* v. *Lal Singh* (63 *P. R.*, 1891) *Bhag Mal* v. *Mohra* (169 *P. R.*, 1888), *Budha* v. *Muhammad Khan* (20 *P. R.*, 1879, *and Khuda Yar* v. *Wahab Din* (35 *P. R.*, 1901) *cited*. *Sardar Kirpal Singh* v. *Nawab Khan* (40 *P. R.*, 1892), *Fateh Muhammad Khan* v. *Moham Lal* (86 *P. R.* 1892), distinguished. MAMAN MAL *v.* ABDUL AZIZ.
58 P R 1902

25. *Land suit—Suit to establish title with reference to a mortgage-deed of land—Course of appeal—Punjab Courts Act*, 1884, *section* 3 (2).

Held, that a suit to establish title with reference to a mortgage-deed of land, and to declare it not to be subject to attachment is a land suit, and the course of appeal is to the Divisional Court. *Devi Ditta* v. *Ahmad Khan* (43 *P. R.*, 1896), *cited*. *Mela Mal* v. *Mela Mal* (88 *P. R.* 1888), referred to. HIRA MAL *v.* BHAWANI RAM.
64 P R 1902

26. *Punjab Courts Act*, 1884, *section* 40 *—Land suit—Value of suit—Appeal—Suits Valuation Act*, 1887, *section* 4.

In two suits by pre-emptors the market value of the properties sought to be pre-empted were found in each case by the Courts to be more than Rs. 250, and in a suit by a mortgagee the decree in his favour fixed a sum more than a thousand rupees (Rs. 1,000) as the amount to be paid by the mortgagor on redemption. In all three cases the value of the suits as laid by the plaintiffs was by the rules in force under the Suits Valuation Act for amounts less than those required by clauses (*a*) (1) or (*b*) (1) of section 40 of the Punjab Courts Act, to entitle the parties to an appeal to the Chief Court.

Held, that as all the decrees involved directly claims to, or respecting properties in, the pre-emption cases of the values of Rs. 250 and upwards and in the redemption case of more than Rs. 1,000, an appeal lay in each case to the Chief Court under clauses (*a*) (1) and (*b*) (1) of section 40 of the Punjab Courts Act. *Bhag Mal* v. *Mohra* (169 *P. R.* 1888), *Lachman Das* v. *Hakim Singh* (94 *P. R.*, 1890), *Bakhu* v. *Jhandu* (145 *P. R.*, 1892), *Gul Muhammad Khan* v. *Khan Ahmad Shah* (29 *P. R.*, 1893), *Kanshi Ram* v. *Sujan Singh* (132 *P. R.*, 1893), *and Nanha* v. *Kura* (3 *P. R.*, 1896), referred to. GHULAM GHAUS *v.* NABI BAKHSH.
24 P R 1903

III.—COURSE OF APPEAL—*concld.*

27. *Appeal in cases under Land Acquisition Act—Appeal from order passed in execution of decree under Rs.* 5,000.

Held, that in cases under the Land Acquisition Act an appeal lies exclusively to the Chief Court against any appealable order of a Court of whatever status passed either on the original side or in execution proceedings, the value of the claim involved being immaterial. ZAMINDARS OF DHAR *v.* RANA.
53 P R 1906

28. An appeal from an order passed by a District Judge under the Lunacy Act, XXXV of 1858, where the property involved exceeds Rs. 5,000 in value lies to the Chief Court. MUHAMMAD YAR *v.* ILAHI BAKHSH.
94 P R 1906

29. *Suit for compensation for diversion of a water-course—Appeal—Course of—Punjab Courts Act*, 1884, *section* 39 (*a*).

Held, that in a suit for compensation for diversion of course of water where the value of the subject matter in dispute is more than Rs. 100 an appeal lies under section 39 (*a*) of the Punjab Courts Act to the Divisional Court and not to the Court of the District Judge. LEHNA SINGH *v.* HIRA SINGH.
134 P R 1906

30. *Suit for possession of* ghair-mumkin *land attached to a well—Land suit—Appeal—Punjab Tenancy Act*, 1887, *section* 4 (1).

Held, that a suit for possession of *ghair-mumkin* land outside the *abadi* and attached to a well upon which *khurlies* are built and *bhusa* is stacked is a land suit as defined in section 4, sub-section (1) of the Punjab Tenancy Act 1887, and that therefore the course of appeal is to the Divisional Court and not to the Districtt Court. GANDU SINGH *v.* NATHA SINGH.
12 P R 1907

31. *Insolvency—Application to be declared insolvent—Rejection of application—Value of subject matter over Rs.* 5,000*—Appeal—Course of—Civil Procedure Code*, 1882, *sections* 351, 588 (17) 589.

Held, that an appeal against an order passed by a District Judge under section 351, Civil Procedure Code, 1882, refusing an application to be declared an insolvent lies by virtue of Punjab Government Notification No. 940, dated 24th October 1888, without regard to the value of the subject-matter involved, to the Divisional Court. RAJA RAM *v.* PRABH DYAL.
98 P R 1908

32. *Provincial Insolvency Act*, 1907, *section* 46 (1)*—Appeals in the Punjab lie to the Divisional Court.*

Held, that under Punjab Home Department, Judicial Notification No. 889 of the 18th November 1908, appeals under section 46 (1) of the Provincial Insolvency Act 1907, from orders made in exercise of insolvency jurisdiction by a Court subordinate to the Divisional Court lie to that Court. MANSA *v.* NATHU, etc.
3 P R 1911

IV.—APPEAL IN ARBITRATION CASES.

1. *Appeal from refusal to remit.*

The omission of a Court to remit an award which determines matters not referred to arbitration cannot be urged on appeal, section 323, Civil Procedure Code, is permissive, not obligatory. CHOOHUR SINGH *v.* JEET SINGH.
64 P R 1870

2. *Act VIII of* 1859, *section* 326.

An appeal does not lie from an order passed under section 326, Civil Procedure Code —(relating to filing in Court agreements to refer). PIR BAKHSH *v* JUMAL. **80 P R 1870**

3. Plaintiff sued defendant upon an account stated, and the matter was referred under the Procedure Code to arbitration. The arbitrators made an award in favor of plaintiff which was followed by a decree in the original Court. The Lower Appellate Court set aside the award and dismissed the suit as being barred by limitation.

Held, that the parties having referred the whole matter with the question of limitation to arbitration, and no objection on the ground of limitation being apparent on the face of the award the decree following the award was final. SHAMA *v.* AZIM. **2 P R 1875**

4. *Arbitration—Appeal from order setting aside an award.*

An appeal lies from an order of a Court setting aside an award for misconduct or corruption ; that is, when a party appeals on the merits, he is entitled also to urge that the lower Court should not have set aside the award, and the Appellate Court can determine the question and uphold the award if it considers it was set aside for insufficient cause. Mussammat BHOI *v.* SHER BAZ KHAN.
59 P R 1875

5. *Act VIII of* 1859, *section* 327.

An appeal lies from an order under section 327, Civil Procedure Code (relating to filing in Court an award when the matter was referred to arbitration without the intervention of the Court), if there has been no reference to arbitration of the matter determined or if the award does not follow the reference unless the parties have ratified the award as made. *Query*—whether an appeal lies when there has been a reference and an award on such reference.

The exercise of the powers conferred by section 327, Civil Procedure Code, is a matter in the discretion of the Court, and a Court should refuse to exercise the powers and refer the applicant to a regular suit, when there is a serious dispute as to the fact of a submission having been made or an award delivered. CHITTU MAL *v.* BHAI GOPAL SINGH.
93 P R 1876

6. *Arbitration—Civil Procedure Code, (Act VIII of* 1859), *section* 325*—Act X of* 1877, *section* 522*—Reference to three arbitrators without provision for award of majority being binding—Effect of—Objections to award—Omission to dispose of—Decree.*

IV.—APPEAL IN ARBITRATION CASES—*contd.*

Plaintiff and defendants executed a written agreement to refer their disputes to three arbitrators without making any provision that the award of the majority should be binding. Plaintiff applied to file the agreement under section 326, Act VIII of 1859, and an order of reference was made and award filed by two out of three arbitrators on 30th August 1877. On 11th October 1877, the date fixed for the next hearing of the case, defendants filed a petition, dated 1st idem, objecting to the award, and praying that it might be remitted, on the ground that the award of two out of three of the arbitrators was not binding. The Court ordered the petition to be filed, and gave judgment the same day in terms of the award, taking no notice of the objection beyond saying that it did not allege corruption. The defendants appealed to the Commissioner, who rejected the appeal as barred by section 522, Act X of 1877.

Held, by the Chief Court, that a judgment in terms of an award has not the attribute of finality unless the proceedings immediately preceding the decree have been strictly regular and all the conditions required by law satisfied; and that the decree having been passed without the Court considering the question raised by defendants, whether there was cause for remitting the award, the appeal was not barred under section 325, Act VIII of 1859, or section 522, Act X of 1877.

Held, further, that the legal effect of an agreement, where there is no provision that the award of the majority, shall be binding is that only a unanimous award is binding. HARDHYAN *v.* MEHR CHAND. **57 P R 1879**

7. *Arbitration—Act X of 1877, section 522—Judgment in accordance with award—Appeal on ground that defendants did not consent to arbitration.*

Held, that where the first Court has passed judgment in accordance with what purports to be an award of arbitrators, an appeal by the defendants on the ground that they did not consent to the arbitration is admissible. NEK MUHAMMAD *v.* AHMED ALI (No. 53 of 1880, Civil) cited. HUSSAN ALI *v.* GHULAM MUSTAFA SHAH. **33 P R 1881**

8. *Arbitration—Appeal against award filed under section 526, Act X of 1877—Grounds for such appeal.*

Held, that an award which omits to determine matters referred or which professes to determine matters not referred or which is so indefinite as to be incapable of execution as a decree of Court is for the purposes of section 525 and section 526 of the Code, no award, and an appeal lies against a decree giving effect thereto. LALA DHARM DAS *v.* AJUDHIA PERSHAD. **70 P R 1881**

9. *First Court setting aside award for misconduct—Civil Procedure Code (Act X of 1877), sections 522, 591—Power of Appellate Court to pass judgment in accordance with award.*

IV.—APPEAL IN ARBITRATION CASES—*contd.*

Held, that where in a case which has been referred to arbitration, the Court has set aside the award on the ground of the misconduct of the arbitrators, and disposed of the case on the merits, an appeal will lie on the whole case, and the Appellate Court can, under section 591 of the Code of Civil Procedure consider whether the award was set aside on insufficient grounds, and if it come to the conclusion that the award was so set aside, can restore the award and pass judgment in accordance with it MUSSAMMAT BHOI *v.* SHER BAZ KHAN (No. 59 of 1875, Civil) approved. SHER JANG *v.* MAIHUN. **72 P R 1881**

10. *Arbitration—Act X of 1877, sections 506, 508, 522—Reference without consent of all the parties to the suit—Award and judgment in accordance therewith—Right of appeal by party consenting to reference—Jurisdiction—Effect of award following on submission to arbitration by some only of the parties to the suit.*

Held, by the Full Bench, that as by the provisions of section 506 of the Code of Civil Procedure the consent of all parties to a suit is a condition precedent to the jurisdiction of a Court to make an order of reference under section 508, therefore if only some of the parties consent, an award made upon such an order is not an award that renders a judgment or decree passed in accordance with it final as regards appeal under section 522, and it is open in such a case to any of the parties who consented to the reference to appeal from the decree on the ground that the award was passed upon an order of reference made without jurisdiction, because consent of some of the parties cannot give the Court a jurisdiction not given to it by law.

But *held* further, by the Division Bench (Plowden and Brandreth, JJ), that where some only of the parties to a suit submit to arbitration (the submission not being conditional upon the consent of the other parties), and an award follows on such submission, the proceedings are not void nor the award a nullity, but the award is good as evidence on behalf of the party in whose favour it is made, and such party is entitled to have a decree which has followed on such award upheld unless the opposite party can satisfy the Court that the award is invalid, that is to say, one to which as it stands the Court cannot or ought not to give effect. CHETO MULL *v.* MAHOO MULL. **4 P R 1882**

Followed in MURTIZA *v.* FAZL DIN. **4 P R 1882 C N**

AMIR *v.* WARIS. **4 P R 1882 C N**

And MUSSAMMAT SALIA BIBI *v.* MUSSAMMAT PIRANDITTI. **57 P R 1885**

11. *Arbitration—Act X of 1877, section 522—Judgment given in accordance with award before expiry of ten days allowed for application to set it aside.*

IV.—APPEAL IN ARBITRATION CASES—*contd.*

The decrees from which no appeal will lie, unless on the grounds specified in section 522 of the Civil Procedure Code, are only the decrees passed upon judgments in accordance with an award given under the provisions of that section.

Where therefore judgment was given in accordance with an award before the ten days allowed for an application to set aside the award had expired.

Held, that such judgment could not be regarded as one under section 522, and was therefore appealable. HURDEO *v.* THANA. **48 P R 1882**

12. *Objection to award on ground of misconduct of arbitrators—Omission by Court to investigate such objection—Finality of judgment in accordance with award—Act X of 1877, section 522.*

The parties to a suit having referred the matter in dispute to arbitration, and an award having been filed, one of the defendants, within the period prescribed by law, filed an objection to the award on the ground of the arbitrators' misconduct, but the Court without investigating such objection passed judgment in accordance with the award. An appeal to the Deputy Commissioner was dismissed on the ground that as no evidence was offered in support of the allegations of misconduct contained in the petition, the application to set aside the award had been rightly refused. It appeared, however, that the defendant was not examined to ascertain whether she could give any evidence in support of her allegations of misconduct, nor apart from the judgment according to the award was there any order on the record refusing the application.

Held, that the Court could not properly have refused the application without enquiry into the allegations made and either ascertaining that the petitioner had no evidence to offer, or hearing her evidence and determining whether any misconduct was established on account of which the award should be set aside, and until it had refused the application, it could not give judgment upon the award under section 522 of the Code.

The Chief Court therefore remanded the case to the Court of first instance that the defendant's application might be disposed of and a fresh judgment passed, if the award was not set aside, according to the award, and if the award was set aside, upon such evidence as might be obtainable. MUSSAMMAT FATTEH *v.* FATTOO. **184 P R 1882**

13. *Arbitration Act X of 1877, section 522—Judgment in accordance with award—Misconduct.*

Where the Court of first instance passed a decree in accordance with an award of arbitrators, after disallowing objections on the ground of corruption put forward by one of the defendants, and on the said defendant's appeal, the lower Appellate Court set aside the award and remanded the case for decision on

IV.—APPEAL IN ARBITRATION CASES—*contd.*

the merits on the ground that he was not satisfied that the arbitrators had acted honestly in making their award, and he was therefore not prepared to accept it, *held*, that as, under the last clause of section 522 of the Civil Procedure Code, no appeal lies from a decree passed in accordance with an award except so far as it is in excess of, or not in accordance with, the award, and no objection of this nature was taken to the decree in the appeal to the lower Appellate Court, the judgment of that Court was therefore passed without jurisdiction and could give no jurisdiction to the Court of first instance to re-open the case. DEWA SINGH *v.* GANDA SINGH.

17 P R 1883

14. *Arbitration—Civil Procedure Code (Act X of* 1877*), section* 522*—Award too indefinite to be capable of execution —Decree not in accordance with award.*

In a suit for ⅛th share in certain property left by the widow of one M. S., in which the defendants pleaded *inter alia* that the houses included in the suit were their own property, the parties agreed to refer the matter in dispute to the decision of four arbitrators, who eventually awarded the plaintiff a ⅓th share in all the houses left by the deceased. The arbitrators on being examined by the Court stated that out of 12 houses in the village, which the defendants claimed as their own, eight belonged to M. S., and the remaining four descended to the defendants from their father : whereupon the Court passed a decree to the effect that plaintiff was entitled to a ⅓th share of the houses left by M. S.

Held, that the case did not come before the Court as one governed by section 522 of the Code, in which no appeal lay, as there was no award in the sense in which that term is used in the Code, of a complete adjudication of the points referred to the arbitrators for decision and one capable of execution, and that therefore an appeal lay both on that ground and also on the further ground that the decree strictly speaking was not in accordance with the award as pronounced. KALA SINGH *v.* DHANNO SINGH. **47 P R 1883**

15. *Arbitration—Reference by one out of three plaintiffs and the defendants—Finality of award—Act X of* 1877, *section* 522*—Ratification by parties who did not join in reference—Estoppel.*

A suit by three plaintiffs, a father and his two sons, having been dismissed by the Court of first instance, all three plaintiffs appealed, and subsequently one of the appellants and the respondents joined in a reference to arbitration, on which an award in the respondents' favour eventually followed, in accordance with which a decree was passed. On second appeal, the two plaintiff-appellants, who did not join in the reference to arbitration, urged that the award did not bind them.

Held, that as the reference did not purport to have been made by all the appellants, the award was not final against any of them,

though it was admissible in evidence against the plaintiff who was a party to the reference. *Cheto Mull* v. *Mahoo Mull* (No. 4 of 1882 Civil, F. B.) cited.

Held further, that to bind the appealing plaintiffs it was necessary to show that they ratified their co-plaintiff's act in referring the appeal to arbitration, or by their conduct induced the defendants to believe that they were consenting parties to the arbitration, though they had not formally joined in the reference, and were therefore estopped from contending that they were not parties to the arbitration : otherwise the reference to arbitration must be set aside as regards them. *Mir Aman-ullah* v. *Chota Mirza* (No. 67 of 1879, Civil), and *Nek Mohamed* v. *Ahmad Ali* (No. 53 of 1880, Civil) referred to. DHERA MAL *v.* MUSSAMMAT KARMDEVI. **109 P R 1883**

16. *Civil Procedure Code (Act X of* 1877), *sections* 506, 508, 522*—Reference to arbitration in absence of one of the defendants—Finality of award following such reference—Appeal by plaintiff as to one portion of subject-matter of award—Validity of award as between parties who joined in the reference —Award separable into parts.*

A reference to arbitration was made in a suit in the absence of B. D., one of the defendants, the plaintiff and the other defendants joining in the reference. The Court of first instance passed a decree in accordance with the award, which dealt with the rights of the parties in three houses, two in Gujrat and one in Lahore. An appeal by the plaintiff to the Additional Commissioner with reference to one of the Gujrat houses, which was held not to be ancestral and to have become the property of B. D. and others by a gift from the late owners, having been dismissed, the plaintiff filed a second appeal in the Chief Court with regard to the same house in which he contended (among other pleas) that the award was not binding, as all the necessary parties did not join in the reference. At the hearing of this appeal it was admitted that B. D. had also appealed to the Additional Commissioner with reference to the house in Lahore, and that the Additional Commissioner had held that he was not bound by the award, and had accepted the appeal and remanded the case with reference to that house, and that against that order there had been no appeal.

Held, that the decree based on the award was not final under Chapter XXXVII of the Civil Procedure Code, as the reference did not comply with the provisions of that chapter, but the parties to the reference were competent to refer the matter in dispute, as between themselves, to arbitration, and having agreed to do so, were bound by the result of the arbitration unless they could show that the award was open to just exceptions. *Cheto Mull v. Mahoo Mull* (No. 4 of 1882 F. B.) referred to.

With regard to the objection that there was an understanding that all parties should

join, and that the plaintiff should not be bound by an award by which B. D. was not bound, *held*, that as the plaintiff must have been aware that B. D. had not signed the application for a reference to arbitration, and it was for him to object, if he did not wish the arbitration to proceed until this defect in the reference had been remedied, and as the award was separable into parts which were independent of each other, this objection could not be allowed to prevail ; though if the award in respect to each house had not been separable from the remainder of the award, as would have been the case if the arbitrators had given the plaintiff his share in the whole property out of one or more of the houses instead of dividing each separately, is would have been a valid ground of objection that B. D. had been allowed to re-open the award as to one portion of the property. HAKAM RAI *v.* JHANDA MAL. **130 P R 1883**

17. *Arbitration—Decree in accordance with award—Appeal by defendants on ground that they did not join in reference—Finality of judgment in accordance with award—Act X of* 1877, *sections* 506, 508, 522.

A decree having been passed in accordance with the award of the majority of arbitrators appointed in the case, some of the defendants appealed, urging *inter alia* that they did not join in the application for reference to arbitration, not having been present when the application was presented, and that their names were entered without their sanction.

Held, that, if the above allegation was correct, there was no reference to arbitration such as is contemplated in Chapter XXXVII of the Code, and an appeal would therefore not be barred. *Cheto Mull* v. *Mahoo Mull* (No. 4 of 1882, Civil, F. B.) followed. AHMAD *v.* MUSSAMMAT BHAGBARI. **170 P R 1883**

18. *Arbitration—Award—Agreement to refer to arbitration—Application to file such agreement—Appeal—Appeal on grounds other than the decree being in excess of, or not in accordance with the award—Civil Procedure Code,* 1882, *sections* 520, 521, 522, 523, *and* 525.

Held, by the Full Bench :

(*i*) That an appeal lies from an acceptance or rejection of an application under section 525, Civil Procedure Code, when the award is illegal *ab initio*, and

(*ii*) That an order rejecting an application under section 523, Civil Procedure Code, is appealable. JHANGI RAM *v.* MUSSAMMAT PUDHO BAI.

84 P R 1901

19. *Arbitration—Award—Decree on judgment in accordance with an award—Appeal—Appeal on grounds other than the decree being in excess of, or not in accordance with, the award.*

Held, that no appeal lies from a decree pronounced under section 522 of the Civil Procedure Code, except in so far as the

IV.—APPEAL IN ARBITRATION CASES—*contd.*

decree may be in excess of, or not in accordance with, the award.

Jhangi Ram v. *Mussammat Budho Bai* (84 P. R., 1901, F. B.), disapproved. GHULAM JILANI AND OTHERS *v.* MUHAMMAD HASSAN.
25 P R 1902 P C

20. *Appeal—Arbitration—Decree in accordance with an award—Civil Procedure Code*, 1882, *section* 522.

Held, that an appeal does not lie from a decree passed upon a judgment given according to an award except in so far as the decree may be in excess of or not in accordance with the award. SITA RAM *v.* DHANI RAM.
92 P R 1903

21. *Arbitration—Award—Decree of Appeal late Court in accordance with award—Finality of decree—Further appeal—Civil Procedure Code*, 1882, *sections* 521, 522, 582.

Held, that when a Court of first instance wrongly sets aside an arbitration award and passes a decree against the terms thereof, and a Court of appeal dealing with the merits of the case comes to the conclusion that the award was not open to any such objections as are contemplated by section 521 of the Code of Civil Procedure, and upon that finding passes a decree strictly in accordance with the terms of the award, such appellate decree is entitled to the same finality as a decree of the first Court would have had under the last paragraph of section 522, and cannot be made the subject of a further appeal.

Pureshnath Dey v. *Nobin Chunder Dutt* (12 W. R., 93), *Mothoora Nath Tewaree* v. *Brindabun Tewaree* (14 W. R., 327), *Rughoobur Dyal* v. *Maina Koor* (12 Calc. L. R., 564), and *Bykunt Nath Mookerjee* v. *Prio Nath Ghose* (22 W. R., 447), considered and dissented from.

Nawab v. *Ahmad Khan* (26 P. R., 1890), *Naurang Singh* v. *Sadapal Singh* (I. L. R., X All., 8), and *Ghulam Jilani and others* v. *Muhammad Hasan* (25 P. R., 1902, P. C.) cited and followed. BAHAR BAKHSH *v.* INAYAT ALI.
89 P R 1904

22. *Appeal—Award, modification of, under section* 518, *Civil Procedure Code—Power of Appellate Court to consider questions of corruption or misconduct of arbitrator—Civil Procedure Code*, 1882, *sections* 518, 522, 588 (26).

Held, that an appeal under section 588 (26) of the Code of Civil Procedure is limited solely to the question of the correctness of the order passed under section 518, and that it is not open to the Court hearing such appeal to enter into the question of corruption or misconduct of an arbitrator except as concerns his having acted *ultra vires*. The word "award" in section 522 includes "award modified under section 518."

Ghulam Jilani v. *Muhammad Hassan* (25 P. R., 1902, P. C.), and *Mussammat Jafri Begam* v. *Syad Ali Reza* (5 Calc. W. N., 585, P. C.) referred to. KALU *v.* KHAIR DIN.
13 P R 1906

IV.—APPEAL IN ARBITRATION CASES—*contd.*

23. *Arbitration—Award—Setting aside award on ground of misconduct—Decree on merits—Competency of Appellate Court to question on appeal the legality of the order setting aside award—Civil Procedure Code*, 1882, *section* 521.

Query.—Whether in a case in which there has been an order of reference to arbitration under section 508, Civil Procedure Code, and an award has been delivered by the arbitrators, but has been set aside by the Court under section 521, and a decree is passed on the merits, it is open to an Appellate Court on an appeal against that decree to consider the question of the legality of the order setting aside the award? SOBHA RAM *v.* RAM DAS.
66 P R 1907

24. *Court-fee on appeal from an order rejecting an application to file an award in Court—Court-fees Act*, 1870, *Schedule I*, *articles* 1, 17.

Held, that the Court-fees payable upon the memorandum of appeal against an order rejecting an application under section 525 to file an award is Rs. 10 under the sixth clause of article 17 and not an *ad valorem* fee in accordance with article 1 of the Court-fees Act, 1870. BHAGAT RAM *v.* PARAS RAM.
84 P R 1907

25. *Arbitration—Award—Order refusing to file private award—Appealability of the order—Civil Procedure Code*, 1882, *section* 526.

Held, that an appeal lies from an order under section 526 of the Code of Civil Procedure, refusing to file an award made between the parties without the intervention of a Court. MUL RAJ *v.* LADHA MAL
100 P R 1907

26. *Arbitration—Agreement to refer to arbitration—Application to file such agreement—Order allowing agreement to be filed—Right of appeal from such order—Civil Procedure Code*, 1882, *section* 523.

Held, that when a Court acting under section 523, Civil Procedure Code, causes an agreement to refer to arbitration to be filed and passes an order of reference thereon, an appeal lies from such order which is a "decree" within the meaning of that expression as defined in the Code. NARPAT RAI *v.* DEVI DAS.
126 P R 1907

27. *Arbitration—Award—Order directing private award to be filed—Finality of such order—Appeal—Revision—Civil Procedure Code*, 1882, *sections* 522, 525, 526.

Held by the Full Bench that no appeal will lie from an order under section 526 of the Code of Civil Procedure directing the filing of an award made between the parties without the intervention of a Court except in so far as the decree may be not in accordance with the award, and equally such an order is not subject to revision on the points on which an appeal would not be allowed. SHANKER MAL *v.* NATHU MAL.
1 P R 1908 F B

IV.—APPEAL IN ARBITRATION CASES—*concld.*

28. *Arbitration—Award—Decree on judgment in accordance with an award—Appeal—Civil Procedure Code*, 1882, *section* 522.

Held that a decree passed in accordance with an award made by an arbitrator is not appealable. HANSRAJ *v.* SUNDAR LAL.
80 P R 1908 P C

29. *Application under section* 525, *Civil Procedure Code*, 1882,—*Award not pronounced at date of application—Decree passed in terms of award—Appeal.*

Held, that notwithstanding that the Court of first instance passed a decree in accordance with the award, an appeal lay to the District Court, as the first Court had dealt with an application which it had no power to entertain and which it should have rejected immediately the fact was made known to it, that the award was not in existence at the date of the presentation of the application. *Bhagwan Singh* v. *Mussammat Ram Kaur* (38 P. L. R. 1906,) distinguished. GOKAL CHAND *v.* MUKHAN SINGH.
80 P R 1909

V.—APPEAL, LIMITATION OF.

1. *Presented beyond time—Ground for admitting.*

The Lower Court rejected the appeal as barred by time. Appellant's excuse was that the file was before the Judicial Commissioner in another case.

Held, a good ground for admitting the appeal. DAS MALL *v.* YAR MAHOMED KHAN.
12 P R 1866

2. Time occupied in applying for review, deducted from time for appealing, where the reviewer's petition was dismissed after notice to the opposite side, without giving notice to the reviewer of the day appointed for hearing his application. CHUNDA *v.* MIHAN.
35 P R 1872

3. *Dismissed as barred by time.*

Orders dismissing petitions of appeal as barred by time, if time had in fact expired, are final as regards appeal. *Hira Singh* v. *Mussammat Bhunee* (No. 2 of 1869, Civil); provided that an opportunity had been given to appellant to explain the delay. MADDAT KHAN *v.* MUKARRAB.
47 P R 1875

4. *Order dismissing appeal as barred by time—Act X of* 1877, *section* 584—*Limitation Act (XV of* 1877), *section* 4—*Appeal when presented.*

Where the Lower Appellate Court dismissed an appeal by a summary order in which it held that the appeal was not presented within the prescribed period, *held*, that such order must be regarded as an informal judgment and decree passed by the Appellate Court, and that therefore a further appeal lay to the Chief Court under section 584, Act X of 1877.

Held, further, *per* PLOWDEN, J. (following the decision in *Punjab Record*, Civil Judgment No. 7 of 1879), that an appeal is

ot presented within the meaning of section 4 of of the Limitation Act of 1877, unless the memorandum of appeal be accompanied by a copy of the decree and *both* be presented within the prescribed period. NIHAL SINGH *v.* ISHAR SINGH. **147 P R 1879**

See also BHAG SINGH *v.* JHANDA SINGH (No. 7 of 1879, Civil).

5. *Appeal in Civil cases—Presentation—Practice—Deposit in a box—"Sufficient cause."*

Where the practice of an Appellate Court as to the mode of receiving appeals had been altered, and it did not appear that the change of practice was known to the appellant, and his appeal was presented within time according to the former practice, but not according to the new practice, *held*, that sufficient cause was shown for admitting the appeal after the period prescribed by law. SUKH DIAL *v.* JAY SINGH. **101 P R 1890**

6. *Suit dismissed for default—Appeal from order of dismissal—Civil Procedure Code*, 1882, *sections* 102, 103, 588 (8)—*Sufficient cause for admitting appeals after time—Limitation Act*, 1877, *section* 5.

An application under section 103 of the Civil Procedure Code must be made within thirty days of the date of the order dismissing the suit, and the Courts have no alternative to dismissing the application if not presented within that period, but this does not affect the appeal from the original order dismissing the suit, such an order having the force of a decree.

Under section 5 of the Limitation Act delay in filing such an appeal can be excused and the period extended, if the Appellate Court is satisfied that the appellant had no notice of the date fixed for the hearing of the original case. *Pandit Rama Kant* v. *Pandit Ragdeo* (60 *P. R.* 1897), referred to. SAHIB DITTA *v.* RODA. **83 P R 1902**

7. *Divorce—Appeal against the order of a Single Bench dismissing an application for dissolution of marriage—Limitation for such appeal—Limitation Act*, 1877, *Schedule II, Article* 151—*Necessity for copy of decree appealed against accompanying a memorandum of appeal—Civil Procedure Code*, 1882, *section* 541.

A petition filed by the appellant for dissolution of marriage having been dismissed by a Single Bench of the Chief Court in the exercise of its original jurisdiction, on the 12th May 1902; an appeal without either a copy of the judgment or decree was filed on the 7th June 1902. The correspondent objected that the appeal was barred by limitation; 1st on account of the appeal having been filed beyond the time allowed by law; and 2nd on account of the want of either a copy of the decree or judgment having been filed with the grounds of appeal as required by section 541 of the Civil Procedure Code. The appellant's counsel urged that, as neither he nor his client were aware of the date on which the judgment was to be delivered or were aware of it until just before the appeal was filed, asked the Court to excuse the delay in filing of the appeal under the provisions of sections 5 and 5 (*a*) of the Limitation Act, and that he might also be allowed to file a copy of the decree and judgment.

Held, (*i*) that as under section 16 of the Punjab Courts Act it was unnecessary for a Judge of the Chief Court to pronounce his judgment in open Court or on a date appointed and announced to the parties, the appellant was not entitled to claim consideration on that account as a matter of right and that as the appeal was filed after the period allowed by article 151 of the Limitation Act, it was barred by time;

(*ii*) that as an Appellate Court could not dispense with the presentation of a copy of the decree appealed against the appeal filed by the appellant was not a good appeal in law;

(*iii*) that when an appeal is filed after it is time-barred and the appellant desires to take the benefit of the provisions of section 5 or 5 (*a*) of the Limitation Act, the cause of the delay should be stated at the time the appeal is filed. C. *v.* C. AND B.

22 P R 1903

8. *Appeal—Presentation of appeal beyond time—Sufficient cause for admitting appeals after time—Limitation Act*, 1877, *section* 5.

Plaintiffs, the daughters of defendant No. 2, instituted a suit for a declaration that defendant No. 1 was not and could not be validly adopted by defendant No. 2, and that certain alienations made by the latter in favour of the former would not affect their reversionary rights. The appellant being a minor was represented by his adoptive mother (defendant No. 2) as his guardian, but at the request of a relation of the minor the Nazir of the Court was subsequently appointed guardian, who at the first hearing stated his inability to produce any evidence owing to the illness of the minor, and again on the adjourned hearing on the ground that the minor who possessed the necessary information had not been to see him. On 30th November 1900 the District Judge gave judgment for the plaintiff. On the 2nd January following the Nazir made an application under section 108, Civil Procedure Code, to have this decree set aside, giving as his reason for failure to produce evidence that the minor had been ill and unable to instruct him. After notice to the plaintiffs on 20th March 1901 this application was rejected on the ground that the decree not being an *ex-parte* one the petitioner's remedy was either to apply for review of the judgment or appeal to the superior Court. The minor on the 17th June 1901 filed an appeal against the original decree to the Chief Court, and in explanation of the limitation having been allowed to expire contended that the period taken up in conducting the proceeding to set aside the *ex-parte* decree should be deducted under section 5 of the Limitation Act. It was also submitted that he being a ward of the Court was engaged from 1st April to 17th May 1901 in getting an order from the District Judge declaring the termination of his adoptive mother's guardianship and that the was also imprisoned by a Criminal Court at the instance of his adoptive mother's agent and was only released on the 13th June, and that, therefore, he was also entitled to a deduction of the time that had intervened between the date he applied to the District Judge for getting himself declared of age to enable him to act for himself and the date of his release from the prison.

Held, that the appellant had shown sufficient cause within the meaning of section 5 and was fully entitled to claim the benefit to that section, and that the appeal though filed after the prescribed period should be admitted to a hearing under the peculiar circumstances of the case. The time occupied in attempting to get the *ex-parte* decree set aside and in conducting proceedings before the District Judge for getting himself declared of age and also the period during which he was imprisoned ought to be deducted in computing the time that had occurred between the date of the judgment and the date on which the appeal was filed.

Karm Bakhsh v. *Daulat Ram* (183 *P. R.*, 1888), *Ranee Birjobuttee* v. *Partab Singh* (8 *Moo I. A.*, 160), and *Cursandas Natha* v. *Ladkavahoo* (*I. L. R., XX Bom.*, 104), cited. *Ardha Chandra Rai Chowdry* v. *Matangini Dassi* (*I. L. R., XXIII Calc.*, 325), distinguished. MAHARAJ NARAIN *v.* MUSSAMMAT BANOJI AND OTHERS. **21 P R 1904**

9. *Appeal—Period of limitation for an appeal under section* 588 (17) *of the Code of Civil Procedure—Punjab Courts Act*, 1884, *section* 43 (1) (*b*).

Held, that the period of limitation for an appeal to a Divisional Court under section 588 (17) of the Code of Civil Procedure is that prescribed by section 43 (1) (*b*) of the Punjab Courts Act, *viz.*, 60 days. MUKANDA MAL *v.* TARA SINGH. **83 P R 1904**

10. *Application for leave to appeal in forma pauperis—Rejection of application—Extension of time granted for payment of Court-fees—Payment of Court-fees after period of limitation—Sufficient cause for not filing appeal within time—Limitation Act*, 1877, *sections* 5, 20.

An application for leave to appeal *in forma pauperis* was presented by the appellant within the prescribed period of limitation. After inquiry as to the alleged pauperism the Judge rejected the petition, but granted him two months' time to pay the Court-fees. The Court-fees was duly paid within the period allowed by the Judge and the appeal was

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admitted. On the date of hearing the respondent pleaded limitation, as at the time the Court-fees was paid the appeal was beyond time.

Held, that the appeal was not barred by limitation. The prosecution of an application for leave to appeal as a pauper was sufficient cause within the meaning of section 5 of the Limitation Act for not presenting the appeal in time.

Mussammat Intizam Begam v. *Mussammat Waziran* (47 *P. R.*, 1899), *Raja Ram* v. *Tilok Chand* (50 *P. R.*, 1903), *Jumnabai* v. *Vissondas Rutton Chand* (*I. L. R.*, *XXI Bom.*, 576), and *Bai Ful* v. *Desai Manorbhai Bhavani Das* (*I. L. R.*, *XXII Bom.*, 849), cited and followed.

Bishnath Prasad v. *Jagarnath Prasad* (*I. L. R.*, *XIII All.*, 305), *Abbasi Begam* v. *Nanhi Begam* (*I. L. R.*, *XVIII All*, 206), *Keshav Ram Chandra Deshpande* v. *Krishnarao Vinkatish Inamdar* (*I. L. R.*, *XX Bom.*, 508), and *Aubhoy Churn Dey Roy* v. *Bissesswari* (*I. L. R.*, *XXIV Calc.*, 889), not followed. BUTA *v.* PARMA NAND.

84 P R 1904

11. *Company—Winding-up—Appeal from winding up order—Notice of Appeal—Limitation—Extension of time—Companies Act, 1892, section 169—Applicability of sections 5 and 12 of the Indian Limitation Act, 1877, to period prescribed by section 169.*

Held that an appeal against an order made in the matter of the winding up of a Company under the Indian Companies Act, 1882, ought to be filed with such promptitude as to render service of notice upon the respondent possible within the three weeks allowed by section 169 of the Act, and the Appellate Court will not extend the time for appealing unless the delay is caused either by the conduct of the respondent or by mistakes of the officials of the Appellate Court.

A person appealing under this section should not be allowed to avail himself of an extension by reason of his ignorance of the practice or the comparative novelty of the special procedure prescribed by it.

The provisions of sections 5 and 12 of the Limitation Act, are not applicable to the computation of the period of limitation prescribed by section 169. DAULAT RAM *v.* THE WOOLLEN MILLS COY., LD., DELHI.

95 P R 1908

12. *Appeal—Appeal instituted in wrong Court—Sufficient cause—Carelessness or oversight of appellant or counsel—Limitation Act, 1877, section 5.*

Held under the circumstances of the case, that the presentation of the appeal which was of the jurisdictional value of over Rs. 5,000 to the Divisional Court was not a sufficient cause within the meaning of section 5 of the Limitation Act, 1877.

Mere carelessness or oversight of the appellant or his counsel in presenting an appeal in a wrong Court which, by the exercise of due diligence, could have been avoided, cannot be recognized as a sufficient

V.—APPEAL, LIMITATION OF—*concld.*

reason for delay under this section. SANT SINGH *v.* QAIM.

118 P R 1908

13. *Indian Limitation Act, XV of 1877, section 5—Appeal—Time taken up with review—Sufficient cause.*

Held, that filing a petition for review is not a "sufficient cause" within the meaning of section 5 of the Indian Limitation Act, 1877, for not presenting an appeal within time, unless it is shown that there were reasonable grounds for asking for a review. MUSADI LAL *v.* BADHAWA.

100 P R 1910

VI.—APPEAL, PROCEDURE IN.

1. *Where the Lower Appellate Court dismissed the appeal on the merits in the absence of the appellant, who had failed to appear, and a special appeal was preferred to the Chief Court.*

Held, that the lower Court was bound to dismiss the appeal for default, and the special appeal would not lie. MULLIK SAID *v.* ABBAS.

36 P R 1871

2. *Effect of withdrawal of one of two plaintiffs on appeal.*

H. S. had two wives; *by* the first, he had two sons, A. S. and P. S., and by the second also, two sons, J. S. and G. S. In 1856 A. S. and P. S. separated from J. S. and G. S. In 1858, P. S. died leaving a widow, who took a life interest in her husband's property; A. S. also died leaving two sons, Achra Singh and Sampuran Singh. P. S.'s widow, alienated a portion of the property of her deceased husband. J. S. and Sampuran Singh sued for a declaratory decree protecting their rights as reversioners, and pronouncing the sale invalid as against them. The Lower Appellate Court decided in favour of the claim. On defendants' appeal to the Chief Court, Sampuran Singh withdrew from the suit.

Held, by Boulnois and Campbell, JJ., that as Sampuran Singh had joined in the suit, the sale must be declared void, whether or not J. S. had any *locus standi* as a reversioner and that Sampuran Singh's withdrawal from the case at the last stage could not affect the decree of the Lower Court.

Held, by Lindsay, J., that J. S. was not entitled to sue, inasmuch as a disassociated half-brother had no right during the life of the members of an associated family to question the alienation by the widow of a deceased member of that family, unless the living members sanctioned his action and relinquished their own right. DEWAN KIRPA RAM *v.* SIRDAR JWAHIR SINGH.

19 P R 1874

3. *Appeal dismissed for default—Application for re-admission—Absence of party, not of pleader to be explained—Special appeal.*

In the lower Appellate Court, the appellant and his pleader were both absent on the day fixed for hearing; the appeal was dismissed for default; appellant applied for re-admission, explaining that on the day fixed his son was dangerously ill; the Court re-

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jected the application, recording that, "the fact that the appellant's son was ill did not excuse the pleader for not attending. If appellant has suffered by the dismissal owing to the default of his counsel, he must settle that with him." On special appeal the Chief Could *held*, that it was sufficient for the appellant to explain his own default; he was not bound to account for the non-attendance of his pleader. Case remanded for the Lower Court to decide whether plaintiff's own default was explained, and to proceed accordingly. SUBHAN SHAH *v.* KARM KHAN.

113 P R 1876

4. *Appeal heard on its merits in absence of appellant—Act VIII of 1859, section 346—Act XXIII of 1861, section 35—Act IV of 1866, section 44—Jurisdiction—Review.*

Where a Court was bound, under section 346, Act VIII of 1859, to dismiss an appeal for default of appellant's appearance and instead of so doing, went into the merits and dismissed the appeal *held*, that in hearing the appeal, the Court had exercised a jurisdiction not vested in it by law, and that, either under section 35 of Act XXIII of 1861, or section 44 of Act IV of 1866, the Chief Court could set aside the order dismissing the appeal on the merits. DHARM SINGH *v.* NIZAM DIN.

62 P R 1877

5. *Dismissal for default at Preliminary hearing—Act VIII of 1859, section 346—Act IX of 1873, section 7.*

On 23rd May 1877, appellant filed an appeal in the Judicial Assistant's Court at Umballa, which was ordered to be registered and brought up with the file of the case on 13th June. On that date appellant being absent, the appeal was dismissed for default under section 346, Act VIII of 1859, though no notice had issued to respondents, and the date was only fixed under section 7, Act IX of 1873, for hearing appellant or his pleader in support of his petition of appeal. *Held*, that the order of dismissal was illegal.

An Appellate Court is only competent to dismiss an appeal for default under Section 346, Act VIII of 1859, when a date has been fixed under Sections 344 and 345 for hearing the appeal.

There is nothing in section 7, Act IX of 1873, which renders it obligatory upon an appellant whose appeal has been registered to appear in support of his petition, or which authorizes the Appellate Court to dismiss the appeal for default. KIRPA RAM *v.* JAMNA DASS.

48 P R 1878

6. *Dismissal for default on date of which appellant had no notice—Civil Procedure Code (Act VIII of 1859), section 346.*

The Judicial Assistant, Umballa, fixed the 7th June 1877 for hearing an appeal filed in his Court. On 10th May 1877 the date was altered to 22nd May 1877 and the parties ordered to be informed. On 22nd May 1877, neither party being present, the appeal was dismissed for default, though notice of the change of date had not been served upon

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them. *Held*, that in hearing the appeal on 22nd May 1877, the Judicial Assistant exercised a jurisdiction not vested in him by law. KANHYA *v.* BAHADUR ALI. **61 P R 1878**

7. *Civil Procedure Code (Act X of 1877), section 544—Appeal presented by one of several appellants without a power-of-attorney from others.*

M. S., one of several defendants, presented an appeal on 31st October 1877 against an order, dated 30th August 1877, to the Commissioner's Court, which was returned by the Clerk of the Court on the ground that M. S. held no *mukhtarnama* from the other appellants. The appeal was again presented on 21st November 1877, by G. S. another defendant, who held a *mukhtarnama* from all the defendants, and was rejected by the Commissioner on 22nd November 1877, as being out of time.

Held, that the appeal of M. S. ought to have been received and laid before the Commissioner for orders, and that as the decree of the first Court was against the defendants upon a common ground, it was competent to the Commissioner, under section 544, Act X of 1877 to hear and determine the appeal on its merits on the petition of M. S. alone, and to make an order which should ensue to the benefit of his co-defendants. GANDA SINGH *v.* KISHEN SINGH **6 P R 1879**

8. *Civil Procedure Code (Act X of 1877), section 551—Dismissal of appeal without notice to respondent Court bound to record reasons—Practice—Remand.*

Held, that a Court confirming a decision appealed against under section 551, Act X of 1877, without sending notice to the respondent, is bound to record a statement of the grounds of its order, as well as the order itself.

Where an Appellate Court has omitted to record its reasons for dismissal, the proper course to be pursued is, when it is practicable to do so, to return the case to the Judge who disposed of it for a statement of the reasons of his order, the appeal meanwhile being retained in the Court ordering the remand.

Where the Judge has been removed to another district, the proper order is to reverse the order of dismissal, and direct the appeal to be re-heard, and fresh orders to be passed with reasons for such order by the Judge for the time being of the Court to which the appeal was presented. JIWAN *v.* DHIR SINGH **100 P R 1879**

9. *Civil Procedure Code (Act X of 1877) section 551—Dismissal of appeal in default of appellant's appearance at preliminary hearing.*

Held, that an Appellate Court has no power to dismiss an appeal by reason of appellant's default at a preliminary hearing under section 551, Act X of 1877. AKBAR *v.* HIRA. **139 P R 1879**

VI.—APPEAL, PROCEDURE IN —contd.

10. *Dismissal of appeal on preliminary ground—Cross objection—Act X of 1877, section 561.*

Where the defendant's appeal was dismissed as barred by limitation, sufficient cause not being shown for its not being filed within the 90 days prescribed by law, *held*, that a cross objection filed by the plaintiff (a portion of whose claim only had been decreed by the Lower Court) could not be entertained, as her preliminary objection to the hearing of the appeal having prevailed, the appeal had not been "heard" within the meaning of section 561 of Act X of 1877. THE SECRETARY OF STATE *v.* NONIS. **38 P R 1880**

11. *Objection first taken in appeal to admissibility in evidence of documents not filed with plaint.*

Held, that an objection to the admissibility of the documents sued upon by the plaintiff on the ground that they were not filed with the plaints, the said documents having been admitted by the Court without objection, and the objection not having been taken in the grounds of appeal to the lower Appellate Court, though it was urged in the argument, is not one which can be taken on second appeal. GANESHI LAL *v.* CHUNNI LAL. **74 P R 1882**

S. C. under LIMITATION ACT (XIV OF 1859), S. I. I.

12. *Civil Procedure Code, Act X of 1877), sections 312, 588 (16), 589—Appeal from order rejecting application to set aside sale—Omission to implead auction-purchaser as respondent—Effect of such omission.*

Where in an appeal from an order passed under section 312 of the Civil Procedure Code, rejecting an application to set aside an execution sale, it appeared that the judgment-debtor, the appellant, had not made the auction-purchaser a party to the proceedings, *held*, that the appeal must be dismissed, as the said auction-purchaser was a necessary party in order to enable the Court to effectually adjudicate upon all the questions involved in the application, and as the appellant by his own laches had omitted to serve him with notice under the appeal and as the period for appeal had long since expired, there was no valid reason as against the auction-purchaser for extending the prescribed period, and permitting an amendment of the appeal. MELA RAM *v.* NARAIN DAS. **188 P R 1882**

13. *Appeal from order remanding case under section 562, Civil Procedure Code—Completion of proceedings under remand order during pendency of appeal—Refusal to entertain appeal.*

Where at the hearing in the Chief Court of an appeal from an order of remand under Section 562 of the Civil Procedure Code, it appeared that the said order had been already carried out and a new decree given by the first Court, which was itself under appeal in the Lower Appellate Court, the Chief Court

VI.—APPEAL, PROCEDURE IN —contd.

declined to entertain the appeal from the said order of remand. ALI BAHADAR KHAN *v.* RAJA ALADAD KHAN. **129 of 1884**

14. *Appeal filed against decree inadvertently passed against deceased defendant—Effect of decree passed against non-existing person—Proper order to pass in appeal filed by person calling himself the legal representative of the deceased defendant.*

Plaintiff having obtained a decree in the first Court, the defendant appealed to the Commissioner who eventually accepted the appeal and dismissed the plaintiff's suit. From this decree one N., alleging himself to be the legal representative of the original plaintiff, whose death he set out in his petition of appeal as having occurred four days before the date of the Commissioner's decree, preferred an appeal in the Chief Court, and was met with the preliminary objection on behalf of the defendant-respondent that he had no *locus standi* with reference to his own allegations in the petition of appeal. It was admitted that no step was taken in the Commissioner's Court by either party to bring the name of any representative of the deceased plaintiff on the record, and further it appeared that the appeal filed from the Commissioner's decree was upon the merits, and not for the purpose of setting aside the decree as passed against a non-existing person.

Held, that no effect could be given to a decree passed by a Court against a non-existing person, such a decree being one passed in excess of the Court's jurisdiction, although passed inadvertently without notice of the death of the respondent; that the proper course for the person calling himself the legal representative of the deceased was not to appeal on the merits to the superior Court, and that the objection taken must be allowed and the appeal rejected. BHAI NIHAL SINGH *v.* CHAIT SINGH. **31 P R 1886**

15. *Appeal from order of remand under section 562, Civil Procedure Code (Act XIV of 1882)—Appeal filed after completion of proceedings under remand order—Refusal to hear appeal.*

Plaintiff's claim having been dismissed by the District Judge, he appealed to the Divisional Court who remanded the case under section 562 of the Civil Procedure Code to the District Court for re-decision. Both parties having appeared before the District Judge and asked to be heard, the case was argued and again decided against the plaintiff. Plantiff then preferred an appeal to the Chief Court against the order of the Divisional Bench remanding the case, on the ground that the order under section 562 was not justified inasmuch as the case had not been decided on a preliminary point by the first Court.

Held, that the circumstances of the case were such as to justify the Chief Court in refusing to hear the appeal at the present juncture, and that the appeal should be

VI.—APPEAL, PROCEDURE IN —*contd.*

dismissed with costs, but without prejudice to any appeal which the plaintiff might afterwards bring from an order passed by the Divisional Court in appeal from the second order of the District Judge *Ali Bahadar Khan* v. *Raja Aladad Khan* (No. 129 of 1884, Civil) followed. *Jatinga Valley Tea Co.* v. *Chera Tea Co.* (I. L. R., 12 Calc., 45) distinguished. MUSSAMMAT MEHRAN *v.* FATTEH DIN. **83 P R 1886**

16. *Civil Procedure Code (Act XIV of 1882), sections 562, 588 (28)—Appeal from District Judge's order of remand in Small Cause not exceeding Rs. 500 in value—Finality of such order on merits of the preliminary question—Punjab Courts Act (XVIII of 1884), section 40.*

Where on an appeal in a Small Cause not exceeding Rs. 500 in value, a District Judge remands the case under section 562 of the Civil Procedure Code, the decision given by the District Judge upon the merits of the preliminary question is not open to be attacked upon an appeal against the order under section 562, and the only question open in such appeal is whether the right procedure has been followed in remanding under section 562, Civil Procedure Code. DILAWAR KHAN *v.* DOULAT RAM. **126 P R 1886**

17. *Changing nature of claim in appeal—Refusal to allow.*

The suit as laid in the plaint being one for entry on immovable property upon establishment of proprietary title, the appellant in the Chief Court set it up as one for recovery of possession in right of lien for unpaid dower. The Chief Court refused to allow him to entirely change the nature of the grounds upon which he alleged himself to be entitled to relief. JAFAR ALI *v.* MUSSAMMAT JAMIL-UN-NISSA. **28 P R 1890**

18. *Decree for pre-emption—Civil Procedure Code, sections 214 and 244.*

A successful plaintiff in a pre-emption suit paid part of the purchase money in foreign circle currency notes. The Court in the first instance accepted the notes in payment without any objection, and afterwards allowed the plaintiff two more days to supply currency notes of the Lahore Circle, or other legal tender, which order was complied with.

Held, that the order of the lower Court was correct. Currency notes are money in the ordinary acceptation of the term, although they may be notes of a different Circle from that in which they are tendered. The words "purchase money" are not defined, and there is nothing either in section 17, Punjab Laws Act, or in section 214, Civil Procedure Code, 1882, to put a restricted or technical meaning upon them. *Punjab Record*, No. 70 of 1890, distinguished.

Held, also, that an appeal lay from the order in question under section 244 (*c*), Civil Procedure Code, the order relating to the execution of the decree. IFTIKHAR ALI *v.* SAHIB RAM **[67 P R 1892**

VI.—APPEAL, PROCEDURE IN —*contd.*

19. *Application for revision admitted by Judge in Chambers as a further appeal on ground that there is question of law involved—Punjab Courts Act, 1884, section 40, sub-section (2)—Objection by respondent at the hearing that the appeal ought not to have been admitted as no question of law was involved.*

Held, that when an application for revision has been admitted by a Judge in Chambers as a further appeal on the ground that there was a question of law involved, under section 40, sub-section (2) of the Punjab Courts Act, 1884, the respondents are not bound by such *ex-parte* order, but are entitled to call it in question and show it was erroneous, and that a further appeal did not lie, and was admitted through mistake or misconception.

The Divisional Bench, finding that there was no question of law involved, dismissed the appeal on that ground. FATTEH SINGH *v.* HARNAM SINGH. **80 P R 1894**

20. *Civil Procedure Code, 1882, sections 36, 541—Presentation of memo. of appeal by pleader's clerk—Legal Practitioners' Act, 1879, section 10—"Recognized agent."*

The Code of Civil Procedure does not provide for the delegation by a duly appointed pleader of any portion of his duties to others and, therefore, the presentation of a memorandum of appeal by the clerk of such pleader is not permissible.

Where, however, the appellant personally accompanied the clerk and authorized him to present the memorandum of appeal, *held*, that the presentation was valid, inasmuch as in the Punjab, a person specially authorized by a party to appear and act on his behalf in any particular suit is a recognised agent within the meaning of section 36 of the Code, and it is not necessary that the authorization should be in writing. MULA MAL *v.* ATMA RAM. **6 P R 1896**

21. *Plaint, signing and verification of—Plaint signed and verified by some only of the plaintiffs—Objection to such plaint taken on appeal—Procedure—Civil Procedure Code 1882, sections 51, 578—"Co-Plaintiffs."*

Where, in a suit instituted by four plaintiffs the plaint was signed and verified by two only, but was further verified as being true to his client's knowledge by the pleader for the other two plaintiffs, whose names were added after the verification, it was objected on behalf of one S. S. (who had been impleaded as a co-defendant in accordance with the order of the Appellate Court remanding the case for that purpose) that the plaint had not been signed or verified by all of the plaintiffs and the suit could not be considered to have been instituted on behalf of them. The lower Court, thereupon, fixed an issue regarding the question and finally decided that the plaint had been duly signed and verified, and dismissed the suit as against S. S., but gave a decree against the other defendant, D. S., who appealed therefrom to the District Judge and urged, *inter alia*, that the plaint had not been duly signed or verified. The District Judge held that the

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plaint had not been duly signed; that the verification by the pleader was probably sufficient; that the plaint could not be returned for amendment, and that the suit must be dismissed *in toto*, on the ground that as only two of the plaintiffs had signed the plaint, the suit must be considered as having been instituted on behalf of the four whose names appeared in the plaint, and that when a person sues on behalf of another, and the objection has been taken in the Court of first instance, the suit must be dismissed altogether on appeal. Plaintiffs applied to the Chief Court on the revision side, and it was

Held, that there being no rule that a person named as a co-plaintiff is not to be treated as a plaintiff unless he signs and verifies the plaint, the two plaintiffs who did not sign the plaint were co-plaintiffs from the very first and that, therefore, the two other plaintiffs did not sue on their behalf.

Held, therefore, that the District Judge had erred in dismissing the suit on the ground stated.

Held, further, that although the plaint should have been signed by all the plaintiffs as required by section 51, Civil Procedure Code, and the first Court should, of its own motion, have returned it for amendment, the verification which was made by two of the plaintiffs who were acquainted with the facts of the case, was probably sufficient for the purposes of the said section.

It is the duty of a Court on receiving a plaint to satisfy itself that it has been properly signed and verified, but when once a plaint has been admitted, issues drawn, and one or two judgments passed without any objection having been raised to the informal character of the signing and verification of the plaint, such objections when raised at the eleventh hour should not be attended to if they are of a purely formal character not going to the root of the suit. *I. L. R., XVII, Calc., 580, and Weekly Notes N.-W. P.*, 1896, p. 102, cited. CHANDI MAL *v.* DEWA SINGH. **48 P R 1896**

22. *Execution of decree—Bond given by surety for judgment-debtor—Suit by decree-holder against surety without impleading judgment-debtor—Amendment of plaint—Appeal—Civil Procedure Code, 1882, section 53, clause (b) (ii) and (iii), and section 562.*

Plaintiff in execution of a decree against one D. having attached certain land belonging to the latter, the defendant in the present suit became surety for D. for the payment of Rs. 50 a year. The Tahsildar in forwarding the security to the execution Court recommended that should there be any default by the surety in paying the annual sum, the decree-holder should obtain possession of the land. The execution Court, apparently considering the security sufficient, filed the proceedings and made no orders on the Tahsildar's recommendation. The surety made default in paying the Rs. 50 due for Sambat 1952, and plaintiff sued him in

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respect thereof. The first Court held that D. should have been made a co-defendant and that plaintiff should also have sued for the possession of the land attached by him as aforesaid. It, therefore, returned the plaint for amendment. Plaintiff appealed to the District Judge, who remanded the case under section 562 for decision on the merits.

Held, that as no decree had been passed by the first Court and the appeal to the District Judge was under section 588 (6) of the Civil Procedure Code, the District Judge erred in quoting section 562 of the Code in his order, which should simply have set aside that of the first Court and directed it to decide the case on the plaint as it stood.

But *held*, that the order of the first Court in returning the plaint being wrong, the error in the order of the District Judge was immaterial. JAHAN KHAN *v.* CHANDA SINGH. **59 P R 1896**

23. *Jurisdiction—Value of suit—Course of appeal.*

Plantiff sued for return of an ornament, worth Rs. 726, but pawned for Rs. 400, and offered to pay Rs. 502, the amount to which the debt had run up, and in the alternative asked for a decree for Rs. 224, being the difference between the value of the ornament and the amount of his debt. The suit was tried by a Munsiff of the 2nd class, who gave plaintiff a decree for Rs. 211. Defendants appealed to the District Judge, who held the value of the suit to be above Rs. 500 (the limit of the Munsiff's powers), quashed the proceedings and sent the case for trial to a Munsiff of the 1st class. The latter having dismissed the suit, plaintiff appealed to the Divisional Judge, who refused to hear it on the ground that the appeal lay to the District Judge, the suit being under Rs. 500, in value.

Held, that the order of the Divisional Judge was right, and that the orders of the District Judge refusing to entertain the appeal and of the Munsiff of the 1st class dismissing the suit must be set aside. NIHAL SINGH *v.* UDHO. **62 P R 1896**

24. *Dissolution of partnership—Jurisdiction of Court—Civil Procedure Code,* 1882, *section* 17 (3) *(ii)—Misjoinder of causes of action—No appeal from preliminary decree within fixed period, effect of, as regards appeal from final decree—Representative of deceased partner, liabitity of—Presumption against wrong-doer—Comparison of handwriting by experts.*

Plantiffs instituted a suit in the District Court of Ludhiana for dissolution of partnership, a settlement of accounts and a decree for whatever might be found due to them from defendants, which they stated to be in all probability a sum of Rs. 11,500. They joined as defendants both the remaining partners, and also the representatives of a deceased partner. Defendants pleaded, *inter alia*, that as the parties were all residents of

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Jullundur District, the Court had no jurisdiction to entertain the suit, and that there was a misjoinder of causes of action. The suit having been decreed by the District Court, defendants appealed to the Chief Court.

A preliminary objection by plaintiffs to the effect that inasmuch as defendants had not appealed from the preliminary decree of the lower Court within the prescribed period, the appeal from the final decree was barred, having been overruled.

Held, that as the contract of partnership was entered into by the parties at Ludhiana, where balance sheets of accounts were prepared between the parties, and plaintiffs had a share in a shop there which carried on the same business as the firm of the parties the District Court of Ludhiana had jurisdiction in the suit under section 17 (3) *(ii)* of the Civil Procedure Code.

Held further, that the defendants, whether they were partners or representatives of partners, were necessary parties to the suit as framed, and that, therefore, there was no misjoinder of causes of action.

A representative of a deceased partner is liable to the extent of the deceased's assets in his hands, and this is ordinarily a matter for inquiry in execution of decree, but there is no absolute impropriety in its being decided prior to decree.

The Chief Court finding that the deceased partner had previously to his death removed an unknown quantity of partnership property from the shop at Ludhíana, and that he had died a few days therafter, concluded that his representatives had come into possession of the whole of the property so removed, and further finding that the shop books had come into the hands of the said representatives and were being wilfully withheld by them, held that, in the absence of trustworthy evidence as to the amount of assets in their hands, the defendants were liable to the full extent of the plantiffs' claim.

A comparison of handwriting by experts is generally an unsafe test if it has to stand by itself. JAGNA *v.* GAINDA. **62 P R 1897.**

25. *Appeal and cross-objections—Power of appellant to defeat cross-objections by withdrawing from appeal—Case remanded to lower Appealate Court under section* 562, *Civil Procedure Code—Default of appellant —Proper order for lower Appellate Court to pass.*

The first Court having decreed plaintiff's suit for pre-emption at Rs. 492, plaintiff appealed to the Divisional Court as to the price, and defendant cross-objected that plaintiff's suit had not been filed by a duly qualified agent. The Divisional Court dismissed the suit on the latter ground, whereupon plaintiffs appealed to the Chief Court, which remanded the case to the lower Appellate Court under section 562 of the Civil Procedure Code, for decision as to whether plaintiff's alleged agent had been duly authorised to institute the suit, and for disposal of the appeal if the suit were found to be within

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limitation. At the date fixed for hearing on the remand, plaintiff failled to appear, whereupon the lower Appellate Court passed an order to the effect that the appeal must be dismissed for plaintiff's default, and that, therefore, defendant's cross-objection failed and could not be entertained.

Held, that inasmuch as the case had been remanded by the Chief Court merely in order to give plaintiff an opportunity of proving that his alleged agent was duly authorized to institute the suit, the lower Appellate Court should have held, on plaintiff's default that the previous order of the Divisional Court stood.

Held further, that when once an appeal has come to a hearing, the Court is seized of the appeal, and an appellant cannot in such case defeat a cross-objection by withdrawing from the appeal. MUHAMMAD HUSSAIN *v.* ABDUL RAHMAN. **86 P R 1898**

26. *Civil Procedure Code,* 1882, *sections* 562 *and* 588 (28)*—Appeal from order of an Appellate Court—Preliminary point—Court not bound by findings of fact of Court below.*

Plaintiff sued for possession of certain land mortgaged to him by defendant No. 1, and joined defendants Nos. 2 and 3 as subsequent mortgagees in possession. Defendant No. 1 pleaded relinquishment by plaintiff and produced a receipt; defendants Nos. 2 and 3 pleaded ignorance of plaintiff's mortgage. The first Court without entering into the pleas of defendants Nos. 2 and 3 dismissed the suit on the ground that the plaintiff had relinquished the land in suit. The Divisional Judge reversed his decree as he considered that the receipt produced by defendant No. 1 ought to have been registered, and remanded the case under section 562, Civil Procedure Code.

Held, that as the suit had been disposed of upon a preliminary point, the remand under section 562 was right.

Held also, following the Full Bench ruling in *Bhai Wazira* v. *Chuhar Mal*, that the Chief Court when hearing an appeal under section 588 (28), Civil Procedure Code, is not bound to accept the finding of the lower Appellate Court.

Khalas v. *Kalyan Singh* (109 *P. R.* 1887, *and Bhai Wazira* v. *Chuhar Mal* (85 *P. R.* 1895 F. B.), cited. NAND LALL *v.* GURDITTA MAL. **99 P R 1902**

27. *Appeal from order of returning plaint for amendment under section* 588*—Dismissal of such appeal—Right of party aggrieved to attack the order agin when appealing from the final decree.*

Held, that every order passed in an appeal under the provisions of section 588 being final, a party who avails himself of the right of appeal provided by that section cannot raise the same question again in an appeal from the final decree.

Section 591 only provides for appeals from decrees attacking the correctness of orders which are not appealable under section 588, or which have not been appealed under that section. *Venkatapathi Naidu* v. *Tirumalai*

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Chetti (*I. L. R., XXIV Mad.*, 447), *Ghulam Jilani* v. *Ghulam Haidar Khan* (89 *P. R.* 1891), *Moti Lal Kashibhai* v. *Nana* alias *Langda Mukund Patil* (*I. L. R., XVIII Bom.*, 35) and *Tika Ram* v. *Shama Charan I. L. R. XX All.*, 42), referred to. KISHEN CHAND *v.* KEHR SINGH. **14 P R 1904**

28. *Appeal—Admission of fresh evidence by Appellate Court on further appeal—Discretion—Civil Procedure Code*, 1882, *section* 568.

Held, that an appellant, who had deliberately declined to produce any evidence in the original Court and chose to stake his case on the record as it stood, ought not to be allowed on a further appeal another opportunity producing fresh evidence on the ground that he was mistaken in that view. SUNDAR SINGH *v.* JALLANDAR. **51 P R 1905**

29. *Failure to prove case—Right to change main ground on appeal—Inconsistent pleadings—Procedure.*

Where in a suit for pre-emption of a shop the vendee's main defence was that by custom prevailing in the locality where the property in dispute was situate, an owner of the premises at the back of the property sold had no right and the case was fought out from beginning to end on that line of defence and ultimately decreed against him, *held*, that he should not be allowed to change his case entirely and to come in and set up a new and inconsistent plea in appeal on the ground that no custom for pre-emption in respect of sale of shops existed in such locality. SHARIF HUSSAIN *v.* MUHAMMAD YUSAF.

88 P R 1905

30. *Mortgage—Conditional sale—Foreclosure—Regulation XVII of* 1806—*Validity of notice of foreclosure—Objection taken for first time on appeal.*

In a suit for possession of immovable property under a deed of conditional sale said to have been foreclosed under Regulation XVII of 1806 the defendants practically admitted the validity of the notice issued under the Regulation, their main contention being that no demand previous to the issue of the notice had been made. The Court having found this point against the defence decreed the claim. On appeal the mortgagors challenged the validity of the notice on the grounds, amongst others, that neither *khasra* and *khewat* numbers nor the principal and interest were specified in it, and that it did not bear the proper official signature of the Judge inasmuch as his official designation was in print instead of being in the Judge's own hand.

Held, per Johnstone, J. (Rattigan, J., doubting as to this) that in the above circumstances an appellant should not be permitted to plead the aforesaid defects in the notice for the first time in appeal. BHAGIRATH *v.* NATH MAL.

105 P R 1907

VII.—APPEAL—REVENUE.

1. *Civil Procedure Code*, 1882, *sections* 551, 552, 579 *Dismissal of appeal on merits*

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on day of which notice has not been given to appellant—Appellant entitled to notice though at time of filing appeal he says he does not intend to appear at the preliminary hearing—Necessity for drawing up decree when Court dismisses appeal at preliminary hearing—Necessity for Judge to sign decree himself.

See CIVIL PROCEDURE CODE, 1882, SECTION 551. **7 P R 1888 Rev.**

2. *Appeal—Dismissal for default—Notice to appellant of time and place for hearing.*

See CIVIL PROCEDURE CODE, 1882, SECTION 551.

3. *Deciding appeal without fixing date for hearing—Notice to respondent.*

See CIVIL PROCEDURE CODE, 1882, SECTION 553.

4. *Judgment of Appellate Court—Civil Procedure Code*, 1882, *section* 574—*Punjab Tenancy Act*, 1887, *section* 88.

See CIVIL PROCEDURE CODE, 1882, SECTION 574. **2 P R 1893 Rev.**

5. *Appointment and dismissal of Lambardar—Appeal from order of dismissal—Duty of Appellate Court.*

See LAMBARDAR. **3 P R 1890 Rev.**

6. *Punjab Tenancy Act*, 1887, *sections* 5, 6, 8. *Suit for declaration of occupancy status of highest class—Duty of Court to consider whether plaintiff entitled to inferior right than that claimed—Civil Procedure Code*, 1882, *section* 53—*Material irregularity—Collector deciding appeal in absence of record, which had been lost.*

See OCCUPANCY RIGHTS.

3 P R 1898 Rev.

7. *Punjab Land Revenue Act*, 1887, *Sections* 11, 112, 116, 118—*Application for partition—Plea that holding had been already partitioned privately—Course of appeal—Question "as to property to be divided" or "as to title in the property of which partition is sought"—Entries in Settlement Records.*

See PARTITION. **4 P R 1898 Rev.**

8. *Determination by Revenue Officer of entries to be made in a record of rights—Appeal.*

See PUNJAB LAND REVENUE ACT, 1887, SECTION 13.

9. *Punjab Tenancy Act*, 1887, *section* 80, 93—*Joinder of parties having no joint interest—Appeal—Decree.*

See PUNJAB TENANCY ACT, 1887, SECTION 80.

10. *Further appeal—Decree confirmed on first appeal—Construction of statute.*

See PUNJAB TENANCY ACT 1887, SECTION 80.

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11. *Appeal in Zaildari cases.*

See ZAILDAR.

12. *Financial Commissioner*—Appeals filed in the Court of the Financial Commissioner and pending at the time of the passing of Act IV of 1866 could not be transferred to or determined by the Chief Court, the word "may" in section 52 of that Act meaning "must," and conveying no option to the Financial Commissioner to hear the appeals or transfer them to the Chief Court. NIJABUT ALI KHAN *v.* KOOTUB-OOD-DIN KHAN.

41 P R 1867

13. *Dakhil-kharij—Appeal from order refusing dakhil-kharij.*

There is no appeal to the Financial Commissioner from an order refusing mutation of names. RAMDITTA *v.* KAIM DIN.

6 P R 1881 Rev.

14. *Dakhil-kharij—Appeal from order passed in mutation case—Financial Commissioner's powers of revision—Object of mutation proceedings explained.*

Held, by the Officiating Financial Commissioner, that though no appeal lies in mutation cases from the order of a Deputy Commissioner to the Commissioner, or the Financial Commissioner, such cases can be treated by the Financial Commissioner on the revision side under Rule XXI of the Rules issued under Financial Commissioner's Circular, No. 50 of 1856.

Mutation proceedings have no judicial character. The process is a mere declaration of fact. It is the entry in a register of the name of the proprietor of the land, and the object of the proceeding is to keep the revenue registers up to date in order that the Collector may know whom to look to as responsible for the payment of revenue. The person to enter in the register is the person in possession—the *de facto* proprietor. SIRDAR NURAN KHAN *v.* NAWAB IMAM BAKSH KHAN. **6 P R 1883 Rev.**

15. *Punjab Tenancy Act*, 1887, *Sections* 80 (*b*), 88—*Appeal from order of remand passed by a Collector as an Appellate Court—Civil Procedure Code*, 1882, *sections* 588 (28), 589.

Held, that an appeal from an order of remand made under section 562 of the Code of Civil Procedure by a Collector as an Appellate Court lies to the Commissioner under section 80 (*b*) of the Punjab Tenancy Act. KALI DAS *v.* BRAHMAN.

1 P R 1905 Rev.

16. *Appeal—Appeal against an order under section* 98, *Punjab Tenancy Act, sanctioning an application for leave to refer a party to Civil Court—Competency of Appellate Court to decide the suit on merits—Punjab Tenancy Act*, 1887, *section* 98 (1).

Held, that an Appellate Court when hearing an appeal against an order under section 98 (1) of the Punjab Tenancy Act sanctioning an application for leave to refer

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a party to Civil Court, is not competent to decide the suit on merits, but is bound to confine itself to the question whether the sanction had been properly given or not. GANGA SINGH *v.* BADAR-UD-DIN **2 P R 1905 Rev.**

17. *Punjab Alienation of Land Act, 1907, sections 3 (3), 19—Permanent alienation of land—Granting or refusing sanction—Discretion—Appeal.*

Held, that an order of a Deputy Commissioner granting or refusing sanction to a permanent alienation under Section 3 (3) of the Punjab Alienation of Land Act, 1900, is open to appeal and revision as provided by the provisions of Chapter II of the Punjab Land Revenue Act, 1887. RAM SARAN DAS *v.* SARDARA. **4 P R 1908 Rev.**

18. *Execution of decree—Attachment of land by Civil Court—Submission of record to Collector for intervention—No appeal if Collector refuses.*

Held, that where in execution of a decree after attaching agricultural land, a Civil Court sends the record to the Collector, it amounts to an order enquiring from the Collector whether he wishes to intervene under section 72, Civil Procedure Code, Act V of 1908, and that no appeal lies against the order of the Collector if he refuses to intervene. RAJA RAM *v.* DURGA DUT. **5 P R 1910 Rev.**

VIII.—APPEAL—SECOND.

1. *Second regular appeal.*

A second regular appeal will lie in cases of the nature cognizable by Courts of Small Causes. DEVI DITTA MULL *v.* GOLAB SINGH. **48 P R 1869**

2. To bar a *second regular* appeal, the concurrence of two Courts must be absolute in regard to all substantial rights dependent on fact, and a concurrence of the Courts of 1st and 2nd instance as to a portion of a plaintiff's claim does not deprive him of a second regular appeal in regard to the whole claim. Plaintiff sued for possession of 224 kanals of land in the Court of the Tahsildar, who decreed 10 kanals to plaintiff and dismissed his suit as to the residue. Plaintiff appealed to the Deputy Commissioner in respect of the 214 kanals disallowed by the Tahsildar, and the defendant also appealed from the order decreeing to plaintiff 10 kanals. Plaintiff's appeal was dismissed, and defendant's accepted. The suit being dismissed, plaintiff then appealed from the whole of the Deputy Commissioner's decision to the Commissioner, who held that two orders having been passed by the lower Appellate Court, one appeal would not lie from both, and that, so far as the 214 kanals were concerned, a second regular appeal would not lie, in consequence of the concurrence of the two lower Courts, but that plaintiff was at liberty to appeal in respect

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of the 10 kanals as to which the lower Courts had differed. Plaintiff accordingly appealed to the Commissioner as to the 10 kanals only, and preferred a separate appeal to the Chief Court with regard to the 214 kanals.—

Held, that this concurrence by two Courts as to a portion of plaintiff's claim did not bar a regular appeal in regard to the whole claim. NIGHAHYA *v.* JULLA. **76 P R 1869**

3. *Receiving a second appeal—What amounts to.*

An appeal was presented to the Clerk of the Commissioner's Court, registered, and sent on to the Commissioner, who rejected the appeal without hearing the appellant.

Held that the Commissioner was bound, under section 7 of Act VII of 1868, to fix a date for hearing the appellant as under the circumstances the appeal had been "received" within the meaning of section 5 of the Act. BULUB DASS *v.* SOOLTAN MOHAMMED. **3 P R 1871**

4. Plaintiff sued for the release of certain property attached in execution as the property of his brother. The Tahsildar, holding the property to be joint, and on that ground not liable to attachment, decreed plaintiff's claim. The Deputy Commissioner on appeal also found the property to be joint, but holding that the share of plaintiff's brother was liable to attachment, dismissed the suit, *held* that the plaintiff was entitled to a second regular appeal to the Commissioner to whom it would be competent to question the fact upon which the two Lower Courts had concurred, *viz.*, of the property being joint. DEVI DITTA *v.* JHUNDU. **29 P R 1873**

5. *"Merits of the case"—section 5, Act IX of 1873.*

Plaintiff sued for possession of certain land and the defendant pleaded—first that the land was his as the adopted son of plaintiff's deceased husband; and, secondly, that the land had been devised to him by the deceased. The first Court found both points in favour of the defendant; the lower Appellate Court found the adoption not proved, but concurred with the original Court as to the will; both Courts thus dismissing plaintiff's suit. *Held*, that a second regular appeal would not lie to the Chief Court. (BOULNOIS, J., dissenting). MUSSAMMAT RUKAN DEVI *v.* JASWANT RAI. **88 P R 1875**

6. *Point material to the merits.*

The Original Court found that plaintiff was entitled to rights of occupancy under section 5, clause 3, Tenancy Act; the Deputy Commissioner on defendant's appeal held that the plaintiff came under section 8 of the Act. The additional Commissioner rejected the appeal of defendant on the ground that the Deputy Commissioner had not modified the original decision on a point material to the merits of the case. *Held*, by the Chief Court that the Additional Commissioner was wrong, and that he must

VIII.—APPEAL—SECOND—*concld.*

hear and determine the appeal of defendant SANDHI *v.* GANGA RAM. **11 P R 1876**

7. *Concurrence of two Courts—Section 353, Civil Procedure Code.*

Plaintiff sued as mortgagee for the mortgaged property on the ground that defendant had failed to repay the principal and to pay rent by way of interest as agreed upon. The defendant pleaded that he had redeemed the property by payment of the debt, and that if he had not, plaintiff's claim was barred by limitation, as defendant had not paid any rent for upwards of twelve years and had held adversely. The original Court decided the first issue only, and finding defendant had not redeemed the mortgage, decreed for plaintiff. On defendant's appeal, the Lower Appellate Court concurred with the original Court that the redemption of the mortgage was not proved, and found, as to the second issue, that there had been payments of rent within twelve years, and no adverse possession on the part of defendants, and accordingly dismissed the appeal. Defendant further appealed to the Chief Court.

Per Campbell, J. As two Courts had not concurred as to the facts relating to the second issue (only one Court having gone into and determined that issue), the Chief Court should accept the defendant's appeal, in order that the Lower Appellate Court might remand the case to the original Court for a finding on the point left undetermined by the latter Court. An Appellate Court cannot find as to a fact which the Court below has not touched, but should refer an issue to the Lower Court, and on a return of the finding should either concur in or dissent from that finding; in the latter case, a second regular appeal would lie, in the former, the finding as to the fact would be conclusive.

Per Boulnois and Lindsay, JJ. The procedure of the lower Appellate Court could not be interfered with; it was competent to that Court, under Section 353, Civil Procedure Code, to come to a finding upon a fact left untouched by the original Court, if there was sufficient evidence on the record; and Act IX of 1873 (Punjab Appeals' Act) did not alter the procedure. Defendant's appeal dismissed. GANDA SINGH *v.* HARSA SINGH. **79 P R 1876**

8. *Regular Appeal—Modification of decision of first Court.*

Plaintiff sued to cancel a deed of sale executed by a Hindu widow. The first Court held that the sale was invalid, for the reasons that the property was joint and the widow was not entitled to a life tenure, and that there was no legal necessity; the lower Appellate Court held the sale to be void, as there was no legal necessity for it. The defendant (the purchaser) appealed to the Chief Court, and the plaintiffs (the relations of the widow) preferred a cross objection under Section 348, Civil Procedure Code, alleging that the property was joint as found

by the first Court. *Held*, that plaintiffs were entitled to a regular appeal on the question of the jointness of the property, and could take the cross-objection. NATHU MULL *v.* GANDA SINGH. **104 P R 1876**

9. *Modification of decision of first Court by Appellate Court.*

Plaintiff, alleging herself to be the lawful widow of Hyder Ali, deceased, sued for her share in his property. In a former suit her son, Azim Ali, was declared the legitimate son by acknowledgment of Hyder Ali, deceased. The Court of first instance held that the acknowledgment by Hyder Ali of Azim Ali, as his son raised a legal presumption of the plaintiff having been married to Hyder Ali rebuttable only on the ground of legal impossibility which impossibility was not shown to exist. It accordingly held plaintiff to have been the lawful wife of Hyder Ali and gave plaintiff a decree.

The Additional Commissioner, on appeal, disagreed with the first Court, holding the presumption to be only one of fact, and not of law, and went into independent evidence on the point as to whether plaintiff was or was not acknowledged as wife by Hyder Ali. Finding plaintiff had been so acknowledged, the Additional Commissioner maintained the first Court's decree. Thereupon the defendants filed a second regular appeal in the Chief Court.

Held, that the defendants were not entitled to a second regular appeal. A party is only entitled to a second regular appeal under section 5, Act IX of 1873, when he is aggrieved by and seeks to impugn the portion of the decision of the first Appellate Court which modifies the decision of the Court of first instance. MUSSAMMAT JANI BEGAM *v.* MUSSAMMAT MUNNI. **71 P R 1877**

10. *Act IX of 1873, section 5—Modification on point material to merits of case.*

Plaintiff in the first Court obtained a decree for possession of land on payment of compensation to defendants for a building thereon, the materials of which however defendants were allowed the option of removing in lieu of compensation. The plaintiffs appealed to the Judicial Assistant who modified the order of the first Court by setting aside that part of it awarding compensation, reserving liberty to the defendants to remove the materials of the building. At the same time the Judicial Assistant dismissed a cross-appeal brought by defendants.

Held, that the Judicial Assistant's decision on plaintiff's appeal modified the decision of the first Court on a point material to the merits of the case, and therefore, under section 5, Act IX of 1873, a second regular appeal on the whole case lay to the Commissioner. ILAHI *v.* SADHARA. **57 P R 1878**

11. *Act XVII of 1877, section 38—Modification of decree.*

J. F. claimed a right of pre-emption in respect of certain land sold by S. K. to P. The first Court decreed the claim on payment of Rs. 215. S. K. and P. appealed to the Deputy Commissioner, who modified the decree of the first Court so far as to decree pre-emption on payment of Rs 260. Thereupon S. K. and P. filed a special appeal in the Chief Court.

Held, that as the Deputy Commissioner's decision modified the decree of the first Court on a material point, a second regular appeal lay to the Commissioner. SANDHI KHAN *v.* JALAL-UD-DIN KHAN. **23 P R 1879**

12. The first Court (Munsiff) decreed Rs. 139. The Judicial Assistant on appeal, while dismissing defendant's appeal to his Court, modified the first Court's decree to the extent of Rs. 5-14-0.

Held, that under section 38, Act XVII of 1877, a second regular appeal lay to the Commissioner the decree of the first Court having been modified by the Judicial Assistant on appeal. BUTA *v.* MUSSAMMAT KHEMO. **63 P R 1879**

13. *Act XVII of 1877, section 38—Modification of order of first Court.*

Where the first Court gave a decree against 26 defendants and the Judicial Assistant Commissioner on the appeal of all the defendants reversed the decree so far as it affected 5 of the defendants.

Held, that a second regular appeal on the part of the remaining 21 defendants would lie to the Commissioner, as there had been a modification of the decree of the Court of original jurisdiction, within the meaning of section 38, Act XVII of 1877. KANHA *v.* DIAL SINGH. **12 P R 1880**

14. *Dismissal for default—Second appeal—Act X of 1877, sections 551, 587—Application for re-admission—Limitation Act (XV of 1877), Schedule II, article 168.*

Held, by the Full Bench, that a second appeal set down for hearing under sections 551, 587 of the Civil Procedure Code, cannot be dismissed for default on the day fixed for hearing as the provisions of sections 556 and 558 apply to the hearing of appeals in which a date has been fixed under section 552, and notice has been issued to the respondent: nor is the limitation of 30 days prescribed by article 168 of Schedule II of the Limitation Act, which is applicable to appeals dismissed under section 556, applicable to a petition by an appellant whose appeal has been dismissed in consequence of his absence on the date fixed for hearing him under section 551. *Kirpa Ram* v. *Jumna Das* (48 of 1878, Civil) cited. BUTA *v.* RATTAN SINGH. **76 P R 1882**

15. *Further appeal from order passed on appeal from order admitting review—Act X of 1877, section 629—Act XVII of 1877, section 38.*

Held, that as section 629 of the Civil Procedure Code allows an appeal from an order admitting a review, the order passed on such an appeal and reversing that of the Court of original jurisdiction becomes itself appealable under section 38 of the Punjab Courts Act, as such an order is not declared by any other law in force to be final. MANGAT RAI *v.* KHAN CHAND. **133 P R 1882**

16. *Order dismissing appeal as barred by limitation—"Decree"—Act X of 1877, section 2—Adjudication on defence set up in appeal.*

Held, that an order passed by a lower Appellate Court dismissing an appeal as barred by limitation is one from which upon proper grounds a second appeal will lie to the Chief Court, as the objection taken in the lower Court to the appeal that it is barred by limitation is a defence set up in the Appellate Court, and the order allowing the objection an adjudication upon the question, within the definition of the term "decree" in section 2 of the Code of Civil Procedure. BAHADUR SINGH *v.* BASAWA SINGH. **158 P R 1882**

17. *Punjab Courts Act (XVIII of 1884), section 40—Small Cause under Rs. 500 in value—Claim involving property exceeding Rs. 500 in value—Further appeal.*

Held, that the effect of proviso 2 to section 40 of the Punjab Courts Act is to lay down as an absolute rule that no further appeal lies in small causes not exceeding Rs. 500 in value, even though the decree may involve directly a claim to property exceeding Rs. 500 in value. MAHANT ABNASHI RAM v. MAHANT LAKHMI DAS. **95 P R 1887**

18. *Punjab Courts Act, 1884, section 40 (i) (d) and (ii)—Further appeal—Application for revision treated as an appeal.*

A further appeal lies to the Chief Court under section 40 of the Punjab Courts Act, 1884, only from an appellate *decree*, as distinguished from an *order* of the Divisional Court. Where a Divisional Judge in a case in which he had passed an order not open to appeal refused to certify the case as fit for appeal, *held*, that an application for revision of this order could not be dealt with as a further appeal under clause (2) of the above section. GOSAON v. NANAK. **79 P R 1890**

19. *Pre-emption—Value of suit—Punjab Courts Act, 1884, section 40 (1) (a).*

A sued for pre-emption of certain property on payment of Rs. 400, the price stated in the deed of sale. The real value of the property sold was upwards of Rs. 2,000. The Courts below concurred in decreeing the claim. The defendant appealed, and a preliminary objection was taken to the hearing of the appeal on the ground that the value of the suit was below Rs. 1,000 and therefore no further appeal lay to the Chief Court.

Held, that the appeal lay under section 40 (1) (a) of the Punjab Courts Act, 1884, as the decree involved directly a claim to property

VIII.—APPEAL, SECOND—*contd.*

of the value of over Rs. 1,000. LACHMAN DAS v. HAKIM SINGH. **94 P R 1890**

20. *Jurisdiction—Further appeal—Land suit—Claim for share in an orchard,* i.e., *of the fruit trees.*

A suit for possession of a half share in an orchard, that is, in the fruit trees, is not a "land-suit" within the definition of that term contained in section 3, Punjab Courts Act, 1884.

119 *P. R.*, 1890, referred to.

DHANI DAS v. AYA RAM. **15 P. R 1892 F B**

21. "*Land suit*"—*Village graveyard—Further appeal.*

The plaintiffs sued, alleging that 56 *kanals* 3 *marlas* of land had been reserved as the village graveyard from the foundation of the village, and that the defendants had brought 6 *kanals* of it under cultivation two years previously, and made thorn enclosures and taken possession of certain portions.

Held, that the suit was not a land-suit, and that the suit being valued at Rs. 150, a further appeal to the Chief Court was not competent without a certificate from the Divisional Judge under section 40, sub-section 1 (*d*), Punjab Courts Act. ILAHI BAKHSH v. FATTA. **20 P R 1892**

22. *Suits Valuation Act,* 1887, *Rules under—Suit to declare an alienation of land to be not binding after grantor's death—Further appeal—Value of suit Rs.* 1,000, *or upwards—Punjab Courts Act,* 1884, *section* 40.

The plaintiffs sued for a declaratory decree that an alienation by a childless proprietor would not affect their reversionary interests in the land, the subject of the alienation: the grantor was alive, and no consequential relief was prayed for.

The alienation challenged by the plaintiffs purported to be for Rs. 1,300: the value of the land calcuated at 30 times the revenue was Rs. 770.

Held, that no further appeal to the Chief Court was competent in the absence of an application to the Divisional Judge for a certificate under section 40, sub-section (1) (*d*), Punjab Courts Act, 1884, the value of the suit for purposes of jurisdiction being less than Rs. 1,000 and both Courts having concurred in decreeing the claim.

The suit as brought, though it fell within the description of claim mentioned in No. II of the Rules issued under Part II of the Suits Valuation Act, was subject to the proviso to that rule, and as the subject of the alienation impugned was land as specified in section 3 of the Act, and was valued for purposes of jurisdiction at 30 times the revenue, or Rs. 770, according to the rules made under that section, it followed from section 4 of the same Act that the value of the present claim could not be held to be in excess of that sum.

VIII.—APPEAL, SECOND—*concld.*

Held also, that the lower Appellate Court's decree could not be said to involve *directly* some claim to, or question respecting property of Rs. 1,000 or upwards in value within the meaning of section 40, sub-section (1) (*a*) of the Courts Act. BAKHU *v.* JHANDA. **145 P R 1892**

23. *Punjab Courts Act,* 1884, *section* 40 (*i*) (*a*)—*Pre-emption suit—Further appeal.*

Plaintiff sued for pre-emption of certain land, the value of which, calculated at thirty times the revenue, was considerably below Rs. 1,000, upon payment of Rs. 700, and defendants pleaded (*inter alia*) that Rs. 1,000, the price entered in the sale-deed, was fixed in good faith, and was not in excess of the true market value. The suit having been dismissed by both lower Courts and a certificate refused by the Divisional Court on the 12th March 1894, plaintiff on the 21st April 1894 filed a further appeal in the Chief Court.

Held that under section 40 (*i*) (*a*) of the Punjab Courts Act, 1884, no further appeal lay as of right to the Chief Court, the true value of the suit being less than Rs. 1,000, and the decree, which merely dismissed the suit, not involving directly any question concerning the price to be paid by the pre-emptor.

Held also, that the decree did not involve directly a question concerning land of Rs. 1,000 in value, merely because the true market value of such land might be of that amount. 132 *P. R.*, 1893, followed. NANHA *v.* KURA. **3 P R 1896**

24. *Appeal*—"*Land-suit*"—*Right in tank used for watering cattle and excavating earth to make brick.*

Plaintiff sued for declaration of right in a tank, valued at Rs. 900 which was used for watering cattle and excavating earth to make bricks.

Held, that as these were not agricultural purposes or purposes subservient to agriculture the tank was not "land" as defined in the Punjab Tenancy Act, and that, therefore, no further appeal lay. TEJ RAM *v.* TULSI. **48 P R 1898**

IX.—APPEAL, SPECIAL.

See APPEAL.
APPELLATE COURT, JURISDICTION OF.
JURISDICTION OF SMALL CAUSE COURT.
MORTGAGE.
REVIEW OF JUDGMENT.

1 *Ground for special appeal—Omission to consider a presumption of fact.*

The omission of a lower Court to consider a presumption of fact arising out of the circumstances of the case is a good ground for special appeal. MUSSAMMAT ABADEE KHANUM *v.* MUSSAMMAT RANEE. **80 P R 1869**

XI.—APPEAL, SPECIAL—*concld.*

2. *Execution.*

There is no special appeal allowed from an order in execution of a decree made in a suit of the nature cognizable by a Small Cause Court. DEVAN SINGH v. MIGHA. **65 P R 1876**

3. The objection that the Court of first instance had exercised a wrong discretion in permitting plaintiff to sue for a declaratory decree having been taken for the first time on second appeal, the Chief Court refused to interfere in the matter. BAIKUNT DAS v. HAKAM DAS. **55 P R 1877**

4. Res Judicata—*Act X of* 1877, *section* 13, *Expl.* 5.

Query, whether a plea of *res judicata* can be taken in special appeal if not pleaded in bar to the suit in the first Court. HARGOBIND v. JOTHRAM. **59 P R 1879**

5. *Tenancy Act, sections* 37, 40—*Compensation to tenant for improvements—Claim first raised in special appeal.*

The terms of section 37, Act XXVIII of 1868, make it incumbent upon a plaintiff suing to eject a tenant to declare either that proper compensation for improvements has been paid to the defendant, or that no compensation is payable, or that there is a difference between the parties as to the amount or value of the compensation to be made.

Therefore where the plaintiff omitted to place these matters before the first Court and that Court did not deal with them on its own motion, *held*, that the defendant had a right to have the omissions rectified in special appeal. NATHAL *v.* SULTAN. **149 P R 1879**

X.—APPEAL TO PRIVY COUNCIL

1. *Civil Procedure Code,* 1882, *section* 596—*Appeal to Privy Council—Concurrent findings on facts—Substantial question of Law—Procedure.*

On an application for leave to appeal to the Privy Council where upon question of fact the decision of the Chief Court was concurrent with that of the Court of first instance, and upon the facts as found no substantial question of law was involved, *held*, that under the last clause of section 596, Civil Procedure Code, the plaintiff was not entitled to appeal, and therefore leave to appeal should not be given.

Skalbuti Mandrane v. *Babula Mandar.*) *L. R. XXVIII Calc.* 190), *Tulsi Persad Bhakt* v. *Benayek Missar (I. L. R. XXIII Calc.* 918, *P. C.*), and *In re Shri Vishwambhar Pandit* alias *Nana Maharaj I. L. R. XX Bom.*, 6997, cited. *Ashgar Reza* v. *Hyder Reza (I. L. R. XVI Calc.* 287), and *Gopinath Birbar* v. *Goluck Chander Bose (I. L. R. XVI Calc.* 292), dissented from. LIKAL AND OTHERS *v.* HASSAN KHAN AND OTHERS. **48 P R 1904**

X.—APPEAL TO PRIVY COUNCIL—*contd.*

2. *Civil Procedure Code,* 1882, *section* 596—*Privy Council, leave to appeal to—Value of subject-matter.*

Held, that in order to justify the Court in granting leave to appeal to the Privy Council under section 596 of the Code of Civil Procedure, it is essential that the decree itself should involve, directly or indirectly, some claim or question to or respecting property of not less than rupees ten thousand. *Baboo Gopal Lall Thakoor* v. *Teluk Chunder*, 7 *M. I. A.*, 548), *Ko Khine and others* v. *Raichard Snadden (L. R. 2 P. C. 50)* and *Byjnath and others* v. *Graham and others (I. L. R., XI Calc.*, 740), explained and distinguished, *Royal Insurance Co. and others* v. *Akl Coomar Dutt and others (6 Calc. W. N.*, 41), *and Moofti Muhammad Abdoolah and another v. Baboo Mootechund* (1 *M. I.* A., 363), cited KRISHNA MILLS COMPANY, LIMITED, DELHI *v.* GOPI NATH.

75 P R 1904

3. *Appeal to Privy Council—Concurrent findings on facts—Substantial question of law—Procedure—Civil Procedure Code*, 1882, *section* 596.

When upon questions of fact the decision of the Chief Court is concurrent with that of the Court of original jurisdiction, and the question of law only arises if the concurrent findings are reversed, *held*, that such a question is not a "substantial question of law" involved in the appeal within the requirements of section 596 of the Code of Civil Procedure.

Banke Lal v. *Jagat Narain I. L. R., XXIII All.*, 94), *Sukalbatti Mandrani v. Babu Lal Mandor (I. L. R.*, XXVIII *Calc*,. 190), and *Likal* v. *Shariful Hassan Khan* (48 *P. R.*, 1904), cited and followed. RAM NARAIN *v.* MAHARAJ NARAIN. **59 P R 1904**

4. *Appeal to Privy Council—Value of the subject-matter of the suit—Civil Procedure Code*, 1882, *section* 596—*Suits Valuation Act*, 1887.

Held, that in section 596, Civil Procedure Code, "the value of the matter in dispute" for the purpose of appealing to the Privy Council means the real or market value of the property in dispute, and not a nominal value such as is assessed under the provisions of the Suits Valuation Act, VII of 1887

Lekraj Roy v. *Kanhya Singh* (*I. I.* A., 317) and *Pichyee* v. *Siragami* (*I. L. R. XV Mad.* 237), cited and followed. KARM SINGH *v.* KHEM SINGH. **60 P R 1905**

5. *Appeal to Privy Council—Appeal from an order of remand—Final decree—Civil Procedure Code*, 1882, *section* 595.

Held, that an order under section 562 of the Code of Civil Procedure remanding a case to be tried on merits is not a final decree within the meaning of clause (*a*) of section 595 and therefore no appeal lies from such an order to the Privy Council SOHAN SINGH *v.* JAHANDAD KHAN. **52 P R 1907**

X.—APPEAL TO PRIVY COUNCIL—*concld.*

6. *Appeal to Privy Council—Extension of time for giving security—Civil Procedure Code*, 1882, *section* 602.

Held, that the Chief Court is competent for sufficient cause to extend the period allowed by section 602 of the Code of Civil Procedure for giving the security and making the deposit required by that section. KIDAR NATH *v.* NATHU MAL. **87 P R 1908**

XI.—APPEAL, VALUATION OF

1. Where the original Court determined what the stamp was and received the penalty accordingly, *held*, that the decision could not be questioned on appeal. MOOLA MULL *v.* GUNPUT. **66 of 1866**

2. In a case under Act X of 1862, where an unstamped deed of sale appeared on the file, the Chief Court passed judgment upon the merits, taking the document as evidence to be considered, but remanded the case to the first Court to exact a proper penalty. TURTEE *v.* MUKH RAM. **59 of 1867**

3. *Valuation of suit for redemption of mortgage—Plaintiff suing to redeem for Rs.* 2,300—*Defendant pleading that the mortgage-money was over Rs.* 3,500—*Valuation of suit—Course of appeal.*

Plaintiff claimed redemption of a mortgage offering to pay Rs. 2,300, the sum for which the land was originally mortgaged. Defendant pleaded that Rs. 5,850 was due on the mortgage, and the land could not be redeemed until that amount was paid. Plaintiff did not offer to pay more than Rs. 2,300; but the first Court held that Rs. 5,240 was due on the mortgage, and decreed that plaintiff might redeem on paying that amount. Plaintiff appealed against this order to the Divisional Judge, urging that he was entitled to redeem for Rs. 2,300 and the Divisional Judge held that the value of the suit exceeded Rs. 5,000, and that the appeal lay to the Chief Court.

Held, that for the purposes of jurisdiction the valuation of the suit by plaintiff must govern the case. It could not be said that he had valued the suit at any sum over Rs. 2,300, and the fact that defendant alleged that a sum of over Rs. 5,000 was due to him and that the Court had found this in defendant's favour made no difference. RANJE KHAN *v.* BIRBAL. **91 P R 1889**

4. *Suit for account—Value of relief sought—Jurisdiction—Course of appeal—Authority of Appellate Court disclaiming jurisdiction to order payment of additional Court-fee.*

The plaintiff sued the defendant for an account valuing the relief sought at Rs. 100, and expressing his willingness to pay the Court-fee due upon any sum decreed in excess of this amount, in accordance with the provisions of section 11, Court-Fees Act, 1870.

After the defendant had produced the books containing the parties' accounts and a commission had examined the same, the plaintiff filed a petition stating that he appeared to be *prima facie* entitled to recover a sum over Rs. 12,000, and praying that the matter might be fully investigated. No. amendment of the plaint was, however, either asked for or ordered, and the suit eventually resulted in a decree in the plaintiff's favour for Rs. 2,343.

The plaintiff then appealed for a further sum of Rs. 1,716 and the defendant, against the decree in the plaintiff's favour for Rs. 2,343.

Both parties presented their appeals to the Divisional Judge, who held that the appeals lay to the Chief Court.

Held, that the appeals lay to the Divisional Judge : under section 7, clause (*iv*) of the Court Fees Act, the valuation of the original suit for purposes of Court-fee is fixed at the amount at which the relief sought is valued in the plaint. This, in the present case, was Rs. 100, and the amount was never altered by any amendment of the plaint ; and under section 8, Suits Valuation Act, 1887, the value of a suit for an account as determinable for the computation of Court-fees and the value for purposes of jurisdiction, shall be the same. The value of the suit for purposes of jurisdiction was Rs. 100 and the appeal lay to the Divisional Court under section 39, Punjab Courts Act (as amended).

Semble. If an Appellate Court has no jurisdiction to hear an appeal, it is not competent to it to pass orders for the payment of any additional Court-fee which it considers should have been levied in the first Court.

40 P. R., 1892, referred to. FATTEH MUHAMMAD KHAN *v.* MOHAN LAL. **86 P R 1892**

5. *Suit for removal of Mahant ; for declaration of right to appoint a successor, and to enforce the provisions of a will—Value of relief sought—Jurisdiction—Course of appeal—Court-Fees Act, section* 7, *paragraphs iv* (*c*), *v, vi, ix and x* (*d*)—*Suits Valuation Act*, 1887, *section* 8—*Punjab Courts Act, section* 39.

The plaintiffs in their plaint valued the relief sought as follows :—

	Rs.
(1) Removal of defendant from the office of Mahant	... 1,000
(2) Declaration of plaintiff's right to appoint a successor	... 500
(3) Enforcement of the provisions of a will	... 1,000

or Rs. 2,500 in all.

The District Judge having found on a preliminary objection raised by the defendant, that the value of the property attached to the institution in question was Rs. 253,037-13-11, directed the plaintiffs to file additional Court-fees and upon their refusal to comply with such order rejected the plaint under section 54, Civil Procedure Code.

The plaintiffs thereupon appealed to the Divisonal Judge, who returned the memorandum of appeal for presentation to the Chief Court, holding that, though he would have had jurisdiction looking only at the claim as

XI.—APPEAL, VALUATION OF—*contd.*

valued in the plaint, his jurisdiction had been taken away by the District Judge's decision that the true valuation was Rs. 2,53,038.

Held, that this view of the law was untenable, and that the appeal should be returned for presentation to the Divisional Judge. The suit being other than any of those referred to in section 7, paragraphs v, vi and ix, and paragraph x. clause (*d*) of the Court-Fees Act, and the value for the computation of Court-Fees and for purposes of jurisdiction being the same by virtue of section 8 of the Suits Valuation Act, 1887; and such value being determinable according to the amount (in this case Rs. 2,500) at which the relief sought was valued in the plaint or memorandum of appeal, the Divisional Judge had jurisdiction to entertain the plaintiffs' appeal, notwithstanding that the District Judge had decided that the true value of the relief sought was in excess of Rs. 5,000. BAWA MANGAL DAS *v.* MAHANT NARINJAN DAS.

58 P R 1893

6. *Punjab Courts Act,* 1888, *section* 40, *clause (a)—Suits Valuation Act,* 1887, *section* 4—*Valuation of subject-matter of suit in the Appellate Court.*

In a suit for the possession of land, the value of which under the Rules framed under section 4 of the Suits Valuation Act was less than Rs. 500, both the lower Courts concurred in decreeing the claim. The defendants thereupon, without obtaining a certificate for appeal, appealed to the Chief Court, alleging that the market value of the land was over Rs. 1,000, and that an appeal lay under the second branch of clause (*a*) of section 40 of the Punjab Courts Act.

Held, that the decree of the Divisional Judge confirming the decree of the first Court, which decreed the plaintiffs' claim to proprietary possession of land, which claim, valued according to the Rules framed under section 4 of the Suits Valuation Act, 1887, did not amount to Rs. 1,000 in value, was a decree which did not fall under the second branch of clause (*a*) of section 40 of the Punjab Courts Act, 1888, being a decree in which the claim to, or question respecting land was identical with the subject-matter of the suit, which was excluded from appeal under the first branch of that clause, because the value of the suit did not amount to Rs. 1,000. KANSHI RAM *v.* SUJAN SINGH.

132 P R 1893

7. *Suit for removal of* mahant *for declaration of right to appoint a successor and to enforce the provisions of a will—Value of relief sought—Valuation by plaintiff, power of Court to revise—Appeal—Court Fees Act,* 1870, *section* 7, *(iv) (c) and* 12 *(1).*

Plaintiffs sued on the allegations that they were the *gurbhais* of the defendant, who was the present *mahant* of a certain *akhara*, in succession to one B. B., who died in 1885, leaving a will, appointing defendant as his successor, but authorising plaintiffs to control

XI.—APPEAL, VALUATION OF—*contd.*

his management of the institution and to have him ejected from the *mahantship* if he failed to carry out the essential provisions of the said will; that defendant had by his misconduct and disregard of the testator's wishes forfeited all right to continue in the *mahantship*: and that they, therefore, prayed as follows:—

(*i*) that defendant may be declared unfit to continue the *mahant* of the institution and may be removed;
(*ii*) that plaintiffs be declared entitled to nominate his successor as provided in the will;
(*iii*) that, if the above relief cannot be granted, defendant may be compelled to comply with the provisions of the will; or
(*iv*) that plaintiffs be granted such other relief as the will contemplates and the circumstances of the case permit.

Plaintiffs valued the relief sought in clause (*i*) of the plaint at Rs. 1,000; that mentioned in clause (*ii*) at Rs. 500, and the alternative relief asked for in clause (*iii*) at Rs. 1,000; and filed Court-fees upon Rs. 2,500.

The District Judge, on an objection by defendant, held that the claim was undervalued, and ordered plaintiffs to make up the deficiency in the Court-fees upon the total value of the property attached to the institution and on their failure to do so, rejected the plaint. Plaintiffs appealed to the Divisional Judge, but their appeal was dismissed, on the ground that the suit was in reality one for possession of the property belonging to the institution and the plaint should have been stamped accordingly. Plaintiffs thereupon lodged a further appeal in the Chief Court, and it was contended, *inter alia*, on behalf of defendant that no appeal lay from the first Court's decision as to the valuation in view of the provision in section 12 (1) of the Court Fees Act, 1870.

Held, that section 12 (1) should be construed as enacting finality only in the matter of the actual assessment of the valuation of the property, and as allowing an appeal to proceed upon all questions of the construction of the Act, whether the contention is as to the section or clause applicable, or as to the meaning of any particular clause or section.

Held, further, that in cases where the plaintiff seeks the removal of a trustee or manager of an institution, *but does not seek possession of the property for himself as trustee or manager*, it is not necessary to file full stamp on the value of the property of the trust or institution; that in such a case the valuation of the relief sought in the plaint rests with the plaintiff; and that when the plaintiff has valued his relief at a sum which is *primâ facie* not unreasonable, it is not open to the Court to challenge or revise such valuation.

XI.—APPEAL, VALUATION OF—*contd.*

The Court held that the valuation stated in the present plaint was reasonable and should be accepted. BAWA MANGAL DAS *v.* MAHANT NARINJAN DAS.

56 P R 1895

8. *Value of suit for purposes of jurisdiction—Suit for possession of immovable property—Suit by mortgagee against third party in actual possession—Course of appeal.*

Plaintiff, who was already in possession as mortgagee, sued a third party who was in actual possession but, whilst admitting that he was only a tenant, refused to recognize plaintiff's title.

Held, by the Full Bench, that the suit must be regarded as one for possession of immovable property by a person out of possession against a person in actual possession whom the plaintiff sought to eject, and that the value of the suit for the purposes of jurisdiction was the value of the immovable property itself. JALAL *v.* MUHAMMAD BAKHSH.

1 P R 1896 F B

9. *Suit, valuation of, for purposes of Court-fee and of jurisdiction—Suits Valuation Act,* 1887, *section* 8, *Court-Fees Act,* 1870, *section* 7 *(iv) (e)—Further appeal.*

A suit in which the Court-fee payable was *ad valorem* under section 7 (*iv*) (*d*) (*e*) of the Court-Fees Act, was valued by the plaintiff, for purposes of jurisdiction at Rs. 1,500 and for purposes of Court-fee at Rs. 130. The suit having been dismissed by the Additional District Judge and the Divisional Judge on appeal, plaintiff filed a further appeal in the Chief Court.

Held, that under section 8 of the Suits Valuation Act, 1887, the value of a suit of this nature as determinable for the computation of Court-fees and the value for purposes of jurisdiction was the same, and that under section 7 (*iv*) (*d*) (*e*) of the Court-Fees Act the amount of the Court-fees payable was to be computed according to the amount at which the relief sought was valued in the plaint.

Held, therefore, that the value of the suit being Rs. 130, no further appeal lay to the Chief Court.

I. L. R. XVIII Bom., 207, followed. SOHAN LAL *v.* GULAB MAL.

50 P R 1896

10. *Appeal—Suit for possession of land after foreclosure of mortgage—Value for purposes of further appeal—Punjab Courts Act,* 1884, *section* 40 (1) (*b*).

Held that for purposes of a further appeal the value of a suit for possession of land, assessed to land revenue, on the allegation of an already completed foreclosure and vested proprietary right, is the value of the land under the rules framed under section 4 of the Suits Valuation Act, and not the amount of the conditional mortgage or its sale price.

Ghulam Ghaus v. *Nabi Bakhsh* 24 *P. R.*, 1903 *F. B*), referred to. VIR SINGH *v.* SARMUKH SINGH.

84 P R 1906

11. *Land suit—Value of, for purposes of appeal—Punjab Courts Act,* 1884, *section* 40 (1) (*b*)*—Suits Valuation Act,* 1887.

XI.—APPEAL, VALUATION OF—
contd.

Held, that for the purposes of section 40 (1) (*b*) of the Punjab Courts Act, the value of the decree sought to be appealed is the sum found by the decree appealed to be payable on redemption where that exceeds 30 years' Government revenue of the land. BADRI MAL v. GOPAL. **130 P R 1906**

12. *Valuation of suit—Suit to declare an alienation of land to be not binding after alienor's death—Value for purposes of further appeal—Punjab Courts Act*, 1884, *section* 40 (*b*).

Held, that for purposes of section 40 (*b*) of the Punjab Courts Act, 1884, the value of the suit for a declaration that a mortgage by a widow of agricultural land would not be binding after the alienor's death is the value of the land calculated, at thirty times the revenue and not the amount of the encumbrance in dispute. *Bakhu* v. *Jhanda* (145 *P. R.*, 1892) followed. HARI SINGH v. NIKA SINGH. **42 P R 1907**

13. *Valuation of suit—Suit to declare an alienation of land to be not binding after alienor's death—Value for purpose of further appeal—Punjab Courts Act*, 1884, *section* 40 (*b*).

Held, by the Full Bench, that for the purposes of section 40 (*b*) of the Punjab Courts Act, 1884, the value of a suit for a declaration that a sale by a male proprietor of ancestral agricultural land would not be binding after the alienor's death, is the value of the land calculated at thirty times the revenue, and not the amount of the consideration of the sale in dispute. JALLA v. GEHNA. **60 P R 1907 F B**

14. *Suit for redemption—Value for purposes of further appeal- Punjab Courts Act*, 1884, *section* 40 (*b*).

Held, that for purposes of section 40 (*b*) of the Punjab Courts Act, 1884, the value of a suit for redemption is the sum found by the decree appealed to be payable on redemption and not the value of the property itself. BALWANT SINGH v. RAM DAS. **28 P R 1908**

15. *Suit for partition—Preliminary order under section* 215 A, *Civil Procedure Code*, 1882—*Appeal—Court-fees on.*

Held, that an appeal against a preliminary order under section 215 A of the Code of Civil Procedure should bear under section 7 (*iv*) (*b*) of the Court-Fees Act, 1870. an *ad valorem* Court-fee according to the amount at which the relief sought is valued in the plaint. BHAGAT RAM v. GOKAL CHAND. **150 P R 1908**

16. *Suit for redemption—Value for purposes of further appeal—Punjab Courts Act*, 1884, *section* 40 (*b*.)

Held, that for purposes of section 40 (*b*) of the Punjab Courts Act, 1884, the value of the suit for redemption is the sum found by the first Court to be payable on redemption, and the fact that the Lower Appellate Court on appeal had reduced that sum does not

XI.—APPEAL, VALUATION OF—
concld.

alter the value of the property involved in the decree.

Futrher held, that the amount found due to the mortgagee for repairs is included in the jurisdictional value of the appeal. KISHEN CHAND v. TAJ-UD-DIN. **23 P R 1909**

17. *Further appeal—Suit embracing two or more distinct subjects—Value for Court-fees and for appeal different—Court-fees Act, VII of* 1870, *section* 17—*Suits Valuation Act, VII of* 1887, *section* 8.

Where the relief sought in the plaint was—(*a*) a declaration that a house V was the plaintiff's property and that its sale to defendant 2 was null and void; (*b*) a declaration that the plaintiff was owner of the houses R by virtue of a previous sale in his favour, or a decree for specific performance of the contract of sale; or (*c*) a decree for possession by pre-emption of the house R on payment of Rs. 600 or such amount as the Court deemed reasonable, the first relief was valued at Rs. 150, the second at Rs. 600 and the third in the alternative at Rs. 600, and the value of the houses V and R admittedly did not exceed Rs. 900, and the findings of both the Courts below were concurrent—the Chief Court

Held, following *Aukhil Chunder Sen Roy* v. *Mohiny Mohan Das* (1879), *I. L. R.* 5 *Cal.* 489, that the actual value of the houses in litigation is the value for the purpose of further appeal, that this valuation is quite irrespective of the value for purposes of assessing the Court-fee under section 17 of the Court-fees Act, and that, therefore no further appeal under section 40, Punjab Courts Act, lay.

Held also, that neither section 8 of the Suits Valuation Act nor the general rule that the value for Court-fees governs the value for jurisdiction is applicable to such a suit. NUR ILAHI v. UMAR BAKHSH. **41 P R 1910**

18. *Court-fees Act*, 1870, *article* 1. *schedule* I, *Court-fees in appeals in redemption cases.*

When the first Court found that the amount payable on redemption was Rs. 670 and on appeal the lower Appellate Court reduced the Sum to Rs. 190 and the prayer on futher appeal to the Chief Court was that the sum be increased to Rs. 1,190.

Held, that article 1, schedule I of the Court-fees Act applied, the Court-fee being payable on the value of the subject matter in dispute in the appeal, *viz.*, Rs. 1,000. *I. L. R.* 29 *Mad.* 367, followed. BANWARI DAS v. NATHU SHAH. **5 P R 1911**

XII.—APPEAL FROM ORDER.

See APPEAL II—COMPETENCY OF.
75 P R 1881
124 P R 1882
165 P R 1882
9 P R 1883
55 P R 1886

III—COURSE OF—
185 P R 1882
66 P R 1883
100 P R 1883

XII.—APPEAL FROM ORDER—
concld.

VI—PROCEDURE IN—
188 P R 1882

VIII—SECOND—
133 P R 1882
158 P R 1882

See REVISION—CIVIL. **114 P R 1883**

APPELLATE COURT—POWERS AND DUTIES OF.

See APPEAL IV—IN ARBITRATION CASE
72 P R 1881

V—LIMITATION OF
95 P R 1908

VI—PROCEDURE IN
105 P R 1907

X—VALUATION OF
86 P R 1892

1. *Power of Appellate Court—joinder of parties.*

See CIVIL PROCEDURE CODE, 1882, SECTION 31. **5 P R 1892**

JOINDER OF PARTIES.
36 P R 1890
118 P R 1890
83 P R 1894

2. *Jurisdiction of Court to amend decree confirmed by higher Court on appeal.*

See CIVIL PROCEDURE CODE, 1882, SECTION 206
32 P R 1896

DECREE—AMENDMENT OF
32 P R 1896

3. *Power of Appellate Court to appoint a Receiver.*

See CIVIL PROCEDURE CODE, 1882, SECTION 503. **102 P R 1885**

4. *Duty of Appellate Court to give notice of time and place for hearing appeal.*

See CIVIL PROCEDURE CODE, 1882, SECTION 551, 553.

5. *Evidence improperly recorded by first Court—Power of Appellate Court to remand cause on such ground.*

See CIVIL PROCEDURE CODE, 1882, SECTION 562. **45 P R 1896**
40 P R 1887
89 P R 1889
6 P R 1892
85 P R 1895 F B
56 P R 1898
86 P R 1898

6. *Powers of Appellate Court when hearing appeal from order of remand under section* 562, *Civil Procedure Code*, 1882.

See CIVIL PROCEDURE CODE, 1882, SECTION 562.

7. *Judgments of Appellate Court.*

See CIVIL PROCEDURE CODE, 1882, SECTION 574.

8. *Appellate Court reversing decree on point not affecting merits.*

See CIVIL PROCEDURE CODE, 1882, SECTION 578. **65 P R 1891**

APPELLATE COURT—POWERS AND DUTIES OF—*contd.*

9. *Execution of decree of Appellate Court —Restoration of land to party dispossessed —Award of mesne profits for period of dispossession.*
See CIVIL PROCEDURE CODE, 1882, SECTION 583. **28 P R 1896**

10. *To reject appeals for failure to pay Court-fees.*
See COURT-FEES ACT, 1870, SECTION 12. **115 P R 1884**

11. *Competency of a married woman to represent minor in Appellate Court.*
See GUARDIAN. **8 P R 1908**

12. *Appeal by lambardar from order of dismissal—Duty of Appellate Court.*
See LAMBARDAR.
3 P R 1890 Rev

13. *To interfere with discretion of Lower Court.*
See LIMITATION ACT, 1877, SECTION 5,
106 P R 1885
92 P R 1886

14. *Suit for redemption of mortgage—Defective decree of Appellate Court.*
See MORTGAGE, REDEMPTION.
34 P R 1896

15. *Plea raised in Appellate Court for first time—Question of law.*
See OCCUPANCY RIGHTS.
P R 1898

16. *Decree for pre-emption—Power of Appellate Court to extend time for deposit of purchase-money*
See PRE-EMPTION, PAYMENT INTO COURT.
137 P R 1894
10 P R 1895

17. *Dismissal of suit by Appellate Court on point not taken in first Court.*
See PRINCIPAL AND AGENT.
21 P R 1897

18. *Power of Appellate Court to reverse decree passed after review erroneously granted.*
See REVIEW OF JUDGMENT.
128 P R 1881

19. *To remand case under section 566, Civil Procedure Code, 1882, to Court other than the original Court.*
See REVISION IN CIVIL CASES.
111 P R 1886

20. *To substitute as plaintiff—Principal in suit brought by an agent.*
See RIGHT TO SUE. **20 P R 1882**

21. *To decide question relating to immovable property in appeal in a small cause.*
See SMALL CAUSE COURT—JURISDICTION OF. **78 P R 1887**

APPELLATE COURT—POWERS AND DUTIES OF—*contd.*

22. *To question admissibility of document admitted in the first Court.*
See STAMP ACT, 1879, SECTION 34.
139 P R 1890
2 P R 1891

See STAMP ACT, 1899, SECTION 36.
108 P R 1908

23. Limitation is a matter of jurisdiction and the defence that the remedy is barred by lapse of time may be taken at any stage. But to establish this bar defendant cannot ordinarily bring forward in appeal new facts which are not already disclosed on the record. Accordingly, if the defendant, instead of proving that the period of limitation has been exceeded, submits the case to arbitration, he must be held to have voluntarily prevented the question of limitation from being raised when the fact does not appear on the record, and it cannot be raised by the suggestion of facts not already disclosed. GOPAL DASS *v.* RUTHEE RAM (92 of 1867, Civil). See also MYA SINGH *v.* GUNESH DAS (32 of 1872, Civil). But *held, per* SMYTH, J., in MEHTAB RAI *v.* MANAK CHAND (59 of 1878, Civil), that the plea of limitation is not a question of jurisdiction within the meaning of section 622, Act X of 1877.

24. *Jurisdiction—Appeal admitted from order of lower Court—Review by lower Court of order appealed from—An appeal from a certain order treated as an appeal from another.*

By order dated the 22nd March, the Commissioner dismissed plaintiff's suit on appeal. On the 29th May, plaintiff applied for a review of the order. On the 9th June, the case came on before another Commissioner, who first made an order to the effect that he was incompetent to review his predecessor's judgment, but on the same date he suspended action on that order and referred the question for the opinion of the Chief Court. On the 22nd June, plaintiff filed an appeal in the Chief Court from the order of March 22nd, and the appeal was admitted on the 25th June. On July 6th, the Commissioner, having received the Chief Court's order, calling for the files, rejected plaintiff's application for review. On July 11th, on receipt of the Chief Court's reply to his reference, stating that he was competent to review his predecessor's judgment, he directed the case on review to proceed, and on the 6th August reversed the order of March 22nd. Plaintiff took out execution of the order of August 6th. Leave was granted to him by the Chief Court to allow his appeal, admitted June 25th, to be amended and to stand, not as an appeal from the order of March 22nd, but as a special appeal from the order of August 6th. The defendant appealed from the order of August 6th on the ground that it was made without

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jurisdiction, an appeal having been admitted by the Chief Court before the Commissioner granted the review.

Held, upon defendant's appeal, that the action of the Commissioner on June 9th was to continue the application for review pending; that his order of July 6th concluded the proceedings on review; and that his order of August 6th, which must have been based upon fresh proceedings commenced after the plaintiff's appeal was admitted by the Chief Court (June 25th), was without jurisdiction, and must be set aside.

Held, afterwards, but on the same day, on plaintiff's appeal—that the Commissioner's order of August 6th having been reversed by the Chief Court, the plaintiff might revert to his original application and treat his appeal as from the decision of March 22nd, and this notwithstanding that he had taken out execution of the order of August 6th.

Query: Whether the Chief Court will necessarily set aside a judgment defective under section 359, Civil Procedure Code; but the Court will do so where it is not satisfied that the Commissioner considered the case with sufficient care. JEY GOBIND *v.* RAM PERSHAD. **6 P R 1870**

25. *Joinder of fresh parties.*
Where the rights of another person as well as those of the plaintiff have been contested in the lower Courts, though the rights of the two are different, the Chief Court will join that other person as a plaintiff or party to the suit to prevent further litigation. HEERA SINGH *v.* SOBHA. **11 P R 1870**

26. *Want of jurisdiction in hearing the appeal—Act XXIII of 1861, section 35.*
Where the Court of first instance has no jurisdiction, and the Appellate Court, instead of reversing the first Court's judgment for want of jurisdiction, affirms it on the merits.
Held, by *Boulnois* and *Lindsay, JJ.* (*Campbell, J.*, dissenting), that the Chief Court can, under section 35 of Act XXIII of 1861, revise the proceedings of the Courts below, on the ground that the lower Appellate Court in hearing the appeal exercised a jurisdiction not vested in it by law. HAZARI MALL *v.* MUSSAMMAT HARDEVI.
80 P R 1873

27. *When Appellate Court should reverse finding on facts.*
Unless an Appellate Court can say that the finding of the lower Court is entirely against the evidence, it should support that Court's finding.
Bagh Singh v. *Fatta* (28 *of* 1873, *Civil*). *But in Mohunt Radika Das* v *Bhagwan Das* (7 *of* 1874, *Civil*) the Chief Court *held*, that in regular appeal the Appellate Court is as much judge of the facts as the original Court, and is bound to give its judgment on the facts by reference to the recorded evidence independently

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of the decision of the Court of first instance: and that consequently it may reverse such decision, although there is no glaring mistake of the effect of the evidence in the Court below.

28. *Power of Appellate Court to refer to arbitration.*

The parties referred the matter in dispute to arbitration in the Court of first instance, with power to the arbitrators to appoint an umpire. An umpire was appointed, but through illness was unable to act, and the Court directed the appointment of another umpire. The arbitrators failed to comply with this direction, and the Court itself proceeded with the case, and passed a decree for the plaintiff. No objection was taken to this procedure, but the defendant appealed on the merits of the case. At the hearing of the appeal, it was objected for the defendant that the original Court had no jurisdiction to withdraw the case from arbitration, and the Lower Appellate Court, allowing the objection, served the arbitrators with notice to appoint an umpire. The arbitrators were unable to agree as to the appointment: and, at the request of the parties, the Appellate Court appointed an umpire, who made an award in defendant's favour. Plaintiff then appealed to the Additional Commissioner, who held that the original Court had proceeded according to law, and that the first Appellate Court had no power to again refer the dispute to arbitration. From this decision, defendant appealed to the Chief Court.

Held, per Lindsay and *Melvill, JJ.*, that the Court of first instance acted legally in itself proceeding with the case to final judgment, but that it was competent for the Appellate Court, under section 37, Act XXIII of 1861, to refer the matter to arbitration, and incumbent upon that Court so to proceed when requested to do so by the parties. MEHTAB *v.* MUSSAMMAT MADAN.

24 P R 1875

29. Section 359, Civil Procedure Code, must be complied with even when the appeal is summarily dismissed without notice to the respondent. SUBA *v.* KARAM.

45 P R 1875

30. *Dismissal of appeal without calling for record.*

The Appellate Court is not bound to look at the files of the case before dismissing an appeal without notice to the respondent, under section 7, Act IX of 1873. RAM DASS *v.* LACHMAN DASS.

48 P R 1876

31. Where the special appellant tendered fresh evidence in the Chief Court, that Court allowed him to withdraw the special appeal, leaving him free to apply for a review of the judgment of the Court below. GHULAM MAHOMED KHAN *v.* SHADI KHAN.

109 P R 1876

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32. Where the Chief Court on special appeal raises an issue so far new that it was not prominently brought before the parties in the first Court, the Court can direct that each party be allowed to produce fresh evidence bearing on that issue. GANDA *v.* GURMUKH SINGH. **115 P R 1876**

33. The objection that the Court of first instance had exercised a wrong discretion in permitting plaintiff to sue for a declaratory decree having been taken for the first time on second appeal, the Chief Court refused to interfere in the matter.

Held, further, that a plea to the jurisdiction may be taken at any stage of the suit if the facts on which the plea rests are patent on the face of the record; but a party is not entitled, on a second appeal, to have evidence taken to support a plea as to the want of jurisdiction of the first Court to entertain the suit. BAIKUNT DAS *v.* HUKAM DAS. **55 P R 1877**

34. *Power to reject deed wrongly admitted in evidence by first Court.*

Defendant mortgaged to plaintiff by two written deeds two plots of land with the right to half the produce thereof. The deeds were for sums over Rs. 100, and were not registered. In a suit brought by plaintiff to recover the value of his share of the produce from defendant for kharif, Sambat 1932, the Court of first instance admitted the deeds in evidence and decreed the claim, but this decree was reversed by the Judicial Assistant on appeal, on the ground that the deeds were inadmissible in evidence for want of registration.

Held, by the Chief Court, that the Judicial Assistant was competent to reject the deeds on the ground that they were inadmissible in evidence, notwithstanding their admission by the Court of first instance. SARBALAND KHAN *v.* CHANDA SINGH. **84 P R 1877**

35. The power given in section 7, Act IX of 1873, of confirming a decision upon the perusal of the judgment appealed against, and the memorandum of appeal, and hearing the appellant is one which should be sparingly and cautiously exercised, especially in cases where interests in land are concerned. But the exercise of the discretion otherwise than in accordance with these views, is not an error which can be corrected by the Chief Court in special appeal. AHMED KHAN *v.* BEHRAM. **91 P R 1877**

36. A Court of first instance admitted in evidence an unstamped acknowledgment of a debt, which embraced items more than three years old, and consequently barred by limitation.

Held, that the Appellate Court was precluded from taking up the question whether the acknowledgment had, under the provisions of Act XVIII of 1869, been wrongly admitted in evidence as unstamped. DYAL SINGH *v.* MANGAL SINGH.

28 P R 1878

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37. *Return of plaint after trial on the merits.*

An Appellate Court has power to direct the return of a plaint, notwithstanding a trial upon the merits in the first Court, if it be found that such Court ought to have returned it under section 57 (*a*) of Act X of 1877. SHADI *v.* MUSSAMMAT AISHAN.

55 P R 1878

38. *Civil Procedure Code (Act X of 1877), section 506—Application in writing—Want of—Jurisdiction.*

Held, that, under section 506, Act X of 1877, an application in writing by the parties is essential before a case can be referred to arbitrators, and that, where this is wanting, the reference by the Court and proceedings of the arbitrators are without jurisdiction, and a decree based on the award not final.

Held, further, that the consent of the parties to waive the condition required by the Act, that the application shall be in writing, can give no jurisdiction to the Court to delegate its own functions to arbitrators, and found a decree upon their award, and it is only upon a consent recorded in writing that the Court can make an order of reference so as to render the award ensuing thereupon capable of being turned into a final decree. MIR AMANULLAH *v.* CHOTA MIRZA. **67 P R 1879**

39. *Civil Procedure Code (Act X of 1877), section 545—Execution of decree—Stay of, on presentation of pauper appeal.*

In the case of an application for leave to appeal as a pauper, accompanied by a memorandum of appeal, which is not forthwith rejected under section 592, Act X of 1877, the Appellate Court has power, under section 545, Act X of 1877 to order execution to be stayed, although the appeal may not have been admitted as a pauper appeal. LANCESTER *v.* LAHORE ICE AND AERATED WATER CO. **70 P R 1879**

40. *Remand—Dismissal for default without notice to appellant—jurisdiction.*

Plaintiff appealed to Additional Commissioner, Amritsar, against the order of the first Court dismissing his suit. The Additional Commissioner remanded the case, and on receipt of return to the order of remand, the appeal came on for hearing on 15th February 1878, but no notice of such date was given to plaintiff, appellant. The Additional Commissioner waited three days for appellant, and on 18th February 1878, appellant being still absent the appeal was dismissed for default. Plaintiff applied for re-admission of his appeal, but the application was rejected. Thereupon, plaintiff appealed to the Chief Court.

Held, that the appellant having had no notice of the date fixed for the hearing of his appeal the Additional Commissioner acted without jurisdiction in dismissing the appeal for default 48 *P. R.* 1875 cited and approved. BALA *v.* HAKIM. **90 P R 1879**

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41. *Held*, that an objection raised in special appeal that plaintiff could not succeed in his suit as it was founded on a deed of gift insufficiently stamped could not prevail, as the penalty had been levied and the document admitted in evidence. SUDAMA *v.* KESHO **102 P R 1879**

42. *Act X of* 1877, *sections* 551, 574 —*Duty of Appellate Court.*

An Appellate Court is bound in a case disposed of under section 551 of the Civil Procedure Code, as in other cases, to pass a judgment determining the question raised by the appeal, and stating its reasons for the conclusions arrived at, in accordance with section 574 of the same Code. *Jiwan* v. *Dhir Singh* (No. 100 of 1879, Civil) followed. BADRUDDIN *v.* FATTEH MUHAMMAD. **24 P R 1881**

43. *Act X of* 1877, *sections* 544, 559 —*Appeal by one defendant—Power of Appellate Court to reverse whole decree —Addition of parties as respondents.*

Plaintiffs sued to recover certain land, as forming part of their *patti*, from defendants who were the proprietors of the neighbouring *patti*. The 1st Appellate Court (the Deputy Commissioner) decreed half the land in suit to each party, recording that most of the defendants agreed to this decision. The dissentient defendant appealed to the Commissioner, who reversed this order, and dismissed plaintiffs' claim as unproved. On special appeal to the Chief Court the plaintiffs urged that the Commissioner should have accepted the dissentient defendant's appeal as regards his special share, and not as to the whole land.

Held, that the order of the Commissioner was correct, as under section 544 of the Code of Civil Procedure, he could reverse the whole decree on the appeal of one of the defendants, and it was optional with him to take action under section 559 of the same Code. BHUPA *v* CHETU. **26 P R 1881**

44. *Insolvency proceedings—Act IV of* 1872, *sections* 22, 25, 28, 31.

Held, that no appeal lies to the Chief Court from the order under sections 25 and 28 of the Punjab Laws Act of a Court exercising Insolvency jurisdiction under section 22 of that Act, as in the absence of any provision in the Act making the orders of such Courts subject to appeal, section 22 cannot be construed as investing the Local Government with the power to confer jurisdiction to hear appeals, nor can the rules for the better administration of insolvent estates which the Chief Court, with the sanction of the Local Government, is empowered to make by section 31 of the Act, confer any such jurisdiction. SIMLA BANK *v.* TAVENOR. **65 P R 1882**

45. *Defective judgment of Appellate Court—Act X of* 1877, *section* 574—*Duty of*

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Appellate Court to give reasons for its finding.

Where the lower Appellate Court, after disposing of the plea of want of jurisdiction on the part of the first Court, raised in the first ground of appeal to his Court, merely remarked " that it appeared from the judgment of the lower Court that plaintiffs had a superior right to the defendants to succeed to the land in dispute, and that the lower Court having recorded judgment after conducting enquiry, he saw no reason to interfere with the order of that Court," and it appeared from the appeal filed in the lower Appellate Court that the appellant attacked the judgment of the first Court as not having disposed of certain points which were urged by him in his original plea and which raised questions of fact upon the determination of which the rights of the parties depended, which points were passed over by the lower Appellate Court without the slightest discussion in his judgment, *held*, that the said judgment did not fulfil the requirements of section 574 of the Civil Procedure Code.

It is incumbent upon a first appeal for the presiding Judge to give his own reasons for arriving at the conclusion he does, and it is not sufficient to record what the first Court has found and to add in a general way that the Court sees no reason to differ from that finding. MAN SINGH *v.* BHUP SINGH. **91 P R 1882**

See to the same effect PIR WALI SHAH *v.* SULTAN. **91 P R 1882 Note**

46. *Jurisdiction—Objection raised after remand for fresh decision on specific issue—Admissibility of such objection.*

Held, that a party who has obtained on second appeal to the Chief Court a remand for a fresh decision on specific issues affecting the merits of the case, is not at liberty to raise for the first time an objection to the jurisdiction of the Court of first instance in a subsequent second appeal to the Chief Court. RAM SUKH *v.* KANNI RAM. **54 P R 1883**

47. *Act XL of* 1858, *section* 3—*Act X of* 1877, *sections* 445, 446—*Next friend suing on behalf of minor without certificate—Absence of objection in Courts below—Ground for second appeal.*

In a suit instituted by a mother as next friend on behalf of her minor son, in which it was not alleged that the mother was not a proper person to represent the minor under the provisions of section 445 of the Civil Procedure Code, nor was any application made for her removal under section 446, it was objected for the first time by the defendant-respondent in second appeal that no formal sanction had been given under section 3 of Act XL of 1858 to the mother's suing without a certificate under that Act.

Held, that the effect of the objection being, not to support the decree of the lower Appellate Court but to nullify the pro-

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ceedings altogether, the respondent could not properly be allowed to raise it in answer to a second appeal, not having taken the objection in the Courts below, though it would be a ground of second appeal, had it been raised below and overruled MUSSAMMAT ATAR KOUR *v.* MAN SINGH. **62 P R 1883**

48. *Civil Procedure Code (Act X of* 1877), *section* 544—*Reversal of whole decree on appeal of one defendant.*

A suit based on three *hundis* which were drawn at Multan by one B. M. on himself, and his father, the appealing defendant, both of whom resided at Amritsar, and which were payable at Amritsar, was instituted in the Multan District, where it was heard and decided in the plaintiff's favour. It was contended by one of the defendants, who was the sole appellant both in the lower Appellate Court and in the Chief Court, that the Multan Court had no jurisdiction to hear the suit, and this objection though disallowed in the lower Courts was finally allowed on the appeal to the Chief Court.

As regards the question of the proper order to be passed on the appeal to the Chief Court, *held*, that as under section 544 of the Civil Procedure Code, one of several defendants might obtain a reversal of the whole decree appealed against, if it proceeded on any ground common to all the defendants, and the decree appealed against was one dismissing the present appellant's appeal, one of whose grounds of appeal wa that the Court of first instance had no jurisdiction to try the suit, which was a ground common to both defendants, it might be said that in dismissing the appeal the decree of the lower Appellate Court proceeded on a ground common to both defendants, the effect of that decree being to uphold the decision of the first Court which decided that the cause of action arose within the jurisdiction of the Multan Court, and therefore section 544 applied.

The Court therefore ordered the plaint to be returned to the plaintiff for presentation to the proper Court. BANKA MAL *v.* CHUAH MALIK. **71 P R 1883**

49. *Court of its own motion raising the objection that an agreement sued upon is void.*

Plaintiff sued the defendant upon an agreement admitting the latter as a partner in a contract, for which plaintiff had already tendered, to supply wheat to the Commissariat Department, for his share of the losses incurred in such contract and for damages. It was admitted that plaintiff was aware that defendant was at the time in the employment of the Commissariat Department, and that in tendering for the contract he had to state that no one connected with the department was at the time of the tender, nor should afterwards be admitted as a partner with him. The lower Appellate

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Court dismissed the suit on the ground that the agreement sued upon was void.

Held, that the lower Appellate Court could of its own motion take the objection that the said agreement was void, though this was not pleaded by the defendant, and dismiss the suit upon that ground; as if it becomes apparent on the face of the proceedings that an agreement is not enforceable by law, the Court cannot be asked to enforce it, whether the plea is put forward or not. *Dasondhi* v. *Sirdar Khan* (114 of 1879,) *Civil*, cited. SAHIB RAM *v.* NAGAR MAL.

63 P R 1884

50. *Civil Procedure Code (Act XIV of 1882), section 562—Remand—Limits of Appellate Court's power of remand.*

To justify a remand by an Appellate Court under section 562 of the Civil Procedure Code, it is necessary that the lower Court should have decided the case on a preliminary point, and not on the merits, and the exclusion of evidence of fact would not be enough of itself to justify a remand under this section unless the point decided was preliminary to a trial of the case on the merits. MUHAMMD *v.* FATTEH MUHAMMAD. **46 P R 1885**

51. *Civil Procedure Code (Act XIV of 1882), sections* 108, 560 *and* 582—Ex-parte *decree—Power of Appellate Court to order security to be given for satisfaction of decree before rehearing an appeal which has been decided* ex-parte.

A decree was passed *ex-parte* by the lower Appellate Court against the defendant-appellant. On his applying to have the appeal reheard, he was directed to furnish security for satisfying the decree passed against him before his application could be considered, and being unable to furnish the required security his application was rejected. On appeal to the Chief Court it was urged that the lower Appellate Court could only require security for the costs of the suit.

Held, that as under section 560 of the Code of Civil Procedure an Appellate Court may rehear an appeal which has been decided *ex-parte* "on such terms as to costs or otherwise as the Court thinks fit to impose," the words "or otherwise" would authorize the Court to impose terms other than those relating to costs, and would cover an order as to furnishing security for the due performance of the decree.

Held further, that as a Court of original jurisdiction could, under section 108 of the Civil Procedure Code, direct the payment of the decree into Court prior to admitting an application to have an *ex-parte* decree set aside an Appellate Court would, by virtue of section 582, have the same power as a Court of original jurisdiction in this respect. BAWA NARAIN SINGH *v.* GANGA RAM. **70 P R 1885**

52. *Civil Procedure Code (Act XIV of 1882), section 574—Defective judgment of Appellate Court—Court adopting reasons for*

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the decision given by first Court—Omission to notice all the arguments raised in appeal.

In second appeal to the Chief Court, it was contended (*inter alia*) that the judgment of the lower Appellate Court was insufficient to dispose of the appeal before it, the objections urged being that arguments were laid before the Court which were not noticed in its judgment, and that instead of giving independent reasons for its finding, the Court merely adopted the reasons given by the first Court.

Held, that the judgment of the lower Appellate Court could not be considered not to comply with the requirements of section 574, Civil Procedure Code, on the above grounds: that the said Court, if it found that the same points were disposed of by the lower Court below, and after hearing arguments, was satisfied that the reasons given by that Court supported the decision and were unshaken, was at liberty to adopt those reasons as its own by reference to the judgment under appeal without stating them at length, and that it was not bound to set out in its judgment every argument urged before the Court, and its reasons for overruling it. *Man Singh* v. *Bhup Singh* (91 of 1882, Civil) referred to. POLLARD *v.* MUHAMMAD SADIK.

28 P R 1886

53. *Civil Procedure Code (Act XIV of 1882), section 562—Appeal from order of remand—Rejection of appeal on ground that order has been carried out.*

It is the practice of the Chief Court to reject appeals from orders of remand under section 562, Civil Procedure Code, when at the hearing of the appeal it appears that such orders have been carried out by the lower Court, whether the final order of such Court has been appealed against or not. *Ali Bahadar Khan* v. *Raja Aladad Khan* (129 of 1884, Civil) followed. LACHMAN *v.* MUHAMMAD HOSEIN. **117 P R 1886**

54. *Revision—Munsiff returning plaint on ground that case was cognizable by Small Cause Court—District Judge on appeal reversing Munsiff's order and directing him to try the suit—Munsiff refusing to proceed on ground that if the case was not a small cause, the District Judge had no jurisdiction—Appealable order—Course of appeal.*

A Munsiff having returned a plaint for persentation in the Small Cause Court, the District Judge on appeal reversed the Munsiff's order and directed him to receive the plaint and try the suit. Thereupon the Munsiff, holding that if the case was not a small cause the District Judge had no jurisdiction to hear the appeal, and ignoring the order of the District Judge that he should receive the plaint and try the suit, again returned the plaint to the plaintiff.

Held, that the last order of the Munsiff being open to appeal was not open to revision by the Chief Court, and though an erroneous order was nevertheless binding until set aside in due course of procedure by the District Judge.

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But *held* further, that the said order was clearly an erroneous order, for as soon as the Munsiff had decided that the plaint presented was a plaint in a suit of a nature cognizable by a Small Cause Court, that decision determined the course of appeal in the suit for the purpose of contesting the Munsiff's order, and the District Judge undoubtedly had jurisdiction to hear the appeal, such jurisdiction not depending upon the decision he might afterwards arrive at as to the nature of the case. HARJAS RAI *v.* NIRMAL SINGH.

36 P R 1887

55. *Appellate Court—Appeal of one defendant—Decree in favour of plaintiff-respondent who has not appealed against another respondent—Civil Procedure Code, sections* 544 *and* 561.

There is no rule of procedure which would justify an Appellate Court, on the appeal of one defendant, in decreeing in favour of a plaintiff-respondent against another respondent who was also a defendant in the first Court, in the absence of any appeal or cross-objection by the plaintiff filed in the Appellate Court.

The general rule is that an Appellate Court can only modify a judgment or decree so far as it affects the appellant, without interfering as to parties who do not appeal: the Code of Civil Procedure provides at least two exceptions to this rule, which are contained in sections 544 and 561 of the Code. RAM DITTA *v.* MOHKAM. **46 P R 1892**

56. *Interlocutory decision of lower Court not reversed on appeal, how far binding on Appellate Court on appeal from a final order in same proceeding.*

Held, that though a decision by a competent Court in an execution proceeding that an application for execution is not time-barred is, unless reversed on appeal, conclusive between the parties in a subsequent proceeding for execution of the same decree, such decision is not binding upon an Appellate Court on an appeal from a final order *in the same proceeding*, merely because the interlocutory order was not appealed from immediately. *I. L. R., VIII Calc.*, 51, referred to. SARDAR *v.* FATTEH CHAND. **89 P R 1894**

57. *Appeal—Appeal from insolvency order—Civil Procedure Code,* 1882, *sections* 588 (17) *and* 589.

By Punjab Government Notification No. 940, dated 24th October 1888, the Divisional Court is deemed to be the District Court per proviso (*a*), section 589, Civil Procedure Code, 1882, consequently in all suits where the subject-matter is not more than Rs. 5,000, an appeal from an order under section 351 (*a*) of the Code lies to the Divisional Court.

Venkatrayer v. *Jamboo Ayyan* (*I. L. R. XVII Mad.* 377), distinguished. BHAGWAN DAS AND OTHERS *v.* JAI RAM DAS AND OTHERS.

58 P R 1901

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58. *Appeal—Arbitration—Decree on judgment in accordance with award—Revision—Civil Procedure Code,* 1882, *sections* 592, 622.

Where an application has been made to set aside an award on the ground of the arbitrator's misconduct and refused after judicial determination, and a decree was, in accordance with, and not in excess of the award, passed under section 522 of the Code.

Held, that the Chief Court had no authority to interfere with the decree either by way of appeal or revision. *Ghulam Jilani Khan v. Muhammad Hassan* (25 *P. R.* 1902, *P. C.*) cited and *Rajah Harnarain Singh v. Chaudhrain Bhagwant Kour* (*I. L. R. XIII All.*, 800, *P. C.*), distinguished. HANS RAJ AND OTHERS *v.* GANGA RAM.

88 P R 1902 F B

59. *Civil Procedure Code,* 1882, *sections* 562, 588 (28)—*Appeal from order of remand in an unclassed suit under Rs.* 200 *in value—Power of Chief Court to go into the merits on appeal from a remand order.*

Held, by the Full Bench, that in hearing an appeal under section 588 (28), Civil Procedure Code, the Chief Court is not confined to the mere question of procedure, it can and should go into the merits of that preliminary point upon which the lower Appellate Court has remanded the case under section 562; and where in the preliminary point questions of law or custom are involved it can and would discuss those questions. MAHA RAM *v.* RAM MAHAR.

1 P R 1903

60. *Divorce—Dismissal by Single Judge of application for dissolution of marriage—Appeal from such order of dismissal—Indian Divorce Act,* 1869, *section* 55—*Punjab Courts Act,* 1884, *section* 9.

Held, that an appeal lies from all decrees and orders passed by a Single Bench in the exercise of its original jurisdiction in proceedings under the Indian Divorce Act, 1869, by virtue of section 55 of that Act and section 9 A. of the Punjab Courts Act. C. *v.* C. AND B.

18 P R 1903

61. *Review of judgment—Appeal—Jurisdiction of Divisional Judge to review his judgment after it has been upheld on appeal by the Chief Court—Civil Procedure Code,* 1882, *section* 623.

A subordinate Court is competent to review his judgment on an application put in before an appeal has been preferred against his decree and is not prevented from proceeding upon it by the subsequent presentation of an appeal, but he cannot entertain or deal with any such petition after an appeal in the case has been decided by a superior Court, although it might have been put in proper time and is still pending in his Court.

Bhurrut Chunder Mojoomdar v. *Ram Gunga Sein* (5 *W. R.* 59 F. B.), *Thakoor Prosad* v. *Baluck Ram* (12 *Calc.*, *L. R.* 64), *Bunkoo Lal Singh* v. *Basoomunissa Bibee* (7 *W. R.*

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166), *Mussammat Jowala Devi* v. *Kanwar Sen* (32 *P. R.* 1896), and *Abdul Kasim* v. *Piyare Lal* (59 *P. R.* 1900), referred to. JAGAN NATH *v.* DEVI DAS.

25 P R 1904

62. *Further appeal—Practice of Chief Court to interfere with concurrent finding of facts.*

Held, following *Kadir Moidin* v. *Nepean* (*I. L. R. XXVI Cal.*, *I. P.C.*), that finding of facts in which two Courts had concurred would not be disturbed in further appeal by the Chief Court unless cogent reasons are shown. KHARUD MIAN AND OTHER *v.* BADSHAH.

50 P R 1904

63. *Appeal—Award, modification of, under section* 518, *Civil Procedure Code,* 1882 *—Power of Appellate Court to consider questions of corruption or misconduct of arbitrators.*

Held, that an appeal under section 588 (26) of the Code of Civil Procedure is limited solely to the question of the correctness of the order passed under section 518, and it is not open to the Court hearing such appeal to enter into the question of corruption or misconduct of an arbitration except as concerns his having acted *ultra vires*. The word "award" in section 522 includes "award modified under section 578." KALU *v.* KHAIR DIN.

13 P R 1906

64. *Jurisdiction of Chief Court to hear Civil Appeals transferred by Judicial Commissioner of N.-W. F. Province—Regulation VII of* 1901, *section* 87 *A—Punjab Courts Act,* 1884.

Held, that the Chief Court of the Punjab has, by virtue of the provisions of section 87 A of the North-West Frontier Province Law and Justice Regulation No. 7 of 1901 as amended by Regulation No. 1 of 1906, no jurisdiction as a Court of Civil Appeal to entertain, hear and decide any Civil Appeal transferred to it for determination by the Judicial Commissioner of the North-West Frontier Province. JODH NATH *v.* SADHU RAM.

50 P R 1907 F B

65. *Appeal from exercise of discretion—Grounds of interference.*

Held, that a Court of appeal ought not to interfere with the exercise of the discretion of an original Court unless there is some substantial grievance. RAM MAL *v.* SHAHAMAD KHAN.

129 P R 1907

66. *Jurisdiction—Valuation of suit—Suit for possession of house—Decree on payment of improvements—Value for purposes of Court-fee and appeal—Punjab Courts Act,* 1884, *section* 39—*Court-fees Act,* 1870, *sections* 7 (*V*) (*e*) *and* 9.

Plaintiff sued for possession of a house which he valued at Rs. 90. The Munsiff granted him a decree for possession on payment of Rs. 635, value of improvements effected by the defendants. He appealed to

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the District Judge against so much of the decree as awarded compensation for improvements. The District Judge held that he had jurisdiction and that the Court-fee must be made up to the value of improvements.

Held, by the Full Bench, that the value of the suit for purposes of appeal under the Punjab Courts Act, 1884, was the market value of the house as ascertained by the First Court and that the District Judge had not jurisdiction to entertain and hear the appeal. ABDUR RAHMAN *v.* CHARAGH DIN.

19 P R 1908 F B

67. *Appeal from order of remand—Power of Chief Court to go into the merits of the case—Practice—Civil Procedure Code,* 1882, *sections* 562, 588 (28).

Held, that upon an appeal under clause 28 of section 588 of the Code of Civil Procedure, against an order of remand under section 562, as soon as it is found that the remand order is not warranted by the terms of the section, inasmuch as the case has not been disposed of by the Court of first instance upon a preliminary point, the Chief Court will not enter upon, or in any way deal with the spurious preliminary point which the lower Appellate Court had wrongly held to justify the remand order. IMAM BIBI *v.* GHULAM HUSAIN.

38 P R 1908

APPEARANCE

1. Plaintiff's suit was dismissed in default of appearance, the Court finding that the plaintiff's absence was deliberate an application for restoration of the case was refused.

Held, that the plaintiff's absence was wilful and contumacious and that under the circumstances he was not entitled to have the suit restored. GURDIT SINGH *v.* SOHAN SINGH.

46 P R 1905

See CASE UNDER CIVIL PROCEDURE CODE, 1908, ORDER IX, RULES 3 AND 9.

37 P R 1904

2. *Minor, appearance by—Guardian* ad litem—*Effect of decree against minor.*

Where in the lower Appellate Court one of the respondents, a minor girl, was described merely as being plaintiff's wife and not as a minor, and the appeal was decided without any guardian *ad litem* having been appointed to her.

Held, that the girl, not having been represented by a guardian, could not be treated as having appeared, though actually present in Court, and that the decree could not be treated merely as an *ex-parte* decree, and must be set aside. MUSSAMMAT IDO *v.* RULIA.

35 P R 1910

APPOINTMENT OF GUARDIAN.

See GUARDIAN.

APPOINTMENT OF HEIR.

See Custom—Adoption.
See Custom—Inheritance.

1. *Appointment of heir—Daughter's son—Raiens of Jullundur district.*
See Custom—Adoption. **58 P R 1879**

2. *Appointment of heir—Sister's son—Childless village proprietor—Hindu Jats.*
See Custom—Adoption.
64 P R 1879

3. *Appointment of heir—Hindu, Jats Hoshiarpur.*
See Custom—Adoption.
92 P R 1879.

. *Appointment of son-in-law as heir—Sain is of Hoshiarpur.*
See Custom—Adoption.
97 P R 1879

5. *Appointment of heir—Jats of Dodwar got, Jullundur.*
See Custom—Adoption.
108 P R 1879

6. *Appointment of heir—Gift to daughter's son—Muhammadan Jats, Gujrat.*
See Custom—Adoption.
15 P R 1880

7. *Appointment of heir—Rajputs of Jullundur.*
See Custom—Adoption.
71 P R 1880

. *Appointment of heir by will.*
See Custom—Adoption.
103 P R 1880

9. *Appointment of two persons as heir.*
See Custom—Adoption.
85 P R 1881

10. *Appointment of heir—Daughters—Moghals of Patti in* tahsil *Kasur.*
See Custom—Adoption.
71 P R 1895

11. *Appointment of heir, absence of—Gift to sister's son—Gorewaha Rajputs of Jullundur.*
See Custom—Alienation.
152 P R 1884

12. *Appointment of heir—Son-in-law—Hindu Jats of Hoshiarpur.*
See Custom—Alienation.
15 P R 1886

13. *Appointment of heir—Daughter and daughter's husband.*
See Custom—Inheritance.
162 P R 1882

14. *Appointment of heir—Gil Jats of* tahsil *Ajnala.*
See Custom—Inheritence.
14 P R 1884
See also **45 P R 1884**

APPOINTMENT OF HEIR—*concld.*

15. *Appointment of heir by occupancy tenant—Occupancy rights—Succession to.*
See Occupancy Rights.
43 P R 1895 F B

APPROPRIATION OF PAYMENTS.

See Contract Act, 1872.

1. *Held* (before the passing of Act IX of 1872), that a creditor was entitled to appropriate payments made by a debtor to any account which he may have against him, unless the debtor at the time of payment stipulated that the payment should be credited to a particular account, in which case the creditor would not be entitled to disregard the request. Gopal Das *v.* Waryam Singh.
101 P R 1871

2. Money paid to a creditor in a case of current accounts, without any specific appropriation by the debtor, might be appropriated as the creditor thought fit; and the creditor might apply the money in payment of items barred by limitation. If the amount paid be only sufficient for part payment of a debt or item so barred, the rest of the debt was not revived without the assent of the debtor. Gyan Chand *v.* Kurm Bhaggun.
75 P R 1870

3. If in the case of an account current no election as to the appropriation of a payment were made by either debtor or creditor the Court would appropriate the payment to the discharge of the first item on the debit side, though that item was barred by limitation. Naubat *v.* Khubee.
27 P R 1872

ARAINS.

1. *Found* that Arains are converts from Hinduism to Islam.
Raushan *v.* Lehna.
36 P R 1895, p. 153

2. *Held*, that among Arains of *mauza* Dholewala, *tahsil* Zira, district Ferozepore, a sonless proprietor has, by custom, the power to make a gift of a portion of his ancestral land in favour of her daughter, whose husband is the donor's *ghar-jawai* or resident son-in-law. Karm Din *v.* Mussammat Jio.
13 P R 1911

ARBITRATION.

1. *Arbitration—Reference of claim based on accounts.*
See Account Books.
5 P R 1866
35 P R 1867

2. *Arbitration—Appeal from refusal to remit.*
See Appeal—Civil. **64 P R 1870**

3. *Arbitration—Act VIII of 1859 section 326.*
See Appeal—Civil. **80 P R 1870**

ARBITRATION—*contd.*

4. *Arbitration—Appeal from order setting aside an award.*
See Appeal—Civil. **59 P R 1875**

5. *Arbitration—Appeal—Act VIII of 1859, section 327.*
See Appeal—Civil. **93 P R 1876**

6. *Arbitration—Act VIII of 1859, section 325—Act X of 1877, section 522—Reference to the arbitration without provision for award of majority being binding—Effect of objections to award—Omission to dispose of.*
See Appeal—Civil. **57 P R 1879**

7. *Arbitration—Application in writing—Civil Procedure Code, Act X of 1877, section 506.*
See Appeal—Civil. **67 P R 1879**

8. *Arbitration—Act X of 1877, section 522—Judgment in accordance with award—Appeal on ground that defendants did not consent to arbitration.*
See Appeal—Civil. **33 P R 1881**

9. *Arbitration—Act X of 1877, section 526—Appeal against an award—Grounds for such appeal.*
See Appeal—Civil. **70 P R 1881**

10. *First Court setting aside award for misconduct—Civil Procedure Code (Act X of 1877), sections 522, 591—Power of Appellate Court to pass judgment in accordance with award.*
See Appeal—Civil. **72 P R 1881**

11. *Arbitration—Act X of 1877, sections 506, 508, 522,—Reference without consent of all the parties to the suit—Award and judgment in accordance therewith—Right of appeal by party consenting to reference—Jurisdiction—Effect of award following on submission to arbitration by some only of the parties to the suit.*
See Appeal—Civil. **4 P R 1882 F B**

12. *Arbitration—Act X of 1877, section 522—Judgment given in accordance with award before expiry of ten days allowed for application to set it aside.*
See Appeal—Civil. **48 P R 1882**

13. *Arbitration—Objection to award on ground of misconduct of arbitrators—Omission by Court to investigate such objection—Finality of judgment in accordance with award—Act X of 1877, section 522.*
See Appeal—Civil. **184 P R 1882**

14. *Arbitration—Act X of 1877, section 522—Judgment in accordance with award—Misconduct.*
See Appeal—Civil. **17 P R 1883**

15. *Arbitration—Civil Procedure Code (X of 1877), section 522—Award too indefinite to be capable of execution—Decree not in accordance with award.*
See Appeal—Civil. **47 P R 1883**

ARBITRATION—*contd.*

16. *Arbitration—Reference by one out of three plaintiffs and the defendants—Finality of award—Act X of* 1877, *section* 522—*Ratification by parties who did not join in reference—Estoppel.*
See APPEAL—CIVIL. **109 P R 1883**

17. *Civil Procedure Code* (*X of* 1877), *sections* 506, 508, 522—*Reference to arbitration in absence of one of the defendants—Finality of award following such reference—Appeal by plaintiff as to one portion of subject-matter of award—Validity of award as between parties who joined in the reference—Award separable into parts.*
See APPEAL—CIVIL. **130 P R 1883**

18. *Arbitration—Decree in accordance with award—Appeal by defendants on ground that they did not join in reference—Finality of judgment in accordance with award—Act X of* 1877, *sections* 506, 508, 522.
See APPEAL,—CIVIL. **170 P R 1883**

19. *Arbitration—Award—Decree on judgment in accordance with an award—Appeal—Appeal on grounds other than the decree being in excess of, or not in accordance with, the award.*
See APPEAL,—CIVIL. **25 P R 1902 P C**
88 P R 1902 F B

20. *Arbitration—Appeal—Decree in accordance with an award—Civil Procedure Code,* 1882, *section* 522.
See APPEAL—CIVIL. **92 P R 1903**

21. *Arbitration—Modification of award under section* 518, *Civil Procedure Code,* 1882—*Power of Appellate Court to consider questions of corruption or misconduct of arbitrator—Civil Procedure Code,* 1882, *sections* 518, 522, 588 (26).
See APPEAL—CIVIL. **13 P R 1906**

22. *Arbitration—Appealability of order refusing to file a private award—Civil Procedure Code,* 1882, *section* 526.
See APPEAL,—CIVIL. **100 P R 1907**

23. *Arbitration—Order allowing agreement to refer to arbitration to be filed—Right to appeal from such order—Civil Procedure Code* 1882, *section* 523.
See APPEAL—CIVIL. **126 P R 1907**

24. *Arbitration—Order directing private award to be filed—Finality of such order—Appeal—Revision.*
See APPEAL—CIVIL. **1 P R 1908 F B**

25. *Arbitration—Decree in accordance with an award—Appeal.*
See APPEAL,—CIVIL. **80 P R 1908**

26. *Arbitration—Suit on account stated—Decree in accordance with award—Appellate Court dismissing suit as barred by limitation.*
See APPELLATE COURT—JURISDICTION OF—
2 P R 1875

ARBITRATION—*contd.*—

27. *Arbitration—Power of Appellate Court to refer to arbitration.*
See APPELLATE COURT, JURISDICTION OF—
24 P R 1875

28. *Suit for custody of wife—Minors—Reference to arbitration—Sanction of Court—Civil Procedure Code,* 1882, *sections* 462, 522—*Appeal—Material irregularity.*
See CIVIL PROCEDURE CODE, 1908, ORDER XXXII, R. 7. **37 P R 1895**

29. *Insolvency—Applicability of Chapter XXXVII, Civil Procedure Code,* 1882, *to insolvency proceedings under Act IV of* 1872—*Composition.*
See CIVIL PROCEDURE CODE, 1908, SCHEDULE II, R. 1. **88 P R 1887**

30. *Specific Relief Act* (*I of* 1877), *section* 42—*Suit for declaratory decree dismissed in accordance with award of arbitrators—Appeal by plaintiffs on ground that first Court had no jurisdiction to entertain a suit for a declaration only.*
See DECLARATORY DECREE. **1 P R 1882**

31. *Arbitration—Partition of agricultural and residential land and house property—Suit to enforce terms of award—Punjab Land Revenue Act, sections* 123, 158 (2) (xvii).
See JURISDICTION OF CIVIL OR REVENUE COURT. **63 P R 1893**

32. *Suit on award—Deduction of period spent in proceedings to enforce the same award summarily.*
See LIMITATION ACT, 1877, SECTION 14.
67 P R 1889

33. *Arbitration—Award—Omission to remit to arbitrators—Revision—Civil Procedure Code,* 1882, *section* 520.
See REVISION IN CIVIL CASES.
41 P R 1905

34. *Award—Decree on judgment in accordance with an award—Reference by guardian* ad litem *of a minor without leave of Court—Admissibility of objection denying validity of reference on revision.*
See REVISION—CIVIL. **4 P R 1907**

35. *Contract to refer controversy to arbitration—Refusal to perform contract—Bar to suit.*
See SPECIFIC RELIEF ACT, 1877, SECTION 21.
19 P R 1896

36. *Misconduct of arbitrators.*
An award cannot be set aside on the ground of the arbitrators' ignorance of the law. FUTTOO *v.* GHOLAM SULTAN.
47 P R 1867.

37. *Reference to arbitration.*
To be bound by an award, the parties must voluntarily refer to arbitration: coercion of any sort on the part of the Court to induce

ARBITRATION—*contd.*

consent, vitiates the reference. ALI BUKSH *v.* KADIR BUKSH. **28 P R 1868**

38. *Revoking or superseding submission or reference.*
The parties to a suit applied for a reference to arbitration, and provided that in the event of a difference of opinion between the arbitrators, an umpire should be appointed, either by the arbitrators themselves, or by the Court; or that the Court itself might decide the case. The arbitrators not agreeing, the Court adopted the last alternative.
Held, that under the circumstances, the decision was not final under section 316, Act VIII of 1859. The result of the proceedings was that the arbitration was inoperative, and the decision passed by the Court was open to appeal. KAHN SINGH *v.* RUTTUN SINGH.
96 P R 1868

39. *Remitting award—Refusal to amend—Misconduct.*
In a suit for balance of account, the arbitrators allowed as a set-off an item founded on a *budnee* or wagering transaction. The Court, disallowing this item as illegal, decreed the rest in terms of the arbitrators' award. *Held*, that the *budnee* set-off had been rightly disallowed for illegality, but that the proper procedure was to remit the award for the reconsideration of the arbitrators on account of the illegal matter apparent on the face of it. If they refused to amend their award accordingly, it would have been misconduct in terms of section 324, Civil Procedure Code. RAM KURN *v.* ZAHIRA. **101 P R 1868**

40. *Implied agreement to abide by award of umpire or of the majority.*
The appointment of an umpire, coupled with the provisions of Chapter VI of Act VIII of 1859, implies that the parties agree to be bound by the award of the umpire or of the majority of the arbitrators. BUSSAWA SINGH *v.* BOODHOO. **9 P R 1869**

41. *Right to object to validity of submission in Chief Court when no such objection was taken in lower Appellate Court.*
Where a mukhtar, not specially empowered to refer the case to arbitration, signed the submission or *ikrarnamah*, it was *held*, that under section 313 of Act VIII of 1859, the award did not bind his principals. In the lower Appellate Court, the principals relied upon the merits of the case, and took no objection to the validity of the arbitration; *held*, that not having adhered to the award they were not barred from taking such objection in the Chief Court. WAZEERA *v.* MOOKUM. **11 P R 1869**

42. *Misconduct of arbitrators.*
Where an application to set aside an award discloses no legal ground for the order applied for, an order ignoring the petition (*e.g.*, *shamil misl rahe*) is correct. If a specific allegation of misconduct or corruption is made by the applicant, the

Court should, before passing a decree, record whether or not the allegation is supported. Open disregard by arbitrators of proved law or custom does not amount to misconduct under section 324 of Act VIII of 1859; *semble*, it might be ground for remitting the award under section 323. The Court accepting the award is the proper judge of the propriety of remitting it. SECUNDUR BEG *v.* MUSSAMMAT RAJEE. **12 P R 1869**

43. *Small Cause Court—Appointment of arbitrators before new trial granted—Act IV of 1866, section 16.*

Plaintiff's suit was dismissed by the Court of Small Causes; and upon his application, before a new trial was granted, the Court appointed arbitrators. *Held*, that such appointment was beyond the jurisdiction of the Court. KHEEMA *v.* KUNHYA. **19 P R 1869**

44. *Reference to arbitration.*

The Court may recommend, but cannot order, submission. KAZEE KASIMOODEEN *v.* HAJOODEEN. **52 P R 1869**

45. *Revoking or superseding submission or reference.*

A regular submission to arbitration cannot be revoked by one of the parties. PARS RAM *v.* ASA RAM. **9 P R 1870**

46. *Reference to arbitration—Remitting award.*

The Court accepting the award is the proper judge of the propriety of remitting it. Persons admitted to act under notification 1225 of 26th September 1866, are recognized agents, and have power to bind their principals by submission to arbitration; a special authority in writing is not necessary. CHOOHUR SINGH *v.* JEET SINGH. **64 P R 1870**

47. *Revoking or superseding submission or reference.*

Where a suit is referred, and one of the arbitrators becomes unable to act, the Court can supersede the reference, and decide the case itself. BISHEN *v.* BHAG. **66 P R 1870**

48. Where parties have agreed to refer their differences to arbitration, the Court is bound on application of one of the parties to file the agreement and proceed under section 326, Civil Procedure Code, unless sufficient cause be shewn against the agreement by the other party; and the fact that such party has altered his mind arbitrarily, and without good reason, is not a sufficient cause within the section.

Per Lindsay, J.—A suit for damages for such arbitrary breach of agreement will lie. PEER BUKHSH *v.* JUMAL. **80 P R 1870**

49. *Remitting award.*

In a suit for breach of betrothal against two defendants, the plaintiff and one of the defendants consented to arbitration. The arbitrators awarded damages against both defendants. The Court trying the suit passed judgment upon the award, striking out the name of the non-consenting defendant.

Held, that the procedure of the Lower Court was erroneous; that the proper course was to remit the award under section 323, Civil Procedure Code, for illegality on the face of it. NARAIN *v.* KANHA. **3 P R 1872**

50 *Reference to arbitration—verbal.*

The reference may be made on the verbal application of the parties in person. NATHA SINGH *v.* JODHA. **24 P R 1873**

51. *Decree not according to award.*

The matter in dispute was referred to arbitration, and the award directed that plaintiff should recover a certain amount to be realized from certain property mortgaged to the defendant. The Court passed a decree for the amount against defendant personally. *Held*, that the Court had no jurisdiction to pass a decree that was not according to the award. GIRDHARI LALL *v.* IMRAT MUL. **39 P R 1873**

52. *Revoking or superseding submission or reference.*

The parties referred the matter in dispute to arbitration, and the umpire was called in. Defendant petitioned the Court to supersede the reference, on the ground that plaintiff's side had been tampering with the umpire, and it was likely that the latter would not act impartially. The Court superseded the reference and itself disposed of the case. *Held*, that the supersedure was not authorised by Chapter VI, Civil Procedure Code, and the case must be sent back to be disposed of according to the reference. KASHMIRI DAS *v.* MUSSAMMAT PARAS. **28 P R 1874**

53. Where it is apparent that the reference will be fruitless, the Court may itself proceed with the case to final judgment. MEHTAB *v.* MUSSAMMAT MADAN. **24 P R 1875**

54. *Misconduct—Arbitrator.*

Mere delay or inattention on the part of arbitrators, does not amount to misconduct WALI MUHAMMAD *v.* SOHARA. **41 P R 1875**

55. *Setting aside award.*

Where the gist or object of a submission to arbitration was that certain accounts should be examined and the arbitrators did not inspect them, the award and the decree based upon it were set aside by the Chief Court. CHARANJI LAL *v.* RAMJI DAS. **5 P R 1876**

56 *Act IX of 1872, section 28—Act VIII of 1859, section 326.*

Plaintiff sued in the Small Cause Court for Rs. 421, money received by defendant for plaintiff's use. Before suit was brought, the parties had agreed in writing to refer the matter of disputed accounts between them to arbitration: the agreement was filed under section 326, Civil Procedure Code, in the District Court, and an order of reference was made. The arbitrators filed no award, and about two months after the order of reference was made, the Court superseded the reference recording—"Adjournments have already been granted more than once, and the case seems about as far removed from decision as at the outset. Section 318, Civil Procedure Code, seems to imply that the Court has power to issue an order superseding the arbitration and recalling the suit. I do that now directing parties to bear their own costs." Nothing further was done in the District Court, but afterwards the plaintiff sued in the Small Cause Court. *Held*, that the agreement to refer did not bar the plaintiff's suit under section 28 of the Indian Contract Act; and that the order of the District Court must be taken as equivalent to a rejection of the petition to file the agreement; and that plaintiff's suit in the Small Cause Court would, therefore, lie. RAI BHAG SINGH *v.* ASSA SINGH. **37 P R 1876**

57. *Revoking or superseding submission or reference.*

Plaintiff sued in the Court of the Assistant Commissioner in June 1874, and before issues were framed the parties executed a submission to private arbitration. After this, in July 1874, the suit was transferred to the Deputy Commisstoner with an amended plaint, the value of the claim being beyond the jurisdiction of the Assistant Commissioner. The suit was for immovable property; and in the original plaint, plaintiff claimed possession; in the amended plaint, he claimed proprietary right. In August 1874, plaintiff applied to the Court to file the agreement under section 326, Civil Procedure Code, or to refer the case under section 312; this was objected to by the defendants, and the Court proceeded with the case, dismissing the suit on the merits. From this plaintiff appealed to the Commissioner on the merits, making no allusion to the submission to arbitration. The appeal was dismissed, and then plaintiff appealed to the Chief Court, insisting that the case should have been referred to the arbitrators. *Held*, that there was no ground of special appeal, and that the Chief Court could not revise the orders of the Courts below. CHAJJU MAL *v.* KASHI RAM. **57 P R 1876**

58. *Setting aside award.*

The parties referred the matter in dispute to arbitration in the original Court, and the award was in plaintiff's favor. This award the Court set aside on defendant's objections that evidence had been excluded and the arbitrators had not acted together; and after a full investigation dismissed plaintiff's suit. The plaintiff objected to the award being set aside, but afterwards adduced evidence and offered no further objection. The lower Appellate Court considered the award final, and gave plaintiff a decree in terms of the award. Defendant appealed to the Chief Court. *Held*, that plaintiff's acquiescence in the proceedings after the award was set aside debarred him from

insisting upon the award. *Semble*, that the award was properly set aside on defendant's objections to it being made out. MOTI *v.* UTMA. **117 P R 1876**

59. *Act VIII of* 1859, *section* 327.

The plaintiff filed an application under section 327, Act VIII of 1859, to enforce an award. The award was really a petition from the arbitrators, stating that the parties had by their advice settled the dispute amicably between them, and executed a document embodying the terms of the settlement, which the arbitrators presented with their petition to the Commissioner.

Held, that the petition filed by the arbitrators was not an award. ABDUL REHMAN KHAN *v.* GHULAM KADIR KHAN. **79 P R 1877**

60. *Civil Procedure Code (Act VIII of* 1859), *section* 325—*Act X of* 1877, *section* 522—*Reference to three arbitrators without provision for award of majority being binding, Effect of—Objections to award—Omission to dispose of—Decree—Appeal.*

Plaintiff and defendants executed a written agreement to refer their disputes to three arbitrators without making any provision that the award of the majority should be binding. Plaintiff applied to file the agreement under section 326, Act VIII of 1859, and an order of reference was made and award filed by two out of three arbitrators on 30th August 1877. On 11th October 1877, the date fixed for the next hearing of the case, defendants filed a petition, dated 1st idem, objecting to the award, and praying that it might be remitted, on the ground that the award of two out of three of the arbitrators was not binding. The Court ordered the petition to be filed, and gave judgment the same day in terms of the award, taking no notice of the objection beyond saying that it did not allege corruption. The defendants appealed to the Commissioner who rejected the appeal as barred by section 522, Act X of 1877.

Held, by the Chief Court, that a judgment in terms of an award has not the attribute of finality unless the proceedings immediately preceding the decree have been strictly regular and all the conditions required by law satisfied ; and that, the decree having been passed without the Court considering the question raised by defendants, whether there was cause for remitting the award, the appeal was not barred under section 325, Act VIII of 1859, or section 522, Act X of 1877.

Held, further, that the legal effect of an agreement, where there is no provision that the award of the majority shall be binding, is that only a unanimous award is binding. HARDHYAN *v.* MEHR CHAND. **57 P R 1879**

61. *Civil Procedure Code (Act X of* 1877), *section* 506—*Application in writing, Want of Jurisdiction.*

Held that under section 506, Act X of 1877, an application in writing by the parties

is essential before a case can be referred to arbitrators, and that, where this is wanting, the reference by the Court and proceedings of the arbitrators are without jurisdiction and a decree based on the award not final.

Held, further, that the consent of the parties to waive the condition required by the Act, that the application shall be in writing, can give no jurisdiction to the Court to delegate its own functions to arbitrators, and found a decree upon their award, and it is only upon a consent recorded in writing that the Court can make an order of reference so as to render the award ensuing thereupon capable of being turned into a final decree. MIR AMANULLAH *v.* CHOTA MIRZA. **67 P R 1879**

62. *Civil Procedure Code (Act X of* 1877), *sections* 508, 521 *and* 622—*Disposal by Court of case referred to arbitrators.*

Where a Small Cause Court Judge, in contravention of the provisions of the Code of Civil Procedure, proceeded to dispose of a suit which had been referred to arbitrators by taking evidence himself upon the merit and thereafter proceeding to judgment, the Chief Court set aside the decree, under section 622, Act X of 1877, and remitted the case back for disposal under Chapter X of the Code of Civil Procedure. DULA *v.* DAUDZAI. **80 P R 1879**

63. *Civil Procedure Code (Act X of* 1877), *sections* 522, 525, 526—*Award made out of Court—Application to file the award in Court—Duty of Court on filing award to give judgment according to award—Decree—Execution—Jurisdiction.*

An appointment of arbitrators to effect a partition of certain property was made out of Court, and on an award being given, two of the parties to the arbitration, A. P. and J. P., applied under section 525, Act X of 1877 to have the award filed in Court. The Court merely passed an order " that the award be filed, " and a decree to this effect was drawn up. On application by a A. P. and J. P. for execution of this decree, by attachment and sale of property, the Lower Court ordered the attachment to take place.

Held, that the Lower Court acted without jurisdiction in causing the attachment of the property ; that it was clearly the duty of the Court in which the award was filed, after the time for presenting an application to set it aside had expired, to give judgment according to the award, upon which a decree should have followed : that this not having been done, the so-called decree was no decree within the meaning of section 522, Act X of 1877, and was therefore incapable of execution. DHARM DAS *v* AJUDIAH PERSHAD. **112 P R 1879**

64. *Lower Appellate Court giving judgment in accordance with award—Civil Procedure Code (Act X of* 1877) *section* 522—*Appeal.*

Held, that a further appeal lies from an order of a lower Appellate Court, who after

reversing the finding of the first Court upon the question of misconduct imputed to one of the arbitrators, proceeds to pass judgment in terms of the award of the majority of the arbitrators. MUSSAMMAT BANO *v.* NASAR. **5 P R 1880**

65. *Act X of* 1877, *section* 523, *application under—Agreement in writing.*

On an application under section 523, Act X of 1877, where it appeared that plaintiff and one of the defendants, who did not profess to be acting on behalf of any person other than himself, had executed out of Court an agreement to refer to arbitration certain matters affecting themselves, and two other defendants not parties to the agreement.

Held, that the agreement, could not be enforced under section 523 of the Code, as the persons who made the application and the persons against whom it was sought to enforce the agreement could not be held to have " agreed in writing " within the meaning of the above section. JAI SINGH *v.* KISHEN SINGH. **17 P R 1880**

66. *Order varying arbitrators' order as to costs.*

Where the arbitrators in their award directed that each party should bear its own costs, *held*, that the Court had no power to vary this order by making an additional order that the defendant and plaintiff should, as regards the Government, each pay half the amount of Court Fees. MIR MAHOMED *v.* MUSSAMMAT KHAIR-UL-NISSA. **19 P R 1880**

67. *Act X of* 1877, *section* 506—*Agreement to refer signed by one of two plaintiffs and the defendant, but purporting to be made by all the parties.*

An application, purporting to be made on behalf of both the plaintiffs and the defendant in a suit, for an order of reference to arbitration *held* to be an application in writing within the meaning of section 506 of the Code of Civil Procedure, although not subscribed by one of the plaintiffs and to be binding upon such plaintiff if presented unchallenged by him or in his presence. NEK MAHOMED *v.* AHMAD ALI. **53 P R 1880**

68. *Court passing judgment in terms of award in absence of parties—Irregularity—Objection taken in second appeal—Court returning first award as incomplete—Arbitrators filing second and different award—Legality of such award.*

Held, that the objection that an award was confirmed and judgment passed thereon in the appellant's absence, is not one that can be allowed to prevail in second appeal, when not taken in the appeal to the lower Appellate Court. It is at most an irregularity in the procedure and not a fatal error.

Where the Court refused to accept an award of arbitrators because it was incomplete, being made without investigation, and the arbitrators were ordered to file an award after investigation on the spot, whereupon they filed a second award, which, after a

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clear ten days had elapsed without objections being filed by the defendant, was confirmed and judgment given in accordance therewith *held*, that the second award could not be considered a nullity merely because it differed from the first award. KALA SINGH v. POHU. **50 P R 1881**

69. *Power of recognized agent of party to refer—Act X of 1877, sections 36, 37, 506.*

Held, following the Full Bench decision in *Choohur Singh* v. *Jeet Singh* (No. 64 of 1870, Civil), that the recognized agent of a party to a suit is competent to act on his behalf in submitting a matter in dispute to arbitration, there being nothing in section 506 of the Civil Procedure Code which precludes a person who under section 37 is in the position of a recognized agent from doing that which, under section 506, the party whom he represents is able to do in person. HARI SINGH v. MUSSAMMAT LACHMI. **1 P R 1882**

See to the same effect HURDEO v. THANA. **48 P R 1882**

But see *contra* AHMAD v. MUSSAMMAT BHAGBARI. **170 P R 1883**

Cited under APPEAL, CIVIL.

70. *Act X of 1877, sections 523, 524—Refusal of one arbitrator to act—Award filed by remaining arbitrator and umpire—Validity of award.*

Where an agreement to refer to arbitration, which was filed in Court under section 524 of the Civil Procedure Code, clearly contemplated that both of the arbitrators appointed by the parties should take a part in the decision of the case and should file either a single award of separate awards, *held*, that an award filed by one arbitrator and the umpire, the second arbitrator having taken no part in the proceedings, was not binding on the parties. GANDA MAL v. FATTEH ALI SHAH. **55 P R 1882**

71. *Private award—Indefiniteness—Act X of 1877, section 525.*

A private award following upon a submission to arbitration made by the parties without the intervention of the Court, *held*, to be too indefinite to be converted into a decree in a summary proceeding under section 525 of the Civil Procedure Code, DHARAM DAS v. AJUDHIA PERSHAD. **77 P R 1882**

72. *Agreement to refer made out of Court during pendency of suit—Act X of 1877, sections 375, 523—Dismissal of suit as barred by such agreement—Act I of 1877, section 21—Adjustment of suit—Nature of the adjustment contemplated by the Civil Procedure Code—Equitable bar—Agreement to forego further legal proceedings.*

During the pendency of the present suit, the parties referred the subject matter of the claim to the decision of two arbitrators by an agreement which they executed out of Court. No application was made to make this reference a rule of Court, nor was any proceeding taken by either party to cause the agreement to be filed under section 523 of the Civil Pro-

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cedure Code, but the defendant at the next hearing of the suit pleaded the agreement as a bar to its further maintenance. The plaintiff denied the agreement, urging that he had signed it under a misconception of its purport, but the Courts, finding that both parties had deliberately entered into the reference, dismissed the suit, leaving either party to take such action as he might be advised under section 523 of the Code.

Held, that the grounds upon which the Courts below seemed to have proceeded were not sustainable; that every Civil Court must be taken to have power to proceed to a final adjudication of a suit of a Civil nature which had once been properly instituted before it, unless there was something in the Code of Civil Procedure or in some other Act to oust the jurisdiction of the Court; and that the only bar which a reference to arbitration which has not been made a rule of Court, can be said to create is that provided for in the last clause of section 21 of the Specific Relief Act, which was inapplicable to the present case, as the reference in question was made during the pendency and not before the institution of the suit.

Held, further, that a mere reference to arbitration in which there was no distinct agreement that the pending suit should be abandoned, could not be regarded as an adjustment within the meaning of section 375 of the Code, more especially when the very reference itself was denied by one of the parties to it. The adjustment contemplated in that section is one that would enable the Court then and there to dispose of the suit finally, which course would be obviously impracticable where there was a mere reference to arbitration, which left the dispute in practically the same unsettled position as before; nor does the same section contemplate that the Court should be called upon to make an inquiry into whether the plaintiff's claim had or had not been adjusted.

Held further, that the defendant could not successfully plead in the present case that there was an equitable bar to the continuance of the suit on the ground that the parties had agreed to forego further legal proceedings, there being no express agreement to that effect and no such agreement being necessarily implied from the mere appointment of arbitrators, as it would be quite consistent with such an appointment that the parties should still mean the suit to remain on the pending file, with the view of the result of the arbitration being finally embodied in the decree. BUDHA v. HAKU.

130 P R 1882

73. *Act X of 1877, sections 509, 523—Application to file agreement to refer—Absence of provision for difference of opinion—Court appointing umpire on difference of opinion taking place—Fruitless reference.*

An application was made to file, under section 523 of the Civil Procedure Code, an agreement to refer a dispute to arbitration, which contained no provision for a difference

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of opinion between the two arbitrators therein appointed. It appeared that some days after the order of reference had been made, the Court, owing to an expected difference of opinion between the arbitrators, without the agreement of the parties either in person or by their pleaders specially authorised in writing in this behalf, decided that an umpire should be appointed, in accordance with whose award the Court disposed of the case.

Held, reversing the orders of the lower Courts that the reference had become fruitless in consequence of the disagreement between the arbitrators originally appointed, and that the plaintiff's application under section 523 of the Civil Procedure Code must be dismissed. MUSSAMMAT BEGAM BIBI v. GHULAM GHAUS. **191 P R 1882**

74. *Civil Procedure Code, (Act X of 1877) sections 508, 510—Arbitrators not confining themselves to issues referred—Defective order of reference—proper order where defects in award arise from Court not drawing up proper order of reference.*

After issues had been fixed, but before any evidence had been adduced on either side, the parties agreed to refer the whole case to the decision of certain arbitrators and an umpire, and stipulated in the written agreement filed in Court that the decision of the majority should bind the parties. The Court thereupon, by an order of reference, made over the issues which had been previously drawn, but which did not cover the whole matter in dispute, to the arbitrators named in the agreement of reference. The majority of the arbitrators finally gave in an award, which the first Court set aside and proceeded to try the case on the merits, but the lower Appellate Court, on appeal, holding that the first Court was not justified in rejecting the award, passed judgment in accordance therewith. It appeared from the award that the arbitrators had not confined themselves to the issues actually referred, as they were not empowered by the order of reference to decide what particular relief the plaintiff was entitled to.

Held, that the judgment of the lower Appellate Court passed in accordance with the award could not be upheld; that arbitrators who have been appointed in the course of a suit under a submission which has been made a rule of Court, can exercise no greater power than is vested in them by the referring order, as their powers are circumscribed within the four corners of that instrument, and can neither be enlarged nor narrowed by the view the arbitrators may themselves take of their duties.

But *held* further, that as it appeared that the defects which vitiated the award arose in consequence of the referring order not being drawn up in accordance with the agreement of the parties, the proper course to pursue was to set aside all the proceedings subsequent to the filing of the agreement to refer the case to arbitrators, and as the umpire had since died, to remand the case for the Court to proceed under section 510 of the Civil Procedure Code, with the view of either appointing a

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new umpire or of superseding the reference, and in the event of a new umpire being appointed, with directions to the Court to draw up a proper order of reference under section 508, including an issue as to the relief, if any, to which the plaintiff was entitled, and thereafter to proceed according to law, or, if no suitable umpire could be appointed, for the Court to proceed with the suit. RAM DITTA *v.* MUSSAMMAT BHAGAN. **3 P R 1883**

75. *Act X of* 1877, *sections* 523, 524—*Agreement to refer which includes matters beyond the jurisdiction of the Civil Court—Power to file such agreement.*

Held, that the agreement to refer to arbitration mentioned in section 523 of the Civil Procedure Code, must refer to matters in regard to which a Civil Court has jurisdiction to pass a final decree, and if it deals with other matters beyond the jurisdiction of a Civil Court, it is not one that can properly be ordered to be filed under the provisions of the section: the agreement must either be one capable of being filed as a whole or it must be rejected as a whole, there being no provision in sections 523 or 524 which would enable a Court to strike out that portion of the agreement which was in excess of the Court's jurisdiction in order to give itself jurisdiction, unless the parties agreed to do so with the view of proceeding with the reference. PARTAB SINGH *v.* DEVI SINGH. **5 P R 1883**

76. *Arbitrators giving in award too indefinite to be capable of execution—Appeal—Act X of* 1877, *sections* 510, 522—*Remission of award to arbitrators.*

In a suit for ⅛th share in certain property left by the widow of one M. S., in which the defendants pleaded *inter alia* that the houses included in the suit were their own property, the parties agreed to refer the matters in dispute to the decision of four arbitrators, who eventually awarded the plaintiff a ⅛th share in all the houses left by the deceased. The arbitrators on being examined by the Court stated that, out of twelve houses in the village which the defendants claimed as their own, eight belonged to M. S., and the remaining four descended to the defendants from their father; whereupon the Court passed a decree to the effect that plaintiff was entitled to a ⅛th share of the houses left by M. S.

Held, that the decree and the award were both open to the objection of not being capable of execution, as the award did not specify which of the eight houses out of the twelve in defendants' possession, in which the plaintiff was entitled to an ⅛th share, were held to have belonged to M. S., while the decree merely gave plaintiff an ⅛th share in all the houses left by M. S. which was open to the further objection that it was not in accordance with the award, inasmuch as the award as interpreted by the arbitrators in Court, restricted the number of houses in which the plaintiff was entitled to a share to eight, which was not specified in the decree.

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Held further, that the case did not come before the Court as one governed by section 522 of the Code, in which no appeal lay, as there was no award in the sense in which that term is used in the Code, of a complete adjudication of the points referred to the arbitrators for decision and one capable of execution, and that therefore an appeal lay both on that ground and also on the further ground above mentioned, that the decree strictly speaking was not in accordance with the award as pronounced.

Held also, that the proper order to pass was one remanding the case to the Court of first instance for remission to the arbitrators, if they were still alive, with the view of rendering their award capable of execution: with a direction that if the arbitrators or any of them had died meanwhile, the Court must then pass an order in the terms of section 510 of the Code, and proceed in accordance therewith. KALA SINGH *v.* DHANNO SINGH. **47 P R 1883**

77. *Civil Procedure Code, (Act XIV of* 1882), *sections* 508, 509, 512—*Order of reference—Omission to pass such order—Fatal defect.*

Held, that the omission of a Court which refers a case to arbitration to pass an order of reference such as is contemplated by sections 508, 509 of the Civil Procedure Code, is fatal to the subsequent proceedings, and in the absence of any such order there can be no legal award. *Ram Ditta* v. *Mussammat Bhagan* (No. 3 of 1883, Civil) cited. HARCHAND RAI *v.* CHUTTAN LAL. **35 P R 1884**

78. *Civil Procedure Code, (Act XIV of* 1882), *sections* 440, 506—*Power of next friend to refer on behalf of minors.*

In a suit described as brought by all the members of a family jointly, the elder brother, acting as next friend on behalf of his minor brothers, agreed to refer the matter to arbitration. The application for reference was signed by the elder brother alone, the other brothers being present throughout the proceedings. The award was given against the plaintiffs, and their accusation of misconduct against the arbitrators having been found false by both the lower Courts, the objection was taken for the first time in second appeal to the Chief Court that B. one of the brothers described as a minor, was not a minor, and that the reference to arbitration was void as against him.

Held, that even if B. were in fact not a minor, he was estopped by his own conduct from putting forward this plea at the late stage he did.

Held further, that there is no provison of the Code of Civil Procedure which prevents a next friend, suing under section 440 of the Code, from referring the minor's interests to arbitration. *Choohur Singh* v. *Jeet Singh* (No. 64 of 1870, Civil F. B.), *Hari Singh* v. *Mussammat Lachmi* (No. 1 of 1882, Civil), and *Hurdeo* v. *Thana* (No. 48 of 1882, Civil) referred to. HAIDAR *v.* MAUJU. **92 P R 1885**

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79. *Civil Procedure Code (Act XIV of* 1882), *section* 509—*Validity of award of majority of arbitrators, when the agreement was that, in the event of difference of opinion, the decision should rest with the majority—Dissenting arbitrator omitting to record opinion.*

Held, that there is nothing in section 509 of the Civil Procedure Code to render the award of a majority of the arbitrators, where it has been provided that the decision should rest with the majority, invalid, because no separate opinion has been given by the dissenting arbitrator. *Ganda Mal* v. *Fatteh Ali Shah* (No. 55 of 1882, Civil) distinguished. KANHYA LAL *v.* SETH HARBHAGWAN DASS **112 P R 1885**

80. *Suit for land as adopted son of deceased owner—Defendant pleading award as settling the dispute regarding the succession—Award dealing with matters beyond the cognizance of the Civil Court—Invalidity of such award.*

In a suit by plaintiff to recover certain property as the adopted son of the late owner, it was pleaded that the suit would not lie, as, after the death of the late proprietor, arbitrators were appointed by the parties to settle the dispute regarding the succession to the estate, and gave their award. It appeared that the award in dealing with the division of the estate provided for the distribution of the *lambardari* and *sarpanchi* dues receivable by the defendant as lambardar.

Held, following *Partab Singh* v. *Devi Singh* (No. 5 of 1883, Civil), that the award was no bar to the suit, being one which could not be legally enforced, inasmuch as it dealt with matters beyond the jurisdiction of the Civil Court, and being incapable of enforcement, and therefore null and void as regards a part, was inoperative as a whole, as the illegal portion could not be separated from the rest. FATEH SINGH *v.* KARM CHAND. **56 P R 1886**

81. *Civil Procedure Code, (Act XIV of* 1882), *sections* 508, 523, 524—*Applications to file agreement to refer—Court omitting to pass legal order of reference—Court accepting separate award from umpire on disagreement of arbitrators—Illegal award—Proper order to pass on setting aside such award.*

Plaintiff's application that an agreement to refer a dispute between the parties to arbitration should be filed in Court under section 523, Civil Procedure Code, having been granted, the Court directed the arbitrators to decide the matter in dispute, without recording any order of reference as required by that section, and on their filing awards disagreeing with each other, caused an umpire to be appointed under the terms of the agreement, and accepted a separate award from him, in accordance with which judgment was passed. On appeal, the lower Appellate Court, finding that there was no award which was capable of enforcement, there being no award of the majority as required by the agreement to refer, set aside the decree and dismissed the

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plaintiff's application, though the appeal took no objection to the order directing the agreement to be filed.

Held, that the proper course was to pass an order remanding the case to the first Court, in order that after making an order of reference (see sections 523 and 508 of the Code) it might proceed with the case under the provisions of section 524. *Mussammat Begam Bibi* v. *Ghulam Ghaus* (No. 191 of 1882, Civil) distinguished. RALLA RAM *v.* BADHAWA MAL. **67 P R 1886**

82. *Civil Procedure Code, (Act XIV of 1882), sections* 158, 508, 519, 622 *Order of reference directing payment of costs as condition precedent to its issue—Dismissal of suit on non-payment of such costs—Material irregularity.*

Where, after the parties to a suit had appointed arbitrators, the Court in its order of reference to the said arbitrators included a direction that the parties should pay into Court a certain sum on account of the arbitrators' expenses, and held back the actual issue of the order pending such payment, and finally, the money not having been paid in, dismissed the plaintiff's suit, quoting as authority section 158 of the Civil Procedure Code, *held*, by the 2nd Financial Commissioner (cancelling the above order of dismissal), that the Court had acted with material irregularity in the case, as it had no authority, under section 508 of the Code, to hold back a reference to arbitration, or to attach thereto a condition that certain costs should be paid, the power to deal with costs being limited to an order, after the award had been filed, under section 519 of the Code. KHUSHIA *v.* PIRA. **11 P R 1886**

83. *Private award—Plea in bar.*

Case in which a private award was successfully pleaded in answer to a suit in which the plaintiffs sought to recover property forming part of the subject-matter of the award in defendants' favour.

Fateh Singh v. *Karm Chand* (No. 56 *P. R.* 1886) distinguished from the present case, on the ground that though the award pleaded in both cases dealt with a matter beyond the jurisdiction of the Civil Court, the award in the present case dealt separately with such matter, the decision with regard to such matter being therefore separable from the other portions of the award covering the matters in dispute in the present case. ALAM KHAN *v.* MUHAMMAD NAWAS KHAN. **32 P R 1888**

84. *Power of arbitrators to deal with costs—Order of reference.*

Held that, though when a reference to arbitration in a suit is a general one of the whole case, the power of dealing with costs rests with the arbitrators, this is not so where one or more specific issues have been referred and the question of costs is not included in the issues so referred. *Mir Muhammad* v. *Mussammat Khair-ul-nissa* (No. 19 *P R* 1880) and *Ramditta* v. *Mussam-*

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mat Bhagan (No. 3 *P. R.* 1883), cited. HAR GOLAL *v.* SODHI KARTAR SINGH. **91 P R 1888**

85. *Civil Procedure Code, (Act XIV of 1882), sections* 522, 523, 591—*Agreement to refer to arbitration—Application to file such agreement—Power of Court where there is a dispute as to the* factum *of such agreement—Competency of Court to deal with such question—Appeal—Award—Finality of judgment in accordance with award—Appeal from decree in accordance with award on ground that there was no real agreement to refer—Error affecting decision of case.*

Held, that it is not a correct interpretation of section 523 of the Civil Procedure Code, that that section is intended to apply only to those cases where the agreement to refer to arbitration is admitted, and that where there is a substantial dispute between the parties as to the *factum* of the agreement, the Court is not competent to go further and deal with the objection finally. It is not only within the competency of the Court before which the application is pending to determine the *factum* of the agreement to refer or the submission to arbitration, but it is bound to do so.

Held further, that though a decree based on an "award" is declared to be final by the legislature under the terms of section 522, Civil Procedure Code, the provisions of that section pre-suppose the existence of a valid or legal award upon which a decree has been given, and where it can be shown that there is no legal award, that is to say, no award regularly and properly arrived at by arbitrators duly appointed, that finality prescribed by section 522 does not apply, and the decree is appealable like any other ordinary decree. *Hurdeo* v. *Thana* (No. 48 *P. R.* 1880), cited.

Held also, *semble*, that though the order directing an award to be filed is not appealable, still when a decree has been passed on the award, an appeal will lie on the ground that there was no legal award because there was no real agreement to refer the dispute to arbitrators, and on such appeal the correctness of the finding of the original Court as embodied in the interlocutory order may be challenged as an error affecting the decision of the case, within the meaning of the last part of section 591, Civil Procedure Code. ATMA RAM. *v.* JAMITA. **134 P R 1888**

See THE F. B. DECISION. No. 100 *infra.*

86. *Agreement to refer containing provision for appointment of umpire—Difference of opinion—Opinion of majority—Umpire's decision valid as a binding award.*

In a suit in which the parties agreed to arbitrate, it appeared that the agreement to refer contained a provision that if the arbitrators (two in number) differed, an umpire would be appointed. An award having been filed in which the umpire coincided with the defendant's arbitrator, it was objected (*inter alia*) by the defendant, and the objection was allowed by the lower Court, that as no provision was made in the application

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for arbitrators that the decision of the majority should prevail the award was not a valid one.

Held that (subject to proof of misconduct) the award was a valid one and binding on the parties, not because the umpire happened to agree with one arbitrator, and thus formed a majority, but because the arbitrators having differed, the opinion of the umpire was entitled to prevail. GULAB SINGH *v.* DENI CHAND. **46 P R 1889**

87. *Finality of judgment in accordance with award—Arbitrators stating special case—Court refusing to accept award in such form and remitting it for further consideration—Subsequent award following opinion of Court on special case—Validity of such award—Misconduct—Reference of whole matter in difference in case—Validity of such reference—Award by two out of three arbitrators who have not consulted with the third—Such award not a nullity—Civil Procedure Code (Act XIV of 1882, sections* 506, 508, 517, 520, 522).

After a case had been referred to two arbitrators, the said arbitrators submitted an award in the form of a special case (section 517, Civil Procedure Code), saying that they wished to know upon which side the burden of proving a certain point would fall, as that side would fail, which had to establish the point. The Court told them that the burden lay upon the plaintiff, and remitted the award for further consideration. Finally, a difference of opinion having arisen, an umpire was appointed by the Court, and one arbitrator and the umpire gave an award in favour of the defendant. Plaintiff filed several objections, which were overruled after taking evidence, and a decree made in accordance with the award.

Held per Curiam, that no appeal lay merely because the Court had given its opinion on the question put in the special case, which the Court refused to receive; and that if it was misconduct in the arbitrators to seek an opinion from the Court (which was not affirmed) an objection should have been taken in the lower Court on this ground, which was not done.

Held further, *per* PLOWDEN, J., that a reference of the whole matter in difference in a particular case may be a reference of a particular matter within the meaning of sections 506, 508 of the Civil Procedure Code.

Held also *per* PLOWDEN, J., that an award of two out of three persons is not a nullity merely because the two have not consulted with the third before making it. Their conduct is probably misconduct, but it ought to be alleged accordingly, and if found to be misconduct, it is a ground for avoiding the award. KHILU RAM *v.* JIWAN SINGH. **55 P R 1889**

88. *Arbitration—Arbitrators omitting to examine all the defendants' witnesses—Misconduct—Civil Procedure Code (Act XIV of 1882), sections* 521, 622—*Lower Court overruling plea of misconduct and giving judg-*

ment in terms of award—Ground for revision—Material irregularity—Court giving wrong decision upon legal question.

In a suit in which arbitrators were appointed and delivered an award in favour of plaintiff it was objected by the defendant that the arbitrators had only examined two out of five of his witnesses, though they were present, and defendant desired to have them examined. The lower Court found that the witnesses were present as alleged, but held that the arbitrators were not bound to take all the evidence produced, but only so much as they considered necessary for the purpose of justice (which they had done), and finding no misconduct proved, made a decree in terms of the award.

Held that the decision of the lower Court was clearly wrong, as it is the duty of an arbitrator to take the evidence of witnesses produced before him by a party, and the refusal to do so is misconduct on the part of the arbitrator within the meaning of section 521 of the Civil Procedure Code.

But *held* further, that the error of the lower Court was not open to, or which could be remedied in revision, as that Court considered the objection of the defendant, and adjudicated upon it, and the mere circumstance that his adjudication was erroneous, was no ground for revision under section 622 of the Civil Procedure Code. PIR BAKHSH *v.* BABA NIHAL SINGH. **58 P R 1889**

89. *Civil Procedure Code, sections 25, 508, 522—Withdrawal—Trial—Arbitration—Order of reference—Validity of award—Absence of reasons for award—Finality of decree based on award.*

The suit out of which this appeal arose was instituted in the Court of Mr. C., District Judge. After the issues had been settled, Mr. C., on the representation of both parties, consented to act as an arbitrator. Application was then made to the Divisional Judge to withdraw the case from the District Court and to refer the same to Mr. C. for decision. The Divisional Judge referred "all matters in difference between the parties, irrespective of the issues drawn in the case," and Mr. C., after inquiry, delivered the following award: "That the plaintiff's suit be dismissed, and that the parties bear their own costs." Plaintiff then filed objections to the award, which were overruled, and judgment passed in accordance with the award. Plaintiff appealed to the Chief Court. It was contended on his behalf, (I) that withdrawals under section 25, Civil Procedure Code, can only legally take place where the withdrawing Court intends to try the suit itself and not where the avowed object is to make over the case to an arbitrator for decision; (II) that the order of reference was materially defective as it did not specify the particular matter referred to the arbitrator; (III) that the award was bad inasmuch as it assigned no reasons for, and gave no details of, the decision, and (IV) that the objections on the ground of legal misconduct urged against the award in the original Court were valid.

Held (1) that a Court which withdraws a case for trial before itself under section 25 of the Civil Procedure Code, may, after such withdrawal, proceed according to any of the recognized methods of procedure laid down in the Civil Procedure Code.

(2) That the reference to arbitration in the present case did not contravene the provisions of section 508, Civil Procedure Code, as a reference of the whole matter in dispute between the parties in a particular case may be a reference of a particular matter within the meaning of the above section.

(3) That the award was not bad in law because the arbitrator had not given his reasons for his decision or entered into details.

(4) That allegations of misconduct which have been duly heard and decided by a Court which has thereafter passed judgment in accordance with an award, cannot be re-opened on appeal to a higher Court, the decree which follows the judgment being final under section 522, Civil Procedure Code. BANARSI DAS AND OTHERS *v.* RAM KISHEN DAS AND OTHERS. **167 P R 1889**

90. *Civil Procedure Code*, 1882, *sections* 522, 582—*Finality of decree in accordance with award—Appeal.*

A Court of first instance, upon objections made to it, wrongly set aside an award. The Court of first appeal set aside this order and passed a decree in accordance with the award.

Held, that, under the combined effect of sections 522 and 582 of the Civil Procedure Code, the latter decree was final and not open to further appeal. NAWAB *v.* AHMAD KHAN. **26 P R 1890**

91. *Private award—Plea in bar.*

Where a reference to arbitration is made and the arbitrator has given his award, the parties to the reference cannot sue on the original cause of action. The fact that the award was not made within a reasonable time was *held* not to be fatal to its validity under the peculiar circumstances of the case. HASSAN ALI *v.* HOSHDAR ALI. **113 P R 1890**

92. *Civil Procedure Code—Reference to arbitration—Umpire—Consultation between arbitrators and umpire.*

The award of an umpire, appointed under Chapter XXXVII, Civil Procedure Code, is not invalid merely because he has not conferred with the arbitrators, when no provision that he should do so is contained either in the agreement to refer, or the order appointing him. KARIM BAKHSH *v.* SUBHAN ALI. **6 P R 1891**

93. *Arbitration—Reference to be made out of Court during pendency of suit—Specific Relief Act*, 1877, *section* 21—*Effect of.*

Held, that the last clause of section 21, Specific Relief Act, is inapplicable to a case in which a reference to arbitration is made out of Court during the pendency, and not before the institution, of a suit.

Punjab Record, No. 130 of 1882, followed. FAKIR *v.* JAIMAL. **50 P R 1891**

94. *Arbitration and award—Civil Procedure Code, sections* 13 *and* 525—*Order refusing to file award—Powers of Private arbitrator—Construction of terms of reference.*

In a suit by two sons of a deceased Muhammadan to recover their shares in their father's estate from their brother, the defendant pleaded that he was entitled to the said estate under an award in his favour made on a submission to which the plaintiffs were parties; but it appeared that the Civil Court had refused an application under section 525, Civil Procedure Code, to file the same.

Held, that this order was not a decision as to the validity of the award within the meaning of section 13.

Where a dispute relating to land and the right of succession thereto was referred by the members of a Muhammadan family to a private arbitrator, selected by reason of his knowledge of the circumstances of the family, without any stipulation that he was to be controlled in his decision by any custom or Muhammadan Law, and the arbitrator decided on the broad view of giving effect to what he conceived to be the intention of the deceased father of the parties;

Held, that this could not be relied on as misconduct, and that such decision was within the right of the arbitrator. MUHAMMAD NAWAZ KHAN *v.* ALAM KHAN. **70 P R 1891**

95. *Arbitration—Consent of all the parties to the suit—section* 506, *Civil Procedure Code—Appellate Court remanding an appeal under section* 562 *as regards one defendant and dismissing the appeal as regards the other defendants—More than one decree in same suit.*

J. sued D. B., the mother of the girl, and the girl's three uncles, for Rs. 1,000 damages for an alleged breach of a betrothal contract. After settlement of issues, the plaintiff and the three male defendants agreed to refer the matters in dispute to arbitration under the provisions of the Civil Procedure Code. D. B., the mother, did not sign the agreement, but K. M., one of the uncles, stated that he was representing her and that he joined her in the reference to arbitration with her full knowledge and consent.

An award was given in favour of the plaintiff, upon which judgment and decree followed against all four defendants.

Upon appeal by the defendants, the Divisional Judge held that the award was inoperative as regards D. B., unless it could be shown that she had ratified the submission to arbitration, but that the award was good as regards the parties who had consented to the reference. The Divisional Judge accordingly remanded the case under section 562, Civil Procedure Code, for decision as regards D. B. and dismissed the appeal as regards the three male defendants.

ARBITRATION—*contd.*

Held, on further appeal, that the decree of the Divisional Judge was bad in law. He could not legally dispose of the appeal finally as regards the three male defendants and re-open the case by a remand as regards the fourth,—the almost inevitable result of such procedure being that eventually there would be more than one, and possibly conflicting, decrees in the one suit.

Observations on the question whether D. B. was a party to the reference to arbitration. No. 4 *P. R.* 1882 (F. B.), and No. 170 *P. R.* 1883, referred to. KHAN MUHAMMAD *v.* JALAL-UD-DIN. **3 P R 1892**

96. *Suit for property claimed under private reference to arbitration—Validity of award—Award though bad in part when good for the rest.*

The two sons and the widow of R. referred the question of the partition of R.'s property to two arbitrators. The arbitrators duly made an award dividing the property, which was partly situate in the Punjab and partly at Baroda (Bombay Presidency).

The eldest son instituted a suit to recover possession of certain of the property situate at Amritsar which fell to his share under the award.

The defendants contended, *inter alia*, that the award was incomplete and invalid in that it failed to make a complete partition of the Baroda property.

Held, that the objection was not sustainable. This was not a proceeding to enforce an award under the Civil Procedure Code, in which case it would be necessary either to affirm the award in its entirety or wholly reject it. It was open to the Court in the present proceeding to consider whether the rest of the award might not be good, even though one portion of it was bad.

Where arbitrators act in excess of their authority and this portion of their award can be struck out, and the remainder of the award still contains a final determination of all material questions submitted, the valid portion of the award may be maintained and the void portion rejected.

The principle, that though the award be deficient as to a matter within the submission if it be separable, the rest of the award may often be supported, adopted and applied. MIRAN BAKHSH *v.* RAHIM BAKHSH.

18 P R 1892

97. *Civil Procedure Code*, 1882, *section* 523—*Agreement to refer to arbitration—Application to file such agreeement—Plea that consent to agreement was improperly obtained—Power of Court to investigate such plea.*

The petitioner made an application under section 523, Civil Procedure Code, 1882, that an agreement between him and the defendant to refer a dispute to the arbitration of two persons named in the agreement be filed in Court.

The defendant pleaded that his consent to the agreement had been obtained by fraud and misrepresentation.

ARBITRATION—*contd.*

The lower Court held that it was not open to it to go into these questions in the proceeding before it and refused the application.

Held, that the Court could not say whether or not sufficient cause for not ordering the agreement to be filed had been shown, within the true meaning of section 523 of the Code, unless and until it has investigated and adjudicated upon the defendant's objections.

The mere allegation by the defendant that he did not freely and with full knowledge of all material facts consent to the agreement, cannot be deemed to be sufficient cause for not filing the agreement, until the Court is in a position to affirm that the allegations have been established.

No. 13 *P. R.* 1888 referred to and followed. RAM RATTAN *v.* BASAKA MAL. **49 P R 1893**

98. *Civil Procedure Code*, 1882, *sections* 36 *and* 506—*Recognized agent—Reference to arbitration.*

Held, by the full Bench—

(1) that it is competent to a party to a suit to file an application under section 506, Civil Procedure Code, for an order of reference to arbitration by the agency of an authorized agent;

(2) that no special form of authorization in that behalf, as in the case of a pleader who must be specially authorized, is necessary in the case of a recognized agent to enable him to make an application to refer to arbitration. RAM DAS *v.* ABBAS KHAN.

51 P R 1893

99. *Indian Succession Act (IX of* 1895*), sections* 234, 261—*Application by one of two executors for revocation of grant of probate—Court referring question to arbitrators.—Semble.*

Though under section 261 of the Indian Succession Act, 1865, the proceedings in contentious cases are to take, as nearly as may be, *the form of a regular suit* according to the provisions of the Civil Procedure Code, the Court before whom an application under section 234 of the Act is instituted has no jurisdiction to delegate the decision of the question raised to arbitrators, even with the consent of the parties. CAMPBELL *v.* SIMPSON.

72 P R 1894

100. *Arbitration—Judgment in accordance with award—Decree following judgment, appeal from—Civil Procedure Codes (Act VIII of* 1859, *section* 325, *and Act XIV of* 1882, *section* 522).

Held, by the Full Bench that there is no appeal, under section 522 of the Civil Procedure Code, 1882, from a decree following a judgment given according to an award of arbitrators which has not been modified or corrected under section 518 except upon one or other of the two grounds expressly mentioned in the concluding paragraph of the former section.

ARBITRATION—*contd.*

Although under section 325 of the Code of Civil Procedure, 1859, it was competent to a party to object by way of appeal that what purported to be an award was no award or had no legal existence as an award *ab initio*, or that the decree was bad because of an irregular procedure in the Court either before the award *de facto* was delivered or afterwards, the sole test, under the present Code of Civil Procedure is whether the appellant alleges that the decree is not in accordance with the award or is in excess of it. If he does, he can appeal to that extent. In all cases which do not satisfy this test, whatever remedy a party dissatisfied with the award and the decree may have, it can no longer be by way of appeal.

XXIII, S. W. R., 429 ; *VIII, B. L. R.*, 315 ; *I. L. R., XVI. Calc.*, 482 ; *I. L. R., XVII Bom.*, 357 ; *I L. R., VI Mad.*, 414 ; *I. L. R., XI Mad.*, 144 ; *I. L. R., XV Mad.*, 348 ; *I. L. R., IV All.*, 283 ; *I. L. R., VI All.*, 174 ; *I. L. R., VIII All.*, 449 ; *Kirpa Ram* v. *Laljit* (*All Weekly Notes*, 1892, p. 151) cited.

No. 4 *P. R.*, 1882 (F. B.), disapproved *pro tanto*. GHULAM JILANI *v.* MUHAMMAD HUSSAN.

74 P R 1894

101. *Arbitrators, remuneration of—Jurisdiction of Court to direct payment of sum ordered to be deposited in Court as remuneration—Interlocutory order—Revision—Civil Procedure Code*, 1882, *Sections* 507, 508, 519, 622.

Held, that on a reference to arbitration, the Court, in the absence of any agreement by the parties, either spontaneously or in answer to a demand by the arbitrators, to pay any sum as remuneration to the latter, has no jurisdiction, either special or general, to make an order for deposit in Court of a sum for that purpose, or to direct its payment to the arbitrators. MUL CHAND *v.* NARINJAN DAS.

94 P R 1894

102. *Civil Procedure Code*, 1882, *section* 518, 520, 522—*Decree professing to follow an award of arbitrators but not in accordance therewith—Appeal—Award embracing matters not referred to arbitration—Procedure.*

Plaintiff sued for a declaration that one Mussammat N. B. was his lawful wife, and the question was referred, with the consent of the parties, to arbitration. The arbitrators decided that the marriage which had taken place between plaintiff and Mussammat N. B. was illegal; that the girl had been previously betrothed to one K. R. (another defendant), but that plaintiff's marriage should be held good as plaintiff had given his own sister in exchange for Mussammat N. B., but that it should be a condition that R. C. (one of the defendants), who had effected plaintiff's marriage, should get K. R. betrothed to a girl under eight years of age within two years, and, if he failed to do so, should pay K. R. Rs. 500 damages. The lower Court, thereupon, passed a decree simply to the effect that Mussammat N. B. was the legal wife of plaintiff.

Held, that the decree of the lower Court, although it professed to follow the award, was not "in accordance" therewith, and was appealable.

Held further, that inasmuch as the Court, in order to pass a decree embodying all the provisions of the award, would have had to determine matters not referred to arbitration and would have been giving a decree against R. C., one defendant, in favour of K. R., another defendant, who never asked for such a decree, the lower Court should, according to section 520 of the Code, have remitted the award to the arbitrators for reconsideration. MUSSAMMAT GONDI BAI *v.* THAKAR DASS.
60 P R 1896

103. *Arbitrator—Application by arbitrator for payment of his fees before producing award—Arbitrator's lien on award—Civil Procedure Code, 1882, section 622—Right of arbitrator to sue for his fee in absence of express agreement to pay such fee—Contract Act, 1872, sections 95, 171.*

The District Judge having passed an order requiring the petitioner to produce in Court an award which he, acting as arbitrator for certain parties, had drawn up and signed but had not yet delivered to them, the petitioner applied to the Chief Court for revision of the said order, and alleged that one of the said parties had applied to the lower Court to file the award under section 525, Civil Procedure Code; that in taking up the arbitration he did not intend to act gratuitously; that he had not yet received his fee, which the referring parties refused to pay; that he had a lien on the award for such fee; and that if he produced the award in Court he would be left without a remedy for its recovery. The petitioner took these objections in the lower Court, which however, overruled them, and gave him ten days' time to get an order from the Chief Court in his favour. For respondents it was contended that the application did not lie; that the Chief Court should not interfere as the applicant had other and more suitable remedies, and that the petitioner had no lien on the award.

Held, that the petitioner was competent to make, and the Chief Court had jurisdiction to entertain, the application in question.

Held further, that in the absence of any express promise by the parties to a reference to remunerate an arbitrator, the latter has no right of action in respect of such remuneration, his sole remedy being to refuse to deliver his award until his charges are paid.

Held also, that on general principles and in the absence of any direct provision to the contrary, an arbitrator has a lien on his award for the payment of his reasonable charges.

The sections of the Indian Contract Act relating to liens are not exhaustive and do not negative the existence of liens not therein specified.

Per Roe, C. J.—An arbitrator may properly be regarded as an ordinary seller and

entitled to a lien under section 95 of the Contract Act.—KIRKPATRICK, *In re.*
22 P R 1897

104. *Civil Procedure Code*, 1882, *sections* 520, 521, 522, 523, 525, 622—*Power of Court to inquire into objections denying validity of a reference to arbitration—Revision—Practice.*

Held; by the Full Bench, that it is not competent to a Court, upon an application, under section 525 of the Civil Procedure Code, to file an award, to inquire into and decide objections other than those specified in sections 520 and 521 of the Code.

It is not the invariable, though it is the usual, practice for a High Court to refuse to interfere under section 622 of the Code, when the party professing to be injured has another remedy open to him.

No. 134 *P. R.*, 1888, and No. 49 *P. R.*, 1893, overruled. NARAIN DAS *v.* MANOHAR LAL. **21 P R 1898**
Overruled by 84 P R 1901 F B

105. *Punjab Land Revenue Act*, 1887, *section* 158 (2) (*xvii*). (*xviii*)—*Suit to set aside award of arbitrators appointed by Revenue Officer in partition proceedings—Allegation of fraud, but no dispute as to title.*

Plaintiffs sued to set aside an award of arbitrators appointed by a Revenue Officer, under Chapter X of the Punjab Land Revenue Act, 1887, in a dispute between the parties about partition of land. No question as to title was raised, but plaintiffs sued on the ground of fraud inasmuch as they had not been given the land which had been promised to them.

Held, that the suit would not lie, plaintiffs' only course being to press their objections before the Revenue Officer, and thereafter appeal to the superior Revenue authority. ARJAN SINGH *v.* SOCHET SINGH.
52 P R 1898

106 *Civil Procedure Code*, 1882, *sections* 98, 510—*Dismissal of suit pending reference to arbitration.*

Held, that an order dismissing a suit under section 98 of the Civil Procedure Code cannot properly be made when the suit has been referred to an arbitration which is still pending at the date of the order of dismissal, unless an express order superseding the arbitration for sufficient reasons under section 510 of the Code has first been passed.

Held further, on the facts of the case, that the order of the lower Court simply dismissing the suit under section 98 of the Code could not by itself be construed into an order superseding the arbitration under section 510 of the Code. IMAM DIN *v.* JAWAHARI. **10 P R 1899**

107. *Arbitration, reference of case to—Award of arbitrators—Acceptance of award on date of delivery by both parties—Subsequent objections to award by both parties*

—Court setting aside award and adjudicating on case—Estoppel.

To a suit by plaintiffs, who were the collaterals of one R. K., deceased, for possession of four houses and one shop belonging to the latter, the defendant pleaded that he was the adopted son of R. K., and as such excluded the plaintiffs. On the day fixed for hearing evidence both parties agreed to refer the case to the decision of arbitrators who were present in Court, and preferred a request that the arbitrators might be asked to file their award that day. A referring order was accordingly drawn up to this effect, it being further recited that the arbitrators had already made inquiries. The arbitrators filed their award the same day, finding all issues in favour of defendant, but nevertheless giving one of the houses and Rs. 175 to plaintiffs. The parties were examined by the Court, and expressed their acceptance of the award, but the Court, instead of passing a decree in terms of the award, adjourned the hearing for objections to be filed. On the 2nd June the defendant objected to the effect that, as all the issues had been found in his favour, the award of the house and cash to plaintiffs was proof of the arbitrators' partiality towards plaintiffs. He therefore prayed that the award might be set aside or amended. On the 4th June plaintiffs also filed objections to the award, and charged the arbitrators with misconduct in that they had decided the case without inquiry. On the 10th June both parties were examined and stated that they wished the award to be set aside, whereupon the Court, after questioning the arbitrators, set aside the award on the ground, *inter alia*, that both parties were agreed that the arbitrators had decided the case without inquiry and wished the award to be cancelled. The Court then proceeded to inquire into the case, and on the merits held that plaintiffs' claim should be decreed as defendant's adoption had not been proved. On appeal the Divisional Judge agreed with the first Court on the facts, and held further that defendant was not competent, after his objections to the award and in the face of his prayer to have it set aside, to ask the Court of appeal to pass a decree in terms of the award. Defendant appealed to the Chief Court, and contended, *inter alia*, (1) that when on the date of award both parties accepted it, the case should not have been adjourned in order to enable objections to be filed, but a decree should forthwith have been passed in accordance with it, and (2) that the Court erred in setting aside the award on the ground of the arbitrators' misconduct in deciding it without inquiry, the parties having expressly asked for the award to be filed the same day.

Held, that the Court had committed an irregularity in adjourning the case for objections when both parties expressed their acceptance of the award.

Held further, on the facts of the case, that the arbitrators had not been guilty of the misconduct attributed to them.

But *held*, that the Court, both in adjourning the case and in finding misconduct on the part of the arbitrators, had acted within its jurisdiction, though erroneously, and that the error which it had committed amounted merely to an irregularity of procedure from which no substantial injustice on the merits had been proved to result.

Held also, that though the proceedings had been irregular, the defendant was estopped by his conduct from taking exception to them after their conclusion merely on the ground of an irregularity which had been committed at his instance. SHEO NARAIN *v.* SHEO RAM. **15 P R 1899**

109. *Reference and award—Construction—Validity of award—Abstract filed with award—Setting aside award.*

One B., a contractor, sued the Municipal Committee of Lahore for Rs. 43,201 for work done by him on a certain public building, and in his plaint admitted that he had been paid a sum of Rs. 56,810.

The matters in dispute had previously been referred to private arbitration, the parties agreeing that "arbitration be resorted to for a "settlement of the dispute so far as it relates "to measurements of work done and to the "rates to be paid for the same, where such "rates have not been agreed upon between "the Committee and the contractor." The two arbitrators appointed subsequently delivered their award, which was to the effect that "after having duly weighed and "considered, &c. &c., they award and adjudge "that the Municipal Committee *do pay* to B., "the contractor, the sum of Rs. 58,876 *as the "total value of the work done*" With this award the arbitrators gave in a statement, headed "Abstract of Cost" of the building in question. This abstract appeared to be the foundation of the award, and represented the results of the arbitrators' inquiries.

The District Judge held that the said award was invalid because (*a*) it directed a specified sum to be paid by defendant to plaintiff, and (*b*) the arbitrators had omitted to allow for certain portions of the work.

The District Judge thereupon proceeded himself to adjudicate in the matter, and gave plaintiff a decree for Rs. 13,779 with costs in proportion and interest on the amount decreed. Both parties appealed to the Chief Court, and on behalf of plaintiff it was contended that the award was also invalid because his arbitrator had absented himself from the proceedings and made the work over to his son. It was further urged that if the award was to be maintained it must be interpreted strictly, and that under its literal terms plaintiff was entitled to receive the full sum therein awarded to him, *viz.*, Rs. 58,876.

Held, (i) that according to the terms of the agreement to refer, the scope of the arbitration was limited to an inquiry as to (*a*) the quantities of the work done by the plaintiff, and (*b*) the rates where none were provided for by the original contract; and that though in certain particulars the arbitrators had exceeded their authority, it was possible

to separate from their finding and award that which was in excess of their authority;

(ii) that it had not been proved that plaintiff's arbitrator had absented himself from the proceedings or that his son had acted in the matter otherwise than in a purely ministerial capacity;

(iii) that the abstract given with the award was the basis of the award, and must be read with it;

(iv) that the mistake made by the arbitrators in awarding a specified sum *to be paid* by the defendant did not vitiate the award;

(v) that the meaning of the award was clearly that after due inquiry the arbitrators were of opinion that the sum of Rs. 58,876 represented *the total value* of the work done by the plaintiff for defendant and that the meaning of the award being clear, the literal wording thereof was not to be interpreted with too great strictness;

(vi) that in order to make the award invalid on account of the alleged omissions to make allowance for certain work done by the plaintiff it would be necessary to find that the arbitrators had wilfully or negligently omitted to make the requisite measurements, &c., and include them in their award, and that there was no evidence of any such wilful or negligent omission.

Where the parties to a dispute have deliberately referred it to arbitration and bound themselves to abide by the decision of the arbitrators the award of the arbitrators should not be set aside lightly or for a merely formal defect. MUNICIPAL COMMITTEE, LAHORE *v.* BUTA. **65 P R 1899**

110. *Date fixed for filing award—A Court holiday—Award filed on following day—Civil Procedure Code*, 1882, *section* 521.

Where an award was directed to be filed on the 9th August 1898, but was actually filed on the 10th August, and it appeared that the 9th August was a Court holiday and that the Court was closed on that date, *held*, that the award was filed within time. MUHAMMAD YUSAF *v.* KARIM BAKHSH.

78 P R 1899

111. *Arbitration—Judgment in accordance with award—Decree following judgment.*

An order passed under section 522 of the Civil Procedure Code in accordance with the award could not be reviewed into an *ex-parte* one and then set aside even if it was passed in the absence of the defendant, who had put in no objections notwithstanding the service of a notice to file objections, if any, within the prescribed period of ten days. SIDHU RAM *v.* GAMAN. **98 P R 1900**

112. *Power of Court to appoint new arbitrators—Civil Procedure Code*, 1882, *section* 510.

The Court has no power under section 510 of the Code of Civil Procedure to appoint a new arbitrator in the place of another when the latter had refused to accept his appointment.

Pugardin Ravutan v. *Moidinsa Ravutan* (*I. L. R. VI Mad.* 414), *Bepin Behari Chowdhry* v. *Annoda Prosad Mullick* (*I. L. R. XVIII Calc.* 324), and *Balla Patta Bhirama Chetti* v. *Seetha Rama Chetti* (*I. L. R. XVII Mad.* 498), referred to. RADHA KISHEN AND OTHERS *v.* DAULAT RAM.

110 P R 1900

113. *Award—Agreement to refer to arbitration—Application to file such agreement—Power of Court where there is a denial to the execution of such agreement—Competency of Court to enquire into objection denying validity of a reference to arbitration—Appeal on grounds other than the decree being in excess of, or not in accordance with, the award—Civil Procedure Code*, 1882, *sections* 520, 521, 522, 523 *and* 525.

Held, by the Full Bench.

(i) that a Court is competent upon an application under section 525, Civil Procedure Code, to file an award to enquire into and decide objections other than those specified in sections 520 and 521 of the Code;

(ii) that section 526 does not limit the enquiry allowed under section 523, and that a Court is competent upon an application under that section to file the reference to arbitration in spite of defendant's denial of the agreement to refer;

(iii) that an appeal lies from an acceptance or rejection of an application under section 525, Civil Procedure Code, when the award is illegal *ab initio*; and

(iv) that an order rejecting an application under section 523, Civil Procedure Code, is appealable.

Narain Das and another v. *Manohar Lall and others* (21 *P. R.* 1898 F. B.) overruled. *Ghulam Jilani Khan* v. *Muhammad Hassan* (74 *P. R.* 1894 F. B.), *Hussain Bibi* v. *Mohsan Khan* (*I. L. R. I All.* 156), *Surjan Raot* v. *Bhikari Raot* (*I. L. R. XXI Calc.* 213), and *Tejpur Dewchand* v. *Mahomed Jamal* (*I. L. R. XX Bom.* 596) disappoved.

Mahomed Wahid-ud-din v. *Hakiman* (*I. L. R. XXV Calc.* 757), *Atma Ram* v. *Jamita* (134 *P. R.* 1888), *Ram Rattan* v. *Basakha Mal* (49 *P. R.* 1893), *Amrit Ram* v. *Dasrat Ram* (*I. L. R. XVII All.* 21), *Chintamallayya* v. *Thaddi Gangireddi* (*I. L. R. XX Mad.* 89,) *Kalli Prosanno Ghose* v. *Rajain Kant Chatterji* (*I. L. R. XXV Calc.* 141), *Raja Harnarain Singh* v. *Chaudhrain Bhagwant Koer* (*I. L. R. XIII All.* 300), *Chuhu Mal* v. *Hari Ram* (*I. L. R. VIII All.* 548), *Husananna* v. *Linganna* (*I. L. R. XVIII Mad.* 423), *Gowdu Magata* v. *Gowdu Bhagwan* (*I. L. R. XXII Mad.* 299), *Saturjit Pertap Bahadar Sahai* v. *Dulhin Gulab Koer* (*I. L. R. XXIV Calc.* 469), *Nandram Daluram* v. *Nemchand Jadavchand* (*I. L. R. XXVII Bom.* 357), *Amir Hassan Khan* v. *Sheo Bakhsh Singh* (*I. L. R. XI Calc.* 6), and *Cheto Mal* v. *Mahoo Mal* (4 *P. R.* 1882), cited. JHANGI RAM AND ANOTHER *v.* MUSSAMMAT BUDHO BAI.

84 P R 1901

ARBITRATION—*contd.*

114. *Arbitration—Powers and duties of arbitrators—Delegation of authority to perform certain ministerial acts—Excess in award—Award not bad for excess of authority where the good part of the award was separable from that portion which exceeded the authority.*

The plaintiff obtained a contract from the defendants for building a Town Hall which was completed in 1890. When the final accounts came to be settled, disputes arose between the parties, and were referred to arbitration by an agreement, dated the 18th February 1891. The arbitrators being uncertain as to the meaning of a particular clause of the agreement of reference, upon which depended the scope of the reference, wrote to the defendant asking for an opinion, which was obtained from the counsel who had prepared the agreement. This was not communicated to the plaintiff until after the award was made.

The plaintiff, being dissatisfied with the award filed a suit for adjustment of accounts and recovery of the money that might be found due to him for work done and material supplied under the contract for additional work done outside the contract and also for damages. The defendants relied on the award as a bar to the suit, and disputed the claim for damages. The plaintiff challenged the award on the grounds that the arbitrators were guilty of misconduct and had exceeded their jurisdiction. One of the acts of misconduct charged against them was that they, being in doubt as to the subject matter submitted to them for determination, referred to and obtained the interpretation thereof from the defendants alone without communicating with him on the subject, the second ground being that one of the arbitrators had delegated his duty to his son and employed him to take the measurements instead of taking them himself. The objection as to excess of duty was that, instead of only working out the measurements of work done and the rates to be paid where such rates had not been agreed upon between the parties, the arbitrators also found a particular sum due from defendant to plaintiff.

Held, by the Privy Council.

(*i*). Following *Rolland* v. *Cassidy* (*L. R.*, 13 *App. Cas.*, 777), that though there may have been an error of judgment on the part of the arbitrators, there was no ground for impeaching the good faith of any of the parties concerned or the correctness of the opinion given by the counsel consulted, and that that was not such an irregularity as vitiated the award.

(*ii*). That there is no doubt that an arbitrator can delegate to a third person the performance of acts of a ministerial character, and that it had been satisfactorily proved that acts of a ministerial character only had been delegated by one of the arbitrators to his son.

(*iii*). That, as the award consisted of two parts, the first of which gave the detailed measurements and rates allowed by the arbitrators, with a column of remarks showing in

ARBITRATION—*contd.*

some cases the bases of their decision, while the second awarded a specific sum to the plaintiff as the sum resulting from the calculation of the quantities ascertained at the rates allowed in the first part of the exhibit, the whole must be regarded as constituting the award, and that, as that portion of the award which related to the measurements of work done and the rates to be paid for the same, where such rates had not been agreed upon between the parties, was clearly separable from that portion of the award which went beyond the strict terms of the agreement of reference, the first part therefore was an honest determination upon the specific matter referred to the arbitrators and was valid and binding upon the parties, and that the faulty direction given in excess of their authority might be treated as null.

Held, on the merits that it was incorrect that the arbitrators had failed to allow for certain portions of the work done or that they had lowered the rates agreed on by the parties or that the plaintiff was entitled to any damages. BUTA *v.* THE MUNICIPAL COMMITTEE OF LAHORE. **87 P R 1902 P C**

115. An award implies an adjudication or decision by an arbitrator upon the matter submitted to him. A mere petition by the arbitrator reciting that he had induced the parties to settle their dispute by a *razinama* does not amount to an award. THAKAR DAS *v.* JASWANT RAI. **1 P R 1904**

116. *Arbitration—Award—Decree of Appellate Court in accordance with award—Finality of decree—Further appeal—Civil Procedure Code,* 1882, *sections* 521, 522, 582.

Held, that where a Court of first instance wrongly sets aside an arbitration award and passes a decree against the terms thereof, and a Court of appeal dealing with the merits of the case comes to the conclusion that the award was not open to any such objections as are contemplated by section 521 of the Code of Civil Procedure, and upon that finding passes a decree strictly in accordance with the terms of the award, such appellate decree is entitled to the same finality as a decree of the first Court would have had under the last paragraph of section 522, and cannot be made the subject of a further appeal.

Pureshnath Dey v. *Nobin Chundur Dutt* (12 *W. R.* 93), *Mothoora Nath Tewaree* v. *Brindrabun Tewaree* (14 *W. R.* 327), *Rughoobur Dial* v. *Maina Koor* (12 *Calc. L. R.* 564), and *Bykunt Nath Mookerji* v. *Prio Nath Ghose* (22 *W. R.* 447), considered and dissented from; *Nawab* v. *Ahmad Khan* (26 *P. R.* 1890), *Naurang Singh* v. *Sadpal Singh* (*I. L. R. X All.* 8) and *Ghulam Jelani and others* v. *Muhammad Hassan* (25 *P. R.* 1902, *P. C.*) cited and followed. BAHAR BAKHSH *v.* INAYAT ALI. **89 P R 1904**

117. *Arbitration—Award—Receiving evidence from one side in absence of other—Misconduct—Award set aside—Decree on merits—Appeal—Competency of Appellate

ARBITRATION—*contd.*

Court to question the legality of the order setting aside award—Civil Procedure Code,* 1882, *section* 521.

Where arbitrators held meetings and took the evidence produced by one party in the absence of the other party which was wholly unavoidable and did not give the latter sufficient opportunity to produce his own evidence: *held*, that they were guilty of judicial misconduct within the meaning of section 521 of the Civil Procedure Code and that their award was not valid and rightly set aside by the Court.

Query.—Whether in a case in which there has been an order of reference to arbitration under section 508, Civil Procedure Code, and an award has been delivered by the arbitrators but has been set aside by the Court under section 521, and a decree is passed on the merits, it is open to an Appellate Court on an appeal against that decree to consider the question of the legality of the order setting aside the award. SOBHA RAM *v.* RAM DAS. **66 P R 1907**

118. *Arbitration—Application to file a private award—Award effecting portion of immovable property—Registration Act,* 1877, *section* 17, *clause* (*b*) (*i*)*—Court not competent to remit private award when defective and indefinite—Civil Procedure Code,* 1882, *sections* 520, 525, 526*—Court-fee—Court-fee on appeal from an order rejecting an application to file an award in Court—Court-fees Act,* 1870, *Schedule I, articles* 1, 17.

Held, that the Court-fee payable upon the memorandum of appeal against an order rejecting an application under section 525 to file an award is Rs. 10 under the sixth clause of article 17 and not an *ad valorem* fee in accordance with article 1 of the Court-fees Act, 1870.

Held, also, that when an award made without the intervention of the Court is on the face of it defective, determines matters not referred to arbitration, and is so indefinite as to be incapable of execution, the Court has no power under sections 525 and 526 to amend it or to remit it for reconsideration but must refuse to file and enforce it.

Semble: for the purposes of Section 525 of the Code of Civil Procedure an award of arbitrators privately appointed by the parties even if it effects partition of joint immovable property of over Rs. 100 in value and is signed by the parties to signify their acceptance of the same does not require registration and can be filed and made a rule of Court. BHAGAT RAM *v.* PARAS RAM. **84 P R 1907**

119. *Arbitration—Award—Delivery of—within the period allowed by the Court—Civil Procedure Code,* 1882, *sections* 508, 521.

Held, that an award made and signed within the period fixed by the Court even when filed in Court after the expiry of that period is valid under sections 508 and 521 of the Code of Civil Procedure.

The expression "delivery" in section 508 means "making" and not "filing in Court." BHAGAT RAM *v.* GANDA SINGH. **89 P R 1907**

ARBITRATION—*contd.*

119. *Arbitration—Award—Order directing private award to be filed—Finality of such order—Appeal—Revision—Civil Procedure Code,* 1882, *sections* 522, 525, 526.

Held by the Full Bench that no appeal will lie from an order under section 526 of the Code of Civil Procedure directing the filing of an award made between the parties without the intervention of a Court, except in so far as the decree may be not in accordance with the award, and equally such an order is not subject to revision on the points on which an appeal would not be allowed.

Jhangi Ram v. *Budho Bai* (84 *P. R.* 1901 *F. B.*), *Gulam Jelani* v. *Muhammad Hassan* (74 *P. R.* 1894 *F. B.*), and *Janokey Nath Guha* v. *Brojo Lal Guha*, (*I. L. R. XXXIII Cal.* 757) disapproved and dissented from.

Ghulam Jelani v *Muhammad Hassan* (25 *P. R.* 1902 *P. C.*), *Chintamoni Aditya* v. *Haladhar Maibi* (2 *Cal. L J.* 153, 10 *Cal. W. N.* 601), *Hans Raj* v. *Ganga Ram* (88 *P. R.* 1902 *F. B.*) and *Panna Lal* v. *Soman* (89 *P. R.* 1902 *F. B.*) referred to. SHANKAR MAL *v.* NATHU MAL. **1 P R 1908 F B**

120. *Arbitration—Award—Decree on judgment in accordance with an award—Appeal—Civil Procedure Code,* 1882, *section* 522.

Held, that a decree passed in accordance with an award made by an arbitrator is not appealable. HANS RAJ *v.* SUNDAR LAL. **80 P R 1908 P C**

121. *Civil Procedure Code,* 1882, *sections* 522, 525—*Application under section* 525—*Premature if award had not been pronounced at date of application—Appeal lies in such case although decree passed in accordance with award.*

Held, that an application for filing an award under section 525, Civil Procedure Code, 1882, should be dismissed as premature and must fail where the award had not been pronounced orally or reduced to writing at the time of the application.

Held also, that notwithstanding that the Court of first instance passed a decree in accordance with the award an appeal lay to the District Court, as the first Court had dealt with an application which it had no power to entertain and which it should have rejected, immediately the fact was made known to it, that the award was not in existence at the date of the presentation of the application.

Bhagwan Singh v. *Mussammat Ram Kaur* (38 *P. L. R.* 1906) distinguished. GOKAL CHAND *v.* MUKHAN SINGH. **80 P R 1909**

122. *Suit based on an award—Right of appeal.*

Held, that a suit can be brought upon an award independently of the summary procedure authorized by section 525 of the Civil Procedure Code, 1882, at any period which the law for the limitation of suits permits, and a decree made in such a case is appealable though there would be no appeal from a similar decree made in the summary proceedings under Chapter XXXVII of the Code. WAZIR ALI *v.* SHEIKH MALKYAR. **34 P R 1910**

123. *Arbitration*—Pendente lite—*Agreement to refer, made by parties out of Court—Application presented to Court by one party only—Civil Procedure Code,* 1908, *Schedule II, article* 1.

Where a suit was instituted in June 1910, and on 3rd October parties agreed out of Court to nominate certain arbitrators to decide their dispute and, in pursuance of their agreement, had a petition to the Court written out, and owing to the Judge's absence for some days the petition could not be used until 17th October; when plaintiff *alone* presented it in Court, defendant denying having agreed to arbitration and refusing to join in the presentation.

Held, that not only the writing out of an application, but the presentation of it, must have the concurrence of all the parties to fulfil the requirements of article 1 of Schedule II of the Civil Procedure Code, 1908, and that the Lower Court was consequently right in rejecting the application. MIRAN BAKHSH *v.* SHER MUHAMMAD. **17 P R 1911**

124. *Suit based on agreement containing a clause for reference to arbitration—Specific Relief Act,* 1877, *section* 21 (*last clause*).

Held, that defendant on whom the *onus* lay had failed to prove that plaintiffs had refused to perform the contract to refer the matter to arbitration before the present suit was instituted and that consequently the last clause of section 21 of the Specific Relief Act, 1877, did not operate as a bar to the plaintiff's suit. UDHE SINGH *v.* S. BISHEN SINGH. **25 P R 1911**

125. *Arbitration—Application for reference to arbitration—Several causes of action joined in one application—Nomination of arbitrator by Court—Difference between the old and new Code,—Civil Procedure Code,* 1908, *section* 141, *Schedule I, order* 2, *rule* 3 *and clause* 17 *of the second Schedule—Civil Procedure Code,* 1882, *section* 523—*Material irregularity.*

Held, that O. 2, R. 3 of Schedule I read with section 141 of the Civil Procedure Code, 1908, enables a Court to allow plaintiffs to join several causes of action in one application to file in Court agreements to refer to arbitration under clause 17 of Schedule II.

Held also, that section 523 of the old Civil Procedure Code, 1882, differed materially from the provisions of clause 17 of Schedule II of the present Civil Procedure Code, 1908, inasmuch as under the former it was necessary that the arbitrators should be named in the agreement and but in clause 17 there is no reference to "arbitrators named" and the sole provision is that the reference is to be to the arbitrators "appointed in accordance with the provisions of the agreement."

ARBITRATION—*concld.*

Where a Court, in contravention of the express agreement between the parties and the imperative terms of the Civil Procedure Code, appointed an arbitrator who did not come under the terms of that agreement, it committed an irregularity which materially prejudiced the plaintiffs. DREFUS AND CO. *v.* GURDITTA MAL. **35 P R 1911**

ARBITRATION ACT, 1899.

SECTIONS 2 AND 19.

Revision—Revision of an order under section 19 *of the Indian Arbitration Act,* 1899, *Chief Court's powers—Punjab Courts Act,* 1884, *section* 70 (1) (*b*)—*Arbitration Act,* 1899, *section* 2, *application of—to suits which could be instituted in a Presidency Town.*

Held, that an order on an application under section 19 of the Indian Arbitration Act, 1899—staying or refusing to stay proceedings, is not a decree within the terms of section 2 of the Code of Civil Procedure, 1908, and is therefore not open to revision by the Chief Court under section 70 (1) (*b*) of the Punjab Courts Act, 1884.

Held also, that the terms, "could be instituted in a Presidency town" in section 2 of the Arbitration Act is not limited to suits which cannot be instituted elsewhere than in a Presidency town, but applies to suits which can, at the plaintiff's option, be instituted in a Presidency town or elsewhere. CLEMENTS AND CO. *v.* RATTAN SINGH, &c. **144 P R 1908**

ARBITRATOR.

1. *Charge of corruption against an arbitrator by a party to the suit.*
See DEFAMATION. **16 P R 1879**

2. *Lien of arbitrator on award.*
See ARBITRATION. **22 P R 1897**

3. *Misconduct on the part of the arbitrator.*
See ARBITRATION
47 P R 1867
101 P R 1868
12 P R 1869
41 P R 1875
55 P R 1889
58 P R 1889
167 P R 1889
70 P R 1891
15 P R 1899
87 P R 1902 P C.
66 P R 1907

4. *Remuneration of arbitrator.*
See ARBITRATION
11 P R 1886 Rev.
94 P R 1894
22 P R 1897

5. *Nomination of—by Court on application to refer to arbitration.*
See ARBITRATION. **35 P R 1911**

ARDASS.

See RELIGIOUS INSTITUTIONS. **4 P R 1870**

ARHAT.

Suit for arhat—*Small Cause Court Act,* 1887, *Schedule II, Article* 39, *Punjab Tenancy*

ARHAT—*concld.*

Act, 1887, *section* 77 (*j*)—*village cess.*
See SMALL CAUSE COURT ACT, 1887, SCHEDULE II, ARTICLE 39.
204 P R 1889

ARMY ACT, 1881.

See ATTACHMENT. **10 R P 1910**
See MUTINY ACT.

1. *Attachment of pay of officer of British Regiment serving in India—Army Act*, 1881, *section* 151.
See CIVIL PROCEDURE CODE, 1908, SECTION 60 (*h*). **59 P R 1897**

2. Actions for debt, and personal action against persons subject to Military Law—Army Act, 1881, and Army (Annual) Act, 1888.
See SMALL CAUSE COURT—JURISDICTION OF.
21 P R 1887
111 P R 1887 F B
110 P R 1890
1 P R 1893
48 P R 1893

ARMY DISCIPLINE AND REGULATION ACT, 1879.

See MUTINY ACT.
See EXECUTION OF DECREE.
41 P R 1882
See SMALL CAUSE COURT—JURISDICTION OF. **125 P R 1881**

ARORAS.

Not a sub-division of Khatris.
See PUNJAB PRE-EMPTION ACT.
87 P R 1910

ARREARS OF RENT.

See PUNJAB TENANCY ACT, 1868, SECTION 19. **87 P R 1881**
See PUNJAB TENANCY ACT, 1887, SECTION 16. **3 P R 1899 Rev.**
See SMALL CAUSE COURT—JURISDICTION OF. **86 P R 1887**
See SMALL CAUSE COURT ACT, 1865, SECTION 6. **33 P R 1887 F B**
See SMALL CAUSE COURT ACT, 1887, SCHEDULE II, ARTICLE 7 AND ARTICLE 8. **80 P R 1893**
164 P R 1888
1 P R 1894

ARREST.

See MUTINY ACT.

1. *Before judgment.*
On the application of plaintiff, an order was passed for a warrant to issue, under section 75, Act VIII of 1859, to bring up defendant to show cause why he should not give bail for his appearance—unless defendant gave security for his appearance, with satisfaction of any decree that might be passed against him. Defendant's pleader appeared, and gave the required bail. Defendant not having appeared, the bail was forfeited. Defendant in appeal urged that the order of arrest and subsequent proceedings thereon were bad, in that he should have been arrested and required to show cause before security was demanded.

Held, that defendant in choosing to appear and offer bail through his pleader was prevented from taking this objection. He could not insist upon an irregularity in the course of the proceedings, when he himself acted

ARREST—*contd.*

upon and took advantage of that irregularity, and took part in it as if the proceedings were regular. ELPHINSTONE *v.* RAHEEM BUX.
77 P R 1868

2. *Execution of decree—Appeal.*
An appeal does not lie from an order of imprisonment, in execution of a decree. GOOLDAD KHAN *v.* KUREEM KHAN. **22 P R 1871**

3. *Act V of* 1869—*Suits against privileged persons:*
Although under Part III, Act V of 1869, certain persons are protected from arrest for debt, and their pay, allowances, accoutrements, &c., cannot be attached, yet a suit may be brought and a decree is obtainable against such person. IN RE A REFERENCE BY JUDGE, SMALL CAUSE COURT, MIAN MIR.
43 P R 1871

4. *Second arrest for same decree.*
The Civil Procedure Code (Act VIII of 1859) does not prevent a judgment-debtor from being imprisoned a second time on account of the same decree where he has been released on the application of the judgment-creditor. MUSSAMMAT SUBHANI *v.* SADHO RAM. **37 P R 1873**

5. *Act VIII of* 1859, *section* 273.—*Discharge from arrest—Evasion of process.*
Held, by BOULNOIS and LINDSAY, JJ., that the mere evasion of process does not disentitle a judgment-debtor to his discharge from arrest under section 273, Civil Procedure Code, if in fact at the time of applying for his discharge he is not possessed of any property or the means of paying the debt, and has not coupled evasion of process with concealment of property.
Held, *per* CAMPBELL, J., that the Court has a discretion in granting a debtor's discharge under section 273, and may refuse such discharge if the debtor has thrown obstacles in the way of the creditor. FRAMJI RUSTAMJI *v.* YOUNG. **49 P R 1875**

6. *Ground for discharge—Agreement made under threat of arrest.*
The mere fact of a debtor under arrest being in receipt of a salary is not sufficient cause for refusing his discharge. An agreement to pay under threat of arrest *held* by the Chief Court to be properly cancelled by the Lower Court. BANESS *v.* TURTON.
83 P R 1875

7. *Duty of Court to follow procedure laid down in section* 336, *Civil Procedure Code*, 1882, *on the re-arrest of a judgment-debtor after failure of his application under Chapter XX, Civil Procedure Code*, 1882, *section* 336.
Held, by the Full Bench, that when a judgment-debtor after failing in insolvency proceedings under the Civil Procedure Code is re-arrested, it is not the duty of the Court to inform him that he may apply under Chapter XX to be declared an insolvent or take the other steps indicated in section 336, Civil Procedure Code. ARJAN SINGH *v.* GAMAN. **75 P R 1905 F B**

ARREST—*concld.*

8. *Arrest and imprisonment—Judgment-debtor on arrest to be informed that he may apply for discharge—Civil Procedure Code*, 1882, *section* 336—*Notification No.* 3860.
Held, that whenever a judgment-debtor is arrested in execution of a decree for money and brought before the Court under section 336, Civil Procedure Code, the Court is bound to inform him as laid down in Notification No. 3860, that he may apply under Chapter XX to be declared an insolvent, and that he would be discharged if he has not committed any act of bad faith regarding the subject of his application, and places all his property in possession of a receiver appointed by the Court. RAM LAL *v.* MACKENZIE. **16 P R 1909**

ARTICLES OF ASSOCIATION.

1. *Suit by corporation—Power of Secretary to sue on behalf of corporation.*
See CIVIL PROCEDURE CODE, 1908, ORDER XXIX, R. 1. **43 P R 1885**

2 *Suit by Association—Power of Secretary to conduct suit—Articles of Association—Condition of retirement from membership.*
See CIVIL PROCEDURE CODE, 1908, ORDER XXIX, R. 1. **58 P R 1886**

3. *Articles of Association—Pledge of shares—Preferential lien of Company on shares of indebted member.*
See COMPANY. **25 P R 1874**

4. *Company—Pre incorporation contracts not binding on Company even when embodied in Articles of Association.*
See COMPANY. **2 P R 1905**

5. *Articles of Association—Construction of authority conferred in general terms.*
See COMPANY. **10 P R 1905**

ARTICLES OF WAR.

See ARREST **43 P R 1871**
See EXECUTION OF DECREE.
41 P R 1882
See MUTINY ACT. **94 P R 1868**

ASCETIC.

See CUSTOM ADOPTION.
15 P R 1874
52 P R 1875

ASSAULT.

See CIVIL PROCEDURE CODE, 1908 ORDER II R. 2.
53 P R 1868
See SMALL CAUSE COURT—JURISDICTION OF. **53 P R 1868**

ASSETS.

See CIVIL PROCEDURE CODE, 1908, SECTION 73. **6 P R 1903**

ASSIGNEE.

See ASSIGNMENT.

1. *Defrauded assignee pleading fraud of his assignor.*
See ESTOPPEL. **32 P R 1894**

2. *Civil Procedure Code*, 1882, *section* 13—*Decision in suit instituted after assignment—effect of—as regards assignees*
See RES-JUDICATA. **26 P R 1893**

ASSIGNMENT.

1. *Assignment—Lien on present and future property.*

Held, that in equity there could be a valid assignment of property to be subsequently acquired. THE NATIONAL BANK OF INDIA *v.* THE DELHI COTTON MILLS COMPANY, LIMITED. **57 P R 1902**

2. *Assignment—Conditional assignment by way of security—Right of assignee to sue in his own name.*

Where the payee of a promissory note, not negotiable, assigned it to the plaintiff as a security for a debt owing from him to the latter until its repayment in full, *held*, that it being merely a conditional assignment the plaintiff was not entitled to maintain an action in his own name alone against the maker of the promissory note, for the recovery of the amount due thereunder.

Burham Brothers v. *Robertson* (*L. R.* 1. *Q. B.* (1898) 765) followed. NIHAL CHAND *v.* ALI BAKHSH. **9 P R 1907**

ASSIGNMENT OF CHOSE IN ACTION.

See ASSIGNMENT OF DEBT.

1. *Suit by assignor—Notice of assignment—Conditional assignment.*

Plaintiff sued on the allegation that he had a claim for Rs. 10,000 against defendant, arising out of a transaction regarding blue stones; that he assigned the claim to one M. S. for Rs. 6,000, it being agreed at the time of the assignment that the suit to enforce the claim against the defendant, should be brought by and in the name of the plaintiff, but for the benefit of M. S., who would provide the funds required for and receive the fruits of the litigation. No notice of the assignment was given to the defendant either by the assignor or the assignee. It was urged by the defendant, among other pleas, that plaintiff having parted with his property and rights in the subject-matter of the suit, was not entitled to bring or maintain the suit.

Held, that this contention could not prevail; that though the assignee of a *chose in action* was entitled to sue in his own name in the Courts of this country, and, if there had been an unconditional assignment of the claim and if notice of the assignment had been given to the defendant, the plea might have been good, it was of no force when it appeared that the suit was brought by the assignor in pursuance of the contract of assignment and for the benefit and with the consent of the assignee. MUHAMMAD SADIQ *v.* POLLARD. **186 P R 1883**

2. *Alienation of reversionary right—Power of a reversioner out of possession to assign his interest after devolution of inheritance—Right of assignee to sue for possession.*

Held, that a reversioner out of possession of a childless male proprietor can transfer his interests to a stranger after devolution of inheritance and the assignee is entitled

ASSIGNMENT OF CHOSE IN ACTION—*concld.*

to recover possession of the property and contest the validity of the title of the person in possession subject to the same rules which could have been enforced by the assignor. SHER SINGH *v.* SIDHU. **11 P R 1907**

ASSIGNMENT OF DEBT.

1. A promise to pay money when a debtor receives a debt due to him by a third person, does not constitute an assignment so as to charge the debt in the hands of such third person. It simply holds out to the promisee the expectation that he will receive the money when paid by the third person. Such an arrangement is countermandable. MOOL CHAND *v.* JUMYUT SINGH. **63 P R 1873**

2. *Equitable assignment of debt.*

M. borrowed money from plaintiff to enable him to carry out a building contract for B, it being arranged between the three that whatever became due from B to M up to the 20th December 1872, should be paid to the plaintiff. Before that date and before any money was paid by B to the plaintiff, the defendant obtained a decree against M and attached what was due from B to M (or what would have been due to M but for the arrangement with the plaintiff). Plaintiff sued to establish his right to receive the money from B.

Held, that there was an assignment to plaintiff of B's debt to M, and he had a right to the money in preference to the defendant. LAKHA *v.* SOBHA. **66 P R 1875**

3. *Rights arising out of a contract—Intention—Notice—Assignment of debt.*

The rights arising out of a contract, when the matter of the contract permits it, are assignable in equity for a valuable consideration; such assignment may be made by any words or acts showing a clear intention to assign, and may be valid as against the assignor without any notice to the debtor. Nor is notice necessary as against third parties, including judgment-creditors of the assignor, who simply stand in the same position as the assignor. But the intention to create a charge must be shown, and therefore a promise to pay money when the debtor receives a debt due to him from a third person does not constitute an equitable assignment, so as to charge the debt in the hands of such third person.

Defendant, who had a contract with the postal department for the maintenance of a certain postal stage at a monthly payment of Rs. 600, mortgaged to the plaintiff his *chauki* and horses with possession, and agreed with the plaintiff, his mortgagee, that the said monthly payment accruing to him under his contract would be paid to the mortgagee, of which Rs. 200 should be credited to the mortgage-debt, and Rs. 400 should be applied to the maintenance of the horses.

ASSIGNMENT OF DEBT—*contd.*

Held, that the interest affected in the above case was one which admitted of being assigned, and further, that there was a sufficient indication of an intention to transfer or appropriate the debt to the plaintiff or for his use, the assignment thus falling within the principle of an equitable assignment and creating a valid equitable charge upon the fund. If defendant had received the money, he would have been bound to hold on account of the plaintiff, and if it had been attached in his hand, the plaintiff might have had it released under section 280 of the Civil Procedure Code. *Mool Chand* v. *Jumyut Singh* (63 *P. R.* 1873) cited. GURDITTA MAL *v.* SULTAN MUHAMMAD. **60 P R 1884**

4. *Chose in action—Assignment of debts—Notice of assignment to debtor—Transfer of Property Act (IV of 1882), Chapter VIII—Contract Act, 1872, section 60.*

The plaintiff as assignee of a debt sued two defendants the debtor and the original creditor, the latter of whom was the plaintiff's assignor. The debtor-defendant pleaded that he had settled accounts with the original creditor, and was, therefore, not liable to the assignee.

The first Court having found that the settlement between the debtor and the original creditor was subsequent to the assignment and did not include the debt in suit, and having given judgment in favour of plaintiff, defendant-debtor appealed to the District Judge on two grounds, *1st*, that the item now in suit was entered in the deed of compromise between him and the original creditor, and *2nd*, that he had no knowledge of the assignment.

The District Judge held that no notice whatever to the debtor of the assignment had been proved, and, relying upon section 60 of the Contract Act, and without coming to any finding as to whether the defendant-debtor had as a matter of fact settled with his original creditor without notice of the assignment, he dismissed plaintiff's claim.

The plaintiff applied to the Chief Court for revision of the decree of the District Judge.

Held, that before plaintiff's suit could be dismissed, it was necessary to find that defendant had settled with his creditor.

Held, also, that the Contract Act has nothing to do with the assignment of debts, and that, although the Transfer of Property Act, 1882, is not in force in the Punjab, the law on the subject in force in this Province is to the same effect as that contained in Chapter VIII and the principal rule in section 131 of that Act.

Although a *chose in action* is assignable in this country, an assignment cannot operate to the prejudice of the original debtor so long as he has no notice of the assignment. Where, however, the debtor asserts that he has settled the debt with his original creditor, it is necessary to find both whether such settlement has actually taken place, and also whether the debtor was cognisant, or not,

ASSIGNMENT OF DEBT—*concld.*

at the time of such settlement of the assignment. If it is found that the debt was not settled, as alleged, the absence of notice of the assignment is not material.

Held further, that the institution of a suit by the assignee is itself notice of the assignment. JHOKI RAM *v.* MALIK KADIR BAKHSH. **12 P R 1894**

5. *Assignment of debt—Right of assignee to sue.*

Held, that where a plaintiff sues for the recovery of a debt as an assignee, he is bound to prove that he was a *bona fide* assignee of the debt and capable of giving a valid discharge especially where the defence questions the validity of the alleged assignment. MUL CHAND *v.* PIYARE LAL. **23 P R 1903**

ASSIGNMENT OF DECREE.

1. *Assignment of money decree obtained on specially registered mortgage deed—Suit by assignee to establish lien under the deed on property subsequently sold—Civil Procedure Code (X of 1877), section 43.*

See CAUSE OF ACTION. **142 P R 1882**

2. *Execution of decree—Each of several assignees of portions of a decree not entitled to execution separately.*

See CIVIL PROCEDURE CODE, 1882, SECTION 230. **19 P R 1889**

3. *Hindu widow assigning decree obtained by her deceased husband—No certificate under Succession Certificate Act, 1889.*

See CIVIL PROCEDURE CODE, 1882, SECTION 232. **37 P R 1893**

4. *Pre-emption suit—Execution of decree—Transfer of right to execute decree for present possession right of ownership being reserved—Refusal of execution Court to allow transferee to execute his decree—Suit by transferee to establish his right.*

See CIVIL PROCEDURE CODE, 1882, SECTION 232. **78 P R 1896**

5. *Assignment of decree—Suit to set aside attachment by assignee—Act X of 1877, section 232—Absence of written assignment—Objection to attachment by plaintiff on ground of such irregularity.*

See EXECUTION OF DECREE. **87 P R 1880**

6. *Civil Procedure Code, 1882, sections 232, 244, 622—Material irregularity—Court acting in the exercise of its jurisdiction illegally—Wrong decision on question of cause of action—Assignment of decree—Remedy by regular suit.*

See REVISION IN CIVIL CASES. **75 P R 1890 F B**

ASSIGNMENT OF LAND REVENUE

1. *Assignment of land revenue—Liability to attachment in execution of decree.*

See ATTACHMENT. **117 P R 1907**

2. *Liability of* jagir *income to attachment—Civil Procedure Code (XIV of 1882),*

ASSIGNMENT OF LAND REVENUE—*concld.*

section 266 (g)—Attachment of assigned land revenue in hands of lambardar—Pensions Act, XXIII of 1871, *section* 11.

See EXECUTION OF DECREE. **57 P R 1884**

3. *Assignment of land revenue for benefit of shrine—Pensions Act, XXIII of* 1871, *section* 11.

The revenue of certain land was assigned to the custodian of a shrine for the benefit thereof. *Held*, that such assignment of land revenue was not a pension within the meaning of section 11 of the Pensions Act, XXIII of 1871. BAHA-UD-DIN *v.* MOTI LAL. **27 P R 1878**

ASSIGNMENT OF MORTGAGE.

Mortgage—Mortgagee in possession—farm of land by collector for non-payment of revenue—Suit by assignee of mortgagee in possession for possession on expiry of farm—Limitation.

See LIMITATION ACT, 1877, SCHEDULE II, ARTICLE 142. **121 P R 1892**

ASSOCIATION.

Suit by—Power of Secretary to institute and conduct suit.

See CIVIL PROCEDURE CODE, 1882, SECTION 435. **43 P R 1885**
58 P R 1886

ASSOCIATION AND DISASSOCIATION.

1. *Associated and unassociated brothers—*Pargannah *Phillour.*

See CUSTOM—INHERITANCE. **75 P R 1873**

2. *Associated and disassociated brothers—Hindu Law.*

See CUSTOM—INHERITANCE. **8 P R 1876**

3. *Associated and disassociated brothers—Agricultural Brahmins of* Tahsil *Zira, Ferozepore.*

See CUSTOM—INHERITANCE. **123 P R 1879**

4. *Associated and disassociated cousins—Duty of Court to inquire into custom.*

See CUSTOM—INHERITANCE. **81 P R 1874 F B**

5. *Associated and disassociated nephews.*

See CUSTOM—INHERITANCE. **9 P R 1877**

6. *Associated and disassocinted nephews—Jats of Ludhiana District—Hindu Law—Hindu joint family.*

See CUSTOM—INHERITANCE. **76 P R 1879**

7. *Disassociation—Hindu Jats.*

See CUSTOM--INHERITANCE. **102 P R 1876**

8. *Association and disassociation, Effect of—Jats of Pipli* Tahsil, *Amballa District.*

See CUSTOM—INHERITANCE. **21 P R 1881**

9. *Association and disassociation, Effect of—Brahmin agriculturists of* Mauza *Tatta Basaon, Gujranwala* Tahsil.

See CUSTOM—INHERITANCE. **23 P R 1884**

ASSOCIATION AND DISASSOCIATION—*concld.*

10. *Association and disassociation, Effect of—Khatris of Lahore—Immovable property, ancestral and acquired—Hindu Law.*

See CUSTOM—INHERITANCE. **44 P R 1884**

11. *Association and disassociation—Hindu Law.*

See HINDU LAW—INHERITANCE. **59 P R 1869**
19 P R 1874

12. *Disassociation — Nephews — Hindu Law.*

See HINDU LAW—INHERITANCE. **7 P R 1870**

ATRAFI.

See CUSTOM—CESSES OR DUES. **75 P R 1867**
65 P R 1873
107 P R 1876
49 P R 1879
118 P R 1879
126 P R 1882
18 P R 1892

See LIMITATION ACT (XV OF 1877), SCHEDULE II, ARTICLE 131. **146 P R 1882**

See SMALL CAUSE COURT—JURISDICTION OF. **108 P R 1887**

ATTACHMENT.

1. *Attachment—Agreement by father not to alienate—Ancestral property.*

See ANCESTRAL PROPERTY. **50 P R 1877**

2. *Attachment—Act VIII of* 1859, *section* 246.

See CAUSE OF ACTION. **84 P R 1870**

3. *Splitting cause of action—Civil Procedure Code,* 1882, *sections* 43, 250, 251, 274, 287, 290, 311, 312—*Material irregularities in publishing or conducting sale in execution—Fatal defects—Non-compliance with the provisions of the Code as regards attachment—Suit to set aside the sale—Sale null and void—Limitation Act,* 1877, *2nd Schedule, article* 12.

See CAUSE OF ACTION. **76 P R 1890**

4. *Appointment of a manager—Disputed debt—Irregularity in attachment of debt—Civil Procedure Code, Act VIII of* 1859 *sections* 236, 243.

See CIVIL PROCEDURE CODE, 1859, SECTIONS 236, 243. **67 P R 1877**

5. *Appointment of a manager for property other than that attached.*

See CIVIL PROCEDURE CODE, 1859, SECTION 243. **53 P R 1874**

6. *Execution of decree—Application for attachment—Objection by defendant dismissed for default, effect of.*

See CIVIL PROCEDURE CODE, 1882, SECTION 102. **62 P R 1894**

7. *Execution of decree—Jurisdiction of Court to attach salary disbursed outside local limits of Court's jurisdiction.*

See CIVIL PROCEDURE CODE, 1882, SECTION 223. **40 P R 1895**

8. *Execution of decree—Application for attachment and sale of property—Subsequent application for arrest of judgment-debtor—*

ATTACHMENT—*contd.*

Form of application—Property duly attached and deposited with care-taker—Disappearance of attached property—Right of decree-holder to proceed against person of judgment-debtor.
See CIVIL PROCEDURE CODE, 1882, SECTION 235. **21 P R 1899**

9. *Suit to establish right to property released from attachment—Objection by person not party to suit—Civil Procedure Code, 1882, sections 244, 280, 283.*
See CIVIL PROCEDURE CODE, 1882, SECTION 244. **63 P R 1889**

10. *Execution of decree—Attachment of property—Judgment-debtor adjudicated insolvent and property vested in Official Assignee—Objection to attachment by judgment-debtor in interests of Official Assignee—Letter from Official Assignee praying for release of property.*
See CIVIL PROCEDURE CODE, 1882, SECTION 250. **57 P R 1897**

11. *Execution of decree—Attachment—"Agriculturist."*
See CIVIL PROCEDURE CODE, 1882, SECTION 266, CLAUSE (*c*).
1 P R 1889
47 P R 1897

12. *Judgment-debtor's right of residence in house belonging to a shrine.*
See CIVIL PROCEDURE CODE, 1882, SECTION 266. **8 P R 1900**

13. *Political pension—Attachment in execution of a decree.*
See CIVIL PROCEDURE CODE, 1882, SECTION 266, CLAUSE (*g*).
35 P R 1900

14. *Execution of decree—Attachment—Jagir income—Pensions Act, 1871.*
See CIVIL PROCEDURE CODE, 1882, SECTION 266, CLAUSE (*g*).
133 P R 1888
137 P R 1890
47 P R 1893
4 P R 1894
35 P R 1900

15. *Execution of decree—Attachment—Pay of officer of British Regiment serving in India—Army Act, 1881.*
See CIVIL PROCEDURE CODE, 1882, SECTION 266, CLAUSE (*h*).
59 P R 1897

16. *Execution of decree—Transfer of expectancy of succession—"Public policy"—Transfer of Property Act, 1882, section 6.*
See CIVIL PROCEDURE CODD, 1882, SECTION 266, CLAUSE (*k*).
58 P R 1894

17. *Sale of attached property during continuance of attachment—Property belonging to third person not party to decree.*
See CIVIL PROCEDURE CODE, 1882, SECTION 274. **139 P R 1893**

18. *Validity of attachment.*
See CIVIL PROCEDURE CODE, 1882, SECTION 274. **83 P R 1898**

19. *Property liable to be attached—Cause of action—Relief claimed—Form of plaint for declaration that a judgment-debtor had a mortgage on certain property.*
See CIVIL PROCEDURE CODE, 1882, SECTION 283. **111 P R 1900**

ATTACHMENT—*contd.*

20. *Liability of property to attachment—Property given by way of security—Rateable distribution among rival decree-holders.*
See CIVIL PROCEDURE CODE, 1882, SECTION 295. **60 P R 1892**

21. *Civil Procedure Code, 1882, sections 244, 311, 316, 318—Application under section 318 for possession of house purchased at a sale in execution of decree—Refusal of such application—Subsequent suit for possession—House privately sold by judgment-debtor before grant of certificate of sale—Irregularities in attachment and sale.*
See CIVIL PROCEDURE CODE, 1882, SECTION 318. **92 P R 1893**

22. *Application for attachment before judgment—Suit by former defendant for compensation on ground that such application was made maliciously and without reasonable cause—Burden of proof.*
See CIVIL PROCEDURE CODE, 1882, SECTION, 483. **86 P R 1895**

23. *Execution of decree—Money realized under an* ultra vires *attachment—Assets realized by sale or otherwise in execution of a decree—Rateable distribution.*
See CIVIL PROCEDURE CODE, 1882, SECTION 295. **6 P R 1903**

24. *Suit to establish right to attached property.*
See COURT-FEES. **30 P R 1886**

25. *Son's interest in ancestral property—Liability of, to attachment.*
See CUSTOM—INHERITANCE.
113 P R 1886

26. *Sale of movable property—Title acquired by purchaser—Property wrongly attached and sold—Remedies of real owner of goods—Civil Procedure Code, 1877, sections 266 and 287.*
See EXECUTION OF DECREE.
82 P R 1878

27. *Attachment of pay—Indian articles of war (Act V of 1869).*
See EXECUTION OF DECREE.
41 P R 1882

28. *Attachment of pension—Allowance payable by foreign Government.*
See EXECUTION OF DECREE.
58 P R 1884

29. *Attachment of* Jagir *income—Act XXII of 1871.*
See EXECUTION OF DECREE.
30 P R 1874
87 P R 1877
57 P R 1884

30. *Attachment, order of—In execution proceedings—Plea of limitation subsequently raised in same proceedings—Finality.*
See EXECUTION OF DECREE.
105 P R 1882
143 P R 1883

31. *Attachment—Order releasing property—Finality.*
See EXECUTION OF DECREE.
4 P R 1886

32 *Execution of decree—Attachment, objections to, dimissed for default—Power of Court to restore such applicationayı oı file—Remedy of cbjector—Procedure.*

ATTACHMENT—*contd.*

See EXECUTION OF DECREE.
76 P R 1903

33. *Attachment of debts payable by instalments—Under Bankruptcy proceedings.*
See INSOLVENCY. **90 P R 1869**

34. *Attachment of Pensions not included in Act VI of 1849.*
See INSOLVENCY. **100 P R 1869**

35. *Insolvent's Estates' Court—Attachment of insolvent's property—Property already under attachment by District Court.*
See INSOLVENCY. **61 P R 1891**

36. *Suit to establish right to attach and sell property in execution of decree—Value of subject-matter.*
See JURISDICTION. **50 P R 1890**
121 P R 1890

37. *Mortgage by Hindu widow—Attachment in execution of decree obtained on the mortgage—Claim by collateral to attached property—Order passed against claimant—Suit by claimant to establish his title—Limitation.*
See LIMITATION ACT, 1877, SCHEDULE II, ARTICLE 11. **32 P R 1904**

38. *Civil Procedure Code, 1882 sections 278, 283—Attachment—Application by third party for removal of attachment—Default of claimant—Claim disallowed—Suit by claimant to establish right to attached property—Limitation.*
See LIMITATION ACT, 1877, SCHEDULE II, ARTICLE 11. **87 P R 1904**

39. *Suit for damages for wrongful attachment—Limitation.*
See LIMITATION ACT, 1877, SCHEDULE II, ARTICLE 42. **40 P R 1881**

40. *Limitation Act, 1877, 2nd scdedule, article 164—Irregularities in attachment—Application by respondent for re-hearing of appeal decided* ex-parte*—Civil Procedure Code, 1882, sections 274, 560.*
See LIMITATION ACT, 1877, 2ND SCHEDULE, ARTICLE 164.
5 P R 1897

41. *Application for attachment of house property—Release of property on summary objection—Suit by decree-holder to declare property liable—Dismissal of suit—Fresh application for attachment—Limitation.*
See LIMITATION ACT, 1877, SCHEDULE II, ARTICLE 178. **30 P R 1882**

42. *Application to bring attached property to sale—Limitation.*
See LIMITATION ACT, 1877, SCHEDULE II, ARTICLE 178. **179 P R 1882**

43. *Execution of decree—Attachment and sale—Sale subsequently set aside for irregularity—Re-sale without fresh attachment—Limitation.*
See LIMITATION ACT, 1877, 2ND SCHEDULE, ARTICLE 179.
106 P R 1894

44. *Execution of decree—"Applying in accordance with law"—Application for attachment of property* bona fide *believed to belong to judgment-debtor, but not so in fact.*
See LIMITATION ACT, 1887, 2ND SCHEDULE, ARTICLE 179.
6 P R 1895

ATTACHMENT—*contd.*

45. *Pre-emption—Payment of money to purchaser—Condition precedent to delivery of possession—Payment by pre-emptor into Court—Attachment by pre-emptor's creditors*

See PRE-EMPTION—PAYMENT INTO COURT.
61 P R 1890

46. *Civil Procedure Code,* 1882, *sections* 278, 288, 622—*Refusal to release property from attachment—Power of Chief Court to revise such order.*

See REVISION IN CIVIL CASES.
8 P R 1897

47. *Suit for release of movable property from attachment.*

See SMALL CAUSE COURT—JURISDICTION OF.
22 P R 1880

48. *Act XI of* 1865, *section* 6—*Claim to property attached and sold in execution—Suit for recovery of debt and for declaration of lien as against property in the hands of an auction-purchaser—Suit for movable property or its value.*

See SMALL CAUSE COURT, ACT, 1865, SECTION 6.
5 P R 1889

49. *Attachment—Objection to—.*

The procedure held to be to make a summary inquiry and if a *prima facie* objection were established, to refer the objector to a regular suit. JUGOOL KISHORE *v.* DWARKA DASS.
44 P R 1866

50. *Pensions*—Before Act XXIII of 1871.

Held, that a pension could be attached, but not in anticipation of its becoming due. The pension could be attached when the money was lying in deposit in the Government Treasury at the call of the pensioner. *Goordit Singh* v. *Bisheshur* (79 *of* 1867, Civil). But *held*, that Military and Naval pensions and superannuation allowances, included in Act VI of 1849, were not liable to attachment; other pensions were liable to attachment, under ordinary process or proceedings in Bankruptcy, in the hands of the Treasury officer. NIZAKUT-UL-NISSA *v.* RAM SAHAI.
100 P R 1869

51. *Salaries, wages and debts.*

An official salary cannot be attached by a prohibitory order before it is in deposit in the office. HARDEO DASS *v.* CLIFTON.
113 P R 1868

52. *Rival decree-holders—Priority.*

Two judgment-creditors attached the property of their judgment-debtor on the same day: there was an interval of four hours between the two attachments. *Held*, that the first attachment must be satisfied out of the proceeds of sale, and that the attaching creditors were not entitled to share the proceeds *pro rata*. IN RE NANACK CHUND.
54 P R 1872

53. A obtained the attachment of certain property before judgment, under section 81, Civil Procedure Code. Subsequently B at-

ATTACHMENT—*contd.*

tached the same property in execution of decree. Lastly A obtained a decree. Both parties claimed priority of payment from the sale-proceeds of the attached property, under section 270, Civil Procedure Code.

Held, that B was entitled to be first satisfied; priority being obtained under section 270 according to date of attachment *after* judgment, and the date of attchment before judgment not affecting the matter. KESREE CHUND *v.* POORUN CHUND.
68 P R 1868

54. Certain land having been attached in execution of decree, D, who held a mortgage on the land, urged his prior claim, and objected to the sale under section 246, Civil Procedure Code. *Held*, that (the mortgage having been established) the proper course was to sell the land subject to the mortgagee's lien. DEWA *v.* HURNARAIN.
76 P R 1868

55. *Execution of decrees—Same property proceeded against by different judgment-creditors against different debtors—Procedure.*

A and B obtained decrees, the former against C, the latter against D. In execution of A's decree, E purchased a house attached as belonging to C. Afterwards B attached the alleged rights of D in the same house. The lower Court referred B to a regular suit to set aside the purchase by E.

Held, that this was an improper proceeding; that the Court should have attached and sold D's rights in the house, whatever they were, and have left the purchaser of them and E to bring the matter of who was the owner of the house, and to what extent, to a decision. LALU MAL *v.* RAM CHAND.
60 P R 1875

56. *Mortgage with power of sale—Consent of mortgagor to sale—Sale of mortgaged property after attachment by a third party—Section* 240, *Act VIII of* 1859.

Where there is a mortgage deed in English form, with a power of sale, the parties acting according to English law, the mortgagee can sell the property without the consent of the mortgagor; and such sale is not void under section 240, Act VIII of 1859, though it is effected after an attachment of the property by a third party, a judgment-creditor of the mortgagor.

A mortgaged a house to the Simla Bank for a loan, the deed being in English form with a power of sale to the Bank to be exercised without any further consent from the mortgagor in the event of his failing to repay the loan. A failed to repay, and the house was put up for sale by the Simla Bank and sold to B. Before the sale to B. certain judgment-creditors of A had attached the house. B having been refused possession of the house on the ground that the Simla Bank had (for reasons unconnected with these attachments) no authority to sell, sued A for specific performance, and obtained a decree for possession from the Chief Court. The original Court refused to execute this decree on the ground that attachments (before

ATTACHMENT—*contd.*

the sale to B) of the house by the judgment-creditors of A, rendered the sale void under section 240 of Act VIII of 1859. The Commissioner held the sale to B valid, but that B was bound to pay the claims of the attaching creditors.

Held, by the Chief Court, that the sale to B was valid, and that she was not bound to meet the claims of the attaching creditors. BYRNE *v.* BAIN.
68 P R 1875

57. *Breaking outer doors.*

For the purpose of attaching movable property in execution of decree, the officer of the Court may break open the outer door of the person's house against whose property the attachment is issued.

Query, as to breaking an outer door to effect an arrest. MUSSAMMAT CHAOLI *v.* DINA NATH.
72 P R 1876

58. *Attaching stranger's goods.*

The liability of a judgment-creditor, his attorney or agent, and the officer of the Court, for attaching the goods of a stranger in execution, explained. CHAJJU MALL *v.* KARM CHUND.
20 P R 1877

59. *Creditor attaching insolvent's property before judgment—Re-attachment after decree—Effect of such attachment and re-attachment—Priority—Release from attachment before order by Insolvency Court for distribution of assets.*

The present petitioner obtained an attachment of a house belonging to an insolvent prior to judgment, and before the insolvent applied for the protection of the Court under Act IV of 1872, and subsequently, but after the Insolvent Court had attached the house, re-attached the same property after he had obtained a decree against the insolvent. The Judge of the Insolvency Court refused to give him any priority over the other creditors, although it was contended that the effect of the original attachment followed by a decree was to create a charge on the attached property in favor of the attaching creditor and to convert him into a secured creditor.

Held, that even on the assumption that the attachment in execution of decree was still subsisting, the petitioner had not succeeded in showing that he was entitled to the priority he claimed, or that there was any illegality in the order of the Insolvency Court directing a distribution *pro rata* amongst the scheduled creditors but inasmuch as it appeared that the Court executing his decree had released the attached property from attachment before the distribution of assets was ordered by the Insolvent Court, no advantage could possibly be derived by the decree-holder from a process which had ceased to exist. *Ram Chund* v. *Gunga Bishen* (37 *of* 1871 *Civil*), referred to. SUNDAR SINGH *v.* CHARANJI LAL.
93 P R 1882

60. *Pre-emption—Payment of purchase money by pre-emptor in Court—Attachment by his creditor.*

ATTACHMENT—*contd.*

Held, that money deposited in a Court to be paid to a vendee under a pre-emption decree cannot be withdrawn by an attachment under a decree of a third party and that a Court is not competent to pay it out to any one but the person entitled to it under the decree for pre-emption.

Sandha Khan v. *Jhandu Khan* (61 *P. R.* 1890), dissented from. *Abdus Solam* v. *Wilayat Ali Khan* (*I. L. R., XIX All.* 256), followed. SANT SINGH *v.* GHASITA

21 P R 1902

61. *Civil Procedure Code*, 1882, *section* 266 (c)—*Building site of houses occupied by agriculturists not liable to attachment and sale in execution of decree.*

A, having obtained a decree against the representatives of an agriculturist, attached the site of their house, and contended that under section 266 (c) the materials of houses and other buildings belonging to and occupied by agriculturists, are alone exempt from sale; that the judgment-debtors should be allowed to remove the materials, such as bricks, beams and doors, and that the site under the house be sold.

Held, that the house and its materials could not be attached and that the attachment of the site could not affect the tenant's immunity from the attachment of the materials of the house which constitute the house as it stands.

Radha Kishen Hakumji v. *Balwant Ramji* (*I. L. R. VII Bom.* 530) cited. KISHNA *v.* KANSHI RAM. **59 P R 1902**

62. *Execution of decree—Order releasing property from attachment—Finality of such order*—Res judicata.

The heir and representative of a deceased judgment-debtor, being himself also a judgment-debtor under another part of the same decree, objected to the attachment of the property of the deceased on the ground that he had a lien upon it. On the date fixed for evidence, as the decree-holder did not appear, the executing Court without taking any evidence, allowed the objections and released the property. The decree-holder, not having attempted to have the *ex-parte* order set aside, applied for a fresh execution by attachment of the same property, and in defence it was urged that he had finally lost his right of executing against that property, as the previous order of release was final and conclusive between the parties.

Held, that though the order aforesaid allowing the objection was passed in a proceeding under section 244 (c), Civil Procedure Code, that order was in effect nothing more than a dismissal for default, and therefore it was no bar to a fresh application for execution of the same decree.

Similarly such an order could not operate as *res judicata* as the matter was not "heard and finally decided."

Dhaukal Singh v. *Phakkar Singh* (*I. L. R. XV All.* 84), *Sohdi Hukam Singh* v. *Sardar Arjan Singh* (12 *P. R.* 1887), *Ram Kirpal* v. *Rup Kaur* (*I. L. R. VI All.* 273), *Behari Lal* v. *Majid Ali* (*I. L. R. XXIV All.* 138),

ATTACHMENT—*contd.*

Karsan v. *Ganpat Ram* (*I. L. R. XXII Bom.* 875), and *Mungul Pershad Dichit* v. *Griga Kant Lahiri* (*I. L. R. VIII Calc.* 51), referred to *Fakir Bukhsh* v. *Mayadyari* (4 *P R* 1884), distinguished. MAGHAR MAL *v.* JOTI RAM. **90 P R 1902**

63. *Suit for a declaration that land belonging to an agriculturist is liable to attachment and sale.*

Held, that section 15 of the Punjab Alienation of Land Act does not prohibit the attachment in execution of a decree of the land belonging to an agriculturist, and that a decree-holder is entitled to claim a declaration that certain land is liable to attachment and to be thereafter dealt with as provided in section 326, Civil Procedure Code. BADAR DIN *v.* BURA MAL. **4 P R 1903**

64. *Subjects of attachment—Liability of "fodder" to attachment in execution of decree —Civil Procedure Code*, 1882, *section* 266 (*b*).

Held, that fodder is not exempt from attachment in whole or in part in execution of a decree against an agriculturist. WASIL AND OTHERS *v.* MUHAMMAD DIN AND OTHES.

93 P R 1904

65. *Standing crops—Punjab Alienation of Land Act, section* 2 (3)—*Land.*

Held, that a proprietor's share of standing crops is not "land" within the definition of section 2, clause 3 of the Punjab Alienation of Land Act, 1900, and can therefore be attached and sold in execution of decree. NUR MUHAMMAD *v.* TILOKA MAL.

14 P R 1905

66. The fact that property not liable to attachment has been improperly attached on one or more occasions without objection does not debar the judgment-debtor from pleading exemption when it is subsequently attached. QAMAR-UD-DIN KHAN *v.* LACHMI NATH. **95 P R 1906**

67. Every part of a *jagir* granted on political cosiderations is exempt from attachment by virtue of the provisions of section 11 of the Pensions Act, 1871. QAMAR-UD-DIN KHAN *v.* MANI RAM. **96 P R 1906**

68. *Attachment—Fodder, liability of, to attachment in execution of decree—Civil Procedure Code*, 1882, *section* 266 (*n*)—*Punjab Land Revenue Act*, 1887, *section* 70.

Held, that fodder required for the owner's cattle is exempt under clause (*n*) of section 266 of the Civil Procedure Code, read with section 70 of the Punjab Land Revenue Act, 1887, from attachment in execution of a decree against an agriculturist.

A Civil Court can only attach so much as will leave in the opinion of the Collector of the District a sufficiency for the owner's cattle.

Wasil v. *Muhammad Din* (93 *P. R.* 1904). superseded. GUR BAKSHH *v.* KHAIRATI.

82 P R 1907

69. *Assignment of land revenue—Liability to attachment in execution of decree.*

ATTACHMENT—*contd.*

Held, that under clause (3) of section 8 of the Punjab Descent of Jagirs Act, 1900, a sub-assignment of land revenue made with the sanction of Government is as incapable of attachment in execution of decree as the assignment itself,

Section 8 of the Punjab Descent of Jagirs Act, 1900, is not limited to assignments solely made by Government but also includes a sub-assignment made by the original assignee. BHAGAWAN DAS *v.* RAM DAS.

117 P R 1907

70. *Attachment of immovable property before judgment—Compensation for erroneous attachment—Civil Procedure Code*, 1882, *section* 491—*Applicability of to Small Cause Court.*

Held, that a Court of Small Causes has no jurisdiction to award compensation under section 491, Civil Procedure Code, for an erroneous attachment before judgment of immovable property as it is excepted by the Second Schedule to the Code from attcahment by such a Court. BARU MAL *v.* MUNIR KHAN. **77 P R 1907**

71. *Execution of decree—Attachment of immovable property by one creditor—Claim by another creditor under section* 295, *Civil Procedure Code—Removal of attachment—Assignment for consideration—Effect of such on person claiming under section* 295—*Validity of such assignments—Civil Procedure Code*, 1882, *section* 274, 276, 295—*Transfer of Property Act*, 1882, *section* 53.

Held, that a decree-holder who simply obtains an order for a rateable share of the assets in the proceeds of sale of the property attached at the instance of another judgment-creditor is not, when the decree, in execution of which the property was attached, is satisfied and the attachment withdrawn, entitled to the benefit of that attachment; and that the assignee of such property by virtue of a private alienation made after the removal of such attachment has a good title as against such decree-holder.

Held, also, that a transfer of immovable property in favour of a creditor for good and valuable consideration is not void merely because its obvious effect might be to defeat or delay the claim of a less vigilant creditor. LAHORI MAL *v* GANGA RAM. **81 P R 1908**

72. *Attachment of an unused* Khurli—*Civil Procedure Code*, 1882, *section* 266, *clause* (c), *Meaning of.*

Held, that the words "belonging to" in clause (c) of section 266, Civil Procedure Code, 1882, are not synonymous with "occupied by," the latter words are not a mere repetition, but they qualify the former words. "Occupied by" means "lived in by" or "used for agricultural purposes by," and therefore a *khurli*, in which the judgment-debtor does not live and which at the time of attachment was not being used by him for any purpose whatever, is liable to attachment. ATTAR SINGH *v.* BHAGWAN DAS.

65 P R 1909

ATTACHMENT—*concld.*

73. *Attachment of salary of Assistant Surgeon in Military employ—Army Act,* 1881, *sections* 136, 144, *proviso* 1, *and section* 190 *—Civil Procedure Code,* 1908, *section* 2 (17) *and* 60 (1) (*i*)*—Procedure where Commanding Officer refuses to carry out attachment—order XXI, rule* 48 (3).

Held, that the pay of an Assistant Surgeon in Military employ, not being a public officer within the meaning of section 60 (1) (*i*), Civil Procedure Code, 1908, is protected from attachment, in execution of a decree.

Held also, that where a Commanding Officer refuses to comply with an order of attachment although the pay is attachable, the Court under order XXI, rule 48 (3), Civil Procedure Code, should proceed to recover from Government for the benefit of the decree-holder the sums which should have been stopped out of the judgment-debtor's pay, leaving Government to settle up as it pleases with its officer, the judgment-debtor. OAKES AND CO. *v.* J. F. DISCARCIES.

10 P R 1910

ATTESTATION BY KAZI.

Attestation by Kazi—Admissibility in evidence of copy of mortgage—Production from proper custody—Statement made in ordinary course of business—Secondary evidence—Evidence Act (I of 1872), *sections* 32 (2), 65 *and* 90.

See EVIDENCE. **49 P R 1882**

ATTESTATION OF WILL.

Attestation—Will made by a Hindu in the Punjab.

See WILL. **27 P R 1883**

ATTORNMENT

Landlord and Tenant—Right of landlord to claim rent from sub-lessee—Attornment by sub-lessee to stranger claiming title to property—Termination of tenancy—Punjab Tenancy Act, 1887, *section* 58.

See PUNJAB TENANCY ACT, 1887, SECTION 58. **14 P R 1898**

AUCTION.

Auction—Revocation of auctioneer's authority not communicated to purchaser—Specific performance.

See CONTRACT ACT, IX OF 1872, SECTION 208. **63 P R 1874**

AUCTIONEER.

Auctioneer and purchaser—Auctioneer's right to sue for price of goods sold—Contract Act (IX of 1872), *section* 230.

PRINCIPAL AND AGENT. **86 P R 1884**

AUCTION SALE.

1. *Civil Procedure Code,* 1882, *sections* 43, 250, 251, 274, 287, 290, 311, 312*—Splitting cause of action—Material irregularities*

AUCTION SALE—*contd.*

in publishing or conducting sale—Fatal defects—Non-compliance with the provisions of the Code as regards attachment—Limitation Act, 1877, *2nd Schedule, article* 12*—Suit to set aside sale—Sale null and void.*

See CAUSE OF ACTION. **76 P R 1890**

2. *Execution sale—Judgment-debtor alleging fraud and injury—Premature confirmation of sale.*

See CIVIL PROCEDURE CODE, 1882, SECTION 206. **61 P R 1887**

3. *Suit for possession by auction-purchaser—Right of purchaser who has failed to apply under section* 318, *Civil Procedure Code, to sue for possession.*

See CIVIL PROCEDURE CODE, 1882, SECTION 244. **58 P R 1888**

4. *Civil Procedure Code,* 1882, *section* 308*—Forfeiture of deposit made by purchaser of immovable property—Appeal.*

See CIVIL PROCEDURE CODE, 1882, SECTION 308. **120 P R 1891**

5. *Irregularity in conducting execution sale—Failure to obtain sanction of Financial Commissioner—Validity of Rules published with Punjab Government Notification No.* 1297 *S., dated* 10*th September* 1885.

See CIVIL PROCEDURE CODE, 1882, SECTION 311. **5 P R 1888**

See CIVIL PROCEDURE CODE, 1882, SECTION 327. **95 P R 1888**

6. *Application to set aside sale—Auction-puchaser not made party to application.*

See CIVIL PROCEDURE CODE, 1882, SECTION 311. **3 P R 1897**

7. *Auction sale subsequently set aside—Right of auction-purchaser to recover purchase-money how enforceable—Previous application under section* 318, *Civil Procedure Code, dismissed as time-barred—Auction-purchaser's cause of action.*

See CIVIL PROCEDURE CODE, 1882, SECTION 312. **7 P R 1897**

8. *Sale in execution of decree—Absence of certificate of sale—Suit by purchaser—Title against party to the suit or his representative.*

See CIVIL PROCEDURE CODE, 1882, SECTION 316. **27 P R 1892**

9. *Certificate of sale—Admissible in evidence without registration—Right to sue—Omission by auction-purchaser to obtain delivery of immovable property.*

See CIVIL PROCEDURE CODE, 1882, SECTION 318. **14 P R 1893**

10 *Application under section* 318, *Civil Procedure Code, for possession of house purchased at sale in execution of decree—Refusal of such application—Subsequent suit for possession—House sold privately by judgment-debtor before grant of certificate of sale—Irregularities in attachment and sale.*

See CIVIL PROCEDURE CODE, 1882, SECTION 318. **92 P R 1893**

11. *Civil Procedure Code,* 1882, *sections* 320, 327*—Intervention of Collector—Absence*

AUCTIONON SALE—*contd.*

of detailed scheme—Sanction of Civil Court—Appeal.

See CIVIL PROCEDURE CODE, 1882, SECTION 320. **25 P R 1894**

12. *Stay of sale of immovable property in execution of a decree against which an appeal is pending.*

See CIVIL PROCEDURE CODE, 1882, SECTION 546. **120 P R 1890**

13. *Sale of land—Sanction for sale—Procedure.*

See EXECUTION OF DECREE. **1 P R 1887 Rev**

14. *Execution of decree—Sale of agricultural land—Sanction of Financial Commissioner—Power of Civil Court to sell land after refusal of such sanction.*

See EXECUTION OF DECREE. **59 P R 1891**

15. *Application for execution of decree—Sale in execution thereof—Application subsequently set aside by Appellate Court on ground that it was time-barred—Effect of such reversal on sale—Suit by auction-purchaser, not party to decree against decree-holder for refund of purchase-money.*

See EXECUTION OF DECREE. **49 P R 1894**

16. *Hindu Law—Sale of ancestral property in execution of decree.*

See HINDU LAW—ALIENATION. **87 P R 1887** **39 P R 1896**

17. *Sale by Collector at instance of Civil Court—Jurisdiction of Civil Court in execution of decree to confirm such sale.*

See JURISDICTION OF CIVIL OR REVENUE COURT. **83 P R 1896**

18. *Execution of decree—Attachment and sale—Sale subsequently set aside for irregularity—Resale without fresh attachment—Limitation—Application for execution of decree or for revival of suspended proceeding.*

See LIMITATION ACT, 1877, SCHEDULE II, ARTICLE 179. **106 P R 1894**

19. *Auction sale of house—House knocked down to highest bidder, but no deed of conveyance executed—Completion of sale—Transfer of Property Act, section* 54*—Specific Relief Act, section* 13.

In the absence of a special agreement to the contrary, a sale by auction of immovable property is not, as far as the rights and liabilities of the vendor and purchaser are concerned, different from an ordinary contract for the sale of such property, *i.e.*, a contract that a sale of such property shall take place on terms settled between the parties, It does not, of itself, create any interest in, or charge on such property. In such cases the auctioneer primarily acts as the agent of the vendor on whose behalf he offers the property for sale to the public, and when his hammer falls, he merely accepts the bid of the purchaser. Ordinarily such an acceptance creates a contract for the sale of the property the vendor becoming in equity a trustee for the purchaser of the estate sold, but the right of the purchaser is a right *in personam* against the

AUCTION SALE—*concld.*

vendor and is not a right *in rem* so as to affect or bind the property or third parties. The legal estate in the property does not pass until the execution of the deed of conveyance, but if anything happens to the estate between the time of sale and the time of completion of the purchase, it is at the risk of the purchaser. BUDH SINGH *v.* HARDIAL SINGH. **52 P R 1897**

20. *Sale of land in execution of decree—Punjab Alienation of Land Act, 1900, section 16.*

Held, that where a sale of land belonging to a member of an agricultural tribe in execution of a decree was not confirmed under the provisions of section 316, Civil Procedure Code, before the Punjab Alienation of Land Act came into force, the sale was barred by section 16 of that Act.

Budhu v. *Hira and others* (27 *P. R.* 1892), *Than Singh* v. *Kazim Ali* (92 *P.R.*, 1893) and *Budh Singh* v. *Hardial Singh* (52 *P. R.*, 1897), cited. GHULAM KADIR KHAN *v.* BAWA GURBAKSH SINGH AND ANOTHER. **45 P R 1902**

AULAD.

1. *Meaning of* "aulad"—*Right of near female collateral—Kanwali Arains of Lahore District.*

See CUSTOM. **89 P R 1892**

2. *Meaning of* aulad—*Bequest to* "aulad"—*Will—Construction.*

See WILL **114 P R 1900**

3. *Meaning of* "aulad."

In places where the right of females to succeed is widely recognized, the word *aulad* should be construed as including both male and female issue. CHIRAGH BIBI *v.* HASSAN **19 P R 1906**

AUTHORITY OF AGENT

See PRINCIPAL AND AGENT.

AWANS.

See CUSTOM—ALIENATION. **88 P R 1911**

AWARD.

See ARBITRATION.

1. *Judgment in accordance with award—Appeal.*

See APPEAL, CIVIL. **33 P R 1881**
4 P R 1882
109 P R 1883
130 P R 1883
170 P R 1883
70 P R 1881
48 P R 1882
184 P R 1882
17 P R 1883
47 P R 1883
72 P R 1881
83 P R 1904
13 P R 1906
1 P R 1908 F B
80 P R 1908 P C

AWARD—*concld.*

2. *Suit to set aside decree based on award—Fraud.*

See CAUSE OF ACTION. **124 P R 1880**

3. *Application to file award—Court fees.* See COURT FEES. **70 P R 1881**

4. *Settlement award.*

See LIMITATION ACT XIV OF 1859, SCHEDULE I, CLAUSE 6. **9 P R 1871**
68 P R 1871

5. *Application under section 327 of Act, VIII of 1859, to enforce an award.*

See LIMITATION ACT, IX OF 1871, SECTION 15. **179 P R 1877**

6. *Limitation for suit to contest—Regulation VII of 1822.*

See LIMITATION ACT, IX OF 1871, SCHEDULE II, ARTICLE 44. **41 P R 1881**

See LIMITATION ACT, XV OF 1877, SCHEDULE II, ARTICLE 46. **25 P R 1883**

7. *Suit on award—Previous proceedings to enforce the same award summarily—Exclusion of time occupied in such proceeding.*

See LIMITATION ACT, XV OF 1877, SECTION 14. **59 P R 1884**

8. *Award—Omission to remit to arbitration—Revision.*

See REVISION, CIVIL. **41 P R 1905**

9. An award implies an adjudication or decision by an arbitrator upon the matter submitted to him. A mere petition by the arbitrator reciting that he had induced the parties to settle their dispute by a *razinama* does not amount to an award. THAKAR DAS *v.* JASWANT RAI. **1 P R 1904**

10. A suit can be brought upon an award independently of the summary procedure authorized by section 525, Civil Procedure Code, 1882. WAZIR ALI *v.* SHEIKH MALKYAR. **34 P R 1910**

B

BACK FEE.

1. *Suit for money deposited with advocate to be paid over to him if the result of a case is successful—Stake-holder—Privilege as Barrister.*

See ADVOCATE. **194 P R 1883**
52 P R 1894
32 P R 1897

2. *Back fee—Payment to be made contingent on success—Illegal and improper conduct—Public policy.*

See ADVOCATE. **61 P R 1907 F B**

BADNI TRANSACTIONS.

1. *Suit for balance of account—Arbitrator allowing set off of an item founded on a* badni *transaction.*

See ARBITRATION. **101 P R 1868**

BADNI TRANSACTIONS—*contd.*

2. *Void Contract—Contract Act (IX of 1872), section 30—Suit for money paid as agent for losses incurred—Custom—Collateral contract.*

See CONTRACT ACT, 1872, SECTION 30. **90 P R 1880**

3. *Agreement to refund money found by panchayat to be in excess of payer's liability—Suit to enforce such agreement—Contract Act, IX of 1872, sections 23, 30—Consideration for agreement.*

See CONTRACT ACT, 1872, SECTIONS 23, 30. **135 P R 1883**

4. *Principal and agent*—Badni *contracts—Void contract—Suit for profits received by defendants as plaintiffs' agents—Liability of agent to render accounts to his principal.*

See CONTRACT ACT, 1872, SECTION 30. **46 P R 1901**

5. Badni *(wagering) transactions—Claims arising out of.*

Held, claims arising out of *badni* transactions are inadmissible, on the ground that they are founded on agreements by way of gaming or wagering, and are therefore null and void. KISHNA *v.* HUSHNAK. **11 P R 1866**

6. *Compromise of suit based on* badni *transaction—Refusal of Court to accept compromise—Act X of 1877, section 375—Unlawful agreement.*

Where the parties to a suit in which the defendant pleaded that the claim was based on a *badni* transaction, after an issue on that plea had been drawn and evidence recorded, came to a compromise by which the defendant agreed to pay the plaintiff a certain sum in satisfaction of his claim, but the Court being satisfied that the original transaction was unlawful, refused to decree in terms of the compromise, the Chief Court declined to interfere on the revision side, holding that the Court had rightly refused to accept the compromise.

Per Rattigan, J.—An agreement may be unlawful within the meaning of section 375 of the Civil Procedure Code if it professes to bind the defendant to pay a sum which could not be lawfully recovered. JOWALA SINGH *v.* DITTU MAL. **104 P R 1880**

7. *Withdrawal from suit based on* badni *transaction—Hundi—Consideration—Onus of proving want of consideration for withdrawal.*

Plaintiff sued defendant for money due on a *hundi*. Defendant pleaded that there was no consideration for the *hundi* as it had been made in consideration of plaintiff withdrawing from a former suit in which the monies claimed were due on a wagering contract, but plaintiff denied that the said monies were due on a wagering contract.

Held, that the defendant was entitled to a trial of the question whether plaintiff had a reasonable claim which he *bona fide* intended to pursue in the former action, the burden

BADNI TRANSACTIONS—*concld.*

of proving that there was no such claim lying upon the defendant. If he had such a claim, its withdrawal was a good consideration, but if the former suit was brought to recover monies which the plaintiff knew to be due only upon a wagering contract, the withdrawal of his unfounded action would be no consideration for the defendant's promise. RAM LAL *v.* MAKHAN MAL. **74 P R 1881**

8. *Suit for advances made on an unlawful agreement.*

In a suit brought to recover advances made to the defendant on a grain contract of the kind known as *badni*, in which no deliveries were intended, and which was purely a gambling transaction depending on the rise and fall of the market, *held*, that the plaintiff was entitled to recover the advances actually paid, on the principle that as long as an unlawful agreement remains unperformed it may be treated as void, and money paid under it may be recovered back as received to the use of the person who so paid it. *Kahna* v. *Kahn Singh* (106 *P. R.* 1879), cited and approved. GANGA RAM *v.* BALDEWA. **194 P R 1882**

BAHI ACCOUNT.

Bahi *account—Proof and corroboration of—Section* 34, *Indian Evidence Act, I of* 1872.

Where certain disputed items were interspersed in an otherwise true account in a village *bahi* which had, as a whole, been tendered in evidence and sworn to as correct by the plaintiff and was found by the Commissioner to be correct and regular according to village custom in that part of the country to which the parties belonged, the First Court having decreed the suit in part, the Divisional Judge on appeal dismissed it *in toto* on the ground that the *bahi* was unreliable.

Held, by the Chief Court, that there was sufficient proof in support of the claim. HANWANTA *v.* AKBAR KHAN. **80 P R 1910**

BAIL BOND.

Bail bond given for appearance of accused—Non-appearance of accused and forfeiture of bond—Suit by surety against principal to recover amount of bond—"Public Policy"—Contract Act, 1872, *sections* 23, 70—*Criminal Procedure Code,* 1882, *section* 513.

See CONTRACT ACT, 1872, SECTION 23. **1 P R 1899 F B**

BAILEE.

1. *Bailee—Power to retain goods till payment for their custody.*
See CONTRACT. **60 P R 1885**

BAILEE—*concld.*

2. *Liability of bailee in respect of goods deposited with him.*
See CONTRACT ACT, 1872, SECTION 151. **90 P R 1900**

3. *Contract—Bailment—Possession of bailee in respect of goods hired by him from bailor.*
See CONTRACT ACT, 1872, SECTION 178. **34 P R 1902**

4. *Amritsar City—Mercantile Usage—Deposit of property—Depositor borrowing money from bailee—Lien on property deposited.*
See CUSTOM. **34 P R 1886**

5. *Warehousemen—Care to be taken by bailee.*
See RAILWAY COMPANY. **92 P R 1883**

6. *Negligence—Bailee—Custom as to liability.*

Defendant bought a quantity of wheat for plaintiff at his request, and shortly afterwards plaintiff, on leaving the place, left the wheat in the custody of the defendant, who stored it away in a room and kept it under lock and key. The wheat was damaged by rain getting into the room, and plaintiff sued for damages.

Held, that evidence was admissible of custom or usage of trade to show that, under the circumstances, defendant was not liable. GOBIND SAHAI *v.* RAMJI DAS. **68 P R 1876**

BAILMENT.

See BAILEE.

BALANCE OF ACCOUNT.

See ACCOUNT—BALANCE OF.

BANCO.

There is no authority for the District and Cantonment Judges of Small Cause Courts to sit together for the trial of reserved cases. DOOLO RAE *v.* FUKEERA. **24 P R 1868**

BANK.

1. *Purchase by Bank of its own shares—*Ultra vires.
See COMPANIES ACT, X OF 1866, SECTION 128. **38 P R 1881**

2. *Purchase of Bank shares—Fraud and misrepresentation—Voidable contract—Rescission of contract—Purchase by Bank of its own shares—*Ultra vires*—Estoppel.*
See CONTRACT ACT, 1872, SECTION 17. **117 P R 1879**

3. *Banker and customer—Deposit.*
See LIMITATION ACT, 1877, SCHUDULE II, ARICLES 59, 60. **95 P R 1885**
See LIMITATION ACT, 1877, SCHEDULE II, ARTICLE 145. **74 P R 1882**

4 *Banker and customer—Relationship of.*
The relationship between banker and customer is that of a debtor and creditor, and the right of the customer to recover a deposit could become barred by time. BHAWANI DAS *v.* BHAI NUNDGOPAL. **17 P R 1869**

BANK—*contd.*

5. *Bank refusing to continue customer's account—Offer of repayment of amount still in deposit—Plaintiff refusing to accept such offer and subsequently drawing cheque on Bank—Dishonour by Bank of such cheque.*

The legal relations existing between a banker and his customers discussed and explained.

Money deposited in the hands of a banker in the ordinary course of business is money lent to the banker by the depositor, with a superadded obligation that it is to be repaid when called for by cheque. The transaction amounts to a *mutuum* or loan for use and consumption, it being understood that the banker is to have the use of the money in return for his consent to take charge of it. This contract can always be put an end to by either party. The lender can recover his loan by drawing a cheque on the banker for the amount and presenting it to him for payment : the borrower can repay the money or tender repayment to the lender when he pleases. Both parties have equally the right to terminate the relationship of debtor and creditor which springs out of the transaction entered into between them.

Where in a suit for damages for alleged breach of contract by dishonour of a cheque, it appeared that the defendant Bank, having decided not to continue the plaintiff's accounts, offered to repay the plaintiff by sending him for signature a cheque duly filled up for the total amount of the balance due to the plaintiff, and requesting him to present it at the Bank for payment, the Bank undertaking then and there to honor it, whereupon the plaintiff refused this offer of performance, and insisted on the Bank remaining in the position of his debtor, although no period was fixed by the contract between the parties for the duration of the loan, and subsequently drew a cheque on the bank, which on presentation by the payee for payment, was dishonored : *held*, that the Bank's offer of performance was under all the circumstances a legal and proper compliance with the duty cast upon it by its contract with the plaintiff, and that the plaintiff, having refused this offer, could not hold the Bank responsibls for the subsequent refusal to honor his cheque. BRADLEY *v.* AGRA BANK. **101 P R 1885**

6. *Promissory note—Consideration—Shares—Bank Directors—Fraud and misrepresentation—How far misrepresentations of a Director binding on the Bank*

In a suit on a promissory note for Rs. 12,500, dated the 21st October 1884, the defendant pleaded that the promissory note had been executed in consequence of certain misrepresentations made by C, a Director of the plaintiff's Bank ; that the Bank was bound by his acts, and that the defendant had a month later repudiated the transaction to the Director and the Bank.

The facts appeared to be as follows :—

The Bank was registered as a Joint-Stock Company on the 10th June 1884. C was elected as a Director on 1st September 1884.

BANKS—*contd.*

On 9th June 1884, C wrote a letter to the defendant in which he described himself as a Director; and in October 1884 showed the defendant an informal list of subscribers, in which his name appeared as the owner of 600 shares. All this was done for the purpose of inducing the defendant to become a shareholder. As a fact, C was not the owner of 600 shares. He also stated to the defendant that the shares were then being sold at a premium of Rs. 25 each. As a fact they were at par. In consequence of these representations, the defendant on the 21st October 1884, signed (i) a formal application for 100 shares on a deposit of Rs. 125, and (ii) the promissory note now in suit.

The effect of these documents was as follows:—

The defendant proposed to the Bank to grant him 100 shares on a deposit of Rs. 125 per share. He also at the same time proposed to the Bank to lend him Rs. 12,500 on his promissory note, and directed this same to be applied to payment of the deposit of Rs. 125 per share. On the 25th October, the Manager of the Bank, in collusion with C, informed the defendant that the 100 shares had been obtained with some difficulty (on this date 1,425 shares were lying undisposed of), and that he had advanced the defendant Rs. 10,000 for a deposit on 100 shares; also that he had paid a premium of Rs 2,500 for the shares, making a total of Rs 12,500 lent to the defendant on the promissory note.

The defendant never replied to the Bank's letter, and took no steps up to the date of this suit to repudiate his shares. On July 8th, 1885, he wrote to the Bank to sell his shares. On these facts it was contended for the plaintiff that defendant's silence and his request to sell his shares constituted an acceptance of the Bank's offer, and therefore the Bank was entitled to recover Rs. 12,500 on account of the promissory note

Held, that this contention was not valid. Supposing the defendant had assented to the terms contained in the Bank's letter, and had afterwards discovered that at the time of his purchase the shares were at par and not at a premium, it would be open to him on making the discovery, either to avoid the transaction and return the shares, or to affirm the contract, thereby retaining the shares, and sue the Bank for damages sustained by him in consequence of the deceit. Assuming that he had impliedly assented to the Bank's offer, he was still entitled to plead by way of equitable defence that he was fraudulently overcharged Rs. 2,500 by the Bank's Manager, acting for the Bank, and he should not be relegated to a fresh suit for the recovery of this amount, as the purchase of shares and the loan constituted in reality a single transaction.

The defendant contended *per contra* that there never was any binding contract for the shares, and that, therefore, there was no consideration for the promissory note. *Held*, that the fact that defendant, with notice that 100 shares had been granted to him, and with notice of the fraud as to premium, took no steps to inform the Bank that he did not accept the shares, and in his letter of 8th July 1875, described the shares as his own, amounted to a tacit acceptance of the offer and affirmation of the contract notwithstanding the fraud as to the premium, and that the fraud, through the misrepresentation of C, prior to the defendant's application, did not affect the Bank, as C was not their agent. PROVINCIAL BANK OF INDIA, LIMITED *v.* RAO RAJA TEJ SINGH. **127 P R 1889**

7. *Fraud and misrepresentation Repudiation.*

The plaintiff Bank was registered under the Indian Companies Act, 1882, on 10th June 1884, as a limited liability company with a capital of five lakhs of rupees, divided into 2,500 shares of Rs. 200 each.

On 1st September 1884, a general meeting of the shareholders was held, at which six directors, including one C, were elected, and one P was appointed manager. These proceedings were confirmed at a subsequent meeting on 3rd October 1884.

Informal lists appear to have been in circulation in which persons entered their names for the shares they would take; but on 8th October 1884 only 1,111 shares had been formally taken, and 1,389 remained in the hands of the Bank undisposed of.

Between the 8th and 25th October 1884, C visited Jodhpur with the express purpose of inducing the Princes of that State to take shares in the Bank. He succeeded in inducing them to take 975 shares, giving for them promissory notes at the rate of Rs. 125 per share, *viz.*, Rs. 100 the amount called up by the Bank and Rs. 25 premium. In this way the present defendant-appellant, one of the Jodhpur Princes, took 400 shares and gave a promissory note for Rs. 50,000.

The remaining shares out of the 2,500 were disposed of by the end of December 1884, in the manner described in the judgment of the Chief Court, reported as *Punjab Record* No. 127 of 1889 (pp. 438, 439).

Upon a suit brought by the Bank to recover the amount due on the promissory note given by the defendant for Rs. 50,000.

Held, (1) That as decided in *Punjab Record* No. 127 of 1889, the District Judge, Delhi, had jurisdiction to entertain the suit.

(2) That the suit was not barred by limitation. It was not disputed that it was barred unless the plaintiff was entitled under section 13 of the Indian Limitation Act, 1877, to deduct the period during which the defendant had been "absent from British India." The defendant was not and never had been a resident of British India.

Persons with respect to particular territories are exhaustively divided into two classes, (1) those who are present within, and (2) those who are absent from those territories; and unless it can be affirmed that a person is or has been "present," it must necessarily

BANKS—*contd.*

follow that he is or had been "absent." *I. L. R. XIV Calc.* 457, followed.

(3) That the defendant's application for shares in October 1884 was made under the influence of fraud and misrepresentation for which the Bank was responsible, and that he was consequently at liberty to avoid the contract when the fraud and misrepresentation came to his knowledge.

(4) That there had been a proper allotment of shares to defendant. His letters left no doubt that he fully understood that he was both a shareholder in, and a director of the Bank, and that he accepted the position. The mere fact that the scrip had not yet been delivered to defendant, or that it was apparently as yet not even ready for delivery, did not in any way prove that the shares were not in fact allotted to the defendant. (*Buckley's Law and Practice under the Companies Act*).

(5) That although defendant was entitled to repudiate the contract on the fraud and misrepresentation becoming known to him, he was bound to exercise this right within a reasonable time; this he had not done, and therefore he must be held to be still the owner of the shares standing in his name and bound to meet the promissory note given by him to the Bank in payment for the shares, to the extent of the true price of the shares, at the time the note was given. MAHARAJA SIR PARTAB SINGH *v.* PROVINCIAL BANK OF INDIA, LD. **72 P R 1891**

BANK SHARES.

See BANK.

38 P R 1881
117 P R 1879
127 P R 1889
72 P R 1891

BANKER.

See BANK.

BANKER AND CUSTOMER.

See BANK.

95 P R 1885
17 P R 1869
101 P R 1885

BANKRUPTCY.

See INSOLVENCY.

BANKRUPTCY ACT, 1869, 32 and 33 Vict. Cap. 71.

Effect of discharge under—Debt contracted in England.

See PRINCIPAL AND SURETY.

100 P R 1866

BARANI LANDS.

See TENANCY ACT, 1868, SECTION 11.

54 P R 1875

BARRISTER.

1. *Suit by or against a Barrister for or on account of his fees.*

See ADVOCATE.

20 P R 1874
89 P R 1875
194 P R 1883
52 P R 1894
51 P R 1895 F B
32 P R 1897

BARRISTER—*concld.*

2. *Back fee—Payment to be made contingent on success—Illegal and improper conduct.*

See ADVOCATE.

61 P R 1907 F B

3. *Barrister and client—Suit by client for refund of back fee deposited with Barrister to abide certain events—Privilege of Barrister.*

Held, by the Full Bench, that there being no difference in principle between an ordinary fee and a back fee a Barrister is not liable to be sued for the retention of a back fee deposited with him as a Barrister.

Alston v. *Pitamber Das* (*I. L. R., XXV All.* 509) *Shircore* v. *Queen-Empress* (15 *P. R.*, 1897, *Cr.*), *Grey* v. *Lachman Das* (51 *P. R.*, 1895, *F.B.*) *Kennedy* v. *Brown* (32 *L. J. C. P.*, 137), and *Achamparambath Cheria Kunhumu* v. *William Sydenham Gants* (*I. L. R., III Mad.*, 138), cited and followed.

Muhammad Bakhsh v. *Morton* (194 *P. R.*, 1883), and *Bhup Singh* v. *Beechey* (52 *P. R.*, 1894), overruled. *Kirpa Ram* v. *Krishna Singh* (32 *P. R.*, 1897), distinguished. THAKAR DAS *v.* BEECHEY.

49 P R 1906 F. B

BASEE GRANT.

A basee grant, or assignment by a Raja of his rights in the revenue, confers upon the *baseedar* the rights of a superior proprietor. RAM DIAL *v.* BAGAH. **1 P R 1870 Rev.**

BATAI.

See CASH AND GRAIN RATES.
See JAGIRS AND MAFI ESTATES.

1. *Rent in cash and kind.*
See MAFIDAR. **7 P R 1867 Rev.**

2 *Payment of Jagir Revenue in grain—Consent of proprietor.*
See MAFIDAR. **6 P R 1868 Rev.** **1 P R 1869 Rev.**

3. *Reclamation of forest land*—Wajib-ul-arz—*Construction of*
See MAFIDAR. **53 P R 1870**

4. *Settlement of* Mafi *plots—Assessment—Commutation of payment in kind into cash.*
See MAFIDAR **1 P R 1835 Rev.**

5. *Sub-Settlement—Cash and grain rates—Land Revenue Act* (*XXXIII of* 1871), *Rule*, D (3).
See MAFIDAR. **10 P R 1886 Rev.**

6. *Commutation of payment in kind into payment in cash.*
See MAFIDAR. **4 P R 1887**

7. *Cash and kind—Rates fixed at settlement.*
See OCCUPANCY RIGHTS.
6 P R 1867 Rev. **15 P R 1867 Rev.** **90 P R 1867**

8. *Cash and kind—Notice of change of rent in middle of agricultural year.*
See OCCUPANCY RIGHTS.
28 P R 1869

9. *Enhancement of rent—Agreement*—Batai
See TENANCY ACT, 1868, SECTIONS 2, 11.
50 P R 1878

BATAI—*contd.*

10. *Receipt by landlord of value of produce no bar to a claim for the produce itself.*
See TENANCY ACT, 1868, SECTION 16.
23 P R 1873

11. *Failure of cotton crop—Sowing of grain—Right of landlord to share of grain crop*—Batai.
See TENANCY ACT, 1868, SECTION 16
77 P R 1873

12. *Claim for rent in kind—Materiality of last payment preceding suit.*
See TENANCY ACT, 1868, SECTION 16.
53 P R 1872

13. *Agreement to commute—Want of consideration.*
See TENANCY ACT, 1868, SECTION 16.
16 P R 1872

14. *Rent—Change for cash to kind—Agreements—Want of consideration.*
See TENANCY ACT, 1868, SECTION 16.
67 P R 1876

15. *Commutation of rent—Consent of landlord.*
See TENANCY ACT, 1868, SECTION 16.
43 P R 1873

16. *Involuntary commutation.*
See TENANCY ACT, 1868, SECTION 16.
42 P R 1877

BATWARA

See PARTITION.

BENAMIDAR.

See BENAMI TRANSACTION.

BENAMI TRANSACTION.

1. Benami *transaction—Presumption where a person purchases property in the name of his relation.*
See BURDEN OF PROOF.
43 P R 1882

2 *Joint Hindu family—Mortgage of portion of joint estate by one member—Mortgaged property purchased* benámi *in name of mortgagor—Estoppel.*
See HINDU LAW—ALIENATION.
6 P R 1893

3. Benami *sales to escape pre-emption.*
See LIMITATION ACT, 1877, SCHEDULE II, ARTICLE 10.
30 P R 1893

4. Benami *mortgage—Assignment by* benamidar—*Right of beneficiary against the property and the* benamidar.
See LIMITATION ACT, 1877, SCHEDULE II, ARTICLE 132. **37 P R 1909**

5. *Plaintiff in pre-emption suit acting* benami.
See PRE-EMPTION—LOSS OR WAIVER OF RIGHT. **19 P R 1898**

6. *Suit by sons during lifetime of father the real purchaser—Right of sons to maintain suit.*

In a suit by two of the sons of one I. A. against the representatives of the vendor of certain property for possession thereof, the defendants objected that the

BENAMIDAR—*contd.*

plaintiffs could not maintain the suit as the real purchaser was their father. The latter waived his right to be made a party to the suit. The first Court on this held that the plaintiffs could maintain the suit, and eventually gave them a decree.

On appeal, however, the Commissioner decided that the purchaser was the father, and that in his lifetime the plaintiffs could not sue.

Held, without deciding that, as against the father, the sons were absolute owners, that as against third parties, the plaintiffs were certainly entitled to maintain the suit. MOHAMMAD ISMAIL *v.* ABDUL RAZAK.

83 P R 1885

7. *Purchase by uncle with his own funds in name of himself and nephew—Advancement—Presumption*—Onus probandi.

It has been established by several decisions of the Privy Council that the criterion in the case of *benami* purchases in India is to consider from what source the purchase-money came; that the presumption is that a purchase made with the money of A., in the name of B., is for the benefit of A., and that from the purchase by a father, whether Muhammadan or Hindu, in the name of his son, the presumption of English law of an advancement in favour of that son cannot be drawn.

The point for decision was whether the plaintiff, who was the purchaser of two houses proved to have been purchased with his own funds, and the conveyances of which were in his own and his nephew's name in equal shares, did in fact purchase for the advancement of his nephew as well as for himself or for himself alone.

Held, that there being no sufficient evidence to establish that the purchase in the name of the defendant, as well as of the plaintiff, was made with the intention of giving him a half-share, the presumption in favour of the plaintiff by reason of his having found the whole purchase-money prevailed. BURA MAL *v.* BHAGWAN DAS. **61 P R 1889**

8. Benami *transaction—Bar to suit against purchaser buying* benami—*Suit against the assignee of the certified purchaser on the ground that the plaintiff was the real purchaser—Civil Procedure Code,* 1882, *section* 317.

Although no suit can be maintained under section 317, Civil Procedure Code, against a certified purchaser at an execution sale on the ground that he has purchased *benami* for any other person the protection given by that section being strictly limited to the case of a certified purchaser does not preclude a suit against his assignee or representative.

Theyyavelan v. *Kochan* (*I. L. R XXI Mad.*, 7), *Sibta Kunwar* v. *Bhagoli* (*I. L. R. XXI All.* 196), *Nokori Dhur* v. *Sarup Chander Dey* (5 *Calc.*, *W. N.*, 341), *Dukhoda Sundari Dassi* v. *Sreemuntha Joaddar* (3 *Calc.*, *W. N.*, 657) *Monappa* v. *Surappa* (*I. L. R XI Mad.*, 234) and *Mussammat Buhuns Kowar* v. *Lalla*

BENAMIDAR—*contd.*

Buhoore Lal and *Jokhee Lall* (14 *Moo., I. A.*, 496) cited and followed. MUHAMMAD FAROUGH *v.* ABDUL HAKIM. **4 P R 1904**

9. Benami *transaction—Suit against* benamidar *on the ground that the plaintiff was the real purchaser*—Benami *transaction when set aside.*

Held, that it is open to a plaintiff where no fraud has been committed by a *benami* sale to come into Court and ask for a declaration against the *benamidar* that the plaintiff was the real purchaser of the property.

Kali Charan Pal v. *Rasik Lal Pal* (*I. L. R. XXIII Cal.*, 962), *Sreenath Ray* v. *Bindoo Bashinee Debia* (20 *W. R.*, 112), and *Chinrirappa* v. *Puttappa* (*I. L. R. XI Bom.*, 708) cited and followed.

Rangammal v. *Venkatachari* (*I. L. R. XX Mad.*, 323), *Varadarajulu Naidu* v. *Srinivasulu Naidu* (*I. L. R. XX Mad.*, 333), *Honapa* v. *Narsapa* (*I. L. R. XXIII Bom.*, 406), and *Babaji* v. *Krishna* (*I. L. R. XVIII Bom.*, 372), referred to and distinguished. MUHAMMAD FAROUGH *v.* GOKAL CHAND. **3 P R 1906**

BENGAL ARMY REGULATIONS.

1. *Landlord and tenant.—Bengal Military Regulation Promulgation of, in the Punjab—Commanding a trespass—Invasion of proprietary right by convening committee under the Regulation.*

See CANTONMENTS. **71 P R 1873**

2. *Landlord and tenant—House in cantonments—Liability of landlord to repair—Damages for injuries caused from non-repair.*

See CANTONMENTS **38 P R 1877**

. *Lease of house for period exceeding one month—Validity of such lease—Bengal Army Regulations, paragraph* 24.

See CANTONMENTS. **115 P R 1882**

BEQUEST.

See CUSTOM II—ALIENATION.

See PROBATE AND ADMINISTRATION ACT, 1881.

See SUCCESSION ACT, 1865.

See WILL.

BETROTHAL.

1. *Marriage-brocage contract—Void agreement—Public Policy.*

See CONTRACT ACT, 1872, SECTION 23.

128 P R 1889
112 P R 1892
63 P R 1898

2. *Barter of one girl in marriage for another—Breach of promise of marriage—Void agreement—Public Policy—Measure of damages.*

See CONTRACT ACT, 1872, SECTION 23.

50 P R 1903

3. *Suit to establish right to betrothal and marriage of minor—Suit by collaterals against the natural guardian—Guardian and Wards Act*, 1890.

See MINOR. **10 P R 1904**

BETROTHAL—*contd.*

4. *Competency of minor to sue for breach of his betrothal made by his father.*

See RIGHT OF SUIT. **3 P R 1909**

5. *Betrothal Contracts—Damages for breach of contract—Jurisdiction of Small Cause Court.*

See SMALL CAUSE COURT—JURISDICTION OF.

8 P R 1866 Ref.
35 P R 1875
43 P R 1887

See SMALL CAUSE COURTS ACT, 1887, SCHEDULE II, ARTICLE 35 (*g*).

132 P R 1889

6. *Parties to suit.*

Under the Punjab Civil Code, *held*, that when a betrothal contract had been entered into by a parent on behalf of his child, a suit for breach should be brought against the parent alone, and not against both parent and child. MAHOMED BUX *v.* MUSSAMMAT JEEUNT BEEBEE. **59 P R 1866**

7. *Child unborn.*

A contract of betrothal made in regard to a girl not born at the time of the contract is null and void. DIYALA *v.* BHAMA.

60 P R 1866

8. Where money was paid by plaintiff on account of defendant, as a consideration for a bride for defendant, the plaintiff knowing for what purpose the money was required, *held*, that he might recover the money paid; the purchase of a wife not being *malum in se*, and being *malum prohibitum*, by the Punjab Civil Code, only as between the parties to the sale. SHAH GOOL *v.* IKRAM **88 P R 1867**

9 *Guardians.*

Where a parent makes a betrothal contract for his child and dies, the guardian is prevented by the contract from making another for the child. RAM CHAND *v.* LALJEE.

21 P R 1868

10. *Held*, under the Punjab Civil Code, that although a suit would not lie to recover the consideration money paid to the parents of the bride elect to obtain their consent to the betrothal; yet a suit would lie to recover ornaments presented by a man to his betrothed in contemplation of marriage. GAMAN V. KABOOL. **69 P R 1868**

11. Damages for injured feelings are not an independent personal wrong, but the consequential damages of the breach of contract. Indemnification for expenses incurred in gifts relates to all presents made in consequence of the betrothal, and no such distinction can be made as that some are given "specially" and others "ceremonially." NUBEE BUKSH *v.* SUDDEEK. **22 P R 1869**.

12. By the Hindu Law, where a girl of six years of age is betrothed, the father is still entitled to the custody of the child, as against the man betrothed to her. RAM SINGH *v.* BHUGWAN SINGH. **101 P R 1866**

BETROTHAL—*contd.*

13. *Damages for procuring breach.*

In a suit for damages for breach of betrothal contract, the Lower Court awarded damages against the parents of the girl, and also against her husband, on the ground that by marrying her he had promoted the breach of contract.

Held, that the suit as against the husband would not lie. JHANGIE RAM *v.* DASS RAM. **83 P R 1870**

14. *Marriage brocage contract.*

Where defendant agreed, in consideration of receiving Rs. 200, to find a wife for plaintiff, and the money was paid, but defendant did not perform his part of the contract, and it was found by the Court trying the case that defendant never intended procuring a wife for the plaintiff, but obtained the money under false pretences.

Held, that a suit to recover back the sum of Rs. 200 (plaintiff having discovered the agreement to be void), was maintainable, but the Judges (BOULNOIS and LINDSAY, JJ.,) considered the contract opposed to public policy. GAHU V. HAKU. **86 P R 1875**

15. *Suit for breach—Marriage of plaintiff after contract to another woman, pleaded in bar.*

Plaintiff sued for damages for breach of betrothal contract. The plea was, that the plaintiff had married another woman and for that reason, defendant refused to complete the contract.

Held, that by law and custom, the plea was no bar to plaintiff's suit, but that the subsequent marriage went in mitigation of damages. The parties were Muhammadans of the Hissar district. KANDHAL V. LAHIA.

59 P R 1876

16. *Betrothal contract, breach of—Money paid under void agreement—Act IX of 1872, section 57—Promises to do things legal and also other things illegal.*

Where money has been paid by a bridegroom to the bride's father in consideration of the marriage of the latter's daughter, and the promised marriage has not been performed: *Held*, that such money can be recovered back by suit.

The transaction between the parties comprises two distinct and separable sets of promises within the meaning of section 57 of the Contract Act, and while one set, that relating to the marriage, is lawful, and amounts to a contract, the other set that relating to the pecuniary consideration, may be unlawful as opposed to public policy, and therefore a void agreement. But whether such agreement be void or not, the person who paid the money is in either case entitled to recover it back in the event of the father of the girl refusing to celebrate the marriage. KAHNA *v.* KAHN SINGH. **106 P R 1879**

17. *Damage for breach of betrothal contract—Death of guardian who betrothed the girl.—Liability of deceased's successors in the right to dispose of the girl.*

BETROTHAL—*contd.*

In a suit for damage for breach of a betrothal contract, where it was found that the girl had been betrothed to the plaintiff by one B. her brother, and by custom her competent guardian for that purpose, *held*, that on B's death the duty of performing the marriage of the girl with plaintiff, or at least of abstaining from marrying her elsewhere, devolved on B's successors in the right to dispose of the girl in marriage, *viz.*, (in the present case) the younger brothers of B., and that, therefore, the said brothers had rightly been held liable to damages in the suit. MUSSAMMAT GOLABI *v.* SANTA. **7 P R 1880**

18. *Suit for money paid to procure betrothal—Illegal contract—Public policy.*

Where plaintiff paid a sum of money to defendant with a view to his procuring a girl in marriage for plaintiff from the family of a relation of defendant, the money being paid for the benefit of the father of the girl, but the defendant did not pay the money to the girl's father nor procure the girl in marriage for the plaintiff, *held*, that a suit by plaintiff to recover the money thus paid was maintainable.

Khana v Kahn Singh (No. 106 of 1879, Civil), cited and followed. KALLA MAL *v.* DINA. **50 P R 1880**

19. *Place of suing—Cause of action—Breach of betrothal contract.*

Held, following *Lorinda Mal* v. *Sewa Singh* (57 *P. R.* 1874) that a suit for breach of betrothal contract should be brought in a Court which has jurisdiction at the place where the failure to perform the contract occurred, which would ordinarily be the place of residence of the girl's father. BUTA *v.* JAGGA. **147 P R 1882**

20. *Suit for damages for breach—Bride's father refusing to complete contract on ground that bridegroom was a confirmed gambler and unable to maintain a wife—Sufficiency of such plea as justification for breach of contract.*

In a suit for damages for breach of betrothal contract it appeared that the defendants had betrothed their daughter to the plaintiff about 11 years before suit, when the plaintiff was about 2 years old, and the girl 7 or 8 years of age. It further appeared that the plaintiff had fallen into confirmed habits of gambling, and that the defendant in consequence assembled a panchayat a year and a half before suit, who advised him to wait for six months longer in the hope that the boy would reform. A short time before suit, he assembled a second panchayat, and brought to their notice that the boy had not reformed, and apparently asked if any one would be surety for his daughter's support if the marriage was carried out, but no security was then offered. About three weeks before suit, the plaintiff's maternal uncle summoned a third panchayat saying that the boy had improved, and offered a cousin of the plaintiff's as surety for the girl's maintenance if the marriage were carried out. The defendant, however, appeared to be dissatisfied with the offer and finally married his daughter elsewhere. With regard to the security said at last to have been offered, it was admitted that no deed was executed, and the proposed surety was not called as a witness, to show what extent of responsibility he was willing to take.

Held, that under the above circumstances the defendant was justified in breaking off a betrothal which offered no prospect of a suitable husband for his daughter, having first taken every means in his power to bring about a suitable arrangement before he did so. DHONU *v.* ISHAR DAS. **174 P R 1882**

21. *Suit for breach—Liability of guardians of minor girl other than those who betrothed.*

In a suit for damages for breach of a betrothal contract brought against the mother of the girl and her two brothers, it was found that the girl had been betrothed to plaintiff by her mother and her father, since deceased; but it was contended by the two defendants, the girl's brothers, that they were not liable inasmuch as the contract had been entered into by the girl's parents.

Held, that as the said defendants were the present guardians of the girl, who was still a minor, and as they had knowingly repudiated the original contract and refused to complete it, plaintiff was entitled to a decree against all three defendants for damages to be paid by them if they did not marry the girl to plaintiff when she came to a marriageable age. *Ram Chand* v. *Laljee* (No. 21 of 1868, Civil), and *Mussammat Golabi* v. *Santa* (No. 7 of 1880, Civil) cited. GANDU *v.* ISHAR DAS. **197 P R 1882**

22. *Effect of betrothal.*

It is opposed to all the best authorities in Hindu law to treat the betrothal as giving the intended husband any rights over the bride. Betrothal is no necessary part of the nuptial rite, being merely a promise to give a girl in marriage. DYAL *v.* NARAIN DAS. **64 P R 1884**

23. *Suit for damages for breach—Defendant justifying his refusal to carry out the contract by custom—*Onus probandi*—Custom of Aroras—*Riwaj-i-am.

In a suit for damages for breach of a betrothal contract, the parties to which were Aroras, it appeared that the existence of the contract and the subsequent refusal to perform it were facts not denied by the defendant, the father of the girl, but that the contention was, that owing to physical infirmities produced by supervening disease, *viz.*, smallpox, contracted by plaintiff about two years after the betrothal, the plaintiff was not a fit person to contract marriage, and that the father of the girl was therefore excused by custom, from performing his promise of giving the plaintiff his daughter in marriage. It was admitted that the custom by which the parties were governed in matters relating to contracts of betrothal was correctly stated in the *Riwaj-i-am* prepared at Settlement, which provided that "if after betrothal the boy or girl * * * * * contracts any disease whereby the healthy condition of the body may be permanently impaired * * * * * * the other party is at liberty to cancel the betrothal."

BETROTHAL—*concld.*

Held, that the defendant, upon whom the *onus* under the circumstances lay, had failed to prove that the boy's health of body was permanently impaired, and that therefore the custom as embodied in the *Riwaj-i-am* justified him in refusing to perform the contract to give his daughter in marriage to the plaintiff's son. CHANDAN MAL *v.* MITTA RAM. **132 P R 1888**

24. *Suit for damages for breach of betrothal contract—Recovery of money paid under the agreement.*

Held, that a suit for damages for breach of a betrothal contract is maintainable. Sums advanced to the father of the girl may be taken into consideration in assessing such damages.

Civil Ruling No. 128 *P. R.*, 1889, explained and distinguished.

Civil Ruling No. 106 *P. R.*, 1879, followed. JESA RAM *v.* GHAUSAN. **141 P R 1890**

25. *Betrothal Contract—Suit for damages for breach of—Proper person to sue and be sued.*

Held, that it is competent for the plaintiff, a minor, for whose direct benefit the betrothal contract was effected between his father and the father of the girl, to sue for damages in respect of its breach, and the proper person to be sued is the father of the girl who broke it and not the girl who was no direct party to the contract. NABI BAKSH *v.* RAHIM BAKSH **83 P R 1909**

See ALSO **3 P R 1909**

BETROTHAL CONTRACT.

See BETROTHAL.

BETROTHAL FEES.

Betrothal fees—Right of ala Lambardar to levy from Khatri.

See CUSTOM—CESSES. **118 P R 1883**

BHAIACHARA.

See TENURE.

BHAI NAZDIKI.

See PRE-EMPTION—WAJIB-UL-ARZ. **131 P R 1892**

BIAS.

Bias of Judge—Disqualification.

See DISQUALIFICATION OF JUDGE. **7 P R 1883**

BILL OF EXCHANGE.

See HUNDI.
See NEGOTIABLE INSTRUMENTS ACT, 1881.
See PROMISSORY NOTE.

Promissory Note—Bill of exchange—Original consideration—Construction of in-

BILL OF EXCHANGE—*concld.*

strument—Negotiable Instruments Act, 1881, *section* 5.
See CAUSE OF ACTION. **61 P R 1888**

BILL OF SALE.

Act IV of 1872—*Bill of sale—Fraudulent transfer—Assignment of future assets.—Non-delivery of possession.*
See INSOLVENCY. **162 P R 1879**

BIRT.

1. *Succession to* birt *dues—Widow—Brahmans of Pehowa, Umballa District.*
See CUSTOM. **17 P R 1891**

2. *Succession of daughter and daughter's son—Acharaj Brahmans of Batala, Gurdaspur District.*
See HINDU LAW—INHERITANCE. **75 P R 1894**

3. *Succession of adopted son to share of* birt—*Panjzati Brahmans of Amritsar City.*
See HINDU LAW—INHERITANCE. **141 P R 1894**

4. *Enjoyment of* birt *by one heir of mortgagee adversely to other heirs—Extinguishment of title of rival heirs.*
See LIMITATION ACT, 1877, SECTION 28. **34 P R 1908**

5. Birt—*Two parohits in one village—Rights* inter se.
See RELIGIOUS INSTITUTIONS. **62 P R 1867**

6. *Suit for* birt.
See SMALL CAUSE COURTS—JURISDICTION OF. **32 P R 1877**

7. *Suit for share of* birt—*Test of jurisdiction of Court.*
See SMALL CAUSE COURT—JURISDICTION OF. **8 P R 1885 Note.**

8. *Provincial Small Cause Court Act*, 1887, *Schedule II, article* 13—*Suit for* birt *realized by defendant and claimed by plaintiff as payable to him.*
See SMALL CAUSE COURTS ACT, 1887, SCHEDULE II, ARTICLE 13. **81 P R 1889**

BOARD'S CIRCULAR VIII OF 11th FEBRUARY 1852.

Power of settlement officers under.
See SETTLEMENT OFFICER. **1 P R 1878**

BONA FIDE PURCHASER.

1. *Alienation by widow*—Bona fide *purchaser.*
See CUSTOM. **74 P R 1877**

2. *Owner of property standing by and seeing his property sold to* bona fide *purchaser.*
See ESTOPPEL. **87 P R 1875**

3. *Possession—Unregistered agreement for further charge—Subsequent registered sale—Suit for possession by* bona fide *purchaser on payment of original mortgage debt.*
See MORTGAGE. **70 P R 1880**

BONA FIDE PURCHASER—*concld.*

4. *Suit by purchaser of mortgaged property to establish that mortgage is not binding on him—Notice—*Bona fides—*Burden of proof.*
See MORTGAGE. **83 P R 1883**

BOND.

1. *Burden of proving consideration for bond.*
See BURDEN OF PROOF. **61 P R 1889**

2. *Splitting cause of action—Suit on bond—Previous suit for interest only—Subsequent suit for principal and interest—Civil Procedure Code*, 1882, *section* 43.
See CAUSE OF ACTION. **70 P R 1889**

3. *Misjoinder of causes of action—Creditor claiming in one suit to enforce two bonds executed separately by father and son—"Undue influence"—Unconscionable bargain—Interest—Penalty.*
See CAUSE OF ACTION. **32 P R 1890**

4. *Joinder of causes of action—Suit to cancel bonds executed in favour of separate parties in respect of the same transaction—Civil Procedure Code*, 1882, *sections* 28, 45—*Evidence Act*, 1872, *section* 92.
See CAUSE OF ACTION. **5 P R 1896**

5. *Execution of decree—Bond given by surety for judgment-debtor—Suit by decree-holder against surety without impleading judgment-debtor—Amendment of plaint.*
See CIVIL PROCEDURE CODE, 1882, SECTION 562. **59 P R 1896**

6. *Bail bond—Forfeiture of—Suit by surety to recover amount of bond from principal.*
See CONTRACT ACT, SECTION 23. **1 P R 1899**

7. *Minor—Bond executed by defendant after attaining majority for money advanced to him by plaintiff during his minority—Agreement—Consideration.*
See CONTRACT ACT, SECTION 25. **86 P R 1888**

8. *Bond payable by instalments—Interest payable on default from date of bond—Penalty—Compensation for breach of contract—Act XXVIII of* 1855, *section* 2—*Contract Act*, 1872, *sections* 73, 74.
See CONTRACT ACT, 1872, SECTION 73. **99 P R 1894**

9. *Plea that bond was given for money lent for immoral purpose—Admissibility of evidence.*
See EVIDENCE. **61 P R 1892**

10. *Debtor and creditor—Money-lender and zemindar—Bond—Usurious rate of interest.*
See INTEREST. **110 P R 1879**

11. *Debtor and creditor—Registered bond—Agriculturist rate of interest.*
See INTEREST. **145 P R 1879**

12. *Bond payable by instalments—Judicial Commissioner's circular No.* 83 *of* 1859.
See LIMITATION ACT, 1859, SECTION 1, CLAUSE 10. **64 P R 1869**

BOND—*contd.*

13. *Bond payable on demand—Limitation.*
See LIMITATION ACT, 1859, SECTION 1, CLAUSE 10. **17 P R 1872**
26 P R 1873

14. *Bond in English form—Limitation.*
See LIMITATION ACT, 1859, SECTION 1, CLAUSE 10. **77 P R 1875**

15. *Bond—Payment to be made within one year—Limitation.*
See LIMITATION ACT, 1859, SECTION 1, CLAUSE 10. **79 P R 1875**
58 P R 1874

16. *Bond—Excluding day on which right to sue accrued.*
See LIMITATION ACT, 1871, SECTION 13. **38 P R 1876**

17. *Bond—Money lent under agreement to repay on demand.*
See LIMITATION ACT, 1871, SCHEDULE II, ARTICLES 58, 66. **3 P R 1874**

18. *Instalment bond—Waiver.*
See LIMITATION ACT, 1871, SCHEDULE II, ARTICLE 75. **52 P R 1876**

19. *Bond registered by some of the executants only.*
See LIMITATION ACT, 1871, SCHEDULE II, ARTICLE 117. **13 P R 1876**

20. *Tamassuk—Bond—Suit for which period prescribed by Act, XV of* 1877, *is shorter than that prescribed by Act IX of* 1871.
See LIMITATION ACT, 1877, SECTION 2. **77 P R 1879**

21. *Single bond—Bond with a condition—Period of limitation applicable.*
See LIMITATION ACT, 1877, SCHEDULE II, ARTICLE 66. **26 P R 1892**

22. *Suit on instalment bond—Limitation.*
See LIMITATION ACT, 1877, SCHEDULE II, ARTICLE 74. **74 P R 1901**

23. *Bond—Payable by instalments—Provision that in case of default the creditor "should be at liberty to sue" to recover the whole amount by suit—Waiver.*
See LIMITATION ACT, 1877, SCHEDULE II, ARTICLE 75. **188 P R 1883**

24. *Bond fixing term after which payment might be enforced—Provision that in default of payment of interest plaintiff might demand payment at once—Limitation.*
See LIMITATION ACT, 1877, SCHEDULE II, ARTICLE 80. **10 P R 1883**

25. *Suit on registered bond—Limitation.*
See LIMITATION ACT, 1877, SCHEDULE II, ARTICLE 116. **110 P R 1880**
90 P R 1881

26. *Suit on mortgagee—Bond—English mortgage—Period of limitation applicable.*
See LIMITATION ACT, 1877, SCHEDULE II, ARTICLE 132. **112 P R 1890 F B**
See ALSO MORTGAGE.

27. *Bond payable by instalments—On default, whole amount payable—Petition for*

BOND—*contd.*

payment under section 53 *of Act XX of* 1866.

See REGISTRATION ACT, 1866, SECTION 53. **85 P R 1869**

28. *Bond, possession of—Suit for—Jurisdiction.*

See SMALL CAUSE COURT—JURISDICTION OF. **10 P R 1871**

29. *Suit for return of bond—Jurisdiction.*

See SMALL CAUSE COURT—JURISDICTION OF. **69 P R 1886**

30. *Instrument drawn on several pieces of paper.*

See STAMP.

5 P R 1866 Ref.
26 P R 1876

31. *Entry in account-book acknowledging correctness of accounts—Bond.*

See STAMP. **4 P R 1885 Rev.**

32. *Joinder of parties—Succession Certificate Act,* 1889, *section* 16—*Suit by certificate-holders for half of sum due on a bond—Certificate confined to half of deceased's property—Heirs to other half refusing to join as co-plaintiffs.*

See SUCCESSION CERTIFICATE ACT, 1889, SECTION 16. **29 P R 1899**

33. The obligor of a bond has not a right of property in the bond paper, and cannot on payment of the debt recover the document from the obligee. But to prevent fraud, the obligor may be entitled to have the bond cancelled. MIRAJ DIN v. MUHAMMAD BAKHSH. **8 P R 1869**

34. *General hypothecation of movable and immovable property.*

A bond which does not specify the property alleged to be hypothecated, but merely engages that the debt may be realized from the movable and immovable property of the debtor, *held,* not to operate as a mortgage. MUHAMMADJU *v.* JAI RAM. **74 P R 1878**

35. *Material alteration after execution—Dismissal* in toto.

In a suit based upon two bonds purporting to be executed by the five defendants, it was found that the name of the fifth defendant (Nabi Bakhsh) had been added by plaintiff after execution without the consent of the defendants.

Held, that the plaintiff was not entitled to recover from any of the defendants the alteration in a material particular of a deed after execution without the consent of the other party to such deed disentitling the party who has so altered it from seeking afterwards to enforce it.

Gogun Chander Ghose v. *Dhuronidhur Mundul (I. L. R. VII Cal.* 616), *Ganga Ram* v. *Chandan Singh (I. L. R. IV All.,* 62) and *Nihal Chand* v. *Lakhan* (103 *P. R.* 1883), followed. KARAM ALI AND OTHERS *v.* NARAIN SINGH. **91 P R 1900**

36. *Stamp Act,* 1899, *section,* 2 (5) (*b*)—*Acknowledgment of a debt—Bond.*

BOND—*concld.*

Held, that an acknowledgment of a debt signed by the executants and attested by a witness by which the plaintiff was to receive the balance from the executants was a bond within the meaning of section 2 (5) (*b*) of the Indian Stamp Act, 1899, as the executants had obliged themselves thereby to pay the money. DAULA *v.* GONDA.

35 P R 1903 F B

BOUNDARY SUIT.

Boundary suit—Jurisdiction of Civil or Revenue Court—Punjab Courts Act, 1884, *section,* 45 (*m*).

See JURISDICTION OF CIVIL OR REVENUE COURT. **7 P R 1888**

BRAHMANS.

See CUSTOM.

BREACH OF BETROTHAL CONTRACT,

See BETROTHAL.

BREACH OF CONDITION.

Breach of condition—Suit for—Limitation.

See LIMITATION ACT, 1877, SCHEDULE II, ARTICLE 143. **180 P R 1883**

BREACH OF CONTRACT.

See CONDITION PRECEDENT.
CONTRACTS.
CONTRACT ACT, 1872.
FERRY RIGHTS.
JURISDICTION.
JURISDICTION OF CIVIL AND REVENUE COURT.
LIMITATION ACT, 1877, SCHEDULE II, ARTICLE 115.
PLEADER AND CLIENT.

BREACH OF PROMISE OF MARRIAGE

See BETROTHAL.
MARRIAGE.
SMALL CAUSE COURT—JURISDICTION OF.
SMALL CAUSE COURT ACT, 1887, SCHEDULE II, ARTICLE 35.

BRITISH INDIA.

1. *Jurisdiction of British Court to make decree affecting immovable property situate outside British India.*

See CIVIL PROCEDURE CODE, 1882, SECTION 113. **59 P R 1892**

See JURISDICTION.

2. *Suit for damages for malicious prosecution—cause of action accruing in foreign State.*

See CIVIL PROCEDURE CODE, 1882, SECTION 368. **4 P R 1897**

3. *Jurisdiction of Courts in British India to hear suits for dissolution of marriage when the parties were married in England and have an English domicile.*

See DIVORCE ACT, 1869, SECTION 2. **64 P R 1900**

4. *Appointment as guardian of person residing outside British India.*

See GUARDIAN. **137 P R 1893**
65 P R 1893

BRITISH INDIA—*concld.*

5. *Right of creditor residing out of British India to prove his claim in Insolvency Court.*

See INSOLVENCY. **35 P R 1888**

6. *Limitation Act,* 1877, *section,* 13—*Absence from British India.*

See LIMITATION ACT, 1877, SECTION 13.
See BANK. **72 P R 1891**
26 P R 1897
34 P R 1889

7. *Patent—Extent of privilege—Certain provinces only mentioned in specification—Act XV of* 1859, *sections* 4, 22, 34.

See PATENT. **115 P R 1889**

BROKER.

See CONTRACT ACT, 1872, SECTION 30. **80 P R 1895**

BROTHEL-KEEPER.

Claim by brothel-keeper to succeed to estate left by her Nochi—*Invalid custom.*

See CUSTOM—INHERITANCE. **89 P R 1884**

BROTHER.

Gift to—

See CUSTOM—ALIENATION. **39 P R 1886**

Succession of.

See CUSTOM—INHERITANCE. **99 P R 1907**

BROTHERS AND BROTHERS' SONS.

See CUSTOM—ADOPTION.
CUSTOM—ALIENATION.
CUSTOM—INHERITANCE.

BROTHER'S DAUGHTER'S SON.

Adoption of—

See CUSTOM—ADOPTION.

BUILDINGS.

1. *Erection of building by one joint owner on common land—Special damage.*

See COMMON LAND. **54 P R 1892**

2. *Tenant's right to erect buildings on arable land without landlord's consent—Injury to landlord.*

See OCCUPANCY RIGHTS. **122 P R 1888**

3. *Erection of a building—Bridging over a drain—Distinction between.*

See PUNJAB MUNICIPAL ACT, 1891, SECTION 92. **27 P R 1901**

BUILDING AND IMPROVING ON ANOTHER'S LAND.

1. *Erection of buildings—Compensation.*

See ACQUIESCENCE.

2. *Erection of buildings by one man on land of another—Compensation for improvements.*

See PRE-EMPTION—COMPENSATION FOR IMPROVEMENT. **38 P R 1869**

BUILDING SITES.

Building sites in Delhi City—Ejectment of tenant occupying under proclamation of 19th September 1858.

See LANDLORD AND TENANT. **52 P R 1881**
112 P R 1886

BURDEN OF PROOF.

See CUSTOM.
PRE-EMPTION.

1. *Abandonment—Burden of proof.*
See ABANDONMENT OF LAND. **38 P R 1885**

2. *Adverse possession—Burden of proof.*
See ADVERSE POSSESSION. **65 P R 1901**

3. *Withdrawal from suit based on* badni *transaction—*Onus *of proving—Want of consideration for withdrawal.*
See BADNI TRANSACTION. **74 P R 1881**

4. *Purchase by uncle with his own funds in name of himself and his nephew—Advancement—Presumption—*Benami *transaction.*
See BENAMI TRANSACTION. **61 P R 1889**

5. *Betrothal contract—Suit for damages for breach—Defendant justifying his refusal to perform contract by custom—Custom of Aroras.*
See BETROTHAL. **132 P R 1888**

6. *Carriers—*Onus probandi.
See CARRIERS. **13 P R 1866 Ref.**

7. *Application for attachment before judgment—Suit for compensation on ground that such application was made maliciously—Burden of proof.*
See CIVIL PROCEDURE CODE, 1882, SECTION 483. **86 P R 1895**

8. *Mauza Bagha Purana—Moga* tahsil—*Right of non-proprietors to sell their dwelling houses with the sites—General custom—Proof of special custom.*
See COMMON LAND. **85 P R 1882**

9. *Non-proprietary resident claiming proprietary right in site which he occupies—Burden of proof.*
See COMMON LAND. **119 P R 1884**

10. *Common land—*Mauza *Badli, Hoshiarpur—Non-proprietary resident—Right of succession by remote collateral of last occupant of house on village site—Custom—Burden of proof.*
See COMMON LAND. **37 P R 1887**

11. *Gift of ancestral land by a childless proprietor in favour of sister—Contest by the reversioners of the donor—*Onus *of providing the validity of the gift—Dhamrayas of Shahpur District.*
See CUSTOM. **67 P R 1910**

12. *Gift to a* pichhlag.
See CUSTOM. **63 P R 1909**

13. *Collateral—Succession by adopted son.*
See CUSTOM. **61 P R 1909**

14. Atrafi *dues—Co-proprietor carrying on trade as artizan—*Onus *of proof.*
See CUSTOM. **49 P R 1879**

BURDEN OF PROOF—*contd.*

15. Muhtarfa *or* Haq Bua*—Burden of proof.*
See CUSTOM. **53 P R 1881**

16. *Illegitimacy of children—Burden of proof.*
See CUSTOM. **51 P R 1900**

17. *Adoption of brother-in-law's son—Sikh Khatris of Rawalpindi District—Burden of proof.*
See HINDU LAW—ADOPTION. **94 P R 1898**

18. *Adoption of daughter's son—Banias of Jagraon—Burden of proof.*
See HINDU LAW—ADOPTION. **97 P R 1898**

19. *Hindu law—Alienation—Suit by son to set aside his father's alienation—Burden of proof—Legal necessity.*
See HINDU LAW—ALIENATION. **152 P R 1888**

20. *Custom—Daughter—Brahmins—Baraker* gôt *residing in Nurmahal—*Onus *of proof as to custom.*
See HINDU LAW—INHERITANCE. **73 P R 1879**

21. *Non-agricultural Khatris in the matter of succession.*
See HINDU LAW—INHERITANCE **100 P R 1901**

22. *Hindu family—Presumption as to being joint—*Onus *of proving separation.*
See HINDU LAW—JOINT FAMILY.
85 P R 1867
17 P R 1870
33 P R 1870
13 P R 1883

23. *Liability of sons to pay their father's debts—*Onus *of proving that the debts were incurred for immoral purposes.*
See HINDU LAW—JOINT FAMILY. **144 P R 1884**

24. *Hindu law—Maintenance of wife—Sale of land by husband—Wife's right to charge property sold with her maintenance—Burden of proof.*
See HINDU LAW—WIDOW. **190 P R 1889**

25. *Hindu law—Alienation—Hindu widow raising money by mortgage of husband's immovable property.*
See HINDU LAW—WIDOW. **137 P R 1892**

26. *Partition—Right of widow to share of her deceased husband's estate—Maintenance—Hindu law—Custom.*
See HINDU LAW—WIDOW. **60 P R 1895**

27. *Civil Procedure Code, 1877, sections 344,351—Protection order—Burden of proving matters stated in section 351—Cancellation of protection order.*
See INSOLVENCY. **58 P R 1881**

28. *Civil Procedure Code, 1877, sections 344, 351—*Onus *of proving matters contained in section 351 of the Code—"Unfair preference."*
See INSOLVENCY. **142 P R 1883**

BURDEN OF PROOF—*contd.*

29. *Dispossession and discontinuance of possession—Adverse possession—Waste land—Burden of proof.*
See LIMITATION ACT, 1877, SCHEDULE II, ARTICLE 142. **49 P R 1884**

30. *Adverse possession—*Onus *of proving time when possession originally permissive became adverse.*
See LIMITATION ACT, 1877, SCHEDULE II, ARTICLE 144. **94 P R 1884**

31. *Adverse possession by a co-sharer—Burden of proof.*
See LIMITATION ACT, 1877, SCHEDULE II, ARTICLE 144. **116 P R 1900**
See POSSESSION. **118 P R 1889**

32. *Right of* Malik Qabza *to share of common lands—*Onus *of proof.*
See MALIK QABZA. **53 P R 1879**

33. *Suit by purchaser of mortgaged property to establish that mortgage is not binding on him—Notice—*bona fides*—Burden of proof.*
See MORTGAGE. **83 P R 1883**

34. *Acquisition by members of undivided Muhammadan family—*Onus *of proving separate acquisitions.*
See MUHAMMADAN LAW—JOINT FAMILY. **91 P R 1887**

35. Onus probandi*—Presumption of hereditary acquisition arising from long possession for two generations.*
See OCCUPANCY RIGHTS. **187 P R 1882**

36. *Hereditary tenant's right to trees growing on his land—Burden of proof.*
See OCCUPANCY RIGHTS. **112 P R 1883**

37. *Occupancy rights—Decree for ejectment—Specification of land held by tenant in 1868—Punjab Tenancy Act, 1887, section 5 (1) (c)—Burden of proof.*
See OCCUPANCY RIGHTS. **6 P R 1891 Rev.**

38. *Powers of sons to compel partition of ancestral property—Custom—Burden of proof.*
See PARTITION. **105 P R 1895**

39. *Dissolution of partnership—Burden of proof.*
See PARTNERSHIP. **11 P R 1897**

40. *Illegal dispossession by defendants—Burden af proof.*
See POSSESSION. **102 P R 1879**

41. *Promissory Note—Consideration—Inequitable bargain—Burden of proof.*
See PROMISSORY NOTE. **60 P R 1898**

42. *Suit for cancellation in part of document on ground of failure of consideration—Contract Act, 1872, section 2, clause 1, and sections 46, 73—Voidable contract—Evidence Act, 1872, section 92 prov. (3)—Admissibility of oral evidence to add to written contract—Condition precedent—*Onus probandi.
See SPECIFIC RELIEF ACT, 1877, SECTIONS 39-40. **186 P R 1882**
See ALSO **25 P R 1911**

BURDEN OF PROOF—*contd.*

43. Where a contractor received advances and claimed exoneration, alleging that there had been an act rendering the contract impossible of performance, the burden of proof was, *held*, on the contractor. WUZEERA *v.* MOOROODEEN. **77 P R 1866**

44. Proof of payment rests with the debtor when the debt is proved or admitted. MOBARIK KHAN *v.* SEWA RAM. **35 P R 1867**

45. In suits for immovable property plaintiff must succeed by the strength of his own title, and not by the weakness of the defendant's. *Futteh Khan* v. *Badam* (71 *of* 1866, *Civil*). MEGA *v.* SUDDA RAM. **66 P R 1867**

46. Where plaintiff claimed certain property by right of inheritance and prescription, and defendant set up a title of proprietorship, and it appeared that the relation of tenancy originally existed between defendant and those through whom plaintiff claimed; *held*, that it was for plaintiff to show how the occupation, originally permissive, became adverse, and not for defendant to establish affirmatively the fact of his having within the period of limitation exercised the rights of proprietorship. KURM NEWAZ *v.* KURREEM BAKHSH. **97 P R 1867**

47. *Registered bond.*

On a reference as to whether in a case where defendant admits execution and registration of a bond, but denies receipt of the consideration, the *onus* of proof lies on plaintiff or defendant, *held*, that no general rule can be laid down. Mere execution and registration are not *conclusive* proof of the receipt of the consideration by defendant and whether they will amount to *prima facie* proof (independently of the provisions of Act XX of 1866) will depend upon the particular circumstances of each case. IN RE A REFERENCE BY COMMISSIONER, RAWALPINDI. **80 P R 1868**

48. *Custom.*

The burden of proving that a custom prevails overriding the law, is on those who desire to have the case decided according to such custom. MUSSAMMAT LALLI BEGAM *v.* NAWAB MAHOMED AZMAT ALI KHAN. **13 P R 1875**

49. *Hindu Jats—Representation.*

Held, that among Hindu Jats of the Umballa district, it is not necessary for the party alleging a customary right of representation, which extends to collateral as well as to lineal succession, to give evidence in order to establish such a custom. CHANDA *v.* MUSSAMMAT GUJAR. **91 P R 1879**

50. *Pagvand—Chundavand—General Custom*

Inheritance as a rule goes *per capita* (according to the *Pagvand* rule) and not *per stirpes* (*Chundavand*). It therefore lies upon the parties alleging the

BURDEN OF PROOF—*contd.*

special custom of *Chundavand* to establish such custom; and in the absence of such proof the general custom of *Pagvand* will apply without any proof being necessary. DHYAN CHAND *v.* MEHTAB SINGH. **101 P R 1879**

51. *Exclusion of daughters by near collaterals.*

The general customary rule among Hindus in the Punjab is that daughters and their sons are excluded by near male collaterals.

Where, therefore, plaintiff, the nephew of a deceased Hindu landowner, sued to set aside an alienation by the deceased's widow of part of her husband's land, and was met by the defendants with the contention that the deceased's daughters were the next heirs to the land, *held*, that it lay upon the defendants to prove that by custom daughters and their sons succeeded in preference to nephews. PREM SINGH *v.* MUSSAMMAT CHANDI. **150 P R 1879**

52. *Ancestral property—Liability for debts of deceased father.*

No inflexible general rule can be laid down in a suit by a creditor against the son of a deceased Hindu, in order to declare ancestral property in the hands of the latter liable to sale in satisfaction of the debt sued upon, as to whether the plaintiff is bound to prove the nature of the debt, or the defendant. Question discussed as to whom the *onus* would lie on under certain circumstances. MAMRAJ *v.* MUSSAMMAT BELASO. **16 P R 1878**

53. *Presumption—Cousins holding land in same village, and nowhere else—Common ancestor.*

Plaintiffs, proprietors, sued for possession of 12 *bighas* of common land, lately held by one S, a deceased occupancy tenant. Some of the defendants pleaded an adoption, while the rest claimed the land as collaterals of the deceased. The Court of first instance disbelieved the adoption, and decreed for plaintiffs, holding that the collaterals had failed to prove that a common ancestor of themselves, and deceased, had held the land. On appeal by the collaterals, the Commissioner reversed the decree, on the ground that in Settlement enquiries he had always found it a safe rule to presume that, where 4 or 5 cousins, descendants of a common ancestor, lived in a village having land, and having no land or holding in any other village, their ancestor had settled in the village, and had held the land, until such presumption was rebutted by reasonable evidence.

Held, reversing the order of the Commissioner and upholding that of the first Court, that the Commissioner had erred in throwing the *onus* on plaintiffs on the above grounds. DIWAN *v.* DARA. **83 P R 1879**

54. *Tenancy Act (XXVIII of 1868), section 6—Rebuttal of presumption arising*

BURDEN OF PROOF—*contd.*

from entry in Settlement record—Voluntary admission—Burden of proof.

Held, that the burden of proof lies upon the landlord to show that an admission made by a tenant, shortly before the passing of the Tenancy Act, that he was a tenant-at-will, though previously recorded as a tenant with rights of occupancy, was a voluntary admission within the meaning of section 6, Act XXVIII of 1868. JYMAL SINGH *v.* JAMIAT SINGH **115 P R 1879**

55. *Suit to redeem property first mortgaged and afterwards sold during plaintiff's minority by guardians.*

In a suit to redeem from mortgage certain land, which admittedly belonged to plaintiff's deceased father, was mortgaged to defendant, and afterwards sold outright to him, while plaintiff was a minor, by persons affecting to act as his guardians, *held*, that the burden of proof lay upon defendant to show that he had acquired a valid title by purchase against the plaintiff. BURA *v.* AMIR BAKHSH. **117 P R 1880**

56. *Landlord and tenant—Admission by tenant of existence of relationship—Allegation that relationship had ceased to exist—Evidence Act (I of 1872), section 109—Adverse possession.*

In a suit for proprietary possession of land, it appeared that the plaintiffs had been recorded in the Settlement paper in 1859 as proprietors of the land, the defendants having at the time given in a written admission that the plaintiffs were proprietors, and that they (the defendants) were tenants liable to pay *malikana* and to be evicted at pleasure.

Held, that the *onus* of proving that the relationship of landlord and tenant had ceased to exist between the parties, at such a time as would bar the present suit, lay upon the defendants under section 109 of the Evidence Act.

Case remanded for a decision as to whether the defendants by reason of affirmative acts on their part had held possession of the land adverse to the plaintiffs from a period of more than 12 years prior to the date of the institution of the suit. ATTAR SINGH *v.* RAMDITTA **110 P R 1881**

57. *Evidence Act (I of 1872), section* 91 *—Party in possession under unregistered deed of sale—Onus of proving that party so in possession is not owner—Pre-emption.*

The defendants purchased from two brothers H. and G. their respective shares in certain wells. H. first sold his share for Rs. 500 and executed a deed of sale which was not registered: but the vendees got possession under the sale. Subsequently G. sold his share of the same wells to the same vendees for Rs. 494, and executed and registered a deed of sale. On the 3rd December 1879 the present plaintiff, who was not a co-sharer in the wells but held lands in the *patti* in which the wells were situated, brought two suits against H. and G. respectively to enforce his right of pre-emption in respect of the lands sold. His suit in

respect of the land sold by H. was dismissed on the 5th March 1880 as barred by limitation, and this order was upheld in appeal. The other suit in respect of the share sold by G. was also dismissed, on the 15th March 1880, on the ground that the vendees had become by their purchase from H. co-sharers in the well and had thus a preferential right of pre-emption to the plaintiff. In appeal to the Chief Court it was urged that the first deed of sale not having been registered the vendees were debarred by section 91 of the Evidence Act from proving the first sale and that therefore the vendees had not proved that they were co-sharers in the wells at the time of their purchase from G.

Held, that such contention could not prevail, as the vendees having obtained possession of the land under sale from H., such possession must be held to be *prima facie* proof of their ownership, and the *onus* was on the plaintiff to show that they were not owners.

Held further, that the plaintiff himself by instituting a suit against the vendees to obtain the benefit of the sale to them by H. admitted the fact of the sale, and his suit having been dismissed it must be taken as against him that the defendants were at the time alleged owners of a share in these wells, *Sudama* v. *Kesho* (102 of 1879, Civil followed. IMAM BAKHSH *v.* POKHAR.

26 P R 1882

58. *Evidence Act (I of 1872), sections 109, 110, 114—Plaintiff suing to eject defendant as a tenant holding under an expired lease—Defendant setting up title as owner—Both parties' deeds inadmissible in evidence for want of registration—Presumption of ownership—Possession.*

Plaintiffs sued to recover from the defendant possession of the land in suit on the allegation that in 1874 they had given him the said land on a lease for five years, which had now expired. Defendant denied the lease, and alleged that in 1872 he had purchased the land from a person who had himself a few days previously purchased from the plaintiff, deeds of sale being executed on both occasions, and that he (defendant) had since the date of his purchase held possession of the land as owner. Both the plaintiffs' lease, and the deeds relied upon by the defendant, were inadmissible in evidence for the purpose of affecting the land for want of registration under Act VIII of 1871, and neither party could therefore prove the terms of the contract under which the defendant's possession originated, in consequence of the provisions of that Act, and section 91 of the Evidence Act.

Held, per *Smyth*, J., that as the defendant had admittedly held peaceable possession of the land for several years, therefore, under section 110 of the Evidence Act, the burden of proving that he was not the owner of the land was on the plaintiffs who affirmed that he was not the owner: that all that they had proved was that they were the owners some years ago, before the defendant came

into possession of the land, and though a presumption arose from this that they had remained the owners, this was met by the counter-presumption which arose from the defendant's long possession, and that in presence of those conflicting presumptions, the plaintiffs, on whom the burden of proving that defendant was not the owner fell, must fail unless they could show circumstances which would have the effect of turning the balance in their favour, the defendant also being allowed to show circumstances in support of his contention that he was the owner.

Held, per *Barkley*, J., that as the defendant alleged that he was owner of the land, and the plaintiffs denied this, alleging that he held it as tenant under a lease that had expired, section 110 of the Evidence Act threw the burden of proving that the defendant was not the owner on the plaintiffs. But one presumption may be met by another presumption, and if facts were proved which showed that the parties had been acting as landlord and tenant, the burden of proving that they did not stand or had ceased to stand in that relationship to each other was thrown by section 109 on the defendant. The Court might also presume under section 114, if it thought it likely with regard to the facts of the particular case and the common course of events, that the plaintiffs' title the existence of which until 1872 was admitted, continued in existence, and might then put the defendant to the proof of his having acquired a valid title. Moreover, the strength of the presumption arising from possession depended also on the length of time such possession had continued, and therefore less evidence would be required to remove the presumption arising from undisturbed possession in a case like the present, where the defendant's possession was admitted to have commenced less than 8 years before suit, than where it had continued for a longer period. *Sudama* v. *Kesho* (102 of 1879, Civil), cited. HASSAN *v.* FAZAL WAHID.

121 P R 1882

59. *Suit for possession of land—Defendant setting up a sale of the land to him—Inadmissibility in evidence of deed of sale for want of registration—Act I of 1872, section 110—Burden of proving that defendant is not owner.*

Plaintiffs sued as the heirs of one F. to recover certain land which they alleged belonged to F. Defendant pleaded that he had purchased the land from F. some five years before for Rs. 580; that a deed of sale was executed, which, however, was not registered; and that he had held possession of the land as proprietor ever since.

Held, that under section 110 of the Evidence Act the *onus* was under the circumstances of the case on the plaintiffs to prove that defendant was not owner of the land in suit: that all the plaintiffs had done to discharge the *onus* thus cast upon them was to show that F. was the owner of the land before he delivered possession of it to the defendant; that something more than this had to be shown

before it could be held that F. remained owner of the land till the time of his death; and that therefore plaintiffs' case failed. *Sudama* v. *Kesho* (102 of 1879, Civil) and *Hassan* v. *Fazal Wahid* (121 of 1882, Civil), referred to. PIR BAKHSH *v.* JHANDA MAL.

157 P R 1882

60. *Suit by mortgagee to redeem land alleged to be sub-mortgaged to defendant—Defendant setting up absolute sale by plaintiff of all his rights—Inadmissibility of the instrument evidencing the transaction for want of registration—Act I of 1872, section 110—Possession—Ownership.*

In a suit to recover possession of certain land on payment of Rs. 300, the plaintiff, who himself held the land in mortgage from the original proprietor, alleged that he had sub-mortgaged the same land to defendant and had endorsed the particulars of the transaction on his own mortgage-deed which was handed over at the time to defendant. The defendant replied that the transaction between him and plaintiff was an absolute sale of all plaintiff's interest in the land. The endorsement evidencing the transaction was inadmissible as evidence as it was neither stamped nor registered, and oral evidence of the terms of the contract was held to be inadmissible with reference to section 91 of the Evidence Act.

Held, per *Curiam*, that the plaintiff's suit must fail.

Per *Elsmie*, J.—The defendant obtained lawful possession of the land and is now in lawful possession of it. Title is to be presumed from lawful possession until the want of title or a better title is proved. The case is governed by section 110 of the Evidence Act; as there is no question raised as to the proprietorship of the land, the dispute being between a mortgagee and a person who has derived his rights from that mortgagee, the real question in issue is the ownership of the mortgage granted by the proprietor; and it cannot be said that because defendant does not set up a complete title to the ownership of the land he is therefore in the position of a man who has pleaded a limited title and is therefore bound to prove it, for so far as the plaintiff is concerned defendant has set up a complete title.

Per *Smyth*, J.—Under the circumstances of the case the burden was on the plaintiff to show that by the terms of the agreement between him and the defendant he was entitled to recover possession. This he was unable to do, nor was he able to show conduct on the part of the defendant or any other circumstances consistent only with the view that the defendant held the position of sub-mortgagee and not that of assignee of the mortgage. JODH SINGH *v.* SUNDAR SINGH.

122 P R 1882

61. *Claim for possession by proprietors of land—Defendants setting up a limited title as mortgagees—Inadmissibility of mortgage-deed for want of registration—Plaintiffs' right to possession.*

In a suit by plaintiffs, the proprietors of certain land, to recover possession from the defendants whom they alleged to be their tenants, the defendants admitted the plaintiffs, proprietary rights, but set up a claim to hold the land on mortgage. The mortgage deed, on which the defendants relied, was inadmissible in evidence for want of registration.

Held, that plaintiffs were under the above circumstances entitled to a decree awarding them possession. *Badra* v. *Makhna* (58 of 1877 Civil) and *Sarbaland Khan* v. *Chanda Singh* (84 of 1877 Civil), followed. SAWAN SINGH *v.* LEHNA SINGH.

123 P R 1882

62. Benami *transaction—Presumption where a person purchases property in the name of his relatives.*

Plaintiff, who was one of three brothers (Muhammadans), sued to release from attachment ⅓rd of a house attached in execution of a decree against his elder brother, alleging that he was the owner of such share. It appeared from the deed of sale that this property had been sold to all three brothers, but the decree-holder (defendant) contended that the elder brother was the sole owner, and that, so far as the other two brothers were concerned, the transaction was *benami*. The lower appellate Court holding that "when a property is purchased by a person in the name of his relatives, a father for his son, an elder brother for his younger brothers,—the presumption is that it is a *benami* purchase and the property belongs to the person who provided the money," dismissed plaintiff's suit.

Held (reversing the order of the appellate Court) that no such general rule could be laid down as that stated above: that it was for the defendant who alleged that the sale was not what it purported to be, a sale to all three brothers, but a sale to the elder only, to establish the facts from which he desired the inference to be drawn, and that the defendant having failed to discharge this *onus*, the plaintiff was entitled to a decree. KARIM-UD-DIN *v.* HARDHYAN SINGH. **43 P R 1882**

See also MUSSAMMAT FAZLUNNISSA *v.* HARDHYAN SINGH. **43 P R 1882 Note.**

63. *Will of* parda-nashin *women leaving whole of property away from legal heirs—Person relying upon the will bound to establish due execution with full knowledge and without any exercise of undue influence—Failure to discharge* onus.

The question for decision was whether a will propounded by the defendant was really the will of the testatrix by whom it purported to be executed. It appeared that the said will left the whole of the property of the deceased away from her legal heirs, and, further, that the deceased was a *parda-nashin* woman living apart from her relations and natural advisers; that she had been ill for some months before the time when she was alleged to have executed the will, and died some 17 days afterwards: that at the time she was alleged to have executed the will

there were no members of her own family present, except the defendant, who was her maternal uncle, and whose son and daughter-in-law were the persons chiefly benefited by the provisions of the will.

Held, that under the above circumstances it was incumbent on the defendant, as the person relying upon the will, to establish by the strongest and most satisfactory evidence not only that the deceased executed the will, but that she executed it with full knowledge of its effect, and that she was not induced to execute it by the exercise of any undue influence.

Held further, on the facts, that the defendant had failed to discharge the heavy burden cast upon him by the law as above stated. SYAD MUHAMMAD KHAN *v.* SYAD BADR-UD-DIN **149 P R 1882**

64. *Suit to enforce bond—Defendant denying receipt of consideration—*Onus *of proving consideration—Recital of receipt of consideration in bond—Acknowledgment before registering officer—Presumption of truth of such acknowledgment—Rebuttal of such presumption.*

In suits to enforce a bond, the execution of or consideration for which is denied by the defendant, the general rule is that, as the plaintiff has to prove his case, the proof of the payment of the consideration lies upon the party who asserts it, that is to say, upon the plaintiff; and inasmuch as the acknowledgment of receipt of consideration in bonds and deeds is generally inserted in India before any actual payment of consideration takes place, and is merely intended to be formal, the simple existence of such an acknowledgment would not affect the application of the general rule as above stated. But where the acknowledgment is of a more formal character, made and recorded in pursuance of an Act of the legislature, as, for instance, the Registration Act, the presumption ought to be in favour of the truth of such a public declaration. This presumption, however, is not conclusive, and may be rebutted; it merely serves to shift the *onus* of proof to the party who denies the truth of the acknowledgment. *Ala Baksh* v. *Shama* (153 of 1882 Civil), cited. WAZIR SINGH *v.* JAI GOPAL. **17 P R 1888**

65. *Suit on bond—Plea of insanity of obligor—Burden of proving lucid interval where general condition is shown to be that of insanity.*

In a suit upon a bond in which it was pleaded that at the time of execution the obligor was insane and incapable of contracting, and in which it was further proved that the general condition of the obligor was that of insanity, *held*, that the *onus* lay upon the party who alleged that the bond was executed in a lucid interval to prove that the obligor was in a condition at the time of execution to form a rational judgment as to its effect upon his interests. MUSSAMMAT NUR BHARI *v.* GOBINDA. **87 P R 1888**

66. *Evidence Act (I of 1872), section* 110 *—Suit for possession of house—Plaintiff alleging permissive occupation and defendant pleading long adverse possession.*

Plaintiff sued to recover possession of a house on the allegation that permissive occupation of it had been given to the defendant about five years before suit. Defendant pleaded that the house had originally come into his possession by virtue of an exchange, and that he had continued in proprietary possession for the last twenty-four years. The facts found were that the plaintiff had failed to prove that he had made over the property permissively to the defendant, and further that the defendant had undoubtedly been in apparent proprietary possession of the disputed premises for over twenty years, during which period he had exercised the right of an owner by practically re-building the house, and by locating persons in it of his own right.

Held, that under the above circumstances the rule of evidence embodied in section 110 of the Evidence Act must receive due effect, and that the *onus* was clearly on the person who alleged that the possession had really been permissive all along to prove his allegation; that this *onus* was not displaced by the mere admission by the defendant that the house in dispute originally belonged to the plaintiff, as that admission must be taken with the qualification by which it was accompanied, *viz.*, that the ownership was transferred to the defendant by an exchange, and that the defendant had been in adverse possession for the last 24 years: and that it was sufficient for the defendant to rely on this possession as conferring an indisputable title upon him, which could not be displaced unless the plaintiff could prove, not only his original right of ownership, but also that the possession, which was apparently adverse, was in reality permissive. *Sudama* v. *Kesho* (102 *P. R.* 1879), cited. NIHAL SINGH *v.* JIWANDA **116 P R 1888**

67. *Suit for redemption—Plea that suit was barred by limitation—Burden of proof—* Onus.

The plaintiffs sued to redeem a shop which they alleged their father, R C., had mortgaged to the defendant's grandfather, D., for Rs. 400 fifty years before suit.

The defendant pleaded that the shop was mortgaged to D by the plaintiff's grandfather B. S., in *Sambat* 1870 (1813 A. D.), or more than sixty years before suit; and that the suit was therefore barred by limitation.

Held, that the *onus* lay in the first instance upon the plaintiffs to make out at least a *primâ facie* case of a subsisting title before the defendant could be called upon to substantiate his defence. *I. L. R. XI All.* 438, referred to. RALIA RAM *v.* RADHA RAM.

88 P R 1893

See also GHULAM HASSAN *v.* HAJI MUHAMMAD KHAN. **53 P R 1893**
RAM CHAND *v.* BHANA MAL.
71 P R 1900

68. *Suit for redemption—Plea that suit was barred by limitation—Burden of proof.*

BURDEN OF PROOF—*contd.*

Held, that in a suit for redemption of land admittedly mortgaged some considerable time previously, where limitation is pleaded, the burden of proving that the right to redeem is still subsisting, lies in the first instance upon the plaintiff. GHULAM HASSAN *v.* HAJI MUHAMMAD KHAN **53 P R 1893**

69. *Burden of proof—Material irregularity.*

Plaintiff sued as the adopted son of P. to recover land in possession of the defendant. Both the lower Courts concurred in finding that the adoption, which was the only title the plaintiff set up, was not proved. But the Divisional Judge, finding that defendant had failed to establish his right to more than half the land in suit, gave plaintiff a decree for the other half, which on plaintiff's death had been entered in plaintiff's name.

Held, that the plaintiff having failed to prove his adoption by P. the suit ought to have been dismissed *in toto*, and that it was irregular to enter into the question whether defendant could prove a title to half, and on his failing to do so to give the plaintiff half. JANA *v.* MOHAMDA **89 P R 1893**

70. *Punjab Courts Act (XVIII of 1884 as amended by Act XIII of 1888), section 40 (2)—"Certificate appeal"—"Question of law involved"—Burden of proof.*

Held, that though the proper allocation of the burden of proof in a particular case may be, in some sense, "a question of law," it is rather a question incidental to the proceedings in the case between the contesting parties than "involved in it" within the meaning of section 40 (2) of the Punjab Courts Act. MUSSAMMAT JOWALI *v.* MUSSAMMAT MAN KAUR **45 P R 1894**

71. *Gift of share of land in village—Right of donee to share in village* shamilat *—Onus probandi.*

Held, that in the case of a deed of gift whereby a share in certain land in a village is gifted to a person, the *onus* of proving that the deed carries with it, as accessory thereto, a proportionate share of *shamilat* lies, when the deed is silent upon the subject, upon the person who asserts that the gift operates to grant more than it purports to grant.

65 *P. R.* 1889 *and Civil Appeals* 239 *and* 1389 *of* 1890 *(unpublished)*, cited. FAZAL SHAH *v.* SIKANDAR ALI. **115 P R 1894**

72. *Village site*—Abadi—*Suit for partition of village site*—Bhayachara *village divided into* "pattis" *and* "dheris." *—Burden of proof.*

Plaintiffs, alleging themselves to be owners of a one-third share in the village of Bhadana, Lahore District, sued for partition of the whole of the village site according to a particular scheme, and based their claim solely on an entry in the Settlement Record that "the *abadi-deh* is *shamilat* and is divisible *hasab rasad khewat*." The

BURDEN OF PROOF—*contd.*

defendants pleaded that the entry was incorrect; that the tenure of the village was *bhayachara*, and that there was no *shamilat* in the *abadi* which was divisible. The District Judge having found there was no divisible common land of the village in the *abadi*, gave plaintiffs a decree in accordance with defendants' admission for partition solely of any common land within their *patti* that might be found unoccupied. Plaintiffs appealed to the Divisional Judge, who reversed the decree of the lower Court and granted plaintiffs a decree for separation of their share in the *shamilat abadi-deh*, but did not specify the exact land assigned thereby to plaintiffs. Defendants appealed to the Chief Court, and it was

Held, that the *onus* of proving that there was *shamilat* in the *abadi* which could be partitioned and that partition thereof was feasible rested upon the plaintiffs, and that they had failed to rebut the statement in the earlier Settlement Record that the village site was not liable to partition.

The nature of an ordinary village site as a subject of the partition discussed by Benton, J. ISHWAR SINGH *v.* ATMA SINGH. **117 P R 1894**

73. *Punjab Courts Act*, 1884, *section* 40 *(i) and (ii)—"Point of law involved"—Question as to burden of proof—Separation deed between husband and wife—Allegations of misconduct on part of wife—Revision—Civil Procedure Code, section* 622.

The Divisional Judge granted a certificate of appeal under section 40 of the Punjab Courts Act to the effect that "a question "of law is involved, namely, whether a "child born in the lifetime of its father is "not presumed to be a legitimate one, and "whether the *onus probandi* was not on the "defendant-appellant to prove the unchastity "of his wife, and whether it is not a question "of 'no proof' about the finding of "unchastity of the plaintiff-respondent, and "that the case is, in my opinion, of sufficient "importance to justify a further appeal."

Held, that the certificate on the question of *onus probandi* and the mode of decision was not one contemplated in the Act and was bad.

Semble: The right construction of the word "involved" is that it applies to the case rather than to the appeal which is to be certified under sub-section *(i) (d)*, or admitted under sub-section *(ii)* of section 40 of the Act, and includes points which may be raised by way of defence in the appeal.

But *held*, that the Divisional Judge had acted with material irregularity, within the meaning of se tion 622 of the Civil Procedure Code, inasmuch as (1) he had started a new ground of defence not pleaded by the defendant, *viz.*, that the agreement for separation between the defendant and his wife (the plaintiff) was obtained under pressure, and should not be enforced; (2) he had absolved the defendant from liability, although finding that defendant had committed a breach of agreement from the beginning; (3) he had

BURDEN OF PROOF—*contd.*

wrongly decided the question of *onus* of proof as regards breach of the terms of the agreement; and (4) he had dealt in generalities and conjectures about plaintiff's general bad conduct instead of giving definite findings on the evidence as regards specific misbehaviour on her part.

Although Hindu Law does not recognize divorce, the marriage tie being indissoluble, yet where the finding of a Court, in a suit by the wife for maintenance, would put an end to the plaintiff's conjugal rights, make her an outcast, and probably drive her into the streets for her livelihood, the evidence as to adultery and immorality on her part should be of a definite character as well as cogent and reliable, before the Court acts upon it for the purpose of dismissing her suit.

Section 622 of the Civil Procedure Code lays down the conditions under which the Court may revise the proceedings of subordinate Courts, and its powers of interference is subject to these conditions. But once the jurisdiction to revise is established on any of the grounds specified in the first part of the said section, there is no limitation imposed on the power of the Court as to the mode of disposal. The section is intended to arm the Court with the power of remedying injustice in cases not subject to appeal under certain specified circumstances, and, therefore, when the grounds of jurisdiction are established and a fit case shown for the exercise of its powers, there is nothing in the section to preclude the Court from finally disposing of the case itself because points of fact, and not points of law, are involved.

The Court finding that defendant had entirely failed to prove breach of the conditions of the agreement between him and plaintiff on the part of plaintiff, or that the latter had been guilty of any immorality, set aside the order of the Divisional Court, and restored the decree which plaintiff had obtained in the first Court. MUSSAMMAT NIKKI *v.* BISHEN DAS. **41 P R 1898**

74. *Punjab Courts Act*, 1884, *section* 40—*Questions of law involved—Burden of proof—Construction of deed—Contradictory finding by lower Appellate Court—Material irregularity.*

Held, that the proper allocation of the burden of proof and the construction of a deed which merely affected the parties to the suit and concerned no one else, were not "questions of law involved in the case" within the meaning of section 40 of the Punjab Courts Act, 1884.

45 *P. R.* 1894 and 68 *P. R.* 1897, followed.

It was further contended, on behalf of appellant, that inasmuch as the Divisional Judge had held that article 127 of the Limitation Act was applicable to the case, his subsequent finding that the property in dispute was not "joint family property" amounted to an error of law or, at least, to a material irregularity within the meaning of section 622 of the Civil Procedure Code.

Held, that even upon the assumption that such findings were erroneous and contradictory, they would not amount to "questions of law involved" within the said section of the Punjab Courts Act.

Held further, that all that was decided by the Divisional Judge was that, if the allegations in the plaint were correct and the property were to be held to be "joint family property," then under these conditions article 127 of the Limitation Act would be applicable, and that this did not amount to holding that the property was in fact "joint family property," so as to throw the burden of proving that it was not on the other side, or preclude the Court from finding on the merits that it was not in fact "joint family property."

It not being contended that the parties were members of a joint Hindu family, and it being admitted that all the house property other than that in dispute had been partitioned, though some property consisting of agricultural land was still held jointly, *held*, that the burden of proving that the property in dispute was joint family property was at the outset rightly placed on plaintiffs, and that there was nothing in the findings of the Divisional Judge as above explained which shifted the burden to the other side.

Held, therefore, that the Divisional Judge had not acted with material irregularity in dismissing plaintiffs' claim on the ground that they had failed to discharge the *onus* which rested on them. SADHU RAM *v.* MUSSAMMAT BAINI BAI. **66 P R 1898**

75. *Suit to enforce registered sale-deed —Defendant denying receipt of consideration* —Onus *of proving consideration—Delay in attempting to enforce deed.*

In a suit to enforce a registered sale-deed, the consideration for which is denied the deed being registered, imports no doubt consideration. Ordinarily, therefore, the *onus* of proving the want of consideration would be on defendants, but the fact that the plaintiffs took no action on a sale-deed executed in their favour in 1887 nor attempted to assert their rights until February 1897 nor even applied for *dakhil-kharij*, nor took possession of the property, shifts the *onus* of proof to them, and the Court under such circumstances is justified in demanding strict proof of the payment of the consideration mentioned in the deed of sale.

Wazir Singh v. *Jai Gopal and others* (17 *P. R.* 1888), followed. RAM CHAND *v.* HARNAM SINGH. **68 P R 1900**

76. *Of adoption.*

In cases when the right of adoption is admitted or is found to prevail and the parties are not members of an agricultural tribe, or land-holding group, the burden of proof ought to lie on those who deny that a particular kind of adoption, *e.g.*, that of a daughter's or sister's son cannot be made. SOHNUN AND OTHERS *v.* RAM DIAL AND OTHERS **79 P R 1901**

77. *Inheritance—Special family custom.*

Held, that a party relying upon a special family custom, such as that only one son of the last owner, *viz.*, the fittest or the eldest, succeeds to the whole estate the others getting only maintenance, must prove that such custom was ancient, invariable and definite. ZARIF KHAN *v.* AMIR KHAN AND OTHERS. **85 P R 1901**

78. In suits for the recovery of possession of immovable property when resisted by a plea of adverse possession, the plaintiff is bound to prove possession and dispossession within twelve years, but where the property in dispute up to a short time before suit remained waste and unoccupied, the plaintiff is not required to prove acts of possession within twelve years of suit, he has only to prove a *primâ facie* title not extinguished by limitation in such a case. Waste land allowed to remain so by the proprietor cannot be held to be a discontinuance of possession, and the *onus* is in such a case shifted on to defendant to prove when his possession became adverse. RAMZAN ALI *v.* BASHARAT ALI AND OTHERS. **105 P R 1901**

79. Khatris although following agricultural pursuits, cannot be presumed to have adopted the general customs of agriculturists in matters of succession and alienations, and the record of rights cannot operate to make a Khatri proprietor an agriculturist subject to a custom which govern the latter. The presumption is that a Khatri is only bound by so much of the record of rights as deals with pre-emption and similar customs. The burden of proof therefore that a Khatri in matters such as alienation or succession is governed by custom rests always on the party alleging that he is so bound. HARNAM SINGH *v.* DEVI CHAND. **107 P R 1901**

80. Where a person comes into Court alleging purchase of the *shamilat*, the *onus* of establishing it is on him, which is not discharged by proof that lands of separate *khatas* have been sold to him, as the rights of a proprietor in the former are not a mere accessory to the latter. RAM DAS *v.* AMIR SHAH. **113 P R 1901**

81. The burden of proof of right of a reversioner to restrain alienation of occupancy holding is upon the person asserting the rights to restrain such alienation. FAIZ BAKHSH *v.* DITTA **115 P R 1901**

82. Although a presumption at the outset is against the power of an adoption of a daughter's son, but where evidence such as an entry in a *Wajib-ul-arz* or *Riwaj-i-am* or precedents are produced by the adopted son the burden of broof is shifted to the party denying the validity of such an adoption. HEM RAJ *v.* SAHIBA. **116 P R 1901**

83. The burden of proof that a sister of a deceased sonless Jat proprietor was entitled to inherit the landed property of a deceased

in perference to the collaterals, though in the first instance, is on the sister, but that the rules of inheritance detailed in a *Riwaj-i-am* are sufficient to shift such burden on to the collaterals. SHERAN *v.* MUSSAMMAT SHARMAN. **117 P R 1901**

84. The burden of proof that collaterals of a sonless Khatri resident of a town are entitled to inherit the deceased's property in preference to his daughters and their sons is upon the collateral asserting such rights WISHAN DAS *v.* THAKAR DAS. **119 P R 1901**

85. *Negotiable Instruments Act*, 1881, *section* 118—*Presumption—Proof of consideration—Undue influence—Contract Act*, 1872, *section* 16.

Where a money-lender admittedly lent money to a dissolute young man while he was still a minor, and again within a few days of his attaining his majority supplied him with large quantities of jewellery in presence only of his (plaintiff) touts, relations and dependants, and then obviously gave a false colour to the transaction in his claim, *held*, that such circumstances are facts from which undue influence is to be presumed, and are sufficient to shift the ordinary presumption laid down in section 118 of the Negotiable Instruments Act, 1881, that until the contrary is proved, the presumption should be made that every negotiable instrument was made for consideration, and that the *onus*, therefore, of proving the actual amount of the advances must be laid on the plaintiff. MIRAN BAKHSH *v.* MUHAMMAD HUSSAIN. **2 P R 1902**

86. A money-lender advancing money to a Mahant on the security of immovable property belonging to a shrine must prove that the necessity really existed. KASHI RAM *v.* BAWA TOLA. **3 P R 1902**

87. *Onus* of proving a custom authorizing alienation of ancestral land by a proprietor, governed by Punjab Customary Law, without proved necessity rests on the person so alleging. SHER MUHAMMAD *v.* FATTEH DIN. **6 P R R 1902**

88. The *onus* of proving that a male proprietor cannot alienate acquired property at his pleasure, rests on the party denying such power. MEHR KHAN *v.* KARAM ILAHI. **13 P R 1902**

89. *Suit for possession of immovable property—Adverse possession—Burden of proof.*

A plaintiff who had sued for possession of his share of certain immovable property left by his paternal grandfather having no right of inheritance under his personal law (his father having predeceased his grandfather) relied on a testamentary document under which his title, together with the defendants, originated some twenty-eight years before suit.—*Held*, that the *onus* of proof that his claim was within time was on him. DIN MUHAMMAD *v.* MEHR BAKHSH AND OTHERS. **30 P R 1902**

BURDEN OF PROOF—*contd.*

90. Burden of proof that by custom a childless proprietor was competent to alienate ancestral immovable property in favor of some of his collaterals in presence of other collaterals of equal degree lies on the person asserting the existence of such custom. AMIR AND OTHERS *v.* MUSSAMMAT ZEBO AND OTHERS. **42 P R 1902**

91. The *onus* of proving a custom empowering the alienation of ancestral holdings is on the person relying on such a custom. HAIDAR KHAN AND OTHERS *v.* JAHAN KHAN. **50 P R 1902**

92. In an action for malicious prosecution it does not invariably rest entirely on the defendant to rebut the *prima facie* evidence arising from the finding of Criminal Court in favour of accused by showing that he had reasonable and probable cause, but it is for the plaintiff to prove express malice as well as the want of probable cause and its non-existence. FEROZ SHAH DOSSABHOY DARRAH *v.* WAUTERSZ. **60 P R 1902**

93. *Custom—Inheritance—Aroras of Kasur, district Lahore—Exclusion of daughter by brother—Burden of proof.*

In a case, the parties to which were non-agricultural *Aroras*, a shop-keeping and money-lending class of Kasur, Lahore District, *held* that the *onus* of proving that in matters of succession they were governed by a family custom, whereby brothers excluded daughters, was upon plaintiff who asserted it. ANANT RAM *v.* HUKMAN MALL. **62 P R 1902**

94. The *onus* of proving that by a special family custom, a widow succeeds to the whole estate of her husband as absolute owner with full power of alienation is on the person relying on such a custom. MUHAMMAD ANWAR-UL-HAQ *v.* HABIB-UL-RAHMAN. **74 P R 1902**

95. *Custom—Alienation—Sale by sonless Jat proprietor to a distant collateral who is a co-proprietor in the village—Objection by nearer collaterals not residing in the village—Burden of proof.*

In a case by the nearer collaterals of a sonless proprietor for a declaration that a sale effected by the latter in favour of a distant collateral would not affect their reversionary rights, the defence contended that as the alienation was in favour of another collateral, and that as the plaintiffs were no longer members of the village community, being residents of another village, they had no *locus standi*. The lower Courts holding that the plaintiffs had failed to establish affirmatively that by custom they were entitled to challenge the sale in question, the burden of proof being upon them dismissed their suit.

Held, that although in cases where the family of the objectors had for generations back entirely cut themselves off from their village of origin and settled in another village,

BURDEN OF PROOF—*contd.*

or had unmistakeably been shown by their conduct to have given up any rights they might have had to property in such village, the burden of proof that they were nevertheless still entitled to the rights which they would have possessed had they remained in the village lies upon them, yet that in a case where the father of the objectors had left the village and had acquired property in another village, and where there was no proof that their father or that they themselves had abandoned any rights which he or they might have to land in that village the burden of proof that they were not so entitled lay upon the defendants.

Ala Bakhsh v. *Buta* (79 *P. R.* 1891), *Kaila Singh* v. *Tahal Singh* (143 *P. R.* 1888), *Lakha* v. *Hari* (64 *P. R.* 1893), *Badhawa* v. *Dewa Singh* (141 *P. R.* 1893), *Rukan Din* v. *Mussammat Mariam* (68 *P. R.* 1898), and *Chet Singh* v. *Samand Singh* (78 *P. R.* 1898), referred to and considered. KALA SINGH *v.* NARAIN SINGH. **75 P R 1902**

96. *Possession—Ejectment—Suit by person ejected brought more than six months from date of dispossession against one having no title—Title of possession—Burden of proof.*

Possession in law being a substantive right or interest which exists and has legal incidents and advantages apart from the true owner's title, a person in possession of land without title has an interest in the property which is good against all the world except the true owner. Therefore where a plaintiff has been forcibly dispossessed of immovable property by a person having no title he can sue for possession simply on the strength of the possession which he had before he was dispossessed, provided he sues within the twelve years' period allowed by article 142 of the Limitation Act. In such a suit, unless defendant proves a title, plaintiff should succeed without being asked to prove his own title to ownership, and even if the defendant proves that he has no such title. ABDUL HAMID *v.* SARBULAND KHAN **78 P R 1902**

97. *Mortgage—Authority of mortgagor to impose any easement on the property mortgaged whereby the security is rendered insufficient—Validity of such act—Burden of proof.*

Held, that a mortgagor in possession has no authority without the consent of the mortgagee to do an act which is likely to prove destructive or permanently injurious to the property mortgaged. The *onus* of proving the validity of such act, and that the security was not thereby rendered insufficient rests on the mortgagor or his representative in interest. MUSSAMMAT BHAGWAN DEVI *v.* BUNYADI KHANAM **85 P R 1902**

98. *Sale—Suit by vendor for declaration of right.*

Where a plaintiff, who has professed to make over as sold before a Revenue Officer certain property which had been previously mortgaged to the defendant, in consequence of which action on his part mutation had been effected, subsequently filed a suit for a de-

BURDEN OF PROOF—*contd.*

claration of right disputing the genuineness of the mutation proceedings.

Held, that the plaintiff was bound to establish his case affirmatively, the *onus probandi* being upon him either by proving that he was personated before the Revenue Officer or that in fact he never admitted the transaction before him. GHARIB KHAN *v.* SIKANDAR. **91 P R 1902**

99. The burden of proving a custom antagonistic to a rule founded on universal law and justice rests on the party alleging such custom. GHULAM MOHAY-UD-DIN *v.* FAIZ BAKHSH. **97 P R 1902**

100. As the same presumptions as to following the general custom of the Punjab do not arise in the case of persons who do not depend entirely on the land for their support, the burden of proof that such persons in matters of alienations or successions are governed by custom rests on the party making such an allegation. MOTI RAM *v.* SANT RAM. **103 P R 1902**

101. Although the existence of a custom of pre-emption in a particular sub-division such as is referred to in section 11 of the Punjab Laws Act has to be established, instances in the neighbouring sub-divisions, though not of themselves sufficient to prove the existence of such a custom in that sub-division, are evidence of such existence. SANT SINGH *v.* JOWALA SAHAI. **42 P R 1903**

102. Where rival claimants to the pre-emption of house property in towns assert superior right by vicinage each has to prove his vicinage to be of a superior kind. RAHMAT ALI KHAN *v.* HAMID-UD-DIN. **43 P R 1903**

103. The burden of proof that non-agricultural Hindus in matters of alienation and succession follow Punjab Customary Law rests on the person making such an allegation. MANGTU *v.* CHUNI LAL. **51 P R 1903**

104. Burden of proof that any existing custom has been incorrectly stated in a record of rights rests on the person making such assertion. MAHA RAM *v.* RAM MOHAR. **65 P R 1903**

105. *Onus* of proving good faith, fair dealing and full and free consent in transactions where one party is in relation of active confidence must be laid on the party interested in upholding the transaction, and in the absence of such proof, the transaction must be declared as not binding. HOTI LAL *v.* MUSSAMMAT RAM PIARI. **77 P R 1903**

106. When the power of transfer by will is not co-extensive with the power of transfer *inter vivos* the *onus* that a proprietor has a power of alienation by will rests on the person setting up the will. ISHAR SINGH *v.* LEHNA SINGH. **86 P R 1903**

BURDEN OF PROOF—*contd.*

107. Where a general agricultural custom is found to prevail as regards alienation of proprietary rights, the presumption is, unless the contrary can be shown, that such a custom is also applicable to the occupancy rights. The *onus* of proving a special custom antagonistic to such a rule rests on the party asserting the existence of such a custom. HARI CHAND *v.* DHERA AND OTHERS.
12 P R 1904

108. *Pre-emption—Fraudulent concealment of sale—Limitation Act,* 1877, *section* 18—*Burden of proving when fraud first became known to the plaintiff.*

Where an original transaction is tainted by fraud it lies on the party against whom fraud is found to prove that the want of knowledge was not caused by fraud or that the plaintiff had a clear and definite knowledge of the fraud for more than the period of limitation allowed.

Abdul Rahim Khan v. *Muhammad Yar and others* (12 *P. R.* 1898), cited. GORDHAN DAS *v.* AHMAD. **34 P R 1904**

109. In a suit for possession of immovable property which is not of the nature contemplated in section 9 of the Specific Relief Act by a dispossessed person who was not the real owner of the disputed property but a mere temporary squatter and was dispossessed under colour of title by the defendant in whose favour the property was mutated by the Revenue authorities cannot succeed simply on the strength of such previous possession but must prove a title in himself to justify a decree for recovery of possession. TULLA AND ANOTHER *v.* GOPI AND ANOTHER. **51 P R 1904**

110. *Of adoption of a daughter's or sister's son.*

Held, following *Sohnun* v. *Ram Dial* (79 *P. R.* 1901), that in cases where the right of adoption is admitted or is found to prevail, the *onus* lies upon those who allege that a particular kind of adoption, *e.g.*, that of a daughter's or sister's son, cannot be made.

Ralla v. *Budha* (50 *P. R.* 1893 *F. B.*) distinguished. CHUTTAN *v.* RAM CHAND.
86 P R 1904

111. The inclusion of a tribe among the list of the agricultural tribes of a district under section 4 of the Punjab Alienation of Land Act, 1900, is not a conclusive proof that the tribe has adopted the general rules of customary law observed by the agricultural tribes in that district. JOWAHIR SINGH *v.* YAQUB SHAH. **5 P R 1906**

112. The burden of proof that Khatris, who do not depend entirely on land, in matters of alienation and succession follow Punjab Customary Law rests on the person making such an allegation. The mere fact that a Khatri family had held land for a long time is not *ipso facto* sufficient to shift the burden on the other side. ATAR SINGH *v.* PREM SINGH. **12 P R 1906**

113. The burden of proof that a daughter of a sonless proprietor governed by Customary Law inherits the paternal property in absolute estate with unlimited power of alienation rests on the party who asserts its existence. ABUL HASSAN *v.* HABIB-ULLAH.
18 P R 1906

114. The presumption of Hindu Law that the property belonging to a member of an undivided family is joint does not arise where such a member goes into trade himself or into partnership with strangers on capital which was not part of the family property and the burden of proof that other members of the family have also an interest in it lies on those who make such assertions. RIJHU RAM *v.* MOHAN LAL. **25 P R 1906**

115. Observations by Rattigan, J., as to initial presumption and burden of proof in cases of alienations by the members of Muhammadan endogamous tribes in favour of daughters and their sons. BHOLI *v.* FAKIR.
62 P R 1906

116. The burden of proof that a particular form of vicinage gives a preferential right of pre-emption rests on the person making such an assertion. DHUMI MAL *v.* KALU.
67 P R 1906

117. A pre-emptor is bound not only to prove the existence of a custom of pre-emption in the particular locality where the property in dispute is situate, but all such incidents of that custom as would entitle him to succeed. ILAHI BAKHSH *v.* MIRAN BAKHSH.
68 P R 1906

118. Even in a locality where the right of pre-emption by reason of vicinage is admitted or is found to prevail, the burden of proof that an owner of a house opposite to the house sold but separated from it by a road or lane has a right to claim pre-emption against a vendee who may be a mere stranger lies on the party asserting the existence of such a custom. MAHTAB SINGH *v.* NIAZ ALI.
47 P R 1907

119. The burden of proof that high caste Hindus, residents of cities like Amritsar, follow a particular custom in derogation of their personal law lies heavily on the person making such an allegation. RADHO *v.* HARNAMAN. **99 P R 1907**

120. A party setting up a plea of *res judicata* is bound to establish it. RAJAB-UN-NISSA *v.* HABIB BUKHSH. **57 P R 1907**

121. There is no general presumption that regardless of tribe and creed agnates, however remote, exclude daughters from succession to ancestral property. ABDUL KARIM *v.* SAHIB JAN. **5 P R 1908**

122. The burden of proof as to whether remote collaterals such as of the sixth degree exclude daughters from succession to ancestral property rests on the party who asserts its existence. BHOLI *v.* MAN SINGH.
86 P R 1908

123. *Custom—Succession—Hindu Law—Brahmins of* mauza *Mankiala,* tahsil *Gujar Khan, district Rawalpindi*—Onus probandi.

Held, that apart from local and special circumstances and conditions the initial presumption in regard to Brahmins is, that they are governed by Hindu Law, and that the defendants, on whom the *onus probandi* rested, have failed to prove that Brahmins of *mauza* Mankiala, *tahsil* Gujar Khan, district Rawalpindi, follow agricultural custom in matters of succession. MUSSAMMAT MAYA *v.* GURDIT SINGH. **1 P R 1910**

124. *Custom—Succession—Collateral residing in another village, or village proprietary body—Escheat*—Onus probandi.

Held, that a nephew of a deceased proprietor, who does not reside in the village where the deceased left land and is not a proprietor in it, succeeds to his uncle's property in preference to the proprietors of the village—And that the initial *onus*, generally speaking, would lie on the proprietary body to show that they had a right to exclude a near agnatic relative of the deceased owner from the inheritance.

Held also, that a right of escheat to the proprietary body cannot be presumed to exist; it must be affirmatively proved. DASOUNDA SINGH *v.* MANGAL. **18 P R 1910**

125. *Occupancy holding—Succession—Punjab Tenancy Act, XVI of* 1887, *section* 59 (*c*)—*entry in* Wajib-ul-arz *regarding succession of* bhaiya karabati—*meaning of—Custom*—onus probandi.

Held, that where in the *Wajib-ul-arz* the occupancy tenants are recorded as stating, that if one of them should die without sons succession should go to *bhaiya karabati*. Such entry, if viewed (1) as a record of custom, cannot be used to override or extend the scope of section 59 (*c*) of the Punjab Tenancy Act, XVI of 1887, and if viewed (2) as an agreement, should be interpreted in a reasonable way, and it is reasonable to suppose that the landlords, if they agreed at all, agreed to the succession of such brothers and *karabati* only as might be entitled under tenancy law and custom, and the idea of a right according only to descendants of a person who once held the land, is a fundamental idea in the minds of the peasantry.

Held also, that the burden of proof is on the persons claiming occupancy rights, and they must prove that their ancestor once occupied the land. ALLAH DITTA *v.* ACHHRU MAL. **38 P R 1910**

126. *Custom—Alienation—Alienation by father—Ancestral and self-acquired property—onus of proof—suit to set aside alienation as being made without legal necessity—conjecture and positive proof.*

In a suit to set aside a deed of sale of immovable property executed by the plaintiff's father, who had succeeded to it as the

BURDEN OF PROOF—*concld.*

next reversionary heir on the death of the widow of the last male owner, the plaintiff alleged that the land sold was ancestral property, and that the alienation had been made without legal necessity and was therefore void.

The evidence showed that the last male owner had acquired some lands in the district by purchase and others on abandonment by collateral relatives, but there was no evidence defining the boundaries of these portions respectively, that being merely a matter of conjecture.

Held, that the *onus* of proving that the property alienated was not self-acquired in the hands of the last male owner, was on the plaintiff, who could not under the circumstances derive any assistance from conjectures, however reasonable in place of positive proof. ATAR SINGH *v.* THAKAR SINGH.

42 P R 1910 P C

127 *Custom—Adoption—Adoption of brother's daughter's son without the consent of adopter's reversioners—Validity of—Hindu Jat agriculturists of Hoshiarpur* tahsil—onus probandi.

Held, that among Hindu Jat agriculturists of the Hoshiarpur *tahsil* of the Hoshiarpur district adoption of a brother's daughter's son is not valid without the consent of adopter's reversioners.

Held also, that the rule laid down in 50 *P. R.* 1893 *F. B.* (*Ralla and others* v. *Budha*) is that among agriculturists the *onus* of establishing the unfettered power to adopt a person who is not an agnate is on the party who sets up the power, and that evidence of power to adopt a daughter's son does not shift the burden of establishing the power to adopt the son of a brother's daughter. AMRU *v.* MOHAN SINGH.

47 P R 1910

128. *Punjab Pre-emption Act, II of* 1905, *section* 11, *and proviso—Aroras of Multan not a sub-division of Khatri tribe*—Onus probandi.

Held, that plaintiff on whom the *onus* lay had failed to prove that Aroras of the Multan district are a sub-division of Khatris and members of the same tribe within the meaning of the proviso to section 11 of the Punjab Pre-emption Act, 1905. CHAUDHARI KHUSHI RAM *v.* ASU RAM.

87 P R 1910

129. *Will—Execution of—Testamentary capacity—Testator's illness—Undue influence—Evidence—Burden of proof.*

Held, that the *onus* of proving the testamentary capacity of the testator lies on those by whom the will is propounded.

Held also, that when the evidence produced is found to have discharged that *onus*, such evidence is not displaced by mere proof of serious illness and general intemperance of the testator. BUR SINGH, ETC., *v.* UTTAM SINGH, ETC.

21 P R 1911 P C

" BUSINESS" OF AGENCY.

Contract Act, 1872, *section* 217—*Agent's right of retainer—"Business" of Agency.*
See PRINCIPAL AND AGENT.

49 P R 1885

BUTWARA.

See PARTITION. **20 P R 1869**
66 P R 1869

BYE-LAW.

1. *Lease of grazing tax—Bye-law—Limitation applicable to suit for.*
See LIMITATION ACT, 1871, SCHEDULE II, ARTICLE 6. **3 P R 1875**

2. *Act IV of* 1873—*Bye-law—Nuisance.*
See MUNICIPAL COMMITTEE.

8 P R 1875

BYRAGHI FAQUIR.
See CUSTOM—INHERITANCE.

C

CALLS ON SHARES.

Suit by liquidator, for money due to the company in respect of unpaid calls on shares—Limitation.
See PUBLIC COMPANY.

70 P R 1903

CANALS.

1. *Act VIII of* 1873, *sections* 21, 23, 24—*Claim by one village to bring a canal cut across defendant's villages—Jurisdiction of Civil Court.*
See JURISDICTION OF CIVIL OR REVENUE COURT. **114 P R 1888**

2. *Jurisdiction of Civil Court to set aside order passed by Collector on a reference by a Canal Officer—Northern India Canal and Drainage Act,* 1873, *sections* 25, 27.
See JURISDICTION OF CIVIL OR REVENUE COURT. **64 P R 1897**

3. *Northern India Canal and Drainage Act,* 1873, *sections* 20, 68—*Finality of order under section* 20—*Necessity for strict compliance with provisions of section.*
See NORTHERN INDIA CANAL AND DRAINAGE ACT, 1873, SECTION 20.

71 P R 1888

4. *Northern India Canal and Drainage Act,* 1873, *section* 20—*Defective notice—Construction of Act.*
See NORTHERN INDIA CANAL AND DRAINAGE ACT, 1873, SECTION 20.

144 P R 1894

5. *Northern India Canal and Drainage Act,* 1873, *section* 68—*Finality of order as to use and distribution of water for any crop sown or growing at time of order—Jurisdiction of Civil Court to set aside order—Limitation.*
See NORTHERN INDIA CANAL AND DRAINAGE ACT, 1873, SECTION 68.

25 P R 1893

6. *Permission granted under Northern India Canal and Drainage Act,* 1873, *to construct water-course through land of another—Power of Civil Court to restrain.*
See NORTHERN INDIA CANAL AND DRAINAGE ACT, 1873.

74 P R 1907

CANAL AND DRAINAGE ACT.
See NORTHERN INDIA CANAL AND DRAINAGE ACT, 1873.

CANCELLATION OF ADOPTION —SUIT FOR POSSESSION BY REVERSIONERS.

See LIMITATION ACT, 1877, 2ND SCHEDULE, ARTICLE 118.

CANCELLATION OF ADOPTION —SUIT BY ADOPTIVE FATHER FOR.

See CUSTOM.

CANCELLATION OF BOND.

See CANCELLATION OF INSTRUMENT.

CANCELLATION OF DEED.
See CANCELLATION OF INSTRUMENT.

CANCELLATION OF MORTGAGE.

See CANCELLATION OF INSTRUMENT.

CANCELLATION OF INSTRUMENT.

1. *Suit for cancellation of bond.*
See BOND. **8 P R 1869**

2. *Contract in restraint of trade—Suit for cancellation.*
See CONTRACT ACT, 1872, SECTION 27.
29 P R 1874

3. *Suit for cancellation of mortgage.*
See COURT FEES. **2 P R 1886**
RIGHT TO SUE.

4. *Suit to cancel a document—Valuation.*
See COURT FEES ACT, 1870, SECTION 7, CLAUSE IV, 10. **10 P R 1871**

5. *Suit by reversioner to set aside a mortgage by a Mohamedan widow.*
See CUSTOM.

66 P R 1878

6. *Suit for cancellation of instrument—Suit for declaration that a sale (to which plaintiff was no party) was void—Sale by occupancy tenant—Suit for declaratory decree not otherwise provided for.*
See LIMITATION ACT, 1877, 2ND SCHEDULE, ARTICLE 91.

135 P R 1888

7. *Muhammadan Law—Deed of gift to one heir to prejudice of other heirs—Death-bed gift—Void will—Necessity to sue for cancellation of such will.*
See LIMITATION ACT, 1877, 2ND SCHEDULE, ARTICLE 91.

52 P R 1895

8. *Suit for possession of land—Suit involving cancellation of instrument—Period of limitation applicable.*
See LIMITATION ACT, 1877, 2ND SCHEDULE, ARTICLE 91.

55 P R 1897
71 P R 1901

9. *Suit for possession of land—Prayer for cancellation of will by which such land was devised to defendant—Period of limitation applicable.*
See LIMITATION ACT, 1877, 2ND SCHEDULE, ARTICLE 120.

56 P R 1894

10. *Suit by reversioners for possession of land—Land sold by sonless proprietor—No*

CANCELLATION OF INSTRUMENT—*concld.*

prayer for declaration that deed of sale was void.

See LIMITATION ACT, 1877, 2ND SCHEDULE, ARTICLES 142, 144. **54 P R 1891** **116 P R 1890**

11. *Suit for cancellation of document—Jurisdiction.*

See SMALL CAUSE COURT—JURISDICTION OF. **1 P R 1869**

12 *Suit for cancellation of bond on ground of failure of consideration.*

See SPECIFIC RELIEF ACT, 1877, SECTIONS, 39, 40. **186 P R 1882**

13. *Specific Relief Act,* 1877, *section* 39 *—Suit for cancellation of entry of balance in account books—"Written instrument."*

See SPECIFIC RELIEF ACT, 1877, SECTION 39. **12 P R 1890**

14. *Suit for cancellation of mortgage—Subsequent suit for possession of mortgaged property.*

See SPLITTING CAUSE OF ACTION. **47 P R 1886**

15. *Suit for cancellation of deed—Non-payment of consideration.*

See VENDOR AND PURCHASER. **114 P R 1879**

CANTONMENTS.

1. *Act VIII of* 1859, *section* 205*—Government Notification No.* 1225, *September 26th,* 1866*—Sanction of Chief Court for sale of certain property in land—House in cantonments not "property in land."*

By Punjab Government Notification No. 1225, September 26th, 1866, hereditary or joint-acquired property in land cannot be sold in execution under section 205, Civil Procedure Code, without the previous sanction of the Chief Court.

Held, that a house in cantonments is not "property in land" within the meaning of the notification; that "land" means immovable property for the time being subject to a settlement of land revenue. MOOTSUDDEE MULL *v.* ABDOOLA KHAN **26 P R 1870**

2. *Landlord and Tenant—Bengal Military Regulations of* 1836*—Promulgation of, in the Punjab—Commanding a trespass—Invasion of proprietary right by convening committee under the Regulations—Act XVIII of* 1850.

By order of the Governor-General in Council, of the 12th September 1836, which was to take effect from the date of its promulgation at the different stations of the Bengal Army, applications for unoccupied ground for the purpose (*inter alia*) of being built upon, such ground being within the limits of a Military Cantonment, were to be made in the first instance to the commanding officer of the station, to be forwarded and submitted for the orders of Government; the applications were to be written in a form annexed to the Governor-General's Order; and the grantee was to subscribe to certain conditions, one of which was the following, *viz.,* that all houses in a military cantonment being the property of persons not belonging to the army, which

CANTONMENTS—*contd.*

might be deemed by the commanding officer of the station suitable for the accommodation of officers, should be claimable for purchase or hire at the option of the owner, in the former case at a valuation, in the latter at a rent, to be fixed (in case of the parties disagreeing) by a committee of arbitration constituted in manner provided by the Governor-General's Order. This condition was subsequently modified by several G. G. O.'s, until by No. 1001 of 8th December 1864, the condition was stated to be that the owner of any house in a military cantonment not occupied by a person belonging to the army on duty at the station, might be required to rent the house to any Military Officer belonging to the station who might require it to reside in, if the officer commanding the station were satisfied that there was no other suitable house available; that in every such case, if the owner should offer to sell, rather than let, the house to the officer who had so obtained the house, and if the offer were not accepted, the officer should at any time be required to vacate the house within a week of his receiving notice that the house had been sold to another Military Officer on duty at the station who required it for his own residence; and that the rent to be paid in such cases or the price of the house when the officer consented to purchase it, should be fixed (if the parties disagreed as to the amount) by a committee of arbitration. None of these Regulations were formally promulgated at Rawalpindi.

Plaintiff in 1850 made a verbal application to the Officer Commanding the station, through Captain Y. of the 4th Regiment N. I., for permission to occupy certain land at Rawalpindi, and to build a dwelling-house thereon. After a time, plaintiff was informed by Captain Y. that the permission was granted. Plaintiff did not subscribe to any conditions, but the land was marked out; and plaintiff built upon it; and from that time, he remained in undisturbed possession until October 1870. In that month, Captain W. wished to occupy the house built by the plaintiff on this land, as a monthly tenant, at a rent of Rs. 80; but as Captain P. was willing to take the house for a year certain at the same rent, plaintiff refused to let it to Captain W. for any time less than a year, and accepted the offer of Captain P. The defendant, Major-General M. commanding the Rawalpindi Division, on the application of Captain W, ordered a committee of arbitration to be assembled; this application was made before the house was actually let to Captain P. The committee though only convened to assess the rent, found that Captain W. had a prior right to occupy the house as a monthly tenant, and that the rent (Rs. 80) was reasonable. The defendant approved of this finding; and his approval was communicated to Captains W. and P., the latter being informed that the house was not available for him. Captain W. made a forcible entry, and after occupying the house for a few months, during which time

CANTONMENTS—*contd.*

plaintiff treated him as a trespasser he vacated it.

Plaintiff sued the defendant for damages for procuring or commanding this trespass, on the part of Captain W. and for an invasion of his (plaintiff's) proprietary rights in convening and confirming the finding of the committee of arbitration, contending that the Regulations above-mentioned did not apply to him, *first,* because when the Regulations were issued the Punjab was not subject to the Bengal Military Regulations, nor was it even a Province of the Crown, and that they had not after it was conquered been formally promulgated at Rawalpindi, and *secondly,* because plaintiff had not subscribed to the conditions.

Held, that a formal promulgation of the Regulations in question at the different stations was only intended for existing cantonments, which were governed by the earlier orders, and not for cantonments that might afterwards be established, inasmuch as the latter would as a matter of course be governed by the same Regulations as the former; and that plaintiff held the land subject to the Regulations.

Held, also, that plaintiff was not justified in refusing to let the house to Captain W. as a monthly tenant (or unless it was taken for a year), and in letting it to Captain P.

Held, also, that defendant had not ordered Captain W. to take possession of the house, but had merely expressed an opinion, that he was entitled to possession; and that even if what the defendant did amounted to an order to Captain W. which the latter was bound to obey, that order would only justify Captain W.'s taking possession in a legal manner, and the defendant was not responsible for Captain W.'s forcible or illegal entry into the house.

Held, also, that defendant had not invaded plaintiff's proprietary rights in convening the committee of arbitration, as the rent for a *monthly* tenancy had to be fixed, plaintiff having only consented to take a certain rent for a *yearly* tenancy.

Held, also, that the plaintiff had no cause of action in respect of defendant's approval of the committee's finding that Captain W. had a prior right; for, *first,* inasmuch as in convening the committee to assess the rent, the defendant admitted the priority of Captain W. to the occupation of the house, the committee's expression of opinion on that point, approved of by the defendant was immaterial; and, *secondly,* in confirming the decision of the committee, which was final, the defendant only unnecessarily expressed an opinion, even if he had exceeded his duty as General of the Division in expressing it.

Held, also, that there was no want of due care and caution on the part of the defendant in convening the committee; and that unless he acted maliciously, he was not responsible, as in convening the committee and confirming their finding he acted quasi-judicially. *Semble,* if he did not act quasi-

CANTONMENTS—*contd.*

judicially, but called the committee under a mistake, he was not answerable unless he acted maliciously.

Held, also, that defendant was not a "person acting judicially" within the meaning of Act XVIII of 1850. POLEY *v.* McMURDO. **71 P R 1873**

3. *Landlord and tenant—House in cantonments—Liability of landlord to repair—Damages for injuries caused from non-repair.*

On 15th November, 1875, plaintiff, Dr. Tandy, rented from defendant a house situate in the Cantonment of Peshawar, without any agreement in writing and without any special terms. On 13th December 1875 an earthquake took place in the Peshawar valley, which injured and shook the house.

Shortly after the earthquake defendant was shown over the house and requested to repair it. The defendant's attention was drawn to the cracked walls, but not to the roof, which was concealed from view by a ceiling. Repairs were executed by the defendant, but not to the roof, which neither he nor Dr. Tandy believed to be unsafe. On 13th March 1876 the roof of the house gave way, and falling in, seriously injured Mrs. Tandy. By para. 1973 of the Bengal Army Regulations the landlord of a house is bound, and can be compelled, to repair a house in cantonments.

The cause of the roof falling in was the great weight of mud on the beams and supports, which were unfit for the heavy load upon them ; and also the fact that the wood-work or a great portion of it, was unsound.

In a suit by Dr. and Mrs. Tandy for damages, *held*, that the defendant, as owner of a house in cantonments, was liable to keep the same in repair, and having failed in his obligation was liable to an action for damages sustained by the falling-in of the roof through the want of proper repair.

In assessing damages in such a case a Court should not take into consideration the remote consequences that may follow, but the expense, pain and loss, *immediately* connected with the accident.—RAMJI MAL *v.* TANDY.

38 P R 1877

4. *Lease of house for period exceeding one month—Validity of such lease—Bengal Army Regulations, para.* 24.

Where the defendant agreed with plaintiff to take a lease of her house, situated within the Amballa Cantonment, for the period of one year, *held*, that such agreement was not void or inoperative by reason of para 24 of the Bengal Army Regulations, which prescribes that houses in Cantonments can only, according to those Regulations, be let by the month, assuming that the plaintiff was bound by the provisions of those Regulations. *Poley* v. *McMurdo* (71 of 1873, Civil) cited. HODGKINSON *v.* FITZHERBERT.

115 P R 1882

5. *Landlord and Tenant—Hire of house by prostitute in Mooltan Cantonment—*

CANTONMENTS—*concld.*

Agreement to pay rent at specified rate—Subsequent refusal to pay at higher rate than that fixed by Cantonment Committee when permitting landlord to build—Act IX of 1872, *Chapter II—Undue influence—Coercion.*

Plaintiffs, who were the owners of certain houses in the prostitutes' quarters in the Mooltan Cantonment, sued for arrears of rent alleged to be due by defendant, who was a prostitute, occupying one of the said houses, under an agreement in writing to pay rent at the rate of Rs. 2 *per mensem*. Defendant pleaded that she executed the written agreement under protest, and under the exercise of undue influence by the plaintiffs. The lower Court gave effect to this plea, relying on the fact that the plaintiffs had obtained permission to build the houses in question from the Cantonment Committee on certain conditions, one of which was that they should not charge a higher rate of rent than Re. 1-8-0 *per mensem* for a house of the description of that for wh.ch rent at Rs. 2 *per mensem* was claimed in the present case.

Held, that the above facts furnished no valid answer to the plaiutiffs' claim ; that the present suit not being one between the plaintiffs and the Cantonment Committee, but between the plaintiffs and a third party, it was not open to such party to take advantage of the agreement alleged to have been entered into between the plaintiffs and the Cantonment Committee for the purpose of avoiding performance of a contract entered into between her and the plaintiffs ; and as that contract was not in itself illegal, or open to objection on any of the grounds specified in Chapter II of the Contract Act, the defendant was bound by it. MOHAN LAL *v.* MUSSAMMAT BEGAM. **72 P R 1883**

CANTONMENTS ACT, 1889.

Cantonments Act, XIII of 1889, *section* 4 (2)—*power of Government to define the limits of any cantonment so as to extend them—General Clauses Act, X of* 1897, *section* 14.

Held, that looking at the Act as a whole, the word "define" in section 4 (2) of the Cantonments Act, 1889, must be construed to mean, define by way of extension as well as by way of retrenchment, and that under section 14 of the General Clauses Act, 1897, such power can be exercised from time to time. SHEIKH FAZAL ILAHI *v.* THE SECRETARY OF STATE. **24 P R 1910**

CANTONMENTS HOUSE ACCOMMODATION ACT, 1902.

Section 19.

Cantonments (House Accommodation) Act, II of 1902, *section* 19—*Transfer of Property Act, IV of* 1882, *section* 108 (*f*)—*Indian Contract Act, IX of* 1872, *section* 70—*Repairs done by tenant—Cost deducted from rent.*

Where the defendants occupied the plaintiff's house by reason of its having been allotted to their department by the cantonment

CANTONMENTS HOUSE ACCOMMODATION ACT, 1902—*concld.*

authority under the Cantonments (House Accommodation) Act, 1902, and plaintiff had refused to execute necessary repairs.

Held, that the relation between the parties having been settled by a special Act, the application of the general law was ousted and consequently—

(*a*) the defendant's remedy was under section 19 *et seq.* of that Act and the rule embodied in section 108 (*f*) of the Transfer of Property Act did not apply ;

(*b*) the Civil Courts had no jurisdiction to decide the question of necessity for repairs and their cost under section 70 of the Contract Act, 1872.

But also, that a finding by the cantonment authority under the provisions of section 19, that repairs were necessary and their cost would enable the Civil Courts to decide whether under section 70 of the Contract Act money paid by the tenant for repairs should or should not be deducted from the sum claimed for rent due. MRS. C. J DAVIES *v.* LIEUT. BROOK SMITH. **103 P R 1910**

Section 28.

And sections 21, 26, 34—*Military tenant to require reference to arbitration—Constitution of Committee of arbitration—Authority of District Magistrate to appoint a member in place of a nominee of a party—Finality of the decision of a Committee improperly constituted.*

Held, that a District Magistrate has no right to appoint a member of a Committee of arbitration under section 28 of the Cantonments House Accommodation Act, 1902, in the place of a nominee of a party who had declined to act on the ground of unsuitability of the time fixed for the meeting, but was willing to act if another date was fixed, without first calling upon the party concerned to nominate another member in his place, and the latter had failed to do so within the period allowed to him by law.

A Committee of arbitration constituted in violation of the provisions of the Act has no legal existence and no powers of a Committee of arbitration, and its actions are simply *ultra vires* and must be disregarded by Courts of law.

Query.—Is it competent to convene a Committee of arbitration under the act when the requisition comes from a military officer who is not a tenant but intends to lease? GOPAL SAHAI *v.* BELL. **13 P R 1909**

CARRIERS.

1. *Property entrusted to common carrier—Lost or stolen—Cause of action.*

See CAUSE OF ACTION. **56 P R 1868**

2. *Carriers—Head Office at Calcutta, branch at Amritsar—Delivered to carriers at Amritsar to be conveyed to Peshawar—Goods lost in transit—Cause of action.*

See CAUSE OF ACTION.

10 P R 1866 Ref.

CARRIERS—*contd.*

3. *Carriers—Measure of damages for goods lost in transit.*
See CONTRACT. **10 P R 1866 Ref.**

4. *Suit against a carrier for compensation for non-delivery of goods—Limitation.*
See LIMITATION ACT, 1877, ARTICLE 31.
108 P R 1906 F. B.

5. *Suit for damages for injury to consignment—Carriers.*
See RAILWAY COMPANY.
92 P R 1883
97 P R 1886

6. *Act III of* 1865—Onus probandi.

The claim was for goods lost; the goods were silk above Rs. 100 in value, and therefore should have been declared under Act III of 1865.

Held, that the goods not having been declared, the carrier was not liable for their loss. The only ground on which he could be held liable was that of negligence or criminal act on the part of himself or his agents, under section 8 of the Act. Although by section 9, it is not necessary for the plaintiffs to prove this negligence or criminal act, yet it is necessary that such negligence or criminal act should in the case of loss of or damage to articles included in the list either appear or be necessarily inferred, when there has been no declaration. ASSA NAND *v.* THE INDIAN CARRYING CO.

13 P R 1866 Ref.

7. *Action against carrier—Tort or contract.*

An action for loss of or injury to goods by a carrier, may be an action for a wrong or a breach of contract. SAHI RAM *v.* GOLAB SINGH. **56 P R 1868**

8. *Railway Act XVIII of* 1854—*Uninsured goods.*

Plaintiff presented a bale of silk at the Railway station at Amritsar for transport by rail to Mooltan. He was requested by the Railway Company to "insure," but declined to do so, engaging that the goods should go at the owner's risk. When the bale was delivered at Mooltan, it was discovered that the silk had been abstracted and hemp substituted. *Held*, under the circumstances that the Railway Company were protected by section 10, Act XVIII of 1854, and the special contract. JEYTU NUND *v.* THE PUNJAB RAILWAY CO. **91 P R 1868**

9. *Railway Act XVIII of* 1854—*Uninsured goods—Theft by Company's servants.*

Plaintiff delivered two parcels of shawls to the defendants (a Railway Company) for carriage from Lahore to Monghyr. He declared the nature of the contents of the parcels, but said nothing about their value. One of the parcels was not delivered to the plaintiff at its destination, and he sued the defendants for its value, alleging that they had been stolen. *Held*, that under section X of Act XVIII of 1854, the plaintiff was bound to declare the *value* of the shawls; and that

CARRIERS—*concld.*

he could only be excused from doing so by the defendants voluntarily or involuntarily leading him to believe that such a declaration was unnecessary, and that he was protected from loss without making it. S. P. & D. RAILWAY CO. *v.* RUSTOM KHAN.

29 P R 1872

10. *Carrier of Passengers.*

A Dak Company having engaged to convey plaintiff a certain distance for a stipulated sum, which was paid in advance, and having conveyed him only a part of that distance, leaving plaintiff to make his own arrangements for the rest of the journey at additional expense; *held*, that this was a breach of contract and of the legal obligation imposed on the Company to carry in the usual and reasonable course of a carrier's business, for which plaintiff was entitled to damages, in the assessment of which a latitude is allowed to the Courts to have regard to injury to health and feelings as well as to the actual outlay incurred. ROSS *v.* THE PUNJAB HORSE DAK CO.

77 P R 1867

"CASE"—MEANING OF.

Civil Procedure Code, 1882, *section* 622—*"Case" meaning of.*
See CIVIL PROCEDURE CODE, 1882, SECTION 102. **60 P R 1897**
See CIVIL PROCEDURE CODE, 1882, SECTION 108. **125 P R 1892**
See REVISION IN CIVIL CASES.
44 P R 1899

CASH AND GRAIN RATES.

See BATAI.
JAGIR AND MAFI ESTATES.
MAFIDAR.
OCCUPANCY RIGHTS.
TENANCY ACT, SECTION 16.

CATTLE TRESPASS ACT, 1871.

Section 20—*Suit for damages for wrongful seizure of cattle—Jurisdiction of Civil Court.*

Section 20 of Act I of 1871 was intended merely to give a summary remedy for recovery of damages and expenses, and release of cattle illegally seized. The remedy there given is cumulative, and does not deprive the person injured of the right he otherwise has to recover damages by a Civil suit. *Held*, therefore, that the Civil Courts had jurisdiction to entertain a suit for damages for wrongful seizure of cattle. SURJAN *v.* BHOWANI SAHAI. **92 P R 1877**

CAUSE OF ACTION.

1. Distinct Causes of Action.
2. Jurisdiction.
3. Miscellaneous.
4. Misjoinder of Causes of Action.
5. New Cause of Action.
6. Splitting Cause of Action.

CAUSE OF ACTION—*contd.*

See ADVERSE POSSESSION.
APPELLATE COURT; JURISDICTION OF.
BETROTHAL.
COPYRIGHT.
DECLARATORY DECREE.
FERRY RIGHTS.
MALICIOUS PROSECUTION.
MESNE PROFITS.
RES-JUDICATA.
RIGHT TO SUE.
SPECIFIC PERFORMANCE.

1. *Several causes of action joined in one application for reference to arbitration.*
See ARBITRATION.
35 P R 1911

2. *Causes of action—Misjoinder of—Not a ground for appeal.*
See CIVIL PROCEDURE CODE, 1882, SECTION 31. **93 P R 1909 P. C.**

2. (*a*) *Civil Procedure Code,* 1882, *sections* 102, 103.—*Dismissal of suit—Non-appearance of plaintiff—Effect of such dismissal—Suit for injunction—Suit to set aside gift—Cause of action—Res-judicata.*
See CIVIL PROCEDURE CODE, 1882, SECTION 102.
177 P R 1888

3. *Custom—Alienation—Suit by remote reversioner in presence of nearer reversioner—Speculative suit.*
See CUSTOM. **57 P R 1898**

4. *Custom—Alienation by sonless proprietor—*Locus standi *of remote collaterals to object to alienation—Dhillon Jats, Lahore District.*
See CUSTOM. **75 P R 1898**

5. *Custom—Alienation—Suit by son in presence of his father to contest an alienation by an agnate—*Locus standi *of plaintiff—Sodhi Khatris of* Tahsil *Zira, Ferozepore District.*
See CUSTOM. **84 P R 1898 FB**

6. *Custom—Alienation—Escheat—Right of proprietary body to contest alienation by widow of childless proprietor—Kangra District—Right to sue.*
See CUSTOM. **61 P R 1898**

7. *Civil Procedure Code,* 1882, *section* 43—*"Cause of action"—Identity of defendants—Mortgagee by widow—"Necessity"—Duty of mortgagee when advancing money to widow.*
See CUSTOM. **58 P R 1896**

8. *Alienation of occupancy rights by widow in favour of proprietor—Right of reversioner to object.*
See CUSTOM. **30 P R 1898**

9. *Unauthorised alienation of occupancy rights—Customary rights of collaterals to object to alienation.*
See CUSTOM.

89 P R 1898 F B.

CAUSE OF ACTION—*contd.*

10. *Civil Procedure Code, 1882, sections 13 and 43—Merger of mortgage in previous money decree—Cause of action.*
See ESTOPPEL. **32 P R 1910**

11. *Suit based on foreign judgment.*
See FOREIGN JUDGMENT.

12. *Suit on hundi drawn at Jammu, but payable in British India.*
See JURISDICTION. **21 P R 1894**

13. *Suit based on two causes of action, one cognizable by a Civil Court, the other cognizable by a Revenue Court—Procedure.*
See JURISDICTION OF CIVIL OR REVENUE COURT. **81 P R 1904**

14. *Suit on award—Deduction of period spent in proceedings to enforce the same award summarily—Cause of action.*
See LIMITATION ACT, 1877, SECTION 14.

15. *A conditional decree for possession on payment of a sum of money does not create a new cause of action.*
See LIMITATION ACT, 1877, SECTION 7.
100 P R 1909

16. *Mortgage by Hindu widow—Attachment in execution of decree obtained on the mortgage—Claim by collateral to attached property—Order passed against claimant—Suit by claimant to establish his title.*
See LIMITATION ACT, 1877, ARTICLE 11.
32 P R 1904

17. *Attachment—Application by third party for removal of attachment—Default of claimant—Claim disallowed—Suit by claimant to establish right to attached property.*
See LIMITATION ACT, 1877, ARTICLE 11.
87 P R 1904

18. *Contract Act, 1872, sections 69, 70—Reimbursement of person paying money due by another—Suit for money paid—Starting point of limitation.*
See LIMITATION ACT, 1872, ARTICLE 61.
31 P R 1904

19. *Suit for pre-emption on sale—Decree for possession—Subsequent suit by rival pre-emptor against original vendor and former plaintiff—Cause of action.*
See LIMITATION ACT, 1877, SCHEDULE II, ARTICLE 120, No. 15.
25 P R 1899

20. *Sale of land by female entitled thereto for life—Subsequent alienation by vendee more than 12 years after previous sale—Reversioners' cause of action.*
See LIMITATION ACT, 1877, 2ND SCHEDULE, ARTICLE 125. **26 P R 1896**

21. *Alienation by a sonless proprietor—Starting point of limitation—Cause of action.*
See LIMITATION ACT, 1877, 2ND SCHEDULE, ARTICLES 142, 144.

22. *Alienation by deceased sonless proprietor—Discontinuance of possession—Date on which cause of action arises.*
See LIMITATION ACT, 1877, 2ND SCHEDULE, ARTICLE 142.

121 P R 1892

CAUSE OF ACTION—*contd.*

23. *Alienation by a widow—Suit for declaration by reversioner against the widow and various alienees claiming under distinct titles—Misjoinder of causes of action—Civil Procedure Code, 1882, sections 28, 45.*
See MULTIFARIOUSNESS. **1 P R 1905**

24. *Joint promise to plaintiff and others—Right to plaintiff to sue alone—Non-joinder—Procedure.*
See PARTIES, No. 3. **105 P R 1901**

25. *Misjoinder—Parties—Persons jointly interested in a suit—Claims not antagonistic.*
See PARTIES. **38 P R 1903**

26. *Joint Hindu family—Suit by the managing member for debt due to the family—Joinder of other members interested in the family as defendants after the period of limitation—Limitation Act, 1877, section 22—Maintainability of suit.*
See PARTIES, No. 3. **57 P R 1905**

27. *Revision—Material irregularity—Wrong decision on the question of—Cause of action.*
See REVISION IN CIVIL CASES.
108 P R 1890

1. Distinct Causes of Action.

28. *Civil Procedure Code (Act X of 1877), section 43—Bond stipulating for payment of interest and in default of such payment allowing mortgagee to sue for principal and interest—First suit for interest due up to date—Second suit for entire debt with interest—Distinct causes of action.*

In a suit brought to recover the principal and balance of interest due on a mortgage-bond, and to obtain a declaration of lien upon the mortgaged property, it appeared that in a former suit the plaintiff had claimed and obtained a decree for the interest only due on the same bond up to the date of that suit. Under the terms of the bond it was stipulated that the principal sum should be paid without interest within one year; that, in the event of payment not being made, interest should be paid month by month: and, finally, if any default occurred in regard to the payment of interest, the mortgagee should be entitled to sue for both principal and interest. The lower Courts dismissed the present suit as barred under section 43 of Act X of 1877, holding that the plaintiff had split his cause of action, and was debarred from bringing a fresh suit.

Held, that the suit was not barred under the above section, as the distinct agreement to pay interest, month by month, constituted, when there was default of such payment, a basis of a distinct cause of action, and the creditor was entitled to demand, and to enforce his demand for the payment of interest as stipulated, without being compelled to proceed to the further step of demanding the whole of the debt and enforcing his demand by the sale of the mortgaged property. *Thakar Das* v. *Mohomed Bukhsh* (15 of 1866, Civil Ref.) referred to. RAM BHAJ *v* DEVIA.
123 P R 1881.

CAUSE OF ACTION—*contd.*

29. *Civil Procedure Code (Act X of 1877) section 43—Omission to sue—Intentional abandonment—Suit for property excluded from former suit on account of absence of certificate under Pensions Act.*

The property in suit in the present case having been expressly included by the plaintiffs in a former suit, a decree in plaintiffs' favour for the whole of the property then sued for was passed by the Chief Court. The present defendant then applied for and obtained a review of judgment on the ground that under section 4 of the Pensions Act (XXIII of 1871) the Court was precluded from entertaining a suit for the property now in suit, in the absence of a certificate from the Deputy Commissioner authorizing such suit to be tried. The Chief Court, holding this objection to be valid, excluded the property now claimed from its final decree. The necessary certificate, which had been applied for when the objection was raised in the Chief Court, having been granted, the present suit was instituted on the authority of such certificate for the property excluded by the Chief Court, from its decree. The lower appellate Court dismissed the suit as barred under section 43 of the Civil Procedure Code.

Held, reversing the order of the lower appellate Court, that as the plaintiffs did actually sue in the former case for the property now claimed, and as, even if they had not done so, they were under no obligation either to postpone the claim which they were at the time entitled to make, or to relinquish what they might afterwards become entitled to sue for, and as in the previous suit it was decided that the Court could not then entertain the claim, it was impossible to accept the proposition that in the previous suit the plaintiff either omitted to sue for or intentionally relinquished the claim now made. MUHAMMAD RUSTAM ALI KHAN *v.* NAWAB MUHAMMAD AZMAT ALI KHAN.

64 P R 1882

30. *Civil Procedure Code (Act X of 1877), section 43—Lease of house for season—Notice of intended breach of contract by lessee—Suit for one month's rent accrued due—Subsequent suit for rent of the remaining term as damages.*

Defendant took the plaintiff's premises on lease for the season of 1881, at a monthly rent of Rs. 165, payable on the 21st of each month. On August 9th the plaintiff, who after paying the instalments of rent due up to 21st July, had vacated the house, communicated to plaintiff his opinion that he was not liable for further payment. Plaintiff on the 2nd September sued for the instalment of rent payable on August 21st, and obtained a decree on confession of judgment. Subsequently, on the 14th November, plaintiff filed the present suit for Rs. 330, damages for wrongful refusal to pay rent for the remainder of the term from the 21st August.

Held, that plaintiff had not split his claim

CAUSE OF ACTION—*contd.*

It was open to the plaintiff as the promisee to treat the notice of 9th August as a present breach of the contract and to sue at once for damages for non-performance: or to treat the notice as inoperative and await the time when the contract was to be executed and then hold the other party responsible for all the consequences of non-performance. Plaintiff having adopted the latter course and having in his first suit sued for the whole of the claim arising on his then cause of action, *viz.* one month's rent, the rent for no subsequent period having accrued due on the date of that suit, the provisions of section 43 of the Code of Civil Procedure did not apply to the facts of the present suit. GOODALL *v.* ALEXANDER.

70 P R 1882

31. *Civil Procedure Code (Act X of 1877), sections 42, 43—First suit brought by plaintiffs as reversioners to set aside alienation by widow—Subsequent suit for pre-emption of the subject of the same alienation—Distinct causes of action.*

The present plaintiffs first brought a suit against one Mussammat H. and the present defendant to have the sale of a house by Mussammat H. to the said defendant cancelled, on the ground that they (plaintiffs) were reversionary heirs of Mussammat H.'s late husband and entitled as such to succeed to the house on her death, and that the sale was made without necessity. That suit having been dismissed on the ground that the sale was for necessity, the plaintiffs brought the present suit against the purchaser (Mussammat H. having in the meantime died) to obtain possession of the house in virtue of their right of pre-emption.

Held, that the suit was not barred under section 42 or 43 of the Civil Procedure Code, as the act of the widow being from the plaintiffs' point of view regarded as an infringement of distinct rights possessed (assuming them to have been possessed) by the plaintiffs, *viz.*, their right as reversionary heirs of the widow's husband and their right of pre-emption, although the act of the widow in selling the house was a single act, it really gave rise to distinct causes of action, upon which separate suits comprising distinct subject-matters might be brought. KHAIRATI *v.* AKKO **108 P R 1882**

32. *Civil Procedure Code (Act X of 1877), section 43—Assignment of money decree obtained on specially registered mortgage deed—Suit by assignee to establish lien under the deed on property subsequently sold.*

Plaintiff sued, as the assignee of the rights and interest of the holder of a money-decree obtained upon a specially registered mortgage deed against the defendant, to establish a lien under the said deed with respect to certain of the mortgaged properties sold to the defendant subsequently to the date of the money-decree.

CAUSE OF ACTION—*contd.*

Held, that section 43 of the Code of Civil Procedure (as amended) could not be successfully pleaded as an answer to the suit, as the mere fact of a mortgagee obtaining a money-decree does not *per se* destroy his lien against third parties who may have acquired the mortgaged property from the mortgagor subsequent to the mortgage, and that therefore the plaintiff was entitled to enforce his lien against the defendant, notwithstanding the existence of the former money-decree against the original mortgagor. *Mussammat Chand Kour* v. *Mussammat Fajjo* (113 of 1880 Civil), cited. MUSSAMMAT MAKHNI *v* ADJUDHIA PERSHAD.

142 P R 1882

33. *Civil Procedure Code (Act X of 1877), section 43—Distinct causes of action.*

Plaintiff's father, who was mafidar of ⅘ths of the village of S., entered into a private arrangement with his brother, the grandfather of defendant, whereby in consideration of the brother assisting him in collecting the produce in kind from the proprietors, he was to be allowed a half share of whatever remained from the proceeds of the sale of the produce, after deducting the Government revenue on the resumed portion of the mafi and the mafidar's own dues. In pursuance of this arrangement the produce of certain harvests was stored, preparatory to division, in two granaries, but before any division was effected the two brothers died. Disputes then arose between their descendants, and the present plaintiff filed a suit against the present defendant in which, ignoring the former agreement between his father and uncle, he claimed possession of the entire grain, contending that defendant had no title to it whatever. This suit was eventually dismissed, the Court holding that the plaintiff was not entitled to more than a half share of the grain, which the defendant had never refused to give him, and that according to the practice which had prevailed between the father and grandfather of the parties, it was usual to sell the grain, and after deducting the Government revenue to divide the balance in equal proportions. The Court added that it appeared that a sum of Rs. 673-12-0 was due to plaintiff as the Government and mafidar's share of the revenue, but as it was not clear whether any portion of this sum had already been paid by the defendant's grandfather, or what was the state of the accounts between the parties, it left it open to the plaintiff to bring a separate suit for this item. Plaintiff then brought the present suit for the revenue of 10 harvests.

Held, that the present suit was not barred with reference to the provisions of section 43 of the Code. It was not shown, nor was it contended, that the defendant, prior to the date of the former action, had refused to permit a sale of the grain to take place in accordance with the agreement, and it was admitted that the grain had not then been sold; what the plaintiff then claimed and

CAUSE OF ACTION—*contd.*

what the defendant refused to concede was the right to take possession of the entire quantity of grain, so that the refusal on the part of the defendant to allow this, did not create any infraction of the plaintiff's right under the terms of the agreement, and had the plaintiff then sued upon the agreement, the defendant could have successfully pleaded that the plaintiff had no cause of action and that his suit was premature. The dismissal therefore of the former suit did not debar the plaintiff from subsequently suing to recover the revenue, when the defendant, by either taking possession of his own half-share of the produce without paying the revenue, or by refusing to permit the gross produce to be sold, had committed a breach of the agreement whereby plaintiff had acquired a cause of action which was not in existence when the first suit was filed; so that the claim in the present case was not one which the plaintiff was *entitled* to make, under the terms of the agreement as found by the Court, when the former suit was instituted. *Gahi Mal* v. *Shera* (90 of 1881 Civil), referred to. SODHI HARNAM SINGH *v.* SODHI SUNDAR SINGH. **168 P R 1882**

34. *Civil Procedure Code (Act X of 1877), section 43—Mortgage by mother as guardian of her minor son's property—Suit by mortgagee against mother for money-decree only—Subsequent suit to enforce the lien against mother's son, the latter having attained his majority.*

One Mussammat N. mortgaged to the plaintiff certain property belonging to her son, M. B. who was then a minor. His title was not alluded to in the mortgage, but it was alleged in appeal to the Chief Court (though this was denied by M. B. in his reply to the present suit), that the mortgage was effected by Mussammat N. in the capacity of her son's guardian and under circumstances under which the morgage would bind him. The plaintiffs, having sued Mussammat N. alone and obtained a decree against her for the debt due on the mortgage-bond, M. B. being no party to the suit, and the decree not purporting to bind the property, subsequently brought the present suit to enforce their lien against the property, M. B. who had in the meantime come of age and who was stated to be in possession of the property, and his mother, being both made defendants. The lower appellate Court held that the suit did not lie with reference to the provisions of the last clause of section 43 of the Civil Procedure Code.

Held, reversing the order of the lower appellate Court so far as it dismissed the suit as against M. B., that inasmuch as the mother and son clearly could not be regarded as the same party where the question was whether the son was bound by his mother's acts during his infancy, and as it was impossible to say that the son was practically a party to the former suit, since nothing done

CAUSE OF ACTION—*contd.*

in that suit would bind him, it could not therefore be said, so far as the plaintiffs' claim against M. B. was concerned, that they had split their cause of action by suing for separate remedies in separate suits, for there was no suit against him before. If the former decree had been satisfied, the plaintiffs' cause of action on the mortgage would have been extinguished, but it was not alleged that it had been satisfied and the present suit was against a different party for a different remedy from that previously decreed. MUSSAMMAT BHAGWANDEVI v. MEHR BAKSH.

41 P R 1883

35. *Civil Procedure Code (Act X of 1877), section 43—Plaintiff entitled to only one remedy suing for wrong remedy—Different causes of action—Land Acquisition Act, compensation awarded to Hindu widow under—Suit by reversioner for the apportionment of such compensation.*

Plaintiff, the reversionary heir, sued the defendant, a Hindu widow, for a portion of a sum which had been awarded to the defendant by the Collector as compensation for a house which had been taken up under the Land Acquisition Act. It appeared that, during the proceedings before the Collector, plaintiff had applied for a share of the compensation, but the Collector having refused to entertain the application, plaintiff, before the money had been actually made over to the widow, brought a suit in the Civil Court claiming (1) that the widow should be restrained from making the alienation, and (2) that the money should be invested, lest she should waste it, she being entitled to receive only the income from the investment for her life. The suit was dismissed on the ground that the plaintiff had no cause of action for the relief sought, but it was stated that such dismissal would be no bar to a suit by the plaintiff for the apportionment of the compensation, if he were advised to bring such suit. In the present suit it was objected that the suit was barred under section 43 of the Civil Procedure Code.

Held, that this objection could not prevail, (1) because the section has no application to the case of a person who being entitled to one remedy only, sues by mistake, not for that remedy, but for another remedy to which he is not entitled, and (2) because the plaintiff was suing in the present case upon a cause of action different from that on which he first sued. MUSSAMMAT PRAB DAVI v. HARKISHN DAS.

47 P R 1884

36. *Civil Procedure Code (Act X of 1877), sections 42, 43—Dismissal of suit for defect in form—Second suit founded upon the same cause of action—Plaintiff who has mistaken his remedy in the first suit bringing a second suit for a remedy to which he is entitled.*

Plaintiff sued the defendants for a declaration of title to a share in the offerings of a certain shrine, which suit was dismissed upon the ground that it was not cognisable

CAUSE OF ACTION—*contd.*

with reference to section 42 of the Specific Relief Act, as there was consequential relief which the plaintiff could have claimed and had not claimed. This order of dismissal having been confirmed on appeal, the plaintiff brought the present suit claiming the consequential relief which he omitted to claim in his first suit.

Held that, assuming the cause of action in the two suits to be identical, the second suit was not barred by the provisions of section 43 of the Civil Procedure Code.

Per Plowden, J.—Where the dismissal of a suit takes place for defect in the frame of the suit in contravention of section 42 of the Code of Civil Procedure, accompanied by a refusal to adjudicate upon the subject-matter submitted for decision, section 43 of the Code does not preclude a plaintiff whose suit has been thus dismissed from bringing a second suit founded upon the same cause of action. The object of the final clauses of section 43 is to prevent further litigation concerning the subject-matter of dispute, and there has been no previous litigation regarding the subject-matter in dispute within the meaning of section 42 when the Court has refused to exercise its function by giving a decision between the litigants on the subject-matter in dispute. In such cases the plaintiff is at liberty, section 43 notwithstanding, to commence proceedings *de novo*, and that without any express permission.

Per Elsmie, J.—There is nothing in section 43 of the Code which prevents a man who has mistaken his remedy and sued for what he is not entitled, from subsequently bringing a suit for a remedy to which he has a right. BHOLA SINGH v. GURDIT SINGH.

66 P R 1884

37. *Civil Procedure Code (Act XIV of 1882), section 43—Suit for damages for wrongful act—Previous suit for injunction restraining same wrongful act.*

In a suit for damages for wrongful exclusion of plaintiff by defendant from certain property, it appeared that the same plaintiff had previously sued for and obtained from the same defendant a perpetual injunction directing the latter to abstain from the same wrongful act.

Held, that the second suit was barred by section 43 of the Civil Procedure Code, as it was not open to the plaintiff to sue twice for different remedies, and different claims on the same cause of action. CHAJJU SINGH v. NIHAL SINGH.

190 P R 1888

38. *Suit for sum payable as "dhart" and for marriage dues—Jurisdiction of Civil and Revenue Courts—Claims based on two causes of action, one cognizable by Civil Court, the other cognizable by Revenue Court—Power of Chief Court to deal with part of decree—Punjab Tenancy Act, 1887, section 77 (3) (j) and section 100.*

Held, that a suit for a sum payable according to village custom, as "*dhart*" on a sale of grain to which the plaintiff is entitled, but which has been paid to defendant, is not

CAUSE OF ACTION—*contd.*

"a suit for a sum payable on account of village cesses" within the meaning of section 77 (3) (*j*) of the Punjab Tenancy Act, 1887, but is a suit for money received by defendant to the use of plaintiff, and as such cognizable by a Civil Court. (81 *P. R.*, 1889), referred to.

Held further, that where a plaintiff brings in a Civil Court a single suit which comprises two claims on different causes of action, one of which is cognizable by a Civil Court, while the other is cognizable by a Revenue Court, and the decree of the Civil Court deals with both claims on the merits, such decree cannot be registered as the decree of a Revenue Court, the Chief Court having no power under section 100 of the Punjab Tenancy Act, 1887, to deal with part of a decree, but only power to deal with the decree as a whole. BUTA v. FAUJA SINGH.

24 P R 1894

39. *Court Fees Act*, 1870, *sections* 12 (*ii*), 16, 17—*Suit for specific performance of contract to sell, and for pre-emption on sale—"Distinct subject"—Appeal and cross-objections—Court-fee payable—Joinder of causes of action—Civil Procedure Code*, 1882, *section* 44 (*a*), 45 *and* 561.

Plaintiff sued, alleging a contract to sell him a house for Rs. 2,500, out of which Rs. 100 were paid as earnest-money, and a subsequent sale (in guise of a mortgage by conditional sale) to a third party, and prayed for a decree either for (*i*) specific performance of the contract of sale on payment of Rs. 2,400, or (*ii*) for pre-emption on the sale on payment of Rs. 2,500, or whatever might be found to be the market-value of the house. The plaint was stamped in accordance with the value of the first claim only, and the objection of the defendant as to the stamp which was taken by him in the first Court was not disposed of by any formal order.

The first Court decreed the claims in the alternative, and they were both included in the defendants' appeal to the Divisional Judge, which was valued on the same principle as the plaint. The Divisional Judge having reversed the decree as respects the first claim, but upheld it as regards the second, the defendant appealed to the Chief Court from the latter portion of the judgment and the plaintiff put in cross-objections dealing with the former portion. A preliminary objection was taken by appellants that the Court-fee of Rs. 2 on the petition of cross-objections was insufficient, and that it should be calculated on the value of the claim for specific performance to which such cross-objection related. It was also urged that the plaint should be stamped, in accordance with section 17 of the Court-fees Act, on the values of the two distinct claims therein included.

Held, that appellants' contention was correct. Plaintiff alleged two distinct causes of action, *viz.*, the contract to sell, and the subsequent sale giving him a right of pre-emption if not rendered nugatory by the previous agreement, and his suit, therefore, embraced two "distinct subjects" within the

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CAUSE OF ACTION—*concld.*

meaning of section 17 of the Court Fees Act, even though alternative, and not cumulative, relief was alone asked for; and as the plain object of that section is to prevent any loss to the revenue, owing to separate causes of action being lawfully combined in one suit, the fees to be paid are to be the same as if *separate suits* had been filed. Therefore, under section 16 of the Act, respondent was bound to stamp his cross-objections calculated on the value of the claim for specific performance about which the appellants had not appealed.

Held, further, that under section 12 (*ii*) of the Act, plaintiff would have to pay additional Court-fees in the first Court, as the question of valuation was there raised and "wrongly decided," defendants' objection being overruled by implication.

Quære.—Whether the said two causes of action could lawfully be combined in one suit. MUSSAMMAT FATIMA BEGAM v. MUHAMMAD ZAKARIA. **96 P R 1895**

II.—FRESH CAUSE OF ACTION.

40. *Suit on decree or judgment.*

Held, that the final judgment of a competent Court does not constitute a new cause of action—*Sheo Singh* v. *Roora* 14 *of* 1869. *Civil*). *See also Jeewun* v. *Jey Ram* (*No.* 108 *of* 1868, *Civil*). MOOKHA v. KHOOSHALEE RAM. **55 P R 1867 Overruled**

41. As to a suit for a portion of a former decree, plaintiff obtained a decree against defendant for possession of immovable property, and was put into possession under that decree of less than the decree included; in a suit brought by the plaintiff for possession of the remainder, it was *held*, that although under the former decree he ought to have been put in possession of the portion now claimed, a fresh suit for such portion would not lie; that his remedy was by appeal against the order of the Court which failed to give him full possession. JOWAHIR v. RAMPERSHAD. **24 P R 1869**

42. *Adjustment out of Court.*

A obtained a decree against B in a Civil suit, and subsequently B instituted criminal proceedings against A for criminal breach of trust. In consideration of B's withdrawing this prosecution, A gave B a receipt purporting to acknowledge payment by the latter to the former of Rs. 16,120, the amount of the decree mentioned. C, a servant of B, filed this receipt in the Court whose duty it was to execute the decree, and the Court recorded an adjustment of the decree. Afterwards, A applied for execution of the decree, which was refused. Upon appeal to the Chief Court, it was contended for the decree-holder that the receipt had been filed in the Deputy Commissioner's Court in fraud of an understanding between A and B, that the latter should pay the amount of the decree to the former and the receipt was not to be used until such payment had been made; that the receipt was void,

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as it was based upon an illegal consideration, *viz.*, the compromise of the offence of criminal breach of trust; and that the adjustment of the decree not having been certified to the Deputy Commissioner under section 206, Civil Procedure Code, either by the decree-holder in person or by his authorised agent, execution of the decree might still be had. *Held*, that as it was found to be a fact that A authorized or permitted the receipt to be filed as a certificate of adjustment of the decree, the consideration for the receipt could not be inquired into, nor the adjustment questioned; and that C's not being properly authorized by power of attorney was an immaterial irregularity; but that if the decree-holder had been over-reached, or the judgment-debtor had acted *mala fide* in causing the receipt to be filed, a separate suit might be brought. RUTTONJEE CURSETJEE BUTTLEBHOY v. HORMUSJEE COWASJEE. **1 P R 1870**

43. *Attachment—Act VIII of* 1859, *section* 246.

A had attached property as belonging to his judgment-debtor, which B, who alleged himself the owner, obtained the release of under section 246, Civil Procedure Code. A then sued to have his judgment-debtor's title to the property declared. It was ruled that the suit would not lie in *any* Court. *Nuthoo Mull* v. *Radha Kishen* (*No.* 72 *of* 1868, *Civil*). But in a subsequent case this was corrected, the Court there holding that a suit by a judgment-creditor to establish his judgment-debtor's title to property seized in execution would lie, but not in a *Small Cause Court*. A suit by one whose property has been seized in execution as belonging to the judgment-debtor, and not released under section 246, Act VIII of 1859, is founded on a cause of action cognizable by the Small Cause Court, as it is a suit for personal property under section 6, Act XI of 1865. JEEWA v. KULLOO. **84 P R 1870**

44. A decree of a Foreign Court (*e.g.*, of Faridkot) *held* to be a cause of action in a Court of British India. KHETA MULL v. JOWAHIR MULL. **4 P R 1874**

45. A fresh suit on a decree treated as a proceeding in execution. *Mookha* v. *Khooshalee Ram* (*No.* 55 *of* 1867, *Civil*), and HANSRAJ v. HARBAKSH. **86 P R 1874**

46. *Suit on decree—Conditional decree—Omission to execute decree—Right to bring fresh suit for same subject matter.*

Held, (by a Full Bench), that where a plaintiff has sued for possession of land, and has obtained a decree for possession, conditional on payment of money to the defendant, he is not by reason of such decree debarred from maintaining a second suit for possession after the expiration of the period within which he might have obtained possession by execution of the decree. RAM SINGH v. NODH SINGH. **93 P R 1879**

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47. *Civil Procedure Code (Act XIV of* 1882), *section* 43—*Suit by mortgagee for possession—Previous suit for interest due under mortgage—Mortgage providing for possession to be given in default of payment of interest—Distinct causes of action.*

In a suit by a mortgagee for possession under the terms of his mortgage deed which provided that the mortgagor was to retain possession, paying Rs. 60 per annum, but that in case of default the mortgagee should be at liberty to sue for possession, it appeared that in a previous case the mortgagor having made default, the plaintiff had sued for the interest due, and got a decree, but did not then sue for possession. A further default having been made, he brought the present suit, which the lower Courts dismissed as barred by section 43 of the Civil Procedure Code.

Held, that the said section was no bar to the suit, inasmuch as a fresh cause of action had arisen from a breach of the contract subsequent to the previous suit. *Phalla* v. *Kesar Singh* (No. 138 of 1882, Civil) distinguished. RAMAN v. WAZIRA. **79 P R 1886**

48. *Succession—Daughters—Suit by reversioners to contest daughters' succession—Compromise—Subsequent suit by same reversioners to set aside alienation by daughters—Civil Procedure Code*, 1882, *section* 43.

One K. S., a Hindu Jat, died leaving a son Kh., two daughters, the present petitioners, and certain immovable property. Kh. married and had a son L., who survived him. After the death of Kh. and the re-marriage of his widow, the daughter of K. S. went to the house left by K. S. to reside with, and take care of, their minor nephew L. On the death of L. the reversionary heir of K. S. sued the said daughters who had taken possession of both the land and houses left by K. S., but in 1860 this suit was compromised, one-third of the land and houses being left with the daughters. On the 28th January 1893, the daughters having sold part of the said house property to B. S. and C. S., the reversioners, again sued, praying for a declaration that the sale should not affect their rights after the death of the female vendors, and they pleaded that the sale was not for a necessary purpose, and that the consideration was fictitious. The defendants, who were the daughters and the vendees, pleaded that the daughters had inherited the property in dispute from K. S.; that they were full owners and had been in possession for the preceding 27 years, and that the sale was for necessity and for full consideration.

The lower Courts found that, in the absence of evidence to the contrary, the presumption was that the daughters were not full owners but merely life tenants; that their possession was permissive and not adverse to the plaintiffs; that the sale was not for necessity or for consideration, and that the plaintiffs were not barred, under

II.—FRESH CAUSE OF ACTION *concld.*

section 43 of the Civil Procedure Code, from suing by reason of their suit in 1860, and decreed plaintiff's claim. A certificate to appeal having been refused by the Divisional Judge, the defendant-daughters applied to the Chief Court on the revision side, to admit a further appeal on the following grounds :

"(I). That the certificate should have "been granted, as there is a "point of law and custom "involved ;

"(a) does section 43 apply or "not ?

"(b) have or have not, the "daughters by custom more "than a life tenancy ?

"(II). The daughters have full power to "alienate.

"III). There was necessity."

Held, that the real question was not whether the daughters by custom took more than a life tenancy, but what were their rights under the compromise of 1860, and that there was no ground for admitting an appeal upon that question.

Held, further, that the present suit being upon an entirely new cause of action was not barred under section 43 of the Civil Procedure Code by the omission to claim the house in the former suit. MUSSAMMAT IND KAUR *v.* SUJAN SINGH. **47 P R 1894**

49. Conditional decree for possession on payment of a certain sum of money does not create a new cause of action. SHAMIR *v.* LADHA SINGH. **100 P R 1909**

III.—JURISDICTION.

49. *Where it arises.*

In a suit on a promissory note *held*, that the cause of action arose where the note was executed and therefore where the note was executed at Jullundur but was payable at Rawalpindi, the Court at Rawalpindi had no jurisdiction to try the suit—HAMILTON *v.* THE PUNJAB BANK. **104 P R 1866**

50. Where the carrier had his head office at Calcutta and a branch at Amritsar, and the goods (which were lost by the carrier on the way) were delivered at Amritsar to be carried to Peshawar, *held*, that the Small Cause Court at Amritsar had jurisdiction.—ASSA NUND *v.* THE INDIAN CARRYING COMPANY. **10 P R 1866 Ref.**

51. *Held*, in an action on a bonded debt that the place where the money should have been paid was the place, where the breach of contract took place ; but that the whole cause of action did not arise at that place; and that therefore as the bond was executed at one place and payment should have been made at another, the defendant could not be sued at either of those places but the venue lay where he dwelt.—COLLECTOR OF BOOLUNDSHUHUR *v.* NANUCK CHUND. **29 P R 1867**

III.—JURISDICTION—*contd.*

52. The cause of action against a depository consists not only of receipt of the thing deposited, but of a refusal or neglect by him to redeliver : *Held*, therefore, that where a person at Benares, having received money in deposit from a person at Lahore, died before any demand upon him for re-delivery, the failure to re-deliver by his representative did not constitute a cause of action accruing at Lahore, though it might have constituted one at Benares.—MUSSAMMAT DAYAWUNTEE *v.* BHAI NUNDGOPAL. **2 P R 1868**

53. Where property entrusted to a common carrier was lost or stolen, the cause of action was *held* to arise where the property was lost.—SAHI RAM *v.* GOLAB SINGH. **56 P R 1868**

54. *Suit against agent for money received—Jurisdiction.*

Plaintiff, who carried on business at Pind Dadan Khan, constituted the defendant his agents at Karachi for the sale of cotton, &c., all payments being made by the defendants to the plaintiff by the latter drawing *hoondees* upon the former who honored them. Upon the sale of the cotton, &c., there remained due to the plaintiff Rs. 1,752-6-3, for which he sued at Pind Dadan Khan.

Held, that the dealings between the parties did not show that defendant was bound to render accounts to his principal at Pind Dadan Khan, or to pay him there and therefore the Court at Pind Dadan Khan had no jurisdiction to try the suit. KARM CHAND *v.* DEVI DAS **22 P R 1874**

55. Where a right to have a thing done at a particular place has accrued and that right is infringed, the place where that right and its infringement meet is the place to sue. Defendant betrothed his daughter to plaintiff's son. The contract of betrothal was made at Bhera in the Shahpur district, where defendant resided. At Amritsar, defendand informed plaintiff that he did not intend to allow the marriage.

Held, that the place of performance of such a contract would ordinarily be the residence of the girl's father, and therefore the plaintiff's suit for breach of the contract must be brought in the Shahpur district. LORINDA MAL *v.* SEWA SINGH **57 P R 1874**

56. *Principal and agent—Accounting.*

A firm at Saival in the Shahpur district had agents at Mooltan and other places ; goods being consigned to the agents for sale. The firm sued defendants in the Shahpur Court for monies due upon the accounts between them.

Held, that if by agreement, or the mode of dealing, or the usage of trade, the defendants had to account at the head office, the Shahpur district had jurisdiction in the case, but if the mode of dealing was that there was a mere consignment to the agents and payments were to be made by the agents honour-

III.—JURISDICTION—*concld.*

ing bills drawn upon them the cause of action did not arise in the Shahpur district. DEVI DAS *v.* BHAGWAN DAS. **53 P R 1876**

IV.—MISCELLANEOUS.

57. *Suit to set aside will of Hindu widow still living—Cause of action.*

Held, that a suit will not lie for a declaratory decree setting aside a will made by a Hindu widow, still living, and purporting to dispose after her death of the immovable property of her husband, on the ground that the widow has no power to dispose of such property ; no cause of action arising in such a case, till the widow's estate has come to an end. MUSSAMMAT BADHO BAI *v.* CHATTA RAM. **111 P R 1880**

58. *Suit to set aside decree based on award—Fraud—Act XV of 1877, Schedule II, article 158, power of Court to extend time prescribed by—Power of Court to give relief where defendant has fraudulently prevented plaintiff applying within prescribed period.*

Held, that a suit will not lie to set aside a decree passed in accordance with an award of arbitrators, merely on the ground that such decree has been obtained by fraud.

Semble, *per* BARKLEY, J.—Such suit would lie if it could be shown that the judgment and decree in question were a nullity.

Held, further, *per* BRANDRETH, J., that if the parties to an award accept such award and do not file any objection within the period allowed (see Act XV of 1877, Schedule II, article 158), an objection even on the ground of fraud cannot legally be heard afterwards.

But *held* also, *per* BRANDRETH, J., that if in the above case the plaintiff succeeded in proving that the defendant by deceiving plaintiff's agent had fraudulently induced him not to make any application within the prescribed period, the Court would be justified in giving relief from such fraud and allowing a fresh period for the plaintiff himself to make the application. MEHTA KASHI RAM *v.* DADABHOY. **124 P R 1880**

59. *Act XIV of 1882, section 43—Plea first raised in second appeal.*

A Court is not bound to take up *proprio motu* the question involved in section 43 of the Civil Procedure Code, unless the defendant urges it. It is not a question of jurisdiction, section 43 being a provision introduced for the benefit of a defendant to prevent him from being harassed by numerous suits, and the section must therefore be expressly pleaded before judgmeni if a defendant wishes to take advantage of it. MUHAMMAD NUR *v.* MUSSAMMAT MAHROIA **37 P R 1885**

60. *Promissory Note—Bill of Exchange—Original consideration—Stamp—Construction of instrument.*

Though in certain cases where a negotiable instrument, taken on account of a pre-existing

debt and as a conditional discharge of such debt, is inadmissible in evidence for want of a proper stamp or for some other reason, the creditor may, if payment be not made when the instrument falls due, revert to his original rights, and disregarding the instrument, sue for the original consideration, provided he has not endorsed or lost or parted with the instrument under circumstances which would make the debtor liable upon it to some third person, yet when the original cause of action is the instrument itself, and does not exist independently of it, *e.g.*, when the money is lent upon it, in such case there is no cause of action for money lent otherwise than upon the instrument itself, and the instrument being the only contract between the parties, the plaintiff cannot (with reference to section 91 of the Evidence Act) establish his case without it.

A document construed by the lower Courts as a promissory note, but which appeared to be rather in the nature of an unconditional order directing a certain person (*viz.*, the plaintiff) to pay a certain sum of money to a certain person, *held* to fall within the definition of a " bill to exchange." in section 5, Act XXVI of 1881, notwithstanding the concluding clause of the instrument which contained a promise (conditional on his meeting the bill) to repay the plaintiff on a specified date. The latter clause was *held* not to control the operative part of the instrument as an "unconditional order for the payment of money to a certain person," but merely to contain an assurance for the satisfaction and information of the drawee. SHEO DAS *v.* KANHAYA LAL. **61 P R 1888**

61. *Wrongful ouster—Wrongful possession of profits—Different cause of action.*

In April 1882, the plaintiff sued the defendants for recovery of possession of certain premises of which he had been dispossessed in July 1881.

His claim was decreed. Subsequently he sued the same defendants for rent by way of damages for occupation.

The defendants pleaded that the plaintiff having omitted to claim damages in the former suit, could not claim damages for any period anterior to the date of institution of that suit—such claim being barred by section 43 of the Code of Civil Procedure.

Held, by the Full Bench that wrongful ouster and wrongful possession of profits constitute distinct and separate causes of action. The right to possess immovable property and the right to enjoy the profits of such property are two distinct rights. An infringement of the former does not necessarily involve an infringement of the latter right.

I. L. R., II Mad., 210, approved. *I. L. R., II Mad.*, 151 and 138, *P. R.*, 1882, dissented from *I. L. R., IX Calc.*, 283, distinguished. RAJA BIKRAMA SINGH *v.* PRAB DIAL. **129 P R 1889**

62. *Civil Procedure Code—Forms of action—Statement of facts in plaint.*

The Divisional Judge dismissed the plaintiff's suit as a suit for the price of goods sold and delivered and directed the plaintiff to sue on a contract of 10th April 18~5: he also held that the suit as laid, *viz.*, for the price of goods sold to the defendant as an ordinary purchaser independently of the contract, would not lie, and that plaintiff's proper remedy was to sue for a statement of account on the contract.

Held, that the Divisional Judge's decree should be reversed, and a hearing of the appeal directed.

The Code of Civil Procedure does not deal with forms of action, it requires a statement of facts in the plaint and that the plaint should disclose a cause of action. If a cause of action is disclosed, that cause of action is to be heard and determined subject to the defence of the defendant. MUHAMMAD SHARIF *v.* SHAMSHER KHAN. **11 P R 1891**

63. *Civil Procedure Code, sections 42 and 43—Whole claim which the plaintiff is entitled to make—Previous suit dismissed as premature, there being no cause of action.*

Section 43, Civil Procedure Code, is not applicable where the suit set up in bar has been dismissed because there was no cause of action.

A plaintiff must, under section 43, include the whole of the claim which he is entitled to make in respect of the cause of action, and cannot afterwards sue for any portion of the claim in respect of which he may have omitted to sue. The object of the section which is a sequel to section 42, is to prevent further litigation. A premature suit is not within the purview of the section at all.

What is contemplated in the second clause of the section is a second suit advancing a claim supplementary to the first and in respect of " the portion omitted or relin- " quished in the first suit." When the cause of action arises, a second suit may be brought for the whole of the claim arising out of it, notwithstanding the dismissal of the first suit as premature; and it need not be for the same claim or the same remedies as was sued for in the first plaint. AHMAD KHAN *v.* MEHR KHAN. **35 P R 1893**

64. *Civil Procedure Code (Act XIV of 1882), section 43—Suit to include whole claim—Plaintiff having several causes of action suing in respect of one only—Subsequent suit in respect of another cause of action.*

Held, that plaintiff is not required by section 43 of the Civil Procedure Code to bring his suit upon all the causes of action he has, nor is he prevented if he renounces any, from suing again; all that is required by that section is that he should include the whole claim which he is entitled to make in respect of the cause of action. UDMI *v.* RAJI. **23 P R 1894**

65. *Mortgage—Effect of payment of prior mortgage by subsequent incumbrancer as*

against intermediate charge—Cause of action—Limitation.

G., an occupancy tenant of a one-eighth share of land, on the 19th January 1869 mortgaged five-sixths of his share to one G. R. In June 1871, default having been made in the payment of interest by the mortgagor, G. R. under the terms of his mortgage sued for, and obtained possession of the mortgaged land both as against G. and one S. R. who claimed to be in possession of the whole one-eighth share of the holding under a mortgage, dated the 1st June 1870. S. R. was left in possession of the remaining one-sixth of the said share. On the 10th June 1882, G.'s son—G. himself being dead—mortgaged the same five-sixths of the share to one Gh., the previous mortgage to G. R. being recited, and it being stipulated that Gh. should pay the consideration money to G. R. and take possession from the latter after redemption. The sons of S R.—S. R. having died meanwhile—sued, in March 1891, both G.'s son and Gh. and claimed by virtue of the intermediate mortgage to S. R. to recover from Gh. possession of the land mortgaged first to G. R. in 1869 and, subsequently, to Gh. in 1882. The defendants pleaded, *inter alia*, that the suit was barred by limitation and that in any event Gh. had, by redeeming G. R.'s mortgage, acquired all the rights of G. R., in the land.

The first Court dismissed the suit as barred by limitation, but the Divisional Judge, on appeal, held that the suit was within time, and further, that G. R.'s mortgage having been extinguished by the payment in 1882, was of no avail to Gh., and decreed plaintiffs' claim, Gh., appealed to the Chief Court.

Held, in accordance with the ruling of the Privy Council reported in *I. L. R., I. All.*, 325, that inasmuch as limitation did not begin to run against the plaintiffs until the redemption of G. R.'s mortgage in 1882, the suit being filed in 1891, was within time.

But *held*, in accordance with the ruling of the Privy Council reported in *I. L. R., X Calc.*, 1035, that as Gh., had a right to extinguish the prior mortgage to G. R. or to keep it alive, the presumption, in the absence of evidence to the contrary, was that he intended, when paying off G. R.'s mortgage to keep the prior charge alive for his own benefit, and that, standing in the place of G. R., he could successfully set up G. R's mortgage as a defence to plaintiff's claim for unconditional possession of the land.

I. L R., IX Calc., 961, distinguished. GHANAYA *v.* PANDIT CHAJU RAM. **83 P R 1894**

66. *Act XIII of 1855—Death caused by actionable wrong—Cause of action—Contributory negligence.*

Plaintiffs, who were the legal representatives of one G. A., sued for compensation under Act XIII of 1855 for loss sustained by the death of the said G. A., which, it was alleged, was caused by injuries received in a railway accident occasioned by the negligence of

defendant's servants. The lower Court having given a decree in favour of plaintiffs, defendant appealed to the Chief Court, and it was then contended, on his behalf, that although G. A.'s injuries were caused by the negligence of defendant's servants the cause of action was the death of G. A., and that inasmuch as death would probably not have ensued but for the plaintiff's imprudently removing G. A. from the hospital to which he had been taken after the accident, plaintiffs had been guilty of contributory negligence such as disentitled them to recover compensation.

Held, that the cause of action was the wrongful act on the part of defendant's servants resulting in injuries which caused the death of G. A., and not the death simply, although the cause of action was not complete for the relations until death occurred, death being an essential constituent of the cause of action, and that, therefore, the plaintiffs' imprudent conduct in removing G. A. from the hospital, being subsequent to the negligence which caused the injuries, did not constitute contributory negligence or disentitle them to compensation. The removal of the deceased from hospital was to be regarded merely as one of the natural and probable consequences of the infliction of the injuries, it having admittedly been done *bonâ fide* for the benefit of the deceased by a relation. SECRETARY OF STATE FOR INDIA *v.* MUHAMMAD.

85 P R 1894

67. *Promissory Note—Instrument inadmissible in evidence—Original consideration—Stamp Act (I of 1879), section 34, and 1st Schedule, article I—Evidence Act (I of 1872), sections 65, 91—Construction of documents.*

When a document is inadmissible in evidence under section 34 of the Stamp Act, 1879, section 65 of the Evidence Act, 1872, does not allow, and therefore section 91 expressly forbids secondary evidence of the document to be given. Whether there is a cause of action independent of the instrument upon which independent evidence may be given depends upon the question whether plaintiff can allege any contract as the basis of his suit which is not the contract reduced to the form of the document excluded from consideration under the aforesaid provisions of law.

I. L. R., VII Calc., 260, and *Punjab Record*, Nos. 4 of 1881, 73 of 1886, 61 of 1888, and 82 of 1891, referred to. BAKHSHI RAM LABHAYA *v.* KAKA RAM. **42 P R 1895**

68. *Civil Procedure Code*, 1882, *sections* 312, 315—*Auction sale subsequently set aside—Right of auction-purchaser to recover purchase-money, how enforceable—Previous application under section 315 dismissed as time-barred—Auction-purchaser's cause of action—Limitation.*

Section 315, Civil Procedure Code, confers rights on purchasers against persons to whom their money has been paid, and in the absence of an express or an implied bar, such rights are enforceable in the ordinary way, *i.e.*, by suit, as well as in the special manner indicated in the said section. An assignee of the auction-purchaser is entitled to recover the purchase money in a similar manner, and his suit is not unmaintainable merely because at the date of its institution he had an application pending in the Chief Court for revision of the order dispossessing him of the property.

It is for a judgment-debtor, who has succeeded in getting the Court to set aside a sale under section 312 of the Code, to move the Court to restore his property to him, and if he fails to do so, there is nothing to prevent the decree-holder and the purchaser from retaining the former the sale-proceeds, the latter the property itself. It is only when the purchaser is deprived of his bargain and ejected therefrom at the instance of the judgment-debtor that he acquires a cause of action to sue for refund of his money, and it is doubtful whether there is failure of consideration until such ejectment takes place. KHAWAJA YUSAF SHAH *v.* HIS HIGHNESS THE RAJA OF FARIDKOT.

7 P R 1897

69. *Claim by widow against co-widow who had obtained succession certificate—Succession Certificate Act, 1889—Assets not realized at time of suit—Cause of action—Limitation Act, 1877, 2nd Schedule, articles 48, 49, 123—Deed of gift—Registration—Admissibility of deed to prove collateral fact—Evidence of marriage.*

Upon the death of one A. A. on the 17th of January 1891, plaintiff and defendant, claiming to be his wives, applied separately for certificates under the Succession Certificate Act, 1889, and on the 22nd July 1891, the District Judge granted defendant a certificate subject to the condition that she should give security, with three sureties equal to the amount of the debts and securities in respect of which the certificate was applied for. On the 22nd August 1893, one A. R. gave security to the extent of Rs. 2,000, but according to plaintiff's allegation, the truth of which was not denied by defendant, the certificate was granted for the realization of sums, aggregating Rs. 35,586, deposited by A. A. in certain Banks. On the 22nd May 1894 plaintiff sued Mussammat Satara Begam, the said Banks and A. R., in respect of the said sum of Rs. 35,586, her suit being founded on the allegations that she was the wife of A. A., and that he had gifted the whole of his property to her by deed, dated 6th January 1881. The suit was dismissed as against the Banks and A. R., but the District Judge gave plaintiff a decree for half the amount claimed against Mussammat Satara Begam, defendant No. 1, who, thereupon, appealed to the Chief Court. For appellant, it was contended (*i*) that at the date of institution of the suit no portion of the sum claimed had been realized by her, and as she was not in possession of the money there was no cause of action against her; (*ii*) that the suit was barred under either article 48 or 49 of the Limitation Act, having been brought more than three years after the death of A. A.; (*iii*) that the deed of gift, being unregistered was inadmissible in evidence; (*iv*) that plaintiff was not the wife of A. A., but only his mistress.

Held, as to the *first* contention, that as defendant was bound under the certificate to realize the said sum of Rs. 35,586 and to account to plaintiff for her share, plaintiff had a good cause of action against defendant in respect of such share which defendant could have realized prior to the suit but wilfully failed to realize; as to the *second* contention, that the suit was not barred by limitation; as to the *third* contention, that plaintiff had failed to prove that the deed of gift was ever acted upon, and, therefore, could not claim anything under it; and as to the *fourth* contention, that the lower Court had rightly held upon the evidence that plaintiff was the wife of A. A.

Marriage may be presumed presumptively by the statement of the parties, or their general conduct towards each either.—MUSSAMMAT SATARA BEGAM *v.* MUSSAMMAT HUSAINI KHANAM. **16 P R 1897**

70. *Civil Procedure Code*, 1882, *section* 34—"*Cause of action*"—*Want of knowledge—Review of judgment—Informalities in presenting application for review.*

Plaintiff, a minor, under the Court of Wards, sued through the said Court for recovery of certain movable property left by his deceased father and in the possession of defendants, who were his step-mother and his half-sisters, on the ground that plaintiff, as the sole heir of his father, was alone entitled to the said property. Defendants pleaded that the suit was barred by section 43, Civil Procedure Code, plaintiff having in May 1891 brought another suit for possession of the house property of his father, held by the defendants, and having omitted to include in it his present claim, the cause of action being the same in both instances. Plaintiff, in his replication, pleaded that he was unaware at the time of the former suit of the existence of the property claimed in the present suit. A preliminary issue was framed on this question, and after the evidence of the parties had been heard, was decided in plaintiff's favour by the District Judge, who thereupon ordered the suit to proceed on the merits. Subsequently, however, an application for review of judgment was entertained, and the previous finding as regards section 43 was reversed, the suit being dismissed. Plaintiff appealed to the Chief Court, and it was contended on his behalf that the application for review was informal and should not have been entertained, and that in any event, the suit was not barred by the said section, inasmuch as (*a*) the previous claim was for recovery of ancestral immovable property in which plaintiff's right was not derived solely from his father, but accrued to him as a descend-

IV.—MISCELLANEOUS—*contd.*

ant of his remoter ancestors and as a member of the tribe, while the present suit was brought in his capacity as representative of his father alone, and (*b*) at the time of the previous suit plaintiff was ignorant of the existence of the property now claimed.

Held, that informalities in presenting an application for review of judgment cannot be raked up after the review has been accepted and a decree passed disposing of the suit, and the Court of Appeal is not the proper place to take the objection.

Held further, that the alleged distinction between the causes of action had not been established, and that plaintiff had failed to prove that at the time of the previous suit he was ignorant of the existence of the property now claimed by him.

If a plaintiff can be fixed with knowledge at the time he brought his former suit of circumstances which made it probable that he had another claim arising out of the same cause of action, and which therefore should have put him on enquiry to find out its details, the bar of section 43 of the Code would apply to a subsequent suit by him for the whole or any portion of such a claim. NAWAB MUHAMMAD KABIR *v.* MUSSAMMAT BHAG BHARI. **17 P R 1897**

71. *Suit for declaration of title—Adverse entry in Revenue papers—Cause of action—Limitation Act,* 1877, *2nd schedule, article* 120—*Punjab Land Revenue Act,* 1887, *section* 45—*Specific Relief Act,* 1877, *section* 42.

Plaintiffs sued for a declaration of proprietary rights in certain land upon the allegation that defendants were taking advantage of an entry in the Revenue papers to endeavour to oust plaintiffs from the said land. It appeared that the Revenue authorities when making the entry in question more than six years before suit, had included the area in dispute in defendants' estate, but that neither plaintiffs nor defendants were parties to the action of the Revenue authorities. For defendants it was contended that plaintiffs had no cause of action apart from the entry in question, and that the suit having been instituted more than six years after the making of such entry was barred under article 120 of the Limitation Act, 1877.

Held, having regard to the plaintiffs' allegations and the circumstances of the case, that plaintiffs had, with reference to section 42 of the Specific Relief Act, 1877, and section 45 of the Punjab Land Revenue Act, 1887, a cause of action which accrued within the period of limitation and would be entitled to a decree if they prove their allegations. —NATHA SINGH *v.* SADIQ ALI. **20 P R 1900**

72. *Contract—Novation—Right of a party to fall back on the original cause of action—Contract Act,* 1872, *section* 62.

Defendants owed some money to the plaintiffs on book account, they executed certain *hundis* in discharge of that debt, on maturity the *hundis* were dishonoured. The

IV.—MISCELLANEOUS—*contd.*

plaintiffs sued the defendants on the original debt, the defence being novation of contract.

Held, that the plaintiffs not having endorsed or lost or parted with the *hundis* under such circumstances as to make the defendants liable upon them to some third parties were entitled to sue, on the original debt which had not been extinguished by the fact of the receipt by plaintiffs of the *hundis* by way of security.

Sheikh Akbar v. *Sheikh Khan* (*I. L. R. VII Calc.* 256) *Naobat Rai* v. *Taj Muhammad* (84 *P. R.* 1885), *Rahmutulla* v. *Ganesh Das* (82 *P. R.* 1891), and *Udho Shah* v. *Hira Shah* (71 *P. R.* 1897), cited and followed. BALDEO SAHAI *v.* MUL CHAND.

7 P R 1903

73. *Promissory Note—Suit on, not presented for payment—Cause of action—Negotiable Instrument Act,* 1881, *section* 64.

Held, that under the provisions of the exception to section 64 of the Negotiable Instruments Act, where a Promissory Note is payable on demand, and not on demand at sight, no presentment is necessary in order to charge the maker or his legal representative.

Malori Mal v. *Buta Mal* (148 *P. R.* 1883) distinguished. HARI SINGH *v.* NARAIN SINGH.

60 P R 1903

74. *Public Company—Dividends—Liability to pay dividends declared by a Company—Right of the son of a deceased shareholder to sue—Cause of action.*

Where dividends declared by a Company are only payable to its registered shareholder, the son of a deceased shareholder, whose name has not been placed on the register of members of the Company, cannot maintain an action against the Company for the dividends due on the shares standing in the name of his late father. DELHI AND LONDON BANK *v.* KULWANT SINGH.

16 P R 1904

75. *Civil Procedure Code,* 1882, *section* 43—*Mortgage—Separate covenants for the payment of principal and interest—Distinct causes of action—Competency of mortgagee to institute separate suit for principal and interest when both have fallen due—All claims on same cause to be included.*

Held, that when under a mortgage bond both principal and interest have become due, the mortgagee must sue for both together; otherwise he will be debarred under section 43 of the Code of Civil Procedure from claiming in a subsequent suit what was not claimed in the prior suit.

The principle of section 43 is that where several breaches of covenants made under one contract have occurred the cause of action of the various breaches merges into one and renders it obligatory upon a plaintiff to include all claims to which he is entitled under his contract in one action. GANGA RAM *v.* ABDUL RAHMAN. **28 P R 1907**

76. *Son's right to claim pre-emption on death of his father on a cause of action accrued to the latter in his lifetime.*

IV.—MISCELLANEOUS—*concld.*

Held, by the Full Bench, that a right to sue for pre-emption upon a cause of action which accrued to a person in his lifetime passes at his death to his successor who inherits the property through which the right had accrued. FAKIR ALI SHAH *v.* RAM KISHEN.

133 P R 1907 F B

V.—MISJOINDER.

1. *Suit for* atrafi *dues against several defendants jointly—Material error prejudicing defendants—Misjoinder.*

In a suit to recover certain arrears of *atrafi* dues from several defendants who were alleged to be liable to pay the cess by reason of their being artizans, the Chief Court set aside the proceedings as against certain of the appealing defendants, who did not appear to be hereditary cultivators, on the ground that though the plaintiffs were entitled to unite in the same suit several causes of action against the same defendants jointly, they were not entitled to join as defendants a miscellaneous body of artizans, who were in no way jointly liable to pay the cess, and who, their defences not being identical, had been prejudiced by such misjoinder; it being left open to the plaintiff, if so advised, to bring separate actions against each of these defendants. KAHNA *v.* DYAL SINGH.

126 P R 1882

Following HIRA *v.* KHAZAN SINGH.

126 P R 1882 Note.

2. *Landlord claiming in one suit cancellation of several sales to different persons—Misjoinder.*

Where the plaintiffs, suing as proprietors, sought in one suit to set aside several sales by their occupancy tenants to different persons and effected on different dates, *held*, that it was not open to the plaintiffs to join all these independent causes of action together, as there might be wholly independent pleas in regard to each of the sales; and that the plaintiffs should be called upon to elect which of the sales they wished to proceed against in the present case, and when they had so elected the case should proceed accordingly, the purchaser being properly impleaded as a co-defendant with the vendors it being open to the plaintiffs to institute separate suits to cancel the other sales, if so advised. MUBARAZ *v.* DEHRA.

80 P R 1888

3. *Plaint, return of, for amendment—Plaintiff claiming two kinds of relief in alternative—Misjoinder—Civil Procedure Code (Act XIV of* 1882*), sections* 45, 53 *(f).*

Plaintiff claimed to be declared the proprietor of the whole village in suit, or failing that to be declared occupancy tenant. The lower Court ordered the plaint to be returned for amendment by striking out the alternative relief prayed for, on the ground that plaintiff had misjoined two claims, one of which was cognizable by the Civil Court, and the other by a Revenue Court under section 45 (*a*) of the Punjab Courts Act.

V.—MISJOINDER—*contd.*

Held, that there was no misjoinder which authorized the return of the plaint for amendment, that the first relief claimed was one which the Civil Court could grant and could therefore adjudicate upon; and the plaint should therefore have been accepted. If, after it had been received, it became necessary to consider whether the second relief could not be granted, for want of jurisdiction in the Civil Court to grant it, the proper course would be to decide to that effect and dismiss the suit. KABIR KHAN *v.* KHAWANI. **41 P R 1887**

4. *Civil Procedure Code (Act XIV of 1882), sections* 28, 45, 578—*Misjoinder—Material error—Plaintiff obtaining right of further appeal by such misjoinder—Proper order to pass on such appeal.*

In a suit brought by plaintiffs against two defendants, which united two distinct causes of action in which both the defendants were not jointly interested, and which was therefore not properly cognizable by the original Court with reference to the provisions of sections 28 and 45 of the Civil Procedure Code, it appeared that the objection of misjoinder was taken at the first hearing in the pleas of both defendants, but was not formally disposed of by the original Court, and the suit proceeded to trial on the merits, resulting in a dismissal of the plaintiff's suit, which decree was upheld by the Divisional Judge on the merits, whereupon the plaintiffs lodged a further appeal in the Chief Court. It further appeared that the plaintiffs by illegally combining the two causes of action in one suit, obtained a right of further appeal (owing to the combined claims being in excess of Rs. 500), which they would not otherwise have enjoined under the provisions of section 40 (*a*) of the Punjab Courts Act, 1884.

Held that, under the above circumstances, the provisions of section 578, Civil Procedure Code, did not cover the initial mistake of permitting such a misjoinder as is above described.

Held further, that the right order to pass on plaintiffs' appeal was, without entering into the merits of the claim, to direct the Court of first instance to require the plaintiffs to amend their plaint by striking out one of the two causes of action illegally joined together, and thereafter to dispose of the amended plaint in accordance with law. *Kahna* v. *Dyal Singh* (126 P. R. 1882) and *Mubaraz* v. *Dhera* (80 P. R. 1883), cited. SAINA MAL *v* SHAH BAG HUSAIN. **189 P R 1888**

5. *Civil Procedure Code*, 1882, *section* 45—*Misjoinder of causes of action—Creditor claiming in one suit to enforce two bonds executed separately by father and son—Undue influence—Unconscionable bargain—Dispensing power of Courts of equity—Interest—Penalty.*

The creditor of two Muhammadans, father and son, sued in one case to enforce two bonds of different dates and by different

V.—MISJOINDER—*contd.*

executants on the ground that the obligors formed a joint family and were as such liable on each bond.

Held, that the plaintiff could not join the two causes of action and must elect which of the bonds he would proceed against in the present case.

The bond on which the plaintiffs elected to proceed provided as follows: "that the " obligors owed obligee Rs. 396 cash and " 443 maunds of wheat; that the cash would " be paid on a certain date without interest; " that in default interest would be paid at " the rate of 2 annas *per cent. per* six " months; that as regards grain, $1\frac{1}{2}$ times as much grain would be delivered on a certain " other date, and in default obligors would " go on paying $1\frac{1}{2}$ times as much of the " amount due for each year, year by year." In other words, the agreement was to pay the money with simple interest at 25 *per cent. per annum* and to pay compound interest on the grain at the rate of 50 *per cent. per annum.*

It was contended for the defendant that (*i*) the interest agreed upon should be treated as a penalty, and (*ii*) the agreement should not be enforced, having been obtained by the exercise of undue influence.

Held, (*i*) that the interest agreed upon could not be looked upon as a penalty, as it was payable not on the breach of the agreement but in pursuance of the contract on the occurrence of a certain contingency; (*ii*) that the defendants had failed to prove that they reposed confidence in the plaintiff, or that the latter had any real or apparent authority over them and had obtained an undue advantage by the exercise of this confidence or authority, or that any of the circumstances existed from which undue influence as defined in section 16 of the Contract Act could be presumed. From the mere circumstance that a man has made a bad bargain, it does not follow that this was due to abuse of confidence or authority; (*iii*) that as the rule as to undue influence in contracts has been fixed by statute for this country, the statutory rule should be followed, although it is less flexible and does not permit the much wider discretion enjoyed by the Courts in England. *I. L. R. IX All.* 74 and 228, not followed.—GOKAL CHAND *v.* KHWAJA ALI SHAH. **32 P R 1890**

6. *Civil Procedure Code*, 1882, *section* 45—*Multifariousness—Misjoinder of causes of action.*

The widow and the daughter of a deceased proprietor sued his son, the legal heir of another widow, and a number of alienees who had purchased distinct and separate properties from the son, for their shares in the property of the deceased. The defendants pleaded *inter alia* that the cause of action as against each group of defendants who held separate properties was different, and consequently there was a misjoinder of causes of action.

Held, that there had been no misjoinder. Plaintiff's cause of action was the refusal by

V.—MISJOINDER—*contd.*

the sons to recognise their right to share in the family property. To enforce this, the son and his alienees were rightly sued together in order to obtain a decision on the whole dispute. CHUHAR MAL *v.* MUSSAMMAT BAKHTWADDI. **149 P R 1890**

7. *Civil Procedure Code, Chapter III.—Misjoinder—Trespass—Separate and independent acts of defendants.*

Seventeen of the village proprietors sued thirty-six person—co-sharers and non-proprietors—for a declaration that the defendants were not entitled to enclose certain lands of the village or to erect buildings thereon, and also praying for the demolition of the buildings so erected and restoration of the land to its original condition.

The building by each defendant was his separate and independent act. *Held*, on further appeal (the objection was taken in the Court of first instance), that the suit was bad for misjoinder.

[*Cf. I. L. R. XIV Calc.* 435. MANGAL *v.* GIRDHARI. **127 P R 1892**

8. *Causes of action, joinder of—Suit to cancel bonds executed in favour of separate parties in respect of the same transaction—Civil Procedure Code*, 1882, *sections* 28, 45—*Evidence Act*, 1872, *section* 92.

Plaintiffs sued upon the allegations that their father, who was insane, was entitled to a share in certain property in the possession of a third party; that they had no means whereby to institute a suit in connection with the said claim; that an agreement was entered into between plaintiffs and defendants Nos. 1 and 2, by which the latter stipulated to supply all the money needed for conducting all proceedings, civil and criminal, in connection with the case, and plaintiffs contracted in consideration thereof, to give defendants Nos. 1 and 2 a one-fourth share of whatever should be decreed, together with all expenses incurred by the defendants in the litigation; that a formal deed embodying all the terms of the said agreement was executed by plaintiffs in favour of the defendants on the 1st October 1884; that on the said day defendants Nos. 1 and 2 by way of further security, caused plaintiffs to write two bonds, one for Rs. 8,000 in favour of themselves, and another for Rs. 7,000 in favour of defendants Nos. 3 and 4; that, except as stated above, plaintiff had received no consideration for the said bonds; that a criminal complaint was filed in connection with the case by plaintiff, but had proved unsuccessful, and that defendants Nos. 1 and 2 had by formal notice, demanded payment of the first bond, plaintiffs, therefore, prayed that the two bonds might be declared void and delivered up from defendants' custody, and cancelled. Defendants pleaded (*inter alia*) that the plaint was bad for misjoinder of causes of action as well as of parties and while admitting the bonds, denied the agreement. The lower Court held that the plaint was bad for misjoinder and directed its amendment by striking out one set of defend-

ants and the prayer for relief in respect of the bond in their favour. Plaintiffs appealed to the Chief Court.

Held, that the order of the lower Court must be set aside. As plaintiffs put their claim their cause of action was a single one, and they were bound to sue for the whole relief arising in respect of it, and as there was no question of joinder of causes of action, section 45 of the Civil Procedure Code had no application. And as the cause of action to claim the relief sought in respect of the two bonds was a single one, plaintiffs were not precluded from bringing a single suit merely because some of the defendants were not interested in the entire subject-matter of the suit.

As regards the contention on behalf of defendants that section 92 of the Evidence Act precluded plaintiffs from asserting that any of the defendants other than those whose names appeared thereon, were interested in either of the bonds, *held*, that the said section only prevents a variance orcontradiction of the *terms* of a contract by oral evidence and did not preclude plaintiffs from giving evidence to prove that defendants Nos. 1 and 2 caused the second bond to be drawn up in favour of defendants Nos. 3 and 4 as part of the security to be given by plaintiffs to themselves. SHEIKH MUHAMMAD BAKHSH *v.* RAM DATT. **5 P R 1896**

9. *Misjoinder of parties and causes of action—" Cause of action "—Civil Procedure Code*, 1882, *sections* 45, 283, 295.

Plaintiffs sued on the allegations that one H. K., Mess Khansama of a certain regiment in 1891-92, had dealings with them, and used to take loans from them on the distinct understanding that plaintiffs would have the first charge for their advances on all monies due to him from the Mess, and be entitled to recover the latter direct from the Mess President every month and repay themselves; that this agreement, which was at first oral and was acted on from September to December 1891, was reduced into writing on 7th January 1892; that for January 1892 Rs. 665 were due by the Mess to H. K.; that defendants Nos. 1—8 got the said sum attached by the Cantonment Small Cause Court in execution of their decrees against H. K. on various dates; that plaintiffs filed objections to the attachments on the ground of their prior right to the money; that the said objections were all rejected, and that the Court had ordered the money to be rateably distributed among defendants Nos. 1—8. Plaintiffs therefore prayed for a decree for Rs. 665 against all the defendants. The defendants pleaded, *inter alia*, (*i*) that the suit was bad for misjoinder of causes of action and parties; (*ii*) that there was no cause of action as plaintiffs were no parties to the order under section 295, Civil Procedure Code, and as the money had not yet been paid to defendants; (*iii*) that the alleged agreement between H. K. and plaintiffs was fictitious and without consideration, and in any event, did not create any lien;

and (*iv*) that nothing was due to plaintiffs from H. K. The first Court gave plaintiffs a decree for the full amount claimed against all the defendants, whereupon defendants, Nos. 6 and 7 appealed to the Divisional Judge, who held that the agreement was void for want of consideration: that the suit was bad for misjoinder of defendants and causes of action; that in any event, plaintiffs could only be entitled to a declaration of their right to the money belonging to H. K., and not to a money decree against the other defendants who had not yet received anything under the order of distribution; and, lastly, that the decree could not be a joint one against all the defendants for the whole sum, but, if at all, severally against each defendant to the extent of his share. He, therefore, accepted the appeal and dismissed the whole claim. From this decree plaintiffs appealed to the Chief Court in respect of the whole sum of Rs. 665, but impleaded as respondents only the successful defendants in the lower Appellate Court.

Held, that the suit, if regarded as one under the penultimate clause of section 295, Civil Procedure Code, was bad on the ground that it was instituted before the defendants had realized the money which was the subject of contention, the order for distribution being a mere proceeding in Court to which the plaintiffs were no parties, and which could not affect them unless and until the defendants had realized their shares in pursuance of it and thereby took possession of money to which plaintiffs were properly entitled.

Held further, that the suit, if regarded as one under section 283, Civil Procedure Code, to set aside the attachments ordered by the Small Cause Court at the instance of the defendants and to declare the plaintiffs' right to the money in dispute, was bad for misjoinder, the various attachments having been made by different defendants on different dates for different sums out of Rs. 665, and plaintiffs' objections thereto having been disposed of by separate orders on different dates.

But, *held*, that the agreement between plaintiffs and H. K. was for good consideration and gave the former a prior right to realize the debt due them out of the money due from the Mess to H. K.

The Court, to avoid further litigation, allowed plaintiffs to amend their plaint by adding a clause setting out the (admitted) realization of their proportionate share by the present respondents and claiming its refund. JHAMAN LAL *v.* SANT LAL. **43 P R 1897**

10. *Dissolution of partnership—Jurisdiction of Court—Civil Procedure Code*, 1882, *section* 17 (3) (*ii*)—*Misjoinder of causes of action—No appeal from preliminary decree within fixed period, effect of as regards appeal from final decree—Representative of deceased partner, liability of—Presumption against wrong-doer—Comparison of handwriting by experts.*

Plaintiffs instituted a suit in the District Court of Ludhiana for dissolution of partnership, a settlement of accounts and a decree for whatever might be found due to them from defendants, which they stated to be in all probability a sum of Rs. 11,500. They joined as defendants both the remaining partners, and also the representatives of a deceased partner. Defendants pleaded, *inter alia*, that as the parties were all residents of Jullundur District, the Court had no jurisdiction to entertain the suit, and that there was a misjoinder of causes of action. The suit having been decreed by the District Court, defendants appealed to the Chief Court.

A preliminary objection by plaintiffs to the effect that inasmuch as defendants had not appealed from the preliminary decree of the lower Court within the prescribed period, the appeal from the final decree was barred, having been overruled:

Held, that as the contract of partnership was entered into by the parties at Ludhiana, where balance sheets of accounts were prepared between the parties, and plaintiffs had a share in a shop there which carried on the same business as the firm of the parties, the District Court of Ludhiana had jurisdiction in the suit under section 17 (3) (*ii*) of the Civil Procedure Code.

Held further, that the defendants, whether they were partners or representatives of partners, were necessary parties to the suit as framed, and that, therefore, there was no misjoinder of causes of action.

A representative of a deceased partner is liable to the extent of the deceased's assets in his hands, and this is ordinarily a matter for inquiry in execution of decree, but there is no absolute impropriety in its being decided prior to decree.

The Chief Court, finding that the deceased partner had previously to his death removed an unknown quantity of partnership property from the shop at Ludhiana, and that he had died a few days thereafter, concluded that his representatives had come into possession of the whole of the property so removed, and further finding that the shop books had come into the hands of the said representatives and were being wilfully withheld by them, held that, in the absence of trustworthy evidence as to the amount of assets in their hands, the defendants were liable to the full extent of the plaintiffs' claim.

A comparison of handwriting by experts is generally an unsafe test if it has to stand by itself. JAGNA *v.* GAINDA. **62 P R 1897**

11. *Civil Procedure Code*, 1882, *sections* 19, 43, 45—*Suit for possession of immovable property situate in different districts—Joint suit by reversioners against person in wrongful possession—Misjoinder of causes of action—"Cause of action," meaning of.*

Held, that under section 19 of the Civil Procedure Code, when immovable properties are situate in several districts, a suit in respect of the whole of the properties can be brought in any one of these districts, *I. L. R. XIV Calc.* 661, followed

MISJOINDER—*contd.*

Where on the death of the survivor of two widows, all the reversioners fourteen in number, brought a joint suit for possession of property which was alleged to be wrongfully withheld from them by the defendant, and which was admittedly undivided.

Held, that though the rights of the plaintiffs might be divisible and have accrued to them undivided on the death of the said widow, the substance to which those rights attached being undivided, plaintiffs' title and property was still joint, and that they were therefore entitled to jointly sue defendant, whose wrongful holding of possession of the property was the single act which infringed those rights.

Held further, that even if the words "cause of action" were construed in the limited sense of including merely the facts constituting the infringement of the right, but not those constituting the right itself, the plaintiffs were nevertheless entitled to sue jointly, as it was the same wrongful act of the defendant which infringed these rights, whether joint or distinct, in the property in dispute.

It appeared that during the lifetime of the widows the reversioners had brought several suits for declaratory decrees in respect of various alienations effected by the said widows in favour of the present defendant from time to time, but that they had not sued for certain houses which were now included in their claim.

Held, that inasmuch as the reversioners' right to possession of the houses could not accrue during the lifetime of the widows, their suit for possession thereof, on the death of the survivor of the widows, was not barred under section 43 of the Civil Procedure Code. ASA SINGH *v.* INDAR SINGH **91 P R 1898**

12. *Suit by reversioner on death of widow —Joint suit against various defendants who raised different defences—Suit based on allegation that on the death of the widow the right to possession vested in plaintiff, who was entitled to eject all defendants as trespassers—Misjoinder of causes of action—Civil Procedure Code*, 1882, *sections* 31, 578.

Plaintiff sued on the allegations that the property in suit belonged to one H. S., who died without male issue, plaintiff being his reversionary heir; that on the death of H. S., his widow took possession of the property as a life tenant, and that on the death of H. S.'s widow, on the 20th July 1897, the defendants took possession of the property unlawfully, and though repeatedly asked to give up the property, definitely refused to do so one month before suit. Plaintiff further alleged that if defendants claimed to being in possession in virtue of any deed, such deed was inoperative as against him. The defendants advanced various claims to the property, and two of them raised a plea of misjoinder, which was put in issue and decided against them in the first Court. On the merits the first Court found that plaintiff was entitled to get possession of the land and house, provided that he paid off three mortgages which

MISJOINDER—*contd.*

affected a portion of the land and the thouse, *viz.*, a mortagage of Rs. 300 in favour of one defendant, another of Rs. 99 in favour of a second defendant, and another of Rs. 99 in favour of a third defendant as regards the house. Plaintiff appealed to the Divisional Judge, who held that he was entitled to get the whole of the property without any payment, the mortgages being held to be either fictitious or notfor necessity. Defendants in that appeal took no cross-objections on the point of misjoinder, nor did they appeal against the first Court's finding thereon. On appeal to the Chief Court, one defendant raised the question of misjoinder in the written grounds of appeal, while the other defendants in their appeals did not raise the question in their written grounds.

Held, that there had been no misjoinder of causes of action. Only one cause of action was disclosed in the plaint, the meaning of which was clearly that on the demise of the widow the right to possession of the property vested in the plaintiff, who was entitled to eject certain trespassers, and the fact that the various defendants raised different defences to the plaintiff's allegation, was immaterial.

Held further, that even if there were a misjonder of parties, the defect would be covered by section 31 of the Civil Procedure Code, while section 578 of the Code would preclude the Chief Court from interfering as the merits of the case had not been affected and the objection as to misjoinder had not been taken in the lower Appellate Court. MUSSAMMAT RATTAN KAUR *v.* BADNA.

24 P R 1899

13. *Civil Prcoedure Code*, 1882, *sections* 28, 44, 53, 588 (16)—*Misjoinder of causes of action—Plaint returned for amendment —Appeal—Date of cause of action in suit for partition—Suit against several persons each interested in part of the property.*

Held, that an order returning a plaint for amendment on the ground that it violated the rules contained in section 44 of the Civil Procedure Code, 1882, is appealable, under section 588 (6).

Plaintiff instituted a suit against one S. M., the husband of defendant No. 1, defendants Nos. 2—5 and the father of defendants Nos. 6 and 7 for partition of a house alleged to be the joint property of all, but on the objection of certain of the defendants his plaint was returned for amendment by including the whole joint property. Subsequently S. M. died, and thereafter plaintiff came into Court alleging that defendant No. 1, S. M.'s widow, had taken possession of her husband's estate, to one-third of which he was entitled as heir, defendants Nos. 2 and 3 being entitled to the remaining two-thirds. He therefore prayed for possession by partition of the share to which he was entitled in the whole estate, including that which had descended to him from S. M.

The lower Court returned the plaint for amendment, on the ground that there was a misjoinder of causes of action, the rule

MISJOINDER—*contd.*

contained in section 44 (*b*) of the Code having been violated, and the causes of action for the share of S. M.'s property and partition of the original share of the appellant having accrued on different dates.

Held, (*i*) that appellant was barred neither by rule (*b*) of section 44 nor by any other rule of law from seeking an adjudication in the suit for partition of his right to a share of the share to which S. M. would have been entitled on partition had he been alive, and (*ii*) that the date of the cause of action in a suit for partition is, as a rule, fixed arbitrarily, partition being a continuing right which can ordinarily be enforced whenever a co-sharer finds the joint enjoyment irksome, there being no distinction in a suit for partition between claims for a share to which the plaintiff has been entitled for a long time and for a share to which he has only recently become entitled. R. B. SODHI HUKAM SINGH *v.* BIBI BHAGWAN DEVI. **79 P R 1899**

14. *Civil Procedure Code*, 1882, *section* 43—*Suit to include whole claim—Discretion of plaintiff having several causes of action to sue in respect of one only—Subsequent suit in respect of another cause of action not barred.*

The defendants had a sister F, on whose marriage they took possession of her share in the property, and mortgaged the whole, including their own joint property to one S. Thereupon the plaintiff No. 1 and the father of plaintiff No. 2 instituted a suit against the present defendants and S, claiming possession of one-third of the property mortgaged on the allegation that they were F.'s reversioners, and in respect of the remaining two-thirds a declaration that the alienation would not affect their reversionary rights, and obtained a decree for the relief sought. Subsequently they instituted the present suit against the two sisters alone for possession of the residue of F.'s land. It was pleaded that the present suit was barred by section 43, Civil Procedure Code, by reason of the previous suit.

Held, that section 43 was not applicable and did not bar the present suit. The fact that a suit embracing the relief sought in the present suit and in the former suit might not have been bad for misjoinder did not necessarily entail that the present suit was barred by reason of the relief claimed not having been included in the former suit, and that although the respondent's right to possession of the shares of F. had accrued when the previous suit was instituted, the immediate cause of action was the execution of the mortgage, and the plaintiffs were entitled to sue separately for relief claimed, which had no connection with the mortgage.

Rao Kurun Singh v. *Nawab Muhammad Fyz Ali Khan* (14 *M. I. A.* 187), *Kristodass Kundoo* v. *Ramkant Roy, Chawdhry* (*I. L. R. VI Calc.* 142), *Ittappan* v. *Manavikrama* (*I. L. R. XXI Mad.* 153), *Chuhar Mal* v. *Mussammat Bakht-waddi* (149 *P. R.* 1890), *Mussammat Rattan Kour* v. *Badna* (24 *P. R.* 1899), & *Ishan Chunder Hazra* v. *Rameshawar*

V.—MISJOINDER—*concld.*

Mondol (I. L. R. XXIV Calc. 831), referred to. MUSSAMMAT BADSHAH *v.* SAHIB.

87 P R 1903

15. *Suit by* mahant *of a religious institution to set aside various mortgages made by his predecessors in office to several persons—Misjoinder of causes of action and parties—Civil Procedure Code,* 1882, *sections* 28, 45.

Held, by the Full Bench, that a suit by the *mahant* of a religious institution for possession of *waqf* property alienated by his predecessor in office, and also for a sum of money realized by the alienees as rent from persons to whom the said property had been leased, is not bad for misjoinder of causes of action. BASHESHAR LAL *v.* NATHA SINGH.

30 P R 1908 F. B

VI.—SPLITTING CAUSE OF ACTION.

1. *Civil Procedure Code (Act X of* 1877), *section* 43.

Where plaintiffs who had been dispossessed of the rights held by their father in three villages brought a suit to recover their property in one of the villages alone, *held*, that suits brought subsequently to recover possession in the two other villages were barred under section 43, Act X of 1877. MADDA SINGH *v.* BUKAN SINGH.

9 P R 1881

2. *Civil Procedure Code (Act X of* 1877), *section* 43—Lekha mukhi *mortgage—Suit for possession under terms of mortgage-deed—Subseqeunt suit to recover mortgage debt.*

The plaintiff brought the present suit to recover the sum allged to be due under a mortgage of certain land, the plaint also containing a prayer that the amount found to be due should be decreed against the mortgaged property. The mortgage was a usufructuary one of the kind known as *lekha mukhi*, and the deed was executed on the 28th May 1861, and was duly registered. It appeared that previous to this suit, the mortgagee brought a suit against the representatives of the original mortgagors (the latter being dead) to obtain possession of the mortgaged land, of which he alleged he had had possession till within two years of the suit. The first Court having examined the accounts, and finding that a balance was still due to the mortgagee, considered him clearly entitled to a decree for possession, holding further that it was unnecessary to come to a finding as to the exact amount really due. This decree was reversed in appeal by the Commissioner, who held that plaintiff could not claim possession of the land, but should establish his debt and proceed against the land. From this order the plaintiff made no appeal, but forthwith lodged the present suit to recover Rs. 4,200 alleged to be due under the mortgage contract, and asked that the amount should be decreed against the land.

Held, that the suit was not maintainable, because, assuming that the plaintiff could as an alternative remedy sue for the balance due

VI.—SPLITTING CAUSE OF ACTION—*contd.*

under the mortgage, he was debarred from doing so in the present suit by reason of section 43 of the Civil Procedure Code, as he omitted without the leave of the Court to sue for this remedy in the first suit. GAHI MAL *v.* SHERA.

90 P R 1881

3. *Civil Procedure Code (Act X of* 1877), *section* 43—*Identity of causes of action in the two suits—Object of suits.*

The widow of one A. Y. having succeeded to a 5-*biswas* share in the village, mortgaged this share by way of conditional sale to one S. R., now represented by the defendant. The mortgagee having foreclosed was put into possession of the land under a decree for possession. After the death of the widow, one of the present plaintiffs, brother of A. Y., sued to recover from the mortgagee certain resumed revenue-free grants in the village, which had been settled with the widow, on the ground that this land was not included in the mortgage or in the decree for possession, saying that he would sue separately for the mortgaged land as heir of A. Y. The only issue in this case was whether the land claimed was included in the mortgage and subsequent decree. This issue was decided by the first Court in plaintiff's favour, but the appellate Court (after impleading the plaintiff's nephew the second plaintiff in the present suit, accepted the appeal and dismissed the plaintiff's suit. Meanwhile, and while the above appeal was pending, the two plaintiffs brought the present suit to recover the 5-*biswas* share from the defendant on the ground that the widow's alienation was only valid for her life and did not bind them as heirs of A. Y.

Held, that the present suit was not barred by section 43 of the Civil Procedure Code, as there had been no splitting of the claim which plaintiff was entitled to make in respect of his cause of action, nor did he in the former suit omit to sue in respect of any portion of his claim.

In considering whether there has been any splitting of the cause of action, it is necessary to look at the object with which the suits were brought, and the issues arising in them. In the present case, though both suits were brought to recover property which the defendant claimed to hold under the widow's conditional sale, the object of the first suit was only to show that the property to which it related was not included in the sale, and no issue as to the validity of the sale was raised by the pleadings. The object of the present suit was to raise the question of the validity of the sale itself, and it must be taken to relate to property distinct from that previously sued for, as, when the suit was brought, the first plaintiff had got a decree in the previous suit that the land then claimed was not included in the conveyance.

Held also, that even if the first plaintiff's claim were barred by section 43, it would be impossible to hold that this bar would affect the second plaintiff, as he was not made a party to the former suit in the Court of first

VI.—SPLITTING CAUSE OF ACTION—*contd.*

instance, and the present suit had been instituted long before the order of the appellate Court in that case, directing him to be joined as plaintiff. SYAD YAR KHAN *v.* RAM CHAND.

24 P R 1882

4. *Civil Procedure Code (Act X of* 1877), *section* 43—*Suit for possession of land—Previous suit for mesne profits of same land.*

In a suit for possession of certain land, it appeared that in a former suit plaintiffs had claimed a share of the produce of the same land, though they had at that time a cause of action which entitled them to sue for possession as well as for mesne profits. In that case the defendants challenged the plaintiffs to sue for all their remedies at once, but the latter declined to sue for possession at that time, nor did they obtain permission from the Court to bring a subsequent suit for possession.

Held, that with reference to para. 3, section 43 of the Civil Procedure Code, it was not open to the plaintiffs to bring the present suit for the possession of the land. PHALLA *v.* KESAR SINGH.

138 P R 1882

5. *Civil Procedure Code (Act X of* 1877), *section* 43—*First suit for profits of certain land alleged to be due from defendant as agent—Subsequent suit for possession of the same land.*

Plaintiff sued for an account of the profits of certain lands, and for the amount due after taking an account, alleging that defendant had been acting as his agent, and had misappropriated the profits. Defendant set up a title to the land as owner, but this plea was overruled, and a decree passed for the amount of profits found to have been taken by the defendant for the three years previous to suit. Subsequently, plaintiff sued the same defendant for possession of the lands which had been the subject of the former suit, and also for mesne profits for three years intervening between the two suits.

Held, that the second suit was not barred by section 43 of the Code of Civil Procedure. *Syad Yar Khan* v. *Ram Chand* (24 of 1882 Civil), referred, to. MALIK FATTEH MUHAMMAD *v.* ADMINISTRATOR-GENERAL OF BENGAL.

59 P R 1883

6. *Civil Procedure Code (Act X of* 1877), *section* 43—*Sale by defendant to plaintiff of two different properties by different deeds—Right to sue separately for possession under each deed—Distinct causes of action.*

On an account being taken of the amount due to plaintiff under two previous mortgages from the defendants, and Rs. 948-7-0 being found due, the defendant conveyed to plaintiff by registered deed of sale, a certain share of the village of K. for Rs. 500, and for the remaining Rs. 448-7-0 conveyed on the same day by another registered deed a certain share in the village of B. The defendants did not deliver possession of the share in

VI.—SPLITTING CAUSE OF ACTION—*contd.*

these two villages to the vendee, and accordingly he sued the defendants to obtain possession of the share sold in B., and obtained a decree. Subsequently the same plaintiff brought the present suit to recover possession of the share in K. sold to him by the defendants for Rs. 500.

Held, that the latter suit was not barred by section 43 of the Civil Procedure Code, as the transactions which took place between the parties could not be said really to form only one transaction, but resulted in two separate sales of distinct properties, and therefore the present suit was founded on a cause of action distinct from that on which the former suit was based. *Madda Singh* v. *Bukan Singh* (9 of 1881 Civil), distinguished. MASSA SINGH *v.* KAHN SINGH.

1 . 0 P R 1883

7. *Civil Procedure Code (Act VIII of 1859), sections 7, 12—Act XIV of 1882, section 43—Suit by joint owner for partition of immovable property in one district—Subsequent suit for partition of property in second district—Continuance of joint possession in second district.*

Where A. and B. are joint owners in joint possession of immovable property (*viz.*, houses) in districts X. and Y., and B. excludes A. from enjoyment of one only of the houses in district X., whereupon A. sues in district X. for partition of all the houses in district X. and gets a decree for one-half, and A. continuing in joint possession with B. of the property in district Y. afterwards demands from B. partition of the property in district Y., and on B.'s refusal sues for it in district Y., *held*, that there has been no such splitting of claim by A. in the first suit that he cannot maintain the second. *Madda Singh* v. *Bukan Singh* (9 of 1881 Civil), distinguished. BHAI NIHAL SINGH *v.* SOWAYA SINGH.

62 P R 1884

8. *Civil Procedure Code (Act XIV of 1882), section 43—Notice of ejectment—Suit for proprietary right—Subsequent suit for right of occupancy.*

Plaintiff, against whom a notice of ejectment had been issued by defendant, the recorded proprietor of the land in question, sued for proprietary rights in the said land, and his claim was rejected. Subsequently he brought the present suit to establish his right of occupancy in the same land.

Held, by the Financial Commissioner, that the second suit was barred by the provisions of section 43 of the Civil Procedure Code. JIWAN *v.* PIR BAKHSH.

5 P R 1884 Rev

9. *Civil Procedure Code (Act XIV of 1882), section 43—Distinct causes of action.*

L., H. and S. were three brothers. Plaintiffs, who represented L, were absentees, and in 1882 sued H.'s son, the present defendant, for their one-third share of the estate and got a decree. When that suit was instituted, S. was dead, and the defendant in possession of the whole estate.

VI.—SPLITTING CAUSE OF ACTION—*contd.*

Held, that a subsequent suit by the plaintiffs to recover one-half of S.'s one-third share of the estate, was barred by the provisions of section 43 of the Code of Civil Procedure, the cause of action in the two suits being identical, *viz.* the defendant's refusal to acknowledge the plaintiffs' right to enter in 1882, not on a third, but on a half of the estate. MAHI *v.* USMAN

15 P R 1885

10. *Civil Procedure Code (Act XIV of 1882), section 43—Splitting claims—Plaintiff suing for wrong remedy—Subsequent suit for proper remedy.*

Where plaintiff first sued to have it declared that he was the adopted son of one B., and as such entitled to the property belonging to him, which suit was dismissed on the ground that the plaintiff was entitled to further relief, *held*, that a subsequent suit by the same plaintiff to have his adoption declared, and to have the property which was still joint partitioned, was not barred by reason of section 43 of the Civil Procedure Code, as that section cannot properly be construed to mean that a plaintiff entitled to only one remedy on his cause of action, who by mistake sues for what the Court considers is not the remedy to which he is entitled, will be precluded from subsequently suing for the proper remedy. *Mussammat Prab Devi* v. *Harkishn Das* (47 of 1884 Civil), followed. MUSSAMMAT PARMESHARI *v.* VASDEO.

35 P R 1885

11. *Civil Procedure Code (Act XIV of 1882), section 43—Suit for cancellation of mortgage—Subsequent suit for possession of mortgaged property.*

One B, an occupancy tenant, having mortgaged her holding with possession, and the mortgagee having taken possession and held the same without interruption, the proprietors brought a suit against B and the mortgagee, for cancellation of the mortgage and obtained a decree. Subsequently the same plaintiffs sued the same defendants to recover possession of the holding.

Held, that the second suit was barred by section 43, clause 3 of the Civil Procedure Code, the causes of action in the two suits being one and the same. *Syad Yar Khan* v. *Ram Chand* (24 of 1882 Civil), *Phalla* v. *Kesar Singh* (138 of 1882 Civil), and *Malik Fatteh Muhammad* v. *Administrator-General of Bengal* (59 of 1883 Civil), cited. BAWA SANT RAM *v.* CHANDA SINGH.

47 P R 1886

12. *Splitting cause of action—Suit on bond—Suit for interest only—Subsequent suit for principal and interest.*

The question for decision was whether a suit on a bond, dated 1883, for principal and interest was maintainable in face of the fact that the plaintiff had brought a previous suit in 1885, in which he sued for interest only. The true construction of the bond was held to be that it created only one obligation,

VI.—SPLITTING CAUSE OF ACTION—*contd.*

viz., to pay the principal sum with interest at Rs. 25 per cent. payable yearly, and in default of yearly payment, with further interest at the same rate on the yearly interest.

Held that, when the plaintiff brought the former suit, the only cause of action he had was the defendant's breach of his obligation to pay the principal with interest for two years, while the plaintiff only claimed the interest and not the principal, and he could not, therefore, now claim the principal with subsequent interest, the suit being barred by section 43, Civil Procedure Code. MIAN SINGH *v.* SHAM DAS.

70 P R 1889

13. *Civil Procedure Code, 1882, section 43—Splitting cause of action—Civil Procedure Code, 1882, sections 250, 251, 274, 287, 290, 311, 312—Material irregularities in publishing or conducting the sale—Fatal defects—Non-compliance with the provisions of the Code as regards attachment—Limitation Act, 1877, 2nd Schedule, article 12—Suit to set aside a sale—Sale null and void.*

H. and D. obtained an *ex-parte* decree against K. in the Court at Peshawar on the 17th December 1883. In May 1884, application was made and granted for transfer of this decree for execution to the Court at Rawalpindi. The latter Court fixed the 6th of October 1884 for sale of certain property (a house situate on revenue-paying land and the land attached thereto) belonging to the judgment-debtor. On the same date, however, the Court passed an order for stay of execution on an application made by K.'s mother as his guardian, to the effect that K. was a minor, and the decree void in consequence. This order did not reach the sheriff in time, and the sale took place as advertised on the date fixed. On the 22nd December 1884, the sale was confirmed. On the 4th July 1885 the *ex-parte* decree was set aside on appeal, but the auction-purchaser was no party to this proceeding. On the 7th April 1887, K. instituted two suits simultaneously, the first for a declaration that the sale of the house was void and for possession thereof, and the second, for recovery of certain revenue-paying lands of which, it was alleged, the defendants had taken forcible possession.

The contentions raised on behalf of plaintiff were—

(*i*) that the decree was void, having been passed against a minor without appointment of a guardian *ad litem*;

(*ii*) that there was no lawful attachment; that no notices and warrants had been issued under sections 250, 251, Civil Procedure Code; that no attachment was made on the spot by proclamation, nor had any publication been made at the Court-house or the Collector's Office; that no boundaries had been specified; that no procla-

VI.—SPLITTING CAUSE OF ACTION—*contd.*

mation was issued under section 287, and that no time for sale was notified as provided in section 290 of the Civil Procedure Code; and

(iii) that the sale was illegal, having taken place after the order to sell had been withdrawn.

The auction-purchaser contended, on the other hand, that (i) section 43, Civil Procedure Code, barred the one or the other of the two suits; (ii) both suits were barred by article 12 of the Limitation Act; (iii) the auction-purchaser was under no obligation to go behind the decree and to inquire how it had been obtained or whether the sale had been rightly ordered, and (iv) the suits were not maintainable, *vide* section 312, Civil Procedure Code.

Held, (i) that section 43 did not apply; that even if there were no necessity or justification for bringing two suits, yet as both had been instituted simultaneously, one suit could not be said to have priority over the other in point of time; that there was no relinquishment and no question of a subsequent suit in respect of the portion relinquished.

I. L. R. I All. 650, *and W. N.* 1888 *p.* 147, followed in preference to *I. L. R. IX Mad.* 279.

(ii) that the *onus* of proving that plaintiff was a minor at the date of the *ex-parte* decree was on plaintiff, that he had failed to discharge it, and that consequently the decree must be held to be valid and binding;

(iii) that the suits were maintainable; their object was not to attack the sale on account of irregularities in publishing or conducting it, but for defects of such a nature as made the sale void, *ab initio*, having been made without jurisdiction, and therefore a nullity;

(iv) that the formalities laid down in the Court as preliminary to a valid sale had not been complied with, and that the sale was therefore *de facto* void; and

(v) that article 12 of the Limitation Act did not apply as the suit was based on the allegation that the so-called sale was no sale at all.

I. L. R. XI Bom. 119, 130, *and I. L. R. XII Bom.*, 18, followed. The observations in *I. L. R. XIV Calc.* 18, explained. LALA SEVA RAM *v.* KASHI RAM. **76 P R 1890**

14. *Splitting cause of action—Civil Procedure Code,* 1882, *section* 43.

In 1874 plaintiffs, representatives of one out of four branches of a joint family, sued defendants, representatives of two other branches, for partition of joint property and obtained a decree for one-fourth share. K., the representative of the remaining branch, was not made a party to the suit, as his whereabouts were not known; but at partition, which followed in execution of decree, his one-fourth share was reserved in the joint possession of the parties. In 1887 plaintiffs

VI.—SPLITTING CAUSE OF ACTION—*concld.*

claimed one-third in K.'s one-fourth share. Defendants pleaded that the suit was barred by section 43 of the Civil Procedure Code, inasmuch as K's existence was as problematical in 1874 as in 1887, and the plaintiffs had as good a right to claim partition of his share then as at the date of the later suit. Both the lower Courts concurred in this contention and dismissed the claim. On appeal to the Chief Court, *held*, that the suit was not barred by section 43 of the Code. The facts entitling plaintiffs to claim a share in K's estate were not known in 1874, and probably did not exist, or if they did exist, could not be advanced with the same certainty as in 1887, and consequently this was not a claim which the plaintiffs were entitled to make in respect of their cause of action in 1874. The proceedings of 1874 contemplated that K. would return and claim his share. SHADI *v.* GAINDA. **127 P R 1890**

15. *Execution of decree—Attachment of mortgaged property—Suit by mortgagee under section* 283, *Civil Procedure Code—Subsequent suit for possession—Splitting cause of action—Civil Procedure Code,* 1882, *section* 43.

Certain mortgaged property was attached in execution of a decree against the mortgagor, he being at the time in possession. The mortgagee intervened unsuccessfully, and then instituted a suit under section 283, Civil Procedure Code.

Held, that he was not bound in that suit to ask for possession, and that a subsequent suit for possession was not barred under section 43 of the Code. GANPAT RAI *v.* HIRA SINGH. **29 P R 1891**

16. *Section* 43, *Civil Procedure Code,* 1882—*Splitting cause of action.*

In 1888 the plaintiff, then a minor, sued the defendant, through M. K., a next friend, for his share of the land left by his grandfather in *mauza* B. He omitted to sue for other land to which he was equally entitled in *mauza* K. H., and which also has been taken possession of by the defendant and was still held by him.

Held, that the second suit for the recovery of land in *mauza* K. H. was barred by section 43 of the Civil Procedure Code, the cause of action in both suits being one and the same, and the Code of Civil Procedure containing no exception in favour of a minor plaintiff suing by his next friend. BUTA *v.* FAIZ BAKHSH **76 P R 1893**

"CAUSE," REASONABLE AND PROBABLE.

See MALICIOUS PROSECUION.

CAUSE, SUFFICIENT.

See CIVIL PROCEDURE CODE, 1908, SECTIONS 104 AND 043, RULE 1.

See LIMITATION ACT, 1877, SECTION 5, SUFFICIENT CAUSE.

CAVEAT EMPTOR.

1. *Act X of* 1877, *section* 315—*Execution sale—Error in extent of saleable interest of judgment-debtor—Suit against decree-holder for purchase-money*—Caveat emptor.

See EXECUTION OF DECREE.

131 P R 1879

2. *Immovable property—Covenant for title*—Caveat emptor.

See VENDOR AND PURCHASER.

90 P R 1876

3. *Immovable property—Covenant for title*—Caveat emptor.

Where the purchaser of immovable property knows at the time of purchase that a third party professes to have the proprietary right, he buys the disputed title at his own risk, unless the vendor covenants to the contrary; and if the third party makes good his title and ousts the purchaser or deprives him of the benefit of his bargain, the latter cannot recover the money paid or claim relief from his vendor. The rule of *caveat emptor* applies to the purchaser of immovable property; and after the transaction is completed the purchaser has no redress for defect of title unless the vendor has covenanted for title. HIRA NAND *v.* MAHIA.

90 P R 1876

4. *Act X of* 1877, *section* 315—*Execution sale—Error in extent of saleable interest of judgment-debtor—Suit against decree-holder for purchase-money*—Caveat emptor.

Held, that neither section 315 of Act X of 1877, nor the principle of that section, applies to a purchase in execution of decree where the judgment-debtor has a saleable interest in the property sold, and the only error is as to the extent of such interest.

The maxim of *caveat emptor* applied as between the auction-purchaser and decree-holder in suit by former against latter for compensation in respect of loss consequent upon such error. BUTA SINGH *v.* CHATTAR SINGH. **131 P R 1879**

5. *Sale to plaintiff without notice of former sale—Refund of purchase-money*—Caveat emptor—*Fraud.*

Plaintiff, having been deprived of some land purchased by him, at the suit of one M. who had purchased the same land more than two years before him, sued his vendors to recover the price paid.

Held, that if the vendors sold to the plaintiff, keeping back from him the fact of a former sale, in which one of them took part, this would be a fraud upon the plaintiff which would render the doctrine of *caveat emptor* inapplicable, and would give the plaintiff an equitable right to recover the money obtained from him by fraud. *Hira Nand* v. *Mahia* (90 of 1876 Civil), distinguished. ALA BAKHSH *v.* NABI BAKHSH.

26 P R 1884

6. *Lease of Government village on condition that if certain stipulations entered into by*

CAVEAT EMPTOR—*contd.*

the lessee were fulfilled, proprietary rights in the village would be conferred on him—Power of such lessee to alienate his rights without sanction of Government—sections 20 *and* 65, *Contract Act*, 1872.—Caveat emptor.

The village of Rupnagar in the Ferozepur district, the property of Government, was leased on certain conditions to four persons of whom, owing to death and desertion, Hanwanta, son of Peman, alone after a while represented the original lessees. In 1882 the terms of the lease not having been fulfilled, one M. was put in possession as farmer of half the village, the other half, or ten *biswas*, remaining with H. for a further term of five years conditional upon the unfulfilled terms of the original grant being carried out within that period. In June 1886, H sold to one K. S. for Rs. 8,000 all his rights in a 5-*biswas* share of the village, and the purchaser was put in possession of the land and began to cultivate it. In November 1886 the Deputy Commissioner passed an order disallowing the above alienation as having been made in contravention of the terms of H.'s lease, and finally, on 29th April 1887, it was resolved that a 10-*biswas* share of the village should be granted in proprietary right to M., a 5-*biswas* share to H., and that the remaining 5-*biswas* share which represented the share alienated to K. S. should be resumed by Government. Early in 1890, at which time K. S. was dispossessed of his rights, lease of the 5-*biswas* share resumed by Government was granted to one R. R., and in 1891 the present plaintiff, son of K S. (deceased), filed a suit against H. demanding either possession of a 5-*biswas* share of the village under the terms of the deed of sale, or a refund of the purchase-money, Rs. 8,000. The deed of sale contained no covenant for title by the vendor, and the plaintiff failed to establish his allegation of fraud and misrepresentation against the vendor. The plaintiff, however, contended that there had been a material mistake as to a matter of fact between the parties, and that either the contract was void under section 20 of the Contract Act, 1872, or that there had been a breach thereof for which compensation was due under section 65 of that Act;

Held, (1) that the plaintiff's suit for possession of the 5-*biswas* share sold to K. S. must fail, because the share in question had been resumed by Government and assigned to a third person who was in possession thereof;

(2) that no material mistake of fact had been proved which would under section 20 of the Contract Act be applicable nor any breach of a contract, nor had a contract become void within the meaning of section 65 of the Act, and that the doctrine of *caveat emptor* was applicable to the case. KASHMIRA SINGH *v.* HANWANTA.

62 P R 1893

7. *Sale to plaintiff without notice of former sale—Refund of purchase-money—*Caveat emptor—*Fraud.*

See VENDOR AND PURCHASER.

26 P R 1884

CAVEAT EMPTOR—*concld.*

CERTIFICATE—Appeal.

See APPEAL. **79 P R 1890**
47 P R 1894

See PUNJAB COURTS ACT, 1884, SECTION 40. **24 P R 1886**
93 P R 1886
119 P R 1888
151 P R 1888
169 P R 1888
135 P R 1890
27 P R 1895
61 P R 1899
42 P R 1900

AND SECTION 40 (2). **86 P R 1889**
79 P R 1890
45 P R 1894
69 P R 1897

CERTIFICATE FOR LEAVE TO APPEAL TO PRIVY COUNCIL.

See CIVIL PROCEDURE CODE, 1908, SECTIONS 109-110.

CERTIFICATE OF SALE.

See EXECUTION OF DECREE.

27 P R 1892
42 P R 1896

See REGISTRATION ACT, 1877, SECTION 17. **16 P R 1895 F B**

CERTIFICATE FOR LEAVE TO SUE.

1. *Suit against Sovereign as Ruler of State.*

See CIVIL PROCEDURE CODE, 1908, SECTION 86.

51 P R 1886

2. *Pensions Act (XXIII of* 1871).

See JURISDICTION OF CIVIL COURT.

17 P R 1882
131 P R 1882

See DISTINCT CAUSES OF ACTION.

64 P R 1882

CERTIFICATE UNDER ACT XL OF 1858.

See ACT XL OF 1858.

1. Next friend suing on behalf of minor without objection first raised in second appeal.

See APPEAL—CIVIL.

2. *Act XL of* 1858, *section* 7—*Discretion of Court to grant certificate.*

Held, that section 7, Act XL of 1858, does not render the grant of a certificate for the administration of the property of a minor to a near relative compulsory. The words of the section are not imperative, and it is left to the Court to grant a certificate or not, as it thinks proper under the circumstances of the particular case. MUSSAMMAT KHEM KOUR *v.* GUJAR MAL

23 P R 1878

3. *Act XL of* 1858—*Minor widow—Mother-in-law claiming the guardianship against the natural father—Discretion of Court.*

CERTIFICATE UNDER ACT XL OF 1858—*concld.*

Held, that the mother of a deceased married son is not entitled, as a matter of right, to be appointed guardian to the minor widow, in preference to the widow's natural father, by a Court acting under Act XL of 1858, if the Court in its discretion prefers the latter upon reasonable grounds.

There is nothing in the Act to indicate that the natural guardian of the minor, according to the personal law to which he is subject, has a right to be appointed on that ground; but it is left to the discretion of the Court to appoint a fit person from among the relations of the minor, when none has been appointed by will or deed. MUSSAMMAT NIHAL DAE *v.* DEOKI NUNDUN.

25 P R 1881

CERTIFICATE UNDER ACT XXVII OF 1860.

See ACT XXVII OF 1860.

1. Mussammat Luchmi was the widow of Nadhur Mul who died before his father, Bunsi Lal; and upon the death of Bunsi Lal, his heir (Mukhun Lal) caused mutation of names to be effected in favour of Mussammat Luchmi and Mussammat Mawa (Bunsi Lal's widow).

Held, that Luchmi was not entitled to a certificate under Act XXVII of 1860, as her husband had pre-deceased his father; notwithstanding this mutation of names. MUKHUN LAL *v.* MUSSAMMAT LUCHMI.

20 P R 1872

2. *Act XXVII of* 1860—*Certificate for collection of debts—Rival claimant—Enquiry into, and adjudication upon, title set up by—*

D. R., the eldest son of H. R. deceased, applied for a certificate under Act XXVII of 1860, to enable him to collect the debts due to his deceased father. The application was opposed by T. D., the younger son of H. R. deceased, who claimed a certificate under a will alleged to have been executed by H R., the genuineness and validity of which was disputed by D. R. The Court (Judicial Assistant) refused to take evidence as to the genuineness and validity of the will, and granted a certificate to D. R. as eldest son of H. R. deceased, subject to his furnishing security.

Held, by Plowden and Smyth, JJ. (Lindsay, J., dissenting), that the Court was bound to go into the question of the genuineness and validity of the will.

An objector claiming a certificate under Act XXVII of 1860 under a will, is entitled to have an enquiry into, and adjudication upon, the title which he sets up, before a decision by the Court as to which claimant should get the certificate. THAKUR DAS *v.* DYA RAM.

36 P R 1878

3. *Act XXVIII of* 1860—*Grant of certificate subject to conditions—Appeal to vary conditions—Jurisdiction.*

Where an application for a certificate under Act XXVII of 1860 was made to, and granted by the District Court, subject to certain conditions, which the petitioners being

CERTIFICATE UNDER ACT, XXVII OF 1860—*contd.*

dissatisfied therewith made the subject of an appeal to the Chief Court; *held*, that no such appeal would lie, as the 1st clause of section 6 of the Act does not allow an appeal by a successful petitioner against an order in his favour with a view to vary the terms upon which a certificate is to be granted, an application with such an object being cognizable only by the Court which passed the order. MUSSAMMAT PARBATTI *v.* DWARKA DAS. **133 P R 1879**

4. *Act XXVII of* 1860, *section* 3—*Court failing to adjudicate upon the rights of the respective claimants.*

Where the lower Court in a proceeding under Act XXVII of 1860, after ordering a preliminary enquiry, simply expressed its dissent from the opinion of the officer who held the enquiry, and dismissed the application without stating any reasons for arriving at this conclusion, *held*, with reference to section 3 of the Act, that there had been no proper adjudication of the rights of the parties, and that the case must be remanded to the lower Court in order that it might determine which of the rival claimants was entitled to the certificate and grant it accordingly. BAGA SINGH *v.* KHERA **58 P R 1883**

5. *Act XXVII of* 1860, *sections* 3, 6—*Appeal from order granting certificate—Application by mother of deceased for supersession of certificate—Refusal to grant certificate on ground of mother's unchastity.*

Held, following *Makhan Mal* v. *Mussammat Prem Kor* (No. 76 of 1881, Civil), that no appeal lies from an order of a District Court granting a certificate under section 3 of Act XXVII of 1860.

Such an appeal having been treated by the Chief Court as an application to supersede the certificate granted under section 6 of the Act, but it appearing that the present applicant, whose claim was founded on her being the heir of her son, was unchaste during her son's lifetime, and there was therefore ground for supposing that she might be precluded from inheriting his property, *held*, that the application to supersede the certificate granted by the District Court should be refused. MUSSAMMAT PREMI *v.* WADHAWA SINGH. **34 P R 1885**

6. *Act XXVII of* 1860, *sections* 3, 6—*Appeal from order refusing to grant certificate.*

Where upon an application for grant of a certificate under section 3 of Act XXVII of 1860, the Court refused the application on the ground that there was a dispute in the case, *held*, that the order was clearly wrong under the express provisions of section 3 of the Act, and the Court having refused to exercise a jurisdiction vested in it by law, the order was open to revision under section 622 of the Civil Procedure Code, if there was no appeal. MUZAFFAR HAMID *v.* MUSSAMMAT RAHIMAN. **78 P R 1886**

CERTIFICATE UNDER ACT, XXVII OF 1860—*concld.*

7. *Act XXVII of* 1860—*Power of third parties to compel grantee to render accounts—Court Fees Act* (*VII of* 1870), *Schedule I, No.* 12.

Although it is open to a Court which has granted a certificate under Act XXVII of 1860 to require the grantee to file a statement on oath of all moneys recovered or realized by him under such certificate (*see* Act VII of 1870, Schedule I, No. 12), this power is not intended to be used to enable strangers to compel the grantee of a certificate to render accounts of the administration of the estate of the deceased. BAWA SANT RAM *v.* JAS MAL. **94 P R 1887**

8. *Delegation of power to subordinate Court by District Court.*

Act XXVII of 1860 requires that the District Judge should himself consider fully and dispose of, after such enquiry as may be necessary, all applications and objections, and it nowhere authorizes his delegating this duty to a subordinate Court, merely passing a formal order himself. RAJKOUR *v.* MUSSAMMAT RUPAN. **142 P R 1889**

CERTIFICATE UNDER ACT, VII OF 1889.

See SUCCESSION CERTIFICATE ACT, 1889.

CESSES.

See CUSTOM—CESSES.

CHADAR ANDAZI.

1. *Proof of marriage by* Chadar Andazi. *See* CUSTOM. **13 P R 1898**

2. *Hindu Law—Marriage of a minor Hindu widow by* "Chadar Andazi"—*Presumption of legality of marriage—Khatris of Lahore—Act XV of* 1856.
See HINDU LAW—MARRIAGE. **49 P R 1903**

3. *Marriage by* "Chadar Andazi" *between a Khatri and a Khatrani widow—Legitimacy of issue of such marriage—Act XV of* 1856.
See HINDU LAW—MARRIAGE. **4 P R 1905**

Followed in. **61 P R 1905**

CHAHI LANDS.

See PUNJAB TENANCY ACT (XXVIII OF 1868) SECTION 11. **54 P R 1875**

CHAIRMAN.

Of meeting of share-holders of a company—Wrong decision of point before him at the meeting—Damages, liability for.
See COMPANY. **46 P R 1911**

CHAMPERTY.

1. A contract disclosing conditions falling within the definition of champerty, as laid down in *Fischer* v. *Kamala Naicker*, 8 Moore's Indian Appeals, page 186, is illegal, and no action can be maintained upon it in a Court of law. "It must be something against good policy and justice, something tending

CHAMPERTY—*contd.*

to promote unnecessary litigation, something that in a legal sense is immoral, and to the constitution of which a bad motive in the same sense is necessary."

A contract by which a party in consideration of supplying funds to enable another to prosecute a *bona fide* claim, was to participate in the fruits of the suit, is not void. GHULAM MAHOMED *v.* WALIDAD. **70 P R 1870**

2. *Interest in litigation—Unconscionable Bargain—Registration.*

Defendant, being engaged in litigation with third parties regarding a plot of land, agreed to give the plaintiff ¼th share of what might be awarded to him in consideration of the plaintiff supplying funds to meet the costs. It was found that the plaintiff had supplied Rs. 80 only whereas the value of the ¼th share was over Rs. 300. In a suit for specific performance of the agreement. —*Held* that, (*a*) the agreement not being registered could not affect land of the value of over Rs. 300, and (*b*) specific performance should not be decreed as the plaintiff would thereby reap a grossly unfair advantage. JHANDU KHAN *v.* BARKHURDAR. **150 P R 1889**

3. *Champerty—Inequitable agreements—Discretion of Court.*

Held, that though a Court is not bound to enforce an agreement which is extortionate or inequitable, an agreement is not void for champerty alone and the Court can award reasonable compensation for work done.

I. L. R., XX Calc., 843, and *I. L. R., XV All.*, 352, cited. DHALLU MISSAR *v.* JIWAN SINGH. **79 P R 1894**

4. *Legal Practitioners Act,* 1879,—*sections* 13, 14—*Champertous agreement between legal practitioner and client*—"*Grossly improper conduct in discharge of professional duty.*"

One A. M., a certificated mukhtar, entered into an agreement with certain clients wherein it was stipulated that A. M. should undertake all the expenses up to final appeal connected with a civil case, to be instituted on behalf of his clients in consideration of receiving half the *net* proceeds of the litigation. The lower Courts holding that A. M. had thereby been guilty of "grossly "improper conduct in the discharge of his "professional duty," within the meaning of section 13 of the Legal Practitioners Act, 1879, suspended him from practice under section 14 of the Act.

The matter having been referred by the Divisional Judge to the Chief Court.

Held, that the mere existence of the relation of pleader and client is sufficient for the instant condemnation, as opposed to public policy, of any agreement for the supply of funds for litigation in consideration of a delivery of a share in the property, in suit on recovery, and that a legal practitioner entering into such an illegal agreement is, for the same reasons as establish the contract to be opposed to public policy, guilty of "grossly improper conduct in the

CHAMPERTY—*concld.*

discharge of his professional duties." *In re* ALI MUHAMMAD, MUKHTAR.
111 P R 1894

5. *Champerty—Agreement to supply funds for suit—Agreement opposed to public policy—Decree for actual outlay—Contract Act,* 1872, *section* 23.

Held, that an agreement to supply funds to carry on a suit in consideration of having a share of the profits of litigation if recovered whereby practically the whole or much the greater share of the profits was to go to the backer and only a definite small sum to the nominal plaintiff who had also undertaken not to compromise the suit amounted to champerty and was void as contrary to public policy and that under such circumstances the backer was only entitled to recover his actual outlay with reasonable interest.

Raja Mohkam Singh v. *Rup Singh* (*I. L. R., XV All.*, 357, *P. C*)., *Ram Coommar Coondoo* v. *Chander Canto Mookerjee* (*L. R.*, 4 *I. A.*, 23) *Siva Ramayya* v. *Ellamma (I. L. R., XXII Mad.*, 310), *Chunni Kuar* v. *Rup Singh* (*I. L. R., XI All.*, 57), *Loke Indar Singh* v. *Rup Singh* (*I. L. R., XI All.*, 118), *Raghu Nath* v. *Nil Kanth* (*I. L. R., XX Calc.*, 843), *Jai Narain* v. *Sultan Muhammad Khan* (96 *P. R.*, 1902), *Soba Singh* v. *Lorinda Mal* (99 *P. R.*, 1901) and *Gopal Ram Chandra* v. *Ganga Ram Anandishet* (*I. L. R., XIV Bom.*, 73) referred to. STEWART *v.* RAM CHAND.
26 P. R. 1906

CHARGE OF DEBTS
See CO-HEIRS. **179 P R 1883**

CHARITABLE TRUSTS.

1. *Suit to enforce a charitable trust.*
See CIVIL PROCEDURE CODE, 1877, SECTION 539. **50 P R 1882**
See CIVIL PROCEDURE CODE, 1908, SECTIONS 32+93 **94 P R 1885**
76 P R 1886
See RELIGIOUS INSTITUTION.
See RIGHT OF SUIT.

2. *Irrevocable when for definite object and acted upon.*

Plaintiff's suit brought to recover money paid under the following circumstances, dismissed: Money was made over to the Deputy Commissioner on behalf of certain indigent persons whose parents or other relatives had been killed in an accident at the plaintiff's premises. At the removal of the corpses, the Deputy Commissioner in the presence of a large crowd expressed to the plaintiff, to the defective state of whose building the accident was partly attributable, that the sufferers were in very indigent circumstances, and that looking to the plaintiff's means it was proper that he should come to the relief of their families. He at once expressed his readiness so to do. Some of the principal citizens of Amritsar who were then standing round were asked what they thought would be a proper sum for him to give. They then said Rupees 500 for the relations of each

CHARITABLE TRUSTS—*concld.*

person. The Deputy Commissioner, however, expressed his opinion that Rupees 250 would be a more appropriate amount, and accordingly the sum of Rupees 3,000 with Rupees 250 for the police and the medical attendant, was made over to one of the subordinates of the Deputy Commissioner, who had left the place. The Deputy Commissioner immediately after the money had come to his office, commenced a system of relief out of the money. In this way he had disposed of Rupees 300, when he received a telegram requesting him to stop the disbursement, and he shortly afterwards received a letter from the plaintiff's agent requesting the return of the money. He, however, disbursed the rest of the money; whereupon plaintiff sued.

A gift of money for a charitable purpose is not revocable when the trust is created for definite objects of bounty, and acted upon. SIRDAR PERTAB SINGH *v.* LEWIN.
43 P R 1867

CHARITIES.
See CHARITABLE TRUSTS.

CHEQUE.

1. Dishonor of cheque by Bank—Customer drawing cheque after refusal of Bank to continue his account.
See BANK **101 P R 1885**

2. *Indian Stamp Act (I of* 1879), *sections* 3 (6), 5, *and Schedule I, Article* 19—"*Cheque*"—*Cheque drawn in India on bank in England and bearing impressed stamp of the value of one penny—Admissibility of such cheque in evidence—Cheque exceeding Rs.* 20 *in value.*

Plaintiff sued defendant for Rs. 1,056, alleged to be due by defendant, on account of principal and interest due on two cheques, one for £35, dated 21st October 1889, and the other for £25, dated 16th November 1889, drawn at Nowshera on Messrs. Cox & Co., of London, on cheque forms bearing impressed stamps of the value of one penny which it was alleged were dishonoured by the drawees on presentation. Plaintiff alleged that the cheques were endorsed with defendant's signature and sought to make defendant liable on the ground that he was an acceptor or drawee in case of need.

Held, that inasmuch as the cheques were for amounts exceeding Rs. 20 in value and were executed in British India after the 1st April 1879, they were by section 5 of the Indian Stamp Act, 1879, chargeable with a duty of one anna, and as they were not duly stamped, they were not admissible in evidence. DAMODAR DAS *v.* MAJOR DORAN.
69 P R 1894

CHIEF COURT—Powers of.

1. *Appeal from order of remand—Power of Chief Court to go into the merits of the case.*
See APPEAL. **38 P R 1908**

2. *Competency of Chief Court to extend period allowed by section* 602, *Civil Procedure Code*, 1882.
See APPEAL. **87 P R 1908**

CHIEF COURT—Powers of—*concld.*

3. *To extend time allowed for the deposit of security for respondent's costs in appeal to Privy Council.*
See APPEAL TO PRIVY COUNCIL.
44 P R 1910

4. *Chief Court's powers of Revision.*
See REVISION. **13 P R 1910**

5. *Chief Court—Jurisdiction of to hear Civil Appeals transferred by Judicial Commissioner of North-West Frontier Province—Regulation VII of* 1901, *section* 87 *A—Punjab Courts Act*, 1884.

Held by the Full Bench that the Chief Court of the Punjab has, by virtue of the provisions of section 87 A. of the North-West Frontier Province Law and Justice Regulation No VII of 1901, as amended by Regulation I of 1906, no jurisdiction as a Court of Civil Appeal to entertain, hear and decide any Civil Appeal transferred to it for determination by the Judicial Commissioner of the North-West Frontier Province. JODH NATH *v.* SADHU RAM. **50 P R 1907 F B**

6. *Divorce—Jurisdiction of Chief Court, both parties residing within its jurisdiction, though not together.*

Held, that the Chief Court has jurisdiction to entertain a petition for divorce filed by a petitioner who last resided *with* her husband within the jurisdiction of the Bombay Court and at the date of filing the petition resided within the jurisdiction of the Chief Court, the respondent also residing at that date within the jurisdiction of that Court, though apart from the petitioner. GALE *v.* GALE.
47 P R 1911 F B

CHIEF COURT'S—Powers of Superintendence.
See LEGAL PRACTITIONERS ACT, 1879, SECTION 14.
See PUNJAB COURTS ACT, 1884, SECTION 13.

CHIEF COURT—References to.
See CIVIL PROCEDURE CODE, 1908, O. 46 R. 1 & R. 7.
See PUNJAB TENANCY ACT, 1887, SECTION 77.

CHIEF COURT—Rules made by.
See APPEAL. **132 P R 1893**
86 P R 1896
See COUNSEL'S FEES. **61 P R 1896**
See CUSTODY OF MINOR.
10 P R 1897
See EXECUTION OF DECREE.
66 P R 1909
See JURISDICTION OF CIVIL OR REVENUE COURT. **83 P R 1896**

CHIEF LAMBARDAR.
See ALA LAMBARDAR.

CHIEF LAMBARDARSHIP.
See ALA LAMBARDAR.

CHILD.
See CHILDREN.
Born 330 *days after last access of parents—Legitimacy of.*
See DIVORCE. **77 P R 1911**

CHILDREN.
See MUHAMMADAN LAW.
WILL.

1. *Meaning of—Punjab Civil Code.*
7 P R 1869

CHILDREN—*concld.*

2. *Custody of—Minor.*
See DIVORCE.
DIVORCE ACT,—1869, SECTION 43.
GUARDIAN.
HINDU LAW—GUARDIANSHIP.
JURISDICTION OF CIVIL COURT.

3. *Legitimacy of.*
See EVIDENCE ACT, 1872, SECTION 112. **28 P R 1906**
78 P R 1907
See MUHAMMADAN LAW—MARRIAGE. **6 P R 1908**
78 P R 1910

CHOONGEE.
See JURISDICTION OF SMALL CAUSE COURT—OCTROI.

CHOSE IN ACTION.
See ASSIGNMENT OF CHOSE IN ACTION **186 P R 1883**
ASSIGNMENT OF DEBT **12 P R 1894**

CHOWDRIAT DUES.
See CUSTOM—CESSES.

CHOWKIDARI DUES.
See MALIK QABZA.

CHRISTIANS, NATIVE.
See CONVERTS. **36 P R 1909**

CHUKDAR.

1. *Chukdaree tenure in Mooltan.*

Suit by a *chukdar* to restrain the *zemindar* from constructing a new well within the holding of the former.

Found, that while the *zemindar* is owner of the soil, the *chukidar* is owner of the well, and enjoys the right of arranging for the cultivation.

Held, consequently, that to the *chukdar* alone belongs the right of repairing the old well or replacing it by a new one. NAWAB MAHOMED SURFARAZ KHAN *v* DEWA MULL. **34 P R 1868**

2. *Right of pre-emption as between "chukdars" and village proprietors.*

In the Mooltan district, where the *chukdari* tenure prevails, the co-sharers in a well have the right of pre-emption as to the shares in that well, in preference to the general proprietor of the village, who has no share in the well, but merely receives a *haq zemindari* payable by the *chukdars*. MUKDUM SHAH ALI MAHOMED *v.* OOMUR ALI. **44 P R 1870**

CHUNDAVAND AND PAGVAND.
See CUSTOM—INHERITANCE.
74 P R 1870
25 P R 1873
105 P R 1876
8 P R 1879
34 P R 1879
101 P R 1879
81 P R 1884
125 P R 1884
127 P R 1884
62 P R 1885
63 P R 1885
77 P R 1885 and Note.
48 P R 1886
53 P R 1886

CHUNDAVAND AND PAGWAND—*concld.*
35 P R 1889
51 P R 1889
75 P R 1889
178 P R 1889
4 P R 1891 F B
110 P R 1891
134 P R 1892
84 P R 1893
119 P R 1893
3 P R 1894
68 P R 1896
46 P R 1897
74 P R 1898
12 P R 1899
22 P R 1899
47 P R 1901
22 P R 1903
11 P R 1905
29 P R 1905
148 P R 1908
5 P R 1909
58 P R 1911

CIRCUMSTANTIAL EVIDENCE.
See EVIDENCE.

CIVIL COURT.
See JURISDICTION OF CIVIL COURT.

1. *Power of Civil Court to decline to enforce a valid contract on mere assumption that it is for the benefit of a person prohibited by law to enter into such contract.*
See CONTRACT. **142 P R 1907**

2. *Jurisdiction of Civil Court to decide the incompetency of a claimant to apply for partition.*
See PARTITION. **104 P R 1906**

CIVIL PROCEDURE CODE, 1882.
See CIVIL PROCEDURE CODE, 1908.

Section 257A.

1. *And section* 649 (*section* 36 *of the new Code*)—*Agreement for satisfaction of judgment-debt—Decree passed by Judicial Assistant Commissioner—Jurisdiction of District Judge to sanction such agreement after Judicial Assistant Commissioner's Court has ceased to exist.*

Where, after a decree had been obtained from a Judicial Assistant Commissioner, the parties thereto in execution proceedings entered into an agreement for the satisfaction of the decree, providing for the payment of the decree by instalments and that interest should be chargeable in case of failure to pay such instalments, *held*, that the Court of the Judicial Assistant having ceased to exist, the sanction required by section 257 A of the Civil Procedure Code to give validity to the agreement, could in accordance with section 649 of the same Code, be granted by the Court of the District Judge which had succeeded that of the Judicial Assistant Commissioner. SIDDHU *v.* RAMJI DAS. **25 P R 1887**

2. *Execution of decree—Payment by instalments—Agreement to give time for satisfaction of judgment-debt—Civil Procedure Code*, 1882, *section* 210 (*order XX, rule* 11 *of the new Code,*) *and section* 257 A, *Limitation Act* (*XV of* 1877), *2nd Schedule articles* 175, 178, 179.

CIVIL PROCEDURE CODE, 1882—*contd.*

Section 257A—*contd.*

Appellant obtained decree against the respondents on the 3rd February, 1888, and applied for execution thereof on the 25th October, 1888. A warrant was directed to issue, but on the 27th November, 1888, both parties put in a petition reciting that an arrangement had been made between them, by which the debt was to be paid by instalments, and praying that the sanction of the Court might be given thereto. The proceedings were thereupon ordered to be filed, a separate order of even date being recorded in the proceedings that the property should remain under attachment but not be brought to sale. On the 8th April, 1892, the appellant filed an application in which, after reciting the former arrangement, it was prayed that the respondents might be summoned with a view to recovery of the sum still remaining due, and on the 5th July, 1892, the appellant again applied for execution by attachment of the judgment-debtor's property.

Held, that the order of the 27th November, 1888, was not one falling under section 210 (order XX, rule 11 of the new Code) of the Civil Procedure Code, inasmuch as the application leading to that order did not purport to be under that section, nor was it presented within the period of 6 months prescribed by article 175 of the 2nd schedule of the Limitation Act for the presentation of applications under that section.

Held further, that the said order was one sanctioning "an agreement to give time for the satisfaction of the judgment-debt" within the meaning of the Civil Procedure Code, and that, as the mere sanction by the Court of an agreement under that section does not "alter" the decree, the decree to be executed was the decree, dated the 3rd February, 1888.

Held also, that inasmuch as the applications of the 8th April, 1892, and of the 5th July, 1892, were applications for "execution or to take some steps in aid of "execution," they were applications to which article 179, and not article 178, of the 2nd schedule of the Limitation Act was applicable, and that consequently the decree of the 3rd February 1888 was time-barred.

I. L. R. XII All., 571, and 61, *P. R.* 1886, followed; *I. L. R. V All.* 596, not followed. NANAK CHAND *v.* ANANT RAM. **26 P R 1894**

3. *Mortgage—Construction of mortgage-deed—Satisfaction of judgment-debt—Uncertified adjustment of decree—Civil Procedure Code*, 1882, *sections* 257A *and* 258 (*order XXI, rule* 2 *of the new Code*).

Plaintiff sued upon two mortgage-deeds, executed on the 19th January, 1890, and the 5th March, 1890, respectively.

In the case of the second mortgage of the consideration money of Rs. 1,800, Rs. 1,000 were on account of principal and Rs. 144 on account of interest on two decrees passed in favour of pliantiff against defendant, and the Divisional Judge, finding that interest was not allowed on one of the said decrees, which

CIVIL PROCEDURE CODE, 1882, —*contd.*

Section 257A—*contd.*

was for Rs. 738, and that no sanction of the issuing Court had been given, *Held*, that the agreement in the mortgage-deed to pay interest was invalid under section 257A of the Civil Procedure Code.

Held, that the section applicable to the case was section 258 (order XXI, rule 2 of the new Code.) inasmuch as the judgment-debt had been adjusted in whole to the satisfaction of the decree-holder, and that though such adjustment had not been certified to the Court whose duty it was to execute the decree, it could be recognized as an adjustment by a Civil Court except in execution. Rulings regarding the scope of Civil Procedure Code, referred to. KALU RAM *v.* KHUDA BAKHSH.

54 P R 1894

4. *Bond executed in satisfaction of decree — Subsequent suit on bond.*

Held, that where the benefit of a decree is given up by the decree-holder and in consideration thereof a bond is given by the judgment-debtor, such bond may be the foundation of a subsequent suit, notwithstanding that the satisfaction of the decree was uncertified by the Court.

I. L. R. XVI Calc. 504, *I. L. R. XV Bom.* 419, *I. L. R. XVII Mad.* 382, followed. SUKHU RAM *v.* UMED.

16 P R 1900

5. *Agreement for satisfaction of a judgment-debt without sanction of Court—Agreement to pay more than the decretal amount—Agreement void.*

Held, that under the second clause of section 257 A of the Code of Civil Procedure, every agreement between the decree-holder and the judgment-debtor for the satisfaction of a judgment-debt which provides for the payment of any sum in excess of the decretal amount is void for all purposes and unenforceable as a contract unless made with the sanction of the Court which passed the decree.

Vishnu Vishwanath v. *Hur Patel and others* (*I. L. R. XII Bom.* 499), *Heera Nema* v. *Pestonji Dossabhoy* (*I. L. R. XXII Bom.* 693 F. B.), *Tukaram* v. *Anantbhat* (*I. L. R. XXV Bom.* 252), *Dan Bahadur Singh* v. *Anandi Prasad* (*I. L. R. XVIII All.* 435), *Dalu Malwahi* v. *Palakdhari Singh* (*I. L. R. XVIII All.* 479), and *Bhag Chand* v. *Radha Kishan* (*I. L. R. XXVIII Bom.* 62), cited and followed.

Sukhu Ram v. *Umed* (16 *P. R.* 1900), *Jhabar Mahomed* v. *Modan Sonabor* (*I. L. R. XI Calc.* 671), *Hukam Chand Aswal* v. *Taharunessa Bibi* (*I. L. R. XVI Calc.* 504), *Juji Kamti* v. *Annai Bhatta* (*I. L. R. XVII Mad.* 382), and *Benkata Subramania Ayyar* v. *Koram Kanny Ahmad* (*I. L. R. XXVI Mad.* 19), dissented from. PALA MAL *v.* HARI RAM AND OTHERS.

88 P R 1904

6. *Application of, to an agreement in satisfaction of a judgment-debt—Enforcement of agreement by suit.*

Held, by the Full Bench (Robertson, J., dissenting), that section 257 A. applies only to execution proceedings and does not apply to an agreement entered into between a

CIVIL PROCEDURE CODE, 1882 —*concld.*

Section 257A—*concld.*

decree-holder and a judgment-debtor, which in itself satisfies and extinguishes a judgment-debt.

Pala Mal v. *Hari Ram* (88 *P. R.* 1904) overruled. ATMA SINGH *v.* BANKE RAM.

29 P R 1908 F B

CIVIL PROCEDURE CODE, 1908.

Section 2, clause (2).

1. *See* DECREE. **158 P R 1882**
2. *See* APPEAL—CIVIL. **185 P R 1882**
115 P R 1884
115 P R 1886
3. *See* CIVIL PROCEDURE CODE, 1908, SECTION 47.
104 P R 1886

4. *Punjab Courts Act, 1884, section 39—Order passed by Munsif in execution of decree in suit not cognizable by Small Cause Court —" Decree"—Course of appeal.*

See APPEAL—CIVIL. **4 P R 1887**

5. *Order by execution Court for imprisonment of Judgment-debtor—Appeal.*

See APPEAL—CIVIL. **69 P R 1895**

6. *Suit dismissed for default—" Decree" —Appeal.*

See CIVIL PROCEDURE CODE, 1908, ORDER IX, RULE 8. **60 P R 1897 F B**

7. *Insolvency—Appeal from order discharging insolvent—Agreement to satisfy debts —Property vested in Receiver—Future salary of insolvent.*

Held, that an order of discharge under section 358, Civil Procedure Code 1882, is a decree, and is appealable as such. HUKAM CHAND *v.* ROBINSON. **43 P R 1894**

8. *Foreclosure proceedings—Suits by mortgagor for redemption after expiry of year of grace*—Res judicata.

See MORTGAGE—REDEMPTION.

27 P R 1900

9. *Order of appellate Court returning plaint for presentation to proper Court— " Decree."*

See PLAINT—RETURN OF.

59 P R 1899

10. *And order XX, rule 16—Appeal—Order directing an account—Interlocutory order - Small Cause Court suit—Act IX of 1887, Schedule II, articles 30 and 31—Suit for partition of offerings after taking and explaining accounts and for inspection of strong-room in which the offerings were stored—Punjab Courts Act (XVIII of 1884), section 40 (1) (i)—Further appeal.*

Plaintiffs claiming to be interested in the income of a shrine, sued that accounts be taken and explained to them from 1871, and that they be allowed to inspect the strong-room in which the offerings were stored and for partition of such of the offerings as were partible and for their share on partition. The first Court held that they were entitled to have accounts taken from 1888 only and passed orders under order XX, rule 16, of the Code of Civil Procedure, but the Divisional Judge, on appeal, held, that the order of the first Court being an interlocutory order no appeal lay. Plaintiffs preferred a further appeal

CIVIL PROCEDURE CODE, 1908 —*contd.*

Section 2, clause (2)—*concld.*

under a certificate granted by the Divisional Judge to the Chief Court and the defendants amongst other objections urged that the suit being a small cause of value not amounting to Rs. 1,000, no further appeal lay under section 40 (1) (*i*).

Held, that as section 2 of the Code of Civil Procedure includes an order directng accounts to be taken in the definition of decree, an appeal lay to the Divisional Court, and that the suit as framed being excluded by articles 30 and 31, Schedule II, Act X of 1887, from the jurisdiction of a Court of Small Causes, a further appeal lay under the certificate granted by the Divisional Judge inasmuch as the nature of a suit for an account is not changed merely by reason of a share in the collection being claimed.

Mela Mal v. *Harbhaj* (115 *P. R.* 1884), followed, *Narayan* v. *Bhalaji* (*I. L. R. XVII Bom.* 248), and *Damodar Gopal Dikshit* v. *Chintoman Balkrishn* (*I. L. R. XVII Bom.* 42), distinguished. *Ranjit Singh* v. *Ilahi Bakhsh* (*I. L. R. V All.* 520), *Coverji Luddha* v. *Morarji Punja* (*I. L. R. IX Bom.* 183), *Behari Lal Pundit* v. *Kedar Nath Mullick* (*I. L. R. XVIII Calc.* 464), referred to. KAKA RAM AND OTHERS *v.* RAM SARN AND OTHERS. **13 P R 1901**

Section 2, clause (5).

11. *Court of Faridkot State—" Foreign Courts."*

See FOREIGN JUDGMENT.

191 P R 1888

Section 6.

And sections 24, 38 and 141—Execution of decree—Power of Court to execute decree in excess of the limits of its pecuniary jurisdiction as an original Court—Punjab Courts Act, 1884, section 35.

Held, that a Court to which a decree has been sent for execution has not jurisdiction to execute such decree when it is in excess of the limits of its pecuniary jurisdiction as an original Court.

Gopal Das v. *Mussammat Golab Devi* (70 *P. R.* 1897), *Ram Lal* v. *Natha Singh* (45 *P. R.* 1882), *Ganga Ram* v. *Gursarn Das* (31 *P. R.* 1887), *Narasayya* v. *Venkata Krishnayya* (*I. L. R. VII Mad.* 397), and *Shanmugo Pillai* v. *Ramanathan Chetti* (*I. L. R. XVII Mad.* 309), referred to. *Shri Sidheshwar Pandit* v. *Shri Harihar Pandit* (*I. L. R. XII Bom.* 155), *Gokal Kristo Chunder* v. *Aukhil Chunder* (*I. L. R. XVI Calc.* 457), and *Durga Charan Mojumdar* v. *Umatara* (*I. L. R. XVI Calc.* 465) followed. KHAN BAHADAR NAWABZADA SHAMSHERE ALI KHAN *v.* MUSSAMMAT AHMAD ALLAHDI BEGAM

9 P R 1901

Section 9.

See RIGHT TO SUE. **4 P R 1885**

Section 10.

See RES JUDICATA. **104 P R 1883**

——*Court of Political Agent, Bhopal.*

See CIVIL PROCEDURE CODE, 1908, ORDER VI, RULE 2.

59 P R 1892

CIVIL PROCEDURE CODE, 1908 —*contd.*

Section 11.

See RES JUDICATA.

1. *See* ESTOPPEL. **23 P R 1910**

2. *See* EXECUTION OF DECREE. **143 P R 1883**

3. *See* CIVIL PROCEDURE CODE, 1908, ORDER IX, RULE 8. **177 P R 1888**

4. *Arbitration and award—Order refusing to file award, effect of as regards validity of award.*

See ARBITRATION. **70 P R 1891**

5. *Revision in Civil cases—Material irregularity—Erroneous decision upon a plea of* res judicata.

See REVISION IN CIVIL CASES. **130 P R 1889** **206 P R 1889**

6. *See* JURISDICTION OF CIVIL OR REVENUE COURT. **92 P R 1902 F B**

Section 13.

See FOREIGN JUDGMENT.

Section 15.

See RES JUDICATA.

—And section 99—Suit heard by Court other than the Court of the lowest grade competent to hear it—Irregularity—Reversal of decree.

Held, that the object of the provisions of section 15 of the Civil Procedure Code, that every suit shall be instituted in the Court of the lowest grade competent to try it, is merely directory to regulate the procedure of Courts, and it does not deprive a Court of jurisdiction which it may otherwise possess: and, further, if there be any irregularity, as a matter of procedure, in a Judge taking up a case in contravention of the terms of the section and trying it himself, such irregularity would be cured by section 99 of the Code, and would not justify the reversal of the first Court's decree by an Appellate Court. MIRZA NAJIB BEG *v.* JODHA. **184 P R 1888**

Section 16.

1. *Section 16—"Dwelling."*

The defendant was shown to have left Calcutta, where he resided in a hired dwelling-house, and to have resided in Delhi from 29th September to 26th December, where the action was brought. His wife and children had all along lived in his ancestral house at Delhi.

Held, that these facts proved a "dwelling" in Delhi, sufficient to give the Delhi Courts jurisdiction over the defendant under section 16 of Act V of 1908. TOTA RAM *v.* RAMJEE DASS. **63 P R 1870**

2. *Held* that temporary absence is consistent with dwelling in a particular place, there being nothing to show an intention of not returning. GUNDA MULL *v.* MULLA MULL. **17 P R 1871**

3. *Jurisdiction—Suit for determination of right to, or interest in, immovable property—section 16, Civil Procedure Code, 1908.*

Plaintiff sued in the Court of the District Judge, Lahore, to enforce specific performance

CIVIL PROCEDURE CODE, 1908 —*contd.*

Section 16—*concld.*

of an alleged contract made with defendant for the sale to defendant of a house situate in the cantonment of Sialkot for Rs. 6,500.

The defendant objected to the jurisdiction of the Lahore Court.

Held, that the defendant's objection was well founded. The suit as framed was one for the determination of a right to, or interest in, immovable property within the meaning of section 16, clause (*d*), Civil Procedure Code, 1908, such right or interest being directly and not merely incidentally or collaterally in issue. *I. L. R. VI Mad.* 344, referred to.

Held, further, that the proviso to section 16, Civil Procedure Code, did not apply, as the immovable property in respect of which relief was sought was not held by, or on behalf of, the defendant at the date of the suit. DIWAN LACHMAN DAS *v.* W. HASLET. **39 P R 1891**

4. *Jurisdiction—Sale of a house in foreign territory by a British Insolvency Court—Suit for the recovery of a share of the purchase-money on the ground of co-ownership—Suit for determination of an interest in immovable property.*

Held that a suit to follow the purchase-money of a house in a foreign territory, which had been sold by the order of a British Insolvency Court, on the ground that it was not the sole property of the insolvent, and that a certain portion of it belonged to the plaintiff, is a suit "for the determination of any right to or interest in immovable property" within the meaning of section 16, clause (*d*) of the Code of Civil Procedure, and can only be instituted in a Court within the local limits of whose jurisdiction the house is situated. HARI RAM *v.* KANSHI RAM. **122 P R 1908**

Section 17.

1. *Suit for possession of immovable property situate in different districts—Joint suit by reversioners against person in wrongful possession.*

See CAUSE OF ACTION. **91 P R 1898**

2. *Suit for immovable property situate in different districts—Sanction.*

Under the Code of Civil Procedure, 1859, in a suit for immovable property situate in several districts, the sanction of a superior Court was requisite to the institution of a suit in one district.

Under the Code of Civil Procedure, 1908, section 17, no such sanction is requisite, the plaintiff having an absolute right to institute his suit in any one of such districts within which any portion of the property is situate, without obtaining any sanction. ANUP SHAH SINGH *v.* JASWANT SHAH SINGH. **10 P R 1891**

Section 18.

Suit for possession of land—Uncertainty as to the Court's jurisdiction Power of Civil Court to adjudicate on the correctness

CIVIL PROCEDURE CODE, 1908 —*contd.*

Section 18—*concld.*

of boundaries laid down by the Settlement authorities—Punjab Courts Act, 1884, *section* 18.

In a suit by the proprietors of *mauza* Bharthwali in Muzaffargarh District, for a declaration that certain land awarded to the proprietors of Kachur in the Mooltan District by the Settlement authorities in a boundary dispute belongs to them and should be included within their village, the decree given by the Munsif in the plaintiff's favour was reversed on appeal by the Divisional Judge on the grounds that as by the orders of the Settlement Officers the disputed area at the time of the institution of the suit formed part of the Revenue District of Mooltan, and as the Revenue Officers had complete power to settle the boundaries of districts, and as such orders could not be questioned by a Civil Court, the Munsif of Muzaffargarh acted without jurisdiction.

Held, that the Civil Court had jurisdiction to go into the question of the correctness of the boundaries laid down by the Settlement authorities

Held, also, (1) that the Munsif, having raised the point of jurisdiction himself and decided that he had jurisdiction, substantially complied with the provisions of sub-section (1), section 18 of the Code of Civil Procedure, and (2) that at best the proper place of institution was uncertain, and the objection not having been taken in the first Court, the Divisional Judge should not have allowed it with reference to sub-section (2) of section 18. *Combe* v. *Edwards* (*L. R.* 3 *P. D.* 103), referred to. ALLAH DITTA AND OTHERS *v.* ABDUL QADIR KHAN AND OTHERS. **1 P R 1901**

Section 19.

And section 20—Meaning of words "actually and voluntarily resides."

See JURISDICTION OF CIVIL COURTS (4). **77 P R 1909**

Section 20.

1. *See* JURISDICTION. **118 P R 1881** **71 P R 1883** **132 P R 1883**

2. *Dissolution of partnership—Jurisdiction of Court.*

See CAUSE OF ACTION. **62 P R 1897**

3. *Jurisdiction—Place of suing—Contract with commission agent for supply of goods—Contract made by letters.*

See CONTRACT ACT, 1872, SECTION 4. **76 P R 1896**

4. Hundi *drawn at Jammu, but payable in British India—Jurisdiction of British Court.*

See JURISDICTION. **21 P R 1894**

5. *Jurisdiction—Place of suing—Suit to recover money paid in Delhi on* hundis *sent by defendants to Delhi and there accepted and paid by the plaintiff.*

See JURISDICTION. **10 P R 1903**

6. *Jurisdiction—Place of suing—Consent to jurisdiction—Waiver.*

See JURISDICTION. **27 P R 1903**

CIVIL PROCEDURE CODE, 1908 —*contd.*

Section 20—*contd.*

7. *Jurisdiction—Actions of debts and personal actions against military officers not residing within the jurisdiction of Court where the cause of action arose.*

Held, that section 151 of the Army Act of 1881 having been expressly repealed by section 5 of the Army Act of 1895, the ruling of this Court in *E. Gillon & Co.* v. *White* (No. 1 *P. R.* 1893 F. B.,) has, in consequence, become obsolete, and the test of a Civil Court's jurisdiction against a military officer now is, as in other cases, arising out of contract, that supplied by section 20 of the Civil Procedure Code. PHELPS & CO. *v.* CAPT. HAMMOND.

93 P R 1900

8. *Suit on a* hundi *by a holder and indorsee against the drawer, acceptor and subsequent indorsers.*

Plaintiff brought a suit at Dera Ismail Khan against the defendants on a *hundi* drawn and payable at Karachi, but endorsed to him by two of the defendants at Dera Ismail Khan. Some of the defendants, *i. e.*, the drawer and acceptor and some of the indorsers, contended that the Court had no jurisdiction as the *hundi* was drawn and payable at Karachi. *Held*, by the Full Bench, that when a plaintiff sues the drawer, acceptor and subsequent indorsers, the cause of action arises out of the original contract, which in this case was the *hundi*, and that, that having been made and being payable at Karachi, the Dera Ismail Khan Court had no jurisdiction to hear the suit. SHIVJI RAM AND OTHERS *v.* HEM RAJ.

57 P R 1900

9. *Place of suing—Contract with commission agent for sale of goods.*

Plaintiff who resided at Kasur, in the Lahore District, sent *bhusa* from the Ferozepore District to the defendant who was trading at Jhelum for sale as a commission agent. Disputes having arisen between the parties with reference to the *bhusa* transactions, plaintiff filed a suit at Kasur to recover the amount due to him. *Held*, that as under the Contract Act there is no liability for a commission agent to render accounts to his principal at his place of business unless there is an express agreement to do so, no cause of action arose in Kasur, and that the Munsif of Kasur had no jurisdiction to try the case. DEVI DYAL *v.* HARI CHAND.

79 P R 1902

10. *Place of suing—Contract for supply of goods—Place where performance was to be completed.*

A merchant of Lahore sent a certain sum of money as an advance to a firm in Cochin for certain goods, under a contract which provided that the firm would draw bills for the balance due to them under the contract upon the remitter's firm at Lahore and negotiate them with any banker, which bills the remitter undertook to pay and retire at maturity.

CIVIL PROCEDURE CODE, 1908 —*contd.*

Section 20—*concld.*

Held that a suit for the refund of the money advanced and damages due on the breach of the contract against the Cochin firm on account of the goods not being shipped lay at Lahore, where the payment of the balance was to be made, as that was the place where the performance of the contract was to be completed within the meaning of clause (*ii*) of Explanation 3 to section 17 of the Civil Procedure Code of 1882. PREMJI KHETSEY *v.* GHULAM SARWAR KHAN.

36 P R 1908

11.—*And section* 19—*Meaning of words "actually and voluntarily resides."*

See JURISDICTION OF CIVIL COURTS.

77 P R 1909

Section 22.

Staying proceedings, grounds for—Civil Procedure Code, 1908, *section* 22—*Analogous suit instituted elsewhere—Plaintiff not party thereto.*

Plaintiff having obtained permission to sue in *formâ pauperis* in the Court of the District Judge, Ferozepore, for certain property which he claimed as heir of one B. L., instituted his suit in that Court. Application was thereupon made to the Court under section 22 of the Civil Procedure Code to stay proceedings on the ground that one of the defendants in plaintiff's suit was at the time suing certain of his co-defendants in the Umballa Court for part of the property comprised in plaintiff's claim. It was admitted that plaintiff had not been made (and he was not necessarily) a party to the latter suit. The District Judge granted the application on the grounds that "all the property claimed at Umballa was included in the present suit; that plaintiff though not a party to the Umballa case would probably be made one now, that the Umballa case had been pending some time and much evidence had been taken, and that the points for decision in both cases were the same."

Held, that, as the jurisdiction given by section 22 of the Civil Procedure Code is of an exceptional character to be exercised cautiously and only upon very clear cause shown the sole test under that section being whether "the Court is satisfied that justice is more likely to be done by the suit being instituted in some other Court," and there being no mention of convenience or expediency, the mere fact that the points for decision in both cases might be analogous was not sufficient reason for holding that justice was more likely to be done by compelling the plaintiff to sue in the other Court, especially in view of the facts that plaintiff had not been made a party to the suit at Umballa and that the value of the property claimed by plaintiff at Ferozepore was considerably larger than of that in suit at Umballa. 4 *Calc. L. R.* 282, distinguished; *I. L. R. XIII Bom.* 178, cited. KHETA *v.* GANGA RAM.

8 P R 1894

CIVIL PROCEDURE CODE, 1908 —*contd.*

Section 24.

1. *Finality of order of Munsif in case withdrawn from Small Cause Court and transferred to him under section* 24, *Civil Procedure Code.*

See CIVIL PROCEDURE CODE, 1908, ORDER XLI, RULE 23. **40 P R 1887**

2. *Legal Practitioners Act*, 1879, *sections* 13, 14—*Chief Court's power to transfer proceeding under section* 14 *to another Court—Civil Procedure Code*, 1908, *section* 24.

See LEGAL PRACTITIONERS ACT, 1879, SECTION 14. **111 P R 1894**

3. *Small cause of value exceeding Rs.* 50—*Jurisdiction of presiding Judge limited to Rs.* 50—*Power of District Judge to transfer case.*

See SMALL CAUSE COURT—JURISDICTION OF. **74 P R 1896**

4. *Suit instituted in Cantonment Small Cause Court for sum beyond the jurisdiction of the then incumbent of the Court—Transfer of case by District Judge to his own Court—Finality of order of District Judge.*

Plaintiff instituted a suit for Rs. 234 in the Cantonment Small Cause Court at Rawalpindi, the Judge of which ordinarily exercised powers up to Rs. 500, but which when the present suit was instituted was presided over by a Judge who had no power to hear suits over Rs. 50 in value. Thereupon the District Judge withdrew the case to his own file under section 24 of the Civil Procedure Code, and eventually disposed of it himself.

Held, that the District Judge having decided the case with the powers of a Small Cause Court Judge, his decision was final under the last clause of section 24 of the Code, and not open to appeal. *Hulas Rai* v. *Rehmatullah* (No. 95 *P. R.* 1877), cited. PARSICK *v.* BUTA MAL. **80 P R 1887**

5. *Punjab Courts Act* (*XVIII of* 1884), *sections* 33, 34—*Power of District Judge to transfer case from Small Cause Court to his own Court.*

Held, that under section 24 of the Civil Procedure Code, read with sections 33, 34 of the Punjab Courts Act, a District Judge in the Punjab can transfer a case from a Small Cause Court to his own Court. MUSSAMMAT BEGAM *v.* MAJOR COOK **77 P R 1889**

6. *Withdrawal of case—Procedure after withdrawal.*

A Court which withdraws a case for trial before itself may after such withdrawal proceed according to any of the recognised modes of procedure laid down in the Civil Procedure Code. BANARSI DAS *v.* RAM KISHAN DAS **167 P R 1889**

7. *Small Cause Court—Munsif trying case "withdrawn" from Small Cause Court—Appeal—Small Cause Court Act*, 1887, *section* 16—*"Court having jurisdiction within local limits of jurisdiction of Small Cause Court"—Civil Procedure Code*, 1908, *section* 24.

CIVIL PROCEDURE CODE, 1908 —*contd.*

Section 24—*concld.*

Plaintiffs, money-lenders, residing in the Sialkot Cantonment, instituted a suit for Rs. 159-2-0 in the Cantonment Small Cause Court against defendant, who resided at Ghazipur in the Sialkot *tahsil*, and alleged that the latter had borrowed Rs. 101-12-0 from them at their place of business within the local limits of the jurisdiction of the Cantonment Small Cause Court. The Judge of that Court for the time being having power to hear suits only up to the value of Rs. 50, returned the plaint for presentation to the District Judge, who thereupon sent it to the Munsif of Sialkot for disposal. The suit having been dismissed by the latter, plaintiffs appealed to the District Judge, who held that, as the case had been withdrawn from a Small Cause Court, the Court of the Munsif who tried it must, under section 24, Civil Procedure Code, be deemed to be a Court of Small Causes, and that, therefore, an appeal did not lie. Plaintiffs applied to the Chief Court on the revision side, and contended (*i*) that the suit was not "withdrawn" by the District Judge from the Court of Small Causes, and (*ii*) that the suit was cognizable by the Munsif as well as by the Small Cause Court and was, in fact, tried by the former in his capacity as Munsif.

Held, that the suit had been "withdrawn" by the District Judge within the meaning of section 24, Civil Procedure Code.

Held further, that the suit which was admittedly cognizable by the Cantonment Small Cause Court, was under section 16 of the Small Cause Court Act, 1887, not cognizable by the Munsif of Sialkot who had jurisdiction within the local limits of such Court. SAIDHU MAL *v.* HASSU. **58 P R 1897**

8. *Case remanded to Small Cause Court—Transfer to Subordinate Judge.*

Certain issues in a small cause suit were remanded to the Small Cause Court, Umballa, for decision. As the Judge of the Small Cause Court who originally tried the suit had been replaced by a Judge whose pecuniary jurisdiction did not extend to the value of the suit, the District Judge transferred the issues remanded to the Court of the Subordinate Judge, Umballa.

Held, that it was competent to the District Judge to make the transfer in question. BARU *v.* KIRPA RAM **69 P R 1899**

9. *See* SECTION 38, *infra*. **8 P R 1902**

10. *Small Cause Court suit—Munsif trying case withdrawn from Small Cause Court—Finality of order of Munsif.*

See TRANSFER OF CASE. **83 P R 1903**

11. *Transfer of suit—Disqualification of presiding Judge—Reasonable apprehension of bias.*

See TRANSFER OF CASE. **83 P R 1903**

Section 33 (*cf.* order XX, rules 1, 2).

1. *See* CIVIL PROCEDURE CODE, ORDER XVIII, RULE 14. **110 P R 1888**

CIVIL PROCEDURE CODE, 1908 —*contd.*

Section 33—*concld.*

2. *Dismissal of suit for non-appearance of parties on the day fixed for delivery of judgment.*

See DISMISSAL OF SUIT. **82 P R 1901**

3. *Judgment to be pronounced in open Court on a fixed day.*

In a suit for pre-emption after examining the witnesses and hearing the arguments the Judge recorded an order that the case was closed and that the judgment would be delivered on a certain day. Subsequently the Judge wrote his judgment a week previous to the date fixed for the delivery and dated it on the day on which it was written.

Held, that the Judge was bound to wait until the date fixed and not to announce judgment at an earlier date, and that in neglecting to take this course his action was in flagrant violation of the provisions of law, and that, therefore, the judgment was a nullity. PARAS RAM *v.* JOTI PERSHAD. **61 P R 1904**

Sections, 38, 39, 41.

1. *See* EXECUTION OF DECREE. **45 P R 1882**

2. *See* LIMITATION ACT (XV OF 1877), SCHEDULE II, ARTICLE 179. **107 P R 1881**

3. *And sections* 24, 47—*Jurisdiction—Execution of decree—Sale of property outside jurisdiction of Court in execution of decree—Question relating to the execution of decree—Separate suit.*

A suit was transferred under section 24 of the Civil Procedure Code, 1908, from the Amritsar to the Lahore District. A decree was eventually passed against the whole family estate. On application for execution of the decree certain property was attached and sold, including the immovable property (situate within the Amritsar District) now in dispute. No objections were taken at the time of the execution of the decree, on the ground that the property was not within the limits of the territorial jurisdiction of the Judicial Assistant Commissioner of Lahore to whom the case had been transferred for trial and by whom the decree had been passed. Six years after the sale of the property in dispute one of the judgment-debtors filed the present suit, alleging that the property in question was his separate property and not liable to attachment and had not as a matter of fact been attached, and also that as it was situate in the Amritsar District, the District Judge of Lahore had no jurisdiction to attach it under the decree and even if it was so attached and sold by him, the order being without jurisdiction was a nullity.

CIVIL PROCEDURE CODE, 1908 *contd.*

Section 38—*concld.*

Held, that the execution of a decree being only a continuation of the suit, a Court which has passed a decree with jurisdiction to do so can execute that decree itself against immoveable property outside its ordinary territorial jurisdiction.

Held also, that a party professing to be injured in any way by an execution proceeding is not entitled to obtain relief by a separate suit if he has not availed himself of a remedy open to him under section 47, Act XIV of 1882. GURBACHAN SINGH *v.* RAM SAHAI. **8 P R 1902**

4. An application under the provisions of this section is a step in aid of execution within the meaning of article 179, schedule II of the Limitation Act. BULDEO DAS AND ANOTHER *v.* CHUNI LAL AND ANOTHER. **55 P R 1904**

Section 39.

1. *Power of Court to which decree has been transmitted to transmit to another Court for execution.*

See CIVIL PROCEDURE CODE, 1908, SECTION 42. **83 P R 1887**

2. *Execution of decree—Application to Court to which decree has been transmitted after that Court has made its return to the original Court—Application to the "proper Court."*

See LIMITATION ACT, 1877, 2ND SCHEDULE, ARTICLE 179. **168 P R 1888**

3. *Punjab Courts Act (XVIII of* 1884), *section* 35—*Civil Procedure Code (Act V of* 1908), *section* 39, *order XXI, rules* 10 *and* 35—*Power of Court to execute decree in excess of the limits of its pecuniary jurisdiction as an original Court.*

Held, by the Full Bench, that a Court to which a decree has been sent for execution under the powers conferred by section 35 of the Punjab Courts Act, can in execution pass orders in regard to property in excess of the limits of its pecuniary jurisdiction as a Court of original jurisdiction, as section 38 and order XXI, rule 10, of the Civil Procedure Code, show that there is no limitation on the power of an original Court to execute decrees of any value, section 39 (1) (*d*), allowing a Court which has passed a decree to send it for execution to *any* Court subordinate to it. *Ram Lal* v. *Natha Singh* (45 *P. R.* 1882), cited. GANGA RAM *v.* GUR SARN DASS. **31 P R 1887**

N.B.—This case has been overruled. *See* **70 P R 1897.**

4. *Execution of decree—Jurisdiction of Court to attach salary disbursed outside local limits of Court's jurisdiction—Civil Procedure Code*, 1908, *section* 38.

Held, that a Civil Court executing a decree or money has no jurisdiction to attach a moiety of the judgment-debtor's salary under section 60, and order XXI, rule 46, Civil Procedure Code, when the said judgment-debtor, as well as the garnishee, resides outside the local limits of the Court's jurisdiction. SHEO KARAN DASS *v.* EARLE. **40 P R 1895**

CIVIL PROCEDURE CODE, 1908 —*contd.*

Section 42.

1. *And sections* 47 *and* 50, *order XXI, rules* 11, 16 *and* 22.

See Civil Procedure Code, 1908, section 47. **70 P R 1897**

2. *Civil Procedure Code (Act V of* 1908), —*Power of Court to which decree has been transmitted to transmit to another Court for execution.*

Held, that the powers conferred by section 42 of the Civil Procedure Code, which provides that the Court executing a decree sent to it under Chapter XIX of the Code of 1882 shall have the same powers *in executing such decree* as if it had been passed by itself, does not include the power of transmitting the transmitted decree to another Court for execution.

But *held* further, that there is nothing in the Code of Civil Procedure to prevent a decree-holder from moving the Court which made the decree to grant or to prevent that Court from granting several certificates, concurrently or successively, enabling other Courts to execute its own decree. Naubat Rai *v.* Jaffarji. **83 P R 1887**

Section 47.

1. *See* Jurisdiction of Revenue Court. **126 P R 1879**

2. *See* Appeal—Civil. **55 P R 1886**

3. *See* Civil Procedure Code, order XXI, rule 78. **14 P R 1886**

4. *And order XXI, rule* 16.
See Civil Procedure Code, 1908, order XXI, rule 16. **78 P R 1896**

5. *And order XXI, rules* 24 *and* 58.
See Civil Procedure Code, 1908, order XXI, rule 24. **57 P R 1897**

6. *And order XXI, rules* 90, 94 *and* 95.
See Civil Procedure Code, 1908, order XXI, rule 95 **92 P R 1893**
See also No. 16, *Infra.*

7. *And sections* 2, 55 *and* 104 (1) (*h*).
See Civil Procedure Code, 1908, section 55. **69 P R 1895**

8. *Clause (c)—Evidence admissible under, not restricted to documents on record.*

Held, that there is nothing in the law to restrict the evidence admissible under section 47, sub-section (1) of the Civil Procedure Code, to documents already upon the record. Bhagwan Ram *v.* Chint Ram. **28 P R 1885**

9. *Decree—Representative.*

Held, following the decision of the Privy Council in *Chowdry Wahed Ali* v. *Mussammat Jumaee* (11 B. L. R. 149), that where a decree against a person in a representative capacity has been properly passed and proceedings taken under it to obtain execution against the party in his representative character, he should be considered a party to the suit with respect to any question which may arise between him and other parties relating to the execution of the decree, within the meaning of section 47 of the Civil Procedure Code. Munshi Aziz-ud-din *v.* Mussammat Dulhan Begam. **88 P R 1886**

10 *And sections* 2, 145—*Order refusing to grant execution against surety—"Party to the suit"—Decree.*

Held, that an order refusing to grant execution under section 253, Civil Procedure Code of 1882, against one who is sought to be charged as having become surety for execution of the decree before such decree was passed, is an order made against a "party to the suit" under section 47 of the Code, and consequently falls under the definition of "decree" contained in section 2 of the Code. Muhammad Sadik *v.* Haji Ata Muhammad. **104 P R 1883**

11. *Sub-section* (3)—*Questions for Court executing decree—"Parties to suit"—Representative—Right to sue.*

The decision of the Privy Council in *Chowdry Wahed Ali* v. *Mussammat Jumaee* (11 *B. L. R.* 149), to the effect that "where "a decree has been properly passed and pro-"ceedings taken under it to obtain execution "against a party in a representative character, "there seems to be no good reason for say-"ing he should not be considered a party to "the suit with respect to any question which "may arise between him and the other parties "relating to the execution of the decree" within the meaning of Act XXIII of 1861 section 11 Act V of 1908, section 47 (1), cited and followed.

Held, semble, that the above decision does not go to the length of affirming that a person who is a party to a suit in *any* character is a party in *every* other character he may happen to fill: and therefore an objection by a judgment-debtor that, while the decree was against his private property, the thing attached was property which he was holding as a mere trustee or executor or in his capacity of an office-bearer would not fall within section 47 of the Code of 1908 so as to bar a separate suit.

Held further, that where the subsequent suit is no longer between the judgment-debtor claiming in a different capacity against his decree-holder only, but he is suing to eject a stranger to the previous suit who has bought the attached property at the auction, the latter cannot be said to be either a party to the prior suit or the representative of a party, so as to bring the case within the scope of section 47 (3) of the Code. Moreover, if the auction-purchaser could be deemed a representative of either party, it would be of the judgment-debtor whose right and interest he had bought, and the question would therefore be not between the parties to the suit, but between a party and his own alleged representative. *Munshi Aziz-ud-din* v. *Mussammat Dulhan Begam* (88 *P. R.* 1886), referred to. Sodhi Hukam Singh *v.* Sardar Arjan Singh. **12 P R 1887**

12. *Questions for Court executing decree—Parties—Representative.*

One H. sued and obtained a money decree against the sons and widow of one S., deceased, to be executed against the property of the said S. In execution of this decree, the decree-holder attached certain houses as the property of S., whereupon one of the judgment-debtors objected to the attachment of one house, claiming it as his sole property, acquired from his maternal grandfather. The objection having been allowed, the present suit was brought by H. to set aside the order and declare the house liable to attachment.

Held, that the case fell within the decision of the Privy Council in *Chowdry Wahed Ali* v *Mussammat Jumaee* (11 *B. L. R.* 149), and was not maintainable, inasmuch as the proper mode of seeking relief from the order impugned was by way of appeal.

The question which arose in execution of the plaintiff's decree was "a question arising "between the parties to the suit in which "the decree was passed, and relating to "the execution of the decree," within the meaning of section 47 of the Civil Procedure Code, and did not cease to be such a question either because the objector was a party before decree as the legal representative of a deceased debtor, or because the objector claimed release of the property as belonging to him in his personal and not in his representative capacity. *Munshi Aziz-ud-din* v. *Mussammat Dulhan Begam* (88 *P. R.* 1886), and *Sodhi Hukam Singh* v. *Sardar Arjan Singh* (12 *P. R.* 1887), referred to. Kashi Ram *v.* Harnam Das. **47 P R 1887**

13. *And section* 50—*Questions for Court executing decree—Parties—Representative.*

Held (applying the principle laid down by the Privy Council), in *Chowdry Wahed Ali* v. *Mussammat Jumaee* (11 *B. L. R.* 149), that where execution has been properly taken against the representative of a deceased judgment-debtor under section 50 of the Civil Procedure Code, and the said representative has made an objection to the sale of the property attached on the ground that it is ancestral property, the question thus raised is a question arising under section 47 of the Code, and an appeal therefore lies from the decision thereof by the executing Court. *Kashi Ram* v. *Harnam Das* (47 *P. R.* 1887), cited. Ram Chand *v.* Gholu Shah. **87 P R 1887**

14. *Parties to suit—Representatives.*

Held, that a person claiming to be the representative of a deceased decree-holder for purposes of executing the decree in favour of the heirs, and who has been recognized by the Court as a petitioner, but has not been recognized as the representative of the deceased decree-holder, the Court having refused to permit him to execute the decree, unless and until he has established his re-

presentative title in a regular suit, is not a "representative" within the meaning of section 47 (3) of the Civil Procedure Code.

The only legitimate construction of the expression in the above clause "questions "arising between the parties to the suit in "which the decree was passed or their "representatives" is one which restricts it to *de facto* representatives admitted as such on the record, and neither "parties" nor "representatives" includes persons who claim to be but are not admitted in the record to be parties or representatives, as the case may be. NIHAL SINGH *v.* CHAIT SINGH.

97 P R 1887

15. *Party to suit—Surety.*

Held, that a person who becomes surety for the performance of an original decree, after the decree has been made, is not a party to the suit within the meaning of section 47 (3), Civil Procedure Code. *Muhammad Sadik* v. *Haji Ata Muhammad* (104 P. R. 1886), and *Jai Dial* v. *Sawan Mal* (109 P. R. 1886), distinguished. SRI RAM (INFANT SON OF) *v.* KANWAR HARI SINGH.

99 P R 1887

Cf., however, section 145 of the new Code.

16. *And order XXI, rule 95—Suit by auction purchaser (who was also decree-holder) for possession of immovable property purchased at execution sale—Question for Court executing decree—Separate suit barred—Right of purchaser who has failed to apply for possession under order XXI, rule 95, Civil Procedure Code, to sue for such possession.*

In execution of a decree against the defendant, the present plaintiff attached the defendant's rights and interest under certain deeds of usufructuary mortgage, and at a subsequent sale became the purchaser thereof. The auction-sale, which took place in 1882, was never confirmed by the Court in which the execution proceedings were pending, nor was a certificate of sale granted till 1885, nor did the auction-purchaser obtain possession of the mortgaged property, or ask for the assistance of the Court under order XXI, rule 95, of the Code. But shortly after obtaining his certificate of sale, he filed the present suit asking to be put into possession of the hypothecated land, and to have a clerical error in his certificate corrected.

Held, that the suit was barred by the provisions of section 47 of the Civil Procedure Code. *Sodhi Hukam Singh* v. *Sardar Arjan Singh* (12 P. R. 1887), and *Kashi Ram* v. *Harnam Das* (47, *Ibid.*), cited

Semble :—The suit was also not maintainable, as plaintiff had taken no action under order XXI, rule 95, Civil Procedure Code, to recover possession of the property sold to him from his judgment-debtor. BHAGA SHAH *v.* BURA SHAH.

58 P R 1888

But see Civil Procedure Code, 1908, order XXI, rule 95. **92 P R 1893**

17. *Question relating to execution of decree—Parties to suit.*

Where certain decree-holders attached certain immovable property as belonging to two of the judgment debtors who objected that they had gifted the property to a certain temple, and were only in possession of it as trustees for that temple, *held*, that *quoad* the judgment-debtors, the question raised fell under section 47, Civil Procedure Code, as one relating to the execution of the decree between the parties to the suit, and was not one to be tried by a separate suit. SRI NARAIN *v.* DAULAT RAM. **9 P R 1889**

18. *Suit to establish right to property released from attachment—Objection by a person not a party to the suit—Civil Procedure Code, section 47, order XXI, rules 60 and 63.*

Plaintiff, a decree-holder, against whom an order for release of certain property from attachment had been passed under order XXI, rule 60, Civil Procedure Code, on the objection of a person not a party to the suit, sued to establish his right to such property. *Held*, that the suit lay and that no appeal lay under section 47 as the property was released on the objection of a person not a party to the suit. DEVI DITTA *v.* MIRAN BAKHSH.

63 P R 1889

19. *Right to sue—Mesne profits—Decree for redemption and possession on payment of a certain sum—Modification of decree—Final decree making redemption conditional on payment of larger sum—Suit for recovery of mesne profits which accrued between date of obtaining possession under first decree and payment under final decree.*

A. obtained a decree for redemption and possession against B. on the 13th May 1884. The decree directed redemption on payment of Rs. 1,000. A. applied for execution and obtained possession on 14th June 1884. There was further litigation between the parties—appeals and a remand—and the first Court after remand directed that A. should pay Rs. 1,603-12-0 instead of Rs. 1,000. The additional Rs. 603-12-0 were not paid by A. till 17th January 1887. B. claimed from A. the profits of the land from 14th June 1884 to 17th January 1887. A. pleaded that the claim did not lie, being barred by section 47, Civil Procedure Code, and that the plaintiff was not entitled to the profits claimed.

Held, that the question involved in the case was not a question relating to the execution or satisfaction of the decree. The *mesne* profits claimed not having been dealt with by the previous decree, a separate suit was maintainable for their recovery.

Held further, that the plaintiff was entitled to the profits claimed. Although A. legally obtained possession in execution, it was finally decided that he was not entitled to possession until he paid Rs. 1,603-12-0. Until such payment his possession was wrongful. JAMYAT SINGH *v.* NIHAL CHAND.

60 P R 1890

20. *Representative—Person claiming title from judgment-debtor after institution of suit.*

As regards possession of property bound by a decree, a person claiming title from the judgment-debtor after the institution of the suit and not brought upon the record under order XXII, rule 10, Civil Procedure Code, is identified with the judgment-debtor and does not represent him within the meaning of section 47 of the Code.

I. L. R. 16 *Calc.* 355, dissented from. BHAINI RAM *v.* GOKAL MAL.

151 P R 1890

21. *Decree for pre-emption—Civil Procedure Code, order XX, rule 14, and section 47.*

A successful plaintiff in a pre-emption suit paid part of the purchase-money in foreign circle currency notes. The Court in the first instance accepted the notes in payment without any objection, and afterwards allowed the plaintiff two more days to supply currency notes of the Lahore Circle, or other legal tender, which order was complied with.

Held, that the order of the lower Court was correct. Currency notes are money in the ordinary acceptation of the term, although they may be notes of a different Circle from that in which they are tendered. The words "purchase-money" are not defined, and there is nothing either in section 17, Punjab Laws Act, or in order XX, rule 14, Civil Procedure Code, 1908, to put a restricted or technical meaning upon them. 70 P. R. 1890, distinguished.

Held also, that an appeal lay from the order in question under section 47, Civil Procedure Code, the order relating to the execution of the decree.—IFTIKHAR ALI *v.* SAHIB RAM. **67 P R 1892**

22. *Civil Procedure Code, 1908, section 55, and sections 47 and 104—Order by execution Court for imprisonment of judgment-debtor—Appeal—Revision.*

Held, that an order passed by the Court executing a decree under section 55 of the Civil Procedure Code for the imprisonment of the judgment-debtor, though not appealable *as an order* under section 104, is appealable as a *decree* inasmuch as the question decided by such order is one relating to the execution of the decree within the meaning of section 47 of the Code. SEVA SINGH *v.* DHAUNKAL. **69 P R 1895**

23. *Order of lower Court awarding costs reversed on appeal—Restitution by summary process—Civil Procedure Code, 1908, sections 47, 144, order XLIII, rule 2.*

Held, that when an order of a lower Court awarding costs is reversed on appeal, assuming that order XLIII, rule 2, Civil Procedure Code, does not make the procedure provided by section 144 of the Code applicable by analogy, the Court is authorised on general principles to compel by summary process restitution of such costs if already realised. THAKAR MAHAN CHAND *v.* LALA GANDA MAL. **49 P R 1896**

CIVIL PROCEDURE CODE, 1908 —*contd.*

Section 47—*contd.*

24. *Civil Procedure Code*, 1908, *sections* 47, 144—*Interest on money taken out of Court in execution of decree—Separate suit.*

Held, that interest on money taken out of Court in execution of a decree is recoverable with the principal in execution proceedings under section 144, Civil Procedure Code, and that section 47 of the Code, is a bar to a separate suit for the recovery thereof.

The rulings of the Courts cited and discussed. SHADI LAL *v.* MEHTAB CHAND.

82 P R 1896

25. *Civil Procedure Code*, 1908, *sections* 42, 47, 50, *order XXI, rules* 11, 16, 22—*Execution of decree—Power of Court executing transferred decree to implead representative of deceased judgment-debtor—"Court which passed the decree"—Application for execution dismissed for default—Subsequent application without fresh certificate from Court which passed the decree—Jurisdiction of Court to execute decree in excess of the limits of its pecuniary jurisdiction as an original Court.*

The amendment of section 244, Civil Procedure Code, 1882, by section 26 of Act VII of 1888, has had the effect of practically doing away with the necessity of resorting to the Court which passed the decree, when the execution of such decree is pending elsewhere, in order to implead the representative of the judgment-debtor if he happens to die while execution is going on. In such a case, the Court executing the decree is enabled by virtue of the said section to implead such representative, and is not debarred from so doing by section 234 of that Code, which is at best imperative only when no execution is pending, but the decree has not been fully realized.

An application for execution of a decree which had been transferred to a Court for execution was consigned to the Record-room by an order in the following terms:—"There "has been no attachment, nor has property "been pointed out on the spot; decree-holder "or his mukhtar not present. Let the file be "sent to the Record-room (*lihaza misl dakhil* "*dafter hoe*)." A subsequent application for execution having been made to the same Court and granted, it was objected on appeal that in consequence of the order above set forth the executing Court had become *functus officio* and could not proceed with the execution without a fresh certificate from the Court which passed the decree.

Held, that the effect of such order was merely that the application "was struck off" the file of the business pending in the Court, but that the case really continued pending in the Court, which was, therefore, competent to proceed with the execution on a fresh application made to it within time.

Quaere: Whether as the law now stands, a Court to which a decree has been sent for execution, has jurisdiction to execute such decree when it is in excess of the limits of its pecuniary jurisdiction as an original Court. GOPAL DAS *v.* MUSSAMMAT GULAB DEVI.

70 P R 1897

CIVIL PROCEDURE CODE, 1908 —*contd.*

Section 47—*contd.*

26. *Civil Procedure Code*, 1908, *section* 47, *order XXI, rule* 15—*Application for execution of whole decree by one of several joint decree-holders—Dismissal of application—Appeal.*

An application for execution of the whole decree was made, under order XXI, rule 15, of the Civil Procedure Code, by one of four joint decree-holders, but was dismissed by the District Judge on the ground that the decree could not be executed until all the decree-holders joined in the application. It appeared that the judgment-debtor was not summoned to defend the application, but on appeal from the District Judge's order he was impleaded as well as the other co-decree-holders. The Divisional Judge ordered that the execution should proceed on the applicant joining with him such of his co-sharers as were willing to execute the decree jointly with him, and impleading the rest who objected and declined to take out execution, and that the Court should take possession of the entire land decreed, and separate off the shares of applicants from those of the others through the agency of the Collector. The judgment-debtor appealed to the Chief Court and it was contended on his behalf that the order of the District Judge under order XXI, rule 15, of the Code was not appealable, and that, therefore, the order of the Divisional Judge was without jurisdiction and void.

Held, following *I. L. R. XVII Mad.* 394, that the Divisional Judge had jurisdiction to hear the appeal.

Although, if an application under order XXI, rule 15, of the Code is dismissed without summoning the judgment-debtor or issuing process, and the latter is not made a party to the appeal, the question may be one beyond the province of the appellate Court to adjudicate upon, yet if, as in the present case, the judgment-debtor is impleaded on the appeal, the question then becomes one under section 47 of the Code and an appeal lies.

The Court refused, under the circumstances of the case, to interfere with the order of the Divisional Judge on the merits. MIR KHAN *v.* JINDE KHAN.

28 P R 1898

27. *Civil Procedure Code*, 1908, *section* 47—*Decree for pre-emption—Question whether decree-holder has paid money into Court within time.*

On the 19th May 1897, Hyat obtained a decree against Saghar Mal, vendee, for pre-emption of certain land and it was ordered that on payment by him of Rs. 2,000 purchase-money by the 28th June 1897, for payment to Saghar Mal, vendee, together with Rs. 29, cost of sale-deed and registration, he should be put in possession of the land, and that, in default of deposit of the said sums, the decree should become void. The decree-holder by mistake, paid into Court only Rs. 2,000 by the 28th June, and on the 1st July the vendee submitted an application urging that the decree had become void in consequence of the failure of the decree-holder to pay in the whole amount specified in the decree. This application having been rejected, the judgment-debtor (vendee) appealed to the Divisional Judge, but his appeal was dismissed on the ground that no appeal lay.

CIVIL PROCEDURE CODE, 1908 —*contd.*

Section 47—*contd.*

Held, that the question whether the purchase-money had been deposited in time was one arising between the parties to the suit, in which the decree was passed, and relating to the execution thereof within the meaning of section 47 of the Civil Procedure Code.

Held, therefore, that an appeal lay to the Divisional Judge from the order rejecting the application. SAGHAR MAL *v.* HYAT

38 P R 1898

28. *And order XXI, rule* 32.

In a partnership suit the Court after finding that a certain sum was due to the firm, which the parties were entitled to in equal shares, ordered the defendant to realise the amount and pay half to the plaintiffs. On the question whether the plaintiffs could realise their share from the defendant by execution of their decree or by separate suit.

Held, that as a specific sum having been found to be due to the firm, the plaintiffs could recover from the appellant in execution proceedings their share of any sum found to have been realised by the defendant or to have been realisable with due diligence under section 47 (3) of the Civil Procedure Code.

Held, order XXI, rule 32, of the Civil Procedure Code, inapplicable to the case. TIKAYA RAM *v.* MEGA RAM.

48 P R 1900

29. *Execution proceedings—Jurisdiction of Court to entertain application after full satisfaction of the decree being entered—Procedure—Review—Appeal—Appeal from an order declining to review the previous order.*

Section 47 of the Civil Procedure Code does not apply to a Court which has fully executed a decree and has thereby become *functus officio*, it applies only to a Court executing a decree at the time when an application connected with execution is made; therefore, where a judgment-debtor after the final settlement had been effected and the execution proceedings terminated, full satisfaction of the decree being entered and the execution record being consigned to the Record-room, made an application to the Court for the refund of a certain amount alleged to have been recovered from him by the decree-holder in excess of the sum due under the decree, *held*, that the only course open to the judgment-debtor was to apply for a review of the order declaring the decree satisfied and striking of the execution proceedings, but that where no objection to jurisdiction had been taken in the Court below and the *forum* for the application for review was the same as

CIVIL PROCEDURE CODE, 1908 —*contd.*

Section 47 · *contd.*

the *forum* selected by the judgment-debtor for the application for refund, the latter application might be treated as an application for review.

Held, further, that an order declining to review a previous order was not appealable.

Fakhr-ud-din Muhammad Ahsan v. *The Official Trustee of Bengal* (*I. L. R. X Cal.* 538), *Sadasiva Pillai* v. *Ramalinga Pillai* (24 *W. R.* 193), and *Aziz-ud-din Hossein* v. *Ramanagar Roy* (*I. L. R. XIV Cal.* 605) followed. *Haji Ahmad Husain* v. *Sunder Lal* (80 *P. R.* 1893) distinguished. CHAUDRI GURMUKH SINGH *v.* MUSSAMMAT MIRZA NUR.

63 P R 1901

30. *Question relating to execution of decree—Separate suit.*

Held, that a party professing to be injured in any way by an execution proceeding is not entitled to obtain relief by a separate suit if he has not availed himself of a remedy open to him under section 47. GURBACHAN SINGH *v.* RAM SAHAI. **8 P R 1902**

31. *Mesne profits—Application for recovery of mesne profits which accrued between the date of decree and of delivery of possession.*

Held, that section 47 of the Code of Civil Procedure does not empower an executing Court to determine the amount of mesne profits due to a decree-holder in a case in which the decree does not mention mesne profits.

Jamayat Singh v. *Nihal Chand* (60 *P. R.* 1890), *Ram Ghulam* v. *Dwarka Rai* (*I. L. R. VII All.* 170). *Man Mohan Sirkar* v. *Secretary of State for India* (*I. L. R. XVII Cal.* 968), and *Kalka Singh* v. *Paras Ram* (*I. L. R. XII Calc.* 434 *P. C.*) cited. KHAZAN SINGH AND OTHERS *v.* KHUSHAL SINGH AND OTHERS. **29 P R 1902**

32. *Question in execution of decree—Question arising between the parties or their representatives—Appeal.*

The holder of a decree for pre emption duly deposited the purchase-money amounting to Rs. 1,475 in Court as directed. Subsequently a reversioner of the vendor brought a suit to have it declared that the sale was without necessity, and should not be allowed to affect his rights except in respect of Rs. 300 and obtained a decree. The pre-emptors then asked the Munsif for the return of their purchase-money as they no longer wished to go on with the purchase, as their decree of pre-emption had been superseded by the declaratory decree. The Munsif without informing the vendee ordered the refund of the money. The vendee appealed to the Divisional Judge who declined to interfere, on the ground that the procedure for paying money into Court in pre-emption cases was not a procedure in execution of a decree, and that he had no jurisdiction to hear an appeal from such an order. *Held*, that as the effect of the Munsif's order was to deprive the vendee of his money which he was entitled to under a decree of Court, it fell within the scope of

CIVIL PROCEDURE CODE, 1908 *contd.*

Section 47 —*contd.*

section 47, Civil Procedure Code, as a question arising between the parties to the suit or their representatives and relating to the execution, discharge or satisfaction of the decree, and that an appeal lay as if from a decree. ABDULLA *v.* AMIR-UD-DIN.

76 P R 902

33. *Execution of decree—Application by judgment-debtor that more had been realised from him than was due under the decree—Appeal.*

Held, that an application by a judgment-debtor for refund of money realised from him in execution proceedings in excess of the sum due under the decree is covered by section 47 of the Civil Procedure Code, and that a refund can be ordered by the Court executing the decree.

Chaudri Gurmukh Singh v. *Mussammat Mirza Nur* (63 *P. R.* 1901), *Hira Lall Chatterji* v. *Gourmoni Debi* (*I. L. R. XIII Cal.* 326), *Mammed* v. *Locke and another* (*I. L. R. XX Mad.* 487) *Ram Adhar* v. *Narain Das* (*I. L. R. XXIV Mad.* 519), *Rash Behary Mandal* v. *Rakhal Charn Mandal* (1 *Cal. W. N.* 708), and *Fakir-ud-din Mahomed Ahsan* v. *The Official Trustee of Bengal* (*I. L. R. X Cal.* 538), referred to and distinguished. KALU KHAN AND OTHERS *v.* ABDUL LATIF.

45 P R 1904

34. *Right of suit—Decree for possession of equity of redemption—Pre-emptor obtaining possession of property instead of equity of redemption—Suit for restitution of property wrongfully taken—Question relating to the execution, discharge or satisfaction of decree—Discretion of Court to treat plaint as an application for restitution—Civil Procedure Code,* 1908, *section* 47.

'A' purchased from 'B' the equity of redemption in a certain property which was previously mortgaged with possession to 'C' and then redeemed the mortgage of 'C'. 'D' sued 'A' to enforce his right of pre-emption and got a decree for delivery of possession of equity of redemption, but in execution of his decree he somehow obtained possession of the property in lieu of its equity of redemption. 'A' then filed a regular suit to recover possession of the property as a mortgagee on the ground that 'D' had taken unlawful possession in execution proceedings. Thereupon the defence contended that the suit was barred by the provisions of section 47 of the Civil Procedure Code.

Held, that the suit was not barred under section 47 of the Code of Civil Procedure. The question to be decided in this suit did not relate to the execution, discharge or satisfaction of the original decree within the meaning of that section because the decree in the pre-emption suit has and had no concern with it.

Rash Beharee Lal v. *Bebee Wajun* (11 *W. R.* 516), followed.

CIVIL PROCEDURE CODE, 1908 —*contd.*

Section 47 —*concld.*

Held also that even assuming that no regular suit lay the plaint should be regarded under the circumstances of the case as an application for execution of decree for claiming restitution of property wrongfully taken by 'D.'

Biru Mahata v *Shyama Churn Khawas* (*I. L. R. XXII Cal.* 483), *Jhamman Lal* v. *Kewal Ram* (*I. L. R. XXII All.* 121), *Pusupathy Ayyar* v. *Kothanda Rama Ayyar* (*I. L. R XXVIII Mad.* 64), and *Jotindra Mohan Tagore* v. *Mahomed Basir Chowdhry* (*I. L. R. XXXII Cal.* 332), followed. KARAM CHAND *v.* KHUDA BAKHSH.

5 P R 1907

35. *Suit against a member of joint Hindu family—Death of defendant pending suit—Decree against son as legal representative—Right of son to question the legality of the debt covered by the decree in execution proceedings.*

See HINDU LAW—JOINT FAMILY.

147 P R 1907

36. And order *XXI*, rule 90—Application to have sale set aside by reason of defective attachment.

See EXECUTION OF DECREE.

40 P R 1910

Section 48.

1. *And section 38, order XXI, rules* 10 *and* 35.

See CIVIL PROCEDURE CODE, 1908, SECTION 38. **31 P R 1887**

But see **70 P R 1897**

2. *Twelve years' old decree—Application for share of sale-proceeds—"Step in aid" of execution.*

See LIMITATION ACT, 1877, 2ND SCHEDULE, ARTICLE 179. **27 P R 1888**

3. *Limitation for applications for execution of decree.*

See LIMITATION ACT, 1877, 2ND SCHEDULE, ARTICLE 179.

9 P R 1891

4. *Execution of decree—Limitation—Subsequent order—Modification or alteration of original decree.*

See LIMITATION ACT, 1877, 2ND SCHEDULE, ATICLE 179.

89 P R 1894

5. *Execution of decree—Attachment and sale—Sale subsequently set aside—Re-sale without fresh attachment—Application for execution of decree or for revival of suspended proceedings.*

See LIMITATION ACT, 1877, 2ND SCHEDULE, ARTICLE 179.

106 P R 1894

6. *Twelve years' old decree—Civil Procedure Code,* 1882, *section* 230,—*Meaning of "granted" and "law in force" in above section.*

An application by a decree-holder on which the judgment-debtor was arrested and brought up to Court, though he was subsequently released, *held* to have been "grant-

Section 48—*contd.*

ed" within the meaning of section 230 of the Civil Procedure Code, 1882, such application having been made the basis of proceedings in execution.

Held further, that the words "law in force" in the concluding paragraph of the same section mean not only the Limitation Act but also the Civil Procedure Code of 1877. MISRI *v.* TULSI RAM. **54 P R 1887**

7. *Twelve years' old decree—Application when "granted" within the above section—Moneypayable at a "certain date"—Each of several assignees of portions of a decree not entitled to execution separately.*

On an application filed in August 1886, for execution of a decree passed in April 1874, it appeared that a previous application by the present applicant, who was an assignee of a part of the decree, was made under section 230 of the Civil Procedure Code of 1882, in October 1883, the object of which was to obtain an order for the distribution of a sum of Rs. 150 which was said to be in the hands of the Nazir, and to have a notice issued to the judgment-debtor to appear and show cause why the decree should not be executed against him. This notice (under order XXI, rule 22) was issued, and eventually the case was heard in the presence of the parties, and the Court having directed the ratable distribution of the Rs. 150 in the hands of the Nazir, left the decree-holders to make any application for further proceedings to recover the balance which they might be advised to take and as no such proceedings were taken, the Court subsequently ordered the case to be consigned to the record-room.

Held, that the application of October 1883 must under the above circumstances be taken to have been "granted" within the meaning of section 230 of the Civil Procedure Code.

The decree in the above case directed the money due under it to be paid annually in two instalments at a specified rate "each harvest," referring apparently to the *Fasli* harvests of *rabi* and *kharif*.

Held, that money payabale as above could not be said to be payable "at a certain date" within the meaning of clause (*b*) of section 48 of the Civil Procedure Code, and that therefore applying clause (*a*) of the same section, the present application for execution was barred.

It is a grave irregularity in an executing Court to permit several assignees of parts of a single and indivisible decree to execute that decree as to their shares independently of each other. SADIK ALI *v.* DEOKI NANDAN. **19 P R 1889**

8. *Execution of decree—Limitation Act XV of 1877, Schedule II, article 179.*

An application for execution of a decree having been made more than three years after the date of the last application, the judgment-debtor pleaded that it was time-barred. The District Judge held that section 48, Civil

Section 48—*contd.*

Procedure Code, applied and as twelve years had not elapsed since the date of the decree, the application was within time.

Held, on appeal to the Chief Court, that the law of limitation for applications to execute decrees of mofussil Civil Courts is contained in article 179, Schedule II, Act XV of 1877. Section 48, Civil Procedure Code, does not contain the law of limitation, but fixes a period after which an application for execution, though not barred by the law of limitation, shall not be granted. The Code of Civil Procedure does not restore a right which the law of limitation prevents from being exercised.

Held, also, that section 9, Limitation Act, does not apply to applications but to suits only. BEHARI LAL *v.* BANESS. **109 P R 1889**

9. *Delivery of property—Certain date—Construction of decree.*

The decree in this case bore date, the 18th August 1873, and was to the following effect: "Decree for Rs. "6,000 principal and interest, and Rs. 315 "costs, with further interest at Re .0-8 per "cent. per month, that is, from date of "decree to date of realization, be made in "favour of plaintiff against defendant. "Mauza Raseen, which is under attachment "by the Government in lieu of Rasadi debts "be made over to plaintiff after release "from attachment (*mudai ko bad vaguzasht* "*supurd kia jawe*)".

The decree-holder made applications for execution, from time to time, so as to keep alive the right of execution so far as it is effected by article 179, Schedule II, Limitation Act. It was contended that the present application made on the 6th Decemebr 1887 was barred under section 48, Civil Procedure Code, as a previous application for execution had been made and granted and that 12 years had elapsed from the date of the decree. It was also contended that the decree did not direct the delivery of property and that if it did, no *certain* date was fixed for delivery.

Held, that the decree was for delivery of property. Section 48 is not restricted to a delivery of the property to the decree-holder as his own property, and does not exclude a delivery of property as mortgaged property.

Held also, that a *certain* date had been fixed for delivery, as the date could be sufficiently ascertained by reference to a contingent event—*i.e.*, the release from attachment. *In certum est quod certum reddi potest.* MUHAMMAD AKBAR KHAN *v.* DWARKA DAS. **159 P R 1889**

10. *Execution of decree—Decree more than 12 years' old—Arrangement between parties in execution for payment of judgment-debt by instalments—Validity of such arrangement.*

The decree of which execution was sought was passed on the 11th May 1869. From 1869 to 1878, applications for execution were

Section 48—*contd.*

regularly made at intervals of less than three years. On the 20th August 1878, the decree-holder applied for execution. Notice was issued to the judgment-debtor, who, on the 14th October 1878, proposed an arrangement for payment of the amount of the decree by instalments which was agreed to by the decree-holder and the case struck off. The decree-holder applied for execution under this arrangement on the 9th May 1881, 22nd April 1884, and finally on the 7th August 1886. On notice having been served on him of this last application, the judgment-debtor appeared and contended that the decree could no longer be executed being more than 12 years old, and one application having been made and granted in 1884. He further contended that the arrangement made in 1878 was null and void, having been made without jurisdiction, inasmuch as a provision similar to that contained in section 57 A. did not exist in Act X of 1877, and further that no decree could be altered by consent of parties except by the Court which passed the decree, and then only within six months of the date of the decree, which was not the case here.

Held, that the judgment-debtor could not be allowed to challenge the validity of an arrangement which was brought about by his own action in 1878. Where a Court has a general jurisdiction over the subject-matter of a claim, parties should be held to an agreement made by them that the questions between them should be heard and determined by proceedings contrary to the ordinary *cursus curiae*: and consequently the decree of 1869, as modified by consent of parties in 1878, was still capable of execution.

15 *B. L. R.* 383, 21 *W. R.* 310, and *Pisani* v. *The Attorney-General of Gibraltar, L. R.* 5 *P. C.* 516, referred to. NAWABZADA MUHAMMAD AKBAR KHAN *v.* DYA NATH. **200 P R 1889**

11. *Execution of decree—Certain date.*

The decree in this case provided that Rs. 8,000 was due to the decree-holder; that Rs. 400 should be paid annually on account of interest on this sum, and that in case of default for 2 years, the decree-holder would be competent to recover Rs. 8,000 with interest.

Held, that the decree did not direct payment of Rs. 8,000 to be made at "a certain date," within the meaning of section 48 of the Civil Procedure Code. NIHAL CHAND *v.* SAFDAR HUSSAIN. **199 P R 1890**

12. *Civil Procedure Code, section 48—Execution of decree—Limitation.*

Section 48, Civil Procedure Code, 1908, does not contain the law of limitation for application to execute a decree, but gives a period after which such an application, though *not* barred by the law of limitation, shall not be granted.

No. 27 *P. R.* 1888 and No. 109 *P. R.* 1889 followed. GHOLAM JILANI *v.* GANGA RAM. **9 P R 1891**

Section 48—*contd.*

13. *Civil Procedure Code, section* 48 —*Annual or monthly payments—Decree directing payment at a certain date.*

Decrees for annual or monthly payments fall within and are governed by the provisions of section 48, Civil Procedure Code, 1908. NAWABZADA MUHAMMAD KAMAR-UD-DIN KHAN *v.* PIARI LAL. **13 P R 1892 F B**

14. *Execution of decree—Application by representative of deceased decree-holder—Absence of certificate under Act VII of* 1889, *section* 4—*Subsequent applications—Civil Procedure Code,* 1908, *order XXI, rule* 10.

Held, that an application by the legal representative of a deceased decree-holder for execution of the decree is nonetheless an application " in accordance with law, " because when it was preferred the applicant had not obtained a certificate as required by Act VII of 1889, section 4, that section merely directing that a Court shall not " *proceed* " upon the application till the production of the certificate, but not preventing the reception of such application.

Certain subsequent applications *held,* not barred under section 48 of the Civil Procedure Code, as being applications, not to execute the decree, but to carry on the proceedings initiated by the first application. KUNDAN LAL *v.* MUSSAMMAT MAKHNI. **27 P R 1894**

15. *Limitation Act (XV of* 1877), *section* 7—*Disability of minor—Application for execution presented more than* 12 *years after date of decree—Civil Procedure Code,* 1908, *section* 48.

Held, that the enactment in section 48 of the Civil Procedure Code, 1908, limiting the period during which execution shall be granted of a decree once put in actual execution, is one made for the benefit of the judgment-debtor to protect him from being subject, without limit in point of time, to execution proceedings, and as the said section is in absolute and unqualified terms as regards persons, a minor decree-holder is not exempted from its operation by section 7 of the Limitation Act, 1877.

I. L. R. XVI Bom. 536, not followed. JHANDA *v.* MOHAN LAL. **128 P R 1894**

16. *Executian of decree—Limitation—Civil Procedure Code,* 1908, *section* 48, *order XXI, rule* 11—*Limitation Act,* 1877, 2*nd schedule, article* 179 (*iv*).

The decree, of which execution was sought, was passed on the 15th July 1880, and an application for execution by attachment and sale of movable property was made on the 27th October 1882, but as no movable property could be found, the proceedings were infructuous and terminated. Subsequently, on the 18th October 1883, on a fresh application for execution, the judgment-debtor was arrested and imprisoned, and a small sum of money was realised by sale of a document. On the 29th January 1884 an application was made for execution by attachment and sale of immovable property of the judgment-debtor. The executing Court dealt with this application as one for a farm of the property, but the error was amended by the Divisional Court on appeal, and proceedings were protracted until, on the 31st October 1891, the Commissioner of the Division refused to sanction sale of the property. On the 31st October 1892, the decree-holder filed an application, setting forth the refusal of the Commissioner to sanction the said sale and his own fruitless endeavours to realise his decree, and praying that the land be sold or a receiver appointed under order XL, rules 1—3 of the Civil Procedure Code. An order for the appointment of a receiver having been made, the judgment-debtor appealed to the Chief Court, and it was contended on his behalf that execution of the decree was barred under the provisions of section 48 of the Code, and article 179 (*iv*) of the 2nd Schedule to the Limitation Act, 1877. It was urged that the application of 1892 was "a subsequent application " within the meaning of the said section of the Code.

Held, that the said application was merely a petition to the Court, seized of, and already executing, the decree on the application of 1884, to take a step in aid of the execution on that application, and was, therefore, not barred under section 48 of the Code, which does not apply to applications or petitions asking the Court to give effect to previous petitions still pending.

Held further, that inasmuch as proceedings in execution had been pending ever since 1884, execution was not barred by reason of " steps in aid of execution " not having been taken every three years. BUDHE KHAN *v.* BIR BAL. **40 P R 1898**

17. *Civil Procedure Code,* 1908, *section* 48—*Execution of decree—Limitation—Execution of twelve years' old decree.*

Held, that where an application to execute a decree for the payment of money or delivery of other property has been made within the period of limitation prescribed by section 48, Civil Procedure Code, and granted, and there has been no unreasonable delay in its prosecution by the decree-holder, the latter's right to continue execution will not be barred under the third paragraph of that section if the final completion of the proceedings initiated by such an application cannot be obtained within the period limited by that section.

Sher Ali, v. *Deoki Nandan* (19 *P. R.* 1889), *Mul Chand* v. *Kour Singh* (27 *P. R.* 1888), *Bihari Lall and Harjas Rai* v. *Baness* (109 *P. R.* 1889), *Golam Jilani* v. *Ganga Ram* (9 *P. R.* 1891), *Misri* v. *Tulsi Ram* (54 *P. R.* 1887), *Jhandu* v. *Mohan Lall* (128 *P. R.* 1894), *Sreenath Goobo* v. *Yusoof Khan* (*I. L. R. VII Calc.* 556), *Senra Disai Venra Jagath Viroraina Dhikku Vojaya Sethurayar* v. *Annasami Ayyar* (*I L. R. VI Mad.* 359), *Budhe Khan* v. *Bir Bal* (40 *P. R.* 1898), *Biswa Sonan Chunder* v. *Binanda Chunder Delingor* (*I. L. R. X Calc.* 416), *Keshavlal Bechar* v. *Pitambirdas Tribhuvandas* (*I. L. R. XIX Bom.* 261), *Kunhi Mannan* v. *Seshagiri Bhaktan* (*I. L. R. V Mad.* 141), and *Rahim Ali Khan and others* v. *Phul Chand* (*I. L. R. XVIII All.* 482, *F. B.*), referred to. BAHADUR KHAN *v.* SADHO SINGH. **76 P R 1904**

18. *And order XXI, rule* 11—*Execution of decree—Limitation—Execution of twelve years' old decree.*

Held, that where an application for execution in accordance with order XXI, rule 11, of the Code of Civil Procedure, has been made within the period of limitation prescribed by section 48 and granted, the decree-holder's right to continue execution will not be barred under that section if the final completion of the proceedings initiated by such application cannot be obtained within the period limited by that section.

Rahim Ali Khan v. *Phul Chand* (*I. L. R. XVIII All.* 482) and *Jit Mal* v. *Jwala Prasad* (*I. L. R. XXI All.* 155), cited. BISHAN SINGH V. GANGA RAM. **27 P R 1905**

19. *Civil Procedure Code,* 1908, *section* 48—*Execution of decree—Limitation—Continuation of previous application for execution—Fraud.*

Where an application for execution of a decree was made on the 11th May 1906 by attachment and sale of *moveable property,* which was fully attached and sold, but the money was not paid to the decree-holder owing to an appeal filed by the judgment-debtor, nor had the application ever been definitely struck off the file or consigned to the record-room, and other applications were made on the 10th March and 15th June 1908 for attachment and sale of *houses* not mentioned in the application of 11th May 1906.

Held, that the applications of 1908 were fresh substantive applications and not merely continuations of the former application.

Held also, that it is doubtfull whether it is open to the decree-holder to raise questions of fraud and claim the benefit of the last sentence of section 48, Civil Procedure Code, 1908, for the first time in appeal, and that the mere fact that the judgment-debtor filed an appeal in connection with the execution proceedings in 1906 did not constitute fraud. HIRU *v.* GUR CHARAN. **17 P R 1910**

CIVIL PROCEDURE CODE, 1908
—contd.

Section 50.

1. *And section 47—Question for Court executing decree—Parties—Representative.*

See Civil Procedure Code, 1908, section 47. **87 P R 1887**

2. *And sections 42, 47, order XXI, rules 11, 16, 22.*

See Civil Procedure Code, 1908, section 47. **70 P R 1897**

Section 52.

1. *Section 52—Obligation of representative of party to contract—Assets—Liability of representative for waste or misapplication—Decree against representative—Section 37, Act IX of 1872.*

By section 37 of Act IX of 1872, "promises bind the representatives of the promisors in case of the death of such promisors before performance, unless a contrary intention appears from the contract." And by section 203, Act VIII of 1859, corresponding to section 52 of the Code of 1908, if a "decree "be against a party as the representative of a "deceased person, and such decree be for "money to be made out of the property of the "deceased person, it may be executed by the "attachment and sale of any such property, "or if no such property can be found, and the "defendant fail to satisfy the Court that he "has duly applied such property of the "deceased as shall be proved to have come "into his possession, the decree may be "executed against the defendant to the extent "of the property not duly applied by him in the "same manner as if the decree had bee against "the defendant personally."

Held, that the legal representative of the deceased, whether the latter were a Hindu or not, was only liable to perform the promise or pay the debts of the deceased to the extent of the property of the deceased received by him.

Held also, that the existence of assets and receipt or possession thereof by the representative must be enquired into before decree, unless a *prima facie* case of receipt, or right to receive, not denied by the defendant, appeared; and that such case appeared on proof that the defendant was entitled to existing assets without proof that they had come into his actual possession.

Held also, that a decree against the representative, which did not specify that it should be payable out of the assets of the deceased, was an erroneous decree. Madho Dass *v.* Radha Mal. **65 P R 1874**

2. *Civil Procedure Code, 1908, section 52—"Duly applied" such property of the deceased."*

Held, that a legal representative of a deceased person who had paid away to *bona fide* creditors all the property of the deceased, and so satisfied their claims in full, has "duly applied" such property within the meaning of section 52, Civil Procedure Code, even though there remain other creditors of whose claims he may have had notice when

CIVIL PROCEDURE CODE, 1908
—contd.

Section 52—*concld.*

he satisfied the other debts. Seth Kastur Chand *v.* Mangal Sen. **68 P R 1895**

3. *Decree against representative of deceased for money to be paid out of deceased's property—Personal liability of representative where the property descended to him is exempt from attachment and sale in execution of a decree—Civil Procedure Code, 1908, section 52.*

Held, that a decree-holder is not entitled to execute his decree against the private property of the legal representative of a deceased person merely because the property of the deceased which came into the hands of such representative was not liable to be seized under the Punjab Alienation of Land Act, 1900. Ram Gopal *v* Harjas. **123 P R 1906**

Section 54.

Decree for partition of estate—Partition referred to Collector—Power of Civil Courts to interfere.

Held, that when a decree to which section 54 of the Civil Procedure Code applies is made, and the partition referred to the Collector, the Civil Courts have no further concern with the orders passed by the Revenue Officer who takes up the partition, the proceedings of that officer being subject to appeal and revision under the Land Revenue Act, and the rules made thereunder by the superior Revenue Authorities to whom he is subordinate. Sant Singh *v.* Wazir Singh. **73 P R 1889**

Section 55.

1. *Surety, liability of, under section 55 (1), Civil Procedure Code, 1908—Application by judgment-debtor within one month to be declared insolvent—Application returned by Court as defective—Release of surety.*

One R. D. having obtained a decree against B. S. and R. S. and having applied for the arrest and imprisonment of B. S. one T. S. offered security under section 55 (1) of the Civil Procedure Code, which was accepted, the condition of the bond being that B. S. should apply within one month under section 344 of the Code of 1882 (repealed) to be adjudicated an insolvent, otherwise the surety undertook to produce B. S. on any date fixed by the Court, or, if he failed to do so, to be responsible for payment of the decree with costs. Within one month B. S. put in an application under section 344 of the Code, but the application was returned by the Court for an alleged defect, and B. S. was ordered to file another application within one week. No further application having been filed and the case having been struck off, B. S. and T. S were summoned to appear on a certain date. T. S. alone appeared on the date fixed, and offered to produce B. S. on a specified date, but as he failed to do this, the Court ordered execution to issue against T. S.'s property. T. S. applied to the Chief Court for revision, and it was

CIVIL PROCEDURE CODE, 1908
—contd.

Section 55—*concld.*

Held, that inasmuch as B. S. had applied within one month under section 344, T. S. was released from his obligation, it being no concern of the surety's that the Court returned the application of the judgment-debtor for an alleged defect therein.

I. L. R. XV Calc. 171; *I. L. R. XIII All.* 100; *I. L. R. XV All.* 183; *I. L. R. XVI All.* 37, referred to. Thakar Singh *v.* Ram Das. **100 P R 1894**

2. *Civil Procedure Code, 1908, section 55 (1), order XXI, rule 40—Arrest and imprisonment in execution of decree—Subsequent application stating judgment-debtor's intention to apply to be declared an insolvent—Rejection of application—Illegal confinement—Duress.*

Where a debtor, on being arrested and brought before a Court in execution of a decree expresses his intention to apply to be declared an insolvent, under section 55 (1) of the Civil Procedure Code, the Court must release him on his furnishing security to appear when called upon, and to apply within one month under section 47 of the Code.

Where, however, the debtor did not apply under section 55 (1) on being first brought before the Court, but made such application after proceedings under order XXI, rule 40, had terminated, and it did not appear that he had furnished the requisite security.

Held, that, without holding that an application under section 55 (1) cannot under any circumstances be made after proceedings under order XXI, rule 40, the Court in the present case was not bound to release the petitioner, and that his confinement in jail was not illegal by reason of such application.

Held, therefore, that a mortgage and bond executed by such debtor while in jail for the purpose of securing his release were not void on the ground of duress. Daulat Ram *v.* Rup Lal. **59 P R 1898**

3. *See* Arrest.

75 P R 1905 F B
16 P R 1909

4. *Liability of surety who has given security for the appearance of a person arrested under this section to be proceeded against summarily in excution proceedings.*

See section 145 *infra*.

143 P R 1908

Section 60.

1. *See* Cantonments. **26 P R 1870**

2. *See* Execution of Decree.

82 P R 1878
41 P R 1882
57 P R 1884
58 P R 1884

3. *Execution of decree—Jurisdiction of Court to attach salary disbursed outside limits of Court's jurisdiction.*

See Civil Procedure Code, 1908, section 38. **40 P R 1895**

4. *Attachment—Right of residence in house belonging to a shrine.*

CIVIL PROCEDURE CODE, 1908 —*contd.*

Section 60—*contd.*

Plaintiff obtained a decree against defendant to the effect that certain properties, including the house in dispute, belonged to a certain shrine and that he (plaintiff), as the eldest son of the late *mahant*, was entitled to succeed thereto, defendant's right of maintenance and residence in the house were never disputed in the suit and were expressly reserved by the decree, but in execution of the decree for costs, the house was attached and sold.

Held, that the defendant, merely as a dependent of the shrine, had no saleable interest in the house, which was *waqf* and attached to the shrine, and that his interest in the house, which was merely a right of residence and maintenance, personal to himself and inalienable by him, was therefore incapable of attachment.

Held further, that the defendant had sufficient interest in the institution to be able to object as against the *mahant* that the house as *waqf* property could not be sold, though the decree was against himself.

Section 60 of the Civil Procedure Code clearly requires as a preliminary condition to attachment that the property sought to be attached should be saleable or that over it, or its profits, the judgment-debtor should have a disposing power which he may exercise for his own benefit. NANAK CHAND *v.* KISHEN CHAND **8 P R 1900**

Clause (b).

1. *Attachment—Fodder, liability of, to attachment in execution of decree.*

Held, that fodder is not exempt from attachment in whole or in part in execution of a decree against an agriculturist. WASIL AND OTHERS *v.* MUHAMMAD DIN AND OTHERS. **93 P R 1904**

2. Fodder required for the owner's cattle is exempt under this clause, read with section 70 of the Punjab Land Revenue Act, 1887, from attachment in execution of decree against an agriculturist. GUR BAKHSH *v.* KHAIRAITI. **82 P R 1907**

Clause (c).

1. *Execution of decree—Attachment of house mortgaged by agriculturist—Liability of such house to attachment.*

A decree-holder in execution of his decree against the defendant, an agriculturist, which specified that a house which the defendant had mortgaged as security for the payment of the sum due to the decree-holder, was to be considered as hypothecated for payment of the decree, attached the house in question, which the lower Courts directed to be released as non attachable with reference to the provision of section 60 (*c*) of the Civil Procedure Code.

Held, that under the circumstances the above clause could not be correctly construed as controlling the operation of the decree. NARAIN DAS *v.* SHER KHAN **1 P R 1889**

2. *Attachment in execution—"Agriculturists."*

The decree-holder, in execution of his decree for some Rs. 7,000, applied for attachment of certain houses belonging to the judgment-debtor, who, it appeared, was a large owner of land, deriving his income from rents paid by tenants, but not cultivating any land himself. Of the four houses belonging to the judgment-debtor, the largest, in which he himself resided, was exempted by the District Judge from attachment on the ground that the debtor was an agriculturist, but the three other houses were duly attached. Subsequently the debtor applied for their release under section 60 (*c*), Civil Procedure Code, alleging that house No. 2 was his *bythak*, in which his servants also lived; that house No. 3 was used for the purpose of stacking fodder and as a residence for his son's tutor; and that in house No. 4 his second wife resided. The District Judge, after enquiry, found these allegations proved, and held that the judgment-debtor as a landowner was an agriculturist within the meaning of the said clause, and that all the houses were entitled to the benefit of that provision of the law. He, therefore, accepted the application and released all the houses from attachment. The decree-holder appealed to the Chief Court.

Held, that the order of the District Judge must be set aside. Clause (*c*) of section 60 of the Code has the effect of conferring an exceptional exemption or privilege on certain classes of debtors, and of trenching on the ordinary rights of the creditor to realize his money from the property of his debtor, and must therefore receive a strict construction and not be extended to cases to which it does not in terms apply. The word "agriculturist" as therein used denotes a husbandman and a person who carries on and makes his living by tillage, and not a mere owner of land. BAWA. GURBAKHSH SINGH *v.* GHULAM QADIR **47 P R 1897**

3. *Civil Procedure Code*, 1908, *section* 60—*Building site—Building site of houses occupied by agriculturists not liable to attachment and sale in execution of decree.*

A having obtained a decree against the representatives of an agriculturist attached the site of their house and contended that under section 60 (*c*) the materials of houses and other buildings belonging to, and occupied by, agriculturists, are alone exempt from sale; that the judgment-debtors should be allowed to remove the materials, such as bricks, beams and doors, and that the site under the house be sold.

Held, that the house and its materials could not be attached, and that the attachment of the site could not affect the tenant's immunity from the attachment of the materials of the house which constitute the house as it stands.

Radha Kishen Hakumji v. *Balvant Ramji* (*I L. R. VII Bom.* 530), cited. KISHNA *v.* KANSHI RAM. **59 P R 1902**

4. *Civil Procedure Code*, 1908, *section* 60—*Meaning of—Attachment of an unused* khurli.

Held, that the words "belonging to" in section 60, Civil Procedure Code, are not synonymous with the words "occupied by"; the latter words are not a mere repetition, but they qualify the former words. "Occupied by" means "lived in by" or "used for agricultural purposes by," and therefore a *khurli*, in which the judgment-debtor does not live and which at the time of attachment, was not being used by him for any purpose whatewer, is liable to attachment. ATTAR SINGH *v.* BHAGWAN DAS. **65 P R 1909**

Clause (g).

1. *Civil Procedure Code (Act V of* 1908), *section* 60 (*g*)—*Liability of* jagir *income to attachment—Pensions Act* (*XXIII of* 1871), *section* 11.

Held, that a sum of money paid by the lambardars of the village on account of *jagir* income due to a judgment creditor is liable to be attached in execution of decree. *Kundan Lal* v. *Dalip Singh* (57 *P. R.* 1884), followed. SHANKAR DAS *v.* BASANT SINGH. **133 P R 1888**

See also MUSSAMMAT LACHMI *v.* BHAGWAN SINGH. **133 P R 1888 Note.**

2. *Pensions Act*, 1871—Jagir—*Political pension, liability of, to attachment in execution of decree.*

In 1862 Government granted a *jagir* of Rs. 10,000 in perpetuity to one N. Subsequently it was agreed that this amount should be paid by the land revenue of certain villages. On N.'s death the grant was continued to his son A. Money lying in the Government treasury as collections for a particular harvest was attached in execution of a decree against A. *Held*, having regard to the history and correspondence relating to the grant, that the *jagir* was a political pension within the meaning of section 11 of the Pensions Act, 1871, and money due on account thereof could not be attached in execution of decree under section 60 (*g*) of the Civil Procedure Code. The mere fact that the mode of payment was by mutual arrangement converted from cash into an assignment of land revenue did not alter the nature of the grant. BODHRAJ SHAH *v.* SARDAR AMRIKH SINGH. **137 P R 1890**

3. *Pensions Act*, 1871, *section* 11—*Civil Procedure Code*, 1908, *section* 60 (*g*)—*Attachment of* jagir—*Executing Court to require production of evidence as to nature of* jagir.

Before a Court executing a decree makes an order for issue of process for the attachment of *jagir* income, it should require some evidence as to the nature of the *jagir*, as some *jagir* income may be liable to attachment while other such income may not.

The order for attachment in this particular case set aside.

57 and 58 *P. R.* 1884 and 137 *P. R.* 1890, referred to BASANT SINGH *v.* ASA RAM. **47 P R 1893**

CIVIL PROCEDURE CODE, 1908 —*contd.*

Section 60—*concld.*

4. *Attachment of* jagir *revenue—Procedure—Punjab Land Revenue Act,* 1887, *section* 143.

Held, that assigned land revenue can only be attached in the manner prescribed in section 143 of the Punjab Land Revenue Act, 1887, and the revenue thus attached is not of the nature of a debt, saleable under section 60 of the Civil Procedure Code, 1908, but can be realized only through the Collector. NAWAB ABDULLAH KHAN *v.* KUDDAN MAL.

4 P R 1894 Rev

5. *Political pension—Attachment in execution of a decree—Act XXIII of* 1871, *sections* 11 *and* 12.

The judgment-debtor pledged his *jagir* income as security for debt incurred to the decree-holder, who obtained a decree charging the *jagir* income with payment, no objection based on the provision of section 12 of the Pension Act being raised until after the execution of the decree was sought.

On appeal to the Chief Court (both the lower Courts being of opinion that the pension being a political pension came within the purview of Pensions Act, section 11, and was not liable to attachment). *Held*, by the majority, that the executing Court could not refuse to attach the *jagir* income or pension, as the decree is the final adjudication on the liability of the property sought to be charged, and so long as that decree stands the decree-holder has a right to execution. MUSSAMMAT MEHR NISHAN v. NAWABZADA MUHAMMAD KAZIM ALI KHAN.

35 P R 1900

Clause (h).

Attachment—Pay of officer of British Regiment serving in India—Army Act, 1881, *section* 151.

An officer of a British Regiment serving under the orders of the Government of India is a "public officer" within the meaning of section 2 of the Civil Procedure Code, 1908, and under section 60 *(h) (iii)* a moiety of his salary as such public officer is liable to attachment in execution of decree.

Dictum in *I. L. R. XXIV Calc.* 166, not approved. KERRING *v.* RAIKES.

59 P R 1897

Clause (m).

Deed of release, construction of—Transfer of expectancy of succession—"Public policy"—Transfer of Property Act (IV of 1882), *section* 6.

A transfer of, or an agreement to transfer, rights of succession to accrue in future, though they cannot, under section 60 *(m)* of the Civil Procedure Code, be had recourse to in execution of decrees, are not unenforceable as being opposed to public policy. NIZAM-UD-DIN *v.* MUSSAMMAT JANNAT BIBI.

58 P R 1894

Section 64.

See ATTACHMENT. **68 P R 1875**

——*And order XXI, rule* 54. **81 P R 1908**

See CIVIL PROCEDURE CODE, 1908, ORDER XXI, RULE 54.

139 P R 1893

83 P R 1898

CIVIL PROCEDURE CODE, 1908 *contd.*

Section 64—*concld.*

And order XXI, rule 89—Execution of decree, attachment and sale of immovable property in—Private alienation of property after attachment and sale, but prior to confirmation—Confirmation of sale—Title of alienee against the auction purchaser—Suit by the alienee to recover possession from the auction purchaser—Limitation—Limitation Act, 1877, *Schedule II, article* 12 *(a).*

In the course of certain execution proceedings the property in dispute was attached, and on the 4th December 1899 sold by auction to defendant subject to confirmation. On 7th March 1900, prior to the confirmation, the judgment-debtor paid into Court the amount of the decree and the sale was set aside and attachment withdrawn. Against that order the defendant (auction purchaser) filed an appeal, which, having been accepted, the sale was confirmed by the order of the appellate Court, dated 22nd May 1900. On 26th August 1901 the plaintiff brought a suit for possession of the property against the auction purchaser, alleging that he had purchased it from the judgment-debtor on 20th February 1900 and that out of the consideration-money paid by him the decree had been paid off. It appeared that no action was taken by the judgment-debtor under order XXI, rule 89, of the Code of Civil Procedure.

Held, that the private sale of the property to the plaintiff while it was under attachment and in fact had been sold subject to confirmation to the defendant, was void by virtue of the prohibition contained in section 64, Civil Procedure Code, as against the defendant, and further the suit having been brought more than one year after the confirmation of the sale was barred by article 12 *(a)*, Schedule II of the Indian Limitation Act.

Moti Lal v. *Karrabuldin (I. L. R. XXV Calc.* 179), *Umesh Chunder Roy* v. *Raj Bullubh Sen (I. L. R. VIII Calc.,* 279), *Dagdu* v. *Panchamsing (I. L. R. XVII Bom.* 375), and *Bahurar* v. *Govind Shankar (I. L. R. X Bom.* 588), referred to. NAGINA SINGH *v.* PURAN CHAND. **11 P R 1906**

Section 66.

Benami *transaction—Bar to suit against purchaser buying* benami*—Suit against the assignee of the certified purchaser on the ground that the plaintiff was the real purchaser.*

Although no suit can be maintained under section 66, Civil Procedure Code, against a certified purchaser at an execution sale on the ground that he has purchased *benami* for any other person, the protection given by that section being strictly limited to the case of a certified purchaser does not preclude a suit against his assignee or representative

Theyyavelan v. *Kochan (I. L. R. XXI Mad.* 7), *Sibta Kunwar* v. *Bhagoli (I. L. R. XXI All.*—196), *Nokori Dhur* v. *Sarup Chunder Dey* (5 *Cal. W.N.* 341), *Dukhoda Sundari Dassi* v. *Sreemuntha Joaddar* (3 *Calc. W.N.* 657), *Monappa* v. *Surappa* (*I. L. R. XI Mad.* 234), and *Mussammat Buhuns Kowur* v. *Lalla Buhooree Lal and Jokhee Lall* (14 *Moo. I.A.* 496), cited and followed. MUHAMMAD FAROUGH *v.* ABDUL HAKIM.

4 P R 1904

CIVIL PROCEDURE CODE, 1908 —*contd.*

Section 66—*concld.*

Section 67.

See CIVIL PROCEDURE CODE, 1908, SECTIONS 68, 71.

25 P R 1894

See JURISDICTION OF CIVIL OR REVENUE COURTS. **83 P R 1896**

——*Civil Procedure Code (Act V of* 1908), *sections* 67, 115—*Validity of rules published with Punjab Government Notification No.* 1297 *S., dated* 10*th September* 1885—*Sale in execution without sanction required by rules—Such sale void* ab initio—*Chief Court's power to set aside void sale on revision.*

Held, that the rules relating to sales of land in execution of decree, made in modification of former rules on the subject by the Local Government and published in the Local Gazette under Notification No. 1297 S., dated 10th September 1885, were within the competence of the Local Government to make, with the previous sanction of the Governor-General in Council, and must therefore be held to be *intra vires* of the provisions of section 67 of Act V of 1908.

Held further, that a sale in execution of decree of land paying revenue to Government, made and confirmed without the sanction required by the above rules having been previously obtained, is void *ab initio*, and may be set aside by the Chief Court under the powers conferred by section 115 of the Code of Civil Procedure. TARA CHAND *v.* ALA BAKHSH. **95 P R 1888**

Section 68.

1. *And sections* 67, 72, *order XXI, rules* 93.

See JURISDICTION OF CIVIL OR REVENUE COURTS.

83 P R 1896

2. *Civil Procedure Code,* 1882, *sections* 67, 68 *and* 72—*Intervention of Collector—Absence of detailed scheme—Sanction of Civil Court—Appeal.*

Held, that though it is open to either the decree-holder or the judgment-debtor to appeal to a superior Civil Court from the order of a Civil Court authorising or refusing to authorize the Collector to make an arrangement under section 72 (1) of the Civil Procedure Code, no appeal lies to the superior Civil Court from any order made by the Collector when acting under section 72 (1) of the Civil Procedure Code.

Held further, that there is nothing in section 72 (1) of the Civil Procedure Code or elsewhere in the Code, which requires the Collector to submit a detailed scheme when he makes a representation under that section in order to prevent a sale, and that the Civil Court is competent to give the Collector authority in general terms, as appears

CIVIL PROCEDURE CODE, 1908 —*contd.*

Section 68—*concld.*

from Form No. 152 of Schedule IV of the Civil Procedure Code.

The scope of sections 67—72, Civil Procedure Code, and the practice to be observed by the Courts when acting thereunder explained.

No. 114 *P. R.* 1886, referred to. DARYA SINGH *v.* MAHTAB. **25 P R 1894**

Section 72.

1. *See* EXECUTION OF DECREE. **6 P R 1882** **114 P R 1886**
2. *See* CIVIL PROCEDURE CODE, 1908, SECTION 68. **25 P R 1894**
3. *See* JURISDICTION OF CIVIL OR REVENUE COURT. **83 P R 1896**
4. *See* PUNJAB ALIENATION OF LAND ACT, 1900, SECTION 16. **4 P R 1903**

5. *Scheme for liquidation of money decree by Collector—Procedure on disapproval of such scheme by Civil Court.*

Held, that where a Civil Court disapproves of the scheme of a Collector under section 72 of the Civil Procedure Code for the satisfaction of a decree in order to avoid the sale of attached property as unreasonable, it should pass orders for the sale of the property. JAI BHAGWAN *v.* BUALI BAKHSH. **63 P R 1906**

Section 73.

1. *And order II, rule* 3, *order XXI, rule* 63.
   See CAUSE OF ACTION. **43 P R 1897**
2. *And order XXI, rules* 66, 84, 90.
   See CIVIL PROCEDURE CODE, 1908, ORDER XXI, RULE 90. **30 P R 1899**

3. *And order XXI, rule* 11—*Execution of decree—Application to share in assets by decree-holder who has not applied for execution.*

Held, that a decree-holder who has made no application under order XXI, rule 11 of the Civil Procedure Code for execution of his decree, cannot claim by a mere petition to share under section 73 (1) in a rateable distribution of the proceeds of an execution sale. HARDIAL *v.* BIHARI LAL. **93 P R 1889**

4. *Priority—Rateable distribution among rival decree-holders.*

Property which a Court has accepted as security for a decree is not liable to attachment by, and to be divided rateably among, rival decree-holders. To hold otherwise would be to render the provisions of the law for stay of execution on giving security illusory; and it is immaterial whether the property in question is offered as security by the judgment-debtor himself, or by a third party. If the property is liable to attachment and distribution under section 73, Civil Procedure Code, in satisfaction of

CIVIL PROCEDURE CODE, 1908 —*contd.*

Section 73—*contd.*

decrees against the judgment-debtor, it would be similarly liable when there were decrees against the surety as a third party.

It is the property, not the person offering it, which the Court accepts as security, and the acceptance thereof by the Court creates a charge on the property, by whomsoever offered, which must take precedence of all subsequent attachments or charges. KANWAR HIRA SINGH *v.* MASSON. **60 P R 1892**

5. *Mortgage—Suit for refund of sale-proceeds paid in accordance with order for distribution, under section* 73, *Civil Procedure Code*, 1908—*Suit by* puisne *mortgagee to enforce his lien—Limitation Act*, 1877, *schedule II, article* 13—*Doctrine of marshalling.*

Defendant was the first mortgagee of two houses under a deed, dated 28th September 1888, for Rs. 195, while plaintiff was the *puisne* mortgagee of one of the houses for Rs. 150. Plaintiff sued on his deed and obtained a decree for Rs. 155 and costs, to be recovered from the hypothecated house which he got attached in execution. The defendant had a simple money-decree for Rs. 102, and had both houses sold—apparently free of his mortgage lien—by auction for Rs. 315 on the 7th January 1892. Plaintiff tried to assert his claim for part of the sale-proceeds on his mortgage but failed, and on the 9th April 1892, defendant realized the whole amount, crediting Rs. 195 to the mortgage-money due to him and the rest to his money-decree. On the 17th April 1893 plaintiff sued to recover this balance on the ground that his second mortgage gave him a better title to it. Defendant pleaded, *inter alia*, that the claim was barred under article 13 of the second schedule to the Limitation Act, 1877, inasmuch as the original order of the execution Court rejecting plaintiff's claim to share in the sale-proceeds of the two houses was one under section 73, Civil Procedure Code, and that the present suit was filed more than one year after the date of that order.

Held, that the present suit was not one to set aside an order under section 73 of the Code, but to recover money on the strength of plaintiff's superior title, and that, therefore, article 13 of the Limitation Act was not applicable.

Held further, that plaintiff was entitled, in accordance with the rule of marshalling of mortgages, to insist that defendant should first realize the amount due to him on his own mortgage from the house not mortgaged to plaintiff, and only the deficiency from that mortgaged to him, and that plaintiff's mortgage-deed took precedence as regards the balance over defendant's simple money-decree.

I. L. R. XV Bom. 438 and *W. N.* 1894, 78, followed; *I. L. R. XIII Calc.* 159, not followed. SOHAN LAL *v* BALDEO SAHAI. **65 P R 1895**

CIVIL PROCEDURE CODE, 1908 —*contd.*

Section 73—*contd.*

6. *Execution of decree—"Assets realized by sale or otherwise in execution of a decree"—Money realized under an* ultra vires *attachment—Rateable distribution.*

Held, that money paid by a judgment-debtor into a Court under an order of attachment which was *ultra vires* cannot be treated as assets realized by sale or otherwise in execution of a decree within the meaning of section 295, Civil Procedure Code. Such a payment, being a voluntary one made in order to avoid, execution or from a desire to pay a debt due, is not capable of rateable distribution.

Mussammat Mehr Nishan v. *Nawabzada Muhammad Kazim Ali Khan* (35 *P. R.* 1900) *Bithal Das* v. *Nand Kishore (I. L. R. XXIII All.* 106), *Sheo Karn Das* v. *Earle* (40 *P. R.* 1895), *Sew Bux Bogla* v. *Shib Chunder Sen (I. L. R. XIII Calc.* 225), *Purshotam Das Tribhovandas* v. *Mahant Surajbharttee Hari Barthi (I. L. R., VI Bom.* 588), *Prosonomayi Dassi* v. *Sreenauth Roy (I. L. R., XXI Calc.* 809), and *Gopal Das* v. *Chunni Lal (I. L. R. VIII All.* 67), referred to. GOPAL SAHAI *v.* SHEO KARAN DAS. **6 P R 1903**

7. *Revision from an order under section* 73, *Civil Procedure Code, passed with jurisdiction—Chief Court's powers of—Punjab Courts Act*, 1884, *section* 70 (*i*) (*a*).

Held, that an order made with jurisdiction under section 73 of the Code of Civil Procedure is not open to revision by the Chief Court under section 70 (*i*) (*a*) of the Courts Act, on the ground that the Court below has misapprehended the facts or erred in law.

Sew Bux Bogla v. *Shib Chunder Sen (I. L. R. XIII Calc.* 225), *Kashi Ram* v. *Mani Ram (I. L. R. XIV All.* 211), *Tiruchittambala* v. *Sheshav Vongar (I. L. R. IV Mad.* 383), *Venkataraman* v. *Mahalingayyan I. L R. IX Mad.* 508), *Viraraghava* v. *Parasurrama (I. L. R. XV Mad.* 372), and *Kishore Chand* v. *Nihal Devi* (70 *P. R.* 1904), referred to. PARMANAND *v.* MUNICIPAL COMMITTEE OF LAHORE. **65 P R 1905**

8. *Revision from an order under section* 73, *Civil Procedure Code*, 1908—*Practice of Chief, Court—Punjab Courts Act*, 1884, *section* 70 (1) (*a*).

Held, that an order under section 73, Civil Procedure Code, is not open to revision by the Chief Court under section 70 (1) (*a*) of the Punjab Courts Act, as the penultimate clause of section 73 affords the petitioners the legal remedy.

Joti Mal v. *Coates* (15 *P. R.*, 1901) *and Barij Lal* v. *Harji Mal*, (8 *P. R.*, 1903 followed. THE PUNJAB NATIONAL BANK *v.* SALAMAT SINGH. **82 P R 1905**

9. As a general rule the practice of the Chief Court is to refuse to exercise its extraordinary jurisdiction under section 70

CIVIL PROCEDURE CODE, 1908
—contd.

Section 73—*concld.*

(1) (*a*), Punjab Courts Act, in a case under this section because the party professing to be injured has another legal remedy open to him? FAZAL DIN *v* NARAIN SINGH.

128 P R 1906

Section 80.

1. *Suit against Ward of Court—Public Officer—Notice.*

Held, that a suit based on a bond executed by the father of the minor defendant, who at the time of the suit was a Ward of Court, is not one to which the provisions of section 80, Civil Procedure Code, are applicable, so as to render it necessary for a previous notice to be served on the Court of Wards, as a preliminary to the plaintiff's right to come into Court. BASANT SINGH *v.* INDAR SINGH.

24 P R 1889

2. *Objection to sufficiency of notice after issues had been framed on the merits by consent of parties—Admissibility of such objection*

The notice in question was given on the 7th November 1887 and the suit threatened therein instituted on the 10th March 1888. On the 18th June 1888 a decree was given in plaintiff's favour for a portion of his claim on the strength of an admission made by a person who appeared for the defendant. On the 1st October 1888 an application for review of judgment was made on the ground that the admission above referred to was made by an unauthorized person and also on the merits. It was granted and pleas recorded on the merits and issues framed by agreement of counsel on the 5th January 1889. The 22nd April 1889 was fixed for evidence. On this date exception was taken for the first time to the sufficiency of the notice contemplated by section 80 of the Code.

Held, that the objection had been taken too late and ought not to have been allowed after the defendant had pleaded on the merits. SECRETARY OF STATE FOR INDIA *v.* MAHTAB SINGH.

155 P R 1890

3. *Civil Procedure Code, section 424—Construction of the words " delivered to or left at "—Notice of suit.*

Held, that there is nothing in the language of section 80, Civil Procedure Code, 1908, to prohibit the use of the post in delivering or leaving the notice of suit required by that section.

Held also, that the defendant had failed to show that the words "delivered or left" used in the section have acquired a technical meaning or are used in any but their ordinary and popular sense; and that he had similarly failed to show any ground for holding that the Legislature intended to exclude the use of the post.

Held further, that, assuming the plaintiffs case to be founded upon contract and not upon tort, the Collector of the Simla District was the Collector within the meaning of

CIVIL PROCEDURE CODE, 1908
—contd.

Section 80—*contd.*

section 80 for the purpose of the present case. TANI *v.* SECRETARY OF STATE IN COUNCIL.

71 P R 1891

4. *Joint suit by alleged partners in respect of leases made in the names of certain individual members of the alleged partnership—Joint undivided Hindu family—Omission in plaint to specify grounds entitling plaintiffs to sue jointly in respect of such leases—Notice of action—Civil Procedure Code*, 1908, *section* 80—*Evidence Act* (*I of* 1872), *section* 92.

Plaintiffs in their notice of action describe themselves as Toll Bar contractors, Dharmpur, and residents of Simla, and stated that they intended to sue the Secretary of State for India in Council for damages for breach of the terms of three several leases granted to them, and the plaint was in conformity with the said notice. The leases filed purported to be executed as follows :—(1) that for the first year by plaintiff III alone ; (2) that for the second year by plaintiffs I and II alone ; and (3) that for the third year also by plaintiffs I and II alone. The plaint contained no statement of the circumstances which entitled the three plaintiffs to sue jointly for damages in respect of each of the three leases, none of which purported to be granted to all of them but in answer to defendant's first plea that he had contracted, if at all, with plaintiff III alone in respect of the first lease, and with plaintiffs I and II alone in respect of the two other leases, plaintiffs replied that the contract was with all three and all were entitled to sue because "they were then, and still are, members of a trading partnership and also of an undivided Hindu family." Defendant having thereupon rejoined that the notice of action was insufficient, the lower Court framed, *inter alia*, two preliminary issues,—(*i*) whether the notice of action was sufficient, and (*ii*) whether the mere fact that plaintiffs are partners or members of a joint Hindu family suffices in law to include them all in the contract, if any, so as to enable them to sue jointly ?—and, deciding both issues in favour of defendant, dismissed plaintiffs' suit. The plaintiffs appealed to the Chief Court.

Held, that there was no substantial variance in respect of the statement of the cause of action between the notice of action given and the suit brought in pursuance of the notice given, that the notice of action given was sufficient, and that the suit was not liable to dismissal in consequence of such variance as there was.

Held, further that the fact that the lease for the first year was in the name of plaintiff III alone, and the two other leases in the names of plaintiffs I and II alone was not of itself conclusive proof that plaintiffs were not jointly interested therein, and that section 92 of the Evidence Act, 1872, would not debar plaintiffs I and II from proving that they were interested in the first lease, or plaintiff III from proving that he was interested in the two other leases.

CIVIL PROCEDURE CODE, 1908
contd.

Section 80—*concld.*

Held, that, if after trial it should prove that there has been a misjoinder of plaintiffs, it would not by reason of order I, rules 1, 4 (*a*) of the Civil Procedure Code, be necessarily fatal to the suit. TANI MAHESHA *v.* SECRETARY OF STATE FOR INDIA.

67 P R 1894

Section 83.

See FOREIGN JUDGMENT.

191 P R 1888

Section 84.

See FOREIGN JUDGMENT.

191 P R 1888

Section 85.

See ORDER VI, RULE 14 *infra.*

41 P R 1902

See CIVIL PROCEDURE CODE, 1908, ORDER III, RULE 2.

165 P R 1889

See FOREIGN JUDGMENT.

191 P R 1888

Section 86.

See FOREIGN JUDGMENT.

191 P R 1888

1. *Suit against Sovereign as Ruler of State —Act XVII of* 1877, *sections* 4, 9, 30—*Act XIV of* 1875, *section* 3—*Jurisdiction of Court of Judicial Assistant—Subordination to District Court—Jurisdiction of Court to consider validity of certificate granted by Government under section* 433 *of the Code—Sovereign Prince "trading" within jurisdiction of Court—Ground for second appeal.*

Held, that the Court of a Judicial Assistant constituted under the powers conferred by section 3 of Act XIV of 1875, and section 9 of Act XVII of 1877, is not subordinate to the Court of the Deputy Commissioner, within the meaning of section 86 Civil Procedure Code.

Held also, that where a certificate of the sanction of Government to a suit being brought against a Sovereign Prince has been granted under section 86 of the Code, the Court is not only at liberty, but bound to consider, when the question is raised, whether the conditions laid down by the section have been fulfilled, under which alone the Legislature has empowered Government to grant such certificate.

The question whether it can be held on certain facts which are undisputed, that a Prince trades within the local limits of the jurisdiction of a Court within the meaning of section 86 of the Code, is a question of construction not of fact, and can be considered by a Court sitting in second appeal.

Held, on the facts found in the present case, that the Maharaja of Kashmir could not be said to trade within the jurisdiction of the Lahore Court. MAHARAJA OF KASHIR *v.* MOHAN LAL.

51 P R 1886

2. *Jurisdiction—Suit against ruling chief—Institution of suit without obtaining the consent of Governor-General in Council—Waiver by defendant of objection to consent—effect of such waiver.*

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CIVIL PROCEDURE CODE, 1908
—contd.

Section 86—*concld.*

Held, that the exemption from being sued in the Civil Courts in British India without the sanction of the Governor-General in Council conferred on independent ruling chiefs by section 86, Civil Procedure Code, is a purely personal privilege capable of waiver and does create a defect of jurisdiction in the Courts, and that a defendant who is such a Chief but who does not take the objection at the proper time waives his privilege thereby and cannot raise it for the first time in further appeal in the Chief Court.

Manohar Bhirrao Potanis (2 *Bom., H. C. R., A. C.*, 396), *Migbell* v. *Sultan of Jahore* (*L. R., I. Q. B.* (1894) 149), *Beer Chundur Manik-kiya* v. *Nabodeep Chundur Deb Burmono* (*I. L R., IX Calc.*, 535), *Chandulal Khushaljiv.* *Awad Bin Umar Sultan Nawaz Jung Bahadur* (*I. L. R., XXI Bom.*, 351), and *Ledgard* v. *Bull* (*L. R., XIII I. A.*, 134), *cited.* THE MAHARAJA OF FARIDKOT *v.* BALL HOBSON. **40 P R 1903**

8. *See* JURISDICTION OF CIVIL COURTS. **21 P R 1909**

Sections 92, 93.

1. *Procedure for suits relating to religious institutions.*

See RELIGIOUS INSTITUTION. **7 P R 1908**

2. *Trust for public charitable purposes —Bequest of money* " bama sarif indulla " *—Muhammadan Law.*

The meaning of the expression " trust created for public charitable purposes," as used in sections 92, 93 of the Civil Procedure Code, discussed.

Held, that a bequest of money by a Muhammadan testator " *bama sarif indulla*, " *i. e.*, to be expended on pious purposes at the discretion of the executor, is too vague and indefinite to be pronounced a bequest creating a " trust for public charitable purposes " within the meaning of the above section, upon any interpretation that could properly be put upon the language of that section. The fund bequeathed in the above terms might, according to the view of the Muhammadan lawyers, be legitimately expended upon a variety of purposes, which include, among others, pilgrimage to Mecca, almsgiving, fasting, prayer, purification, and the erection of masjids, the particular objects on which the expenditure is to be made lying within the discretion of the executor. DEPUTY COMMISSIONER OF DELHI *v.* MUSSAMMAT MUHAMDI JAN. **50 P R 1882**

3. *Suit by persons interested in a shrine.*

In a suit to set aside an alienation of property alleged to belong to a Muhammadan shrine in the maintenance of which the plaintiffs claimed to be interested, the Commissioner held that without the sanction prescribed by sections 92, 93 of the Civil Procedure Code, the suit could not be maintained.

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CIVIL PROCEDURE CODE, 1908
—contd.

Sections 92, 93—*contd.*

Held, that the suit was not one belonging to any of the classes of cases for which sections 92, 93 of the Code make provision, and that no sanction was necessary to enable the plaintiffs to bring the suit. *Ram Partab* v. *Kalu Mal* (No. 27 of 1885, Civil) cited. ABID ALI *v.* GHULAM JALAL. **94 P R 1885**

4. *Suit for share of offerings—Suit relating to trust created for public charitable or religious purposes.*

A suit to recover a share of certain offerings which, according to the plaintiffs, was theirs by ancestral right, but which the defendants had appropriated to their own use, *held*, not to be based on a breach of any trust created for *public* charitable or religious purposes within the meaning of sections 92, 93 of the Civil Procedure Code. DANE SHAH *v.* JHANDE SHAH. **76 P R 1886**

5. *Religious endowment—Suit to recover possession of shrine—Right of* sewaks *or worshippers to remove a Mahant*—Onus probandi.

In a suit by a person claiming as the lawful *mahant* of a shrine for the recovery of possession thereof and of the lands attached thereto, defendant who had been elected *Mahant* by the worshippers of the shrine, pleaded, *inter alia*, that Sections 92, 93 of the Code barred the suit.

Held, that sections 92, 93 had no application to such a suit,— that section deals with two classes of cases—(i) where there is an alleged breach of any trust created for public charitable or religious purposes, and (ii) where the direction of the Court is necessary for the administration of any such trust.

On the facts of the case *held*, that the defendant on whom the *onus* lay had failed to prove (i) that by general or special custom the worshippers of a shrine were competent to remove a *mahant* and to appoint his successor ; and (ii) that the plaintiff had acquiesced in his removal. BAWA SUKHRAM DAS *v.* BARHAM PURI. **122 P R 1890**

6. Dharmsala—*Right of worshippers at, to contest alienation of property attached to —Application of sections 92, 93, Civil Procedure Code*

The plaintiffs we e worshippers at a *dharmsala* and interested in the maintenance of the institution and preservation of the property intact.

Held, that in this capacity they had a *locus standi* to challenge certain alienations of property alleged and found to be *waqf* and attached to the *dharmsala*, not as self constituted representatives of the body of worshippers, who should have obtained an order under order I, rule 8 (1), Civil Procedure Code, but as persons themselves interested in the preservation of the property

Held, further, that sections 92, 93, Civil Procedure Code, have no application to a suit of this description. SEWA SINGH *v.* BUDH SINGH. **66 P R 1892**

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CIVIL PROCEDURE CODE, 1908
—contd.

Sections 92, 93—*concld.*

7. *Suit by worshippers to restrain alteration of temple property.*

Plaintiffs, who were the *pujaris* of Baba Atal, attached to the Golden Temple, Amritsar, sued for an injunction to restrain defendant from converting a certain building into shops, and alleged that the site of the building had been granted to defendant's father for religious purposes, and that the said building had been erected thereon by public subscriptions under the auspices of the Golden Temple. On appeal to the Chief Court, the plea was raised for the first time that the suit must fail by reason of absence of the consent of the Advocate-General under sections 92, 93, Civil Procedure Code.

Held, that on the facts proved, plaintiffs had established their right to maintain the suit as laid SAPURAN SINGH *v.* GULAB SINGH. **29 P R 1897**

8 Where the plaintiffs had applied for permission under section 92 (1) of the Code of Civil Procedure to sue to have a committee appointed by a Civil Court for the management of a certain religious trust and to obtain such other relief as they might be entitled to under the said section, and the Collector had merely " accorded permission," *held*, that the suit must be limited to matters covered by the sanction, and that the plaintiffs were not competent to sue for the removal of the defendant from the office of *mahant*, the Court having no authority to enlarge the scope of the suit and to grant any other reliefs other than those included in the terms of the sanction. PREM SINGH *v.* LABH SINGH AND OTHERS. **89 P R 1901**

9. A suit for the removal of the incumbent *mahant* of a *dharmsala* who has misbehaved as *mahant* and misused the funds of an institution and for the appointment of the plaintiff in his place falls within the scope of this section and is not maintainable without obtaining previous sanction of the oollector to the institution of such suit. DALIP SINGH *v.* ISHAR SINGH. **78 P R 1907**

10. *Consent to action against public charities—Court cannot entertain suit asking reliefs not included in the consent.*

See RIGHT OF SUIT. **110 P R 1907**

Section 96.
See APPEAL, CIVIL **115 P R 1886**

Section 98.

Reference to third Judge owing to difference of opinion among the Judges composing a Division Bench—Procedure.

Held, dissenting from *Rohilkund and Kamaon Bank* v. *Roe* (*I. L. R. VI All.* 468) that a reference under section 98 of the Civil Procedure Code can legally be made to a third Judge, and that the tribunal which hears the appeal on the second occasion in consequence of such reference should consist of such third

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CIVIL PROCEDURE CODE, 1908 —*contd.*

Section 98—*concld.*
Judge, and not that Judge sitting together with the Judges who first heard the appeal. MUSSAMMAT SAHIBZADI *v.* NEWTON.
15 P R 1887

Section 99.
1. *See* CIVIL PROCEDURE CODE, ACT V OF 1908, ORDER XXVI, RULE 10. **161 P R 1882**
2. *See* PLAINT. **186 P R 1882**
3. *See* REVIEW OF JUDGMENT. **128 P R 1881**
4. *See* APPEAL, CIVIL. **48 P R 1896**
5. *See* CAUSE OF ACTION. **189 P R 1888**, **24 P R 1899**
6. *See* CIVIL PROCEDURE CODE, 1908, SECTION 15. **184 P R 1888**

7. In an action brought by a Hindu husband for a tort and personal grievance to himself and wife, the Chief Court held that the non-joinder of the wife was cured by section 350 of Act VIII of 1859. MUSSAMMAT GOOJREE *v.* RUTTUN CHUND PUREE.
3 P R 1869

8. *Material irregularity—Revision—Appellate Court reversing decree on point not affecting merits.*

It may be a material irregularity and ground for revision, that an Appellate Court, in contravention of the provisions of section 99, Civil Procedure Code, has reversed the decree of a subordinate Court merely by reason of an irregularity not affecting the merits of the case or the jurisdiction of the Court.

No appeal lies from an order granting a review of judgment except in the cases set forth in order XLVII, rules 7 and 9, Civil Procedure Code, 1908.

I. L. R., XXI Bom 171, followed. JAIMAL SINGH *v.* GUNPAT MAL. **65 P R 1891**

Section 102
See APPEAL, CIVIL **75 P R 1881**, **124 P R 1882**, **165 P R 1882**, **185 P R 1882**, **188 P R 1882**, **66 P R 1883**, **100 P R 1883**, **156 P R 1883**, **55 P R 1886**, **15 P R 1898**, **25 P R 1907**, **38 P R 1908**, **98 P R 1908**
See APPEAL, REVENUE. **1 P R 1905 Rev.**
See JOINDER OF PARTIES. **86 P R 1891**
See PLAINT, RETURN OF. **59 P R 1899**

Section 104.
See REFERENCES UNDER SECTION 102 *supra*.
See APPEAL, CIVIL. **103 P R 1905**

1. *Appointment of receiver—Appeal.*

Held, that where a Court after hearing both sides has decided that a receiver should be appointed such order is appealable under

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CIVIL PROCEDURE CODE, 1908 —*contd.*

Section 104—*concld.*
Section 104, Civil Procedure Code, even though owing to the refusal of the Court's nominee no one has actually been appointed to the office. MUSSAMMAT BUDHWANTI *v.* MUSSAMMAT BISHEN KAUR. **73 P R 1902**

2. *And section* 105—*Appeal from order of returning plaint for amendment under section* 104—*Dismissal of such appeal—Right of party aggrieved to attack the order again when appealing from the final decree.*

Held, that every order passed in an appeal under the provisions of section 104 being final, a party who avails himself of the right of appeal provided by that section cannot raise the same question again in an appeal from the final decree.

Section 105 only provides for appeals from decrees attacking the correctness of orders which are not appealable under section 104, or which have not been appealed under that section.

Venkatapathi Naidu v. *Tirumalai Chetti* (*I. L. R. XXIV Mad.*, 447) *Ghulam Jilani* v. *Ghulam Haidar Khan* (89 *P R.* 1891), *Moti Lal Kashibhai* v. *Nana* alias *Langda Mukund Patil* (*I. L. R., XVIII Bom.* 35), and *Tika Ram* v. *Shama Charan* (*I. L. R., XX All.* 42), referred to. KISHEN CHAND *v.* KEHR SINGH.
14 P R 1904

3. *Period of limitation for an appeal under section* 104 *of the Code of Civil Procedure—Punjab Courts Act*, 1884, *section* 43 (1) (*b*).

Held, that the period of limitation for an appeal to a Divisional Court under section 104 of the Code of Civil Procedure is that prescribed by section 43 (1) (*b*) of the Punjab Courts Act, *viz.*, 60 days. MUKANDA MAL *v.* TARA SINGH **83 P. R. 1904**
See ORDER XL, RULE 1 *supra*.

4. An appeal under this section is limited solely to the question of the correctness of the order passed under Schedule II, p. 12 and that it is not open to the Court hearing such appeal to enter into the question of corruption or misconduct of an arbitrator except as concerns his having acted *ultra vires*. KALU *v.* KHAIR DIN. **13 P R 1906**

Section 105.
See SECTION 104 *supra*.
See APPEAL, CIVIL. **72 P R 1881**, **156 P R 1883**
See ARBITRATION. **134 P R 1888**
See CIVIL PROCEDURE CODE, 1908, ORDER XLI, RULE 23. **89 P R 1889**
See GUARDIAN. **10 P R 1898**
See JOINDER OF PARTIES. **36 P R 1890**, **83 P R 1894**

Section 106
See APPEAL, CIVIL. **185 P R 1882**, **188 P R 1882**, **66 P R 1883**, **98 P R 1908**
See PLAINT, RETURN OF. **59 P R 1899**

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CIVIL PROCEDURE CODE, 1908 —*contd.*

Section 107.
See RIGHT TO SUE. 5. **20 P R 1882**
APPELLATE COURT, POWER OF. **70 P R 1885**
CIVIL PROCEDURE CODE, ORDER XXII, RULE 11. **102 P R 1885**
LIMITATION ACT (XV OF 1877) SCHEDULE II, ARTICLE 171 B. **133 P R 1884**
APPEAL, CIVIL. **15 P R 1898**
ARBITRATION, No. 12. **26 P R 1890**
CIVIL PROCEDURE CODE, 1908, ORDER XXII, RULE 3 (1). 2. **23 P R 1889**
CIVIL PROCEDURE CODE, 1908, ORDER XXII, RULE 4 **66 P R 1894**, **4 P R 1897**
CIVIL PROCEDURE CODE, 1908, ORDER XLI, RULE 23. **98 P R 1887**, **23 P R 1899**
COURT FEES ACT, 1870, SECTION 28. **156 P R 1888**, **38 P R 1900**
JOINDER OF PARTIES. **118 P R 1890**
PLAINT, RETURN OF. **59 P R 1899**

Section 108.
See APPEAL, CIVIL. **76 P R 1882**
See CIVIL PROCEDURE CODE, 1908, SECTION 47. **49 P R 1896**

Section 109.

1. *Application for leave to appeal to Privy Council—Order of remand under order XLI, rule 23, Civil Procedure Code—"Final decree."*

Held, that an order of remand under order XLI, rule 23, Civil Procedure Code, made in consequence of a finding that a cause of action had been disclosed by the plaintiffs, and directing a trial of the case set up for the plaintiffs on its merits, is not a "final decree" within the meaning of section 109 of the Code of Civil Procedure. YUSAF SHAH *v.* GHULAM JILANI. **56 P R 1888**

2. *"Final decree"—Leave to appeal to Her Majesty in Council.*

Held, that an order passed by the Chief Court on an appeal under section 104 of the Civil Procedure Code, from an order of the District Judge, returning a plaint for presentation in the Revenue Court, and reversing that order, is not a "final decree" within the meaning of section 109 of the Code, from which leave to appeal to Her Majesty in Council can be granted.

A final decree within the terms of section 109 of the Civil Procedure Code is one which finally determines some cardinal point in issue in the cause, in respect of the

CIVIL PROCEDURE CODE, 1908 —*contd.*

Section 109—*concld.*

rights of the parties and on the merits of the case.—GANDA MAL *v.* THAKAR HARKISHEN SINGH. **12 P R 1896**

3. *See* APPEAL TO PRIVY COUNCIL. **52 P R 1907**

Section 110.

1. *See* APPEAL TO PRIVY COUNCIL. **59 P R 1905** **60 P R 1905**

2. *Leave to appeal to the Privy Council—Substantial question of Law—Orders passed under section* 104 *and order XLIII, rule* 1.

Held, where the Chief Court in appeal has confirmed the order of the lower Court, and has taken substantially the same view of the facts, and from the facts as found no substantial question of law arises, leave to appeal to the Privy Council should be refused. *Held also*, that an appeal may lie to the Privy Council in certain cases from an order passed unnder section 104 and order XLIII, rule 1. MUSSAMMAT SURASUTI AND OTHERS *v.* ESHRI PERSHAD. **61 P R 1900**

3. *Civil Procedure Code*, 1908, *section* 110—*Appeal to Privy Council—Concurrent findings on facts—Substantial question of law—Procedure.*

On an application for leave to appeal to the Privy Council whereupon question of fact the decision of the Chief Court was concurrent with that of the Court of first instance and upon the facts as found no substantial question of law was involved *held*, that under the last clause of section 110, Civil Procedure Code, the plaintiff was not entitled to appeal, and therefore leave to appeal should not be given.

Sukalbutti Mandrani v. *Babulal Mandar* (*I. L. R., XXVIII Calc.*, 190), *Tulsi Persad Bhakt* v. *Benayeh Missir* (*I. L. R., XXIII Calc.*, 918, P C.), and *In re Shri Vishwambhar Pandit* alias *Nana Mahraj* (*I. L. R., XX Bom.*, 699), cited.

Ashgar Reza v. *Hydar Reza* (*I. L. R., XVI Calc.*, 287) and *Gopinath Birbar* v. *Goluck Chunder Bose* (*I. L. R., XVI Calc.*, 292), dissented from. LIKAL AND OTHERS *v.* SHARIF-UL-HASSAN KHAN AND OTHERS. **48 P R 1904**

4. *Civil Procedure Code*, 1908, *section* 110 *Privy Council, leave to appeal to—Value of subject-matter.*

Held, that in order to justify the Court in granting leave to appeal to the Privy Council under section 110 of the Code of Civil Procedure it is essential that the decree itself should involve directly or indirecty some claim or question to or respecting property of not less than rupees ten thousand.

CIVIL PROCEDURE CODE, 1908 —*contd.*

Section 110—*concld.*

Baboo Gopal Lal Thakoor v. *Teluk Chander Rai* (*7 M. I. A.* 548), *Ko Khine and other* v. *Richard Snaddan* (*L. R.* 2 P. C., 50) and *Byjnath and others* v. *Graham and others* (*I. L. R., XI Calc.*, 740) explained and distinguished. *Royal Insurance Co. and others* v. *Akhey Coomar Dutt and others* (6 *Calc. W. N.*, 41) and *Moofti Muhommed Abdoollah and another* v. *Baboo Mootechund* (*I, M. I A.*, 363) cited. KRISHNA MILLS COMPANY, LIMITED, DELHI, *v.* GOPI NATH. **75 P R 1904**

Section 113.

And order XLVI, rule 1.
See REFERENCE TO CHIEF COURT. **5 P R 1886** **3 P R 1886**

Section 114.

See REVIEW OF JUDGMENT.

See C. P. C. 1908, ORDER XLVII, RULE 1.

1. *Dismissal of application for revision—Second application—Review.*

See REVISION IN CIVIL CASES. **23 P R 1898**

3. *Section* 114, *order XLVII, rules* 1 *and* 8—*Review of judgment.*

A Judge or a Bench is competent in admitting an application for review of judgment to define and limit the points on which the case shall be re-heard. An order of admission does not *ipso facto* re-open the whole case.

10 *Bom., H. C. R.*, 360 dissented from. *I. L. R., V. Calc.* 89, and *IX. Calc.*, 209, and 11 *M. I. A.*, 487 referred to. DHANRUP MAL *v.* SARDAR HIRA SINGH. **158 P R 1889**

Section 115.

See PUNJAB COURTS ACT, SECTION 70, *passim.*
See REVISION IN CIVIL CASES, *passim.*
See REVISION IN REVENUE CASES, *passim.*
See APPEAL, CIVIL. **36 P R 1887** **79 P R 1890** **54 P R 1896** **86 P R 1896** **48 P R 1901** **72 P R 1902** **88 P R 1902**

See ARBITRATION. **11 P R 1886 Rev.** **58 P R 1889** **74 P R 1894 F. B.** **22 P R 1897** **21 P R 1898 F. B.**

See BURDEN OF PROOF. **89 P R 1893**

CIVIL PROCEDURE CODE, 1908 —*contd.*

See CIVIL PROCEDURE CODE, SECTION 67 **95 P R 1888**

See SECTION 99. **65 P R 1891**

See ORDER V, RULES 19, 20 (1). **104 P R 1888**

See ORDER IX, RULE 8 **60 P R 1897**

See ORDER IX, RULE 13. **125 P R 1892** **60 P R 1897 F. B.**

See ORDER XXIII, RULE 3. **105 P R 1889** **50 P R 1898**

See ORDER XXXII, RULE 5. **130 P R 1894**

PUNJAB COURTS ACT, SECTION 40.

93 P R 1886

Section 132.

See CIVIL PROCEDURE CODE, 1908, ORDER XXXII, RULE 15. **19 P R 1899**

Section 141.

1. *Execution of decree—Leave to withdraw—Effect of order XXIII, rule* 1 *and section* 141, *Civil Procedure Code.*

See CIVIL PROCEDURE CODE, 1908, ORDER XXIII, RULE 1. **37 P R 1892**
See ALSO **22 P R 1905**

2. *And sections* 6, 24 *and* 38—*Execution of decree—Power of Court to execute decree in excess of the limits of its pecuniary jurisdiction as an original Court—Punjab Courts Act*, 1884, *section* 35.
See CIVIL PROCEDURE CODE, 1908, SECTION 6. **9 P R 1901**

Section 144 (1).

See CIVIL PROCEDURE CODE, 1908, SECTION 47. **49 P R 1896** **82 P R 1896**

See CIVIL PROCEDURE CODE, 1908, SECTION 145. **77 P R 1895**

Execution of decree of Appellate Court—Restoration of land to party dispossessed—Award of mesne profits for period of dispossession.

Held, that a party seeking restitution under section 144 (1) of the Civil Procedure Code is entitled to be fully restored to his former position, and when he has been dispossessed of land, to be awarded mesne profits for the period of his dispossession. HIMAN *v.* HUKMAN SINGH. **28 P R 1896**

CIVIL PROCEDURE CODE, 1908 —*contd.*

Section 145.

See CIVIL PROCEDURE CODE (ACT XIV OF 1882, SECTION 47 (2).
104 P R 1886

1. *Security for performance of decree—Execution against surety—Original and appellate decrees.*

Held, that section 145 of the Civil Procedure Code is only applicable to cases in which security is given for the performance of a decree in an original suit, that is, of an original as distinguished from an appellate decree, so that the liability of a person who becomes surety for the performance of an appellate decree cannot be enforced summarily in execution of that decree. JAI DIAL *v.* SAWAN MAL. **109 P R 1886**

2. *Civil Procedure Code*, 1908, *orderXLI, rule* 5, *sections* 144, 145—*Liability of surety who has given security for due performance of an appellate decree under order XLI, rule* 5, *to be proceeded against summarily in execution-proceedings—Act VII of* 1888.

Held, that a surety who has given security for the due performance of an appellate decree under section 545, Civil Procedure Code, 1882, is not liable under the present law to be proceeded against summarily in execution proceedings by the decree-holder, the latter's remedy against the surety being by regular suit. GANPAT RAI *v.* GOKAL CHAND. **77 P R 1895**

But cf. SECTION 145 OF THE NEW CODE.

3. *And section 55—Release of judgment-debtor on finding surety undertaking that he should apply to be declared an insolvent—Dismissal of application for want of prosecution—Execution of decree against surety—Appeal—Revision.*

H. M. became surety under section 55 of the Code of Civil Procedure for a judgment-debtor, and undertook to produce him in Court when called upon, and that he should within one month file an application to be declared an insolvent. The judgment-debtor duly applied to be declared an insolvent, but his application was rejected in default of prosecution after one appearance. The decree-holder thereupon applied for the execution of his decree against the surety, which was refused by the District Judge on the ground that the obligation of the surety was discharged. The decree-holder preferred an appeal to the Chief Court.

Held, that an order refusing an application under section $\frac{145}{253}$ of the Code of Civil Procedure for recovery of the amount decreed from a surety is not appealable, the decree-holder's remedy being by application for revision. LILLO MAL *v.* HARJI MAL. **72 P R 1902**

4. *And section 55—Liability of surety who has given security for the appearance of a person arrested under section 55 to be proceeded against summarily in execution proceedings.*

Held, that a surety who has given security under section 55, Civil Procedure Code, for the appearance of or payment by a person arrested in execution of a decree for money

CIVIL PROCEDURE CODE, 1908 —*contd.*

Section 145—*concld.*

can be proceeded against summarily in execution proceedings. GURAN DITTA MAL *v.* PALA SINGH. **143 P R 1908**

Section 151.

Civil Procedure Code, Act, V of 1908, *section* 151, *order XXI, rule* 29, *and order XLI, rule* 5—*Stay of execution.*

H. K. obtained a decree against B. K. in 1907, execution of which was stayed on appeal pending the decision of a counter-case brought by B. K. against H. K.—B. K.'s suit having been dismissed and an appeal preferred to the Chief Court, B. K. asked for stay of execution of H. K.'s decree of 1907, pending hearing of the appeal in her (B. K.'s) case. It was contended on the authority of 41 P. R. 1904 (*Guest* v. *McGregor*) that the Court had no power to accede to this prayer.

Held, that since the passing of the new Civil Procedure Code the dictum contained in 41 P. R. 1904 was no longer applicable, and that the order sought for could be made under section 151 of that Code.

Held also, that an Appellate Court has, generally speaking, as full powers as the Original Court and can do, while the appeal is pending, what the Original Court could have done while the suit was pending. SARDARNI BHAGWAN KUAR *v.* RANI HARNAM KAUR. **82 P R 1910**

Section 152.

1. *Amendment of decree—Variance between decree and judgment must be patent on the documents—Power of lower Court to amend decree confirmed on appeal by higher Court.*

Held, that to justify the exercise of the power to amend a decree under section 152 of the Civil Procedure Code, the variance between the decree and the judgment which is relied upon must be a variance which is patent upon the face of the documents themselves, and does not need the introduction of extraneous evidence to establish it.

Semble :—The mere circumstance that the decree of the first Court has been appealed to a higher Court and confirmed by that Court, would not affect the jurisdiction of the former Court to amend the original decree. KARM BAKHSH *v.* HAIDAR BAKHSH. **94 P R 1888**

2. *Order XXI, rule* 26—*Duty of Court executing decree—Clerical error—Amendment of decree—Stay of execution.*

It is not the business of a Court executing a decree to go behind its plain terms and substitute in it particulars, which it may suppose the Court which passed the decree intended to insert, but failed to insert, for the particulars actually inserted.

The proper course, where a decree is found to contain a clerical error, is for the executing Court to stay execution of the decree, under order XXI, rule 36 of the Civil Procedure Code pending an application by the judgment-debtor to the Court which passed the decree to amend it under section 152. CHARAT SINGH *v.* KHUSHAL SINGH. **78 P R 1889**

CIVIL PROCEDURE CODE, 1908 —*contd.*

Section 152—*contd.*

3. *Section* 152, *decree, amendment of—Decree of Appellate Court confirming decree of District Court—Jurisdiction of District Court to amend original decree.*

The decree of a District Court in plaintiff's favour was, on appeal, confirmed by the Chief Court, and subsequently plaintiff applied to the District Court to amend its own decree, on the ground that it was not in accordance with the penultimate paragraphs of its own judgment. The District Judge declined jurisdiction on the ground that the only existing decree in the case was that of the Chief Court, which he was not competent to amend. Plaintiff applied to the Chief Court on the revision side, and contended that when the decree of an Appellate Court merely confirms the decree of the lower Court, that decree is still open to correction by the original Court

Held, that the decree of the Appellate Court was the only decree capable of execution and therefore the only decree to be amended if amendment were necessary, and that the District Judge had rightly declined jurisdiction. MUSSAMMAT JOWALA DEVI *v.* KANWAR SEN. **32 P R 1896**

4. *Section* 152 *and order XX, rule* 6 *decree—Decree not in conformity with judgment—Application by decree-holder to amend decree rejected as time-barred—Duty of Court—Civil Procedure Code*, 1908, *section* 152.

The law of limitation does not apply to applications made to a Court to do acts which it has no discretion to refuse to do. Inasmuch, therefore, as under Civil Procedure Code, the Court is bound of its own motion to amend a decree so as to bring it into conformity with its judgment or to correct errors of omission, it cannot reject as time-barred an application made to it for this purpose by the decree-holder, but it is bound to amend the decree, or if no decree exists, to draw one up in conformity with its judgment. DEVI DAS *v.* GURDATTA. **12 P R 1897**

5. *Amendment of decree—Decree not in conformity with judgment—Application by plaintiff to amend decree after it has been upheld by the Chief Court—Jurisdiction.*

The District Judge passed a decree in favour of the plaintiff for amount claimed, and further directed that the decree should bear interest at six per cent. from its date up to realization. In the formal decretal order the provision as to future interest was omitted. The defendant appealed to the Chief Court from the decree as it stood which upheld and affirmed the findings of the District Judge. On the application of the plaintiff for amendment of the first Court's decree by the addition of the clause relating to future interest in the operative part of the judgment, *held*, that the application lies *only* to the Chief Court and not to the first Court, and that the amendment can only be made by Chief Court. *Held, also*, that the right to apply for amendment cannot be lost merely because the first Court's

CIVIL PROCEDURE CODE, 1908, —*contd.*

Section 152—*concld.*

decree in its incorrect form had been upheld and confirmed by the Appellate Court. ABDUL KASIM *v.* PIARE LAL AND OTHERS.

P R 1900

SCHEDULE I.

Order I rule 1.

1. *And order XXIII, rule 1—Withdrawal from suit with liberty to bring fresh suit—Effect of permission to one of several plaintiffs to withdraw without consent of others—Power to challenge such permission in subsequent proceedings.*

See CIVIL PROCEDURE CODE, 1908, ORDER XXIII, RULE 1. **93 P R 1887**

2. *Joint suit by alleged partners in respect of leases made in the names of certain individual members of alleged partnership—Joint undivided Hindu family—Omission in plaint to specify grounds entitling plaintiffs to sue jointly in respect of such leases—Evidence Act, section 92.*

See CIVIL PROCEDURE CODE, 1908, SECTION 80. **67 P R 1894**

3. *And order I, rules 9 and 10—Misjoinder—Parties—Joinder of plaintiffs—Persons jointly interested in a suit—Claims not antagonistic.*

See PARTIES. **38 P R 1903**

Order I, rule 3.

1. *And order I, rule 4 (b) and order II, rule 3 and section 99—Misjoinder of causes of action—Plaintiffs obtaining right of further appeal by reason of such misjoinder—Proper order to pass on such appeal.*

See CAUSE OF ACTION. **189 P R 1888**

2. *And order I, rule 4 (b), order II, rule 3—Misjoinder of causes of action—Suit to cancel bonds executed in favour of separate parties in respect of the same transaction.*

See CAUSE OF ACTION. **5 P R 1896**

3. *And order I, rule 4 (b) and order II, rule 4, order VI, rule 17, order XLIII, rule 1 (a)—Misjoinder of causes of action—Plaint returned for amendment—Appeal—Date of cause of action in suit for partition—Suit against several persons, each interested in part of the property.*

See CAUSE OF ACTION. **79 P R 1899**

Order I, rules 3 and 4.

See MULTIFARIOUSNESS. **1 P R 1905**
30 P R 1908 F B

Order I, rule 8.

See JOINDER OF PARTIES.
104 P R 1882
175 P R 1882
151 P R 1883
See PRE-EMPTION. **3 P R 1881**
See PARTIES. **105 P R 1901**

Right of worshipper at Dharmsala to contest alienation of property attached thereto—Applicability of section 92 (1) Civil Procedure Code.

See CIVIL PROCEDURE CODE, 1908, SECTION 92 (1). **66 P R 1892**

Order I, rule 9.

1. *And section 99—Suit by reversioner on death of widow—Joint suit against various defendants who raised different defences—*

CIVIL PROCEDURE CODE, 1908 —*contd.*

Order I, rule 9—*contd.*

Suit based on allegation that on the death of the widow the right to possession vested in plaintiff, who was entitled to eject all defendants as trespassers—Misjoinder of causes of action.

See CAUSE OF ACTION. **24 P R 1899**

2. *Suit for land awarded at partition of whole culturable land of village—Parties—Duty of Appellate Court.*

The plaintiff sued eleven defendants for possession of a small corner of *gorah* land which had been awarded to him at a partition of the whole culturable land of the village.

The Court of first instance impleaded the whole proprietary body as co-defendants.

In his appeal to the Divisional Court, the plaintiff again made the eleven original defendants-respondents.

The Divisional Judge rejected the appeal on the ground (*inter alia*) that the whole of the proprietary body had not been made respondents.

Held, that the Divisional Judge was not justified in rejecting the appeal for want of parties, there being no reason why the principle of order I, rule 9, Civil Procedure Code, should not be applied, so far as may be, by Appellate Courts. Two courses were open to the Court:

(1) to decide the appeal as between the parties before it, leaving with the plaintiff-appellant the risk of not having brought the other defendants before the Court; or

(2) to have used the power given it by order XLI, rule 20, Civil Procedure Code, if the Court considered it necessary, and to have directed that the other defendants be made respondents.

Held also, that the suit (which was instituted while the Punjab Land Revenue Act, 1871, was in force) was not excluded from the cognizance of the Civil Courts by the provisions of that Act. ALI MIR *v.* GULAB DIN. **5 P R 1892**

3. *Civil Procedure Code, 1908, Order I, Rule 9, and section 99—Misjoinder of causes of action—No ground for appeal—Power of Court to refuse to entertain pleas raised too late—Estoppel—Custom—Widow's alienation—Effect of consent of collaterals—Adoption of daughter's son.*

Held, that though by strict Hindu Law a daughter's son cannot be adopted, this general rule may be varied by family custom, and often is so varied in the Punjab.

Held also, that the District Court was right in refusing to entertain a new plea challenging the validity of an adoption (the solution of which must be dependent upon evidence), when it was put forward at the very last stage of the hearing after all the evidence was closed.

Held also, that a widow cannot by deed provide for the descent of property (which she has inherited from her husband) after her death, in a line different from that prescribed

CIVIL PROCEDURE CODE, 1908 —*contd.*

Order I, rule 9—*concld.*

by law either with or without the consent of reversioners.

Held also, that the plaintiffs claiming title from an adopted son are not estopped by reason of their father having signed a sale-deed, as a witness, made by the widow of the adopted son and the latter's mother, in which they claim title derived from the adoptive father and from the collaterals of the adoptive father and not from the adopted son.

Held also, that it is doubtful whether upon the strictest construction to be placed upon the Procedure Code, it can properly be said that there is a misjoinder of causes of action in a suit, when plaintiffs as reversioners sue for a declaration in one suit in regard to several alienations made by widows.

And *further*, that section 99 of the Code of Civil Procedure has the effect of preventing such a defect of misjoinder from being made a ground of appeal. RUP NARAIN *v.* MUSSAMMAT GOPAL DEVI. **93 P R 1909 P C**

Order I, rule 10.

1. *See* CONTRACT ACT, 1872, SECTION 45.
   See JOINDER OF PARTIES.
2. *See* RIGHT TO SUE. **20 P R 1882**
3. *See* DECLARATORY DECREE. **93 P R 1884**

4. *Muhammadan Law—Inheritance—Insanity—Plaintiff suing in his own name during his father's lifetime on ground of father's insanity—Power to substitute or add name of true plaintiff.*

See MUHAMMADAN LAW—JOINT FAMILY. **91 P R 1887**

5. Section 22 of the Limitation Act applies even where a Court of its own motion adds a party to a suit. NABI BAKHSH *v.* FAKIR MUHAMMAD. **25 P R 1903**

6. *And order I, rules 1 and 9—Power of Court to strike out the name of one of two plaintiffs of its own motion.*

See PARTIES. **9 P R 1906**

7. *Striking out name of parties—Power of Court.*

See PARTIES. **71 P R 1907**

8. *Suit by the managing member of a joint Hindu family for debt due to the family—Objection as to non-joinder—Joinder of other members after period of limitation.*

See PARTIES. **149 P R 1907**

9. No Company or person can be made a plaintiff in a suit without its or his express consent.

See COMPANIES. **46 P R 1911**

Order I, rule 13.

1. *See* JOINDER OF PARTIES.

64 P R 1881
104 P R 1888
151 P R 1883
156 P R 1889

2. *See* CONTRACT ACT, 1872, SECTION 45.
3. *See* PARTIES. **69 P R 1903**

CIVIL PROCEDURE CODE, 1908, —*contd.*

Order II, rules 1 and 2.

1. *Splitting cause of action—Suit for damages for wrongful act—Previous suit for injunction restraining same wrongful act.*
See CAUSE OF ACTION.
190 P R 1888

2. *Splitting cause of action—Suit on bond—Suit for interest only—Subsequent suit for principal and interest.*
See CAUSE OF ACTION.
70 P R 1889

3. *Splitting cause of action—Wrongful ouster—Wrongful possession of profits—Different causes of action.*
See CAUSE OF ACTION.
129 P R 1889

4. *Splitting cause of action—Two suits simultaneously instituted.*
See CAUSE OF ACTION.
76 P R 1890

5. *Splitting cause of action—Facts not known at date of earlier suit.*
See CAUSE OF ACTION.
127 P R 1890
17 P R 1897

6. *Attachment of mortgaged property—Unsuccessful intervention by mortgagee—Suit under order XXI, rule 63, Civil Procedure Code—Subsequent suit for possession.*
See CAUSE OF ACTION.
29 P R 1891

7. *Whole claim which the plaintiff is entitled to make—Previous suit dismissed as premature, there being no cause of action.*
See CAUSE OF ACTION.
35 P R 1893

8. *Splitting cause of action—Minor plaintiff suing through his next friend.*
See CAUSE OF ACTION.
76 P R 1893

9. *Plaintiff having several causes of action suing in respect of one only—Subsequent suit in respect of another cause of action.*
See CAUSE OF ACTION.
23 P R 1894

10. *Custom—Succession—Suit by reversioners to contest daughters' succession—Compromise—Subsequent suit to set aside daughters' alienation.*
See CAUSE OF ACTION.
Also under CUSTOM II, ALIENATION BY DAUGHTERS
47 P R 1894

11. "*Cause of action*"—*Identity of defendants.*
See CUSTOM II—ALIENATION BY WIDOW—NECESSITY.
58 P R 1896

12. *Application to Revenue Officer for partition of land—Question of title decided by said officer—Subsequent suit for possession of house—Title to land and house identical—Punjab Land Revenue Act, 1887, section 117.*
See PARTITION. **30 P R 1898**

13. *Suit for possession of immovable property situate in different districts—Joint suit by reversioners against person in wrongful possession—Misjoinder of causes of action.*

CIVIL PROCEDURE CODE, 1908, —*contd.*

Order II, rules 1 and 2—*contd.*

See CAUSE OF ACTION.
91 P R 1898

14. Shamilat *land—Suit by khewatdar to obtain share in village common land—Relinquishment of part of claim.*
See COMMON LAND.
113 P R 1900

15. *Suit to include whole claim—Discretion of plaintiff having several causes of action to sue in respect of one only—Subsequent suit in respect of another cause of action not barred.*
See CAUSE OF ACTION.
87 P R 1903

16. *See* CAUSE OF ACTION. **28 P R 1907**

17. *See* MULTIFARIOUSNESS.
30 P R 1908 F B

18. *And order II, rule 3.*
See ESTOPPEL. **32 P R 1910**

19. *Master and servant—Wages.*

Where A engages B for a particular service for a given term on a stipulated monthly salary, and before the expiration of the term, A, without just cause dismisses B, B can sue at once for damages for breach of contract; but he cannot divide the sum into periodical claims, by suing month by month as each month's wages fall due.—FENWICK *v.* HURSOOKH RAI. **36 P R 1868**

20. *Assault—Actual loss and injured feelings—District Court and Small Cause Court.*

A claim to damages arising out of assault, made up partly of actual pecuniary loss and partly of general damages for injury to feelings, should be heard in the District Court: the Small Cause Court has jurisdiction only in respect to the actual loss, and the claim cannot be split by suing for that part in the Small Cause Court and for the other part in the District Court.—RUTTUN CHUND PAREE *v.* MUSSAMMAT GOOJNEE.
53 P R 1868

21. *Mistake in suing.*

Where plaintiff had brought a suit for hereditary shares jointly with another, under a mistake of fact that the latter was also entitled to a share. *Held*, that the plaintiff was not precluded from bringing a second suit for what she had omitted to claim in the first action, the omission having arisen from the mistake in question.—MUSSAMMAT TAJAN *v.* IMAM BUX.
10 P R 1869

22. *Order II, rule 2—Splitting cause of action—Declaratory decree.*

The plaintiff in 1872 sued for a decree declaring that certain lands which were recorded as the property of defendant really belonged to plaintiff. In 1876 plaintiff instituted the present suit in respect of land similarly recorded, but which in 1872 was under water and had no separate number attached to it, being included with the rest of the river bed under one number as the property of defendant. *Held*, that the second suit was barred by section 7, Act VIII

CIVIL PROCEDURE CODE, 1908, —*contd.*

Order II, rules 1 and 2—*contd.*

of 1859, corresponding to order II, rule 2, of Act V of 1908, as the fact that the land was under water and had no separate number attached to it did not affect the plaintiff's right to a declaration in 1872 that it was wrongly recorded as the defendant's property.—NADAR KHAN *v.* ELAHI BAKSH.
90 P R 1877

23. *Application to file private award—Subsequent suit for possession of movable and immovable property under the decree passed on such award.*

Held, that where an application was made to a Court for filing a private award and a decree in its terms was passed, a subsequent suit for the recovery of movable and immovable property under that award and decree was not barred, under order II, rule 2, of the Code of Civil Procedure. SULTAN SINGH *v.* NIDHAN SINGH. **65 P R 1902**

24. *Suit to include whole claim—Suit for money value of the produce—Subsequent suit for possession of the land not barred.*

At a time when the harvest was lying cut and ready for division, the landlord was dispossessed by a person who thereupon proceeded to divide the crop with the tenant and to take the landlord's share. The landlord sued for the money value of the landlord's share of the produce, and then sued for possession of the land. *Held*, that the former suit did not, under order II, rule 2, Civil Procedure Code, bar the latter, the two suits being based on different causes of action.

Tirupati v. *Narasimha (I. L. R., XI Mad., 210). Monohur Lal* v. *Gauri Shankar (I. L. R., IX Calc., 283), Lalessor Bahni* v. *Janki Bibi (I. L. R., XIX Calc., 615) Moyi* v. *Avuthraman (I. L. R., XXII Mad., 197,* and *Raja Bikrama Singh* v. *Prab Dial* (129 *P. R.,* 1889), cited. ABDUL HAMID *v.* SARBULAND KHAN. **78 P R 1902**

25. *Civil Procedure Code* (1882), *section 43—Proceedings in Revenue Court, no bar to a Civil Court—Jurisdiction of Civil and Revenue Court—Claim for land in addition to that allowed in partition proceedings—Punjab Land Revenue Act, XVII of* 1887, *section* 158 (1).

In mutation proceedings in 1903 plaintiffs were recorded as owning 16 shares and defendants 32 shares out of 480 shares in a joint *khata*. This *khata* was subsequently split up and a new *khata* No. 10 formed out of part of it, in which plaintiff was shown as owning one-sixth according to what had gone before. In 1905 plaintiffs themselves applied to the revenue authorities for partition of *khata* No. 10 without specifying their own shares and partition was duly made and was formally accepted by them, one-sixth share having been allotted to them. On a suit now brought by the plaintiffs in a Civil Court asking one-twelfth share more on the ground that the mutation of 1903 was wrong.

Held, that section 43, Civil Procedure

CIVIL PROCEDURE CODE, 1908, *—contd.*

Order II, rules 1 and 2—*concld.*

Code, 1882, cannot be used to bar a suit in a Civil Court because of something that has happened in a Revenue Court, and section 158 (2), Land Revenue Act, has no bearing on the case—but

Held also, that section 158 (1) of the Punjab Land Revenue Act prevents a Civil Court from taking cognizance of the matter. INAYAT *v.* NAURANG. **8 P R 1910**

Overruled by 28 P R 1913 F. B. regarding Jurisdication of Civil Court.

26. *Civil Procedure Code,* 1882, *section* 43, (*order II, rule* 2 *of new Code*)—*Previous suit for interest only, after expiry of term of mortgage—Second suit for subsequent interest barred.*

Where a mortgagee after the date of expiry of the mortgage term sued only for the interest due and not for the principal, though both principal and interest were then payable.

Held, that he was precluded by the provisions of section 43 of the Civil Procedure Code, 1882, from suing for the principal subsequently. Interest being accessory to the principal, it follows that a subsequent suit for interest, although accrued due after the decision of the previous suit, is equally barred, if the claim for the principal is barred.

28 *P. R.* 1907 (*Ganga Ram* v. *Abdul Rahman*), followed. *Vashiant Narayan* v. *Vithal Divakar* (1897) *I. L. R.* 21 *Bom.* 267, differed from. CHAUDHRI KUDAN MAL *v.* SARDAR ALLAH DAD KHAN. **19 P R 1910**

See SPLITTING CAUSE OF ACTION.

See RES JUDICATA. **190 P R 1883**

Order II, rule 3.

1. *And order VI, rule 17—Return of plaint for amendment—Plaintiff claiming two kinds of relief in alternative—Misjoinder.*

See CAUSE OF ACTION. **41 P R 1887**

2. *And section 99—Misjoinder of causes of action—Plaintiff obtaining right of further appeal by such misjoinder.*

See CAUSE OF ACTION. **189 P R 1888**

3. *Misjoinder—Creditor claiming in one suit to enforce two bonds executed separately by father and son.*

See CAUSE OF ACTION. **32 P R 1890**

4. *Suit by widow and daughter against legal heir and his alienees.*

See CAUSE OF ACTION. **149 P R 1890**

5. *Misjoinder—Trespass—Separate and independent acts of defendants.*

See CAUSE OF ACTION. **127 P R 1892**

6. *Suit for specific performance of contract to sell and for pre-emption on sale.*

See CAUSE OF ACTION. **96 P R 1895**

CIVIL PROCEDURE CODE, 1908, *—contd.*

Order II, rule 3—*concld.*

7. *Suit to cancel bonds executed in favour of separate parties in respect of the same transaction.*

See CAUSE OF ACTION. **5 P R 1896**

8. *Misjoinder of parties and causes of action—" Cause of action " —Civil Procedure Code,* 1908, *order II, rule* 3, *order XXI, rule* 63, *and section* 73.

See CAUSE OF ACTION. **43 P R 1897**

9. *Suit for possession of immovable property situate in different districts—Joint suit by reversioners against person in wrongful possession—Misjoinder of causes of action—Cause of action, meaning of.*

See CAUSE OF ACTION. **91 P R 1898**

10. *Order II, rule* 3.

See MULTIFARIOUSNESS **1 P R 1905**

Order II, rule 4.

See CAUSE OF ACTION. **96 P R 1895**

Order II, rule 5.

See CAUSE OF ACTION. **79 P R 1899**

Order III, rule 1.

1. *And order XLI, rule* 1—*Presentation of memorandum of appeal by pleader's clerk—Legal Practitioners' Act,* 1879, *section* 10—"*Recognized agent.*"

See APPEAL—CIVIL. **6 P R 1896**

2. *Reference to arbitration—Application filed by recognized agent.*

See ARBITRATION. **51 P R 1893 F B**

3. *Pleader's authority to bind client under Oaths Act.*

See OATHS ACT, SECTION 9. **75 P R 1900**

Order III, rules 1 and 2.

See ARBITRATION. **1 P R 1882**
48 P R 1882

See also APPEAL—CIVIL. **170 P R 1883**

Order III, rule 2.

1. *Act VIII of* 1859, *section* 17, *Proviso—Recognized agent—Plaint filed by, without power-of-attorney—Acceptance of plaint—Limitation.*

On 30th January 1877 (before the period of limitation had expired) plaintiff instituted his suit in the proper Court at Attari. The plaint was presented (without a power-of-attorney) by plaintiff's daughter-in-law, R., who stated that plaintiff came with her and became extremely ill, that he was lying outside the village and that as the period of limitation was expiring he had sent her on to file it. On the same date the Court directed the plaint to be kept in the office, and R., to bring the plaintiff in person or else a *mukhtarnama* from him. On 19th February 1877 (after the period of limitation had expired) plaintiff was taken to Court in a doolie and attested a *mukhtarnama* by which he appointed his nephew J. S. his *mukhtar* for the purpose of conducting the suit.

Held, that a written authority to present the plaint was not necessary in favour of R.

CIVIL PROCEDURE CODE, 1908, *—contd.*

Order III, rule 2—*concld*

acting as recognized agent of the plaintiff under the proviso to section 17, Act VIII of 1859, added by Punjab Government Notification No. 1225, dated 26th September 1866, and the Court having in fact accepted and retained the plaint it was filed within time. JODH SINGH *v.* WASSAWA SINGH. **9 P R 1878**

2. *Suit by a person carrying on business on behalf of a Native Prince—Specially appointed agent.*

Section 85 (1), Civil Procedure Code, is an enabling provision, and does not supersede order III, rule 2, of the Code, nor does it prevent the institution of a suit through a recognised agent other than one appointed under section 85 (1).

I. L. R. X Calc. 136, referred to. HIS HIGHNESS THE MAHARAJA OF JUMMU AND KASHMIR *v.* CHAUGHATTA. **165 P R 1889**

3. *Recognized agent—Am-mukhtar appointed by a party residing within the jurisdiction of the Court in which the suit or appeal is pending—Validity of the appointment of a pleader by such am-mukhtar—Necessary for written authority.*

A. being engaged in litigation in a Court within the local limits of whose jurisdiction he resided appointed B. as his *am-mukhtar*. B. instructed C., a duly qualified pleader, to appear on A's behalf in the said Court. C. was not allowed to argue.

The appeal on the ground that his appointment was void, having been made by a person who was not a recognised agent within the meaning of order III, rule 2, Civil Procedure Code, and the case was dismissed in default. A. applied for re-hearing and stated that he had verbally authorized B. to appoint a pleader. This application was dismissed. On appeal to the Chief Court,

Held, (*i*) that C.'s appointment by B. was valid, and (*ii*) that a written authority was not necessary for B.'s appointment as a special agent by A. under the last clause of order III, rule 2, of the Code. KARAM CHAND *v.* UDE SINGH. **134 P R 1890**

4. *And order III, rule* 1, and *order XXVII, rule* 2.—*Institution of suit on behalf of Secretary of State—Competency of Collector to institute without power-of-attorney from Financial Commissioner.*

Held, that a Collector is competent to institute a suit on behalf of the Secretary of State for India in Council without obtaining a power-of-attorney from the Financial Commissioner in his favour. THE SECRETARY OF STATE FOR INDIA *v.* MEHR BAKHSH. **84 P R 1905**

5. Person carrying on business for parties out of jurisdiction cannot be deemed a recognized agent within this section. FATEH DIN *v.* RALLI. **109 P R 1907**

Order V, rule 15.

Order V, rule 15—*Substituted service—Discretion of Court—Male member of family*

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CIVIL PROCEDURE CODE, 1908 —*contd.*

Order V, rule 15—*concld.*

commencing residence in defendant's absence.

Defendant left his home at Amritsar for the lower provinces upon an itinerant expedition, to dispose of a consignment of goods. He left no agent empowered to accept service of the summons. After his departure from home, his brother (an adult) took up his residence with defendant's family. *Held,* that the Court might serve the summons upon the defendant's brother under order V, rule 15, Civil Procedure Code, but that it was altogether at the discretion of the Court to dispense with personal service. SHEO LALL *v.* GUNGA RAM. **27 P R 1871**

Order V, rule 17.

Order V, rules 17, 19, 20—*Substituted service.*

Service by affixing the summons on a dwelling house, can only be effected when defendant is dwelling in the house and cannot be found, or when defendant has left the house to avoid service ; and therefore where defendant had gone to Hurdwar on a pilgrimage, *held,* that the service was bad. LEKH RAJ *v.* DAVEE CHUND (35 *P R* 1868), *also* GODUR *v.* BALUK RAM.

105 P R 1868

BUT *vide* ORDER V, RULE 17.

Order V, rules 19, 20.

1. *Order V. rules* 19, 20.

In an *ex-parte* case, the peon entrusted with the service of summons on defendant, affixed it to the door of his house, defendant being absent and the peon unable to find him ; and the Court, accepting this as a proper service, decided the case against defendant in his absence.

Held, that the service was bad, and that defendant was entitled to a new trial. The peon should have returned the summons with endorsement thereon that he was unable to serve it ; on which the Court (if satisfied after proper investigation that defendant was avoiding service) could have ordered a substituted service under order V, rules 19, 20, of the Code of Civil Procedure. GOORMOOKH SINGH *v.* KOORA.

79 P R 1868

BUT *vide* ORDER V, RULE 17.

2. *Act VIII of* 1859, *section* 57—*Substituted service—Divorce Act (IV of* 1869).

Where several unsuccessful attempts to effect service of the petition upon the respondent had been made ; and the Court was satisfied that the respondent was purposely evading service, substituted service was ordered under section 57 of Act VIII of 1859. REBERTEST *v.* REBERTEST.

68 P R 1870

3. *And section* 115—*Due service of summons—" Substituted service " when sufficient —Duty of Court—Material irregularity.*

It is the imperative duty of a Court of original jurisdiction before declaring that a summons has been " duly served " within the meaning of order V, rule 19, of the Civil Procedure Code, by means of substituted service, to see that the condition exists

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CIVIL PROCEDURE CODE, 1908 —*contd.*

Order V, rules 19, 20—*concld.*

which alone justifies such service, namely, that the person who ought to be served personally is keeping out of the way for the purpose of avoiding the service, and the omission to ascertain that the requisite condition does exist before passing an *ex parte* decree is a material irregularity justifying the interference of the Chief Court (where no further appeal lies) under section 115 of the Civil Procedure Code. LEKHU MAL *v.* CHELA MAL. **104 P R 1888**

Order V, rule 20 (2)

Exparte *decree—Application by defendant to have the* ex-parte *decree set aside —Substituted service, effect of.*

See RDER IX ORULE 13 INFRA.

42 P R 1904

Order V, rules 25, 27, 28, 29.

1. *Order V, rules* 25, 27, 28, 29—*Service of summons in foreign territory.*

Though it may be an invasion of the jurisdiction of a country to attempt to force any one under its protection and temporary allegiance before a foreign tribunal, yet a mere notification of proceedings is valid if authorized by the procedure of the Court. NUTHOO *v.* GRAY. **82 P R 1869**

2. *Order V, rules* 27, 28, 29—*Substituted service—Suit against Military Officer on furlough—Limitation.*

Order V, rules 27, 28, 29 of Act V of 1908, do not provide for the service of a summons on a Military Officer out of the British territories in India, by transmitting a copy of the summons to his Commanding Officer ; and therefore the time during which such defendant may have been absent out of the said territories is to be excluded from the period of limitation under section 13 of Act XIV of 1859. HOME *v.* JAMSETJEE. **41 P R 1871**

Order VI, rule 2.

Written statement—Defence must be confined to the pleas put in—Evidence inconsistent to the pleas not allowed—Civil Procedure Code, 1908, *order VI, rule* 2.

As a general rule a defendant must be confined to the pleas he puts forward in his defence, and in a case for pre-emption where the main plea put forward was the cancellation of the bargain by consent, but during the trial the defence tried to prove it as fictitious.

Held, that the defence was not entitled to rely on such an inconsistent plea and that no evidence should have been allowed to go on record. RAM RAKHA MAL *v.* DEVI DAS.

89 P R 1905

Order VI, rule 14.

1. *Plaint, signing and verification of—Plaint and verified by some only of plaintiffs —Objection to such plaint taken on appeal.*

See APPEAL—CIVIL.

48 P R 1896

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CIVIL PROCEDURE CODE, 1908 —*contd.*

Order VI, rule 14—*concld.*

2. *And section* 85—*Suit brought by an independent prince—Recognized agent—Signing and verification of plaint.*

Held, that a plaint signed and verified by a person specially appointed under section 85 of the Civil Procedure Code to prosecute or defend any suit on behalf of a sovereign prince or ruling chief is duly signed within the meaning of proviso to order VI, rule 14.

His Highness the Maharaja of Jammu and Kashmir v. *Chaughatta* (165 *P. R.* 1889), *The Maharaja of Bhartpur* v. *Kacheru (I. L. R. XIX All.* 510), *Beer Chunder Manikya* v. *Ishan Chunder Burdhun* (*I. L. R. X Calc.* 136), *Roy Dhunput Singh* v. *Jhoomuk Khawas* (*III Calc. L. R.* 579), and *Kastotiro* v. *Rustamji Dadabhai* (*I. L. R. IV Bom.* 470), referred to. HIS HIGHNESS THE MAHARAJA OF KASHMIR *v.* MUSSAMMAT KARAM BHARI.

41 P R 1902

3. *See* AGENT. **109 P R 1907**

Order VI, rule 17.

1. *See* RES JUDICATA. **81 P R 1878**

2. *See* JOINDER OF PARTIES. **175 P R 1882**

3. *See* PLAINT. **126 P R 1881**
186 P R 1882
131 P R 1883

4. *Plaint—return of, for amendment—Plaintiff claiming two kinds of reliefs in alternative.*

See CAUSE OF ACTION.

41 P R 1887

5. *Amendment of plaint—Conversion of suit of one character into a suit of another and inconsistent character.*

See PLAINT, AMENDMENT OF.

161 P R 1888

6. *Amendment of plaint—Power of Court to extend time originally granted for amendment.*

See PLAINT, AMENDMENT OF.

113 P R 1894

7. *Suit for pre-emption—Defective plaint —Procedure.*

See PLAINT—FORM OF ; *also see* PRE-EMPTION—LOSS OR WAIVER OF RIGHT.

7 P R 1896

8. *Plaint returned for amendment—Appeal.*

See APPEAL—CIVIL.

59 P R 1896

9. *Appeal from order of appellate Court returning plaint for amendment or for presentation to proper Court.*

See APPEAL—CIVIL.

15 P R 1898

10. *Suit for declaration of occupancy status of highest class—Duty of Court to return plaint for amendment or to amend it itself to enable it to frame issue which should*

CIVIL PROCEDURE CODE, 1908
—*contd.*

Order VI, rule 17—*concld.*

cover whether plaintiff entitled to inferior right than that claimed.

See Occupancy Rights.

3 P R 1898 Rev.

11. *Plaint filed by unauthorised person—Rejection of plaint.*

See Revision in Civil Cases.

5 P R 1899.

12. *Plaint returned for amendment—Misjoinder of causes of action—Suit against several persons each interested in part of the property.*

See Cause of Action.

79 P R 1899

13. *And order VII, rule 11—Plaint not to be rejected by reason of insufficient verification—Procedure.*

Held, that a plaint should not be rejected on a mere question of defect of verification. Where the verification is found to be defective the Judge is bound to return the plaint for amendment and has no power to reject it until default had been made in amending it within the time allowed by his order.

Tapi Ram v. *Sadu (I. L. R. XXII Bom.* 570), distinguished. Tulsi Ram and others v. Munshi Ram and others. **57 P R 1904**

14. *Amendment of plaint—Suit for injunction converted into one for possession—Change in relief does not involve a change in character.*

See Plaint. **135 P R 1906**

Order VII, rule 10.

See Plaint. **55 P R 1878**

Order VII, rule 11.

1. *And order XXII, rule 11—Rejection of memo. of appeal as improperly stamped without fixing time for appellant to complete the proper stamp.*

See Court Fees Act, 1870, section 28. **156 P R 1888**

2. *Insufficiently stamped plaint, when deemed to have been properly presented.*

See Limitation Act, 1877, section 4.

3 P R 1893

3. *Power of Court to extend time originally granted for amendment of plaint.*

See Plaint, Amendment of.

113 P R 1894

4. *Parties—Adding parties as plaintiffs—Joint promise to plaintiff and others—Right of plaintiff to sue alone—Cause of action—Non-joinder—Procedure.*

See Parties. **56 P R 1901**

5. *Plaint insufficiently stamped—Payment of requisite Court-fee after the expiry of limitation allowed for the suit—Plaint when deemed to have been presented.*

See Limitation Act, 1877, section 4. **74 P R 1903**

6. *Plaint not to be rejected for insufficient verification.*

See Order VI, rule 17. **57 P R 1904**

7. See Limitation Act, section 4. **123 P R 1907**

CIVIL PROCEDURE CODE, 1908
—*contd.*

Order VII, rule 14.

—*And order XI, rule 12—Suit for dissolution of marriage on the ground of wife's adultery—Power to order discovery of documents in the possession of the petitioner.*

In a suit for dissolution of marriage on the ground of the wife's adultery, the co-respondent served the petitioner with an order under order VII, rule 14, of the Civil Procedure Code, to file a list of all documents relied upon by him in support of his suit. The petitioner objected to the application on the ground that until issues had been framed or until the defence had been filed he did not know what documents might be relevant.

Held, that the petitioner was bound under order VII, rule 14, of the Civil Procedure Code, to file a list of all letters and documents in his possession or power which he relied on, relating to the adultery charged. C. v. C. and B. **11 P R 1902**

Order VII, rule 18.

Reception of documents.

Although the Courts are vested with a discretion under Act VIII of 1859 as to the reception of documents not submitted with the plaint, sufficient reason must be assigned for the delay in producing them. Gholam Mahomed v. Maya Dass.

98 P R 1867

Order VIII, rule 6.

1. *Valuation of suit—Set-off—Jurisdiction.*

See Jurisdiction. **69 P R 1889**

2. *Set-off—Jurisdiction.*

See Jurisdiction. **17 P R 1890**

3. *Partnership—Lien—Contract Act, 1872, sections 60, 61, 217, 262—Set-off.*

See Partnership.

53 P R 1898

4. *Order VIII, rule 6—Set-off—Unascertained demand—Rent and repairs—Implied contract—Small Cause Court.*

Plaintiff sued for rent of a house tenanted by defendant, who pleaded that he had expended what was due for rent in repairs, which plaintiff was bound to execute but refused to execute. *Held*, that defendant's plea was admissible as a plea of set-off under order VIII, rule 6, Civil Procedure Code, and that it involved a claim cognizable by a Small Cause Court. Warburton v. Anderson.

25 P R 1876

5. *Set-off—Unascertained damages.*

Held, that unascertained damages for breach of a contract may be set-off in answer to a claim for money due on that contract so far as it has been fulfilled, order VIII, rule 6, of the Civil Procedure Code, not being intended to be an exhaustive enactment on the law of set-off, or to take away any right of set-off, whether legal or equitable, which parties would have had independently of its provisions. Gobind Parshad v. Murree Brewery Co. **47 P R 1885**

6. *Written statement—Plea of payment—Set-off—Levy of Court-fee on such written statement.*

A sued B to recover the amount alleged to be due to him under a mortgage. In his

CIVIL PROCEDURE CODE, 1908
—*contd.*

Order VIII, rule 6—*concld*

written statement B stated that A had been in wrongful possession of the premises mortgaged and had realized profits equal to the amount alleged to be due to him under his security, and prayed that the claim should therefore be dismissed.

Held, that the written statement was not a set-off against the plaintiff's demand within the meaning of order VII, rule 6, Civil Procedure Code, and was chargeable with a Court-fee as on a plaint. Bhagat Singh v. Devi Dial.

85 P R 1908

7. *Civil Procedure Code, Act V of 1908, order VIII, rule 6—Set-off—Kinds of.*

Held, that the law recognises two kinds of set-off (1) statutory and (2) equitable.

The statutory provisions contained in Civil Procedure Code, Act V of 1908, order VIII, rule 6, are not exhaustive. Where a washerman declines or is unable to return articles made over to him to wash, his employer is equitably entitled to set-off the value when paying him his wages. Mr. Maiden v. Bhondu. **77 P R 1910**

Order VIII, rule 10.

And order VI, rules 2, 14 and 15—Striking out defence of defendant—Circumstances justifying such an order—Jurisdiction of Court of Political Agent, Bhopal—Jurisdiction of British Court to make decree affecting immovable property out of British India.

In a suit for partition and possession of a one-third share of property, movable and immovable, including cash and choses in action, the Court of first instance, being of opinion that issues could not be properly settled until defendants 1, 2 and 3 produced their books, which the Political Agent of Bhopal reported could not be spared, directed defendant 1 to file a written statement setting forth in detail the entire joint property, movable and immovable, and in the case of trading firms a balance sheet for each showing how they stood on the date of suit.

Defendant 1 failed to comply with this order, although the suit was adjourned from time to time to enable him to do so, and eventually the Court struck the three defendants' defence off the record and directed the plaintiff to produce *ex-parte* proof against them.

Plaintiff produced evidence accordingly and the Court gave him a decree for—

(*a*) possession by partition of one-third share of immovable property in the Karnal District, and of the immovable property situate at Sehore (Bhopal State);

(*b*) certain cash and outstandings; and

(*c*) rupees 1,95,487-9-5 to be paid by defendants 1, 2 and 3.

Held, that the order striking the defence off the record was not justified by law and that the suit must be remanded.

The statement required by the Court was not one of the nature prescribed by order VI,

CIVIL PROCEDURE CODE, 1908 —*contd.*

Order VIII, rule 10—*concld.*

rule 2, Civil Procedure Code, which is as much as possible to be confined to a simple narrative of the facts, which the party by whom or on whose behalf the written statement is made believes to be material to the case, and which he either admits or believes he will be able to prove. Here, the defendants had put in their defence and the Court did not wish them to supplement it in any way by a further statement of facts which they might believe to be material to their case. Order VIII, rule 10, Civil Procedure Code, therefore, did not justify the order.

Nor was the order justified by order XI, rule 21, Civil Procedure Code. The document called for by the Court was neither in the possession nor in the power of the defendants and was not even in existence. Order XI, rule 14, refers to documents which are *in esse* and not to documents which the Court desires to be brought into existence. Further here is no power conferred by order XI, rule 21, or elsewhere, to strike out the defence of a defendant of its own motion, and in the absence of an application to that effect by the plaintiff. *Cf.* 80 P R 1889.

Observations as to the power of the Court to punish defendants for contumacious behaviour and to ensure the speedy disposal of suits.

Held also, that the Court of the Political Agent, Bhopal, whatever its jurisdiction may be, was not one of the nature referred to in section 10, Civil Procedure Code, not being established by the authority of the Governor-General in Council and Bhopal not forming part of British India.

Quære.—Whether the District Judge, Delhi, had jurisdiction with regard to the immovable property situate and business conducted in foreign territory. HANS RAJ *v.* JHANDA MAL AND DWARKA DAS. **59 P R 1892**

Order IX, rule 3.

1. *Dismissal of suit pending reference to arbitration.*

See ARBITRATION. **10 P R 1899**

2. *Dismissal of suit for default in appearance—Parties to be informed of the place of hearing as well as the date.*

Held, that Courts of Justice when on tour should not dismiss any suit for default in appearance unless they are satisfied that due notice of the exact date and place of hearing was given to the parties. It is essential for every Judicial Officer to acquaint the parties either by an order in Court given in his presence or by notice containing the date and place of hearing. To post a general notice and programme of the tour at head-quarters is not a sufficient notice within the requirements of the Civil Procedure Code.

Bahala v. *Mamraj and others* (7 *P. R.* 1892 Rev.), and *Ambya* v. *Umra and Hassan* (45 *P. R.* 1875), cited. NAND LAL *v.* DIT RAJ AND OTHERS. **37 P R 1904**

CIVIL PROCEDURE CODE, 1908 —*contd.*

Order IX, rule 3—*concld.*

3. *And order IX, rule 4, and order XLVII, rule 1—Dismissal of suit for default—Failure of plaintiff to avail himself of the provisions of order IX, rule 4—Review of judgment.*

See REVIEW. **33 P R 1909**

Order, IX rule 4.

Order IX, rule 4—Proceedings against defendant while a prisoner in jail.

Plaintiff's suit was dismissed under order IX, rule 4, of Act V of 1908, both parties being absent. On application of plaintiff, his suit was brought on the file again. In the meantime defendant had been put in jail; and his father petitioned the Court that proceedings might be stayed till his son's release. The Court ordered "a non-suit until defendant came out of jail," the plaintiff offering no objection to this order. On defendant's release, plaintiff applied to have his case brought on again. *Held*, that his course was to bring a fresh suit unless precluded by the rules of limitation, and that no deduction could be made from the period of limitation on account of defendant's imprisonment, there being nothing to prevent a prisoner in jail from being served with a summons in a suit against him. JANEE *v.* WARIS. **39 P R 1869**

Order IX, rule 6.

1. *Order IX, rule 6, and order XVII, rule 2.*

The parties were present at the first hearing; issues were framed, and the case adjourned. At the adjourned hearing defendant did not appear. *Held*, that the decree passed against him was *ex-parte*. IN RE A REFERENCE BY THE JUDGE, SMALL CAUSE COURT, DELHI. **6 P R 1866**

2. *See* EX-PARTE SUITS. **26 P R 1879**

3. *And order IX, rule 13, order X, rule 4, order XI, rule 21, order XVII, rules 2 and 3*—"Ex-parte *decree*"—*Defendant present at first, but absent at adjourned hearing—Order for case to proceed* ex-parte—*Application to set aside* ex-parte *decree—Rejection of such application—Appeal.*

See CIVIL PROCEDURE CODE, 1908, ORDER IX, RULE 13. **82 P R 1895**

Order IX, rule 8.

1. *See* LIMITATION ACT (XV OF 1877), SECTION 14. **63 P R 1886**

2. *And order IX, rule 9—Suit by Hindu widow—Dismissal for default—Subsequent suit by reversionary heirs.*

Held, that when a suit brought by a Hindu widow in relation to her husband's estate is dismissed under order IX, rule 8, of the Civil Procedure Code, the order of dismissal does not, under order IX, rule 9, of the Code, bar a fresh suit by the

CIVIL PROCEDURE CODE, 1908 *contd.*

Order IX, rule 8—*concld.*

reversionary heirs of her husband in respect of the same cause of action. VIRU MAL *v.* MUSSAMMAT BHAGWANDEVI. **80 P R 1884**

3. Res judicata—*Civil Procedure Code, order IX, rules 8, 9—Dismissal of suit—Non-appearance of plaintiff—Effect of such dismissal—Suit for injunction—Suit to set aside gift—Couse of action.*

The dismissal of a suit in terms of order IX, rule 8, of the Civil Procedure Code, for the plaintiff's non-appearance does not operate in favour of the defendants as *res judicata*, though it precludes the plaintiff whose suit has been dismissed from bringing a fresh suit in respect of the same cause of action.

A. and B. who were agnates of K. sued K.'s widow for an injunction restraining her from alienating the property of K. in her possession, but the suit was dismissed under order IX, rule 8, of the Civil Procedure Code, on account of the non-appearance of the plaintiffs. The widow afterwards executed a deed of gift to P., who was a stranger to the succession of the fee of K.'s estate, and A. and B. with two other agnates of K. sued the widow and K. for a declaration that the deed of gift did not affect their reversionary rights.

Held, by the Privy Council, that the dismissal of the first suit was not a bar to the second suit.—MUSSAMMAT CHAND KOUR *v.* PARTAP SINGH. **177 P R 1888**

4. *Appeal from decree made under section 102—Dismissal for default—Scope of such appeal.*

A plaintiff who appeals against a decree made under order IX, rule 8, of the Civil Procedure Code, can only appeal as in the case of a decree made in the presence of both parties, on the ground that the lower Court has erroneously decided some question of law or of fact, or that its procedure has been irregular and not in accordance with law. The plaintiff has no right to impeach such a decree merely on the ground that he had a good excuse for not being present on the date fixed in the lower Court, the proper and the only way in which a decree can be impugned on such ground being by a proceeding under order IX, rule 9, a proceeding under which rule imputes no error to the Court in making the decree, but alleges new matter as a ground why it should be set aside. BHAGWAN SINGH *v.* PARI. **32 P R 1889**

5. *Execution of decree—Application for attachment—Objection by defendant dismissed for default, effect of—Civil Procedure Code, 1908, order IX, rule 8, order XXI, rule 60, order XXI, rule 63, section 141.*

Held, that where an objection by a defendant to an application by a decree-holder for attachment of property has been dismissed for default, such dismissal is not

CIVIL PROCEDURE CODE, 1908 —*contd.*

Order IX, rule 8—*contd.*

equivalent to an order under Order XXI, rule 60, Civil Procedure Code, disallowing the objection so as to necessitate the institution by such defendant of a suit to establish the right which he claims to the property in dispute, within the meaning of Order XXI, rule 63, of the Code.

Sadat Ali v. *Ram Dhan*, 12 *C. L. R.* 43, distinguished; *I. L. R. III All.* 504, cited. RURA MAL *v.* KURIA. **62 P R 1884**

6. *Suit dismissed for default—Appeal from order of dismissal—Civil Procedure Code*, 1908, *Section* 2 *Order IX, rule* 8—*Revision—Civil Procedure Code*, 1908, *section* 115.—"*Case*," *meaning of.*

Plaintiff's suit was dismissed by the first Court under Order IX, rule 8, Civil Procedure Code, and on the following day plaintiff applied for its re-admission, pointing out that he had been present in the Court premises all day, but had gone to the Bar-room to call his pleader, when his case was called on and dismissed for default. The first Court dismissed the application on the ground that no sufficient cause had been shown for the absence, and plaintiff appealed to the Divisional Judge, who, after an inquiry through the first Court, rejected the appeal on the ground that the case had been called on twice, first at 12 o'clock and again at 2 or 2-30 P. M., and plaintiff had only accounted for his absence on the second occasion. Plaintiff applied to the Chief Court for revision of the order of the Divisional Judge, and it was contended on behalf of defendant that an application for revision did not lie, inasmuch as the order dismissing the case for default was appealable to the Divisional Court, and thence to the Chief Court on a certificate. The questions referred to the Full Bench were, (*i*) whether an order of dismissal for default under Order IX, rule 8, Civil Procedure Code, is appealable as a decree; (*ii*) whether the word "case" in section 115 of the Code means the *whole* case in every instance, or whether a definite portion of a case for which a special remedy is provided in the Code, or specific orders in it for which a separate procedure is prescribed, can form the subject of revision under section 115; and (*iii*) whether plaintiff had shown sufficient cause for his absence.

Held, by the Full Bench, (*i*) that an order under Order IX, rule 8, of the Code is a decree within the meaning of section 2, and as such, is appealable under section 96 (1); (*ii*) that the word "case" in section 115 does not necessarily, in every instance, mean the *whole* case, but may mean a particular branch of a case for which an independent remedy, or a different procedure is provided in the Code, and may include an interlocutory order not falling under section 105 (1); and (*iii*) that the Divisional Judge committed a material irregularity in not accepting the plaintiff's appeal when he

CIVIL PROCEDURE CODE 1908, —*contd.*

Order IX, rule 8—*concld.*

found that plaintiff's absence at the time when his case was dismissed in default had been accounted for, on the ground that plaintiff had not accounted for his absence when the case was first called on. PANDIT RAM KANT *v.* PANDIT RAJDEO.

60 P R 1897

7. *Deciding case on tour without giving notice to plaintiff of place of hearing—Sufficient cause to restore such suit to the file.*

The first Court when on tour heard, and disposed of plaintiff's case *ex-parte*. He appealed to the Collector and alleged illness and want of notice of the place of hearing. The Collector dismissed the appeal holding that if he was ill he should have arranged to be represented and that the fact that the Court was on tour was no excuse.

Held, that the proceedings of the Collector must be set aside as it was incumbent on the Court to give proper notice of the place of hearing, which omission was sufficient to vitiate the whole subsequent proceedings. Revenue Officers should make programmes of their tour and adhere to them; and if they have to vary their tour they should take timely steps to give the parties fresh notice, and, in the absence of a clear note to this effect, it should be presumed that due notice has not been given.

Bahala v. *Mam Raj* (7 *P. R.* 1892 Rev), followed. TEGHA *v.* MUSSAMMAT PURSENUN.

81 P R 1902 Rev.

8. *And Order IX, rule* 9—*Mortgage—Redemption—Suit by mortgagor for redemption—Dismissal of suit for default—Subsequent suit for the same object.*

Held, that a dismissal under Order IX, rule 8, of the Code of Civil Procedure, of a suit by a mortgagor for redemption of mortgaged property precludes the plaintiff under Order IX, rule 9, from bringing a fresh suit for the redemption of the same property.

Shankar Bakhsh v. *Daya Shankar* (*I. L. R. XV Cal.* 422), *Mam Raj* v. *Chandua Mal* (117 *P. R.* 1891), and *Imdad Ali* v. *Hurmat Ali* (32 *P. R.* 1905), referred to. GURDITTA *v.* NARAIN DAS. **43 P R 1907**

9. *Appeal from order dismissing suit for non-appearance of plaintiff.*

See APPEAL. **121 P R 1907**

Order IX, rule 9.

See CIVIL PROCEDURE CODE, 1908, ORDER IX RULE 8.

1. *Civil Procedure Code*, 1908, *Order IX, rule* 9—*Suit dismissed under Order IX, rule* 8, *where defendant only appears—Meaning of the word "plaintiff."*

In Order IX, rule 9, Civil Procedure Code, 1908, which enacts that when a suit is wholly or partially dismissed under Order IX, rule 8 (that is, in the presence of the defendant and in the absence of the plaintiff), the plaintiff shall be precluded from bringing a fresh suit in respect of the same cause of action, the word "plaintiff" must be held to include the plaintiff's heirs and representa-

CIVIL PROCEDURE CODE, 1908 —*contd.*

Order IX, rule 9—*contd.*

tives in interest, who cannot claim any better position as regards the maintenance of the second suit than the person through whom they claim.

No. 80 *P. R.* 1884 and *I. L. R. XV Cal.* 422, referred to. MAMRAJ *v.* CHANDWA MAL.

117 P R 1891

2. *Suit dismissed by default—Application for review made more than* 30 *days after date of dismissal—Civil Procedure Code*, 1908, *Order IX, rule* 9—*Limitation Act*, 1877, *Second Schedule, article* 163.

In a suit instituted by petitioner, the defendant was summoned for and duly appeared on the 11th May 1894, but petitioner himself did not appear. As the claim was denied, petitioner's suit was dismissed by default, and on the 2nd July 1894, petitioner applied for review of judgment, without, however, being able to show that the order attacked was other than the only order which the Court could have passed under the circumstances.

Held, that article 163 of the Second Schedule to the Limitation Act, 1877, applied, and that the application was barred thereunder. NUR MUHAMMAD *v.* DINA. **15 P R 1897**

3. *And Order IX, rule* 8—*Suit dismissed for default—Appeal from order of dismissal.*

An application under Order IX, rule 9, of the Civil Procedure Code must be made within thirty days of the date of the order dismissing the suit, and the Courts have no alternative to dismissing the application if not presented within that period, but this does not effect the appeal from the original order dismissing the suit, such an order having the force of a decree. SAHIB DITTA *v.* RODA. **83 P R 1902**

4. *Execution of decree—Attachment—Objections to attachment dismissed for default—Power of Court to restore such application to the file.*

Held, that the procedure prescribed for original suits by the Code of Civil Procedure does not apply to execution proceedings under Chapter XIX, and accordingly the remedy provided by Order IX, rule 9, of the Code is not open to an objector whose objections under Order XXI, rule 58, to an attachment of certain property in execution of decree owing to his absence on the date fixed for hearing have been dismissed in default. COATES *v.* KASHI RAM. **76 P R 1903**

5. *See* MORTGAGE.

32 P R 1905

6. *Dismissal of suit for default—Application to restore suit—Sufficient cause for non-appearance—Civil Procedure Code, Order IX, rule* 9.

Plaintiff, believing that the presiding Judge had taken an unfavourable view of his case came to Lahore to try and get the case transferred from his Court. On the 1st May 1903, he filed an application for transfer which was rejected on the 2nd, on the ground that the

CIVIL PROCEDURE CODE, 1908 —*contd.*

Order IX, rule 9—*concld.*

reasons given were frivolous. The original case had been fixed for the 4th May at Rawalpindi but as it was thought that the presiding Judge was likely to be transferred about the beginning of June, the plaintiff, with a view to avoid by delay having his case decided by that Judge, sent a telegram to his Pindi Counsel with instructions to secure a postponement. The District Judge finding the plaintiff's absence deliberate dismissed the case under Order XVII, rule 2, Civil Procedure Code. On the 1st June the plaintiff applied under Order IX, rule 9, for restoration of the case, but the District Judge having found that the absence of the plaintiff and his Counsel on the 4th May was intentional, refused to restore the case.

Held, that under the circumstances the plaintiff was not entitled to have the suit restored. His absence was wilful and contumacious and amounted to a refusal to submit himself to the jurisdiction of the Court.

Sundar Lal v. *Gurprasad* (*I. L. R. XXIII Bom.* 417), *Hinga Bibee* v. *Nurma Bibee* (*I. L. R. XXXI Cal.* 150), and *Somayya* v. *Subhamma* (*I. L. R. XXVI Mad.* 599), referred to. GURDIT SINGH *v.* SOHAN SINGH.

46 P R 1905

7. Power of Court to restore application for revision dismissed for default.

See REVISION—CIVIL.

97 P R 1907

Order IX, rule 13.

Order IX, rule 13—Appeal from *ex-parte* decree.

See APPEAL—CIVIL. **60 P R 1883**

See APPELLATE COURT—POWER OF.

70 P R 1885

1. *Suing defendant in wrong name.*

A summons was erroneously addressed to the defendant under the name of Faddy instead of Free. The summons was served upon Free, but he did not appear to answer the suit, and an *ex-parte* decree was given against him. When execution was applied for, the error was detected.

Per Boulnois, J. (Roberts, J., concurring).—If Lieutenant Free had appeared to the summons and the suit had been decided against him, or the name and description of the defendant in the summons even without his appearance had been so close as to admit of no reasonable doubt, the plaintiff could proceed on this record notwithstanding the misnomer. All he would have to do would be to identify his defendant as the person whom he meant to sue, whom he did actually summon, and against whom in reality, with whatever error of name, the decree was made. But in this case, the name in the summons admits of a doubt as to whether Lieut. Free

CIVIL PROCEDURE CODE, 1908 —*contd.*

Order IX, rule 13—*contd.*

must have known himself to be the man intended to be summoned. It admits of this doubt apparently, and although such a doubt might be removed on enquiry, as, for instance, if it appeared that he had gone by this *alias*, yet the circumstances of this case render it likely that the plaintiff could not show that the defendant, although so miscalled, ought to have appeared on the summons. If there was no sufficient summons the proceedings fall to the ground, and no warrant can issue. It is not necessary for the defendant to come in and set aside the proceedings under Orders IX, rules 13, 14, of the Civil Procedure Code. That is a course which might be adopted by a person who appeared on the face of the summons to have been properly summoned, but in fact was not. There can be no doubt that the proper course for the plaintiff in this case is to sue again, as if nothing had been done. In fact, no proceedings, on this view have been taken against Lieut. Free, and no warrant can issue or be executed against him on this record. But care must be taken, in reference to cases like this, to avoid establishing a principle, that every man must necessarily be sued by his right name, for it is only so far as the error may have reasonably led to actual mistake that the proceedings are vitiated; and when the defendant has appeared to the summons, I do not believe that there is any occasion to sue again. NIDHAN *v.* FREE. **9 P R 1866 Civil Ref.**

2. *Order IX, rules* 13 *and* 14, *and order XVII, rule* 2.

A suit having been brought in the District Court, the Extra Assistant Commissioner dismissed the suit as being cognizable by the Court of Small Causes. The Commissioner affirmed this decision on appeal. The Chief Court reversed the Commissioner's decision and remanded the case to the District Court for trial. *Held*, that the defendant having appeared in the suit at its institution, and on appeal in the Commissioner's Court and the Chief Court, but failed to appear at the trial on remand, the judgment passed on remand was *ex-parte* within Order IX, rules 13 and 14, of Act V of 1908, and therefore no appeal would lie from it. MUSSAMMAT GOOJREE *v.* RUTTUN CHUND PUREE.

3 P R 1869

3. Where the defendant was falsely personated at the hearing, *held*, that the decree passed in the suit for the plaintiff was *ex-parte*. JAMAL DEEN *v.* NIHAL SINGH.

87 P R 1869

4. *Order IX, rules* 13 *and* 14.

Plaintiff obtained a decree *ex-parte* against the defendant for possession of certain property and a few months afterwards applied for execution. The usual notice to show cause was issued but, the defendant being absent,

CIVIL PROCEDURE CODE, 1908 —*contd.*

Order IX, rule 13—*contd.*

was not served. Upon the defendant's non-appearance, the Assistant Commissioner issued the order to carry out execution of the decree. Subsequently, the plaintiff filed and attested a *dakhlnama*, upon which the proceedings were consigned to the record-room. About a year afterwards, the defendant applied under Order IX, rules 13 and 14, of Act V of 1908, to set aside the *ex-parte* decree, urging that he had no notice either of the suit or of the execution of decree, and that he was still in possession of the land. *Held*, that no process for enforcing the judgment had been executed, and consequently the application was not barred by time. MOOLA SINGH *v.* WASAWA SINGH. **94 P R 1869**

5. *Order IX, rules* 13 *and* 14, *and Order XXI, rule* 54—Ex-parte *decree—Application to set aside, made after time—Discretion of Court, to admit—Informality in process of execution under Order XXI, rule* 54—*Effect of.*

On 28th April 1876, C. H. and W. obtained an *ex-parte* decree against J. K., in execution of which certain shops were attached on 29th June 1876. On 2nd August 1876, J. K. applied under Order XVII, rules 13 and 14, Act V o 1908, to have the *ex-parte* decree set aside. The process of execution issued under Order XXI, rule 54, Act V of 1908, was informal, because (*a*) no copy of the prohibitory order was attached to the door of the Court, or other conspicuous part of the Court-house, and (*b*) the order was not read aloud in any place on or adjacent to the shops sought to be attached.

Held, by Plowden and Elsmie, JJ., that no legal process of execution was executed under Order XXI, rule 54, within 30 days of the application made by J. K. on 2nd August 1876, and therefore, that his application was within time.

Per Pitzpartick and Plowden, JJ.—A Court has no discretion to set aside an *ex-parte* decree on application made more than 30 days after process for enforcing the decree has been executed, even though it appear that the defendant had, as a matter of fact, not known of the execution till within 30 days before he made his application.

A party insisting upon the provisions of a severe and stringent law, like that relating to *ex-parte* decisions, is bound to see that every formality is strictly complied with; where this is not done a Court is bound to hold for the purposes of Order IX, rules 13 and 14, Act V of 1908, that no process has been executed. CHOWDRI HIAT *v.* JAI KISHEN.

32 P R 1878

6. *Application to set aside* ex-parte *decree—Transfer of officer who passed the decree—Punjab Courts Act*, 1884, *sections* 17, 28, 35.

The *ex-parte* decree which the defendant wished to have set aside was made by C., a special Judge, invested with the powers of a Munsif in the Jullundur District. An

CIVIL PROCEDURE CODE, 1908 —*contd.*

Order IX, rule 13—*contd.*

application was made to S., another officer invested with the same powers and rejected on the ground that he was not C.'s successor.

Held, that the order was wrong. Under section 17 of the Punjab Courts Act, a Court designated as the Court of the Munsif had been established at Jullundur which continued to exist notwithstanding C.'s transfer. The application was made to that Court and could be dealt with by any officer directed to do so under the rules for the distribution of business. KUTAB-UD-DIN *v.* RUPA.

158 P R 1890

7. *Civil Procedure Code, section* 115—*Order under Order IX, rule* 13, *of the Code setting aside an* ex-parte *decree—Revision.*

An application was made to revise an order made under Order IX, rule 13, Civil Procedure Code, setting aside an *ex-parte* decree, such order being made nearly seven years after the date of the decree.

Held, following No. 114, *P. R.*, 1883, that no application under section 115 of the Code would lie. The suit was one in which an appeal would lie, and by the word "case" the whole suit is meant. HASSAN ALI SHAH *v.* SALIG RAM. **125 P R 1892**

But see **60 P R 1897 F B**

8. "Ex-parte *decree*"—*Defendant present at first, but absent at adjourned hearing—Order for case to proceed* ex-parte—*Application to set aside* ex-parte *decree—Rejection of such application—Appeal—Civil Procedure Code*, 1908, *Order IX, rules* 5, *and* 13, *Order X, rule* 4, *Order XI, rule* 21, *Order XVII, rules* 2 *and* 3.

On the 6th October 1893, one M. L. sued one B. S., for Rs. 5,665-8-6, and on the 21st December defendant put in his pleas by a mukhtar, who appeared and was examined on his behalf. On the 5th January 1894, the Court drew issues and adjourned the hearing to the 18th January, on which date it was ordered that defendant should appear in person to answer certain questions. On the 18th plaintiff appeared with his witnesses, but neither the defendant nor his mukhtar put in an appearance; the Court thereupon ordered that the case should be heard *ex-parte*, recorded the evidence of plaintiff's witnesses and on the following day passed an *ex-parte* decree against defendant for the amount claimed. Defendant subsequently applied to the Court under Order IX, rule 13, Civil Procedure Code, to set aside the *ex-parte* decree, and on the rejection of his application appealed to the Chief Court. It was contended, on behalf of the respondent, that no appeal lay, inasmuch as the order of the 18th January, directing an *ex-parte* hearing, was made under either Order XVII, rule 3, or Order X, rule 4, or Order XI, rule 21, and that even if it was made under Order XVII, rule 2, the provisions of Order IX, rule 13, of the Code, were not applicable

CIVIL PROCEDURE CODE, 1908 —*contd.*

Order IX, rule 13—*contd.*

to a decree resulting from an order under that section that the case be disposed of in the manner prescribed by Order IX, rule 6. It was further urged that Order IX, rule 13, does not apply to a case where the defendant has appeared at the first hearing, but has failed to appear at the adjourned hearing.

Held, that inasmuch as the order of the Court directing an *ex-parte* hearing did not profess to have been passed on the ground of defendant's contumacy, but solely on the ground that he had failed to appear, the section applicable to such order was Order XVII, rule 2.

Held further, that as the Court was competent, under the provisions of Order XVII, rule 2, to proceed *ex-parte*, and had, as expressly stated, so proceeded, the decree was an *ex-parte* decree to which Order IX, rule 13, which applies to all cases in which a decree is passed *ex-parte*, was applicable.

Held, therefore, that the Court rightly entertained the application under Order IX, rule 13, and that an appeal lay from its order rejecting such application on the merits.

I. L. R. XXI Calc. 269, referred to. BALDEO SAHAI *v.* MANOHAR LAL.

82 P R 1895

9. *Money paid into Court*—Ex-parte *decree upheld—Application by decree-holder for payment of deposit—Execution of decree—Limitation Act*, 1877, 2*nd Schedule, article* 179.

When a sum of money is paid into Court under Order IX, rule 13, Civil Procedure Code, in order to be delivered to plaintiffs, should the *ex-parte* decree be upheld, such sum becomes the decree-holder's money as soon as the *ex-parte* decree is upheld, and it is not necessary for him to apply for execution of the decree in order to obtain payment of the money.

Where, therefore, in such a case the decree-holder applied for payment of the deposit more than three years after the decree was passed.

Held, that such application could not be considered an application for execution of decree, and was not barred under article 179 of the 2nd Schedule to the Limitation Act. INAYAT ALI *v.* LACHMAN SINGH.

8 P R 1898

10. *And Order XLI, rule* 26—Ex-parte *decree confirmed on appeal—Power of original Court to subsequently set aside such decree.*

Held, that an *ex-parte* decree which has been confirmed on appeal becomes merged in the decree of the appellate Court and cannot thereafter be set aside by the Court which originally passed it. MEHDI *v.* BAHADAR. **30 P R 1900**

11. *Decree* ex-parte—*Jurisdiction of District Judge to re-open an* ex-parte *decree*

CIVIL PROCEDURE CODE, 1908 —*contd.*

Order IX, rule 13—*contd.*

which was appealed against to the Chief Court by the plaintiff.

In a suit where the plaintiff on obtaining an *ex-parte* decree for the major portion of his claim had unsuccessfully appealed to the Divisional Judge and the Chief Court as regards the portion disallowed, the District Judge, on the application of the defendant, after the decision of the Chief Court, re-opened the case under Order IX, rule 13, of the Code of Civil Procedure.

Held, that under Order IX, rule 13, of the Code the only Court which had jurisdiction at the time the application was made was the Chief Court, and that the action of the District Judge in setting aside decree which in point of law was no longer existent at the time was altogether *ultra vires* and void. SAYAD ZAHUR-UL-HASSAN *v.* GANDU MAL.

4 R P 1901

12. Ex-parte *decree—Death of judgment-debtor—Application by legal representative of the judgment-debtor to have the* ex-parte *decree set aside.*

Held, that where a defendant against whom a decree has been passed *ex-parte*, dies, his legal representative is competent to apply under Order IX, rule 13, Civil Procedure Code, for an order to set the *ex-parte* decree aside.

Ganoda Prasad Roy v. *Shib Narain Mukerji* (*I. L. R. XXIX Calc.* 33), followed, and *Janki Prasad* v. *Sukhrani* (*I. L. R. XXI All.* 274), dissented from. MUSSAMMAT JAS KAUR *v.* BHAI MEHTAB SINGH.

36 P R 1903

13. Ex-parte *decree—Application by defendant to have the* ex-parte *decree set aside—Substituted service, effect of—Civil Procedure Code*, 1908, *Order V, rule* 20 (2) *and Order IX, rule* 13.

Held, that a person is not necessarily deprived of his remedy under Order IX, rule 13, Civil Procedure Code, from applying to have an *ex-parte* decree set aside on the ground that he had not been duly served with summons or was prevented by any sufficient cause from appearing, merely because substituted service had been effected on him, and the original summons had been destroyed in accordance with an office rule.

Kessur Chander v. *Bhoobunessur Chunder* (*Bourke* 27), doubted.

Mirza Ally Behanee v. *Syed Haider Husain* (*I. L. R. II Bom.* 449), cited. GHALLU RAM *v.* DURGA DAS. **42 P R 1904**

14. *Setting aside* ex-parte *decree on condition of payment of costs.*

Held, that an *ex-parte* decree which has been ordered to be set aside on payment of costs within a certain time remains in full force until the payment of costs is made within the time fixed, and where the condition is not strictly carried out the order imposing it becomes inoperative. GHULAM MUHAMMAD *v.* TULSI RAM. **60 P R 1904**

CIVIL PROCEDURE CODE, 1908
contd.

Order IX, rule 13—*concld.*

15. *Setting aside decree* ex-parte *against defendant—Discretion of Court.*

Held, that as a general rule the Courts should exercise their discretion in a liberal manner when asked to set aside an *ex-parte* decree against a defendant especially when the plaintiff consents to the indulgence being shown to the defaulting party.

Somayya v. *Subhamma* (*I. L. R. XXVI Mad.* 599), cited. PARTAP SINGH *v.* NARAIN DAS. **72 P R 1905**

Order X, rule 4.

And Order IX, rules 6, *and* 13, *Order XI, rule* 21, *Order XVII, rules* 2 *and* 3 —Ex-parte *decree.*

See CIVIL PROCEDURE CODE, 1908, ORDER IX, RULE 13. **82 P R 1895**

Order XI, rule 12.

Power to order discovery of documents.

See CIVIL PROCEDURE CODE, 1908, ORDER VII, RULE 14 **11 P R 1902**

Order XI, rule 14.

1. *And section* 10, *Order VIII, rule* 10, *Order VI, rules* 2, 14, 15, *Order XI rule* 21.

See CIVIL PROCEDURE CODE, 1908, ORDER VIII, RULE 10. **59 P R 1892**

2. *And Order XI, rule* 21,—*Order to produce document—Consequences of failure to obey order—Power of Court to strike out defence of its own motion—Procedure.*

There is no power conferred on a Court by Order XI, rule 21, of the Civil Procedure Code, or elsewhere, to strike out the defence of a defendant *of its own motion*, if the defendant fails to comply with an order made under Order XI, rule 14, to produce a document. Upon such non-compliance a plaintiff may apply under the second clause of Order XI, rule 21, for an order striking out the defence, and on such an application the proper course is to call upon the defendant to show cause why the order prayed for should not be made when he would have an opportunity of explaining the reason for his non-compliance. If no such application is made, there is no power given to the Court to strike out the defence of its own motion, but the defenda t may be liable to a prosecution under section 188, Penal Code, by order of the Court. SOHARA *v.* MUSSAMMAT ZAINAB. **80 P R 1889**

3. *And Order XI, rule* 21, *Order XIII, rules* 1 *and* 2—*Failure to comply with order directing defendant to produce documents by specified date—Defence struck out and case heard* ex-parte.

Plaintiff's plaint was filed in the District Court on the 23rd December 1895, and the 9th February 1896 was fixed for defendant's appearance. The latter appeared on the said date, but the case was put off to the 24th February, on which date defendant filed his

CIVIL PROCEDURE CODE, 1908
—contd.

Order XI, rule 14—*contd.*

defence. After several adjournments, issues were drawn and the parties examined on the 2nd April, and at close of the day's proceedings the District Judge recorded an order to the following effect: "Case for evidence on the 19th and 20th May. Defendant must file the documents he has in his possession and copy of his account-book by 5th April." On all the adjourned dates, except one, defendant was present in person in Court.

On the 2nd April plaintiff had a notice served on defendant for the production of his books and certain letters, and on the 9th April defendant gave plaintiff notice under Order XI, rule 17, of the Civil Procedure Code, offering inspection at a certain place on the 19th. On the 21st April, after inspection by the plaintiff, defendant applied for leave to remove his books to his shop, and on the following day the District Judge gave the required permission. Plaintiff called defendant as his witness for the 19th May, but the notice was returned unserved with the endorsement that defendant had gone away. Thereupon plaintiff's pleader complained that defendant had kept out of the way to evade service, and had not complied with the order of the 2nd April. The Court was, therefore, asked to proceed under Order XI, rule 21, of the Code, by striking out defendant's defence, and to decide the case *ex-parte*. The Court held that the said order was one under Order XI, rule 14, of the Code, struck out the defence under Order XI, rule 21, and after taking some evidence for the plaintiff, decreed the claim in full. The decree having been upheld by the Divisional Court on appeal, defendant appealed to the Chief Court.

Held, that the lower Courts had erred in treating the order of the 2nd April as one passed under Order XI, rule 14, of the Code, and that the District Court was not justified by defendant's non-compliance with the said order in striking out the defence and deciding the case *ex-parte*.

Order XI, rule 14, of the Code does not apply to a general direction, without any particular object in view, to a party to produce all documents in his possession by a certain date, and (*semble*) the order therein referred to is meant to be served on the party to whom it is given and not merely to be verbally announced, so that compliance would depend on his memory or his understanding of it.

Held further, that even if the order in question had been one under Order XI, rule 14, it could not be legally given in respect of the copy of defendant's accounts as they were not in existence, and therefore not in the possession or power of defendant, when it was passed.

Order XI, rule 21, of the Code requires to be worked with caution and should be made use of only as a last resort, and it is always proper to make the order a conditional one

CIVIL PROCEDURE CODE, 1908
—contd.

Order XI, rule 14—*concld.*

and to grant a little further time for compliance. JAISUKH *v.* DINA NATH. **58 P R 1898**

Order XI, rule 21.

See UNDER ORDER XI, RULE 14 *supra.*

1. *And section* 14, *Order IX, rules* 6, 13, *Order X, rule* 4, *Order XVII, rules* 2 *and* 3.

See CIVIL PROCEDURE CODE, 1908, ORDER XI, RULE 13. **82 P R 1895**

2. *And section* 10, *Order VIII, rule* 10, *Order VI, rules* 2, 14, 15, *Order XI, rule* 14.

See CIVIL PROCEDURE CODE, 1882, ORDER VIII, RULE 10. **59 P R 1892**

3. *And Order XI, rule* 14.

See CIVIL PROCEDURE CODE, 1908, ORDER XI, RULE 14. **80 P R 1889**

4. *Failure to comply with order directing defendant to produce documents by specified date—Defence struck out and case heard* ex-parte.

See ORDER XI, RULE 14 *supra.* **58 P R 1898**

5. *Order under this rule, dismissing a suit, is a decree from which an appeal lies.*

See APPEAL—CIVIL. **43 P R 1898**

6. *Inspection of documents.*

An appellate Court should not dismiss a suit under Order XI, rule 21, Civil Procedure Code, because it finds that before the original Court the plaintiff did not obey that Court's order for inspection of document, when the Court in which the disobedience has occurred has refrained from doing so. AMIR CHAND *v.* TIRKHA. **36 P R 1900**

7. Order XI, rule 21, has the effect of rendering a party to a suit who fails to comply with an order of Court for production or inspection of documents punishable only in the manner prescribed by that rule and not punishable under section 175 or any other section of the Penal Code. CROWN *v.* RAM CHAND. **15 P R 1910 Cr.**

Order XIII, rules, 1 and 2.

1. *See* ORDER XI, RULE 14 *supra.* **58 P R 1898**

Order XIII, rule 10.

2. In a Civil suit, the record of a Criminal case or any other case may be inspected under Order XIII, rule 10, Civil Procedure Code (*per* LINDSAY, J.). FAKIR-UD-DIN *v.* MUSSAMMAT HOSEIN BIBI. **32 P R 1874**

Order XIV, rule 3.

Order XIV, rule 3, *case tried without proper issues being framed.*

Held, that the omission to frame an issue is not fatal to the trial of a case, especially where the parties had gone to trial well knowing what the real question between them was and had produced evidence in respect thereof. HOTI LAL *v.* MUSSAMMAT RAM PIARI **77 P R 1903**

Order XVI, rule 1.

Order XVI, rule 1, Summoning and attendance of witnesses—Discretion of Court.

In a suit for pre-emption where the only question to be decided was that of the price of the subject-matter of the sale, the plaintiff on the day fixed for the hearing applied for coercive process against one of the vendees who had been summoned as a witness for him, but had failed to attend, the Judge observed that as the vendee was the leading man in the district he should not be compelled to appear in Court, and that his evidence would be unnecessary and, after examining one of the vendors and hearing the arguments, recorded an order that the case was closed and that the judgment would be delivered on a certain day.

Held, that the omission to summon the vendee was a substantial error in procedure. Under the provisions of the Code of Civil Procedure the plaintiff had the absolute right of summoning any witness he named to give evidence in the Court, and that the Judge had no power to fetter the plaintiff's discretion, and was therefore bound to take coercive measures against the vendee and to give every assistance to the plaintiff for securing the attendance of his witness. PARAS RAM *v.* JOTI PERSHAD. **61 P R 1904**

Order XVII, rules 2 and 3.

And order IX, rules 6 and 13, order X, rule 4, order XI, rule 21.

See CIVIL PROCEDURE CODE, 1908, ORDER IX, RULE 13. **82 P R 1895**

1. *Order XVII, rule 3. Plaintiff failing to produce witness on date fixed—Suit dismissed by first Court—Duty of Commissioner on appeal to enquire into cause of plaintiff's default.*

Plaintiff was directed by the Court of first instance to produce witnesses on a certain date. On that date both parties failed to appear, and the suit was dismissed under Order XVII, rule 3 of Act V of 1908. Two days afterwards plaintiff applied to have his case restored to the file on the ground that he had attended with his witnesses the day before, and had been prevented from bringing them on the proper date through illness. The Court refused the application. On appeal, the Commissioner omitted to decide the question whether plaintiff had been prevented by any sufficient cause from producing his witnesses on the date fixed. *Held*, that the Commissioner, by this omission, had erred in law; and *held*, also that the procedure of the first Court was injudicious and harsh. KESRA SINGH *v* SAHIB SINGH. **14 P R 1870**

2. *Order XVII, rule 3. Plaintiff's case disposed of on record on default of defendant before valuation of suit was ascertained.*

The property in dispute, ultimately valued at Rupees 1,50,000, was estimated in the plaint at the institution of the suit at Rupees

Order XVII, rules 2 and 3—*contd.*

90,000. Defendant took objection to this estimate, an issue was framed as to the value of the property, and the valuation was referred to the Executive Engineer under Schedule B, note *b*, para. 3 of Act XXVI of 1867. The plaintiff closed his case before the report of the Executive Engineer was made to the Court, and a day was fixed for the defendunt to produce her witnesses. On the day appointed the defendant failed to have her witnesses in attendance, and the Court proceeded to decide the case on the record, under Order XVII, rule 3 of Act V of 1908, the report of the Executive Engineer being still wanting. *Held*, that the record was not complete, as the value of the suit had not been ascertained, and that the Court had, therefore, no power to dispose of the case under Order XVII, rule, 3 reserving the question of the valuation of the suit for a supplementary order as to stamp and costs. MUSSAMMAT UTTUR KOUR *v.* ATMA SINGH. **20 P R 1870**

3. *Order XVII, rule 3. Non-attendance of either party—Procedure.*

Where a case is partly heard and adjourned, if neither party appear on the day fixed for the adjourned hearing, the Court may order another adjournment to enable the parties to appear: but if the Court do not pass such an order, it must dismiss the suit, under Order IX, rule 3, and Order XVII, rule 2, Civil Procedure Code. It cannot decide the suit on the record, for Order XVII, rule 3, in that case does not apply. SAIN DAS *v.* MUSSAMMAT RAJJI. **32 P R 1875**

4. *Failure of plaintiff to appear on date fixed in ordinary course for evidence—Dismissal of suit under Order XVII, rule 3, altered to dismissal under Order XVII, rule 2.*

On a date fixed after settlement of issues in a case for the parties to produce their evidence, the plaintiff failed to appear, though the defendant was present. The lower Court therefore dismissed the suit under Order XVII. rule 3 of the Civil Procedure Code, and subsequently rejected an application by plaintiff under Order IX, rule 9 of the Code to have the case restored to the file, on the ground that such application could not be made in respect of a suit dismissed under Order XVII, rule 3.

Held, that the suit should not have been dismissed under Order XVII, rule 3, but for default under Order XVII, rule 2 of the Code, thereby making Order IX, rule 9 applicable, as the case had not been adjourned in favour of either party for the production of evidence or to cause the attendance of witnesses, so that Order XVII, rule 3, had no application to the circumstances of the case. RAM NATH *v.* MUMRAJ. **139 P R 1884**

5. *Dismissal of suit under Order XVII, rue 3—Review—New and important matter.*

Order XVII, rules 2 and 3—*contd.*

A suit having been dismissed under section 158, Civil Procedure Code, by reason of the plaintiff having failed to summon witnesses, any application for review was made by the plaintiff on the ground that he had not been allowed an opportunity of producing his evidence. This application was granted and a decree passed after the evidence had been recorded. On appeal the decree was set aside on the ground that the application for review should not have been granted, as no new and important matter or evidence had been discovered. *Held*, by the Chief Court that ordinarily the proper remedy for a person aggrieved by an order under Order XVII, rule 3 is by way of appeal.

Held further that under the circumstances of the case the first Court had not acted *ultra vires* in granting the review, inasmuch as the evidence which the plaintiff asked to be taken was new in the sense that it was not already on the record, and it was important. GHULAM JAN *v.* SHADI KHAN. **126 P R 1889**

6. *Order dismissing suit—Subsequent suit between same parties.*

Res judicata.—On the date fixed for settlement of issues, defendant was not present and an ajournment was necessary under all circumstances as no evidence had been called for, and accordingly an adjournment was made, a date being fixed for the production by plaintiff of a certain deed and for the hearing of the evidence *ex parte*. On the date specified the deed called for was put in, and a further adjournment was asked for and granted. On the second date fixed for plaintiff to produce his evidence he was not present, but sent a pleader to ask for a further adjournment. This was refused and the suit dismissed. but it was not clearly recorded that the dismissal was under Order XVII, rule 3 of the Civil Procedure Code. A review of judgment having been applied for and refused, plaintiff subsequently instituted the present suit, which was dismissed as barred by reason of the former suit having been dismissed under Order XVII, rule 3 of the Code.

Held, that though it may not be necessary in order to take action under Order XVII, rule 3 of the Code to give specific warning to the party concerned that action under that section will be taken, there must be something on the record to show clearly that the adjournment is one which brings the case within the purview of that section, and also to make it plain that the order itself is one under that section and not under Order XVII, rule 2, and that this was not the case in the present instance.

Order XVII, rule 3 of the Code is a very stringent one, and is only to be applied when the facts do not admit of the application of any other. KALE SHAH *v.* SHAHABAL SHAH. **80 P R 1899**

CIVIL PROCEDURE CODE, 1908 —*contd.*

Order XVII, rules 2 and 3—*concld.*

7. *Default of defendant to give evidence—Discretion of Court to pass decree against him—Procedure—Civil Procedure Code, 1908, Order XVII, rule 3.*

Held, that mere default by a defendant to attend Court in person, when required for the purpose of examination does not empower a Court to pass judgment against him under Order XVII, rule 3, of the Code of Civil Procedure.

The penal provisions of that section apply only to those cases where a party to a suit expressly obtains time to do certain specified acts and fails to do so. It does not refer to the case of a defendant where the adjournments were apparently being given not at his request but in the interest of the plaintiff.

Kale Shah v. *Shahabal Shah* (80 *P. R.* 1899) and *Ram Nath* v. *Maharaj* (139 *P. R.* 1884), referred to. PANNA LAL *v.* BULL.

30 P R 1906

8. *Non-service of some of the plaintiff's witnesses—Power to dismiss suit.*

Held, that a Court has no power, after taking part of the oral evidence, to dismiss summarily a plaintiff's suit without even entering on the merits merely because the rest of the plaintiff's witnesses, who had been summoned through Court to attend on the date of hearing, were not served. KARTAR DEVI *v.* SURASTI. **9 P R 1908**

Order XVIII, rules 5 and 8.

AND ORDER XLI, rule 23.

See CIVIL PROCEDURE CODE, 1908, ORDER XLI, RULE 23.

45 P R 1896

Order XVIII, rule 15.

1. *And order XX, rule 1, section 33—Power of Judge to decide case on evidence recorded by his predecessor—Transfer of case—Notice to parties.*

Where, after the issues had been fixed in a case, and the parties' witnesses examined, and the files of certain judicial cases called for and examined, and the arguments heard, at various adjourned dates, after which a further adjournment took place for a report as to the value of the property in suit, on the receipt of which the case was again adjourned, and eventually transferred from the Court before whom all the above proceedings had taken place to another Judge, who without taking any evidence or hearing the parties or their pleaders, or giving them notice, decided the case in their absence: *held*, that the judgment pronounced under the above circumstances was illegal, and must be set aside, and the case returned to the District Judge for retrial and redecision.

Although Order XVIII, rule 15, Civil Procedure, Code provides for the case of a Judge dying or leaving the Court before the conclusion of a suit, and gives to his successor power to deal with the evidence as if he himself had taken it down,

CIVIL PROCEDURE CODE, 1908 —*contd.*

Order XVIII, rule 15—*concld.*

the law does not empower a Judge to decide a case on evidence recorded by his predecessor without giving notice to the parties and giving them an opportunity of being heard before judgment is pronounced. SIRDAR MAHTAB SINGH *v.* MUSSAMMAT SOBHA KAUR. **110 P R 1886**

2. *And section 33 and order XX, rule 1. Power of Judge to decide case on evidence taken down by his predecessor.*

Held, that a Judge who has not heard any part of the evidence and before whom no part of the proceedings have taken place is not competent to proceed to judgment until he has given the parties an opportunity of appearing before him and stating their respective cases. Judgments recorded without observing these essential rules of procedure are illegal and must be set aside.

Jugram Das v. *Narain Lal (I. L. R. VII All.* 857), *Afzul-un-nisa Begam* v. *Al Ali (I. L. R. VIII All.* 35), *Sirdar Mahtab Singh* v. *Mussammat Sobha Kour* (110 *P. R.* 1886), referred to. SHER KHAN *v.* BAHADUR SHAH.

91 P R 1904

Order XX, rule 4.

1. *Civil Procedure Code,* 1908, *order XX, rule 4—Judgments of Small Cause Courts—Reasons for decision when question of law involved—Revision.*

Order XX, rule 4, of the Civil Procedure Code was enacted with the object of exonerating Judges of Small Cause Courts from giving their reasons for findings on simple and uncomplicated questions of fact, but it was not intended thereby to invest such Judges with power to decide difficult questions of law in an arbitrary and off-hand manner without giving any reasons whatever in support of their findings. A discretion has been given by the said section, but such discretion must be exercised in a reasonable and judicial manner, and, if it has not been so exercised, the Chief Court will interfere on revision. HARI MAL *v.* NIKKA.

78 P R 1895

2. *Judgment of Small Cause Court.*

Order XX, rule 4, of the Civil Procedure Code, which merely requires that judgments of Small Cause Courts should contain the points for determination, and the decision thereon, without reasons for the same, is merely permissive, and the discretion thereby given must be judiciously exercised. In cases in which intricate legal questions are involved, the use of this discretion cannot be said to be properly exercised if the superior Court is unable to satisfy itself from the judgment that no material considerations have been overlooked by the Judge. SARUP CHAND *v.* BOMBAY, BARODA and CENTRAL INDIA RAILWAY COMPANY. **41 P R 1896**

3. *Judgment of Small Cause Court, Contents of—Small Cause Court Act,* 1887, *section* 25.

CIVIL PROCEDURE CODE, 1908 contd.

Order XX, rule 4—*concld.*

Held, that a judgment of a Small Cause Court should convey some indication that the Judge applied his mind to weighing the evidence on the record or of the conclusion arrived at by him, and that the mere words "issue not proved and claim be dismissed" are obviously inadequate under order XX, rule 4 of the Civil Procedure Code.

Malik Rahmat v. *Shiva Prasad* (*I. L. R. XIII, All.* 533), *Bai Jasoda* v. *Bamansha Mancherji* (*I. L. R., XXIII Bom.* 335), and *Sarup Chand* v. *The Bombay, Baroda and Central India Railway Company* (41 *P. R.*, 1896) followed. SAMAND KHAN *v.* PIR BAKHSH.

57 P R 1901

Order XX, rule 5.

Finding on one issue even when sufficient does not preclude a Court from determining the other issues raised.

See REVISION—CIVIL.

121 P R 1907

Order XX, rule 6.

See CIVIL PROCEDURE CODE, SECTION 152 *supra*.

1. *Suit for pre-emption—Deposit of purchase-money—Power of appellate Court to extend time for deposit.*

See PRE-EMPTION—PAYMENT INTO COURT. **137 P R 1894**

See DECREE. **95 P R 1906**

2. *Costs—Appeal—Discretion of Court.*

The discretion allowed to the Court under order XX, rule 6 (2), (3), of the Civil Procedure Code, is one which must be judicially exercised.

Where, therefore, the first Court gave plaintiff a decree for the full amount claimed, but ordered payment to be made by instalments, whereupon plaintiff appealed to the Commissioner, who stated that he was of opinion that there was no reason for such instalments, but "under the circumstances of the case" the plaintiff should not be allowed the costs of his appeal, *held*, on a further appeal by plaintiff, that there was no reason for not allowing him the costs of his appeal to the Commissioner, who had not exercised his discretion judicially in the present case. SEHJU MAL *v.* PANJABA.

21 P R 1883

3. *Decree silent as to instalments fixed by judgment—Power of executing Court to go behind decree—Stay of proceedings to allow amendment of decree—Civil Procedure Code (Act V of* 1908), *order XX, rule* 6; *order XXI, rule* 26*—Court ordering execution to issue before any instalment had fallen due—Execution-sale—Judgment-debtor alleging fraud and injury—Premature confirmation of sale.*

In a suit to obtain a sum of money alleged to be due from the defendant to the plaintiff, the Court gave judgment for the plaintiff for Rs. 259-8-0, and directed that the amount should be paid in certain specified instal

CIVIL PROCEDURE CODE, 1908 —*contd.*

Order XX, rule 6 (3)—*contd.*

ments, but the decree was for the payment of the money only and was silent as to instalments. In execution of this decree, the decree-holder on an application filed before any instalment was due, obtained an *ex-parte* order for the sale of a house belonging to the judgment-debtor, and eventually the house was sold for Rs. 250, and the sale confirmed by the Court within the period of 30 days allowed for objections by article 166, schedule II of the Limitation Act. Thereupon the judgment-debtor gave a petition stating that a decree had been given against him payable by instalments, and that before any instalment was due, the decree-holder had caused execution to issue and sold his house, worth Rs. 1,000 for Rs. 250, to his own *gomashta*, and had committed a fraud upon the Court in executing the decree. He, therefore, prayed to have the sale set aside, the decree-holder applying on the same day for the purchase-money. Eventually the Court accepting the decree as an instalment decree, and admitting that the application for execution was premature, held that the judgment-debtor was not injured by this as he has not as a fact paid the first instalment in time. The Court therefore rejected the judgment-debtor's application to set aside the sale, and ordered the purchase-money to be paid out to the decree-holder.

On an appeal by the judgment-debtor from the last mentioned order, *held*, that the executing Court had no authority to go behind the decree, which was silent as to instalments, and treat it as an instalment decree, merely because the judgment intended that the decree should be an instalment decree: but that the proper order was for the Court to stay proceedings in the execution under Order XXI, rule 26, Civil Procedure Code, in Order to enable the judgment-debtor to apply to the Court to have the decree brought into conformity with the judgment under Order XX, rule 6, Civil Procedure Code.

Held also, that the Court having decided to treat the decree as an instalment decree and having found as a fact that there was no instalment due when the application for execution was made, should have taken no further step towards carrying on the proceedings without giving the judgment-debtor an opportunity of having these proceedings set aside by superior authority, or by itself setting aside an order which it had made *ex-parte*, and would not have made if it had been aware at the time that the decree was intended to be an instalment decree, and that the time for payment had not arrived.

Held further, that the Court had erred in not adjudicating upon the question of the fraud alleged, and coming to a finding upon the question of injury, and also in treating the judgment-debtor's application as one to set aside a sale which had been already duly confirmed, whereas in point of fact the confirmation was premature and unauthorized by law. RAMAN *v.* DASOUNDHI.

61 P R 1887

CIVIL PROCEDURE CODE, 1908 *contd.*

Order XX, rule 6 (3)—*concld.*

4. *Decree too indefinite to be capable of execution—Civil Procedure Code (Act V of 1908), rder XX, Orule 6.*

In a suit in which the contending parties were two adjoining villages, and in which the property in dispute was a quantity of land formed by alluvion in front of the north-west boundary of the villages, the Court passed a decree (which was confirmed on appeal) in the following terms:—"Decree "for fixing a boundary between the village A "and village B. concerning the land in dis-"pute, with reference to the frontage "('mahaz') which each village respectively "has. On the subsidence of the floods in the "course of execution of decree the boundary "line will be fixed with reference to the "respective frontage of each village."

Held, that the above decree was not legal in its terms or sufficiently definite to comply with Order XX, rule 6, of the Civil Procedure Code, and was incapable of execution, as no enquiry could be made or evidence taken to explain or make clear the decree in the course of execution proceedings. HAIDAR SHAH *v.* SHUJAWAL. **67 P R 1887**

Order XX, rule 7.

And order XLI, rules 11 *and* 12, 35—*Signing decree.*

See CIVIL PROCEDURE CODE, 1908, ORDER XLI, RULE 11.

7 P R 1888 Rev.

Order XX, rule 9.

Decree—Decree for possession of immovable property—Omission to specify boundaries or numbers of property decreed—Construction—Civil Procedure Code, 1908, order XX, rule 9.

In a case for possession by pre-emption of a certain area of land and of a house the Court decreed the claim and described the property decreed as the property "in suit" without specifying its boundaries or *khasra* numbers.

Held, that the decree was not imperfect so as to be incapable of execution, inasmuch as the details given in the plaint in the case could be read into the decree, and that the executing Court should have proceeded to execute with the help of those details. GORDHAN DAS *v.* RUGHNANDAN DAS.

74 P R 1905

Order XX, rule 11.

See MESNE PROFITS. **44 P R 1869**

See REVIEW OF JUDGMENT. **144 P R 1879**

See EXECUTION OF DECREE. **46 P R 1881**

See LIMITATION ACT (XV OF 1877), SCHEDULE II, ARTICLE 179. **61 P R 1886**

1. *Decree payable by instalments.*

Held, that order XX, rule 11, of the Code of Civil Procedure, under which a Court has on sufficient reason being shown, authority to

CIVIL PROCEDURE CODE, 1908 —*contd.*

Order XX, rule 11—*contd.*

order that the amount, when the decree is for the payment of money, shall be paid by instalments, is not applicable to a decree in a suit for the recovery of a debt by sale of immovable property which has been hypothecated as security for the payment of the debt. AMIR CHUND *v.* KARM. **49 P R 1887**

2. *Execution of decree—Payment by instalments—Agreement to give time for satisfaction of judgment-debt—Civil Procedure Code, 1908, order XX, rule 11—Limitation Act (XV of 1877), 2nd Schedule, articles 157, 178, 179.*

Appellant obtained a decree against the respondents on the 3rd Februrary 1888, and applied for execution thereof on the 25th October 1888. A warrant was directed to issue, but on the 27th November 1888, both parties put in a petition reciting that an arrangement had been made between them, by which the debt was to be paid by instalments and praying that the sanction of the Court might be given thereto. The proceedings were thereupon ordered to be filed, a separate order of even date being recorded in the proceedings that the property should remain under attachment but not be brought to sale. On the 8th April 1892, the appellant filed an application in which, after reciting the former arrangement, it was prayed that the respondents might be summoned with a view to recovery of the sum still remaining due, and on the 5th July 1892 the appellant again applied for execution by attachment of the judgment-debtor's property.

Held, that the order of the 27th November 1888 was not one falling under Order XX, rule 11, of the Civil Procedure Code, inasmuch as the application leading to that order did not purport to be under that section, nor was it presented within the period of 6 months prescribed by article 175 of the 2nd Schedule of the Limitation Act for the presentation of applications under that section.

Held further, that the said order was one sanctioning "an agreement to give time for satisfaction of the judgment-debt" within the meaning of section 257A. of the Civil Procedure Code, 1882 (*repealed*), and that as the mere sanction by the Court of an agreement under that section does not "alter" the decree, the decree to be executed was the decree dated the 3rd February 1888.

Held also, that inasmuch as the applications of the 8th April 1892 and of the 15th July 1892 were applications for "execution or to take some step in aid of execution," they were applications to which article 179, and not article 178, of the 2nd Schedule of the Limitation Act was applicable, and that consequently the decree of the 3rd February 1888 was time-barred.

I. L. R. XII All. 571 and No. 61 *P. R.* 1886, followed; *I. L. R. V All.* 596, not followed. NANAK CHAND *v.* ANANT RAM.

26 P R 1894

3. *Application after decree for an order for payment by instalments—Contents of application.*

CIVIL PROCEDURE CODE, 1908
—*contd.*

ORDER XX, rule 11—*concld.*

Held, that an application by a judgment-debtor, although it did not actually state that it was under Order VIII, rule 1, of the Code of Civil Procedure, but which was in every respect what a petition under that section would have been, and which was presented within the period of limitation prescribed for the presentation of such application, although the word *ikrarnama* was used in it, was, as the subsequent conduct of the parties showed that they treated it, an application under Order XX, rule 11, of the Code of Civil Procedure.

Chajju v. *Gulab and others* (61 *P. R.* 1886), *Nanak Chand* v. *Anant Ram and another* (26 *P. R.* 1894) and *Gandharap Singh* v. *Sheodarshan Singh* (*I. L. R. XII All.*, 571), distinguished. NABI BAKHSH AND ANOTHER *v.* GORI MAL AND ANOTHER. **96 P R 1900**

Order XX, rule 13.

Administration suit—Succession Act (X of 1865)—Jurisdiction of Civil Court.

Order XX, rule 13, of the Code of Civil Procedure does not purport to create any jurisdiction, but it recognizes the possibility of administration suits being instituted and tried under the Code, and provides for them accordingly.

The jurisdiction to entertain such a suit does not depend upon whether the deceased person is one to whose estate the Indian Succession Act is applicable. MUSSAMMAT RUKMAN *v.* BRIJ MOHAN LAL.

68 P R 1881

Order XX, rule 14.

1. *See* PRE-EMPTION 3. **96 P R 1884**

2. *And section 47—Decree for pre-emption—Appeal.*

See APPEAL, CIVIL.

67 P R 1892

3. *Punjab Laws Act*, 1872, *sections* 17, 18—*Construction of order XX, rule* 14, *Civil Procedure Code.*

See PRE-EMPTION—PAYMENT INTO COURT.

70 P R 1890 F B

4. *Pre-emption—Power of Appellate Court to extend time for deposit.*

See PRE-EMPTION—PAYMENT INTO COURT **137 P R 1894**

5. *Pre-emption—Decree of lower Court fixing time for payment modified, subsequently to expiry of such period.*

See PRE-EMPTION—PAYMENT INTO COURT. **10 P R 1895**

6. *Pre-emption—Failure to comply with order directing deposit of purchase-money by certain date, effect of—Appeal.*

See PRE-EMPTION—PAYMENT INTO COURT, **67 P R 1895**

7. *Decree for pre-emption omitting to state consequence of non-payment of pre-emptive price within the time prescribed thereby for payment.*

Held, that a pre-emption decree becomes void and inoperative if the pre-emptive price is not paid within the time prescribed for

CIVIL PROCEDURE CODE, 1908
—*contd.*

Order XX, rule 14—*concld.*

its payment in the decree. An omission in the decree of any order as to what would be the consequence of the decree-holder's default in payment of the pre-emptive money does not in any way affect the case.

Jai Kishen v. *Bhola Nath* (*I. L. R. XIV All.* 529), followed. GURDIT SINGH *v.* HUKAM SINGH. **53 P R 1903**

8. *Pre-emption—Conditional decree—Appeal by purchaser for enhancement of purchase-money—Duty of appellate Court to extend time allowed for payment of price when confirming decree of first Court—Construction of decree of Appellate Court confirming decree of original Court but silent as to time for payment of purchase-money.*

See PRE-EMPTION.

48 P R 1906 F B

9. *Civil Procedure Code, Act XIV of* 1882, *section* 214—(*Order* 20, *rule* 14, *Civil Procedure Code, Act V of* 1908)—*Pre-emption suit—Price fixed by first Court—Decretal amount paid in after deducting costs—Price raised by Appellate Court—Payment of difference without costs previously recovered—Sufficient compliance.*

Where in a suit for pre-emption the first Court passed a decree for possession of certain property on payment of Rs. 430, authorising the pre-emptor to deduct Rs. 5-14-0 as costs and it was so paid by the pre-emptor within the time fixed by the Court, but on appeal by the vendee the price was raised to Rs. 512, reversing the order as to costs, but no notice of the exact additional amount payable was given to the pre-emptor, who paid in Rs. 82 (the difference between Rs. 430 and Rs. 512), whereupon the vendee contended that the order of the appellate Court had not been complied with.

Held, following *Balmokand* v. *Pancham* [(1888) *I. L. R.* 10 *All.* 400] that the payment of the difference within the time allowed without the costs already realised was a sufficient compliance with the decree of the appellate Court and the vendee was separately entitled to recover costs. BHAGWAN *v.* GORU. **56 P R 1910**

Order XX, rule 15.

1. *Appeal—Order directing an account—Interlocutory order—Small Cause Court Act*, 1887, *schedule II*, *articles* 30 *and* 31—*Suit for partition of offerings after taking and explaining accounts and for inspection of strong-room in which the offerings were stored—Punjab Courts Act*, 1884, *section* 40 (1) (*i*).

See CIVIL PROCEDURE CODE, 1908, SECTION 2. **13 P R 1901**

2. *Suit for dissolution of partnership—Sale of outstandings before the business was dissolved—Validity of such sale.*

CIVIL PROCEDURE CODE, 1908
—*concld.*

Order XX, rule 15—*concld.*

See PARTNERSHIP. **23 P R 1903**

Order XX, rule 16.

Suit for partition—Preliminary order under this section—Appeal, Court-fees on.

See COURT-FEES ACT, 1870, SECTION 7 (*iv*) (*b*). **150 P R 1908**

Order XXI, rule 2.

See FRAUDULENTLY EXECUTING SATISFIED DECREE. **7 P R 1885**

See RIGHT TO SUE. **47 P R 1881**
182 P R 1882
11 P R 1883
83 P R 1884

See LIMITATION ACT (XV OF 1877) SCHEDULE II, ARTICLE 179.
61 P R 1886

1. *Adjustment of decree not certified—Adjustment not between decree-holder and judgment-debtor.*

One B had a decree against Mussammat N in course of execution of which B died, whereupon one Mussammat S. his daughter-in-law, applied to the Court and was entered as decree-holder in his place in 1883. B's widow, Mussammat K, then sued Mussammat S regarding B's estate, and in 1886 succeeded in establishing her title to succession, whereupon she proceeded to claim execution of decree in continuation of the proceedings, which had terminated temporarily in 1883. In the meantime, *viz.*, in 1884, Mussammat K had given to Mussammat N a writing in which she gave up the decree of B against Mussammant N., and on Mussammat K's application for execution in 1886, Mussammat N met her with this document.

Held, that whether or no the document of 1884 was within the terms of order XXI, rule 2, of the Civil Procedure Code as an "adjustment," the adjustment (assuming it to be one) was not between the decree-holder and the judgment-debtor within the meaning of that section, but between the judgment-debtor and a person claiming to be decree-holder, and therefore Order XXI, rule 2, Civil Procedure Code, was no obstacle to Mussammat N using the document to show that Mussammat K was not now entitled to execution of B's decree. MUSSAMMAT KISHEN DEVI *v.* MUSSAMMAT NIHALI.

137 P R 1888

2. *Execution of decree—Competency of one of several joint decree-holders to certify satisfaction of entire decree—Civil Procedure Code*, 1908, *order XXI*, *rule* 2.

Held, that one of several joint decree-holders is not competent without direct authority from the other decree-holders to certify under order XXI, rule 2, Civil Procedure Code, satisfaction by payment out of Court of the entire decree, and that a payment to one of them cannot operate as a discharge of the decretal amount except as to such person's own share in the decree.

ORDER XXI, rule 2—*concld.*

Moti Ram v. *Hannu Prasad* (*I. L. R. XXVI All.* 334) and *Periasami* v. *Krishna* (*I. L. R. XXV Mad.* 431), cited and followed.

Ranee Nyna Koer v. *Doolee Chand* (22 *W. R.* 77), distinguished. DHANRAJ *v.* UJAIN SINGH. **34 P R 1906**

3. *Execution of decree—Uncertified adjustment out of Court—Subsequent execution by decree-holders—Plea of adjustment not maintainable—Civil Procedure Code,* 1908, *Order XXI, rule* 2.

Held, that Order XXI, rule 2, of the Code of Civil Procedure applies to all decrees and not only to decrees for money.

Baba Muhammad v. *Webb* (*I. L. R. VI Calc.* 786) and *Ishwar Chander Dutt* v. *Haris Chander Dutt* (*I. L. R. XXV Calc.* 718), cited and followed.

Sankaran Nambiar v. *Kanara Kurup* (*I. L. R. XXII Mad.* 182) and *Malli Karjima Sastri* v. *Narasimha Rao* (*I. L. R. XXIV Mad.* 412), dissented from. LACHU *v.* KISHEN LAL. **44 P R 1906**

4. *Civil Procedure Code,* 1882, *section* 258—*Satisfaction of decree out of Court—Suit for declaration that the decree had been satisfied—Maintainability of such suit.*

Held, that although section 258 of the Civil Procedure Code, 1882, specifically enacts that an uncertified adjustment cannot be recognized as an adjustment of the decree by any Court executing the decree, it is implied that it may be recognized as such by a Court trying the matter as a regular suit and therefore a suit for a declaration that the decree had been satisfied is maintainable, notwithstanding that its object is to restrain the decree-holder from executing the decree. DIWAN SINGH *v.* AMIR SINGH. **16 P R 1910**

Order XXI, rule 11.

1. *Execution of decree—Limitation.*
See CIVIL PROCEDURE CODE, 1908, SECTION 48 *passim.*

2. *And sections* 42, 47, 50, *Order XXI, rules* 16, 22.
See CIVIL PROCEDURE CODE, 1882, SECTION 47. **70 P R 1897**

3. *And section* 73.
See CIVIL PROCEDURE CODE, 1908, SECTION 73. **93 P R 1889**

! *And section* 48.
See LIMITATION ACT, 1877, 2ND SCHEDULE, ARTICLE 179.
89 P R 1894
106 P R 1894

5. *And Order XXI, rules* 17, 43, *Schedule III,* 10.—*Execution of decree—Application for attachment and sale of property—Subsequent application for arrest of judgment-debtor—Form of application—Property duly attached and deposited with care-taker—Disappearance of attached property—Right of decree-holder to proceed against person of judgment-debtor.*

Order XXI, rule 11—*concld.*

Held, that where a formal and legal application for execution of a decree has been made within time in accordance with the requirements of Order XXI, rule 11 of the Civil Procedure Code and has been registered in Court under Order XXI, rule 17, of the Code, and such application was for attachment and sale of specific property, the decree-holder, if such attachment has been duly effected, but the decree has not been satisfied by sale of the property attached must, if he wishes to apply for satisfaction by the arrest of the judgment-debtor, apply in accordance with the provisions of order XXI, rule 11, of the Code.

Held, further, that if movable property of the judgment-debtor, amply sufficient to satisfy the decree, is attached and made over by the attaching officer to a care-taker, under the rules framed under Order XXI, rule 43 of the Code, and is subsequently not forthcoming from the custody of the care-taker, who is himself missing, the decree-holder cannot further execute his decree against the person or property of the judgment-debtor, other than that attached and made over to the care-taker, unless it be proved that the judgment-debtor was a party to the disappearance of the property attached. BHANA MAL *v.* GANPAT RAI. **21 P R 1899**

Order XXI, rule 15.

Application for execution of whole decree by one of several joint decree-holders—Dismissal of application—Appeal.
See CIVIL PROCEDURE CODE, 1908, SECTION 47.
28 P R 1898
See EXECUTION OF DECREE.

Order XXI, rule 16.

See LIMITATION ACT (XV OF 1877), SCHEDULE II, ARTICLE 178.
151 P R 1882

2. *And sections* 42, 50, *Order XXI, rule* 11, *section* 47, *Order XXI, rule* 22.
See CIVIL PROCEDURE CODE, 1908, SECTION 47.
70 P R 1897
See EXECUTION OF DECREE.

3. *Assignment of money-decree obtained on specially registered mortgage-decree—Suit by assignee to establish lien under the deed on property subsequently sold—Validity of assignment—Registration Act (XX of* 1866), *section* 52.

Plaintiff sued, as the assignee of the rights and interest of the holder of a money-decree obtained upon a specially registered mortgage-deed against the defendant, to establish a lien under the said deed with respect to certain of the mortgaged properties sold to the defendant subsequently to the date of the money-decree.

Held, that the decree obtained under the mortgage-deed specially registered under the

Order XXI, rule 16—*contd.*

provisions of section 52 of the Registration Act of 1866, could not be held to be non-assignable, and therefore incapable of being executed by the plaintiff, simply because the bond itself so registered could not be sued upon by the assignee summarily, as Order XXI, rule 16, of the Code of Civil Procedure allows a Court executing a decree to permit such decree to be executed by the assignee, and there is no provision disabling an assignee of a decree obtained under a specially registered bond from obtaining such permission. MUSSAMMAT MAKHNI *v.* ADJUDHIA PERSHAD. **142 P R 1882**

4. *Succession Certificate Act,* 1889—*Execution of decree—Civil Procedure Code, Order XXI, rule* 16, *Hindu widow assigning decree obtained by her deceased husband—Effect of absence of certificate under the Act of* 1889.

A decree-holder died leaving a widow; she did not take out a certificate under the Succession Certificate Act, 1889, but made an assignment in writing of the decree to N. L.

N L. proceeded to attach property of the judgment-debtor, who objected that N. L. had no title to execute the decree on the ground that the widow had not obtained a certificate under the Act of 1889 to collect debts due to her husband.

Held, that the objection was well founded. Assuming that the widow was competent without a certificate to assign the debt, she could only assign effectually what right she herself had. She had not the right to execute the decree unless and until she had applied to the Court under Order XXI, rule 16, Civil Procedure Code, for execution of the decree under a transfer by operation of law from the deceased decree-holder. An application by the widow could not be granted unless she produced a certificate under the Act of 1889, section 4 of the Act prohibiting the Court from acting on an application of the kind without the production of a certificate. LAL CHAND *v.* NAND LAL. **37 P R 1893**

5. *Pre-emption suit—Execution of decree—Transfer of right to execute decree for present possession, right of ownership being reserved—Refusal of execution Court to allow transferee to execute decree—Suit by transferee to establish his right—Procedure—Civil Procedure, Code,* 1908, *Order XXI, rule* 16 *and section* 47.

In September 1880, M and others sold the house in dispute to J. S. and S. D., who in July 1883 obtained possession thereof from certain mortgagees. In 1884 one A. D. sued for pre-emption in respect of the sale of 1880, and on the 11th December 1886 obtained a decree for pre-emption on payment of Rs. 170, and was awarded Rs. 62-2-0 for costs. A. D. deposited the Rs. 170 into Court on the 3rd January 1887, but on the 6th July 1887 one J. in execution of a decree against A. D., attached and realized Rs. 103-9-0 out of the said Rs. 170. On the 26th

CIVIL PROCEDURE CODE, 1908 —*contd.*

Order XXI, rule 16—*contd.*

June 1888 the appeal, which the vendors had preferred to the Divisional Judge, was accepted, whereupon A. D. appealed to the Chief Court, which, after a remand for further inquiry, allowed the appeal and decreed the claim with costs throughout, in favour of A. D., by an order, dated 27th April 1891, and to the following effect: "It is ordered "that the decree of the Divisional Judge, "Sialkot, dated 25th April 1889, be set aside "and a decree be passed to the effect that if "plaintiff deposit Rs. 170, or that portion of "the money which has not already been de-"posited, within two months from this date "he can take possession by pre-emption of "house No. 81, situate in *Mauza* Ferozewala. "It is further ordered that defendants, vend-"ors, should pay the costs incurred by "plaintiff in all the Courts." It was admitted that A. D. paid nothing into Court subsequently to the said decree, but the judgment-debtors owed him Rs. 134-2-0 for his said costs, and the balance of Rs. 35-14 was more than covered by the sum of Rs. 83-6-6 which the judgment-debtors had recovered from A. D. on account of costs and which they had to refund. On the 28th August 1892, A. D., while reserving to himself the right to redeem the house from mortgage, sold his right to execute the said decree for present possession and costs awarded to one R. R., who thereafter applied for execution of the decree. This application having been refused by the Divisional Judge, on appeal, whose order was confirmed by the Chief Court, R. R., as transferee of the decree, subsequently instituted the present suit for possession of the said house and for a certain sum of money alleged to be due by way of costs. The first Court granted R. R. a decree as prayed for, but the Divisional Judge, on appeal varied the decree by one declaring that assignment of the decree of the Chief Court by A. D. in favour of R. R. was valid and gave R. R. a right to execute the said decree, notwithstanding the order of the execution Court disallowing the said assignment. J. S. and S. D. appealed to the Chief Court, and it was contended on their behalf that (1) the Divisional Judge should not have given plaintiffs the declaration contained in the decree (*a*) because it was not asked for, and (*b*) because the relief claimed by plaintiff had been already refused him by the execution Court under section 47 which order was a decree and could not be called in question in a subsequent suit; (2) even if the suit did lie, a decree should not have been passed that plaintiff was entitled to execute the decree of the Chief Court of 27th April 1891, the said decree having lapsed owing to the failure of plaintiff to pay Rs. 170 into Court within the allotted period; and (3) the right to execute the decree for pre-emption could not be assigned.

Held, as to the *first* contention, that the Divisional Judge, while refusing to give a decree for possession of the house and recovery of the costs incurred by A. D. in the pre-

CIVIL PROCEDURE CODE, 1908 —*contd.*

Order XXI, rule 16—*concld.*

emption suit was entitled to declare that plaintiff had a right to execute the pre-emption decree and further, that inasmuch as R. R. was admittedly the assignee of A. D. the refusal of the execution Court, under Order XXI, rule 16 of the Code, to allow R. R. to execute the decree, was final, and gave R. R. a cause of action against the judgment-debtors which he could enforce by regular suit.

No. 75 *P. R.*, 1890, F. B., cited and followed.

Held, as to the *second* contention, that, upon the facts as proved, A. D. had duly deposited the Rs. 170 before the 27th April 1889, and that upon that date there remained no portion of the said sum to be deposited.

Held, as to the *third* contention, that A. D. was entitled to sell his right to execute the decree for costs and present possession of the house, retaining his rights as owner and merely giving the vendor a right to present possession.

Semble: Even if A. D. had transferred the proprietary right in the property to R. R., the latter would have been entitled to execute the decree, such transfer operating a fresh sale of the property and conferring a fresh cause of action upon pre-emptors, which, however, could only be asserted in a regular suit and not in proceedings for execution of the decree so transferred. JOWALA SAHAI *v.* RAM RAKHA **78 P R 1896**

6. *Transfer of* ex parte *money decree—Competency of transferee to prosecute suit on original cause of action if the* ex parte *decree is set aside.*

Held, that the transferee of an *ex parte* money decree, who had been brought up on the record, as such after contest, is entitled to prosecute the suit on the original cause of action in the event of the *ex parte* decree being set aside. *Ganpat Rai* v. *Sarupi* (*I. L. R. I All.* 446), distinguished. GURDIT SINGH *v.* CHANDA SINGH **78 P R 1905**

Order XXI, rule 17.

See LIMITATION ACT (XV OF 1877), SCHEDULE II, ARTICLE 179. **23 P R 1883**

—*And Order XXI, rules* 11, 43, *Schedule III.*
See CIVIL PROCEDURE CODE, 1908, ORDER XXI, RULE 11. **21 P R 1899**

Order XXI, rule 22.

1. *And sections* 42, 47, 50, *Order XXI, rules* 11, 16.

See CIVIL PROCEDURE CODE, 1908, SECTION 47. **70 P R 1897**

2. *Limitation Act*, 1877, *Schedule II, article* 179, *clauses* (4) *and* (5)—*Application by the decree-holder asking for notice to be issued—Step in aid of execution—Limitation.*

Held, that an application by the decree-holder under order XXI, rule 22 of the Code of Civil Procedure asking for notice to be issued to the judgment-debtor is an application to the Court to take a step in aid of execution of the decree within the meaning of article 179 of Schedule II, of the Limitation Act, and the issuing of the notice con-

CIVIL PROCEDURE CODE, 1908 —*contd.*

Order XXI, rule 22—*concld.*

templated by that section allows a fresh starting point for limitation under clause (5) of that article.

Dhonkal Singh v. *Phakhar Singh* (*I. L. R.* XV. *All.* 84), *Behari Lal* v. *Salik Ram* (*I. L. R. I All.* 675), *Baness* v. *Turton* (23 *P. R.* 1883), and *Gopal Chander Manna* v. *Gosain Das Kalay* (*I. L. R. XXV Calc.* 594), cited.

Gopal Shah v. *Janki Koer* (*I. L. R. XXIII Calc.* 217), referred to. MUHAMMAD NAWAZ KHAN *v.* RAM DAS. **22 P R 1905**

Order XXI, rule 24.

1. *And order XXI, rules* 24, 25, 54, 66, 68, 90, 92.

See CAUSE OF ACTION. **76 P R 1890**

2. *Execution of decree—Attachment of property—Judgment-debtors adjudicated insolvent and property vested in Official Assignee—Objection to attachment by judgment-debtor in interests of Official Assignee—Letter from Official Assignee praying for release of property* 11 *and* 12 *Vic., c.* 21, *sections* 7, 49—*Civil Procedure Code* 1908, *section* 47, *Order XXI, rules* 24, 58.

The decree-holder having, in execution of his decree, attached certain houses belonging to his jugdment-debtors, the latter objected that the attachment could not take place on the ground that they had already been adjudicated insolvents at Bombay, and a vesting order with respect to all their property passed in favour of the Official Assignee. It appeared that the Official Assignee took no steps to obtain possession of the houses before attachment, and that he made no application, either personally or by duly authorized pleader or agent, for their release from attachment. On the date of the application for attachment, however, the judgment-debtors produced, with their petition of objection, a letter from the said Official Assignee to the District Judge in which the latter was informed of the insolvency of the judgment-debtor and was requested to refuse attachment of their property at the instance of the decree-holder or other creditors. Subsequently the Official Assignee addressed another letter to the Judge to the effect that the claims of the Official Assignee under a vesting order were recognized by all Courts in the British Empire, and that in consequence of such order, the judgment-debtors had no salable interest in the property sought to be attached. The first Court, acting on this letter, released the property from attachment, and, on appeal, the Divisional Judge upheld the said order of release. The decree-holder appealed to the Chief Court, but the Official Assignee was no party to the appeal, nor had he been a party in the Divisional Court, where the appeal was lodged against and defended by the judgment-debtors, who alone conducted the objection proceedings in the first Court.

Held, that the order of release from attachment was wrong and must be set aside, the Chief Court having no discretion on an appeal to refuse to pass the order required by law.

When a decree-holder, in execution of his decree, moves the Court in accordance with

Order XXI, rule 24—*concld.*

law to attach property belonging to his judgment-debtor, the Court is ordinarily bound to issue process for attachment, and cannot properly refuse to do so except as provided in Order XXI, rule 24, Civil Procedure Code. The lower Court, therefore, could not refuse to attach merely on an informal letter from the Official Assignee, nor release the property from attachment without a formal application from him.

Held, further, that it was not competent to the judgment-debtors who, as long as the vesting order stood, had no interest whatever in the property, to themselves make the objection either under Order XXI, rule 58 or any other section of the Code or to prefer a claim or make an objection, under Order XXI, rule 58 in the interests of the Official Assignee. DHOLAN DAS *v.* RAHIM BAKHSH.
57 P R 1897

Order XXI, rule 25.

And Order II, rule 2, Order XXI, rules 24, 54, 66, 68, 90, 92.

See CAUSE OF ACTION.
76 P R 1890

Order XXI, rule 26.

And Order XX, rule 6.

See CIVIL PROCEDURE CODE, 1908, ORDER XX, RULE 6.
61 P R 1887

Order XXI, rule 29

1. *Execution of decree—Stay of execution pending suit between decree-holder and judgment-debtor.*

Held, that the provisions of Order XXI, rule 29, Civil Procedure Code, providing for stay of execution pending suit between decree-holder and judgment-debtor are confined to those cases only where the execution and the suit are pending in the same Court and between the same parties, and have no reference to a case where the suit between the judgment-debtor and the holder of the decree had been decided by the Court executing the decree and was pending in the Court of Appeal.

Cooke v. *Hiseeba Beebee* (*6 N.-W. P. H. C. R.* 181), *Ghazi Din* v. *Fakir Bakhsh* (*I. L. R. VII All.* 73), *Kassa Mal* v. *Gopi* (*I. L. R. X All.* 389), and *Lingum Krishna Bhupati Devu* v. *Kavdula Sivarammayya* (*I. L. R. XX Mad.* 366), referred to. GUEST *v.* MCGREGOR. **41 P R 1904**

2. *Execution of decree—Stay of execution pending suit between decree-holder and judgment-debtor.*

Held, that a Court to which a decree is transmitted for execution is competent to act under order XXI, rule 29 of the Code of Civil Procedure and to stay execution during the pendency of a suit in such Court between the judgment-debtor and holder of the decree. BHAGWAN KOUR *v.* GAJINDAR SINGH.
130 P R 1903

Order XXI, rule 31.

And Order XXI, rule 32.

See CIVIL PROCEDURE CODE, 1908, ORDER XXI, RULE 32. **64 P R 1890**

Order XXI, rule 32.

1. *And order XLI, rule* 5.

See CIVIL PROCEDURE CODE, 1908, ORDER XLI, RULE 5. **2 P R 1894**

2. *Execution—Decree for restoration of* parnala.

Held, that a decree directing that the *pernala* in dispute be restored to its former place, should be enforced according to the provisions of Order XXI, rule 32, Civil Procedure Code, and not through the agency of the Nazir, Chief Court Book Circular II of 1889, referred to. NANUN MAL *v.* UTTAM CHAND. **107 P R 1889**

3. *And Order XXI, rule* 31—*Execution of decree—Decree for specific movables or their value—Construction.*

The contention on behalf of the judgment-debtor in this case was that the decree was for specific movable property which had not been ascertained and was incapable of execution. The decree provided as follows:—"It is ordered that plaintiff obtain " possession as owner of jewels, clothes, " shawls, trappings, dishes of sorts, cattle " and other goods to the value of Rs. 30,000 " in accordance with his plaint."

Held, that on a proper construction of the decree, read with the judgment, it ordered the defendant to deliver to the plaintiff whatever movable property she had of the kind specified in the list attached to the plaint up to Rs. 30,000 in value, and on default to pay Rs. 30,000 or such portion thereof as should represent the value of the property not delivered ; and that the decree so construed was capable of execution under Order XXI, rule 32, Civil Procedure Code, if not under Order XXI, rule 31. SARDAR RANDHEER SINGH *v.* SARDARNI DHARAM KAUR.
64 P R 1890

Order XXI, rule 35.

1. *And section* 38, Order XXI, rule 10.

See CIVIL PROCEDURE CODE, 1908, SECTION 38. **31 P R 1887**

BUT *see*— **70 P R 1897**

2. *Sale of share of residential house by one of four Hindu co-sharers—House occupied by tenant—Right of vendee to joint physical possession—Civil Procedure Code,* 1908, *Order XXI, rule* 35.

Appellant purchased from one of four Hindu brothers, his share being one-fourth of a dwelling-house in the Civil Lines, Rawalpindi, which had for some years previously been rented for residential purposes by the Political Officer for the time being with *Sardar* Ayub Khan. It appeared that the appellant wished to occupy the whole house, and purchased the share of his vendor, but was unable to come to terms with the three other co-sharers. The respondent tenant of the house, originally from all the four co-sharers, and finally from three of them, having refused to vacate any part of it, appellant filed a suit against him and his three lessors for " joint possession of a one-" fourth share of the said house, Rs. 260

Order XXI, rule 35—*concld.*

" arrears of rent and costs," and on the 19th November 1897 obtained a decree against respondent " for possession of a joint quarter " share, and for Rs. 60 rent and for costs." Subsequently appellant applied for execution of the said decree, and prayed that " posses-" sion of a one fourth share of a house situate " in the Civil Lines in which the judgment-" debtor lives, be given." This application having been dismissed on the ground that an order for physical possession, if passed, could not be carried out having regard to the fact that the respondent was in possession as tenant of a majority of the co-sharers the decree-holder appealed to the Chief Court.

Held, that appellant having confined his application to physical possession of the house in suit and having refused to accept possession through receipt of rent, the application had been rightly rejected, on the ground that the house having been enjoyed by the co-sharers only through receipt of rent, it was not open to one co-sharer to transfer to his vendee the right to interfere with the rights of the other co-sharers in such a manner as to deprive them of the enjoyment of their shares in the joint property. PETMAN *v.* RAMSAY **16 P R 1898**

Order XXI, rule 39.

Civil Procedure Code, 1908, *Order XXI, rule* 39 *and section* 36 *of the Prisons Act,* 1871—*Correlation of—Subsistence allowance of Civil prisoner—Clothing, bedding and cooking utensils of prisoner.*

A Civil Court executing a decree under the Civil Procedure Code, 1908 is not competent to require a decree-holder to supply anything but the judgment-debtor's subsistence allowance in money, which it is required to fix by order XXI, rule 39 (1). A Civil Court has obsolutely no concern with the bedding, clothing or cooking utensils, or any other article which may be declared by the Jail authorities necessary for the prisoner.

By section 36 of the Prisons Act, 1871, every Civil prisoner unable to provide himself with sufficient clothing and bedding shall be supplied by the Superintendent with such clothing and bedding as may be necessary, and the decree-holder is liable to pay to the Superintendent on demand the cost of the clothing and bedding so supplied to the prisoner when he has been committed to prisoner in execution of a decree in favour of a private person. In default of such payment, the prisoner is to be released.

The Code and the Prisons Act are both silent as to cooking utensils and the Court has no concern with the mode in which the judgment-debtor is to be supplied with food in the jail: it has only to require the decree-holder to make provision in money for the prisoner's subsistence. SAWAN MAL *v.* NANDU.
43 P R 1893

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CIVIL PROCEDURE CODE, 1908 —*contd.*

Order XXI, rule 40.

—*See* SECTION 55, *supra.*

Execution of decree—Release of debtor after furnishing security—Right of decree-holder to recover the decree from surety by execution. *See* SURETY. **50 P R 1905**

Order XXI, rule 43.

And order XXI, rules 11, 17, *Schedule III, para.* 10.

See CIVIL PROCEDURE CODE, 1908, ORDER XXI, RULE 11. **21 P R 1899**

Order XXI, rule 46.

Order XXI, rule 46, *Order XL, rules* 1—3, *Order XXI, rule* 58—*Suit by judgment creditor to recover debt due to judgment-debtor.*

J. M. obtained a decree against R. D. and G. L. In execution he attached under order XXI, rule 46, Civil Procedure Code, a debt due from M. H. to R. D and G. L. The Court executing the decree directed J. M. to sue M. H. for the debt, as the latter denied that any such debt existed.

Held, (LINDSAY, J., dissenting), that the suit would not lie, as J. M. was not an assignee of the debt, neither was he appointed manager to sue under Order XL, rules 1—3 and Order XXI, rule 58 did not apply, as there could not be "possession" of a debt, such as was necessary to bring the case under that section. JOWRI MAL *v.* MAHOMED HOOSEIN. **24 P R 1874**

2. *Order XXI, rule* 46, *Order XL, rules* 1—3—*Irregularity in attachment of debt—Appointment of manager—Disputed debts.*

The plaintiff sued to recover a debt, as manager appointed under Order XL, rule, 1—3, Act V of 1908. He was appointed manager prior to attachment of the debt under Order XXI, rule 46, by prohibitory order, and though defendants were subsequently served with prohibitory orders, no such order was served on the judgment-debtor. The debt was disputed.

Held, that plaintiff as manager appointed under Order XL, rules 1—3, Act V of 1908, was entitled to maintain the suit, notwithstanding that the debt was disputed.

Held further, that though the attachment did not precede the appointment of plaintiff as manager, the plaintiff was entitled to maintain the suit, it not being shown that defendants had been prejudiced by the irregularity.

The omission to serve the judgment-debtor with a prohibitory order was an irregularity which did not invalidate the attachment. NEBRAJ *v.* UTTAM CHAND. **67 P R 1877**

3. *Attachment of debt—Payment into Court.*

Though under Order XXI, rule 46 of the Civil Procedure Code a debtor of a judgment-debtor may pay the debt, attached by prohibitory order under that section, into the attaching Court, such payment is optional

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CIVIL PROCEDURE CODE, 1908 —*contd.*

Order XXI, rule 46—*concld.*

with him, and he is not bound and cannot be compelled by summary process to make such payment. LACHMAN SINGH *v.* RAM SAHAI. **95 P R 1886**

4. *Prohibitory Order—suit by creditor to recover attached debt—"Recovery."*

Held, that a written order made in execution of a decree under order XXI, rule 46 (*i*) of the Civil Procedure Code, prohibiting a creditor from recovering a debt and the debtor from making payment thereof until the further order of the Court, does not incapacitate the creditor from instituting a suit against the debtor in order to recover the debt.

I. L. R. XIII All. 76, cited. NANDU *v.* SUNDAR. **142 P R 1894**

5. *And sections* 38, 60.

See CIVIL PROCEDURE CODE, 1908, SECTION 38. **40 P R 1895**

6. *Civil Procedure Code,* 1908, *order XXI, rule* 46—*Attachment—Mortgage debt—Movable or immovable property.*

Held, that for the purposes of the Code of Civil Procedure a debt secured by a mortgage lien on land is not immovable but movable property. BANTU *v.* GANDA SINGH. **18 P R 1909**

Order XXI, rule 48.

Order XXI, rule 48 (3)—Procedure where Commanding Officer refuses to carry out order for attachment of pay.

See ATTACHMENT AND EXECUTION OF DECREE (4). **10 P R 1910**

Order XXI, rule 54.

1. *And order II, rule* 2, *Order XXI, rules* 24, 25, 66, 68, 90, 92 (1).

See CAUSE OF ACTION. **76 P R 1890**

2. *And order XLI, rule* 21.

See LIMITATION ACT, 1877, 2ND SCHEDULE, ARTICLE 164. **5 P R 1897**

3. *And section* 64, *and* 4*th Schedule, Form No.* 141, *Code of* 1882—*Sale of attached property during the continuance of the attachment—Property belonging to a third person not a party to the decree.*

Order XXI, rule 54 and section 64 of the new Code, and Form No. 141 of the 4th Schedule of the Code of 1882 only refer to property undoubtedly belonging to the judgment debtor. If the property attached does not belong to the judgment debtor, the decree-holder has no claim enforceable against it, and there is nothing to prevent the rightful owner from selling it. BURA MAL *v.* GHULAM NABI. **139 P R 1893**

4. *Civil Procedure Code,* 1908, *order XXI, rule* 54, *section* 64—*Validity of attachment.*

On the 8th October 1888 the decree-holder applied for execution of his decree by attachment and sale of the whole

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CIVIL PROCEDURE CODE, 8 —*contd.*

Order XXI, rule 54—*concld.*

of the judgment-debtor's immoveable property, and the report of the attaching officer was that attachment had been effected on the 22nd October 1888 by beat of drum on the spot and by affixing a notice, under Order XXI, rule 54 of the Civil Procedure Code, on the house of the judgment-debtor situate on the spot. It did not, however, appear from the report that a copy of the notice was affixed in the court-house or in the office of the Collector of the District, and no evidence was adduced on this point. The plaintiff purchased the land in dispute from the said judgment-debtor on the 18th March 1891, and it was contended on his behalf that, in order to render the sale to him invalid, the decree-holder was bound to prove that all the conditions of Order XXI, rule 54 had been duly complied with. It was proved that there had been litigation about the attachment before plaintiff's purchase, and that the latter's sale-deed was executed at Lahore, and not at Amritsar, where it would ordinarily have been executed.

Held, having regard to the circumstances of the case, that plaintiff had notice *aliunde* of the attachment, and that there was no reason to hold that the condition of order XXI, rule 54 had not been complied with, or, in any case, that the attachment was not valid as against plaintiff.

The rule laid down in *I. B. L. R.* (*S. N.*) 20 and *I. L. R., II All.* 58, should not be strictly applied in this Province. SUNDER SINGH *v.* JIWAN RAM. **83 P R 1898**

5. *Execution of decree—Attachment of immoveable property by one creditor—Claim by another creditor under section* 295—*Removal of attachment—Assignment for consideration—Effect of assignment on person claiming under section* 73—*Validity of such assignment—Civil Procedure Code,* 1908, *sections* 64, 73—*and order XXI, rule* 54, *Transfer of Property Act,* 1882, *section* 53.

Held that a decree-holder who simply obtains an order for a ratable share of the assets in the proceeds of sale of the property attached at the instance of another judgment-creditor is not, when the decree, in execution of which the property was attached, is satisfied and the attachment withdrawn, entitled to the benefit of that attachment; and that the assignee of such property by virtue of a private alienation made after the removal of such attachment has a good title as against such decree-holder. LAHORI MAL *v.* GANGA RAM. **81 P R 1908**

Order XXI, rule 58.

1. *Se* LIMITATION ACT (IX OF 1871), SCHEDULE II, ARTICLE 15. **43 P R 1875**

2. *And section* 47, Order XXI, rule 24.

See CIVIL PROCEDURE CODE, 1908, ORDER XXI, RULE 24. **57 P R 1897**

CIVIL PROCEDURE CODE, 1908 —*contd.*

Order XXI, rule 58—*contd.*

3. *And order XXI, rule* 63 *and section* 115.

See REVISION IN CIVIL CASES.

8 P R 1 97

4. A suit to recover personal property or its value, under this section, is cognizable by Courts of Small Causes. A suit for a declaratory decree under the section will lie, but not in the Small Cause Court.

A obtained a decree in the Small Cause Court against B, and in execution thereof attached certain personal property belonging to C, who intervened under order XXI, rule 58, Civil Procedure Code. C's claim was disallowed, and, he thereupon, brought a regular suit against A to recover the property or its value. *Held*, that C's suit was cognizable by the Court of Small Causes, as it was a suit for personal property or its value : and that it was not barred on the ground that the decision of a Small Cause Court is final.

A suit by a judgment-creditor to establish his judgment-debtor's title to property seized in execution of a decree will lie, but not in a Court of Small Causes. *Nuthoo Mull v. Radhakishen* (*No.* 72 *of* 1868, Civil), explained. JEEWA *v.* KULLOO. **84 P R 1870**

5. *And order XXI, rule* 58—*Mortgage by Hindu widow—Attachment in execution of decree obtained on the mortgage—Claim by collateral to attached property—Order passed against claimant—Suit by claimant to establish his title—Limitation.*

In 1888 B, a Hindu widow, mortgaged certain property to the defendant. In 1900 the defendant obtained a decree on the mortgage, and in execution attached the property. Plaintiff, a collateral, intervened under order XXI, rule 58, Civil Procedure Code. The Court overruled the objection on the ground that the objector had no present right to possession. Plaintiff instituted a suit, within one year of the date of the order disallowing his objections, for a declaration that the attachment of the property would not affect his rights after the death of the mortgagor. This suit was dismissed by the Divisional Judge as barred by article 125 of the Limitation Act.

Held, that the plaintiff was entitled to object under order XXI, rule 58 of the Civil Procedure Code in spite of 12 years having expired since the execution of the mortgage, and his suit to establish his right to the property attached was within limitation under article 11 of the Indian Limitation Act.

A collateral may well be content to await the death of a female mortgagor before suing for possession, but where the mortgagee takes steps to oust the mortgagor in execution of a decree obtained on the mortgage, and to effect the sale of the property mortgaged the collateral has a cause of action distinct from that afforded by the mortgage. *Devi Ditta v. Pareman* (71 *P. R.*, 1898), referred to. SANT RAM *v.* GANGA RAM. **32 P R 1904**

6 *Civil Procedure Code*, 1908, *order XXI, rules* 58 *and* 63—*Attachment—Application by third party for removal of attachment—Default of claimant—Claim disallowed—Suit by claimant to establish right to attached property—Limitation—Limitation Act*, 1877, *Schedule II, article* 11.

In a suit brought by the plaintiff to recover possession of a dwelling house which had been sold at an auction sale in execution of a money decree against the plaintiff's brother more than a year before the institution of the suit, it appeared that in the course of the execution proceedings the plaintiff had intervened and applied to have the attachment removed on the ground that the property was his and not of his brother, but that owing to default of prosecution the plaintiff's claim was disallowed.

Held, that the order in the execution proceedings dismissing the plaintiff's objections to the attachment on account of default of prosecution was not a judicial investigation under order XXI, rule 61 of the Civil Procedure Code, and that therefore the suit was not barred under article 11 of the Limitation Act.

An order cannot be held to be an order under order XXI, rule 61, Civil Procedure Code, unless it is passed after an investigation into the facts of the case and an opinion expressed and judgment given on the merits.

Kallu Mal v. *Brown* (*I. L. R. III All.* 504), *Munisami Reddi* v. *Arunachala Reddi* (*I. L. R. XVIII Mad.* 265), *Chandra Bhusan Gangopadhya* v. *Ram Kanth Banerji* (*I. L. R. XII Calc.* 108), *Sardari Lal* v. *Ambika Pershad* (*I. L. R. XV Calc.* 521, *P. C.*), and *Kallar Singh* v. *Toril Mahton and another* (1 *Calc. W. N.* 24), cited and followed. SAJAN RAM *v.* RAM RATTAN. **87 P R 1904**

7. *And order XXI, rule* 63—*Attachment—Application for removal of attachment—Omission of Judge to give decision with respect to a part of the property under attachment—Suit by claimant to establish right regarding the part so omitted—Limitation.*

See INDIAN LIMITATION ACT, 1877, ARTICLE 11. **42 P R 1909**

Order XXI, rule 60.

—*See* EQUITABLE ASSIGNMENT. **60 P R 1884**

—*And order IX, rule* 8, *order XXI, rule* 63, *section* 141.

See CIVIL PROCEDURE CODE, 1908, ORDER IX, RULE 8. **62 P R 1894**

—*Order XXI, rule* 60—*Civil Procedure Code*, 1882, *section* 280—*Adjudication on merits—Limitation—Indian Limitation Act, XV of* 1877, *article* 11.

CIVIL PROCEDURE CODE, 1908 —*contd.*

Order XXI, rule 60—*concld.*

N. M. in execution of his decree against T. D. attached the house in dispute on 20th June 1902. Mussammat J. and L. objected to attachment, an enquiry was made by the executing Court, and on 14th October 1903 in the absence of the decree-holder an *ex parte* order releasing the house was passed in the following words: "*Aj digridar hazer nahin* "*hai, misl ijra ba adam pairvi dakhil dafter* "*hui hai, lihaza jaidad makruka waguzar* "*howe, misl dakhil dafter ho.*" The decree-holder again attached the house in the same decree on 4th June 1907, and the District Judge released the house on the ground that having once been released, it could not be attached again. Thereupon the decree-holder on 29th August 1908 brought the present suit. The First Court, holding the suit time-barred, dismissed it, and the Divisional Judge remanded the case for decision on the merits, being of opinion, that the order of 14th October 1903 was not one under section 280 of the Civil Procedure Code, 1882, inasmuch as it was *ex parte* and there being no adjudication on the merits. On appeal to the Chief Court,

Held, that notwithstanding the wording of the order, dated 14th October 1903, it was an adjudication on the merits under section 280, Civil Procedure Code, 1882, inasmuch as the objector had actually produced his evidence, and the decree-holder after several hearings produced none and absented himself on the last hearing, and that consequently the suit was barred under article 11, Schedule II, of the Indian Limitation Act, 1877. MUSSAMMAT JIWANI *v.* NATHU MAL. **28 P R 1910**

Order XXI, rule 61.

See REVIEW OF JUDGMENT. **143 P R 1897**

Order XXI, rules 61, 63.

See ORDER XXI, RULE 58, *supra*. **87 P R 1904**

Order XXI, rule 63.

1. *See* COURT FEES. **80 P R 1886**
2. *See* JURISDICTION OF SMALL CAUSE COURT. **91 P R 1886**

3. *Execution of decree—Attachment of mortgaged property—Suit by mortgagee under order XXI, rule* 63—*Subsequent suit for possession.*

See CAUSE OF ACTION. **29 P R 1891**

4. *And order II, rule* 3 *and section* 73 (1).

See CAUSE OF ACTION. **43 P R 1897**

5. *And order IX, rule* 8, *order XXI, rule* 60, *section* 141.

See CIVIL PROCEDURE CODE, 1908, ORDER IX, RULE 8. **62 P R 1894**

6. *Valuation of suit for purposes of Court fee—Suit under order XXI, rule* 63.

See COURT FEES ACT, 1870, 2ND SCHEDULE, ARTICLE 17. **51 P R 1897**

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CIVIL PROCEDURE CODE, 1908 —*contd.*

Order XXI, rule 63—*contd.*

7. *And order XXI, rule 58 and section 115.* *See* REVISION IN CIVIL CASES.
8 P R 1897

8. *Jurisdiction of Small Cause Court—Suit instituted under order XXI, rule 63.*
See SMALL CAUSE COURT ACT, 1887, 2ND SCHEDULE, ARTICLE 20.
63 P R 1889
51 P R 1890

9. *Attachment—Property liable to be attached—Cause of action—Form of plaint for declaration that a judgment-debtor had a mortgage on certain property—Plaint—Relief claimed—Specific Relief Act, 1877, section 42.*

Plaintiffs in execution of a money decree against one Gurdit Singh, deceased, who had a mortgage on the land belonging to defendants, attached those rights, whereon the defendants objected that they had redeemed the land from mortgage, and that no representative of the deceased judgment-debtor had been placed on the record. The objections were disallowed by the first Court, but on appeal the District Judge reversed the decision and the attachment was removed on the ground that mutation had taken place and no person was recorded as a mortgagee. Plaintiffs then sued the defendants, the successful objectors, and asked for a declaration that the mortgage on the land had not been removed; they also asked for any other relief which under the circumstances alleged the Court might think them entitled to. The first Court found the redemption not proved and decreed the claim. The Divisional Judge was disposed to accept this finding on the merits, but dismissed the claim on the ground that the suit did not lie. He held that suit was not one under order XXI, rule 63 of the Code of Civil Procedure as the defendant's objections did not fall under order XXI, rule 58, and as plaintiffs were not claiming to establish a right to any property or a declaration that the mortgage rights were liable to attachment in execution of their decree, nor were the defendants contending that the mortgage rights if they existed were not liable to attachment for that purpose. He was also of opinion that section 42 of the Specific Relief Act was not applicable as there was no dispute as to plaintiff's title to any legal character or to their right to any property, and plaintiffs did not even allege that they had any right over the land owned by the defendants, and could not say who was vested with the alleged right, the original mortgagee being dead without any heirs. He considered that the dispute was not whether the plaintiffs were entitled to attach the mortgage rights, but whether, as a matter of fact, those rights exist and this could not give rise to a cause of action.

Held, that as the object of the present suit was to establish that there was no redemption, and that the property of the objectors was still under mortgage and was liable to attachment in execution of plaintiff's decree to the extent of the mortgage interest it must be treated as one falling under order XXI, rule 63 of the Code of Civil Procedure, and as the right of the (mortgagee) judgment-debtor in the land is an interest in the land and is property, and the plaintiffs assert their right to recover their decree from it, which defendants denied, plaintiffs are entitled to sue for a declaration under section 42 of the Specific Relief Act. *Held* also, that the actual form of the suit is of little consequence. The relief really claimed on the case set up by the plaintiffs is to be considered and as the Code of Civil Procedure does not deal with forms of suits, the substance and merits of the case should be kept in view and not merely the words in the plaint.

Sardar Dial Singh v. *Beli Ram* (No. 51 *P. R.* 1897) followed. *Muhammad Sharif* v. *Shamsher Khan* (No. 11 *P. R.* 1891) and *Rup Singh* v. *Bisni* (*XI I. A.* 149), relied on. MIRAN BAKHSH AND OTHERS *v.* ATRA AND OTHERS
111 P R 1900

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CIVIL PROCEDURE CODE, 1908 —*contd.*

Order XXI, rule 63—*concld.*

10. *And order XXI, rule 58—Attachment—Application for removal of attachment—Omission of Judge to give decision with respect part of the property under attachment—Suit by claimant to establish right regarding the part so omitted—Limitation.*
See INDIAN LIMITATION ACT, 1877, ARTICLE 11. **42 P R 1909**

Order XXI, rule 66.

1. *See* EXECUTION OF DECREE.
45 P R 1886

2. *And order II, rule 2, order XXI, rules 24, 25, 54, 68, 90, 92 (1).*
See CAUSE OF ACTION.
76 P R 1890

3. *And section 73, order XXI, rule 84, order XXI, rule 90.*
See CIVIL PROCEDURE CODE, 1908, ORDER XXI, RULE 90. **30 P R 1899**

4. *See* ORDER XXI, RULE 9, *infra.*
132 P R 1906

5. *And order XXI, rule 90—Material irregularity in publishing or conducting a sale—Omission to state the nature of property.*

Where the proclamation issued under the authority of order XXI, rule 66 of the Code of Civil Procedure of an intended sale of a tea garden and building attached thereto gave only the *khasra* numbers of the property and did not specify of what it consisted of, *held* that the omission to state the description of the property and the buildings attached thereto was a material irregularity within the meaning of section 311 of the Code, which would warrant the setting aside of the sale. PEACHEY *v.* JAMNA DAS.
47 P R 1905

Order XXI, rule 68.

1. *See* EXECUTION OF DECREE.
45 P R 1886

2. *Order II, rule 2, order XXI, rules 24, 25, 54, 66, 90, 92.*
See CAUSE OF ACTION **76 P R 1890**.

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CIVIL PROCEDURE CODE, 1908 —*contd.*

Order XXI, rule 78.

And section 47—Suit for compensation for injury caused by irregularity in conducting sale of movable property—Questions for Court executing the decree.

Though order XXI, rule 78 of the Civil Procedure Code allows a judgment-debtor to sue for compensation for injury sustained by him by reason of any irregularity which has occurred either in the publishing or conducting of a sale of movable property, that section must be read with section 47 of the Code, which prohibits a suit from being brought to decide any questions between the parties which ought to have been decided by the Court executing the decree. ATMA RAM *v.* GULAB.
14 P R 1886

Order XXI, rule 83.

1. Where immovable property has once been sold in execution of a money decree, the executing Court has no authority to allow time to the judgment-debtor to enable him to raise the amount of the decree by a private transfer of the property or otherwise as provided by this section. GIRDHARI LAL *v.* BHAGO.
92 P R 1907

2. *Civil Procedure Code, Act V of 1908, order XXI, rules 83 and 89 and order XLIII, rule 1 (j)—Application by judgment-debtor to set aside sale after the auction sale had taken place—Refusal of such application—appeal.*
See EXECUTION OF DECREE.
72 P R 1910

Order XXI, rule 84.

And section 73, order XXI, rules 66, 90.
See CIVIL PROCEDURE CODE, 1908, ORDER XXI, RULE 90.
30 P R 1899

Order XXI, rule 86.

Forfeiture of deposit made by purchaser of immovable property—Appeal.

No appeal lies from an order of forfeiture to Government under order XXI, rule 86, Civil Procedure Code, 1908, of a deposit of twenty-five per centum on the amount of the purchase-money paid by a purchaser of immovable property in execution of decree, who fails to deposit the full amount of purchase-money within the fifteen days after the sale of the property in pursuance of order XXI, rule 85 of the Code. SAWAN RAM *v.* MAYA DAS.
120 P R 1891

Order XXI, rule 89.

Order XXI, rule 83 and order XLIII, rule 1 (j)—Application by judgment-debtor to set aside sale after the auction sale had taken place—Refusal of such application—appeal.

See EXECUTION OF DECREE.
72 P R 1910

Order XXI, rule 90.

1. *See* EXECUTION OF DECREE.
19 P R 1884
96 P R 1885

CIVIL PROCEDURE CODE, 1908 —*contd.*

Order XXI, rule 90—*contd.*

2. *And order II, rule 2, order XXI, rules* 24, 25, 54, 66, 68 *and* 92 *(1).*

See CAUSE OF ACTION. **76 P R 1890**

3. *And section* 47, *order XXI, rule* 94, *order XXI, rule* 95.

See CIVIL PROCEDURE CODE, 1908, ORDER XXI, RULE 95. **92 P R 1893**

4. *Material irregularity in publishing or conducting a sale—Omission to state the nature of property.*

See ORDER XXI, RULE 66, *supra.* **47 P R 1905**

5. Section 47 and order XXI, rule 90—Application to have sale set aside by reason of defective attachment.

See EXECUTION OF DECREE. **40 P R 1910**

6. *Irregularity in conducting execution sale—Failure to obtain sanction of Financial Commissioner—Substantial injury.*

Held, that the omission to obtain the sanction of the Financial Commissioner to the sale of certain trees in execution of decree (such sanction being found to be necessary under the terms of Notification No. 1297 S., dated 10th September 1885, for the sale in question) is a reason for setting aside the sale on objection under order XXI, rule 90 of the Civil Procedure Code, the failure to obtain such sanction, when required, being a material irregularity in the publishing or conducting the sale within the meaning of that section, and that it may have resulted in material loss being clear from the fact that the Financial Commissioner might have refused his sanction altogether. *Nirmal Das* v. *Muhammad Yar* (No. 6 *P. R.*, 1882), cited. HAZURA SINGH *v.* BALDEO DAS. **5 P R 1888**

7. *Application to set aside sale—Auction purchaser not made party to application.*

The necessary parties to an application under order XXI, rule 90, Civil Procedure Code, are, in the first instance, the applicant and the Court itself. It is only when the applicant has pointed out irregularities and shown that they have caused him substantial loss that any one else is interested in the application. While, therefore, the Court ought to cause notice to be issued to all interested at the expense of the applicant before it grants the application finally, there is nothing in the said section which requires that no application under it shall be received unless the name of the auction-purchaser is set out in it, and he is "made a party." SEWAK RAM *v.* KUNDAN LAL. **3 P R 1897**

8. *Civil Procedure Code,* **1908**, *order XXI, rules* 66, 84 (1) *and* 90 *and section* 73 (1)—*Sale in execution of decree—Sale in favour of decree-holder—Objections to confirmation of sale—" Substantial injury."*

CIVIL PROCEDURE CODE, 1908 —*contd.*

Order XXI, rule 90—*contd.*

Appellants executed a mortgage of certain house property of which they were in possession in favour of respondent, whereupon certain alleged reversioners filed a suit for a declaration that the mortgage would not affect their reversionary interests. Pending this suit, the mortgagee obtained a decree for realization of the mortgage-money by sale of the mortgaged property, and in execution of his decree, obtained an order for sale of the property free from the mortgage. The property was thereupon put up for sale on the 9th, 12th, 13th, 14th, 15th, and 16th October 1897, and on the last day the mortgagee, to whom express permission to bid had been given bid Rs. 70,000.

Subsequently the property was again put up for auction, but as no advance on the mortgagee's bid was made, the Court fixed the 20th December for continuation of the sale. The mortgagors appealed from this order, but their appeal was dismissed whereupon the executing Court ordered the sale to be continued on the 25th March 1898 starting from the mortgagee's bid of Rs. 70,000. The latter objected to this order on the ground that starting at such a figure would spoil the sale but his objection was overruled. The sale was conducted on the spot by the bailiff of the Court, who deposed that he commenced the sale at 10 A.M., with the bid of Rs. 70,000, and remained on the spot till 11-30 A.M., when he returned to the Court leaving a *Chaprassi* and the usual drum-beater on the spot; that he came back at 3-30 P.M., and at 4 P.M., as no advance on the Rs. 70,000 had been made, he terminated the sale in favour of the mortgagee, obtained the signatures of the mortgagee's agent and of those present, including a servant of the mortgagors, and received from the mortgagee's agent Rs. 575, the *ad valorem* fee to cover sale expenses, calculated on the Rs. 70,000. The purchase-money almost exactly equalled the amount of the decree and was set off against it. The mortgagors objected to the confirmation of the sale under order XXI, rule 90 of the Civil Procedure Code, and on their objections being overruled, appealed to the Chief Court. It was urged on their behalf (1) that there was no sale on the 25th March, as there was no bid on that date; (2) that the sale proclamation did not state that the property was sold free from the mortgage or that a suit relating to it was pending; (3) that in the column of the proclamation devoted to specification of charges on the property was written *koi deriaft nahin hua*; (4) that the mortgagee had colluded with the reversioners to keep down the price of the property; (5) that the failure to deposit 25 per cent. of the purchase-money immediately after the sale, vitiated the latter; and (6) that the procedure adopted by the bailiff was irregular, and that there was consequently no sale, or in any case, that the interests of the mortgagors had been prejudiced.

CIVIL PROCEDURE CODE, 1908 —*contd.*

Order XXI, rule 90—*contd.*

Held, overruling the said contentions, (1) that the conduct of the mortgagee and his agent during the sale was incompatible with the contention that the bid of Rs. 70,000 had been withdrawn, or that the sale had not been duly completed; (2) that the sale proclamation could not be said to have caused substantial injury to the mortgagors, within the meaning of order XXI, rule 90 of the Code, by reason of the words *koi deriaft nahin hua*, or the omission to mention the mortgage or suit; (3) that it was unnecessary to specify in the sale proclamation a charge to which the property would not be subject in the hands of a purchaser after sale; (4) that as the purchase-money almost exactly equalled the amount of the decr.e and as the mortgage lien was transferred from the property to the purchase-money and was a first charge on the latter under section 73 of the Code the deposit made on account of fees satisfied the provisions of the law, the obligation to deposit the full 25 per cent. arising in such cases only in the event of the mortgage lien being less than the purchase-money; and (5) that in the absence of evidence to prove that a possible bidder was prevented by the absence of the bailiff from bidding, the procedure adopted by the bailiff could not be held to have vitiated the sale or prejudiced the interests of the mortgagors. MUSSAMMAT SARSUTI *v.* ISHRI PERSHAD. **30 P R 1899**

9. *Sale in execution of decree—Material irregularity—Mistake in proclamation as to place of sale—Evidence—Court not limited to irregularities specifically mentioned in the application to set aside sale—Civil Procedure Code,* 1908, *order XXI, rule* 66

Where property under attachment had been expressly ordered to be sold on the premises and the proclamation issued under the authority of order XXI, rule 66 of the Civil Procedure Code advertised the sale to take place at the Court-house, while as a fact it was actually conducted on the spot and was found to have been sold for an inadequate price.

Held, that the mistake in the sale proclamation as regards the place of sale was a material irregularity sufficient in itself to justify a Court to set aside the sale under order XXII, rule 9 of the Civil Procedure Code. Such an irregularity even in the absence of any direct evidence on the point might well be presumed to have caused substantial injury by keeping away the bidders, although there may not be direct evidence connecting the irregularity with the inadequacy of price obtained.

Held, also, that an error in sale proclamation might be considered even if it may not be specifically mentioned in the application provided that it is patent on the record and the other side have had an opportunity to rebut it if had wished to do so. DUNI CHAND *v.* ATMA SINGH. **132 P R 1906**

CIVIL PROCEDURE CODE, 1908 —*contd.*

Order XXI, rule 91.

1. *See* EXECUTION OF DECREE. **183 P R 1883**

. *And order XXI, rule* 92.
See JURISDICTION OF CIVIL OR REVENUE COURT. **83 P R 1896**

Order XXI, rule 92.

1. *See* APPEAL—CIVIL. **188 P R 1882**

2. *See* EXECUTION OF DECREE. **183 P R 1883** **19 P R 1884** **96 P R 1885**

3. *And order II, rule* 2, *order XXI, rules* 24, 25, 54, 66, 68, and 90.
See CAUSE OF ACTION. **76 P R 1890**

4. *And order XXI, rules* 91 *and* 92.
See JURISDICTION OF CIVIL OR REVENUE COURT. **83 P R 1896**

5. *Civil Procedure Code*, 1908, *order XXI, rules* 92, 93—*Auction sale subsequently set aside—Right of auction-purchaser to recover purchase-money, how enforceable—Previous application under order XXI, rule* 93 *dismissed as time-barred—Auction-purchaser's cause of action—Limitation.*

Order XXI, rule 93, Civil Procedure Code, confers rights on purchasers against persons to whom their money has been paid, and in the absence of an express or an implied bar, such rights are enforceable in the ordinary way, *i.e.*, by suit, as well as in the special manner indicated in the said section. An assignee of the auction-purchaser is entitled to recover the purchase-money in a similar manner, and his suit is not unmaintainable merely because at the date of its institution he had an application pending in the Chief Court for revision of the order dispossessing him of the property.

It is for a judgment-debtor, who has succeeded in getting the Court to set aside a sale under order XXI, rule 92 of the Code, to move the Court to restore his property to him, and if he fails to do so, there is nothing to prevent the decree-holder and the purchaser from retaining the former the sale-proceeds, the latter the property itself. It is only when the purchaser is deprived of his bargain and ejected therefrom at the instance of the judgment-debtor that he acquires a cause of action to sue for refund of his money, and it is doubtful whether there is failure of consideration until such ejectment takes place. KHAWAJA YUSAF SHAH *v.* H. H. RAJA OF FARIDKOT. **7 P R 1897**

6. *And order XXI, rules* 90 *and* 91, *section.* 104—*Confirmation of sale in execution of decree—Application to set aside sale dismissed in default—Fresh application for same relief dismissed on merits—Such orders of dismissal not appealable.*
See APPEAL. **25 P R 1907**

CIVIL PROCEDURE CODE, 1908 —*contd.*

Order XXI, rule 92—*concld.*

7. *And order XXI, rules* 89 *and* 90.

If a sale of immovable property in execution of a money decree is not set aside either under order XXI, rules 89 and 90, the Court has no option but to confirm the sale as provided by order XXI, rule 92. GIRDHARI LAL *v.* BHAGO. **92 P R 1907**

Order XXI, rule 93.

1. *See* EXECUTION OF DECREE. **131 P R 1879** **157 P R 1884** **45 P R 1886**

2. *Jurisdiction of Civil Court to confirm sale by Collector at instance of Civil Court.*
See JURISDICTION OF CIVIL OR REVENUE COURT. **83 P R 1896**

3. *And order XXI, rule* 92 (1).
See CIVIL PROCEDURE CODE, 1908. ORDER XXI, RULE 92 *supra.* **7 P R 1897**

4. "*Saleable interest of judgment-debtor.*"

One B. M. had a decree against K. B., and in execution thereof got two houses belonging to the latter attached and sold by auction. Of these two houses Ibrahim purchased one and obtained possession under the certificate of sale, whereupon one K. R., who was mortgagee of part of the property, sued for and obtained possession of the same. Ibrahim thereupon applied to the execution Court under order XXI, rule 93, Civil Procedure Code, for a refund of a proportionate share of the purchase-money from the decree-holder, who was ordered by the Court to refund the value of the portion recovered by K. R.

Held, that the action of the Court under order XXI, rule 93 of the Code was *ultra vires*, and could not be sustained, that section being applicable only to cases in which the auction sale has been set aside under order XXI, rules 89, 91 and 92, *or* if it is found that the judgment-debtor had no saleable interest in the property which purported to be sold, and the purchaser is, for that reason, deprived of it. In the present case only a portion of the property sold had passed out of the purchaser's hand, and in that the judgment-debtor had simply a mortgagor's right at the time of auction, which the auction-purchaser apparently still retained. *I. L. R. IX Mad.* 437, followed. BANSI MAL *v.* IBRAHIM. **42 P R 1896**

5. *Suit by auction-purchaser to recover purchase-money—Maintainability of such suit.*
See JURISDICTION OF SMALL CAUSE COURT.
See RIGHT OF SUIT. **114 P R 1908**

Order XXI, rule 94.

1. *See* RIGHT TO SUE. **103 P R 1884**

2. *And order XXI, rules* 90 *and* 95.
See CIVIL PROCEDURE CODE, 1882, ORDER XXI, RULE 95. **92 P R 1893**

3. *Application for execution of decree—Sale in execution thereof—Application subsequently set aside by Appellate Court on ground that it was time-barred—Effect of such reversal on sale—Suit by auction-purchaser not party to decree, against decree-holder for refund of purchase-money.*
See EXECUTION OF DECREE. **49 P R 1894**

CIVIL PROCEDURE CODE, 1908 —*contd.*

Order XXI, rule 94—*concld.*

4. *Sale of immovable property in execution of decree—Sale certificate—Title of auction-purchaser who has not obtained a certificate—Pre-emption—Right of pre-emptor to maintain suit before a certificate has been granted—Registration of sale certificate Registration Act*, 1877, *section* 17 (*o*).
See PRE-EMPTION. **9 P R 1903**

5. *Sale of immovable property in execution of decree—Registration of sale certificate under section* 89 *of the Registration Act—Suit for pre-emption—Applicability of second part of article* 10 *of the Limitation Act*, 1877.
See LIMITATION ACT, 1877, ARTICLE 10. **142 P R 1908 F B**

6. *Sale in execution of decree—Absence of certificate of sale—Suit by purchaser—Title against party to the suit or his representative in interest.*

The plaintiff sued, alleging that he was the purchaser of a house at an execution sale following decree against B., defendant 2, on account of a debt due from B.'s deceased husband. The defendant 1 was B.'s second husband, and defendant 3 her son. The plaintiff could produce no certificate of sale.

Held, that the non-production of a certificate was not fatal to the plaintiff's claim.

When the plaintiff is suing to eject not a third party, but the very person who was a party to the suit which led to the execution sale, or persons whose interests are identical, with such party, the mere omission to produce a certificate of sale is not fatal to the success of the suit. A party to the suit, or his representative in interest, cannot, after the sale has been confirmed, dispute the purchaser's title at the order confirming the sale completes the title as against the parties to the suit. *I. L. R. XII Bom.* 589 followed. BUDHU *v.* HIRA. **27 P R 1892**

Order XXI, rule 95.

1. *See* RIGHT TO SUE. **103 P R 1884**

2. *And section* 47 (1).
See CIVIL PROCEDURE CODE, 1908, SECTION 47. **58 P R 1888**

3. *Certificate of sale—Admissible in evidence without registration—Right to sue—Omission by auction-purchaser to obtain delivery of immovable property under order XXI. rule* 95 - *Civil Procedure Code.*

A certificate of sale granted in December 1880, under order XXI, rule 94, Civil Procedure Code, to a purchaser of immovable property at an execution sale, but not registered, *held*, to be admissible in evidence,

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CIVIL PROCEDURE CODE, 1908 —*contd.*

Order XXI, rule 95—*contd.*

when tendered in 1891, under clause *(o)* added to section 17 of the Registration Act, 1877, by Act VII of 1888, by virtue of the provision in section 65 of the amending Act.

Held, further, that an auction-purchaser (not a party to the original suit) who has taken no action under Order XXI, rule 95, Civil Procedure Code, to recover possession of the property sold to him from the judgment-debtor, is not thereby debarred from maintaining a regular suit for possession of the property, as the two remedies are concurrent.

The opinion on this question expressed in No. 58 *P. R.*, 1888, not followed. MUSSAMMAT HARDEVI *v.* RAM JIWAN. **14 P R 1893**

4. *Application under Order XXI, rule 95, Civil Procedure Code, for possession of house purchased at sale in execution of decree—Refusal of such application—Subsequent suit for possession—House sold privately by judgment-debtor before grant of certificate of sale—Irregularities in attachment and sale—Section 47 (1), Order XXI, rules 90, 94 and 95, Civil Procedure Code.*

In 1884 the plaintiff purchased at an auction sale in execution of a decree against T. S. and M. S. the house now in dispute, and the sale was confirmed on 27th March of the same year; but the certificate of sale was not granted till the 9th April 1888. On the 19th May 1887, T. S. sold the house in question to the defendants, N. A. (since dead) and K. A. In 1890 the plaintiff applied under Order XXI, rule 95, Civil Procedure Code, to be put in possession of the purchased property, and on the 19th May of that year his application was refused as time-barred.

In a suit now brought by the plaintiff (auction-purchaser) against T. S. and his vendees for recovery of possession of the house in dispute, it was contended for the defendants:

(1) that prior to the grant of a certificate—and therefore before the plaintiff had acquired an absolute title—the house had been sold privately, and that such sale was valid;

(2) that no suit would lie as the plaintiff had failed to obtain possession under Order XXI, rule 95, Civil Procedure Code; and

(3) that the sale in plaintiff's favour was vitiated by irregularities.

Both the lower Courts dismissed the plaintiff's suit,—the first Court because of certain irregularities which it considered took place in attaching the property and publishing the sale: the Divisional Judge because he considered that the plaintiff's title not having become absolute till the grant of a certificate in 1888, T. S. was at liberty to sell in 1887, and also because the plaintiff had failed to obtain possession in a proceeding under Order XXI, rule 95, Civil Procedure Code:

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CIVIL PROCEDURE CODE, 1908 —*contd.*

Order XXI, rule 95—*concld.*

Held (1) that under the provisions of Order XXI, rules 92 and 94, Civil Procedure Code, the plaintiff's title must be taken to have vested in him on the 27th March 1884, which was the date of the confirmation of sale, and the delay in obtaining a certificate of sale till 1888 did not of itself render the sale by T. S. to the other defendants in 1887 a valid sale or a sufficient answer to the suit:

(2) that the failure of an auction-purchaser to obtain delivery of possession under Order XXI, rule 95, he not being a party to the suit, was not in itself a bar to a regular suit for possession.

(3) that the defendants had failed to establish any irregularities which could be held to vitiate the sale, even if they had been urged in a proceeding under Order XXI, rule 90, Civil Procedure Code, and not in answer to the present suit by the auction-purchaser. THAN SINGH *v.* KAZIM ALI. **92 P R 1893**

Order XXI, rule 97.

And Order XXI, rules 99—103—Procedure of executing Court in executing decree for possession when property is in possession of a third party—Difference between the old and new Code pointed out.

See EXECUTION OF DECREE. **14 P R 1910**

Order XXI, rule 99.

Execution of Decree for possession of immovable property—Obstruction by person other than the judgment-debtor—Procedure.

—*See* OBSTRUCTION TO EXECUTION OF DECREE, **118 P R 1907**

—*and Order XXI, rules* 97 *and* 103.

See EXECUTION OF DECREE. **14 P R 1910**

Order XXI, rule 100.

Suit by decree-holder against whom an order has been passed under Order XXI, rule 100, Civil Procedure Code, 1908, to establish his right—Limitation.

Plaintiff, in execution of a decree for possession as mortgagee against his mortgagor obtained formal possession of certain land on the 11th August 1891, and on the 17th August 1891, P. and M., alleging that they were in actual possession of the said land as mortgagees and had been illegally dispossessed by plaintiff in execution, petitioned the Court to be restored to possession. The Court allowed their objection on the 3rd December 1891. More than a year thereafter, plaintiff brought a regular suit to establish his right, but the Divisional Judge, on appeal, dismissed the suit as barred by limitation under article (11) of the 2nd Schedule of the Limitation Act, 1877.

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CIVIL PROCEDURE CODE, 1908 —*contd.*

Order XXI, rule 100—*concld.*

Held, that the order of the Court allowing the objection of P. and M. was one under Order XXI, rule 100, Civil Procedure Code, 1908, and that neither article (11) nor article (13) of the 2nd Schedule of Act XV of 1877 applied to suit brought by a person, against whom an order had been passed under that section, to establish his right, no special period of limitation being prescribed for such suits. NIHALA MAL *v.* KHAIRA. **125 P R 1894**

Order XXI, rule 103.

The difference in procedure between the new Code, Order XXI, rules, 97, 99 and 103 and the old Code, section 331, pointed out.

See EXECUTION OF DECREE. **14 PR 1910**

Order XXII, rule 2.

See ABATEMENT OF APPEAL. **83 P R 1886**

See CIVIL PROCEDURE CODE, 1908, ORDER XXII, RULE 4. **53 P R 1896**

Order XXII, rule 3.

See ABATEMENT OF APPEAL. **109 P R 1881** **51 P R 1886**

1. *Order XXII, rule 3—Death of sole appellant—Abatement of appeal—Legal representative—Right to sue.*

Held, that the words "legal representative" in Order XXII, rule 3 of the Civil Procedure Code, must be read in connection with the "right to sue" which is involved in the case before the Court; and that unless the person applying to be considered the "legal representative" can show that he is the person to whom the "right to sue" involved in the case descends or survives by law, he is not *qua* that right the "legal representative" within the meaning of Order XXII, rule 3, Civil Procedure Code. HARNAM SINGH *v.* BACHATAR SINGH. **23 P R 1889**

2. *Death of sole appellant—Nullity of decree—Remedy.*

F., the sole appellant before the Divisional Court, died while the appeal was still pending, but after the death of F. the sons of F. applied to have their names placed on the record in the room of their deceased father. This application was rejected by the Divisional Court for default. When the appeal was heard on the merits, no objection was raised by either party, and the appeal was decreed in the deceased appellant's favour.

Held, on the revision side, no appeal being competent, that the proper order to pass was one setting aside the decree of the Divisional judge as a nullity, leaving either party to make any application which he might be advised to make to that Court, with a view to re-opening the case. CHUNNI LAL *v.* FARIDA. **78 P R 1891**

CIVIL PROCEDURE CODE, 1908 —*contd.*

Order XXII, rule 3—*contd.*

3. *Civil Procedure Code, Order XXII, rules 3 and 5, and section 107 (2)—Suit by widow with life-interest to recover from collaterals property of her deceased husband—Legal representative of such widow for the purpose of continuing the suit or appeal on widow's death—Dat Brahmins of Kanjrur, tahsil Shakargarh, Gurdaspur District.*

The plaintiff, who was the widow of one H R., sued to recover from the defendants, collaterals of H. R., a portion of her husband's estate, of which it was alleged they had taken wrongful possession. During the pendency of her appeal in the Chief Court, the plaintiff died, and applications by the widows of other collaterals of H. R., who claimed to be brought upon the record and to continue the appeal as representatives of the deceased appellant, were resisted by the defendants on the ground that, as the deceased had only a life-interest in the property and practically left no heir—the succession going to the heirs of her deceased husband—the right to appeal did not survive, and that the appeal ought therefore to abate.

The deceased, H. R., was a Dat Brahmin of Kanjrur, *tahsil* Shakargarh, Gurdaspur District.

Held, that the right to appeal survived to the heirs, whoever they might be of the late H. R.

Held also, that as all the parties interested in the result of the present applications were parties to a new suit, brought in order to determine the question of the right to succeed to the property of H. R., the proper order to pass at the present stage was to direct under Order XXII, rule 5, Civil Procedure Code, that the appeal should be stayed until the fact as to who was the legal representative of Mussammat L. had been tried and determined in such suit. MUSSAMMAT LACHMI *v.* AMIN CHAND.

97 P R 1893

4. *Death of sole plaintiff after conclusion of case, but before delivery of judgment—Decree drawn up in favour of deceased plaintiff—Material irregularity—Civil Procedure Code, 1908, Order XXII, rule 3.*

In a certain case after evidence had been taken and arguments heard on the 28th and 29th September 1897, the District Judge on the 2nd November 1897 gave the (sole) plaintiff a decree for the property claimed, and at the foot of his judgment recorded the following note:—

"It having been brought to my knowledge " that plaintiff has died in the *interim*, I " deliver judgment notwithstanding, being " guided by *I. L. R. XXI Bom.* 314, and the " authorities quoted therein, defendant's " counsel agreeing." Defendant applied to the Chief Court on the Revision Side to set aside the said decree.

CIVIL PROCEDURE CODE, 1908 —*contd.*

Order XXII, rule 3—*contd.*

Held, that under the circumstances of the present case, there had been a disregard of the provisions of the Civil Procedure Code which had materially prejudiced the defendant, inasmuch as she could not appeal against a dead person, and had no right of appeal against his heirs who were not on the record, and was, moreover, deprived of the possibility of the suit being allowed to abate in consequence of no application under Order XXII, rule 3, Civil Procedure Code, being made within the time allowed by law.

Held therefore, that the decree of the District Court must be set aside and the case remanded for disposal in accordance with law with reference to Order XXII, rule 3 of the Code.

ROE, C. J.—A decree passed in favour of or against, a dead person is not *ipso facto* a nullity, and all that can be said in such a case is that there has been a disregard of the provisions of the Civil Procedure Code. Each case must be decided on its merits, and the decree should be set aside or maintained, as if the death occurred after decree, according as the disregard of procedure has or has not materially prejudiced the parties.

I. L. R. XXI Bom. 314 ; *I. L. R. VI Mad.* 180 ; *I. L. R. XV Mad.* 399 ; *I. L. R. XVII All.* 478 ; *No.* 31 *P. R.* 1886 ; *No.* 7 *P. R.*, 1889 ; and No. 78 *P. R.* 1891, referred to. BATES *v.* PRESTAGE.

20 P R 1898

5. —*Execution of decree—Death of decree-holder—Abatement of execution proceedings—Admission of application to set aside abatement after time—Sufficient cause—Limitation Act, 1877, section 5.*

In an execution proceeding the decree-holder having died in September 1898, the judgment-debtor, on the 18th October 1899, obtained an order from the executing Court for the removal of the attachment on the ground that no application in accordance with the provisions of Order XXII, rule 3, Civil Procedure Code, had been made by the representatives of the deceased decree-holder within the prescribed period of limitation. The circumstances were that the decree-holder who was a Sikh Jat had died and left a will probate of which having been keenly contested by his heirs was not granted to the executors until April 1900. In May 1900 two out of the three executors filed an application for execution, but the judgment-debtor contended that by Order XXII, rule 3 of the Civil Procedure Code, the application was time-barred.

Held, that the word "suit" includes all proceedings in a suit including the proceedings in execution, and that the executors were bound to make and capable of making the application at the time of the death of the testator, but that, under the peculiar circumstances of the case, there was sufficient

CIVIL PROCEDURE CODE, 1908 —*contd.*

Order XXII, rule 3—*concld.*

cause preventing them from continuing the execution proceedings originated by the testator within the meaning of Order XXII, rule 9, Civil Procedure Code, and that therefore under the provisions of Order XXII, rule 9, Civil Procedure Code, and of section 5 of the Limitation Act they were entitled to an extension of the time for making the application to set aside the abatement order.

Moosa v. *Essa (I. L. R. VIII Bom.* 241) *Khan Bahadur Nawabzada Shamsher Ali Khan* v. *Mussammat Ahmad Allahdi Begam* (9 *P. R.* 1901), *Ram Kirpal v. Rup Kuari (I. L. R. VI All.*, 269), and *J. C. Bose* v. *Rani Bhagwan Kaur* (63 *P. R.* 1900), referred to. PRICE *v.* GOLAK NATH.

39 P R 1903

Order XXII, rule 4.

1. *See* ABATEMENT OF APPEAL.

76 P R 1884
22 P R 1885
39 P R 1885
81 P R 1886
86 P R 1886

2. *See* LIMITATION ACT (XV OF 1877), SCHEDULE II, article 171 B.

133 P R 1884

Order XXII, rule 4.

3. *See* INSOLVENCY. **69 P R 1888**

4. *Death of one of several defendants.*

Application for substitution—Sufficient cause for not applying within prescribed period.

See PARTIES. **113 P R 1907**

5. Imperative—pleaof ignorance of death does not justfy departure from the rule.

See APPEAL (CIVIL).

60 P R 1911

6. *Application to place legal representative of deceased defendant-respondent on the record—Sufficient cause for not applying within prescribed period—Civil Procedure Code (Act V of* 1908, *Order XXII, rule* 4.

Held, that the period for applying in the case of a deceased defendant-respondent to place his legal representative upon the record is 60 days under article 171 B. of the 2nd Schedule of the Limtation Act, *Hafiz Ghulam Muhammad Khan* v. *Mohan Lal* (No. 133 P. R., 1884) and *Dasoundha Singh* v. *Kanhya Lal* (No. 133 P. R., 1886) followed.

Held, further, that ignorance by an appellant of the fact of a respondent's death may be a sufficient excuse for not applying within 60 days, within the meaning of the last clause of Order XXII, rule 4 of the Civil Procedure Code. GAMAN *v.* BAKSHA.

42 P R 1887

7. *Death of respondent during pendency of appeal—Legal representative.*

During the pendency of an appeal in the Chief Court in a pre-emption suit brought by the pre-emptor as appellant against the

vendor and the vendee as respondents, the vendor respondent (who was a childless widow) died; whereupon an application was duly made by the appellant under order XXII, rule 4, Civil Procedure Code, to substitute as the legal representatives of the deceased respondent, certain persons who were the reversionary heirs of the husband of the said deceased. It was objected at the hearing on their behalf that they were not the legal representatives of the deceased respondent, as there was a sister and a sister's son of the deceased in existence.

Held, that the term "legal representative" as used in order XXII, rule 4 of the Code, clearly does not necessarily mean "legal heirs:" that it is not the intention of the section that an elaborate inquiry and decision should be given, in case of nice questions arising as to exactly who, under particular rules of law, is the legal representative and that looking in the present case to the obvious practical interest which the reversioners had in the property, and the great probability (to say the least) that they were as much the next heirs and representatives as a sister or a sister's son, the objection taken by the respondents must be disallowed. CHARANJIT MAL *v.* MUSSAMMAT MITHO. **29 P R 1(8**

8. *Application to implead the legal representative of a deceased respondent—"Sufficient cause" for not applying within the prescribed period—Ignorance of law.*

In a suit in which there were numerous defendants, it appeared that after the plaintiff had filed his appeal in the Court of the Divisional Judge, one of the respondents died leaving minor sons, and (it was alleged) a widow, and also a brother who was also a respondent. At the hearing of the appeal, it was objected that plaintiff had not applied within 60 days of the death of the deceased respondent to have his sons made legal representatives, whereupon the plaintiff explained that he considered it unnecessary, as the deceased's brother was alive and a party to the suit. The Divisional Judge held that this was merely pleading ignorance of law and the excuse was not sufficient.

Held, that the explanation was sufficient, the plaintiff being an uneducated zamindar, who, it might easily be believed, would consider the adult surviving brother to be the proper representative of the deceased in preference either to his widow or his minor sons in a suit regarding immovable property.

It is not necessarily a ground for rejecting cause shown for omitting to apply for legal representatives to be brought on the record in place of a deceased party, that the cause shown involves a mistake of law. (*See* No. 81 *P. R.*, 1886, *F. B.*) AMIR BAKHSH *v.* DULA **43 P. R., 1889.** GHULAM SHAH *v.* MALAK MUZAFFAR KHAN. ALSO **43 P R 1889 Note**

9. *And section* 107 (2)—*Appeal—Local representative of respondent.*

In the case of the death of a respondent, the Court has no authority to inquire as to who is the legal representative of the deceased or to refuse to accept the person designated as such by the appellant. Order XXII, rule 4 leaves it to the appellant to apply that a certain person whom he alleges to be the legal representative be brought on the record. If he wilfully omits to bring the right person on the record he will bear the consequence, as the proceedings will not bind the true heir. KUTBA *v.* MUSSAMMAT UMRI.

5 P R 1890

10. *Practice—Procedure—Parties—Death of respondent pending appeal—Application by appellant to have certain person brought on record as deceased's legal representative—Similar application by third party who alleges himself to be deceased's legal representative—Duty of Court—Civil Procedure Code,* 1908, *Order XXI, rule* 4, *and* 5.

One of two respondents having died pending an appeal, the appellant applied to have one Mussammat T. D. brought on the record as the deceased's legal representative. Thereupon one H. N. applied under order XXII, rule 4 of the Civil Procedure Code, 1908, to be accepted as the legal representative of the deceased instead of Mussammat T. D. The Divisional Judge, without inquiring into the truth of the allegations held that he was bound to accept as the deceased's legal representative, the person indicated in the application of the appellant. H. N. having appealed to the Chief Court.

Held, that although order XXII, rule 4 of the Code does not make any express provision for the case of a dispute in such matters, it follows *ex necessitate rei*, that when a dispute does arise, the Court should have the power of deciding it by an interlocutory order for the purposes of proceeding with the case or appeal. *I. L. R. IX Bom.* 151, and *I. L. R. X. All.* 223, cited; No. 5 *P. R.* 1890, distinguished. HAR NARAIN *v.* TULSI RAM.

66 P R 1894

11. *Civil Procedure Code,* 1908, *Order XXII, rules* 2 *and* 4—*Death of one of several defendants pending appeal—No application by plaintiff within prescribed period to put legal representative of deceased on the record—Abatement of appeal—Amendment of appeal—Cross-objections, abatement of—Contract Act,* 1872, *sections* 42, 43.

Plaintiff sued for recovery of Rs. 48,400, principal and interest, due on a mortgage-bond executed by a Muhammadan lady, widow of one R. A., on the 2nd June 1881. The said lady having died in 1883, the persons sued were the brother and nephews of R. A., they having succeeded to R. A.'s property on the death of the widow, and the claim was based on the grounds that the defendants were the heirs and representatives

of the widow, and that in any event, as the debt was incurred for necessary purposes, it was recoverable from the estate of her husband in their hands. Defendants pleaded that the deed was fictitious and without consideration, and that it was not executed for necessary purposes, and did not therefore bind the estate of R. A.

The District Judge found necessity proved to the extent of Rs. 3,000 only, and gave plaintiff a decree for that amount, with interest at one per cent. up to date of suit, or Rs. 7,260 in all, with proportionate costs, against the property sought to be charged, and dismissed the rest of the suit with costs.

Plaintiff thereupon appealed to the Chief Court for the portion of his claim disallowed by the lower Court and defendants filed cross-objections under Order XLI, rule 22, Civil Procedure Code, in regard to the amount decreed against them.

When the appeal came on for hearing, respondents' counsel pointed out that one of the respondents had died more than six months previously, and that no application had been made to put his representatives on the record, and contended that the appeal had therefore abated under Order XXII, rule 4 and section 149, Civil Procedure Code. On behalf of appellant, it was admitted that the facts were as stated, but it was urged that appellant had nevertheless a right to proceed against the remaining respondents.

Held, that the appeal had abated as against the remaining respondents. Inasmuch as, under section 42 of the Contract Act, the obligation to perform the promise of the widow devolved on her death, on all her representatives jointly, and as on the death of one of her said representatives the heirs of the latter were not discharged, but took their place with reference to the liability, Order XXII, rule 4 was applicable to the suit though founded on contract, and no act on the part of plaintiff could take the case out of the operation of the said section.

Section 43 of the Contract Act, which gives a creditor a right to proceed against any one of his joint debtors, deals with substantive law, and the right so given must be exercised before the creditor institutes his suit. After the suit is filed the creditor is in the hands of the Court, and his option under section 43 of the Contract Act is subject to the provisions of the Code of Civil Procedure. He cannot, therefore, defeat the provisions of Order XXII, rule 4 of the Code by resorting to his right under section 43 of the Contract Act after the limitation prescribed for putting the representative of his deceased debtor on the record has expired, and he has no explanation to offer for the delay.

Held, also, that even if appellants prayer to proceed against the remaining respondents could be regarded as tantamount to one to

CIVIL PROCEDURE CODE, 1908
—contd.

Order XXII, rule 4—*concld.*

amend his appeal, the appeal having at the time abated, it was too late to ask for such amendment in the form proposed, whatever might have been the decision on such application, if it had been made within six months of the death of the deceased respondent.

Held further, that as there can be no hearing on the merits after abatement, the cross-objections had also abated. RAO GHULAM MUHAMMAD KHAN *v.* NAHAR ALI.
53 P R 1896

12. *Suit for damages for malicious prosecution—Cause of action accruing in Foreign State, but suit instituted in British India—Discharge of plaintiff in former proceedings—Death of defendant pending appeal—Abatement of appeal—Civil Procedure Code,* 1908, *Order XXII, rules* 4 *and* 5 *and section* 149, *Act XII, of* 1855, *section* 1—*"Reasonable and probable cause."*

Upon a charge of theft, brought by defendant in the Courts of the Kalsia State, plaintiff was arrested and kept in custody for about six weeks, but was subsequently discharged after full enquiry had been made into the truth of defendant's allegations. Thereafter plaintiff instituted a suit in the District Court, Umballa, within the jurisdiction of which defendant was resident, for Rs. 3,400 as damage for malicious prosecution. Defendant traversed the allegations in the plaint, and further pleaded that plaintiff could not sue in a British Court on a cause of action which had arisen in Kalsia State. The Court overruled this objection and awarded plaintiff Rs. 610 as damages, whereupon both parties appealed to the Chief Court. Pending the appeal, defendant died, and his son was brought on the record as his representative, and at the hearing it was contended on his behalf, (*i*) that plaintiff's appeal had abated on defendant's death ; (*ii*) that plaintiff had not proved that the alleged malicious prosecution amounted to a tortious act *lege loci delicti commissi* (*i.e.*, of the Kalsia State) as well as *lege fori* (*i.e.*, of British India) ; (*iii*) that the former proceedings had not resulted in the *acquittal*, but merely in the *discharge*, of the plaintiff ; and (*iv*) that, in any event, defendant had not acted without "reasonable and probable cause" in charging plaintiff with theft.

Held, as to (*i*), that plaintiff's appeal did not abate on the death of defendant as aforesaid ; as to (*ii*), that the plea not having been raised in the Lower Court in this form, could not be raised in the Chief Court on appeal ; and as to (*iii*), that a discharge after full inquiry is better proof of the innocence of an accused person than an acquittal.

But *held*, upon the facts of the case, that plaintiff's suit for damages must be dismissed, inasmuch as defendant had not acted without reasonable and probable cause in charging plaintiff with theft. BHAGWAN SINGH *v.* PANDIT JOTI.
4 P R 1897

CIVIL PROCEDURE CODE, 1908
—contd.

Order XXI, rule 5.

See CIVIL PROCEDURE CODE, 1908, ORDER XXII, RULE 3.
23 P R 1889

See CIVIL PROCEDURE CODE, 1908, ORDER XXII, RULE 4.
66 P R 1894

Order XXII, rule 9.

See ABATEMENT OF APPEAL.
22 P R 1885

Order XXII, rule 10.

See ABATEMENT OF APPEAL.
76 P R 1884
51 P R 1886

And section 104—*Application to be brought on to record in substitution for plaintiff—Dismissal of such application—Appeal.*
See APPEAL CIVIL. **57 P R 1903**

1. *Devolution of interest pending suit—Joinder of parties.*

During the pendency of a suit for pre-emption by plaintiff against the vendor and vendees of certain property, three other persons obtained a decree for pre-emption against the same defendants in respect of the same sale, whereupon the Court before whom the suit was pending ordered the three decree-holders in the other suit to be added as co-defendants in the pending suit, and eventually gave the plaintiff in that suit a decree. This decree was reversed on appeal, the Appellate Court considering that the three plaintiffs in the earlier suit had been improperly joined as defendants.

Held, that inasmuch as the plaintiff's suit involved a claim for possession of the property sold as against the vendor, and pending this suit the vendor's interest devolved under the decree in the suit brought by the three persons above-mentioned upon those persons, they were therefore properly made parties to the present suit under the provisions of Order XXII, rule 10, of the Civil Procedure Code. LAKHA RAM *v.* JHINDU.
29 P R 1887

2. *Transfer of interest pending suit or appeal—Registration—Notice—Verbal mortgage for over Rs.* 100.

Plaintiff sued for possession under a registered sale-deed. Defendant pleaded a verbal mortgage for over Rs. 100 with possession and of which plaintiff had notice. The first Court decided in favour of the defendant's mortgage, but the Divisional Judge passed an unconditional decree in favour of plaintiff. Defendant appealed to the Chief Court. While the appeal was pending, the defendant sued the plaintiff for pre-emption of the same land and got a decree. At the hearing of the appeal, the plaintiff objected *in limine* to the appeal being heard, on the ground, that he had no longer any interest in it; that all his rights had passed to the defendant under the pre-emption decree, and that consequently nothing was left to decide. *Held* that this contention was not correct. It was material to the defendant to get a

CIVIL PROCEDURE CODE, 1908
—contd.

Order XXII, rule 5—*concld.*

decision on the question whether or not he held a lien on the land as mortgagee, as this would effect the amount of money he may have to pay as pre-emptor.

A registered purchaser with notice of an oral mortgage takes subject to the latter. NAJMUDDIN *v.* AKBAR DIN. **143 P R 1889**

Order XXII, rule 11.

3. *See* APPEAL CIVIL. **89 P R 1904**

Order XXIII, rule 1.

See RES JUDICATA.
1 P R 1904

See WITHDRAWAL OF SUIT.
3 P R 1905

1. *Striking out the name of one of several defendants.*

Where the Court of first instance struck out the name of a defendant, on the plaintiff's statement that he had no claim against him. *Held*, that the Court in so doing acted without jurisdiction, and the act of striking out the defendant's name was a nullity. BISHEN DASS *v.* HUR PERSHAD.
19 P R 1870

2. *Order XXIII, rule* 1—*Dismissal of claim.—Right reserved to bring fresh suit—Act XXIII of* 1861, *section* 37.

Plaintiff sued for proprietary possession on the ground that he had been illegally dispossessed a few years before suit ; but it appeared in the course of the case that defendants held as mortgagees, though the defence was proprietary possession for a long time. The Chief Court dismissed plaintiff's claim, reserving to him (under Order XXIII, rule 1, Act V of 1908 and section 37, Act XXIII of 1861) the right to bring a fresh suit as mortgagor for redemption. KALLU *v.* HUKMA. **24 P R 1872**

3. *Order XXIII, rule* 1—*Withdrawal of claim after confession of judgment.*

Plaintiff, at the time the suit was called on for hearing, was absent, but the defendant was present and confessed judgment. Plaintiff, before judgment was recorded, appeared, and applied for leave to withdraw his suit under order XXIII, rule 1, Civil Procedure Code. Plaintiff's desire to withdraw and defendant's readiness to confess judgment arose from plaintiff having sued for part only of a debt that was due, and Order II, rule 2 barring a suit for the balance. The Court refused plaintiff's application, holding that it was made too late. *Held*, that the Court erred in refusing plaintiff leave to withdraw. YAKOOB ALI KHAN *v.* RURA MAL. **65 P R 1875**

4. *Execution-sale of house—Suit by plaintiff to establish her proprietary title to the property sold—Cancellation of sale by executing Court after institution of plaintiff's suit—Withdrawal by plaintiff from her suit—Subsequent order by Appellate Court uphold-*

CIVIL PROCEDURE CODE, 1908 —*contd.*

Order XXIII, rule 1—*contd.*

ing the sale—Fresh suit by plaintiff for declaration of her title to the property sold —Right to maintain such suit—Fresh cause of action.

In a suit by plaintiff for a declaration of her proprietary right in a certain house, it appeared that the property in dispute had been attached and sold in execution of a decree obtained against the plaintiff's husband. The plaintiff then sued the decree-holder and judgment-debtor to establish her proprietary title to the house sold. After the institution of this suit, the Court in which the execution proceedings had been taken refused to confirm the sale, and ordered the house to be released from attachment. Plaintiff therefore withdrew from her suit, though without obtaining permission under Section 97 of Act VIII of 1859, which was then in force, (corresponding to Civil Procedure Code, 1908, order XXIII, rules 1 and 2) and the suit was accordingly struck off the file. Subsequently, the Appellate Court set aside the orders of the execution Court, and upheld the sale, whereupon the plaintiff brought the present suit against the decree-holder and auction purchasers for a decree declaratory of her title to the house.

Held, that such suit was not barred by the provisions of order XXIII, rule 1 of Act V of 1908.

Per Curiam. The plaintiff withdrew from the former suit because the cloud which had been cast on her title by the attachment and sale of the house had been removed by the cancellation of the sale and the withdrawal of the attachment. When, however, the proceedings against the house were re-opened by the appeal to the Commissioner's Court, and when the result of that appeal was to affirm the auction sale, a fresh attack was made upon the plaintiff's title and a fresh cause of action accrued to her, distinct from that which formed the basis of her former suit. MIR NASIR HUSAIN *v.* MUSSAMMAT FAKR JEHAN BEGAM. **119 P R 1881**

5. *And order I, rule 1—Withdrawal from suit with liberty to bring fresh suit—Effect of permission to one of several plaintiffs to withdraw without consent of others—Power to challenge such permission in subsequent proceeding.*

Held, that the effect of the third clause of order XXIII, rule 1 of the Civil Procedure Code is to constitute the consent of the remaining co-plaintiffs in a suit a condition of the valid exercise of the authority conferred in the first clause of the section in a case where there are several plaintiffs; but that the above clause must be read in conjunction with the provisions of the Code as to parties and the frame of the suit, and that the "several plaintiffs" contemplated in the clause are "plaintiffs in whom the right to any relief "claimed is alleged to exist whether jointly, "severally or in the alternative in respect "of the same cause of action" (order I, "rule 1.)

CIVIL PROCEDURE CODE, 1908 —*contd.*

Order XXIII, rule 1—*contd.*

Where therefore an order is made under the first clause of order XXIII, rule 1 in contravention of the third clause, such order may be impeached as made without jurisdiction in a subsequent proceeding, where it is sought to be enforced against a party to the first proceeding.

The above principle *held* however not to be applicable to the present case as the plaintiffs in the former suit were not "several plaintiffs" within the meaning of order XXIII, rule 1 of the Code. *Mussammat Ghasiti* v *Mussammat Banno Jan* (No. 95 *P. R.* 1884), referred to. JAGGU *v.* MUSSAMMAT NANNI JAN. **93 P R 1887**

6. *Withdrawal of suit without permission to sue again—Order of withdrawal* ultra vires *of section—Effect of such order—Power to challenge such order (though not appealed from) in subsequent suit.*

In a suit by plaintiffs seeking to recover their share in the paternal estate, it appeared that a previous suit had been brought for the same purpose against the same parties, in which the plaintiffs had (before the case had come to a hearing) filed a document signed by them alone, which stated that they withdrew their case (and had no claim for costs) because they hoped that they would settle their case out of Court, and that private arbitrators would determine the matter. Thereupon the Court, without quoting any section of the Code, passed an order allowing the withdrawal of plaintiffs' suit without any permission to bring a new one.

Held that, assuming the above order to be one under order XXIII, rule 1 of the Civil Procedure Code, it was clearly *ultra vires* as regards that section, the document put in by the plaintiffs not constituting a "sufficient cause" for permitting the withdrawal, and was therefore no bar to the present suit.

Held further, that the said order could be objected to in the present suit, though it was not appealed against at the time. *Jaggu* v. *Mussammat Nanni Jan* (No. 93 *P. R.* 1887), followed. HOSHDAR ALI *v.* HASSAN ALI. **147 P R 1888**

7. *Execution of decree—Leave to withdraw—Effect of order XXIII, rule 1 and section 141, Civil Procedure Code.*

The decision of the High Court of Allahabad (*I. L. R. XII All.* 392) that section 141 of the Civil Procedure Code makes order XXIII, rule 1 applicable to proceedings in execution of decree, dissented from. MUSSAMMAT JASODHA DEVI *v.* LACHMAN DASS and SITA RAM. **37 P R 1892**

8. *Effect of—on proceedings in execution of decree.*

Held, that order XXIII, rule 1, is not applicable to proceedings in execution of decree.

Pirjade v. *Pirjade* (*I. L. R. VI Bom.* 681) and *Sarju Prasad* v. *Sitaram* (*I. L. R. X All.*, 71) not followed *Thakur Prasad* v. *Fakirullah*, (*I. L. R. XVII All.* 106 *P. C*). cited and followed. MUHAMMAD NAWAZ KHAN *v.* RAM DAS. **22 P R 1905**

CIVIL PROCEDURE CODE, 1908 *contd.*

Order XXIII, rule 1—*concld.*

Order XXIII, rule 2.

See COMPROMISE. **77 P R 1908**

Order XXIII, rule 3.

1. *See* ARBITRATION. **130 P R 1882**

2. *Order passed in execution of decree—Decree giving effect to compromise dealing with immovable property—Course of appeal.* *See* APPEAL CIVIL. **55 P R 1887**

3. *Parties to suit agreeing to be bound by the oath of a witness—Refusal of witness to take the oath, effect of—Adjustment of suit—Decision on merits.*

See OATHS ACT, 1873, SECTION 8. **31 P R 1888**

4. *Order XXIII, rule 3—Satisfaction of claim.*

A Court cannot dispose of a suit according to a compromise if the plaintiff professes himself merely satisfied *aliunde*; it must be that the defendant has satisfied the plaintiff. JERVIS *v.* MANSFIELD. **12 P R 1867**

5. *Compromise of suit—Finality of decree—Allegation of fraud by party to compromise.*

A decree made in accordance with a lawful agreement or compromise is final under order XXIII, rule 3, Civil Procedure Code.

No appeal lies from such a decree, escape from which on the ground of fraud can only be obtained by a regular suit or upon application for review of judgment.

The lawfulness of an agreement or compromise is distinct from the question of its legal validity, and it is sufficient for the purposes of order XXIII, rule 3, that there has been an agreement the objects of which are not unlawful.

No. 105 *P. R.*, 1889, and No. 81 *P. R.* 1890, referred to and followed. MUSSAMMAT LALAIRI *v.* HUSSAIN SHAH. **114 P R 1882**

6. *Compromise of suit—Power to withdraw.*

Held that when a compromise of a pending suit has been unconditionally agreed to neither party is at liberty to withdraw his assent, when the other moves the Court to record the compromise under order XXIII, rule 3, Civil Procedure Code. HAMID ULLAH *v.* HAYAT KHAN. **182 P R 1888**

7. *Order XXIII, rule 3, order XXXII, rules 7 and 16—Guardian and Wards Act XL of 1858—Guardian* ad litem*—Compromise—Appeal—Material irregularity—section 115.*

The mode of appointment of a guardian under section 3, Act XL of 1858, is by a certificate. When a person appointed guardian *ad litem* of a minor compromised a

CIVIL PROCEDURE CODE, 1908
—*contd.*

Order XXIII, rule 3—*contd.*

case on the day when an order was made appointing him guardian under Act XL of 1858, but before a certificate was issued, *held*, that he acted as guardian *ad litem* in entering into the compromise.

A guardian *ad litem* has no power to compromise a suit without the sanction of the Court in which the suit is pending. Such sanction must be expressly given, after inquiry as to whether the proposed compromise would be beneficial to the minor.

A decree based on a compromise is final and not open to appeal. MUSSAMMAT RAM BAJJI *v.* HARNARAIN. **105 P R 1889**

8. *Appeal—Finality of decree—Lawful agreement.*

A decree made in accordance with a *lawful* agreement or compromise under order XXIII, rule 3, is final.

The word *lawful* refers to the legality of the terms or conditions of the compromise.

A compromise can only be set aside on the ground of fraud in a regular suit or by review of judgment. BUDHU MAL *v.* MUSSAMMAT RUP KAUR. **81 P R 1890**

9. *Setting aside decree passed on a compromise—Minor—Guardian* ad litem—*Fraud in equity—Knowledge—order XXIII, rule 3 and order XXXII, rule 7, Civil Procedure Code.*

Although there is no doubt authority for setting aside a decree passed on a compromise affecting the interests of a minor made with the leave of the Court (order XXIII, rule 3 and order XXII, rule 7, Civil Procedure Code) if it can be shown that the Court, when it granted leave, was not fully aware of the facts even though there was no fraudulent withholding of knowledge or concealment of facts; *held*, on the facts, that there was nothing approaching to a withholding of knowledge or even a negligent omission on the part of the guardian *ad litem* to obtain knowledge.

The Court, with the facts fully before it, considered the compromise for the benefit of the minor, and to hold that the guardian *ad litem* in entering into the compromise for reasons similar to those which led the Court to sanction it, was guilty of a "fraud in equity," appeared to be impossible. HAR NARAIN *v.* MUSSAMMAT DEOKI AND MUSSAMMAT RAM BHEJI. **24 P R 1893**

10. *Civil Procedure Code,* 1908, *order XXIII, rule* 3, *Compromise of suit—Finality of decree in accordance therewith—Unauthorised compromise.*

No appeal lies from a decree passed under order XXIII, rule 3, Civil Procedure Code, in accordance with a lawful compromise so far as it relates to so much of the subject-matter of the suit as is dealt with by the compromise.

The word "lawful" in the said section has reference to the subject-matter or the terms of

CIVIL PROCEDURE CODE, 1908
—*contd.*

Order XXIII, rule 3—*contd.*

the compromise, and not to its binding character on the parties to it. A deed of agreement or compromise, therefore, that is lawful as between those who actually executed it, does not cease to be so because they, or some of them, had not authority to bind such among their co-suitors as were not present in Court, though the said suitors may not be bound by their act. ALA BAKHSH KHAN *v.* KASIM ALI KHAN. **48 P R 1895**

11. *Decree in accordance with compromise—Agreement of parties—Power of Court to enquire whether compromise, denied in Court, had been assented to elsewhere.*

Held, by the Full Bench, that it is not essential before a Court can pass a decree in accordance with a compromise that all the parties to it should assent to it before the Court, and that it is open to the Court, if any party to the compromise refuses to assent to it when it is brought before the Court to enquire whether an assent had been given elsewhere and if it finds this proved, to pass a decree in accordance with the compromise thus assented to. HARKHA *v.* KIRKPATRICK. **8 P R 1896 F B**

12. *Appeal—Civil Procedure Code,* 1908, *order XXIII, rule* 3, *section* 115—*Offer made by defendant* pendente lite *to settle case—"Compromise"—Decree based on plaintiff's acceptance of offer—Offer repudiated by defendant—Power of pleader to compromise suit.*

Plaintiff's suit, which was filed on 7th May 1895, was in respect of one-third of the estate of one F. J., deceased, which plaintiff claimed as F. J.'s sister. On the 18th June the pleas of a co-defendant, who had taken part of the disputed property in mortgage from the real defendant, Mussammat W. B., deceased's widow, were filed, and the latter's advocate applied for, and obtained, an adjournment in order that a compromise might be come to. After another adjournment the case was fixed for the 15th October, on which date Mussammat W. B. was represented by a pleader who stated his oral pleas on her behalf and concluded with the words "If plaintiff is still "willing to receive Rs. 2,000 in satisfaction "of all claims, defendant No. 1 is willing to "pay. If not she cannot recognize any claim "of the plaintiff."

Thereupon the parties appear to have applied for a further postponement in order that the case might be settled out of Court, and the 23rd October was fixed for the next hearing. On that date nothing was said on either side about any compromise or defendant's offer, but defendant's pleader got additional pleas on the merits recorded. The case was then adjourned (for no special reason) to the following day, when plaintiff's recognized agent, acting on a fresh power-of-attorney, dated the day before and in super-

CIVIL PROCEDURE CODE, 1908
—*contd.*

Order XXIII, rule 3—*concld.*

session of a previous power in his favour, stated that plaintiff was willing to take Rs. 2,500 in full satisfaction of her claim and to forego costs. Defendant's pleader (who was other than the pleader through whom the offer of the 15th October had been made) replied that he had that day been instructed to say that his client did not agree to pay Rs. 2,500, and that if the Court gave a decree, it must be against the estate. To this plaintiff's pleader objected. The Court held that the offer of the 15th October was subject to no such qualification, and gave a decree in plaintiff's favour for Rs. 2,500 " on " the pleadings as they stand." This decree was at first modified by the Divisional Judge on appeal, but was subsequently restored by him on review. Defendant appealed to the Chief Court, and it was objected, on plaintiff's behalf, that the decree fell within the purview of order XXIII, rule 3, of the Civil Procedure Code, and was therefore final.

Held, that whether or not the decree in the present case fell under the said section, the procedure of the District Judge was sufficiently tainted with material irregularities to justify interference under section 115 of the Code.

Semble: Under the circumstances of the case an appeal was competent.

Held, that the material irregularities committed by the District Judge were (*i*) in stating that his decree was based on the pleadings, when in fact the said decree was not made with reference to any material allegation of fact or proposition of law relating to the subject-matter of the suit made or affirmed by one side and admitted by the other; (*ii*) even assuming that the Court had power to pass such a decree, in not enquiring, as it was bound to do, into the objections of defendant, whose pleaders should have been asked whether repudiation meant that the original offer had not been made with authority or merely that it was withdrawn and the acceptance too late; (*iii*) in not making any inquiry as to whether defendant's pleader had express authority to make the offer of the 15th October; (*iv*) in assuming that the said offer was still binding on the 24th October, and in proceeding to pass a decree in accordance with its terms without further inquiry.

Held therefore, that the decrees of the lower Courts must be set aside.

A pleader has not power without express authority from his client to bind him by a compromise. MUSSAMMAT WAZIR BEGAM *v.* MUSSAMMAT PIYARI BEGAM. **50 P R 1898**

Order XXVI, rules 9 and 10.

Order XXVI, rules 9 and 10—When issues are fixed, they ought not to be referred generally for the determination of a commission; a commission can only report on some matter in dispute or in evidence. HYDAR SHAH *v.* JAFIR SHAH. **11 P R 1868**

Order XXVI, rules 11 and 12.

Order XXVI, rule 10.

And section 99—Omission to file record of evidence with report of local commission—Irregularity not affecting merits or jurisdiction.

Held, that though the depositions of witnesses examined by a local commission ought to be recorded under order XXVI, rule 10 of the Civil Procedure Code, and when recorded should be filed with the report, the omission to do so is one which is cured by section 99 of the Code, especially when the objector does not take any exception to it, till the case has arrived at the stage of second appeal. GANESH RAM *v.* RANJA.

161 P R 1882

1. *Order XXVI, rules 11,12—Examination of accounts—Jurisdiction—Objection taken on appeal—Obligation of Court to take evidence when accounts are referred under Order XXVI, rules 11 and 12 of the Civil Procedure Code—Appointment of more than one Commissioner not a sufficient irregularity to call for the interference of the Court.*

A defendant is not entitled to raise, on appeal, the question of jurisdiction, which he omitted to put in issue in the first Court unless the defect is patent on the record, When accounts are submitted to a commissioner under order XXVI, rules 11 12, the Court is not bound to take any other evidence than the Commissioner's report. The appointment of more than one Commissioner, under order XXVI, rules 11-12, Civil Procedure Code, is an irregularity, but may be treated as immaterial under section 99. KISHEN SHAH *v.* GURMOKH. **40 P R 1870**

Order XXVI, rule 13.

1. *Partition suit—Decree omitting to specify the particular properties decreed—Determination of such questions by executing Court.*

In a suit for partition in which the decree omitted to specify the actual portions of land to be assigned to each sharer, *held*, that though there may be cases in which it is the duty of the Court to specify in the decree the particular properties which are to form the shares decreed, the facilities afforded by order XXVI, rule 13, of the Civil Procedure Code being made use of for this purpose, and such questions should not as a matter of course, or as a matter of usual practice, be relegated till the execution of the decree; still it cannot be held that in all cases the specific shares must be declared by metes and bounds in the decree itself, and cannot be determined by any procedure in execution of decree in any case whatever. GANGA RAM *v.* GURSARN DAS. **31 P R 1887**

2. *Commission to make partition after disposal of suit—"May issue a commission to such persons as it thinks fit"—Power of Court to issue commission to single person—*

Order XXVI, rule, 3—*contd.*

Irregularity in procedure—Estoppel of party acquiescing—Appeal.

In a suit for partition under order XXVI, rule 13, Civil Procedure Code, arbitrators were appointed and a decree made in terms of their award. Subsequently, the decree-holder applied in execution of his decree to be placed in separate possession by partition of his share of the property. A single commissioner was appointed by consent, and he submitted two alternative schemes for partition, of which one was approved and sanctioned by the District Judge, who directed it to be carried out. Thereupon, the defendant appealed to the Chief Court, objecting that the partition proposed was not a fair one; while on behalf of the respondent it was contended that the proceedings in the Court of first instance were irregular, and that as a consequence of the irregularity there was really no decree in existence and no appealable order, of which either the Chief Court or the Court below could take cognizance.

Held, that in a suit for partition of immovable property not paying revenue to Government, the Code of Civil Procedure contemplates an order ascertaining the property to be divided, the parties interested and their several rights therein; and provides for the issue, thereafter, of a commission to make partition, a report under the commission, and a decree based thereupon.

The distinction which exists between suits of the above class and suits for partition of land paying revenue to Government, administration suits, suits for an account, or for dissolution of partnership, in which the legislature has provided that the preliminary order adjudicating on the rights of the parties shall be deemed to be a decree within the meaning of section 2 of the Civil Procedure Code, and therefore appealable, pointed out and discussed.

Held also, that where the Court below, following an erroneous practice, has prepared what purports to be a former judgment and decree without ascertaining the specific properties to be partitioned, the decree thus prepared is nonetheless a decree because it ought to have been a preliminary adjudication and order and it is open to appeal and liable to be set aside upon the ground that it is a premature and defective decree; but where, as in the present case, the parties have acquiesced in the irregular proceedings, they are estopped by their own conduct from excepting to such proceedings after their conclusion, merely on the ground of their irregularity.

Held further, that the word "persons" in the first clause of section 396 of the Code of Civil Procedure, 1882, means "more persons than one" and not "one or more persons," and a Court has no power under that section to issue a commission to a single person except with consent of parties.

Order XXVI, rule, 3—*concld.*

I. L. R. VII Calc. 318 referred to. KANSHI NATH *v.* BULAKI DAS.

124 P R 1893

But see ORDER XXVI, RULE 13, WHERE WORD USED IS "PERSON."

3. *Order fixing plaintiff's share in suit for partition and directing partition—"Decree"—Appeal.*

In a suit for partition of immovable property, the Court, after making a full inquiry, wrote an order, which was headed as a judgment, deciding that plaintiff was entitled to a one-third share in certain specified property. No decree was framed, but the Court directed the parties to appear on a certain date and to suggest the names of persons whom they wished to be appointed as commissioners for partition and on their failing to agree about this, allowed them further time in order to inform him how they valued the properties held liable to partition, so that he might allot them to the highest bidder among them.

Held, by the Chief Court, on revision, that the order of the Court, fixing plaintiff's share and directing partition, was not a decree within the meaning of section 2 of the Civil Procedure Code, and that no appeal lay therefrom.

124 *P. R.* 1893, followed; *I. L. R. XIX, Calc.* 463 not followed. PARMA NAND *v.* RUP CHAND. **37 P R 1896**

Order XXVI, rules 13, 14.

1. *Partition—Order declaring the right of parties and the property to be partitioned in a partition suit—Omission to appeal from such order—Effect of, as regards appeal from final decree.*

See APPEAL—CIVIL. **49 P R 1902**

2. *Decree in suit for partition—Application for effecting partition—Execution of decree—Competency of judgment-debtor on a subsequent application for execution to raise objection on ground that a preceding application was barred*—Res judicata—*Limitation Act*, 1877, *schedule II, articles* 178, 179.

See PARTITION. **47 P R 1906**

Order XXIX, rule 1.

1. *Suit by Corporation—Power of Secretary to sue on behalf of Corporation.*

A suit having been instituted by one B, as Secretary of the Northern India Trades Association in the name of the Association, to recover arrears of subscription said to be due by defendant, a member of the Association, it was contended for the defendant that B had no *locus standi*, as he neither had a power-of-attorney to act for the Association, nor was there anything in the Articles of Association which gave him authority to sue on behalf of the Company or Association.

Held, that the Association which B represented, and which was incorporated under section 26 of the Companies Act (VI of 1882),

CIVIL PROCEDURE CODE, 1908 —*contd.*

Order XXIX, rule 1—*concld.*

being a Corporation within the meaning of order XXIX, rule 1 of the Civil Procedure Code, the plaint might under that section be subscribed and verified on behalf of the Corporation by B as Secretary to the Corporation. NORTHERN INDIA TRADES ASSOCIATION *v.* LAWRIE. **43 P R 1885**

2. *Suit by Association—Power of Secretary to conduct suit—Articles of Association Conditions of retirement from membership*

Order XXIX, rule 1 of the Civil Procedure Code does not empower the Secretary of an Association to conduct a suit, and appoint pleaders on behalf of the Association, nor can he do so unless the Articles of Association give him this authority, or unless he is appointed as an authorized Agent for the purpose in the way laid down in the said Articles.

One of the Articles of Association provided that a member must on resigning his membership, pay up all sums due by him to the end of the current month in which he resigned.

Held, that a member of the Association desiring to withdraw from it must do so in the manner prescribed by the article, and until the conditions therein prescribed were complied with, he did not cease to be a member. NORTHERN INDIA TRADES ASSOCIATION *v.* MATTHEWS. **58 P R 1886**

Order XXXII, rule 1.

1. *See* ARBITRATION. **92 P R 1885**

2. *And order XXXII, rules* 4 (1) *and* 10 (1)—*Minor plaintiffs suing by next friend—Removal of next friend for misconduct—Omission by Court to appoint another guardian—Effect of such omission—Ground for second appeal.*

Where the Court allowed a suit to be instituted on behalf of two minors by one B. as next friend, but subsequently, suspecting B.'s collusion with the opposite side, revoked such permission, whereupon the case was allowed to be prosecuted by the elder of the two plaintiffs, a boy of about 15 years of age, who finally agreed to refer the case to arbitrators, in accordance with whose award a decree in favour of plaintiffs was passed.

Held, on defendants' appeal to the Chief Court, that under the provisions of order XXXII, rule 1, of the Code of Civil Procedure it was clearly the duty of the Court, when it saw reason to revoke the permission previously granted to B., to proceed in the manner prescribed by order XXXII, rule 10 (1), that the appointment of one of the minors to conduct the suit was quite contrary to the provisions of order XXXII, rule 4 (1) and must for the purposes of the suit be treated as a nullity, and therefore the plaintiffs were not from the stage when B. ceased to act for them properly represented. DINA *v.* BAHAWAL BAKSH. 100 *P R* 1882 *cited.*

CIVIL PROCEDURE CODE, 1908 —*contd.*

Order XXXII, rule 1—*concld.*

Held further, that though the defendants might have immediately applied to the first Court for the plaint to be taken off the file, or for the Court to proceed as directed in order XXXII, rule 10 (1), their omission to do so at the time did not prevent them from pressing the objection in second appeal, nor could it have the effect of giving validity to proceedings which the law did not permit to be taken. RAHIM *v.* AHMAD. **125 P R 1882**

3. *Act XL of* 1858, *section* 3—*Minor—Suit by next friend of minor—Absence of certificate—Omission to record a formal order granting permission to sue—Irregularity.*

The mere omission to pass a formal order granting the permission contemplated by section 3 of Act XL of 1858 is not a fatal defect justifying the dismissal by the appellate Court of a suit which has proceeded to judgment in the first Court without objection by the defendant. Such omission is a mere irregularity covered by section 99, Civil Procedure Code. Section 3 of Act XL of 1858 contains no express provision as to the mode in which the necessary permission should be recorded. It may be implied from the action of the Court in tacitly accepting the plaint and allowing the case to proceed.

I. L. R. XIV Calc. 159, and *IX All.* 508, followed. RAM RAGHBIR *v.* GAURI PERSHAD. **166 P R 1889**

Order XXXII, rule 3.

1. *Minor defendants—Omission by Court to appoint guardian* ad litem—*Effect of such omission—Appointment by Court to be formally made.*

Where one of three defendants agreed to refer a case to arbitration in the name of all three defendants, and, at the time of the attestation of the agreement in Court, stated that the remaining defendants, who were his nephews, were minors, but that he had been recorded at Settlement as their *surbarah* and would be answerable for them; whereupon the Court without passing any order appointing the first defendant to be guardian *ad litem* for the minor defendants, or in any way expressly recognizing him as such guardian, referred the case to the arbitrators named in the agreement, *held*, that the minors were not bound by the reference to arbitration, as under order XXXII, rule 3 of the Code of Civil Procedure, it was the duty of the Court to appoint a guardian *ad litem* on behalf of the minor defendants, when the fact that they were minors was brought to its notice, and no such appointment having been made the proceedings as against them were void.

Held further, that it was not to be presumed from the circumstances of the case that the Court gave the necessary permission to represent the minors, as such permission

CIVIL PROCEDURE CODE, 1908 —*contd.*

Order XXXII, rule 3—*concld.*

must be formally recorded by the Judge, it being an act of judicial discretion which is necessarily open to appeal. DINA *v.* BAHAWAL BAKSH. **100 P R 1882**

See also SUKHA SINGH *v.* BUR SINGH. **100 P R 1882 N.**

2. *And order XXXII, rule* 4—11 (2)—*Guardian* ad litem, *duration of authority of—Application for review.*

Held, that a guardian *ad litem* duly appointed in a suit against a minor is not *functus officio* on a decree being passed in the suit in which he was appointed and that he holds office until removed by death, or the act of the Court (sections 458 and 459 of the Civil Procedure Code). Therefore all applications on behalf of the minor, arising out of, or connected with, the suit, *e.g.*, an application for review of judgment, must be made by the constituted guardian. NUR MUHAMMAD *v.* SHAH MAL. **115 P R 1885**

3. *Suit against minor—No formal order appointing guardian* ad litem—*Informal sanction of Court.*

Held, that the mere fact that there is no formal order of the Court under order XXXII, rule 3 of the Civil Procedure Code, for the appointment of a guardian *ad litem* to a minor defendant, does not vitiate the proceedings when it appears on the record that the Court had in fact, though informally, sanctioned the appointment of a certain person as such guardian.

I. L. R. XIV Calc. 204 and *I. L. R. IX All.* 508, followed; 100 *P. R.*, 1882, not followed. DHANPAT MAL *v.* KHAZANA. **67 P R 1897**

Order XXXII, rule 4.

1. *See* CIVIL PROCEDURE CODE, 1908, ORDER XXXII, RULE 1. **100 P R 1882**

2. *See* APPEAL, CIVIL. **62 P R 1883**

3. *See* CIVIL PROCEDURE CODE, 1908, ORDER XXXII, RULE 3. **115 P R 1885**

4. *And section* 107 (2), *order XXII, rule* 11, *section* 108—*Competency of a married woman to represent a minor in an appellate Court—Guardian.*

See GUARDIAN. **8 P R 1908**

Order XXXII, rule 5

See CIVIL PROCEDURE CODE, 1908, ORDER XXXII, RULE 3. **19 P R 1899**

Order XXXII, rule 7.

1. *See* CIVIL PROCEDURE CODE, 1908, ORDER XXIII, RULE 3. **105 P R 1889**
24 P R 1893

CIVIL PROCEDURE CODE, 1908—*contd.*

Order XXXII, rule 7—*contd.*

2. *See* WITHDRAWAL OF SUIT.
3 P R 1905

3. *And Schedule II, p. 1—Arbitration—Award—Decree on judgment in accordance with an award—Reference by guardian* ad litem *of a minor without leave of Court—Admissibility of objection denying validity of reference on revision.*

See REVISION—CIVIL. **4 P R 1907**

4. *Oaths Act (X of 1873)—Party to suit—Next friend of a minor offering to be bound by the oath of his adversary—Agreement without leave of Court not binding on minor—Inquiry into minor's benefit—Necessity of express sanction.*

During the course of an enquiry the next friend of a minor plaintiff agreed to relinquish the claim should the opposite party take a certain oath. The opposite party took the oath proposed and the suit was consequently dismissed.

Held, that the agreement, to be bound by an oath, was an agreement on behalf of the minor with reference to the suit of the nature contemplated by order XXXII, rule 7, Civil Procedure Code, and that the next friend was not competent to enter into it without the leave of the Court. *Held* also, that the agreement not having been made with the express sanction of Court accorded after inquiry as to whether it would be for the minor's benefit was not binding on the minor. SHADI *v.* NATHU.
186 P R 1889

5. *Oaths Act, 1873—Offer to be bound by oath of other party—Power of next friend to bind.*

The next friend of a minor plaintiff is competent to bind the minor by an offer under the provisions of the Indian Oaths Act, 1873, that the oath or solemn affirmation by the other party to, or by any witness in, such proceeding shall, as against the minor, be conclusive proof of the matter stated.

The leave of the Court under order XXXII, rule 7, Civil Procedure Code, is not required. No. 186 *P. R.*, of 1889, and *I. L. R, XII Mad*, 483, referred to. MALAK SORAB *v.* ANOKH RAI. **18 P R 1891 F. B.**

6. *Suit for custody of wife—Minors—Reference to arbitrators—Sanction of Court—Civil Procedure Code,* 1908, *order XXXII, rule 7, Schedule II, p.* 16—*Appeal—Material irregularity.*

Plaintiff, a minor, through his father as next friend, sued for the custody of his minor wife whose mother was appointed her guardian *ad litem*. The first Court framed only one issue, *viz.*, whether plaintiff's marriage with his wife was legal and valid, and allowed the matter in dispute to be referred by the respective guardians to two arbitrators, an umpire being appointed by itself in case of a difference of opinion. The arbitrators on the 13th November 1894 filed an award finding the marriage proved whereupon the Court after allowing the usual time for objections decreed plaintiff's claim. This decree having been confirmed on appeal by the Divisional Judge, defendants preferred a further appeal to the Chief Court.

Held, that though it was doubtful whether an appeal could be said to lie the defects that were apparent in the proceedings of the first Court were such as to amount to "material irregularity," inasmuch as (*a*) the Court failed to record an order under order XXXII, rule 7 of the Civil Procedure Code, before allowing the case to be referred to arbitrators by the guardian of the minor defendant, and (*b*) it was not competent to the Court to delegate to arbitrators the question, whether or not a claim for custody of a wife should be decreed, such question especially when either party is a minor being entirely one for the discretion of the Court. HIRA *v.* DINA. **37 P R 1895**

7. *Minor Compromise of suit—Sanction of Court—Civil Procedure Code,* 1908, *order XXXII, rule 7—Statement of minor at mutation proceedings—Estoppel.*

In March 1893, one G. R. sued for foreclosure of a mortgage by way of conditional sale, the defendants impleaded being M. S., S. S., and Mit Singh, the present plaintiff, who was at the time a minor and represented by S. S. his uncle, who however had not been appointed guardian *ad litem* by the Court. M. S. and S. S. (the latter for himself and Mit Singh) confessed judgment and a decree was passed in favour of G. R. for foreclosure unless the amount due under the mortgage were paid by a specified time. This amount was not paid and the decree became absolute. Thereupon one B. S. sued all the above-mentioned parties, claiming pre-emption, Mit Singh being again represented by S. S. In this suit also a compromise was filed, and on the back of it the Court endorsed an order in English accepting it and decreeing in accordance with its terms, it being also recorded in this order that Mit Singh was a minor and that S. S. had been appointed his guardian *ad litem*. B. S. subsequently sold part of the land and mortgaged the rest. The present suit was instituted by plaintiff, Mit Singh, for the whole of the land, and the first issue framed was whether the foreclosure decree and the decree in the pre-emption suit were void and not binding on plaintiff. The first Court held that the irregularities in the foreclosure proceedings were sufficient to vitiate the former decree as against plaintiff, but held that this could not affect the pre-emption decree (No. 56 *P. R.*, 1896). It further held that plaintiff's admission at mutation in 1895 of both transactions acted as an estoppel. The Divisional Judge, on appeal, held that as no guardian *ad litem* had been appointed in the foreclosure proceedings and as the express sanction of the Court had not been obtained to the compromise in those proceedings or to that in the pre-emption suit, the decrees in neither case were binding on the plaintiff. He further held that No. 56 *P. R.*, 1896 was distinguishable, and that plaintiff's statement at mutation could not act as an estoppel. The appeal was therefore accepted and the case remanded under order XLI, rule 23 of the Civil Procedure Code.

Held, that as there was a good defence in the foreclosure proceedings on account of the irregularities and as it could not be held that the compromise agreed to by S. S. was to the benefit of the minor to whom no guardian *ad litem* had been appointed, while the requirements of order XXXII, rule 7 of the Civil Procedure Code, had not been complied with, the decree in the foreclosure proceedings was not binding on plaintiff.

Held further, as regards the decree in the pre-emption suit, that as there was nothing to show that the Court satisfied itself after due inquiry that the compromise was one such as in the interests of the minor ought to be accepted and as the compromise had not been expressly sanctioned by the Court as required by order XXXII, rule 7 of the Code, the decree in that suit also was not binding on the plaintiff.

Held also, that B. S., though he was a *bona fide* purchaser under the pre-emption decree, could not obtain a good title under a decree which was in itself a bad decree as against plaintiff, and from a person, G. R., whose title under the foreclosure decree was bad as against plaintiff.

Held finally, that plaintiff's admission at mutation, even if made by plaintiff individually, was at most an admission of facts which were not denied, and as it was not necessary that plaintiff should on that occasion have asserted his rights such statement, made with a view to the correction of the revenue papers, could not affect plaintiff's rights by estoppel or otherwise. BISHEN SINGH *v.* MIT SINGH. **17 P R 1899**

Order XXXII, rule 9.

See APPEAL, CIVIL. **62 P R 1883**

Order XXXII, rule 10.

See CIVIL PROCEDURE CODE, 1908, ORDER XXXII, RULE 1.
125 P R 1882

Order XXXII, rule 11.

See CIVIL PROCEDURE CODE, 1908, ORDER XXXII, RULE 3.
115 P R 1885

Order XXXII, rule 15.

See MUHAMMADAN LAW—JOINT FAMILY,
91 P R 1887

See CIVIL PROCEDURE CODE, 1908, ORDER XXXIII, RULES 2 and 3.
19 P R 1899

CIVIL PROCEDURE CODE, 1908 —*contd.*

Order XXXII, rule 15—*concld.*

Suit on behalf of alleged lunatic not so adjudged—Appointment by Court of guardian ad litem—*Practice—Act XXXV of* 1858.

See LUNATIC. **31 P R 1905**

—*Practice—Suit on behalf of alleged lunatic by next friend—Civil Procedure Code,* 1908, *order XXXII, rule* 15.

A suit was instituted in the names of B. R., a lunatic, and K. R., his minor son, by one T. R., as next friend, and the plaint was accompanied by an application by T. R. asking for permission to represent both plaintiffs, on the ground that one was insane and the other a minor, B. R. had never been adjudged insane by any competent authority.

Held, that the suit could not proceed at the instance of T. R., inasmuch as under order XXXII, rule 15 of the Civil Procedure Code, it is not open to a Court to permit a suit to be brought in the name of an alleged lunatic through a next friend, unless and until the said plaintiff has been formally adjudged to be of unsound mind under Act XXXV of 1858 or some other law for the time being in force.

Held further, that in any event, the minor K. R. was not a necessary or proper party to the suit in addition to his father B. R., who, even if insane, had not therefore become civilly dead or divested of his rights of property. KANWAL RAM *v.* BHAWANI RAM.

13 P R 1896

Order XXXII, rule 16.

See CIVIL PROCEDURE CODE, 1908, ORDER XXIII, RULE 3.

105 P R 1889

Order XXXIII, rule 1.

See PAUPER.

—*Application for leave to sue in* formà pauperis—*Court taking into consideration property in plaintiff's possession forming part of the subject-matter of the suit.*

In a suit for partition of the ancestral property of the parties, the lower Court dismissed an application by plaintiff for leave to sue as a pauper on the ground that he was in possession of sufficient property to enable him to pay the Court-fee. The plaintiff applied for revision of this order on the ground that the property referred to by the Court as being in his possession formed part of the ancestral property for partition of which the suit was brought, and being part of the subject-matter of the suit should not, with reference to the explanation to order XXXIII, rule 1 of the Civil Procedure Code, have been taken into account.

Held, that if it was shown that the property in the plaintiff's possession formed part of the ancestral property for the division of which the suit was brought, it should be excluded from consideration, and only such property in plaintiff's possession as did not form part of the subject-matter of the suit should be taken into account in determining whether

CIVIL PROCEDURE CODE, 1908 —*contd.*

Order XXXIII, rule 1—*concld.*

the plaintiff was a pauper or not. SHEIKH MUHAMMAD MUBARIK *v.* SHEIKH FAZAL ILAHI.

99 P R 1882.

Order XXXIII, rules 2 and 3.

—*Succession of widow—Application for leave to appeal* in formá pauperis *filed without schedule of pauper's property—Limitation—Application filed by manager of idiot plaintiff's estate—Civil Procedure Code, 1908, order XXXIII, rules 2 and 3, order XXXII, rules 5 and 15, order XLIV, rule 1, and section 132.*

On the death of one K., childless and without leaving any reversioners, a suit for the whole of his property was instituted on behalf of his widow, Mussammat J., a congenital idiot, by Kanhya, who had been appointed, under Act XXXV, of 1858, manager of Mussammat J's estate. The persons impleaded as defendants were—(1) Mussammat B., who had lived with K. as his mistress, and (2) Kanshi, who was no relation of deceased, but in whose favour deceased had apparently made a will, which, however, it was alleged on plaintiff's behalf, was invalid. The defendants took a so-called "preliminary plea" to the effect that plaintiff, being a congenital idiot was not entitled to succeed, and in reply thereto it was contended on plaintiff's behalf that by custom an idiot widow was not disqualified from inheriting. The Court, without considering the question as to the validity of the will, dismissed the suit on the ground that no such custom as alleged had been proved, and that the rule of decision must be taken from Hindu Law, under which plaintiff as a congenital idiot must be considered as incapable of inheriting. The suit was dismissed on the 28th July 1898, and on the 17th October the first day on which the Court was open after the vacation, Kanhya filed an application on behalf of plaintiff for leave to appeal *in forma pauperis*, without, however, filing a list of the pauper's property. The application was accordingly returned on the 6th November in order that such a list might be filed, which was done on the 11th November. For respondents it was contended, *(i)* that the application was incomplete without the schedule of property, and could not therefore be held to have been filed till the 11th November, by which date appeal was barred by limitation, and *(ii)* that the appeal was not properly presented (order XXXIII, rule 3 and order XLIV, rule 1, Civil Procedure Code).

Held, overruling the said contentions *(i)* that the application being accompanied by copies of the judgment and decrees of the lower Court, was in time, the date of presentation being the 17th October, and *(ii)* that the application which had been filed by the person who had been appointed, under Act XXXV of 1858, manager of plaintiff's estate, had been duly presented under order XXXII, rules 5, 15 of the Civil Procedure Code.

CIVIL PROCEDURE CODE, 1908 —*contd.*

Order XXXIII, rules 2 and 3—*concld.*

Semble: order XXXIII, rule 3 of the Code was inapplicable to the present case, as plaintiff, a Khatri woman of Nadaon, was entitled to the benefit of section 132 of the Code, and exempt from personal appearance in Court. MUSSAMMAT JANDI *v.* KASHI RAM.

19 P R 1899

Order XXXIII, rule 4.

See CIVIL PROCEDURE CODE, 1908, ORDER XXXIII, RULE 5.

130 P 1894

Order XXXIII, rule 5.

1. *Application to sue in* forma pauperis *—Order giving permission to sue for part of claim only.*

Where the Court, to whom an application was made for leave to sue *in forma pauperis*, found as a fact that the applicant was unable to pay the Court-Fees upon his claim as laid in his plaint, but, considering that he would probably only succeed as to part of that claim, gave him permission to sue as a pauper for such amount only, and refused to give him permission to sue as a pauper for the remainder, the Chief Court, on the revision side, set aside the lower Court's order, holding that the said Court was bound to give the applicant permission to sue as a pauper for the whole amount claimed. LAKHU *v.* MUSSAMMAT RAMU.

81 P R 1881

2. *Application to sue in* forma pauperis—*Rejection of application on ground that plaintiff was unlikely to prove his claim.*

Order XXXIII, rule 5 of the Code of Civil Procedure does not authorize the rejection of an application to sue *in formâ pauperis*, on the ground that the plaintiff is unlikely to be able to prove his claim to the satisfaction of the Court. The real question for decision is whether a *primâ facie* right to sue exists or not. NATHU *v.* SHEIKH SHAH MUHAMMAD.

25 P R 1885

3. *And order XXXIII, rule 7—Application for leave to sue* in formá pauperis *—Ground for refusing application.*

Where the lower Court rejected an application for leave to sue *in forma pauperis* on the ground that "the allegations of the plaintiff do not *prima facie* show that "under order XXXIII, rule 5 (c), Civil Procedure Code, his suit would succeed," *held*, that the Court had misstated the ground contained in the clause cited, and that as the plaint disclosed a claim cognizable by the Court in question, it was not for that Court to go further at the present stage and determine what prospect the petitioner had of success upon the merits, and that therefore the Court's order must be set aside and the case returned for a fresh order under order XXXIII, rule 7 of the Code. SAMNATH *v.* GANGA NATH.

122 P R 1886

CIVIL PROCEDURE CODE, 1908 —*contd.*

Order XXXIII, rule 5—*contd.*

4. *Application to sue* in forma pauperis—*Rejection of application on ground of omission by plaintiff to enter all his property in the schedule.*

It is not a ground for rejecting an application to sue *in forma pauperis* under order XXXIII, rule 5 (a) of the Civil Procedure Code, that the applicant has omitted to enter all his property in the schedule filed by him. JHANDA MAL *v.* DIT MAL.
27 P R 1887

5. *Application for leave to sue* in forma pauperis—*Grounds for rejecting such application—Allegations showing "right to sue" in Court where application is made.*

It is not intended by any of the provisions of Chapter XXVI of the Civil Procedure Code, 1882, that the Court should be at liberty to reject an application to be allowed to sue as a pauper, merely because in the opinion of the Court, the suit is not one which is likely to end successfully for the plaintiff. The points in regard to which the Court has to be satisfied are those mentioned in order XXXIII, rule 5; clause (c) of that section merely requires that the *allegations* in the plaint should at least show a right to sue in the Court to which the application is presented. MUSSAMMAT DAYA KOUR *v.* THAKAR SINGH. **155 P R 1888**

6. *Application to sue* in forma pauperis—*Court issuing notice to defendant without preliminary inquiry—Material irregularity—"Right to sue in such Court"—Civil Procedure Code,* 1908, *order XXXIII, rules* 4, 5, 6, 7 *and* 15.

Plaintiff having applied to the District Judge for leave to sue as a pauper, the District Judge, without making any inquiry under order XXXIII, rule 4 and order XXXIII, rule 5 of the Civil Procedure Code, 1908, issued notice to defendant, fixing a date for the parties to give evidence. On the date so fixed, the Court on an objection by defendant that plaintiff was subject to prohibition (c) of order XXXIII, rule 5 inasmuch as his suit was barred by limitation, rejected the application for leave to sue *in forma pauperis* but without specifying the section under which he acted.

Held, that the irregularity committed by the District Judge in omitting to proceed under order XXXIII, rules 4 and 5 before issuing notice to defendant was a "material irregularity" inasmuch as the rejection of an application under order XXXIII, rule 5 does not debar the applicant from making another similar application, whereas an order under order XXXIII, rule 7 is under order XXXIII, rule 15, a bar to a fresh application under that order of the Code in respect of the same cause of action.

CIVIL PROCEDURE CODE, 1908 —*contd.*

Order XXXIII, rule 5—*concld.*

Held further, that the expression "right to sue in such Court" in clause (c) of order XXXIII, rule 5 was not intended to refer only to want of jurisdiction in the particular Court in which the application is made, but extends to a case where the right to sue is barred by the law of limitation.

I. L. R. VII All. 661, followed. MUHAMMAD TAHIR *v.* SECRETARY OF STATE FOR INDIA.
130 P R 1894

Order XXXIII, rule 6.
See CIVIL PROCEDURE CODE, 1908, ORDER XXXIII, RULE 5.
130 P R 1894

Order XXXIII, rule 7.
See CIVIL PROCEDURE CODE, 1908, ORDER XXXIII, RULE 5.
122 P R 1886
130 P R 1894

—*Application for leave to sue as pauper—Application dismissed for default—Subsequent application—Civil Procedure Code,* 1908, *order XXXIII, rules* 7, 8, 11 *and* 15.

The dimissal, in default of prosecution, of an application for permission to sue as a pauper, is no bar to a subsequent application therefor.

V. B. L. R. App. 29, followed. ACHRU *v.* DITTA MAL. **64 P R 1896**

Order XXXIII, rule 8.
See CIVIL PROCEDURE CODE, 1882, ORDER XXXIII, RULE 7. **64 P R 1896**

Order XXXIII, rule 11.
See CIVIL PROCEDURE CODE, 1882, ORDER XXXIII, RULE 7.
64 P R 1896
See PAUPER SUIT. **104 P R 1908**

Order XXXIII, rule 15.
See CIVIL PROCEDURE CODE, 1908, ORDER XXXIII, RULE 5.
130 P R 1894

See CIVIL PROCEDURE CODE, ORDER XXXIII, RULE 7. **64 P R 1896**

Order XXXVIII, rule 1.
See ARREST. **77 P R 1888**

Order XXXVIII, rule 5.
Application for attachment before judgment—Suit by former defendant for compensation on ground that such application was made maliciously and without reasonable cause—Burden of proof.

On the 2nd June D. C. sued A. K. to recover a sum alleged to be due on a *hundi*, and on the same day applied under order XXXVIII, rule 5, Civil Procedure Code, for an attachment before judgment on the grounds that A. K. had closed his shop, removed therefrom property of considerable

CIVIL PROCEDURE CODE, 1908 —*contd.*

Order XXXVIII, rule 5—*concld.*

value, and intended on the following day to sell by auction certain house property, from which applicant inferred that A. K. had some evil intention and would waste all his property by degrees. The Court thereupon passed a conditional order for attachment, subject to security not being furnished, and the attaching officer went to A. K.'s shop to attach his property, but the actual attachment was averted by the necessary security being given. D. C.'s suit on the *hundi* was dismissed in the first Court, but decreed, on appeal, by the Divisional Judge, but previously to the latter decree, A. K. sued D. C. for Rs. 3,000 as damages for the injury said to have been caused by the attachment which was alleged to have been unnecessarily and maliciously applied for.

Held, that proceedings taken for the arrest of a defendant, or the attachment of his property, are of a kind which form an exception to the general rule, that it is not an actionable wrong to institute *civil* proceedings without reasonable and probable cause; and that therefore, the suit by A. K. was maintainable, and none the less so, because an actual attachment was averted by security being offered and accepted.

Held, further, that the principles governing the present action were, *mutatis mutandis*, the same as those in an action for malicious prosecution, and that it was necessary for plaintiff to prove: (1) that defendant had been actuated by malice; (2) that his proceedings were without reasonable and probable cause, malice, however, being properly inferred on proof that there were no sufficient grounds for the applications; and (3) that plaintiff had sustained some substantial injury.

In the present case the Court held on the evidence that plaintiff had failed to discharge the *onus* imposed on him. DALI CHAND *v.* ALAF KHAN. **86 P R 1895**

Order XXXIX, rule 1.

Temporary Injunction—Effect of alienation in contravention of injunction.

Whatever penalty a party disobeying an injunction might be liable the alienation made in contravention thereof is not void on that ground. KALA KHAN *v.* KIRPAL SINGH. **144 P R 1889**

Order XL, rules 1 and 3.

1. *Order XL, rules* 1 *and* 3—*Appointment of manager for other property than that attached.*

Held, by BOULNOIS AND MELVILL, JJ., (LINDSAY, J., dissenting), that a Civil Court executing a decree can appoint a manager under Section 148 of Act VIII of 1859, only for the property that has been actually attached upon the judgment-creditor's application, and not for other property of the judgment-debtor; as the Code merely contemplates attachment, seizure and sale, and

CIVIL PROCEDURE CODE, 1908 —*contd.*

Order XL, rules 1 and 3—*contd.*

not a *quasi* insolvency proceeding,—a winding up of the debtor's estate and liquidation of his liabilities. FATEH SINGH *v.* GUNGA PERSHAD. **53 P R 1874**

2. *And order XL, rules 1 and 3—Jurisdiction of Divisional Court to appoint a Receiver—Enquiry to be made under section 503.*

Held, that the direction contained in section 505 of the Civil Procedure Code, 1882, that the powers conferred by Chapter XXXVI should be "exercised *only* by High Courts and by District Courts," does not preclude a Court superior to the District Court, and hearing an appeal from the decree of that Court, from appointing a Receiver under order XL, rules 1 and 3 by virtue of the powers obtained under section 107 of the Code and that the word "only" in section 505 must be regarded as intended to exclude Courts subordinate to a District Court, but not superior Courts of appeal.

The question whether the appointment of a receiver is necessary for any of the purposes stated in order XL, rules 1 and 3 of the Code is one to be determined judicially, and if the necessity of the appointment is in dispute between the parties, the question can only be determined after enquiry with reference to the evidence. BUDH PARKASH *v.* SANT RAM. **102 P R 1885**

3. *Order XL, rules 1 and 5—Appointment of receiver—Power to cancel appointment—Jurisdiction of District Judge.*

Held, that there is no authority in the Civil Procedure Code for a District Judge, either upon an application to himself, or upon a reference by a subordinate Judge to cancel an order appointing a receiver under order XL, rule 1, in a suit which is not pending in the Court of the District Judge.

Quære, whether such order of appointment, once made can be cancelled by the Court or Judge who made it or by his successor in office before whom the suit is pending. SEVA DAS *v.* PURAN DAS. **74 P R 1889**

4. *Appointment of receiver.*

A very strong case should be made out before the power conferred by order XL, rule 1, relating to the appointment of receiver, can be exercised. That such an appointment would, under the circumstances, be expedient is not enough. It should be established that it is *necessary* to attain the object mentioned in that section. BHAI BHAGA SINGH *v.* HARNAM SINGH. **136 P R 1890**

5. *Appointment of receiver—Duty of Court—Order XL, rule 1, Civil Procedure Code, 1908.*

The duty imposed upon a Court in appointing a receiver under the Civil Procedure Code, 1908, examined and discussed.

It does not necessarily follow from the provision in order XL, rule 1, of the Code that a Court appointing a receiver may, if need be, remove the person in whose possession or custody the property in suit may be, from the possession or custody thereof, and commit the same to the custody or management of the receiver; or from the provision that the Court may grant to the receiver all such powers as are therein described, that the Court can authorise a receiver to enter upon immovable property in the possession of another person, without his consent, in order to take an inventory of all such property as the plaintiff may indicate as the property in dispute. MUSSAMMAT MAI GUJRI AND DIWAN LUCHMAN DAS *v.* DIWAN AMAR NATH AND DIWAN ANANT RAM. **69 P R 1891**

CIVIL PROCEDURE CODE, 1908 —*contd.*

Order XL, rules 1 and 3—*concld.*

6. *Civil Procedure Code, 1908, order XL, rule 1, section 104—Order refusing to direct receiver to pay out monies—Appeal.*

Held, that the appeal allowed by section 104, Civil Procedure Code, against an order, under order XL, rule 1, appointing or refusing to appoint a receiver does not extend to "directions" given by the Court to such receiver subsequently to his appointment. KAFUR CHAND *v.* NARINJAN LAL. **107 P R 1895**

7. *Appointment of Receiver—In what cases appointment necessary—Discretion.*

Held, that the appointment of a Receiver is a matter of discretion to be governed by all the circumstances of each particular case, one of these being the probability of the plaintiff being ultimately entitled to a decree, that a case of necessity for such appointment for the realization, preservation, better custody or management of the property, the subject of suit, has to be established before the Court can exercise its power under order XL, rules 1 and 3, Civil Procedure Code, and that no such order should be given unless strong grounds are made out. MUSSAMMAT BUDHWANTI *v.* MUSSAMMAT BISHEN KAUR. **73 P R 1902**

8. *And section 104—Appeal—Appeal from orders other than specified in paragraphs (a) to (d) of order XL, rule 1.*

Held, that the appeal allowed by section 104, Civil Procedure Code, against an order under order XL, rule 1, only extends to orders specified in paragraphs (*a*) to (*d*) of that section. WALI RAM *v.* ISHAR CHAND.

9. *See* RECEIVER. **26 P R 1904** **39 P R 1908** **107 P R 1908**

10. Order XL, rule 1—Appeal from order refusing to appoint a receiver.
See RECEIVER. **36 P R 1910**

Order XLI, rule 1.

1. *See* LIMITATION ACT (XV OF 1877), SECTIONS 4, 5, 12. **7 P R 1879**

2. *Necessity for copy of decree appealed against accompanying a memorandum of appeal.*

CIVIL PROCEDURE CODE, 1908 —*contd.*

Order XLI, rule 1—*concld.*

Held, that an appeal unaccompanied by a copy of the decree is not a good appeal in law, and an Appellate Court has no authority to dispense with the presentation of a copy of the decree appealed against. C. *v.* C. AND B. **22 P R 1903**

Order XLI, rule 3.

See APPEAL, CIVIL. **6 P R 1896**

Order XLI, rule 4.

See APPEAL, CIVIL. **6 P R 1879** **46 P R 1892**
See APPELLATE COURT, POWER OF. **26 P R 1881** **71 P R 1883**

1. *Appeal—Ground common to all defendants.*

A contracted to sell a house to B. On his failure to convey, B sued A for specific performance. A pleaded that at the time of sale he was not owner of the property, having previously gifted it to C and D. The first Court made C and D parties to the suit, and finding that the gift to them was invalid, decreed as against all defendants. C and D alone appealed, and the lower appellate Court holding that the gift was valid, dismissed the suit *in toto*.

Held, on appeal to the Chief Court, that C and D should not have been made parties to the suit as they relied on a title anterior to the sale to plaintiff, and that the lower appellate Court was wrong in dismissing the suit as against A as the original Court's decree did not proceed on grounds common to all the defendants. MITHA MAL *v.* FAIZ MUHAMMAD AND OTHERS. **113 P R 1889**

2. *Appeal—Appeal by one of several defendants—"Any ground common to all the defendants"—Civil Procedure Code, 1908, order XLI, rule 4—Procedure.*

Plaintiff sued on a bond executed by one S. K., since deceased, and made the father, the brother, the son and the widow of S. K., joint defendants, alleging that the bond, though given by S. K., in his own name, was really executed by him in his capacity of manager of the joint-family, and that the money had been spent on family purposes. The plaint proceeded to describe the defendants as the representatives (*kaim makam*) of S. K., and as in possession of property as members of a joint-family. The widow of S. K. and his son did not appear and proceedings against them were *ex parte*. The father and brother pleaded that they and S. K. were never joint; that S. K. had no power to bind them, and they had no assets of S. K. in their possession. The first Court held that the family was a joint one and gave a decree against all the defendants. From his decree the brother alone appealed to the Divisional Judge, who set aside the decree so far as the appellant's own personal

CIVIL PROCEDURE CODE, 1908 —*contd.*

Order XLI, rule 4—*concld.*

liability was concerned, but reserved the rights of his co-defendants to claim contribution of his share for payment of the decree. The brother thereupon preferred a further appeal to the Chief Court and urged, *inter alia*, that the Divisional Court should have discharged the other defendants also on his appeal which was against the whole decree of the first Court based on "a ground common to them all."

Held, that though the decree of the first Court proceeded against all the defendants upon the common ground that they, as members of a joint-family, were bound by the acts of their manager, S. K., there was also a special ground in support of it which affected only the representative of S. K.,—*viz.*, that S. K. was the person who executed the bond and his representative was therefore liable in any event—and that order XLI, rule 4 of the Civil Procedure Code had no application to a decree of this description, it being necessary for the legitimate exercise of the power given by that section that "the common ground" therein referred to should be the only basis of the decree under appeal.

Semble: The use of the power given by order XLI, rule 4 of the Code to Courts of Appeal is discretionary with the latter and not imperative, though the discretion must be exercised in a logical and reasonable manner.

II W. R. 227 and *XI W. R.* 449 cited. BURE KHAN *v.* SANT RAM. **8 P R 1895**

3. Order XLI, rule 4, Civil Procedure Code, has no application to applications for review; that section applies only to appeals and cannot be applied to reviews by analogy, for there is in effect no analogy between the two. GULLA *v.* MOTA AND OTHERS. **47 P R 1904**

Order XLI, rule 5.

See CIVIL PROCEDURE CODE, 1908, SECTION 145. **77 P R 1895**

See PRE-EMPTION, PAYMENT INTO COURT. **137 P R 1894**

1. *Decree for restitution of conjugal rights —Application for stay of execution— "Substantial loss to party applying"—Civil Procedure Code*, 1908, *order XXI, rule* 32, *and order XLI, rule* 5.

Held, that an order for stay of execution may be granted under order XLI, rule 5 of the Code to a wife against whom a decree has been made in a suit by her alleged husband for restitution of conjugal rights. JASSA RAM *v.* THARYA RAM. **2 P R 1894**

2. A surety who has given security for the due performance of an appellate decree under this section can be proceeded against summarily in execution proceedings.

Ganpat Rai v. *Gokal Chand* (77 *P. R.* 1895), overruled.

Tokhan Singh v. *Udwant Singh* (*I. L. R. XXII Calc.* 25) dissented from. RAGHBAR DAS *v.* SALIG RAM. **109 P R 1906 F. B.**

CIVIL PROCEDURE CODE, 1908 —*contd.*

Order XLI, rule 5—*concld.*

3. An order under this section refusing to stay execution of a decree is not appealable. CAMERON *v.* BULAKI MAL. **146 P R 1907**

Order XLI, rule 6.

See PRE-EMPTION, PAYMENT INTO COURT. **137 P R 1894**

1. *Stay of sale of immoveable property in execution of decree against which an appeal is pending.*

Where a decree for money is passed in favour of plaintiff in respect to a portion only of his claim and he appeals for the portion disallowed, and no appeal or cross-objection has been presented by the defendant against the portion of the decree which is in favour of plaintiff, there is no appeal pending against the decree as regards that portion within the meaning of the last clause of order XLI, rule 6 of the Code, so as to entitle the defendant to an order staying sale of property ordered to be sold in execution of the decree. BAHRAM KHAN *v.* BAGH SINGH. **120 P R 1890**

2. A security bond executed by a third party for the due performance of an appellate decree under this section can be enforced by process of execution.

Raghbar Das v. *Salig Ram* (109 *P., R.* 1906, *F. B.*) followed. DEOKI NANDAN *v.* GEHNA MAL. **125 P R 1906**

Order XLI, rule 10.

Security for costs—Recoverg of costs from surety in execution or by separate suit—Liability of surety if decree against principal debtor is barred by limitation.

A. J. was plaintiff-appellant in an appeal pending in the High Court at Allahabad and was required under order XLI, rule 10, Civil Procedure Code, to give security for the costs of the appeal. Pursuant to that order, A. J. tendered a security bond dated 8th September 1881, by which A. S. (defendant in the present suit) agreed to be responsible to the extent of Rs. 1,400, hypothecating a *haveli* situate at Sujanpur in the Gurdaspur District to secure the said sum.

On 5th April 1882, A. J.'s appeal to the High Court was dismissed with costs; and on 23rd June 1890 the defendant-respondent in that appeal filed a suit against A. S. for recovery of Rs 1,400 on the instrument of 8th September 1881, execution of the High Court decree for costs against A. J., the principal debtor, having meanwhile become barred by limitation.

Held, following No. 109 *P. R.* 1886, that at the date of the High Court decree the plaintiff had no remedy against the defendant (the surety) except by regular suit, and such remedy was not impaired by the fact that in 1888 the Legislature altered the law by providing a remedy by way of execution, which but for the law of limitation, would have been available to the plaintiff

CIVIL PROCEDURE CODE, 1908 —*contd.*

Order XLI, rule 10—*concld.*

after Act VII of 1888 became law, the rule that pending proceedings are generally governed by any change in the law of procedure not being extendible to substantive rights.

Held, also, that A. S. was not discharged from liability by reason that the right of the plaintiff in the present suit to execute the decree for costs against A. J., was barred by limitation. ABDUL SAMAD *v.* RAJA SIR INDAR KISHOR SINGH. **136 P R 1892**

Order XLI, rule 11.

See APPEAL, CIVIL. **24 P R 1881**
76 P R 1882

See LIMITATION ACT (XV OF 1877), SCHEDULE II, ARTICLE 168. **76 P R 1882**

See CIVIL PROCEDURE CODE, 1908, ORDER XLI, RULE 22. **25 P R 1897**

See CIVIL PROCEDURE CODE, 1908, ORDER IX, RULE 13. **8 P R 1903 Rev.**

1. *Civil Procedure Code* (*Act V of* 1908), *order XLI, rules* 11, 12 *and* 35—*Dismissal of appeal on merits, day of which notice has not been given to appellant—Appellant entitled to notice though at time of filing appeal he says he does not intend to appear at the preliminary hearing—Necessity for drawing up decree when appellate Court dismisses appeal at preliminary hearing—Necessity for Judge to sign decrees himself.*

An appellate Court is bound under order XLI, rules 11 and 12 of the Civil Procedure Code to fix a date for hearing the appellant or his pleader; and the mere fact that an appellant on the date of filing an appeal may say that he does not intend to appear at the preliminary hearing cannot set aside the clear provision of the law, or justify an appellate Court, who has not fixed a day for hearing the appeal, in disposing of it on the merits on a day of which notice has not been given to the appellant.

There is nothing in order XLI, rule 35 of the Civil Procedure Code which shows that a decree is unnecessary when an appellate Court confirms the order of an original Court at a preliminary hearing.

Under order XX, rule 7 and order XLI, rule 35 of the Code, a Judge is clearly bound to sign decrees himself, after he has satisfied himself that they have been drawn up in accordance with the judgment: he has no authority to delegate the signing of decrees to a subordinate ministerial officer. KHUSHAL *v.* KHUSHWAQT RAI. **7 P R 1888 Rev.**

2. *Appeal—Non-appearance of appellant —Dismissal for default.*

If on the day fixed in that behalf for the hearing of an appeal, the appellant does not attend in person or by his pleader, the appeal *shall* be dismissed for default (section 551, Civil Procedure Code, and section 88,

CIVIL PROCEDURE CODE, 1908 —*contd*.

Order XLI, rule 11—*contd.*

Punjab Tenancy Act, 1887). GOPAL SINGH *v.* KHUSHAL SINGH AND PIR MUHAMMAD

4 P R 1892 Rev.

Note—Cf. order XLI, rule 11 of new Code where the appeal *may* be dismissed.

3. *Appeal dismissed for default—Notice to appellant of time and place for hearing.*

In the matter of fixing dates and places for hearing suits and appeals, Revenue Courts are bound by the same rules as Civil Courts.

Held therefore, that where the Collector disposed of an appeal in camp, no notice of the place for hearing being given by him—an application under order XLI, rule 19, Civil Procedure Code, to restore the appeal being rejected by the Collector, which order was upheld by the Commissioner on appeal—the proceedings of both the lower Appellate Courts must be set aside with a direction to the Collector to re-hear the appeal, after fixing a date and place for this purpose and giving notice thereof to the parties.

No. 48 *P. R.* 1875, *Judicial Circular XIII*, para. 11 (page 50, 3rd edition), and *Revenue Circular* No. 17, para. 23 (Vol. I, page 71), referred to. BAHALA *v.* MAMRAJ.

7 P R 1892 Rev.

4. *Civil Procedure Code, order XLI, rule* 11—*Dismissal of appeal for default—Fixing day for hearing appellant or his pleader.*

The defendant filed an appeal in the Commissioner's Court. The practice of the Court was to permit appellants to deposit their appeal in a box.

The appellant's appeal was taken up several days after being so deposited, but the appellant, to whom notice had not been given, not appearing, it was dismissed in default.

Held, that as required by order XLI, rule 11, Civil Procedure Code, the Commissioner should have fixed a day for hearing the appellant or his pleader, and that the appeal must be remanded to him for rehearing. GURDIT SINGH *v.* SARDAR JAWALA SINGH.

19 P R 1892 Rev.

5. *Decree of first Court reversed by Divisional Court—Further appeal dismissed without summoning respondent—Civil Procedure Code,* 1908, *order XLI, rule* 11—*"Decree"—Application for execution—Costs—Procedure*

Plaintiff's suit was dismissed by the first Court, but on appeal his claim was decreed by the Divisional Court, the decree sheet of the latter Court expressly stating that plaintiff's costs of the original suit were to be paid by defendant. A further appeal by the defendant to the Chief Court was dismissed without summoning the respondent. Plaintiff applied for execution of the decree for costs, but was only awarded costs of the Appellate Court, those of the first Court not being allowed as the original decree of that Court had been against plaintiff and no fresh

CIVIL PROCEDURE CODE, 1908 —*contd*.

Order XLI, rule 11—*concld.*

decree had been drawn up. Plaintiff was directed to apply for amendment of the decree, but when he did so, he was informed that the Court had no power to amend as the final decree was that of the Divisional Court. The plaintiff thereupon applied to the Divisional Judge, who on the same principles referred him to the Chief Court.

Held, that the only subsisting decree in the case was that of the Divisional Court, confirmed by the Chief Court, and that no amendment of the decree of the first Court was necessary for the purposes of execution, all that was needed being to tax the costs of the first Court by calculating the costs in the original suit from the record.

Where an Appellate Court rejects an appeal without summoning the respondent, a decree should be drawn up in accordance with the judgment in the usual manner. There is, however, no rule about this, and in most instances it is not necessary for any practical purposes. SHERA *v.* RAMMAN SHAH.

9 P R 1900

Order XLI, rule 12.

See CIVIL PROCEDURE CODE, 1908, ORDER XLI, RULE 11.

7 P R 1888 Rev.

Order XLI, rule 14.

1. *Deciding appeal without fixing date for hearing.*

In a case where the Commissioner had on appeal revised the order of the lower Court without fixing a date for hearing or giving the respondent an opportunity of being heard, the order was set aside and the case remanded for a fresh decision in accordance with law. NAUROZ *v.* FAZALDAD.

9 P R 1890 Rev.

2. *Procedure of Revenue Courts—Appeal—Notice of appeal to respondent—Punjab Tenancy Act (XVI of 1887), section 88 (2) (a).*

A Revenue Court, when entertaining an appeal, ought to give notice to the opposite party to appear in order that he may have an opportunity of being heard in support of the order appealed against. BALDEO DAS *v.* BISHAMBAR DAS. **10 P R 1895 Rev.**

Order XLI, rule 17.

See APPEAL, CIVIL. **113 P R 1879**

9 P R 1883

See LIMITATION ACT (XV OF 1877), SCHEDULE II, ARTICLE 168.

44 P R 1882

76 P R 1882

—*And order XLI, rules* 19 *and* 21, *order XLIII, rule* 1, *section* 106, *order XLIII, rule* 4 *and section* 141—*Order rejecting application to re-admit application to set aside* ex-parte *decree dismissed in default—Appeal—Power of Court to treat such application as one for review.*

Held, that no appeal lies from an order rejecting an application to re-admit an

CIVIL PROCEDURE CODE, 1908 —*contd*.

Order XLI, rule 17—*concld.*

application, dismissed in default, to set aside an *ex-parte* decree.

Semble: A petitioner whose application to set aside an *ex-parte* decree has been dismissed in default, may either apply for review of the order dismissing his application in default or may appeal therefrom under order XLI, rules 17 and 21 of the Civil Procedure Code, 1908. If, instead of applying for a review, he makes an application to re-admit his previous application, it is competent to the Court to treat such application as in reality one for review. GANDA MAL *v.* MUSSAMMAT SUGHRA BIBI.

5 P R 1900

Order XLI, rule 19.

See LIMITATION ACT (XV OF 1877), SCHEDULE II, ARTICLE 168.

44 P R 1882

See REVISION IN CIVIL CASES.

13 P R 1881

1. *Dismissal of appeal for default in absence of all the appellants—Application for re-admission by one appellant on plea of illness—Sufficient cause for re-admission of appeal.*

Held, that where an appeal is dismissed for default owing to the absence of all three appellants, and subsequently one of the three applies to have it revived on the ground of his absence being due to illness, this is not a sufficient cause for re-admitting the appeal in the sense of order XLI, rule 19, Civil Procedure Code. SHARF-UD-DIN *v.* HAJI KHAN. **33 P R 1888**

2. *Refusal to re-admit appeal dismissed in default—"Sufficient cause."*

Notice of the date fixed for the adjourned hearing of an appeal, under order XLI, rule 11 of the Code, had in this case been duly given to an appellant. He left the station and his pleader having cases elsewhere left the Court on the day fixed, though he was told the case would be heard. It was called on within business hours and dismissed in default. An application for re-admission was rejected on the ground that sufficient cause had not been shown. On appeal to the Chief Court, stress was laid on the Court's Circular IV of 1887.

Held, that although under order XLI, rule 11 of the Code, a day and not a particular hour is to be fixed for the hearing, yet when the appeal is dismissed for default, the appellant is required by order XLI, rule 19 to show cause for non-attendance at the time when the appeal was called on for hearing.

Book Circular IV of 1887 explained. Para. 3 is restricted to parties and does not refer to pleaders.

Held further, that the non-attendance of both pleaders and client in this case was wilful. MIRAN BAKHSH *v.* RATTAN CHAND.

71 P R 1890

3. *Appeal dismissed for default in absence of both appellants—Application for re-admis-*

CIVIL PROCEDURE CODE, 1908 —*contd.*

Order XLI, rule 19—*concld.*

sion by one appellant—No reason given for absence of co-appellant—Meaning of term "the appellant."

M. D. and S. B., defendants in a pre-emption suit, appealed from a decree passed against them to the District Judge, but, as they did not attend either in person or by pleader on the day fixed for the hearing, the appeal was dismissed for default. On the same day S. B. applied under order XLI, rule 19 of the Civil Procedure Code for re-admission of the appeal, giving reasons for his non-appearance but none for that of M. D. On the day fixed for the hearing of the application M. D.'s pleader appeared with S. B. and contended that the application should be considered as having been made by M. D. as well as by S. B. The District Judge overruled this contention and, relying on No. 33 *P. R.* 1888, held the term "the appellant" in order XLI, rule 19 meant the appellants, jointly and severally, and that the incapacity of one appellant from appearing was no proof that "the appellant" was prevented from appearing. The appeal being dismissed, the appellants applied to the Chief Court.

Held, that the application by S. B., giving reasons for his non-appearance and making no reference to M. D., was not an application by or on behalf of M. D.

Held further, that the term "the appellant" as used in order XLI, rules 17 and 19 of the Code includes a sole appellant, or a group of appellants or one or more members of a group of appellants.

No. 33 *P. R.* 1888 dissented from. MATHRA DAS *v.* MEHAR CHAND.

42 P R 1894

Order XLI, rule 20.

See APPELLATE COURT, POWER OF. **26 P R 1881**

See JOINDER OF PARTIES. **118 P R 1890**

See CIVIL PROCEDURE CODE, 1882, ORDER I, RULE 9. **5 P R 1892**

Joinder of respondents on appeal—"Interested in the result of appeal"—Meaning of.

A., B., C. and D. filed a suit for the recovery of certain moneys from the defendant. The first Court dismissed their suit *in toto*. From that decision all the plaintiffs appealed, but the Divisional Judge only accepted A.'s appeal, and rejected that of B., C. and D. The defendant filed a further appeal against the decree of the Divisional Judge. On the day of the hearing an application was filed on behalf of B., C. and D. that they might be joined as respondents under order XLI, rule 20 of the Code of Civil Procedure.

Held, that the petitioners were not "interested in the result of the appeal" within the meaning of order XLI, rule 20 of the Code of Civil Procedure, as their claim had been disallowed by both the lower Courts, and they had not appealed and could not be granted a

CIVIL PROCEDURE CODE, 1908 —*contd.*

Order XLI, rule 20—*concld.*

decree on appeal against a decree in favour of a co-plaintiff, nor could any change be made in the order of dismissal passed against them.

Upendra Lal Mukerjee v. *Girindra Nath Mukerjee* (*I. L. R. XXV Calc.* 565), *Hudson* v. *Basdeo Bajpye* (*I. L. R. XXVI Calc.* 109) and *Ram Ditta* v. *Mohkam* (46 *P. R.* 1892), referred to. RAI BHOLA RAM *v.* RAI SETH CHAND MAL. **23 P R 1901**

Order XLI, rule 21.

See APPELLATE COURT, POWER OF. **70 P R 1885**

See LIMITATION ACT, 1877, 2ND SCHEDULE, ARTICLE 164 **5 P R 1897**

Order XLI, rule 22.

See APPEAL, CIVIL. **46 P R 1892**

See CAUSE OF ACTION. **96 P R 1895**

1. *Order XLI, rules 22, 25, 26—What objection (verbal or written) under former section is required—Power of Court under order XLI, rules 25, 26 to decide a question in absence of any objection under order XLI, rule 22.*

Plaintiff sued for possession of certain land which he alleged he had purchased from defendant. He stamped his plaint as for a claim valued at Rs. 150. The original Court gave plaintiff a decree for Rs. 300, the amount of the purchase-money said to have been paid, on the ground that defendant had no legal power to sell the land. Plaintiff appealed to the Deputy Commissioner, asking for possession of the land instead of a refund of the purchase-money: the appeal was dismissed, and the Deputy Commissioner also set aside the money decree for Rs. 300, (believing that plaintiff had not paid the defendant) without any written objection taken by defendant under order XLI, rule 22, Civil Procedure Code.

Held per LINDSAY, J., that as defendant had not taken proper objection under order XLI, rule 22, the Deputy Commissioner had no jurisdiction to reverse the money decree of the original Court, which would accordingly be affirmed.

Held, per CAMPBELL, J., that as plaintiff had not sued for a refund of the purchase-money, and as the stamp on his plaint was not sufficient to cover the amount, and moreover as plaintiff himself appealed from the decree awarding him Rs. :00 instead of possession, the Deputy Commissioner was competent to reverse the decree without giving the plaintiff other relief. *Held* also, that a verbal objection under order XLI, rule 22 is sufficient.

Held, per CUNNINGHAM, J., that the Deputy Commissioner was justified in reversing the order of the first Court, as under order XLI, rules 25, 26 the Appellate Court may raise and decide any question of fact essential to

CIVIL PROCEDURE CODE, 1908 —*contd.*

Order XLI, rule 22—*contd.*

the right determination of the suit upon the merits. RAMJEE DAS *v.* CHOOHUR.

78 P R 1870

Cf. C. P. C. 1908, ORDER XLI, RULE 33.

2. *Notice of objection—Respondent raising plea of* res judicata *decided against him in lower Court.*

A preliminary question having been raised for the defendant-respondents at the hearing of an appeal, that the plaintiffs' suit was barred as a *res judicata*, which objection had been overruled in the Court below, it was objected on behalf of the appellants that no notice of objection had been given under order XLI, rule 22, Civil Procedure Code.

Held, that no notice was necessary, as the defendants were not objecting to the decree which was in their favour, but desired to support the decree on a ground decided against them in the Court below. DHARM SINGH *v.* ATTAR SINGH. **59 P R 1886**

3. *Right of one co-respondent to take an objection to the decree as against another co-respondent in the appeal—Separate appeal.*

Held, that the language of order XLI, rule 22 of the Civil Procedure Code is not wide enough to permit a plaintiff-respondent, on the appeal of one defendant, to take any objection which the plaintiff could have taken by way of appeal against another defendant who is respondent in the appeal. The true interpretation of the section is that which interprets respondent as limited to a respondent in relation to the appellant, and on this interpretation the section does not permit one co-respondent to take an objection to the decree as against another co-respondent in the appeal.

The proper mode of proceeding in order to raise a question as between the plaintiff and a defendant in an original suit, who are co-respondents in an appeal by another defendant, is by a separate appeal by the plaintiff against the non-appealing defendant: and when the objection as between such co-respondents is taken within the period of limitation for an appeal by the objector against the co-respondent, and is otherwise not open to exception, the defect is only one of form, and might be overlooked, the objection being treated as an appeal, which in substance it is. But where the objection is taken after the period for an appeal has expired, it cannot be entertained as an appeal until the delay has been satisfactorily accounted for. SHER SINGH *v.* KABULA SINGH.

7 P R 1887

4. *Right of respondent to support decree upon ground decided against him in lower Court—Written notice of objection, when necessary.*

Order XLI, rule 22 of the Code of Civil Procedure draws a clear distinction between a respondent supporting a decree upon grounds decided against him in the Court

Order XLI, rule 22—*contd.*

below, and his taking an objection to the decree, which he might have taken by way of appeal. In the former case the respondent may support the decree in the manner indicated at the hearing, although he may not have filed any written notice of his intention to do so. But where the respondent means to object to the decree itself, in that case the section requires that a notice of such an objection in form of a memorandum, complying with the provisions of order XLI, rule 22, shall be filed not less than seven days before the date fixed for the hearing of the appeal. *Dharm Singh* v. *Attar Singh* (No. 59 *P. R.* 1886) cited. GAURI MAL *v.* NIDHA MAL. **127 P R 1888**

5. *Cross-objection as to costs—Appeal dismissed.*

A cross-objection as to costs is not entertainable when the appeal is dismissed for want of proper Court fee. SHAH ALAM *v.* MAHMUD. **2 P R 1889**

6. *Alienation by widow—Necessity—Suit by collaterals dismissed on appeal without notice being issued to respondents—Further appeal—Right of respondents, who had filed no cross-objections, to support decree by objection, going to the root of decree—Civil Procedure Code, 1908, order XLI, rules 11 and 22.*

In a suit by plaintiffs, as collateral of one M. B., to have it declared that a sale by his widow should not affect their reversionary rights, defendants pleaded that plaintiffs were not the collaterals of, or co-sharers with, M. B., or residents of the village where the land in dispute was situate, and, further, that the sale was for necessary purposes. The first Court found that plaintiffs were the collaterals of M. B., but that necessity had been proved in respect of the whole of the consideration and gave a decree in favour of plaintiffs on payment of this amount. Plaintiffs alone appealed, and their appeal was dismissed by the Divisional Judge under order XLI, rule 11, Civil Procedure Code. Plaintiffs having preferred a further appeal to the Chief Court, respondents, who had neither appealed from the finding of the first Court as to plaintiffs being the collaterals of M. B., nor filed any cross-objections, endeavoured to support the decrees of the lower Courts on the ground that plaintiffs had no *locus standi.*

Held, that it was not open to respondents to seek to maintain so much of the decrees as found the whole consideration to be for necessity, by shewing that the suit should have been dismissed *in limine* on the ground that plaintiffs had no *locus standi.*

The first and second paragraphs of order XLI, rule 22, Civil Procedure Code, are not on the same footing, and a decree cannot be supported by an objection going to the root of that decree. RULDA KHAN *v.* MUSSAMMAT KANDI. **25 P R 1897**

Order XLI, rule 22—*contd.*

7. *Specific performance of contract—Specific Relief Act, 1877, sections 12, 20, 22—Discretion of Court—Decree of lower Court reversed on respondents' cross-objections—Civil Procedure Code, section 561—Appeal from part only of decree.*

One D. D. having alienated his rights in a certain shop to one T. R., defendant was about to sue the latter for pre-emption when it was agreed between them that T. R. should sell his rights to defendants for Rs 2,000. Thereupon defendant entered into an agreement with plaintiffs to the following effect:—That defendant should pay Rs. 350, and plaintiffs the balance of the said Rs. 2,000 through defendant, to T. R.; that plaintiffs should bear all incidental expenses; that thereafter plaintiffs should be put into possession of three-fourths of the shop, one-fourth remaining with defendant, and that in the event of any breach of the said agreement, the party in default should pay the other party Rs. 500. A question having arisen subsequently as to what sum should be entered in the sale deed as consideration for the three-fourths part of the shop, the deed of sale was not executed, and the parties separated. Plaintiffs thereupon instituted the present suit, and alleged that defendant had given them possession of three-fourths of the shop, and had subsequently dispossessed them. They prayed that they might be restored to possession, and that defendant might be ordered to execute a conveyance in their favour, the latter portion of the prayer being inserted in the heading of the plaint, and not (presumably by an oversight) at the end of it. The first Court gave plaintiffs a decree in the terms of their prayer, but the Divisional Judge, on appeal, though finding all the facts in plaintiffs' favour, modified the decree of the first Court by granting them a decree merely for the Rs. 500, on the ground that there had been no complete constructive possession of the shop by plaintiffs, and because the suit was not one for specific performance. From this decree defendant appealed to the Chief Court and plaintiff filed cross-objections under order XLI, rule 22, Civil Procedure Code. For defendant it was contended that the said cross-objections were not maintainable on the ground that defendant had appealed only against a portion of the decree of the lower Appellate Court.

Held, overruling the objection, that the cross-objections were maintainable under order XLI, rule 22 of the Code.

Held, further, without considering defendant's appeal that plaintiffs' cross-objections must be allowed, on the ground that the suit as laid was for specific performance of a contract which, under the circumstances, was a proper contract to be specifically enforced, and none the less so, because a sum was named in it as the amount to be

Order XLI, rule 22—*concld.*

paid in case of its breach by the party in default, the fact that in this case the party in default was not willing to pay such sum being an additional reason for specifically enforcing the said contract.

According to section 22 of the Specific Relief Act, jurisdiction to decree specific performance is discretionary, but the discretion of Court is not arbitrary, but sound and reasonable, guided by judicial principles and capable of correction by a Court of Appeal. HAJI GHULAM MUHAMMAD *v.* KAKA RAM. **31 P R 1897**

8. *Query.*—Can an Appellate Court entertain cross-objections under order XLI, rule 22, of the Code of Civil Procedure when it has decided that an appeal would not lie? BALWANT SINGH *v.* RAM DAS. **28 P R 1908**

Order XLI, rule 23.

See REMAND.

(*a*) *Appeal from order of remand—Completion of proceedings under remand before hearing of the appeal—Refusal to hear appeal.*

See APPEAL, CIVIL. **129 P R 1884**
83 P R 1886
117 P R 1886

(*b*) *Appeal from District Judge's order of remand in Small Cause not exceeding Rs. 500 in value—Finality of such order on merits of preliminary point.*

See APPEAL, CIVIL. **126 P R 1886**

(*c*) *Appellate Court's power of remand.*

See APPELLATE COURT, POWER OF. **46 P R 1885**

(*d*) *Appeal to Privy Council from order of remand under order XLI, rule 23.*

See CIVIL PROCEDURE CODE, 1908, SECTION 109. **56 P R 1888**

(*e*) *See* OATHS ACT, SECTION 11. **45 P R 1898**

(*f*) *And section* 104—*Appeal from an order returning plaint for amendment—Remand by Appellate Court—No appeal from such order of remand.*

See APPEAL. **120 P R 1907**

1. *Splitting up subject matter of appeal into two parts—Remand as to one portion under order XLI, rule 23.*

The Commissioner, on appeal, splitting up the subject-matter of the appeal into two parts, remanded the case under order XLI, rule 23, Act V of 1908 as to one portion, while as to the other portion, he rejected the appeal. *Held*, that the proper course was to remand the case under order XLI, rules 25, 26, Act V of 1908, and upon return of the record to dispose of the whole appeal by a single order. MANGA *v.* MUSSAMMAT GURJAN. **82 P R 1877**

2 *Appeal from order of remand—Power of Appellate Court to come to a decision on*

CIVIL PROCEDURE CODE, 1908 —*contd.*

Order XLI, rule 23—*contd.*

the merits of the preliminary point—Suit decreed exparte *against one defendant and dismissed against another defendant—Liability of defendant against whom suit was dismissed to be again impleaded after the setting aside of the* exparte *decree—Finality of order passed by Munsif in case withdrawn from Small Cause Court and transferred to him under section* 24, *Civil Procedure Code—Validity of proceedings following order of remand passed on an appeal heard without jurisdiction.*

Plaintiff having sued two defendants, S. and T., in the Cantonment Small Cause Court for Rs. 90, the Judge dismissed the suit as against T., and decreed Rs. 81 *exparte* against S. on May 14th, 1885. The same day S. applied for the *exparte* decree to be set aside, which was done after notice had been given to the plaintiff and T., and the case was adjourned to a further date. Meanwhile the Judge of the Court quitted his office, and was succeeded by a Judge whose power was limited to cases not exceeding Rs. 50 in value. Thereupon, on a reference by the Judge to the District Court, an order was passed transferring the case to the Court of the Munsif, and both defendants were summoned. The Munsif, referring to the decree of the 14th May, ordered that T. be considered released from the suit, and having tried the suit, eventually dismissed it as against S. on the merits. Plaintiff then appealed to the District Judge as against S. only, not urging in the grounds of appeal that T. was responsible, but the District Judge after adding T. as a respondent held, (1) that an appeal lay; (2) that T. must be made a party to the suit and the case be heard on its merits, and he remanded the case under section 562, Civil Procedure Code, to the Munsif to be retried as against both defendants.

On an appeal to the Chief Court by T. from the above order of remand, *held* that it was competent to T. to contend in such appeal that the decision of the District Judge was wrong upon the preliminary point urged in the District Court, *viz.*, whether any appeal lay to that Court, and also to contend that the decision of the District Judge was wrong upon the question whether the Munsif could entertain the suit against T., even if the contention that the remand ought not to have been made under Order XLI, rule 23 was not maintainable.

Held further, that the appellant was entitled to succeed upon both the above points, first, because the decree of May 14th had terminated the suit as between the plaintiff and T. before the transfer of the suit from the Small Cause Court to the Munsif, such decree never having been set aside as between the plaintiff and T., and secondly, because the decree of the Munsif was, by reason of the last clause of section 24, Civil Procedure Code, not open to appeal.

It appeared in the above case that the order of remand made by the District Judge under Order XLI, rule 23 of the Code had been carried out, and an *exparte* decree been made by the Munsif against T.

Held, that the validity of such subsequent proceedings in the present case depended upon the validity of the order of remand: that the defendant T., who had not since appeared in the Munsif's Court or accepted the order of remand as valid, would be entitled to have the proceedings set aside even if they had been made in pursuance of the order of a competent Court, and that *a fortiori* he was so entitled when the order was made on an appeal heard without jurisdiction. TARA SINGH *v.* GURDITTA.

40 P R 1887

3. *Appeal from order of remand—Completion of proceedings under remand order pending the hearing of the appeal—Appellant refusing to recognize the jurisdiction of the Court acting under the remand—Reversal of order of remand.*

On an appeal from an order of remand under order XLI, rule 23, Civil Procedure Code, which was admittedly wrong in so far as it ought to have been made under Order XLI, rule 25 of the Code, it appeared that, while the appeal was pending, the remand order had been carried out and a new decision passed in favour of the present respondent. It further appeared that though the lower Court had declined to stay proceedings merely on the ground that an appeal had been filed, the appellant had declined to produce evidence, or to recognize the jurisdiction of the Court acting under the remand, which had accordingly proceeded to judgment under Order XVII, rule 3, of the Code.

Held that, under the above circumstances the appellant was entitled to an order accepting his appeal, and modifying the order of the lower Court under Order XLI, rule 23 so as to convert it into one under Order XLI, rule 25, Civil Procedure Code under which section the lower Court must re-decide the case itself. *Ali Bahadar Khan* v. *Raja Aladad Khan* (No. 129 *P. R.* 1884), and *Mussammat Mehran* v. *Fatteh Din* (No. 83 *P. R.*, 1886), distinguished. SURJAN MAL *v.* BAWA.

65 P R 1887

4. *And section* 107—*Dismissal of appeal by lower Appellate Court on preliminary ground—Reversal of decision on preliminary point by Court of second appeal—Remand to lower Court for decision on merits.*

Where the lower Appeallate Court refused to hear an appeal on the ground that the appellant had no *locus standi* to appeal without even looking into the merits, which decision was reversed on second appeal on the ground that the said appellant was competent to appeal, *held* that the proper course under the above circumstances was to remit the appeal under Order XLI, rule 23 (read with section 107 of the Code) to the Court which was by law authorized and required to hear it, as a Court of second appeal is not expected, much less bound by law, to perform functions which the Court of first appeal ought to have performed and has not entered upon at all. RAM DITTA *v.* ALLAYAR.

98 P R 1887

5. *Scope of appeal from order of remand—Preliminary point.*

Held that, when in a case appealable to the Chief Court there is an order of remand under Order XLI, rule 23 of the Civil Procedure Code, the appeal against the decision on the preliminary point lies to that Court in regard to the merits of the decision on that point, as well as in regard to the form of the order, as not being warranted by the terms of Order XLI, rule 23 KHALAS *v.* KALYAN SINGH.

109 P R 1887

6. *Order XLI, rule* 23, *sections* 104 *and* 105—*Appeal from order of remand—Order as to costs.*

Held that the appeal allowed by section 104, Civil Procedure Code, against an order of remand under Order XLI, rule 23, extends to an appeal against any part of such an order, *e. g.*, an order as to cost, which must be taken to be a part of the order itself, and not a separate interlocutory order from which no appeal lies until it has been incorporated in the final decree. NATHU LAL *v.* ZARU MAL.

89 P R 1889

7. *Remand—Misapplication of section and likelihood of injury resulting therefrom.*

The attention of the first Appellate Court in the Province drawn to the injuries which may arise from misapplying Order XLI, rule 23 of the Code and from making remands under that section when the proper procedure would have been to remand under a different section SENAH GUL *v.* SAHIB GUL.

63 P R 1890

8. *Civil Procedure Code,* 1908 *Order XLI, rule* 23 *and section* 104, *sub-section* (28)—*Appeal from order of remand—Unqualified right of appeal.*

Section 104, Civil Procedure Code, 1908, gives a person aggrieved by an order passed under Order XLI, rule 23 of the said Code an unqualified right of appeal from an order remanding a case, and the mere fact that the party has submitted to the proceedings resulting from such order of remand, or that such remand order has been carried out by the lower Court, does not in any way operate to restrict or justify the Appellate Court in declining to hear the appeal.

No. 129 *P. R.*, 1884, (No. 83 *P. R.*, 1886), and No. 117 *P. R.*, 1886, not followed. *I. L. R., XII Calc.*, 45, followed. GHULAM JILANI *v.* GHULAM HAIDAR KHAN.

89 P R 1891

CIVIL PROCEDURE CODE, 1908 —*contd.*

Order XLI, rule 23—*contd.*

9. *Arbitration—Consent of all the parties to the suit—Schedule II, P. 1, Civil Procedure Code, 1908—Appellate Court remanding an appeal under Order XLI, rule 23 as regards defendant and dismissing the appeal as regards the other defendants—More than one decree in same suit.*

J. sued D. B., the mother of the girl, and the girl's three uncles, for Rs. 1,000 damages for an alleged breach of a betrothal contract. After settlement of issues, the plaintiff and the three male defendants agreed to refer the matters in dispute to arbitration under the provisions of the Civil Procedure Code. D. B., the mother, did not sign the agreement, but K. M., one of the uncles, stated that he was representing her, and that he joined her in the reference to arbitration with her full knowledge and consent.

An award was given in favour of the plaintiff, upon which judgment and decree followed against all four defendants.

Upon appeal by the defendants, the Divisional Judge held that the award was inoperative as regards D. B., unless it could be shown that she had ratified the submission to arbitration, but that the award was good as regards the parties who had consented to the reference. The Divisional Judge accordingly remanded the case under Order XLI, rule 23, Civil Procedure Code, for decision as regards D. B., and dismissed the appeal as regards the three male defendants.

Held, on further appeal that the decree of the Divisional Judge was bad in law. He could not legally dispose of the appeal finally as regards the three male defendants and re-open the case by a remand as regards the fourth,—the almost inevitable result of such procedure being that, eventually, there would be more than one and possibly conflicting decrees, in the one suit.

Observations on the question whether D. B. was a party to the reference to arbitration, No. 4 *P. R.*, 1882, (F. B.), and No. 170 *P. R.*, 1883, referred to. KHAN MUHAMMD *v.* JALAL-UD-DIN. **3 P R 1892**

10. *Remand order made under Order XLI, rule 23, Civil Procedure Code—Duty of Appellate Court hearing appeal from such order under section 104.*

An Appellate Court hearing an appeal preferred under section 104, Civil Procedure Code, 1908, from an order of remand passed under Order XLI, rule 23 by a subordinate Appellate Court is not necessarily confined to considering the question, whether the order of remand impugned is justified by the terms of the section, but may, when a preliminary point is found to exist, enter into and decide upon the merits of such preliminary point. But as soon as it is held that the remand order appealed from is not warranted by the terms of Order XLI, rule 23 inasmuch as the case has not been disposed of by the

CIVIL PROCEDURE CODE, 1908 —*contd.*

Order XLI, rule 23—*contd.*

lower Court upon a preliminary point, the Court hearing the appeal under section 104 cannot enter upon or in any way deal with the merits of such remand order.

I. L. R., VII All., 136 and *XVII, Calc.*, 168, followed. MUSSAMMAT MAKHAN DEVI *v.* ASA SINGH. **6 P R 1892**

11. *Civil Procedure Code*, 1908, *Order XLI, rule 23, section 104—Appeal from order of remand in a small cause under Rs. 500 in value—Power of Chief Court to consider merits of preliminary point—Punjab Courts Act*, 1884, *section 40.*

Held by the Full Bench, that it is open to the Chief Court when hearing an appeal, under section 104 of the Civil Procedure Code, from an order under Order XLI, rule 23 of the Code, remanding a case, when the order is that of a District Judge exercising appellate jurisdiction and the case is a small cause under Rs. 500 in value, in which the District Judge's decree would be final to decide upon the merits of the preliminary point upon which the first Court disposed of the suit, and that its attention is not confined to the question whether the right procedure has been followed in ordering the remand under Order XLI, rule 23, Civil Procedure Code.

No. 126 *P. R.*, 1886, overruled. BHAI WAZIRA *v.* CHUHAR MAL. **85 P R 1895 F B**

12. *Civil Procedure Code*, 1908, *Order XVIII, rules 5 and 8 and Order XLI, rule 23—Evidence improperly recorded by first Court—Power of Appellate Court to remand cause on such ground—Procedure.*

An Appellate Court remanded a cause under Order XLI, rule 23 of the Civil Procedure Code, for re-decision, on the ground that the evidence had been entirely recorded by a Muharrir, and that the provisions of Order XVIII, rules 5 and 8, regarding the mode in which evidence should be recorded, had not been observed. It appeared, however, from the record that while the evidence had been fully recorded by the Muharrir under Order XVIII, rule 5, a memorandum of the evidence of each witness had been made by the Judge of the first Court in his own handwriting under Order XVIII, rule 8, though there appeared to be reason to believe that such memorandum was written all at one time after the whole of the evidence had been taken.

Held, that the order of remand was improper, even on the facts as stated by the Appellate Court, and that the irregularity in the procedure of the first Court, even if committed, was no reason for setting aside the whole procedure. BHAGWAN DAS *v.* JIWAN. **45 P R 1896**

13. *Execution of decree—Bond given by surety for judgment-debtor—Suit by decree-holder against surety without impleading judgment-debtor—Amendment of plaint—*

CIVIL PROCEDURE CODE, 1908 —*contd.*

Order XLI, rule 23—*contd.*

Appeal—Civil Procedure Code, 1908, *Order VI, rule 17, Order XLI, rule 23.*

Plaintiff in execution of a decree against one D. having attached certain land belonging to the latter, the defendant in the present suit became surety for D. for the payment of Rs. 50 a year. The Tahsildar in forwarding the security to the execution Court recommended that should there be any default by the surety in paying the annual sum, the decree-holder should obtain possession of the land. The execution Court, apparently considering the security sufficient, filed the proceedings and made no orders on the Tahsildar's recommendation. The surety made default in paying the Rs. 50 due for Sambat 1952, and plaintiff sued him in respect thereof. The first Court held that D. should have been made a co-defendant and that plaintiff should also have sued for the possession of the land attached by him as aforesaid. It, therefore, returned the plaint for amendment. Plaintiff appealed to the District Judge, who remanded the case under Order XLI, rule 23, for decision on the merits.

Held, that as no decree has been passed by the first Court, and the appeal to the District Judge was under section 104, of the Civil Procedure Code, the District Judge erred in quoting Order XLI, rule 23 of the Code, in his order, which should simply have set aside that of the first Court and directed it to decide the case on the plaint as it stood.

But *held* that, the order of the first Court in returning the plaint being wrong, the error in the order of the District Judge was immaterial. JAHAN KHAN *v.* CHANDA SINGH. **59 P R 1896**

14. *Order of remand under Order XLI, rule 23, Civil Procedure Code 1908,—Erroneous order—Powers and duties of Chief Court when hearing appeal from such order.*

Held, that when a certain fact is the basis of a suit, and there is no suggestion that the inquiry into that fact by the first Court has been insufficient or imperfect, and the lower Appellate Court, differing from the Court of first instance as to the existence of that fact, has remanded the suit under Order XLI, rule 23 of the Code of Civil Procedure, the Chief Court, when hearing an appeal from the order of remand, is entitled, when it finds that the order of remand should not have been made under that section, to itself consider and decide upon the truth of such fact, and is not bound to return the appeal to the lower Appellate Court for decision thereon. SANT RAM *v.* MUSSAMMAT MOHAN DEVI. **56 P R 1898**

15. *Appeal and cross-objection—Power of appellant to defeat cross-objections by withdrawing from appeal—Case remanded to lower Appellate Court under Order XLI, rule 23, Civil Procedure Code—Default of appellant—Proper order for lower Appellate Courts to pass.*

CIVIL PROCEDURE CODE, 1908 —*contd.*

Order XLI, rule 23—*contd.*

The first Court having decreed plaintiff's suit for pre-emption at Rs. 492, plaintiff appealed to the Divisional Court as to the price, and defendant cross-objected that plaintiff's suit had not been filed by a duly qualified agent. The Divisional Court dismissed the suit on the latter ground, whereupon plaintiff appealed to the Chief Court, which remanded the case to the lower Appellate Court, under Order XLI, rule 23 of the Civil Procedure Code, for decision as to whether plaintiff's alleged agent had been duly authorised to institute the suit, and for disposal of the appeal if the suit were found to be within limitation. At the date fixed for hearing on the remand, plaintiff failed to appear, whereupon the lower Appellate Court passed an order to the effect that the appeal must be dismissed for plaintiffs' default, and that, therefore, defendants' cross-objection failed, and could not be entertained.

Held, that inasmuch as the case had been remanded by the Chief Court merely in order to give plaintiff an opportunity of proving that his alleged agent was duly authorized to institute the suit, the lower Appellate Court should have held, on plaintiff's default, that the previous order of the Divisional Court stood.

Held further, that when once an appeal has come to a hearing, the Court is seized of the appeal, and an appellant cannot in such a case defeat a cross-objection by withdrawing from the appeal. MUHAMMAD HUSSAIN *v.* ABDUL RAHMAN. **86 P R 1898**

16. *Preliminary issue as to whether defendant was a minor at time of suit—Issue decided against defendant by first Court, but suit dismissed on the merits—Finding by lower Appellate Court that defendant was a minor—Case remanded for trial after appointment of guardian* ad litem—*Procedure—Civil Procedure Code,* 1908, *Order XXXII, rules* 3, 4, 5, *Order XLI, rule* 23, *section* 107.

On the objection by the mother of the defendant that the latter was a minor, and that a guardian *ad litem* should be appointed for him, the Court of first instance framed a preliminary issue as to defendant's age, and, finding that he was not a minor, framed other issues on the merits and eventually dismissed the suit. Plaintiff appealed to the Divisional Court, and the defendant filed cross-objections, based on the ground that he was a minor at the date of suit. The Divisional Court found that defendant was a minor as alleged, and remanded the case, under Order XLI, rule 23 of the Civil Procedure Code, for trial, after appointment of a guardian *ad litem*. From this order plaintiff appealed to the Chief Court, and it was contended on his behalf that as the suit had not been decided on a preliminary point the order of remand under Order XLI, rule 23 was illegal.

CIVIL PROCEDURE CODE, 1908 —*contd.*

Order XLI, rule 23—*contd.*

Held, that Order XLI, rule 23 of the Code was not a bar to the exercise by an Appellate Court of the jurisdiction conferred by Order XXXII, rules 3, 4, 5, section 107 under which the proper course to be adopted in the present case was to set aside all the proceedings subsequent to the filing of the plaint, inasmuch as, on the finding of the lower Appellate Court, that defendant was a minor at date of suit, they were void as being *coram non judice*. The Court so far modified the order of the Divisionol Court as to substitute Order XXXII, rules 3, 4, 5, section 107 for Order XLI, rule 23. AHMAD MIRZA KHAN *v.* HIRA LAL. **23 P R 1899**

17. *And section* 104—*Appeal from order of remand—Scope of such appeal.*

Held, that under section 104, Civil Procedure Code, no appeal lies from an order of remand where the party does not seek either to traverse the remand order passed by the Appellate Court or its finding upon the preliminary point as to which it has differed from the first Court, but seeks to traverse the decision as to a preliminary point in which both the Courts have concurred and in regard to which no reference has been made under Order XLI, rule 23. SAYAD MUHAMMAD ISHAQ *v.* MOHRU MAL. **28 P R 1902**

18. *And section* 104—*Appeal from order of remand—Completion of proceedings under remand order.*

Held, that under section 104, Civil Procedure Code an appeal lies from an order of remand under Order XLI, rule 23, and the mere fact that such an order has been carried out by the lower Court does not bar the jurisdiction of the Chief Court to entertain the appeal. JAG LAL *v.* SHIB LAL. **37 P R 1902**

19. *Remand—Preliminary point.*

Where a Munsif had decided a suit on the main issues and had not decided it upon a preliminary point and on appeal the Appellate Court had not reversed the decision of the first Court upon such points but had remanded the case for decision upon the preliminary point under Order XLI, rule 23, Civil Procedure Code, the remand order was illegal as the suit had not been disposed of upon a preliminary point within the meaning of that order. MIRAJ-UD-DIN *v.* KARIM BAKHSH AND OTHERS. **43 P R 1902**

20. *And section* 104—*Appeal from order of an Appellate Court—Preliminary point Court not bound by findings of fact of Court below—Document operating to declare rights to immovable property—Registration Act,* 1877, *section* 17.

Plaintiff sued for possession of certain land mortgaged to him by defendant No. 1, and joined defendants Nos. 2 and 3 as subsequent mortgagees in possession. Defendant No. 1 pleaded relinquishment by plaintiff and produced a receipt; defendants 2 and 3 pleaded ignorance of plaintiff's mortgage. The first Court without entering into the pleas of defendants 2 and 3 dismissed the suit on the ground that the plaintiff had relinquished the land in suit. The Divisional Judge reversed his decree as he considered that the receipt produced by defendant No. 1, ought to have been registered and remanded the case under Order XLI, rule 23, Civil Procedure Code.

CIVIL PROCEDURE CODE, 1908 —*contd.*

Order XLI, rule 23—*contd.*

Held, that as the suit had been disposed of upon a preliminary point the remand under Order XLI, rule 23, was right.

Held also, following the Full Bench ruling in *Bhai Wazira* v. *Chuhar Mal*, that the Chief Court when hearing an appeal under section 104, Civil Procedure Code, is not bound to accept the finding of the lower Appellate Court.

Held, on the merits, that the receipt in question required to be registered as it purported to be an acknowledgment that the mortgage had been redeemed. *Khalas* v. *Kalyan Singh*, (109 *P. R.* 1887) *and Bhai Wazira* v. *Chuhar Mal* (85 *P. R.* 1895 *F.B*)., cited. NAND LAL *v.* GURDITTA MAL. **99 P R 1902**

21. *And section* 104—*Appeal from order of remand in an unclassed suit under Rupees* 200 *in value—Power of Chief Court to go into the merits on appeal from a remand order.*

Held, by the Full Bench, that in hearing an appeal under section 104, Civil Procedure Code, the Chief Court is not confined to the mere question of procedure: it can and should go into the merits of that preliminary point upon which the Lower Appellate Court has remanded the case under Order XLI, rule 23; and where in the preliminary point questions of law or custom are involved it can and should discuss those questions.

Bhai Wazira v. *Chuhar Mal* (85 *P. R.* 1895, F. B.), *Khalas* v. *Kalyan Singh* (109 *P. R.* 1887), *Badam* v. *Imrat* (*I. L. R. III All.* 675, F. B.), *Mussammat Makhan Devi* v. *Asa Singh* (6 *P. R* 1892), *Loki Mahto* v. *Aghoree Ajail Lal* (*I. L. R. V. Calc.* 144), *Abrahim Khan* v. *Faizunissa* (*I. L. R. XVII Calc.* 168) *Bhanbala* v. *Bapaji Bapuji* (*I. L. R., XIV Bom.* 14), and *Gauri Shanker* v. *Karima Bibi* (*I. L. R. XV All.* 413), referred to. MAHA RAM *v.* RAM MAHAR. **1 P R 1903 F B**

22. *And Order XLI, rule* 25—*Competency of Chief Court to remand case on grounds other than specified in Order XLI, rules* 23 *and* 25 *of the Code of Civil Procedure.*

Held, that it is competent for the Chief Court to remand a case to rectify errors, omissions and defects which unless so rectified would result in serious miscarriage or failure of justice on grounds other than provided for in Order XLI, rules 23 and 25 of the Code of Civil Procedure.

CIVIL PROCEDURE CODE, 1908 —*contd.*

Order XLI, rule 23—*concld.*

Durga Diyal Das v. *Anoraji (I. L. R. XVII All.* 29), and *Perumbra Nayar* v. *Subrahmanian Pottar (I. L. R. XXIII Mad.* 445) cited and followed. SHER KHAN *v.* BAHADUR SHAH. **91 P R 1904**

23. *Civil Procedure Code,* 1908, *Order XLIII, rule* (1) (*u*)—*Order of remand under section* 562, *Civil Procedure Code.* 1882—*Appeal—Punjab Courts Act, XVIII of* 1884, *section* 70 (1) (*b*)—*Revision.*

Held, that under Order XLIII, rule (1), clause (*u*), Civil Procedure Code, 1908, no appeal lies to the Chief Court from the order of the Divisional Judge, remanding a case under section 562 of the Code of Civil Procedure, 1882, in a case where an appeal would not lie from the final decree of the Divisional Judge.

Held also, that in the circumstances of the case the Court must decline to interfere with the order of remand under clause (*b*) of section 70 (1) of the Punjab Courts Act, 1884. ALI BAKHSH *v.* CHUHAR SINGH. **101 P R 1910**

Order XLI, rule 25.

See REVISION IN CIVIL CASES. **111 P R 1886**

See CIVIL PROCEDURE CODE, 1908, ORDER XLI, RULE 26. **27 P R 1890**

See ORDER XLI, RULE 23, *supra*. **91 P R 1904**

——*And order XLI, rule* 11—*Civil Procedure Code,* 1908, *Order XLI, rule* 11—*Dismissal of appeal under Order XLI, rule* 11, *Civil Procedure Code—Power of Original Court to subsequently set aside such decree.*

Held, that the decree of an Original Court merges in the order or decree of an Appellate Court passed under Order XLI, rule 11 of the Civil Procedure Code dismissing the appeal without notice to the Court below or to the respondent, and in a case where there is occasion for an application under Order IX, rule 13 for setting aside such a decree, the application should be made to the Appellate Court.

Bapu v. *Vajir (I. L. R., XXI Bom.,* 548), dissented from *Uma Sundari Devi* v. *Bindu Bashini Chowdhrani (I. L. R., XXIV Calc.,* 759), *Mehdi* v. *Bahadur* (30 *P. R.,* 1900), and *Sayad Zahur-ul-Hassan* v. *Ganda Mal* (4 *P. R.,* 1901) followed. *Thakar of Masuda* v. *The widows of the Thakur of Nandwara* (*I. L. R., II All.,* 819), *Royal Reddi* v. *Linga Reddi* (*I. L. R., III Mad.,* 1), and *Muhammad Sulaiman Khan* v. *Muhammad Yar Khan* (*I. L. R., XI All.* 267), referred to. MAHR RANA *v.* THAKAR DAS. **8 P R 1903 Rev.**

Order XLI, rule 26.

See CIVIL PROCEDURE CODE, 1908, ORDER IX, RULE 13. **30 P R 1900**

1. *Discretion of Court to receive or decline to receive any written objection preferred after time*

CIVIL PROCEDURE CODE, 1908 —*contd.*

Order XLI, rule 26—*concld.*

The Court has full discretion to receive or to refuse to receive written objections after time. If no memorandum has been filed, either party can be heard verbally against the finding. The Court is not bound to accept the finding when no written objections are filed. MUSSAMMAT AMAN BIBI *v.* MULA MAL. **131 P R 1889**

2. *Civil Procedure Code (Act V of* 1908), *Order XLI, rules 25 and 26—Omission to file a memo. of objections to finding on remand—Right to be heard at the hearing of appeal.*

A party who has not presented a memorandum of objections under Order XLI, rule 26, Civil Procedure Code, against a finding on remand under Order XLI, rule 25, has no *right* to raise objections and to insist upon being heard in support of them, at the hearing of the appeal. The Court can, however, permit such objections to be taken and hear the party or his pleader in support thereof. GHULAM DIN *v.* BHOLA. **27 P R 1890**

Order XLI, rule 27.

Admission of fresh evidence by Appellate Court on further appeal—Discretion.

See APPELLATE COURT. **51 P R 1905**

Order XLI, rule 31.

See APPEAL CIVIL. **24 P R 1881**
91 P R 1882
28 P R 1886

1. *And section* 115—*Judgments of Courts of final appeal.*

District Judges sitting as Courts of final appeal in suits of the nature of small causes are bound to exercise their jurisdiction in a regular manner and to write their judgments according to the provisions of Order XLI, rule 31 of the Code. In a case in which the District Judge did not state the true points for determination nor the reasons for his decision, the Chief Court, on the revision side, reversed his order and directed a rehearing of the appeal. GANGA RAM *v.* JAWAHAR SINGH. **72 P R 1890**

2. *Appellate Court—Judgment in appeal—Order XLI, rule* 31, *Civil Procedure Code, and section* 88, *Punjab Tenancy Act* 1887.

The judgment of a Collector passed in appeal must state—

(*a*) the points for determination;
(*b*) the decision thereupon;
(*c*) the reasons for the decision; and
(*d*) when the decree appealed against is reversed or varied, the relief to which the appellant is entitled, agreeably to the provisions of Order XLI, rule 31, Civil Procedure Code, and section 88, Punjab Tenancy Act. SAIN DITTA *v.* ALICE FORSTER.

2 P R 1893 Rev.

CIVIL PROCEDURE CODE, 1908 —*contd.*

Order XLI, rule 35.

See CIVIL PROCEDURE CODE, 1908, ORDER XLI, RULE 11. **7 P R 1888 Rev.**

See PRE-EMPTION, PAYMENT INTO COURT. **10 P R 1895**

Order XLIV, rule 1.

See REVISION IN CIVIL CASES. **21 P R 1885**

See CIVIL RROCEDURE CODE, ORDER XXXII, RULE 15. **19 P R 1899**

Order XLV, rule 1.

See CIVIL PROCEDURE CODE, 1908, SECTION 109, *Passim*

Order XLV, rule 7.

See APPEAL TO PRIVY COUNCIL. **87 P R 1908**

Civil Procedure Code, 1908, *Act V of* 1908, *Order XLV, rule 7—Appeal to Privy Council—extension of time for the deposit of security for respondents' costs—sufficient ground for.*

Held, following *Barjore and Bhawani Pershad* v. *Mussammat Bhagana* (L. R. 11 I. A. 7) and dissenting from *Ranga Sayi* v. *Mahalakshamanna* (I. L. R. 14 Mad. 391), that time allowed for the deposit of security for respondents' costs under Order XLV, rule 7 of the Code of Civil Procedure, 1908, for appeal to Privy Council can be extended for cogent reasons, and that poverty was sufficient reason for extension of time, where the sum of money required was large and the diligence of the petitioner was shown by his having paid in ¾ths of the money required within the time originally allowed. BAGGA *v.* SALIHON. **44 P R 1910**

Order XLVI, rule 1.

See REFERENCE.

See CIVIL PROCEDURE CODE 1908, SCHEDULE II, p. 1. **88 P R 1887**

JURISDICTION OF CIVIL OR REVENUE COURTS. **40 P R 1893**

——*Civil Procedure Code, Order XLVI, rule* 1—*Reference.*

Observations as to the making of references to the Chief Court under Order XLVI, rule 1, Civil Procedure Code, in cases in which a further appeal will lie upon a Certificate granted by the Divisional Judge, or in which an application for revision can be referred under section 115 of the Code. MUSSAMMAT KARMON *v.* JIWAN MAL. **19 P R 1892**

Order XLVI, rule 7.

Subordinate Courts—References when allowed.

Held, (*i*) that a reference under order XLVI, rule 7 of the Code should be made only when the District Court is of opinion that the order of the Subordinate Court is erroneous;

(*ii*) that the Subordinate Courts referred to in the section are Subordinate Civil Courts other than Courts of small causes. MAKHAN LAL *v.* AMIR BAKHSH. **91 P R 1890**

CIVIL PROCEDURE CODE, 1908 —*contd.*

Order XLVII, rule 1.

See REVIEW OF JUDGMENT, *Passim.*

1. *Dismissal of application for revision—Second application—Review.*

See REVISION IN CIVIL CASES.

23 P R 1898

2. *Dismissal of suit under section* 158—*Review—New and important matter.*

A suit having been dismissed under section 158, Civil Procedure Code, by reason of the plaintiff having failed to summon witnesses, any application for review was made by the plaintiff on the ground that he had not been allowed an opportunity of producing his evidence. This application was granted, and a decree passed after the evidence had been recorded. On appeal the decree was set aside on the ground that the application for review should not have been granted, as no new and important matter or evidence had been discovered. *Held*, by the Chief Court that ordinarily the proper remedy for a person aggrieved by an order under section 158 is by way of appeal.

Held further that under the circumstances of the case the first Court had not acted *ultra vires* in granting the review, inasmuch as the evidence the plaintiff asked to be taken was new in the sense that it was not already on the record, and it was important. GHULAM JAN *v.* SHADI KHAN.

126 P R 1889

3. A Judge or a Bench is competent in admitting an application for review of judgment to define and limit the points on which the case shall be re-heard. An order of admission does not *ipso facto* re-open the whole case.

10 *Bom. H. C. R.* 360 dissented from. *I. L. R. V Calc.* 89 and *IX Calc.* 209, and 11 *M. I. A.* 487, referred to. DHANRUP MAL *v.* SIRDAR HIRA SINGH. **158 P R 1889**

4. *And order XLVII, rule* 1—*Revision—Second application for revision after decision of first application—Review of order passed on revision—Civil Procedure Code,* 1908, *section* 115 *and order XLVII, rule* 1.

Held, that the dismissal of an application for revision in default of appearance does not bar the entertainment of a second application for revision, but where an application for revision has been entertained, and an order passed after consideration of the case, a second application for revision should not be received, the proper remedy being for the applicant to ask for a review of judgment, which may be had in such a case. UMAR DIN AND OTHERS *v.* ALA BAKHSH AND ANOTHER.

54 P R 1901

5. *Attachment—Objections to attachment dismissed for default—Remedy of objector—Procedure.*

When a person making an application in execution proceedings fails to prosecute it, the Court must dispose of it by dismissing

CIVIL PROCEDURE CODE, 1908 —*contd.*

Order XLVII, rule 1—*contd.*

it in default, and in such case the objector is only entitled to make a fresh application to obtain his relief if he is not otherwise barred, but when such an application has been disposed of on the merits the Court cannot entertain another of the similar nature, or can alter or set aside its order except on review under order XLVII, rule 1, the provisions of which do apply to such proceedings.

Thakar Prashad v. *Fakirulla* (*I. L. R. XVII All.* 106 *P. C.*), and *Dhonkal Singh* v. *Phakkar Singh* (*I. L. R. XV All.* 84 *F. B.*), followed. COATES *v.* KASHI RAM.

76 P R 1903

6. *Review of judgment—Appeal—Jurisdiction of Divisional Judge to review his judgment after it has been upheld on appeal by the Chief Court—Civil Procedure Code,* 1908, *order XLVII, rule* 1.

A subordinate Court is competent to review his judgment on an application put in before an appeal has been preferred against his decree and is not prevented from proceeding upon it by the subsequent presentation of an appeal, but he cannot entertain or deal with any such petition after an appeal in the case has been decided by a superior Court although it might have been put in proper time and is still pending in his Court.

Bhurrut Chunder Mojoomdar v. *Ram Gunga Sein* (5 *W. R.* 59, *F. B.*), *Thacoor Prosad* v. *Baluk Ram* (12 *Calc. L. R.* 64), *Bunkoo Lal Singh* v. *Basoomunissa Bibee* (7 *W. R.* 166), *Mussammat Jowala Devi* v. *Kanwar Sen* (32 *P. R.* 1896), and *Abdul Kasim* v. *Piyare Lal* (59 *P. R.* 1900) referred to. JAGAN NATH *v.* DEVI DAS. **25 P R 1904**

7. *Review—Review by some only of several defendants—Power of Court to reverse decision as regards persons not parties to the review—Civil Procedure Code,* 1908, *order XLI, rule* 4, *and order XLVII, rule* 1.

One Phusa, a Jain Jat, died childless leaving immovable property which in default of heirs reverted to the proprietary body of the village. 'A,' also a Jain Jat of the same village, claimed to be a collateral of the deceased and brought a suit against all the *khewatdars* of the village for recovery of possession. The suit was decreed. Among the defendants four alone applied for a review of judgment on the ground that they have discovered the pedigree table of the Settlement of 1863, which conclusively proves that the plaintiff was not a collateral of the deceased proprietor. The other defendants were neither impleaded in the review proceedings nor did they take any steps to become parties to it. After enquiry the Court granted the review and reversed the decree as to the petitioners without disturbing decree as to those defendants who were not parties to the review proceed-

CIVIL PROCEDURE CODE, 1908 —*contd.*

Order XLVII, rule 1—*concld.*

ings. Thereupon the remainder of the *khewatdars* appealed to the Divisional Judge urging that the claim of the plaintiff should have been dismissed not only as regards the share of the four petitioners but as regards all the defendants. The Divisional Judge accepted this view and dismissed the whole claim.

Held, that the Divisional Judge had no jurisdiction to reverse the decree of the first Court against the appellants, who being no party to the application for review, nor to the subsequent proceedings, had no *locus standi* to appeal to the Divisional Judge.

Order XLI, rule 4, Civil Procedure Code, has no application to applications for review; that section applies only to appeals and cannot be applied to reviews by analogy, for there is in effect no analogy between the two.

Poresh Nath Mundul v. *Khettri Monee Debia* (20 *W. R.* 284) and *Chinta Monee Paul* v. *Peare Mohun Mookerjee* (15 *W. R. I. F. B.*), distinguished. GULLA *v.* MOTA AND OTHERS. **47 P R 1904**

8. The fact that an existing exposition of the law by a superior Court was not brought to the notice of the Court at the hearing by reason of the parties' ignorance of its existence is a sufficient ground for granting a review.

Sharup Chand Mala v. *Pat Dassee* (*I. L. R. VI All.* 292) followed. SUJAN SINGH *v.* FATEH MUHAMMAD.

124 P R 1906

9. This section has no application to the proceedings under the Guardian and Wards Act, 1890. FARID *v.* MITHO.

143 P R 1906

Order XLVII, rule 2.

See REVIEW OF JUDGMENT.

134 P R 1884
97 P R 1885

1. *Civil Procedure Code (Act V of 1908), order XLVII, rule 2—Application to whom "made" within the section.*

The Divisional Bench having dismissed plaintiff's claim, he put in an application for review, which was heard by one of the Judges who constituted the Bench, who directed that the files should be sent for and the petitioner heard on a given date. Before that date the Divisional Bench was broken up, and the application was sent to the Judge who had succeeded the Bench to be heard by him, but he refused to hear the application.

Held, that as the application had been "made" within the meaning of order XLVII, rule 2 of the Civil Procedure Code, to one of the Judges who constituted the Bench which had decided the case, there was no reason why his successor should not take over the application for disposal. *Aziz-ud-din* v. *Badar-ud-din* (No. 134 *P. R.* 1884)

CIVIL PROCEDURE CODE, 1908 *—contd.*

Order XLVII, rule 2—*concld.*

and *Diwan Singh* v. *Jowahir Mal* (No. 97 *P. R.* 1885), referred to. DURGA DAS *v.* JHANDVA MAL. **6 P R 1887**

2. *Review of interlocutory order—Application "made" to Judge other than Judge who passed original order—Civil Procedure Code (Act V of* 1908), *order XLVII, rules* 2 *and* 4, *clause* (c), *and Act VII of* 1888—*Appeal against admission of application for review—Civil Procedure Code (Act V of* 1908), *order XLVII, rule* 7.

When an application, on specified grounds, for review of an interlocutory order is presented to the Judge who has passed the order sought to be reviewed and he thereupon passes an order for notice to issue to the opposite party to oppose the application, the application is "made" to that Judge within the meaning of order XLVII, rules 2 and 4 of the Civil Procedure Code, although the application be finally argued before, and be granted by, the successor of that Judge.

Order XLVII, rule 2 of the Code deals merely with matters of procedure, and the merits of an order granted under that section cannot be questioned in an appeal under order XLVII, rule 7.

Semble.—The fact that an appellant's written grounds of appeal do not show any ground for an appeal under order XLVII, rule 7 of the Code is not necessarily fatal if he can show *aliunde* that any such ground as is specified in that section exists upon the record of the lower Court.

No. 134 *P. R.* 1884 and *I. L. R. XIII Mad.* 178, distinguished. HANS RAJ *v.* JHANDU MAL. **7 P R 1894**

3. *And order XLVII, rule 7—Power of Judge of a Court of Small Causes to review judgment of his predecessor.*

See REVIEW. **63 P R 1905**

4. A Divisional Judge has no jurisdiction to review an order of another Divisional Judge dismissing an appeal in default, on the ground that it was passed in the absence of the petitioner and without giving him notice of the hearing.

Jagarnath Singh v. *Budhan* (*I. L. R. XXIII Calc.* 115), dissented from. BAHADOO *v.* FATTEH KHAN. **82 P R 1906**

Order XLVII, rule. 4.

See REVIEW OF JUDGMENT. **97 P. R. 1885**

See CIVIL PROCEDURE CODE, 1908, ORDER XLVII, RULE 2. **7 P R 1894**

Order XLVII, rule 7.

See APPEAL, CIVIL. **133 P R 1882**

See REVIEW OF JUDGMENT. **107 P R 1883**

See CIVIL PROCEDURE CODE, 1908, SECTION 89. **65 P R 1891**

See CIVIL PROCEDURE CODE, 1908, ORDER XLVII, RULE 2. **7 P R 1894**

CIVIL PROCEDURE CODE, 1908 *—contd.*

Order XLVII, rule 7—*concld.*

1. *Review of review—Competency of.*

The language of order XLVII, rule 7, Civil Procedure Code, 1908, that "No application to review an order passed on review or on an application for a review shall be entertained" forbids any application for review of an order admitting or rejecting an application for review or of the judgment arrived at after re-hearing of the case under order XLVII, rule 8, whether that judgment affirms or varies the previous judgment, and though, in either case, it is followed by a new decree: in other words a review of a review is not competent.

The word "order" in the clause referred to is apparently not used in a technical sense as opposed to a decree, but as a comprehensive term to express the final adjudication of the Court after the application for review has been admitted and the case re-heard and includes both the judgment and the decree. BANARSI DAS *v.* SAYAD SULTAN MIRZA. **57 P R 1892**

2. *Order granting review—Appeal—Civil Procedure Code,* 1908, *order XLVII, rule* 7.

Held, that an order granting a review under order XLVII, rule 7, Civil Procedure Code, can be objected to, on appeal, only upon the grounds specified in that section, whether the appeal be one against the order granting the application or against the final decree in the suit.

I. L. R. XXII Calc. 3 and *I. L. R. XII Bom.* 171, followed. DHARM SINGH *v.* DEWA SINGH. **62 P R 1895**

3. *Appeal from order granting a review of judgment—Small Cause Court suit valued at less than Rs.* 500.

Held, that under order XLVII, rule 7 of the Civil Procedure Code, an appeal from the District Judge's order granting a review of judgment in a Small Cause, valued at less than Rs. 500, lies to the Chief Court, though an appeal from the final decree would be barred. ASA *v.* GOPAL DAS. **33 P R 1902**

Order XLVII, rule. 9.

See APPEAL, CIVIL. **133 P R 1882**

See REVIEW OF JUDGMENT. **107 P R 1883**

Schedule II.

See ARBITRATION, *Passim.*

—*Applicability of Chapter XXXVII of the Civil Procedure Code,* 1882, *to insolvency proceedings under Act IV of* 1872—*Composition—Act IV of* 1872, *section* 28—*Jurisdiction of Judge in bankruptcy to make a reference under order XLVI, rule* 1, *Civil Procedure Code.*

Held, that the provisions of Chapter XXXVII of the Civil Procedure Code, 1882, are not applicable to a proceeding in insolvency under the provisions of the Punjab Laws Act as between the creditors on one side and the insolvent on the other.

CIVIL PROCEDURE CODE, 1908 *—contd.*

Schedule II—*concld.*

If a majority of the creditors chose to say as between themselves and the insolvent that they will accept whatever arrangement or composition three arbitrators appointed by them may determine, and an arrangement is made by these means and brought into Court, this is no doubt an arrangement or composition which may become binding on the whole body of creditors if sanctioned by the Court, but in such a case the arbitration proceedings are not taken under the Code or through the Court, and the Court must proceed under section 28 of the Punjab Laws Act to deal with the arrangement or composition on its merits, apart from the question of how the arrangement or composition has been arrived at.

Quære, whether it is competent to a Judge acting under the insolvency jurisdiction conferred by the Punjab Laws Act to refer a question to the Chief Court under order XLVI, rule 1 (read with section 141 of the Code of Civil Procedure. SIMLA BANK *v.* NARPAT RAI. **88 P R 1887**

Schedule II, rule 1.

See APPEAL, CIVIL. **67 P R 1879**

Schedule II, rule 3.

See APPEAL, CIVIL. **4 P R 1882**
ib **Notes.**
130 P R 1883
170 P R 1883

—*And Schedule II, rule* 15.

An award made and signed within the period fixed by the Court even when filed in Court after the expiry of that period is valid.

The expression "delivery" in this section means "making" and not "filing in Court." BHAGAT RAM *v.* GANDA SINGH. **89 P R 1907**

Schedule II, rule 14.

Award—Omission to remit to arbitrators—Revision.

See REVISION IN CIVIL CASES. **41 P R 1905**

Schedule II, rule 15.

And Schedule II, rule 16, *order XXII, rule* 11—*Arbitration award—Decree of Appellate Court in accordance with award—Finality of decree—Further appeal.*

Held, that when a Court of first instance wrongly sets aside an arbitration award and passes a decree against the terms thereof, and a Court of appeal dealing with the merits of the case comes to the conclusion that the award was not open to any such objections as are contemplated by Schedule II, rule 15 of the Code of Civil Procedure, and upon that finding passes a decree strictly in accordance with the terms of the award, such appellate decree is entitled to the same finality as a decree of the first Court would have had under the last paragraph of Schedule II, rule 16, and cannot be made the subject of a further appeal.

CIVIL PROCEDURE CODE, 1908 —*contd.*

Schedule II, rule 15—*concld.*

Pureshnath Dey v. *Nobin Chunder Dutt* (12 *W. R.* 93), *Mothoora Nath Tewaree* v. *Brindabun Tewaree* (14 *W. R.* 327), *Rughoobur Dyăl* v. *Maina Koor* (12 *Calc. L. R.* 564), and *Bykun Nath Mookerjee* v. *Prio Nath Ghose* (22 *W. R.* 447), considered and dissented from.

Nawab v. *Ahmad Khan* (26 *P. R.* 1890), *Naurang Singh* v. *Sodapal Singh* (*I. L. R. X All.*, 8), and *Ghulam Jilani and others* v. *Muhammad Hassan* (25 *P. R.* 1902, *P. C.*), cited and followed. BAHAR BAKHSH *v.* INAYAT ALI. **89 P R 1904**

Schedule II, rule 16.

See APPEAL, CIVIL.
57 P R 1879
33 P R 1881
72 P R 1881
4 P R 1882
48 P R 1882
184 P R 1882
17 P R 1883
47 P R 1883
109 P R 1883
130 P R 1883
170 P R 1883
1 P R 1908 F B
80 P R 1908 P C

See REVIEW OF JUDGMENT.
111 P R 1881

See CIVIL PROCEDURE CODE, ORDER XXXII, RULE 7. **17 P R 1899**

1. *Arbitration—Award—Decree on judgment in accordance with an award— Appeal on grounds other than the decree being in excess of, or not in accordance with, the award.*

Held, that no appeal lies from a decree pronounced under Schedule II, p. 16 of the Civil Procedure Code, except in so far as the decree may be in excess of, or not in accordance with, the award.

Jhangi Ram v. *Mussammat Budho Bai* (84 *P. R.* 1901 *F. B.*) disapproved. GHULAM JILANI AND OTHERS *v.* MUHAMMAD HASSAN.
25 P R 1902 P C

2. *Appeal—Arbitration—Decree on judgment in accordance with an award—Revision—Civil Procedure Code, 1908, Schedule II, p.* 16, *and section* 115.

Where an application has been made to set aside an award on the ground of the arbitrator's misconduct and refuser after judicial determination and a decree was, in accordance with and not in excess of the award. *Held*, that the Chief Court had no authority to interfere with the decree either by way of appeal or revision.

Ghulam Jilani Khan v. *Muhammad Hussan* (25 *P. R.* 1902 *P. C.*) cited and *Raja Harnarain Singh* v. *Chaudrani Bhagwant Kaur* (*I. L. R. XIII All.* 800 *P. C.*) distinguished. HANSRAJ AND OTHER *v.* GANGA RAM. **88 P R 1902 F B**

CIVIL PROCEDURE CODE, 1908 —*contd.*

Schedule II, rule 16—*concld.*

3. *Revision—Arbitration—Decree in accordance with award—Civil Procedure Code,* 1908, *section* 115.

Held by the Full Bench that a revision lies against a decree passed upon an award where the Court which passed the decree committed an error in procedure or has misused the jurisdiction prescribed by the Civil Procedure Code.

Ghulam Jilani v. *Muhammad Hassan* (25 *P. R.* 1902, *F. B.*) discussed. PANNA LAL *v.* MUSSAMMAT SOMAN. **89 P R 1902 F B**

4. *Appeal—Arbitration—Decree in accordance with an award—Civil Procedure Code,* 1908, *Schedule II, p.* 16.

Held, that an appeal does not lie from a decree passed upon a judgment given according to an award except in so far as the decree may be in excess of or not in accordance with the award. SITA RAM *v.* DHANI RAM.
92 P R 1903

5. The word " award " in schedule II, rule 16, includes award modified under Schedule II, rule 12. KALU *v.* KHAIR DIN.
13 P R 1906

Schedule II, rule 17.

Agreement to refer to arbitration filed in Court—Award of arbitrators set aside as void—Right to institute regular suit to enforce such award.

Held, that where in proceedings taken under Schedule II, p. 17, of the Code of Civil Procedure an award is declared to be void by the Court conducting such proceedings no regular suit to enforce such an award will lie. MIRAN BAKHSH *v.* CHIRAGH DIN.
19 P R 1907

Schedule II, rule 20.

See COURT FEES. **70 P R 1881**
See REVISION IN CIVIL CASES.
51 P R 1899
See APPEAL, CIVIL. **1 P R 1908**

1. The Court-fee payable upon the memorandum of appeal against an order rejecting an application under this section to file an award is Rs. 10 under the sixth clause of article 17.

For the purposes of this section an award of arbitrators privately appointed by the parties even if it effects partition of joint immovable property of over Rs. 100 in value and is signed by the parties to signify their acceptance of the same does not require registration and can be filed and made a rule of Court. BHAGAT RAM *v.* PARAS RAM.
84 P R 1907

2. *And Schedule II, rule* 21.

When an award made without the intervention of the Court is on the face of it defective, determines matters not referred to arbitration and is so indefinite as to be incapable of execution the Court has no power under these sections to amend it or to remit it for

CIVIL PROCEDURE CODE, 1908 —*contd.*

Schedule II, rule 20—*concld.*

reconsideration but mu t refuse to file and enforce it. BHAGAT RAM *v.* PARAS RAM.
84 P R 1907

3. *And* 16—*Application under Schedule II, section* 20—*Premature if award had not been pronounced at date of application—Appeal lies in such case although decree passed in accordance with award.*

Held, that an application for filing an award under Schedule II, section 20, Civil Procedure Code, 1908, should be dismissed as premature and must fail where the award had not been pronounced orally or reduced to writing at the time of the application.

Held also, that notwithstanding that the Court of first instance passed a decree in accordance with the award, an appeal lay to the District Court, as the First Court had dealt with an application which it had no power to entertain and which it should have rejected, immediately the fact was made known to it, that the award was not in existence at the date of presentation of the application.

Bhagwan Singh v. *Mussammat Ram Kaur* (No. 38 *P. L. R.* 1906) distinguished. GOKAL CHAND *v.* MUKHAN SINGH. **80 P R 1909**

4. *Civil Procedure Code, Act XIV of* 1882, *section* 525—*Suit based on award—right of appeal*

Held, that a suit can be brought upon an award independently of the summary procedure authorized by section 525 of the Civil Procedure Code, 1882, at any period which the law for the limitation of suits permits, and a decree made in such a case is appealable, though there would be no appeal from a similar decree made in the summary proceedings under Chapter XXXVII of the Code. WAZIR ALI *v.* SHEIKH MULKYAR.
34 P R 1910

Schedule II, rule 21.

See APPEAL, CIVIL. **70 P R 1881**
See COURT FEES. **70 P R 1881**

—*Order directing private award to be filed—Finality of such order—Appeal, Revision.*

See APPEAL, CIVIL.
1 P R 1908 F B

—An appeal lies from an order under this section refusing to file an award. MUL RAJ *v.* LADHA MAL. **100 P R 1907**

Schedule III.

See CIVIL PROCEDURE CODE, 1908 SECTIONS 68, 71. **25 P R 1894**
See CIVIL PROCEDURE CODE, 1908 SCHEDULE I, ORDER XXI, RULE 11,
21 P R 1899
See JURISDICTION OF CIVIL OR REVENUE COURTS.
83 P R 1896

1. *Civil Procedure Code (Act XIV of* 1882), *sections* 327, 622—*Validity of rules published with Punjab Government Notifica-*

CIVIL PROCEDURE CODE, 1908 —*concld.*

Schedule III—*concld.*

tion No. 1297 S., dated 10th September 1885—Sale in execution without sanction required by rules—Such sale void ab initio*—Chief Court's power to set aside void sale on revision.*

Held, that the rules relating to sales of land in execution of decree, made in modification of former rules on the subject by the Local Government and published in the Local Gazette under Notification No. 1297 S., dated 10th September 1885, were within the competence of the Local Government to make, with the previous sanction of the Governor-General in Council, and must therefore be held to be *intra vires* of the provisions of section 327 of Act XIV of 1882.

Held further, that a sale in execution of decree of land paying revenue to Government, made and confirmed without the sanction required by the above rules having been previously obtained, is void *ab initio*, and may be set aside by the Chief Court under the powers conferred by section 622 of the Code of Civil Procedure. TARA CHAND *v.* ALA BAKHSH. **95 P R 1888**

2. *Incompetency of judgment-debtor to charge land farmed out by Collector—Contract Act, 1872, section 11.*

Under Schedule III, p. 10, read in conjunction with schedule III, p. p. 2 and 10, the incompetency of the judgment-debtor to charge his land which has been farmed out by the Collector under a scheme for the liquidation of the money-decree, continues so long as the scheme subsists and not merely until the Collector has inaugurated the scheme.

Where, therefore, the Collector had farmed out the judgment-debtor's land for a period of 15 years, and while the farm still subsisted, the judgment-debtor without the permission of the Collector entered into an agreement with the plaintiff to mortgage the land to *him*, *held* that the judgment-debtor was disqualified from contracting in respect of the land within the meaning of section 11 of the Contract Act, 1872, and the agreement was, therefore, void. CHANDAN LAL *v.* MUHAMMAD HUSSAN KHAN. **42 P R 1899**

3. *Civil Procedure Code, Act V of 1908—Sale of land in execution of decree—Sanction of Commissioner.*

Held, that the special rule framed under the Civil Procedure Code of 1882, section 327, having become inoperative since the enactment of Civil Procedure Code, 1908, the sanction of the Commissioner of the division is no longer required, as a condition precedent to the sale in execution of decree of land applied to agriculture or pastoral purposes. GIRDHARI RAM *v.* MEHR KHAN. **4 P R 1910 Rev.**

CLUB—PERSONAL LIABILITY OF SECRETARY OF.

1. *Unincorporated Club—Principal and agent—Honorary Secretary—Personal liability as Honorary Secretary and as a Member of Club.*

Plaintiff sued the defendant for the rent of house at Simla, known as the "Blessington Estate," for two-and-a-half years, *viz.*, for half of 1885, and for 1886 and 1887, at Rs. 1,000 per annum, or in all Rs. 2,500. The plaintiff alleged that the estate had been demised by an Indenture of lease, dated October 1879, and made between plaintiff's predecessor in title and Henderson "for and on behalf of the governing body of the Agri-Horticultural Society of Simla" for a term of five years, from 1st January 1880, at a rent of Rs. 1,000 per annum: that Henderson held possession until 2nd March 1882, when he made over possession to Anderson, who continued to hold until the spring of 1884, when he made over possession to the defendant: and that defendant had used and occupied the house from the spring of 1884 to 31st December 1887, but had only paid rent to 1st June 1885. The defendant contended, in effect, that he had not used or occupied "Blessington" in any other capacity than that of Honorary Secretary of the Society or Blessington Lawn Tennis Club—which name had been adopted in lieu of that of the Agri-Horticultural Society of Simla—and that he had derived no personal profit from the income or profits of the estate. The Society or Club was an unincorporated body.

Both the lower Courts concurred in holding that the defendant was not personally liable and dismissed plaintiff's suit.

In appeal, it was contended that defendant was liable.

(1) As the owner of a proprietary Club, and having in that capacity used and occupied the house.

(2) As an agent of an informal Society incapable of being sued within the meaning of section 230, clause (3) of the Indian Contract Act.

(3) As one of the members of the Blessington Lawn Tennis Club,

Held, that these contentions failed, because as to

(1) It assumed a state of facts which the evidence on the record directly contradicted.

(2) Among other reasons, assuming that the relationship of principal and agent existed between the Society and defendant, the Society could not correctly be described as a principal not liable to be sued, the true doctrine being, not that an unincorporated body like a Club or Society cannot be sued, but that it cannot be sued except in the names of all the individuals composing it.

(3) The liability of an individual member of a Club for debts incurred by the Club depends upon whether he has in any way pledged his personal credit and the evidence in the present case showed that the defendant did what he could to make it generally known that he was not undertaking any personal responsibility, and that he declined to incur any personal obligation. KANWAR RANZOR SINGH *v.* F. B. HEBBERT. **15 P R 1891**

CLUB—PERSONAL LIABILITY OF SECRETARY OF—*concld.*

2. *Unregistered Association—Personal liability of Secretary of Managing Committee who was also a Member thereof and a depositor in the Association.*

B. guaranteed the honesty of his brother, who was appointed Manager of the Sind, Punjab and Delhi Railway Co-operative Stores, which was an unregistered private association of the nature of a Club. B. further deposited Rs. 3,000 under the guarantee.

In a suit by B. against S., who was, at the time of the contract, a depositor in the Association, a Member of the Managing Committee and also its Secretary, for a refund of portion of his guarantee deposit, *held*, that S. was personally liable, either as a sole promisor, or as a joint promisor (section 43, Contract Act) and that a suit against him would lie. T. BECK *v.* T. SIDDLE. **11 P R 1892**

CODICIL.

See SUCCESSION ACT (X OF 1865), SECTION 54.

COERCION.

See CANTONMENTS. **72 P R 1883**
See CONTRACT. **135 P R 1882**
148 P R 1882

CO-HEIRS.

1. *Inheritance—Suit by one of several co-heirs for his share in an estate—Dismissal of such suit—Subsequent suit by all the heirs for the whole estate—Res judicata—Right of the heirs not parties to the first suit to recover the whole estate—Exclusion of that portion of the estate to which the first suit related.*

The estate in dispute was last held in full ownership by one J. S., son of S. S., and on his death without issue devolved on the widow of S. S., and Mussammat D., daughter of S. S., the latter holding with only a life interest. On the death of Mussammat. D., mutation of names took place in favour of B. S., her husband, whereupon one P. S., a male collateral of S. S., sued B. S. for ¼th of the whole estate, and his suit was dismissed on the ground that the defendant had a better title. On the death of B. S., the present plaintiffs, who were the collateral heirs of S. S., sued the present defendants, the collateral heirs of B. S. for the estate, among the plaintiffs being included the sons of P. S., and no deduction being made of the fraction of the whole estate in regard to which P. S.'s suit was dismissed. It was found

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that plaintiffs' right to succeed as heirs of the last full owner was superior to that of the defendants, and that the defendants had not acquired by adverse possession or otherwise an absolute title to the estate. The claim was also held to be *res judicata* as regards two of the plaintiffs, the sons of P. S., but the question remained as to whether the remaining plaintiffs were entitled to a decree for the whole of the land or only for their respective shares, the shares of the two plaintiffs, whose father P. S sued before, being deducted.

Held, per *Brandreth* and *Barkley*, JJ., (*Plowden* J., dissenting), that P. S.'s share must be excluded from the decree, as the right of each plaintiff to a decree depended upon his own title and upon that title alone, and the defendants could successfully set up against any claim to P. S.'s share the plea, that on the plaintiffs' own showing P. S.'s sons were alone entitled to that share, and that the circumstance that the plaintiffs were co-heirs did not affect the case, as the share of each was ascertainable.

Held, per *Plowden*, J., that the plaintiffs other than the sons of P. S. were entitled to ignore altogether the proceedings taken by P. S. in respect of his share of the inheritance, and that the mere circumstance that the sons of P. S. had joined as co-plaintiffs did not preclude the other plaintiffs from recovering all that they claimed, even if that would have the effect of giving to these plaintiffs some of the land unsuccessfully claimed by P. S., and that the circumstance that the share of these plaintiffs could be ascertained did not affect their right to recover the whole. The fact that P. S. sued for a share and his suit was heard without objection, did not affect the other plaintiffs. A suit by one only of several co-heirs for his share is a suit which is open to objection by the defendant on the ground that one co-heir cannot sue without making the other co-heirs parties, and also on the ground that he ought to sue for the whole estate. If these objections are not taken, the suit may proceed and a decree may be made in it. But this cannot be held to oblige other co-heirs to sue for their shares in the estate instead of the whole when the whole remains in the possession of the defendants, nor can it affect their right to recover the whole. If the defendants have to undergo the trouble of contesting two suits instead of one, it is due to their not having objected in the proper manner and at the proper time to the maintenance of the suit brought by P. S. KESAR SINGH *v.* GANGA SINGH. **2 P R 1882**

2. *Suit for share in inheritance—Defendant claiming liquidation of plaintiffs' share of debt to him by deceased—Obligation of plaintiffs to submit to partition of charges against the estate—Separate suit—Unsecured debt.*

Plaintiffs, who were co-heirs with the defendants in equal shares of the inheritance of one N., deceased, sued for recovery of their shares of the portion of the property

CO-HEIRS—*concld.*

of the said N. which had not been divided. One of the defendants contended that the plaintiffs, claiming to be co-heirs, were bound as such to liquidate their shares of a debt due by N. to him.

Held, that the plaintiffs could not be permitted by framing their suit so as merely to demand a partition of the property of the estate to evade their obligation to submit at the instance of the other co-heirs to a partition of the charges against the estate, their substantive right being only to a partition of the *inheritance* which comprised the charges as well as the property left by the deceased: nor could they insist that the co-heirs should be turned round to a separate suit to recover from them as co-heirs their share of a debt due by the deceased to the defendants, merely because that debt was not secured upon some specific portion of the estate. RUKEN DIN *v.* KUTAB DIN. **179 P R 1883**

COLLATERALS.

See REVERSIONERS.
See CUSTOM—ALIENATION.
See CUSTOM—SUCCESSION.

COLLATERAL HEIRS.

SUIT BY—
See CUSTOM—ALIENATION.
See CUSTOM—INHERITANCE.
See CUSTOM—DECLARATORY DECREE.

COLLECTOR.

See CIVIL PROCEDURE CODE, 1908, SECTION 54.
See CIVIL PROCEDURE CODE, 1908, SECTION 68-71.
See EXECUTION OF DECREE. **114 P 886**

COLLUSION.

See BENAMI TRANSACTION.
See DIVORCE.
See PRE-EMPTION, CONSTRUCTION OF
See TRANSFERS.

COMMISSION.

See CIVIL PROCEDURE CODE, 1908, Order XXVI P. R. 9 and 11.

1. *Executor when allowed to charge commission.*
See EXECUTOR. **76 P R 1905**

2. *Commission or* dustoori *on purchases is unlawful as being immoral and opposed to public policy.*
See PUBLIC POLICY. **91 P R 1910**

COMMISSIONER.

Appointment of Pleader as commissioner.
See PUNJAB TENANCY ACT, 1887, SECTION 16.

COMMON CARRIER.

Railway Company. *See* RAILWAY ACT 0189. **97 P R 1886**
6 P R 1897

COMMON LAND.

See PARTITION. TENANCY ACT, SECTION 9.

1. Ala *and* adna maliks—*Re-appearance of submerged land—Right of possession*—Wajib-ul-arz.
See CONSTRUCTION OF DOCUMENT. **125 PR 1889**

COMMON LAND—*contd.*

2. *Construction of document—"Kul haqiat ka tisra hissa"—Inclusion or exclusion of share of* shamilat.
See CONSTRUCTION OF DOCUMENT. **42 P R 1897**

3. *Suit to restrain proprietors of one* patti *from closing pathway over the* shamilat *of the village—Necessity to implead other proprietors of village.*
See JOINDER OF PARTIES. **41 P R 1888**

4. *Parties to suit—Dispute as to* shamilat *—Necessity to implead all co-sharers.*
See JOINDER OF PARTIES. **108 P R 1889**

5. *Claim to partition—Act XXXIII of* 1871, *section* 65.
See JURISDICTION OF CIVIL OR REVENUE COURT.
71 P R 1875
97 P R 1876
17 P R 1877
69 P R 1877
126 P R 1879

6. *Partition—Settlement Records.*
See JURISDICTION OF CIVIL OR REVENUE COURT. **40 P R 1876**

7. *Portion of* shamilat *granted to* Ala-lambardar *in virtue of his office—Landlord and tenant.*
See JURISDICTION OF CIVIL OR REVENUE COURT.
66 P R 1893
123 P R 1893
104 P R 1894
105 P R 1894
23 P R 1895
28 P R 1895

8. *Suit for declaration of plaintiff's right to a partition of the village common land without consent of defendants.*
See JURISDICTION OF CIVIL OR REVENUE COURTS. **82 P R 1893**

9. *Suit for possession of portion of common land allotted by instrument of partition.*
See JURISDICTION OF CIVIL OR REVENUE COURTS. **63 P R 1894**

10. *Grant of a portion of the village common land to a person holding the office of* ala-lambardar *rent free—Suit for dispossession by the proprietors of the land-Landlord and tenant—Punjab Tenancy Act,* 1887, *section* 4, *clause* 5—*Jurisdiction.*
See JURISDICTION OF CIVIL OR REVENUE COURT. **101 P R 1901**

11. *Chief* lambardar, *office of—Grant at Settlement, Right in land then allotted—Common land.*
See LAMBARDAR—ALA-LAMBARDAR. **105 P R 1879**

12. *Suit for pre-emption—Sale of separate holding with share of* shamilat—Physical *possession—Limitation.*
See LIMITATION ACT, 1877, 2ND SCHEDULE, ARTICLE 10, **65 P R 1889**

COMMON LAND—*contd.*

13. *Mortgage of common land—Part of mortgaged land already heavily encumbered—right of mortgagee.*

See MORTGAGE. **89 P R 1903**

14. *Mortgage of common land—Redemption—Right of one of several joint mortgagors to redeem the whole estate.*

See MORTGAGE. **2 P R 1904**

15. *Occupancy rights in* Shamilat—*Proprietor—Agreement.*

See OCCUPANCY RIGHT. **155 P R 1889**

16. *Pre-emption—Preferential rights of owner of land in same* taraf *to rights of purchaser, owner of land in* shamilat.

See PRE-EMPTION, RIGHT OF, IN VILLAGES. **169 P R 1889**

17. *Pre-emption—House on village site—Suit between non-proprietary residents in village—Vicinage—Special custom.*

See PRE-EMPTION, RIGHT OF, ON ACCOUNT OF VICINAGE OR RELATIONSHIP **85 P R 1893**

18. *Suit by non-proprietors for declaration of right to hold their houses free from certain fees and dues—Right to maintain suit.*

See SPECIFIC RELIEF ACT, 1877, SECTION 42. **48 P R 1887**

19. *Joinder in suit of the full proprietary body.*

Where the right to common land was in issue, *held*, that the whole proprietary body should be parties to the suit. HOOKMA SINGH *v.* FUTTEH SINGH (*No.* 103 *of* 1866, Civil), and KAHN SINGH *v.* GOBIND DASS. **39 P R 1866**

20. Where a person was found to be owner of a holding in a village *held*, that the presumption was that he was entitled to a share in the common land; but if there had been a non-user for more than twelve years, the right must be presumed to have been abandoned. KISHEN LAL *v.* MOOTSUDDEE. **52 P R 1866**

21. *Digging kunker.*

A deed purporting to convey the right of entry to dig kunker in common land, is not valid unless all the proprietors join in it. ANDERSON *v.* TAYLOR. **70 P R 1833**

22. *Ejectment by others than the full proprietary body.*

The user of *shamilat* land is very different from the occupation of a plot of private property. The owner of private lands may be taken conclusively to part with the property which another occupies without leave or license for seventeen years, but there are circumstances in the case of common land belonging to a village, to rebut any such presumption. A suit was brought by a lambardar, backed by the majority of the proprietors, who were then proceeding to partition, to eject an occupier of 17 years' standing. Thirty-eight proprietors were in favor of ejectment; and fourteen for the defendant's remaining. *Held*, that these fourteen should be joined as defendants; and on that being done, a decree might be passed to eject the occupier on giving compensation. GULAB SINGH *v* HEERA LAL. **92 P R 1866**

COMMON LAND—*contd.*

23. Delay on the part of the co-proprietors in objecting to a sale by one of the proprietary body, entitles a *bonâ fide* purchaser for value to be maintained in possession. BUKSHAN *v.* NOOR MAHOMED. **96 P R 1866**

24. *Ejectment of tenant-at-will by proprietary body.*

A *khewatdar* cultivating common land by consent of his co-proprietors, may become a tenant-at-will of the rest of the co-proprietors and may be ejected; but the act of ejectment must proceed from the proprietary body generally and not from a portion only. NEHAL SINGH *v.* RUTTUN SINGH. **99 P R 1866**

25. *Hereditary cultivator.*

Under the general system of property established in this province, a hereditary cultivator is not entitled to a share in the *shamilat* or common land of the village. Therefore a claim to such share set up by a hereditary cultivator was, in the absence of any express provision on the subject in the *wajib-ul-arz*, held to be untenable. AKBUR *v* FUTTEH SHAH. **8 P R 1867**

26. No decree regarding rights in common land can be made adverse to the proprietary body, unless they are parties to the suit either as a body or through their ordinary representatives. BOOTA *v.* WAZEERA (*No.* 18 *of* 1867, Civil), and JAFIR KHAN *v.* FIROZ KHAN. **110 P R 1876**

27. *Mafidar's right.*

A right to share in the common land does not necessarily attach to the *biswadars* of a *mafi* plot within the village. ABDOOL SUMUND *v.* ROOLDOO. **45 P R 1867**

28. *Lambardar.*

The office of *lambardar* confers no right, *per se*, to dispose of the common land. NEBA MULL *v.* ROOPA. **48 P R 1867**

29. The devotion of a peice of land (not being *gora deh* or common building site) to a common village purpose, such as the location of a *faqir*, requires to be established by long use for the particular object; failing which, if the occupant be not one of the proprietary body he can be ejected, by the majority of the proprietors. HEERA MULL *v.* GOLAB SINGH. **56 P R 1867**

30. *Sub-Proprietors' right.*

In certain cases sub-proprietors may receive a proportionate share in the *shamilat.* Both parties were Gukkurs, the dominant tribe in the village. Appellants had been out of proprietary possession for 20 years and were recorded as *malik qabzas*; on this ground the lower Courts would not allow appellant a share in the *shamilat.* *Held*, that as the Settlement Officer had intermediately recognized a distinction between *malik qabzas*, who were Gukkurs, and *malik qabzas* who belonged to other castes, the rule which excluded sub-proprietors from a share in common land might be relaxed, and that appellants should receive a share in the *shamilat* proportionate to their *khewat* holding or actual possession. ROOSTUM KHAN *v.* AZEEMOOLLAH. **5 P R 1867 Rev.**

COMMON LAND—*contd.*

31. A claim allowed where the consent of the proprietary body had been given some years before in partition proceedings. *Ameera* v. *Dan Singh No.* 25 *of* 1868, *Civil*); and where the *wajib-ul-arz* provided for it. GOLAB SINGH *v.* KANH SINGH. **84 P R 1869**

32. Artizans located on the common by the majority of the proprietors cannot, in the absence of special damage to any one and of provision to the contrary in the *wajib-ul-arz*, be ejected by the majority. LUCHMUN *v.* TEJ RAM. **43 P R 1868**

33. A *mafidar* is not entitled to share in the *shamilat*, merely by reason of his being an assignee of the Government revenue; but if he be also proprietor of the *mafi* holding, whether he is entitled to share in the *shamilat*, or not will depend upon how he obtained the proprietorship of that holding. BUSSAWA SINGH *v.* GOLAB SINGH. **44 P R 1868**

34. *Waste Land.*

The waste land attached to a *mehal* consisting of an aggregate of independent wells, does not necessarily belong exclusively to the owners of the site of the principal village which gives its name to the whole *mehal.* KAEM SHAH *v.* MOHUMDA. **64 P R 1868**

35. A *faqir* who has been allowed without opposition to squat on the common, and to plant trees thereon and enjoy the fruit, cannot be disturbed by hereditary cultivators of the land, though it is open to the proprietary body to dispute his right GOORDIT SINGH *v.* GABEEA. **103 P R 1868**

36. *Co-parceners—Allotment on breaking up.*

The *wajib-ul-arz* gave to the *lambardar* the right of allocating *shamilat* land to the cultivators, and reserved the prior right to a coparcener to break up land bordering on his cultivated field; but it was not clear from the *wajibul-arz* whether sanction of a *lambardar* was required for breaking up *shamilat* land not situated on the borders of his field. The land in dispute did not border upon the cultivated fields of the plaintiff, who was a *lambardar*, nor of defendants, whose eldest brother was also a lambardar. The land was first broken up by *lambardar*, but plaintiff objected to this from the first, and never assented to defendants' possession. *Held*, that until application was made to divide the *shamilat*, the defendants' possession must be maintained, but not so as to necessitate allotment to them of the land in dispute on a partition of the *shamilat*, and

that if the land should be allotted to another co-parcener, defendants must surrender possession. KURM *v.* HUSSUN ALI. **34 P R 1869**

37. *Transfer—Consent of joint proprietors.*

With regard to village affairs, a *temporary* alienation of a portion of joint-property without the consent of the joint-owners may be valid. The allotment of a portion of *shamilat* land to a head lambardar is not a transfer which requires the consent of all the shareholders. JUGGUT SINGH *v.* BAGH SINGH. **4 P R 1870 Rev.**

38. *Gift of share in divided land—Right of donee to* shamilat.

Defendants held certain shares in the divided land of the village by gift from the original proprietors. *Held*, that the defendants were entitled in virtue of their separate holdings to share in the common land according to the usual division of the profits of the common land among the proprietary body. MAHOMED SADIK *v.* ABDULLA. **52 P R 1871**

39. *Appropriation of part of shamilat—Assent of majority of proprietors disregarded.*

The contention between the parties was as to whether a piece of *shamilat* land should be used for the site of a serai. Inasmuch as it appeared that the dispute had arisen out of the attempts of certain individual members of the proprietary body to get possession of a piece of *shamilat* ground for themselves, and that the object for which the ground was to be used was only colourable, the Chief Court *held* that, whatever might be the rights of disputing parties in a village community where a *bonâ fide* dispute had arisen as to the use of the common land, it could not allow the assent of the majority of the proprietors of the *thoke* to which the *shamilat* belonged, to outweigh in this case the declared wish of the minority. HIDAYAT ALI *v.* AKBAR ALI. **76 P R 1873**

40. The proprietary body of *mauza* Chatera, *Zillah* Rohtak, gave a portion of the *shamilat* as *dhol* (or rent free) to a *faqir*. The proprietors of Pana Begwan, objecting to the conduct of the *faqir*, sued to oust him, the proprietors of Pana Chaja wishing to retain the grantee in possession. *Held*, that the suit of the proprietors of Pana Begwan would not lie; that their proper course was to apply for partition. RATU DAS *v.* INDRAJ. **40 P R 1875**

41. *Grazing—Rights of common pasture.*

The *wajib-ul-arz* of village B was as follows: "The cattle of the entire village, without distinction of proprietors and non-proprietors, shall continue to graze in future in the same manner as they have grazed from old times; no grazing dues shall be collected." The plaintiffs resided elsewhere, and resorted to village B merely for the

purposes of cultivation. *Held*, that their right to depasture cattle free of charge in village B was limited to such cattle as they *bonâ fide* used for cultivating the lands held by them in that village, and did not extend to all the cattle they might possess; but that the right extended to all parts of the waste of village B on which the proprietors grazed their cattle. A claim asserted by the proprietors of one village to common pasture in another, must be supported by the very fullest and clearest evidence when the *wajib-ul-arz* is silent on the point. BHUP SINGH *v.* SARDHA SINGH. **108 P R 1876**

42. *User by Kamins—Right to continue the user.*

Where certain paper-makers had by the consent of the proprietary body erected trade-buildings on the common land a few years previously, and a partition had followed, *held*, that the purchaser from the proprietor to whom fell that portion on which the buildings stood could not eject the paper-makers. DASONDHI *v.* GHULAM ALI. **3 P R 1877**

43. The plaintiffs, weavers, claimed the right to have and use holes or pits in the *abadi* for the purpose of their trade, the defendant, a proprietor, to whom that portion of the *abadi* had been allotted on partition, resisting the claim. The plaintiffs had used the holes for many years, and the lower Courts found that by custom they were entitled to use them.

Per BOULNOIS, J.—It is open to the proprietary body to allow persons to occupy part of the common land for their use and benefit in such a way as to acquire a right of user; and under some circumstances, especially after a long lapse of time, it is not open to the proprietary body, or individuals claiming under it, after a partition, to oust the occupants. It is not a question whether there has been occupation for 12 years or not.

Per BOULNOIS AND CAMPBELL, JJ.—The custom having been satisfactorily found by the lower Courts, the plaintiffs' claim must be admitted.

Per LINDSAY, J.—The custom had not been satisfactorily found, and in the absence of proof of custom, plaintiffs should establish an easement. DEWA SINGH *v.* BILLA. **4 P R 1877**

44. *Held*, that a non-proprietor (tenant) can by long use and prescription obtain a right to use part of the common land for the purpose of his agricultural employment, *i.e.*, by erecting a *bara* or cattle-trough on the common land.

Held further, that such a user will survive partition of the common land, so long as the non-proprietor (tenant) continues in the occupation of his cultivating land, and so long as he uses the *bara* as a tenant properly should. GHOUSA *v.* ABADAN. **34 P R 1877**

45. *Appropriation of* shamilat *for specific object—Dissent of minority of proprietors.*

Held that, in the absence of any custom, the will of the majority of a village community cannot prevail against that of the minority when the question is one as to the disposal of the common property in such a way as to preclude all use of it by the owners. SOHEIL SINGH *v.* ABDULLA. **78 P R 1877**

46. Abadi—*Village site—Sale of vacant site occupied by proprietor for many years—Consent of Co-sharers—Custom.*

Where the *abadi* was recorded in the *wajib-ul-arz* as the common property of the village proprietors, *held* (no special custom being proved), that the fact of one of the proprietors having held a vacant site in the *abadi* gave him no right to sell it to one who was not a member of the village community, without the consent of the co-sharers. HEBA *v.* RAM SINGH. **24 P R 1878**

47. *Ejectment—Suit by one of several co-sharers.*

A suit by one of several co-sharers in a plot of land to eject a tenant of such land will not lie. All the co-sharers must join in the action. ATTAR SINGH *v.* DEWA SINGH. **17 P R 1879**

48. *Lease against wishes of proprietary body*—lambardars, *powers of, in respect of common land.*

The *Lambardars* of the village of Rurki in the Rohtak district, gave a contract to K. for the manufacture of saltpetre out of certain lands which were the undivided common property of the village proprietors, 261 in number.

Four proprietors brought a suit against K. and the *lambardars*, to restrain K., the contractor, from manufacturing saltpetre, on the ground that they had not consented to the contract and objected to the manufacture. On taking the votes of the proprietary body, it was found that 162 objected and 102 were in favour of the manufacture being permitted.

Held, as the majority of the village proprietors were opposed to the grant of a lease for the manufacture of saltpetre from the common land of the village, as no custom was shown to exist in the locality under which *lambardars* had the power to grant such a lease in opposition to the wishes of the proprietary body, and as the *lambardars* had no such power in virtue of their office, that the plaintiffs were entitled to the relief claimed. KASHINATH *v.* LEKH RAM. **30 P R 1879**

49. Malik Kabza—*Right to share of common lands*—Onus *of proof.*

The status of *Malik Khudkasht* or *Malik Kabza* does not ordinarily confer a right to share in the common lands of a village. Where, therefore, plaintiffs occupying that

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status sued for a declaration of their right to such share, *held*, that the burden of proving that they were entitled to it, lay upon them.

The fact that a *Malik Khudkasht* or *Malik Kabza* has been allowed to break up and cultivate portions of the common lands, without being called upon to pay anything more than the revenue and cesses assessed on such land, is not ordinarily sufficient to show that he holds the land as of right in virtue of his status as such *Malik Khudkasht or Malik Kabza*. SEWA SINGH *v.* GANESHA.

53 P R 1879

50. *Right of one proprietor to sue for share of produce of portion of common land.*

The plaintiff, who had established his right to a fourth share in the common land of the village, but had failed to obtain partition from the revenue authorities, sued the defendants, co-proprietors of the village, for the value of his share of the produce of a portion of the common land which they cultivated.

Held, that as the defendants did not cultivate as tenants of the plaintiff, and, were not liable to be ejected or have their rent enhanced in a suit brought by him alone, and as, moreover, they were rightly in possession of the land under a well defined and recognized title, the suit was not maintainable. JAMUN SHAH *v.* AHMED SHAH. **65 P R 1879**

51. *Sale of mango grove by majority of proprietors—Dissent of minority—Suit by purchasers to compel partition of trees.*

Where a majority of the proprietary body sold to the plaintiffs the trees standing in a mango grove, which was joint undivided property of all the proprietors, whereupon the plaintiffs brought a suit to compel the dissentient proprietors to partition off their share in the trees.

Held, that the sale passed no interest whatever in the trees of the grove: that the plaintiffs could stand in no better position as against the defendants (the dissentient proprietors) who were no parties to the sale, than their own vendors. That these vendors could not before partition claim any particular trees as their own; and could not have claimed partition of the trees as distinct from the soil on which they stood; and that therefore plaintiffs' suit failed. The decision in *Punjab Record*, No. 70 of 1866, cited and followed. GUJAR *v.* SAHAB SINGH.

109 P R 1879

52. *Construction of enclosure with consent of co-sharers—Subsequent suit by minority of proprietors for removal of enclosure.*

Where all the co-sharers of the village consented to the construction of a thorn hedge on the common land of the village, *held* that a suit by a minority of the proprietors for the removal of the hedge was not maintainable, it not being shown that the enclosure was being devoted to any use materially different from what was contemplated when the assent was given, nor that any damage

COMMON LAND—*contd.*

accrued to plaintiffs from the continuance of the hedge. KHET SINGH *v.* KISHNA.

158 P R 1879

53. *Hoshiarpur district.*

Found, that no established custom exists in *Mauza* Bassimoda in the Hoshiarpur district, where by a non-proprietary occupant of a site in the village can make a valid transfer of house and site, otherwise than with the consent of the proprietors. SOUDHA *v.* USMAN KHAN. **8 P R 1881**

54. Mauza *Bahtar, Rawalpindi—Power of sale.*

Found, that by the custom of the village of Bahtar in the Fattehjhang tahsil of the Rawalpindi district, non-proprietary residents have power to sell the houses in their occupation. KALA KHAN *v.* SARU.

48 P R 1881

55. Mauza *Bilgah, Jullundur district—Power of non-proprietor to sell his house without permission of proprietors—Proprietors' right to site.*

Held, that a non-proprietary resident of Mauza Bilgah in the Phillour *tahsil* of the Jullundur district may sell his house without the permission of the proprietors, though he has no power to sell the site. RAMJI DAS *v.* HAMIR CHAND. **9 P R 1882**

56. *Acquiescence—Suit for cattle-enclosure—Long possession by plaintiff—Power of village proprietors to evict where possession has not lasted for* 12 *years—Customary right of occupant to retain possession.*

Plaintiff sued to recover possession of a piece of land adjacent to and enjoyed with his house as a cattle-enclosure, on the ground of his long possession and recent dispossession by defendants. Defendants pleaded that the land was *shamilat* of the village, was not the plaintiff's cattle-yard, and had never been in his possession. The lower Courts found that plaintiff had held the cattle-enclosure for a long time, and accordingly held that his possession could not be disturbed by the defendants.

Held, that the judgments of the lower Courts could be supported on the simple ground that the occupation of the land adjacent to the plaintiff's residence as a cattle-enclosure had long been acquiesced in by the defendants, the village proprietors, and that such occupation by general custom was not liable to be determined at the mere will of the proprietors at any time if it had not lasted for 12 years, such acquiescence implying a tacit consent to the occupation of the enclosure as annexed to the residence, and that consent not being liable to be revoked merely at the caprice of those who gave it. *Dasondhi* v. *Ghulam Ali* (No. 3 of 1877, Civil), *Dewa Singh* v. *Billa* (No. 4 of 1877, Civil) and *Ghousa* v. *Abadan* (No. 34 of 1877, Civil) referred to. NARAIN SINGH *v.* HAMIR SINGH. **36 P R 1882**

57. *Suit for removal of* Chabutra*—Co-sharers altering character of portion of com-*

COMMON LAND—*contd.*

mon land without consent of the proprietary body.

It is not competent to one or two co-sharers alone, and without the consent of the proprietary body, to take possession of a portion of the common land of the village and to alter its character in such a manner as to exclude permanently the remaining co-sharers from the possession or use of it.

Where therefore the defendants (who were three of the co-sharers of the village) erected a *chabutra* in front of their houses on a portion of the common land of the village which was used as a lane, thus narrowing the lane to the material inconvenience of the persons using it, *held*, that the plaintiffs (the remainder of the proprietary body) were entitled to a decree to the effect that the defendants must remove the *chabutra*, and restore the site to the condition in which it was before the erection of the *chabutra*. GHAN SINGH *v.* SADDA SINGH.

73 P R 1882

58. Mauza *Bagha Purana, Moga* tahsil—*Right of non-propietors to sell their dwelling-houses with the sites—General custom—Proof of special custom.*

The general rule, applicable to agricultural villages in the Punjab, is that a non-proprietary resident in such village cannot, unless there be a well established custom to the contrary, sell his dwelling-house with its site to a stranger without the permission of the proprietors of the village.

Found, that no well-established custom exists in the village of Bagha Purana in the Moga *tahsil* of the Ferozepur district, opposed to the general custom, allowing non-proprietary residents to sell their sites without the consent of the proprietors.

To prove a local custom that the owners of the houses are also full owners of their sites, and can dispose of them without permission, it is not enough to show that some sales of sites have taken place which were not objected to and that in a particular case some of the proprietors objected without success. Proof of particular sales having taken place without objection would be very good evidence of the title of the purchaser to the lands actually sold; but while such sales would give a good title to individuals in particular portions of the village site, they would not prove that the rights of the proprietary body over the remainder of the site had been extinguished, and that possession whether by proprietors or non-propietors had come to be the only measure of right. *Mya Das* v. *Fatteh Din* (No. 25 of 1875, Civil), *Bika Singh* v. *Lakhu* (No. 92 of 1880, Civil), *Sahiba* v. *Prema* (No. 93 of 1880, Civil), *Ramji Das* v. *Hamir Chand* (No. 9 of 1882, Civil), and *Bishen Chand* v. *Jawanda Mal* (C. A. No. 1313 of 1876, unpublished), cited. KHARAK SINGH *v.* ALLADITTA. **85 P R 1882**

59. *Lease of common land by some co-sharers without consent of rest—Validity and effect of such disposition.*

COMMON LAND—*contd.*

In a suit brought to enforce specific performance of a lease executed by some of the proprietors of the village, whereby they transferred to the plaintiff all their rights and interests in the *shamilat* land of the village, the defendants who contested the case pleaded *inter alia* that the lease of joint property like *shamilat* land by only some of the co-sharers without the consent of the rest was invalid.

Held, that the fact of some of the proprietors not having joined in the lease did not, in the absence of a contrary custom (which was not alleged to exist in the present case), render the contract void and inoperative.

Although in certain villages a local custom may exist whereby a co-sharer may be restrained from alienating even for temporary purposes his own share except under specified conditions, there is nothing on general legal grounds to prevent a co-sharer from validly disposing of his own share in common property, and thereby substituting the purchaser or alienee in his own stead as a tenant in common with the rest of the proprietary body, so long as such a disposition does not interfere improperly with the enjoyment by the latter of the property in the usual manner. *Anderson* v. *Taylor* (No. 70 of 1866, Civil), and *Gujar* v. *Sahab Singh* (No. 109 of 1879, Civil), referred to. JHANDA *v.* NANA LAL. **148 P R 1882**

Cited and followed in GURADITTA *v.* JOWALA SHAH. **102 P R 1883 (Note)**

60. *Suit by proprietors to oust occupancy tenants from* baras—*Tenant's right to retain possession.*

In a suit by the proprietors of the village to oust the defendants, who were occupancy tenants, from certain *baras* or enclosures situated near the village site and occupied by defendants, it was found that the defendants had been in possession of the *baras* for a long time and had been using them for the storage of *bhusa* and for agricultural purposes.

Held, that the defendants' occupation of the *baras* should not be disturbed so long as they remained hereditary tenants in the village, and used the *baras* for purposes connected with the tenancy of their lands. *Ghousa* v. *Abadan* (No. 34 of 1877, Civil) followed. SHEOJI RAM *v.* PAUKAR. **152 P R 1882**

61. Mauza *Bhirwal*, tahsil *Chunian*—*Right of non-proprietor to sell the site of his house.*

In a suit for possession of a house in *mauza* Bhirwal, *tahsil* Chunian, Lahore district, on the ground of purchase from a non-proprietary resident in that village, *held*, that the plaintiff had failed to establish any custom, contrary to the generally prevailing custom in the Punjab, whereby a non-proprietary resident could dispose of the site as well as the materials of his house; the evidence establishing that while the materials might

COMMON LAND—*contd.*

be sold, the site was the property of the proprietors of the village and could not be transferred by sale without their consent. NANDA *v.* PUNJU SINGH. **193 P R 1882**

62. *User by kamin—Presumption from long user*—Bara.

Plaintiff, who was a kamin and a non-proprietor, claimed a *bara* or enclosure situated in the common land, from which he alleged the defendants, the proprietors, had ejected him. It was found that plaintiff had had possession of the *bara* for about 25 years, but there was no proof that the plaintiff had received actual permission from the proprietors to occupy the land.

Held, that, considering the plaintiff's long possession, it was fair to infer that he obtained such permission, from the owners, and that he had acquired a right of user in the enclosure. *Dewa Singh* v. *Billa* (No. 4 of 1877, Civil, F. B.) cited. LALA *v.* PARMESARYA. **73 P R 1883**

63. *Suit by one proprietor to eject occupant of common land—Joinder of proprietary body—Right to sue—Decree for ejectment.*

Plaintiff, one of the proprietors of the village, sued to eject defendant from a plot of land in the village *abadi* upon which the defendant had constructed a hut, alleging that the building interfered with the discharge of water from his roof, which was accustomed to flow on to the land now built upon. The lower Appellate Court, after impleading the remainder of the proprietary body as defendants, gave a decree to the effect that the defendant was to be ejected from the land in suit, which decree purported to be in favour of the plaintiff and 38 co-proprietors, who when joined as co-defendants, agreed with the plaintiff in demanding the defendant's ejectment from a portion of the common land.

Held, that a decree in the above form could not be sustained in the present case; that the plaintiff as a mere member of the proprietary body was not entitled *eo-nomine* to maintain the suit, unless he could show that by long possession of the site in question he had acquired a title which, against a trespasser, was entitled to protection; and if the proprietary body as such, or a majority of them, claimed to eject the defendant as a mere trespasser, they must bring a suit for that purpose, the present suit not being of that character. NANU *v.* RAM SAHAI. **99 P R 1883**

64. Mauza *Parawala*, tahsil *Phalian*, zillah *Gujrat*—*Right of non-proprietor to sell his house*

In a suit for cancellation of a sale made by a non-proprietor of a house situated in *mauza* Parawala, *tahsil* Phalian, in the Gujrat district, *held*, that the defendant had failed to prove that a custom had grown up allowing sales by non-proprietary residents of the village in general. JIT SINGH *v.* IMAM BAKSH. **151 P R 1883**

COMMON LAND—*contd.*

65. Mauza *Chiryawala*, tahsil *Kharian*—*Power of non-proprietors to alienate their houses.*

Held, that no special custom was shown to exist in *mauza* Chiryawala in the Kharian *tahsil* of the Gujrat district, allowing non-proprietary residents to alienate their houses without the consent of the owners. GURDIT SINGH *v.* FATTEH ALI. **6 P R 1884**

66. *Mortgage of undivided share in* shamilat—*Legality of mortgage—Possession by mortgagee of share subsequently falling to mortgagor at division.*

There is no rule of law prohibiting the mortgage by an owner of his share in *shamilat* and before it has been divided.

In such a case when the mortgagee has taken up a certain definite share at the time of the mortgage, and that share has subsequently fallen to the mortgagor at division, and has been held since by the mortgagee, *held*, that the said mortgagee is entitled to hold such share as mortgagee in preference to a subsequent alienee of the mortgagor. BULAKI *v.* BAHALA SINGH. **37 P R 1884**

67. Mauza *Mudki*, *Ferozepur*—*Transfer by one proprietor of his right of occupancy of a piece of* shamilat *land to another proprietor.*

Found, that no custom exists in *mauza* Mudki in the Ferozepur district by which a proprietor in possession of a piece of *shamilat* land within the site of a *qasbah* is restrained from transferring his right of occupancy in such land to another proprietor. BHAGWAN DAS *v.* FUTTEH SINGH. **42 P R 1884**

68. Mauza *Chabal*, tahsil *Tarn Taran*, *Amritsar*—*Power of non-proprietor to transfer his right in a site on which he has been allowed to build.*

Found, that no custom exists in *mauza* Chabal in the Tarn Taran *tahsil* of the Amritsar district, whereby a non-proprietor who has been allowed by the proprietors to build on a site given by them acquires a transferable right in such site. *Ramji Das* v. *Hamir Chand* (No. 9 of 1882, Civil), *Kharak Singh* v. *Alladitta* (No. 85 of 1882, Civil), and *Bishen Chand* v. *Jawanda Mal* (C. A. No. 1313 of 1876, unpublished), cited. PREM SINGH *v.* NATHU RAM. **73 P R 1884**

69. *Mauza Somryal*, tahsil *Daska*, *Sialkot*—*Right of non-proprietary resident to sell his house with right of occupancy of the site.*

Found, that a non-proprietary resident at *mauza* Somryal in the Daska *tahsil* of the Sialkot district, who is the owner of the building in which he has resided, can by custom sell the house as it stands, including the right to occupy the site, but that such sale merely gives the purchaser the same right of occupancy in the site which his vendor had, he being liable to the payment of the same dues to which the vendor would have been liable. *Mya Das* v. *Fatteh Din* (No. 25 of 1875, Civil), *Alla Ditta* v. *Dina*

No. 125 of 1879, Civil), *Bika Singh* v. *Lakhu* No. 92 of 1880, Civil), and *Kharak Singh* v. *Alladitta* (No. 85 of 1882, Civil), cited. MEWA SINGH *v.* HAKAM ALI. **87 P R 1884**

70. *Non-proprietary resident claiming proprietary right in site which he occupies—Burden of proof.*

In cases where a non-proprietary resident claims to have a proprietary right in the site occupied by him, the main issue is whether he has such right, and the burden of proof rests on him in the first instance to show that he has it, and not on the proprietary body to show that he has not. The latter may rely in the first instance on the facts that they are the proprietary body, and that the proprietary body is as a rule owner of the habitable site, and therefore anybody controverting their general title has to establish his proposition affirmatively. *Alla Ditta* v. *Dina* (No. 125 of 1879, Civil), and *Kharak Singh* v. *Alladitta* (No. 85 of 1882, Civil), cited. AMAN SINGH *v.* KALLA. **119 P R 1884**

71. *Non-proprietor's right of residence in house on village site—Right to materials of house—Property in site after materials have been removed*—Wajib-ul-arz.

Where the *Wajib-ul-arz* of the village provided that if a non-proprietor had built a house the materials of which were worth more than Rs. 30, he could sell the materials of the house with the right of residence therein, *held*, that such right of residence could not be taken to include the right of residence on the bare site after the house had been removed from it, or to render the bare site alienable at the pleasure of non-proprietors after they had taken away their materials. HAR SARUP *v.* HANWANTA. **7 P R 1885**

72. *Right of village proprietors to restrain alienation of* shamilat—*Right of majority to restrain permanent alienation.*

Where a suit is brought to restrain the permanent alienation of the common land, *i.e.*, an alienation calculated to prevent any part of the common land from being hereafter divisible among the owners, there is no reason why a minority of the village proprietors should not sue: but where the alienation is not permanent, but the rights of the alienee, whatever they may be, are subject to the future division of the *shamilat*, then the will of the majority will prevail. *Hidayat Ali* v. *Akbar Ali* (No. 76 of 1873, Civil), *Soheil Singh* v. *Abdulla* (No. 78 of 1877, Civil) and *Kashinath* v. *Lekhram* (No. 30 of 1879, Civil), cited. HAR SARUP *v.* HANWANTA. **7 P R 1885**

See also GULAB *v.* LALJI. **7 P R 1885 Note**

73. *Suit by proprietors to oust occupancy tenant—Tenant's right of occupation—Tenant using the site for purpose other than that for which it was given—Custom.*

Held, that by custom, a hereditary cultivator who occupies a portion of the *shamilat* land with the consent or acquiescence of the

proprietor for storing manure for agricultural purposes cannot be disturbed in his possession so long as he remains a tenant in the village and uses the site for the purposes for which it was given; but if he diverts the site to other purposes, as for instance to build upon, and disclaiming the title of the proprietors sets up an adverse title himself, he forfeits his right of user and is liable to ejectment at the suit of the proprietors. *Narain Singh* v. *Hamir Singh* (No. 36 of 1882, Civil), and *Sheoji Ram* v. *Paukar* (No. 152 of 1882, Civil), cited and followed. BHANI *v.* BHAG MAL. **65 P R 1885**

74. *Suit for removal of cattle-trough erected by a co-sharer without the consent of the proprietary body—Altering character of common land in such a way as to prevent other proprietors from using it in the way they intended it should be used.*

Twenty-nine of the proprietary body of the village brought a suit against the remaining proprietors (14 in number) for the demolition of a cattle-trough erected by one of them on common land, alleging that the trough had been erected seven months before suit and that it caused inconvenience to the people of the village. Defendants replied that the trough had been erected eighteen years previously on joint land in possession of one of their number, and that it caused no inconvenience. The first Court gave a decree for demolition of the trough, but, on appeal, the Judicial Assistant Commissioner held that the plaintiffs had not a cause of action cognizable by the Civil Courts and dismissed the suit. On appeal, the Commissioner reversed the Judicial Assistant's order, holding that the suit would lie.

Held, that the plaintiffs could maintain the suit, not simply on the ground that the cattle-trough caused obstruction to a public road, but on the ground that one of the proprietary body had taken possession of joint land and had altered its character in such a way as to prevent the remaining proprietors from using it in the way they intended that it should be used. *Ghan Singh* v. *Sadda Singh* (No. 73 of 1882, Civil), cited. CHUHAR SINGH *v.* DHAUNKAL SINGH. **74 P R 1885**

75. *Suit for removal of wall and* dahliz *—Co-sharers have no right to exclusive possession of joint property or to alter the condition of any portion thereof without the consent of the proprietary body—Acquiescence in wrongful act.*

In a suit for a mandatory injunction to compel defendants to remove certain obstructions erected by them on common land, the lower Courts dismissed the suit on the ground that the plaintiffs' conduct in allowing nearly a year to elapse before suing, amounted to acquiescence in the wrongful act committed by the defendants and barred them from claiming an injunction.

Held following *Ghan Singh* v. *Sadda Singh* (No. 73 of 1882, Civil), that co-sharers have no right to take exclusive possession and alter the conditions of any portion of joint

property without the consent of the other co-sharers, and that, as the defendants in the present instance took advantage of the temporary absence of the plaintiffs to hurriedly run up the obstructions complained of, and plaintiffs, on their return to the village, at once objected to the acts of the defendants and continued so to object, the fact that they allowed almost a year to elapse before bringing their suit could not disentitle them to the relief claimed, as mere delay in enforcing a right does not constitute acquiescence.

To constitute a bar by acquiescence the conduct of the party entitled to offer opposition to the act of the other must be such as to give rise to a reasonable belief of his consent, and the other must have been induced thereby to do something from which he might otherwise have abstained. *Gouhar* v. *Fazla* (No. 53 of 1878, Civil) and *Tronson* v. *Official Liquidator, Punjab Bank* (No. 38 of 1881, Civil) cited. GHASITA MAL *v.* GOGA. **121 P R 1885**

76. Mauza *Hatin*, tahsil *Nuh*, zillah *Gurgaon—Right of non-proprietors to sell the sites of their houses.*

Found that no well established custom exists in *Mauza* Hatin in the Nuh *tahsil* of the Gurgaon district under which non-proprietors can sell the sites of the houses occupied by them so as to extinguish the rights of the proprietary body in the village site. KALLU *v.* AMIAN SINGH. **40 P R 1886**

77. *User by kamins—Erection of* kothas *without permission of proprietors—Suit for ejectment—Right of minority of proprietors to maintain suit—Forfeiture of rights of user—Custom.*

A suit brought for the demolition of certain buildings erected by the defendants on common land without the consent of the proprietary body, *held*, to be maintainable by a minority of the proprietary body, the act complained of amounting to an infringement of their rights as co-owners, which alone was sufficient to sustain the action.

Where it appeared that the defendants who were weavers, and who had been permitted to erect their looms on a portion of the common land, subsequently built *kothas* on the land without the consent of the proprietors, whereupon the plaintiffs, a portion of the proprietary body, sued to eject them from the land, *held*, that though so long as the defendants used the land for carrying on their trade, they could not under a well-recognized custom be ejected, when they diverted the site to another purpose not warranted by the grant and built upon it, they forfeited their rights of user and were liable to ejectment. *Har Sarup* v. *Hanwanta* (No. 7 of 1885, Civil), and the earlier cases therein relied upon, cited. AMIN CHAND *v.* DASOUNDHA SINGH. **54 P R 1886**

78. *Non-proprietary resident of* mauza *Badli, Hoshiarpur—Right of succession by*

COMMON LAND—*contd.*

remote collateral of last occupant of house on village site—Custom—Onus probandi.

Plaintiff, a non-proprietor of the village of Badli in the Hoshiarpur *tahsil*, claimed to succeed to the house of a deceased non-proprietor to whom he was only remotely related. The proprietors resisted the claim on the ground that the right of succession by non-proprietors to the sites in the village was limited to direct descendants (son, grandson, etc.) and collaterals as near as nephews only.

Held that, under the circumstances of the case, it lay upon the plaintiff to show that collaterals more distantly related than a nephew were by custom entitled to succeed, and that he had failed to discharge the *onus* cast upon him in the present case. ATTRA *v.* MODA. **37 P R 1887**

79. *Custom—Non-proprietary resident on village site—Right of ejectment by proprietor.*

In a suit by the proprietors of the village for ejectment of a non-proprietary resident, *held*, that the plaintiffs had failed to prove a special custom whereby they could eject such non-proprietary resident from a house built by him, so long as he remained in the village and paid the customary fees or rendered the customary services. *Muhammad Alam* v. *Ajab* (No. 34 *P.* R., 1882,) cited and followed. ZARIF *v.* AKBAR. **50 P R 1888**

80. *Appropriation by one proprietor of houses built for common purposes—Suit for ouster of such proprietor—Joinder of proprietary body—Will of majority.*

Plaintiffs, who were some of the proprietary body of the village, sued on the allegation that one of the defendant proprietors had set up an exclusive title to certain houses, which had been built on common land for common purposes by the whole proprietary body. The lower Appellate Court dismissed the suit on the ground that a proprietor holding common property could only be ousted by a clear majority of the proprietors, holding that such a majority did not exist against the defendant in the present case.

Held (reversing the above order), that in a case like the present, even a single proprietor would have a right to protect himself by a suit in Court against such an infringement of his rights. NAZAR SINGH *v.* HIRA SINGH. **74 P R 1888**

81 Mauza *Nagar, Rohtak—Succession to houses held by non-proprietary residents—Power to alienate such houses—Custom.*

Held, that no special custom was proved to exist in *mauza* Nagar in the Rohtak district, by which only direct lineal heirs were entitled to succeed to the houses of non-proprietary residents in the village, and that the right to succeed therefore extended also to near collaterals. *Attra* v. *Moda* (No. 37 *P. R.*, 1887) distinguished.

COMMON LAND—*contd.*

But, *held* further that, by the custom of the same village, non-proprietors, who either are or are in the position of mere *kamins* have no right to sell or mortgage either the sites of their houses or a right of residence therein. WALI MUHAMMAD KHAN *v.* MUSSAMMAT SURJI **76 P R 1888**

82. Mauza *Kanet Khalil*, tahsil *Gujar Khan - Right of non-proprietors to alienate their houses and site without the permission of the proprietor—Right to sell materials—Custom.*

Held, that no well-established custom was shown to exist in the village of Kanet Khalil in the Gujar Khan *tahsil* (contrary to the general prevailing custom of agricultural villages in the Punjab) by which a non-proprietary resident could sell his house and site without the permission of the proprietor of the site, nor was it even proved that he could sell the materials. *Mya Das* v. *Fatteh Din* (No. 25 *P. R.* 1875), *Bishen Chand* v. *Jawanda Mal* (No. 1313 of 1876, unpublished), *Rehmat Khan* v. *Kutba* (No. 3 *P. R.* 1879), *Alla Ditta* v. *Dina* (No. 125 *P. R.* 1879), *Bika Singh* v. *Lakhu* (No. 92 *P. R.* 1880), *Sahiba* v. *Prema* (No. 93 *P. R.* 1880), *Soudha* v. *Usman Khan* (No. 8 *P. R.* 1881), *Mir Ahmad* v. *Amir* (No. 53 *P. R.* 1881), *Ramji Dass* v. *Hamir Chand* (No. 9 *P. R.* 1882), *Kharak Singh* v. *Alladitta* (No. 85 *P. R.* 1882), *Prem Singh* v. *Nathu Ram* (No. 73 *P. R.* 1884), *Mewa Singh* v. *Hakam Ali* (No. 87 *P. R.* 1884), and *Kallu* v. *Amian Singh* (No. 40 *P. R.* 1886), cited. TEJA SINGH *v.* MIRZA SAYAD MUHAMMAD KHAN. **124 P R 1888**

83. Mauza *Hassellanwala*, tahsil *Phalian, Gujrat district—Right of non-proprietors to transfer the sites of their houses.*

Found, that no custom exists in *mauza* Hassellanwala in the Phalian *tahsil* of the Gujrat district, according to which non-proprietors generally can transfer the sites of their houses without the consent of the proprietors. MAYA DAS *v.* JAN MUHAMMAD. **13 P R 1889**

84. Mauza *Ghartal*, tahsil *Daska, Sialkot—Right of non-proprietors to sell their houses.*

Found that no established custom exists in *mauza* Ghartal in the Daska *tahsil* of the Sialkot district by which non-proprietors can sell even their houses, apart from the sites, without the consent of the proprietors. BUTA MAL *v.* RULDU. **40 P R 1889**

85. Mauza *Bhagowal, Gujrat district—Right of non-proprietors to transfer their houses.*

Found that in *mauza* Bhagowal in the *tahsil* and district of Gujrat, non-proprietors can by custom transfer the materials of their houses on the *abadi* without the consent of the proprietors, but that such customary right does not involve a power to transfer the site also. KHUDA YAR *v.* KAPUR SINGH. **50 P R 1889**

COMMON LAND—*contd.*

86. Mauza *Chabal Kalan*, Tahsil *Tarn Taran, Amritsar District—Succession to houses of non-proprietors—Near and remote collaterals.*

In a suit for possession of a house by the collaterals (related in the 6th and 7th degree) of the deceased non-proprietary resident in *mauza* Chabal Kalan in the Tarn Taran *tahsil* of the Amritsar district, in which it appeared that the deceased was not an absolute owner of the house in question and the site, *held*, that the plaintiffs had failed to prove any custom whereby the right of succession extended beyond very near collaterals. KARAM CHAND *v.* HAKAM SINGH. **71 P R 1889**

87. Mauza *Ambadher*, tahsil *Doaba*, zillah *Peshawar—Right of proprietors to eject non-proprietors from their houses.*

Found, that no custom prevails in *mauza* Ambadher, in the Doaba *tahsil* of the Peshawar district, by which the proprietors of the village can eject a non-proprietary resident from a house occupied by him, and which was built by him or his ancestors, even on payment of the value of the materials of the house. HAMID KHAN *v.* TOTA SINGH. **88 P R 1889**

88. *Co-sharers—Exclusive possession of one—Dispossession—Suit for restoration of possession—Proper parties.*

In a suit for possession of a plot of *shamilat* land, it was alleged that the plaintiffs had reclaimed the land and had long been in possession, but that the defendants had recently ousted them. Both parties were co-sharers in *shamilat*. The Divisional Judge dismissed the suit on the ground that plaintiffs could not sue for exclusive possession of joint property. *Held*, that one co-sharer may, under certain circumstances, take and keep exclusive possession of a portion of *shamilat* land for his own use until partition, and that another joint owner is not by reason of the land being *shamilat* necessarily entitled to disturb his possession.

Held, also, that it was not necessary to make all the co-sharers parties to the suit, as there was no dispute as to the land being *shamilat*. WAZIR SINGH *v.* MAHTAB SINGH. **108 P R 1889**

89. *Grazing rights—Common land—Occupancy tenants—Proprietor's right to partition and cultivate.*

In a suit by occupancy tenants against proprietors for a declaration of right to graze their cattle on the original common land, the lower Appellate Court held that the plaintiff's right was conditional on the land continuing *shamilat*, and that as the land had been partitioned in 1871, the right ceased. The plaintiffs based their claim on the *Wajib-ul-arz* prepared previous to partition, which provided that all the village cattle were to graze in future upon the common land of the village, without distinction of proprietors or non-proprietors. *Held*, that this provision did not mean either that

the grazing right extended over the *shamilat* as it was constituted at the time of settlement, or that the right extended over the *shamilat* as constituted for the time being. The provision could not exclude absolutely the liability of a *shamilat-i-deh* to be partitioned at the will of the proprietors collectively. At the same time the partition could not of itself, by converting the property divided from joint into several, extinguish the right of grazing over it. The right of grazing over what was *shamilat* at the time of settlement and the proprietary right therein, may and do co-exist side by side, both before and after partition. Neither right overrides the other so as to extinguish it, but each right limits and is limited by the other. The proprietary rights of the proprietors whether collectively before, or individually after, partition may be fully exercised, so long as this exercise leaves a sufficient area to graze the cattle of the non-proprietors. But the mere act of partitioning the *shamilat* does not entitle the non-proprietors to sue the proprietors to have a portion of the original *shamilat* sufficient to graze their cattle demarcated and reserved by a Civil Court. When, however, a large portion of the original *shamilat* has after partition been enclosed or reduced to cultivation and the non-proprietors' grazing rights are seriously threatened they may jointly sue the proprietors to prevent any further interference with what remained open of the original *shamilat*, or possibly to have some portion of the enclosed or cultivated land thrown open, so as to secure to them the proper enjoyment of the grazing right. HIRA *v.* NATHU. **119 P R 1889**

90. *Partition*—Pattis—*Village site—Common land.*

Each of two *pattis* in a village claimed exclusive proprietary right in a plot of land. It appeared that the village site was not divided into blocks belonging to several parties, but that the land belonging to them was *her mer* or scattered over the village site. It was also found that in Sambat 1920, defendants' *patti* sold some portion of the land in dispute to persons who were still in possession. *Held*, that considering how the land was distributed among the *pattis*, this did not prove that the defendants were entitled to the rent. Where adjoining *pattis* own common land, the general rule is that their rights in it are measured by the extent of land they hold in the village. MASTAN SINGH *v.* DEWA SINGH. **151 P R 1889**

91. Goradeh—*Erection of sugar-press by one proprietor—Suit for its demolition by another—Appreciable injury—Alteration of character of joint property.*

A., one of the proprietors in a village erected a *belna* or sugar-press and a *kotha* in the *goradeh*. B., another proprietor sued for a declaration that A. had no right to erect the buildings complained of and for their removal. *Held* that the erection caused no injury or inconvenience to the plaintiff who could protect his rights by applying

for partition of his share in the *shamilat*. Plaintiff could succeed only on proof that the act was intended as an assertion of individual right, which if unchecked might deprive the proprietors of a portion of the common land altogether and prevent its being hereafter divisible among the co-sharers, or that the user by defendant materially interfered with plaintiff's own right of user. GHULAM MUHAMMAD KHAN *v.* BUTA. **187 P R 1889**

92. *Alienation—Powers of chief headmen and headmen of village to alienate portions of common land—Suit by other co-sharers to set aside sale and for possession—Previous sales by headmen of* shamilat *plots without objection by co-sharers—Estoppel.*

The chief headmen and headmen of a village sold a portion of the *shamilat* land, not as agents and on behalf of the proprietary body, but as principals. Other co-sharers sued to set aside the sale and for possession. The purchaser pleaded that the vendors represented the proprietary body and had as such sold plots of *shamilat* land previously without objection by the rest of the proprietors, whereby he had been induced to believe that the sale of common land was within the scope of the authority of the vendors.

Held that the vendors had no authority to sell common land. They were agents of the proprietary body for certain purposes only, *i. e.*, for management of common land. *Held* also that it had not been shown that the plaintiffs had ratified the previous sales. MALLIK BASSU *v.* MRS. C. BRYAN. **191 P R 1889**

93. *Right of hereditary tenants to cut wood and grass from the common land of the village for purposes of sale—Profits* a prendre *—Easement—*Mauza *Mangharwal, Hoshiarpur district.*

Certain hereditary tenants of *mauza* Mangharwal, District Hoshiarpur, claimed the right to cut wood and grass from the village *shamilat*, not only for their own agricultural purposes, feeding cattle, etc., but for sale. The proprietors resisted the claim.

Held, that the tenants had failed to prove that they had any such right by easement or custom. ABDULLA *v.* PRABHU DIAL. **29 P R 1890**

94. *Village site—Custom—Ejectment of non-proprietor from house made habitable by him—Compensation—*Mauza *Jhawarian,* tahsil *Shahpur.*

In the village of Jhawarian, *tahsil* Shahpur, proprietors by custom make over houses without roofs or in an unfinished condition to non-proprietors for use and eject them at pleasure either on payment of compensation or on permission granted to remove the materials.

Held, that this custom was good and binding. BUTA *v.* MOTI RAM. **37 P R 1890**

95. *Non-proprietors, mortgage of houses by—Custom.*

Found, that in the village of Kot Mahmud Khan, in the Tarn Taran *tahsil* of the Amritsar District, (which, apparently, was not historically speaking, a mere village homestead, but had been the seat of Nawab Mahmud Khan, a Governor under the Mughal Emperor, and had been founded by him), the proprietors were not competent to object to a mortgage of a *kutcha* house which had recently belonged to a non-proprietor, a Khatri ekka-driver, possession of which had been taken by his father's sister's son and mortgaged to one of the village proprietors and a goldsmith.

No. 73 *P. R.* 1884 and Nos. 9 and 85 *P. R.* 1882, referred to. GURDITTA MALL *v.* MOTA SINGH. **102 P R 1891**

96. *Joint owners—Erection of building by one on common land—Absence of special damage to others.*

The defendant, who was a proprietor in Gohana (Rohtak district), erected a *pakka* building upon a portion of the *abadi*—208 yards in extent—or common property of the village. The building was commenced within a very few months before suit, and was immediately objected to by at least one of the plaintiffs. It was completed in spite of the plaintiffs' protests and appeal to the Revenue authorities, at or about the date when the present suit was launched. The defendant spent Rs. 1,000 or thereabouts upon the building, which was adjacent to, if not built on to his own house. No acquiescence on the plaintiffs' part was established.

The plaintiffs, sixteen proprietors of Gohana, sued to have the building demolished. They did not succeed in proving any substantial damage from the building, over and above the fact that defendant had probably monopolized a larger share of this particular portion of the common land than would fall to him at a division.

Held, that the plaintiffs' appeal must be dismissed upon the ground that, it not being satisfactorily established that any substantial mischief had accrued to the plaintiffs from the completed building erected at considerable expense, the lower Court had exercised a wise discretion in refusing to order its demolition. HIDAYAT ALI KHAN *v.* BASIT ALI KHAN. **54 P R 1892**

97. *"Custom"—Village menials—Sale of their houses by, without consent of proprietors.*

Found, that in the village of Haria in the Bhera *tahsil*, Shahpur district, no custom was established permitting menials to sell their houses without the consent of the proprietary body. MIRZA *v.* SAMDILI. **99 P R 1892**

98. *Partition*—Shamilat taraf *and* shamilat deh—*Ala lambardar*—Muafi *land held by ala lambardar in which he had no proprietary right.*

In a claim to partition certain *shamilat taraf* and *shamilat deh* land, it was sought to

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exclude the *muafi* land, which was *shamilat taraf*, held by the ala-lambardar by virtue of his office and in which he had no proprietary right.

Held, that there was no reason for excluding this land from partition. This land was entered in the revenue records as common land of certain *tarafs* of the village and the records contained nothing which precluded the holding from being brought into partition. ARJAN SINGH *v.* SUCHET SINGH.

15 P R 1892 Rev.

99. Shamilat *land—Suit by khewatdar to obtain share in village common land*—Wajib-ul-arz.

Plaintiff, who was a khewatdar in the village, although not an original proprietor, sued for a declaration that he was entitled to a share of the common land of village Pindi Maddu in proportion to his holding. In the *Wajib-ul-arz* of the village it is laid down that the common lands are to be partitioned proportionately to the *khewat* holdings and certain particulars are given as to the permission to occupy and cultivate the *shamilat* and as to the disposal of those lands when partition takes place. In accordance with this permission plaintiff had been cultivating a considerable extent of the common lands.

The defendants contended that as plaintiff was not originally a proprietor in the village but only a purchaser, he was not entitled to any share in the common land.

The deeds of sale by which plaintiff or his predecessor in title became purchasers of lands in the village contained no reservation to the vendors of the common land which belonged to them.

The lower Courts dismissed the claim, the Divisional Judge holding that plaintiff was not entitled to claim a share in the common land because such share was not specifically included in the deeds of purchase.

Held, that the plaintiff by the deeds of sale acquired certain holdings and became a khewatdar, and the *khewat* carried with it as appurtenant to it a proportionate share of the common land. PAREM CHAND *v.* SARDARA.

10 P R 1894

100. *Gift of share of land in village—Right of donee to share in village* shamilat—Onus probandi.

Held, that in the case of a deed of gift whereby a share in certain land in a village is gifted to a person, the *onus* of proving that the deed carries with it, as accessory thereto, a proportionate share of *shamilat* lies, when the deed is silent upon the subject, upon the person who asserts that the gift operates to grant more than it purports to grant.

No. 65 *P. R.* 1889 and Civil Appeals Nos. 239 and 1389 of 1890 (unpublished), cited. FAZAL SHAH *v.* SIKANDAR ALI.

115 P R 1894

101. *Village site*—Abadi—*Suit for partition of village site*—Bhayachara *village divided into* "pattis" *and* "dheris."

Plaintiffs, alleging themselves to be owners of a one-third share in the village of Phadana,

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Lahore District, sued for partition of the whole of the village site according to a particular scheme, and based their claim solely on an entry in the Settlement record that "the "*abadi-deh* is *shamilat* and is divisible *hasab* "*rasad khewat*." The defendants pleaded that the entry was incorrect; that the tenure of the village was *bhayachara*, and that there was no *shamilat* in the *abadi* which was divisible. The District Judge having found that there was no divisible common land of the village in the *abadi*, gave plaintiffs a decree, in accordance with defendants' admission, for partition solely of any common land within their *patti* that might be found unoccupied. Plaintiffs appealed to the Divisional Judge, who reversed the decree of the lower Court and granted plaintiffs a decree for separation of their share in the *shamilat abadi-deh*, but did not specify the exact land assigned thereby to plaintiffs. Defendants appealed to the Chief Court, and it was held that the *onus* of proving that there was *shamilat* in the *abadi* which could be partitioned and that partition thereof was feasible rested upon the plaintiffs, and that they had failed to rebut the Statement in the earlier Settlement record that the village site was not liable to partition.

The nature of an ordinary village site as a subject of partition discussed by *Benton* J. ISHWAR SINGH *v.* ATMA SINGH.

117 P R 1894

102. *Custom—right of non-proprietors to alienate without consent of Kamboh proprietors—Transfer of house in Khem Kharan, Kasur* tahsil, *Lahore District.*

Found, that by the custom of Khem Karan in the Kasur *tahsil* of the Lahore District, non-proprietors, though they have no rights in the sites of their houses, can transfer the houses themselves, with a right of residence, without the consent of the Kamboh proprietors. BHAG SINGH *v.* KHANAYA MAL. **38 P R 1895**

103. *Punjab Tenancy Act*, 1887, *section* 5 (1) (*d*), 10—*Occupancy rights in common land—Jagirdar—Punjab Tenancy Act*, 1868, *section* 9 (2)—Pattidari *village.*

Held, following No. 15 *P. R.* 1880, Rev., that section 9, clause (2) of the Tenancy Act, 1868, read with section 10 of the Tenancy Act, 1887, should be construed to mean that no right of occupancy in the common lands of a *pattidari* village community should be acquired by a *pattidar* of the village under Chapter II of the said Acts, there being in this respect no distinction between pure and impure *pattidari* villages.

No. 1 *P. R.* 1897, Rev., referred to and considered.

The distinction between a pure and an imperfect *pattidari* village does not depend upon the maintenance or disuse of ancestral shares, but upon the existence or absence of *shamilat-i-deh* belonging to the village proprietors as a body. If there is no such *shamilat-i-deh* the tenure is pure *pattidari*; if their is such, tenure is *pattidari ghairmukammal.* JAHNDU KHAN *v.* SAMMAN. **1 P R 1899 Rev.**

COMMON LAND—*contd.*

104. Shamilat *land—Suit by khewatdar to obtain share in village common land—Relinquishment of part of claim.*

Plaintiffs and defendants were representatives of two families who originally owned each a half share of a certain *patti.* Previous to 1864 plaintiffs' ancestors had been absentees, but in that year they returned and instituted a suit against the ancestors of the defendants for possession of their original half share. The dispute was eventually compromised, the plaintiffs agreeing to accept 7 ghumaos of land and to relinquish the remainder of their claim. In 1896, the village *shamilat* was divided, 202 *kanals* 7 *marlas* falling to the share of the *patti* owned by the parties. Shortly after plaintiffs applied for partition of the latter. The application was opposed by defendants, who denied that plaintiffs had any share in the land so allotted; the plaintiffs were referred to a regular suit to establish their right by the Revenue Courts. They therefore filed a suit for half of the *shamilat* that had fallen to the share of their *patti.* The first Court dismissed the suit as barred by sections 13 and 43 of the Civil Procedure Code, inasmuch as the present claim should have been included in the suit brought by the plaintiffs' predecessors in 1864. On appeal the Divisional Judge held that plaintiffs were entitled to a decree for possession of a share in the *shamilat* proportionate to their holding of 7 *ghumaos.*

Held, that the suit as laid was not barred by reason of section 43, Code of Civil Procedure, even if that section could otherwise be applied, as the plaintiffs' predecessors were under no obligation in 1864 to expressly sue for a share in the *shamilat* in addition to their claim for possession as khewatdars of part of the holding, and that when the 7 *ghumaos* were awarded to them, they became in respect of such land full proprietors with a right to the enjoyment of everything appurtenant to their holding.

Kishen Lal v. *Mootsuddee* (52 *P. R.*, 1866), *Prem Chand* v. *Sardara* (10 *P. R.*, 1894), *Baju Shah* v. *Hukma* (42 *P. R.*, 1897), *Fazal Shah* v. *Sikandar Ali* (115 *P. R.*, 1894), and *Maluk Singh* v. *Muhammad* (65 *P. R.*, 1889), followed. BURA AND ANOTHER *v.* JHANDA AND ANOTHER. **113 P R 1900**

105. *Common land*—Gora-deh—*Erection of* kotha *by non-proprietary resident with the permission of a proprietor in possession—Absence of special damage.*

A non-proprietor was allowed by one of the proprietors of the village to build a *kotha* on a portion of the *gora-deh* which he (the proprietor) had previously used himself as a cattle pen. The plaintiff and the proprietor in the village sued for demolition; the defendant and the consenting proprietor admitted that on the vacation of the site by them it would revert to the whole proprietary body.

Held, that in the absence of proof of substantial damage to the plaintiff his suit must fail, as he had not proved that he had ever exercised any specific rights over the site

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or that the consenting proprietor had disposed of more than would fall to his share on partition, or that the alienation was a permanent one.

Hidayat Ali Khan v. *Basit Ali Khan* (54 *P. R.* 1892), followed; *Paras Ram* v. *Sherjit* (*I. L. R. IX All.*, 661) *Shadi* v. *Anup Singh* (*I. L. R. XII All.*, 436) *Najju Khan* v. *Imtiaz-ud-din* (*I. L. R. XVIII All.*, 115), *Soheil Singh* v. *Abdulla* (78 *P. R.*, 1877), *Har Sarup* v. *Hanwanta* (7 *P. R.* 1885), *Amin Chand* v. *Dasaundha Singh* (54 *P. R.*, 1886), *Ghulam Muhammad Khan* v. *Buta* (187 *P. R.* 1889), and *Kanakayya* v. *Narasim Hulu* (*I. L. R. XIX Mad.* 38), referred to. RAM *v* PIR BAKHSH. **33 P R 1901**

106. *Common land—Joint vacant piece of land in* mohalla—*Right of suit of some of the inhabitants of the* mohalla *affecting such land—Plaint—Alternative reliefs—Injunction when to be granted—Discretion of Court—Damages.*

The plaintiffs sued to recover possession of a piece of land situate in front of their houses and shops alleging that it had been jointly enjoyed by them, and that the defendants Nos. 1 and 2 having obtained a fictitious deed of sale of a portion thereof from defendant No. 5 had taken possession and commenced to build thereon, the relief sought being either a decree for possession of the land or an injunction restraining the defendants Nos. 1 and 2 from building thereon. The lower Appellate Court gave the plaintiffs, "as members of the community," a decree for possession, and also issued a permanent injunction to the defendants prohibiting the erection of any building on or other interference with the land in suit.

Held (*i*) that the claims were not inconsistent, the difference being between sole right and joint right, and that the plaintiffs were at liberty to claim in the alternative exclusive possession or an injunction to restrain the defendants from interfering with their rights as co-sharers in the land in suit;

(*ii*) that the land in suit not being a public thoroughfare, the suit lay;

(*iii*) that the plaintiffs were entitled to sue in their own right for a relief common to themselves and others, and that the failure to sue on behalf of those others was not a bar to their suit;

(*iv*) that inasmuch as the exclusive occupation by the defendants would have materially injured the plaintiffs they were entitled to the injunction issued by the first Court.

Raja Bijoy Keshab Roy v. *Obhoy Churn Ghose* (16 *W. R.*, 198), *Muhammad Sharif* v. *Shamsher Khan* (11 *P. R.* 1891), *Mussammat Parbati and others* v. *Kaur Singh* (85 *P. R.*, 1896), *Nur-ul-Hussein* v. *Sheosahai Lal* (*I. L. R. XX Calc. I. P. C.*), *Ningapa* v. *Shivappa* (*I. L. R. XIX Bom.* 323), *Raghubar Dial and others* v. *Kesho Ramaunj Das* (*I. L. R. XI All.* 18), *Amin Chand* v. *Dasaundha Singh and others* (54 *P. R.* 1886),

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Hira Lal v. *Bhairon* (*I. L. R. V All.* 602, F. B.), *Baiju Lal Parbatia and others* v. *Bulak Lal Pathuk* (*I. L. R. XXIV Calc.* 385), *Tanudin and others* v. *Pandu and others* (*I. L. R. XVIII Bom.*, 699), *Baldeo Bharthi* v. *Bir Gir and others* (*I. L. R. XXII All.* 269), *Framji Corsetji* v. *Gokul Das Madhowji* (*I. L. R. XVI Bom*, 338), *The Shamnagger Jute Factory Coy., Ld.*, v. *Ram Narain Chatterjee* (*I. L. R., XIV Calc.* 189), *Joy Chander Rukhit* v. *Rippo Churn Rukhit* (*I. L. R. XIV Calc.* 236), and *Ram* v. *Pir Bakhsh* (33 *P. R.* 1901) referred to. GUJAR MAL AND OTHERS *v.* RAM RICHPAL AND OTHERS. **91 P R 1901**

107. *Limitation Act,* 1877, *section* 28—*Suit for recovery of possession of common waste land encroached upon by a trespasser—Limitation—Adverse possession—Burden of proof—Suit by some of the several co-sharers against the trespasser affecting common land—Effect of non-joinder of other co-sharers—Civil Procedure Code,* 1882, *section* 30—*Decree, form of.*

In suits for the recovery of possession of immovable property when resisted by a plea of adverse possession, the plaintiff is bound to prove possession and dispossession within twelve years, but where the property in dispute, up to a short time before suit, remained waste and unoccupied, *held*, that the plaintiffs were not required to prove acts of possession within twelve years of suit, they had only to prove a *prima facie* title not extinguished by limitation in such a case. Waste land allowed to remain so by the proprietor cannot be held to be a discontinuance of possession, and the *onus* is in such a case shifted on to defendant to prove when his possession became adverse.

Held also, that one or several of many co-sharers can sue to prevent invasion of their common property by a mere trespasser, and that in such a case a decree for sole possession, or for possession on behalf of other co-sharers, should not generally be given, the proper form of decree should be for the restoration of the property to its condition prior to the trespasser's invasion, and so preserve the invaded rights which the plaintiff and other co-sharers possessed in the property.

Tanudin v. *Pandu* (*I. L. R. XVIII Bom.* 699), *Inayat Husen* v. *Ali Husen* (*I. L. R. XX All.* 182), *Muhammad Ali Khan* v. *Khaja Abdul Guny* (*I. L. R. IX, Calc.* 744), *Muhammad Yar* v. *Ghulam* (49 *P. R.* 1884), *Hira Lal* v. *Bhairon* (*I. L. R. V All.* 602) and *Hidayat Ali Khan* v. *Basit Ali Khan* (64 *P. R.* 1892), cited. *Mohima Chunder Mozoomdar* v. *Mohesh Chunder Neogi* (*I. L. R. XVI Calc.*, 473), *The Secretary of State for India in Council* v. *Vira Rayan* (*I. L. R. IX Mad.* 175), and *Jafar Hussain* v. *Mashuq Ali* (*I. L. R. XIV All.* 193), referred to. RAMZAN ALI *v.* BASHARAT ALI AND OTHERS. **105 P R 1901**

108. *Common land—Purchase of separate holding in a village—Suit by purchaser for a declaration that he is entitled to a*

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share in the shamilat—*Inclusion or exclusion of share of* shamilat—*Burden of proof.*

Held, that as the rights of a proprietor in the *shamilat* of a village are not a mere accessory to the land separately held by him, and that a sale of the latter does not *ipso facto* convey any rights in the former to the purchaser.

A clause in the *Wajib-ul-arz* providing that shares in the *shamilat* are proportional to the *khewat* lands held by each proprietor cannot confer any rights in the common land on the purchaser not conveyed by his deed of sale.

Maluk Singh v. *Muhammad* (63 *P. R.* 1889) and *Baju Shah* v. *Hukma* (42 *P. R.* 1897) cited; and *Prem Chand* v. *Sardara* (10 *P. R.* 1894) referred to. RAM DAS AND OTHERS *v.* AMIR SHAH AND OTHERS. **113 P. R. 1901**

109 *Partition—Partition of* shamilat-deh *including the land which had been assigned to an ala-lambardar in virtue of his office—Compensation for disturbance or improvements—Punjab Tenancy Act,* 1887, *sections* 69, 72.

Plaintiffs sued for partition of the *shamilat-deh* including land which had been assigned to an ala-lambardar in virtue of his office, and which since his death had remained in possession of his heirs. The deceased ala-lambardar and his brother had sunk a well, built a house, and made an enclosure wall on the land the subject-matter of the dispute. The points in dispute were whether the occupants of that plot on being dispossessed of so much of it as exceeded their shares were entitled to compensation for improvements or disturbance; and, if so whether such compensation should be paid by the proprietors who under the partition would benefit by the improvements or by the whole body of persons who sought partition.

Held, on the analogy of the proviso to section 69 of the Tenancy Act, that the heirs of the original ala-lambardar were not entitled to any compensation for disturbance, but that they were entitled to receive compensation for improvements as a condition precedent to partition from those village proprietors only who would benefit by the improvements for the cost of so much of the same as such heirs would cease to enjoy.

In estimating the compensation to be awarded for any improvement the Revenue Officers should act upon the principles laid down by section 72 of the Tenancy Act.

Salig Ram v. *Badhawa Mal* (3 *P. R.* 1886, Rev.), referred to and followed. SHERA *v.* ALI BAKHSH. **9 P R 1902 Rev.**

110. *Custom—Right of village menials to build a mosque over the site occupied by them without consent of the proprietors*—Mauza *Bakipur, Amritsar District.*

Held, that as a *kamin* generally gets land from the proprietary body on the implied understanding that it is only to be used for purposes of residence and for plying his trade, he is not competent to build a mosque or temple on it without the consent of the

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proprietors. KALU AND OTHERS *v.* WASAWA SINGH AND OTHERS. **19 P R 1904**

111. *Partition—Common land—Right of proprietors to partition land used for tethering cattle.*

Held, that village common land used by the co-sharers for tethering cattle is not precluded from being brought into partition. MAKHAN SINGH *v.* ISHAR SINGH.

136 P R 1906

112. *Common land—Partition—Suit for partiton of portion of common land.*

Held, that a suit for partition of a portion of the *shamilat* is not maintainable, and consequently a purchaser from a co-sharer is not entitled to obtain partition of his share alone in the village common land. SHEO NATH *v.* PARMA NAND. **32 P R 1908**

113. *Common land—Possession of one co-sharer Adverse possession—Abandonment.*

Held that as in common holding the possession of one co-sharer is the possession of all, mere occupation and enjoyment by one to whatever period it may extend to does not constitute an adverse possession as against the other co-sharer, unless the one in possession is able to show most clearly and emphatically his own adverse possession or abandonment by other.

An absentee in a common holding who leaves his property in the hands of a co-sharer, asserts his rights to succeed to a relative on the opening out of a succession in the village and objects on the first invasion of his rights by the person left by him in charge of his share of the holding cannot be deemed to have abandoned his property, as in such cases mere length of time or absence does not affect his rights. RAM CHAND *v.* KIRPA RAM. **120 P R 1908**

COMMUTATION OF RENT.

See OCCUPANCY RIGHTS.
6 P R 1867 Rev.
15 P R 1867 Rev.
90 P R 1867
28 P R 1869

See TENANCY ACT (1868), SECTION 16.
6 P R 1872
23 P R 1873
43 P R 1873
77 P R 1873
42 P R 1877

COMPANY.

See BANK.

See CAUSE OF ACTION. **16 P R 1904**

1. *Agent.*

The agent of a company is not personally liable, when he contracts on behalf of the company. MEER KHAN *v.* MUNDEN.

3 P R 1867

2. *Allotment of shares.*

A joint stock bank having been projected, in the published prospectus of which it was stated that business would not commence until two-thirds of the advertised capital

COMPANY—*contd.*

had been subscribed for,—defendant applied for shares, and received a reply that his application had been registered. At a subsequent meeting of subscribers, at which defendant was not present, it was resolved to start at once with the capital already subscribed for, which did not exceed half of the advertised capital. Defendant having been called upon to pay for his shares, denied that he was a shareholder; hence this suit. *Held* that the banking association actually formed was not the association in which defendant had expressed himself ready and willing to take shares; and *held*, that to form a complete contract to take shares, there must be not only an application and allotment of shares, but the allotment must be communicated to the shareholder, and acquiesced in by him. UNITED BANK OF INDIA *v.* PLOWDEN. **17 P R 1868**

3. *Acceptance of shares.*

Suit by a joint stock bank, registered under Acts XIX of 1857 and VII of 1860, against an alleged shareholder for payment of calls. Defendant pleaded (*inter alia*) that he was not a shareholder, inasmuch as there was no written acceptance by him of shares as required by Table B of Act XIX of 1857. *Held*, that the defence was good; however strong the evidence as to defendant having in fact taken shares and held himself out as a shareholder, by voting as such, and by offering his shares for sale, yet unless he accepted them in writing as required by the Act, neither could he insist on receiving shares, nor could the bank compel him to pay calls upon them. MOHUN LALL *v.* SECY. UNITED BANK OF INDIA. **38 P R 1868**

4. *Articles of Association—Pledge of shares—Preferential lien of Company on shares of indebted members—Restraint of assignment of shares by indebted members.*

Plaintiffs were a banking company, and by their deed of partnership or articles of association (clauses 27, 28 and 29), a member indebted to the company was prohibited from disposing of or transferring his shares without the consent of the directors. And by clause 36, "in order to "facilitate the pledging of the shares of the "bank by way of collateral security for any "loan of money the party desirous of "pledging his shares should apply to the "manager for a declaration that the bank "consented to such pledge, and the manager "should be authorized and empowered to "order the secretary to enter a memorandum "of such pledge *and of the duration thereof* "in the books of the bank, and to write "a letter to the applicant certifying the "consent of the bank to such pledge; and "thereupon the pledgee or party advancing "money on the security of such shares, "should be entitled to hold them free of all "claims of the bank against the debtor "pending the duration of such pledge and "until repaid the amount advanced: provid- "ed also, that the manager should be at "liberty to withhold his consent to any

COMPANY—*contd.*

"pledge in any case in which the applicant "should be indebted to the bank to such "an amount as should render it necessary "in the judgment of the manager to retain "the bank's lien on the shares of such "applicant."

On the 28th January, 1864, defendants lent D. a shareholder of the plaintiffs' company, Rs. 10,000 on his pro. note, and the same day obtained from plaintiffs a certificate as follows: "Certified that twenty shares "of this company, of Rs. 500 each, numbered "622 to 631 and 1,606 to 1615, belonging "to Mr. D, are registered in this office as "pledged to Chunna Mall Salig Ram for a "loan of Rs. 10,000 or for the unpaid balance "thereof, for a period of six months from "this date, with due regard to clauses 27, "28 and 29 of the deed of co-partnership."

Before the expiration of the six months *viz.*, on the 7th July 1865, the bank lent D Rs. 8,000, and D pledged to the bank, as security for the loan, 90 other shares. On the 8th November 1869, D gave defendants a pro. note for Rs. 13,545, being the principal and interest due upon the note of the 28th January, 1865,—the object of the defendants in taking this note being to prevent the law of limitation barring their claim against D. Defendants sued D on his second note and obtained a decree. Subsequently, plaintiffs sued D for the Rs. 8,000, and also obtained a decree. The defendants in execution of their decree attached the twenty shares pledged to them; the shares were put up for sale and bought by the defendants. Plaintiffs sued defendants for a decree declaring their right to realize their debt due from D, from the twenty shares purchased by defendants.

Held, that the effect of the certificate was not to limit the duration of the pledge of the shares by D to defendants, to six months only; but merely amounted to a declaration that the plaintiffs had no lien on or claim against the shares; that the pledge was not affected by the defendants taking the second pro. note from D, but enured as collateral security for that note also; and that the articles of association, though they gave plaintiffs a lien on the shares of those members indebted to them, and power to prevent an assignment of such shares so long as their debt was unliquidated,—gave plaintiffs no preferential lien on shares already pledged with the consent of the plaintiffs to a third party to secure a debt at a time when the shareholder was not indebted to the bank. DELHI AND LONDON BANK *v.* CHUNNA MALL.

25 P R 1874

5. *Power and authority of Directors—Articles of Association—Ratification by Company of acts* ultra vires *of Directors—Condition vital to contract or merely ancillary to it—Evidence as regards.*

Where Articles of Association of a Company empowered the Directors generally to do all such acts as under the Indian Companies Act and Articles of Association are directed or authorised to be done by the

COMPANY—*contd.*

Company in General Meeting, *held*, that this authority did not absolve the Directors from the necessity of observing the established principle which should regulate their management of the Company's affairs, and if their acts were not reasonably necessary for efficient management, the Company would not be bound by them. *Held* further, that to establish ratification by the Company of acts *ultra vires* of the Directors it was necessary for the plaintiff to prove (1) that the shareholders present at the meeting at which it was alleged that ratification had been accorded had clear knowledge of what was to be ratified, and (2) that the absent shareholders had individually assented to the ratification.

Whether a particular clause in an agreement should be held to embody a condition vital to the contract, or one subsidiary to its main purpose must depend upon the intention of the contracting parties, and if possible that intention should be gathered from the terms of the agreement itself.

Ashbury Railway Carriage and Iron Company v. *Riche* (*L. R.* 7 *H. L.* 653); *Houldsworth* v. *Even* (*L. R.* 3 *H. L.* 263), and *Phosphate of Lime Company* v. *Green* (*L. R.* 7 *C. P.* 56) referred to. TARA CHAND *v.* The GANESH FLOUR MILLS COMPANY, LIMITED, DELHI. **17 P R 1901**

6. *Public Company—Articles of Association—Directors exceeding borrowing powers—Adoption and ratification of* ultra vires *acts of Director—Lien on present and future property.*

The articles of Association of the defendant company provided that the Directors might, from time to time at their discretion, borrow any sum or sums of money for the purposes of the Company, but so that not more than Rs. 4,00,000 should be owing at any one time without the sanction of a General Meeting. The Directors exceeded their borrowing powers, but the excessive borrowing had been brought through the balance sheets of the Company to the notice of the shareholders who, instead of objecting to it, endorsed the actions of the Directors by passing the accounts and declaring dividends. *Held*, that the above acts of the Company constituted sanction and ratification of the excessive borrowing by the Directors. *Held* also, that as in equity there could be a vaild assignment of property to be subsequently acquired the plaintiff had a lien on all the goods of the Company which had been obviously acquired by the latter by means of the overdraft allowed by the plaintiff bank—*Held* further, that the defendants had failed to substantiate their contention that the goods of the Comany were wrongfully taken possession of by the Bank or sold for inadequate sums and without reasonable notice to the Company, or that the inadequacy of price exceeded the amount claimed, or that, by the fact of their taking over possession of the defendants' property, the plaintiff's remedy to recover any balance which remained due after credit of the sale

COMPANY—*contd.*

proceeds, had become exhausted, as, under section 176 of the Contract Act, if the proceeds of sale of goods were less than the amount due, the Company was still liable to pay the balance. THE NATIONAL BANK OF INDIA, LIMITED, *v.* THE DELHI COTTON MILLS COMPANY, LIMITED. **57 P R 1902**

7. *Principal and agent—Managing Agent and Company—Liability to account.*

Held, that the relationship between a Company and its Managing Agent being that of principal and agent, it is the duty of the latter to render proper accounts to the former. The fact that an Agent of a Company was paid by commission or was subordinate to the control of its Directors, or that he had delivered up to them all the account books of the Company, does not exonerate him from the liability to account.

Hurrinath Rai v. *Krishna Kumar Bakshi* (*I. L. R. XIV Calc.* 147, P. C.), and *Lawless* v. *Calcutta Landing and Shipping Company, Limited* (*I. L. R. VII Calc.* 627), referred to. ANDERSON *v.* DELHI COTTON MILLS, Co. LTD. **69 P R 1903**,

8. *Public Company—Suit by liquidator for money due to the Company in respect of unpaid calls on shares—Limitation—Limitation Act*, 1877, *Schedule II, article* 120.

Held, that the period of limitation applicable to a suit brought by liquidator of a Public Company to recover the unpaid amount of calls from a shareholder is six years from the date of default under article 120 of the second schedule to the Limitation Act.

The Parell Spinning and Weaving Company v. *Manek Haji* (*I. L. R. X Bom.* 483) cited. In re *Duckworths* (*L. R.* 2 *Ch.* 578), In re *Stockens* (*L. R.* 3 *Ch.* 412), *Waterhouse* v. *Jamieson* (*L. R.* 2 *H. L.* (Sc.) 29), In re *Whitehouse & Co.* (*L R.* 9 *Ch. D.* 595), In re *National Funds Assurance Co.* (*L. R.* 10 *Ch. D.* 118), *Sukho Bibi* v. *Ram Sukh Das* (*I. L. V. All.* 263), *Raghubar Dial* v. *Modan Mohan Lal* (*I. L. R. XVI All.* 3), *Sorabji Jamsetji* v. *Ishwar Das Jugjiwan Das* (*I. L. R. XX Bom.* 654), In re *Ram Sunkar Bhodoori* (3 *Calc. L. R.* 440) *Manekji Framji* v. *Rustomji Naserwanji Mistry* (*I. L R. XIV Bom.* 269), and *Parashram Jethmal* v. *Rakhma* (*I. L. R. XV Bom.* 299), referred to. HARCHAND RAI *v.* RANG LAL. **70 P R 1903**

9. *Public Company—Contract on behalf of Company—Directors and Officers—Warranty of authority—Duty of third parties to see that the Directors and Officers are acting within their authority—Presumption as to observation of formalities requisite to confer authority upon Directors.*

Although any one dealing with a Joint Stock Company is bound to satisfy himself that the Agent or Director with whom he acts as representing the Company is acting within the powers which such Agent or Director might possess under the Articles of Association, it is not incumbent on him to ascertain whether the necessary formalities

COMPANY—*contd.*

or proceedings have been held or performed requisite to confer such powers on such Agent or Director, and therefore where the person dealing with a Company has satisfied himself that such dealings by an Agent or Director are amongst those which an Agent or Director might perform within the scope of the Company's Articles of Association and could be validly entered into by such persons duly empowered on behalf of the Company, and he finds an Agent or Director of the Company, entering into such dealings on behalf of the Company, and acting as if he, the Agent or Director, had been duly empowered, he is entitled to infer the fact of the necessary authorisation to act and to maintain an action on account of damages caused by the Company's non-compliance with the terms of a contract made with him whether through his Agent or personally, and is not bound to enquire further whether as a matter of fact such representative of the Company has been so empowered by the Company, or that all the proceedings of the Company and its Directors have all been strictly regular.

Ernest v. *Nicholls* (*L. R.* 6, *H. L. C.* 401), *Fountaine* v. *Carmarthen and Cardigan Railway Company* (*L. R.* 5 *Ex.*, 316), *Royal British Bank* v. *Turquand* (24 *L. J. R. P.* 327), *Smith* v. *The Hull Glass Company* (*L. R.* 11 *C. B.* 897). *Agar* v. *Althenæum Life Insurance Society* (*L. R.* 3 *C. B.* 725), *Davies* v. *Bolton* (*L. R.* 3, *Ch. Dn.* 678), *County Glocucester Bank* v. *Rudry Merthyr Steam and House Coal Colliery Company* (*L. R.* 1 *Ch. Dn.* 629), *Biggerstaff* v. *Rowatt's Wharf, Lt.* (*L. R*, 2 *Ch. Dn.* 93), *Prince of Wales Insurance Society* v. *Athenæum Insurance Society* (*L. R.* 3 *C. B. H. S.* 756), *Duck* v. *Lower Galvanizing Company, Ld.* (*L. R.* 2 *K. B.*, 349), and *Mahony* v. *East Holyford Mining Company* (*L. R.* 7 *H. L.* 869), referred to. THE KRISHNA MILLS COY., LD, DELHI *v.* GOPI NATH. **81 P R 1903**

10. *Company—Pre-incorporation contracts not binding on Company even when embodied in Articles of Association—Ratification and adoption of contracts.*

As no contract can bind a Company which has been made on its behalf before it was incorporated, therefore a contract between A and the founders of an intended Company by virtue of which A was to be the broker of the Company for a term of fifteen years, even if that contract be embodied in the Articles of Association, is not enforceable against the Company unless it has been made binding by a fresh contract between A and the Company after its formation.

Browning v. *Great Central Mining Company* (5 *H. and N.* 856), *In re Rotherham Alum and Chemical Company* (*L. R.* 25 *Ch. Dn.* 103), *Ely* v. *Positive Government Security Life Assurance Company* (*L. R.* 1 *Ex. Dn.* 20), *Howard* v. *Patent Ivory Manufacturing Company* (*L. R.* 38 *Ch. Dn.* 156), *In re Northumberland Avenue Hotel Company* (*L. R.* 33 *Ch. Dn.* 16), *In re Empress Engineering Company* (*L. R.* [illegible] *Ch. Dn.* 125), *Terrell*

COMPANY—*contd.*

v. *Hutton* (*L. R.* 4 *H. L. Cas.* 1091), and *Tara Chand* v. *The Ganesh Flour Mills Company, Ld.* (17 *P. R.* 1901), referred to. THE GANESH FLOUR MILLS COMPANY, LIMITED *v.* PURAN MAL. **2 P R 1905**

11. *Company—Contracts by Directors with Company—Duty of disclosure of Director's interest—Articles of Association—General words—Ratification and adoption of Contracts.*

The plaintiffs sued the defendant Company and its Managing Agents for damages on the allegation that they were offered the appointment of *mutsaddis* to the defendant Company by its Managing Agents on condition of their financing the Company to the extent of Rs. 70,000 and their remuneration had been fixed at eight annas per cent. of all purchases of raw materials and Re. 1-6 per cent. on all sales of its produce except such as the plaintiffs declined to guarantee and countersign and that in addition to the above the Managing Agents of the Company had agreed to give the plaintiffs a quarter of their own commission which by the Articles of Association of the Company had been fixed at 7½ per cent. on the gross profits of its business. The plaintiffs had accepted the offer which had been embodied in an agreement drafted by the legal adviser of the Company with a further condition that they were irremovable for twenty years except for personal dishonesty and that they were not to be bound to make any purchases and sales for the Company unless they were willing to do so. That plaintiffs had duly performed their part of the agreement but the defendants had terminated the said agreement in violation of its express terms without the plaintiffs' consent.

The defendants' contentions amongst others were, that the agreement was invalid and not binding on the Company—

(*a*) because it had been entered into with one of the Directors without the knowledge of other Directors and the shareholders;

(*b*) because it has been entered into by the Managing Agents in excess of their authority and was against the interests of the Company.

It appeared that the contract purported to be one with the defendant Company and the Directors' interest in it was patent in the writing in which it was embodied. There was no concealment and it was drawn up or revised by the standing counsel of the Company who had never before he appeared to conduct the defence on behalf of the Company pointed out its invalidity or impropriety. In the Articles of Association of the Company it was provided that the office of a Director should be vacated if he should enter the Company's service or become a Director in a similar or competing Company or become directly or indirectly interested in any similar business without the sanction of the shareholders at a general meeting and that he should not vote when any question relating

COMPANY—*contd.*

to any such contract is put before the general meeting of the shareholders.

Held, that under the circumstances as found the contract did not come within the prohibitory rule that a Director of a Company by reason of his standing in a fiduciary position to the shareholders could not make a binding contract for profit to himself in a transaction in which the Company was interested without the knowledge and sanction of the shareholders, which is of general application, and consequently the plaintiffs were entitled to maintain their action against the Company.

Held also, following *Tara Chand* v. *Ganesh Flour Mills Company, Limited, Delhi* (17 *P. R.* 1901), that although the Articles of Association of the Company empowered the Managing Agents to engage *mutsaddis* on such terms as they might think fit, that that authority did not absolve the Managing Agents from the necessity of observing the established principle which should have regulated their management of the Company's affairs in the usual way and according to the ordinary course of business, and as their acts were unreasonably and excessively onerous the contract was *ultra vires* and the Company was entitled to repudiate it.

Authority conferred in general terms must be construed as authority to act in the usual way and according to the ordinary course of business.

An agreement which had never been submitted either to a general meeting of the shareholders or to a special meeting of the shareholders summoned for that particular purpose could not be held to be ratified and adopted by the Company as to render the Company liable merely because the plaintiffs were allowed to work for sometime as *mutsaddis* of the Company. RAM CHAND *v.* DIAMOND JUBILEE FLOUR MILLS COMPANY, LIMITED. **10 P R 1905**

12. *Companies—acts of directors, not properly appointed—Indian Companies Act, IV of* 1882, *section* 92—*Form of suit—error in—not ground for interference by Appellate Court—Company made plaintiff without its express consent—Civil Procedure Code, Act V of* 1908, *section* 99, *and order I, rule* 10 (3)—*Court's interference with matters of internal management—Chairman of meeting not liable to damages for coming to wrong decision.*

Held, that acts *bonâ fide* done by a director or manager of a Company are valid, notwithstanding any defect that may afterwards be discovered in his qualification and this applies not only between the Company and outsiders, but also between the Company and its members—Indian Companies Act, 1882, section 92.

Held also, that the form of a suit is not bad because the relief prayed for does not affect each defendant equally, and also that even if the suit had been open to objection on the ground of misjoinder, there having

COMPANY—*concld.*

been no material prejudice to the defendants on the merits, the decree of the lower Court could not be reversed merely on this technical ground—Civil Procedure Code, section 99.

Held also, that a Company cannot be made plaintiff in a suit without its consent expressly given (order I, rule 10 (3) of the Code) and neither one or several shareholders can sue in the name of the Company unless they were authorised by the majority at a general meeting of the Company or shewed that they have exhausted all reasonable means of obtaining the institution of the suit by the Company or that the case is one of urgency and the plaintiff has the support of the majority.

Held also, that one or more shareholders suing on his or their own behalf cannot obtain in a Court of law a declaration that the election of certain persons as directors was null and void on account of irregularities or even illegalities in their election, nor an injunction to restrain those persons from acting as directors these being matters relating exclusively to the internal management of the Company, with which Courts generally decline to deal at the instance of any person other than the Company itself.

Held also, that a chairman presiding at a meeting of a Company has to decide to the best of his judgment all questions that arise at such meeting, *e. g.*, the right of persons to vote or their disqualification, and if he acts *bonâ fide*, he is not liable to pay damages to any party, who can afterwards satisfy a Court of law, that a particular ruling of the chairman was erroneous or that it resulted in such party being deprived of a right to which he is subsequently found entitled. RAM NARAIN AND THE AMRITSAR COTTON MILLS COMPANY, LD., *v.* RAM KISHEN AND OTHERS. **46 P R 1911**

COMPANIES ACT (X OF 1866).

Section 98.

See JURISDICTION OF SMALL CAUSE COURT.

Section 128.

Purchase by Bank of its own shares—Ultra vires—*Claim based on deposit receipts—Admissibility of pleas by Official Liquidator going behind such receipts—Separate proceeding—Void transaction—Acquiescence—Validity of pleas in bar of Official Liquidator's grounds of defence.*

In a proceeding under section 128 of the Indian Companies Act, the petitioner put in a claim as a creditor of the Punjab Bank (then in liquidation) for certain monies alleged to be in deposit with the Bank at the date of the winding-up order, and for which he held deposit receipts. The claim was resisted by the Official Liquidator, as regards part of the sum claimed, on the ground that it was the money accruing from the sale of certain shares in the Bank held by the petitioner himself and sold by him to the Bank at par.

COMPANIES (ACT X OF 1866)—*concld.*

Section 128—*concld.*

Held that the purchase by the Bank of its own shares was *ultra vires* of the Bank, there being nothing in the memorandum or articles of association expressly authorizing such a transaction, and a purchase by a Company of their own shares not being a legal transaction, unless there is a clear and special authority authorizing the Company to make such purchase.

Held further, that the Official Liquidator was competent to raise a plea going behind the deposit receipts upon which the claim was based by the claimant, and was not bound to question the validity of the original purchase by the Bank of the shares, either by a proceeding under the Indian Companies Act directed to placing the claimant upon the list of contributories, or by a regular Civil suit directed to procuring a rescission of the contract and a refund of the money paid by the Bank, as the transaction being *ultra vires*, and therefore not merely voidable, but wholly void and never at any time binding on the Company, did not require to be set aside, and no separate proceeding was therefore necessary to test the validity of the transaction.

Held further, that the Official Liquidator was not barred from questioning the validity of the sale by acquiescence on the part of the head manager and the board of management, as the transaction being *ultra vires* on the part of the Company, neither acquiescence nor ratification would be enough to bind the shareholders who had no notice of the transaction when it took place, and were not proved to have acquiesced in or ratified it subsequently.

To constitute a bar by acquiescence, both parties must be acquainted with all material facts, and the conduct of the party entitled to offer opposition to the act of the other must be such as to give rise to a reasonable belief of his consent, and the other must have been induced thereby to do something from which he might otherwise have abstained. TRONSON *v.* OFFICIAL LIQUIDATOR, PUNJAB BANK.

38 P R 1881

COMPANIES (ACT VI OF 1882).

Section 26.

See CIVIL PROCEDURE CODE, 1908, ORDER XXIX, RULE 1.

Section 92.

See COMPANY. **46 P R 1911**

Section 151.

Companies in liquidation—Contributories—Liability of, under section 151, *Indian Companies Act, VI of* 1882, *in regard to unpaid calls made before winding-up.*

Held, that the contributions due under section 151 of the Indian Companies Act, 1882, include unpaid calls made *before* the winding up as well as calls made *after* the winding up. THE DELHI WOOLLEN MILLS COMPANY, LTD., *v.* DURGA PERSHAD.

67 P R 1911

COMPANIES (ACT VI OF 1882)—*concld.*

Section 169.

1. *Company—Winding up—Appeal from winding up order—Notice of appeal—Limitation—Extension of time—Companies Act,* 1882, *section* 169—*Applicability of sections* 5 *and* 12 *of the Indian Limitation Act,* 1877, *to period prescribed by section* 169.

Held that an appeal against an order made in the matter of the winding up of a Company under the Indian Companies Act, 1882, ought to be filed with such promptitude as to render service of notice upon the respondent possible within the three weeks allowed by section 169 of the Act, and the Appellate Court will not extend the time for appealing unless the delay is caused either by the conduct of the respondent or by mistakes of the officials of the Appellate Court.

A person appealing under this section should not be allowed to avail himself of an extension by reason of his ignorance of the practice or the comparative novelty of the special procedure prescribed by it.

The provisions of sections 5 and 12 of the Limitation Act are not applicable to the computation of the period of limitation prescribed by section 169. DAULAT RAM *v.* THE WOOLLEN MILLS COY., LD., DELHI. **95 P R 1908**

COMPENSATION.

See ACQUIESCENCE.
DAMAGES.
JURISDICTION OF SMALL CAUSE COURT.

1. *Suit for—Against Municipal Corporation—Period of Limitation.*

See LIMITATION ACT, 1877.

72 P R 1909

2. *Compensation to house-owners—Delhi Palace Fortifications—Acts of Government officers binding on Government.*

To carry out the fortification of the palace at Delhi, a quantity of houses around it were cleared away. The owners of these houses were in the enjoyment of the rights of private property, and were not in the position of those who suffered by the acts of the State before the complete restoration of civil jurisdiction, or who suffered after that restoration from acts already done by Government. The better fortification of the palace was no more an act of State than any other improvement of the town. When the demolitions were contemplated, it was considered how the owners of the houses were to be compensated; and the following scheme was sanctioned by Government: That a sufficient number of houses which had become confiscated and had otherwise fallen into the hands of Government, should be put up to auction, and that the owners of the demolished houses should be allowed to bid at the auction up to the estimated value of their own houses without making any payment to that extent; that the market value of the demolished houses should be determined by a proportionate deduction from or addition to their estimated value,

COMPENSATION—*contd.*

according as the confiscated houses were sold for more or less than their estimated value; and that every owner of demolished property should receive or pay a percentage of profit or loss, as the case might be. It was left to the Government officers at Delhi to sell what property out of the confiscated houses they might think best to sell, provided that the estimated value of the property to be sold should be equal to that of the demolished houses. Accordingly, a note or ticket was given to each owner of the value at which his house had been estimated; these tickets at an early period became transferable or negotiable at a greater or less discount, and the plaintiff held and sued upon 130 of them.

On the 16th July 1860, it was agreed between the Deputy Commissioner and the ticket-holders that a list of confiscated property worth seven lakhs be prepared and the property put up for sale; that profit or loss should be shared by the owners of the demolished houses; that purchasers should not be required to pay more than 50 per cent. of any loss, but non-purchasers should pay their full share of the loss. At the same time a notice was issued by the Government officers to the ticket-holders to the effect that if the proceeds of the sale equalled the estimated value of the demolished houses, the ticket-holders would be paid in full, and that they would share any excess or any loss: further, that the ticket would be taken as cash for the amount recorded in it, the holder paying any excess or receiving any difference as the case might be. This notice was objected to by the ticket-holders, and a second notice was issued stating that "the value of the demolished property shall not be paid in cash by Government; and if the sale realized more than the estimated value, it will be distributed rateably, and if less will be deducted rateably, excepting those who purchased from those desirous of cash payment." A lithographed list of the houses for sale was circulated according to the resolution of, 16th July 1860.

Tickets were issued to the value of Rs 8,08,000. To pay the holders and defray the expenses of the sale, etc., Government intended to sell confiscated property to the value of Rs. 8,77,000. The additional property was not specified in the same way as that entered in the lithographed list, but was put up for auction as the sale of the specified property proceeded. While the auction was proceeding, specified property worth several lakhs of rupees which had belonged to the ex-King of Oude, was withdrawn, and other property of an inferior value was substituted for it, and the profit on the total result of the sales was less than it would otherwise have been. To make up for this deficit, the Deputy Commissioner lowered the original estimate of the property put up for sale by Rs. 30,000, and thus increased the rate of profit realized.

In March 1862, the Deputy Commissioner paid a dividend of profit to the actual ticket-

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COMPENSATION—*contd.*

holders, but not to those who, having been ticket-holders, had given up their tickets in payment at the auction sale. Against this several of the purchasers protested; and the Deputy Commissioner replied that the intention of Government was that holders of tickets and those who desired cash for them should alone share in the profit and loss, and that those who purchased property would not so share.

In June 1862, the Deputy Commissioner fixed the profits of the sales hypothetically at 19·77 per cent.; and dividing that profit amongst all the ticket-holders, Government declared a dividend of 3 annas $5\frac{1}{8}$ pies per rupee, payable at the Delhi Treasury to every ticket-holder, who would give a receipt in full.

Upon these facts, it was contended for the defendant that if plaintiff, a non-purchasing ticket-holder, would admit that all ticket-holders alike were entitled to share the profits, the Deputy Commissioner's aggregate of profits might be taken as correct; otherwise, the plaintiff should be paid according to the actual profit, which was about 13 per cent. on the value of tickets issued (*viz.*, Rs. 8,08,000).

Held, that, though the offer of 19·77 per cent. profit was conditional, yet the defendant had taken no account of the alleged default on the part of Government in the withdrawal of the Oude property; that Government was bound to sell particular property according to the lithographed list, and not what confiscated property it chose: that it was impossible for Government to insist on paying only a profit calculated on the bare receipts of the sales; and that the proper payment of profit to be made, having regard to certain admissions made for the defence, was the hypothetical estimate of what would have been the profit if all had gone right, made by the Deputy Commissioner.

Held also, that Government could not insist upon dividing the profit with regard to the original scheme, as that was never carried out as sanctioned,—the changes that took place being the addition of a list of houses for sale, an addition which if in fact unauthorized did not appear to be so; the substitution of other houses for those in the list, and the calculation of a profit by reference to what would have been the profit if the list had been adhered to:—but that the acts of the officers of Government, which were done within the scope of their authority, were apparently if not in fact, duly authorized by Government, and these acts led the non-purchasing ticket-holders to believe that they were exclusively entitled to a profit of 3 annas $5\frac{1}{8}$ pies per rupee; and that accordingly plaintiff was entitled to profits at that rate.

Held, also, that the notices mentioned did not amount to an agreement excluding parol evidence of the true contract between Government and the ticket-holders. LALA SAHIB SINGH *v.* THE SECRETARY OF STATE FOR INDIA IN COUNCIL. **57 P R 1869**

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COMPENSATION—*concld.*

3. *Negligent keeping of animals—Liability of owners for mischief.*

In a fight between two animals belonging to two different owners, one was killed: *held*, that the owner of the animal which killed the other was not liable to make compensation in the absence of neglect or carelessness on his part in keeping the animal. MUNGUL SINGH *v.* LEHNA SINGH. **72 P R 1870**

4. *Suit for money due as compensation for the abduction of a woman—Consideration, legality of.*

Held, that a promise to pay a sum of money as compensation for the abduction of a woman is enforceable, provided the abduction does not constitute a non-compoundable offence.

Kahna v. *Kahn Singh* (106 *P. R.* 1879), *Kalla Mal* v. *Dina* (50 *P. R.* 1880), *Waziri Mal* v. *Rullia* (128 *P. R.* 1889, F. B.), *Srirangachariar* v. *Ramasami Ayyangar* (*I. L. R. XVIII Mad.* 189), and *Gobardhan Das* v. *Jai Kishen Das* (*I. L. R. XXII All.* 224), referred to. SHAH RAHMAN *v.* ISMAIL KHAN. **82 P R 1904**

COMPENSATION FOR BREACH OF CONTRACT.

See DAMAGES.

1. *Bond payable by instalments—Interest payable on default from date of bond—"Penalty"—Compensation for breach of contract—Primary and secondary obligations.*
See CONTRACT ACT, 1872, SECTION 73.

2. *Contract Act, 1872, section 74—Compensation for breach—"Sum named" to be paid in case of breach.*
See CONTRACT ACT, 1872, SECTION 74.

3. *Compensation for breach of promise of marriage.*
See SMALL CAUSE COURT ACT, 1887, ARTICLE 35 (*G*).
SMALL CAUSE COURT, JURISDICTION OF.
BETROTHAL.

COMPENSATION FOR IMPROVEMENTS.

1. *Made under* bonâ fide *belief of ownership.*
See REGISTRATION ACT (III OF 1877), SECTION 50. **2 P R 1885**

2. *By co-sharer.*
See COMMON LAND. **9 P R 1902 Rev.**
See JURISDICTION OF CIVIL OR REVENUE COURTS. **3 P R 1902 Rev.**

3. *By mortgagee.*
See CUSTOM. **75 P R 1897**
See INTEREST. **103 P R 1893**
See MORTGAGE—REDEMPTION. **119 P R 1876**, **123 P R 1888**, **55 P R 1890**, **67 P R 1896**, **18 P R 1898**

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COMPENSATION FOR IMPROVEMENTS—*concld.*

4. *By Non-proprietor.*
See COMMON LAND.
CUSTOM.
PRE-EMPTION, COMPENSATION FOR IMPROVEMENTS.

5. *By Tenant.*
See CUSTOM. **75 P R 1897**
See ENHANCEMENT OF RENT. **7 P R 1902**
See PUNJAB TENANCY ACT, 1868, SECTIONS 19, 25, 37, 38, 40.
PUNJAB TENANACY ACT, 1887, SECTIONS 40, 65, 70.
RES JUDICATA. **96 P R 1881**, **142 P R 1884**

6. *By Vendee.*
See PRE-EMPTION—COMPENSATION FOR IMPROVEMENTS.

COMPENSATION FOR LAND COMPULSORILY ACQUIRED.

See LAND ACQUISITION ACTS.

Award of compensation to Hindu widow under Land Acquisition Act—Suit by reversioner for apportionment.
See RIGHT TO SUE. **47 P R 1884**
See SPLITTING CAUSE OF ACTION. **47 P R 1884**

COMPENSATION FOR OCCUPATION OF LAND.

See JURISDICTION OF CIVIL OR REVENUE COURTS. **82 P R 1894**

COMPENSATION FOR WRONGS.

See CIVIL PROCEDURE CODE, 1882, SECTION 483.
See EASEMENT. **22 P R 1888**
See SMALL CAUSE COURT ACT, 1887, SCHEDULE II, ARTICLE 11. **80 P R 1896**

COMPETENT COURT.

See RES JUDICATA. **163 P R 1883 F B**

COMPOSITION.

See CIVIL PROCEDURE CODE, 1908, 2ND SCHEDULE.
See INSOLVENCY. **17 P R 1876**, **30 P R 1885**, **88 P R 1887**

COMPROMISE.

1. *Order passed in execution of decree in small cause—Decree giving effect to compromise dealing with immovable property—Course of appeal.*
See APPEAL. **55 P R 1887**

2. *Agreement to refer made out of Court during pendency of suit—Act X of 1877, sections 375, 523—Dismissal of suit as barred by such agreement—Act I of 1877, section 21—Adjustment of suit—Nature of the adjustment contemplated by the Civil Procedure Code—Equitable bar Agreement to forego further legal proceedings.*
See ARBITRATION. **130 P R 1882**

3. *Compromise of suit based on* badni *transaction—Refusal of court to accept com-*

COMPROMISE—*contd.*

promise—Revision—Act X of 1877, *section* 375—*Unlawful agreement.*
See BADNI TRANSACTION.
104 P R 1880

4. *Certificate of appeal—Succession of daughters—Suit by reversioners to contest—Compromise—Subsequent suit by same reversioners to set aside alienation by daughters—Civil Procedure Code,* 1882, *section* 43.
See CAUSE OF ACTION. **47 P R 1894**

5. *Satisfaction of claim—Compromise.*
See CIVIL PROCEDURE CODE, 1859, SECTION 98. **12 P R 1867**

6. *Compromise of suit—Subsequent suit to enforce promise on strength of which original claim was foregone.*
See CIVIL PROCEDURE CODE, 1877, SECTION 375. **95 P R 1880**

7. *Compromise of suit—Power to withdraw.*
See CIVIL PROCEDURE CODE, 1908, ORDER XXIII, RULE 3.

8. *Power of guardian or next friend of minor to compromise suit.*
See CIVIL PROCEDURE CODE, 1908, ORDER XXIII, RULE 3.
CIVIL PROCEDURE CODE, 1908, ORDER XXXII, RULE 7.

9. *"Lawful agreement"—Decree made in accordance with compromise—Appeal.*
See CIVIL PROCEDURE CODE, 1908, ORDER XXIII, RULE 3.

10. *Power of Court to inquire whether compromise, denied in Court, had been assented to elsewhere.*
See CIVIL PROCEDURE CODE, 1908, ORDER XXIII, RULE 3.

11. *Appeal—Offer made by defendant* pendente lite *to settle case—Compromise—Decree based on plaintiff's acceptance of offer—Offer repudiated by defendant—Power of pleader to compromise suit.*
See CIVIL PROCEDURE CODE, 1908, ORDER XXIII, RULE 3.

12. *Minor—Compromise of suit on behalf of a minor to whom no guardian* ad litem *had been appointed—Sanction of Court.*
See CIVIL PROCEDURE CODE, 1908, ORDER XXXII, RULE 7.

13. *Sale made in contravention of terms of compromise—Restriction on alienor's powers of alienation unknown to alienee.*
See CONTRACT. **19 P R 1894**

14. *Compromise of criminal prosecution for offence not permitted by law to be compounded—Validity of contract—Public Policy—Compoundable offence—Penal Code, sections* 213, 214—*Coercion—Undue influence.*
See CONTRACT ACT, 1872.
135 P R 1882

15. *Admission in deed of compromise.*
See EVIDENCE ACT, 1872, SECTION 23.
83 P R 1877

16. *Decree in accordance with compromise—Construction of decree.*
See EXECUTION OF DECREE.
84 P R 1885

COMPROMISE—*contd.*

17. *Decree of foreign Court—Kabul Court—Compromise.*
See FOREIGN JUDGMENT.
2 P R 1899

18. *Suit for ejectment of tenant—Defendant pleading right of occupancy—Compromise of suit by some only of plaintiffs—Appeal by both sets of plaintiffs—Findings as regards the plaintiffs who were not parties to the compromise that they were not bound thereby—Proper order to pass as regards the other plaintiffs—Remand of case for retrial as regards all the plaintiffs.*
See LANDLORD AND TENANT.

19. *Decree made on a compromise that after expiration of fifteen years plaintiff would be entitled to possession—Limitation.*
See LIMITATION ACT, 1877, 2ND SCHEDULE, ARTICLE 179.

20. *Parties to suit agreeing to be bound by the oath of a witness—Refusal of witness to take the oath—Adjustment of suit—Civil Procedure Code,* 1882, *section* 375.
See OATHS ACT, 1873, SECTION 8.

21. *Petition to Court to recognise arrangement in satisfaction of decree—Registration—Compromise.*
See REGISTRATION ACT, 1877, SECTION 17. **51 P R 1885**
37 P R 1888

22. *Unregistered deed of compromise—Admissibility of, in evidence.*
See REGISTRATION ACT, 1877, SECTION 17. **59 P R 1890**
14 P R 1893
97 P R 1895
27 P R 1906

23. *Decree—Compromise—Decree as to occupancy rights prior to passing of Tenancy Act, section* 2.
See RES JUDICATA. **77 P R 1877**

24. *Compromise of suit—Subsequent suit to enforce promise on strength of which original claim was foregone.*
See RES JUDICATA. **1 P R 1904**

25. *Decree in accordance with compromise—Compromise by guardian* ad litem *without sanction of Court—Material irregularity.*
See REVISION IN CIVIL CASES.
105 P R 1889
See WITHDRAWAL OF SUIT.
3 P R 1905

26. An unregistered compromise declaring right to immovable property, if addressed to Court and acted upon judicially by the presiding Judge is admissible in evidence. KHAIR-UL-NISSA *v.* BAHADUR ALI.
27 P R 1906

27. *Compromise of suit—Compromise must relate to the relief claimed—Civil Procedure Code,* 1882, *section* 375.

Held, that under section 275 of the Code of Civil Procedure a Court is not competent to pass a decree in terms of a compromise which embodies reliefs beyond the scope of the subject-matter of the suit and which could not have been claimed or granted in the suit as framed.

COMPROMISE—*concld.*

Under such circumstances the course laid down in *Muthu Vijaya Raghunatha Udayara Tevar* v. *Thandavaraya Tambiran* should be adopted, *i. e.*, that the Court should inform the parties that the terms of the compromise could not be embodied in the decree, and if it appeared that the compromise was arrived at conditionally upon its being incorporated in the decree to proceed with the suit. BHAG SINGH *v.* NAZIR. **77 P R 1908**

CONCURRENT FINDINGS ON FACTS.

1. *Practice of Chief Court to interfere, in further appeal, with concurrent findings on fact.*
See APPEAL. **50 P R 1904**

2. *Appeal to Privy Council—Concurrent findings on fact—Substantial question of law—Procedure,*
See APPEALS TO PRIVY COUNCIL.
48 P R 1904
59 P R 1905

CONDITION PRECEDENT.

1. *Contract reduced to writing—Admissibility of evidence of oral agreement constituting a condition precedent to the attaching of any obligation under such contract.*
See EVIDENCE ACT, 1872, SECTION 92.
51 P R 1877

2. *Suit for cancellation in part of document on ground of failure of consideration—Voidable contract—Evidence Act, section* 92—*Admissibility of oral evidence to add to written contract—Condition precedent.*
See SPECIFIC RELIEF ACT, 1877, SECTIONS 39, 40.
186 P R 1882

3. *Compensation for improvements—Condition precedent—Tender of amount of compensation before notice of ejectment.*
See TENANCY ACT, 1868, SECTION 25.
96 P R 1881
18 P R 1883
39 P R 1883

4. *Alienation by tenant with right of occupancy under section* 5, *Tenancy Act,* 1868—*Offer to landlord—Condition precedent.*
See TENANCY ACT, 1868, SECTION 3A.
45 P R 1883
80 P R 1883

5. *Reciprocal promises of marriage—Cross-action.*

Defendant promised his sister in marriage to plaintiff. Suit for breach, and plea that it was a condition precedent that plaintiff should find a bride for defendant's son, which condition had not been fulfilled. The Lower Courts decreed damages to plaintiff, leaving defendant to a cross suit. *Held*, by the Chief Court, that the truth of defendant's plea should have been inquired into, as being a good answer to the action. Suit remanded for re-trial. KASHI RAM *v.* GUNGA RAM.
51 P R 1872

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CONDITIONAL DECREE.

1. *Suit on decree—Conditional decree—Omission to execute decree—Right to bring fresh suit for same subject-matter.*
See CAUSE OF ACTION. **93 P R 1879**

2. *For possession on payment of a sum of money, does not create a mortgage or new cause of action.*
See LIMITATION ACT, 1877, SECTION 7.
100 P R 1909

CONDITIONAL SALE.

1. *Conditional sale—Mortgage—Foreclosure, Regulation XVII of 1806.*
See MORTGAGE—FORECLOSURE.
21 P R 1870
42 P R 1870
75 P R 1874
29 P R 1876
76 P R 1877
91 P R 1880
1 P R 1881
84 P R 1882
132 P R 1882
139 P R 1882
171 P R 1882
31 P R 1883
32 P R 1883
55 P R 1883
75 P R 1883
114 P R 1885
117 P R 1885
88 P R 1888
106 P R 1889
185 P R 1889
36 P R 1893
123 P R 1894
35 P R 1899
5 P R 1901
21 P R 1901
28 P R 1901
38 P R 1901
103 P R 1901
109 P R 1901
48 P R 1902
50 P R 1906
65 P R 1906
4 P R 1907
46 P R 1907
70 P R 1907
93 P R 1907
105 P R 1907
28 P R 1908
57 P R 1908
22 P R 1910
86 P R 1910

2. *Effect of section 9 (3) of Punjab Alienation of Land Act, 1900, on suit for declaring conditional sale absolute.*
See PUNJAB ALIENATION OF LAND ACT, 1900, SECTION 9. **26 P R 1902**
47 P R 1902
20 P R 1905
38 P R 1905
64 P R 1906

3. *Mortgage of land by agriculturist by way of conditional sale—Applicability of section 9 (2) of the Punjab Alienation of Land Act, 1900.*
See PUNJAB ALIENATION OF LAND ACT, 1900, SECTION 9 (2). **5 P R 1905**

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CONDITION SALE—*concld.*

4. *Conditional sale—Involuntarily parting with proprietary rights.*
See TENANCY ACT, 1868, SECTION 5.
6 P R 1881

CONDONATION.

Act IV of 1869—Condonation—Evidence.
See DIVORCE ACT, 1869.
70 P R 1873

CONFESSION OF JUDGMENT.

1. *Suit for share in joint property—Effect of confession by some only of the proprietors.*
See CO-SHARER. **5 P R 1883 Rev.**

2. *Suit for occupancy right—Confession by some of the defendants.*
See OCCUPANCY RIGHTS.
84 P R 1881

3. *Authority of agent to confess Judgment—Decree on confession.*
See PRINCIPAL AND AGENT.
58 P R 1878

4. The confession of a respondent in a divorce suit is not evidence against a co-respondent. GORDON *v.* GORDON.
58 P R 1870

CONFIRMATION OF EXECUTION SALE.

Before period for setting same aside.
See EXECUTION OF DECREE.
19 P R 1884

CONFISCATION OF PROPERTY.

Restoration to owner—Intermediate incumbrances.

If property be actually confiscated and afterwards restored by Government to the owner, the latter takes it back subject to all incumbrances intermediately created: but if the property were merely taken possession of by Government, and not absolutely forfeited, the right of ownership was never extinguished, and an incumbrance intermediately created does not affect the owner. KURREEM BAX *v.* SHADEE RAM.
19 P R 1866

CONJUGAL RIGHTS.

See CUSTODY OF WIFE.

CONSENT.

See CUSTOM ADOPTION.
44 P R 1911

By Adult female—Marriage—Muhamedan Law.
See BETROTHAL. **83 P R 1909**
See MARRIAGE. **73 P R 1909**

CONSEQUENTIAL RELIEF.

See COURT-FEES. **2 P R 1886**
80 P R 1886

See DECLARATORY DECREE.
6 P R 1876
73 P R 1881
1 P R 1882
63 P R 1882
182 P R 1883
93 P R 1884
125 P R 1886

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CONSEQUENTIAL RELIEF—*concld.*

1. A suit for a declaration must not be dismissed merely because the plaintiff, being able to sue for further relief, has omitted to do so. HAZARA *v.* BISHEN SINGH.
128 P R 1907.

CONSIDERATION.

1. For *hundi*—Withdrawal from suit based on *badni* transaction—*Onus* of proving want of consideration for withdrawal.
See BADNI TRANSACTION.
74 P R 1881

2. For agreement—Payment of money due on agreement by way of wager.
See BADNI TRANSACTION 8.
194 P R 1882

3. *Consideration for bond—Denial of receipt.*
See BURDEN OF PROOF.
17 P R 1888

4. *Promissory Note—Right to revert to original consideration.*
See CAUSE OF ACTION.
PROMISSORY NOTE.
cf. also CONTRACT ACT, 1872, SECTION 62.

5. *Immoral and void contract.*
See CONTRACTS. **4 P R 1867**
88 P R 1867
10 P R 1872
81 P R 1875
86 P R 1875
64 P R 1876
22 P R 1877
26 P R 1877

6. *Suit on bond not legally enforceable—Right to revert to original consideration.*
See CONTRACT ACT, 1872, SECTION 16.
77 P R 1903

7. *Illegal contract—Money advanced to married woman to procure divorce from her husband and to pay her debts—Agreement of which consideration is unlawful in part.*
See CONTRACT ACT, 1872, SECTION 23.
46 P R 1887
82 P R 1904

8. *Marriage brocage contract—Void agreement—Guarantee.*
See CONTRACT ACT, 1872, SECTION 23.
128 P R 1889
112 P R 1892

9. *Bond executed by defendant after attaining majority for money advanced to him by plaintiff during minority.*
See CONTRACT ACT, SECTION 25.
86 P R 1888

10. *Contract in restraint of trade.*
See CONTRACT ACT, 1872, SECTION 27.
29 P R 1874

11. *Contract—Reciprocal promises—Written contract—Consideration extraneous to terms of contract.*
See CONTRACT ACT, 1872, SECTION 52.
17 P R 1898

12. *Novation—Incomplete contract—Right of rescission—Right to revert to old consideration.*
See CONTRACT ACT, 1872, SECTION 62.
66 P R 1888
71 P R 1897
7 P R 1903

CONSIDERATION—*contd.*

13. *Suit for enhancement of rent—Plea that the landlord had sold the land to defendants—Written agreement to sell, reciting payment of purchase money—Consideration only partly paid.*
See ENHANCEMENT.

14. *Admission of receipt of, before Registering Officer.*
See ESTOPPEL.
See REGISTRATION ACT (III OF 1877), SECTIONS, 23—26.

15. *For bond—Plea that bond was given for money lent for immoral purpose—Admissibility of evidence in proof of such plea.*
See EVIDENCE.

16. *Failure of consideration—Suit for money—Limitation.*
See LIMITATION ACT, 1877, 2ND SCHEDULE, ARTICLE 97.

17. *Promissory Note—Consideration—Inequitable bargain—Burden of proof.*
See PROMISSORY NOTE.

18. *Validity of plea of non-receipt of, in answer to suit by mortgagee.*
See MORTGAGE. **153 P R 1882**
16 P R 1884
27 P R 1886
59 P R 1907

19. *Acknowledgmeut of receipt of—Registration.*
See REGISTRATION ACT (III OF 1877), SECTION 17.

20. *Failure of—Suit for cancellation of bond.*
See SPECIFIC RELIEF ACT (I OF 1877), SECTIONS 39, 40.

21. *Non-payment of—Completion of sale.*
See VENDOR AND PURCHASER.
85 P R 1879
132 P R 1879
192 P R 1882

22. *Registered bond.*

The mere recital of receipt of the consideration in a registered bond is not conclusive evidence of the fact, precluding evidence to show that the money was not paid.—JEEWA *v.* BOOTA (*No.* 99 *of* 1867, Civil) ; *Malak Shahbaz* v. *Mowaz No.* 31 *of* 1868, Civil, and MUSSAMMAT SUIBHUARI *v.* THAKOOR DASS. **41 P R 1868**

23. On a reference as to whether, in a case where defendant admitted execution and registration of a bond, but denied receipt of the consideration, the *onus* of proof was on plaintiff or defendant, it was *held*, that no general rule could be laid down—each case must be dealt with according to its particular circumstances. IN RE A REFERENCE BY COMMISSIONER, RAWALPINDI. **80 P R 1868**

24. But before a registered deed is set aside on the ground of want of consideration, there must be very strong evidence produced by the party denying it, the registration of the deed being an admission by the parties that everything has been duly done and performed. JHUNDA SINGH *v.* INDUR SINGH. **45 P R 1873**

CONSIDERATION—*concld.*

25. The admission before the Registering officer of the receipt of consideration is evidence, but not necessarily conclusive evidence of the payment of the consideration stated to have been paid. KUTBA *v.* SHANKAR DASS. **8 P R 1878**

26. *Stifling prosecution—Unlawful consideration.*

Held, that a person is not debarred from taking a promissory note from his servant or agent for an amount found to have been embezzled by him, nor can the latter avoid it simply on the ground that he was threatened with a prosecution for the offence. The consideration for such a document only becomes unlawful when it consists wholly or in part of an agreement not to prosecute. NANAK CHAND *v.* DURANT. **9 P R 1906**

27. *Non-payment of—Sale—Intention of parties whether sale shall be complete without payment of consideration or not—relevancy of subsequent conduct of parties in ascertaining their intention.*

Held, that, although title in property sold can pass without payment of consideration, no title will pass where there is proof of an intention in both the parties that ownership should not pass until payment of consideration, and the subsequent conduct of the parties to the sale is relevant in order to show whether the parties intended ownership to pass independently of the payment of consideration or not. MUSSAMMAT BHAGAN AND OTHERS *v.* ALLAH DITTA AND OTHERS. **55 P R 1911**

CONSOLIDATION OF MORTGAGES.

See MORTGAGE, REDEMPTION. **33 P R 1899**

CONSTRUCTION.

I.—Of contracts.

1. *Construction of contracts*—Fortius contra proferentem.
See CONTRACTS. **15 P R 1871**

2. *Contract with independent Raja—Cession of territory to British Government—Effect of, upon rights of contractee—Reservation of right by transferring state—Construction of contract.*
See CONTRACTS. **21 P R 1872**
1 P R 1874
Privy Council.

3. *Joint promissory notes—Construction of instrument—Marginal entry.*
See CONTRACTS. **118 P R 1885**

CONSTRUCTION—*contd.*

I.—Of contracts—*concld.*

4. *Contract to sell—Sale on approval—Construction of contracts.*
See CONTRACTS. **28 P R 1886**

5. *Contract—Consideration, sufficiency of—Tender to supply stores at fixed prices, when it amounts to a valid contract—Continuing offer—Reasonable notice.*

The Commissariat Department invited tenders for the supply of such gram as it might require for a period of twelve months. The defendant sent in a tender to supply the gram for that period at a certain fixed price in such quantities as the Department might order from time to time. By one of the terms of the tender the plaintiff was bound to give fifteen days' notice if more than 1,000 maunds of gram was required at a time. The plaintiff accepted the tender, and on 12th September gave notice to the defendant (which was not despatched from plaintiff's office until the 14th) that he would require delivery of 1,400 maunds on or before the 28th September. The defendant having failed to deliver the gram (although several extensions were allowed to him), the plaintiff rescinded the contract and brought an action for damages for non-delivery against the defendant.

Held—

(*i*) That there was a sufficient consideration for the defendant's promise to supply the gram, although there was no binding contract on the part of the Commissariat Department to order any.

(*ii*) That the tender made by the defendant and accepted by the plaintiff was not a contract by itself, but created a series of continuing offers on the part of the defendant which plaintiff was at liberty to convert into contract by giving orders in accordance with the terms of the tender.

(*iii*) That the notice given by plaintiff on the 12th September was not a legal notice in accordance with the terms of the tender, inasmuch as the time allowed in it was too short for the quantity required, and that the subsequent extensions of time granted by the plaintiff could not remove the defect in the original notice and none of them could be treated as a sufficient notice by itself, and that, therefore, non-delivery of gram under such notice did not amount to a breach of contract and plaintiff's claim for damages therefore failed.

Burton v. *The Great Northern Railway Company* (23, *L. J. Ex.*, 184), *The Great Northern Railway Company* v. *Witham* (43 *L. J. C. P.*, 1), and *The Bengal Coal Company* v. *Homee Wadia and Company* (*I. L. R.* 24 *Bom.* 97), cited and followed. KUNDAN LAL *v.* THE SECRETARY OF STATE FOR INDIA IN COUNCIL. **72 P R 1904**

II.—CONSTRUCTION OF DECREES.

See CONSTRUCTION OF DOCUMENTS.

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CONSTRUCTION—*contd.*

III.—Of document.
See MORTGAGE—CONSTRUCTION.
PRE-EMPTION—CONSTRUCTION OF TRANSFERS.

1. *Reference and award—Construction—Validity of award.*
See ARBITRATION.

2 *Construction of deed.*
See BURDEN OF PROOF.

3. *Promissory Note—Bill of exchange—Original consideration—Stamp.*
See CAUSE OF ACTION.

4. *Construction of decree—Civil Procedure Code,* 1882, *section* 230—*Certain date.*
See CIVIL PROCEDURE CODE, 1908 ORDER XXI, RULE 10.

5. *Decree for specific movables or their value—Construction.*
See CIVIL PROCEDURE CODE, 1908 ORDER XXI, RULE 32.

6. Wajib-ul-arz—" *Kuch haqiat.*"
See CUSTOM.

7. Riwaj-i-am—Sahib-i-jaidad—*Construction of* Riwaj-i-am.
See CUSTOM.

8. *Promissory note or acknowledgment of liability—Suit based on document stamped with an anna stamp—Admissibility of document in evidence—Right of plaintiff to fall back upon original consideration.*
See EVIDENCE ACT, 1872, SECTION 91.

9. *Jurisdiction of Court to execute decree exceeding the pecuniary limits of its jurisdiction for suits—Construction of decree—Power of executing Court to look at judgment to explain ambiguous parts of decree.*
See EXECUTION OF DECREE.
45 P R 1882

10. *Decree for payment of money in accordance with written compromise—Construction of decree.*
See EXECUTION OF DECREE.
84 P R 1885

11. *Construction of will—Appointment of guardian.*
See GUARDIAN.

12. *Construction of will—Vested and contingent interest—Provision for maintenance of widow.*
See HINDU LAW—INHERITANCE.

13. *Gift to certain persons for purposes of a society not then in existence—Construction of deed of gift.*
See INCORPORATED SOCIETY.

14. *Mortgage—Interest—*Post diem *interest—Absence of a covenant to pay interest after a certain date when the mortgage if not redeemed was to become a usufructuary one—Damages—Construction of document.*
See INTEREST.

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CONSTRUCTION—*contd.*

III.—Of document—*contd.*

15. Wajib-ul-arz—*Right of occupancy tenant to sink wells without landlord's consent.*
See IRRIGATION.

16. *Grant of Government revenue for life to parties' family in specific shares—Death of one sharer—Suit by the surviving sharer against the son of the deceased for certain instalments wrongfully enjoyed by the latter—Construction of such grant—Pensions Act,* 1871, *section* 6.
See JAGIR.

17. *Plaint, construction of—Ejectment suit.*
See JURISDICTION OF CIVIL OR REVENUE COURT.

18. *Single bond—Bond with a condition—Limitation.*
See LIMITATION ACT, 1877, 2ND SCHEDULE, ARTICLE 66.

19. *Mortgage deed—Personal liability of mortgagor.*
See MORTGAGE, CONSTRUCTION.

20. *Mortgage deed—Cash credit—Consideration.*
See MORTGAGE, CONSTRUCTION.

21. *Mortgage deed—Construction—Satisfaction of judgment-debtor—Uncertified adjustment of decree.*
See MORTGAGE, CONSTRUCTION.

22. *Provision in mortgage-deed regarding interest.*
See MORTGAGE, CONSTRUCTION.

23. *Mortgage deed—Clear expression of intention necessary to take away mortgagor's right to redeem before expiration of terms.*
See MORTGAGE, REDEMPTION.

24 *Colorable mortgage for purpose of evading law of pre-emption—Construction.*
See PRE-EMPTION.
145 P R 1906.

25. *Pre-emption—Construction of deed—Colorable mortgage for purpose of evading low of pre-emption—Fraud.*
See PRE-EMPTION.

26. *Mortgage or sale—Conditions restricting equity of redemption.*
See PRE-EMPTION.

27. *Suit for pre-emption—Sale or Contract to sell—Construction of deed.*
See PRE-EMPTION.

28. *Mortgage or sale—Colorable transaction—Evidence Act,* 1872, *sections* 92, 99.
See PRE-EMPTION.

29. *Mortgage or sale—Construction of document—Question of law involved.*
See PRE-EMPTION.

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CONSTRUCTION—*contd.*

III.—Of document—*contd.*

30. Wajib-ul-arz—*Pre-emption.*
See PRE-EMPTION.

31. Wajib-ul-arz—*Succession to occupancy rights.*
See TENANCY ACT, 1868, SECTION 36.

32. *Instrument operating to declare right to or in immovable property.*
See REGISTRATION ACT, 1877, SECTION 17.

33. *Construction of Document—Partnership or co-ownership.*
See REGISTRATION ACT, 1877, SECTION 17.

34. *Erroneous construction of judgment and decree—Material irregularity.*
See REVISION IN CIVIL CASES.

35. *Construction of document—Sale or contract to sell.*
See SALE.

36. *Plaint, construction of—Joint holding—Separate possession and enjoyment—Partition, proof of.*
See SPECIFIC RELIEF ACT, 1877, SECTION 39.

37. *Deed of grant—Construction of.*
See SPECIFIC RELIEF ACT, SECTION 42.

38. *Custom—Right to take water-course through another village—Construction of Wajib-ul-arz.*
See WATER-COURSE.

39. *Devise to defendant if child born to testator was a daughter—Birth of male child who died the same day—Defendant's right to succeed in preference to nearest collaterals—Construction of will.*
See WILL. **181 P R 1882**

40. *Construction of will—Bequest to Hindu widow as* malik—*Presumption as to nature of bequest to Hindu female.*
See WILL

41. *Will—Bequest to* aulad—*Construction of the expression* aulad.
See WILL.

42. Ala *and* adna maliks—*Land submerged—Re-appearance—Right of possession*—Wajib-ul-arz.

The parities to the case were *ala* and *adna maliks* of Mauza Thoa, in the Dera Ismail Khan District. As regards the preservation or loss of rights of *adna Maliks* in cases of alluvion and diluvion, the *Wajib-ul-arz* provided that the land attached to wells will on restoration belong to the former owner *adna malik*); that in case of lands not attached to wells, if a *portion* of a field or plot be carried away and be again thrown up opposite the remaining land, the former *adna malik* will take so much of it as is

CONSTRUCTION—*contd.*

III.—Of document—*contd.*

required to make up his old holding; but if the *whole* field or land be carried away, it will belong on restoration to the *ala maliks* as *shamilat*, and the *ala maliks* will have full power to give it to *adna maliks* or not, and for its cultivation those powers and rules will come into force which are laid down for the *shamilat*. It also contained the following clause: *Lekin jis malik adna ki zamin amum burd hogi banisbat digar malikan adna uska pahle hak hai ki banjar shamilat se ya zamin baramad shuda se bakadr rakba burd shuda ke usko mile, aur aisi zamin ki liye malik adna ko jadid jhuri jo ek rupaya fi acre se ziyada na howe deni hogi aur khilaf dastur ala malikan ko aisi zamin ke liye jhuri lene se inkar karne ka ikhtiyar na hoga.*

Held, that the proper interpretation of this clause was that if the *ala maliks* did not require the lands themselves, and it became a question of letting them out then the first persons entitled to admission were the *adna maliks* who had lost a good deal of land (*amum*). Both those who had lost all their land and those who had lost a considerable part (and who might not wish to wait for the chance of a restoration—*mahaz*), would come under this head, and might claim to be accepted in prefereuce to other *adna maliks* or outsiders on payment of the fair customary rent, which the *ala maliks* might not refuse to accept on the plea that they could get a higher rent by competition. MUBARIK SHAH *v.* ABDULLA. **125 P R 1889**

43. *Conditional decree—Possession to be given on certain payment being made—Mortgage—Adverse possession.*

An absentee proprietor obtained a decree in 1867 for restoration to his holding, subject to payment of certain losses. *Held*, that this did not declare the relationship of mortgagor and mortgagee to exist between the parties. MUHAMMAD SHAH *v.* MAHAN SADHU RAM. **137 P R 1889**

44. *Deed of sale—Sale of portion of* khewat *land* mai hissa shamilat-i-deh.

A, the owner of certain *khewat* land, sold part of it *mai hissa shamilat-i-deh* to B. by a deed of sale which after the usual recitals provided as follows.

"*Aur jo hissa shamilat-i-deh se barue takseem muzhir ko milega uske sath muzhir ka kuch vasta nahin hai.*"

B contended that A.'s *entire* share in the *shamilat-i-deh* passed to him under these words. *Held*, that on a proper construction of the document only a share in the common land proportionate to the land sold was intended to be conveyed and that the word *hissa* should be construed with reference to what immediately preceded it, *i.e.*, the quantity of *khewat* land sold. KHAIR DIN *v.* NIHAL CHAND. **194 P R 1889**

45. *Karabati.*

Karabati means not only a male collateral but *near* male collateral. RANJHE KHAN *v.* MUSSAMMAT KAMAN. **179 P R 1889**

See ALSO MUSSAMMAT JEWAN *v.* IBRAHIM **196 P R 1889**

CONSTRUCTION—*contd.*

III—Of document—*contd.*

46. *Grant by Government—Construction—Joint and several interests—Survivorship.*

The proprietary right of the village of Shamapur was at the absolute disposal of Government as confiscated property of the late Raja of Ballabgarh (Delhi District) The recommendation of the Lieutenant-Governor of the Punjab in 1859 as to the disposal of the confiscated village, which the Government of India approved, was as follows:

> "The jagirdars are kinsfolk of the late "Raja, being descended from common" ancestor. I recommend that "the lands "be released to them and their male" issue in perpetuity subject to good "conduct. I would also grant them "the proprietary right in free gift, the pensions to cease on their receiving possession."

The District Judge in construing the grant held that each of the four grantees became entitled under the grant to a fourth share of the village in severalty. and that there was no right of survivorship.

Held that the effect of the grant was a grant to the parties jointly with a right of survivorship. The grant was to the members of the family jointly without any definition or limitation of interests to the parties severally.

Accordingly, in the present case, in the absence of any severance of the joint ownership, the whole interest granted would vest in the last survivor.

I. L. R. XI Calc., followed. MUSSAMMAT UMRAO KAUR *v.* TEJ SINGH. **27 P R 1891**

47. *Deed of release, construction of—Transfer of expectancy of succession—"Public policy"—Transfer of Property Act (IV of* 1882), *section* 6, *and Civil Procedure Code*, 1882, *section* 266 (*k*).

In 1873 a dispute having arisen between plaintiff and his brother, J., regarding certain property, plaintiff and J. agreed to compromise the suit then pending between them, and a registered deed of release was drawn up, whereby it was agreed that plaintiff, in consideration of the receipt of Rs. 350, would make no claim in respect of the property during J.'s lifetime or after his death, in the lifetime of his offspring or widow. J. shortly before his death executed a mortgage of his house in favour of one A. B., defendant No. II, and, upon the death of J., plaintiff sued A. B. and defendant No. 1, who was the daughter of J., on the allegations that he was entitled to the said house under Muhammadan law, and that the mortgage was fictitious and without consideration. Defendants contended that the mortgage was valid and for full consideration, and that plaintiff was debarred from suing by reason of the deed of release of 1873. The first Court dismissed the suit both on the ground that the mortgage was valid and also that the plaintiff was estopped under the deed of release from suing in respect of J.'s property, but the Divisional Court, although holding that

CONSTRUCTION—*contd.*

III.—Of document—*contd.*

the mortgage was valid, held that plaintiff was not debarred by the said deed from claiming to succeed his brother, and gave the plaintiff a decree for possession of half the house on payment of half the mortgage money. Plaintiff appealed to the Chief Court, and it was argued, on his behalf, that the deed merely referred to the rights he was then suing for in succession to his father and not to any rights that might accrue to him upon his possible survival of his brother.

Held, that, looking at the reference in the deed of release to J.'s widow and offspring and to the time subsequent to J.'s death, the deed clearly contemplated that J. should enjoy the property he had released from any claim by the plaintiff, and that, after his death, his widow and offspring should so enjoy it, and that plaintiff had renounced any possible right of succession thereto. A transfer or an agreement to transfer rights of succession to accrue in future, though they cannot, under section, 266 (*k*) of the Civil Procedure Code, 1882 be had recourse to in execution of decrees are not unenforceable as being opposed to public policy.

VI. B. L. R. 291, distinguished. NIZAM-UD-DIN *v.* MUSSAMMAT JANNAT BIBI. **58 P R 1894**

48. *Document, construction of*—Kul haqiat ka tisra hissa—*Inclusion or exclusion of share of* shamilat.

The decree-holder having brought a suit against his judgment-debtor for recovery of the money due under the decree, a *razinama* was drawn up to the effect (*i*) that the respondent was to be responsible for his brother's share of the debt, and was to pay the decree-holder a certain sum without further costs, and (*ii*) that the respondent was to execute a mortgage with possession of a one-third share of his entire interest (*kul haqiat ka tisra hissa*) and a bond bearing interest for Rs. 100 in appellant's favour by a certain date, failing which the appellant was to be at liberty to execute his whole decree in the usual way. After the said date, the decree-holder applied for execution on the ground that the bond and mortgage deed had not been executed by the judgment-debtor according to the *razinama*. The latter pleaded that he was ready and willing to execute both documents, but that the decree-holder insisted on including a third share of the *shamilat* in the mortgage, which he declined to do, as there was no such agreement in the *razinama*. The lower Courts held that the words "*kul haqiat ka tisira hissa*" were not meant to include a proportionate share of the *shamilat*.

Held, that the wording of the *razinama* was faulty, but, though not to be construed with the strictness appropriate to a formal and regularly drawn up deed, must be governed by the rule that the obviously plain meaning of the words used must not be nullified by importing extraneous considerations.

CONSTRUCTION—*contd.*

III—Of document—*contd.*

Held, therefore, that the document must be construed to mean that one-third of the entire share of the judgment-debtor was to be included in the mortgage including his share in the *shamilat*. BAJU SHAH *v.* HUKMA.

42 P R 1897

49. *Premature suit—Agreement to pay money to third party—Refusal to account to promisee as to such money—Method of taking account—Interest.*

On the 9th January, 1879, one B. L. executed a deed whereby he leased certain lands to defendant for a period of two years, *i.e.*, up to *Rabi Sambat* 1938. On the 28th October 1879, B. L. executed another deed in favour of defendant in which the period of the lease was fixed at twelve years, "not to be cancelled before the expiry of that time." At the end of this latter deed, a "P. S." was added to the effect that "the condition set "forth above will remain in force even in case "of default of money after the expiry of the "term of twelve years." On the 17th October 1891, plaintiffs, as representatives of B. L. sued defendant for possession and for a sum of money which they alleged to be due to them after taking of accounts. Defendant contended, *inter alia*, that the suit was premature, inasmuch as (*a*) the second deed had superseded the first and had fixed the period of twelve years from the date on which it was executed; and (*b*) that the meaning of the "P. S." was that if the land had not been redeemed within twelve years, the lease would be continued on the old terms for another twelve years.

Held, having regard to the time usually fixed for the expiry of an agricultural lease and reading the two deeds together, that the latter deed was not intended to supersede the earlier deed as to the commencement of the lease, and that therefore the lease was for a period of twelve years from *Rabi, Sambat* 1936.

Held, further that the proviso in the "P.S." was simply added at the last moment to prevent any difference as to the *terms* upon which the lease should run after the expiry of the twelve years which might expire before the full sum was made up.

Semble: Inasmuch as the plaint, originally filed on the 17th October 1891, was returned for amendment on the 8th March 1892, and not represented until the 16th March 1892, the suit was not premature.

Held, that when A has contracted with B. in consideration of the mortgage or lease of certain land, to make certain payments for B. to C., there is no privity of contract between A. and C. and B., and B's representatives are entitled to an account from A. of all sums of money in his hands under the contract, it being no answer on the part of A. to decline to account for such money on the ground that it was payable to a third party.

The method of taking accounts between mortgagor and mortgagee should be in accordance with the principles laid down at page 550 (7th Edition) of Macpherson on "Mortgages." GANDA MAL *v.* THAKUR HARKISHEN.

3 P R 1900

CONSTRUCTION—*contd.*

III.—Of document—*contd.*

50. *Construction of mortgage-deed—Limitation Act, 1877 2nd Schedule, articles* 75, 132, 147.

The mortgage-deed in question provided as follows:—"The mortgagees shall pay the "mortgage-money by instalments of Rs. 60 "a year, together with interest at the rate of "8 annas *per cent.*, without raising any ob-"jection or dispute. In case of default of "payment of an annual instalment, together "with interest at the aforesaid rate, the "mortgagors will put the mortgagee in pos-"session of the mortgaged share of the "house. If the mortgagors raise any "objection, the mortgagee will be at "liberty to at once get possession by bring-"ing a regular suit. Afterwards the mort-"gagors will redeem and get released the "mortgaged share on payment of the mort-"gage-money, together with the fixed amount "of interest."

The deed was executed in 1881, and the first default in payment of the instalments took place in 1882. In 1897 the mortgagee sued for Rs. 797-6-0 principal and interest due on the mortgage, and prayed for attachment and sale of the mortaged property.

Held, with reference to the language of the deed, that the intention of the parties was to hypothecate the property in the first instance, giving the mortgagee the power of taking steps for assuming possession and so converting the mortgage into a purely usufructuary one, but, as the mortgagee failed to so convert it, the transaction remained no more than a promise to pay by the obligor who had hypothecated his property as a collateral security.

Held, therefore, that as the plaintiff had failed to enforce payment within twelve years of the first default in payment by taking possession and so carrying out and developing the contract, the suit was barred under article 132 of the Limitation Act, 1877. MILKHI RAM *v.* ACHHRU MAL. **23 P R 1900**

51. *Wajib-ul-arz.*

A clause in the *Wajib-ul-arz* providing that shares in the *shamilat* are proportional to the *khewat* land, held by each proprietor, cannot confer any rights in the common land on the purchaser not conveyed by his deed of sale. RAM DAS *v.* AMIR SHAH.

113 P R 1901

52. *Construction of grant—Grantee allowed to dig at his own expense an irrigation canal through waste land belonging to the grantor—Interest of grantee in the lands taken for the purpose of the canal—Stipulation as to possession of canal.*

In 1860 certain waste lands in *tahsil* Mailsi, of the Mooltan District, belonging to the Government and known as *barbarani* lands, were leased to one Ghulam Mustapha (the grandfather of the plaintiffs) for the period of the then current settlement. After the lease had been granted the grantee petitioned Government for sanction to dig two water-cuts at his own expense, one for irrigation of the land in Ludan, which was occasionally watered from the Sutlej, and the

CONSTRUCTION—*contd.*

III.—Of document—*concld.*

other for irrigating the land known as Khai, a Government jungle from the same river. On 4th of December 1861 the Commissioner of the Division permitted the opening of both the water-cuts, as he considered that a considerable area of land would be benefited, and that there would be increase of Government revenue. Ghulam Mustapha Khan then commenced the construction of the canals which was completed after his death by his son Ghulam Kadir Khan (the plaintiffs' father). On the expiration of the period of the then current settlement the Government by a *sanad*, dated 20th March 1886, made a grant of a tract of land, which was irrigated or capable of being irrigated by the canals, to the plaintiffs' father, but at the same time stipulated that it should have the right to intervene when necessary in the management and control of the canal, Ghulam Kadir having died and dissensions having arisen between his sons, the Government in 1890 took possession of the canals, declaring them to be their own property. The plaintiffs, who are three sons of Ghulam Kadir, sued for a declaration of their right to possession as proprietors of three-fourths of the canal.

Held, following the principles enunciated by Lord Kingsdown in *Ramsden* v. *Dyson* (*L. R. I. H. L.* 129) that in equity the plaintiffs have acquired proprietary rights in so much of the Government lands as was required for the construction and maintenance of the canal and are entitled to a declaration that, subject and without prejudice to the privilege conferred upon the Government by the reservation clause of the *sanad*, dated 20th March 1886, to a proprietary right in three-fourth shares of the Hajiwah Canal,

Held also, that the reservation clause did not give the Government a right to seize and confiscate the canal, but that it gave them the right from time to time whenever they think it necessary in the interest of the public without payment of any compensation whatsoever, to take into their own hands the management, control and distribution of the waters of the canal without being in the position of receivers, managers or trustees for the proprietors or accountable to them for the profits. AHMAD YAR KHAN AND OTHERS *v.* THE SECRETARY OF STATE FOR INDIA IN COUNCIL. **38 P R 1902 P C**

53. A document dividing immovable property in specified shares between the heirs of the executant which was intended to give immediate effect to the intentions of the alienor contained therein and whereunder possession was actually transferred within a short time of its execution, *held* to be a deed of gift, although it was called throughout and registered by the executant as a will. MURAD BAKHSH *v.* HUSSAIN BAKHSH. **74 P R 1904**

IV.—Of grant.

See CONSTRUCTION OF DOCUMENT.

V.—Of statute.

See PUNJAB TENANCY ACT, 1887, SECTION 80. **3 P R 1891 Rev.**

VI.—Of will.

See CONSTRUCTION OF DOCUMENTS.

CONSTRUCTION OF WORDS.
See MAVESHI. **86 P R 1911**

CONSUMMATION OF MARRIAGE.
See CUSTODY OF WIFE.
HINDU LAW-MARRIAGE.

CONTEMPT AND DISOBEDIENCE.

1. The institution of frivolous, vexatious or malicious suits, *held*, not to be punishable summarily as contempt of Court, but punishable only under the Penal Code. ALA *v.* FUTTEH DEEN. **9 P R 1867**

2. *Contempt of Court by Advocate and Barrister in his private capacity as suitor—Dismissal or suspension of such advocate from practice.*

Held, that conduct which is in itself indefensible and amounts to gross misconduct in an Advocate is not taken out of the purview of section 41 of the Legal Practitioners' Act, by a mere colourable pretence that it was the conduct of a suitor or accused in that capacity. IN THE MATTER OF AN ADVOCATE **5 P R 1902 F B**

CONTINGENT CONTRACT.
See PLEADER AND CLIENT.

CONTINUING BREACH OF CONTRACT.
See LIMITATION ACT, 1877, SECTION 23. **180 P R 1883**

CONTRACTS.
See CONSIDERATION.
See CONTRACT ACT, 1872.
See EQUITABLE ASSIGNMENT.
See EVIDENCE ACTS.
See JURISDICTION.
See JURISDICTION OF CIVIL OR REVENUE Courts.
See LIMITATION ACTS.
See PUBLIC COMPANY.
See RAILWAY.

1. *By Advocate.*
See ADVOCATE.

2. *Wagering Contracts.*
See BADNI TRANSACTIONS.

3. *Marriage brocage Contract.*
See BETROTHAL.
See MARRIAGE.

4. *Landlord and tenant—House in Cantonments—Liability of landlord to repair—Damages for injuries caused by non-repair:—*
See CANTONMENTS. **38 P R 1877**
Cantonment House Accommodation Act, 1902, **103 P R 1910**

5. *Bengal Regulations, para. 24—Lease.*
See CANTONMENTS. **115 P R 1882**

6. *Hire of house in Cantonments by prostitute.*
See CANTONMENTS. **72 P R 1883**

7. *Promissory Note—Original Consideration.*
See CAUSE OF ACTION.
EVIDENCE ACT, 1872, SECTION 91.
PROMISSORY NOTE.

8. *Champertous Contract.*
See CHAMPERTY.

9. *To transfer right of expectancy—Public policy.*
See CIVIL PROCEDURE CODE, 1908, SECTION 60.

CONTRACT—*contd.*

10. *Specific performance—Discretion of Court.*
See CIVIL PROCEDURE CODE, 1908, ORDER XLI, RULE 22.

11. *Punjab Laws Act 1872, sections 34-38—Incapacity of disqualified person to contract—*
See COURT OF Wards. **18 P R 1884**

12. *Muhammadan Law—Custody of wife—Agreement to divorce—Public Policy:—*
See CUSTODY OF WIFE. **193 P R 1889**

13. *For Enhancement of rent.*
See ENHANCEMENT.

14. *Tort—Breach of Contract.*
See FERRY. **30 P R 1877**

15. *Continuing breach of Contract.*
See FOREST Act, 1878.

16. *Interest—Implied Agreement to pay:—*
See INTEREST. **36 P R 1894**

17. *Renunciation of by tenant before time for performance—Action for damages—Maintainability of before time fixed for performance.*
See LANDLORD AND TENANT. **137 P R 1906**

18. *Privity of Contract—mortgage and sub-mortgage.*
See MORTGAGE. **31 P R 1900**

19. *Document embodying terms of contract and compromsing suit—"Instrument operating to declare right to immovable property"—Admissibility of such document as evidence of oral contract.*
See REGISTRATION ACT, 1877, SECTION 17. **95 P R 1894**

20. *Suit for contribution—Express contract—Relation resembling contract.*
See SMALL CAUSE COURT, ACT, 1865, SECTION 6. **118 P R 1888**

21. *Suit for ferry tolls—Suit not based on contract, express or implied.*
See SMALL CAUSE COURT ACT, 1865, SECTION 6. **173 P R 1888**

22. *Suit for money due for use of a moga—Rent.*
See SMALL CAUSE COURT ACT, 1887, 2ND SCHEDULE, ARTICLE 8. **164 P R 1888**

23. *Breach of promise of marriage.*
See SMALL CAUSE COURT ACT, 1887, ARTICLE 35 (*g*). **132 P R 1889**
SMALL CAUSE COURT, JURISDICTION OF.
cf. BETROTHAL. **43 P R 1887**

24. *To refer controversy to arbitration—Refusal to perform contract.*
See SPECIFIC RELIEF ACT, 1877, SECTION 21. **50 P R 1891**

25. *Suit for damages for breach of contract—Agreement in contract to refer to arbitration any dispute arising thereunder—Bar to suit.*
See SPECIFIC RELIEF ACT, 1877, SECTION 21. **80 P R 1906**

26. *Instrument relating to same matter, but embodying distinct contracts—Stamp duty.*
See STAMP ACT, 1879, SECTION 7. **102 P R 1905**

CONTRACTS—*contd.*

26. (*a*) Where there was a contract to pay a certain price for work and services, *held*, that it was competent to the defendant to show in reduction of the price agreed to be paid, that the subject of the contract was diminished in value by reason of the incomplete and insufficient execution of the work by the plaintiff. FENWICK *v.* MIRZA ELAHI BUKSH. **25 P R 1866**

27. A written contract could be varied by a subsequent oral agreement before Act IX of 1872. SHADI RAM *v.* HURGOPAL. **51 P R 1866**

Time for performance must be reasonable when no time specified. SHADI RAM *v.* HURGOPAL. **51 P R 1866**

The measure of damages in an action for not accepting goods sold held to be the difference between the contract price and the market price on the day when the vendee ought to have received the goods. SHADI RAM *v.* HURGOPAL. **51 P R 1866**

28. A contractor is liable for advances made by him where he fails to prove any performance on his part, or any act rendering the contract impossible of performance. WUZEERA *v.* MOOROODEEN. **77 P R 1866**

29. Where *A* takes *B* into his service upon *C's* guaranteeing *B's* honesty, and *B* is dishonest and *A* brings a suit for damages against *C*, the damages must be proved to have resulted from *B's* dishonest acts, and must be measured by his actual defalcations; all other damages are too remote. DECORTANZE *v.* MERCER. **106 P R 1866**

30. The measure of damages in the case of goods delivered to a carrier at one place to be conveyed to another, and lost *en route*, *held* to be the market value of the goods at the place of delivery. ASSA NUND *v.* THE INDIAN CARRYING CO. **10 P R 1866 C. Ref.**

31. Defendant wrote to plaintiff, a monthly nurse, asking her to attend on a certain date; plaintiff replied that she would attend on that date if defendant agreed to her terms; and defendant replied that he did agree to her terms. *Held*, that the contract to hire the plaintiff was complete. CAMERON *v.* FIELD. **17 P R 1866 C. Ref.**

32. *Immoral and void contracts—Contracts in aid of prostitution.—*

A bond given by a prostitute to the keeper of a brothel, will be presumed, until the contrary is shown, to have been given for the purpose of carrying on the business of prostitution, and a suit on the bond will not lie. DILAWUR *v.* MUSSAMMAT GOOLABEE. **4 P R 1867**

33. *Entire Contract.—*

When there is an entire contract to deliver a quantity of goods in distinct parcels within a specified time, and the seller delivers part, he cannot before the expiration of that time recover in a suit the price of the part delivered, the contract not being completed. But after the time has expired, if the purchaser retain the part delivered, the seller, even though he has had no good reason for not delivering the whole, and whatever his own liability to the purchaser may be, may recover the value of the part delivered.

CONTRACTS—*contd.*

34. In order to maintain a suit for non-delivery of the full quantity of goods contracted for the vendee must show that he was ready and willing to pay for the quantity actually delivered. In the absence of any special agreement payment must be made within a reasonable time after delivery. THE SECRETARY OF STATE FOR INDIA IN COUNCIL *v.* ARRATOON. **5 P R 1867**

35. No action will lie for breach of contract, where defendant did not prevent plaintiff from carrying out its terms. SECUNDER KHAN *v.* THE GOVERNMET. **10 P R 1867**

36. In a suit to recover damages for breach of contract of sale of corn, the measure of damages is the difference between the contract rate and the market rate immediately after breach; and not the difference between the contract rate and the market rate at time of action brought. KUNHYA LAL *v.* GUNDA. **15 P R 1867**

37. Where defendant refused to enter into a partnership according to agreement, *held*, that the damages should be assessed in regard to the share of profits which would have accrued to plaintiff if the contract had been carried out. AKULJOO *v.* HURBHUJ. **68 P R 1867**

38. *Termination of contract for self-protection.*

A contracted with a railway company for the supply of certain quantities of ballast; and he also sub-contracted with B that the latter should supply the kunker in 2 years and 6 months. On the grounds that B was carrying out his sub-contract in an unsatisfactory manner, and that the rate of progress was such that the ballast would not probably be delivered within the time, A terminated the contract with B at the end of 5 or 6 months, and sued for damages.

Held that it was not sufficient for A to show that B had begun his work so badly that in self-protection A had taken the work away from his sub-contractor, and had afterwards incurred losses which would not have resulted if the contract with B had continued. B was under no terms to deliver particular quantities at certain times; and until the time for performance elapsed, or so much thereof as would have rendered it impossible for him to perform his contract, in the absence of any refusal on his part to proceed, no cause of action had accrued to A.—A clause in the contract between A and B was that if the latter delivered the ballast in an unsatisfactory manner, or should the rate of progress be such as to create an opinion that the ballast would not be delivered within the specified time, A should have the power of terminating the contract by giving two months' notice: *Held*, that A's right to rescind the contract under this clause did not necessarily convey with it a right to damages; but if the rescission by A were not merely an act of precaution on his part, but was forced upon him by B, a suit for damages would be maintainable.

Where A contracts with B to perform a certain work in a certain time, and by the terms of the agreement B can terminate the contract by giving notice, and B uses this

CONTRACTS—*contd.*

power; B is not entitled to damages for non-fulfilment, there being no breach of contract. THE JULLUNDUR CONTRACTING ASSOCIATION *v.* TAYLOR. **78 P R 1867**

39. *Immoral and void Contracts.*

In a suit for money had and received, the Court is not ordinarily required *proprio motu* to enquire (when the question is not in issue) whether the money had been applied by defendant to an immoral purpose, or whether plaintiff knew it would be so applied. But if this appears incidentally from the evidence, the Court is bound to take cognizance of the fact. The purchase of a bride, where she is not regarded as a slave, and the practice of making payments to the parents on marriage, has been established by the usage of the community, and is not *malum in se*; and although, according to the law of the Punjab, a suit between the bridegroom and the father of the bride would not lie, there is nothing to prevent a third party from recovering in a law suit money advanced by him to the bridegroom for this purpose. SHAH GOOL *v.* IKRAM. **88 P R 1867**

40. *Lex fori.*

Where the matter relates *adlitis decisionem*, if the *lex fori* clashes with the *lex loci contractus*, the former must prevail—if not, the latter will rule the decision. SHAH GOOL *v.* IKRAM. **88 P R 1867**

41. Breach of contract for supply of sleepers at a given rate; the measure of damages, where no sum has previously been agreed upon, is the difference between the contract price and the price at which plaintiff could have bought elsewhere—not the difference between the contract price and the price at which plaintiff might have sold. NOOR MAHOMED *v.* BABOO RAJ NARAIN DAS. **103 P R 1867**

42. *Measure of damages.*

Plaintiff contracted with a Railway Company to deliver sleepers at Rs. 2-15-0 each, and then contracted with defendant for supply of a given number of sleepers by defendant at Rs. 2-8-0 each, within a given time. Defendant having ceased to deliver, plaintiff sued for damages. *Held*, that as defendant knew of the contract of plaintiff with the Railway Company, the proper measure of damages was the difference of rate in the two contracts. CHAPMAN *v.* SURMOOKH SINGH. **59 P R 1868**

43. *Guarantee.*

Plaintiff proposed to M to take a building contract; before the agreement was complete, M urged a prior engagement, and proposed R and B to undertake the work in his stead, promising to overlook their work generally. To this plaintiff agreed, and ultimately the contract was entered into with R and B. R and B failed in their contract, were guilty of acts of fraud, and finally absconded; whereon plaintiff sued M, R, and B jointly and severally, for damages. *Found*, that M had not connived at the fraud of R and B, and was not pecuniarily interested in the contract made by them; and *held*, under the circumstances, that M was not liable for damages. BRIND *v.* MUTHRA. **93 P R 1868**

CONTRACTS—*contd.*

44. *Separate or Entire—Reduction of price for inferior work.*

Defendant was under contract with Government for the supply of doors, and plaintiff was under a sub-contract with defendant to make the doors. The doors were made and delivered in batches by plaintiff to defendant, and the latter paid for every batch except the last, which Government rejected as not coming up to the contract. Other batches of doors supplied by plaintiff had been of inferior quality, and defendant had been put to expense in making them good. In a suit by plaintiff for the price of the last batch, defendant contended that plaintiff was bound to supply doors according to pattern, and that the payments made by defendant to plaintiff were not in full discharge of claims for work completed, but a general advance in respect of an entire contract.

Held, that the contract between plaintiff and defendant was not entire, but that there was a separate contract for each batch; and that defendant had no remedy in reference to the inferior quality of the batches of doors accepted and paid for.

Held also, that defendant might have reduced the price of the last batch from the contract price to the actual value, had he not by working up the doors prevented their actual value at time of delivery from being ascertained.—BERTOLA *v.* PEER BUKSH. **45 P R 1869**

45. *Plaintiff estopped from replying to plea that contract was illegal.*

In a suit for the custody of a wife, defendant pleaded that plaintiff had sold the woman to him for Rs. 300. Plaintiff replied that the sale was void for illegality.

Held, that plaintiff's replication was bad, on the ground that it was not open to a party to an illegal contract to ask the Court to relieve him from its stipulations. HAKAM *v.* KAHNA. **10 P R 1870**

46. *Construction of contract—"Fortius contra proferentem."*

On the 11th October 1868, the plaintiff commenced certain buildings for the defendant, an Executive Engineer, 1st Division, Agra Canal, without any agreement as to the rates of payment. On the 4th February 1869 the parties executed an instrument, by which the defendant agreed to pay the plaintiff for the buildings at certain rates higher than the ledger rates of the Public Works Department. In the middle of March 1869 the work was stopped by the defendant. In a suit for the price of the work done, the plaintiff claimed to be paid for the whole of the work at the contract rates; the defendant contended that for work done prior to the 4th February 1869, the plaintiff should be paid according to the ledger rates only.

Held, that construing the agreement most strongly against the defendant, he was liable at the contract rates for all work that had not been paid for at the time when the contract was made. MOTEE RAM *v.* THE EXECUTIVE ENGINEER, AGRA CANAL. **15 P R 1871**

CONTRACTS—*contd.*

47. *Immoral Contract—Void.*

Rent cannot be recovered for a house let for the purpose of being used as a brothel. MUSSAMMAT NOOR BUX *v.* MUSSAMMAT SHIBRATUN. **10 P R 1872**

48. *Contract with Independent Rajah—Cession of territory to British Government—Effect of, upon rights of contractee—Reservation of rights by transferring State—Construction of contract—Custom of place where made—Appropriation of property—Laches of owner—Right to injunction to restrain further injurious acts.*

In May 1865, the Rajah of Chumba, an independent and absolute ruler, secured to M. by an instrument written in English, the sole right to quarry slate and to hold slate quarries within a specified portion of the Rajah's territories for the term of ten years, in consideration of the payment by M of Rs. 1,000 a year. It had been the custom in Chumba for the Rajah to grant to his subjects by written instruments the right to quarry slate for a certain consideration,—the right in each instance being confined to a specified locality and limited by a fixed period of time. In these instruments, the word "slate" was represented by the vernacular "*sél*" and "quarry" by "*sél-kakhan*." In the Chumba territory there were to be found blue clay slate (fit for building purposes, and which, if properly quarried, would make inferior slabs), roofing slate and slab slate. By *sél* the Rajah and his subjects understood only roofing and slab slate, and therefore no right was conveyed to the grantees by the vernacular instruments in the blue clay slate. In 1866, the Rajah ceded to the British Government a portion of his territory called Balún, which was also a part of the territory within which M was entitled to quarry slate under his agreement of May 1865. The Superintendent of Chumba (a British Officer appointed in 1866, at the Rajah's request, to assist him in the management of his State) arranged the terms of the cession of Balún; and in a letter to the Commissioner of Amritsar, submitting these terms on behalf of the Rajah, took into consideration the value of the blue clay slate as a building material, as an item forming part of the basis of calculation on which the value of Balún was estimated; and in the same letter brought to notice that Balún was included in M's agreement of May 1865, by which he had the sole right for ten years of working the slate quarries in the land included in it, and requested that if slate were found in the ceded lands, Government would not interfere with M's right. In 1867, 1868, and 1869, the Government made roads and erected barracks on Balún; in so doing—in levelling the top of the hill, making roads, and using blue clay slate found in the hill for building the barracks—M. (and T to whom M assigned his rights in the quarries in February 1868) alleged that the Government had violated the rights secured by the Rajah to M by the agreement of May 1865. During the progress of the work at Balún, neither M nor T made any complaint of the infringement of their respective rights, or

CONTRACTS—*contd.*

put forward any objection, of which official notice could be taken, to the appropriation of the blue clay slate.

In a suit brought by M and T for compensation for the slate appropriated and used by Government.—*Held*, that the Court had jurisdiction to entertain the suit, inasmuch as, the Rajah of Chumba having only made the broad proposition that the British Government was to be allowed to take slate of some kind from Balún without accurately separating what slate was intended from the material referred to in M's agreement which the Rajah required to be recognized, the Government was responsible in a Civil Court for an alleged breach of the rights secured or intended so to be.

Held also, that upon the evidence the intention of the Rajah of Chumba was to secure to M only the right to quarry roofing and slab slate, and that M had not an exclusive right to the blue clay slate.

Held also, that the laches of M and T in not taking objection to the appropriation of the slate, barred them from recovering compensation, if otherwise they were entitled to compensation.

Found, that there had been no systematic quarrying of slab slate, and that there was nothing to shew that the incidental quarrying of it had taken place to any appreciable extent.

Held, that if in the course of excavating blue clay slate (which Government had the right to quarry), blocks of slate which, if quarried differently, might be termed slab slate, were incidentally or casually extracted, no damages were recoverable for such blocks.

Held also, that as a continuation of the excavations might interfere with the rights of T (the assignee) to quarry roofing and slab slate (for as they excavated down, the Government agents were coming to splitting slates), T was entitled to an injunction to restrain the Government making further excavations. MCGUFFIN *v.* SECRETARY OF STATE FOR INDIA IN COUNCIL. **21 P R 1872**
1 P R 1874 P C

49. *Public Policy.*

A loan by a military officer to a man under his command is not opposed to public policy, and the debt is recoverable. ASA SINGH *v.* SADDA SINGH. **16 P R 1873**

50. *Nazul Property—Incomplete contract.*

Plaintiff bought certain *nazul* premises at public auction and paid the price, Rs. 2,220. By the conditions of sale, the sanction of Government was necessary to complete the transaction; and before that sanction was obtained or applied for, plaintiff was convicted of criminal breach of trust. The Magistrate convicting him was the Deputy Commissioner who held the purchase-money (Rs. 2,220), and to cover certain losses sustained through the plaintiff's offence of breach of trust, the Deputy Commissioner appropriated the sum of Rs. 2,220, declined to give possession of the premises, and re-sold the property, which was bought by the defendants. Plaintiff having undergone his term of imprisonment, sued the defendants for possession. *Held*, that the sale to the plaintiff not having

CONTRACTS—*contd.*

been sanctioned by the Government, he had no title to the premises. SALIG RAM *v.* GOKAL SINGH. **No 47 P R 1874**

51. *Master and servant—Contract, whether for a term of years or determinable upon notice—Contract governed by law of place of performance—Power of Governors of a School to dismiss Master—Jurisdiction of Court over the matter.*

The late Bishop of Calcutta (Dr. Cotton) established a School at Simla, and framed certain statutes or rules for its conduct or management. By those rules, the Head Master had power to appoint Assistant Masters, their number and salary being fixed by the Governors; and the Assistant Masters were liable to be removed by a vote of the Governors present at any meeting.

Plaintiff in April, 1871, engaged himself in London to serve in the School as Assistant Master; received £100 as passage money from London to Simla, and executed a bond by which he obliged himself to pay the sum of £200 to the Head Master of the School, the condition of the bond being that if the plaintiff "during *five* years from the commencement of his duties faithfully discharged all "the duties of his said office of Master," the bond should be void. At the time of entering into this engagement, plaintiff was not made acquainted with the above-mentioned rules or statutes (though he was informed that there were Governors of the School), but he became aware of them about three years afterwards. In June 1874, plaintiff was accused by the Head Master of misconduct or insubordination, and he submitted the matter to the Governors for decision, who, after making an investigation, dismissed the plaintiff from his Assistant Mastership. Plaintiff thereupon sued the Governors for damages for wrongful dismissal, alleging, with reference to the bond of April, 1871, that his engagement was for five years.

Held, that the plaintiff and the Governors had not entered into any contract, express or implied, whereby the latter were bound to employ the former for the full term of five years.

Held also, that plaintiff was bound by the above-mentioned rules and statutes, and that under them the Governors could dismiss the plaintiff whenever they thought fit to do so; and that no suit would lie against the Governors for exercising that power, if they acted fairly and honestly.

Held also, that if there were any contract in this case superseding the power of the Governors to dismiss the plaintiff under the statutes, that contract must be governed by the law of the country where it was to be performed; and by that law (the law of India), plaintiff would be entitled to only one month's notice of dismissal. COX *v.* THE GOVERNORS OF BISHOP COTTON'S SCHOOL. **85 P R 1874**

52. *Immoral Contracts.*

In a suit to recover money paid to compromise a charge of adultery it appeared that plaintiff's son abducted defendant's wife, and plaintiff and defendant agreed that the former should pay the

CONTRACTS—*contd.*

latter Rs. 180, and that defendant should divorce his wife. The money was paid, but defendant refused to divorce his wife, and prosecuted plaintiff's son for adultery. *Held*, that a suit to recover the money paid was maintainable. HOSEIN SHAH *v.* NUR AHMED **81 P R 1875**

53. *Immoral Contract.*

Defendant agreed, in consideration of receiving Rs. 200, to find a wife for plaintiff. The money was paid, but defendant did not perform his part of the contract, and it was found by the Court trying the case that defendant never intended procuring a wife for the plaintiff, but obtained the money under false pretences. *Held*, that a suit to recover back the sum of Rs. 200 was maintainable. GAHU *v.* HAKU. **86 P R 1875**

54. *Contracts in aid of prostitution—Immoral—Void.*

It is immoral to advance money to a prostitute expressly to enable her to carry on her trade; and money so advanced cannot be recovered. Every advance of money to, or contract made with, a prostitute, is not necessarily immoral; it is a question of fact whether in the particular case, the loan or subject-matter of the contract was meant by the plaintiff to be applied to or used for the defendant's immoral trade, or whether the plaintiff knew that the defendant intended so to apply or use it. BHOLI BAKHSH *v.* MUSSAMMAT GULIA **64 P R 1876.**

55. *Immoral Contract.*

The plaintiff leased a house to the defendants, one of whom was a tailor, the other a prostitute. The female defendant carried on her profession on the premises. Plaintiffs sued for rent due.

Held, by BOULNOIS, J., that it was not to be assumed that the plaintiff knew that the house was hired for the sole purpose of the female defendant practising her calling, and the rent was recoverable.

Held, by LINDSAY, J., that if the plaintiff knew that the intention of the defendants in hiring the house was that the woman should practise her profession there, the rent was not recoverable; but, as a fact, this was not known to the plaintiff.

Held, by CAMPBELL, J., that though, as a fact, the plaintiff knew the purpose for which the female defendant required the premises, he was entitled to recover his rent. SULTAN *v.* NANU. **22 P R 1877**

56. *Prostitution—Immoral—Void.*

A suit will not lie to recover ornaments lent by a brothel-keeper to a prostitute for the purpose of display and to attract men. ALLAH BAKHSH *v.* MUSSAMMAT CHUNIA. **26 P R 1877**

57. *Money paid for expenses of marriage afterwards found to be a nullity—suit for damages—Fraudulent representation.*

Defendant caused the marriage of his niece to take place with plaintiff, having taken Rs. 120 from plaintiff for expenses. Three months after the marriage, one S, alleging a former marriage, sued and obtained a decree for custody of the girl. Plaintiff therefore sued for the Rs. 120, advanced for the marriage expenses, and got a decree from both the Lower Courts.

CONTRACTS—*contd.*

On special appeal to the Chief Court, it was urged that the suit was not maintainable

Held, that it did not appear that the Rs. 120 was paid as consideration for the wife, and that in any case plaintiff was entitled to recover the amount as damages for a fraudulent representation by defendant. GHANA *v.* HAKIM **107 P R 1879**

58. *Joint promissory notes—Construction of instrument—Marginal entry.*

Certain promissory notes were executed by the defendants and one C. in favour of the plaintiff. Each promissory note contained a joint and several promise by the persons executing them to pay a certain sum of money within a fixed period. On the margin of the notes the following words were printed, the rate of interest being filled in ink, and the initials of the aforesaid C. being attached at the foot thereof, but at a time subsequent to the execution of the notes by the defendants:

"*N. B.*—In case of default of payment of "this promissory note at maturity from any "cause whatever, the amount to bear interest "from due date at Rs. 3-2-0 per cent. per "month."

Held, that the marginal entry did not form an integral part of the promissory notes executed by C. jointly with the defendants, the said entry being entirely distinct from the operative words of the promissory notes, though written or printed on the same sheet of paper, but that the alteration or addition in the marginal entry after the execution of the promissory notes would not render them void as against the defendants. MANGAL SEN *v.* CANNON. **118 P R 1885**

59. *Contract to sell—Sale on approval—Construction of contract.*

Plaintiff sued for the price of certain blue stones on the following document signed by the defendant: "8th March 1882.—Received "from M.S. (plaintiff) two seers of blue stones "to the value of ten thousand rupees on appro-"val for one week at my risk, after which the "stones to be either returned or purchased "outright by me."

Held, that the above document amounted to a contract to sell, though not a complete sale on the 8th March, and the contract was to sell *all* the stones for Rs. 10,000 on the defendant approving of them, and the contract being indivisible the defendant could only be released by returning the whole when the time allowed for approval expired. POLLARD *v.* MUHAMMAD SADIK. **28 P R 1886**

60. *Agreement—Sale made in contravention of terms of compromise—Restriction on alienor's powers of alienation unknown to alienee.*

Held, that an agreement contained in a deed of compromise of a suit that the promisor shall not exercise his power of transfer of land in dispute except in favour of the promisee is lawful and binding between the parties and enforceable against a person taking from the promisor with notice that he is so bound JHANDA *v.* LAKHA. **19 P R 1894**

CONTRACTS—*contd.*

61. *Custom—Pre-emption in village—Mortgage by way of conditional sale—Entry in* Wajib-ul-arz, *effect of—Contract—Evidence of custom.*

Plaintiff, who was a co-sharer with defendant No. 2 in the village of Mughalpura, claimed a right of pre-emption of certain land arising out of a mortgage by conditional sale by defendant No. 2 in favour of defendant No. 1, and relied, in support of his claim, upon entries in the *Wajib-ul-arz* of the village made in 1842 and 1880. These entries were to the effect that there had been no mortgage or sale in the village up to 1842 and 1880, respectively, but that every co-sharer was thence forward to be at liberty to mortgage or sell his share for necessity or to pay arrears of Government revenue, provided that he first offered the said share to certain specified persons. It was urged, on behalf of plaintiff, that these entries either (*a*) established a custom in his favour, or (*b*) evidenced an agreement sufficient to support his claim.

Held, (i) by the *Full Bench*, that these entries were not agreements, and (ii) by the *Divisional Bench*, that they were sufficient evidence of the custom set up. DILSUKH RAM *v.* NATHU SINGH. **98 P R 1894 F. B.**

62. *Sale to three persons—Shares of vendors specified distinctly, but purchase-money for all shares mentioned in lump—Joinder of parties—Indivisible contract—Limitation.*

One Mussammat R. sold certain land to three brothers for a lump sum of Rs. 2,000, but the deed of sale recited that two-thirds of the property were sold to two of the brothers, M. S. and G. S., and one-third to P. S. The said deed was executed and registered on the 29th March 1892, and on the 21st February 1893, plaintiffs who were proprietors of the village where the said land was situate sued for pre-emption in respect of the sale. G. S. had died previously to the institution of the suit which was brought against M. S., both in his capacity of vendor and of representative of G. S. and P. S., but on the 10th April 1893 P. S. informed the Court that there was another brother of G. S. who ought to be impleaded as his representative, and accordingly the said brother was made a defendant on the 24th April 1893, by which date plaintiff's suit as against him was barred by limitation. The first Court, however, held that though the suit was barred in respect of the two shares sold to M. S. and G. S., it was within time as regards the share of P. S. and decreed accordingly. This decree having been reversed on appeal, by the Divisional Judge, plaintiffs appealed to the Chief Court.

Held, that the contract of sale as regards the vendor was one and indivisible, the specification of the shares in the sale-deed being merely an arrangement among the purchasers *inter se* which did not affect the vendor, who had contracted to take Rs. 2,000 for the whole land, and could not have been compelled to

CONTRACTS—*contd.*

sell to one or other of the vendors his specified share on payment of a proportionate share of the purchase-money.

Held, further, that plaintiff's suit being barred as against the brother of G. S., who was impleaded after limitation, was also barred as against the other brothers. KESAR SINGH *v.* PANJAB SINGH.

66 P R 1896

63. *Contract—Sub-letting contract, what is—Assignment - Illegality of assignment of or sub-letting of contract as opposed to public policy.*

A contract by which the plaintiffs agreed to supply the Commissariat authorities with certain *bhusa* contained a recital to the effect that the contract was not to be sub-let, although it could be transferred with the approval of the official by whom it was sanctioned. Subsequently the plaintiffs entered into an agreement with the defendant, under which the defendant was actually to supply the *bhusa* to the Commissariat Department, paying the plaintiffs one anna for each rupee's worth supplied. The defendant made default, and the plaintiffs had to perform their contract, and thereby incurred an alleged loss of Rs. 221 for which they sued the defendant. The first Court found that the agreement between the parties was void as being opposed to public policy, and dismissed the suit.

Held, that the defendant was not entitled to avoid fulfilling the terms of his agreement with the plaintiffs on the ground that it was opposed to public policy, merely because the plaintiff had, done something which under the terms of their contract with the Commissariat Department they possibly should not have done. Where two parties, competent to contract, have formally entered into an agreement, one of them cannot be permitted to get rid of his obligation unless the plea that the object of the agreement is opposed to public policy is thoroughly well substantiated.

Printing and Numerical Registration Company v. *Sampson* (44 *L. J. Ch.*, 705) cited—SOBHA SINGH *v.* LORINDA MAL AND ANOTHER—

99 P R 1901

64. *Civil Procedure Code*, 1882, *Section* 17.—*Jurisdiction—place of suing—Contract with commission agent for sale of goods.*

Plaintiff, who resided at Kasur, in the Lahore District, sent *bhusa* from the Ferozepore District to the defendant who was trading at Jhelum for sale as a commission agent. Disputes having arisen between the parties with reference to the *bhusa* transactions, plaintiff filed a suit at Kasur to recover the amount due to him.

Held, that as under the Contract Act there is no liability for a commission agent to render accounts to his principal at his place of business unless there is an express agreement to do so, no cause of action arose in Kasur and that the Munsiff of Kasur had no jurisdiction to try the case. DEVI DYAL *v.* HARI CHAND. **79 P R 1902**

65. *Contract—Alteration of contract by the Court—Interest—Zamindar and Bania.*

CONTRACTS—*concld.*

A suit for possession of certain land on two mortgage-deeds was dismissed by the first Court on the grounds that the deeds had been executed under undue influence and that there was no consideration for them. The Divisional Judge on appeal reversed the findings of the first Court and gave plaintiff a decree to the effect that he should have possession unless the principal amount advanced was paid to him by a certain date, but he disllaowed interest simply because the debtor was a zamindar. On further appeal being preferred by the plaintiff it appeared from the evidence taken on remand that not only was there no undue influence, but the terms regarding the interest and the rates agreed upon were by no means unfair or extortionate.

Held, that although transactions between banias and zamindars require to be strictly scrutinised, yet in cases where it is not shown that the zamindar had been overreached or that he had agreed to terms merely because the bania had been able to exercise undue influence over him or where the terms of the contract are neither inequitable nor oppressive the Courts in India are not competent to decline to enforce the terms of the contract in its entirety on the sole ground that one of the party is a zamindar. HEM RAJ *v.* KHUDA BAKHSH. **13 P R 1905**

66. *Contract—Civil Court—Power of, to decline to enforce a valid contract on mere assumption that it is for the benefit of a person prohibited by law to enter into such contract.*

Held, that a Civil Court has no power to decline to enforce a contract which is legal and binding in every respect on the face of it as between the parties on a mere assumption that in reality it is intended for the benefit of a third person against whom a statutory prohibition to enter into such contract exists. JAHAN KHAN *v.* DALLA RAM.

142 P R 1907

67. *Contract—Contract to supply goods—Special limitation of time for damages from due date of draft—Suit for non-delivery—Inapplicability of the special provision.*

Held that, a special provision in an indent for the supply of goods limiting the period for a claim or dispute relating to the contract to 60 days from due date of draft is inapplicable to cases of non-delivery of the goods indented for. TANNU LAL *v.* BEHARI LAL. **145 P R 1908**

68. *Sale—Non-payment of consideration—intention of parties whether sale shall be complete without payment of consideration—relevancy of subsequent conduct of parties in ascertaining their intention.*

Held that, although title in property sold can pass without payment of consideration, no title will pass where there is proof of an intention in both the parties that ownership should not pass until payment of consideration, and the subsequent conduct of the parties to the sale is relevant in order to shew whether the parties intended ownership to pass independently of the payment of consideration or not. MUSSAMMAT BHAGHAN, etc., *v.* ALLAH DITTA, etc. **55 P R 1911**

CONTRACT ACT (IX OF 1872)

Section 2.—

1. *Contract Act*, 1872, *sections* 2, 11, 68—*Contract by minor—Void agreement—Advance to minor for benefit of his estate—"Necessaries suited to his condition in life—" Reimbursement.*

See Minor. **165 P R 1883**

2. *Suit for cancellation in part of document on ground of failure of consideration—Contract Act* 1872, *section* 2, *clause* 1 *and sections* 46, 73—*Voidable contract.*

See SPECIFIC RELIEF ACT, 1877, SECTIONS 39, 40 **186 P R 1882**

Sections 4, 5.

Jurisdiction—Place of suing—Contract with commission agent for supply of goods—Contract made by letters—Place where contract completed—Contract Act, 1872, *sections* 4, 5, 91—*Civil Procedure Code*, 1882, *section* 17.

Plaintiffs sued in the Small Cause Court at Delhi on the allegations that, on the 7th December 1895, they wrote to the defendant to buy certain goods at Bombay and to despatch them by railway with all possible speed to Delhi; that other letters and a telegram were sent to him for this purpose; that on the 23rd December he replied promising to send the said goods within two days, but that they did not in fact reach Delhi till 11th January 1896, when they were no longer required. Plaintiffs refused delivery and sued for recovery of Rs. 200, which they had remitted to defendant as an advance to make the purchases, with expenses and damages, in all Rs. 234-11-6. Defendant pleaded that the Court had no jurisdiction to try the suit, inasmuch as the whole cause of action arose at Bombay. For the plaintiffs it was contended that the goods were at defendant's risk until they reached plaintiff's hand; that plaintiffs had not indicated any particular railway to which the goods were to be handed over in their letter and could not recover them from the railway; that in reality the transactions should be treated as one for the sale of goods as plaintiffs did not know who were the actual vendors of the goods; and that, in any event, the contract was made in Delhi, as it was not complete until the defendant's acceptance of plaintiff's offer was communicated to them at that place.

Held, that the Small Cause Court at Delhi had no jurisdiction to try the case, which was in reality a suit against an agent for an account of money received by him as such for his principal in the course of the agency business.

Although an offer made by letter does not become a contract binding against the promisee until acceptance thereof is communicated to the promisor, the communication of such acceptance does not make any change in the *place* where the contract is made, but only affects the *time* of its coming into force.

Held, therefore, that the plaintiffs, proposal having reached defendant at Bombay and having been accepted at that place, the contract between the parties was made at Bombay. MUHAMMAD SHAFI *v.* KARAMAT ALI.

76 P R. 1896

CONTRACT ACT, IX (OF 1872)—*contd.*

Section 10.

Agreement by pleader for extra remuneration contingent on success—Contract Act, IX of 1872, sections 10 and 23.

See PLEADER AND CLIENT. **5 P R 1878**

Section 11.

See Section 2. **165 P R 1883**

See CIVIL PROCEDURE CODE, 1908, sections 68, 70, 71, 72.

1. *Contract Act (IX of 1872), sections 11, 65—Sale made by minor—Void contract—Benefit of section 65 not claimable where contract is void abinitio—Contract subsequently discovered to be void—Obligation of person receiving advantage under such contract.—Held*, that a minor not being competent to contract under section 11 of the Contract Act, a sale made by a minor is void; and where such contract is void *ab initio* and not merely subsequently discovered to be void a defendant in a suit in which the plaintiff claims to be relieved from such a contract, and where the circumstances of the sale are not such as to constitute necessity, cannot ordinarily claim the benefit of section 65 of the Contract Act, and demand a restitution of any advantage which the plaintiff may have derived from the sale.

Jowala Pershad v. *Bishan Behari Banarji* (*No.* 163 *P. R.* 1879) and *Kidar Nath* v. *Adjudhia Pershad* (No. 165 *P. R.* 1883) referred to. JHABA *v.* NIGAHIA **23 P R 1888**

2. *Contract Act (IX of 1872), sections 11, 65, Contract with minor—Mortgage—Suit for possession—Mortgagee aware of mortgagor's minority—Mortgage not beneficial to minor's interests—Agreement discovered to be void—Obligation of person who has received advantage—Restoration to possession conditional on repayment of consideration applied to benefit of estate.*—In a suit brought on behalf of two minors by their mother to recover possession of certain land of which the defendant had obtained possession as mortgagee, it appeared that the mortgage in question purported to be executed by one of the minor plaintiffs in person, and by the mother as guardian of the other plaintiff. It was found as a fact that it was impossible under the circumstances that the defendant could have *bonâ fide* believed, when the deed was executed, that the executing plaintiff was a person who was *sui juris* and competent to contract and that therefore the case was not one where an agreement was subsequently "discovered to be void" (*vide* section 65 of the Contract, Act), but rather one where an agreement was taken from a person who was known to be a minor at the time, but was misrepresented as of full age, and which was therefore known to be void *ab initio*. It was further found that the mortgage as a whole was not a proper one or beneficial to the interests of the minors.

Held, that the mortgage-deed must be regarded as invalid, but that before the plaintiffs' possession of the property could be restored they must repay to the defendant so much of the consideration money expressed in the deed as had been applied to the benefit of the estate of the minors.

Jhaba v. *Nigahia* (No. 23 *P. R.* 1888) cited. ATMA RAM *v.* HUNAR. **96 P R 1888**

CONTRACT ACT (IX OF 1872)—*contd.*

Section 11—*concld.*

3. *Contract—Suit by a barrister, enrolled as an Advocate of the Chief Court, in respect of his fees—Enrolment as advocate, effect of, upon status of barrister—Ancillary services.* "Quantum meruit"—*Contract Act*, 1872, *sections* 11, 70.

Plaintiff, who was a Barrister-at-Law and enrolled as an Advocate of the Chief Court and practising in the Punjab as such Advocate, sued in respect of the fees for services rendered in his capacity as an Advocate and for services ancillary thereto.

Held by a majority of the Full Bench (*Frizelle, Stogdon* and *Chatterji*, JJ.), that the suit was not maintainable, as the plaintiff was incapacitated from making a contract of hiring as an advocate by the usage and constitution of his bar.

Held, per *Roe* and *Rivaz*, JJ., *Contra*, that the suit was maintainable, as no such incapacity attached to the plaintiff.

Held, further *per Curiam*, that if the principal service rendered could not be the subject of a contract, no service which was merely ancillary thereto and of no value without the principal service, could be the subject of a contract or give rise to any independent cause of action. MR. ARTHUR GREY *v.* DIWAN LACHMAN DAS.

51 P R 1895 F B

4. *And section 65—Sale of minor's property by next friend—Validity of sale—Necessity—Sale not beneficial to minor's interest—Refund of purchase money paid to minor with knowledge of minority—Liability of minor in equity—Specific Relief Act*, 1877, *sections* 38, 41.

Held, that a sale of a minor's property by a brother who was neither a guardian legally constituted nor a natural guardian under the minor's personal law is void *ab initio* and cannot be upheld except on the ground of its being justified by the necessities of the minor or of his estate or beneficial to his interests.

When a person deals with a minor with full knowledge of his minority he is not entitled to claim from him equity when compelled to restore matters to the *status quo*. It is not just to compel a person to pay any money in respect of a transaction which against him is void.

Mohri Bibee v. *Dharmodas Ghose* (*I. L. R. XXX Calc.*, 539, P. C.), *and Thurstan* v. *Nottingham Permanent Benefit Building Society* (*L. R.* 1 *Ch.* (1902) 1). INDAR SINGH *v.* NARINDAR SINGH. **33 P R 1904**

Section 14.

See SECTION 17. **63 P R 1884**

Section 15.

See SECTION 16. **148 P R 1882**
135 P R 1882

Section 16.

1. *Promissory Note—Proof of Consideration—Presumption—Undue influence.*

See BURDEN OF PROOF. **2 P R 1902**

CONTRACT ACT (IX OF 1872)—*contd.*

Section 16—*contd.*

2. *Undue influence—Unconscionable bargain—Dispensing power of Courts of Equity.*

See CAUSE OF ACTION, MISJOINDER.

32 P R 1890

3. *Debtor and Creditor—Money-lender and Zamindar—Bond—Usurious rate of interest—Contract Act*, 1872, *sections* 16, 19.

See INTEREST. **110 P R 1879**

4. *Act IX of* 1872, *sections* 15, 16—*Specific performance of lease—Coercion—Undue influence—Coercion must refer to the agreement sought to be got rid of on that ground—Unconscionable bargain.*

In a suit brought to enforce specific performance of a lease, it was contended *inter alia* for the defendants that the lease was not executed by them voluntarily but in consequence of fraud and coercion practised on them by the Tahsildar to compel them to pay up the revenue due by them to Government for the previous harvest.

Held, that assuming that the Indian Contract Act does not require, contrary to the English law, that the coercion should be exercised by or even known to the other party to the contract, the coercion must at all events have been exercised with the intention of causing the person so treated to enter into the agreement which is sought to be got rid of on that ground: as therefore there was no evidence in the present case connecting the Tahsildar with the particular transaction sought to be set aside, the plea on that ground alone must fail.

It was further urged that plaintiff took advantage of defendants' position and drove an unconscionable bargain, but this contention was *held* to fail for want of proof, there, being nothing to show that the consideration paid by plaintiff was so grossly inadequate, with reference to the state of things existing at the date of the contract, as to evidence fraud or undue advantage having been taken by him. JHANDA *v.* NANA LAL.

148 P R 1882

5. *Act IX of* 1872, *sections* 15, 16, 19, 23—*Compromise of criminal prosecution for offence not permitted by law to be compounded—Validity of contract—Public Policy—Penal Code, sections* 213, 214—*Compoundable offence—Coercion—Undue influence.*

Plaintiff sued to obtain possession of a house which he alleged he had purchased from one of the defendants by registered deed of sale. It was urged by the defendants among other pleas that subsequently to the deed of sale the plaintiff had executed a deed by which he relinquished all claims to the house and promised for himself and his heirs never to sue for it. It appeared that two days after the execution of the deed of sale a complaint under sections 447 and 342 of the Indian Penal Code was brought against the plaintiff, and that the deed of relinquishment was given in consideration of the compounding of the offence under section 447.

CONTRACT ACT (IX OF 1872)—*contd.*

Section 16—*contd.*

Held, that as the offence for the compounding of which the deed of relinquishment was given by plaintiff was not one which could lawfully be compounded, and as the execution and delivery of the deed by plaintiff and its acceptance by defendant in consideration of the offence being compounded were acts prohibited respectively by sections 214 and 213 of the Indian Penal Code, the consideration for the agreement was unlawful within the meaning of section 23 of the Contract Act, both because it was forbidden by law and because it was opposed to public policy, and the deed was accordingly void under that section.

Where the element of intention is expressly made part of the definition of an offence, the offence is not one which comes within the exception to section 214 of the Indian Penal Code and may lawfully be compounded.

Held further, that when a criminal prosecution is instituted against a person and such person fearing the result of such prosecution enters into an agreement in favour of the complainant in consideratiou of his abandoning the prosecution, it cannot be held simply upon these facts that the consent of such person to the agreement was caused by coercion, as defined in section 15 of the Contract Act, nor yet by undue influence as defined in section 16. MASJIDI *v.* MUSSAMMAT AYISHA. **135 P R 1882**

6. *Contract—Undue influence.*

In a suit upon a registered mortgage deed where the defendants (mortgagors) pleaded undue influence and in support of their plea were only able to prove that to this extent pressure had been put upon them to execute the mortgage deed as security for the payment of a debt, namely, that a choice had been given to them of executing the deed or being at once put into Court.

Held, that such pressure did not amount to "undue influence" within the meaning of section 16 of the Indian Contract Act as amended by Act VI of 1899. In order to reap the benefit of that section it was necessary for the defence to establish that the executants of the deed were induced to sign it because the plaintiff was in a position to dominate their will and had used that position to obtain an unfair advantage over them.

Sital Prasad v. *Parbhu Lal (I. L. R. X All.* 535) distinguished. BANK OF BENGAL *v.* DIN DIAL. **36 P R 1901**

7. *And section* 74 *-Undue influence—Penalty—Unconscionable bargain—Interest—Act XXVIII of* 1855, *section* 2.

In the absence of evidence that the parties to a bond were not on an equal footing, or that the obligor did not fully understand the transaction, or was in the clutches of an extortionate money-lender, the mere fact that the rate of interest was high is insufficient to raise a presumption of undue influence such as is contemplated in section 16 of the Contract Act. When under the terms of a bond the interest chargeable cannot be regarded as a penalty, the terms of the

CONTRACT ACT (IX OF 1872)—*contd.*

Section 16—*contd.*

bond must be enforced. Indian Courts cannot interfere at discretion merely on the ground that a bargain is hard and unconscionable.

Gokal Chand v. *Khawaja Ali Shah* (32 *P. R.* 1890) followed. *Edulji* v. *McDonald (55 P. R.* 1901) referred to. BULAKI MAL *v.* T. G. ACRES. **96 P R 1901**

8. *Undue influence*—Pardanashin *woman—Execution of deed by* pardanashin *in favour of a person who is in relation of active confidence—Burden of proof—Presumption of a recital in a registered deed as to receipt of consideration—Contract Act* 1872, *section* 16.—*Evidence Act*, 1872, *section* 111—*Suit on bond not legally enforceable—Right to revert to original consideration.*

Plaintiff sued upon a registered bond purporting to have been executed by the defendant, a married *pardanashin* lady of Delhi. The defendant admitted execution, but pleaded that the bond was without consideration and fictitious for fear of her husband who was addicted to extravagance and waste. It was proved that the defendant was the daughter of plaintiff's maternal uncle, and had been brought up in plaintiff's house and married from there, and that in fact the plaintiff was the only relation she had on her father's side, that the plaintiff held a position of active confidence with reference to her, as her husband being an unbusiness-like man, she had to call in plaintiff's aid in order to save the family property from being wasted which had been gifted to her by her husband in full ownership. The bond sued upon was executed in plaintiff's house at Hathras, and all the witnesses and persons present at the execution were his servants, dependants, or friends. There was no one to help the defendant with advice or other assistance, her husband with whom she had all along continued to live not being even present.

Held, that such circumstances were sufficient to modify the ordinary presumption arising out of a recital in a registered bond, "that when a bond is registered and its execution is admitted by the defendant the "*onus* of proof of want of consideration and "of free consent not having been given would "lie on the party seeking to get out of its "effect," and that the *onus* of proving good faith, fair dealing, and full and free consent must be laid on the party interested in upholding the transaction, and in the absence of such proof the deed must be declared as not binding on the executant.

Plaintiff's prayer for an inquiry into the accounts which formed the alleged consideration of the bond and decree thereupon refused under the circumstances. HOTI LAL *v.* MUSSAMMAT RAM PIARI. **77 P R 1903**

9. *Execution of mortgage in liquidation of a money decree while under arrest in its execution—Undue influence.*

Held that the mere fact that a mortgage bond was executed by the defendant in liquidation of a money decree while under

CONTRACT ACT (IX OF 1872)—*contd.*

Section 16—*concld.*

arrest would not alone avoid the transaction on the ground of undue influence. *Banda Ali* v. *Banspat Singh (I. L. R. IV All.* 352), doubted. MUL CHAND *v.* IMAM BAKHSH. **15 P R 1908**

10. *Undue influence—Money-lender—Unconscionable bargain—Court's right to interfere.*

A professional money-lender advanced to a person in distress for money and in fear of summary dismissal as warrants were out on his pay, Rs. 1,755, taking from him promissory notes for Rs. 5,510, bearing interest at Rs. 24 per centum per annum. Upon a suit by the lender against the borrower for recovery of the amount due on the promissory notes.

Held that the bargain was oppressive and unconscionable, and the plaintiff was under the circumstances disclosed only entitled to recover the principal sum advanced by him with simple interest at the rate of Rs. 18 per centum per annum. RAM DAS *v.* NETTO. **115 P R 1908**

Section 17.

1. *Fraud—Misrepresentation—Bank shares—How far misrepresentation by Director binding on Bank.*

See Bank. **127 P R 1889**
72 P R 1891

2. *Section 17—Purchase of Bank shares—Fraud and mis-representation—Voidable contract—rescission of contract—Ratification—Purchase by Bank of its own shares*—Ultra vires—*Estoppel.*

A purchase of Bank shares held to have been under all the circumstances a contract voidable, under section 17 of the Indian Contract Act.

A person who has been induced to enter into a contract voidable on the ground of fraud, may rescind the contract within a reasonable time after discovering the fraud. The contract continues valid until the party defrauded has determined his election by cancelling it: if he once determined his election, it is determined for ever.

Where a purchase of Bank shares was voidable by the purchaser on the ground of non-disclosure of material facts which it was held to have been the duty of the vendors,—the *de-facto* Directors of the Bank,—to disclose, and the facts withheld subsequently came to the knowledge of the purchaser, and the purchaser, after a reasonable time had elapsed, took active steps both as a shareholder and as a Director qualified by the purchase to act as such, *held*, that the purchaser's election was determined by his conduct in affirmance of the contract, and he could no longer repudiate the purchase.

Held also, that the purchaser could not contest his liability as a contributory in respect of the shares so purchased, merely on the ground that the shares had been acquired *ultra vires* by the Directors, as the shares had a legal existence which their acquisition by the Directors had not destroyed. CORY *v.* THE OFFICIAL LIQUIDATOR, PUNJAB BANK. **117 P R 1879**

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CONTRACT ACT (IX OF 1872)—*contd.*

Section 17—*contd.*

3. *Act IX of* 1872, *sections* 17, 23—*Void agreement—Agreement involving injury to property of another—Agreement of which object is fraudulent.*

Plaintiff sued the defendant upon an agreement admitting the latter as a partner in a contract, for which plaintiff had already tendered, to supply wheat to the Commissariat Department, for his share of the losses incurred in such contract and for damages. It was admitted that the plaintiff was aware that defendant was at the time in the employment of the Commissariat Department, and that in tendering for the contract he had to state that no one connected with the Department was at the time of the tender nor should afterwards be admitted as a partner with him. The lower Appellate Court dismissed the suit on the ground that the agreement sued upon was void.

Held, that though the object of the agreement sued upon could not be held to involve or imply injury to the property of another, within the meaning of section 17 of the Contract Act, the rights which it was the object of the agreement to infringe not being rights of *property*, still the object of the agreement being fraudulent, it was equally rendered void by the same section.

The false representation made to the Commissariat Department was "a promise made without any intention of performing it," and was made to deceive the Agents of the Department, and to induce them to enter into the contract with plaintiff on behalf of the Department. It was therefore "fraud" as defined in section 17 of the Contract Act, and the object of the agreement between plaintiff and defendant being to obtain a contract from the Commissariat Department for the benefit of both, which could not be obtained for both without fraud, was fraudulent within the meaning of section 23, and therefore unlawful. SAHIB RAM *v.* NAGAR MAL. **63 P R 1884**

4. *Act IX of* 1872, *sections* 14, 17—*Contract entered into with one person on his representation that he was another person—Fraud—Absence of free consent.*

In a suit brought by the plaintiff on a contract which he alleged had been entered into between him and the Secretary of State, through the Superintendent, Northern State Railway, and broken by the latter, the defendant's plea was that he did not contract with the plaintiff, the only contract being one entered into with S., a brother of the plaintiff, who represented himself as plaintiff, and with whom no contract would have been entered into, but for this representation. The Lower Court finding that the defendant's agent was deceived by the conduct of the plaintiff and his brother as to the person with whom he was dealing, held that there was no valid agreement and no contract.

Held, upholding the order of the lower Court, that the deception practised by the plaintiff amounted to fraud within the de-

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CONTRACT ACT (IX OF 1872)—*contd.*

Section 17—*contd.*

finition in section 17 of the Contract Act; and that there being therefore no free consent to the agreement sued upon owing to such deception, there was no contract. JAGGANNATH *v.* SECRETARY OF STATE. **21 P R 1886**

Section 18.

See SECTION 19.

Section 19.

See SECTION 17.

1. *Act IX of* 1872, *sections* 18, 19, 116—*Misrepresentation—Warranty.*

In a suit to recover the price of a pair of mares sold by the plaintiff to the defendant, the main pleas for the defendant were (1) that the contract was voidable at his option on the ground of misrepresentation as defined in clause (1) of section 18 of the Contract Act; and (2) that there was a warranty and a breach thereof entitling the defendant to compensation from the plaintiff. In support of these pleas the defendant relied *inter alia* upon an assertion made by the plaintiff in a letter forming part of the contract of sale that the mares were sound, whereas it appeared after the sale that the mares were unsound, though admittedly not to the plaintiff's knowledge. The material portions of the plaintiff's letter, which was written in answer to a letter from the defendant asking for particulars about the mares, were as follows:—

"I think your queries would be more satisfactorily answered by a friend, if you have one in the station, and I shall feel more satisfied. All I can say is that the mares are thoroughly sound * * * *

P. S.—I would prefer your buying them after you have satisfied yourself with regard to them through a friend" * * *

Held, that the above amounted to a misrepresentation within the meaning of section 18, clause (1) of the Contract Act as to the soundness of the mares, as the letter could only be construed as a "positive assertion" of soundness, coupled with a recommendation to the defendant to satisfy himself on this point before purchasing, and it further appeared on the facts that the assertion thus positively made was not warranted by the information of the plaintiff, and that the defendant's consent was caused by it.

But *held* further, that the contract was not voidable by the defendant on the ground of the above misrepresentation, as it was proved that he had the means of discovering the truth, *i. e.*, the unsoundness of the mares, with ordinary diligence.

Though according to the law in England the falsity of a representation made by a vendor and relied upon by a purchaser precludes the former from imputing to the latter negligence in ascertaining the truth, this is not the law in India, when there is merely misrepresentation as distinct from fraud, under the clear enactment in the exception to section 19 of the Contract Act. Whether the party misled had the means of discovering the truth with ordinary diligence is a

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CONTRACT ACT (IX OF 1872)—*contd.*

Section 19—*concld.*

question of fact to be decided in each case with reference to the circumstances.

Held also, that the above letter did not amount to a warranty of soundness, the affirmation contained therein being a representation not amounting to a warranty for want of the requisite intention.

In the absence of any definition of "warranty" in the Contract Act, the definition accepted by the English law, being consistent with the language of the Indian Act, may be accepted, according to which "an affirmation at the time of sale is a warranty, provided it appears in evidence to have been so intended," the intention being a question of fact to be determined from the nature of the sale and the circumstances of the particular case. CURRIE *v.* RENNICK. **41 P R 1886**

2. *Contract—Fraud—Fraud between vendor and purchaser, effect of—Contract Act,* 1872, *section* 19.—

The defendant, a horse-dealer, sold a mare to the plaintiff which he knew had a cracked hoof. He filled up the crack with some substance in such a way as to defy detection. Shortly after the purchase the mare having to walk a short distance was found to be lame and on enquiry being made the defect was discovered. The plaintiff brought an action to avoid the purchase on the ground of fraud and to recover damages, *held*, that he was entitled to avoid the sale and recover back the purchase money from defendant.—*Currie* v. *Rennick* (41 *P. R.* 1886), distinguished. ABDULLA KHAN *v.* GIRDHARI LAL. **49 P R 1904**

Section 20 and Section 65.

Lease of Government village on condition that if certain stipulations entered into by the lessee were fulfilled, proprietary rights in the village would be conferred on him—Power of such lessee to alienate his rights without sanction of Government—Contract Act, 1872, *sections* 20—65, *Caveat Emptor.*

See CAVEAT EMPTOR. **62 P R 1893**

Section 23.

Agreement to receive back fee.

See BACK FEE.

See CONTRACTS.

61 P R 1907 F B

1. *Custody of Minor—Contract Act,* 1872, *section* 23—*Void Contract—Act IX of* 1861.

See GUARDIAN.

140 P R 1879

2. *Agreement to pay pleaders contingent on success.*

See PLEADER AND CLIENT.

26 P R 1874

3. *Sections* 23, 24—*Purchase of wife.—Contract of indemnity—Void agreement.*

Plaintiff, a banya on defendant's representation that one Mussammat P. was a banyani, the daughter of one Mussammat B., and his own kinswoman, and on the understanding that defendant would indemnify him if she was not, married the said Mussammat P., and made over to defendant Rs. 750 to be paid to Mussammat

CONTRACT ACT (IX OF 1872)—contd.

Section 23—contd.

B. as the price of her daughter's hand It afterwards turned out that Mussammat P. was not a banyani, nor Mussammat, B.'s daughter but it was not proved that defendant had made any wilfully false representation to plaintiff regarding Mussamma. P.; nor that he received any payment from plaintiff on his own account.

In a suit by plaintiff to recover from defendant the Rs. 750 as damages for breach of contract, *held* that the contract was not one which could be enforced in a Court of law, the agreement between plaintiff and defendant being so intimately connected with the transaction by which plaintiff purchased a wife, that the payment to Mussammat B. must be regarded as a consideration opposed to public policy, and, therefore, one which rendered the promise to indemnify plaintiff against loss a void agreement under sections 23, 24 of the Contract Act. KUNDAN LAL v. NATHU.

116 P R 1880.

4. *Act IX of 1872, section 23—Void agreement—Sub-lease Agreement of a nature to defeat the provisions of any law—Public policy.*

Plaintiff, as superior proprietor of certain land, sued defendant, the inferior proprietor, on a deed of agreement whereby the plaintiff on the one hand agreed to hold himself responsible for the Government revenue, whilst the defendant on the other hand agreed to give plaintiff 2-5ths of the produce for twenty years.

Held, overruling the decisions of the lower Appellate Court as to this, that the agreement sued upon was not illegal either on the ground that it tended to defeat the provisions of any law, or that it was against public policy, as the agreement with plaintiff that the latter should pay the revenue did not relieve defendant of the liability to pay the revenue to Government. AZAZ v. KALLU.

139 P R 1883

5. *Contract Act (IX of 1872), sections 23, 24,—Suit for money paid in consideration of illegal contract—Executory and executed contract—Money advanced to married woman to procure divorce from her husband and to pay her debts—Agreement of which consideration is unlawful in part—Void agreement.*

Where money has been paid in consideration of an executory contract or purpose which is illegal, the party who has paid it may repudiate the agreement at any time before it is executed and reclaim the money as if upon failure of consideration. But after execution of the illegal contract to perform, the money paid under it, whether on the consideration or in performance of the promise, cannot be recovered back, for the parties are equally delinquent, and the rule applies that *in pari delicto melior est conditio possidentis.*

CONTRACT ACT (IX OF 1872)—*contd.*

Section 23—*contd.*

In a suit, the parties to which were Muhammadans, in which plaintiff claimed to recover Rs. 759 which he advanced to defendant on the promise that she would marry him when divorced from her husband, it appeared that Rs. 300 of the sum claimed were paid to the husband for the divorce and the balance to the defendant to pay her debts.

Held, by *Plowden* and *Smith*, JJ., that as the divorce had taken place in pursuance of the above agreement, the contract had been executed in part and was no longer executory, and therefore upon the principle above stated the plaintiff could not recover the money advanced by him to promote the divorce.

Held, further, by the full Bench (*Plowden*, *Tremlett* and *Smith*, JJ.), that the plaintiff could not recover the money advanced to the defendant to enable her to pay her debts, as an agreement to advance money to a woman in consideration that she will procure a divorce and marry the plaintiff, even where the parties are Muhammadans whose personal law allows a wife to purchase a divorce, is a void agreement under section 23 of the Contract Act, as being for an unlawful object or consideration, and therefore the consideration or object of the agreement sued upon being unlawful in part the whole agreement was void under section 24 of the Contract Act.

Hosein Shah v. *Nur Ahmed* (No. 81 *P R.* 1875), distinguished: *Kahna* v. *Kahn Singh* (*No.* 106 *P. R.* 1879, referred to. MUSSAMMAT ROSHAN v. MUHAMMAD RABNAWAZ KHAN.

46 P R 1887

6. *Marriage-brocage contract—Void agreement - Public policy.*

A, a Hindu, agreed to pay a sum of money to B., in consideration of B. giving his sister in marriage to A.'s nephew. *Held by the full Bench*, that the agreement was void, its object being opposed to public policy. It is a matter of public concern that all persons, whatever their personal law, who have authority over minors, should faithfully perform their duties towards them and especially in respect to marriage, the institution of marriage being itself a matter of public concern. The policy of the law in conferring power of consenting to a minor's marriage is to secure the benefit of the minor. The object of an agreement of this kind is to procure by corrupt means the guardian's consent to the desired marriage, and is, in substance, a bargain and sale of the minor in marriage. The tendency of such agreements is to subordinate and postpone the interests of the minor to those of the guardian Such agreements are, therefore, opposed to the policy of the law and to public policy.

Held, further, that such transactions were not countenanced by the usage of the country. The practice was neither followed nor approved by the Hindu community at large.

106 *P. R.* 1879; *I. L. R. X Calc.* 1054; 14 *W. R.* 154; 25 *W. R.* 32; 50 *P. R.* 1880, referred to. WAZIRA MAL v. RALLIA.

128 P R 1889

CONTRACT ACT (IX OF 1872)—*contd.*

Section 23—*contd.*

7. *Indian Contract Act, 1872—Marriage brocage contract—Void agreemnt—Guarantee.*

S. betrothed his minor daughter to the plaintiff's son, who was also a minor, and N., the brother-in-law of S. entered into an agreement with the plaintiff's father by which he guaranteed that S should celebrate a marriage between the boy and girl after the expiration of five and before the expiration of eight years. S. married his daughter elsewhere and the ptaintiff sued N. for damages.

The plaintiff's father D. betrothed his marriageable daughter to N. receiving Rs. 1,200 from him: the marriage took place shortly after the betrothal. S. agreed to give his infant daughter to the plaintiff's son, and N. guaranteed the performance of S.'s undertaking.

The Divisional Judge held the agreement to be a contract of guarantee.

Held, that there was no enforceable agreement of guarantee; the agreement was entirely for the benefit and satisfaction of N. himself and his promise was *nudum pactum*. He could in fact do nothing more than endeavour to induce S. to marry his daughter to the plaintiff's son, and if the parties contemplated that he should purchase S.'s consent, such an undertaking on his part would be void according to the view expressed in the Full Bench decision reported as No. 128 *P. R.* 1889. HIRA v. BHANDARI.

112 P R 1892

8. *Indian Contract Act, 1872, sections 23 and 24—Void agreement—Trafficking in public office.*

The plaintiff sued to recover from the defendant damages for the breach of a contract of which the terms were as follows:—

That the plaintiff should bear all the expenses to be incurred in a lambardari suit brought by himself and the defendant; that both should eventually bear the costs of such suit equally; and that the successful party should pay to the other half the *pachotra* of the office.

Held, that the agreement was void *ab initio* and that the plaintiff had no cause of action entitling him to sue. AMIR KHAN v. SAIF ALI.

86 P R 1893

9. *Contract Act, 1872, section 23—Immoral contract—Suit for rent for house let to prostitute.*

Plaintiff, who was the owner of a house which he had let to defendant, a prostitute, in the ordinary way of business, sued for recovery of the rent. It appeared that plaintiff probably knew that defendant was a prostitute, but it was not shown that the house was let for the express purpose of being used as a brothel, or that plaintiff was to have any share in, or receive rent out of, defendant's earnings as a prostitute.

Held, that the agreement was not immoral and that plaintiff was entitled to recover the rent due thereunder. PIRTHI MAL v. MUSSAMMAT BHAGAN.

2 P R 1898

CONTRACT ACT (IX OF 1872)—*contd.*

Section 23—*contd.*

10. *Suit for recovery of money paid to agent for unlawful purpose—Suit instituted before execution of unlawful object—Principal and agent—Contract Act,* 1872, *section* 23.

Locus penitentiæ.—Plaintiff sued on the allegations that he paid a sum of Rs. 300 to the defendant, a friend of his, to procure him a bride; that defendant had represented that this sum was to be paid to the bride's father in advance, and the betrothal performed on the 9th *Nauratara*; that no betrothal had taken place, and that defendant on being asked to refund had denied the receipt of the money. Defendant denied the transaction altogether. The first Court found that plaintiff's allegations were proved, and that he was entitled to recover, but the Divisional Judge, on appeal, held that the defendant had undertaken to act as a mere procurer, that the contract was opposed to morality and public policy, and, following No. 116 *P. R.*. 1880, dismissed the suit without going into the facts. Plaintiff appealed to the Chief Court.

Held, that inasmuch as, upon the true construction or the transaction, defendant was merely a go-between or agent of the plaintiff for paying the money to the bride's father, the property in the money did not pass to the defendant but remained with the plaintiff so long as it continued in defendant's hands, or until it was paid over to the father of the intended bride.

Held, therefore, that the suit was maintainable.

A person who pays money to his agent, whether on the agent's representation or of his own motion, for an unlawful purpose is entitled to a *locus penitentiæ*, and can call back his money at any time before the purpose is executed, nor in such a case can the agent, merely because he was entrusted with an unlawful commission, repudiate his liability to refund and appropriate the money to his own use.

I. L. R. XXIII Calc. 962; *I. L. R. XVIII Mad.* 388; No. 106 *P. R.* 1879; No. 50 *P. R.*, 1880; No. 116 *P. R.* 1880; No. 128 *P. R.* 1889; *Taylor* v. *Bowers (L R. I. Q. B. D.* 291*)*, and *Kearly* v. *Thomson (L. R. XXIV, Q. B. D.* 747*)*, referred to.—PRITHA DAS *v.* HIRA SINGH.

63 P R 1898

11. *Bail bond given for appearance of accused person—Non-appearance of accused and forfeiture of bond—Suit by surety against principal to recover amount of bond "Public policy"—Contract Act,* 1872, *sections* 23, 70—*Criminal Procedure Code,* 1882, *section* 513.—

Held, by the full bench, that inasmuch as the intention in requiring a surety for the appearance of an accused person to answer a criminal charge is that the surety shall at his own personal risk see to the appearance of the accused according to his bail bond, it is opposed to public policy to allow the surety to recover from his principal any part of his bail bond that may have been forfeited

CONTRACT ACT (IX OF 1872)—*contd.*

Section 23—*contd.*

by the non-appearance of the accused, and that it is immaterial for this purpose whether the surety's suit be based on the ground of an express or an implied, or a *quasi* contract by the principal to indemnify the surety or as an action in tort for damages.—SUNDER SINGH *v.* KISHEN SINGH.

1 P R 1899

12. *Hindus—Suit by wife for dissolution of marriage—Ante-nuptial agreement—"Public policy"—Contract Act,* 1872, *section* 23.

In a case in which the parties were Hindus, a wife sued for dissolution of her marriage, and based her claim thereto on an ante-nuptial agreement to the effect that her husband was bound, under certain circumstances, to let her go.

Held, that such an agreement was contrary to public policy and unenforceable, it being against the policy of the law as administered by British Courts to allow persons by a contract between themselves to avoid a marriage on the happening of any event they may think fit to fix upon.

XX W. R., 49 *(XI B. L. R.* 129*)*, followed —CHAIT RAM *v.* MUSSAMMAT NATHI.

15 P R 1900

13. *Contract—Agreement by plaintiffs and defendants to purchase certain landed property at an auction jointly and not to bid against each other—Void contract—Public policy—Jurisdiction—Suit for possession of land—Value of subject matter—Court-Fees Act,* 1870, *section* 7, *clause* 10.

Plaintiff sued for possession of $\frac{3}{11}$ths share of certain plots of land sold at an auction by Government on the allegation that the plaintiffs and defendants before the auction had entered into an agreement to buy the land in partnership and thereafter to divide it, and that they had paid their *quotas* of the portion of the purchase money deposited on the day of the sale and were willing to pay the balance, and had been wrongfully refused their share by the defendants. The first Court having decreed the claim, the Divisional Judge reversed it on the ground, amongst others, that the alleged agreement was void as opposed to public policy, inasmuch as the parties had agreed to purchase the property at the auction jointly and not to bid against each other. Also found that the form of suit was really one for specific performance of a contract in writing, and that the first Court had no jurisdiction to try it.

Held, that under the circumstances of the case the agreement was perfectly lawful and one that should be enforced, being more in furtherance of public policy than against it.

Held also that clause 10 of section 7 of the Court-Fees Act was not applicable as there was no agreement to perform. The defendants had already performed the contract they had made to buy the property and the title vested in the plaintiffs as soon as the purchase was effected, and they had become joint-owners with the defendants, and thirty

CONTRACT ACT (IX OF 1872)—*contd.*

Section 23.—*contd.*

times the *jama* of the $\frac{3}{11}$ths share of the property which was sued for being Rs. 939, the first Court had jurisdiction to try the suit.

Bullah Mal v. *Bhupa Mal* (110 *P. R.* 1888, F. B.*)*, *Hari Balkrishna Joglekar* v. *Naro Moreshvar Joglekar (I. L. R. XVIII Bom.* 342*)*. *Doorga Singh* v. *Sheo Pershad Singh* (*I. L. R. XVI Calc.*, 194), and *Gobind Chandra Gangapadhya* v. *Sherajunnissa Bibi* (13 *C. L. R.,I*) followed. *Chunibai* v. *Secretary of State (Bom. P. J.*, 204*)*, referred to.—NANDA SINGH *v.* SUNDER SINGH.

37 P R 1901

14. *Contract—Contract entered into in violation of Army Regulations, India—Contract opposed to public policy—Void contract, Contract Act,* 1872, *section* 23.

Paramount public policy requires that men of full age and competent understanding shall have the utmost liberty of contracting, and that their contracts when entered into freely and voluntarily held sacred and enforced by Courts of Justice unless they contravene a positive rule of law. In a case where the plaintiff, a regimental *bania*, sued the defendant, a *sowar* in his regiment, to recover Rs. 371-14-3 due on a book account, and the Court dismissed the suit on the ground that the plaintiff being prohibited by section 85, para. 2063, Army Regulations, India, Volume II, Part 2, from lending money to the rank and file over and above the daily rations on pain of punishment, the dealings between the parties were contrary to public policy and the contract void.

Held, that the plaintiff was not precluded from suing. Section 85 of Army Regulations, India, not having the force of law, the punishment mentioned therein being merely departmental, the contract sued upon was not in contravention of any statutory prohibition, though it might be against the rules of discipline, and that it was therefore not void as against public policy.

Asa Singh v. *Sadda Singh (*16 *P. R.* 1873*)*, *Sobha Singh* v *Lorinda Mal (*99 *P. R.* 1901*)*, *Bhikanbhai* v. *Hira Lal Ramdinshel Marwad (I. L. R. XXIV Bom.* 622*) Davies* v. *Davies (L. R. XXXVI Ch. Dn.* 359*) Richardson* v. *Mellish (*2 *Bing.* 229*) and Printing and Numerical Registering Company* v. *Sampson L. R. XIX Ex.* 462*)* referred to and followed. *Harmasji Motabai* v. *Pestonji Dhanjibai (I. L. R. XII Bom.* 422*)*, *Raghunath Lalman* v. *Nathu Hirji Bhate (I. L. R. XIX Bom.* 626*)*, *Debi Prasad* v. *Rup Ram (I. L. R. X All.* 577*)*, *Sahib Ram* v. *Nagar Mal (*63, *P. R.* 1884*)*, and *Shiam Lal* v. *Chhakki Lal (I.L.R. XXII All.* 220*)*, distinguished—JAI NARAIN *v.* SULTAN MUHAMMAD KHAN.

96 P R 1902

15. *Marriage—Betrothal—Barter of one girl in marriage for another—Breach of promise of marriage—Void agreement—Public policy—Measure of damages.*

Held, that a family arrangement of inter-marriages of sons and daughters of various families known as "*bilma waza*" among persons of the same class is not void as op-

CONTRACT ACT (IX OF 1872)—*contd.*

Section 23—*contd.*

posed to public policy, but as such arrangements are not held in the highest repute the injured party is not entitled to heavy damages on its breach.

Kahna v. *Kahn Singh (*106 *P. R.* 1879) *Hira* v. *Bhandari (*112 *P. R.*, 1892*)*, *Wazir Mal* v. *Ralia* (128 *P. R.* 1889), *Jasa Ram* v. *Ghansham* (141 *P. R.*, 1890), and *Mulji Thakersey* v. *Gomti, (I. L. R. XI Bom.* 412*)*, *referred* to. AMIR CHAND *v.* RAM. **50 P R 1903**

16. *Tenancy for immoral purpose—Rent—Suit for rent of house let to prostitute—Immoral contract - Contract Act,* 1872, *section* 23.

Held, that a landlord cannot recover the rent of a house knowingly let to a prostitute to be used by her as a brothel,

Gourenath Mookerjee v. *Modhoomonee Peshakur* (18 *W. R.*, 445), and *Mussammat Noor Bux* v. *Mussammat Shibratun* (10 *P. R.*, 1872) *cited. Pirthi Mal* v. *Mussammat Bhagan* (2 *P. R.* 1898), explained.—BRINKMAN *v.* ABDUL GHAFUR. **65 P R 1904**

17. *Suit for money due as compensation for the abduction of a woman—Consideration, legality of.*

Held, that a promise to pay a sum of money as compensation for the abduction of a woman is enforceable, provided the abduction does not constitute a non-compoundable offence.

Kahna v. *Khan Singh* (106 *P. R.* 1879), *Kalla Mal* v. *Dina* (50 *P. R.*, 1880), *Waziri Mal* v. *Rallia* (128 *P. R.* 1889, *F. B.*), *Srirangachariar* v. *Ramesami Ayyangar* (*I. L. R. XVIII Mad.* 189) *and Gobhardan Das* v. *Jai Kishen Das* (*I. L. R.* XXII *All.* 224), *referred to.*—SHAH RAHMAN *v.* ISMAIL KHAN. **82 P R 1904**

18. *Stifling prosecution—Unlawful consideration.*

Held, that a person is not debarred from taking a promissory note from his servant or agent for an amount found to have been embezzled by him, nor can the latter avoid it simply on the ground that he was threatened with a prosecution for the offence. The consideration for such a document only becomes unlawful when it consists wholly or in part of an agreement not to prosecute.—NANAK CHAND *v.* DURANT. **9 R P 1906**

19. *Champerty—Agreement to supply funds for suit—Agreement opposed to public policy—Decree for actnal outlay—Contract Act,* 1872, *Section* 23.

Held, that an agreement to supply funds to carry on a suit in consideration of having a share of the profits of litigation if recovered whereby practically the whole or much the greater share of the profits was to go to the backer and only a definite small sum to the nominal plaintiff who had also undertaken not to compromise the suit amounted to champerty and was void as contrary to public policy and that under such circumstances the backer was only entitled to recover his actual outlay with reasonable interest.—STEWART *v.* RAM CHAND. **26 P R 1906**

CONTRACT ACT (IX OF 1872)—*contd.*

Section 23—*concld.*

20. *Contract—Partnership between a licensee under Act XII of* 1896 *and other persons—Valid contract—Public Policy—Contract Act,* 1872, *section* 23.

A being the holder of a license under the Excise Act, XII of 1896, for wholesale vend of liquor, entered into an agreement of partnership with B. and C., in the business carried on under the license. One of the conditions subject to which the license was granted was "No license is transferable."

Held (1) that under the circumstances of the case there had been no transfer of the license within the meauing of the rules;

(2) that the contract was not void as opposed to public policy, but was capable of being enforced by one partner against the other.

Jai Narain v. Sultan Muhammad Khan (96 *P. R.*, 1902) referred to. BASHESHAR DAS *v* GOBIND RAM. **114 P R 1906**

Section 24.

See SECTION 23.

Section 25.

1. *Suit for balance of account—Acknowledgment—Promise to pay.*

See LIMITATION ACT, 1877, SECTION 19.
33 P R 1882
36 P R 1886
68 P R 1904

2. *Contract to pay debt barred by Limitation Law.*

See LIMITATION ACT, 1877, SECTION 19. **132 P R 1907**

3. *Mortgage by minor, after attaining majority for consideration received during minority—Validity of.*

See MINOR. **31 P R 1911**

4. *Section* 25, *clause* 3—*Suit on balance of account—Promise to pay.*

Defendant's account books contained an entry to the following effect:—

"Balance Rupees 323. One rupee per cent per month has been fixed as interest on it. Besides this there is no other account between us up to 18th Assoo, 1923, (Signed)—Fazl Dad."

The items composing the balance of Rupees 323 were barred by limitation on the 18th Assoo 1930, when the balance was alleged to have been struck; and thus plaintiff, who brought his suit on the balance, could only recover by showing that the entry amounted to a promise to pay within the meaning of section 25, clause 3, of the Contract Act.

Held, that the entry contained a promise to pay the balance Rupees 323 with interest. LADHU SHAH *v.* FAZAL DAD. **72 P R 1879**

5. *Contract Act (IX of* 1872*), section* 25—*Bond executed by defendant after attaining majority for money advanced to him by plaintiff during his minority—Agreement—Consideration.*

CONTRACT ACT, IX OF 1872—*contd.*

Section 25—*contd.*

Plaintiff sued for the principal and interest alleged to be due on a registered bond executed by the defendant shortly after attaining his majority for money advanced to him as loans by the plaintiff while he was a minor, which loans were admittedly not made for necessaries.

Held, that though the agreement sued upon did not amount to a contract, as it was made without legal consideration, still it fell under the first part of clause 2 of section 25 of the Contract Act, inasmuch as it was a promise to compensate the plaintiff for what he had already voluntarily done for the promisor, *viz.*, for the goods and cash he had voluntarily made over to him; but that this would only cover the actual advance and not the interest, the undertaking to pay which was merely an empty promise.

Jowala Pershad v. *Bishan Behari Banarji* (No. 163 *P R.* 1879) *and Kidar Nath* v. *Ajudhia Pershad* (No. 165 *P. R.* 1883) *cited.* BUDHA MAL *v.* BORIA. **86 P R 1888**

6. *Muhammadan Law—Gift to heir—Deathbed gift—Hiba-bil-iwaz—Indian Contract Act,* 1872, *section* 25 (2)—*Agreement for consideration.*

In a suit for the administration of the estate of one M. I., deceased, one of the heirs M. S., son of the deceased, claimed as his sole property an item of Rs. 3,000, which was the principal item in dispute in the case. The claim was based upon a *rukka* written by the deceased dated 26th July 1888. In support of the *rukka* it was contended that M. S., having been appointed manager of his father's shop at Calcutta, the assignment in question was not gratuitous but by way of remuneration for work done, or a *hiba-bil-iwaz*, and was valid therefore with reference to section 2 or section 25 (2) of the Indian Contract Act, 1872. On the other hand, the validity of the gift was questioned upon the ground (1) that it was a gift to an heir without consent of the other heirs; (2) that it was a gift made in contemplation of death and was therefore opposed to Muhammadan Law.

Held, (1) that viewed simply as a gift, the direction entered in the *rukka*, which was written under the apprehension that there was immediate danger of death, violated the rule of Muhammadan Law relating to *marz-ul-mout* or death-illness, and was therefore invalid.

(2) That the transaction in question did not constitute a *hiba-bil-iwaz*, which did not include the case of a gift in consideration only of natural love and affection or of services or favours rendered, but was limited to mutual or reciprocal gifts between two persons each of whom is alternately the donor of one gift and the donee of the other.

(3) That the transaction evidenced by the *rukka* was not an agreement for consideration as defined by section 2 of the Contract Act there having been no promise on the part of M. I. to remunerate his son for services to be rendered, nor did it fall within the purview of clause (2) of section 25 of that Act, as it was not a promise to compensate one who had

CONTRACT ACT (IX OF 1872)—*contd.*

Section 25—*contd.*

voluntarily done something for the promisor, and moreover, as an agreement made in violation of a rule of Muhammadan Law binding upon the parties to the agreement, it could not, by the terms of the section itself, be enforced. MUSSAMMAT SALAMTI JAN *v.* MUHAMMAD SHAFI. **61 P R 1893**

7. *Gift of land by husband to wife—Contract Act, 1872, section 25—Punjab Laws Act, 1872, section 5—Statement before settlement Officer—Subsequent mortgage of gifted property by donor—Voluntary conveyance in fraud of creditors.*

A. gifted certain lands and a house to his second wife for her support, and appeared before the Deputy Superintendent of Settlement and prayed that mutation might be effected in the donee's name. Mutation was formally sanctioned, but subsequently the donor mortgaged the gifted property as well as other lands to plaintiff, who now sued to recover the mortgage-money and interest from all the property included in the deed. The donee, who was impleaded as a defendant, pleaded that plaintiff could not claim against the property gifted to her, and plaintiff in reply contended (*a*) that the gift was void under section 25 of the Contract Act, (*b*) that the donee never took possession of the property, and (*c*) that the gift was in fraud of creditors and invalid.

Held, (*a*) that the question as to the validity of the gift should be determined by reference to section 5 of the Punjab Laws Act, (*b*) that the fact that subsequently to the gift, A., in transactions with third parties, called the property his own, was not sufficient to counteract or nullify the formal statement made by him before the Settlement Officer that the property belonged to the donee, and (*c*) that inasmuch as A., though heavily in debt at the time of the gift, was a man with a large amount of property and was not shown to have been deprived in consequence of the gift of the means of paying his debts, the gift was not void as being in fraud of creditors. PREMA SHAH *v* CHET RAM **38 P R 1899**

Section 25 (3).

8. *Suit for balance of account—Promise to pay.*

Plaintiff sued upon a balance of account alleged to be in writing of the defendants' father which was to the following effect:

"*Bais tahrir anke mublagh Rs.* 1,500, *ek "hazar panch so rupae ke nisf jiske mublagh "sat so pachas rupae Sikke chehre shahi hota "hai az sari nau hisab karke babat hisab bala "jo ki hamrah Hafiz Muhammad Naim Sahib "aur Haji Abdul Hakim Sahib ke sath hai "mere zimme baki raha hai, lihaza yeh "chand kalme bataur sanad likh deta hun ke "sanad rahe aur waqt hajat kam ave.*"

The defence contended that as the above balance was struck more than three years after the previous balance the claim was barred by limitation.

CONTRACT ACT (IX OF 1872)—*contd.*

Section 25 (3)—*contd.*

Held, that the above entry constituted a promise to pay within the meaning of clause 3 of section (25) of the Indian Contract Act and as such created a fresh starting point of limitation.

Ratta Ram v. *Nano* (3 *P. R.* 1878), *Ladhu Shah* v. *Fazal Dad* (72 *P. R.* 1879), *Laxumibai* v. *Ganesh Raghunath (I. L. R. XXV Bom.* 373), *Daula* v. *Gonda* (35 *P. R.* 1903, *F. B.*), *Harkishen Das* v. *Pir Bakhsh* (36 *P. R.* 1886), *Ranchhoddas Nathubhai* v. *Jeychand Khushal Chand* (*I. L. R. VIII Bom.* 405), *and Ganga Prasad* v. *Ram Dayal* (*I. L. R. XXIII All* 502.), referred to. MAHBUB JAN *v.* NUR-UD-DIN **102 P R 1905**

9. *Suit on balance of account—Acknowledgment of subsisting liability—Promise to pay a barred debt.*

Plaintiff sued upon a balance of account, dated 7th May 1902, alleged to be attested by the defendant which was to the following effect:—

"Baki rahe lene lekhe uparle de, akhrin "3,760—Baisakh parvishta 27, Sambat 1959. "Ticket ek anna lagaya gia, zabani Bibi "Jasodan, bewa Hukam Chand, zat Khatri, "sakin Qasba Hajipur, Kanungo, mublagh "3,760 rupaya ba-zima Jasodan ke Shankar "Das Shah ke dene rahe, etc."

The defence having pleaded limitation, it was discovered that the account between the parties ended in 1878, since when nothing was paid or received, but with a view to keep the claim alive for the purposes of limitation eight balances were struck just within three years of one another, *i. e.*, in 1881, 1884, 1887, 1890, 1893, 1896, 1899 and 1902. Of these, the first two were signed by a brother of the defendant, and the third, fourth, fifth and sixth by persons alleged to be her agents, of which fact there was no proof at all on the record except the bare statement of the plaintiff himself, and the seventh and eighth were alleged to have been attested by the defendant herself.

Held that the entry in suit, *i.e.*, of 1902 neither amounted to a valid acknowledgment of debt, nor to such a promise to pay as would give a new period of limitation in the one case under section 19 of the Limitation Act, and in the other under section 25 (3) of the Contract Act. It did not amount to an acknowledgment, because the entries of 1887 to 1896 not having been signed by some one duly authorized in this behalf by the defendant the latter acknowledgments referred to a barred debt and were made after the expiration of the period prescribed for its recovery. Similarly, being a bare statement of account and containing none of the ingredients required by clause 3 of section 25 of the Contract Act, it was not a promise to pay within the meaning of that section. SHANKAR DAS *v.* JASODHAN. **102 P R 1908**

Section 25 (*c*).

10. *Suit for balance admitted due—Acknowledgment of liability—Promise to pay—New contract.*

CONTRACT ACT (IX OF 1872)—*contd.*

Section 25 (*c*)—*contd.*

Held that an entry in writing to the effect:

"Sri Ganesh ji Sahai."

"Sarkhat kar ditta Pala Mal, Amar Nath "Bhabhara Khandaya jog Nikka Ram, Roda "Ram, Rala Ram, Brahman Gujrati, Garhwale ne miti Poh Sudhi teej, Poh 18, Sambat "1959, tarik ek January 1903."

"Baqi dena raha tarik ek January 1903 "miti Poh Sudhi teej Poh din 18, Sambat "1959."

"Dastkhat Roda Ram Gujrati Garhwale "tikas (ticket-stamp) lega ditta lene Pala "Mal, Amar Nath ne dena Nikka Ram, Roda "Ram Gujrati Garhwale. Dastkhat Roda "Ram."

amounts to a mere acknowledgment of liability in respect of an existing debt and does not import a promise to pay the same so as to constitute a fresh cause of action independently of the debts on which the balance was based and cannot therefore be made the basis of a suit. PALA MAL *v.* TULLA RAM. **119 P R 1908**

Section 27.

Contract in restraint of trade—Relief.

The female plaintiff when *feme sole* entered into a contract to serve the defendant as milliner and dress-maker for three years. After two years' service under the contract, she married the other plaintiff, and defendant consented to a rescission of the contract of service in consideration of the plaintiff's promising that the female plaintiff would not carry on the trade of milliner and dress-maker for a certain term and within certain local limits. The new agreement also contained a clause that if she did so trade, the plaintiff would pay the defendant Rs. 10,000 as a penalty. Plaintiff's sued to have the contract cancelled. Defendant pleaded that though it must be admitted the contract was void under section 27 of the Indian Contract Act, so far as it restrained the female plaintiff from trading, yet it was void only to that extent, and if she elected to trade she was bound to pay the defendant according to the agreement, her promise to pay being based on a consideration, *viz.*, her release by the defendant from the residue of her term of service. The defendant further pleaded that plaintiffs had no cause of action, and could not sue for cancellation of the contract.

Held, that the contract to pay the penalty was void, under section 27 of the Contract Act, on the ground that if the plaintiff could not set up in a particular trade without paying Rs. 10,000, that in itself was a restraint upon her trading.

Held also, that, though defendant had not threatened to enforce the payment of the penalty, the position of the plaintiff was such that the suit would lie, as it was of the first necessity to her to discover whether, without incurring a heavy liability, she could establish a trade; and as the contract could not be enforced against her, it was against conscience for the defendant to retain the instrument. COOKE *v.* RUSSELL. **29 P R 1874**

CONTRACT ACT (IX OF 1872)—*contd.*

Section 28.

See ARBITRATION

37 P R 1876

—*Sections* 28 *and* 127, *Ill.* (*b*)—*Promise by creditor to forbear to sue debtor—Void agreement—Agreement partly void and partly enforceable.*

Forbearance by a creditor to sue a debtor, or a promise to forbear either absolutely or for a time, is not unlawful. On the contrary, there is express authority in section 127, illustration (*b*) of the Contract Act, for holding that a promise to forbear for a time is lawful, and by consequence a promise to forbear absolutely, and the forbearance itself, are lawful.

Where the agreement between the parties consisted of a promise by the plaintiff to forbear to sue a third party absolutely or for a time, and in consideration thereof the defendants made certain promises to indemnify plaintiff for any loss he might incur thereby, *held*, that such agreement would be void under section 28 of the Contract Act only as far as it restricted the plaintiff from suing his debtor. Upon performance by plaintiff of his promise, such performance having taken place at defendant's desire, plaintiff would be entitled to enforce defendant's promise according to its tenor. MATHRA DAS *v.* MAHOMED DIN.

120 P R 1879

Section 30.

1 Suit for money paid as agent for losses incurred under a void—Contract—Custom—Act IX of 1872, section 30.

See BADNI TRANSACTION.

90 P R 1880

2. Agreement to refund money found by *panchayat* to be in excess of payer's liability—Suit to enforce such agreement—Contract Act IX of 1872 section 23, 30.

See BADNI TRANSACTION.

135 P R 1883

3. Wagering transaction—Written Contract—Admissibility of evidence to prove that Contract was void under section 30 of Contract Act, 1872-

See Revision.

85 P R 1898

4. *Wagering transaction—Claim by commission agents to recover by way of set-off sums due to them for losses incurred by principal—No proof of actual payment of such sums, but agents making themselves liable for the amount as a matter of account—Agents' liability not enforceable at law—Brokerage fees in respect of wagering transaction—Contract Act, 1872, sections* 30,222. —Plaintiff sued to recover a sum of Rs. 2,000 alleged to be due to him from defendants' firm on account of the price of certain indigo seed handed over to defendants, who were commission agents, for sale on plaintiff's behalf. Defendants pleaded that they had a general running account with plaintiff, of which the indigo transaction was merely one incident,

CONTRACT ACT IX OF 1872—*contd.*

Section 30—*contd.*

and that on the whole account, after allowing plaintiff the actual price of the seed, there was a balance due to them from plaintiff of Rs. 2,697-15-3, which amount they claimed by way of set-off. It appeared that defendants, as commission agents, did a large gambling business, in the course of which they purported to make purchases and sales for their constituents, but that such purchases and sales were mostly nominal and of a wagering character. Elaborate accounts were kept, showing the profits and losses of each constituent; according as prices rose or fell, and speculations succeeded or failed, and the winnings or losings of the respective constituents were adjusted, generally, in defendants' books. It was not proved that defendants had actually paid in cash to any of their constituents the sums alleged to have been lost by plaintiff in such wagering transactions, or that they had settled by final cash payments all the balances due to the numerous third parties who had won what plaintiff had lost; it was, however, shown, from their books that defendants had made themselves liable to that extent as a matter of account. The set-off claimed included the amount of defendants' commission fees in respect of the said transactions.

Held, as regards the amount claimed for losses incurred by the plaintiff, that, in accordance with the principle that an agent, before he can recover from his principal the amount claimed for losses on a wagering transaction entered into under the principal's instructions, must prove either an actual payment upon the principal's behalf or that a liability has been incurred which is enforceable at law, defendants were not entitled to recover the said amount, inasmuch as plaintiff's losses were not proved to have been settled by actual payments, and it was still open to defendants to repudiate the liability evidenced by the mere statement of account, by advancing the plea that the dealings were wagering transactions.

Held, as regards the charges for commission fees, that defendants were not debarred from recovering the same on the ground that they were earned in respect of services relating to wagering transactions.

The authorities cited and discussed by *Rivaz*, J. RAGNATH SAHAI *v.* Mam Raj

80 P R 1895

5. *And Section* 213—*Principal and agent*—Badni *(wagering) contracts—Void contract—Suit for profits received by defendants as plaintiff's agents—Liability of agent to render accounts to his principal.*—Defendants as plaintiff's agents arranged with third parties for the delivery to plaintiff of 20,000 maunds of gram on a certain date, and three weeks after sold the said gram as his agents at a profit, the plaintiff sued the defendants for differences between the purchase and sale price after deducting the commission to which the defendants were entitled. The defendants admitted the purchases and sales, but pleaded that the transactions were *badni*, and that they had realized no profits.

CONTRACT ACT (IX OF 1872)—*contd.*

Section 30—*contd.*

Held, that as there was never any intention that the gram should be delivered, and it was only intended that differences should be settled, the transactions were *badni* and void under section 30 of the Contract Act, but not illegal, and the defendants were liable to the plaintiff for any profits received by them. The defendants as agents being bound to render proper accounts to the plaintiff, under section 213 of the Act, which they had failed to and in the absence of any objection on their behalf as to the amount of profits calculated the plaintiff was entitled to a decree for the amount claimed.

Ragnath Sahai v. *Mamraj* (80 *P. R.*, 1895) and *Telu Mal* v. *Subha Singh* (90 *P. R.* 1880) followed; *Doshi Talakshi* v. *Shah Ujamsi Veli* (*I. L. R., XXIV Bom.*, 227), distinguished. DEVI SAHAI V. GANESHI LAL AND OTHERS

4. P. R.1901.

6. *Wagering contract—Principal and agent—suit by agent to recover from principal sums due on account of wagering contracts—Maintainability of such suit.*

Held, that an agent can maintain a suit against his principal to recover the actual payments which he has made as agent under the express instructions and on behalf of his principal or for a liability incurred by him to a third party if that is enforceable by law, though the contracts in respect of which the claim is made were transactions known as *badni* transactions, but he cannot include in it an adjustment of a *badni* loss against a *badni* gain on behalf of his principal. KASHMIRI Lal *v.* GIRDHARI LAL.

74 P R 1908

NOTE.—SINCE overruled by 79 P. R., 1908, F. B.

7. *Wagering contracts—Principal and agent—Rights and liabilities of—Right of agent to recover from principal sums due on account of wagering contracts—Contract Act,* 1872, *Section* 30.—*Held* by the Full Bench—

(1). That a cash payment made by an agent on account of a *badni* transaction entered into on behalf of a principal is legally recoverable from the principal.

(2). That enforceable liabilities incurred by an agent on such transactions to a third party are also recoverable.

(3). That if an agent dealing *badni* for a principal loses a sum of money on the transaction and having no previous account with the third party authorises him to enter up in his books a debt against him he cannot without paying the money recover the amount from his principal.

(4). If in such a case the agent already has dealings with the third party and is owed money by him on accounts with which the principal has no concern and the sum lost as aforesaid being less than the sum due to the agent is settled by a credit in the agent's books, and a debit in the third party's books, the amount so credited and debited is recoverable by the agent from the principal.

CONTRACT ACT (IX OF 1872)—*contd.*

Section 30—*concld.*

(5). That in a similar case if the debit owed to the agent is less than the sum lost by him on account of his principal and the matter is settled by a debit and credit as aforesaid plus a payment in cash of the balance due by the agent, the latter can recover from his principal both the amount adjusted by debit and credit and the amount of the cash payment.

(6). That if in such a case the sum already owed to the agent by the third party is equal to the sum lost as aforesaid to the third party and the agent authorises that party to set off one against the other in his books, and treat the account as squared the agent can recover the sum in question from his principal. *Kashmiri Lal* v. *Girdhari Lal* (74 *P. R.*, 1908), overruled.

BEHARI LAL *v.* PARBHU LAL.
79 P R 1908 F B

Section 32.

Contingent Contract—Shukarana—Contract Act IX of 1872, *sections* 30, 53.

See PLEADER AND CLIENT.
155 P R 1879

Section 37.

1. *Civil Procedure Code,* 1859, *section* 203—*Obligation of representative of party to contract—Assets—Liability of representative for waste or misapplication—Decree against representative—Section* 37, *Act IX of* 1872.

By section 37 of Act IX of 1872 "promises bind the representatives of the promisors in case of the death of such promisors before performance, unless a contrary intention appears from the contract." And by section 203, Act VIII of 1859, if a "decree be against a party as the representative of a deceased person, and such decree be for money to be paid out of the property of the deceased person, it may be executed by the attachment and sale of any such property, or if no such property can be found, and the defendant fail to satisfy the Court that he has duly applied such property of the deceased as shall be proved to have come into his possession, the decree may be executed against the defendant to the extent of the property not duly applied by him in the same manner as if the decree had been against the defendant personally."

Held, that the legal representative of the deceased, whether the latter were a Hindu or not, was only liable to perform the promise or pay the debts of the deceased to the extent of the property of the deceased received by him.

Held also, that the existence of assets and receipt or possession thereof by the representative must be enquired into before decree, unless a *primâ facie* case of receipt, or right to receive, not denied by the defendant, appeared; and that such case appeared on proof that the defendant was entitled to existing assets without proof that they had come into his actual possession.

Held also, that a decree against the representative, which did not specify that it should be payable out of the assets of the deceased, was an erroneous decree. MADHO DASS *v.* RADHA MAL
65 P R 1874

2. *Limitation Act,* 1877, *section* 8—*Contract Act,* 1872, *sections* 37, 38 *and* 45—*Competency of an adult co-owner of a house to grant a valid discharge for rent payable to himself and to minor co-owners jointly, so as to bind the latter.*

CONTRACT ACT (IX OF 1872)—*contd.*

Section 37—*contd.*

Three plaintiffs, of whom one was a minor, sued to recover the rent for eleven years of two shops rented by the defendant. Exemption from the ordinary law of limitation was claimed on the ground that one of the plaintiffs had attained majority only about a year before suit, while another was still a minor, and that during their minority there was no one qualified to give a discharge without their con urrence. For the defendant, it was contended that Mussammat Shahzadi Khanam, one of the co-owners, could have given a discharge at any time during the period in question without the concurrence of the minors.

Held, by the Chief Court, that Mussammat Shahzadi Khanam could have received payment of the whole rent during the disability of the minor co-owners and given a valid discharge for the same without their concurrence; that time consequently ran against them all during the period of the said disability; and that three years' rent only was recoverable in the present suit. DAULAT RAM *v.* SAYAD ABDUL KASIM.
60 P R 1893

3. *Contract—Death of the promisor before performance—Obligation of the representative of such promisor to perform.*

In 1888, the respondent's father took from the petitioner's father some land on lease for seven years, commencing from 11th August 1888, and executed a registered deed. The lessee died before the expiry of the lease, and his son has remained in possession ever since. In 1898, the petitioner, his father, also then being dead sued the respondent, for arrears of rent for 1892, 1893, 1894, on the basis of the registered lease. The plea on behalf of the respondent before the Financial Commissioner was, that as he was a minor when his father executed the lease, it was not binding on him. *Held,* that in accordance with section 37 of the Contract Act that promises bind the representatives of the promisors in case of the death of such promisors before performance, the registered contract of his father bound the respondent, especially as he had possession of the property, the subject of the lease during the period for which rent was claimed. JESA RAM *v.* DAULAT SHAH.
4 P R 1902 Rev.

Section 38.

See SECTION 37, SUPRA.

Section 39.

See SECTION 62, INFRA.

Suit for enhancement of rent—Entry in regular settlement sanctioned by Local Government—Agreement in writing—Uncertainty—Party disabling himself from performing promise wholly—Act IX of 1872 *Section* 39.

See PUNJAB TENANCY ACT, SECTION 2.
50 P R 1883

Section 42.

Death of one of several defendants pending appeal—No application by plaintiff to put representatives on the record—Abatement of appeal.

CONTRACT ACT (IX OF 1872)—*contd.*

See CIVIL PROCEDURE CODE, 1908, ORDER XXII, RULE 4. **53 P R 1896**

Section 43.

1. *Correlation between section* 368, *Civil Procedure Code,* 1882, *and section* 43, *Contract Act,* 1872.

See CIVIL PROCEDURE CODE, 1908, ORDER XXII, RULE 4. **53 P R 1896**

2. *Club—Personal liability of Secretary of Managing Committee who was also a member thereof and a depositor in the Association.*

See CLUB
11 P R 1892.

3. *And Sections* 42, 266—*Contract by a partner on behalf of the partnership—Right of promisee to sue any or all of the joint promisors.*

Held, that in a suit upon a contract made by a partner on behalf of the partnership, the promisee can compel all or any one of such partners to perform the whole of the promise, and that non-joinder of a co-promisor is no ground of defence to such a suit. JAG LAL *v.* SHIB LAL.
37 P R 1902

Section 45.

1. *And sections* 37, 38—*Competency of an adult co-owner of a house to grant a valid discharge for rent payable to himself and to minor co-owners jointly so as to bind the latter.*

See SECTION 37, *supra.*
60 P R 1893

2. *Suit for partnership debt—Representatives of a father who died pending the suit not necessary parties.*

See PARTIES
10 P R 1906

3. *Suit for partnership debt on a contract entered into with one partner—Right of such partner to sue alone.*

See PARTIES.
127 P R 1906

4. *Act IX of* 1872, *section* 45—*Suit on mortgage bond by one of three persons jointly entitled—Cause of action.*

In a suit to recover the amount due on a mortgage bond, it appeared that the bond was in favour of three persons, of one of whom only the plaintiff claimed to be the representative. There was no allegation that the person whom the plaintiff represented was in fact solely entitled under the bond, nor did the plaintiff ask the permission of the Court under section 30 of the Civil Procedure Code to sue on behalf of all the persons entitled on it, nor did the bond itself contain anything to indicate an intention that the right to claim performance by the mortgagor should not rest with the persons in whose favour the mortgage was made jointly.

Held, that the case was governed by section 45 of the Contract Act, and that the plaint disclosed no cause of action on which the plaintiff was entitled to sue alone. JOWALA NATH *v.* RUPA.
175 P R 1882

5. *Non-joinder as plaintiffs of co-promisees—Contract Act, section* 45.

CONTRACT ACT (IX OF 1872)—*contd.*

Section 45—*contd.*

Held, by the Full Bench that an objection by a defendant that one of several co-promisees cannot sue alone to enforce payment of a debt due to them jointly is an objection falling within and governed by section 34, Civil Procedure Code.

Per PLOWDEN, J.—When a plaint discloses that the suit is on a promise made to the plaintiff, or plaintiffs named in the plaint, jointly with others who are not made parties to the suit the Court can and ought to consider and decide whether it should be returned for amendment under section 53, Civil Procedure Code, or whether it should be received leaving the question of parties to be dealt with by defendant under section 34 or by the Court under section 32, Civil Procedure Code. If the objection is taken in time by the defendant under section 34, he is entitled to an order of the Court under section 32, that any person who ought to have been joined as plaintiff be made a plaintiff, if he consent and otherwise be made defendant, if practicable. If the objection is not made in time, the defendant cannot afterwards, either before or after judgment, take an objection founded solely upon the non-joinder of the other co-promisees either in that form or in the form of an objection that the plaintiff or plaintiffs alleged a promise to himself or themselves alone and that there is a variance between this allegation and a proof of promise to him or them and others jointly with him or them.

Per POWELL, J.—The objection that where several partners lend money to the defendant and jointly receive a promise of repayment from him, section 45 of the Contract Act is as a matter of substantive as distinguished from Procedure Law a bar to the right of any one of the parties alone to claim repayment of the whole debt is not valid in law. The joinder or non-joinder of parties must always depend on some rule of substantive law, and the procedure rule does nothing more than provide that certain rules of substantive law, certain rights and obligations arising out of such law can only be enforced or given effect to in a particular way or under particular limitations.

Kendall v. *Hamilton (L. R., 4 H. L., 504)*; *King* v. *Hoare* (13 *M. and W.*, 494); 8 *P. R.*, 1886; 175 *P. R.*, 1882; *I. L. R., VI Calc.*, 815; *I. L. R., VII Calc.*, 242 and 594; *I. L. R., V Bom.*, 609; *I. L. R., I All*, 453; *I. L. R., VIII All.*, 264; *I. L. R., VII Bom.*, 257; *I. L. R., III Calc.*, 26; *I. L. R., III Mad.*, 235; *I. L. R., X Bom.*, 32; *IV B. L. R.*, 118; *I. L. R., XI Calc.*, 338; 87 *P. R*, 1880; 58 *P. R.*, 1882; 20 *P. R.*, 1882, considered and discussed. KALA KHAN v. SEVA RAM.

159 P. R. 1889.

6. *Cause of action—Joint promise to plaintiff and others—Right of plaintiff to sue alone.*

The plaintiff sued for a money decree on a promise to himself alone, the defendants denied the promise alleged by the plaintiff and pleaded that the promise was one made

CONTRACT ACT (IX OF 1872)—*contd.*

Section 45—*concld.*

to the plaintiff and two others jointly. The plaintiff denied this allegation and adhered to the claim as stated in the plaint.

Both the lower Courts found that the defendants' allegation was correct, and that the moneys claimed were due, if at all to the plaintiff and two others. The lower Appellate Court further considered whether the plaintiff should be allowed to amend his plaint, and decided that it was useless to permit this, as the amended claim would be barred by limitation.

The plaintiff then preferred a further appeal to the Chief Court: he did not accept the finding as to the debt being due, if at all to two other persons jointly with him, nor did he ask for permission to amend his plaint.

Held, by the Full Bench, that the Court, finding that the lower Courts had rightly held that the debt if due was not due to the plaintiff but to the plaintiff and others jointly, the proper decree to make was one dismissing the appeal thus confirming the decree dismissing the suit without going into the question whether the precise ground on which the lower Appellate Court refused to permit an amendment of the plaint was correct, or whether the plaintiff could be permitted to amend his plaint.

No. 156 *P. R.*, 1889 (F. B.) distinguished. BADRI DAS *v.* JAWALA PERSHAD. **86 P R 1891**

7. *Joint contract—suit by 2 out of several lessees for possession of the whole land leased—maintainability of such suit—Indian Contract Act, IX of* 1872, *section* 45.

Where the 2 plaintiffs together with 9 other persons (impleaded as defendants) had jointly entered into a lease of certain land with the defendants-lessors, and sued for possession of the land leased, the other lessees having refused to join in the suit and being in fact in collusion with the defendants-lessors—

Held, that the 2 plaintiffs were not only entitled, but indeed obliged, to sue for possession of the whole of the land leased.

MUHAMMAD ALI, &c., *v.* MUHAMMAD SHAH, &c. **57 P R 1911**

Section 46.

Suit for cancellation in part of document on ground of failure of consideration—Contract Act, 1872, *section 2* 46-73—*Voidable contract.*

See SPECIFIC RELIEF ACT, 1877, *sections* 39,40. **186 P R 1882**

Section 52.

Contract Act, 1872, section 52—reciprocal promises—Written contract—Extraneous consideration.

Plaintiff had a money decree against one L. S., *jagirdar* of Majra, and had possession of the village, the revenue being then payable in kind, by virtue of a *patta* from the said L. S. On the 30th May 1891, the latter granted a lease of his *jagir* rights for twenty years to his son, R. D., and the defendant, T. S., in equal shares, stipulating to receive Rs. 500 a year from them and they in their turn undertaking to pay Rs. 225 annually on account of cesses and the *nazrana* due to

CONTRACT ACT (IX OF 1872)—*contd.*

Section 52—*concld.*

Government from the *jagirdar* into the *tahsil*. Of the balance Rs. 275, one-half was to be paid by the lessor to R. D., and out of the other half the defendant, T. S., was to pay Rs. 100 annually to the plaintiff in liquidation of his decree against the lessor and Rs. 37-8-0 to the lessor himself. On the 31st May 1891 T. S. executed the bond now sued upon in favour of plaintiff, whereby he agreed to pay the amount of the plaintiff's decree, which was fixed at Rs. 1,400, in yearly instalments of Rs. 100 each payable before Jeth each *Sambat* year from 1948. In case of default, the whole amount due at the time was to be realizable at once. On the said date plaintiff wrote a document (called a receipt) in favour of T. S. and R. D., by which he declared that he had given up possession of the village which he had been holding under the *jagirdar's patta* and stipulated that he would pay the revenue due on account of the lands held by him, as owner or mortgagee to them. Plaintiff having sued to recover Rs. 1,250 on the bond upon the allegation that T. S. had paid him Rs. 150 only of the stipulated instalments and had failed to pay the rest, T. S pleaded that the consideration for the bond, *viz.*, the lease of his *jagir* by L. S. had failed as it was incapable of enforcement and that plaintiff by his own conduct in paying the *jagir* dues to L. S. contrary to his agreement was precluded from suing on the bond. It was proved that plaintiff had paid the revenue of his lands direct to L. S. since *Rabi* 1892 and not to the lessees as agreed upon, and that T. S. had realized *batai* for *Kharif* 1891. The first Court accepted T. S.'s plea and dismissed the claim so far as it was based on the bond, but the Divisional Judge, on appeal decreed plaintiff's suit in full on the ground that the bond was an independent contract, the consideration being the release of L. S. from his liability under the decree. T. S. appealed to the Chief Court.

Held, upon the facts as above stated, that the contract between plaintiff and T. S. was contained in the bond and the so-called receipt read together and not in the bond alone, and that plaintiff's failure to pay the *jagir* dues to T. S. and R. D., as he had agreed to do, was a sufficient ground for T. S. avoiding his contract as contained in the bond.

The consideration for a contract is extraneous to its terms, and there is no legal objection to proof being given that the recital of the consideration in a written contract is incomplete or is in reality something different. TARA SINGH *v.* SOHNU SHAH. **17 P R 1898.**

Section 53.

Act IX of 1872, sections 32-53.—Contingent contract—Shukrana.

See PLEADER AND CLIENT. **155 P R 1879**

Section 57.

Breach of betrothal contract—Money paid under void agreement—Act IX of 1872, section 57—Promises to do things legal and also other things illegal.

See BETROTHAL. **106 P R 1879**

CONTRACT ACT (IX OF 1872)—*contd.*

Section 60.

1. *Chose in action—Assignment of debt—Notice of assignment to debtor—Transfer of Property Act (IV of 1882), Chapter VIII.*
See ASSIGNMEMT OF DEBT.
12 P R 1894

2. *Partnership—Lien—Set-off.*
See PARTNERSHIP. **53 P R 1898**

Section 62.

1. *Admissibility of evidence of oral agreement substituting new contract for contract in writing—Act IX of 1872, section 62.*
See EVIDENCE. **169 P R 1883**

2. *Act IX of 1872, sections 39, 62—Substitution of new contract—Incomplete contract—Right of rescission—Right to revert to old consideration.*

Defendant in consideration of an old debt and a present advance executed a deed in the form of a mortgage bond in favour of plaintiffs, in which it was stipulated that possession of certain landed property of the defendant was to be transferred to the plaintiffs as security for the debt, but it appeared that as a fact such possession was never given, and the deed remained unregistered. In a suit by plaintiffs for the recovery of the debt with interest, the defendant pleaded that the proper remedy of the plaintiffs was to sue for specific performance and for the repayment of the debt, adding that, when such a suit was brought, a plea of want of full consideration would be advanced. The suit was eventually dismissed by the lower Appellate Court on the ground that, though the existence of a debt was admitted by the defendant, that debt was in the eye of the law discharged by the acceptance of the bond above alluded to, and that therefore plaintiffs had no remedy except upon such bond.

Held, (reversing the above order) that though it is open to parties to a contract to substitute a new contract therefor, in which case the original contract need not be performed (section 62, Contract Act), yet in this case there was no completed "contract" within the meaning of the section quoted, and the defendant's refusal to perform his promise, *viz.*, to have the deed registered and to transfer possession justified the plaintiffs in rescinding the new agreement under the provisions of Section 39 of the Contract Act, and they were therefore entitled to revert to their original consideration, and to use the bond as an acknowledgment, which it clearly contained, of a liability subsisting on the date of its execution.—RAJA RAM *v.* MEHAR KHAN.

66 P R 1888

3. *Contract—Novation—New contract reduced to writing but inadmissible in evidence—New contract not duly completed—Suit based on former contract.*

On the 22nd *Bhadon, Sambat* 1948, a balance was struck by defendant in plaintiff's favour for Rs. 1,800, and subsequently defendant received from plaintiffs two sums, one of

CONTRACT ACT (IX OF 1872)—*contd.*

Section 62—*contd.*

Rs. 300, the other of Rs. 400, making up a total of Rs. 2,500, and Rs. 125 paid on account of interest. To a suit by plaintiff based on this account, defendant pleaded that subsequently to the striking of the balance, plaintiff had agreed, in writing, to take the amount due to him in 10 years with interest at 4 annas per cent., payable annually, and that in the face of the said new contract for the discharge of defendant's liability, plaintiff's present suit on the old balance and subsequent advances would not lie. It was admitted that the document embodying the alleged new contract was insufficiently stamped, and was inadmissible in evidence, and that no evidence *aliunde* could be given of its terms. It was further found by the first Court, and accepted by the Chief Court, on appeal, that the plaintiff did in fact take the document in question, but that he did so without fully considering its nature, and that immediately after he came to know of its defects, he insisted on a proper bond on a sufficient stamp being executed, which the defendant refused to give.

Held, that the alleged new contract set up by defendant could not be successfully pleaded in bar of plaintiff's claim because (*a*) the new contract having been reduced into the form of a document, inadmissible in evidence, could not be proved, much less operate as a discharge of the former contract, and (*b*) assuming that the *factum* of the new contract could be proved, the naked promise to pay the old debt in ten years at reduced rate of interest was not sufficient to extinguish the old liability.

Held, further, that in any case plaintiff was entitled, on defendant's refusal to give a proper security for the debt, to treat the old contract as subsisting and to sue on the same. UDHO SHAH *v.* HIRA SHAH.

71 P R 1897

4. *Contract—Novation—Right of a party to fall back on the original cause of action.*

Defendants owed some money to the plaintiffs on book account, they executed certain *hundis* in discharge of that debt. On maturity the *hundis* were dishonoured. The plaintiffs sued the defendants on the original debt, the defence being novation of contract.

Held, that the plaintiffs not having endorsed or lost or parted with the *hundis* under such circumstances as to make the defendants liable upon them to some third parties, were entitled to sue on the original debt which had not been extinguished by the fact of the receipt by plaintiffs of the *hundis* by way of security.

Sheikh Akbar v. *Sheikh Khan* (*I. L. R. VII Calc.*, 256), *Naobut Rai* v. *Taj Muhammad* (84 *P. R.* 1885), *Rahmatulla* v. *Ganesh Das* (82 *P. R.* 1891) and *Udho Shah* v. *Hira Shah* (71 *P. R.* 1897), cited and followed. BALDEO SAHAI *v.* MUL CHAND. **7 P. R. 1903**

Sections 64 and 65.

Sale by minor—Misrepresentation—Vendee acting in good faith—Refund of purchase-money.
See SPECIFIC RELIEF ACT.
76 P R 1910

CONTRACT ACT (IX OF 1872)—*contd.*

Section 65.

1. *And section 20—Lease of Government village on condition that if certain stipulations entered into by the lessee were fulfilled, propietary rights in the village would be conferred on him—Power of such lessee to alienate his rights without sanction of Government*—"Caveat Emptor"—*Material mistake.*
See "CAVEAT EMPTOR."
62 P R 1893

2 *Contract by minor—Sections 11, 65, Contract Act, 187..*
See CONTRACT ACT, 1872, SECTION 11.
23 P R 188?
96 P R 1888

3. *Provincial Small Cause Court Act, 1887, section 25—Decree of Small Cause Court—Error of law—Revision—Money paid under unlawful agreement, suit to recover—Penal Code, section 215—Contract Act, 1872, section 65.*

Plaintiff sued in the Small Cause Court, Lahore, on the allegations that defendant had promised that, in consideration of the sum of Rs. 100, he would either put plaintiff on the track of certain cows which had been stolen from him, or would return him the money; that plaintiff had paid defendant the said sum, but that the latter had neither pointed out the cows nor returned the money, and that, therefore, plaintiff sued him for refund of the same. The Court found that the money had been paid as alleged, and held that plaintiff was entitled to sue for its recovery, as defendant, not having done the service for which he had received it, could not retain money for doing nothing. Defendant applied to the Chief Court for revision, and it was contended, on plaintiff's behalf, that under section 25 of Act IX of 1887, the decree of the Small Cause Court could not be set aside merely on the ground of error of law.

Held, that the scope of section 25 of Act IX of 1887 is wider than that of section 622, Civil Procedure Code, and that the Chief Court, when acting thereunder, is competent to correct errors of law made by Judges of Small Cause Court.

Held, further, that plaintiff's suit was not maintainable on the ground that if defendant had actually received the money, he had committed an offence under section 215, Indian Penal Code, and that, therefore, plaintiff could not make out his case without showing as part of it that he had himself been guilty of an illegality, *viz.*, of abetment of the said offence.—ARUR SINGH *v.* KHUDA BAKHSH.

66 P R 1895

Section 68.

Contract made by minior—Void agreement—"Necessaries suited to his condition in life—Contract Act IX of 1872, sections 2, 11, 68.
See MINOR. **165 P R 1883**

Sections 69 and 70.

1. See FRAUD. **42 P R 1883**

2. *Act. IX of 1872, section 70—Obligation of person enjoying benefit of non-gratuitous act, jurisdiction of Small Cause Court.*

CONTRACT ACT (IX OF 1872)—*contd.*

Sections 69 and 70—*contd.*

See JURISDICTION OF SMALL CAUSE COURT.

69 P R 1874

3. *Suit for reimbursement—Act IX of* 1872, *section* 69.

See JURISDICTION OF SMALL CAUSE COURT.

90 P R 1875

4. *And section* 11—*Contract by Barrister "Quantum meruit."*

See CONTRACT ACT, 1872, SECTION 11.

5. *Bail bond given for appearance of accused person—Non-appearance of accused and forfeiture of bond—Suit by surety against principal to recover amount of bond—Public Policy.*

See CONTRACT ACT, 1872, SECTION 23.

6. *Act IX of* 1872, *sections* 69, 70, 178—*Pledge by possessor of documentary title to goods—Good faith of pawnee—Presumption that pawnor was acting improperly—Validity of pledge—Reimbursement—Persons paying money due by another in payment of which he is interested—Obligation of person enjoying benefit of non-gratuitous act.*

Plaintiff sued to recover Rs. 580 on the following grounds: He stated that the first three defendants, who represented a firm at Rawalpindi, sent their agent, defendant 4, to Meerut to purchase sugar for them. After sugar had been purchased and made over to the Railway at Meerut for transmission to Jhelum, defendant 4, in whose name the bill of lading had been made out, came on to Jhelum to await the arrival of the sugar and there pawned it to plaintiff for Rs. 600, making over the bill of lading to the plaintiff: defendant 4 then paid up Rs. 150 out of the Rs. 600 which he had borrowed, but left the bill of lading with the plaintiff. On the arrival of the sugar at Jhelum, plaintiff presented the bill of lading to the Railway authorities, paid Rs. 125 freight from Meerut, and claimed the sugar; but defendants 1—3 represented to the Railway authorities that the sugar belonged to their firm and so got delivery of the sugar. Plaintiff therefore claimed Rs. 450, the balance of Rs. 600 lent on the security of the sugar, and Rs. 125 paid as freight at Jhelum, plus interest, in all Rs. 580, for which he declared all four defendants responsible as the firm was bound by the acts of its agent. Defendant 4 did not appear, and defendants 1—3 disclaimed all liability.

Held, with regard to the claim for Rs. 450, the balance of the money advanced on the sugar, that though there was no absolute proof of collusion between the plaintiff and defendant 4, it was impossible to hold the firm responsible for the act of their agent. It was clear from the subsequent conduct of defendant 4, that he was wholly unauthorized to make the pledge, and plaintiff, who was aware that defendant 4 belonged in some capacity at least to the firm

CONTRACT ACT (IX OF 1872)—*contd.*

Sections 69, and 70—*contd.*

could by ordinary care have found this out; that therefore the circumstances were such as to raise a reasonable presumption that the pawnor (defendant 4) was not acting in good faith, so that according to the first proviso in section 178 of the Contract Act the pledge could not be considered valid.

With regard to the claim for the Rs. 125 which was paid by plaintiff for the freight of the sugar at Jhelum, *held*, that the plaintiff was entitled under section 69 of the Contract Act to be reimbursed by defendants 1—3, as plaintiff, who was in possession of the bill of lading, was interested in paying the freight which the defendants 1—3 were bound to pay, and having paid it could sue to recover the amount from the said defendants, and further that the defendants could not claim to avoid the plaintiff's claim to be reimbursed this payment, by the plea that they had furnished their agent with the necessary funds to clear the goods.

Held, further, per *Rattigan*, J., that if section 69 of the Contract Act were not applicable to the last item of claim, plaintiff could recover the item under section 70, as he never intended to let the defendant have the benefit of this payment gratuitously. PRABHU DYAL *v.* JIWAN SINGH.

199 P R 1882

7. *Pleader and client—Suit for fee—Contract Act (IX of* 1872), *section* 70.

Held, that though section 28 of the Legal Practitioners Act prohibits the recovery of any money under an agreement not recorded in a particular manner, and thus supersedes those provisions of the Contract Act under which agreements can be enforced generally, it does not touch section 70 of the last named, which has no relation to express agreements, but is intended especially to deal with cases where remuneration can be claimed in the absence of an agreement. KHAZAN CHAND *v.* GOBIND SINGH.

160 P R 1888

8. *Legal Practitioners Act*, 1879, *section* 28—*Indian Contract Act*, 1872, *section* 70.

Held, that whereas in the present instance, a pleader sues upon an alleged oral contract for remuneration for services rendered to a client, he cannot succeed, because the contract is not in writing; and because there is a contract, he cannot fall back upon section 70 of the Contract Act and claim reasonable remuneration.

If there is no agreement on the subject of remuneration amounting to a contract under the Contract Act, operating independently of section 28 of the Legal Practitioners Act, the pleader's right to remuneration is measured by section 70 of the Contract Act.

If there is an agreement which amounts to such a contract, the pleader cannot enforce it unless it is reduced to writing and filed in Court as required by section 28, Legal Practitioners Act. If these conditions are

CONTRACT ACT (IX OF 1872)—*contd.*

Sections 69 and 70—*concld.*

fulfilled, the contract can be enforced, subject to the special provisions of sections 29—31 of the Act. If they are not, the pleader is without a remedy.

I. L. R. XII All. 169; *I. L. R. IX Mad.* 375, and No. 160 *P. R.* 1888, dissented from. HAZARI LAL *v.* TILOK CHAND.

136 P R 1893

9. *Section* 69 *and section* 70—*Reimbursement of person paying money due by another.*

An undertaking to pay is not actual payment and the cause of action for suits contemplated by sections 69 and 70 of the Contract Act does not arise until the money or its equivalent is actually paid. FITZGERALD *v.* MUSA. **31 P R 1904**

Section 70.

Repairs done by tenant—Deduction of cost from rent.

See CANTONMENT HOUSE ACCOMMODATION ACT. **103 P R 1910**

Section 72

1. *Money paid under mistake—Act IX of* 1872, *section* 72.

A obtained a decree against plaintiff in the Meerut Court; defendants (Delhi Bank) obtained a decree against A in the Delhi Court. Under an order of the Delhi Court, plaintiff paid defendants the amount of their decree against A. Execution was then taken out in the Meerut Court by A against plaintiff, who pleaded that he had paid the amount to the Delhi Bank. The Court overruled the objection, holding that it could not recognize the payment at Delhi; whereupon plaintiff paid A the amount of his decree. Plaintiff sued defendants to recover back the money paid by him at Delhi in satisfaction of the defendant's decree against A. *Held*, that plaintiff was entitled to recover the money from the defendants under section 72 of Act IX of 1872; the payment having been made under a mistake. THE DELHI AND LONDON BANK *v.* SKINNER. **11 P R 1873**

2. *Mistake—Liability of person to whom money is paid under mistake of fact.*

A was a tenant holding under B. On B's death he was induced to take a lease of the same property from B's widow to whom he regularly paid rent. Subsequently the executors of B sued A and obtained a decree for the full amount of the rent due from him since B's death.

Held, that as the parties entered into the agreement under a mistake of fact, A was entitled under the provisions of section 72 of the Indian Contract Act to recover back the whole amount he paid as rent to B's widow.

Cooper v. *Phipps* (*L. R.* 2 *H. L.* 149) and *Ragnath Sahai* v. *Mam Raj* (80 *P. R.* 1895), followed. RAM KISHAN *v.* RANI BHAGWAN KAUR. **131 P R 1906**

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CONTRACT ACT (IX OF 1872)—*contd.*

Section 73.

1. *Suit for compensation for breach of Contract Act, IX of* 1872, *sections* 73, 74.

See LIMITATION ACT, 1877, SCHEDULE II, ARTICLE 115. **22 P R 1883**

2. *Correlation of Contract and Registration Acts—Registration Act, section* 49—*Meaning of the words "affect immovable property"—Admissibility of document for other purposes.*

See REGISTRATION ACT, 1877, SECTION 49. **83 P R 1891**

See ALSO SPECIFIC RELIEF ACT, 1877, SECTIONS 39, 40. **186 P R 1882**

3. *Breach of contract to transfer business—Measure of damages.*

In a suit for damages for breach of contract, it appeared that the defendants contracted to transfer their business, including stock and outstandings, to the plaintiffs, and to pay them Rs. 1,650 in consideration of the plaintiffs paying the debts of the firm, that the defendants did not complete the transfer, or pay Rs. 1,650 to the plaintiffs, and that the plaintiffs sued for damages accordingly, which they assessed at Rs. 2,000. It further appeared that the liabilities of the defendants' firm were Rs. 5,500.

Held, that the plaintiffs were entitled to recover compensation for loss or damage, in terms of section 73 of the Contract Act; that if the plaintiffs had suffered any loss or damage such loss or damage had arisen from their having been prevented from making the profit (if any) which would have accrued to them, if the defendants had fulfilled their promises, and the plaintiffs had fulfilled theirs—that is to say, the plaintiffs had been deprived of any surplus, which would have remained in their hands in the form of stock and money after paying Rs. 5,500 minus Rs. 1,650 due by plaintiffs, that is, after paying Rs. 3,850 to defendants' creditors, and realizing outstandings due to defendants, less costs of recovering the same; that in order to recover anything the plaintiffs must prove that the total of the value of stock and net recoveries from outstandings due to defendants would have exceeded Rs. 3,850, and the plaintiffs were entitled to recover from defendants any sum thus arrived at in excess of that sum, within the amount of Rs. 2,000 claimed by them. GANPAT MAL *v.* KIRPA RAM. **20 P R 1889**

4. *Bond payable by instalments—Interest payable on default from date of bond—"Penalty"—Compensation for breach of contract—Primary and secondary obligations—Act XXVIII of* 1855, *section* 2, *and Indian Contract Act*, 1872, *sections* 73, 74.

Held, in the case of a bond payable by instalments, that when a promisor engages to pay each instalment on a specified date without interest, and in the event of a breach of his engagement, with interest from the date of his bond, the primary obligation is to pay the instalment on the date specified, and the subject of the promise is the secondary obligation to make compensation for the breach of the primary obligation, the right of the promisee to compensation being re-

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CONTRACT ACT (IX OF 1872)—*contd.*

Section 73—*concld.*

gulated either by section 74 of the Contract Act when there is an agreement as to the compensation to be made, and it satisfies the requirements of the said section, or by section 73, when there is no agreement, or it does not satisfy the terms of section 74.

When a contract in the above terms fails to indicate, either expressly or by implication, a date up to which the interest is to be calculated and the period therefore remains indefinite, it cannot be said that a sum is named within the meaning of section 74 of the Contract Act.

Section 2 of Act XXVIII of 1855 was not intended to override the general law of contracts and compel the Courts to enforce any and every agreement which might be made as to payment of interest, and there is nothing in the said section to restrict, or in any way effect, the power of the Courts to adjudicate upon the right to recover the interest claimed, or the operation of sections 73 and 74 of the Contract Act in respect to the compensation to be made upon breach of a contract to pay money with interest. What is recoverable in a suit upon a breach of a contract to pay money with interest is compensation in money by way of damages and not interest *eo nomine*, though the stipulated rate of interest may be good evidence of the proper measure of the compensation.

I. L. R. IX Calc. 692, *I. L. R. XIX Calc.* 392 and *I. L. R. XV All.* 232, referred to. KANHAYA LAL *v.* NARAIN DAS. **99 P R 1894**

Cf. 36 P R 1894

Section 74.

1 *Act IX of* 1872 *section* 74—*Bond providing for higher rate of interest in default of payment within a certain time.*

See DAMAGES. **150 P R 1883**
55 P R 1885
81 P R 1910

2. *See* LIMITATION ACT, 1877, SCHEDULE II, ARTICLE 115. **22 P R 1883**

3. *Undue influence—Penalty—Unconscionable bargain—Interest.*

See CONTRACT ACT, 1872, SECTION 16. **96 P R 1901**

See ALSO SECTION 73, *supra.* **99 P R 1894**

4. *Section* 74.—Where the contract was a penal contract, *held*, that under section. 74, Act IX of 1872, plaintiff, for breach, was entitled to reasonable compensation only, and not to the full amount fixed or agreed upon. MERI LAL *v.* MUKHTA. **3 P R 1875**

5. *Section* 74—*Penalty—Stipulation to pay higher rate of interest after a certain time.*

The defendant borrowed a sum of money for six months at 3 per cent. per mensem, the bond (which was the only security plaintiff took for the loan) stipulating that if the loan and interest were not repaid within 6 months then 10 per cent. per mensem should be paid after that term on the total sum of the unpaid loan and interest which had accrued during the term of 6 months. The loan was not repaid, and plaintiff demanded payment, upon which defendant said that he should like time

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Section 74—*contd.*

to be given and that he was willing to pay interest for the accommodation. Plaintiff gave time, and at the expiration of 2 months sent in a claim for interest, calculated, for those 2 months, at 10 per cent. per mensem. Defendant paid the amount so claimed for interest. In August 1874, plaintiff sued for the balance due, allowing credit for all payments, and claiming the unpaid part of the loan and interest thereon at 2 per cent. for 6 months, and then interest at 10 per cent. according to the terms of the bond.

Held, that defendant was liable for the full amount claimed; that as to the question whether the stipulation for payment of higher rate of interest was in the nature of a penalty to secure the punctual payment of the money lent and the lower rate of interest, the parties showed an intention that 10 per cent. and nothing less, should be paid; and the intention of the parties is that which governs the question,

Held also, that the stipulation in such cases is not to pay a sum of money by way of a penalty, but to pay money by way of interest, and the Court is bound to decree the sum mentioned in the agreement under section 2 of Act XXVIII of 1855, section 74 of the Contract Act being wholly inapplicable. TEK CHAND *v.* MORICE. **5 P R 1877**

6. *Section* 74—*Penalty—Liquidated damages—Agreement to pay higher rate of interest in default of payment of principal on due date.*

M. B. executed two mortgage-bonds in favor of H. M., stipulating to pay interest at Re. 1-4-0 per cent. per mensem for two years, and after that period at Rs. 2-8-0 per cent. *Held*, that the contract to pay interest at the double rate in default after two years was a valid contract, and H M. was entitled to claim interest at Rs. 2-8-0 per cent. under it.

An agreement to pay a double rate of interest in default of repayment of the loan by a given date is not in the nature of a penalty, but of liquidated damages, and one to which effect ought to be given as being the agreement of the parties. HONDA MAL *v.* MUHAMMAD BAKSH **25 P R 1879**

7. Plaintiffs sued to redeem certain property from mortgage. The mortgage-deed provided that interest should be paid at 12 per cent. per annum on the principal sum at the expiration of one year, and in default of its being paid on that date, the interest should be added to the principal, and on the consolidated sum interest should be paid at 18 per cent. per annum. *Held*, that the increased rate of interest was intended to operate as a penalty.

The question whether the provision as to a higher rate of interest is to be treated as liquidated damages or as a penalty is a question of law to be decided on a consideration of the whole instrument in each case. BARMA MAL *v.* GOKAL CHAND **51 P R 1879**

8. *Contract Act (IX of* 1872), *section* 74—*Compensation for breach of contract—"Sum named" to be paid in case of breach.*

In a suit for compensation for breach of a

CONTRACT ACT (IX OF 1872)—*contd.*

Section 74—*concld.*

contract, it appeared from the instrument upon which the suit was founded that the contract of the debtor was to re-pay Rs. 1,500 by monthly instalments of Rs. 65; that by clause 2 of the agreement should he fail to pay any one instalment on or about a fixed date in each succeeding month, the creditor was at liberty to foreclose the bond and to demand the whole unpaid balance, which might be due on such failure; and that by clause 3, so long as the foreclosure due to the failure entered in the above condition should last and the amount remain unpaid, the creditor was at liberty to charge interest at the rate of 5 per cent. per mensem on the amount due on the date of foreclosure.

Held, that the case fell within section 74 of the Contract Act, as there had been a breach of contract to pay instalments, and the balance due at date of default with interest thereon at Rs. 60 per cent. till date of payment was the sum named as the amount to be paid in case of such breach.

The question was one of intention and construction and in the present case clauses 2 and 3 "ascertained the compensation for a breach "of the obligation" expressed in the first clause of the instrument (*see Abdulla* v. *Mussammat Kulvanti* (No. 150 *P. R.* 1883). DHANPAT *v.* KASHI RAM. **106 P R 1887**

9. *Future interest—Sum named—Section 74, Contract Act—Penalty—Equitable relief.*

Plaintiffs mortgaged their land to defendant, the latter to be placed in possession and enjoy the produce in lieu of interest. The mortgagors had the right to redeem within five years, but after that the land was to be considered as sold to the mortgagee for the principal sum advanced, or interest at the rate of 2½ per cent. per mensem was in future to be paid.

Held, in a suit for redemption by the mortgagors, nearly 12 years after the expiry of the said term of five years, that they were not entitled to claim in equity to be relieved from the burden which they had deliberately imposed upon themselves.

Semble: the provision as to interest in the present case was not a sum named which could be relieved against under section 74, Contract Act.

Wallis v. *Smith*, *L. R.* 52 *L. J. Ch.* 145; S. C., *L. R.* 21 *Ch. Dn.* 243, and *I. L. R.* X *Calc.* 305, referred to. BASAWA SINGH AND CHANDA SINGH *v.* HEM SINGH. **99 P R 1891**

10. *Interest—Compound interest—Penalty.*

Held, that a stipulation in a bond for the payment of compound interest at the same rate as that payable on the principal is not necessarily a penalty within the meaning of section 74 of the Indian Contract Act.

Ganga Dayal v. *Rachu Lal and another* (*I. L. R. XXV All.* 26), *Janki Das v. Ahmad Husain Khan* (*I. L. R. XXV All.* 161), and *Rameswar Prosad Singh* v. *Rai Sham Kishen* (*I. L. R. XXIX Calc.* 51), referred to and followed. MUL SINGH *v.* KISHEN GOPAL. **58 P R 1904**

CONTRACT ACT (IX OF 1872)—*contd.*

Section 75.

Act IX of 1872, *section.* 75—*Rescission of contract—Suit for compensation for non-fulfilment of contract—Omission to sue for formal rescission.*

There is no positive rule of law that when, after a voidable contract has been fulfilled, one of the parties subsequently discovers facts, which if known at an earlier stage would have entitled him to rescind the contract without instituting legal proceedings, the only mode in which such party can obtain relief is by a formal adjudication of rescission through a Court.

Where therefore plaintiff sued for compensation for damages sustained through the non-fulfilment of a contract of sale which was voidable by reason of the misrepresentation of the defendant, and the question was whether there had been such a rescission as would entitle the plaintiff to recover the damages, *held*, that the plaintiff was not bound to sue for rescission of the contract, nor was the plaintiff's omission to communicate to the defendant before suing him the rescission of the contract, (which was sufficiently clearly communicated by the act of suing for damages as soon as the defendant became aware of the suit)., fatal to the maintenance of the present claim for damages. SANT LAL *v.* MUSSAMMAT HUSSAINI. **60 P R 1882**

Section 76.

See SECTION 108, *infra.*

Section 91.

And sections 4, 5.

See CONTRACT ACT, 1872, SECTION 4.

Section 95.

And section 171—*Arbitrators' lien on award.*

See ARBITRATION. **22 P R 1897.**

Section 108.

1. *And sections* 178, 179—*Pledge by co-owner in possession.*

See CONTRACT ACT, 1872, SECTION 178.

2. *Sections* 76, 108—"*Goods*"—*Stolen currency note—Bonâ fide holder.*

R. L. of Rohtak was robbed of a currency note by one N., who brought it to Delhi and with the assistance of H. got it cashed by R. N., who passed it for full consideration to M.

The Rohtak police traced the note to M. D., seized half of it and gave it in as evidence in the criminal case against the thief N. The latter was convicted, and by order of the Magistrate the half note was handed over to R. L., who subsequently sued before the Judicial Assistant of Rohtak and obtained a decree (*ex parte*) against M. D., for the other half note, or (alternatively) for Rs. 100.

In a suit by M.D., against R.N., from whom he received the note, to recover its value, *held* that M. D. was not entitled to recover, he having received full consideration from R. N.

The title of the *bona fide* holder, for consideration, of a currency note, is not defective by reason of a defect in the title of a previous holder.

CONTRACT ACT (IX OF 1872)—*contd.*

Section 108—*contd.*

Held further, that the fact of M. D. having been deprived of his note by a decree of the Judicial Assistant of Rohtak, did not give him a cause of action against R. N., from whom he obtained it. MATHRA DAS *v.* RAMA NAND. **73 P R 1878**

3. Bonâ fide *holder—Goods—Stolen money.*

Plaintiff received from B. a certain sum of money in satisfaction of a lawful debt. Shortly before this payment, a theft had taken place in the treasury at Lahore in which B.'s son was implicated. The Police traced the money to the plaintiff and had it produced as evidence in the criminal case against the thieves. The Magistrate, acting under section 517 of the Criminal Procedure Code, directed that the money produced be handed over to Government as part of the stolen property. Plaintiff applied for restoration of his money, and on refusal instituted the present suit. The defence was that Government held the money under a lawful order, that the plaintiff was not a *bona fide* holder inasmuch as he abstained from making an inquiry into the title of the previous holder—the son of B.—who had committed the theft and that he got no better title to the money than the thief himself under section 108 of the Contract Act.

Held, that section 108 of the Contract Act did not apply, that the question of good faith did not arise in the case, that the plaintiff had received the money as current coin in payment of a lawful debt, and was therefore entitled to its recovery. KANSHI RAM *v.* SECRETARY OF STATE. **83 P R 1890**

4. *Vendor and purchaser—Possession of vendor after sale with consent of purchaser—Notice to public—Re-sale by the vendor to third party—Title of vendee—Contract Act,* 1872, *section* 108, *Exception* 1.

In June 1899 A sold to B five horses for Rs. 2,400 and was allowed by B to keep them in his own possession, neither of the parties giving notice to the public of the sale. C, who had a decree against A, applied for attachment of movables, including these horses, and on the 3rd July 1899 accepted from A, without notice of the sale to B, two of these horses as consideration for Rs. 1,500 in part payment of his decree. B challenged the subsequent sale to C. *Held* that, inasmuch as B allowed A to retain possession of the horses after his purchase, and led C to believe that A was the owner, the sale by A to C was binding, and that C acquired under section 108, Exception 1 of the Contract Act, a title which could not be impeached by B.

Seager v. Hukma Kesa (*I. L. R. XXIV Bom.* 458) and *Shankar Murlidhar* v. *Mohan Lal* (*I. L. R. XI Bom.* 704), referred to. FRAMJEE *v.* MCGREGOR AND ANOTHER. **27 P R 1902**

CONTRACT ACT (IX OF 1872)—*contd.*

Section 108—*concld.*

5. *And section* 109—*stolen currency note*—Bonâ fide *holder—Liability of.*

The plaintiff changed a Government currency note belonging to the defendant, which note subsequently turned out to be a stolen one, and the Court deciding the criminal case ordered the plaintiff to return the note to its original owner. Plaintiff instituted a suit against the defendant from whom he received the note to recover its value. It was admitted that the defendant was a *bonâ fide* holder of the currency note. The lower Court found the plaintiff entitled to recover the amount paid by him to defendant as damages, *vide* section 109 of the Indian Contract Act.

Held, that the plaintiff was not entitled to maintain the suit against the defendant. Sections 108 and 109, Indian Contract Act, had no bearing on the sale, for the passing of the note for money could not be considered to be a sale of the note within the meaning of that Act.

Mathra Das v. *Ramanand* (73 *P. R.* 1878), *Empress* v. *Joggessur Mochi* (*I. L. R. III Calc.* 379), and *Kanshi Ram* v. *The Secretary of State for India in Council* (83 *P. R.* 1890), referred to. DASAUNDI *v.* IMAM-UN-DIN.

18 P R 1905

6. *Purchase of stolen buffalo by a* bonâ fide *purchaser—Sale in market overt—Title conveyed by vendor to vendee—Right of owner to reclaim from such purchaser—Contract Act,* 1872, *section* 108.

Held that as in India under section 108 of the Contract Act, 1872, a seller cannot give to a buyer a better title than he has himself and the buyer even in overt market is not protected by any of the exceptions to that section, the real owner of a buffalo which had been stolen is entitled to recover it from an honest purchaser. FAIZ AHMAD *v.* KING-EMPEROR.

2 P R 1908 Cr.

Section 112.

1. *And section* 118—*Agency—Merchant buying goods in foreign market on behalf of another—Fraud—Right to rescind contract—Goods ordered according to sample—Difference in goods supplied.*

See PRINCIPAL AND AGENT.

21 P R 1897

2. *Act IX of* 1872, *sections* 112, 118—*Sale of goods by sample—Vendee's power of rejection of all the goods, in case of entire contract, if some are not equal to sample.*

In a suit by plaintiff to recover the price of 49 kegs of white paint, it appeared that there was an entire contract with the defendant for 49 kegs equal to a particular sample, that 49 were delivered of which, as a fact, 18 were not equal to sample; that defendant's agent kept the 49 kegs for only a reasonable time, and caused some of them to be examined, and then rejected the whole, assigning as the ground, that they were not equal to sample.

CONTRACT ACT (IX OF 1872)—*contd.*

Section 112—*concld.*

The lower Court, holding that the defendant ought to have retained the good and rejected the bad kegs, decreed accordingly.

Held (reversing the order of the lower Court) that, in acting as above, the defendant did nothing or omitted nothing so as to violate any obligation due by him under the contract to the plaintiff, and did nothing more than he was entitled to do under section 118 of the Contract Act, which does not impose upon a purchaser the duty of examining *all* the articles delivered under an entire contract for numerous articles. SECRETARY OF STATE *v.* JOHNSON.

79 P R 1888

Section 116.

See SECTION 19 *supra.*

41 P R 1886

Section 118.

See SECTION 112 *supra.*

Sections 134, 137, 139.

Liability of creditor to take legal proceedings against principal debtor—Discharge of sureties—Act IX of 1872, *sections* 134, 137, 139.

See PRINCIPAL AND SURETY.

2 P R 1878

Section 140.

See SECTION 251 *infra.*

107 P R 1907

Section 145.

Money rightfully paid—Payment by surety of debt barred as against principal—Act IX of 1872, *section* 145.

See PRINCIPAL AND SURETY.

30 P R 1878

Section 151.

1. *Liability for damages—Suit for compensation for damage caused to horse during transit by rail—Act IX of* 1872, *sections* 151, 152—*Railway Act,* 1879, *sections* 8, 10, 13—*Special Contract.*

See RAILWAY COMPANY.

127 P R 1882

2. *Suit for damages for injury to consignment—Carriers—Act IX of* 1872, *section* 151—*Demurrage.*

See RAILWAY COMPANY.

92 P R 1883

3. *Railway Act,* 1879, *section* 10—*Liability of carrier by Railway—Common carrier—Act IX of* 1872, *sections* 151, 161.

See RAILWAY COMPANY.

97 P R 1886

4. *And section* 152—*Contract—Bailment—Liability of bailee in respect of goods deposited with him.*

In a suit for the value of jewellery deposited by the plaintiff with defendant for safe keeping on the allegation that defendant had

CONTRACT ACT (IX OF 1872)—*contd.*

Section 151—*concld.*

concocted a story about a burglary having taken place at their shop in order to account for the loss of his (plaintiff's) jewellery, which in point of fact had been made away with by the defendants, and on the contention, even if the burglary actually took place defendants were liable as they failed to exercise due care and caution in respect of the articles deposited, the defendants pleaded that the jewellery in question as well as other articles belonging to themselves were really stolen, and that they were not in any way responsible for the loss.

Held, that as the articles were actually stolen from defendant's shop, and they had taken as much care of the articles bailed to them as an ordinary prudent man would under similiar circumstances take of his own goods of the same quality and value, and having regard to sections 151 and 152 of the Indian Contract Act, 1872, the defendants were not liable. LAKHMI DAS AND ANOTHER *v.* BABU MEGH RAJ.

90 P R 1900

5. *And section* 161—*Bailee not responsible for the loss of the thing bailed.*

Plaintiff, a jeweller of Lahore, sued there to recover from the defendant, a jeweller of Calcutta, the value of certain jewellery sent by him to the latter for repairs and subsequently lost. It appeared that the parties method of transacting business was that the plaintiff used to receive jewellery for repairs from customers and send it off by post uninsured to the defendant, who after executing the necessary work returned the same uninsured by V.-P.P. the value being the sum due to defendant for the work. The plaintiff having sent defendant in the ordinary way a parcel of jewellery for repairs with a request for its return by first post, the defendant returned the articles duly repaired according to the usual practice by V.-P. P. uninsured, the sum to be recovered from plaintiff being the amount of his charges for the work done. The parcel was received in the Lahore Post Office and a postal peon took it to the plaintiff's shop, but as the latter did not find it convenient to pay then he refused delivery and asked the peon to keep it for him till he should send for it. Two days after the plaintiff sent an employee for it, but the parcel could not be found and in fact it was discovered to have been lost. The defence contested the claim. *Held*, that the defendant was not liable for the loss of the parcel, as it did not arise from his negligence, and moreover the previous conduct of the plaintiff estopped him from urging that the neglect on defendant's part to insure on the particular occasion was a want of such care as a man of ordinary prudence would under similar circumstances have taken of his own goods.

Held also, that the Post Office holding the jewellery at Lahore was plaintiff's agent and not defendants' and, therefore, loss by the Post Office did not render defendants liable. BOSECK & CO. *v.* MANDLESTAN.

70 P R 1906

CONTRACT ACT (IX OF 1872)—*contd.*

Section 152.
See SECTION 151, *supra.*

Section 161.
See SECTION 151 *supra.*
97 P R 1886

Section 170.
Act IX of 1872, *section* 170—*Bailee's lien—Power to retain goods till payment for their custody.*

Held, that in the absence of any express agreement a bailee of goods is not entitled to retain the goods till paid for their custody, such custody not being a service involving the exercise of labour or skill within the meaning of section 170 of the Contract Act. CHANDA MAL *v.* GANDA SINGH.
60 P R 1885

Section 171.
See ARBITRATION. **22 P R 1897**

Section 176.
Suit by pawnee for money lent, and for sale of property pawned—Suit barred as against the defendant personally but in time as against the pawned property—Act IX of 1872, *section* 176.
See LIMITATION ACT, 1877, SCHEDULE II, ARTICLE 57. **116 P R 1881**

Section 178.
See SECTIONS 69 AND 70, *supra.*
199 P R 1882

1. *Mortgage of personal property not followed by possession—Subsequent pledge with possession—Act IX of* 1872, *section* 178.
See MORTGAGE. **70 P R 1874**

2. *Pledge—Pledge by co-owner in possession—Contract Act,* 1872, *sections* 108, 178, 179.

N. M. and K. L. had made at Calcutta a necklace, valued at above Rs. 6,500. This was sent to K. L. at Delhi for sale there, but was pledged by K. L. to S. R., a jeweller of Delhi, for a certain sum, which K. L. appropriated to his own purposes. N. M. and K. L. were joint-owners of the necklace with equal interests therein, but S. R. had no notice that K. L. was not sole owner, and had no reason to presume that K. L. was acting improperly in making the pledge. The lower Courts held that the rights of the parties were governed by section 179 of the Contract Act, 1872, and that N. M. could recover possession of the jewel on payment of half its value or, in the alternative, could recover half its value from S. R.

Held, on appeal by S. R., that though the answer to the question, whether a given person was in possession of the thing pledged must depend upon circumstances which may vary in each case, in the present case K. L., one of the co-owners, held the jewel in his safe custody by the express direction of the other co-owner, and was, therefore, a person "in possession" of it within the meaning of section 178 of the Contract Act, and, as such, was capable of making a valid pledge of it in its entirety.

Section 178 of the Act is, in its terms, wide enough to include any person who is "in possession" of a thing, whether his interest be

CONTRACT ACT (IX OF 1872)—*contd.*

Section 178—*concld.*
limited, or even if he has no interest at all, and a pledge by a person with a limited interest in the thing pledged may fall under the section and may be valid, provided the pawnee acted in good faith and there was no such defect in the pawner's title as is mentioned in the second proviso to the section. SHADI RAM *v.* MAHTAB CHAND. **1 P R 1895**

3. *Contract—Bailment—Possession of bailee in respect of goods hired by him from bailor—Contract Act,* 1872, *section* 178.

Held, that the possession of a person who had obtained a bicycle from the owners, on the hire and purchase system, under circumstances which were not such as to raise a reasonable presumption that he was acting improperly, and who had not made default in payment of instalments of hire was in possession within the term of section 178 of the Contract Act, IX of 1872, such as would confer a valid title on a pawnee in good faith of the bicycle under section 178 of the Contract Act.

Chamman Khan v. *Mody* (70 *P. R.* 1874), *Shadi Ram* v. *Mahtab Chand* (1 *P. R.* 1895), *Lickbarrow* v. *Mason (Smith's Leading Cases, Vol. I)* and *Colonial Bank* v. *Cady* (*L. R.* 15 *App. Cas.* 267), cited. *Babock* v. *Lawson* (*L. R.* 5, *Q. B. Dn.* 284), *Singer Manufacturing Company* v. *Clark* (*L.R.* 5 *Ex. Dn.* 37), *Greenwood* v. *Halquette* (20 *W. R.* 467), *Le Gent* v. *Harvey* (*I. L. R. VIII Bom.* 501), *Shankar Murlidhar* v. *Mohan Lal Jadugan* (*I. L. R. XI Bom.* 704), and *Seager* v. *Hukma Kesa* (*I. L. R. XXIV Bom.* 458), distinguished. ABDUL HASSAN KHAN *v.* RANGI LAL.
34 P R 1892

Section 179.
See SECTION 178, *supra.* **1 P R 1895**

Section 187.
Husband and wife—Power of wife to pledge husband's credit—European Christians.

In a case where the husband and wife were European Christians, *held*, that in order to make the husband liable for goods purchased by, and supplied to, his wife, it is necessary to prove that the relation of principal and agent existed between them, or that the conduct of the husband was such as to estop him from pleading that there was no such agency, or as to show that he clearly ratified the acts of his wife acting as his agent in respect of the purchases in question, and that it is not sufficient to show that the tradesman *bonâ fide* believed in the existence of the agency. Such agency must in fact exist, and though in respect of "necessaries" supplied to the wife while living with her husband there is a presumption that it does exist, the presumption is rebuttable, and is rebutted when it is proved that the wife had not her husband's authority.

In the present case, *held*, on the facts that the wife was not acting as the authorised agent of her husband in making the purchases in question, and that the husband had not

CONTRACT ACT (IX OF 1872)—*contd.*

Section 187—*concld.*
so conducted himself as to make it inequitable for him to deny, or to estop him from denying his wife's authority. DAL CHAND *v.* MR. THADDEUS. **63 P R 1899**

Section 194.
Appointment of Road Overseer to superintend building—Liability of, as agent, for negligence.
See PRINCIPAL AND AGENT.
77 P R 1874

Section 201.

Payment by agent after death of principal—Act IX of 1872, *section* 201.
See LIMITATION ACT, 1877, SECTION 20.
78 P R 1880

Section 208.
Auction—Revocation of auctioneer's authority not communicated to purchaser—specific performance.

The defendant, being indebted to A, authorised the latter to sell a house belonging to the former and appropriate the proceeds in satisfaction of the debt. A. appointed an auctioneer, and the sale was advertised. A month later, A. and the defendant came to terms about the payment of the debt due to A. and agreed to stay the sale. A. omitted to inform the auctioneer not to proceed with the sale, and the plaintiff became the auction-purchaser, to whom also the fact that defendant and A. had agreed to stay the sale was unknown at the time of sale.

Held, that the sale was valid under Act IX of 1872, sections 194 and 208, and that the plaintiff was, under the circumstances, entitled to specific performance. BAIN *v.* BYRNE.
63 P R 1874

Section 213.
1. *And section* 30—*Principal and agent by Bandi contracts—Suit for profits received by defendants as plaintiff's agents—Liability of agent to render accounts to his principal.*
See CONTRACT ACT 1872, SECTION 30.

2. *And section* 258—*Partnership—Suit by partner against co-partner who was also manager of the business to have an account rendered of his stewardship—Accounts without dissolution.*
See PARTNERSHIP.

3. *Suit by agent against principal for adjustment of accounts—Contract Act,* 1872, *section* 213.

Held, that though under section 213 of the Contract Act, 1872, an agent is under a statutory obligation to render accounts to his principal, the principal is under no counter statutory obligation of the same nature towards the agent. In the absence, therefore, of special circumstances, trade usage or definite contract between the parties, the principal cannot be compelled to keep accounts for, or render accounts to, his agent so as to entitle the latter to sue the former for an adjustment of accounts, even though in point of fact the principal has actually kept accounts.

CONTRACT ACT (IX OF 1872)—*contd.*

Section 213—*concld.*

The right to claim a statement of accounts is an unusual form of relief only granted in certain specific cases, and is only to be claimed when the relationship between the parties is such that this is the only relief which will enable the claimant to satisfactorily assert his legal rights. JOWAHAR SINGH *v.* HARIA MAL. **60 P R 1899**

Section 217.

1. *Partnership—Lien—Set of.*
See PARTNERSHIP. **53 P R 1898**

2. *Agent's rights of retainer—"Business" of agency.*
See PRINCIPAL AND AGENT. **49 P R 1885**

Section 222.

And section 30—Brokerage fees in respect of wagering transaction.
See CONTRACT ACT, 1872, SECTION 30.

Section 230.

1. *Liability of Honorary Secretary of Club.*
See CLUB. **15 P R 1891**

2. *Suit by agent of undisclosed principal.*
See PRINCIPAL AND AGENT. **64 P R 1881**

3. *Auctioneer and purchaser—Auctioneer's right to sue for price of goods sold.*
See PRINCIPAL AND AGENT. **86 P R 1884**

4. *Indian Contract Act, IX of 1872, section 230 (3)—Personal liability of agent in British India for money due to a contractor for work done for a Rana outside British India—Limitation—Indian Limitation Act, XV of 1877, article 56 and section 19, explanation (1)—Acknowledgment by agent.*

Held, that plaintiff suing for the balance of money due to him for work done for a Rana in his State situate outside British India was entitled under section 230 (3) of the Indian Contract Act, IX of 1872, to sue the defendant, the Rana's agent (*qua* the work) in British India, from whom plaintiff had actually got the contract.

Semble, that article 56 of the second schedule of the Indian Limitation Act is applicable to such a suit.

Held further, that a letter addressed to the Rana by the defendants within 3 years from the date of the completion of the work by the plaintiff was a sufficient acknowledgment of liability in respect of the plaintiff's claim within the meaning of explanation (1) to section 19 of the Indian Limitation Act, as it admits in clear and definite language that plaintiff has a good and subsisting claim. ABDUL ALI *v.* GOLDSTEIN. **43 P R 1910.**

Section 231.

An undisclosed principal can take advantage of any contract made for him by his agent.
See NEGOTIABLE INSTRUMENTS ACT, 1881. **71 P R 1909.**

CONTRACT ACT (IX OF 1872)—*contd.*

Section 235.

Liability of pretended agent—"loss or damage"—Compensation how to be estimated.
See PRINCIPAL AND AGENT. **160 P R 1882**

Section 237.

Contract made by a military officer invested with certain powers as forest officer—Unauthorised contract—Principal and agent—continuing breach of contract.
See FOREST ACT, 1878, SECTIONS 2, 67. **16 P R 1899**

Section 238.

Difference between ordinary partnership and hereditary partnership of a joint Hindu family
See HINDU FAMILY. **97 P R 1910**

Section 239.

See JURISDICTION OF SMALL CAUSE COURT. **74 P R 1880**

Section 245.

See SECTION 264, *infra.*

Section 249.

*And section 264—Notice of dissolution of partnership on the retirement of a dormant partner—Liability of such partner for debts of partnership—*Shikmi sharik.

Held that it is not necessary to give any express notice of dissolution of a partnership on the retirement of a dormant partner especially when the fact of the latter's relationship was unknown to the customers of the concern, but he is liable for all debts and obligations incurred by the partnership up to the date of his retirement from that business.

Shikmi sharik found to be a dormant partner and not a mere sub-partner. HASHMAT ALI *v.* LACHMI NARAIN. **75 P R 1908**

Section 251.

1. *Power of a managing member of joint family to give discharge binding on minor—Act IX of 1872, section 251—Partner's powers to bind co-partners.*
See HINDU LAW—JOINT FAMILY. **63 P R 1883**

2. *Hindu joint family—Power of one member to bind the others—Contract Act, 1872, section 251.*
See HINDU LAW—JOINT FAMILY. **45 P R 1899**

3. *Partnership—Assignment of his share by a partner—Liability of assignee on admission for debts owing by the firm—Act IX of 1872, sections 140, 251.*
See PARTNERSHIP. **107 P R 1907**

Sections 253, 254, 255.

1. *Suit for dissolution and winding-up of partnership—Form of suit—Act IX of 1872, sections 253, 254, 265.*
See PARTNERSHIP. **12 P R 1881**

2. Section 253 (10)—Hindu partnership dissolved by death of one partner.
See HINDU FAMILY. **97 P R 1910**

3. *Partnership—Insolvency of firm—Dissolution of partnership.*
See PARTNERSHIP. **37 P R 1897**

CONTRACT ACT (IX OF 1872)—*concld.*

Section 262.

Partnership—Lien—Set-off.
See PARTNERSHIP. **53 P R 1898**

Section 264.

See SECTION 249, *supra.* **75 P R 1908**

And section 245—Dissolution of partnership—Liability of retired partner for debts contracted after dissolution.
See PARTNERSHIP. **78 P R 1903**

Section 265.

1. *Partnership—Suit for account and share of profits—Act IX of* 1872, *section* 265.
See JURISDICTION. **71 P R 1881**

2. *Court of Sub-Judge of 1st class "not inferior to the Court of the District Judge."*
See JURISDICTION. **55 P R 1888**

3. *Suit for winding-up partnership in land—Co-sharers in agricultural land.*
See JURISDICTION OF CIVIL OR REVENUE COURTS. **115 P R 1888**

4. *Suit for dissolution and winding-up of partnership—Form of suit.*
See PARTNERSHIP. **12 P R 1881**

5. *Suit to wind-up partnership—Power to pass decree against plaintiff in settling accounts—Defendant disclaiming order in his favour.*
See PARTNERSHIP. **65 P R 1888**

6. *Section 265—Suit for an account—Jurisdiction.*

Plaintiff sued for a dissolution of partnership and a declaration of the amount due to him for his share of the profits after a settlement of accounts. *Held*, that the plaintiff was not bound to institute such a suit in the Court of the District Judge, under section 265, Act IX of 1872. RAGHA *v.* NORANGA. **76 P R 1876**

7. *Suit to wind up a partnership business.*

Plaintiffs, representatives of a deceased partner in a business carried on in Calcutta, instituted a suit for an account in the Court of the Extra Assistant Commissioner at Amritsar. *Held*, that the suit was one to have the partnership business wound up, and fell within the terms of section 265 of the Contract Act (IX of 1872).

Held, further, that the Extra Assistant Commissioner had no jurisdiction; such a suit being triable only by a Court not inferior to the Court of a District Judge; and that, as the principal place of business of the firm was in Calcutta, the Amritsar Courts had no jurisdiction. DURGA DAS *v.* BELI MISR. **35 P R 1878**

CONTRACT OF INDEMNITY.

Advance made to contractors on plaintiff's security—Failure of contract—Contract of indemnity made in Foreign State—Application of law of British India.
See PRINCIPAL AND SURETY. **7 P R 1882 P C**

CONTRACT OF MARRIAGE.

A civil contract under Mohamedan Law.
See MARRIAGE. **73 P R 1909**

CONTRACT IN WRITING.

1. *Contract in writing—Oral agreement in substitution—Admissibility.*
See EVIDENCE. **169 P R 1883**

2. *Contract in writing—Merger.*
See EVIDENCE. **30 P R 1884**

3. *Suit on balance of account—Contract in writing—Claim barred by Act IX of* 1871, *section* 21.
See LIMITATION ACT (XV OF 1877), SECTION 20. **62 P R 1881**

4. *Contract in writing—Exclusion of other evidence.*
See REGISTRATION ACT (III OF 1877), SECTION 17. **30 P R 1884**

See REGISTRATION ACT (III OF 1877), SECTION 50. **2 P R 1885**

5. *Contract in writing—Oral agreement entered into after passing of Tenancy Act.*
See TENANCY ACT, XXVIII OF 1868, SECTION 8. **23 P R 1881**

CONTRACTOR.

Employer and contractor—Responsibility of employer for negligence of contractor.
See NEGLIGENCE. **108 P R 1883**

CONTRIBUTION.

1. *Suit for contribution by surety against his co-surety for costs incurred in defending suit.*
See COSTS. **86 P R 1868**

2. *Suit for contribution—Suit to enforce obligation not arising out of fraud of parties.*
See FRAUD. **42 P R 1883**

3. *Payment of father's debts by one son—Liability of other sons to contribute.*
See HINDU LAW—UNDIVIDED FAMILY. **79 P R 1883**

4. *Lease of* tirni*—Suit by lessee to enforce contribution from co-lessee towards sum paid into treasury.*
See JURISDICTION OF CIVIL OR REVENUE CUURTS. **33 P R 1894**

5. *Suit for contribution on partition—Jurisdiction.*
See JURISDICTION OF SMALL CAUSE COURT. **66 P R 1871**

6. *Suit for contribution—Contract.*
See JURISDICTION OF SMALL CAUSE COURT. **37 P R 1886**

7. *Suit by co-surety to recover from principal debtor sum paid to a co-surety as contribution towards amount paid by him to a creditor.*
See LIMITATION ACT (XV OF 1877), SCHEDULE II, ARTICLES 81, 83. **98 P R 1881**

CONTRIBUTION—*concld.*

8. *Mortgage—Apportionment of mortgage-debt—Contribution—Transfer of Property Act,* 1882, *section* 82.
See MORTGAGE—MARSHALLING. **75 P R 1895**

9. *Suit for contribution.*
See SMALL CAUSE COURT ACT, 1865, SECTION 6. **118 P R 1888**

10. *Suit for contribution between co-defendants.*

No action for contribution lies between wrong-doers (*e.g.*, by a defendant against a co-defendant in a libel suit for a share of the amount decreed and paid by the former) but subject to that exception, where a decree has been recorded against two defendants, and one has paid more than his share, he may sue the other for contribution. GOLAM HOSSEIN *v.* IMAM BUX. **32 P R 1866**

11. *Joint wrong-doers—Decree for damages—Suit not maintainable.*

H. S. and others brought a suit against the plaintiff and defendants in the present suit for possession of a plot of land, damages for demolition of a wall, and removal of building materials. In that suit the parties to the present dispute denied H. S.'s title and the other allegations in his plaint, but the suit was decreed with costs and Rs. 50 damages, the whole of which were realized from the plaintiff who brought the present suit for contribution against his former co-defendants. The lower Court found that as the plaintiff and defendants knew perfectly well that they were both acting wrongfully and had filed a false defence in the former suit disallowed the present claim.

Held that the suit for contribution was not maintainable, the parties being joint wrong-doers in the common sense of the word as well as in law.

Haramoni Dassi v. *Hari Churn Chowdhry* (*I. L. R. XXII Calc.* 833), *Gobind Chunder Nundy* v. *Srigobindh Chowdhry* (*I. L. R. XXIV Calc.* 330), *Vayangara Vadaka Vittal Manja* v. *Pariyangot Padingara Kuruppoth Kadugochen Nayar* (*I. L. R. VII Mad.* 89), *Fakire* v. *Tassadduq Hussain* (*I. L. R. XIX All.* 462), followed; *Sreeputty Roy v. Loharam Roy* (*7 W. R.* 384) referred to, and *Ruthu Sirdar* v. *Shujoo Parawarink* (*20 W. R.* 235), distinguished. SUDHU SINGH *v.* LEHNA SINGH AND OTHERS. **7 P R 1901**

CONTRIBUTORIES.

Liability of—In regard to unpaid calls unpaid before winding-up.
See COMPANIES. **67 P R 1911**

CONTRIBUTORY NEGLIGENCE.

Act XIII of 1855*—Death caused by actionable wrong—Cause of action—Contributory negligence.*
See CAUSE OF ACTION—MISCELLANEOUS. **85 P R 1894**

CONVERTS.

Native Christian—Hindu convert to Christianity—Rule of succession—Hindu law or Indian Succession Act, 1865*—Evidence of custom—Justice, equity and good conscience—Partition of joint immovable property—Authority of Courts to give money decree in lieu of share—Partition Act,* 1893.

CONVERTS—*concld.*

Held, that the rule of law to regulate succession in the case of a Hindu convert to Christianity should be determined by ascertaining the course of his conduct and the usages adhered to by him since his conversion, and therefore where it appeared that he and his family had severed all connection with Hindu society and in matters relating to social intercourse, marriages and the similar usages, abandoned all caste distinctions and had thoroughly identified themselves with the members of the religion of their adoption, it is in accordance with justice, equity and good conscience to apply to them the rules of inheritance prescribed by the Indian Succession Act, 1865.

Held also, that in a suit for partition of joint immovable property the Court has no authority in the absence of an application under Act III of 1893, to grant a mere money-decree in lieu of a definite share to the claimant. MUKERJI *v.* ALFRED AND OTHERS. **36 P R 1909**

CONVERSION TO CHRISTIANITY.

Conversion to Christianity—Apostacy from Islam—Dissolution of marriage.
See MOHAMEDAN LAW—MARRIAGE.
124 P R 1876 F B.
132 P R 1884
61 P R 1899
85 P R 1906

CONVEYANCE.

Act X of 1862, *Schedule A, articles* 23, 25*—Deed of transfer—Conveyance—No value appearing on face of conveyance.*
See STAMP. **44 P R 1881 F B**

COPIES—DEDUCTION OF TIME REQUISITE FOR OBTAINING.

See LAND ACQUISITION ACT, SECTION 18.
LIMITATION ACT (IX OF 1871), SECTIONS 5, 12.
LIMITATION ACT (XV OF 1877), SECTION 12.

COPIES—ADMISSIBILITY OF.

See EVIDENCE. **49 P R 1882**

CO-PLAINTIFF.

Signing and verification of plaint by some only of the plaintiffs.
See APPEAL. **48 P R 1896**

COPYRIGHT.

1. *Unpublished document.*

An author or composer of any work unpublished and kept for his private use, has a property in it; and to publish that work or composition without his consent constitutes a good cause of action. But if the writer of a document read it in Court in the course of litigation, and allow it to go upon the file, he deprives himself of all right to consider its contents in future as his private property. All that is done by or said to a Judge in open Court is public, as well to those who

COPYRIGHT--*concld.*

are absent as to those who happen to be present. LEITNER *v.* PLOWDEN.

45 P R 1868

2. *Copyright—Act XX, 1847—Copyright in the "Urdu Tarjama, Punjab Record."*

The plaintiff, proprietor of the *Koh-i-Nur* Press, was also proprietor and publisher of a periodical called the *Urdu Tarjama, Punjab Record.* This periodical which was an exact translation of the *English Punjab Record*, was published with the permission of and under an arrangement with the proprietors of the copyright of the *English Punjab Record*. The defendant published a periodical called the *Anwar-ul-Shams* or Urdu translation of the *Punjab Record*, whereupon the plaintiff, alleging a breach of his copyright, sued for an injunction, an account, and other relief.

Held, that the plaintiff's copyright had been infringed. The reports of cases of the Chief Court and of the Financial Commissioner, which have been published in the *Punjab Record* are the subject of copyright; that this copyright had been secured according to law by the proprietors of the *Punjab Record*; and that the plaintiff had for the period which the periodical publications in dispute covered lawfully secured to himself exclusive permission to reproduce these reports in Urdu, and that he (the plaintiff) had obtained a copyright in his periodical.

Form of decree considered. DIWAN BUTA SINGH *v.* MUNSHI JAGAT NARAIN.

15 P R 1893

CO-RESPONDENT.

Death of respondent in a suit for dissolution of marriage—Abatement of claim for damages against Co-respondent.

See ABATEMENT OF SUIT.

60 P R 1906

CORPORATION—REGISTERED.

See CIVIL PROCEDURE CODE, 1882, SECTION 435.

43 P R 1885
53 P R 1886

CORPORATION—UNREGISTERED.

See CLUB.
INCORPORATED SOCIETY.

Pre-emption—Unregistered corporation sued through its manager—Names of members not specified—Plaint returned for addition of such names—Date of institution of suit—Limitation Act, 1887, section 22.

On the 3rd March 1892, A. S. and others sold to the Madrassa Tibbia in Delhi through its Manager H. A., certain land in a village with all accessory rights, the sale-deed being registered on the the 16th March 1892. Subsequently plaintiffs, who were *biswadars* of the village, sued both the vendors and the vendee for pre-emption, the latter being sued as "the Madrassa Tibbia through its Manager, H. A." Summons was issued to H. A. alone, and not to any other member of the said Society, and H. A. appeared and pleaded

CORPORATION—UNREGISTERED—*concld.*

(*inter alia*) that the land had been purchased in the name of the Madrassa Tibbia of which he was sole proprietor. This allegation being denied by plaintiff, H. A. contended that the said Society being an unregistered corporation could not be sued through its Manager or Secretary, and declined to plead or act on its behalf. The District Judge thereupon returned the plaint for the names of the members of the Society to be entered and returned by the 8th May 1893, the time being subsequently extended to the 25th May. On the latter date it was ordered that all the members of the Society as per lists filed by plaintiffs should be impleaded as defendants and summonses issued for the 3rd July 1893. On the 30th August 1893, about thirty of the defendants so impleaded appeared and pleaded that H. A. was not the sole proprietor of the Madrassa Tibbia, and that the suit was barred by limitation by reason of the added members of the Society having been brought on the record *after* the expiry of more than one year from the date of registration of the sale-deed. The District Judge held that H. A. was not the sole proprietor of the Society, and dismissed the suit as barred by limitation, under section 22 of the Limitation Act. Plaintiffs appealed to the Chief Court.

Held, (*i*) that H. A. was not the sole proprietor of the Madrassa Tibbia; (*ii*) that inasmuch as when plaintiffs instituted their suit they intended to sue as the vendee, the Madrassa Tibbia as a body, and not merely its Manager, H. A.,—the members of the Society although not specifically named being comprised in the designation "Madrassa Tibbia,"—the whole of the members were parties from the date of the institution of the suit, and it was consequently not barred under section 22 of the Limitation Act; and (*iii*) that plaintiffs who owned land in the village had a right to pre-empt the land in dispute as against the Madrasas Tibbia which did not own any land therein. MOTI *v.* SAYAD AHMAD SHAFI.

29 P R 1896

CO-SHARERS.

See ABANDONMENT OF LAND.
COMMON LAND.
HINDU LAW—ALIENATION.
HINDU LAW—JOINT-FAMILY.

1. *Sale of share of residential house by one of four Hindu co-sharers.*

See CIVIL PROCEDURE CODE, 1903, ORDER XXI, RULE 35 (1).

16 P R 1898

2. *Joint holding—Alienation by one co-sharer.*

See CUSTOM.

167 P R 1888

3. *Right of* thuladars *to succeed to deceased childless co-proprietor.*

See CUSTOM.

77 P R 1896

CO-SHARERS—*contd.*

4. *Suit for share in the wheel of a well on payment of expenses.*

See CUSTOM.

9 P R 1887

5. *Hindu law—Joint ancestral property—Partition—Power of member of joint family to dispose of his share in immorable property without the consent of his co-parceners.*

See HINDU LAW—ALIENATION.

103 P R 1894

6. *Mortgage of undivided share of joint property—Consent of co-sharers.*

See INTEREST. **114 P R 1894**

7. *Co-sharers in agricultural land—Suit to wind up partnership in land.*

See JURISDICTION OF CIVIL OR REVENUE COURTS. **115 P R 1888**

8. *Suit by co-sharer for a share of profits.*

See JURISDICTION OF CIVIL ON REVENUE COURTS. **74 P R 1886**
38 P R 1891
119 P R 1894
44 P R 1895 F B

SMALL CAUSE COURT, JURISDICTION OF. **34 P R 1888**

SMALL CAUSE COURT, ACT, 1865, SECTION 6. **28 P R 1889**

SMALL CAUSE COURT, ACT, 1878 SCHEDNLE II, ARTICLE 11.
2 P R 1904
ARTICLE 29. **92 P R 1889**

9. *Mortgage of undivided property by a joint owner—Partition—Remedy of mortgagee.*

See MORTGAGE. **2 P R 1906**

10. *Mortgage—Right of one co-sharer to redeem his share.*

See MORTGAGE, REDEMPTION.

42 P R 1892

11. *Lands specifically mortgaged allotted on partition to co-sharers of mortgagor—Liabilty to mortgage lien of lands allotted to mortgagor.*

See MORTGAGE, CONSTRUCTION.

101 P R 1894

12. *Competency of a majority of joint proprietors to maintain a suit for enhancement of rent.*

See PARTIES. **3 P R 1905 Rev.**

13. *Joint holding—Separate possession and enjoyment—Proof of partition.*

See PARTITION. **44 P R 1894**

14. *Suit for partition of joint property by one co-sharer—Right of other co-sharers to obtain possession of shares allotted to them.*

See PARTITION. **23 P R 1905**

15. *Joint ancestral property—Possession of one co-sharer—Adverse possession.*

See POSSESSION.

118 P R 1889

CO-SHARER—*contd.*

16. *Pre-emption—Rights of co-sharers.*
See PRE-EMPTION. **44 P R 1870**
59 P R 1870
91 P R 1875
11 P R 1877
42 P R 1880
82 P R 1880
16 P R 1881
54 P R 1882
56 P R 1882
107 P R 1882
6 P R 1883
30 P R 1887
131 P R 1892
87 P R 1894 F B
55 P R 1899
44 P R 1900
89 P 1900
111 P R 1901

17. *Suit by co-sharer for declaration of right to half share of joint undivided holding—Adverse possession by co-sharer.*
See LIMITATION ACT, 1877, SCHEDULE II, ARTICLE 144. **116 P R 1900**
PUNJAB LAND REVENUE ACT, 1887, SECTION 158.

18. *Suit by co-sharers for specific amount due by representative of one sharer—Agreement.*
See SMALL CAUSE COURT, ACT, 1865, **28 P R 1889**

19. *Suit by or against a co-sharer—How far binding on other co-sharer.*
See RES JUDICATA **111 P R 1882**

20. *Joint property—Suit against proprietary body for share in such property—Confession of judgment by some of the defendants—Effect of such confession.*

Where in a suit for a share in certain joint property in which the plaintiffs failed to prove their proprietary title, some of the defendants, the proprietary body, confessed judgment in favour of the plaintiffs' rights, *held*, by the Officiating Financial Commissioner, that such confession could not avail the plaintiffs so as to entitle them to a decree for the shares represented by the confessing defendants, as the land in question being undivided common property, the defendants, the owners of the joint property, must be looked upon as one person, and the plaintiffs were bound to prove their case against *all* the defendants. SAHIB SINGH *v.* DAU.
5 P R 1883 Rev.

21. *Joint property—Power of one co-parcener to materially alter such property—Appreciable injury.*

Though one co-parcener cannot so deal with property belonging to himself and other persons as joint owners so as to materially alter the character of that property, or to depreciate its value, or to interfere with the comfort of his co-owners without their consent, still in order to justify the interference of a Court of Equity in cases seeking to remove such alteration, it is necessary for

CO-SHARER—*concld.*

the party who seeks its assistance to show that the alteration he complains of is calculated to do him an appreciable injury.

Ghan Singh v. *Sadda Singh* (*No.* 73 *P. R.* 1882), *Chuar Singh* v. *Dhunkal Singh No.* 74 *P. R.* 1885), and *Ghasita Mal* v. *Goga* (*No.* 121 *P. R.* 1885), cited. SODHI JOWALA SINGH *v.* SODHI NAGAR SINGH. **54 P R 1888**

22. *Right to sue—Suit by a sharer for possession of a portion only of the joint property—Right to maintain such suit.*

Held, that a suit by a sharer for joint possession of his share in a portion of the joint undivided estate is maintainable, and cannot be defeated on the ground that he has not included the entire joint property in his claim.

Shadi v. *Sain Ditta* (77 *P. R.* 1887), *Ukha* v. *Daya* (*I. L. R. VII Bom.*, 182), *Hari Narayan Brahme* v. *Ganpatrai Daji* (*I. L. R. VII Bom.* 272), *Haridas Sanyal* v. *Pran Nath Sanyul* (*I. L. R. XII Calc.* 566), and *Nehal Singh* v. *Sowaya Singh* (162 *P. R.* 1884), distinguished SURA SINGH *v.* SANT SINGH. **43 P R 1906**

23. *Common land—Possession of one co-sharer—Adverse possession—Abandonment.*

Held that as in common holding the possession of one co-sharer is the possession of all, mere occupation and enjoyment by one to whatever period it may extend to does not constitute an adverse possession as against the other co-sharer, unless the one in possession is able to show most clearly and emphatically his own adverse possession or abandonment by other.

An absentee in a common holding who leaves his property in the hands of a co-sharer, asserts his rights to succeed to a relative on the opening out of a succession in the village and objects on the first invasion of his rights by the person left by him in charge of his share of the holding, cannot be deemed to have abandoned his property, as in such cases mere length of time or absence does not affect his rights. RAM CHAND *v.* KIRPA RAM. **120 P R 1908**

COSTS.

1. *Order varying arbitrators' order as to costs--Powers of Court.*
See ARBITRATION. **19 P R 1880**

2. *Powers of arbitrators to deal with costs—Order of reference.*
See ARBITRATION. **91 P R 1888**

3. *Discretion of Court as to Costs—Appeal.*
See CIVIL PROCEDURE CODE, 1877, SECTION 220. **21 P R 1883**

4. *Setting aside* exparte *decree on condition of payment of costs—Effect of non-payment within the stipulated time.*
See CIVIL PROCEDURE CODE, 1908, ORDER IX, RULE 13.
60 P R 1904

5. *Order of lower Court awarding costs reversed on appeal—Restitution by summary process.*
See CIVIL PROCEDURE CODE, 1908, SECTION 47. **49 P R 1896**

COSTS—*contd.*

6. *Security for costs—Recovery of costs from surety in execution or by separate suit.*
See CIVIL PROCEDURE CODE, 1908, ORDER XLI, RULE 10.
136 P R 1892

7. *Decree of first Court reversed by Divisional Judge—Further appeal dismissed without summoning respondent—Application for execution of decree for costs.*
See CIVIL PROCEDURE CODE, 1980, ORDER XLI, RULE 11.
9 P R 1900

8. *Cross-objection as to costs—Dismissal of appeal.*
See CIVIL PROCEDURE CODE, 1908, ORDER XLI, RULE 22.
2 P R 1889

9. *Suit for declaration of right to property—Costs—Counsel's Fees.*
See COUNSEL'S FEES. **91 P R 1896**

10. *Award of full costs although two-thirds of claim dismissed.*
See CUSTOM.
121 P R 1893

11. *Decree in favour of appellants with costs--Construction of decree.*
See DECREE. **18 P R 1907**

12. *Dissolution of marriage—Power to execute—District Judge's decree for dissolution as regards costs before confirmation.*
See DIVORCE ACT, 1869, SECTION 17.
35 P R 1887

13. *Act XXVIII of* 1861, *sections* 10 *and* 11*—Execution—Interest on costs—Decree of Privy Council.*
See INTEREST. **1 P R 1877 P C**

14. *Decree-holder omitting to pay the costs as well as the purchase-money within the stipulated time—Effect of such omission.*
See PRE-EMPTION. **96 P R 1884**

15. *Decree subject to payment of a certain sum within a fixed period, and also awarding plaintiff their costs—Payment of such sum within the fixed period less the costs awarded—Effect of such payment.*
See PRE-EMPTION. **70 P R 1888**

16. *Costs in Testamentary Suits.*
See PROBATE AND ADMINISTRATION ACT, SECTION 2. **63 P R 1900**

17. *Held*, that though the Court had a discretion in refusing a party his *mukhtar's* costs, some reason should have been given for the refusal. Case remanded for lower Court to give reason. MEHTAB SINGH *v.* EXECUTIVE ENGINEER, BARI DOAB CANAL.
4 P R 1866

18. A suit cannot be brought to recover costs of a previous suit. The remedy is by executing the decree allowing costs. IN RE A REFERENCE BY THE JUDGE, S.C. COURT, AMRITSAR.
73 P R 1867

19. A surety cannot compel a co-surety to contribute towards the cost of defending an action, unless he is authorized or induced by the latter to do so, or unless the defence was necessary. BYRNE *v.* MCLEOD.
86 P R 1868

COSTS—*contd.*

20. Suit by a *mukhtar* to recover fees from his employer, disallowed by the lower Court on the ground that fees are included in costs, and that a separate suit cannot be brought to recover the costs of an action. *Held*, that the rule which prevents the recovery of costs as between party and party, in a separate suit, does not interefere with the contract made as to fees between pleader or *mukhtar* and his client, and that such contract can be enforced in a suit. DURBARA SINGH *v.* MUSSAMMAT TEEKA DEVEE. **88 P R 1868**

21. Where plaintiff sued Government for restitution of property alleged to belong to plaintiff partly by inheritance and partly under deed of assignment executed by his mother and sister, who were joined as defendants by the Court after action brought, and where plaintiffs' suit wholly failed, but Government were ordered to restore to the woman the property alleged by plaintiff to have been assigned to him; the Court directed Government to pay its own costs and the costs of the two women and order the plaintiffs costs to be paid out of the entire estate, calculated upon the amount decreed to the women. SHEIKH MAHOMED RUFFEE *v.* SECRETARY OF STATE FOR INDIA IN COUNCIL. **6 P R 1869**

22 An order regarding costs will not be interfered with, unless it is plain that an unwise discretion has been exercised in awarding them. MUSSAMMAT JEEWUNEE *v.* HAKIM. **31 P R 1869**

23. Personal expenses cannot be awarded as costs to a party, on account of his attendance at Court during the suit, LEKRAJ *v.* DEVEE CHAND. **41 P R 1869**

24. *Appeal decreed with costs.*

Held, that the words "appeal decreed with costs," refer only to costs of the appeal, and not to costs throughout the Courts. RAMJI DAS *v.* CHARANJI LAL. **45 P R 1877**

25. *Appellate Court, jurisdiction of—"Costs to be costs in the cause," meaning of—Power of Court in awarding costs.*

Held, (following the decision of the Full Bench of the Calcutta High Court in 6 W. R. 187) that a Court can in regular appeal review the exercise of the discretion of the Lower Court as to the award of costs, but that in special appeal the Chief Court cannot interfere, unless the order made as to costs is contrary to law.

Plaintiff's suit was decreed with cost by the Assistant Commissioner. The additional Commissioner dismissed an appeal by defendant from that order, with costs; but on defendants appealing specially to the Chief Court, the appeal was accepted, and the case remanded for re-decision to the Court of first instance. The Chief Court ordered that costs of the appeal to that Court should be costs in the cause. The Assistant Commissioner in giving his final order decreed all the costs incurred in all the Courts in plaintiff's favour, and the Additional Commissioner upheld this order on appeal.

COSTS—*concld.*

Held, by the Chief Court, (1) that as regards the costs incurred in the Chief Court, the order of the Assistant Commissioner was legal, as the order of the Chief Court empowered him to deal with such costs, the words "costs of the appeal to be costs in the cause," meaning that it is left to the Court which passes the final orders in the case to say by which party such costs are to be borne; (2) that as regards the costs incurred in his own Court, the Assistant Commissioner had power to deal with them whether incurred before or after the decree of the Chief Court; but (3) that as regarded the costs of the first appeal to the Additional Commissioner, the order of the Assistant Commissioner was *ultra vires*, as there was no order empowering him to deal with such costs, and the order of the Additional Commissioner having been cancelled by the Chief Court, it was not competent to the Assistant Commissioner to order that the said costs should be paid by either party. PREMA *v.* GOBIND LAL. **23 P R 1880**

CO-SURETY.

Suit by co-surety to recover from principal-debtor sum paid to a co-surety as contribution towards amount paid by him to the creditor.

See LIMITATION ACT, 1877, SCHEDULE II, ARTICLES 81, 83. **98 P R 1881**

COUNSEL.

See ADVOCATE.
LEGAL PRACTITIONER'S ACT, 1879.
PLEADER.

COUNSEL'S FEES.

Costs—Suit for declaration of title to property—Counsel's fee—Rules and orders of Chief Court No. XXXI, Rules 3, 4, 5 and 17.

In a suit for declaration of title to property, the Court has a discretionary power to award to the successful party by way of Counsel's fee a sum not exceeding that provided for by rule 3 of the rules regulating Counsel's fees in Subordinate Courts, and the fact that the suit has eventually been referred to arbitration does not limit the discretion so allowed to the Court. NAGAR *v.* JHANDU. **61 P R 1896**

COUNTER CHARGES.

See DIVORCE ACT, 1869, SECTIONS 12, 14. **130 P R 1879**
62 P R 1887

COURT-FEES.

1. *Court-fee in a declaratory suit to the effect that plaintiff is the real decree-holder of a decree obtained by defendant and to have the decree transferred to him.*

See DECLARATORY SUIT. **1 P R 1911**

2. *Court-fees in appeals in redemption suits.*

See COURT-FEES ACT, 1870, SCHEDULE I, ARTICLE 1. **5 P R 1911**

3. *Suit by pauper—Application for leave to sue* in forma pauperis—*Subsequent payment of Court-fees after period of limitation—Date of institution of suit.*

See LIMITATION ACT, 1877, SECTION 4. **59 P R 1903**

COURT-FEES—*concld.*

4. *Valuation of suit for partition of joint family property for purposes of Court-fee.*

See PARTITION. **28 P R 1903**

5. *Return of plaint for presentation in proper Court—Cancellation of Court-fee—Re-stamping of plaint.*

See PLAINT. **91 P R 1884**

6. *Unstamped plaint—Conditional order admitting plaint properly stamped after period of limitation.*

See PLAINT. **130 P R 1890**

7. *Court-fee on appeal by purchaser in a pre-emption suit.*

See PRE-EMPTION. **92 P R 1900**

8. *Plea of payment in written statement—Levy of Court-fee on such written statement.*

See SET-OFF. **85 P R 1908**

COURT-FEES ACT, 1870.

Section 6.

And section 28—Presentation of a plaint insufficiently stamped through circumstances beyond the control of the plaintiff—Payment of requisite Court-fees after expiration of limitation—Date of institution of suit.

See LIMITATION ACT, 1877, SECTION 4. **104 P R 1905 F B**
123 P R 1907

Section 7.

See JURISDICTION.

Section 7 (11), (c).

Valuation of suit for purposes of Court-fee—Suit under section 283, Civil Procedure Code, 1882—Court-Fees Act, 1870, section 7 (ii) (c) and 2nd Schedule, article 17 (ii), (iii).

Plaintiff in execution of a money decree had a house belonging to his judgment-debtors attached, whereupon defendants objected that the said house had been previously mortgaged to them. The District Judge ordered that the property should remain under attachment, but that it should be sold subject to the mortgagees' lien. Plaintiff then sued his judgment-debtors and their mortgagees, the successful objectors, and prayed that he might be declared to have a preferential right to the attachment of the house in dispute, in supersession of the said order of the District Judge, and that any other relief which the Court might think proper might be granted to him. The suit was valued for the purposes of jurisdiction at Rs. 7,000 but a Court-fee stamp of Rs. 10 only was affixed to the plaint.

Held, by the Full Bench, that the plaint had been sufficiently stamped either under clause (*i*) or clause (*iii*) of article 17 of the 2nd Schedule to the Court-Fees Act. SARDAR DIAL SINGH *v.* BELI RAM. **51 P R 1897**

COURT FEES ACT, 1870—*contd.*

Section 7 (IV)

Suit for account—Value of relief sought—Jurisdiction—Course of appeal—Authority of Appellate Court disclaiming jurisdiction, to order payment of additional Court-fee.

The plaintiff sued the defendant for an account valuing the relief sought at Rs. 100, and expressing his willingness to pay the Court-fee due upon any sum decreed in excess of the amount in accordance with the provisions of section 11, Court-Fees Act, 1870.

After the defendant had produced the books containing the parties' accounts and a commission had examined the same the plaintiff filed a petition stating that he appeared to be *primâ facie* entitled to recover a sum over Rs. 12,000, and praying that the matter might be fully investigated. No amendment of the plaint was, however, either asked for or ordered, and the suit eventually resulted in a decree in the plaintiff's favour for Rs. 2,343.

The plaintiff then appealed for a further sum of Rs. 1,716 and the defendant, against the decree in the plaintiff's favour, for Rs. 2,343.

Both parties presented their appeals to the Divisional Judge, who held that the appeals lay to the Chief Court.

Held, that the appeals lay to the Divisional Judge: under section 7, clause (iv) of the Court-Fees Act, the valuation of the original suit for purposes of Court-fee is fixed at the amount at which the relief sought is valued in the plaint. This, in the present case, was Rs. 100 and the amount was never altered by any amendment of the plaint; and under section 8, Suits Valuation Act, 1887, the value of a suit for an account as determinable for the computation of Court-fees and the value for purposes of jurisdiction shall be the same.

The value of the suit for purposes of jurisdiction was Rs. 100 and the appeal lay to the Divisional Court under section 39, Punjab Courts Act (as amended).

Semble.—If an Appellate Court has no jurisdiction to hear an appeal, it is not competent to it to pass orders for the payment of any additional Court-fee which it considers should have been levied in the first Court.

[*Cf.* No. 40 *P. R.* 1892.] FATTEH MUHAMMAD KHAN *v.* MOHAN LAL. **86 P R 1892**

Section 7 (IV (a).

—*Section 7, Cl. IV (a)—Suit to recover mortgage-deed—Value of claim.*

Plaintiff sued to obtain possession of a mortgage-deed, alleging that the debt (Rs. 11,200) had not been paid, and that defendant was not entitled to keep the deed. *Held*, that section 7, clause IV (*a*) of Act VII of 1870, did not apply to the suit. SALIG RAM *v.* DEWAN MAHOMED FAZL-ULLA KHAN.

39 P R 1875

Section 7 (IV) (b).

1. *Partition—Suit to obtain separate possession of admitted share in joint family property—Court-fee payable—Court-fees Act, 1870, section 7, clause (iv) (b)—Hindu*

COURT-FEES ACT, 1870—*contd.*

Section 7 (IV) (b)—*contd.*

Law—Suits on behalf of minor for partition of joint family property.

Plaintiff, a minor, aged 17, at the date of institution of the suit, sued through his next friend for partition of his one-third share of the paternal estate. The plaint, which bore a Court-fee stamp of Rs. 10, alleged that all the parties were in joint possession of the entire property, the first defendant, however, having the sole control as manager of the joint family; and, for reasons specified in the plaint, the plaintiff prayed to be put in separate possession of his admitted one-third share of the estate, which he valued at Rs. 53,227-1-1.

Held, that the suit was liable to an *ad valorem* fee as being one "to enforce a "right to share in any property on the "ground that it is joint family property" within the meaning of section 7, sub-section (*iv*), clause (*b*), of the Court-Fees Act, 1870, and nonetheless such because plaintiff's share was admitted and merely his right to separate possession denied, the said clause having been so framed as to cover all cases within its general purview in which something more than a mere declaration of right is sought for, and consequential relief, whether it be in the form of joint possession, separate possession, and injunction, or other appropriate relief, is asked for.

Semble.—Even if the property did not fall under the category of joint family property, a suit for partition thereof would still be liable to an *ad valorem* fee under sub-section (*iii*) or sub-section (*v*) of section 7, according to the nature of the property.

Although no malversation on the part of defendant No. 1 had been proved, the Court under the particular circumstances of the case and with especial reference to plaintiff's age at the date of institution of the suit, and to the fact that after attaining his majority he had elected to prosecute his claim, decided that at the date of suit it was sufficiently clear that it would be in plaintiff's best interest to order a partition instead of dismissing the suit. RAGHBAR DIAL *v.* SALIG RAM. **104 P R 1895**

2. *Partiion—Suit to enforce a right to share in joint family property—Valuation for purposes of jurisdiction and Court-fee—Suits Valuation Act, 1870, section 8.*

Held, that for purposes of Court-fees in a suit to enforce a right to share in joint family property by partition and for the delivery of the possession to the plaintiff of his share, the value of the suit is the amount at which the plaintiff values his share. In such cases the value as determinable for the competition of Court-fees and the value for purposes of jurisdiction are identical.

Boidya Nath Adya v. *Makhan Lal Adya* (*I. L. R. XVII Calc.* 680), *Balvant Ganesh* v. *Vana Chintamon I. L. R. XVII Bom.*, 209), and *Raghbar Dial* v. *Salig Ram* (104 *P. R.* 1895), referred to. *Bawa Mangal Das* v. *Mahant Narinjan Das* (56 *P. R.* 1895),

COURT-FEES ACT, 1870—*concld.*

Section 7 (IV) (b)—*concld.*

and *Guruvajamma* v. *Venkatakrishnama Chetti* (*I. L. R. XXIV Mad.* 34), distinguished.

HARI CHAND *v.* JIWAN MAL.

28 P R 1903

3. *Suit for partition—Preliminary order under section* 215 *A, Civil Procedure Code,* 1882—*Appeal—Court-fees on.*

Held, that an appeal against a preliminary order under section 215 A of the Code of Civil Procedure should bear under section 7 (*iv*) (*b*) of the Court-Fees Act, 1870, *ad valorem* Court-fee according to the amount at which the relief sought is valued in the plaint. BHAGAT RAM *v.* GOKAL CHAND.

150 P R 1908

Section 7 (IV) (c).

1. *Suit to cancel or to get possession of a document.*

A suit to recover possession of a bond should be valued at the amount payable under its terms. CHET SINGH *v.* MUL SINGH.

10 P R 1871

1 A. *Act VII of* 1870, *section* 7, *Clause IV* (*c*)—*Suit for cancellation of mortgage—Covenant not to alienate—Consequential relief.*

Plaintiff sued for the cancellation of a mortgage executed by one of the defendants in favour of the other, in contravention of a covenant made by the mortgagor with the plaintiff by which he bound himself not to alienate the property by sale or mortgage elsewhere, until he had first satisfied the mortgage dept due to the plaintiff.

Held, that the case fell under section 7, Clause IV (c) of the Court-Fees Act, as plaintiff was claiming consequential relief, and that he was bound to value the relief sought. CHUNI LAL *v.* BODAR MAL.

2 P R 1886

2. *Act VII of* 1870, *section* 7, *Clause IV* (*c*) *and Clause VIII—Civil Procedure Code* (*Act XIV of* 1882, *section* 283—*Suit to establish right to attached property.*

Held, that where a plaintiff, whose objection to the attachment of property in execution of decree has been disallowed by the executing Court, brings a suit under section 283 of the Civil Procedure Code to establish his right to such property, the suit must be treated as one for the property or for a declaratory decree where consequential relief is prayed, and it must bear a stamp, under section 7, Clause IV (*c*) of the Court Fees Act, according to the amount at which the relief sought is valued, which may be estimated either at the value of the property attached or at the sum for the payment of which the property was attached, if such sum is less than the value of the property. Civil Appeal No. 125 of 1874 followed. *Jeewa* v. *Kulloo* (No. 84 of 1870, Civil), *Jowala Singh* v. *Deria* (No. 167 of 1882 Civil), and *Shugan Chand* v. *Baksh* (No. 97 of 1883, Civil) referred to. KARAM-UD-DIN *v.* JASWANT SINGH.

80 P R 1886

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COURT-FEES ACT, 1870—*contd.*

Section 7 (IV) (c)—*contd.*

3. *Suit for removal of* mahant; *for declaration of right to appoint a successor; and to enforce the provisions of a will—Value of relief sought—Jurisdiction—Course of appeal—Court-Fees Act, section 7, paragraphs iv (c), v, vi, ix and x (d)—Suits Valuation Act, 1887, section 8—Punjab Courts Act, section 39.*

The plaintiffs in their plaint valued the relief sought as follows:

	Rs.
(1) Removal of defendant from the office of *mahant*	1,000
(2) Declaration of plaintiffs' right to appoint a successor	500
(3) Enforcement of the provisions of a will	1,000
or Rs. 2,500 in all.	

The District Judge having found, on a preliminary objection raised by the defendant, that the value of the property attached to the institution in question was Rs. 2,53,037-13-11, directed the plaintiffs to file additional Court fees, and upon their refusal to comply with such order rejected the plaint under section 54, Civil Procedure Code.

The plaintiffs thereupon appealed to the Divisional Judge, who returned the memorandum of appeal for presentation to the Chief Court holding that though he would have had jurisdiction, looking only at the claim as valued in the plaint, his jurisdiction had been taken away by the District Judge's decision that the true valuation was Rs. 2,53,038.

Held, that this view of the law was untenable, and that the appeal should be returned for presentation to the Divisional Judge. The suit being other than any of those referred to in section 7, paragraphs v, vi and ix, and paragraph x, clause (*d*) of the Court-Fees Act, and the value for the computation of Court-fees and for purposes of jurisdiction being the same by virtue of section 8 of the Suits Valuation Act, 1887; and such value being determinable according to the amount (in this case Rs. 2,500) at which the relief sought was valued in the plaint or memorandum of appeal, the Divisional Judge had jurisdiction to entertain the plaintiffs' appeal notwithstanding that the District Judge had decided that the true value of the relief sought was in excess of Rs. 5,000. BAWA MANGAL DAS *v.* MAHANT NARINJAN DAS. **58 P R 1893**

4. *Suit for removal of* mahant, *for declaration of right to appoint a successor and to enforce the provisions of a will—Value of relief sought—Valuation by plaintiff, power of Court to revise—Appeal—Court-fees Act, 1870, section 7 (iv) (c) and 12 (1).*

Plaintiffs sued on the allegations that they were the *gurbhais* of the defendant who was the present *mahant* of a certain *akhara*, in succession to one B. B., who died in 1885, leaving a will appointing defendant as his successor, but authorising plaintiffs to control his management of the institution and to have him ejected from the *mahantship* if he

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COURT-FEES ACT, 1870—*contd.*

Section 7 (IV) (c)—*concld.*

failed to carry out the essential provisions of the said will; that defendant had by his misconduct and disregard of the testator's wishes forfeited all right to continue in the *mahantship*; and that they, therefore, prayed as follows:—

(i) that defendant may be declared unfit to continue the *mahant* of the institution and may be removed;
(*ii*) that plaintiffs be declared entitled to nominate his successor as provided in the will;
(*iii*) that, if the above reliefs cannot be granted, defendant may be compelled to comply with the provisions of the will; or
(*iv*) that plaintiffs be granted such other relief as the will contemplates and the circumstances of the case permit.

Plaintiffs valued the relief sought in clause (*i*) of the plaint at Rs. 1,000; that mentioned in clause (*ii*) at Rs. 500, and the alternative relief asked for in clause (*iii*) at Rs. 1,000; and filed Court-fees upon Rs. 2,500.

The District Judge, on an objection by defendant, held that the claim was undervalued and ordered plaintiffs to make up the deficiency in the Court-fees upon the total value of the property attached to the institution, and on their failure to do so, rejected the plaint. Plaintiffs appealed to the Divisional Judge, but their appeal was dismissed on the ground that the suit was in reality one for possession of the property belonging to the institution and the plaint should have been stamped accordingly. Plaintiffs thereupon lodged a further appeal in the Chief Court, and it was contended, *inter alia*, on behalf of defendant that no appeal lay from the first Court's decision as to the valuation, in view of the provision in section 12 (1) of the Court-Fees Act, 1870.

Held, that section 12 (1) should be construed as enacting finality only in the matter of the actual assessment of the valuation of the property, and as allowing an appeal to proceed upon all questions of the construction of the Act, whether the contention is as to the section or clause applicable, or as to the meaning of any particular clause or section.

Held, further, that in cases where the plaintiff seeks the removal of a trustee or manager of an institution, *but does not seek possession of the property for himself as trustee or manager*, it is not necessary to file full stamp on the value of the property of the trust or institution; that in such a case the valuation of the relief sought in the plaint rests with the plaintiff; and that when the plaintiff has valued his relief at a sum which is *prima facie* not unreasonable, it is not open to the Court to challenge or revise such valuation.

The Court held that the valuation stated in the present plaint was reasonable and should be accepted. BAWA MANGAL DAS *v.* MAHANT NARINJAN DAS. **56 P R 1895**

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COURT-FEES ACT, 1870—*contd.*

Section 7 (IV) (d).

1. *Valuation of suit for purposes of jurisdiction and Court-fee—Suits Valuation Act, 1887, sections 8, 9.*

Held, that section 8 of the Suits Valuation Act so far governs section 7 (*iv*) of the Court-Fees Act as to indicate that it was not the intention of the legislature that a purely arbitrary value should be fixed by the plaintiff, and that it follows from section 8 and the Rules under section 9, Suits Valuation Act, that in an injunction suit, where no damages are claimed, the Court-fee payable is on the jurisdictional value fixed by the plaintiff within the limits laid down by the Rule.

Boidya Nath Adya v. *Makhan Lal Adya* (*I. L. R. XVII Calc.* 680), *Sohan Lal* v. *Gulab Mal* (50 *P. R.* 1896), and *Bai Varunda Lakshmi* v. *Bai Manegavri* (*I. L. R. XVIII Bom.* 207), cited. *Saradarsingji* v. *Ganpatsingi* (*I. L. R. XVII Bom.* 56), not followed. NANAK *v.* GURANDITTA **63 P R 1902**

2. *Held*, that in a suit governed by Rule IV framed by the Chief Court under section 9 of the Suits Valuation Act the amount of Court-fee payable is to be computed on the jurisdictional value of the relief sought. NAJM-UD-DIN *v.* MUNICIPAL COMMITTEE, DELHI. **6 P R 1904 F B**

Section 7 (V).

Suit by mortgagee for possession of land—Foreclosure under Regulation XVII of 1806—Value of suit for purposes of jurisdiction—Suits Valuation Act, 1887, section 3.

A suit for possession of land by a mortgagee by conditional sale who claims to have foreclosed his mortgage under Regulation XVII of 1806, is a "suit for the possession of land" falling within clause V, section 7, Court-Fees Act, 1870, and is not a "suit by a mortgagee to foreclose the mortgage" falling under clause IX of the section, suits for foreclosure of mortgages being unknown in the Punjab where foreclosure takes place as a ministerial and not a judicial proceeding under the Regulation of 1806.

For purposes of jurisdiction under section 3, Suits Valuation Act, 1887, the value of the subject-matter of such a suit is to be calculated at thirty times the revenue assessed upon the land, in accordance with the rules made under the Act. Punjab Government Notification No. 255, dated 4th March 1889 (*Chief Court Book Circular, VII of* 1889).

No. 56 *P. R.* 1892 F. B. referred to. TELU MAL *v.* LAL SINGH. **20 P R 1893**

Section 7 (V) (b).

1. *Section 7, clause V (b) and (d), section 12, clause 1—Suit for possession of a share in a joint* khata—*Valuation—Appeal.*

Plaintiff sued for possession of 214 *kanals* 8 *marlas* of land on the allegation that defendants sold it to him for Rs. 1,500, gave him possession and subsequently dispossessed him. The sale-deed conveyed to defendant no specific land, but seven-fifteenths of *khata* No. 409, which was a joint *khata*, comprising 460 *kanals* 10 *marlas* of land.

COURT-FEES ACT, 1870—*contd.*

Section 7 (V) (b)—*concld.*

The Courts below rejected the plaint on defendant refusing to file additional stamps as on a suit valued in accordance with section 7, clause V (*d*) of the Court-Fees Act, 1870. Plaintiff appealed, insisting on his right to value the suit at five times the *jama* under section 7, clause V (*b*), when a preliminary objection was taken that the appeal was barred by section 12, clause I.

Held, by the Chief Court, that the appeal was not barred, as the question was not merely one relating to valuation for the purpose of determining the amount of fee chargeable on the plaint, but whether a particular article of clause V of section 7 applied to the suit.

Held, further, that the plaintiff's prayer really was for possession jointly with the defendants of *khata* No. 409, with an interest therein to the extent of seven-fifteenths, and that the whole *khata* being part of an estate paying annual revenue to Government and recorded in the Collector's register as separately assessed with revenue, within the meaning of clause V (*b*), the value of the suit must be deemed to be five times the revenue payable on the *khata*. GANDA MAL *v.* MUSSAMMAT MEHTABO.

67 P R 1878

2. *Section 7, clause V (c) and schedule I, article 1.*

The stamp for an appeal from an order under section 230, Act VIII of 1859, is an *ad valorem* stamp. MUSSAMMAT SUBHAN BIBI *v.* RAHIM BUKSH. **18 P R 1875**

3. *Declaratory decree.*

Plaintiff and defendant were widows of N. S. and plaintiff sued for a declaratory decree of her right to share equally with the defendant in the estate of N. S. *Held*, that plaintiff having a right to share as alleged by her, was bound to sue for a specific share of her husband's property on an *ad valorem* stamp. MUSSAMMAT GUNESHA *v.* MUSSAMMAT DAROBATI. **20 P R 1875**

Section 7 (V) (d).

See COURT-FEES ACT 1870, SECTION 7 (*V*) (*b*), *supra.* **67 P R 1878**

1. *Section 7, clause V—Valuation of suit.*

In a suit for a ⅓rd share of a holding not a definite share in an estate paying annual revenue to Government, *held*, that the stamp must be calculated upon the value of the land under section 7, clause V (*d*) of the Court-Fees Act, and not on the revenue under clause V (*b*) of the same section, there being no provision in the Court-Fees Act for the value of a fractional part of a holding, which is recorded in the Collector's register as separately assessed with land revenue, being calculated on the land revenue. HAIDAR ALI *v.* SONDHA.

102 P R 1880

2. *Act VII of* 1870, *section* 7, *clause V—Valuation of suit.*

In a suit for pre-emption, unless the land

COURT-FEES ACT, 1870—*contd.*

Section 7 (V) (d)—*concld.*

in suit is a definite share in an estate paying revenue to Government or is recorded in the Collector's register as separately assessed, the stamp must be calculated upon the value of the land under section 7, clause V (*d*) of the Court-Fees Act, and not on the revenue under clause V (*b*) of the same section. *Haidar Ali* v. *Sondha* (No. 102 of 1880,) cited. MUSSAMMAT JIAN *v.* MUSSAMMAT NADIR NISHAN. **6 P R 1883**

Section 7 (V) (e).

1. *Section 7, clause V, para. (e) and section 7, clause X, para. (b)—Suit by mortgagee for possession of garden on ground of ouster by mortgagor.*

Where the plaintiff sought to recover possession of a date garden on the allegation that he had been put into possession under two deeds of mortgage and had been subsequently ousted by the defendants *held*, that the suit was not one for specific performance of a contract of mortgage so as to fall under clause X (*b*) of section 7 of the Court Fees Act, but that the suit fell under para. (*e*) of clause V of section 7 of the Act, and an *ad valorem* fee was necessary on the value of the garden. CHELA MALL *v.* FAZAL BEG.

33 P R 1880

2. *Suit for possession of house—Value of suit.*

Held that in a suit for possession of a house the value for purposes of jurisdiction should be the same as the value for purposes of Court-fee which under section 7 (*v*) (*e*) of the Court-Fees Act, 1870, is the market value of the house. PARSICK *v.* PARSICK.

72 P R 1899

3. *And section 9—Suit for possession of house—Decree on payment of improvements—Value for purposes of Court-fee.*

Plaintiff sued for possession of a house which he valued at Rs. 90. The Munsiff granted him a decree for possession on payment of Rs. 635, value of improvements effected by the defendants. He appealed to the District Judge against so much of the decree as awarded compensation for improvements. The District Judge held that the Court-fee must be made up to the value of improvements.

Held, that under section 7 (*v*) (*e*) read with section 9 of the Court-Fees Act, 1870, the value for purposes of Court-fee must be computed on the jurisdictional value of the house as finally fixed by the Court. ABDUR RAHMAN *v.* CHARAG DIN. **19 P R 1908 F B**

4. *Valuation of suit—Suit for possession of a fruit garden.*

Held that the term "garden" in section 7 (*v*) (*e*) of the Court-Fees Act, 1872, includes fruit garden, even though the land under it may have been assessed to land revenue, and the value of a suit for possession of a fruit garden for the purposes of the Court-Fees Act must, therefore, be assessed at the market value of the garden. SIRI DHAR *v.* AMAR NATH. **146 P R 1908**

COURT-FEES ACT, 1870—*contd.*

Section 7 (V) (f).

See JURISDICTION. **46 P R 1906**

Section 7 (X).

See COURT FEES ACT, 1870, SECTION 7 (*e*). **33 P R 1880**

Jurisdiction—Suit for possession of land—Value of subject-matter.

See CONTRACT ACT, 1872, SECTION 23. **37 P R 1901**

Section 7 (XI) (c).

Suit for possession of immovable property—Landlord and tenant—Value for purposes of Court-fees—Year's rent.

See VALUATION OF SUITS. **27 P R 1910**

Section 7 (XI) (d).

Act VII of 1870, *section 7, clause XI (d)—Suit to contest notice of ejectment—Valuation of suit.*

Held, that a suit to contest a notice of ejectment on the ground that plaintiff is entitled first to receive compensation for improvements effected by him on the land before he can be ejected, must be stamped, under section 7, clause XI (*d*) of the Court-Fees Act, in accordance with the amount of rent payable for the previous year. NURULLA *v.* ATTAR SINGH. **111 P R 1883**

Section 9.

See COURT-FEES ACT, 1870, SECTION 7, (V) (*e*), *supra*.

19 P R 1908 F B

Section 10 (ii).

Section 10, *clause* 2—*Order to pay additional Court-fee—Failure to pay within the time fixed.*

The plaintiff sued to have a deed of gift delivered up by the defendant to be cancelled. The plaintiff alleged that at a time when he was *non compos mentis* the defendant obtained from him a deed of gift of a house; that when plaintiff recovered his soundness of mind, he revoked the gift and received back the deed from the defendant, and that the latter subsequently obtained possession of the deed, which he still retained. The plaintiff sued on a ten-rupee stamp, the value of the house being Rs. 1,600, and his suit was dismissed on the merits by the original Court; he appealed to the Commissioner on a ten-rupee stamp, and obtained a decree. Defendant appealed to the Chief Court on a stamp of Rs. 10, and BOULNOIS, J., on the 25th May 1876, holding that the stamp should be an *ad valorem* stamp, ordered the plaintiff to file full stamps for the Lower Courts, and the defendant a full stamp of Rs. 105 for his appeal to the Chief Court, fifteen days being allowed. On the 30th May the defendant filed his stamp, but plaintiff did not tender his until the 3rd July, explaining that owing to some informality in a money order, he could not get the money in time. *Held*, that plaintiff's default not being wilful his suit should not be dismissed under section 10, clause 2, Act VII of 1870. MAJLIS *v.* MUNNA SINGH. **84 P R 1876**

COURT-FEES ACT, 1870—*contd.*

Section 11.

See, SECTION 7 (IV), *supra*.
JURISDICTION. **46 P R 1906.**

Section 12 (i).

See APPEAL.
See SECTION 7 (IV) (*c*), *supra*.
56 P R 1895

1. *Act VII of* 1870, *section* 12, *clause II—Appellate Court rejecting appeal for failure to pay Court-fees required for first Court—No question as to amount of fee raised or decided in first Court—Inapplicability of section* 12 *of the Court-Fees Act—Return of appeal to lower Appellate Court.*

The lower Appellate Court dismissed under section 12, clause II of the Court-Fees Act the plaintiffs' appeal to his Court upon their failure to comply with an order to file within a certain period Court-fee stamps both for the Court of first instance and for the Appellate Court.

Held that, as it appeared that no question had arisen in, or been decided by the first Court as to the amount of fee chargeable, that the 2nd para. of section 12 of the Court-Fees Act was inapplicable, and the lower Appellate Court was not competent to require from the plaintiffs an additional fee in respect of the first Court.

Appeal returned to the lower Court with a direction to call upon the plaintiffs to state in their memorandum of appeal the amount at which they valued the relief sought, and then to require them to pay an *ad valorem* fee on that amount. MELA MAL *v.* HARBHAJ. **115 P R 1884**

2. *And schedule II, article* 17 (3)—*Suit for confirmation of title in land—Suit for declaration without consequential relief—Appeal as to valuation.*

Plaintiff sued to have his title in certain land affirmed, alleging that he was full owner and in possession, and was recorded as owner in the first Settlement, but at the revised Settlement was shown only as an occupancy tenant. The first Court dismissed the suit on the merits, and the plaintiff appealed to the Divisional Court stamping his appeal with a ten-rupee stamp. The Divisional Court held that the land was worth Rs. 1,000, and that the plaintiff could not recover Rs. 1,000, worth of land on a stamp of Rs. 10, and as the plaintiff refused to increase the stamp, dismissed his appeal.

Held, on a further appeal by plaintiff that under article 17 (3), schedule II of the Court-Fees Act, a stamp of Rs. 10 was sufficient for the suit as laid, which was not to recover the land, but to have the plaintiff's title to land, of which he professed himself to be already in possession, affirmed; and further, that section 12 of the same Act was no bar to the present appeal, in which the contention was not as to the valuation of the suit, but rather as to its nature, that being the matter on which the Divisional Court had gone wrong. SHAH ALUM *v.* MAHMUD. **2 P R 1889**

COURT-FEES ACT, 1870—*contd.*

Section 12 (i)—*contd.*

3. *Court-fees Act*, 1870, *sections* 12 (*ii*), 16, 17—*Suit for specific performance of contract to sell, and for pre-emption on sale—"Distinct subjects"—Appeal and cross-objection—Court-fee payable—Joinder of causes of action—Civil Procedure Code*, 1882, *sections* 44 (*a*), 45 *and* 561.

Plaintiff sued, alleging a contract to sell him a house for Rs. 2,500, out of which Rs. 100 were paid as earnest-money, and a subsequent sale (in guise of a mortgage by conditional sale) to a third party, and prayed for a decree either for (i) specific performance of the contract of sale on payment of Rs. 2,400, or (ii) for pre-emption on the sale on payment of Rs. 2,500, or whatever might be found to be the market-value of the house. The plaint was stamped in accordance with the value of the first claim only, and the objection of the defendant as to the stamp which was taken by him in the first Court was not disposed of by any formal order.

The first Court decreed the claims in the alternative, and they were both included in the defendants' appeal to the Divisional Judge, which was valued on the same principle as the plaint. The Divisional Judge, having reversed the decree as respects the first claim, but upheld it as regards the second, the defendants appealed to the Chief Court from the latter portion of the judgment, and the plaintiff put in cross-objections dealing with the former portion. A preliminary objection was taken by appellants that the Court-fee of Rs. 2 on the petition of cross-objections was insufficient, and that it should be calculated on the value of the claim for specific performance to which such cross-objections related. It was also urged that the plaint should be stamped, in accordance with section 17 of the Court-Fees Act, on the values of the two distinct claims therein included.

Held, that appellant's contention was correct. Plaintiff alleged two distinct causes of action, *viz.*, the contract to sell, and the subsequent sale giving him a right of pre-emption if not rendered nugatory by the previous agreement, and his suit, therefore, embraced two "distinct subjects" within the meaning of section 17 of the Court-Fees Act, even though alternative, and not cumulative, relief was alone asked for; and as the plain object of that section is to prevent any loss to the revenue, owing to separate causes of action being lawfully combined in one suit, the fees to be paid are to be the same as if *separate suits* had been filed. Therefore, under section 16 of the Act, respondent was bound to stamp his cross-objections calculated on the value of the claim for specific performance, about which the appellants had not appealed.

Held further, that under section 12 (*ii*) of the Act, plaintiff would have to pay additional Court-fees in the first Court, as the question of valuation was there raised and "wrongly decided," defendants' objection being overruled by implication.

COURT-FEES ACT, 1870—*contd.*

Section 12 (i)—*concld.*

Quære.—Whether the said two causes of action could lawfully be combined in one suit. MUSSAMMAT FATIMA BEGAM *v.* MUHAMMAD ZAKARIA. **96 P R 1895**

Section 16.

See SECTION 12, *supra*.
96 P R 1895

Section 17.

See SECTION 12, *supra*.
2ND SCHEDULE, ARTICLE 17, *post*.
96 P R 1895

Suit embracing two or more distinct subjects—Value for Court-fees.
See APPEAL. **41 P R 1910**

Section 19.

Application for probate—Retrospective effect of Act XI of 1899.

Held, that section 19 (1) (*i*) of the Court-Fees Act, 1870, as amended by Act XI of 1899, merely embodies a rule of procedure, and applies to an application for probate which was pending when that sub-section came into force. IN RE THE GOODS OF E. T. FIELD, DECEASED. **26 P R 1900**

Section 28 and Section 6.

See LIMITATION ACT, 1877, SECTION 4.
104 P R 1905 F B
123 P R 1907

1. *Civil Procedure Code (Act XIV of* 1882), *sections* 54, 582—*Rejection of memo. of appeal as improperly stamped without fixing time for appellant to complete the proper stamp—Illegality of such order.*

Held, that section 28 of the Court-Fees Act cannot be treated as superseding those provisions of the Code of Civil Procedure, which direct the Courts how to deal with special classes of documents, *viz.*, plaints or memoranda of appeal, when presented to them, and therefore an improperly stamped plaint or memorandum of appeal can only be rejected on the ground of the insufficiency of the stamp (under section 54 or section $\frac{54}{582}$ of the Civil Procedure Code) when the Court has required the plaintiff or appellant to file the extra stamp within a fixed time, and he has failed to do so. SARDAR KHUSHAL SINGH *v.* PURAN SINGH. **156 P R 1888**

2. *Unstamped plaint—Presentation by post—Limitation Act (XV of* 1877), *section* 4.

Plaintiff had his plaint written with respect to a bond executed on 20th June 1895 payable on demand on the 11th June 1898, but owing to the existence of plague he was unable either to procure a Court-fee stamp or present his plaint in person and in accordance with a *robkar* issued by the Deputy Commissioner of the district, it was sent unstamped by post to the District Judge of Hoshiarpur, who forwarded it to the Munsiff. On 13th July 1898, owing to the restrictions being removed, the plaintiff put in the requisite Court-fee stamp. The Munsiff dismissed the claim as time-barred, but the District Judge held it within time. The

COURT-FEES ACT, 1870—*contd.*

Section 28—*concld.*
Chief Court on appeal held that the suit could not be said to have been instituted until the plaint was stamped, and that it was not even presented until plaintiff appeared himself in the Munsiff's Court.

Held also, that the Deputy Commissioner had no power to exempt litigants from stamping their plaints.

Held further, that section 28 of the Court-Fees Act did not apply as there was no question of mistake or inadvertence. LAKHA *v.* MUNSHI RAM. **38 P R 1900**

See ALSO PLAINT—PRESENTATION OF.

Section 29.
Amendment of document—Fresh suit.
The plaintiff sued in a Revenue Court for (1) value of produce and (2) value of trees.

The Revenue Court decided the suit as regards the produce, referring the plaintiff to the Civil Court as regards the value of the trees.

The plaintiff sued in the Civil Courts accordingly, filing his plaint on unstamped paper.

Held, that section 29, Court-Fees Act, 1870, did not operate to exempt the second plaint from payment of the usual Court-Fees. GANDA RAM *v.* SAIN. **132 P R 1892**

Schedule I, article 1.
1. *Schedule I, article* 1 *and schedule II, article* 11—*Remand—Civil Procedure Code* (*Act X of* 1877), *section* 562—"*Order having force of decree.*"

Held, that an order remanding a case under section 562, Act X of 1877, is not a "decree" nor "an order having the force of" "a decree" within the meaning of Act VII of 1870, schedule II, article 11, and that therefore a memorandum of appeal from such order falls under that article, and does not fall under article 1 of schedule 1, or require an *ad valorem* fee. SADIQ MAHOMED *v.* GUR SAHAI RAM. **6 P R 1880**

2. *Act VII of* 1870, *schedule I, article* 1—*Act X of* 1877, *sections* 525, 526—*Stamp on appeal arising out of application to file an award under above section—Stamp on application to first Court under same sections.*

Held, that an appeal arising out of an application made to file an award under section 526 of Act X of 1877 (corresponding with section 327 of Act VIII of 1859) requires an *ad valorem* stamp calculated on the amount or value of the subject-matter in dispute under article I, schedule I of the Court-Fees Act, but that an application of the above description to the first Court is only liable to a stamp of 8 annas as an "application," and not to an *ad valorem* stamp as a "plaint." LALA DHARM DASS *v* AJUDHIA PERSHAD. **70 P R 1881**

3. *Act VII of* 1870, *schedule I, article* 1, *and schedule II, article* 17—*Suit for possession of property valued at Rs.* 5,000—*Decree for property valued at Rs.* 15,000 *on payment*

COURT-FEES ACT, 1870—*contd.*

Schedule I, article 1—*concld.*
of that sum within two months, and ordering that in default of payment the decree should become void—Computation of Court-fees on appeal from such decree.

Plaintiff sued for possession of a third share of certain property valued at Rs. 5,000 and obtained a decree for possession of the whole property on payment of Rs. 15,000 within two months, it being provided that in default of such payment the decree should become null and void. The plaintiff appealed, urging that the first Court was wrong in ordering that the decree for possession should be null and void in default of payment by him within the time fixed by the decree.

Held by the Full Bench, that the subject-matter in dispute in such appeal was the validity or invalidity of a decree for possession of property valued at Rs. 15,000, and the Court-Fee was that leviable under article I of schedule 1 of the Court-Fees Act for a memorandum of appeal not otherwise provided for in the Act calculated upon Rs. 15,000. PIRBHU *v.* SAUDAGAR. **33 P R 1884**

4. *And article* 17.
Court-fee payable upon the memorandum of appeal against an order rejecting an application under section 525 of the Code of Civil Procedure to file an award is Rs. 10 under the sixth clause of article 17 and not an *ad valorem* fee in accordance with article 1 of the Court-Fees Act, 1870. BHAGAT RAM *v.* PARAS RAM. **84 P R 1907**

5. *Court-fees in appeals in redemption suits.*
Where the first Court found that the amount payable on redemption was Rs. 670 and on appeal the lower Appellate Court reduced this sum to Rs. 190 and the prayer on further appeal to the Chief Court was that this sum be increased to Rs. 1,190.

Held, that article 1, schedule I, of the Court-Fees Act applied, the Court-fee being payable on the value of the subject matter in dispute in the appeal, *viz.*, Rs. 1,000. *Reference under Court-Fees Act*, 1870, (1906) *I. L. R.* 29 *Mad.* 367 followed. BANWARI DAS *v.* NATHU SHAH. **5 P R 1911**

Schedule I, articles 4 and 5.
1. *Schedule I, articles* 4 *and* 5—*Application for review presented after* 89*th day—Limitation Act* (*XV of* 1877), *section* 5.

On 29th October 1878 defendant's appeal was rejected. On 28th January 1879, application for review was filed on half stamp, under article 4, schedule I of the Court-Fees Act (VII of 1870), the defendant's pleader claiming the benefit of section 5 of the Limitation Act (XV of 1877), the last day allowed under the Court-Fees Act having fallen on a holiday, and the petition having been presented on the re-opening of the Court.

Held, that the provisions of section 5 of the Limitation Act could not be applied to extend the period fixed in the Court-Fees Act, and the application having been present-

COURT-FEES ACT, 1870—*contd.*

Schedule I, articles 4 and 5—*concld.*
ed after the 89 days allowed under article 4, was liable to the full stamp fee under article 5, schedule I. RULDU MAL *v.* SOBHA. **39 P R 1879**

2. *Review of judgment—Application for,* in forma pauperis—*Court-Fees Act,* 1870, 1*st schedule, articles* 4 *and* 5.

Petitioner was plaintiff-appellant in an appeal to the Chief Court, and, subsequent to the dismissal of his appeal, asked for leave to apply for review of judgment *in forma pauperis*. He had not asked for, or obtained, leave to sue or appeal as pauper.

Held, that a petitioner for review, who has not been declared a pauper in any of the earlier stages of the case, must file the usual stamp required by law on his application.

No. 24 *P. R.*, 1870, cited and followed. KARAM KHAN *v.* BUTA KHAN. **91 P R 1895**

3. Schedule I article 11.
Probate—Probate duty—Foreign securities—Assets beyond jurisdiction.
Probate duty is payable only on property within the jurisdiction of the Court at the time the probate is applied for. Accordingly, where a testator left securities which were not saleable or transferable unless they had been transferred to the Executor or Trustee in the register of the Bank of England, *held*, that such securities were not assets in India, and that duty was not payable thereon. IN THE GOODS OF MAJOR-GENERAL MILLETT. **51 P R 1902**

Schedule II, article 1 (b).
Schedule II, article I (b).
A petition under Act IX of 1861 (Act relating to Minors) requires a stamp as for a petition only and not for a plaint. IN RE ANONYMOUS **6 P R 1873**

Schedule II, article 11.
1. *Act VII of* 1870, *Schedule II, article* 11.

The stamp for an appeal from an order of an Appellate Court refusing to re-admit an appeal dismissed for default is one of Rs. 2 under article 11, Schedule II of the Court-Fees Act. MUSSAMMAT KAHNO *v.* SOHEL SINGH. **100 P R 1883**

2. *Held*, that an order refusing an application under section $\frac{253}{336}$ of the Code of Civil Procedure for recovery of the amount decreed from a surety not being a decree nor an order having the force of a decree within the meaning of article 11 of the second schedule to the Court-Fees Act, an *ad valorem* fee was not leviable on an application for revision from such order. LILLO MAL *v.* HARJI MAL. **72 P R 1902**

Schedule II, article 12.
See CERTIFICATE UNDER ACT XXVII OF 1860.

Schedule II, article 17.
See SECTION 12, *supra*. **2 P R 1889**

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COURT-FEES ACT, 1870—*contd.*

Schedule II, article 17—*contd.*

1. *Court-fee where only question is to whom amount, admittedly due, is payable.*
See HINDU LAW. **71 P R 1911**

2. *Schedule II, article* 17, *No.* 3.

Held, that the plaint in a suit by a reversioner for a decree declaring (without giving any relief) that a conveyance by a Hindu widow is void in respect of anything beyond her life interest is properly stamped with a stamp of ten rupees under the above article. BAKSHISH SINGH *v.* NARAIN SINGH. **70 P R 1877**

3. *Act VII of* 1870, *section* 17 *and schedule II, article* 17 *(iii)—Suit for money and declaration of lien as equitable mortgagees—Appeal as regards the declaration only—Stamp on such appeal.*

The relief claimed by plaintiff in the lower Court against certain insolvent defendants consisted of (1) a prayer for certain money with interest, and (2) a declaration of plaintiff's right as equitable mortgagee to be first paid out of certain specified property. The lower Court gave the plaintiff a decree for the full amount claimed, but refused to grant the declaration sought, whereupon the plaintiff appealed in regard only to the declaration thus refused.

Held, that the proper fee chargeable for such appeal was Rs. 10 under section 17 and article 17 *(iii)* of the 2nd Schedule of the Court-Fees Act. SIMLA BANK *v.* NARPAT RAI. **43 P R 1888**

4. *Court-Fees Act*, 1870, *Schedule II, article* 17 *(iii)—Suit to obtain a declaratory decree where no consequential relief is prayed for—Stmap on plaint.*

The prayer for relief in the plaint was as follows :—

> The plaintiffs pray that by issuing a declaratory decree on this point, their right may be secured, namely, that the will of 3rd January 1890 after the death of the widows shall have no effect on the reversionary right of the plaintiffs, or whatever relief they may be found entitled to.

In reply to the Court, the plaintiffs said that their suit was "*waste tansikh wasiyat namah.*"

The District Judge thereupon returned the plaint, which had been filed upon a stamp of Rs. 10 for amendment and representation on full stamp.

The District Judge's order was affirmed on appeal by the Divisional Judge.

Held, that the plaint had been correctly stamped. If the facts alleged by a plaintiff regarding a particular document are such as to entitle him, on proof of these facts, to a declaration that it shall be inoperative against him, and also to have it delivered up and cancelled in whole or in part, and the plaintiff's prayer is for such a declaration and for setting aside the document, or for such other relief as the Court think fit, he does ask for consequential relief.

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COURT-FEES ACT, 1870—*concld.*

Schedule II, article 17—*concld.*

But, held that, in the present case, there was no allegation that the will was not genuine, nor even that it was wholly inoperative : the will was by implication admitted to be operative during the lifetime of the widows, and the only relief that could be granted, if all the facts alleged were proved, was a declaration that the will would not affect the plaintiff's reversionary interests.

21 *W. R.* 340, and *I. L. R.* 13 *Calc.* 308, distinguished.

No. 70 *P. R.* 1877, referred to. HAKIM *v.* MUSSAMMAT MAHTAB KOUR. **109 P R 1893**

5. *Suit for decree directing registration of document—Registration Act (III of* 1877), *section* 77*—Valuation of suit—Court-Fees Act (VII of* 1870), *2nd Schedule, article* 17 *(vi)—Punjab Courts Act (XVIII of* 1884), *section* 40 *(i) (a).*

Plaintiff sued under section 77 of the Registration Act, 1877, for a decree directing registration of a receipt for Rs. 100 said to have been paid as earnest-money of the price of a house which, it was alleged, defendants agreed to sell for Rs. 2,500. No value was put on the suit in the plaint, which was written on a Rs. 10 stamp, but in his appeal plaintiff valued it at Rs. 100.

Held, that *(i)* as regards Court-fees, the suit fell under article 17, clause *(vi)* of the 2nd Schedule to the Court-Fees Act, 1870 ; and *(ii)* that although the property might have been agreed to be sold for Rs. 2,500, the suit did not "involve directly any question respecting property of the value of Rs. 1,000 or "upwards," within the meaning of clause *(a)* of section 40 (i) of the Punjab Courts Act, 1884, but was an unclassed suit, of which the value, for purposes of jurisdiction, was Rs. 100 only. MUHAMMAD ZAKRIA *v.* MUSSAMMAT FATIMA BEGAM. **21 P R 1895**

COURT OF REQUESTS.

See SMALL CAUSE COURT—JURISDICTION OF. **21 P R 1887**
111 P R 1887 F B

COURT OF WARDS.

1. *Suit against ward of Court—Public Officer—Notice.*
See CIVIL PROCEDURE CODE, 1908, SECTION 80. **24 P R 1889**

2. *Acknowledgment of debt by Court of Wards as guardian of minor.*
See LIMITATION ACT, 1877, SECTION 19, **1 P R 1887**

3. *Punjab Laws Act (IV of* 1872, *as amended by XII of* 1878), *sections* 34—38*—Effect of declaration under section* 35*—Incapacity of disqualified person to contract—Extent of such incapacity.*

The effects of a declaration under section 35 of the Punjab Laws Act, and of the transfer of the disqualified person's estaie to the Court of Wards, discussed and explained.

The effect of such declaration and transfer s that the person whose property is thus

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COURT OF WARDS—*concld.*

placed under the superintendence of the Court is placed under a qualified incapacity, *viz.*, incapacity to do acts directly binding his property, and that his property is not bound by his acts which purport to charge it, but are done in contravention of the enactment in section 38 of the Act. There are no sufficient grounds in the terms of the provisions of sections 34—38 of the Act for holding either that the disqualification extends to incapacitating a person, otherwise competent to do so, from contracting debts, or that it exempts his property from the liability to which it is ordinarily subject of being applied to the discharge of his debts by process of law. PADRI RAJAB ALI *v.* GURU NAWNEHAL SINGH. **18 P R 1884**

4. *Punjab Laws Act (IV of* 1872), *section* 35, Proviso (1)*—Jurisdiction of Court of Wards—Act XL of* 1858, *section* 12.

The first proviso to section 35 of the Punjab Laws Act has not the effect of excluding the jurisdiction of the Court of Wards except in the case of a *jagirdar* or lambardar who engages direct for the payment of the land revenue, as the *proviso* says nothing about engaging direct for such payment, and though the settlement of the estate must have been made with the minor's father, as one of the owners, under the provisions of section 30 of the Land Revenue Act, it may have been made with him through the lambardar as his representative.

Section 12 of Act XL of 1858, which expressly empowers the Civil Court to direct the Collector to take charge when the minor's estate consists in whole or in part of land or of any interest therein, puts the Collector, when such direction has been given, in a similar position to what he would have held had the property and person of the minor come under the jurisdiction of the Court of Wards. MUSSAMMAT KHANAMJI *v.* SHAHDAD KHAN. **71 P R 1886**

COVENANT NOT TO ALIENATE.

See RIGHT TO SUE. **2 P R 1886**

CROPS.

Standing crops—"Movable property."
See SMALL CAUSE COURT.
19 P R 1866 Civil Ref.

Cut crops—"Movable property."
See SMALL CAUSE COURT.
52 P R 1874

1. *Crops planted* bona fide, *by purchaser with defective title—Right to crops growing on property at time of purchaser's eviction.*
See VENDOR AND PURCHASER.
36 P R 1883

2. *Held*, that a proprietor's share in standing crops is not "land" within the definition of section 2, clause 3 of the Punjab Alienation of Land Act, and can therefore be sold in execution of decree. NUR MUHAMMAD *v.* TILOKA MAL. **14 P R 1905**

CROWN GRANT.

See JURISDICTION OF CIVIL COURTS. **17 P R 1882**

CROSS-OBJECTIONS.

1. *Act X of* 1877, *section* 561—*Dismissal of appeal on preliminary ground—Cross-objection.*

See APPEAL. **38 P R 1880**

2. *Appeal and cross-objections—Power of appellant to defeat cross-objections by withdrawing from appeal.*

See APPEAL. **86 P R 1898**

3. *Abatement of appeal—Abatement of cross-objections.*

See CIVIL PROCEDURE CODE, 1908, ORDER XXII, RULE 4. **53 P R 1896**

4. *Cross-objections as to costs—Dismissal of appeal for want of stamp.*

See CIVIL PROCEDURE CODE, 1908, ORDER XLI, RULE 22. **2 P R 1889**

5. *Decree of lower Court reversed on respondent's cross-objections.*

See CIVIL PROCEDURE CODE, 1908, ORDER XLI, RULE 22. **31 P R 1897**

6. *Right of respondent's who had filed no cross-objections to support decree by objection going to the root of decree.*

See CIVIL PROCEDURE CODE, 1908, ORDER XLI, RULE 22. **25 P R 1897**

7. *Suit for specific performance of contract to sell and for pre-emption on sale—"Distinct subjects"—Appeal and cross-objection—Court-fee payable.*

See COURT-FEES ACT, 1870, SECTION 12. **96 P R 1895**

8. Can an Appellate Court entertain cross-objections under section 561 of the Code of Civil Procedure when it has decided that an appeal would not lie? BALWANT SINGH *v.* RAM DAS. **28 P R 1908**

CRUELTY.

See CUSTODY OF WIFE.

1. *Charge of un-natural offence, by wife without corroboration.*

See DIVORCE ACT, 1869, SECTION 22. **77 P R 1905**

2. *Restitution of conjugal rights—Plea of cruelty.*

See DIVORCE ACT, 1869, SECTIONS 32, 33. **101 P R 1882**

CURRENCY NOTE.

Deposit of Currency Note in payment of decree for pre-emption—"Money."

See PRE-EMPTION. **67 P R 1892**

CUSTODY OF CHILDREN.

See DIVORCE ACT, 1869, SECTION 12.

CUSTODY OF MINOR.

See CIVIL PROCEDURE CODE, 1908, ORDER XXXII, RULE 7. **17 P R 1899**

CUSTODY OF WIFE. **64 P R 1891**
128 P R 1892
35 P R 1894
24 P R 1897

CUSTODY OF MINOR—*contd.*

See GUARDIAN. **135 P R 1893**
137 P R 1893
84 P R 1894
54 P R 1898

JURISDICTION OF CIVIL COURT. **106 P R 1876**

MINOR. **42 P R 1882**
26 P R 1886

1. *Act IX of* 1861, *section* 3—*Guardianship of minor—Application by mother who had previously entrusted her children to a third party under an agreement not to take them back during their minority without repaying the outlay incurred—Mother's right to an unconditional order notwithstanding such agreement.*

On an application under Act IX of 1861 by a mother for the guardianship of her three minor children, it appeared that the petitioner, being at the time a widow and a Native Christian, made over her children to a Missionary in charge of a Mission, executing at the time a stamped agreement by which it was agreed that the Mission should take charge of them and bring them up till they reached the ages of 18 years, and if the said widow should take the said children back, she would repay the outlay already incurred, together with the cost of the children's maintenance. Subsequently, the mother having again become a Muhammadan, brought the present application.

Held by *Tremlett* and *Smyth* JJ., that the applicant was entitled to the custody of her minor children, as it appeared that she was of irreproachable character, and was able and willing to support them, and to bring them up in a manner compatible with their station in life, she also being in a better position to control their religious education than the defendant, who professed a religion different from that of the children's father, as in the above view of the case it would be most beneficial in the minors' interests that they should be restored to the custody of their mother who on the death of their father was the natural guardian.

Held further, by *Plowden* and *Smyth*, JJ. (*Tremlett*, J., dissenting as to this) that an unconditional order of appointment should be made in favour of the applicant, without regard to the question whether there were unadjusted claims between the defendant and the applicant connected with the subsisting custody of the minors, and arising out of the applicant's previous conduct, and that the appointment should not be made dependent upon her ability or her willingness to satisfy such claims.

Per *Tremlett*, J.—That the applicant should as a condition precedent to obtaining the order sought for, be required to make good to the defendant the actual outlay he had incurred in payments made to the applicant or on her behalf, and in maintaining the children so long as they were with him.

Murray v. *Sasoon-bin-Solomon* (*No.* 140 *P. R.* 1879), *Mussammat Fazlan* v. *Murad* (*No.* 42

CUSTODY OF MINOR—*contd.*

P. R. 1882), and *Nizam* v. *Alayar* (*No.* 26 *P. R.* 1886), referred to. MUSSAMMAT SAHIBZADI *v.* NEWTON. **15 P R 1887**

2. *Act IX of* 1861, *sections* 1, 3—*Custody of minor—Division of guardianship between two guardians.*

On an application under Act IX of 1861 for the guardianship of two female minors, the lower Court divided the personal guardianship between two persons, the mother and the paternal aunt, giving the mother the personal custody and requiring the aunt to pay a certain sum for maintenance, and giving her a separate power to direct the education and arrange the marriage of the minors.

Held, that the above splitting of the guardianship was not warranted, and nothing being alleged against the mother except her remarriage which was no objection, so much of the order as gave the aunt rights and made her liable for maintenance must be struck out of the lower Court's order. MUSSAMMAT NUR BIBI *v.* MUSSAMMAT MEHRAN. **44 P R 1887**

3. *Act, IX of* 1861—*Application by father for custody of minor girl—Defendant setting up marriage with the girl performed in absence of father by authority of her mother—Defendant's right to inquiry as to validity of marriage set up by him—Summary proceeding—Separate suit—Custom of Kapur Khatris of Amritsar—Right to custody of girl.*

In a proceeding under Act IX of 1861, it appeared that the petitioner was the father of a minor girl, under the age of puberty, who, when the proceedings were instituted, was in the custody of the defendant or a female member of his family. The petitioner claimed the custody of the child as his daughter, notwithstanding that a marriage between her and the defendant, to which he had not consented, had been performed by the authority of his wife during his absence. The defendant replied that the girl had been married to him by the mother's authority during the absence of the father, and that the father had turned his wife out, and by the custom of Kapur Khatris, a wife was competent to marry the daughter without the father's consent.

Held, that the defendant was not entitled in the present case to any enquiry into the validity of the marriage set up by him as his title to custody, the validity of which marriage was denied; the proceeding being a summary one, and it therefore being a waste of time to enter upon the question, which was not free from difficulty, and to give a decision which would not bind the parties to the marriage *inter se*, and might be contested the next day by a regular Civil suit; that the main and first issue to be tried was whether the petitioner was a fit person to have the custody of the child as its guardian; that if the plaintiff was proved to be fit, the Court must appoint him guardian, unless the defendant produced a decree declaring him to be the lawful husband, and also proved

CUSTODY OF MINOR—*contd.*

that it was customary among Khatris of Amritsar for a minor wife to be delivered, before puberty, to her husband's house. AMAR NATH *v.* RURA MAL. **113 P R 1888**

4 *Act, IX of* 1861,—*Custody of minor.*
The principles which should guide a Court in making an order for the custody of a minor under Act IX of 1861 discussed and explained.

In re Twitchen (*No.* 23 *P. R.* 1867), and *Murray* v. *Sassoon-bin-Solomon* (*No.* 140 *P. R.* 1879,) referred to. MUSSAMMAT CHANDNI *v.* MUSSAMMAT MANNI. **146 P R 1888**

5. *Act IX of* 1861—*Discretion of Court under—Principles on which such discretion should be exercised—Custody of minor—Guardianship of minor for purposes of marriage.*

The Courts acting under Act IX of 1861 have not an arbitrary power of selecting guardians of minors. Where the legal title is shown to exist, the Order under Act IX of 1861 should follow the law unless substantial grounds be shown for refusing to grant his legal rights to the person who has established them. The discretion vested by the Act is a judicial discretion to be exercised on reasonable grounds and not a mere arbitrary discretion. MUSA *v.* MUSSAMMAT ROSHNAI. **163 P R 1889**

6. *Suit for custody of minor—Jurisdiction of Court other than District Court—Munsiff of first class—Guardian and Wards Act,* 1890, *sections* 17, 48—*Rules and Orders of Chief Court No. XXXIII, rule I, clause iii.*

Held, by the Full Bench, that since the enactment of the Guardian and Wards Act, 1890, a suit for establishing a right to the custody or guardianship of a minor cannot be brought in the ordinary way or tried by a Court having jurisdiction up to Rs. 1,000.

So much of rule I, clause iii, as relates to suits for establishing rights to the custody or guardianship of minors has ceased to be operative since the passing of the said Act. GHASITA *v.* WAZIRA. **10 P R 1897**

7. *Application by guardian for custody of minor—Appeal—Guardian and Wards Act,* 1890, *sections* 12, 25, 47 (*c*)—*Revision—Right of guardian to custody of minor.*

An application by a duly appointed guardian for custody of the minor was rejected by the Additional District Judge on the ground that the proper course for the guardian would be to bring a civil suit against the respondent if she refused to make over the minor to his custody. The guardian appealed to the Chief Court.

Held, that the order of the lower Court was not appealable.

But *held*, that the said order was open to revision on the ground that the lower Court should have directed the respondent to produce the minor with a view to his being made over to the petitioner, and that in failing to do so the lower Court failed

CUSTODY OF MINOR—*concld.*

to exercise a jurisdiction vested in it by law. WADHAWA SINGH *v.* MUSSAMMAT MALAN. **13 P R 1897**

8. *Custody of minor—Marriage of minor without consent of paternal relation—Respective rights of minor's husband and paternal uncle.*

A minor girl, aged about 8 years, whose father was dead and whose mother could not be found, was given in marriage to respondent by her maternal grandmother without the consent of appellant, the minor's paternal uncle. The latter applied for the guardianship of the minor, but the District Judge dismissed his application on the ground that, if the marriage was unlawful by reason of the grandmother's incompetency to celebrate it applicant was "at liberty to seek his remedy in a Civil Court."

Held, that the right of giving the minor in marriage lay with the appellant, and that even if a marriage had taken place between respondent and the minor, the respondent did not thereby acquire the right of guardianship when the paternal relations did not consent to the marriage. HAR BHAJ *v.* BHANA. **26 P R 1898**

9. *Guardian, appointment of—Guardian and Wards Act,* 1890, *section* 17—*Application by a Muhammadan maternal grandmother to be appointed guardian of her Muhammadan minor grand-children who were in the custody of their father who had changed his religion—Father's right to custody—Act XXI of* 1850, *section* 1—*Interpretation of the expression* "*rights*"—*Equity.*

Held, that the law in India, while placing all religions on a level before the law, and allowing to the fullest extent the rights of aggregations of individuals to be governed by their own personal law, protects individuals so far as may be from the loss of either rights or property by reason of renunciation of, or exclusion from any religion or caste.

Held, also that the expression "rights" in section 1 of Act XXI of 1850 includes something more than actual rights in property, and that the right to the guardianship and custody of his children by a Muhammadan, who has been converted to Christianity, is a right within the meaning of Act XXI of 1850.

Held, further, that the father, who was the only living parent, and who had the custody of his children, and was making suitable provision for their up-bringing, should not lose his natural rights on the ground of change of his religion. GUL MUHAMMAD *v.* MUSSAMMAT WAZIR BEGAM. **60 P R 1901**

CUSTODY OF PROPERTY OF MINOR.

See GUARDIAN.
MINOR.

CUSTODY OF WIFE.

See LIMITATION ACT (IX) OF 1871) SECTION 23.

CUSTODY OF WIFE—*contd.*

See CUSTODY OF MINOR. **113 P R 1888**

1. *Suit for custody of wife—Minor—Reference to arbitration.*
See CIVIL PROCEDURE CODE, 1908, ORDER XXXII, RULE 7. **37 P R 1895**

2. *Decree for restitution of conjugal rights—Stay of execution.*
See CIVIL PROCEDURE CODE, 1908, ORDER XLI, RULE 5. **2 P R 1894**

3. *Consummation of marriage, Decree for.*

Where the wife had attained her majority, the Court at the suit of the husband decreed consummation of the marriage. CHOUGUTTA *v.* RAJUN. **13 P R 1869**

4. *Consummation of marriage.*

Where a marriage was solemnized during the infancy of the parties, but consummation did not afterwards take place, *held*, that the husband was not entitled to the custody of his wife, but might sue the parent of the girl for breach of contract. JEEWUN *v.* SUNDHEE. **3 P R 1870**

5. *Custody of wife—Execution.*

In executing a decree for the custody of a wife, the proper course is for the Court to summon the woman, and in the event of her refusing to go with her husband, to satisfy itself that the husband will treat her well; and if so satisfied, should the wife persist in her refusal, to enforce the decree by imprisoning her in the Civil Jail. MUSSAMMAT GOOLABEE *v.* GOORMOOKH SINGH. **7 P R 1868**

6. A wife against whom a decree for restitution of conjugal rights has been passed cannot elect whether she will return to her husband or not; and the decree can be enforced, under section 200, Civil Procedure Code, by imprisonment of the wife;—it being the duty of the Court executing the decree to be first assured of her good treatment at the hands of the husband. MUSSAMMAT BEGUM KHATUN *v.* ABDUL KI. **2 P R 1871**

7. Plaintiff sued for the custody of his wife. He was married to her about three years before suit, but as she was then only about nine years of age, she was allowed to remain with her parents. *Held*, that he was entitled to a decree, which could not be executed by ordering the girl to be bodily handed over to him; but that she would be liable to imprisonment if she refused to obey the decree. ALLAH BAKHSH *v.* ALLAH BAKHSH. **15 P R 1876**

8. *Custody of wife—Agreement at marriage not to remove wife from parents' house—Public policy.*

Plaintiff on his marriage executed an agreement binding himself never to take his wife away from her parents' house or town, under a penalty of freeing his wife from the marriage tie. *Held*, that the

CUSTODY OF WIFE—*contd.*

agreement was contrary to public policy and therefore, was no answer in a suit by the plaintiff for the custody of his wife. MUSSAMMAT LAHORAN *v.* MADAR BAKHSH.

20 P R 1878

9. *Restitution of Conjugal Rights—Dower.*

By Muhammdan Law, a husband is not entitled to a decree for restitution of conjugal rights or the custody of his wife, before he has paid the wife the dower fixed, or the dower (when none has been fixed) which she is entitled to receive in accordance with the average rate of dower granted to the females of her father's family. MOULADAD KHAN *v.* WAZIR SHAH.

45 P R 1876

10. *Hindu law—Plea that husband is excluded from caste—Cruelty.*

Quære.—Whether exclusion from caste deprives a Hindu husband of the right to the custody of his wife? Exclusion from a section of a caste does not constitute outcasting. The degree of cruelty which would disentitle a Hindu husband to the custody of his wife, is that which is required by the English Divorce Court. MUSSAMMAT KAKO *v.* LACHMI NARAIN. **18 P R 1877**

11. *Restitution of Conjugal Rights—Muhammadan law—Adultery—Violation of marriage Contract.*

In a suit for restitution of conjugal rights, it was pleaded (among other grounds) that plaintiff had lost his rights by reason of his adultery. *Held*, that the fact of plaintiff having had sexual intercourse with prostitutes during the absence of his wife, she persistently for years having refused to live with him, was not so gross a violation of the marriage contract as to disentitle plaintiff to the coustody of his wife. MUSSAMMAT FAHIM-UL-NISSA *v.* MAHOMED HUSSAIN. **41 P R 1878**

12. *Custody of wife—Marriage of infants—Subsequent marriage without consummation of first marriage—Mohomedan law—Custom—Validity of first marriage—Relief to which plaintiff is entitled.*

In suit for custody of wife, the parties to which were Mahomedans of the Gujrat district, the facts showed that a complete ceremony of a marriage, according to the Mahomedan law, had been entered into between the parties while infants of tender age, the contract being made on their behalf by their respective fathers. This marriage was never consummated, and the wife on attaining maturity entered into a fresh marriage with defendant No. 3 by whom she had a son, though she was shown to have full knowledge of the fact of her previous marriage; whereupon the plaintiff instituted the present suit to establish his marital right. No custom applicable to the parties was shown to exist, modifying the Muhammadan law as to the effect of a marriage of the kind in question nor was any such custom distinctly alleged by the defendants.

CUSTODY OF WIFE—*contd.*

Held, reversing the order of the lower Appellate Court, that plaintiff was entitled to a decre for the recovery of defendant as his wife, to be enforced in the manner prescribed in the Code of Civil Procedure. MUHAMMAD ALI *v.* MUSSAMMAT HYAT BIBI.

79 P R 1880

13. *Non-payment of prompt dower—Muhammadan Law—Custom.*

Quaere.—Whether there is any rigid rule which is binding throughout the Punjab as between all husbands and wives who are by religion Muhammadans, that a wife who has not received her prompt dower is entitled either before or after consummation to refuse to reside with her husband.

Mussammat Zebo v. *Jewan Khan* (*No.* 35 *of* 1873, Civil), and *Mouladad Khan* v. *Wazir Shah* (*No.* 45 of 1876, Civil) referred to. MUHAMMAD BAKHSH *v.* MUSSAMMAT BEGAM.

141 P R 1884

14. *Non-payment of prompt dower before suit—Payment before decree.*

In a suit for custody of wife, it appeared that the plaintiff had not paid or tendered before the institution of his suit the amount due to the defendant as prompt dower, urging that he had been excused such payment, but that on the Court finding against him on this point he paid the dower into Court and obtained a decree for the possession of his wife.

This decree was upheld by the Chief Court on second appeal. *Mussammat Zebo* v. *Jewan Khan* No. 35 of 1873, Civil) and *Muhammad Bakhsh* v. *Mussammat Begam* (No. 141 of 1884, Civil) cited. MUSSAMMAT MULKAN *v.* MUHAMMAD HUSAIN. **119 P R 1885**

15. *Defendants pleading acquiescence and connivance on the part of the plaintiff—Validity of such plea.*

In a suit by a husband against his wife for restitution of conjugal rights and against the man with whom she was living as his wife for recovery of her person, where the defendants pleaded acquiescence and connivance on the part of the plaintiff, *held*, that the Court should have raised an issue on the above plea, as a Civil Court may refuse to grant its aid to a husband seeking its assistance against his wife, if it is proved that the conduct of which he complains has been knowingly permitted or connived at by him for a considerable period. DULO *v.* GHULAM HUSSAIN. **150 P R 1884**

16. *Husband acquiescing for several years in his wife's absence from his protection—Gross negligence disentitling husband from obtaining assistance from Court.*

In a suit for custody of wife, *held*, that where a wife leaves her husband and goes off to another man, it is an imperative duty on the husband, if he intends to keep her as his wife and not to sever the connexion, to lose no time and spare no reasonable exertions in tracking and bringing her back, and if he allows years to go by without making

CUSTODY OF WIFE—*contd.*

any effort to reclaim her, the obvious conclusion is that either he has made up his mind to give her up and let her go, or else that he grossly neglected making the exertions due from him of keeping his wife safe in his protection, in either of which cases he is entitled to no assistance from the Courts. BUDH SINGH *v.* ASA SINGH. **6 P R 1885**

17. *Suit for restitution of conjugal rights—Dower—Plea of non-payment.*

A suit is maintainable by a Muhammadan husband for restitution of conjugal rights or for recovery of wife notwithstanding previous non-payment of dower. The Court may allow the sum due as prompt dower to be paid into Court before decree, or give a decree with a condition that it can only be executed on prompt dower being paid.

I. L. R. VIII All., 149; *I. L. R. XI Mad.* 327; 141 *P. R.* 1884; 119 *P. R.* 1885, approved. 35 *P. R.* 1873 and 45 *P. R.* 1876, overruled. MUSSAMMAT SALEH BIBI *v.* RAFI-UD-DIN.

164 P R 1889

18. *Custody of wife—Agreement to divorce—Khula—Agreement opposed to public policy.*

A., a Muhammadan husband, took unto himself a second wife C., whereupon his first wife B. left him, A. followed her, and in order to induce her to return to him executed an agreement by which he agreed to divorce C. in four months and promised that in default he should have no claim on B. who might then marry any one she liked. B. on her part executed a deed agreeing to renounce all claim to her dower in case A. did not divorce C. On the expiration of four months, A. did not divorce C. B. continued to live in the same house with A. for some time after which she left A. then sued for custody of B., B. pleaded that she had been irrevocably divorced by 'Khula.'

Held, that there had been no 'Khula.' Neither party wished for a divorce *absolute*. B. only wished for one in case A. did not divorce C. within 4 months. There was only an agreement to divorce, no actual repudiation but a suspension of repudiation on acceptance by B. which acceptance had to be notified by her on the termination of four months. As B. did not signify her acceptance at the proper time, there was no divorce.

Held, also that the agreement was void, its object and consideration being unlawful and opposed to public policy. MUHAMMAD BAKHSH *v.* MUSSAMMAT SAHIB JAN.

193 P R 1889

19. *Valuation of suit for custody of wife—Appeal.*

In a suit for custody of a wife, the husband is enabled to value the suit himself. by stating in the plaint as its value any sum exceeding Rs. 500 and not exceeding Rs. 1,000 (*Rule I of the Rules made under the*

CUSTODY OF WIFE—*contd.*

Suits Valuation Act, 1887—*Chief Court Book Circular V of* 30*th March* 1889).

But neither can the Appellate Court itself put a value on the suit nor permit the plaintiff to value it, for the first time, when he presents his appeal. SHER *v.* MUSSAMMAT HASHO. **53 P R 1891**

19. *Custom—Custody of minor wife—Minor husband—Hindu Jats of Rohtak.*

In a suit the parties to which were Hindu Jats of Rohtak, *held,* that no custom had been proved by which a minor husband was entitled to the custody of a minor wife before she attains puberty. SHEO NAND *v.* SHEO CHAND. **64 P R 1891**

20. *Custody of wife—Husband undergoing sentence of transportation for life at Port Blair—Equity and good conscience.*

The lower Appellate Court gave the plaintiff, a Jat of the Jullundur district, who was undergoing a sentence of transportation for life at the penal settlement of Port Blair in the Andaman islands, a decree for the custody of his wife.

Held, that the decree should not have been made and must be reversed, it not being in accordance with the principles of equity and good conscience that a young woman, who had hardly attained maturity when her husband was transported for life, should be directed to proceed to a penal settlement and co-habit with him there. MUSSAMMAT JOWALI *v.* KARM SINGH. **47 P R 1892**

21. *Suit for custody of wife—Third person harbouring wife—Continuing wrong—Indian Limitation Act,* 1877, *section* 23.

A third person who harbours a runaway wife is guilty of a continuing wrong, and under the operation of section 23, Indian Limitation Act, 1877, a fresh period of limitation begins to run at every moment of time during which the wrong continues, the section being more comprehensive in this respect than the corresponding provision of the Act of 1871.

The limitation applicable to a suit by a husband for the custody of his wife is to be found in articles 34, 35, schedule II, Limitation Act, 1877.

No. 60 *P. R.* 1879 (F. B.), followed. KHAIR-UD-DIN *v.* MUSSAMMAT BUDHI. **80 P R 1892**

22. *Suit for custody of wife—Mussalman Gujars—Discretion of Court.*

The plaintiff, a minor, sued through his father for custody of his wife.

The plaintiff was about ten years of age and the principal defendant, who was a widow, about thirty. It was alleged that the marriage took place when the plaintiff was four and the woman between nineteen and twenty-four.

CUSTODY OF WIFE—*contd.*

Held, assuming the plaintiff to have become the husband of the woman, that the Court had a discretion to grant or refuse the order prayed for and the order ought in the present instance to be refused.

[*Cf. No.* 47 *P. R.* 1892] KALU *v.* MUSSAMMAT AISHA. **128 P R 1892**

23. *Hindu Jats, Jullundur district—Suit by a husband for custody of wife whom he has deliberately abandoned—Custom.*

The plaintiff executed an instrument by which he deliberately abandoned his wife, recording that he gave her up and had no further claim upon her.

The plaintiff now sued for the custody of his wife, who was living with another man.

The parties were Hindu Jats of different *gots* of the Jullundur district.

Held, that the husband had deprived himself of all right to the custody of his wife.

Quære : Whether by custom in the Jullundur district a Hindu Jat can divorce his wife. MUSSAMMAT UTTI *v.* HIRA SINGH.

78 P R 1893

24. *Custody of wife—Minors—Muhammadan law—Discretion of Court.*

In a suit among Muhammadans admittedly governed by the Muhammadan Law, for custody of wife, when both husband and wife were found not to have attained the age of puberty, held that the Court was not bound by any provision of Muhammadan Law to grant the decree sought for and should therefore in its discretion refuse a decree in the present case. DINU *v.* ABDULLA.

35 P R 1894

25. *Hindu Law—Marriage of minor—Minor given in marriage by person other than her guardians—Suit by guardians for custody of minor.*

A minor woman having been given in marriage by her mother's sister and her own elder sister, plaintiffs, who were admittedly the guardians of the minor for the purposes of marriage, instituted the present suit with the object of getting possession of the minor, and of disposing of her in marriage for their own benefit. The marriage in question was a perfectly suitable one in all respects.

Held, that, as no reason affecting the propriety of the said marriage could be alleged, plaintiffs were not entitled to the decree for which they prayed, although the persons who gave the minor in marriage had no right under Hindu Law to do so.

I. L. R. XIV Mad., 316, cited. CHELA RAM *v.* CHOHAT RAM. **24 P R 1897**

26. *Custody of wife—Conduct of husband—Discretion of Court.*

CUSTODY OF WIFE—*concld.*

In suits for the custody of the person of a wife, the Court requires from the husband proof not merely that he is the husband of the woman but also that he has done nothing to forfeit his right to such special relief by failure in his own duty towards his wife. He has to show not only that he is not estopped from exercising a claim or privilege, but that he has done his duty in the matter towards his wife so as to entitle him to claim this extreme exercise of authority on his behalf.

Where it appeared that plaintiff's wife, of whom custody was sought, had some time previously absconded with another man, against whom plaintiff instituted criminal proceedings under section 498 of the Penal Code, which he subsequently compromised by divorcing his wife, and that the defendant, R. S., thereafter married the said woman by *karewa, held,* that inasmuch as plaintiff had done all he could to divest himself of connection with and responsibility for, his wife, the Court was not justified in putting in force the discretionary power vested in it and giving plaintiff a decree for the custody of his wife. HARNAM SINGH *v.* MUSSAMMAT KISHNI. **95 P R 1898**

27. *Husband and wife—Restitution of conjugal rights—Right of husband to claim custody of wife after long deliberate desertion.*

Held, that among Hindus a husband, who for years deliberately deserts his wife and fails to fulfil his obligations of giving her a home and of supporting her, is not entitled to enforce his marital rights and claim the custody of his wife. DHANI *v.* NARAIN SINGH. **82 P R 1908**

CUSTOM I.—ALIENATION.

A.—ALIENATION BY MALE PROPRIETOR.

(1). *Gifts and wills in favour of—*

- (*a*) Sons and grandsons.
- (*b*) Brothers.
- (*c*) Nephews and grandnephews.
- (*d*) Collaterals.
- (*e*) Daughters and their children.
- (*f*) Sisters and their children.
- (*g*) Son-in-law.
- (*h*) Step-sons.
- (*i*) Widow in presence of son.
- (*j*) Strangers.
- (*k*) Miscellaneous.

(2). *Sales and mortgages in favour of collaterals.*

(3). *Sales and mortgages in favour of strangers.*

(4). *Alienations for religious purposes.*
(5). *Necessity.*
(6). *Limitation.*
(7). Locus standi *of widows and reversioners*

B.—ALIENATION BY WIDOW.
(*a*) *Gift.*
(*b*) *Sales and mortgages.*
(*c*) *Necessity.*
(*d*) *Assent of reversioners.*

C.—ALIENATION BY DAUGHTER

D.—ALIENATION BY MOTHER.

E.—ALIENATION BY HEAD OF RELIGIOUS INSTITUTION

F.—ALIENATION BY NON-PROPRIETOR.

G.—ALIENATION BY GUARDIAN.

H.—ALIENATION OF REVERSIONARY RIGHTS.

I.—ALIENATION OF OCCUPANCY RIGHTS.

J.—RULE OF DECISION.

A.—ALIENATION BY MALE PROPRIETOR.

(1). *Gifts and wills in favour of—*
(*a*) *Sons and grandsons—*
(*i*) **Pure gifts and bequests.**
(1) **Proved.**

1. *Bedi Khatris of Pak Pattan—Self-acquired property—Gift of extra share to youngest son—Will.*

Found that among Bedi Khatris of Pak Pattan, in the Montgomery district, there is no established custom whereby a proprietor's power of alienation of self-acquired property is limited.

Where, therefore, a Sikh father of the above tribe disposed of two shares of his self-acquired property by will in favour of his youngest son, to the exclusion of the two elder ones, *held*, that such disposition was valid and should be upheld. BAVA NATHA SINGH *v.* WAZIR SINGH. **63 P R 1880**

2. *Naru Rajputs—Validity of marriage with women of inferior caste or widow—Gift to son by such wife—Possession—Validity of gift.*

One A. A., the father of the parties, a Naru Rajput, gifted half of his land to defendant, whose mother, Mussammat B., was a Moghlani. It was proved that defendant was in fact the son of A. A. by Mussammat B., and had been acknowledged by A. A. as such, but it was found unnecessary to decide whether Mussammat B. was the said A. A.'s lawful wife, or merely his concubine.

In a suit by plaintiffs, the donor's sons by a Rajput wife, to set aside the gift as invalid, *held*, that no custom had been proved under which the marriage of a Rajput with a woman of inferior caste or a widow, was

A.—ALIENATION BY MALE PROPRIETOR—*contd.*

invalid and under which the son of such a marriage could not succeed.

Held, further, that the gift by A. A. to defendant followed by possession, was valid, though at the time of the gift the donor was the father of an infant son by a Rajput wife. HAIDAR ALI *v.* SONDHA.

102 P R 1880

3. *Syads of Gujrat—Gift to one son of larger share of ancestral land than would fall to him by inheritance—Muhammadan Law.*

Found, that there is no well established custom prohibiting a Syad proprietor in the Gujrat tahsil from giving a larger share in ancestral land to one son than would fall to him by right of inheritance, by a deed of gift accompanied by delivery of possession.

A gift of the above description being valid by Muhammadan Law was therefore upheld. *Mahomed v. Walidad* (No. 164 of 1879, Civil), *Mussammat Karm Bhari* v. *Hyat Baksh* (No. 15 of 1880, Civil) and *Nurdin* v. *Sahibzada* (No. 18 of 1880, Civil) cited. SHER SHAH *v.* JAFAR SHAH. **51 P R 1883**

4. *Muhammadan Gujars of tahsil Kharian, Gujrat—Gift to son of eldest son to prejudice of other sons.*

Found, that no custom exists which would invalidate a gift by a Muhammadan Gujar proprietor in the Kharian *tahsil* of the Gujrat district of a portion of self-acquired land not exceeding one-third of his whole estate to the son of his eldest son to the prejudice of his second and third sons. *Mohamed* v. *Walidad* (No. 164 of 1879, Civil), *Mussammat Karm Bhari* v. *Hyat Baksh* (No. 15 of 1880, Civil), *Nurdin* v. *Sahibzada* (No. 18 of 1880, Civil), and *Hyat Baksh* v. *Kalu* (C. A. No. 575 of 1875, unpublished), cited. SULTAN *v.* FATAH DIN.

127 P R 1883

5. *Janjuhas of M. Dandot, Pind Dadan Khan—Gift of immoveable property to sons by inferior wife to the exclusion of sons by an equal wife.*

Found, that by the custom of the Janjuahs of *mauza* Dandot in *tahsil* Pind Dadan Khan, a father can make a gift of his immoveable property to sons by an inferior wife, to the exclusion of sons by an equal wife. BAZ KHAN *v.* GAMA KHAN. **92 P R 1884**

6. *Ghebas of* tahsil *Fattehjang, Rawalpindi district—Gift to one son in excess of his share without consent of the other sons.*

Found, in a suit the parties to which were Ghebas of *tahsil* Fattehjang in the Rawalpindi district, that it was competent to a father by custom to make a gift of land to one son in excess of his ordinary share without the consent of the other sons. NAWAB KHAN *v.* DARAT KHAN **125 P R 1893**

7. *Gift of acquired immovable property to one son without consent of the other sons—Suit involving cancellation of document—Period of limitation applicable.*

See LIMITATION ACT, 1887, ARTICLE 91.
74 P R 1904

A.—ALIENATION BY MALE PROPRIETOR—*contd.*

8. Pagvand *or* Chundavand—*Sials of Jhang District—Alienation—Gift to one son in excess of his share—Equalisation of share.*

Found in a suit the parties to which were Sials of the Jhang district, that they were governed by the *Pagvand* and not by the *Chundavand* rule of succession.

Held, that a gift of land to one son in excess of his ordinary share in order to equalise the shares of his sons is not ordinarily void. AHMAD *v.* HAJI MAHMUD.

50 P R 1909

(2). **Not proved.**

9. *Awans of Shahpur district*—Pagvand—Chundavand—*Ancestral property—Gift by father to one son, prejudicing rights of succession of other sons.*

Plaintiffs, Awans of the Shahpur district, sons of A. by his first wife, sued to cancel a gift of ancestral land in *mauza* Nali, *tahsil* Khushab, made by A. in favour of B. his son by a second wife, prejudicial to plaintiffs' rights of succession. The parties were, it was admitted, governed by custom and not by Mahomedan Law, and it was found that the rule of inheritance was *Pagvand* and not *Chundavand*.

Held, under the circumstances, that the presumption was against the power of A. to make such a gift.

In the absence of proof by defendants of similar gifts having been made and sustained, it was *held* that this presumption must prevail, and the gift was accordingly declared invalid. BAKHTAWAR *v.* CHIRAG.

8 P R 1879

10. *Mahomedans of Gujrat district.*

Found that there is no established custom among Mahomedans in the Gujrat district, invalidating a gift by a father of a portion of his property to one of his sons. MAHOMED *v.* WALIDAD. **164 P R 1879**

11. *Kambohs of Lahore—Validity of gift not followed by possession.*

In a suit (the parties to which were Kambohs of the Lahore city) to enforce a gift made by a father of a fourth share of his immoveable property in favour of one of three sons, and reserving also the said son's one-third share in the remainder, it appeared that no act of any kind had been done by the father after the gift to put the donee into possession.

Held, that the gift was invalid on the above ground. BUDHU *v.* CHIRAGH.

3 P R 1886

See also MUSSAMMAT BAKHT BHARI *v.* KHAN MALIK. **3 P R 1886 Note.**

12. *Gundal Jats of Phalian* tahsil, *Gujrat—Gift of ancestral property to descendants of one son to prejudice of another son.*

In a suit the parties to which were Gundal Jats of the Phalian *tahsil* in the Gujrat district *found*, that a father is not competent by custom to make a gift of the whole of his ancestral property to the descendants of one of his sons to the exclusion of another son.

CUSTOM I.—ALIENATION—*contd.*

A.—ALIENATION BY MALE PROPRIETOR—*contd.*

Mahomed v. *Wali Dad* (*No.* 164 *P. R.* 1879), *Sher Shah* v. *Jafar Shah* (*No.* 51 *P. R.* 1883), *Sultan Bakash* v. *Raja* (*No.* 126 *P. R.* 1883), *Sultan* v. *Fateh Din* (*No.* 127 *P. R.* 1883), and *Malayan* v. *Muhammad Baksh* (*No.* 43 *P. R.* 1884), cited. SULTAN *v.* LAKHAN.

89 P R 1887

13. *Agricultural Khatris, Jhelum district.* In a suit the parties to which were agricultural Khatris of the Jhelum district, *found*, that by custom (1) a Khatri father cannot dispose of the whole of the ancestral land by gift to two sons in presence of a third; (2) he is competent in partition to retain for himself and at his own disposal a share equal to that of a son.

The gift in favour of the two sons to the exclusion of the third held operative only to the extent of one-fourth, the share which the father might have retained for himself. SHEIKH GHULAM HASSAN *v.* GURMUK AND RAMJI.

24 P R 1891

14. *Mahtons of Hoshiarpur—Will—Power to make a will giving an extra share in ancestral estate to one grandson.*

J., a Mahton of the Hoshiarpur district, divided his estate into four shares, giving one share to each of his three sons, retaining one-fourth for himself.

He then made a will of his own fourth share in favour of the son of one of his own sons (in supersession of a will previously made in favour of another grandson).

Held, that the plaintiff, who claimed under the will, had failed to establish its validity by custom. The result of upholding it would be to sanction an unequal distribution by a proprietor of his ancestral property among his sons and grandsons, and the burden of proof was therefore upon him.

No. 119 *P. R.* 1880 and *No.* 18 *P. R.* 1890 (alienations by childless Mahton proprietors), referred to. BUTA SINGH *v.* UTTAM SINGH.

115 P R 1891

15. *Gift to grandsons to exclusion of son—Sidhu Jats*, tahsil *Moga, Ferozepore district.*

Found, in a suit the parties to which were Sidhu Jats of the Moga *tahsil* of the Ferozepore district, that no custom was established empowering an owner of ancestral property to make a gift of half of his land and a house to his grandsons—the children of his only son, who had two wives by each of whom he had male issue, the donees being the children of one of the wives—to the exclusion of their father, the donor's son. BURA *v.* MAN SINGH.

82 P R 1892

16. *Ancestral land—Non-ancestral house and movable property—Arains of the Ferozepore district—Will.*

The plaintiffs sued their half-brother to recover their share of the property left by their father, an Arain of the Ferozepore district, consisting of ancestral land, a non-ancestral house, and movables. The defendants set up a will, the validity of which, as exceeding the power of the donor, was denied by the plaintiffs.

Held, that the alienation of the ancestral land in favour of one son to the exclusion of the others, without their assent, was invalid; but that the bequest, therefore, of the rest of the property in dispute should be maintained.

Per PLOWDEN, S. J.—Ancestral land stands upon a different footing from all other property, ancestral or non-ancestral, and the general presumption undoubtedly is against a father being competent to divide the ancestral land held by him unequally among his sons with effect beyond his life without their assent and what he cannot do by an act *inter vivos* he cannot do by will.

Where property is not land, and is non-ancestral, and there is full power to dispose of it at pleasure, there is not necessarily any presumption against a will being a valid form of disposition. ACHHA *v.* GAMAN.

120 P R 1893

17. *Gift in favour of eldest son—"Ancestral property"—Bhatti Rajputs (Muhammadan) of Raiya* tahsil, *Sialkot district*—Riwaj-i-am—*Land given in dowry by mother of wife.*

On the marriage of one N. B. with one Mussammat U. H., a certain village was given in dowry by the mother of Mussammat U. H., but it was not clear whether the gift was to N. B., or to Mussammat U. H., or to both jointly. In both settlements, however, N. B. had the land recorded as his sole property and was proved to be in possession of it. On the 27th February 1894 N. B., who was then a very old man, executed a deed of gift of the said village in favour of his eldest son by Mussammat U. H. whereupon the other sons of N. B. by his said wife sued to set aside the gift so far as it affected their reversionary rights. The parties were Muhammadan Bhatti Rajputs of Raiya *tahsil*, Sialkot district.

Held, by the Chief Court, that the gift of the village by the mother of Mussammat U. H. was intended for the benefit of Mussammat U. H. and her sons and not for that of N. B., and was, therefore, upon the principles laid down by the Full Bench in No. 32 *P. R.* 1895, "ancestral property" for the purposes of the present suit.

Found, that defendants, upon whom the *onus* rested, had failed to prove that gift of ancestral property in favour of the eldest son to the prejudice of the other sons was valid by custom. KABIR BAKHSH *v.* NABI BAKHSH.

40 P R 1896

(*ii*) Unequal distributions.

(1) Proved.

18. *Sikh Jats—Sirsa—Acquired immovable property—Unequal distribution.*

By the custom of the Sikh Jats of Sirsa, a father may distribute his acquired immovable property to his sons in unequal shares. KAMIL SINGH *v.* BUDH SINGH.

30 P R 1873

19. *Sindhu Jats of Amritsar—Gift by father of ancestral property to one son in presence of other son—Burden of proof of validity of gift.*

Held, that among Sindu Jats of the Amritsar district, and generally among the Jat clans of the central Punjab, the burden of proving that a father can by custom distribute ancestral land among his sons unequally, lies on the party asserting that the alienation in any particular case is justifiable. *Miyan* v. *Sandhi* (No. 64 of 1879, Civil) and *Bhagwana* v. *Mothu* (No. 62 of 1884, Civil), cited. HUKAM SINGH *v.* HAKIM SINGH.

164 P R 1884

20. *Sawathis of the Hazara district—Power of father to make an unequal distribution in his life-time of ancestral lands among his sons by different wives*—Pagwand *and* chundawand—*Exogamous and endogamous societies.*

Found, that by the custom prevailing among the Sawathis of the Hazara district, a father is competent in his lifetime to make an uneqal distribution of ancestral lands among his sons by different wives. KALANDAR KHAN *v.* NAJAF KHAN.

23 P R 1893

21. *Unequal distribution by father among sons—Alpials of Rawalpindi district.*

Found after a remand for further inquiry that among Alpials of the Rawalpindi district, a father is entitled by custom to distribute his estate unequally among his sons, provided that thet preference shown must not be such as to pracically disinherit the other sons. NAZRA *v.* SULTAN.

64 P R 1899

22. *Will—Pathans of Peshawar district.*

Found, that by the custom prevailing among Pathans of the Peshawar district, a father is competent to make an unequal distribution of his immoveable property among his sons by will. SHAD ALI KHAN *v.* ABDUL GHAFUR RHAN AND ANOTHER.

80 P R 1901

23. *Sheikhs of* tahsil *Attock, Rawalpindi district—Unequal distribution by father among sons.*

Found, that among Sheikhs of the Attock *tahsil* in the Rawalpindi district, a father is competent by custom to make an unequal distribution of his estate among his sons whilst he is alive.

Nawab Khan v. *Dharat Khan* (125 *P. R.* 1893), and *Nazra* v. *Sultan* (64 *P. R.* 1899), referred to. HABIBULLAH *v.* HABIBULLAH.

62 P R 1903

(2) Not proved.

24. *Awans, Jhelum district—Power of father to distribute the ancestral estate among his sons unequally.*

A custom was alleged and was found by the lower Courts to exist that among Awans of the Jhelum district, a father had an authority recognized by custom to distribute the ancestral land among his sons so as to deprive one son of his proper share.

CUSTOM I.—ALIENATION—*contd.*

A.—ALIENATION BY MALE PROPRIETOR—*contd.*

Held, by the Chief Court, that the custom was not established.

Observations by Plowden, J., as to the danger of taking one single clause of a *Wajib-ul-arz* or a *Riwaj-i-am* and basing a decision thereon without considering the rest of the document. SAYAD RASUL *v.* FAZAL **7 P R 1891**

25. *Gujars of Rawalpindi district—Power of father to exclude son.*

In a suit the parties to which were Gujars of the Rawalpindi district, *found*, that a father had no power by custom to disinherit a son. ILAHI BAKSH *v.* HASSU KHAN. **43 P R 1891**

26. *Unequal distribution of ancestral land between sons and son's sons—Jats of* tahsil *and district Hoshiarpur.*

Found, in a suit the parties to which were Jats of Nangal Ishar, *tahsil* and district Hoshiarpur, that—

(*a*) the *onus* of proving a custom empowering a father to make an unequal distribution of his ancestral holding was on the person relying on such a custom; and

(*b*) That the defendants, who relied on such a power, has failed to establish it.

No. 164 *P. R.* 1884 and Nos. 7 and 115 *P. R.* 1891, referred to. HAKU *v.* KESAR. **138 P R 1892**

27. *Unequal distribution of ancestral land by father in favour of certain sons to prejudice of remaining sons—Muhammadan Awans of Attock* tahsil, *Rawalpindi district—Suit for possession of land—Limitation.*

One N. A, a Muhammadan Awan of the Attock *tahsil* in the Rawalpindi district, owned certain ancestral lands in the villages of Mirza and Burhe, and, on the 13th February, gifted to defendants, who were then minors, the half of his lands in Mirza and the whole of his lands in Burhe.

N. A. died in June 1889, and on the 2nd January 1891, plaintiffs, who were the step-brothers of defendants, sued the latter for possession of a half share in the lands of both villages, on the grounds that the gift had been induced by undue influence, that it had never been acted on, and that it was invalid by custom. The District Court, after a remand by the Divisional Court, decreed plaintiff, Mian Khan, possession of ¼th of the land in Burhe and of ¼th of the land in Mirza. Both parties appealed to the Divisional Judge, who held that the claim regarding the whole of the gifted land was time-barred, but rejected the defendants' claim to exclusive possession of the ungifted portion of the Mirza land. The plaintiff having appealed to the Chief Court.,

Held, following the ruling of the Full Bench in No. 116, *Punjab Record*, 1890, that the suit having been brought within

CUSTOM I.—ALIENATION—*contd.*

A.—ALIENATION BY MALE PROPRIETOR—*contd.*

12 years from the date of the gift was not time-barred, and

Found, that no custom among Muhammadan Awans of Attock *tahsil* in the Rawalpindi district had been proved, whereby a father is competent to make an unequal distribution of ancestral property between his sons.

No. 7 *P. R.* 1891 and No. 52 *P. R.* 1892, cited. MIAN KHAN *v.* MEHR KHAN. **107 P R 1894**

28. *Power of father to make unequal distribution of ancestral property among his sons—Nura Rajputs of Hoshiarpur* tahsil—Riwaj-i-am.

Found, in a case the parties to which were Naru Rajputs of the Hoshiarpur *tahsil* that a father has no power by custom to favour one son in the matter of the distribution of the ancestral estate to the prejudice of his other sons, save for special cause.

In the present case, *held* that the defendant had failed to prove a sufficient cause for such uneqnal distribution. AMIR KHAN *v.* SANDHE KHAN. **72 P R 1895**

29. *Ancestral and acquired property—Awans of* mauza *Uchhali,* tahsil *Khushab, Shahpur district—Will.*

In a case the parties to which were Awans of *mauza* Uchhali, *tahsil* Khushab, of the Shahpur district, the plaintiff sued his half-brothers to recover his share of the property left by their father consisting of ancestral and acquired landed property. The defendants set up a will, the validity of which as exceeding the power of the donor was denied by the plaintiff. The first Court found that by Customary Law the father was prohibited from making an unequal distribution of his ancestral property and could not disinherit the plaintiff and was also of opinion that as the father in acquiring might have used income derived from ancestral property that the whole of the property referred to in the suit came within the definition of ancestral property—the Divisional Judge modified the decree in regard to the nature of the acquired part of the property, which he held capable of being disposed of in accordance with the terms of the will.

Held, that the donor had no power to distribute his ancestral property unequally and disinherit a lawful son, and the fact that he endeavoured to do so by will does not better his position.

Held also, that as under Customary Law property acquired from income or profits of ancestral property did not constitute it ancestral, the *onus* of proving that the last full owner could not alienate such part at his pleasure rested on the plaintiff, which he had failed to discharge.

Shad Ali Khan v. *Abdul Ghafur Khan* (24 *P. R.* 1898), *Ghulam Muhammad* v. *Abbas Khan* (22 *P. R.* 1899), *Nura* v. *Tora* (46 *P. R.* 1900), *Sher Singh* v. *Kishen Singh* (4 *P. R.* 1900), and *Ali Muhammad*

CUSTOM I.—ALIENATION—*contd.*

A.—ALIENATION BY MALE PROPRIETOR—*contd.*

v. *Dulla* (26 *P. R.* 1901), referred to. MEHR KHAN *v.* KARAM ILAHI AND OTHERS. **13 P R 1902**

(*b*) *Brothers—*

(1) Proved.

30. *Naru Rajputs of Jullundur district—Gift by childless proprietor to brother in presence of other brothers.*

A gift by a childless proprietor to a brother in the presence of other brothers, *held* to be valid by custom among Naru Rajputs of the Mahomedan religion in the Jullundar district. KUTBA *v.* SULTAN. **84 P R 1879**

31. *Shaikh Koreshis of Salara tribe, Jhang district—Gift to brother in presence of son.*

In a suit the parties to which were Shaikh Koreshis of the Salara tribe, residents of *mauza* Salara, *tahsil* Chiniot, district Jhang, *found*, that a gift to a brother to the exclusion of a son of the donor was valid by custom. *Hajee* v. *Ghazee* (No. 102 of 1866, Civil), and *Kurm* v. *Jooma* (No. 16 of 1867, Revenue) cited. FAZU *v.* KARMO. **39 P R 1886**

32. *Tarkhans of the Jhelum district—Gift by sonless man to one heir without consent of the other.*

Found, that by the custom governing Tarkhans in the Jhelum district, a sonless man is competent to make a gift of ancestral immovable property to one heir without the consent of the rest, the heirs being a brother and another brother's sons.

No. 109 *P. R.* 1891 and No. 34 *P. R.* 1883, referred to. GHULAM HUSAIN *v.* SAHIB DIN. **22 P R 1892**

33. *Gift by sonless proprietor to first cousin who was also his uterine brother—Awans of* tahsil *Kuhshab, Shahpur district.*

One M., a full proprietor, before his death executed a deed of gift of his land in favour of his first cousin, who was also his uterine brother and put him in possession. The parties were Awans of *mauza* Mardwal, Khushab *tahsil*, Shahpur district. *Found*, that the said gift was valid by custom. AULIA *v.* ALU. **49 P R 1898**

(2).—Not proved.

34. *Gift—Acquiescence of heirs.*

Plaintiff claimed a share of his deceased uncle's property from defendant (brother of the deceased), who resisted plaintiff's claim on the ground that he (defendant) held the land under a gift from deceased. The parties belonged to a family of Dogar Rajputs.

Held, that by the general custom the gift to the defendant without plaintiff's consent was void. Consent found as a fact. LAKHA *v.* WALLAH. **42 P R 1875**

35. *Varaich Jats of the Phalian* tahsil, *Gujrat district.*

Found in a suit the parties to which were Varaich Jats of *tahsil* Phalian, Gujrat district, that no custom was established by which it was competent to a sonless proprie-

CUSTOM I.—ALIENATION—*contd.*

A.—ALIENATION BY MALE PROPRIETOR—*contd.*

tor to make a valid gift of his ancestral land to one brother in consideration of his services to the donor, to the exclusion of the sons of another brother without the assent of the latter, still less that he could make a valid bequest, a form of transfer which is not generally recognised by custom. The special ground set up by the donees was that their father had managed the land and rendered services to the donor, who was a cripple.

No. 8 *P. R.* 1891, referred to. SUKHA *v.* AMIRA. **81 P R 1893**

C.—Nephews and Grand nephews.

(1).—**Proved.**

36. The gift by a hereditary tenant of his cultivating tenure to his nephew and adopted son followed by possession, was held to be a valid gift, where the transferee was a member of the donor's family and dependent upon the land. NUTHOO KHAN *v.* SULTAN. **18 P R 1868**

37. *Exclusion of Nephew—Hindu Law.*

Two village proprietors in Ferozepore of the Brahmin caste, left ancestral lands to one nephew, who had long taken care of them and cultivated their land, to the exclusion of other nephews.

Held, that the Hindu Law which would permit this alienation was not applicable, but that the parties were governed by their custom, which in this case had been found not to forbid the exclusion, which, however unusual could be supported under the particular circumstances. SHIB DYAL *v.* MEHTABA. **6 P R 1872**

38. *Jats of Varaitch* got *of* mauza *Mahrala*, tahsil *Phalian—Gift to associated nephews in presence of unassociated brothers and nephews—Validity of gift.*

In a suit the parties to which were Jats of the Varaitch *got*, residing in *mauza* Mahrala in the Phalian *tahsil* of the Gujrat district, it appeared that one of the defendants, a childless proprietor, had made a gift of his share in the ancestral land to two of his nephews, who were associated with him in food and residence, giving them possession, and reciting in the deed of gift, which was duly registered, that he had brought up the said nephews, whose father before his death had resided with him, and that now on his becoming old his nephews had agreed to support and take care of him, and in consideration thereof he made a gift of his land to them. Plaintiffs, who were the brother and the sons of another brother of the donor, therefore sued to set aside the gift alleging that the donor had by custom no power to make a gift of his land to two of his nephews to their (plaintiffs') prejudice.

Held, that the gift under the above circumstances was by custom a valid one. *Mahomed* v. *Walidad* (No. 164 of 1879, Civil) cited. SULTAN BAKSH *v.* RAJA. **126 P R 1883**

39. *Hindu Jats of Hoshiarpur—Gift to nephew's son—Near collaterals.*

Found that no established custom exists rendering a gift by a childless Hindu Jat of the Hoshiarpur district to his nephew's son invalid on the ground that there are other relatives equally nearly related.

Mohun Singh v. *Nowdha* (No. 55 *of* 1870, Civil), *Lakha* v. *Wallah* (*No.* 42 *of* 1875 Civil) *Pertab Singh* v. *Bishen Singh* (*No.* 81 *of* 1877 Civil), *Kanhya Singh* v. *Dewa Singh* (*No* 27 *of* 1879, Civil), *Miyan* v. *Sandhi* (*No.* 64 *of* 1879, Civil), *Ganda Singh* v. *Golab Singh* (*No.* 159 *of* 1879, Civil), *Sobha Singh* v. *Hazara* (*No.* 103 *of* 1880, Civil), *Hazara* v. *Ishar* (*No.* 72 *of* 1882, Civil), and *Budh Singh* v. *Chartu* (*No.* 128 *of* 1882, Civil), cited. BHAGWANA *v.* MOTHU. **62 P R 1884**

Followed in SAHIB SINGH *v.* CHARTA. **62 P R 1884 Note**

40. *Ladhra Jats of Jalandhar district—Gift to near agnate relations.*

In a suit by the nephew of the donor to obtain a declaration that a gift made by his uncle, an old man of 80, in favour of the sons of a deceased brother who had been for a long time cultivating with and supporting the donor, the parties being Ladhra Jats of the Jalandhar district, found that such a gift was valid by custom. SOBHA *v.* GYANA. **116 P R 1886**

41. *Joint tenants—Gift by one joint tenant of his share to another joint tenant—Suit by reversioners—Custom.*

The plaintiffs, the sons of one brother, sued to set aside a gift made by a childless occupancy tenant of his occupancy rights in *khatas* A. and B. in favour of his nephews, the sons of another brother. It appeared that the occupancy rights in *khata* A. were held jointly by the defendants, whilst *khata* B. was held jointly by plaintiffs and defendants.

Held, that the plaintiffs' claim must be dismissed as regards both *khatas*.

As regards *khata* A., the defendants must be considered to represent a single tenant, each defendant having a right of survivorship, and the plaintiffs therefore were not the next reversioners and had no right to interfere.

Similarly as regards *khata* B., the defendants were also joint tenants with the donor, and there was nothing to show that one joint tenant could not gift his share to another joint tenant, or that such a gift was opposed to custom or to the provisions of the *Wajib-ul-arz*.

Gunda Singh v. *Ghulab Singh* (*No.* 159 *P. R.* 1879), cited. AHMAD DIN *v.* HAJI **56 P R 1887**

42. *Mahtams of Hoshiarpur—Validity of gift to one nephew in the presence of other nephews.*

In a suit by a nephew of the donor to set aside a gift made by his uncle in favour of another nephew who had for a long time served the donor and managed his land, the parties being Mahtams of the Hoshiarpur district *held*, that the plaintiff had failed to prove that such a gift was invalid by custom. INDAR *v.* LUDDAR SINGH. **18 P R 1890**

43. *Kang Jats of Jullundur—Gift to a nephew in the presence of other nephews.*

Found, that no well-established custom exists among Kang Jats of the Jullundur district rendering a gift by a sonless proprietor to one of his nephews invalid on the ground that there were other relatives equally related. SHER SINGH *v.* SOHAIL SINGH. **19 P R 1890**

44. *Gift to nephews—Appointment of heir—Ghorewaha Rajputs of Hoshiarpur district.*

Found, that by the custom prevailing among Ghorewaha Rajputs of the Hoshiarpur district a gift of their whole estate by two childless proprietors to two of their nephews to the exclusion of the other nephews, sons of another brother, the gift being accompanied by possession, and mutation of names being effected in favour of the donees, who had also lived with the donors as their sons, was valid.

Nos. 173 and 174 *P. R.* 1883, and 152 *P. R.* 1884, referred to. KARIM BAKHSH *v.* FATTU. **113 P R 1891**

45. *See (b) Brothers* (i) PROVED No. 32. **22 P R 1892**

46. *Gift by childless proprietor of a portion of undivided ancestral land to brother's son and brother's grandson—Jhurars of Sirsa* tahsil.

Found, that a gift of a portion of undivided ancestral land by a childless Jhurar Jat (Mussalman) of *mauza* Chora Khera in the Sirsa *tahsil* to his brother's son and brother's grandson was valid by custom in the presence of a brother and nephew of the donor. NAULA *v.* MIAN KHAN. **101 P R 1892**

47. *Gift to nephew in presence of other nephews—Sonless proprietor—Muhammadan Mangyal Rajputs of* tahsil *Gujar Khan, Rawalpindi district—Burden of proof.*

Found, in a suit the parties to which were Muhammadan Mangyal Rajputs of *tahsil* Gujar Khan in the District of Rawalpindi, that the defendants have failed to prove—the burden of proof being upon them—that by custom it was competent to a sonless proprietor to make a gift of ancestral immovable property to the son of one brother in the presence of sons of other brothers. HASSAN ALI *v.* BAHADUR. **32 P R 1893**

48. *Gift by childless proprietor to nephew in presence of brothers, validity of—Naru Rajputs of Jullundur district.*

Found, that by the custom prevailing among Naru Rajputs of the Jullundur district a gift by a sonless proprietor of his ancestral land to a nephew who had been for a long time associated with and assisting in cultivation and rendering service to the donor is valid in the presence and to the exclusion of the donor's own brothers.

Kutha v. *Sultan* (84 *P. R.* 1879), *Ilahia* v. *Ilahi Bakhsh* (113 *P. R.* 1883), *Sultan Bakhsh* v. *Raja* (126 *P. R.* 1883), *Haidar Ali* v. *Sondha* (102 *P. R.* 1880), *Ayhey Khan* v. *Bhambu Khan* (174 *P. R.* 1883), *Sobha* v. *Gyana* (116

P. R. 1896), *Gopal Singh* v. *Kheman* (85 *P. R.* 1889) *Indar* v. *Luddar Singh* (18 *P. R.* 1890), *Sher Singh* v. *Sohail Singh* (19 *P. R.* 1890), *Karim Bakhsh* v. *Fatta* (113 *P. R.* 1891), *Narain Singh* v. *Gurmukh Singh* (116 *P. R.* 1894), *Rala* v. *Banna* (14 *P. R.* 1901), *Atma Singh* v. *Nandh Singh* (61 *P. R.* 1901), *Amir* v. *Mussammat Zebo* (42 *P. R.* 1902), *Gujar* v. *Sham Das* (107 *P. R.* 1887, *F. B.*). and *Ralla* v. *Budda* (50 *P. R.* 1893, *F. B.*), referred to.

Amir Khan v. *Sardara* (110 *P. R.* 1894), *and Umar Khan* v. *Samand Khan* (145 *P. R.* 1894), distinguished. PUNNU KHAN *v.* SANDAL KHAN. **92 P R 1904**

49. *Validity of gift to a nephew and a grand-nephew to the exclusion of other nephews—Gujars of Jhelum.*

Held, that amongst Gujars of the Jhelum district a gift by a sonless proprietor of his ancestral property in favour of a nephew, son of one brother, and a grand-nephew, grandson of another brother, in consideration of services rendered by the donees to the donor, in the presence of other nephews and their descendants, was valid by custom.

Narain Sing v. *Gurmukh Singh* (116 (*P. R.* 1894), *Karim Bakhsh* v. *Fatta*, (115 *P. R.* 1891), *Naula* v. *Mian Khan*, (101 *P. R.* 1892), *Bakhsh* v. *Mir Baz*, (79 *P. R.* 1896), *Dal Singh* v. *Puran Singh*, (36 *P. R.* 1904). *Fazal* v. *Khan Muhammad* (85 *P. R.* 1904), *Sher Jang* v. *Ghulam Mohi-ud-din* (22 *P. R.* 1904), *Indar* v. *Luddar Singh* (18 *P. R.* 1890), *and Sher Singh* v. *Sohail Singh* (19 *P. R.* 1890), referred to. *Muhammad* v. *Sharf-ud-din* (8 *P. R.* 1891) distinguished. NUR HUSSAIN *v.* ALI SHER. **33 P R 1905**

50. *Gift by a childless proprietor of his entire estate to two of his grand-nephews in presence of other nephews and grand-nephews—Mair Rajputs of Chakwal* tahsil *of the Jhelum district.*

Found, that amongst Mair Rajputs of the Chakwal *tahsil* of the Jhelum district, a gift by a childless proprietor of his entire estate in favour of two of his grand-nephews in the presence of other nephews and grand-nephews is valid by custom. FAIZ BAKHSH *v.* JAHAN SHAH. **96 P R 1907**

(2).—Not proved.

51. *Awans of Bannu—Muhammadan Law—Will in favour of one heir without consent of others.*

Found, that there is no established custom among the Awans of Bannu under which an Awan without lineal male descendants has any special power of disposing of his property by will.

A will in a suit among parties of the above class *held* to be void under Muhammadan Law, as made in favour of one heir without the consent of the others. MUHAMMAD KHAN *v.* ATAR KHAN. **121 P R 1886**

52. *Gift—Mussalman Gujars*, Got *Khatana*, tahsil *Kharian, Gujrat district.*

Held, that among Mussalman Gujars, *got* Khatana, *tahsil* Kharian, Gujrat

district, no custom was proved by which a valid gift of ancestral land could be made by a sonless owner to a nephew in presence of own brothers and another nephew of the donor, an alleged adoption of the donor by the donor being not proved. MUHAMMAD *v.* SHARF-UD-DIN. **8 P R 1891**

53 *Childless proprietor—Gujars of Hoshiarpur* tahsil—*Burden of proof.*

Found, in a suit the parties to which were Gujars of the Hoshiarpur *tahsil*, that no custom was established justifying an alienation by a childless proprietor to two nephews in the presence of other nephews,—the *onus* being upon the alienees to establish the custom.

Per RIVAZ, J.—In cases raising important issues of custom, it is desirable that Courts of first instance should, before deciding as to the burden of proof, call for evidence from both sides and defer adjusting the question of *onus* until all possible information has been obtained from either party. TAJU and KALU *v.* BARU. **35 P R 1892**

54. *Awans of Rawalpindi—Childless proprietor—Gift to grand-nephew in presence of brother—Burden of proof.*

Found, that among Muhammadan Awans of the Rawalpindi district a childless proprietor is not competent, in presence of a brother, to convey his whole estate by gift to his grand-nephews.

Semble.—In adjusting the burden of proof in such an alienation, the same rule applies as if the case had occurred in a part of the Province in which the Full Bench ruling No. 107 *P. R.* 1887, is to be regarded. HAYAT MUHAMMAD *v.* FAZL AHMAD. **52 P R 1892**

55. *Childless proprietor—Goraya Jats*, tahsil *Ajnala, Amritsar district.*

Found, in a suit the parties to which were Goraya Jats of *tahsil* Ajnala, Amritsar district, that a mortgage—which was held to be in fact a purely colourable transaction—by a childless proprietor in favour of a nephew in the presence of other near collaterals was not authorized by custom.

The *onus* of establishing the validity of the alienation was upon those setting it up, within the general principles explained in No. 107 *P. R.*, 1887. ASA SINGH *v.* HARI SINGH. **61 P R 1892**

56. *Gift of ancestral land by sonless proprietor to the daughter of a brother who with her husbands had resided in donor's house—Consent of brother's son—Bariar (Mussalman) Jats of* tahsil *Sialkot.*

Found, in a suit the parties to which were Bariar Jats (Mussalmans) of the Sialkot *tahsil*, that by custom it was not competent to a deceased sonless proprietor, in the presence of brother's sons and without their consent, to make a gift of all his ancestral land to the daughter of a brother, who, with her hus-

band, had resided in the donor's house and rendered him service. MUSSAMMAT TABAN *v.* BHAGA. **33 P R 1893**.

57. *Adoption, evidence of—Chuhan Rajputs of* tahsil *Chakwal, Jhelum district*—Riwaj-i-am.

Found, that by custom among Chuhan Rajputs of Chakwal *tahsil* in the Jhelum district, a childless proprietor has no power to gift or will any portion of his ancestral land to one of his nephews to the prejudice of his other agnatic heirs. KARMDAD *v.* MUHAMMAD. **59 P R 1895**

58. *Bequest by sonless proprietor of whole of his ancestral estate in favour of a nephew without the assent of his full brothers—Sayads of Dera Ismail Khan* tahsil.

Found, that the defendants, upon whom the *onus* rested, had failed to prove that, by custom among Sayads of the Dera Ismail Khan *tahsil*, a bequest by a sonless proprietor of the whole of his ancestral estate in favour of his full brother's son is valid in the presences and without the assent, of his other brother, by the same father. ALLA DITTA SHAH *v.* SAID ALI SHAH. **79 P R 1895**

59. *Gift of occupancy rights by childless occupancy tenant to nephews in presence of brother—Burden of proof—Brahmins.*

Found, in a suit the parties to which were Brahmans of Aurangabad, *tahsil* Kharian, Gujrat district, that a gift by a childless proprietor in favour of a nephew in the presence of his own brother was not authorized by custom. When a general agricultural custom is found to prevail as regards alienation of proprietary rights the presumption is, unless the contrary can be shown, that such a custom is also applicable to the occupancy rights. The *onus* of proving a special custom antagonistic to such a rule rests on the party asserting the existence of such a custom.

Karam Din v. *Sharaf Din* (89 *P. R.* 1898, *F. B.*), *Muhammad* v. *Sharaf-ud-din* (8 *P. R.* 1891), *Taju* v. *Burn* (35 *P. R.* 1892), *Hayat Muhammad* v. *Fazal Ahmad* (52 *P. R.* 1892), *Asa Singh* (61 *P. R.* 1892), *Mussammat Jowai* v. *Jiwan* (79 *P. R.* 1893), *Suha* v. *Amira* (81 *P. R.* 1893), and *Bir Singh* v. *Chamila* (91 *P. R.* 1893) referred to. *Kesar Singh* v. *Sundar Singh* (59 *P. R.* 1889), not followed and *Sahib Din* v. *Amira* (16 *P. R.* 1889), distinguished. HIRA CHAND *v.* *Dheru.* **12 P R 1904**

D.—Collaterals.

(1.)—Proved.

60. *Panwar Rajputs of Dasuah* tahsil, *Hoshiarpur district—Gift by childless proprietor—Validity of gift—Right of collaterals six degrees removed from the common ancestor to contest alienation.*

In a suit by Panwar Rajputs of the Dasuah *tahsil* of the Hoshiarpur district to contest a gift by a childless proprietor to their cousins, in which the plaintiffs, the donor, and the donees were all six degrees removed from the common ancestor, found that by

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A.—ALIENATION BY MALE PROPRIETOR—*contd.*

custom the gift was valid, it not being shown that the custom of Panwar Rajputs differed from that of the Narus as regards the validity of such gifts.

Semble, that among Panwar Rajputs collaterals as distantly related as the plaintiffs in the above case, are not entitled by custom to object to an alienation of the above nature. *Kutba* v. *Sultan* (No. 84 of 1879, Civil), *Haidar Ali* v. *Sondha* (No. 102 of 1880, Civil), and *Wazira* v. *Rama* (No. 101 of 1881, Civil), cited. ILAHIA *v.* ILAHI BAKSH.
113 P R 1883

61. *Muhammadan Jats of* tahsil *Gujrat—Gift to one heir to the prejudice of others equally entitled—Muhammadan Law.*

Plaintiffs, who were the sons of one brother and the grandson of another brother of one M., sued to set aside a gift made to M. by another brother's son of his equity of redemption in his holding, which was already mortgaged to the donee. The parties were Muhammadan Jats, residents of M. Chakneola in the Gujrat *tahsil.*

Held, that no custom was proved which would render the above gift invalid, as being made to one heir to the prejudice of others equally entitled, and that therefore the parties were bound by Muhammadan Law, under which the gift would be valid, if made by a person competent to contract, and if possession were given to the donee, without reference to whether he was an heir or not.

Case remanded for a decision as to whether the donor was of sound mind, and if he was whether any undue influence was proved which would entitle the heirs of the donor to have the gift declared invalid as against them. *Sultan Baksh* v. *Raja* (No. 126 of 1883, Civil) cited. MALAYAN *v.* MUHAMMAD BAKSH.
43 P R 1884

62. *Awans of Jhelum district—self-acquired property.*

Found that, among Awans of the Jhelum district, a childless proprietor can by custom alienate self-acquired property at will.

A gift to a distant relative in presence of nephews of the donor upheld. SULTAN AHMAD *v.* MUHAMMAD YAR.
59 P R 1885

63. *Validity of gift to one of several heirs—Gil Jats of Dasuya* tahsil, *Hoshiarpur district.*

In a suit, the parties to which were Gil Jats of the Dasuya *tahsil*, Hoshiarpur district a gift by a sonlesi proprietor of his ancestral land to some of the heirs to the exclusion of the rest was upheld as valid by custom, as the donees were found to have been associated in cultivation with the donor and his brother who predeceased him, and to have been responsible for the donor's maintenance and funeral ceremonies, the moral obligation to compensate for services rendered being a sufficiently good consideration to support the gift.

No. 116 *P. R.* 1886, No. 18 *P. R.* 1890, and No. 19 *P. R.* 1890, referred to. NARAIN SINGH *v.* GURMUKH SINGH.
116 P R 1894

64. *Atwal Jats of Pharala,* tahsil *Nawashahr, Jullundur district—Alienation by childless proprietor of ancestral property to one of his collaterals in 6th degree—Suit by collaterals of 5th and 6th degree.*

Held that the plaintiffs being collaterals in the 5th and 6th degrees had failed to prove that by custom they were entitled to sue for a declaration that an alienation to a collateral in the 6th degree should not affect their reversionary rights. ISHAR *v.* GANDA SINGH.
41 P R 1900

65. *Gift with possession by a sonless proprietor to one of his collaterals acquiesced in by near agnate relations Kahuts of* mauza *Chak Bazid,* tahsil *Chakwal, Jhelum district.*

Found, that a gift made by a childless Kahut proprietor to a near agnate collateral followed by possession and mutation acquiesced in by the near agnate relations of the donor is valid according to the custom of the Kahuts of *mauza* Chak Bazid in the Chakwal *tahsil* of the Jhelum district. WALI DAD AND OTHERS *v.* ALA DAD AND OTHERS.
72 P R 1900

66. *Validity of gift to one of several heirs—Kang Jats of Garhshankar* tahsil, *Hoshiarpur district.*

In a suit the parties to which were Kang Jats of the Garhshankar *tahsil*, Hoshiarpur district, a gift by a sonless proprietor of his land to one of his heirs who had been for a long time cultivating with and supporting the donor, to the exclusion of the rest was found valid by custom.

Sobha v. *Gyana* (116 *P. R.* 1886), *Gopal Singh* v. *Kheman* (85 *P. R.* 1889), *Indar* v. *Luddar Singh* (18 *P. R.* 1890), *Sher Singh* v. *Sohail Singh* (19 *P. R.* 1890), *Karim Bakhsh* v. *Fatta* (113 *P. R* 1891), *Narain Singh* v. *Gurmukh Singh* (116 *P. R.* 1894), *Naula* v. *Mian Khan* (101 *P. R.* 1892), and *Sahib Din* v. *Amira* (16 *P. R.* 1889), referred to. RALA *v.* BANNA AND OTHERS.
14 P R 1901

67. *Validity of gift to a near agnate not actually an heir of the donor—Dhat Jats of* tahsil *and district Hoshiarpur.*

In a suit by a nephew of the donor to set aside a gift made by his uncle on account of services rendered to him in favour of a near agnate, who was not actually his heir, the parties being Dhat Jats of the Hoshiarpur *tahsil*, *held*, that the gift was valid by custom.

Bhagwana v. *Mothu* (62 *P. R.* 1884), *Sobha* v. *Gyana* (116 *P. R.* 1886), *Gopal Singh* v. *Kheman* (85 *P. R.* 1889), *Indar* v. *Luddar Singh* (18 *P. R.* 1890), *Sher Singh* v. *Sohail Singh* (19 *P. R.* 1890), *Narain Singh* v. *Gurmukh Singh* (116 *P. R.* 1894), and *Rala* v. *Banna* (14 *P. R.* 1901), referred to. ATMA SINGH AND ANOTHER *v.* NANDH SINGH.
61 P R 1901

68. *Gift of ancestral property by sonless proprietor to one collateral to the exclusion of other collatearls—Sahota Jats of* tahsil *Hoshiarpur.*

Found, that by custom among Sahota Jats of *tahsil* Hoshiarpur, a sonless proprietor is competent to gift his ancestral land to one of the collaterals who had rendered him service to the exclusion of his other agnatic heirs in the same degree.

Ishar v. *Ganda Singh* (41 *P. R.* 1900), referred to. DAL SINGH *v.* PURAN SINGH.
36 P R 1904

69. *Will—Jhiwars of Hoshiarpur District—Competency of a childless proprietor to make a will in favour of one of his collaterals in the presence of other collaterals.*

Found, that by the custom prevailing among Jhiwars of the Hoshiarpur district a bequest by a sonless proprietor in consideration of services rendered to him in favour of one of his collaterals is valid by custom without the consent of his other collaterals. *Mussammat Bano* v. *Fateh Khan* (48 *P. R.* 1903, *F. B.*) and *Ali Bakhsh* v. *Nathu* (92 *P. R.* 1894), referred to. RAJADA *v.* LEHNU.
96 P R 1905

(2).—Not proved.

70. *Kambohs of Amritsar—Gift by childless proprietor to one out of the male collaterals.*

In a suit the parties to which were Kambohs of the Tarn Taran *tahsil* of the Amritsar district, found that no custom existed whereby a Kamboh, who had no male issue, could in the presence of male collaterals gift away his property to one of his male collaterals whom he had not adopted. *Shib Dyal* v. *Mehtaba* (No. 6 of 1872, Civil) cited. SAWAN SINGH *v.* NIHAL SINGH.
48 P R 1885

71. *Varaitchs of the Sialkot district—Gift by sonless proprietor to one heir to the exclusion of other heirs.*

A gift (under guise of a sale) of ancestral property by a sonless Varaitch proprietor in the Sialkot District, in favour of one heir to the exclusion of others equally entitled in the absence of such gift, *found*, to be invalid by custom. GHASITA *v.* AMIR.
36 P R 1888

72. *Dhanoa Jats of Kasur—Will in favour of remote connection in presence of near collaterals.*

Found, that no custom exists among Dhanoa Jats of Kasur justifying an alienation by will by a sonless proprietor of his land in favour of a distant connection in the presence of near collaterals.

Gujar v. *Sham Das* (No. 107 *P. R.* 1887), cited. VIR SINGH *v.* HARDIT SINGH.
128 P R 1888

73. *Hindu Bhatti Rajputs of Sandhwal Dasuya* tahsil, *Hoshiarpur district—Custom,—Alienation—Will—Burden of proof.*

In a suit the parties to which were Hindu Bhatti Rajputs of Sandhwal in the Dasuya *tahsil* of the Hoshiarpur district, *found* that there is no custom permitting persons of the parties clan to bequeath ancestral land to near relations in the presence of other near relations.

Observations as to the burden of proof SUCHET SINGH *v.* BANKA.
90 P R 1891

A.—ALIENATION BY MALE PROPRIETOR—*contd.*

74. *Custom—Alienation—Gift of occupancy rights—Jurisdiction of Revenue Court.*

G., a Hindu Rajput and a sonless landowner of *tahsil* Unah in the Hoshiarpur district, shortly before his death made a gift of occupancy rights in his land to S, a collateral kinsman but not an heir. In a suit brought after G.'s death by the plaintiffs, collateral kinsmen and heirs of G., for possession of G.'s land, it was contended for the defendant that the Civil Court had not jurisdiction to hear the suit and that the grant by G. of occupancy rights was valid.

Held, that as S. had not taken possession of the land as a tenant during the lifetime of G. the suit was properly brought in the Civil Court.

Held also, that as the gift of occupancy rights was not shown to be a gift within the powers of the grantor, or to be a mere act of management or beneficial to the estate, or to be a gift made for services rendered. It was invalid.

No. 100 *P. R.* 1886, referred to. Suba *v.* Mohra. **71 P R 1893**

75. *Arains of* tahsil *and district Gujrat—Gift to son of first cousin in presence of nephews of donor—Adoption.*

Held, that no custom was established by which amongst Arains of the Gujrat *tahsil* a sonless proprietor could make a gift to, or adopt a son of his first consin in the presence of brothers' sons.

No. 8 *P. R.* 1891, referred to. Mussammat Jowai *v.* Jiwan. **79 P R 1893**

76. *Hindu Jadubansi Rajputs, Atras* got *of Barwala,* tahsil *Kharar, district Umballa.*

Held, the provisions in the *Riwaj-i-am* being in favour of the plaintiffs, that the defendants had failed to prove any custom by which a sonless proprietor was competent, without the consent of all the *warisan jaddi* to distribute his land unequally among his heirs, in whole or in part. Bir Singh *v.* Chamila. **90 P R 1893**

77. *Varaich Jats (Hindu)—Gujranwala* tahsil.

Found, in a suit the parties to which were Varaich Jats (Hindu) of the Gujranwala *tahsil,* that it was not competent to a sonless proprietor to alienate the whole of his ancestral property by will or gift to a distant collateral in preference to the proper heir. Attra *v.* Saddu.

110 P R 1893

78. *Childless proprietor—Muhammadan Rajputs of Amritsar district—Burden of proof—Acquiescence—Estoppel.*

In a suit the parties to which were Muhammadan Rajputs of Amritsar district, *held,* that defendants had failed to prove, the burden of proof being upon them, that by custom a childiess proprietor was competent to alienate ancestral immovable property in favour of some of his colletrals in presence of other collaterals of equal degree.

In matters of alienation under customary

A.—ALIENATION BY MALE PROPRIETOR—*contd.*

law subsequent long silence sometimes amounts to conduct precluding a suit to set aside the alienation, but where the collaterals not only delayed to attack the alienation, but were also concerned either in purchasing from the alienor to the exclusion of other collaterals, or cultivating under or exchanging with the defendant, alienees, the disputed lands, *held,* that they had acquiesced in the alienation and were estopped from bringing the suit.

Gujar v. *Sham Das* (107 *P. R.* 1887, *F. B.*) *Taju and Kalu* v. *Baru and others* (35 *P. R.* 1892), *Gurdit Singh* v. *Hakim* (53 *P R.* 1892), *Asa Singh* v. *Hari Singh* (61 *P R.* 1892), *Sayad Rasul* v. *Fazal* (7 *P. R.* 1891), *Muhammad* v. *Sharf-ud-din* (8 *P. R.* 1891), *Shekh Ghulam Hussan* v. *Gurmukh* (24 *P. R.* 1891), *Suchet Singh* v. *Banka* (90 *P. R.* 1891), *Buta Singh* v. *Uttam Singh* (115 *P. R.* 1891), *Hako* v. *Kesar* (138 *P. R.* 1892), *Hussan Ali* v. *Bahadur* (32 *P. R.* 1893) *Sukha* v. *Amira* (81 *P. R.* 1893), *Bir Singh* v. *Chumila* (90 *P. R.* 1893), *Karm Dad* v. *Muhammad* (59 *P. R.* 1895), *All Ditta Shah* v. *Said Ali Shah* (79 *P. R.* 1895), *Juma* v. *Mubarik* (70 *P. R.* 1901), and *Duke of Leeds* v. *Earl Amherst,* (2 *Phill,* 117), referred to. *Indar* v. *Luddar Singh* (18 *P. R.* 1890) *Sher Singh* v. *Sohail Singh* (19 *P. R.* 1890), *Rala* v. *Banna* (14 *P. R.* 1901), *Atma Singh* v. *Nandh Singh* (16 *P, R.* 1901), *Allah Bakhsh* v. *Buta* (79 *P. R.* 1891), *Ghulam Hussian* v. *Sahab Din* (22 *P. R.* 1892), *Nura* v. *Tora* (46 *P. R.* 1900), *Sahib Din* v, *Amira* (16 *P. R.* 1889). *Ishar* v. *Ganda Singh* (41 *P. R.* 1900) *and Ganda Singh* v. *Galab Singh* (159 *P. R.* 1879), *distinguished. Kesar Singh* v. *Sundar Singh* (59 *P. R.* 1889), *doubted. Nihalu* v. *Bikham Ram* (81 *P. R* 1898) *cited. Amir and others* v. *Mussammat Zebo and others.*

42 P R 1902

79. *Will—Sandhu Jats of* tahsil *Tarn Taran, District Amritsar—Competency of a childless proprietor to make a will in favour of a distant collateral in presence of near collaterals—Burden of proof.*

Found, in a suit the parties to which were Sandhu Jats of *tahsil* Tarn Taran in the Amritsar district, that no custom enabling a sonless proprietor to make a valid disposition of his ancestral property by will in favour of a distant collateral in the presence of near collaterals had been established.

Where the power of transfer by will is not co-extensive with the power of transfer *inter vivos* the *onus* that a proprietor has a power of alienation by will rests on the person setting up the will.

Rala v. *Bana* (14 *P. R.* 1901), *Ali Muhammad* v. *Dullu* (26 *P. R.* 1901), *Atma Singh v. Nandh Singh* (61 *P. R.* 1901), *Shera* v. *Saghar* (83 *P. R.* 1895), *Mukarrab* v. *Fatta* (88 *P. R.* 1895), *Shad Ali Khan* v. *Abdul Ghafur Khan* (24 *P. R.* 1898), and *Taj Din* v. *Muhammad Yasin* (99 *P. R.* 1900), referred to.—Ishar Singh *v.* Lehna Singh.

86 P R 1903

A.—ALIENATION BY MALE PROPRIETOR—*contd.*

See Locus standi. **35 P R 1906**

80. *Gift of a portion of ancestral land by a proprietor to a cousin in presence of his own son—Phapra Moghals of Jhelum district.*

Found that there is no recognized custom among Phapra Moghals of the Jhelum District by which a proporietor can make a valid gift of a portion of his ancestral property to a cousin to the prejudice of his own son. Fazal Muhammad *v* Shahbaz Khan

126 P R 1908

81. *Will—Competency of a childless proprietor to make a will in favour of distant collaterals in presence of near agnates—Chiman Jats of Rawalpindi District.*

Found, that by custom among the Chiman Jats of Rawalpindi District, a bequest of ancestral property by a sonless proprietor in favour of distant collaterals is invalid in the presence of his near agnates. Kaim *v.* Ala Din. **4 P R 1909**

E.—Daughters and their children.

(1.)—**Proved.**

82. *Succession of and gift to daughter and daughter's daughter—Muhammadans.*

A, a Muhammadan of Bhai Busti Ram, Lahore district, executed a deed of gift of his property in favour of his wife and daughter (his only child). After A's death the donees executed a deed of gift of all the property in favour of M, the daughter's daughter. K, brother of A, admitted the capacity of the latter to make the gift to his wife and daughter, but contended that the gift was intended only for the support of the women during their lifetime, and further that if this were not so the gift to the daughter's daughter was invalid.

The *Riwja-i-am,* as to the points in issue, was as follows :

Section 125.

The widow took a life estate, and at her death the property went to the descendants (*owlád*) of her deceased husband's grandfather. *Section* 144. The daughter did not inherit if there were male issue ; but a gift to the daughter made by the father in his lifetime, conferred upon her proprietary rights, and in such case the estate descended to her childern. *Section* 145.—If there were no male issue, the daughter succeeded ; but if she died *lawaris wa lawuld* the property reverted to the near relations of her father. *Section* 159.—The proprietor could not transfer to a stranger to the exclusion of collaterals ; otherwise he had full power of alienation.

Held, by Lindsay, J., that the gift to M, was invalid, on the grounds that, though the daughter, in the absence of male issue, was entitled to succeed to the entire estate of her father, the succession did not go to the daughter's daughter, the words in section 145, "*lawaris wa lawuld,*" referring to male issue only, and meaning nothing more than " without son and heir, " and that section 159 referred to a male proprietor only.

Held, by Boulnois and Melvill, JJ., that

A.—ALIENATION BY MALE PROPRIETOR—*contd.*

A intended to give his wife and daughter the land absolutely; that the *Riwaj-i-am* allowed daughters and their daughters as well as sons, to succeed; and therefore the gift to M, was valid. MUSSAMMAT MEHAR BIBI *v.* KALU. **41 P R 1874**

83. *Awan tribe—Riwaj-i-am—Gift of land by father to daughter.*

It being found by the two lower Courts that by custom of the Awan tribe (Sialkot district), notwithstanding the *Riwaj-i-am* to the contrary, a gift of land by a father to his daughter, he dying without male issue, was valid, the Chief Court dismissed the suit of the collateral relatives of the deceased donor brought to contest the gift. RANJA *v.* MUSSAMMAT RAHIM BIBI. **23 P R 1877**

84. *Raiens of Hoshiarpur district—Village proprietor without male issue.*

Found that no custom existed amongst the Raiens of the Hoshiarpur district which precluded a village proprietor, without male issue, from making a gift of all his property to his daughter's son. MUSSAMMAT RAJADAN *v.* UMRA. **37 P R 1878**

85. *Gujar tribe of Gujrat district.*

The *Wajib-ul-arz* allowed gifts of land by a proprietor to his daughter and son-in-law. *Held*, that a gift to the daughter's son was within the spirit of the *Wajib-ul-arz*, and that, not being opposed to custom, it was valid. DITTA *v.* KHUDAYAR. **46 P R 1878**

86. *Daughter's son—Gujars of Gujrat district.*

Found, that by the custom of the Gujars of the Gujrat district, a gift to a daughter's son, brought up by and residing with the sonless donor, accompanied by such possession as can be given during the donee's minority, is a valid gift. *Mussammat Karm Bhari* v. *Hyat Baksh* (No. 15 of 1880, Civil) cited. GUL AHMED *v.* SAHIBZADA. **45 P R 1881**

87. *Mogals of Phuphrah got, Pind Dadan Khan—Devise to daughter's son.*

Found, that by the custom of the Mogals of the Phuphrah *got*, resident in *mauza* Sadowal in the Pind Dadan Khan *parganah* of the Jhelum district, a landowner is competent to give his land by will to his daughter's son in the absence of sons of his own. ALLA BAKSH *v.* MUHAMMAD BAKSH. **56 P R 1881**

88. *Gujars of Gujrat—Gift to married daughter—Resident son-in-law.*

Found, that among Gujars of the Gujrat district a gift by a sonless proprietor of his land to his married daughter, who resides in her father's house and whose husband is joined in cultivation with her father, is valid by custom. *Ditta* v. *Khudayar* (No. 46 of 1878, Civil), *Shah Muhammad* v. *Mussammat Imam Bibi* (No. 56 of 1878, Civil), *Jowahir* v. *Faiz Baksh* (No. 137 of 1879, Civil), and *Gul Ahmed* v. *Sahibzada* (No. 45 of 1881, Civil), cited. MEHR DIN *v.* MUSSAMMAT NEKI **67 P R 1882**

89. *Gujars of Gujrat district—Gift to daughter—Donee receiving possession by her husband*—Ghar-jawai.

A.—ALIENATION BY MALE PROPRIETOR—*contd.*

In a suit the parties to which were Gujars of *mauza* Kamala in the Gujrat district, *found* that a gift to a daughter, where the donee by her husband receives possession of the land gifted, and she and her husband reside with her father, her husband having become *ghar-jawai*, is valid by custom. *Jowahir* v. *Faiz Baksh* (No. 137 of 1879, Civil) cited. AHMAD KHAN *v.* MUHAMMAD KHAN. **1 P R 1883**

90. *Chuna Jats of* mauza *Badoki, Sialkot—Gift to daughter's sons—Possession.*

In a suit the parties to which were Chuna Jats of *mauza* Badoki in the Sialkot district, plaintiffs sued to set aside a gift by their cousin of his land to his daughter's sons, who were minors, and as whose guardian their mother appeared in the case. It appeared that the *Riwaj-i-am* applicable to the parties only provided expressly for gifts to daughters, which were allowed to extend to the whole estate, if no male descendants of the great-grandfather survived, but which, when such descendants existed, were valid for the share which under Muhammadan law the daughter would inherit; and in accordance with the above terms, it was held by the Courts below that the gift was valid against the plaintiffs only for one-half of the property gifted. The plaintiffs in second appeal sought for a decree declaring the gift altogether invalid against them, as it was not a gift to the daughter, but her sons, and further urged that, possession not having been given, the gift was void.

Held, that there was sufficient evidence of a custom under which a gift to daughters' sons would be valid, at least to the same extent as if the gift had beed made to their mother.

Held further, that assuming the custom required that the provisions of Muhammadan law in respect to possession should be complied with, the fact that the donees were minors, who, with their mother, lived with the donor, was a sufficient reason for regarding the possession of the latter as on behalf of the donees, as their guardian. *Gulam Muhammad* v. *Muhammad Amin* (No. 86 of 1882, Civil), cited. FAUJDAR *v.* BHAMMA. **91 P R 1883**

91. *Khandoi Rajputs of Pind Dadan Khan—Gift to grand-daughter.*

Found, that no special custom exists among the Khandoi Rajputs of the Pind Dadan Khan *tahsil* rendering a gift by a father to his son's daughter in presence of a first cousin invalid. CHARAGH *v.* CHAMMAN. **53 P R 1884**

92. *Jhanjuas of* tahsil *Jhelum—Will in favour of daughter.*

Found, that by the custom prevailing among Jhanjuas of the Jhelum *tahsil* the alienation of land in favour of a daughter by will is permitted. *Alla Baksh* v. *Muhammad Baksh* (No. 56 of 1881, Civil) cited. SABALAM *v.* MUSSAMMAT SARFARAZ. **122 P R 1884**

93. *Muhammadan Rajputs of Chakwal* tahsil, *Jhelum district.*

A.—ALIENATION BY MALE PROPRIETOR—*contd.*

Found that, among Muhammadan Rajputs of the Chakwal *tahsil*, a proprietor without male issue can by custom make a will leaving his entire estate to his daughter to the prejudice of his near collaterals. *Alla Baksh* v. *Muhammad Baksh* (No. 56 of 1881, Civil and *Sabalam* v. *Mussammat Sarfaraz* (No. 122 of 1884, Civil) cited. FAZL *v.* MUSSAMMAT BHAGBARI. **93 P R 1885**

94. *Varaitches of Gujrat district—Gift by childless proprietor—Burden of proof.*

In a suit by certain agnate male collaterals in the 4th and 5th degree to set aside a gift by a childless proprietor to his relations through females, the parties to which were Varaitches of the Gujrat district, *held*, that the plaintiffs, on whom the burden of proof lay, had failed to establish any custom under which the gift was invalid. *Nathu* v. *Karam Bhari* (No. 15 of 1884, Civil) referred to. KASIM *v.* CHOGATTA. **116 P R 1885**

95. *Aroras of Mooltan—Will in favour of daughter's son—Burden of proof.*

In a suit, the parties to which were Aroras of the city of Mooltan, plaintiff, who was the own brother of one I. D., deceased, sued to cancel a will made by I. D., in favour of the defendant, his daughter's son, of his ancestral property.

Held, that the burden lay upon the plaintiff to prove affirmatively that such alienation was opposed to the custom governing the class to which the parties belonged, and that he had failed to do so. *Mussammat Parmeshri* v. *Vasdeo* (No. 35 of 1885, Civil) cited. KISHAN CHAND *v.* SHAM DAS. **7 P R 1886**

96. *Gujars of* tahsil *Kharian—Gift to married daughter—Possession—Gift to minor donee.*

In a suit the parties to which were Muhammadan Gujars of the Kharian *tahsil* in the Jhelum district, *held* that though a Gujar can gift his land to a married daughter residing with him, such gift to be valid must be completed by a delivery of possession; and though where the donee is a minor and residing with her father as guardian, the possession would not be physically changed even in such case the donor must show in some clear way that he has begun to hold in a new capacity as guardian and not as owner. *Gul Ahmad* v. *Sahibzada* (No. 45 of 1881, Civil) referred to. MUSSAMMAT RAJ BIBI *v.* KAKO. **106 P R 1886**

97. *Pathans of Attock* tahsil—*Gift of share in joint property by sonless proprietor to daughter's son.*

In a suit for cancellation of a deed of gift the parties to which were Pathans of the attock *tahsil*, found that a gift by a sonless proprietor of his share in a joint holding in favour of his daughter's son was not invalid by custom. ABDULLA KHAN *v.* MIR ALAM KHAN. **13 P R 1887**

98. *Awans of Kharian* tahsil—*Gift to daughter*—Khana-damad.

Found, that among Awans of the Kharian *tahsil* of the Gujrat district gifts to daughters whose husbands are resident with the donor

CUSTOM I.—ALIENATION—*contd.*
A.—ALIENATION BY MALE PROPRIETOR—*contd.*

are valid by custom, though gifts to daughter whose husbands are not so resident are invalid.

Sikandar Khan v. *Bahadur Khan* (No. 39 *P. R.* 1876) *Mussammat Karm Bhari* v. *Hyat Bakhsh* (No. 5 *P. R.* 1880), *Ahmad Khan* v. *Muhammad Khan* (No. 1 *P. R.* 1883), and *Nathu* v. *Mussammat Karm Bhari* (No. 15 *P. R.* of 1884, cited. JIWAN *v.* WAZIR.
39 P R 1887

99. *Dhanoi Jats of the Umballa district—Will in favour of widowed daughter—Collaterals.*

In a suit brought by the male collaterals of a childless proprietor to contest a disposition in the nature of a will made by him before his death in favour of his widowed daughter, who it appeared had lived with him for several years prior to his death and after she became a widow, the parties to the suit being Jats of the Dhanoi *got* resident in the Umballa District, found that by custom the alienation was valid and conveyed to the defendant the life estate ordinarily enjoyed by women of the agricultural class in the Punjab. SUNDAR SINGH *v.* MUSSAMMAT MANO. **68 P R 1888**

100. *Arains of Raipur, Jullundur district—Gifts to daughters and their sons.*

Found, that a custom exists among Arains of Raipur in the Jullundur district allowing alienations by sonless proprietors by way of gift in favour of daughters and daughters' sons.

Mussammat Rajdan v. *Umra* (No. 37 *P. R.* 1878) and *Gujar* v. *Sham Das* No. 107 *P. R.* 1887, (F. B.) cited. NIHAL *v.* PALLA.
92 P R 1888

101. *Awans of Peshawar district—Will—Acquired property—Bequest with remainder.*

A will by which a proprietor bequeathed his self-acquired property to the defendant's mother with remainder to the defendant herself found not to be invalid by the custom of Awans of the Peshawar district. MUSSAMMAT KHAMO *v.* FAZAL DIN. **176 P R 1888**

102. *Gariwal Jats of* mauza *Bhawar Thalli and Har Chandpur, Hissar district—Right of collaterals to object to alienation where the common ancestor did not hold the land in dispute.*

Found that among Gariwal Jats in the Hissar district a childless proprietor is competent to make a gift of land to his daughter in the presence of remote collaterals, where the common ancestor had never held the land in dispute. BALKI *v.* BIBA.
43 P R 1890

103. *Gift by a sonless proprietor of his self-acquired property to a daughter's sons—Chib Rajputs of* mauza *Chak Natha, district Gujrat.*

Found, that no custom exists among Chib Rajputs of the Gujrat district which prevents a childless proprietor from making a valid gift of his *self-acquired* immovable property to his daughter's sons in the presence of near agnates. SHARAF ALI *v.* KARIMULLA.
125 P R 1890

104. *Khandoya Rajputs of Jhelum district—Gift to daughters in presence of first cousins once removed.*

CUSTOM I.—ALIENATION—*contd.*
A.—ALIENATION BY MALE PROPRIETOR—*contd*

Found, that no special custom exists among Khandoya Rajputs of *mauza* Jhobi, Jhelum district, rendering a gift by a father to his daughters in the presence of a first cousin once removed invalid. PEER BAKHSH *v.* MUSSAMMAT BANO. **132 P R 1890**

105. *Gift to married daughters by sonless proprietor of Taloka caste*, tahsil *Khushab, district Shahpur*—Kuch Hakiat *Construction.*

In a suit the parties to which were Talokas of *tahsil* Khushab, district Shahpur, *found* that no well-established custom had been proved invalidating a gift of his ancestral lands by a sonless proprietor in favour of his married daughters. The words " Kuch Hakiat " in the *Wajib-ul-arz* relating to the tribe mean any kind of property rather than a portion of the estate. SHAH WALI *v.* MUSSAMMAT PANAH BIBI. **133 P R 1890**

106. *Gujars of Kharian* tahsil—*Resident son-in-law.*

Found, that among Gujars of the Kharian *tahsil* gifts to daughters whose husband's are resident with the donor, are valid by custom. No. 39 *P. R.* 1887, referred to.

The fact of the daughter's *dholi* being taken to her father-in-law's house in another village after her marriage did not operate to render the gift invalid. MUHAMMAD *v.* MUSSAMMAT HAYAT BIBI. **109 P R 1891**

107. *Gift to daughter whose husband is a resident son in-law—Mussalman Jats of* tahsil *Phalian, Gujrat District.*

The course of decisions that among Muhammadan Jats and Gujars of the Gujrat district—whose customs in this respect appear to be identical—gifts to daughters whose husbands are *khanadamads*, are permitted but not gifts to daughters whose husbands do not answer the above description, referred to and followed.

No. 30 *P. R.* 1887, and *No.* 109 *P. R.* 1891, referred to. KAMMA *v.* NATHU.
96 P R 1892

108. *Aulak Jats (Hindu)*, tahsil *Ajnala, Amritsar District—Gift to daughter's son.*

Found, in a suit the parties to which were Aulak Jats (Hindu) of the Ajnala *tahsil*, Amritsar district, that it was not proved that by the custom of the donor's tribe a gift to a daughter's son was invalid. MUSSAMMAT MAHTAB KOUR *v.* WADHAWA SINGH.
131 P R 1893

109. In a case the parties to which were Muhammadan Jats of the Gujrat district, *found*, that a gift followed by possession by a sonless proprietor to a grand-daughter living with him, whose husband was a *gharjawai*, entitled the said grand-daughter and her sons to succeed to the donor's estate upon his death. KHAN MUHAMMAD *v.* ALAM.
92 P R 1895

110. *Gift by sonless proprietor to daughter or her husband—Gondals of Bhera* tahsil, *Shahpur district*—Wajib-ul-arz *and* Riwaj-i-am.

Found that defendants had failed to prove that, by custom among Gondals of Shahpur district, a sonless proprietor is competent to gift ancestral land to a daugther or her

CUSTOM I.—ALIENATION—*contd.*
A.—ALIENATION BY MALE PROPRIETOR—*contd.*

husband agaisnt the will of his near agnates. FATTEH-UD-DIN *v.* JALLU. **70 P R 1896**

111. *Gift by sonless proprietor of entire estate to daughters—Validity of gift in presence of donor's nephews—Arains of Jullundur* tahsil.

Found, that defendants, upon whom the burden of proof rested, has proved a special custom whereby, among Arains of the Jullundur district, a gift by a sonless proprietor of his entire estate in favour of his daughters is valid in the presence of the donor's nephews, (brother's sons). SADULLA *v.* HUSAIN. **2 P R 1897**

112. *Will in favour of daughter—Khalils of* tahsil *Peshawar.*

In a case, the parties to which were Khalils of *tahsil* Peshawar, *found* that an alienation by way of will in favour of a daughter and her sons was valid by custom in the presence of collaterals related to the testator in the fourth degree. KALANDAR KHAN *v.* ATA-ULLA. **44 P R 1897**

113. Among Awans of Khushab *tahsil*, in the Shahpur District, *found*, that by custom in the absence of lineal male descendants a male proprietor has an unrestricted power of gifting his immoveable property, whether ancestral or acquired, to his daughter, daughter's son, sister, sister's son, son-in-law, or to one of his agnates to the exclusion of the rest and without their consent. SHER MUHAMMAD *v.* PHULA.
9 P R 1899

114. *Gift by sonless proprietor of ancestral property to daughter—Arains of Hoshiarpur district.*

Found, that amongst Arains of Hoshiarpur district, gift by a sonless proprietor of ancestral property in favour of a daughter is valid by custom.

Mussammat Rajadan v. *Umra und others* (37 *P. R.* 1878), *Nihal and others* v. *Palla and another* (92 *P. R.* 1888), and *Sadula and another* v. *Hussain and others* (2 *P. R.* 1897), followed. GHAUSA AND ANOTHER *v.* NATHU. **82 P R 1900**

115. *Gift by sonless proprietor of entire estate to his daughter's son who was adopted by him previous to the gift—Validity of gift in presence of collaterals—Arains of the Phillour* tahsil *of the Jullundur District.*

Found, that amongst Arains of the Jullundur District, a gift by a sonless proprietor of his entire estate in favour of his daughter's son in the presence of near collaterals is valid by custom.

Mussammat Rajadan and Dana v. *Umra and others* (37 *P. R.* 1878), *Nihal and others* v. *Palla and others* (92 *P. R.* 1888), and *Sadula and another* v. *Hussain and others* (2 *P. R.* 1897), considered and followed. ALLA DIA AND OTHERS *v.* NUR BAKHSH AND OTHERS.
83 P R 1900

116. *Gift by sonless proprietor with the consent in accordance with custom of the nearest reversioner to his daughter—Suit by the sons of that reversioner.*

In a suit to contest the validity of a gift made by a sonless proprietor in favour of

his daughter which was acquiesced in (on a compromise) by the father of the plaintiffs who was the donor's heir and the only reversioner in that degree, the compromise being in accordance with the terms of the *Riwaj-i-am*, *i. e.*, that a sonless proprietor might with the consent of the collaterals gift a certain amount of his land to a daughter.

Held, that when an alienation has been made good and valid by the consent of the next reversioner given reasonably and without collusion and in accordance with custom, there were no rights left to other more remote reversioners in respect of which they were entitled to contest the validity of the alienation. MUSSAMMAT FATTEH BIBI AND ANOTHER *v.* ALLAH BAKHSH AND OTHERS.

84 P R 1900

117. *Gift by a sonless proprietor in favour of daughter—Ghuman Jats of Daska* tahsil, *Sialkot district.*

Found, that a sonless Ghuman Jat of Daska *tahsil* could in the absence of custom to the contrary gift his self-acquired property to his daughter and daughter's son, and that a gift of ancestral property in favour of daughters to the extent of $\frac{1}{10}$th share is valid by custom. DEVI DITTA AND OTHERS *v.* MUSSAMMAT HUKMI AND OTHERS.

85 P R 1900

118. *Will—Will in favour of daughter's son—Awans of Shahpur district—Competency of proprietor to make a will in favour of his daughter's son in the presence of his own brother.*

Held, that the right to make a bequest by a will exists among the Awans of the Shahpur district, and that a bequest by a sonless proprietor in favour of his daughter's son is valid by custom in the presence of his own brother. ALI MUHAMMAD *v.* DULLA.

26 P R 1901

119. *Ghakhars of Domeli, Jhelum district—Gifts of ancestral property to daughters or daughters and their husbands.*

Found, that a gift by a sonless proprietor of his ancestral land to his daughters and their husbands in the presence of a first cousin, was valid by custom of Ghakhars of Domeli in the district of Jhelum.

Muhammad Khan v. *Dulla* (56 *P. R.* 1896) distinguished. *Jowahir Singh* v. *Dial Singh* (76 *P. R.* 1898), *Ali Muhammad* v. *Dulla* (26 *P. R.* 1901), *Nura* v. *Tora* (46 *P. R.* 1900), *Fattu* v. *Bakhra* (15 *P. R.* 1895), and *Gujar* v. *Sham Das* (107 *P. R.* 1887, F. B.), referred to. FEROZ KHAN *v.* AMRI MUHAMMAD KHAN.

53 P R 1902

120. *Gift by sonless proprietor to daughters*—Khanadamad—*Waraich Jats of Shadiwal, Gujrat district.*

In a suit the parties to which were Waraichs of Shadiwal in the Gujrat district, the plaintiffs who were nephews of the donor sued for a declaratory decree that the deed of gift executed by the donor in favour of his three daughters should not affect their

reversionary rights after his death. During the trial it was proved that the husband of one of the daughters had been living with donor as a *khanadamad*, *held*, that the plaintiffs were not entitled to the relief claimed, as they had no right to challenge the gift in presence of the *khanadamad* who had by custom a title superior to theirs.

Mussammat Baggi v. *Mamun* (31 *P. R.* 1895) and *Nathu* v. *Mussammat Karambhari* (15 *P. R.* 1884), cited. HAYAT *v.* GAUHAR.

80 P R 1902

121. *Gift by sonless proprietor to daughter's husband in presence of the first cousins—Koreshis of Bhera, Shahpur district.*

Held, that although the Koreshis are agriculturists living by the produce of land for the most part and have in some matters adopted Punjab agricultural customs, in the matters of the power of male proprietors to gift to daughters or their husbands or issues the prevailing custom much more nearly follows Muhammadan Law than agricultural custom, and that a sonless proprietor is competent to make a gift of his property to his daughter's husband in presence of even first cousins.

Mussammat Ghulam Fatima v. *Mussammat Maqsudan* (69 *P. R.* 1890), distinguished. GHULAM SHAH *v.* ZAIN SHAH.

101 P R 1902

122. *Gift by sonless proprietor—Awans of* mauza *Dhanal, Jullundur district—Competency of sonless proprietor to make a gift to his daughter and her son in the presence of his collaterals in the third degree.*

In a case, the parties to which were Awans of *mauza* Dhanal, in the Jullundur *tahsil*, *found*, that a gift of ancestral land by a sonless proprietor in favour of his daughter and her son was valid by custom in the presence of agnates in the third degree.

Aulia v. *Alu* (49 *P. R.* 1898), *Sher Muhammad* v. *Phula* (9 *P. R.* 1899), *Nura* v. *Tora* (46 *P. R.* 1900), and *Ali Muhammad* v. *Dulla* (26 *P. R.* 1901) referred to. KHAIRU *v.* FATTU.

14 P R 1903

123 *Muhammadan Mair Rajputs of Chakwal* tahsil *of the Jhelum district—Burden of proof.*

Found that amongst Muhammadan Mair Rajputs of the Chakwal *tahsil* of the Jhelum district, a gift by a sonless proprietor of half of his ancestral land in favour of his daughter's son in presence of his agnatic heirs is valid by custom.

Although, the initial presumption throughout the province is against the power of alienation in respect of ancestral land in village communities and the burden of proof at the outset rests on the person asserting such a power, yet in case of Mahammadan tribes of the Jhelum district the presumption against the validity of a gift by a sonless proprietor to a daughter or daughter's son is not of great weight and may be easily shifted.

Sunder Singh v. *Jhanda Singh* (51 *P. R.* 1881), *Niaz Ali* v. *Ahmad Din* (109 *P. R.*

1882), *Charagh* v. *Chamman* (53 *P. R.* 1884), *Sabalam* v. *Mussammat Sarfaraz* (122 *P. R.* 1884), *Jiwan* v. *Mahamad* (131 *P. R.* 1884), *Sultan Ahmad* v. *Muhammad Yar* (59 *P. R.* 1885), *Fazl* v. *Mussammat Bhagbari* (93 *P. R.* 1885), *Gujar* v. *Sham Das* (107 *P. R.* 1887), *Ramji Lal* v. *Tej Ram* (73 *P. R.* 1895), *Rala* v. *Budha* (50 *P. R.* 1885), *Fazl* v. *Alla Bakhsh* (129 *P. R.* 1890), *Pir Bakhsh* v. *Mussammat Bano* (132 *P. R.* 1890), *Sayad Rasul* v. *Fazal* (7 *P. R.* 1891), *Muhammad* v. *Sharf-ud-din* (8 *P. R.* 1891), *Sheikh Ghulam Hassan* v. *Gurmakh* (24 *P. R.* 1891), *Karm Bakhsh* v. *Fattu* (108 *P. R.* 1891), *Mussammat Mastur Bano* (81 *P. R.* 1894), *Narain Singh* v. *Gurmukh Singh* (116 *P. R.* 1894), *Lehn Singh* v. *Buta* (135 *P. R.* 1894), *Abdulla* v. *Muhammad* (14 *P. R.* 1895), *Fatta* v. *Bakiar* (15 *P. R.* 1895), *Karamdad* v. *Muhammad* (59 *P. R.* 1895), *Shera* v. *Saghar* (83 *P. R.* 1895), *Mussammat Bano* v. *Fateh Khan* (48 *P. R.* 1903), *Mukarrab* v. *Fatta* (88 *P. R.* 1895), *Chaughatta* v. *Ditta* (93 *P. R.* 1895), *Muhammad Beg* v. *Bahadur* (23 *P. R.* 1896), *Muhammad Khan* v. *Dulla* (57 *P. R.* 1896), *Mussammat Nur Bhari* v. *Dulla* (56 *P. R.* 1899), *Nura* v. *Tora* (46 *P. R.* 1900), *Atma Singh* v. *Naudh Singh* (61 *P. R.* 1901), *Haidar Khan* v. *Jahan Khan* (50 *P. R.* 1902), *Feroz Khan* v. *Amir Muhammad Khan* (53 *P. R.* 1902), *Arur Singh* v. *Mussammat Lachmi* (75 *P. R.* 1898), *Ali Muhammad* v. *Dullu* (26 *P. R.* 1901), and *Dilawar* v. *Mussammat Jatti* (2 *P. R.* 1901), referred to. SHER JHANG, &c., *v.* GHULAM MOHI-UD-DIN.

22 P R 1904

124. *Gift by sonless proprietor to his relations in the female line—Moghals*, got *Phapra, of Chakwal and Pind Dadan Khan* tahsils, *Jhelum district—Burden of proof.*

Found, that by custom among Moghals, *got* Phapra, of the Chakwal and Pind Dadan Khan *tahsils* in the Jhelum district, a gift by a sonless proprietor of the whole or a substantial part of his ancestral immovable property to his relations in the female line is valid in the presence and without the consent of his male agnates.

The effect of Full Bench ruling in *Gujar* v. *Sham Das* (107 *P. R.* 1887), and other cases on the point of burden of proof as to free alienations considered and discussed by Chatterji, J.

Muhammad Beg v. *Bahadur* (23 *P. R.* 1896), *Muhammad Khan* v. *Dulla* (57 *P. R.* 1896), *Allah Bakhsh* v. *Muhammad Bakhsh* (56 *P. R.* 1881), *Hayat Muhammad* v. *Fazal Ahmad* (52 *P. R.* 1892), *Hassan Ali* v. *Bahadur* (32 *P. R.* 1893), *Ralla* v. *Budha* (50 *P. R.* 1893), *Ramji Lal* v. *Tej Ram* (73 *P. R.* 1895), *Charag* v. *Chamman* (53 *P. R.* 1884), *Sabalam* v. *Mussammat Sarfaraz* (122 *P. R.* 1884), *Sultan Ahmad* v. *Muhammad Yar* (59 *P. R.* 1885), *Fazal* v. *Mussammat Bhagbari* (93 *P. R.* 1885), *Pir Bakhsh* v. *Bano* (132 *P. R.* 1890), *Karam Bakhsh* v. *Falla* (108 *P. R.* 1891), *Bakshi* v. *Rahim Dad* (107 *P. R.* 1893), *Bahadur* v. *Mussammat Bholi* (103 *P. R.* 1893), *Rasul Khan* v. *Mussammat Mastur Bano* (81 *P. R.* 1894),

CUSTOM I.—ALIENATION—*contd.*
A.—ALIENATION BY MALE PROPRIETOR—*contd.*

Shera v. *Saghar* (83 *P. R.* 1895), and *Chaugatta* v. *Ditta* (93 *P. R.* 1895), referred to. HASSAN AND OTHERS *v.* JAHANA.
71 P R 1904

125. *Gift by male proprietor to daughter's son—Suit by donor's nephew—Awans of Talagang* tahsil *of the Jhelum district.*

One 'F.', an Awan of *mauza* Pachnand in the Talagang *tahsil* of the Jhelum district, gifted certain land and a house to his daughter's son. Notwithstanding the fact that the donor had a son who raised no objection to the gift, the plaintiffs who were the donor's nephews, sued for a declaration that the gift made by 'F.' should not affect their reversionary rights after the death of the donor.

Found, without deciding the question whether or not the presence of the donor's son and his consent to the gift debarred the plaintiffs from contesting the alienation that by custom among Awans of the Talagang *tahsil* of the Jhelum district a male proprietor is competent in presence of nephews to make a gift of his property in favour of his daughter's son who had rendered him service.

Nura v. *Tora* (46 *P. R.* 1900), *Bakhsha* v. *Mir Baz* (79 *P. R.* 1896), *Aulia* v. *Alu* (49 *P. R.* 1898), *Sher Muhammad* v. *Phula* (9 *P. R.* 1898), and *Devi Das* v. *Bhakra* (53 *P. R.* 1899), cited and followed.

Hayat Muhammad v *Fazl Ahmad* (52 *P. R.* 1902), *Jiwan* v. *Wazir* (39 *P. R.* 1887), *Kadman* v. *Amir Bibi* (122 *P. R.* 1892), *Ghulam Muhammad* v. *Abbas Khan* (22 *P. R.* 1899), *Fatta* v. *Bakhra* (15 *P. R.* 1895), *Ali Muhammad* v. *Dula* (26 *P. R.* 1901), *Bahadur* v. *Bohli* (108 *P. R.* 1893), *Rasul Khan* v. *Mastur Bano* (81 *P. R.* 1894), and *Chiragh* v. *Chamman* (53 *P. R.* 1884), referred to. KHUDA YAR *v.* FATTEH.
8 P R 1906

126. *Gift by sonless proprietor of ancestral estate to daughter—Validity of, in presence of donor's brother—Sohani Pathans of* tahsil *Shakargarh, District Gurdaspur.*

Found, in a suit the parties to which were Sohani Pathans of *tahsil* Shakargarh in the Gurdaspur district, that a gift of the whole of his ancestral land by a sonless proprietor to his daughter in the presence of a brother of the donor was valid by custom. AMIR KHAN *v.* RURI.
14 P R 1906

127. *Gift by sonless proprietor to daughter's son in the presence of male collaterals—Gujars of* mauza *Bholiwal Qadim, Ludhiana district.*

Found, that by custom among Gujars of *mauza* Bholiwal in the Ludhiana district, a gift by a sonless proprietor of his ancestral immovable property to his daughter's sons is valid without the consent of his male collaterals, the daughters having both married the same man, and their *dolis* never having left their father's house, and their husband having been a *khanadamad.* NIZAM *v.* GAUHARA.
17 P R 1906

128. *Will—Bequest of ancestral property by sonless proprietor to daughter and daughter's son—Gujars of* tahsil *Gujar Khan, District Rawalpindi—Burden of proof.*

CUSTOM I.—ALIENATION—*contd.*
A.—ALIENATION BY MALE PROPRIETOR—*contd.*

Found, that by custom among Gujars of the Gujar Khan *tahsil*, Rawalpindi district, a sonless proprietor is competent to bequest the whole of his ancestral immovable property to his daughter and daughter's son in the presence and to the prejudice of his near male collaterals.

Observations by Rattigan, J., as to initial presumption and burden of proof in cases of alienations by the members of Muhammadan endogamous tribes in favour of daughters and their sons.

Bano v. *Fateh Khan* (48 *P. R.* 1903 *F. B.*), *Gujar* v. *Sham Das* (107 *P. R.* 1887 *F. B.*), *Ramji Lal* v. *Tej Ram* (73 *P. R.* 1895 *F. B.*), *Hassan* v. *Jahana* (71 *P. R.* 1904), *Hem Raj* v. *Sahiba* (116 *P. R.* 1901), *Sheran* v. *Sharman* (117 *P. R.* 1901), discussed and considered.

Sadulla v. *Husain* (2 *P. R.* 1897), *Ali Muhammad* v. *Jawahri* (112 *P. R.* 1889), *Sharaf* v. *Begam* (88 *P. R.* 1890), *Raj Bibi* v. *Kako* (106 *P. R.* 1886), *Muhammad* v. *Hayat Bibi* (109 *P. R.* 1891), *Mussammat Kirpi* v. *Solekh Singh* (67 *P. R.* 1904), *Ishar Singh* v. *Lehna Singh* (86 *P. R.* 1903), *Ahmad* v. *Jahana* (52 *P. R.* 1905), *Muhammad* v. *Sharf-ud-din* (8 *P. R.* 1891), *Abdulla Shah* v. *Kaim Shah* (86 *P. R.* 1894) and *Kadman* v. *Amir Bibi* (122 *P. R.* 1892), referred to. BHOLI *v.* FAKIR.
62 P R 1906

129. *Gift by sonless proprietor of ancestral property to his daughter's son and son's daughter—Arains of Nakodar* tahsil, *Jullundur district.*

Found, that amongst Arains of Nakodar *tahsil* of the Jullundur district, a gift by a sonless proprietor of his ancestral property in favour of his daughter's son or son's daughter specially where she is married to his daughter's son is valid by custom. PALA *v.* NUR MUHAMMAD.
133 P R 1906

130. *Will—Competency of a sonless proprietor to make a will in favour of his daughter in presence of brother—Awans of Rawalpindi* tahsil.

Found, that by custom among the Awans of Rawalpindi *tahsil* a bequest of ancestral property by a sonless proprietor in favour of his daughter is valid in the presence of his own brother. AMIR ALI *v.* BAGGO.
15 P R 1907

131. *Gift by daughter's son of ancestral maternal estate inherited by his mother from her father under a gift—Jats of Mathothial* got *of* mauza *Kulchpur,* tahsil *Kharian, Gujrat district.*

Found, that among Jats of the Mathothial *got* of *mauza* Kulchpur, *tahsil* Kharian, in the Gujrat district, a daughter's son who had succeeded to the property which had been gifted to his mother by her father is competent by custom to gift the said property to his daughter. IMAM DIN *v.* MULLA.
104 P R 1907

132. *Alienation by sonless proprietor of ancestral immovable property to daughter*—Locus standi *of the collaterals of the eighth*

CUSTOM I.—ALIENATION—*contd.*
A.—ALIENATION BY MALE PROPRIETOR—*contd.*

degree to contest such alienation—Rattal Jats of Jallo, tahsil *Lahore.*

In a suit the parties to which were Rattal Jats of *mauza* Jallo, *tahsil* Lahore, a sonless proprietor made a bequest of his entire estate, including the ancestral immovable property, to his daughter. The collaterals of the eighth degree contested the alienation. *Held* that the latter had failed to prove that by custom they were entitled to contest the alienation or to succeed in preference to the daughter. RAJO *v.* KARAM BAKHSH.
11 P R 1908

133. *Gift by male proprietor to his daughter with the consent of his son*—Locus standi *of reversioners to contest such alienation—Arains of Jagraon* tahsil, *Ludhiana district.*

Found, that by custom among Arains of the Jagraon *tahsil* in the Ludhiana district a gift by a male proprietor of his ancestral immovable property to his daughter with the consent of his son who is himself childless, is valid and cannot as such be questioned by his reversioners. SHADI *v.* KHEWNI.
58 P R 1908

134. *Bequest of ancestral property by sonless proprietor to daughter—Bukhari Sayads of Gujrat district*—Khanadamad—*Future son-in-law.*

Found, that by custom among Bukhari Sayads of Gujrat district a sonless proprietor is competent to bequeath the whole of his ancestral immovable property to his daughter in the presence of his near male collaterals, and the bequest is for the benefit of her and her issue. But the testator cannot nominate as *khanadamad* a man who has not married his daughter and come to live in his house up to the time of his (testator's) death. HAYAT SHAH *v.* FAZAL BEGAM.
70 P R 1908

135. *Gift and will in favour of a daughter or daughter's son—Muhammadan Dab Jats of Jhang district.*

Found, that the defendant failed to prove that among Muhammadan Dab Jats of Jhang district, a sonless male proprietor is competent to transfer either by gift or will ancestral immovable property to a daughter or daughter's son, or that the daughter or daughter's son was entitled to succeed in preference to the first cousins once removed of the deceased. ALLAH DITTA *v.* BEG.
48 P R 1909

136. *Pathans of Gurdaspur* tahsil—*Gift to daughter's son in presence of near collaterals—Different entries in* Riwaj-i-am *of different settlements.*

Held, that a sonless Pathan proprietor of the Gurdaspur *tahsil* has by custom power to make a gift of ancestral land in favour of his daughter's son in presence of near collaterals. ISMAIL *v.* ISMAIL.
21 P R 1910

137. *Will in favour of daughter and son-in-law*—Khanadamad—*Gujars of Gujrat district.*

CUSTOM I.—ALIENATION—*contd.*

A.—ALIENATION BY MALE PROPRIETOR—*contd.*

Held, that among Gujars of the Gujrat District wills in favour of daughters and their husbands are valid only, if the latter is a duly appointed and regularly and continuously recognized *khana-damad*. MUHAMMAD *v.* LAKHAN. **25 P R 1910**

138. *Gift to married daughter, whose husband is* khana-damad, *valid as against collaterals—Kahuts,* mauza *Thirpal,* tahsil *Chakwal, district Jhelum.*

Held, that among Kahuts of *mauza* Thirpal, *tahsil* Chakwal, district Jhelum, a gift by a father to his married daughter, who has never left her father's house and whose husband is *khana-damad*, is valid against collaterals of the father. MUHAMMAD HUSSAIN *v.* MUHAMMAD. **31 P R 1910**

139. *Gift by a sonless proprietor to his daughter's sons—Validity of—Mirali Sials of Kabirwala* tahsil, *District Multan.*

Held, that among Mirali Sials of the Kabirwala *tahsil* (formerly called Serai Sidhu) of the Multan district a gift of ancestral land made by a sonless male proprietor in favour of the sons of a daugher, whose husband was a *khana-damad* and near collateral, is valid. SHAHAMAD *v.* NAURANG. **53 P R 1910**

II.—Not proved.

140. *Gift to daughter's son—Suit by distant reversioner.*

A gave his daughter's son a portion of ancestral land; A's nephew in his lifetime sued to set aside the gift, alleging that it was void by custom, the donee living in another village and not having obtained possession. The *riwaj-i-am* which the parties admitted mainly governed the case, was that if a proprietor put his daughter and his son-in-law in possession of his land the daughter and her issue became owners after the donor's death,—in that case the consent of shareholders was not required. The parties were Muhammadans. *Held*, that A's nephews were not precluded from suing in his lifetime to contest the gift, and that the gift was void. *Held*, also, that, as a general rule, a suit for a declaratory decree must be bronght by the next reversioner, but a more distant reversioner may sue where the nearer reversioner has waived or abandoned his rights. SIKANDAR KHAN *v.* BAHADUR KHAN. **39 P R 1876**

141. *Muhammadan Sheiks—Childless village proprietor—Gift to daughter's son of ancestral property.*

Found that custom precluded a childless village proprietor from making a gift of his ancestral property to his daughter's son, in the presence of nephews. MAMU *v.* KARM BAKHSH. **39 P R 1878**

142. *Hindu Jats of Jalandhar—Gift to daughter's son in presence of near male collaterals.*

Found, that among Hindu Jats of the Jalandhar district a sonless proprietor of land, cannot in the presence of near male collaterals make a valid gift of his land to his daughter's son, to enure beyond his own life. unless the heirs consent or the donee has been brought up or treated as a son. *Nihal Singh* v. *Kahn Singh* (No. 50 of 1875, Civil), *Pertab Singh* v. *Bishan Singh* (No. 81 of 1877, Civil), and *Miyan* v. *Sandhi* (No. 64 of 1879, Civil) cited. BUDH SINGH *v.* CHARTU. **128 P R 1882**

143. *Kambohs of Dipalpur tahsil—Gift of immovable property to daughter.*

Found, that by custom a Kamboh of the Dipalpur tahsil is not competent to make a gift of his immovable property to his daughter. MUSSAMMAT BHAGAN *v.* GAHNA. **177 P R 1883**

144. *Nijar Jats of M. Pindori Nijjaran, Jalandhar—Gift to daughter's sons.*

Found, that no custom exists in *mauza* Pindori Nijjaran, in the Jalandhar district, whereby a Jat proprietor of the Nijjar *got* can make a valid gift to grandsons (daughter's sons) who lived with him and were brought up by him, without the consent of collaterals descended from the donor's uncle, there being no adoption and no finding that the father of the donees would, but for the gift, have succeeded as a *khana-damad*. MUSSAMMAT MEMA *v.* MAHABBAT. **61 P R 1884**

145. To daughter whose husband is non-resident.

See UNDER (i) PROVED *Supra.* **39 P R 1887**

146. *Kalals of* tahsil *Kathal,* zilla *Karnal—Gift (in form of sale) to daughter's son in presence of grand-nephews.*

In a suit the parties to which were Kalals of the Kaithal *tahsil* of the Karnal District it appeared that the transaction impeached by which one S. had transferred ancestral land to his daughter's son in presence of the plaintiffs, who were grandsons of S.'s brother, though in form a sale, was in fact a gift. It further appeared that the *Wajib-ul-arz* prohibited a gift to a daughter's son, that on one previous occasion when such a gift was made in the village it was set aside and that there was no evideuce of such a gift being upheld.

Held that the Lower Courts had rightly decided in favour of the plaintiffs and against the gift. NIRBHA RAM *v.* PUNNU. **75 P R 1887**

147. *Arains of Ferozepore District—Gifts of ancestral land by sonless proprietor to daughter's son—Near collaterals.*

A gift by a sonless proprietor of his ancestral land to his daughter's son in the presence of near collaterals, (*viz.*, the own brother and sons of an own brother of the donor), found to be invalid by the custon of Arains in the district of Ferozepore. *Gujar* v. *Sham Das* (No. 107 *P. R.* 1887), cited. GHULAM *v.* MAKHNA. **111 P R 1888**

148. *Possession—Gujars of Shakargarh* tahsil, *Gurdaspur.*

Found that by the custom of the Gujars of *tahsil* Shakargath (*zila* Gurdaspur) a gift to a daughter's sons not accompanied or followed by possession is invalid in the absence of proof that such a gift is by custom valid without delivery of possession. ALI MUHAMMAD *v.* MUSSAMMAT JOWHARI. **112 P R 1889**

149. *Tawani Rajputs, Umballa District.*

Found, that by the custom of the Tawani Rajputs, it is not competent to a sonless proprietor to make a gift of part of his estate to a daughter's son in the presence of nephews. HAKIM ALI *v.* SHERA. **73 P R 1891**

150. *Gifts to daughters in presence of near male collaterals—Sayads (Sunnis) of Unchagaon of Balabgarh* tahsil, *Delhi District.*

In a suit the parties to which were Sayads (Sunnis) of the village of Unchagaon in the Balabgarh *tahsil* of the Delhi District *found* that the defendants (two daughters) upon whom the burden of proof lay, had failed to establish that by custom (it being admitted that the daughters had no right by *inheritance*) a gift of ancestral land made in their favour by their father, a sonless proprietor, in the presence of male collaterals descended from the grandfather of the donor without their consent, was valid—MUSSAMMATS BANO BEGAM and JAFRI BEGAM *v.* SAYAD AHMAD ALI. **32 P R 1892**

151. *Will—Nun Mussalman Jats,* tahsil *Bhakkar, Dera Ismail Khan District.*

Found in a suit the parties to which were Nun Mussalman Jats of the Bhakkar *tahsil* of the Dera Ismail Khan District, that no custom was established authorising the bequest of land in favour of a daughter and her sons. UMAR *v.* MUSSAMMAT SAHIB KHATUM. **76 P R 1892**

152. *Gifts to daughters whose husbands non-resident.*

See (i) (2) PROVED, *supra.* **96 P R 1892**

153. *Gift to daughter's son in presence of nephew—Khatris of Ahmadpur,* tahsil *Shorkot, Jhang District.*

Found, that a gift by a sonless Khatri of a village in the Shorkot *tahsil* of the Jhang District of ancestral immovable property, in favour of his daughter's son, was invalid by custom in the presence of a nephew of the donor. GANGA RAM *v.* ASA NAND **93 P R 1892**

154. *Gift to daughters by sonless proprietor—Rights of brother of donor—Muhammadan Gujars,* tahsil *Kharian, Gujrat District.*

Found in a suit the parties to which were Muhammadan Chuhan Gujars of *tahsil* Kharian in the Gujrat District, that a gift of all his land by a sonless proprietor to his daughters in the presence of a brother of the donor was invalid by custom.

No. 106 *P. R.* 1886, and No. 39 *P. R.* 1887, referred to. KADMAN *v.* MUSSAMMAT AMIR BIBI. **122 P R 1892**

A.—ALIENATION BY MALE PROPRIETOR—*contd.*

155. *Will—Awans of the Jhelum District—Bequest of whole of testator's land to his daughters in presence of brother.*

Found, in a suit the parties to which were Awans of the Jhelum District that no custom was proved enabling a sonless proprietor to make a valid disposition of his ancestral property by will in favour of his daughters in the presence of a brother.

No. 121 *P. R.* 1886, referred to. BAHADUR *v.* MUSSAMMAT BHOLI. **108 P R 1893**

156. Khanadamad—*Muhammadan Basra Jats of*—Tahsil *Raya*—Riwaj-i-am—Onus probandi.

Found, that by custom among Muhammadan Basra Jats of *mauza* Jaguwala, in the Raya *tahsil*, a sonless proprietor is not competent to make a gift to a daughter without the consent of the next heirs, even when the donee is found to be the wife of a *khana-damad*, or resident son-in-law. MUSSAMMAT PARDHAN *v.* WAZIRA. **11 P R 1894**

157. *Gift by sonless proprietor to daughter's husband—Afghans of Kakar got, Ajnala* tahsil, *Amritsar District—Consent of collaterals.*

Found, that by custom among Afghans of Kakar *got*, Ajnala *tahsil*, in the district of Amritsar, a sonless proprietor is not competent to make a gift of his property to his daughter's husband without the consent of kinsmen descended from the donor's grandfather. NAWAB KHAN *v.* MUSSAMMAT JIAN. **15 P R 1894**

158. *Awans of* mauza *Bhodhal, Talagang* tahsil, *Jhelum District*—Onus probandi—Riwaj-i-am.

Found, that by custom among Awans of *mauza* Bhodhal, Talagang *tahsil* in the Jhelum District, a gift by a proprietor of half his ancestral estate to a daughter is invalid in the presence of sons.

The initial presumption is against such gifts.

Nos. 53 *P. R.* 1884, 107 *P. R.* 1887, 132 *P. R.* 1890, 7 *P. R.* 1891, and 108 *P. R.* 1891 referred to. RASUL KHAN *v.* MUSSAMMAT MASTUR BANO. **81 P R 1894**

159. *Gift to daughter's son who had been adopted by donor, Sayads of Rawalpindi* tahsil.

Found, that by custom among Sayads of the Rawalpindi *tahsil* the adoption of a daughter's son, who was also a grandnephew of the adoptor, was invalid

A disposition by deed by a Sayad proprietor of the whole of his property, giving three-fifths to the said adopted son, one-fifth to the widow and reserving one-fifth for himself, which was to go after his death to his two daughters and ultimately to the adopted son, found to be invalid by custom.

No. 120 *P. R.* 1881, referred to. ABDULLA SHAH *v.* KAIM SHAH. **86 P R 1894**

160. *Gift by sonless proprietor to daughter's son—Gift not completed by possession—Muhammadan Awans of* mauza *Pachnand, Talagang* tahsil, *Jhelum District—Gift made in contemplation of death—Muhammadan Law.*

One S., a sonless Muhammadan Awan of *mauza* Pachnand in the Talagang *tahsil* of the Jhelum District, executed and registered on the 19th December 1891 a deed of gift of the whole of his ancestral property in favour of his daughter's minor son. The deed was executed at a time when the donor was seriously ill, and was not followed by possession during his lifetime, he dying ten days after its execution. Plaintiffs who were the donor's nephews, sued for a declaration that the said deed of gift should not affect their reversionary rights after the death of the donor's widow.

Held, that it being an essential element to the validity of the gift, both according to the *Riwaj-i-am* and the decided cases, that it should be completed by a delivery of possession during the donor's lifetime, the validity of the gift in the present case was rightly impeached upon the ground that no possession followod during the lifetime of S.

Held further, that even if viewed as a will (which it did not purport to be) the deed was equally inoperative, even to the extent of one-third of the property, as it was obviously made in contemplation of death within the meaning of the Muhammadan Law relating to death-bed disposition, by which according to the *Riwaj-i-am*, the parties were to be governed as regards wills.

Nos. 59 *P. R* 1881, 53 *P. R.* 1884, 93 *P. R.* 1885, 132 *P. R.* 1890, 7 and 108 *P. R.* 1891, 22 *P. R.* 1892, 107 and 108 *P. R.* 1893, and 81 *P. R.*, 1894, referred to. FATTA *v.* BAKHRA **15 P R 1895**

161. *Gift by sonless proprietor in favour of daughter's son—Arains of* mauza *Tungo Heri, Ludhiana* tahsil—Onus probandi—Riwaj-i-am.

Found, in a case the parties to which were Arains of the Ludhiana *tahsil*, that no custom was established whereby a sonless proprietor was competent to make a gift of his property in favour of his daughter's son in the presence of his near collaterals. RAUSHAN *v.* LEHNA. **36 P R 1895**

162. *Will in favour of daughter—Khandaya Chauhans, Chakwal* tahsil, *Jhelum District*—Riwaj-i-am.

In a case, the parties to which were Khandaya Chauhans of Chakwal *tahsil* in the Jhelum District, *found* that an alienation by way of will made by a sonless proprietor in favour of his daughter is invalid by custom in the presence of *warisan ek jaddi*. SHERA *v.* SAGHAR. **83 P 1895**

163. *Gift by sonless proprietor to daughter's son in presence of nephews—Muhammadan Jats of Rupar* tahsil, *Umballa District.*

Found, in a case the parties to which were Muhammadan Jats of the Rupar *tahsil*, Umballa District, that defendants, upon whom the *onus* rested, had failed to prove that a sonless proprietor has by custom an unrestricted power of alienation in the presence of nephews. BHOLA *v.* CHANDU. **95 P R 1895**

164. *Gift by sonless proprietor to daughters—Ghorewaha Rajputs of Jullundur District.*

In a case, the parties to which were Muhammadan Ghorewaha Rajputs of the Jullundur District, *found*, that a gift of ancestral land by a sonless proprietor in favour of his daughters was invalid by custom in the presence of agnates, the nearest of whom was related to the donor in the fifth degree. MUSSAMMAT LAKHAN *v.* RAHMAT KHAN. **101 P R 1895**

165. *Gift by sonless proprietor in favour of daughter—Mussalman Goraya Jats, Daska* tahsil, *Sialkot District.*

In a case, the parties to which were Mussalman Goraya Jats of the Daska *tahsil*, Sialkot District, *found*, that the defendant, upon whom the *onus* rested, had failed to prove that a gift of ancestral land by a sonless proprietor in favour of his daughter is valid by custom in the presence of near collaterals. HUKAM DIN v. MUSSAMMAT HAKIM BIBI. **16 P R 1896**

166. *Gift of ancestral estate by sonless proprietor to daughter's son—Mughals of Jhelum* tahsil—Riwaj-i-am.

In a case, the parties to which were Mughals of the Jhelum *tahsil*, *found*, that a gift by a sonless proprietor to his daughter's son of the whole of his ancestral property was invalid by custom in the presence of a nephew of the donor. MUHAMMAD BEG *v.* BAHADUR. **23 P R 1896**

167. *Gift to daughter's son—"Necessity"—Lodhi Pathans of Hoshiarpur District.*

In a case in which the parties were Lodhi Pathans of the Hoshiarpur District, *found*, that the *onus* of proving that daughters were entitled to succeed to ancestral property in the presence of near collaterals was on defendants, and that they had failed to sustain it.

A plea that a gift by a sonless proprietor to his daughter's son was valid under the special circumstances of this particular case *held*, not established. NAJABAT KHAN *v.* ABDUL RAHMAN KHAN. **27 P R 1896**

168. *Gift by sonless proprietor in favour of daughter's son—Ghakkars of Jhelum District*—Riwaj-i-am.

In a case, the parties to which were Ghakkars of the Jhelum District, *found*, that a gift of the whole of his ancestral land by a sonless proprietor in favour of his daughter's son was invalid by custom in the presence of the donor's near collateral. MUHAMMAD KHAN *v.* DULLA. **57 P R 1896**

169. *Gift by sonless proprietor to daughter—Ancestral and acquired property—Bans Jats of Ludhiana* tahsil.

Found, that defendants had failed to prove that by custom among Bans Jats of Ludhiana

a sonless proprietor was competent to gift his *ancestral* estate to his daughters in the presence, and without the consent, of descendants from his grandfather.

But also *found*, that plaintiff had failed to prove that the said proprietor was by custom incompetent to gift his *acquired* estate to his said daughters. DULA *v.* BUTA.

53 P R 1897

170. Among Arains of the Ludhiana *tahsil* and District, *found* that by custom a sonless proprietor is not competent to gift his land in favour of his daughter in the presence of near collaterals. GULAB *v.* MUSSAMMAT JEONI. **49 P R 1899**

171. *Gift by sonless proprietor to daughters -Change of possession—Sayads of* mauza *Masania, Batala* tahsil, *Gurdaspur District.*

In a suit, the parties to which were Sayads of Masania, *tahsil* Batala, in the Gurdaspur District, *held*, that, by custom, a gift by a sonless proprietor in favour of his daughters, not complete by a delivery of possession during the donor's lifetime, was invalid.

Ali Muhammad v. *Mussammat Jawahri* (112 *P. R.* 1889), *Walli* v. *Jiwan* (33 *P. R.* 1891), *Ahmad Khan* v. *Mussammat Ghulam Bibi* (36 *P. R.* 1891), and *Fatta* v. *Bakhra* (15 *P. R.* 1891), cited. *Ghulam Muhammad* v. *Muhammad Amin* (86 *P. R.* 1882), *Ameeroonissa* v. *Abedoonissa Khatoon* (23 *W. R.* 208), *Balmukand* v. *Bhagwan Dass* (*I. L. R. XVI All.* 185) and *Anwari Begam* v. *Nizam-ud-din Shah* (*I. L. R. XXI All.* 165), distinguished. MUSSAMMAT MUHAMMAD-UL-NISSA AND OTHERS *v.* GHULAM MURTZA AND OTHERS.

44 P R 1902

172. *Ghuman Jats of Daska* tahsil, *Silakot District.*

Found, that amongst Ghuman Jats of the Daska *tahsil* of the Sialkot District, a gift by a sonless proprietor of ancestral property in favour of a daughter except as to 1-20th share is not valid by custom.

Devi Ditta v. *Mussammat Hukmi* (85 *P. R.* 1900), cited. GAUHAR *v.* GHULAM.

17 P R 1904

173. *Will—Kalals of Umballa—Bequest of ancestral property by sonless proprietor to daughter and daughter's daughter.*

Found, in a suit the parties to which were Kalals of the Umballa District, that no custom was established authorising a sonless proprietor to bequeath his ancestral property to his daughter and daughter's daughter. MUSSAMMAT KIRPI *v.* SOLEKH SINGH.

67 P R 1904

174. Khana-damad—*Waraich Jats of Gujrat District.*

Found, that by custom among Waraich Jats of the Gujrat District gift to a daughter or granddaughter whose husband does not answer the description of a *khana-damad* is invalid—A mere assertion in a deed of gift that the donor intends subsequently to make their husbands *khana-damads* is not sufficient to entitle them to succeed.

Khan Muhammad v. *Alam* (92 *P. R.* 1905) cited. *Ruldu* v. *Mussammat Hayat Bibi* (133

P. R. 1883) referred to and distinguished. GHULAM MUHAMMAD *v.* MUSSAMMAT GAUHRAN.

28 P R 1905

175. *Gift by sonless proprietor to daughter —Rajputs of* mauza *Kharal Kalan and Khurd in the Jullundur and Hoshiarpur Districts.*

Held, that defendants on whom the *onus* lay had failed to establish a custom by which among Rajputs of Bhati *got* of *mauza* Kharal Kalan and Kharal Khurd in the Jullundur and Hoshiarpur Districts a sonless proprietor was competent to gift his ancestral estate to a daughter in the presence of collaterals of the fifth and third degrees respectively. NIGAHIA *v.* SANDAL KHAN. **88 P R 1907**

F.—Sisters and their children.

(i) Proved.

176. *Gift to sister's son.*

There being no custom against the gift *held* that a gift of land to a sister's son followed by possession, could not be set aside on the ground that it excluded collateral male heirs. KHUDADAD *v.* BUKSHUM. **17 P R 1867**

177. *Ghorewaha Rajputs of Hoshiarpur—Gift to sister's grandson—Appointment of heir.*

Found, that by the custom prevailing among Ghorewaha Rajputs of the Hoshiarpur District, a gift by a childless proprietor to a sister's grandson, whom the donor has also brought up as a son, is valid, and cannot be set aside at the instance of the collaterals. *Moula Baksh* v. *Hame Khan* (No. 71 of 1880, Civil, S. C. on review, No. 173 of 1883, Civil) cited. AYHEY KHAN *v.* BHAMBU KHAN.

174 P R 1883

178. *Muhammadan Khalils of Peshawar district—Sister's sons and husband.*

In a suit the parties to which were Khalils of the Peshawar district, found, that custom authorized a will by a sonless proprietor of his whole property in favour of near relatives, *viz.*, sister's sons and a sister's husband, to the exclusion of a distant relative, a great grandson of the testator's grandfather. RAHMAT *v.* AZIMULLA. **34 P R 1884**

179. Among Manj Rajputs of Tarn Taran *tahsil* in the Amritsar District, *found* that by a special custom a childless proprietor is competent to make a gift in favour of a sister's son who is also a son-in-law, in the presence of the donor's nephews. JIWAN *v.* HAKAM KHAN. **140 P R 1894**

180. *Gift to sister's son—Brahman* parohits *of* mauza *Madoki*, tahsil *Moga, Ferozepore District—Burden of proof.*

Held, that plaintiffs, upon whom the *onus probandi* rested, had failed to prove that among the Brahman *parohits* of *mauza* Madoki, Moga *tahsil* in the Ferozepore District, who had no share in the common land of the village, a gift of ancestral land to a sister's son in the presence of collateral heirs is invalid by custom.

No. 122 *P. R.* 1893, referred to. GURMUKH *v.* GUNGA RAM. **81 P R 1895**

181. *Will by sonless proprietor in favour of nephews—Validity of will as against*

widow of testator's deceased first cousin—"Ancestral property"—Dhal Khatris of Shorkot tahsil, *Jhang District.*

Upon the death of one P., a sonless proprietor, who bequeathed all his property to the son of a sister, the widow of one C. a first cousin of P. claimed to succeed to P.'s property, and pleaded that the said will was invalid by custom in her presence.

Held, that the widow of C. has failed to prove that she was by custom entitled to succeed to property to which her husband would have succeeded had he survived P.

Held further, that though the property in suit was "ancestral" as between P. and C. it could not be regarded as ancestral as between P. and a woman who had failed to establish any title to succeed to it, and that, therefore, she had no control over its disposition either by gift or by will. MUSSAMMAT KHEM BAI *v.* BHOWANI DAS. **69 P R 1896**

182. Gift of self-acquired property followed by possession and mutation of names by donor in his lifetime to his sister's son was not invalid by custom. JOWAHIR SINGH *v.* DIAL SINGH. **76 P R 1898**

182 A. *See* UNDER (*e*) DAUGHTERS AND THEIR CHILDREN. **9 P R 1899**

183. *Gift to a nephew of immovable property inherited from an uncle—Ancestral property.*

In a case in which the self-acquired property of an uncle was inherited by his nephews on his dying childless, *held*, that the said property was not ancestral property *qua* the sons of those nephews, as it was not inherited from a direct male ancestor, and that a gift of such property by the nephews to their sister's son was not invalid by custom.

Balki and others v. *Biranand and others* (43 *P. R.* 1890), and *Jowahir Singh* v. *Dial Singh and others* (76 *P. R.* 1898) cited. JHANDA SINGH AND OTHERS *v.* GURMUKH SINGH.

93 P R 1901

184. *Gift by a sonless proprietor of ancestral property to sister's son—Shaikh Tiwanas of Okhali Mohla*, tahsil *Khushab, Shahpur District.*

Found, in a suit the parties to which were Shaikh Tiwanas of Okhali Mohla, *tahsil* Khushab, Shahpur District, that a gift by a sonless proprietor of half of his ancestral land in favour of his sister's son in the presence of his agnatic heirs is valid by custom. *Gujar* v. *Sham Das* (107 *P. R.* 1887, *F. B.*) and *Hassan* v. *Jahana* (71 *P. R.* 1904), referred to. SHER *v.* ALAM SHAH.

94 P R 1905

185. *Gift of ancestral property by a sonless proprietor to sister's son who was also the donor's* khana-damad *and daughter's son—Khinger Jats of Chakwal* Tahsil, *Jhelum District.*

Held, that amongst Khinger Jats of the Chakwal *tahsil*, in the Jhelum District, a gift by a sonless proprietor of his ancestral

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CUSTOM I.—ALIENATION—*contd.*
A.—ALIENATION BY MALE PROPRIETOR—*contd.*

property in favour of a sister's son, who was also the *khana-damad* of the donor, in consideration of services rendered by the donee to the donor and a daughter's son in the presence of male collaterals is valid by custom. FAZAL *v.* HAYAT ALI.

29 P R 1907

186. *Bequest of ancestral land by a childless proprietor in favour of sister's sons —Validity of—Kahuts of* tahsil *Chakwal, district Jhelum.*

Held, that among Kahuts of *tahsil* Chakwal, district Jhelum, a bequest of ancestral land with the consent of his brother by a childless proprietor in favour of his sister's sons who were agnatically related to the testator in the fifth degree and who had rendered services to him, is valid by custom. KHUDA BAKHSH *v.* SHAMAS. **68 P R 1910**

(ii) Not proved.

187. *Sidh Jats of Kharian* tahsil, *Gujrat District—Gift to sister's son or grandson—Burden of proof.*

Found, in a suit the parties to which were Sidh Jats (Mussalman), *tahsil* Kharian, Gujrat District, that it was not competent by custom to a sonless proprietor, in the presence of near male agnates—first cousins —to adopt, that is appoint as an heir or make a gift to his sister's son or grandson.

Held, also that the burden of proof was on the donee.

The authority of No. 104 *P. R.* 1891, questioned.

No. 128 *P. R.* 1890, and No. 92 *P. R.* 1891, referred to. ILAM DIN *v.* MUBARAK.

140 P R 1893

188. *Gift to female cousin's son in the presence of collaterals in the 4th degree—Validity of such gift—Ghamman Jats of the Sialkot District.*

In a suit the parties to which were Ghamman Jats of the Sialkot District, *found*, that the defendant had failed to prove a custom whereby a childless proprietor could make a gift of his estate to the son of a female cousin in the presence of collaterals so nearly related to him as third cousins. LAL SINGH *v.* FATTA. **42 P R 1890**

189. *Gift to sister's son in presence of nephew—Arains of Jullundur District.*

Found that a gift by a sonless Arain of the Jullundur District of ancestral immovable property in favour of his sister's son was invalid by custom in the presence of a son of the donor's brother. RUKNA *v.* GHAUS.

55 P R 1905

190. *Objection by co-proprietors and collaterals of donor.*

Plaintiffs and D were biswadars of the same *patti*, a portion of which D cultivated separately, holding jointly with others a considerable quantity of the common land. D gave his portion of the *patti* to his sister's son. Upon D's death, plaintiffs, who were related to him in the fifth or sixth degree, contested the gift and claimed D's share.

The Chief Court declared the gift void by custom. DASOUNDHI *v.* SAMANDA.

6 P R 1875

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CUSTOM I.—ALIENATION—*contd.*
A.—ALIENATION BY MALE PROPRIETOR—*contd.*

191. *Gift to sister's son—Sindhu Jats, Amritsar district.*

Found that there is no established custom among Sindhu Jats of the Amritsar district, whereby a gift of ancestral property by a childless proprietor to a sister's son in presence of a paternal uncle's son is valid. DEWA SINGH *v.* BUTA SINGH. **166 P R 1879**

192. *Paswal Gujars of* Tahsil *Kharian —Gift to sister's son.*

Found, that no custom exists among Paswal Gujars of *Tahsil* Kharian in the Gujrat district whereby a childless proprietor can make a gift of any portion of his ancestral land to his sister's son, without the consent of the donor's male collaterals, even when that son has from infancy been brought up as a son in the donor's house. NUR DIN *v.* SAHIBZADA. **18 P R 1880**

193. *Jats of Jalandhar—Gift to sister's sons—Collaterals descended from great-grandfather of donor.*

In a suit, the parties to which were Jats of M. Rajab in the Jalandhar district, found that by custom a gift to a sister's sons by a proprietor who had not adopted the donees or brought them up as members of his family, might be set aside at the suit of collaterals descended in the male line from the great-grandfather of the donor, when there were no nearer relatives who would succeed to his property on his death. *Fatteh Singh* v. *Hakim Singh* (No. 82 of 1874, Civil), *Miyan* v. *Sandhi* (No. 64 of 1879, Civil) and *Budh Singh* v. *Chartu* (No. 148 of 1882, Civil) cited. SUCHET SINGA *v.* CHATRA.

13 P R 1884

194. *Gorewaha Rajputs of Jalandhar—Gift to sister's son—Invalidity of gift in absence of appointment as heir.*

Found, that according to the custom prevailing among Gorewaha Rajputs of the Jalandhar district, though a childless proprietor is entitled to *quasi-adopt* or to appoint an heir, and then to give him his estate, he is not entitled without any such adoption to make a bare gift to the prejudice of near collaterals (*e.g.*, his own brother and nephews) to his sister's sons who are also his sons-in-law. *Moula Baksh* v. *Hame Khan* (No. 173 of 1883, Civil), and *Ayhey Khan* v. *Bhambu Khan* (No. 174 of 1883, Civil) cited. MIAN KHAN *v.* RANJHE KHAN.

152 P R 1884

See CUSTOM—ADOPTION 40, 41.

195. *Kahars of Fattehjang* tahsil, *Rawalpindi District—Will in favour of sister's son.*

In a suit the parties to which were Kahars of the Fattehjang *tahsil* of the Rawalpindi District, found that a will by a sonless proprietor bequeathing the whole of his share in a joint holding to a sister's son was invalid by custom in the presence of the nephews and also co-sharers of the deceased.

Fazl v. *Mussammat Bhagbari* (93 *P. R.* 1885) referred to. MUHAMMAD *v.* SADULLAH.

136 P R 1888

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CUSTOM I.—ALIENATION—*contd.*
A.—ALIENATION BY MALE PROPRIETOR—*contd.*

196. *Muhammadan Gujars of Gujrat District—Gift by sonless proprietor to sister's son—Collaterals.*

In a suit the parties to which were Khatanah Gujars of the Gujrat District, found that a gift by a sonless proprietor of his entire estate to a sister's son in the presence of first *cousins* of the *donor* was invalid by custom FAZLA *v.* FAZLA. **53 P R 1889**

197. *Will—Koreshis of Dera Ismail Khan District—Competency of proprietor to make a will—Essentials of Marriage—What does not amount to marriage.*

Held, (*i*) that no custom was established by which among Koreshis of the Dera Ismail Khan District, a landowner may dispose of his land by will to his sister in the presence of a wife, daughter and paternal uncle's son; (*ii*) that a statement made by a Muhammadan father in his will that he had accepted a certain person as husband for his daughter is not equivalent to marriage. MUSSAMMAT GHULAM FATMA *v.* MUSSAMMAT MAQSUDAN.

69 P R 1890

198. *Gift by sonless proprietor to sister's sons in the presence of widow, brothers and nephews—Lalla Jats of Gujrat.*

In a suit, the parties to which were Lalla Jats of the Gujrat *tahsil*, a gift was made by a sonless proprietor to his sister's sons in the presence of a widow, brothers and nephew. The sister's sons also claimed on the ground that they had lived with the deceased like *khana-damads* and were entitled to succeed by custom.

Held, (*i*) that the appointment as heirs of daughter's husbands only was recognised by custom and (*ii*) that the sister's sons, on whom the *onus* lay, under the circumstances of the case, had failed to establish a custom validating the gift impugned. FAZLA *v.* ALLA BAKHSH. **128 P R 1890**

199. *Khokars of Wadhan, Shahpur District.*

In a suit the parties to which were Khokars of Wadhan in the Shahpur District, *found* that a bequest by a sonless proprietor of land in favour of a sister's son was not valid by custom because it was not a gift made during the lifetime of the donors within the meaning of the *Wajib-ul-arz*. WALLI *v.* JIWAN. **33 P R 1891**

200. In a suit the parties to which were Chima Jats of the Gujranwala District, *found* that no special custom was proved empowering a childless proprietor, in the presence of collaterals in the sixth or seventh degree, to alienate his land by will in favour of step-sons or sister's son. SURJAN *v.* JODHA.

34 P R 1891

201. *Awans of Dewa*, tahsil *Khushab, Shahpur District—Possession.*

In a suit the parties to which were Awans of the Shahpur District, a gift to a sister's son (who was also a collateral) was found to be invalid, on the ground that it was not accompanied with or followed by possession.

No. 3 *P. R.* 1886, Note, followed. AHMAD KHAN *v.* MUSSAMMAT GHULAM BIBI.

36 P R 1891

202. *Sister's son—Mussalman Jats, got Bauth of Village Bauth, Gujrat district.*

Held, that, among Mussalman Jats, Bauth *got* of the village of Bauth in the Gujrat district (who appear to follow the same custom as Gujars), no custom was proved by which a valid gift of ancestral land could be made to a sister's son in the presence of nephews.

No. 8 *P. R.* 1891, referred to and followed. HAYAT *v.* ABDUL-UD-RAHIM.

92 P R 1891

203. *Sonless Gujar proprietor—Gurdaspur district—Gift to sister's sons—Collaterals in fourth degree.*

Found, that a gift of land by a sonless Gujar proprietor of the village of Garhwal in the Gurdaspur district in favour of his sister's sons was invalid by custom in the presence of collaterals in the fourth degree. LIKAR AND IDA *v.* GHULAM RASUL.

65 P R 1892

204. *Paswal Gujars,* tahsil *Kharian, Gujrat district—Power of sonless proprietor to adopt or make a gift of his land to sister's son in the presence of collaterals in the fourth and fifth degrees.*

Found, in a suit the parties to which were Paswal Gujars of *tahsil* Kharian in the Gujrat district, that it was not competent to a sonless proprietor to adopt, or make a gift of his ancestral land to his sister's son in the presence of collaterals in the fourth and fifth degrees.

No. 8 *P. R.* 1891, referred to. MAULU *v.* FAZAL AHMAD. **102 P R 1893**

205. *Found*, that by custom among Gaurewaha Rajputs of Garshanker *tahsil*, in the Hoshiarpur district, gifts by a sonless proprietor to a sister's son or grandson, and to a daughter's son are inadmissible in the absence of an adoption of the donee. SULTAN BAKHSH *v.* MUSSAMMAT MAHIAN.

64 P R 1894

206. *Gift by sonless proprietor to sister's son—Muhammadan Naru Rajputs of Hoshiarpur district*—Riwaj-i-am—Onus probandi.

Held, in a suit the parties to which were Muhammadan Naru Rajputs of the Hoshiarpur district, following the ruling of the Full Bench in No. 107 *P. R.* 1887, that the *onus* of proving the validity of an alienation by a sonless proprietor in favour of a sister's son who was also a collateral, rested upon the party asserting its validity, and *found*, on the evidence and with reference to the authorities that the defendant, upon whom the *onus probandi* rested, had failed to prove the validity of such a gift in the presence of collaterals as nearly related as the donee. AMIR KHAN *v.* SARDARA. **110 P R 1894**

207. *Gift by childless proprietor to sister's son*—Locus standi *of collaterals in the sixth degree to contest such gift—Chima Jats of Gujranwala district.*

Found, that by custom among Chima Jats of the Gujranwala district, a childless proprietor is not competent to make a gift in favour of a sister's son in the presence of collaterals, related to the donor in the sixth degree.

Held, that there is no arbitrary bar as regards the degree of relationship entitling collaterals to contest alienations.

Nos. 22 *P. R.* 1884, 15 *P. R.* 1888, 20 *P. R.* 1890, 34 *P. R.* 1891, and 79 *P. R.* 1891, cited. LEHNA SINGH *v.* BUTA.

135 P R 1894

208. In a case the parties to which were Khokars of Gujrat *tahsil* and district *found* that a gift of ancestral land to a sister's son who was also the son of a cousin by a sonless proprietor was not valid by custom in the presence of male agnates. GAMAN *v.* NADIR DIN. **25 P R 1896**

209. *Muhammadan Rajputs of the Mair Mana tribe of Chak Naurange in the Chakwal* tahsil *of Jhelum district—Purchases effected with profits of ancestral immovable property—Burden of proof.*

In a suit the parties to which were Muhammadan Rajputs of the Mair Mana tribe of Chak Naurange in the Chakwal *tahsil* of the Jhelum district, *found* that by the custom prevailing among the tribe an alienation by will or gift by a childless proprietor of non-ancestral immovable property at his pleasure was valid, but that the *onus* of proving a custom empowering the alienation of ancestral holding was on the person, relying on such a custom and that the defendants upon whom the *onus* rested had failed to prove that a sonless Mair Mana proprietor was competent to alienate his ancestral property by will or gift *inter vivos* in favour of his sister's sons and their respective wives who were also his sister's daughters in the presence of his first cousin without his consent.

Held, that purchases effected with profits of ancestral immovable property and property once acquired by an ancestor common to parties (possession of which has been discontinued for a long time) and then reacquired by a member of the family not in the position of a common ancestor, could not be regarded as ancestral property. *Gujar* v. *Sham Das* (107 *P. R.* 1887, F. B.) *Mukarrab* v. *Fatta and another* (88 *P. R.* 1895.) *Rasul Khan* v. *Mussammat Mastur Bano* (81 *P. R.* 1894), *Hayat Muhammad* v. *Fazal Ahmad* (52 *P. R.* 1892), *Karmad* v. *Mahmmad and others* (59 *P. R.* 1895), *Shera and others* v. *Saghar and others* (83 *P. R.* 1895), *Hassan Ali* v. *Bahadu* (32 *P. R.* 1893), *Fata and others* v. *Bakhra and others* (15 *P. R.* 1895), *Nura* v. *Tora* (46 *P. R.* 1900), *Walidad and others* v. *Aladad and others* (72 *P. R.* 1900) *Sharaf Ali and others* v. *Karimulla* (125 *P. R.* 1890), *Achha* v. *Gaman and others* (120 *P. R.* 1893), *Sher Singh and others* v. *Kishen Singh* (4 *P. R.* 1900), *Nawab-ud-din* v. *Mussammat Kami* (12 *P. R.* 1901), and

Sonu and others v. *Loku and others* (2 *P. R.* 1881), referred to. HAIDA Khan.

50 P R 1902

210. *Gift by sonless proprietor to sister's son—Arains of Jullundur* tahsil—*Burden of proof.*

Held, that defendants had failed to prove that by custom among Arains of the Jullundur *tahsil* a sonless proprietor was competent to gift his ancestral estate to a sister's son of a different *got* in the presence of his male agnate. ILAHIA *v.* QASIM.

24 P R 1905

211. *Alienation of ancestral property by sonless proprietor to sister's son—Kothis of Dhedwal in the Chakwal* tahsil *of Jhelum district.*

In a suit the parties to which were Kothi Jats of Dhedwal in the Chakwal *tahsil* of the Jhelum district, *held* that the defendants has failed to prove that by custom a childless proprietor was competent to alienate ancestral immovable property either by gift or bequest in favour of a sister's son in the presence of his father's brother's son.

Mussammat Bano v. *Fateh Khan* (48 *P. R.* 1903, *F. B.*) and *Ali Muhammad* v. *Dulla* (26 *P. R.* 1901,) referred to. HAYAT v. HIDAYAT. **34 P R 1905**

212. *Gift of ancestral land by a childless proprietor in favour of his sisters—Contest by the reversioners of the donor.*—Onus probandi—*Dhamrayas of Shahpur district.*

Held, that among Dhamrayas—a small endogamous agricultural tribe of the Shahpur district—the collateral reversioners of the donor are entitled to obtain a declaration that a gift of the whole of his ancestral land by a childless proprietor to his sisters shall not affect their reversionary rights after the death of the donor. And that the *onus* of proving the validity of the gift was on the sisters who failed to discharge it. MUSSAMMAT BHAGAN *v.* JAHANA. **67 P R 1910**

G.—Sons-in-law.

(i) Proved.

213. Plaintiffs were descended in the male line from Muhram, the son of Aja; defendant was daughter's son of Shah Alum, another son of Aja. The Commissioner found that the latter had given his land to his daughter's husband 80 years ago, and that he and his posterity had since remained in possession. But plaintiffs being now in possession of less than their proper share, he threw the land in the possession of both parties into one common stock, and divided it equally. Plaintiffs appealed, claiming more as being male heirs. The Court declined to interfere considering the decision of the Commissioners equitable. KHAN MALLICK *v.* KHODA BUKSH. **73 P R 1866**

214. *Hindu Jats of Hoshiarpur—Gift to son-in-law—Appointment of heir.*

CUSTOM I.—ALIENATION—*contd.*
A.—ALIENATION BY MALE PROPRIETOR—*contd.*

Found, that among Hindu Jats of the Hoshiarpur district, a gift of land to a son-in-law, who has been brought up and treated as a son by the donor, is valid by custom. *Budh Singh* v. *Chartu* (No. 128 of 1882, Civil) cited. HIRA SINGH *v.* RAMDITTA.

15 P R 1886

215. *Gift by sonless proprietor to sons-in-law in the presence of nephews—Chauhans (Muhammadan Rajputs), Jhelum* tahsil.

In a suit the parties to which were Chauhans (Muhammadan Rajputs) of Gara Uttam Singh in the Jhelum *tahsil*, *held*, that by custom a deed of gift by a sonless proprietor in favour of his five sons-in-law was valid in the presence of nephews of the donor.

No. 53 *P. R.* 1884 and No. 132 *P. R.* 1890, referred to. KARM BAKHSH AND KHUDA BAKHSH *v.* FATTA. **108 P R 1891**

216. *Bangial Jats of Gujrat district*—Khanadamad Riwaj-i-am.

Found, that by custom among Bangial Jats of Gujrat district, a gift of land to a daughter whose husband is a resident son-in-law is valid, notwithstanding that the gift is of all the donor's land, and the residence has not been since the date of marriage. HASSAN MUHAMMAD *v.* ILAM DIN. **50 P R 1894**

217. *Awans of Sialkot district*—Riwaj-i-am.

Found, that by custom among Awans of the Sialkot district, a sonless proprietor is competent to make a gift of one-half of his land in favour of a resident son-in-law who has inherited no share in his own father's land.

No. 39 *P. R.* 1887, cited. ALI BAKHSH *v.* NATHU. **93 P R 1894**

218. *Heritable interest—Awans of Sialkot district*—Onus probandi.

One F. who was the grandson of F. K., an Awan of the Jand *got* of the Sialkot *tahsil*, married one of his daughters to H. M., an Awan of a different *got* and village, and in 1867 made a gift of land by deed in his favour and delivered over possession to him. This gift the kinsmen of F., descended from the said F. K., sought to set aside, but their suit was dismissed after a reference to arbitration. On the death of H. M., the donee, without issue, defendants, who were the collaterals of F., descended from the common ancestor, took possession of the land gifted as aforesaid, whereupon plaintiffs, the brothers of the deceased donee, sued to recover possession as his heirs. The lower Courts having laid the burden of proof upon the defendants and decreed plaintiff's claim, defendants appealed to the Chief Court.

Held, with reference to the deed of the gift and the entry in the *Riwaj-i-am* that the gift in question having been made to H. M., in his character of resident daughter's husband, and the presumption in the case of such gifts ordinarily being that the purpose of the donor is to make a settlement for the benefit of the daughter's sons, plaintiffs,

CUSTOM I.—ALIENATION—*contd.*
A.—ALIENATION BY MALE PROPRIETOR—*contd.*

upon whom the *onus probandi* rested, had failed to prove that H. M. had taken an interest heritable by his collateral kinsmen.

No. 19 *P. R.* 1887, No. 3 *P. R.* 1888, No. 12 *P. R.* 1892, *F. B.*, referred to. MIRAN BAKHSH *v.* ALLA DITTA **126 P R 1894**

219. *Muhammadan Guman Jats of Tarn Taran* tahsil, *Amritsar*—Riwaj-i-am.

In a case the parties to which were Muhammadan Guman Jats of the Tarn Taran *tahsil*, Amritsar district, *found* (i) that defendant, upon whom the *onus* rested, had failed to prove that the adoption of a sister's son was valid by custom; but (ii) that a gift of all his property by a sonless proprietor in favour of his son-in-law, who was also a sister's son, was valid by custom, the said gift having been, so far as was possible, perfected by delivery of possession. KHAN *v* HIRA. **98 P R 1895**

220. *See* UNDER (*e*) DAUGHTERS AND THEIR CHILDREN. **9 P R 1899**

221. *Right of donee's children by second wife to succeed—Hindu Jats of Delhi* tahsil.

Plaintiffs sued for recovery of certain land which had originally been gifted by one D. to his resident son-in-law, S., who had died a few weeks before suit. Defendants who were the sons of S. by a wife other than the daughter of the said D., contended that the gift in favour of their father was absolute, while plaintiffs contended that the gift was strictly conditional for the maintenance of D.'s daughter and any children she might have by S.

Held, following the rule laid down in No. 12 *P. R.* 1882 (*F. B.*), that on the death of S., plaintiffs, as the collaterals of D., were entitled to succeed to the said land in preference to defendants, who were not the "male children" of S., within the meaning of the ruling in No. 134 *P. R.* 1894. NIHAL *v.* MOHLAR. **19 P R 1897**

222. *Right of donee to alienate property acquired by gift—Necessity*—Locus standi *of donee's wife and son to contest alienation.*

Held, that as the gift to a resident son-in-law is generally recognized for the benefit of the daughter of the donor and her male issue, a donee is not competent to alienate the property so gifted to strangers except for necessity, and his wife and son are entitled to contest his alienation based on the fact that they have the same rights as any male heir of the donor would have had.

Ghulam Bhikh v. *Massania* (22 *P. R.* 1893), *Muhammad* v. *Mussammat Umar Bibi* (129 *P. R.* 1893), *Miran Bakhsh* v. *Nabi Bakhsh* (40 *P. R.* 1896), *Nihal* v. *Molar* (19 *P. R.* 1897), *Bhotu* v. *Lehru* (54 *P. R.* 1897), *Sata Ram* v. *Raji Ram* (12 *P. R.* 1902), and *Lehna* v. *Mussammat Thakri* (32 *P. R.* 1895) referred to. BHAGWANI *v.* ATRIC.

20 P R 1904

CUSTOM I.—ALIENATION—*contd.*
A.—ALIENATION BY MALE PROPRIETOR—*contd.*

223. *Janjuhas of the Jhelum district—Burden of proof.*

Found, that by custom among Janjuhas of the Jhelum district, a sonless proprietor is competent to make a gift of his property in favour of a resident son-in-law in the presence and without the consent of his brothers and brothers' sons.

Sher Jang v. *Ghulam Mohi-ud-din* (22 *P. R.* 1904), *Hassan* v. *Jahana* (71 *P. R.* 1904), *Sabalam* v. *Mussammat Sarfaraz* (122 *P. R.* 1884), *Ditta* v. *Mussammat Fazlan* (35 *P. R.* 1897), approved and followed.

Muhammad Beg v. *Bahadur* (23 *P. R.* 1896), *Muhammad Khan* v. *Dulla* (57 *P. R.* 1896), *Gujar* v. *Sham Das* (107 *P. R.* 1887, *F. B.*), and *Ramji Lal* v. *Tej Ram* (73 *P. R.* 1895, *F. B.*) referred to. FAZAL *v.* KHAN MUHAMMAD. **85 P R 1904**

224. Gift to son-in-law presumed to be intended for the benefit of daughter and her issue.

See 7, LOCUS STANDI, *infra*.

39 P R 1905

225. Gift to son-in-law does not constitute latter fresh stock of descent *qua* property gifted.

See 7, LOCUS STANDI, *infra*.

102 P R 1909

(ii) Not proved.

226. *Hindu Jat—Atwal Got—Amritsar district—Ancestral property—Gift by childless proprietor to son-in-law.*

Found that, by the custom of the Atwal *got* a gift of ancestral property by a childless Jat to a son-in-law is not valid except with the consent of the brotherhood. DEWA SINGH *v.* LADHA SINGH. **66 P R 1879**

227. *Gift not followed by possession by sonless proprietor to son-in-law—Gujrat district.*

One K executed a deed of gift of his immovable property in favour of defendant, his son-in-law. Actual possession was not given to the donee (who resided away from his father-in-law though *dakhil kharij* took place in his name. The *riwaj-i-am* provided for the validity of a gift to a daughter and her children, if followed by possession.

In a suit after the donor's death by his collateral relatives to establish their right to possession of the land as heirs and for cancellation of the deed of gift, *held* (upholding the orders of the lower Courts) that the gift was invalid.

Per LINDSAY, J.—Because it was not followed by possession.

Per THORNTON, J.—Because there was no proof of a custom by which a sonless proprietor could transfer his land to a son-in-law, the *riwaj-i-am* only contemplating a gift to a daughter and her sons. JOWAHIR *v.* FAIZ BAKSH. **137 P R 1879**

228. *Gift to son-in-law—Wajib-ul-arz*

Where, by the terms of the Administration Paper, provision was made for the validity of gifts to daughters and their sons, *held*, that a gift to a son-in-law was not authorized by such provision. HUSAIN BAKSH *v.* GHULAM KADIR. **65 P R 1880**

CUSTOM I.—ALIENATION—*contd.*

A.—ALIENATION BY MALE PROPRIETOR—*contd.*

229. *Peiwar Rajputs of Zirah* tahsil—*Gift to son-in-iaw in presence of collaterals of 7th degree.*

Found, that among Peiwar Rajputs of the Muhammadan religion in the Zirah *tahsil* of the Firozpur district, it is not competent to a childless proprietor to make a valid gift of immovable property to his daughter's husband in the presence of collaterals of the 7th degree. WAZIRA *v.* RAMA.

101 P R 1881

230. *Manjh Rajputs of Jalandhar—Sale or gift to son-in-law in presence of nephews.*

Found, that by the custom of the Manjh Rajputs of the Jalandhar district, alienation in favour of a son-in-law in the presence of nephews is invalid. *Muhammad Baksh* v. *Nawab* (No. 52 of 1884, Civil), and *Bhagwana* v. *Mothu* (No. 62 of 1884, Civil), referred to. KHAIRA *v.* BURA.

42 P R 1885

231. *Mahtons of* mauza *Bham*, Tahsil *Garshankar, Hoshiarpur district.*

Found, in a suit the parties to which were Mahtons (Hindus) of the village of Bham in the Garshankar *tahsil* of the Hoshiarpur district, that there was a presumption against the validity of a gift by a sonless proprietor to his son-in-law, and that the presumption had not been rebutted.

No. 75 *P. R.* 1891 and No. 14 *P. R.* 1892, referred to. HAMIR SINGH *v.* KHUSHAL SINGH.

117 P R 1892.

232. In a suit the parties to which were Kainal Jats of the Jhelum *tahsil*, *found* that a gift of the whole of his ancestral land made in his lifetime by a sonless proprietor in favour of his daughter's husband, who was also a sister's son of the donor and descended from his paternal grandfather, was invalid by custom as against the brother's son of the donor. BAKSHI *v.* RAHIM DAD.

107 P R 1893

233. *Puriwal Jats of Daska* tahsil, *Sialkot district—Jointly acquired land*—Riwaj-i-am *of place of origin and* Riwaj-i-am *of place of residence.*

Found, that by custom among Puriwal Jats of *mauza* Noiki, *tahsil* Daska in the district of Sialkot, whose ancestors had migrated from the Raya *tahsil*, a sonless proprietor is not competent to make a gift of his property, whether ancestral or acquired, to his daughter's husband without the consent of the persons who would otherwise succeed to the property. SAHIB DITTA *v.* SURJAN,

17 P R 1894

234. *Kahana Jats of Jhelum district*—Riwaj-i-am.

In a case the parties to which were Kahana Jats of the Jhelum district, *found* that defendants, upon whom the burden of proof rested, had failed to prove that a sonless proprietor was competent by custom to make a gift of ancestral land in favour of a daughter's husband, who was neither an agnate nor a *knanadamad*, in the presence of a brother of the donor. CHAUGHATTA *v.* DITTA.

93 P R 1895

235. *Hatar Jats of Goga*, Tahsil *Bhera, Shahpur district.*

Found, in a suit the parties to which were Hatar Jats of Goga, in the Bhera *tahsil* of the Shahpur district, that no custom was established empowering a male owner to make a gift of one-third of his ancestral land to his son-in-law in the presence and to the prejudice of his own son.

Nihal v. *Mohlar* (19 *P. R.* 1897), *Miran Bakhsh* v. *Ala Ditta* (126 *P. R.* 1894), and *Ghulam Bhikh* v. *Massania* (22 *P. R.* 1893), referred to. SHARAF *v.* JOWAYA.

77 P R 1902

H.—Step-sons.

(i) Proved.

236. *Dhani Jats of Jullundur district—Gift to step-son.*

Found in a case among Dhani Jats of the Jullundur district that a gift of a portion of a childless proprietor's holding made for the support and maintenance of a step-son who had all his life lived in the family, and had for many years worked the land and managed the affairs of the donor, was not invalid by custom. GOPAL SINGH *v.* KHEMAN.

85 P R 1889

237. *Gift by sonless proprietor to step-sons—Hindu Bhains Jats of the Jullundur district.*

Found, that in the village of Bhains in the Nawashahr *tahsil* of the Jullundur district, a gift by a sonless proprietor, a Hindu Jat of the Bhains *got*. to his step-sons, was sufficiently justified by custom.

Held. also, that considering the various castes of which the proprietary body was now composed and the number of gifts that had been made to relations without objection, it was for the plaintiffs to prove that the alienation to step-sons was inadmissible by custom, and that they had failed to discharge the *onus*.

No. 107 *P. R.* 1887 referred to. CHUHAR *v* MAYA.

95 P R 1892

(ii) Not proved.

238. *Gift to step-son—Suit by collaterals—Muhammadan Varaitch Jats of* Tahsil *Gujrat.*

Found that a sonless Varaitch proprietor cannot make a gift to a step-son of his whole holding to the exclusion of near collaterals. 70 *P. R.* 1878, and 15 *P. R.* 1884, distinguished.

15 *P. R.* 1880, 123 *P. R.* 1883, 116 *P. R.* 1885, 107 *P. R.* 1887, 36 *P. R.* 1888, referred to. SALAHU *v.* KAMMUN.

141 P R 1889

239. *Custom not proved.*

See (f) SISTERS AND THEIR CHILDREN *(ii)* NOT PROVED No. 200. **34 P R 1891**

240. *Jats of the village of Bammauli*, Tahsil *Sampla, Rohtak district—Childless proprietor.*

Held, that among Jats of the village of Bammauli, *tahsil* Sampla, Rohtak district, step-sons are not entitled to succeed according to custom, and that their step-father could only make a valid gift to them with the consent of his collaterals. UDMI *v.* BIHARI.

95 P R 1891

241. *Jats of Jaj got, Hoshiarpur tahsil—Gift to or adoption of step-son another* got.

Found, in a suit the parties to which were Jats of the Jaj *got* in the Hoshiarpur *tahsil* (the alleged donee or adopted son being however of a different *got*), that no custom was proved authorising a gift of ancestral land to a step-son in the presence of near collaterals, or the adoption of such son by his step-father, the burden of proof in either case being upon those seeking to maintain the gift or adoption. MUTSADA SINGH *v.* DEVI DITTA.

98 P R 1892

242. *Gift by childless Gujar of tahsil Gujrat to step-son.*

Found, in a suit the parties to which were Gujars of *mauza* Dittawal, *tahsil* and district Gujrat, that a childless proprietor was not authorised by custom to make a gift of his land to his step-son in presence of sons of the donor's brothers.

No. 39 *P. R.* 1887 and Nos. 8 and 109 *P. R.* 1891, referred to. MUHAMMAD HAYAT *v.* LANGAR.

120 P R 1892.

I.—Widow in presence of a son.

243. *Will leaving all property to a childless wife in the presence of sons and their descendants by another wife—Strict proof of such a custom—Charmohals of* Tahsil *Chakwal, Jhelum district.*

C. S., a member of the Charmohal tribe and a resident of *mauza* Kariala in the Chakwal *tahsil* of the Jhelum district, had had two wives. By one wife he had two sons : the other wife was childless.

Upon C. S.'s death his widow (the childless wife propounded a will purporting to have been executed by C. S. leaving her the whole of his land (2,912 *kanals*).

K. S., one of C. S.'s sons, admitted the claim but S. R., the son of a deceased son of C. S., contested it.

Both the Courts below found in favour of the will and decreed for the widow accordingly.

Held, on further appeal, that very strict proof would be necessary to establish so unusual a custom by which a proprietor with sons by one wife could give the whole of his land to a childless wife to be enjoyed by her alone for the term of her life, and that the widow had not proved such a custom in the present case. SHEO RAM *v.* MUSSAMMAT RADHI.

21 P R 1893

J.—Strangers.

(i) Proved.

244. A Hindu, having an only unmarried daughter and no nearer heir, shortly before

A.—ALIENATION BY MALE PROPRIETOR—*contd.*

his death gifted away the whole of his property, real and personal, ancestral and acquired, to a stranger, on condition that he would pay the marriage expenses of the girl, and maintain her meanwhile. *Held*, that there was nothing illegal in this alienation of the property and in the absence of any local custom to the contrary the gift was valid. MUSSAMMAT LADO *v.* SOORJA.
71 P R 1868

245. *Childless village proprietor—Gift of entire estate in presence of collaterals.*

Found that by the custom of *mauza* Chak Chuhar in the Gujrat district, a childless village proprietor has power to make a gift of his land to whom he pleases. MOBARAK *v.* TAJA. **62 P R 1878**

246, *Hindu Jats—Kalkat got, Hoshiarpur—Alienation by childless village proprietor in favour of brother's daughter's husband.*

Held, that by the custom of the Kalkat *got* of Hindu Jats, in the Hoshiarpur district, the collateral relations in the eleventh degree are not entitled to set aside a transfer by a childless proprietor of his land which was followed by possession, even though such transfer was made without consideration. KANHYA SINGH *v.* DEWA SINGH.
27 P R 1879

247. *Montgomery district—Town of Kamalia—Brahmins—Self-acquired property.*

Found that no custom existed amongst Brahmins, in the town of Kamalia, precluding a gift of self-acquired house property. JHINDA RAM *v.* BHAG. **41 P R 1879**

248. *Rawalpindi district—Childless proprietor—Distant collaterals.*

Found that no custom existed abridging the right of a childless proprietor to dispose at pleasure of his property by gift in the presence of distant collaterals. FAZL *v.* WARIS **42 P R 1879**

249. *Bakals of* Qasba *Raipur, Umballa district—Possession—Continued occupancy by donor of property gifted.*

One D. S. executed a registered deed of gift of property movable and immovable in favour of defendants, the sons of the brother of D. S.'s wife. Plaintiffs, collaterals of the donor, sued to set aside the gift, as invalid by custom, and not followed by possession till the donor's death. The parties were by caste Bakals, residents of Raipur, a *qasba* situate in *tahsil* Naraingarh in the Umballa district. The defendants, the donees, lived with D. S. for many years, and were treated by him as sons, but neither of them was adopted by him. Subsequent to the date of the gift, D. S. and the defendants continued to live together till the former's death. D. S. had a brother S. who was separate from him in trade but joint in food. Of the immovable property gifted by D. S., a shop occupied by S. and a *haveli* were joint ancestral property of the two brothers, and one shop was self-acquired by D. S.—S. who pre-deceased his brother, dying one year subsequent to the gift to defendants, made no objection during

A.—ALIENATION BY MALE PROPRIETOR—*contd.*

his lifetime: but as regards the shop occupied by him the defendants disclaimed all title.

Held, that no custom was proved which prevented D. S. from making a valid disposition of his property movable and immovable to the defendants in presence of the plaintiffs, his collaterals, and that, therefore, defendants had a valid title to the whole of the property mentioned in the deed, so far as D. S. was owner of it; but that plaintiffs were entitled to a decree for joint possession of the ancestral *haveli* (in which it was not sufficiently shown that S. permitted a transfer of the whole interest) and a declaration of right as against defendants to possession of the shop occupied by S.

Held, further, that, as regards the immovable property, defendants being in actual possession with the donor before the date of the gift and continuing to occupy the property after that date, the mere circumstance of the donor continuing also to occupy the property did not invalidate the gift, the fair inference being that the occupancy of the donor subsequent to the date of the gift was a permissive occupation.

Held, also, as regards the movable property (which consisted partly of household property and partly of book-debts) that there was a sufficient possession of the former by the donees to pass the ownership, when the ownership of the houses passed under the gift perfected by possession, and that as regards the debts the assignment in the deed was as between the donor and donees sufficient to give the latter a good title to them. KISHNA *v.* HIRA.
153 P R 1879

250. *Khatris of Gujrat—Gift to sister's daughter's son—Collaterals.*

Found, that no custom exists among Khatris of the town of Gujrat, under which the collateral heirs are entitled to maintain a suit to have a gift of an ancestral house in the town, which has by partition become the donor's separate property, to his sister's daughter's son declared invalid beyond the donor's lifetime. THAKUR DAS *v.* JAWANDA MAL. **107 P R 1884**

251. *Will—Awal Khatri agriculturists of* tahsil *Ajnala (Amritsar).*

Held, that an alienation by will of land by a childless Awal Khatri, proprietor of *mauza* Chak Awal, *tahsil* Ajnala, is not invalid by custom. GANESHA *v.* GANPAT.
198 P R 1889

252. *Gift, in favour of mother's brother's children, of one-third estate.*

See UNDER 7 *locus standi* OF WIDOWS.
127 P R 1894

253. *Gift by sonless proprietor to wife's brother who was also a distant collateral—Suit by donor's half-brothers—Awans of Khushab* tahsil, *Shahpur District—Entry in* Wajib-ul-arz—Riwaj-i-am.

A.—ALIENATION BY MALE PROPRIETOR—*contd.*

In a case, the parties to which were Awans of Khushab *tahsil*, Shahpur district, *found*, that defendants had proved a special custom whereby a gift of ancestral property by a sonless proprietor in favour of his wife's brother, who was also a distant, but not very remote, collateral, was valid in the presence of the donor's half-brothers. BAKHSHA *v.* MIR BAZ. **79 P R 1896**

254. *Gift by sonless proprietor to wife's sister son—Suit by donor's brother—Awans of Talagang* tahsil *of the Jhelum district.*

Held, that among Awans of the Talagang *tahsil* of the Jhelum district a gift by a childless male proprietor of ancestral land accompanied with possession in favour of his wife's sister's son in the presence of a brother is valid by custom.

Bakhsha v. *Mir Baz and another* (79 *P. R.* 1896), *Aulia* v. *Alu* (49 *P. R.* 1898), *Shere Muhammad and others* v. *Phula and others* (9 *P. R.* 1899) and *Devi Dass* v. *Bhakara* (53 *P. R.* 1899), followed. *Syad Rasul and others* v. *Fazal* (7 *P. R.* 1891), *Bahadur and another* v. *Mussammat Bholi and others* (108 *P. R.* 1893), *Rasul Khan* v. *Mussammat Mastur Bano* (81 *P. R.* 1894), *Mian Khan* v. *Mehar Khan and another* (107 *P. R.* 1894), *Fattu and another* v. *Bakhra and another* (15 *P. R.* 1895), and *Mukarrab* v. *Fatta and another* (88 *P. R.* 1895), distinguished. NURA *v.* TORA. **46 P R 1900**

J.—Strangers.

(ii) Not proved.

255. *Sindhu Jats of Muktsar* tahsil—*Gift to wife's brother.*

Found that among Sindhu Jats of the Muktsar *tahsil* in the Firozpur district, a childless proprietor cannot in the presence of a brother make a gift of ancestral land to a total stranger, such as his wife's brother. BHAN SINGH *v.* KHAZAN SINGH.
20 P R 1880

256. *Panwar Rajputs of* tahsil *Jhelum—Gift to stranger in presence of near collaterals.*

Found, that there is no well-established custom among Panwar Rajputs of the Jhelum *tahsil* under which a childless proprietor can give away the larger portion of his property to a stranger (a sister's husband) against the will of near agnate kinsmen (father's brother's sons). JIWAN *v.* MAHAMDA.
131 P R 1884

257. *Dhalla Jats of Lahore—Gift—Sale.*

In a suit the parties to which were Dhalla Jats of the Lahore *tahsil*, found that certain alienations made by a proprietor, who had died without male issue, which, though sales in form, were in substance gifts, were invalid by custom. KARM SINGH *v.* KHUSHAL SINGH. **99 P R 1886**

258. *Munkao Rajputs of Sialkot* tahsil—*Gift by childless proprietor to son of a Muhammadan mistress by her former hus-*

CUSTOM I—ALIENATION—*contd.*

A.—ALIENATION BY MALE PROPRIETOR—*contd*

band—Locus standi *of collaterals in seventh degree to contest such gift.*

A gift of land by a childless proprietor belonging to the Munkao *got* of Rajputs in the *tahsil* and district of Sialkot, in favour of the son of a Muhammadan woman who had lived with the donor as a wife, the donee not, however, being the son of the donor, found to be invalid according to the tribal custom of the parties.

Held in the above case that the plaintiffs, though not more closely related to the donor than in the seventh generation from the common ancestor, were under the existing circumstances nevertheless competent to maintain a suit to contest the said alienation, inasmuch as the village in question was inhabited by a single tribe tracing its descent from a common ancestor, and the plaintiffs' names appeared in the pedigree table as amongst such descendants. MOHRU *v.* RATNA. **15 P R 1888**

259. *Pathans of Jullundur District—Will.*

Found, that there is no recognized custom among Pathans of the Jullundur District, by which a proprietor can interfere with the interests of his descendants in his estate by way of will without their consent. MIR MANSAB ALI *v.* MIR DOST ALI. **46 P R 1888**

260. *Ghorewaha Rajputs of* tahsil *Nawashahr, Jullundur District—Gift to wife's relatives in the presence of sons.*

Found, that among Ghorewaha Rajputs of *tahsil* Nawashahr in the Jullundur District a gift by a proprietor of a portion of his ancestral land to his wife's relatives in the presence of sons is invalid by custom. GHULAM NABI *v.* KHAIRU KHAN. **95 P R 1890**

261. *Chima Jats, Gujranwala District—Childless proprietor—Will—Validity of.*

In a suit the parties to which were Chima Jats of the Gujranwala District, *found,* that no special custom was proved empowering a childless proprietor, in the presence of collaterals in the sixth or seventh degree to alienate his land by will.

Nos. 20, 42 and 89 *P. R.* 1890, referred to. SURJAN *v.* JODHA. **34 P R 1891**

262. *Khokars—Sonless proprietor—Power of alienation to strangers.*

Held, that in the tribe of Khokars no custom was established whereby a sonless proprietor was competent, in the presence of near collaterals, to make a gift of ancestral property to a stranger. JAFAR *v.* KARIM BAKHSH. **94 P R 1891**

263. *Kundal Rajputs (Hindus) of Unah* tahsil, *Hoshiarpur District—Gift by childless proprietor to Kajput of another got—History of village.*

Found, in a suit, the parties to which were Kundal Rajputs (Hindus) of *mauza* Chalalor in the Unah *tahsil* of the Hoshiarpur District, that no custom was proved rendering valid a gift of a small portion of his ancestral holding by a childless proprietor in favour of a Rajput of a different *got* who had a few years before suit obtained a footing in the village by purchase.

CUSTOM I.—ALIENATION—*contd.*

A.—ALIENATION BY MALE PROPRIETOR—*contd.*

The pedigree table of the village showed that at the time of its preparation the village was occupied exclusively by the descendants of one common ancestor including the plaintiff (who objected to the gift) and the donor, and the burden of proof therefore lay heavily on the defendants to justify the validity of the alienation.

No. 15 *P. R.* 1888, followed. WAZIRA *v.* TANI AND DHERA. **118 P R 1891**

264. *Gift in presence of collaterals—Brahmins of* mauza *Bupka,* tahsil *Jagadhri.*

Found, in a suit the parties to which were Brahmins of *mauza* Bupka in the Jagadhri *tahsil* of the Umballa District, that an alienation by way of gift was invalid in the presence of collaterals. RAJA NAND *v.* ASA RAM. **24 P R 1892**

265. *Gift to stranger in presence of nephews—Gothwal Jats, Delhi District.*

Found, that by the custom of the Gathwal Jats of the Delhi District, a gift to a stranger of ancestral land in the presence of nephews is invalid. MAN CHAND *v.* DAYA RAM. **25 P R 1892**

266. *Gift to stranger of remaining ancestral property—Childless Gujar of Rawalpindi District.*

Found, that no custom was proved by which a childless Gujar of the Rawalpindi District could make a valid bequest of all his remaining ancestral property in favour of a stranger, an Awan, in the presence of a son of the donor's brother's son. FAKIR *v.* NAWAZISH ALI. **97 P R 1892**

267. *Gift of ancestral land by sonless proprietor in favour of paternal aunt's sons—Gujars of Mahesi got in Kharian* tahsil, *Gujars District.*

Found that no custom had been proved whereby among Muhammadan Gujars of Mahesi *got* of the Kharian *tahsil,* Gujrat District, a sonless proprietor is competent to alienate ancestral property in favour of his paternal aunt's sons, in the presence of collaterals related to him in the seventh degree. ABDULA *v.* MUHAMMADU. **14 P R 1895**

268. *Gift by sonless proprietor in favour of strangers—Agriculturist Bedis of Hoshiarpur District.*

Found, that by custom among agriculturist Bedis of the Hoshiarpur District, a sonless proprietor is not competent to make a gift of his ancestral estate in favour of strangers in the presence of collateral heirs. No. 122 *P. R.* 1893, distinguished. UTTAM SINGH *v.* JHANDA SINGH. **21 P R 1896**

269. *Gift to stranger of remaining ancestral property in presence of colatterals related in the third degree—Gangol Rajputs of* mauza *Mohra Thakra,* tahsil *Gujar Khan, Rawalpindi District.*

CUSTOM I.—ALIENATION—*contd.*

A.—ALIENATION BY MALE PROPRIETOR—*contd.*

Held, that no custom was establised whereby among Gangol Rajputs of *tahsil* Gujar Khan a sonless proprietor was competent to make a gift of the entire residue of his ancestral immovable property to one who, though of the same tribe, was otherwise a stranger, in the presence of collaterals related to him in the third degree. *Hassan Ali* v. *Bahadar* (32 *P. R.* 1893), considered—AHMAD *v.* JAHANA (52 *P.* R. 1905.)

270. *Gift of ancestral property by childless proprietor in favour of strangers—Awans of Jullundur District.*

Held, that by custom among Awans of the Jullundur District a childless proprietor is not competent to make a free and absolute gift ot his ancestral land to strangers and non-relations in the presence of his male agnates. BARKAT ALI *v.* JHANDU. **127 P R 1909**

271. *Gift by sonless proprietor to* pichhlag *—*Locus standi *of distant collaterals to contest its validity—Gondals of* mauza *Isar,* tashil *Bhera, district Shahpur.*

Held, among Gondals of *mauza* Isar, *tahsil* Bhera, district Shahpur, that having regard to the fact that the village community is a compact body of proprietors all descended from one common ancestor, that the tribal custom of the Shahpur district is against the gift, and that the donee as a *pichhlag* is a perfect stranger to the donor, collaterals in the eighth degree from the donor, a sonless proprietor, have a *locus standi* to contest the gift and the *onus* of proving that the gift is valid by custom lies on the donee.

Held also, that the donee had failed to prove that the gift is valid by custom. MOHKU *v.* KARAM. **63 P R 1909**

K.—Miscellaneous.

272. Where the general power of alienation was found, the former under which it was made, whether by gift or nominal sale must be treated as immaterial. KESHAR SINGH *v.* SUNDAR SINGH. **59 P R 1889**

273. *Distinction between gifts* inter vivos *and wills*—Onus probandi—*Pathans of Peshawar District.*

Although a proprietor has, by custom, a plenary power of alienation *inter vivos,* it does not follow that he has, by custom, a power of alienation by will, and the *onus* of proving that he has the latter power rests upon the party taking his stand on the will, especially when an alienation by will is void under the personal law of the proprietor.

The distinction between gifts *inter vivos* and wills discussed by *Chatterji J.* SHAD ALI KHAN *v.* ABUL GHAFUR KHAN. **24 P R 1898**

274. Among Awans of the Talagang *tahsil* of the Jhelum District, the power to transfer ancestral property by will does not exist. GHULAM MUHAMMAD *v.* ABBAS KHAN. **22 P R 1899**

275. *Alienation by childless adopted son of his adoptive father's property—Distinction between the right to alienate the property acquired from adoptive and a natural father.*

Held, that under the Customary Law of Punjab the right to alienate ancestral property is the same whether the property dealt with comes from a natural or an adoptive father. the only distinction which exists between the estates of adopted son in the two classes of property is with reference to devolution of each on his death, childless and without a widow. FATTEH SINGH *v.* NIHAL SINGH.

25 P R 1901

276. *Hamdani Sayads of tahsil Talagang, District Jhelum—Bequest by male proprietor—Ancestral and acquired property.*

Found, that among Hamdani Sayads of Talagang *tahsil* in the Jhelum District a bequest by a male proprietor of his immovable property is valid by custom so far as it affects only his self-acquired property. AHMED SHAH *v.* FATEH BIBI.

132 P R 1908

2.—Sales and Mortgages in favour of heirs and collaterals.

1. *Kalon got of mauza Kalon, Batala tahsil—Alienation by childless proprietor—Suit by distant collaterals—Burden of proof.*

Plaintiffs, the collateral relatives in the male line of a childless proprietor of the Kalon *got* in *mauza* Kalon in the Batala *tahsil* of the Gurdaspur district, the nearest of whom was related in the 8th generation, sued to contest a sale by the said proprietor of part of his land to certain relatives in the 10th generation from the common ancestor, from whom the vendor was descended in the 7th generation.

Held, that the burden of proof was on the plaintiffs to show that by custom they could sue to have the alienation set aside, and that they had failed to establish any such custom. *Ganda Singh* v. *Golab Singh* (No. 159 of 1879, Civil) referred to. BUDHA *v.* BUDHU.

22 P R 1884

2. *Heirs impeaching ostensible sale to relative outside the line of heirs—Duty of Court to determine the question of the bona fides of the transaction.*

In cases of land sold by childless proprietors with a restricted capacity of alienation to relatives outside the line of heirs, the Courts are both competent and bound to go into the truth of the transaction when the true heirs impeach an ostensible sale. It cannot be conceded that the transaction, because it is in form a sale, must be upheld as a sale, if it be shown that consideration has been paid by the ostensible vendees, and that the adequacy of the price is not material. The whole rights of the expectant heirs would be imperilled if the doctrine were admitted that the payment of any sum, however inadequate, conclusively

stamped the transaction as a sale. RAM DHAN *v.* RAM DITTA. **151 P R 1884**

3. *Ranjha Jats of* tahsil *Bhera, Shahpur district - Father alienating in favour of one son to prejudice of others—General custom—Burden of proof.*

In a suit for cancellation of a mortgage made in favour of one son and the sons of another son to the prejudice of the descendants of a third son, the parties to which were Ranjha Jats of the Bhera *tahsil* of the Shahpur district, *held*, that the *onus* of proving a special custom whereby the mortgage was invalid rested on the plaintiffs who sought to set it aside, and that they had not discharged this burden.

There is no general rule of customary law among Muhammadan agriculturists in the Punjab, whereby a proprietor is restricted from alienating his land in favour of one of his sons to the prejudice of the other sons. *Mussammat Rajadan* v. *Umra* (No. 37 of 1878, Civil), *Sultan Baksh* v. *Raja* (No. 126 of 1879, Civil), *Mahomed* v. *Walidad* (No. 164 of 1879, Civil), *Sher Shah* v. *Jafar Shah* (No. 51 of 1883, Civil), *Malayan* v. *Muhammad Baksh* (No. 43 of 1884, Civil) referred to. RUKN-I-ALAM *v.* FAZL AHMAD.

26 P R 1885

4. *Salahriya Rajputs of Sialkot District—Childless proprietor—Collaterals—Necessity—Burden of proof.*

In a suit by the nearest reversioner to set aside a sale of his land by a childless proprietor, the parties to which were Salahriya Rajputs of the Sialkot district, *held*, that the plaintiff (upon whom the burden of proof lay) had failed to establish any custom rendering the alienation invalid unless for necessity. *Ganda Singh* v. *Golab Singh* (No. 159 of 1879, Civil), *Nihal Singh* v. *Sahib Singh* (No. 77 of 1880, Civil), *Ganesha* v. *Roda* (No. 3 of 1884, Civil), *Budha* v. *Budhu* (No. 22 of 1884, Civil), *Hakam Singh* v. *Khark Singh* (No. 50 of 1884, Civil), *Bawa Sohan Singh* v. *Pala* (No. 101 of 1884, Civil), *Khudayar* v. *Hakim* (No. 106 of 1884), Civil and *Sadha Singh* v. *Dyal Singh* (No. 108 of 1884, Civil), cited and approved of. *Ratan Singh* v. *Kabal Singh* (No. 137 of 1884, Civil) disapproved of. DIAL SHAH *v.* SAWAN.

107 P R 1885

5. *Sindhu Jats of Moga tahsil—Mortgage for value in presence of nephews.*

In a suit, the parties to which were Sindhu Jats of the Moga tahsil, in which the plaintiffs, who were the nephews of the mortgagor, sued to have it declared that a mortgage by their uncle of his land was void as against their reversionary interests, *held*, that the plaintiffs had failed to prove any custom rendering such an alienation for value invalid. *Bhan Singh* v. *Khazan Singh* (No. 20 of 1880, Civil), *Nihal Singh* v. *Sahib Singh* (No. 77 of 1880, Civil), and *Ratan Singh* v.

Kabal Singh (No. 137 of 1884, Civil) cited. BHAN SINGH *v.* KHAZAN SINGH.

120 P R 1886

6. *Dewal Jats of Batala* tahsil*—Sale by sonless proprietor*—Onus probandi.

In a suit to contest an alienation by deed of sale by a sonless proprietor, the parties to which were Dewal Jats of the Batala *tahsil* and in which it appeared that plaintiffs and the defendant-vendees were equally nearly related in the collateral line to the defendant-vendor, *held* that the *onus* lay upon the plaintiffs under the circumstances of the case to prove a customary power of interference, and that having failed to do so, their suit must be dismissed—*Ratan Singh* v. *Kabal Singh* (No. 137 *P. R.* 1884) referred to. ALA BAKHSH *v.* UMRA.

58 P R 1887

7. *Gil Jats of* tahsil *Phillour—Childless proprietor—Near collaterals.*

In a suit the parties to which were Gil Jats living in a village in the Phillour *tahsil* in the Jullundur District where all the proprietors belonged to the same tribe, *held*, that no custom was affirmatively proved permitting a childless proprietor to alienate his ancestral land to the exclusion of near male collaterals. HARYA *v.* GULAB.

81 P R 1887

8. *Gujars of* tahsil *Gujrat—Sale to sons of one brother in presence of sons of two other brothers.*

In a suit to contest an alienation, the parties to which were Gujars of the *tahsil* and District of Gujrat, *held* that the plaintiffs (upon whom under the circumstances of the case the *onus* lay) had failed to prove a custom under which a childless proprietor could be restrained from selling a portion of his land to two nephews, the sons of one brother at the suit of the sons of two other brothers. SAHIB DIN *v.* AMIRA. **16 P R 1889**

9. *Hindu Jats of Amritsar* tahsil*—Sale by childless proprietor to distant collaterals—Suit by collaterals equally remote impugning sale*—Onus probandi*—Necessity—Consideration.*

In a suit to contest an alienation by a childless proprietor, the parties to which were Hindu Jats of the Amritsar *tahsil*, it appeared that the plaintffs and defendants were equally, but remotely, related as collaterals to the deceased, but that the defendants claimed to hold the whole estate on the strength of the sale in their favour, while the plaintiffs replied that the deceased had no power to make the sale, that there was no necessity for it, and no money really passed.

Held, that it was for the plaintiffs to show that the alienation was *not* valid by custom and that they had failed to do so.

Held further, that the general power of alienation being found, the form under

CUSTOM I.—ALIENATION—*contd.*

A.—ALIENATION BY MALE PROPRIETOR—*contd.*

2.—Sales and Mortgages in favour of heirs and collaterals—*contd.*

which it was made, whether by gift or nominal sale must be treated as immaterial. No 58 *P. R.* 1887, cited and approved—KESAR SINGH *v.* SUNDAR SINGH.
59 P R 1889

10. *Sonless Jat proprietor—Ghuman Jats of Kala, Sialkot* tahsil, *Sialkot District—Burden of proof.*

Held, following the principle of the Full Bench decision, No. 107 *P. R.* 1887, that the burden of proof lay upon the plaintiffs to establish affirmatively that by custom they were entitled to challenge a sale made by one Chanda, a Ghuman Jat and a sonless proprietor.

The plaintiffs who had embraced the Muhammadan faith and belonged to a different village, and the vendor were alike related to the common ancestor in the eighth degree, while the vendees were of the same stock but one degree more remote. ALI BAKSH *v.* BUTA
79 P R 1891

11. *Sale without necessity to collateral—Burden of proof.*

A childless proprietor sold his land to the plaintiff, a collateral relation who lived with him, and then died. The plaintiff sued the other collaterals who, like himself, would be entitled to inherit along with him but for the sale, to recover possession of the land.

Held, that the alienation without necessity was bad by custom and that the burden of proof was upon the plaintiff to support the sale. GURDIT SINGH *v.* HAKIM.
53 P R 1892

12. *Sale without necessity to sister's sons—Gondals of* tahsil *Phalian, Gujrat District.*

Found, that a Gondal of *tahsil* Phalian, Gujrat District, was not entitled by custom to make a sale of his land, without necessity, to his sister's sons in the presence of his brother's sons.

No. 8 *P. R.* 1891, referred to. TAJA *v.* GAMAN.
129 P R 1892

13. *Gondal Jats,* tahsil *Garhshankar, Hoshiarpur District—Ancestral land—*Mitakshara.

M. S., a Hindu Gondal Jat of *tahsil* Garhshankar, had three sons, M., H. and H. S. who divided his estate. H. S. died sonless, and a son of H. claimed his whole share, as adopted son. M. successfully sued for half of land of H. S. and mortgaged this half for Rs. 800.

The plaintiff, son of M. sued M., and his other son and the mortgagee to set aside the mortgage for Rs. 800 on the ground that it was a mortgage of ancestral land and not made for necessity. It was found by the first Court that the alienation was valid to the extent of Rs. 270. On defendants appeal, the Divisional Judge, without going into the merits, held that the land was not ancestral land as defined by the *Mitakshara* law as being land inherited by M. from his brother H. S., and that the plaintiff could not therefore contest his father's act with regard to it.

CUSTOM I.—ALIENATION—*contd.*

A.—ALIENATION BY MALE PROPRIETOR—*contd.*

2.—Sales and Mortgages in favour of heirs and collaterals—*contd.*

Held, that the land in suit having descended from M. S., the common ancestor of M. and H. S., was ancestral land within the customary meaning of the term. GUJAR SINGH *v.* MOHRU.
88 P R 1893

14. *Sale by sonless Jat proprietor to a distant callater who is a co-proprietor in the village—objection by nearer collaterals not residing in the village—Burden of proof.*

In a case by the nearer collaterals of a sonless proprietor for declaration that a sale effected by the latter in favour of a distant collateral would not affect there reversionary rights, the defence contended that as the alienation was in favour of another collateral and that as the plaintiffs were no longer members of the village community, being residents of another village, they had no *locus standi*. The lower Courts holding that the plaintiffs had failed to establish affirmatively that by custom they were entitled to challenge the sale in question, the burden of proof being upon them, dismissed their suit.

Held, that although in cases where the family of the objectors had for generations back entirely cut themselves off from their villages of origin and settled in another village, or had unmistakeably been shown by their conduct to have given up any rights they might have had to property in such village, the burden of proof that they were nevertheless still entitled to the rights which they would have possessed had they remained in that village lies upon them, yet that in a case where the father of the objectors had left the village and had acquired property in another village, and where there was no proof that their father or that they themselves had abandoned any right which he or they might have to land in that village, the burden of proof they were not so entitled lay upon the defendants.

Ali Baksh v. *Buta* (79 *P. R.* 1891), *Kaila Singh* v. *Tahal Singh* (143 *P. R.* 1888), *Lokha* v. *Hari* (64 *P. R.* 1893), *Badhawa* v. *Dewa Singh* (141 *P. R.* 1893), *Rukan Din* v. *Mariam* (68 *P. R.* 1898), and *Chet Singh* v. *Samand Singh* (78 *P. R.* 1898), referred to and considered. KALA SINGH *v.* NARAIN SINGH.
75 P R 1902

15. *Alienation by sonless proprietor—Right of reversioner to contest such alienation in presence of wife and daughter-in-law—Right to sue—Kalar Jats of* tahsil *Jagraon, Ludhiana District.*

A, a sonless proprietor, sold his house to two of his collaterals, S and G. The plaintiffs, who were nearer collaterals, sued for a declaration that the sale being without necessity should not affect their reversionary rights and should be held to be null and void after the death of A. The defendants pleaded that as A's wife and daughter-in-law were alive the plaintiffs had no *locus standi*. It was found that among the parties, who were Kalar Jats of the

CUSTOM I.—ALIENATION—*contd.*

A.—ALIENATION BY MALE PROPRIETOR—*contd.*

2.—Sales and Mortgages in favour of heirs and collaterals—*concld.*

Jagraon *tahsil*, a widow was entitled on her husband's death to possession of his immovable propery for her life or until re-marriage, and that a daughter-in-law was entitled only to maintenance out of his estate.

Held, that as the right of succession of the widow was only a "widow's estate," the plaintiffs who were the nearest presumptive reversionary heirs, were entitled to maintain their action for a declaration irrespective of the questien of collusion or concurrence by the widow, but were not entitled to possession until after the death or re-marriage of the widow in the event of her surviving A.

Balgobind v *Ram Kumar* (*I. L. R. VI All.* 431), and *Mussammat Ram Kaur* v. *Bhagwana* (127 *P. R.* 1894), cited.

Madari v. *Malki* (*I. L. R. VI All.* 428), and *Ishwar Narain* v. *Janki* (*I. L. R. XV All.* 132), not followed. SUNDAR SINGH *v.* SAIN DITTA.
29 P R 1903

16. *Alienation by a sonless proprietor—Suit by reversioner for a declaratory decree that the sale would not effect his reversionary interest—Decree of suit that on alienor's death his heirs would be entitled to get back the property sold on payment of a certain amount—Subsequent suit by an afterborn son of the alienor after the death of the latter to recover the property sold—Right of plaintiff to take advantage of the declaratory decree obtained by the reversioner.*

Held, that a declaratory decree obtained by a reversioner against an alienor and alienee to the effect that after the alienor's death his heirs would be entitled to get back the property alienated on payment of a certain amount enures for the benefit of whoever may be the person entitled to succeed when the inheritance falls in, provided that such heir is himself a descendant of the common ancestor of himself and the alienor who alienated the land.

Jowala v. *Hira Singh* (55 *P. R.* 1903, *F. B.* and *Harwans Singh* v. *Harnam Singh* (84 *P. R.* 1898), referred to. MUHAMMAD DIN *v.* FATTEH MUHAMMAD.
24 P R 1906

3.—Sales and Mortgages in favour of strangers.

1. *Gurdaspur district—Childless Hindu Jat agriculturist—Sale of land without necessity, and without consent of male collaterals.*

Found that, by the custom of *mauza* Kot Khazana, *tahsil* Batala, district Gurdaspur, a childless Hindu Jat agriculturist cannot sell his land unless for necessity, or with the consent of his male collaterals. KISHEN SINGH *v.* JOWAHIR SINGH.
71 P R 1879

2. *Athwal Jats, Nawashahr, Jullundur district—Alienation by childless proprietor of ancestral proprety—Objection by collaterals.*

Found, that there is no established custom among Jats of the Athwal *got* in the

A.—ALIENATION BY MALE PROPRIETOR—*contd.*

3.—Sales and Mortgages in favour of strangers.

Nawashahr *tahsil* of the Jullundur district, under which a sale by a childless proprietor for valuable consideration of ancestral land in his sole and separate possession can be impeached by his nephews and grand-nephews on the ground that he was not competent to alienate. GANDA SINGH *v.* GOLAB SINGH. **159 P R 1879**

3. *Sindu Jats, Moga* tahsil.

Found that, there is no established custom among Sindu Jats in the Moga *tahsil* of the Ferozepur district, whereby a childless proprietor is incompetent to sell his land in the presence of male collaterals as nearly related to him as nephews. NIHAL SINGH *v.* SAHIB SINGH. **77 P R 1880**

4. *Mehtams of Hoshiarpur—Childless proprietor.*

Found that, there is no established custom among Mehtams of the Hoshiarpur district, whereby a childless proprietor is incompetent to alienate otherwise than for necessity without the consent of his near collaterals. KAHAN SINGH *v.* DIT. **119 P R 1880**

5. *Suit by reversioners*—Onus probandi.

In a suit for a declaration of the invalidity of a mortgage as against the plaintiffs who were the collaterals of the mortgagor, *held*, that no general custom entitling collateral heirs to object to sales or mortgages can be said to have been established in the Punjab, and that therefore it was for the plaintiffs, who were second cousins of the mortgagor, to prove that they had by custom a *locus standi* to contest the alienation. *Mohun Singh* v. *Nundha* (No 46 of 1871, Civil), *Asa Nand* v. *Hukmee* (No. 40 of 1872, Civil), *Ganda Singh* v. *Golab Singh* No. 159 of 1879, Civil), *Nihal Singh* v. *Sahib Singh* (No. 77 of 1880, Civil), and *Kahan Singh* v. *Dit* (No. 119 of 1880, Civil) cited. RAON *v.* JASSU. **16 P R 1883**

6. *Jats of Nawashahr* tahsil, *Jalandhar—First cousin objecting to mortgage by childless proprietor—Necessity.*

In a suit, the parties to which were Jats of the Nawashahr *tahsil*, Jalandhar district, by the first cousin and presumptive heir of a childless proprietor, for a declaration that a mortgage of half of his land without necessity by the said proprietor would not bind the property after his death, *held*, that in order to entitle the plaintiff to the declaration asked for, it was necessary to show that by custom a son would be entitled to a similar declaration in case his father attempted to charge ancestral property with the payment of a similar debt incurred without necessity.

Held further, that no custom had been established in the present case, entitling the relatives of a childless proprietor to set aside a mortgage made by him, merely on the allegation that he had no necessity to raise the money, without offering to pay the money actually raised on the security of the bond. GANESHA *v.* RODA. **3 P R 1884**

7. *Hindu Jats (Ghasa* got) *of* tahsil *Nawashahr, Jalandhar—Sale by proprietor of his proprietary rights in land.*

Found, that no established custom exists among Hindu Jats of the Nawashahr *tahsil* in the Jalandhur district, whereby a childless proprietor is restrained from selling his proprietary right in land. *Ganda Singh* v. *Golab Singh* (No. 159 of 1879, Civil) cited. HAKAM SINGH *v.* KHARK SINGH. **50 P R 1884**

8. *Manj Rajputs of the Gurdaspur district—Necessity—Vendee's lien on the land where the sale was partly for necessary purposes.*

Found, that by the custom which prevails among the Manj Rajputs of the Gurdaspur district, a sonless land owner is restricted from selling his ancestral land save for necessity.

Where in a suit to set aside an alienation of the above nature it appeared that part of the consideration money was required for necessary purposes, *held*, that in addition to the declaration made in the plaintiff's favour, it should be declared that the vendee was entitled to a charge on the estate for such amount, and that he was not bound to surrender possession to the reversioners until that charge had been paid to him. *Bira* v. *Mamon* (No. 74 of 1877, Civil) and *Mussammat Thakuri* v. *Ganda Mall* (No. 78 of 1879, Civil) followed. MUHAMMAD BAKHSH *v.* NAWAB. **52 P R 1884**

9. *Khatris of* tahsil *Batala, Gurdaspur district—Collaterals in fifth degree objecting to sale by childless proprietor—Necessity—Consideration.*

In a suit the parties to which were Khatris of the Batala *tahsil* in the Gurdaspur district, the plaintiffs, who were collaterals related in the fifth degree, sued to set aside a sale by a childless proprietor as being without necessity.

Held, the sale being found to have been for valuable consideration, that the plaintiffs had failed to establish a custom entitling them to have it set aside without offering to repay the consideration, it not being alleged to have been raised for immoral or unlawful purposes. *Ganesha* v. *Roda* (No. 3 of 1884, Civil) cited. BAWA SOHAN SINGH *v.* PALA. **101 P R 1884**

10. *Chuna Jats of Daska* tahsil *Sialkot—Childless proprietor selling his land for valuable consideration—Necessity.*

Found, that no custom exists among Chuna Jats of the Daska *tahsil* of the Sialkot district restraining a childless proprietor from selling his land for valuable consideration unless for necessity. KHUDA YAR *v.* HAKIM. **106 P R 1884**

11. *Sindhu Jats of* tahsil *Kasur—Sonless proprietor selling his land for valuable consideration—Necessity—General custom.*

Found, that no custom exists among Sindhu Jats of the Kasur *tahsil* restraining a sonless proprietor from selling his ancestral land for valuable consideration unless for necessity.

It cannot be said that any general custom exists restraining sonless Jat proprietors from alienating their land unless for necessity, or with the consent of the collaterals. *Kanhya Singh* v. *Dewa Singh* (No. 27 of 1879, Civil), *Kishen Singh* v. *Jowahir Singh* (No. 71 of 1879 Civil), *Dewa Singh* v. *Buta Singh* (No. 166 of 1879, Civil), *Nihal Singh* v. *Sahib Singh* (No. 77 of 1880, Civil), and *Rattan Singh* v. *Mal. Singh* (No. 4 of 1884, Civil) referred to. SADHA SINGH *v.* DYAL SINGH. **108 P R 1884**

12. *Dhariwal Jats of Ferozpur district—Sale by childless proprietor without necessity.*

In a suit among Dhariwal Jats of the Firozpur district *held*, that no custom was shown to exist enabling a childless proprietor to sell his ancestral land at his pleasure and without necessity to one not an heir against the will of near agnate relations.

The view that there is no *a priori* presumption against alienation at will by a Punjabi land-holder is scarcely sustainable. *Mohun Singh* v. *Nundha* (No. 46 of 1871. Civil), *Shib Dyal* v. *Mehtaba* (No. 6 of 1872 Civil), *Asa Nand* v. *Hukmee* (No. 40 of 1872, Civil), *Ganda Singh* v. *Golab Singh* (No. 156 of 1879, Civil), *Nihal Singh* v. *Sahib Singh* (No. 77 of 1880, Civil), and *Raon* v. *Jassu* (No. 16 of 1883, Civil) referred to. RATAN SINGH *v.* KABAL SINGH. **137 P R 1884**

13. *Warias of Gujrat—Power of childless proprietor to alienate ancestral property.*

Found that among Warias of the Gujrat district a childless proprietor can by custom alienate (mortgage) ancestral property without the consent of the collaterals. KHERA *v.* KUTBA. **163 P R 1884**

14. *Sidhu Kheli Jats of Ludhiana—Childless proprietor—Necessity.*

Found, that among Jats of the Sidhu Kheli tribe in the Ludhiana district, a *bona fide* alienation (*e. g.*, a mortgage) by a childless proprietor of his land without necessity is valid by custm. HIRA *v.* GULAB SINGH. **53 P R 1885**

15 *Arains of Lahore district—Acquired and ancestral property—Proprietor alienating in presence of adult sons—Necessity.*

Found, that by the custom of the Cis-Ravi Arains of the Lahore district, acquired and ancestral land are on the some footing in regard to alienations and when a proprietor of the above race has adult sons, he cannot

alienate except for necessity without consulting them. BADR-UD-DIN v. JITA.
17 P R 1886

16. *Mortgage by childless proprietor—Distant collaterals—Burden of proof—Court granting decree for redemption in suit for possession free from any lien.*

In a suit by plaintiffs claiming possession of certain land once owned by their distant relative B. S., deceased, and now in possession of defendants under a title derived from B. S., as mortgagor in which the plaintiffs did not seek to redeem the mortgage, but alleged that the interest thereby created terminated on the death of B. S., the plea was that plaintiffs were too remotely related to B. S. to question his acts.

Held that the burden of proving that B. S., a childless landowner could not make an alienation (otherwise than for necessity) to enure beyond his own life in the presence of collateral male relations in the 10th degree, lay upon the plaintiffs, who had rightly been held to have failed in discharging such *onus.*

It appeared in the above case that the lower Courts instead of dismissing the plaintiffs' suit on the above finding, granted them a decree for possession on payment of the mortgage money within six months.

Held, that the plaintiffs were entitled to object to a decree granting without their consent a relief they did not seek, and were therefore entitled to have the decree altered to one dismissing their suit, leaving them, if so advised, to sue for redemption hereafter, and the defendants to raise any objection they might then be advised to take. DULA SINGH v. WAZIR SINGH. **69 P R 1887**

16A. Restricted power of alienation.
See CUSTOM II—ALIENATION A 5—NECESSITY. **104 P R 1887**

17. *Sonless Jat proprietor—Ancestral land*—Onus probandi—*Sus Jats of the Hoshiarpur district*:

Held, by the Full Bench that within the central districts of the Punjab in cases where the power of a sonless Jat proprietor to alienate ancestral land without necessity is in dispute, the *onus probandi* generally lies on the person asserting the existence of such power: and accordingly in the present case the parties to which were Sus Jats of the Hoshiarpur district, the burden lay on the plaintiffs to prove a custom authorizing an alienation of ancestral land by a childless proprietor in favour of a stranger in the presence of a great nephew of the alienor.

Miyan v. *Sandhi* (No 64 *P. R.* 1879), cited. GUJAR v. SHAM DAS.
107 P R 1887

18. *Lodhra Jats of Jullundur district—Childless proprietor—Collaterals.*

In a suit brought by collaterals related in the 5th and 6th degree, to contest an alienation by a childless proprietor, the parties being Lodhra Jats of the Nawashahr *tahsil* of the Jullundur district, *held*, that the defendants (upon whom the *ouns* lay) had

failed to establish a custom justifying alienations by a childless proprietor in the absence of proved necessity.

Gujar v. *Sham Das* (No. 107 *P. R.* 1887 F. B.) cited. GURMUKH SINGH v. DEWA SINGH.
26 P R 1888

19. *Brahmins of Lahore—Liability of son's interest—Son's right to enforce partition in father's lifetime—Alienation of son's undivided interest in family estate—Hindu Law.*

Found that by the law and custom governing Brahmins of the Lahore city, (1) the sale of ancestral property by a father not made for necessity, passes the interest of his undivided sons as well as his own, unless made for immoral or illegal purposes, which cannot be taken to include mere extravagance; (2) a son cannot enforce partition of ancestral property against his father's consent in his lifetime, nor can he alienate in his father's presenc his undivided interest in the family estate.

Nathe Rai v. *Mannu Ram* (No. 113 *P. R.* 1886) referred to. KHAN CHAND v. SARB DIAL. **109 P R 1888**

20. *Randhawa Jats of Amritsar* tahsil—*Sonless proprietor—Nephews.*

Found, that no custom exists among Randhawa Jats of the Amritsar *tahsil* whereby a sonless proprietor can alienate his estate without necessity in the presence of nephews.

Narain Singh v. *Surmukh Singh* (No. **104** *P. R.* 1887) and *Gujar* v. *Sham Das* (No 107 *P. R.* 1887), cited. KESAR SINGH v. MANGAL SINGH. **144 P R 1888**

21. *Barech Jats of the Nawashahr* tahsil—*Childless proprietor—Co-sharer in joint holding—Collaterals.*

Found, that no custom exists among Barech Jats of the Nawashahr *tahsil* of the Jullundur district permitting a childless proprietor who is a co-sharer in a joint holding to alienate his share without necessity, in the presence of near collaterals, who are also his co-sharers.

Gujar v. *Sham Das* (No. 107 *P. R.* 1887), cited. MALI v. SAHIB DITTA.
167 P R 1888

22. *Kel Jats of Phillour* tahsil—*Childless proprietor—Necessity.*

In a suit, the parties to which were Kel Jats of the Phillour *tahsil* of the Jullundur district, *held*, that the defendants had failed to prove a custom by which a childless Jat could dispose of his property arbitrarily, at his mere will and pleasure, and without any legal necessity. DIWAN v. SAHIBA. **33 P R 1889**

23. *Punnun Jats of* tahsil *Tarn Taran—Mortgage by sonless proprietor—Objection by distant collaterals.*

In a suit brought by certain distant collaterals (related to the mortgagor in the sixth and seventh degrees) to contest an alienation in the form of a mortgage by a sonless Jat proprietor of the Punnun *got*, *held*, that the plaintiffs had failed to establish

that reversioners so remote as they were, had a right by custom to come forward and contest the alienation. BELA SINGH v. JIWAN SINGH. **56 P R 1889**

24. *Childless proprietor—Muhammadan Bhatti Rajputs of* mauza *Mari Bucha—District Gurdaspur.*

Found, that by custom governing Muhammadan Rajputs of Bhatti clan residing in *mauza* Mari Bucha of the Gurdaspur district, a childless proprietor is not competent to alienate ancestral immovable property except with the consent of collaterals or for necessity. IMAM-UD-DIN v. WAZIR KHAN. **14 P R 1890**

25. *Childless proprietor—Mussalman Jats of Mangrial* got *of Kharian* tahsil, *Gujrat district.*

In a suit the parties to which were Mussalman Jats of Mangrial *got* of *tahsil* Kharian, Gujrat district, *held*, that no custom had been proved whereby a childless proprietor may alienate ancestral immovable property to a stranger without necessity and without the consent of collaterals. NUR DIN v. MUHAMMAD KHAN. **40 P R 1890**

26. *Gadari Jats of Batala* tahsil—*Necessity.*

In a suit among Gadari Jats of Batala *tahsil*, *held*, that a childless proprietor could not by custom alienate his ancestral land to the exclusion of near male collaterals without necessity. GHASEETA v. PAREMA.
41 P R 1890

27. *Suit by Muhammadan collaterals of a Hindu Khatri*—Onus probandi.

Plaintiffs (Muhammadans by persuasion) the collaterals of a childless proprietor of the Khatri caste, sued to contest a mortgage by the said proprietor.

Held, that the burden of proof was on the plaintiffs to show that by custom they could sue to have the alienation set aside, and that they had failed to establish any such custom. KANSHI RAM v. JIWAN.
82 P R 1890

28. *Chima Jats of Sialkot—Childless proprietor mortgaging his land for valuable consideration—Necessity.*

In a suit among Chima Jats of the Sialkot district, *held*, that no custom had been shewn to exist enabling a childless proprietor to alienate ancestral land without necessity. HARIA v. SANTA. **89 P R 1890**

29. *Childless proprietor—Mahton Rajputs of Nadalon, Gar shankar* tahsil, *Hoshiarpur district.*

Found, that there is no established custom among Mahton Rajputs of the village of Nadalon in the Garshankar *tahsil* of the Hoshiarpur district, whereby a childless proprietor can in the presence of near collaterals (an uncle and first cousins) sell his land to a stranger (a Hindu Khatri) without necessity. No. 119 *P. R.* 1880, not followed.

Held also, that the burden of proof lay

CUSTOM I.—ALIENATION—*contd.*
A.—ALIENATION BY MALE PROPRIETOR—*contd.*
3.—Sales and Mortgages in favour of Strangers—*contd.*

upon the party asserting the power of alienation. No. 107 *P. R.* 1887 followed. UTTAM SINGH *v.* WAZIR SINGH.
75 P R 1891

30. *Sindhu Jats,* mauza *Sindhwan, Jullundur district—Illegitimacy.*

Found, in a suit, the parties to which were Sindhu Jats of the village of Sindhwan, *tahsil* Nawashahr, Jullundur district, that no custom was proved conferring on a childless proprietor an unrestricted power of alienation of ancestral land in the presence of nephews.

The sons of the deceased, their mother being the wife of another man, must be deemed to be illegitimate.

No. 84 *P. R.* 1889 and No. 49 *P.* R. 1890, referred to. GANGA SINGH *v.* INDAR SINGH.
72 P R 1892

31. *Absence of necessity—Childless proprietor—Arains, Lahore district.*

Found, in a suit the parties to which were Arains of the Lahore district, that a childless proprietor is subject to the ordinary rule restricting alienation to cases of necessity, and that the alienation in the present case was therefore invalid. SHERA *v.* BUTA. **104 P R 1892**

32. *Childless proprietor—Sayads of town of Gujrat owning land in adjacent villages.*

Found in a suit, the parties to which were Sayads of the town of Gujrat, owning land in the villages attached thereto, that no custom was established by the defendants—upon whom the *onus* lay—permitting the alienation of ancestral immovable property save for necessity. RAMZAN SHAH *v.* MUSSAMMAT SHAH BEGAM. **133 P R 1892**

33. *Bhangu Jats of* mauza *Makowal,* tahsil *Ajnala, Amritsar district—Suit by distant collaterals—Burden of proof—*Locus standi *of reversioners.*

The plaintiffs, Hindu Bhangu Jats of the Ajnala *tahsil*, were descended from a common ancestor of themselves and the alienor, in the sixth generation above the latter, and sued to set aside a mortgage by the alienor on the ground that it was made without necessity. The first Courts placed the *onus* on the plaintiffs to prove their *locus standi* to object, and finding that this *onus* had not been discharged, dismissed the suit.

The Divisional Judge, on a review of the reported cases, felt bound to hold upon the authority of No. 56 *P. R.* 1889, a case among Jats in the same district, that the suit had been rightly dismissed: but granted a certificate of appeal.

Held, that no general rule can be deduced from the reported decisions as to the degree of remoteness which would justify a Court fixing a preliminary issue and requiring the plaintiff, before he is heard further, to establish affirmatively his right to maintain the suit. GANGA SINGH *v.* MAYA.
100 P R 1893

CUSTOM I—ALIENATION—*contd.*
A.—ALIENATION BY MALE PROPRIETOR—*contd.*
3.—Sales and Mortgages in favour of Strangers—*contd.*

34. *Mahton Rajputs of* mauza *Binjon,* tahsil *Garshankar, Hoshiarpur district—Mortgage by sonless proprietor—Necessity—Burden of proof.*

Found, in a suit the parties to which were Mahton Rajputs of *tahsil* Garshankar in the Hoshiarpur district, that a sonless proprietor cannot mortgage his land in the presence of brothers except for necessity;

(2) That, the *onus* was rightly placed on the defendants, who alleged an unrestricted power of alienation, and had not been discharged; and

(3) As to the purpose for which a proprietor might alienate, that the payment of a just debt legally enforceable is an obligation in the nature of a personal necessity without regard to the purpose for which the debt was contracted.

No. 119 *P. R.* 1880, No. 18 *P. R.* 1890, No. 75 *P. R.* 1891, and No. 107 *P. R.* 1887 (*F. B.*), referred to. RAMANAND *v.* DEWIYA.
117 P R 1893

35. *Bedis of Mohla Wahidpur,* tahsil *Garhshankar, Hoshiarpur district—Sale without necessity of ancestral land—Objections of near kinsmen—Burden of proof.*

Held, in a suit the parties to which were Bedis of *mauza* Mohla Wahidpur in the Garhshankar *tahsil* of the Hoshiarpur district, a non-agricultural class, though in the present case holding land in the village the tenure of which was incomplete *bhaiachara*, but having no share in the *shamilat*, that the plaintiffs had failed to discharge the burden, which under the circumstances lay upon them, of proving that certain alienations of divided ancestral land by a deceased collateral male without necessity, were liable to be set aside as contrary to custom.

No. 22 *P. R.* 1891, No. 82 *P. R.* 1890, and No. 107 *P. R.* 1887 (*F. B.*), referred to. KHAZAN SINGH *v.* MADDI. **122 P R 1893**

36. *Naru Rajputs of Bhagwanpur, Jullundur* tahsil—Onus probandi.

Held, that defendants, upon whom the *onus probandi* rested, had failed to prove that by custom among Naru Rajputs of Bhagwanpur in the Jullundur *tahsil*, a sonless proprietor has unrestricted powers of alienation of ancestral property.

Nos. 84 *P. R.* 1879, 102 *P. R.* 1880, 113 *P. R.* 1883, 107 *P, R.* 1887 (*F. B.*), 74 *P. R.* 1890, 95 *P. R.* 1890, 73 *P. R.* 1891, 90 *P. R.* 1891, 118 *P. R.* 1891, 71 *P. R.* 1893, and 64 *P. R.* 1894, referred to. UMAR KHAN *v.* SAMAND KHAN. **145 P R 1894**

37. *Proprietor's right of alienation in presence of son—Gagh Jats of Darapur in Hoshiarpur district—*Onus probandi.

Found, that the defendant, upon whom the *onus probandi* rested, had failed to prove that by custom among Gagh Jats of *mauza* Darapur in the Hoshiarpur district, a proprietor has an unrestricted power of alienation of ancestral land.

With reference to a proprietor's right of alienation of ancestral land, the rule in fav-

CUSTOM I.—ALIENATION—*contd.*
A.—ALIENATION BY MALE PROPRIETOR—*contd.*
3.—Sales and Mortgages in favour of Strangers—*contd.*

our of agnates laid down in No. 107 *P. R.* 1887 (*F. B.*), is applicable with all the greater force in the case of a son, and the *onus* of proving a proprietor's unrestricted right of alienation of ancestral property, to the prejudice of his son, rests upon the party alleging such right. BADHAWA *v.* SHER MUHAMMAD.
2 P R 1895

38. *Basrai Jats of Tarn Taran, Amritsar district*—Riwaj-i-am—Onus probandi.

Found, that by custom among Basrai Jats of Tarn Taran in the Amritsar district, a sonless proprietor is not allowed an unrestricted power of alienation of ancestral land. GURDIT SINGH *v.* TARA SINGH. **34 P R 1895**

39. *Power of sonless proprietor to alienate—Dogar Jats of* mauza *Shamaspur, Delhi* tahsil—Onus probandi.

Held, by the *Full Bench*, that when the land which the owner for the time being seeks to alienate is found to have come to him from his ancestors as his share of the land held by them as members of a village community, the principles laid down in the Full Bench decision No. 107 *P. R.* 1887, apply equally as regards the initial presumption, whether the land is situated in a central or in any other district of the Punjab. *Found*, upon the evidence, that the defendants upon whom the *onus* rested, had failed to prove that by custom among Dogar Jats of *mauza* Shamaspur, Delhi *tahsil*, a sonless proprietor has an unrestricted power of alienation of ancestral land. RAMJI LAL *v.* TEJ RAM. **73 P R 1895 F B**

40 *Sale by sonless proprietor in favour of stranger—Varaich Jats, Gujrat* tahsil—*Necessity.*

In a case, the parties to which were Varaich Jats of the Gujrat *tahsil*, *found* that defendants had failed to prove any custom prevailing in their tribe which recognizes an unrestricted power of alienation of ancestral land by a sonless proprietor in the presence of near collaterals. KHUDA YAR *v.* AHMAD DIN. **15 P R 1896**

41. *Sale by childless proprietor—Awans of Mianwali* tahsil, *Bannu district.*

Found, that by custom among Awans of the Mianwali *tahsil* of the Bannu district, a childless proprietor has an unrestricted power of disposing by sale of his ancestral land. DEVI DAS *v.* BHAKRA. **53 P R 1899**

42. *Sale by sonless proprietor to stranger—*Locus standi *of reversioner—Bhandari Khatris of Vairowal,* tahsil *Tarn Taran, District Amritsar—Burden of proof—Agricultural tribe—Record of rights.*

Khatris, although following agricultural pursuits, cannot be presumed to have adopted the general customs of agriculturists in matters of succession and alienation, and the record of rights cannot operate to make a Khatri proprietor an agriculturist subject to customs which govern the latter. The presumption is that a Khatri is only bound by so much of the record of rights as deals with pre-emption and similar customs.

CUSTOM I.—ALIENATION—*contd.*
A.—ALIENATION BY MALE PROPRIETOR—*contd.*
3.—Sales and Mortgages in favour of Strangers—*contd.*

The burden of proof therefore that a Khatri in matters such as alienation or succession is governed by custom rests always on the party alleging that he is so bound.

Found, upon the evidence that plaintiff had failed to establish that a sonless Bhandari Khatri of Vairowal in the Tarn Taran *tahsil* of the Amritsar district was governed by a custom prohibiting alienation by him of ancestral land without the consent of his collaterals.

Mussammat Pal Devi v. *Fakir Chand* (60 *P. R.* 1895), *Jiwan* v. *Hakam Khan* (140 *P. R.* 1894), *Uttam Singh* v. *Jhanda Singh* (21 *P. R.* 1896), *Hashim* v. *Nathu* 13 *P. R.* 1900), *Kartar Singh* v. *Mather Singh* (94 *P. R.* 1898), *Khazan Singh* v. *Maddi* (122 *P. R.* 1893), and *Kanshi Ram* v. *Jiwan* (82 *P. R.* 1890), referred to. HARNAM SINGH *v.* DEVI CHAND.
107 P R 1901

43. *Alienation by sonless proprietor*—Locus standi *of reversioner—Brahmans of Manhala*, tahsil *Lahore—Burden of proof—Agricultural tribe—Hindu Law.*

Held, that as the same presumptions as to following the general custom of the Punjab do not arise in the case of persons who do not depend entirely on the land for their support, the burden of proof that such persons, in matters of alienations or successions, are governed by custom rests on the party making such an allegation.

Found, upon the evidence that plaintiff, upon whom the *onus* lay, had failed to establish that a sonless Brahman of Manhala, in the Lahore *tahsil*, was governed by custom and not by Hindu Law, and that the alienation of land by such a proprietor was consequently subject to restriction.

Kartar Singh v. *Mathar Singh* (94 *P. R.* 1898), *Khazan Singh* v. *Maddi* (122 *P. R.* 1893), *Gurmukh* v. *Gangu Ram* (81 *P. R.* 1895), *Sham Ram* v. *Hemi Bai* (73 *P. R.* 1896), *Sohnun* v. *Ram Dial* (79 *P. R.* 1901) and *Harnam Singh* v. *Devi Chand* (107 *P. R.* 1901), cited. *Mohan Lal* v. *Devi Das* (43 *P. R.* 1899) and *Prabh Dial* v. *Devi Dial* (116 *P. R.* 1893), referred to. MOTI RAM *v.* SANT RAM. **103 P R 1902**

44. Sidhu Jats of Atari, Amritsar district.

See UNDER SUB-HEAD 5, NECESSITY.
58 P R 1905

45. *Alienation by sonless proprietor—Suit by reversioner to have such alienation declared null and void—Dismissal of suit on merits—Subsequent suit by the son of such reversioner for possession after the death of the alienor—Estoppel.*

See RES JUDICATA. **68 P R 1905**

46. *Alienation by sonless proprietor*—Locus standi *of the reversioners of the eighth degree to contest such alienation—Burden of proof—Ghuman Jats of the Sialkot* tahsil.

Held, that the plaintiffs on whom the *onus* lay had failed to establish a custom by which, among Ghuman Jats of the Sialkot

CUSTOM I.—ALIENATION—*contd.*
A.—ALIENATION BY MALE PROPRIETOR—*contd.*
3.—Sales and Mortgages in favour of Strangers—*contd.*

tahsil, collaterals of the eighth degree were entitled to contest an alienation of his ancestral estate made by a childless proprietor as being made without necessity or consideration. NATHA SINGH *v.* MOHAN SINGH.
93 P R 1906

47. *Alienation by sonless proprietor*—Locus standi *of the reversioners of the eighth degree to contest such alienation—Hindu Bhat Jats of* tahsil *Raya, Sialkot district.*

Found, that among Hindu Bhat Jats of *tahsil* Raya in the Sialkot district collaterals of the eighth degree are not entitled by custom to contest an alienation of his ancestral estate by a childless proprietor as being made without necessity or consideration. HIRA *v.* KARAM KOUR. **23 P R 1907**

48. *Suit by reversioner to enforce his right in respect to land on the ground that the alienation had been without necessity which alienation had already been challenged by his father on the ground of pre-emption only*—Locus standi—*Estoppel by acquiescence.*

Held, that the fact that at the mutation of a sale of ancestral immovable property by a childless male proprietor the nearest reversioner expressed his readiness to take it over on payment of the sale price, but abstained from taking any action whatsoever in respect to it during his life-time, is evidence to prove that it had been acquiesced in as valid sale, and consequently the son of such reversioner is debarred from suing to impeach the sale as invalid for want of necessity. LAKHA SINGH *v.* JOTA SINGH.
35 P R 1907

49. *Unrestricted power of a male proprietor to alienate ancestral lands without necessity, exception to general rule of the customary law—Sahu Jats of* mauza *Dudah Sahu, District Montgomery.*

Held, that among Jats generally ancestral land is inalienable in presence of agnates except for necessity, but this general rule is not applicable to sahu Jats of *mauza* Dudah Sahu, District Montgomery, where the common village bond has been broken by the introduction into the proprietary body of persons of different independent tribes, whose lands all intermix and where many uncontested alienations have taken place in the presence of agnatic relations of the alienors. FAZIL *v.* SADAN. **51 P R 1910**

50. *Custom—Alienation—Necessity—Madaris (jugglers), Ludhiana district, agriculturists bound by custom.*

Held, that the parties to the suit, *Madaris* (jugglers) of the Ludhiana district though not among the agricultural tribes in the census report or in the list of agricultural tribes of the district compiled for the purposes of the Land Alienation Act, had by cultivating agricultural land for several generations as their only means of livelihood, adopted and rendered themselves subject to the ordinary agricultural law of the Central Punjab.
7 P R 1911

CUSTOM I.—ALIENATION—*contd.*
A.—ALIENATION BY MALE PROPRIETOR—*contd.*
3.—Sales and Mortgages in favour of Strangers—*concld.*

51. *Custom—Alienation—Kureshis of Mianapura, Sialkot city—Muhammadan Law*—onus probandi.

Held that, although Kureshis of Mianapura, Sialkot city, do not in all matters follow Muhammadan Law, the burden of proving that the tribe follow a custom under which alienations by a male proprietor are controllable by his reversionary heirs is on the latter and that in default of such proof personal law must be applied **63 P R 1911**

52. *Custom—Alienation—Brahmans of* mauza *Dharmsala,* tahsil *Una, District Hoshiarpur—Hindu Law.*

Held, that the parties to the suit Brahmans of *mauza* Dharmsala in *tahsil* Una, District Hoshiarpur, were governed in matters of alienation by agricultural custom and not by Hindu Law. **34 P R 1911**

4.—Alienation for Religious Purposes.

1. *Dhewal Jats of* tahsil *Jagraon—Religious gift* (dharmarth) *of the whole of donor's ancestral property—Suit by collaterals.*

In a suit brought by the plaintiffs as the next reversionary heirs of one D. to obtain a declaration that a gift made by D. of his land to three faqirs was inoperative as against them, the parties being Jats of the Dhewal *got*, resident in the Jagraon *tahsil* of the Ludhiana district, *held*, that the defendants had failed to establish a custom under which a Hindu Jat is empowered to dispose of the whole of his ancestral holding by way of religious gift (*dharmarth*) to the prejudice of collateral heirs. BALRAM *v.* GOLAB SINGH.
51 P R 1884

2. *Randhawa Jats of Batala* tahsil—*Religious gift* (dharmarth)—*Validity of such gift—Hindu Law.*

In a suit by the cousins and reversionary heirs of a childless proprietor to obtain a declaration that a gift made by him for religious purposes (*dharmarth*) of his ancestral land would be inoperative beyond the lifetime of the donor, the parties to which were Randhawa Jats of the Batala *tahsil*, *held*, that the plaintiffs had failed to prove a custom whereby such a gift would be invalid, and that as such a gift was valid by Hindu Law, the plaintiffs' suit must be dismissed. *Kishen Singh* v. *Jowahir Singh* (No. 71 of 1879 Civil), referred to. BHAI JHANDA *v.* NIHAL SINGH. **159 P R 1884**

3. *Bahal Rajputs of the Hoshiarpur district—Gift for religious purposes (dharmarth)—Validity of such gift.*

Found, that among Bahal Rajputs of the Hoshiarpur district, gifts to priests and parohits of small portions of the donor's ancestral land are valid by custom, but that gifts of an entire holding, or of the greater part of a holding, are contrary to the recognized custom. *Balram* v. *Golab Singh* (No. 51 of 1884, Civil), cited. TEKA *v.* BAISAKHI.
3 P R 1885

CUSTOM I.—ALIENATION—*contd.*
A.—ALIENATION BY MALE PROPRIETOR—*contd.*

4.—Alienation for Religious Purposes—*concld.*

4. *Sindhu Jats of Firozpur district—Sankalp.*

Found, that by the custom prevailing among Sindhu Jats of the Firozpur district a man may give in "*sankalp*" a small piece of land, but not the whole of his estate.

Quære—whether a gift as above of 74 kanals out of a holding of 297 kanals, *i. e.*, of ¼th of the entire estate, could be held to be warranted by the above custom. KHAZAN SINGH *v.* MUSSAMMAT KARMO. **23 P R 1885**

5. *Hindu Law—Sankalp gift by a Khatri widow of joint ancestral immovable property.*

Held, in the absence of a proved special custom to the contrary, that a gift in *sankalp* by a Hindu widow, made for her own spiritual benefit is not a valid alienation under Hindu law. SHAMBU *v.* SHANKAR DAS.
76 P R 1885

6. *Hindu Jats of Amritsar district—Gift of a small portion of ancestral land for pious purposes.*

Found that by custom prevailing among Hindu Jats of the Amritsar district, a gift for religious purposes made by a childless proprietor of a small portion of his ancestral land in favour of his *parohit* is valid. DUNI CHAND *v.* JAGAT SINGH. **11 P R 1890**

7. *Alienation of a small portion of ancestral land for pious purposes—Datt Brahmins of Gurdaspur district.*

Held, that a childless Datt Brahmin of the Gurdaspur district is competent to alienate a small portion of his ancestral land for religious purposes, such as sinking of a drinking well. TARA SINGH *v.* GOPAL SINGH.
26 P R 1905

5.—Necessity.

1. *Randhawa Jats of Ajnala* tahsil, *Amritsar—Childless proprietor—Necessity—Duty of lender to proprietor with limited power of alienation.*

Found that among Randhawa Jats of the Ajnala *tahsil* of the Amritsar district, a childless proprietor can only alienate his ancestral land for necessity, against the will of near agnates.

A creditor advancing money to a childless proprietor with a limited power of alienation would be justified in advancing a reasonable sum if, after due enquiry, he had a *bonâ fide* belief that it was required for, and intended to be spent on, a necessary purpose; but he cannot be held responsible for the expenditure of the money after it has passed out of his own hands. NARAIN SINGH *v.* SURMUKH SINGH.
104 P R 1887

2. *Childless proprietor—Necessity—"Zati zarurat" explained.*

In a suit to contest an alienation by a childless proprietor, in which it was agreed by the parties that by custom a sonless, or any proprietor had only power to alienate, by

CUSTOM I.—ALIENATION—*contd.*
A.—ALIENATION BY MALE PROPRIETOR—*contd.*

5.—Necessity—*contd.*

sale or mortgage, for "*zati zarurat*," or payment of Government revenue, *held*, that the above expressions, correctly interpreted, authorized only alienations for necessity which might arise either from State demands, or the pressure of private wants, the latter necessity being restricted to demands which the proprietor would be compelled to satisfy either by law, or by a public opinion of equal force with the law. CHANDA SINGH *v.* DULA SINGH. **185 P R 1888**

3. *Ancestral land—Necessity: antecedent debt—Sonless Brahmin, Hoshiarpur district—Burden of proof.*

In a suit by the collaterals (brother's sons) of a deceased sonless Brahmin of the Hoshiarpur district to contest a mortgage of land made by him upon the ground of absence of valid necessity for the alienation, *held:*

Per STOGDON, J.—It is incumbent on a sonless proprietor to pay his debts, and if he raises money in order to discharge them he raises it for a necessary purpose.

What is valid necessity may be another question of custom, some tribes construing the term much more widely than others.

Per BULLOCK, J.—The payment of a debt proved to be in existence and recoverable by law is a sufficient justification for the raising of money to pay it through an alienation of ancestral land by a childless proprietor, but it follows as a sound deduction from the Full Bench Ruling, No. 107 *P. R.* 1887 that the last creditor lending upon the security of ancestral land must satisfy himself of the necessity for the previous debts for the payment of which the proprietor borrows.

No. 107 *P. R.* 1887, referred to.

[OPINION OF PLOWDEN, J. In admitting the appeal, as to the necessity which will justify a valid disposition of his property by a childless proprietor.] JOWAHIR *v.* MUSSAMMAT CHANDI. **90 P R 1892**

4. *Sikh Jats, Randhawa got, tahsil Ajnala, District Amritsar—Necessity—Consideration.*

The plaintiff, a near collateral, sued to set aside a mortgage of land by K. S. on the grounds that it was fictitious and not made for necessity, and that, except for necessity it was not competent to K. S. to make the alienation. The defendants, against whom the first Court had decided, urged in their third ground of appeal to the Divisional Judge that "the mortgage was for consideration and legal necessity": this ground was disposed of by the remarks that "the evidence of necessity was not at all convincing."

Held, that the case should be remanded to the Divisional Court for disposal of the real issue between the parties, which was: Whether there were antecedent debts due by K S. for the payment of which he mortgaged his land, and, if so, what was their amount or whether the transaction was as a mortgage, purely fictitious and without any consideration, as the plaintiff contended. NIHAL SINGH *v.* WASAWA SINGH. **98 P R 1893**

CUSTOM I.—ALIENATION—*contd.*
A.—ALIENATION BY MALE PROPRIETOR—*contd.*

5.—Necessity—*contd.*

5. In a suit the parties to which were Mahton Rajputs of *tahsil* Garhshankar in the Hoshiarpur district, *found*, that a sonless proprietor cannot mortgage his land in the presence of brother except for necessity.—RAMA NAND *v.* DEWIYA. **117 P R 1893**

6. *Alienation of ancestral lands by proprietor to pay off debts—Necessity.*

Held, that an alienation of ancestral land by a proprietor in order to pay off his just debts was an alienation for "necessity" and formed a valid charge upon such land not only while it was in his own hands but also in the hands of his heirs.

Held, further, that though heirs, who contest an alienation of ancestral property by their predecessor in title, are entitled to demand as against themselves in a proceeding to which they are parties that an alienation to which they were not parties was made in respect of an antecedent just debt of the alienor, there is ordinarily no need to go further and ascertain whether originally the debt was or was not necessarily incurred. ATMA RAM *v.* NAURANGA.
24 P R 1894

7. *Ancestral land—Necessity—Childless agricultural Jat of Amritsar district—Burden of proof.*

One A. S. sued to have it declared that an alienation, by deed of sale of certain ancestral land made by S. S., a childless agricultural Jat of Amritsar district, and uncle of the plaintiff, in favour of the defendant-appellant should not affect his reversionary rights on the ground that S. S. was entitled to alienate only in the case of extreme necessity (*ashad zaruriyat*) and that S. S. had no such necessity in this case and had alienated the land merely from enmity towards plaintiff. The defendant S. S. admitted that he had made the alienation from enmity towards plaintiff and that out of the consideration he had received a portion only. The other defendants pleaded that full consideration had been paid and that the alienation was justified by good cause. The lower Courts having held that, apart from the amount admitted, the payment of consideration was not established, and that there was under the circumstances of the case no necessity for the alienation, decreed the plaintiff's claim. The defendant alienees having appealed to the Chief Court,

Found, upon the evidence that payment of the whole consideration was satisfactorily established and was obtained for necessary purposes.

The question of due exercise of the power of a proprietor of agricultural land to sell for necessity discussed by *Benton*, J.

No. 90 *P. R.* 1892, cited. ASA RAM *v.* AMRIK SINGH. **70 P R 1894**

8. *"Necessity"—"Antecedent just debts"—Sale to pay off previous debts due to vendee—Burden of proof—Distinction between a male owner and widow in possession as regards necessity.*

CUSTOM I.—ALIENATION—*contd.*
A.—ALIENATION BY MALE PROPRIETOR—*contd.*
5.—Necessity—*contd.*

Though there is some similarity between the tenures of a male proprietor and a widow in possession in that both are liable to be controlled, under customary law, in their powers of alienation by the next agnatic heirs, the analogy cannot be carried further, and the *criteria* of necessity in the case of the widow do not apply to the male proprietor whose antecedent just debts are a sufficient necessity to justify the alienation of land by him.

A "just debt" of a male proprietor is one which is (1) really due and (2) has been contracted for a purpose other than one that is immoral or forbidden by law, or opposed to public policy, and (3) can be recovered from his person or property generally. It need not be one incurred for necessity such as would be binding on the heirs in any case, but if it amounts, on the face of it, to an act of sheer recklessness and waste it cannot be treated as a just debt even though it is not immoral or illegal, or opposed to public policy. A "just debt" is none the less so merely because it is one due to the same person to whom the alienation for the purpose of paying off the debt is made, the word "just" having reference to the nature of the debt and not to the person by whom the money has been advanced. The only difference in the relative position of creditors of the two classes is that the person with whom the original dealings took place is ordinarily fixed with knowledge of the character of the debts, and if he has knowingly advanced money for an immoral or an illegal purpose, or one opposed to public policy, or for acts of wilful and wanton waste and reckless extravagance or for ruining the estate for the reversioners, the debt due to him cannot be called a just debt of the owner so as to bind the reversioners if the land is alienated to him in order to satisfy the said debt. An outsider, on the other hand, is protected if he acts in good faith when accepting a transfer of the land for payment of the owner's antecedent liabilities.

A debt incurred without valid necessity and which would not have justified a transfer of ancestral land does not become "a just antecedent debt" merely by its colorable inclusion in a subsequent transaction. SARDARI MAL *v.* KHAN BAHADUR KHAN.

11 P R 1899

9. *"Necessity"—"Antecedent just debt"—Hindu and Customary Law.*

The principle applied to antecedent debts as constituting necessity for a sale under Hindu Law, *viz.*, that the purchaser when he is himself the antecedent creditor must prove more than would be required from one whose purchase money was to be devoted to debts due to others, is applicable to suits by collaterals under Punjab Customary Law to contest alienations by childless proprietors. A debt, therefore, which is not for necessity and cannot bind the estate in the hands of the reversioners does not become one for necessity and binding because

CUSTOM I.—ALIENATION—*contd.*
A.—ALIENATION BY MALE PROPRIETOR—*contd.*
5.—Necessity—*contd.*

a fresh document is substituted for the original document in respect of it. SOBHA SINGH *v.* THOBA SINGH. **14 P R 1899**

10. *Antecedent just debts.*

Held, that as regards antecedent just debts constituting necessity for an alienation of ancestral land by a male proprietor, a clear distinction, in respect at all events of the strictness of proof required is to be drawn between cases where the antecedent debts were due to the alienee himself and cases where they were due to third persons, the alienee having stepped in and paid them off. In the former class of cases it is necessity to prove the actual receipt of consideration in respect of each item of the former debts, and that they were incurred for necessary purposes. JAGAT SINGH *v.* PHULA SINGH. **46 P R 1899**

11. *"Necessity"—antecedent just debts—Burden of proof.*

Held, that a sonless male proprietor, unlike a widow, is a full proprietor, and the necessities in his case are not to be judged by analogies drawn from the case of a widow, although he cannot alienate without necessity, but the payment of his just antecedent debt is a necessity. That the words just debts as used in connection to the debts of a male proprietor are:—(*a*) debts which are actually due and are not immoral, illegal or opposed to public policy; (*b*) debts not contracted as an act of reckless extravagance or of wanton waste or with the intention of destroying the interest of reversioners. The debts incurred for a necessary purpose are always binding irrespective of the income and means of the male proprietor. That the *onus* of proof of the validity of alienation of ancestral land by a male proprietor always lies, in the first instance, on the alienee whether he be a third party or a person whose debts have been paid off by the alienation. That an alienee who is himself the antecedent creditor by his position is *primâ facie* fixed with the knowledge of the nature of the debts and of the purposes on which the money borrowed was spent, and if they were not incurred for actual necessity or were contracted for reckless extravagance or to waste the estate the alienation in lieu of such debts is invalid. That an outsider who pays antecedent debts in consideration of the transfer of the property if he acts honestly and makes proper enquiry whether the debts are actually due, is not responsible if he has been deceived and is entitled to have the alienation declared binding.

Sardari Mall and others v. *Khan Bahadar Khan* (11 *P. R.* 1899), *Sobha Singh* v. *Thoba Singh* (14 *P. R.* 1899), and *Jagat Singh* v. *Phula Singh* (46 *P. R.* 1899), referred to and explained. DEVI DITTA AND OTHERS *v.* SAUDAGAR SINGH AND OTHERS.

65 P R 1900

CUSTOM I.—ALIENATION—*contd.*
A.—ALIENATION BY MALE PROPRIETOR—*contd.*
5.—Necessity.—*contd.*

12. *Necessity—Antecedent just debts—Suit by son of the alienor.*

In a case where a minor son sued to set aside his father's alienations on the ground of non-receipt of consideration and want of necessity, *held*, that the father having himself admitted receipt of consideration and having given possession and mutations of names raised strong presumption that consideration had been received; and as regards necessity, it being shown that the father had only a small estate and large expenses, and it not being shown that he lived in an extravagant way, the previous debt to the vendee should be held to have been incurred for the usual necessary requirements of an agriculturist. PIRAN DITTA *v.* MOTI AND OTHERS.

97 P R 1901

13. *Necessity—Childless agricultural Jats of Hoshiarpur District—Burden of proof—Acquiescence.*

In a suit brought by the collaterals of a childless agricultural Jat in 1891, to contest alienations effected by him in 1863 and 1864 on the ground that they were without consideration or "necessity," the defence pleaded acquiescence, and established the following facts in proof of the plea, *viz.*, (*i*) that the plaintiffs never intimated to them during the whole of the time that they intended to object to the sales, (*ii*) the plaintiffs total silence in 1867 when a partition was proceeding, (*iii*) the fact of plaintiff taking some land in dispute as tenant from the vendee without warning him of their own prospective claim. *Held*, that the above facts sufficiently establish acquiescence on the plaintiffs' part, and that in such cases nothing more should be required of an alienee in the way of proof of "necessity" than the deeds and his own solemn affirmation on the point. RODA *v.* HARNAM SINGH.

102 P R 1902

14. *Suit by reversioner to enforce his right in respect to land on the ground that the alienation had been made without necessity, which alienation had already been challenged by his ancestor on the ground of pre-emption only—Locus standi—Waiver—Necessity.*

One M. S. sold half of his land to the defendants in 1862, whereon the grandfather of the present plaintiff brought a suit to enforce his right of pre-emption, but his suit was eventually dismissed as he was unable to deposit the purchase-money. Shortly after M. S. mortgaged the remaining half of his land and the grandfather of the plaintiff again brought a suit which was compromised between the parties, the plaintiff's grandfather paying the mortgage-money and interest to the mortgagee. In neither of these suits did the plaintiff's grandfather challenge the power of M. S. to sell, or alleged that the sale or mortgage was without consideration or necessity, and as a fact he finally agreed to pay the amount mentioned in the purchase-deed, and in the

CUSTOM I.- ALIENATION—*contd.*
A.—ALIENATION BY MALE PROPRIETOR—*contd.*
5.—Necessity—*contd.*

second he actually took over the mortgage. In 1897 the plaintiff filed the present suit in respect of the sale in 1862 on the ground that it was without necessity and did not bind him.

Held, that the plaintiff's grandfather by bringing his suit for pre-emption on the sale in dispute abandoned any right he had to challenge it on the ground of want of necessity or other reason sufficient to make it voidable by him. Such a suit raised a presumption which of course was not conclusive, that the sale was not bad on the ground of necessity, but it necessarily waived all right to set it aside for want of necessity, and that the plaintiff was bound by the waiver on the part of his grandfather, and on that account precluded from succeeding in the present claim. *Held, also*, that the above facts certainly establish that there is some proof that the sale was not an improper one and was for necessity, and that in such cases if conclusive evidence as to necessity was not forthcoming it was due to the plaintiff's laches and delay in bringing the suit. That it would be unjust to expect the purchaser's sons and grandsons to be able to supply strict proof in 1897 of the reasons which led the seller to transfer his land in 1862. LABH SINGH *v.* GOPI.

15 P R 1903

15. *Alienation by a Jat proprietor of ancestral property—Suit by the son of the alienor to declare the alienation invalid and not binding after the alienor's death—Sidhu Jats of Attari,* tahsil *Tarn Taran, Amritsar District—Necessity—Burden of proof.*

Held, that the vendees, upon whom the *onus probandi* rested, had failed to prove that the property was not ancestral, or that the alienor was not subject to the ordinary rule restricting alienation to cases of necessity, or that there was any valid necessity for the alienation in dispute for a sum exceeding Rs. 4,150.

The nature of a reversioner's right to contest an alienation by a widow under Hindu Law considered and compared with a reversioner's right to contest an alienation by a male proprietor under Customary Law. RAM RAKHA MAL *v.* BALWANT SINGH.

58 P R 1905

16. *Sale by limited owner—Necessity—Failure to prove necessity with respect to a trifling portion of the consideration—Competency to convert sale into mortgage.*

Held, that a sale of immovable property by a limited owner ought not to be converted into a mortgage merely because a trifling portion of the consideration was paid in cash for current expenses and was not proved to have been for necessity. BADRI MAL *v.* GOPAL. **130 P R 1906**

17. *Alienation of ancestral estate in order to carry on speculative suits for pre-emption—Legal necessity.*

CUSTOM I.—ALIENATION—*contd.*
A.—ALIENATION BY MALE PROPRIETOR—*contd.*
5.—Necessity—*concld.*

Held, that advances made to agricultural proprietors on the security of ancestral land to provide them with funds to fight out speculative suits for pre-emption, can under no circumstances be regarded as incurred for legal necessity and alienees who make such advances cannot reasonably ask the Courts to regard such alienations as made for a necessary purpose. SOBHA SINGH *v.* KISHORE CHAND. **65 P R 1907**

18. *Sale by limited owner—Necessity—Failure to prove necessity with respect to a fraction of the consideration—Competency to convert sale into mortgage.*

Held that on a suit by the son of a limited owner to contest a sale of immovable property made by his own father on the ground that it was without necessity or consideration ought not to be converted into a mortgage merely because a fraction of the purchase-money was not proved to have been for necessity or might possibly be fictitious in whole or in part especially where the suit is collusive and the amount of the purchase-money proved to be for necessity is not very much below the real value of the property sold. WADHAWA MAL *v.* WADHAWA.

8 P R 1908

19. *Necessity—Childless proprietor borrowing money with a view to entering the army and for marriage—Lender's duty to see to application of the money.*

Held, that a mortgage of ancestral land by childless proprietor for his intended marriage and to enable him to enlist in a cavalry regiment, though neither purpose is effected, but steps are taken towards both, is binding on the reversioners and constitutes necessity and that in such cases the lender, having made enquiry and found that the money was really required for the purposes stated, is not bound to see what the mortgagor actually does with the money. PAL SINGH *v.* BUR SINGH. **65 P R 1910**

6.—Limitation.

1. *Alienation of ancestral property by Jat proprietor—Suit by after born son of the alienor to contest such alienation—Limitation—Limitation Act,* 1877, *Schedule II, Article* 120.

In 1904, plaintiff, who was born in 1900, brought a suit for declaration that an alienation of ancestral land made by his father in 1893 would not affect his reversionary interests.

Held, that the claim was barred by limitation under Article 120 of the second Schedule to the Limitation Act. The cause of action giving the right to sue commenced from the date of the alienation, and limitation had finally expired before the plaintiff's birth and was not revived in favour of plaintiff on his birth in 1900.

Harvans Singh v. *Harnam Singh* (84 *P. R.* 1898, *F. B.) and Jowala* v. *Hira Singh*

CUSTOM I.—ALIENATION—*contd.*
A.—ALIENATION BY MALE PROPRIETOR—*contd.*
6.—Limitation—*concld.*

(55 *P. R.* 1903), *F. B.*), referred to. GANPAT *v.* DHANI RAM. **76 P R 1906**

2. *Alienation of ancestral property by sonless proprietor—Right of after-born reversioner to contest alienation beyond time—Legal disability—Limitation Act,* 1877, *section* 7.

Held, that a reversioner born subsequent to the date of an alienation which had been made in his father's life-time cannot avail himself of an extension of time under section 7 of the Indian Limitation Act to enable him to contest the validity of such an alienation. UMRA *v.* GHULAM. **22 P R 1907**

3. *Suit by after-born son of such proprietor to recover possession of such land—Limitation—Starting point of—Punjab Limitation Act,* 1900.

Held, that under the provisions of the Punjab Limitation Act a suit by a son of a male proprietor governed by the Customary Law of the Punjab to recover possession of ancestral land alienated by such proprietor during his life-time, must be instituted within twelve years from the date on which the alienation was attested by the Revenue Officer in the Register of mutations maintained under the Punjab Land Revenue Act, 1887, and a son of such proprietor born after the date of such alienation is not exempted from its operations by section 7 of the Indian Limitation Act, 1877, and can claim no deduction on the ground of his minority, as when once time begins to run no subsequent disability to sue stops it.

Jawala v. *Hira Singh (*55 *P. R.* 1903), *and Ganpat* v. *Dhani Ram* (76 *P. R.* 1906) referred to.

Govinda Pallai v. *Thayam Mal* (14 *M. L. J* 209), not approved. INAYAT KHAN *v.* SHABU.

108 P R 1907

4. Onus probandi *as to the inapplicability of Punjab Limitation Act,* 1900, *to a suit by a reversioner of a male proprietor to recover possession of ancestral land alienated by such proprietor.*

See PUNJAB LIMITATION ACT, 1900.

11 P R 1909

7.—Locus standi of reversioners and widows.

1. A gift in contravention of the law of Benares (that law being held to prevail in the Punjab), is invalid.—A Hindu gave his property to his first wife who was childless just before marrying his second wife by whom he had children. The donor retained possession. After his death, in a suit between the wives, *held*, that the gift was invalid. MUSSAMMAT KISHEN DEVEE *v.* MUSSAMMAT GUNGA DEVEE. **22 P R 1867**

2. By the custom of the Gill section of the Jats, Ferozepore district, a gift of undivided ancestral property may be contested by the

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CUSTOM I.—ALIENATION—contd.

A.—ALIENATION BY MALE PROPRIETOR—contd.

7.—Locus standi of reversioners and widows—contd.

collateral relatives of a childless proprietor (the donor), but a gift of divided property does not require the consent of the collaterals. TEJA SINGH *v.* SOCHET SINGH. **33 P R 1872**

3. Only a son or grandson is competent by Hindu Law to object to the alienation of ancestral property; a brother or nephew has no such right. *Moola* v. *Atma Ram* (*No.* 77 *of* 1869, Civil); but by proved custom a nephew may object and sue to contest the alienation. *Mohun Singh* v. *Nowdha* (*No.* 55 *of* 1870, Civil); *Mohun Singh* v. *Nundha* (*No.* 46 *of* 1871, Civil); and ASA NAND. *v.* HUKMEE. **40 P R 1872**

4. *Gift by village proprietor to relation—Objection by village proprietary body.*

Held, that the members of the proprietary body of a village are not entitled as such to object to a gift by one of their number to a relation. JOWALA SINGH *v.* SHAM SINGH. **43 P R 1877**

5. *Ancestral house property—Khatris of Jullundur.*

Found that no custom existed restraining the alienation of ancestral house property by Khatris of the town of Jullundur at the instance of possible reversioners, related in the fifth degree from the alienor. GANGA RAM *v.* RALLA MAL. **51 P R 1878**

6. *Hindus of Kapuria caste—Property ancestral and acquired—Onus of proving property ancestral.*

In a suit by collateral relations to set aside a will alienating property moveable and immoveable in favour of defendants, who were sister's sons of the testator's father, it was found that the custom applicable to the parties, who were Hindus of the Kapuria caste, was that relatives more remote than great grandsons, and collaterally, not lineally related, could contest alienations of *ancestral* property, though no custom was established restricting either the alienation of acquired property, or of property derived from the maternal line by inheritance.

Held, that the plaintiffs could no more restrain the deceased from alienating property acquired, after the division of the family, by his father or grand-father, than from alienating property acquired by himself.

Held, further, that the lower Court was wrong in presuming, in the absence of evidence to the contrary, that the immoveable property had descended from an ancestor common to the plaintiffs and the testator, the burden of proving that the property was ancestral being upon the plaintiffs, who having failed to establish their allegation upon this point, were not entitled to set aside the will in dispute. SONU *v.* LOKU. **2 P R 1881**

7. *Second cousin.*

See UNDER SUB-HEAD 3, *supra*—SALES AND MORTGAGES IN FAVOUR OF STRANGERS. **16 P R 1883**

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CUSTOM I.—ALIENATION—contd.

A.—ALIENATION BY MALE PROPRIETOR—contd.

7.—Locus standi of reversioners and widows—contd.

8. *First cousin*

See UNDER SUB-HEAD 3, *supra*—SALES AND MORTGAGES IN FAVOUR OF STRANGERS. **3 P R 1884**

9. *Collaterals of the 6th and 7th degree.*

See UNDER SUB-HEAD 3, *supra*—SALES AND MORTGAGES IN FAVOUR OF STRANGERS. **56 P R 1889**

10. *Son-in-law—Illegitimate branch of collaterals—Competency to sue.*

Held, in a suit among Awans of the Gujrat District that illegitimate descendants of a collateral of a deceased owner are not competent to sue as reversioners to set aside an alienation made by a widow in favour of her son-in-law. KARAM AND OTHERS *v.* AMIR. **116 P R 1889**

11. *Bajwah Jats of* mauza *Balian*, tahsil *Raya, District Sialkot—Alienation by childless proprietor—Suit by collaterals in tenth degree.*

Found that among Bajwah Jats of *mauza* Balian, *tahsil* Raya, District Sialkot, collaterals so distantly related as the tenth degree from the common ancestor are not entitled by custom to object to an alienation by a childless proprietor. MANGAL *v.* CHETU. **20 P R 1890**

12. *Khatri Hindu collaterals.*

See UNDER SUB-HEAD 3, *supra*—SALES AND MORTGAGES IN FAVOUR OF STRANGERS. **82 P R 1890**

13. *Sindhu Jats, Amritsar District—Collaterals in eighth degree.*

Found, that by the custom of the Sindhu Jats of the Amritsar District collaterals of the eighth degree were not entitled to contest an alienation of his ancestral estate made by a childless proprietor as being made without necessity or consideration.

No. 56 *P. R.* 1890, referred to. BUR SINGH *v.* RAM SINGH. **9 P R 1892**

14. *Right to sue—Suit to contest alienation on ground of relationship—Failure to prove allegations—Enquiry as to plaintiffs' rights as ultimate heirs.*

The plaintiffs sued on the allegation that they were collateral heirs of S. S. in the fifth degree. The lower Appellate Court, while agreeing with the Court of first instance that the plaintiffs had failed to establish any definite relationship to S. S., remanded the suit for an inquiry as to whether plaintiffs were not entitled to sue as the ultimate heirs, being members of the same *got* as S. S and therefore presumably descended from a common ancestor, and also being proprietors in the same division of the village. Ultimately it was decided that the plaintiffs could sue as being of the same *got* and *patti* as S. S.

Held, that the decree of the lower Appellate Court must be reversed. No distinct relationship to S. S. and no custom entitling them to sue upon the grounds set up on their behalf by the Appellate Court was established by the plaintiffs.

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CUSTOM I.—ALIENATION—contd.

A.—ALIENATION BY MALE PROPRIETOR—contd.

7.—Locus standi of reversioners and widows—contd.

No 78 *P. R.* 1888, referred to and distinguished. MUHAMMAD RAFI *v.* KHAZAN SINGH. **68 P R 1892**

15. When a sonless proprietor makes a disposition of ancestral land, either with or without necessity, the *warisan ek jaddi* as such have, *primâ facie* at least, a *locus standi* to contest the alienation based upon the fact that the land has devolved from a common ancestor of the parties. But this particular basis of a title to question the disposition does not exist when the land has not so devolved though it is of course open to the *warisan ek jaddi* to establish their title to question it upon some other basis. MUSSAMMAT FATTO *v.* NIZAM DIN. **10 P R 1893**

16. *Distant collaterals.*

See UNDER SUB-HEAD 3, *supra*—SALES AND MORTGAGES IN FAVOUR OF STRANGERS. **100 P R 1893**

17. *Muhammadan Jats of the Sanghar* got *of* mauza *Jalla Khera*, tahsil *Amritsar—Objections to the alienation by collaterals in the sixth generation—Burden of proof*—Locus standi *of reversioners.*

Found, in a suit, the principal parties to which were Muhammadan Jats of the Sanghar *got* of *mauza* Jalla Khera in the Amritsar *tahsil*, that an alienation of ancestral land by a sonless proprietor to a stranger without necessity, in the presence of collaterals descended from a common ancestor, in the sixth generation from the alienor was invalid as against the customary heirs.

There is no definite rule to be deduced from the reported cases that up to a determinate degree of propinquity it is to be presumed that kinsmen have a right to impeach alienations of ancestral property by a sonless heir, and beyond that degree it is to be presumed that they have not.

As a general rule, among the landowning tribes in the Punjab no holder of ancestral land, whether or not he has male issue, has a wholly unrestricted power to dispose of such land at pleasure, and, in the absence of necessity, and when any control over a landholder's power to alienate ancestral land exists, it resides in the person who would, in default of alienation, take the land as heir.

When the competency of a sonless landholder to make a transfer of ancestral land is questioned by his reversionary heirs, the fact that they are reversionary heirs suffices to give them a *locus standi.* The exact degree of their propinquity or remoteness is, with other circumstances, a material element in determining whether the presumption against the competency of such a transfer without the consent of the heirs, near or remote, has been rebutted, the force of the initial presumption varying according to all the known circumstances of the case.

No. 56 *P. R.* 1889, distinguished; No. 107 *P. R.* 1887 (F. B.), No. 15 *P.* R. 1888 and No. 100 *P .R.* 1893, referred to. KARM DIN *v.* GURDITT. **101 P R 1893**

CUSTOM I.—ALIENATION—*contd.*

A.—ALIENATION BY MALE PROPRIETOR—*contd.*

7.—Locus standi of reversioners and widows—*contd.*

18. *Hindu Jats of the Amritsar* tahsil—*Objections by collaterals in the seventh degree from the common ancestor.*

In a suit brought by the plaintiff to set aside a mortgage of ancestral land on the ground that it was made without necessity and without their consent, it was held by the Courts below that the plaintiffs had failed to establish a custom by which persons so distantly related as they were to the alienor had a right to question the alienation, and their suit was accordingly dismissed.

Held, with reference to more recent decisions of the Chief Court, that there is no foundation for holding that any degree of relationship has been so fixed as the limit of a right to sue; that a Court is justified, when the plaintiff is beyond that limit, in framing a preliminary issue, and calling on the plaintiff to prove by custom his right to maintain the suit.

Held, also, that the true issue in these cases is not whether the plaintiffs have any *locus standi* or right to object, but whether the alienation to a person in the position of the alienee is valid in the presence of persons in the position of plaintiffs without their consent and this issue must be decided not by arbitrary *dicta* about "burden of proof," or the nature of evidence, but by a full inquiry in which each side produces and the Court itself causes to be produced, all available evidence both as to general custom and particular circumstances. JIWAN *v.* RUPA.

130 P R 1893

19. *Alienation by sonless proprietor, right of widow to contest—Nature of widow's estate—Gift to mother's brother's children—Gujars of Karnal District.*

In a suit, the parties to which were Gujars of the Karnal District, plaintiff desired to recover certain land as part of deceased husband's estate from the defendants who were her husband's mother's brother's children, by evidence of a gift found to have been made in favour of the defendants by the husband 4½ year before his death. The said gift was found to be of ⅓rd of the estate only, and to have left with the widow an estate sufficient for her reasonable maintenance.

Held, that the plaintiff had no *locus standi* to maintain the suit, she not being in a position to control her husband in his dealings with his estate, at least when sufficient provision had been made for her maintenance after his death.

No. 107 *P. R.*, 1887, cited. MUSSAMMAT RAM KAUR *v.* BHAGWANA.

127 P R 1894

20. There is no arbitrary bar as regards the degree of relationship entitling collaterals to contest alienations. LEHNA SINGH *v.* BUTA. **135 P R 1894**

21. *Alienation of ancestral land by sonless proprietor in favour of paternal aunt's son—Gujars of Mahesi got in Kharian* tahsil *Gujrat District—Right to sue*—Locus standi *of reversioners related to donor in seventh degree.*

Held, that there being no definite rule of custom against claims by relations in the seventh degree, it is wrong, in the absence of evidence bearing directly on the point, to say that agnates of the seventh degree have no right to object to alienations such as that in dispute.

Held, also, with reference to an objection by the defendants, that plaintiffs could not sue in the presence of a nearer agnate of the donor, who however was no party to the suit, that where the next reversioner is a female, or being a male, has colluded or rendered himself incapable of suing, the reversioner coming next after her or him, as the case may be, is entitled to sue. ABDULLA *v.* MUHAMMADU. **14 P R 1895**

22. *Acquiesence of next reversioners who had sons living*—Locus standi *of more remote collaterals to contest alienation.*

Plaintiffs sued for a declaration that an alienation by a sonless proprietor, to whom they alleged themselves to be reversioners, would not affect their reversionery rights. It was admitted that a reversioner more nearly related to the said proprietor than plaintiffs was alive and had two minor sons living, but it was urged, on plaintiffs' behalf, that the said reversioner was in collusion with the alienor.

Held, that plaintiffs had failed to prove that they were entitled to sue in the presence of the said reversioner and his sons. SARFARAZ KHAN *v.* MOHKAM DIN.

81 P R 1896

23. *Suit by remote reversioners in presence of nearer reversioner—Speculative suit.*

The rule that where a nearer reversioner is precluded from suing to contest an alienation, or colludes with the alienor, a more remote reversioner can sue, has no application to a purely speculative claim with only the remotest chance of ever having any practical effect.

In the present case the plaintiffs, according to the genealogical table, had only a very remote chance of succeeding to a small portion of the estate in dispute.

Held, that plaintiffs were not entitled to sue for a declaration that an alienation should not affect their reversionary rights.

No. 7 *P. R.*, 1893 and No. 81 *P. R.*, 1896, followed. BUDH SINGH *v.* MUSSAMMAT DHAN KAUR. **57 P R 1898**

24. Locus standi *of remote collaterals to object to alienation—Dhillon Jats, Lahore District.*

The right of male agnates to contest alienations by sonless proprietors is founded on the fundamental principles on which land is held among agricultural tribes in the Punjab and so far from there being any *a priori* presumption against the *locus standi* of male agnates beyond a certain degree of relationship to object to such alienations, the presumption is exactly the reverse.

Held, therefore in a case in which the parties were Dhillon Jats of the Lahore District, that plaintiffs who were related to the alienor in the ninth degree were competent to object to the alienation in question.

The mere facts that the property in disptue was situate in a large place (*mauza* Basin), which was almost a town, that land was held there by various tribes, and that numerous alienations had taken place therein (but almost all subsequently to 1893) without objection by male agnates, *held* not to be *per se* sufficient to establish the right of a sonless proprietor to alienate without necessity. ARUR SINGH *v.* MUSSAMMAT LACHMI.

75 P R 1898

25. *Suit by son in presence of his father to contest an alienation by an agnate*—Locus standi *of plaintiff—Sodhi Khatris of* tahsil *Zira, Ferozepore District.*

In a suit by plaintiff to contest an alienation by his father's uncle, it appeared that plaintiff's father was alive, but refused to join in the suit. The question referred to the Full Bench was whether, under such circumstances, plaintiff had any *locus standi* to sue.

Held, that, under Customary Law by which the parties were governed, plaintiff was entitled to sue to set aside the alienation in question, and that the District Judge had erred in dismissing his suit on the ground that he had no *locus standi*. HARVANS SINGH *v.* HARNAM SINGH. **84 P R 1898 F B**

26. *Alienation by Jat proprietor without male issue at the date of the alienation—Right of after-born son to contest such alienation on the ground of necessity.*

Held, by a majority (Clark, C. J., dissenting) that under the Punjab Customary Law a transfer by an owner who has no heir existing at the time competent to challenge it cannot be contested by a son begotten by the owner after the date of the transaction unless there was in existence at the date of the transfer some one who would challenge it and such person did not ratify it before after-born son was begotten.

Sham Singh v. *Sucha* (79 *P. R.* 1900), considered and approved.

Mussammat Lorendi v. *Mussammat Kishen Kaur* (149 *P. R.* 1888), *Mussammat Fakharunnissa* v. *Malik Rahim Bakhsh* (23 *P. R.* 1897), *Gujar* v. *Sham Das* (107 *P. R.* 1887 F B.), *Roda* v. *Harnam* (18 *P. R.* 1895 F. B.) *Sita Ram* v. *Raja Ram* (12 *P. R.* 1892 F. B.) *Mussammat Bano* v. *Fatteh Khan* (48 *P. R.* 1893 F. B.), *Tagore* v. *Tagore* (9 *B. L. R.* 398 P. C.), *Devi Ditta* v. *Saudagar* (65 *P. R.* 1900), *The Collector of Masulipatam* v. *Cavaly Vencata Narrainapah* (8 *Moo. I. A.* 500),

CUSTOM I.—ALIENATION—*contd.*

A.—ALIENATION BY MALE PROPRIETOR—*contd.*

7.—Locus standi of reversioners and widows—*contd.*

Ilahia v. *Ganda Singh* (116 *P. R.* 1890 F. B.) and *Lehna* v. *Mussammat Thakri* (32 *P. R.* 1895 F. B.), referred to. JOWALA *v.* HIRA SINGH. **55 P R 1903 F B**

27. *Custom—Alienation—Alienation by sonless proprietor with the consent of the nearest reversioner—Suit by the son of such reversioner*—Locus standi.

Held, that alienation by a sonless proprietor made openly and in good faith, when acquiesced in, also reasonably and in good faith, by the heir, existing at the time competent to challenge it, is valid against all comers and cannot be contested by those who may later on come into a position which would, had they held it at that time, have given them the right to contest it. LABHU *v.* NIHALI. **7 P R 1905**

28. *Gift by widow of property acquired by her husband from her father in favour of her son-in-law—Pathans of Gohana* tahsil, *Rohtak District*—locus standi *of her husband's collaterals to contest such gift.*

One J gifted his land in favour of N, his son-in-law; after the death of the latter, his widow, M, who was the daughter of the original donor J, made a gift of the said land to X, the husband of her daughter, whereupon the brother and nephews of N brought the present suit to obtain a declaration that the gift in favour of X would not affect their rights on the death of Mussammat M. It appeared from the evidence in the case that the property in dispute was never held by an ancestor common to the plaintiffs and N, and that X was a collateral of the original donor.

Held, that as in accordance with the customary law the original gift by J must be presumed to have really been intended for the benefit of his daughter and her issue, the plaintiff had no *locus standi* to impeach the gift in dispute. *Sita Ram* v. *Raja Ram* (12 *P. R.* 1892 F. B.), referred to. NAWAB KHAN *v.* KALLU KHAN. **39 P R 1905**

29. *Gift by sonless proprietor to daughter's son with the consent of the near reversioners—Right of distant reversioners to contest such alienation in presence of a widow of donor's brother's grandson—Mehtans of Jullundur District.*

In a suit brought by certain distant reversioners to contest an alienation in the form of a gift by a sonless Mehtan Rajput of Jullundur District in favour of his daughter's son, the defence pleaded that as the donor's brother's grandson's widow was alive, the plaintiffs had no *locus standi*. It was found that among the parties a widow was entitled to succeed collaterally to any property to which her husband, if alive, would have succeeded.

Held, that as the widow had a prior right of succession to that of the plaintiffs who were the distant reversionary heirs, the latter were not entitled to maintain their suit.

CUSTOM I.—ALIENATION—*contd.*

A.—ALIENATION BY MALE PROPRIETOR—*contd.*

7.—Locus standi of reversioners and widows—*contd.*

Eda Khan v. *Mussammat Ameri* (177 *P. R.* 1889), *Mussammat Shibbo* v. *Buta* (111 *P. R.* 1891), *Puran* v. *Mussammat Raj Devi* (56 *P. R.* 1891), *Bahadur Singh* v. *Mussammat Nihali* (133 *P. R.* 1893), *Rani* v. *Makhi* (146 *P. R.* 1889), and *Anar Devi* v. *Koulan* (43 *P. R.* 1905), referred to. KHEM SINGH *v.* BIRU. **44 P R 1905**

30. *Custom—Alienation—Alienation by a Jat proprietor of ancestral property.*

Suit by the son of the alienor to declare the alienation invalid and not binding after the alienor's death—Competency of the reversioners of such son to continue the suit or appeal on the death of the son.

See ABATEMENT OF SUIT OR APPEAL.

58 P R 1905

31. *Nature of Reversioner's right to contest an alienation by a Hindu widow compared with that of his right to contest an alienation by a male proprietor under Customary Law.*

See UNDER SUB-HEAD 5—NECESSITY.

58 P R 1905

32. *Bequest of entire estate by sonless proprietor to his wife and by her to her daughter—Acquired property*—Locus standi *of the uncle to contest such alienations—Aroras of Kuri, Rawalpindi District.*

In a case, the parties to which were Aroras of *mauza* Kuri in the Rawalpindi District, *found*, that a sonless proprietor was competent to make an absolute bequest of his entire self-acquired property in favour of his wife in the presence of his own uncle, and that his wife was then empowered to make an alienation in favour of her daughters, and that the uncle had no *locus standi* to contest either of the dispositions. ATMA SINGH *v.* KALU. **93 P R 1905**

33. *Sale by a sonless Khatri proprietor*—Locus standi *of reversioners—Khatris of Hasil*, tahsil *Chakwal, District Jhelum—Burden of proof.*

Found, in a suit the parties to which were Khatris of Hasil, *tahsil* Chakwal, in the Jhelum District that no custom was established under which a sonless proprietor in possession of divided estate could be controlled by his collaterals in the matter of alienation of that estate.

The burden of proof that Khatris who do not depend entirely on land, in matters of alienation and succession follow Punjab Customary Law, rests on the person making such an allegation. The mere fact that a Khatri family had held land for a long time is not *ipso facto* sufficient to shift the burden on the other side.

Nanak Chand v. *Mussammat Dayan* (103 *P. R.* 1894), *Kartar Singh* v. *Mathar Singh* (94 *P. R.* 1898), *Harnam Singh* v. *Devi Chand* (107 *P. R.* 1901), and *Hassan* v. *Jahana* (74 *P. R.* 1904), cited and followed.

Ralla v. *Budha* (50 *P. R.* 1893, *F. B.*), referred to. ATAR SINGH *v.* PREM SINGH.

12 P R 1906

CUSTOM I.—ALIENATION—*contd.*

A.—ALIENATION BY MALE PROPRIETOR—*contd.*

7.—Locus standi of reversioners and widows—*contd.*

34. *Alienation by childless proprietor to one of his collaterals in tenth degree*—Locus standi *of a collateral of equal degree to contest such alienation—Burden of proof.*

Held, that among the agricultural tribes in the Punjab there is no definite limit of propinquity up to which kinsmen are to be presumed to have the right to impeach alienations of ancestral land by a sonless proprietor without consideration or necessity, and beyond which they are to be presumed not to have it.

Male reversioners are entitled to object to any such alienation even though made in favour of a male agnate of equal or remoter degree, except where the previous relations between the alienor and the alienee have created a sort of moral obligation in the former to compensate the latter in this manner for services rendered.

Ganda Singh v. *Maya* (100 *P. R.* 1893), *Karm Din* v. *Gurditta* (101 *P. R.* 1893), *Arur Singh* v. *Mussammat Lachmi* (75 *P. R.* 1898), *Ami* v. *Mussammat Zebo* (42 *P. R.* 1902), cited and followed.

Alla Bakhsh v. *Umra* (58 *P. R.* 1887), *Kesar Singh* v. *Sundar Singh* (59 *P. R.* 1889), *Ishar* v. *Ganda Singh* (41 *P. R.* 1900), explained and distinguished.

Gujar v. *Sham Das* (107 *P. R.* 1887), *Karm Din* v. *Gurditta* (53 *P. R.* 1893), *Punnu Khan* v. *Sandal Khan* (92 *P. R.* 1904), *Narain Singh* v. *Gurmukh Singh* 116 *P. R.* 1894, referred to. KHAZAN SINGH *v.* RELU. **35 P R 1906**

35. *After born son.*

See 6, LIMITATION.

76 P R 1906

36. *Collaterals of the 8th degree.*

See UNDER SUB-HEAD 3, *supra*—SALES AND MORTGAGES IN FAVOUR OF STRANGERS.

93 P R 1906

37. *Alienation by widow—Effect of acquiescence of the nearest reversioner—Suit by the son of such reversioner*—Locus standi.

Held, that where a person entitled to object to an alienation takes *bona fide* action for the protection of the reversion and enters into a compromise in good faith with the alienee in the belief that it was a reasonable and proper one, his son and all other remote reversioners are bound by it, and have no *locus standi* to contest the alienation in their own right. BUTA *v.* KHUDA BAKHSH.

97 P R 1906

38. *Collaterals of 8th degree.*

See UNDER SUB-HEAD 3, *supra*—SALES AND MORTGAGES IN FAVOUR OF STRANGERS.

23 P R 1907

39. *Son of an acquiescing Reversioner.*

See UNDER SUB-HEAD 3, *supra*—SALES AND MORTGAGES IN FAVOUR OF STRANGERS.

35 P R 1907

40. *Sale by sonless proprietor*—Locus standi *of reversioner—Gilani Sayads of* mauza *Masania*, tahsil *Batala, Gurdaspur District*—

CUSTOM I.—ALIENATION—*contd.*

A.—ALIENATION BY MALE PROPRIETOR—*contd.*

7.—Locus standi of reversioners and widows—*contd.*

Muhammadan Law—Religious purposes, justification for.

Held, that in matters of alienation and succession Gilani Sayads of *mauza* Masania, *tahsil* Batala, Gurdasrur District, who have for nine generations past followed agriculture as a landholding occupation, were governed by the general rules of agricultural customs of the Province and not by the Muhammadan Law, and that the alienation of ancestral land by such a proprietor was consequently subject to restriction, but he was justified in raising money in order to perform the *aqiqa* ceremony of his deceased son and in alienating a small portion of his ancestral land for that purpose. SHAH NAWAZ *v.* AZMAT ALI. **40 P R 1907**

41. *Suit by next reversioner to set aside alienation as invalid in the presence of the adopted son of such proprietor—Right of suit.*

Held, that where the nearest heir entitled to object to an alienation by a proprietor with limited powers happens to be a minor and is as such unable to exercise a free agency, the next reversioner is entitled to sue for the protection of the estate. JIWA SINGH *v.* KHAZANA. **56 P R 1908**

42. *Alienation by an adopted son of his adoptive father's property*—Locus standi *of sons born before the adoption of their father to contest alienation.*

Held that sons born before the adoption of their father do not, by the mere reason of his adoption, become members of the agnatic family of the adoptor and have therefore no *locus standi* to contest an alienation made by their father of his adoptive father's property as being made without necessity or consideration. TULSI *v.* RAM RAKHA. **66 P R 1908**

43. *Assent by reversioner*—Locus standi *of the sons of reversioner to contest such alienation.*

Held that a reversioner is competent to give his assent to an alienation of ancestral land by a sonless proprietor even after he has contested the validity of that alienation and obtained a decree, and that such assent is binding on his sons and on all reversioners more remote than himself. SHIB RAM *v.* SHIB SINGH. **78 P R 1908**

44. Status *of alienee of reversionary rights to contest an alienation.*

Held, that a reversioner's right to contest an alienation under Customary law is not transferable to a stranger and *ergo* that where a reversioner, who has succeeded after the death of a widow, alienates his reversionary rights, the alienee has no *status* to contest the validity of mortgages made by the widow.

Sher Singh v. *Sidhu* (No. 11 P. R. 1907) overruled.

JAWALA SAHAI *v.* RAM SINGH. **67 P R 1909**

CUSTOM I.—ALIENATION—*contd.*

A.—ALIENATION BY MALE PROPRIETOR—*concld.*

7.—Locus standi of reversioners and widows—*concld.*

45. *Land originally gifted to son-in-law for benefit of daughther and her issue reverts to doner's family—Reversioners of son-in-law have no* locus standi *to contest an alienation of it.*

The land in dispute originally belonged to one Jiwan, who gifted it to his son-in-law Mulayam for the benefit of his daughter and her son Pira. Pira died, leaving a daughter, Mussammat Kako, and in his lifetime made a gift of the said land to Maula Bakhsh Mussammat Kako's son. After Pira's death the daughter sold the land to collaterals of the said Jiwan. Plaintiffs, the collaterals of Pira, brought the present suit to contest the alienation claiming to be reversioners. An objection as to their *locus standi* was raised by the defendants.

Held, that the land came to Pira through his mother, that is, he held it as a daughter's son. He does not constitute a fresh stock of descent *qua* the land, which throughout its course of devolution, whether by inheritance or gift, retains its original character as property that has gone down from Jiwan to Mussammat Kako, therefore the Plaintiff's as collaterals of Pira have no *locus standi* to contest the sale in the presence of the collaterals of Jiwan. KALU *v.* MUSSAMMAT KAKO. **102 P R 1909**

B.—ALIENATION BY WIDOW.

(a) Gifts.

1. *Unauthorized alienation enures for life of widow alienating.*

Plaintiffs sued to set aside a deed of gift of certain land executed by Mussammat Begum (defendant), widow of Jiwan Khan, in favour of the other defendants. Plaintiffs alleged that the property had belonged to Jiwan Khan ; that his widow by local custom was entitled only to a life interest in the property, the Muhammadan law of inheritance being unknown in their village ; and that they (plaintiffs) were the reversioners. The parties were Pathans living in a Muhammadan village, *mauza* Sewli, *tahsli* Palwal, Zillah Gurgaon. *Found*, that by local custom the widow's interest was for her life only ; and *held*, that the alienation would operate only for her lifetime. SEPAH DAR KHAN *v.* MUSSAMMAT BEGUM. **8 P R 1874**

2. *Mahomedan Jats.*

Plaintiffs, as reversioners, sued to set aside a deed of gift by which the landed property of two brothers, W. and S. was given by the widow of S. and by W. to the husband of W's daughter. The lands so alienated were acquired by W. and S. respectively. Neither of them had sons. The parties were Mahomedan Jats of the Ghumman tribe, Ferozepore district.

Found by custom that only a son could object to the alienation of acquired property and *held*, accordingly, that plaintiffs suit as to W's property failed. *Found* also, that a widow was absolutely incapable of alienating, and *held*, that the gift by the widow of S. must be set aside. JAWAN *v.* ESA. **2 P R 1877**

CUSTOM I.—ALIENATION—*contd.*

B.—ALIENATION BY WIDOW—*contd.*

(a) Gift—*contd.*

3. *Childless widow—Vattu tribe, Sirsa district—Necessity.*

Found, that by the custom of the Vattu tribe of the Sirsa district, a sonless widow is not competent to alienate her deceased husband's land except for proved necessity. SAMANDA *v.* MUSSAMMAT HAIBAN. **34 P R 1881**

4. *Suit by reversioners to set aside sale by widow—Necessity*—Wajib-ul-arz *providing for offer to relatives in case of alienation by widow—Effect of such provision.*

In a suit by the reversionary heirs of one M. to set aside a sale of a ½ share of a holding by M.'s widow, the lower Appellate Court gave the plaintiffs a decree on the ground that, although the widow might sell the land for legal necessity, she could only do so in the manner provided in the *Wajib-ul-arz*, which required a widow, when intending to sell her husband's land for necessity, to first offer it to her husband's relatives in a specified order, and as she had not made such offer, the sale was invalid.

Held, that the provision in the *Wajib-ul-arz* was inserted merely with a view to secure the right of pre-emption to the reversionary heirs of the husband in the case of a sale of his land by his widow, but if she sold the land for necessity without making an offer to the reversioners, the sale would not be invalid but the reversioners would be entitled to bring a suit for pre-emption.

The Chief Court, however, upheld the Commissioner's decree in the present case, finding on the facts that necessity for the sale was not established. MUSSAMMAT KARAM BIBI *v.* HAYAT BAKSH. **47 P R 1882**

5. *Muhammadans of Sheikh Ansari tribe, Jalandhar—Widow's power to gift her husband's estate to her daughter.*

Held, that no special custom was proved to exist among Ansari Sheikhs of the village of Danishmandan, near Jalandhar, whereby a widow can make a valid gift of the estate of her husband, to which she has succeeded, to her daughter. *Mussammat Hijjo* v. *Meer Mahomed* (No. 54 of 1867, Civil) cited. SHER MUHAMMAD *v.* JAFIR KHAN. **2 P R 1883**

6. *Gujars of Gujrat—Gift to son-in-law who was not a* ghar-jawai *by widow of deceased proprietor.*

Found, that the widow of a Muhammadan Gujar in the district of Gujrat is not competent by custom to make a valid gift of the land which she holds on a life-tenure from her husband to her son-in-law, where such son-in-law was not a *ghar-jawai* of her husband. *Jowahir* v. *Faiz Baksh* (No. 137

of 1879, Civil) and *Husain Baksh* v. *Ghulam Kadir* (No. 65 of 1880, Civil) referred to. MUSSAMMAT GHORI *v.* KUTHBA.

43 P R 1883

7. *Aroras of Montgomery—Necessity.*

Found that no special custom exists amongst the Aroras of Montgomery, different from that prevailing elsewhere in the Punjab enabling a widow to alienate, otherwise than for necessity, the landed estate of her deceased husband. GURDIT SINGH *v.* DITTU.

76 P R 1883

8. *Muhammadan Rajputs of M. Mulvi,* tahsil *Pipli, Ambala—Gift by widow to her daughter—Consent of collaterals.*

Found that, according to the custom of Muhammadan Rajputs of the Tuar *got* in the Pipli *tahsil* of the Ambala District, a widow cannot make a valid gift of her sonless husband's land to her daughter without the consent of her husband's collateral relatives. SARFRAZ *v.* MUSSAMMAT FAZL-UN-NISSA.

147 P R 1883

9. *Gujars of Gujrat—Gift by widow to her son-in-law.*

In a suit to cancel a gift made by the widow of a Gujar of the Gujrat *tahsil*, *held* that the defendants had failed to establish the existance of a custom which would enable such widow without the express authority of her husband to alienate her land in favor of a son-in-law who was also a distant collateral of her husband. *Shah Muhammad* v. *Mussammat Imam Bibi* (No. 56 of 1878, Civil) cited. KUTB-UD-DIN *v.* MIRAN BAKSH.

128 P R 1884

10. *Suit by thuladars to set aside alienation by widow—Burden of proof—Alternative claim for pre-emption.*

In a suit by the proprietors of the *thula* in which the land was situate to set aside an alienation by the widow of a deceased proprietor of the land left by her husband, and in the alternative for pre-emption, the first Court, without deciding whether the plaintiffs had any right to sue, held that it was proved that the widow had no power to make the sale, and declared it void as against the plaintiffs. The lower Appellate Court, on the appeal of the purchasers, held that the plaintiffs were not shown to have any title to maintain the suit to contest the alienation, and therefore dismissed the suit, without noticing the alternative claim to pre-emption which had not been dealt with.

Held, that it was for the plaintiffs to show that they had a customary right of succession, and could therefore impeach the sale, and that they had failed to do so in the present case, but that they were entitled to have their claim to pre-emption disposed of, and the suit must be remanded for that purpose. *Jowala Singh* v. *Sham Singh* (No. 43 of 1877, Civil) cited. JHARU *v.* MUSSAMMAT LACHMI.

49 P R 1886

11. *Sangri Jats of Jalalabad,* tahsil *Tarn Taran, Amritsar—Widow's power to gift her husband's land.*

In a suit the parties to which were Sangri Jats of M. Jalalabad in the Tarn Taran *tahsil* of the Amritsar district, found (an entry in the *Riwaj-i-am* notwithstanding) that no custom was proved under which a widow could make a gift of her deceased husband's land in favour of her daughter's son to the prejudice of the already vested rights of the reversioners. MIRAN BAKHSH *v.* MUSSAMMAT BAKHTAWARI. **77 P R 1886**

12. *Near and remote reversioners.*

In suits by reversioners to contest alienations made by widows (*e.g.*,) a gift by a widow to her deceased husband's daughters, the principles applicable to next heirs contesting a grant made by a full male proprietor regarding nearness and remoteness of relationship to the grantor, are inapplicable.

A widow's customary estate in the Punjab not being the full proprietary estate such as a male heir takes, but a limited one enjoyed under many restrictions, for a particular purpose, the residue of the proprietary estate must vest in the next reversioner, however remote he may be, and he is thus enabled to contest an alienation in excess of her power or any act of waste by the widow in her lifetime, and is not barred from recovering the estate after the widow's death (in the absence of any legal alienation by the widow) by reason of his remoteness from the last male owner. KUTUB-UD-DIN *v.* MUSSAMMAT UMRI.

18 P R 1887

13. Locus standi *of next reversioner, however remote.*

Held that as alienations by widows stand on an entirely different footing from alienations by childless proprietors, the next reversioner, however remote, is at liberty to sue to contest the former class of alienation. PREM SINGH *v.* MUSSAMMAT RAMON.

11 P R 1888

14. *Kherawat Jats of Ambala District*—Locus standi *of plaintiffs claiming as reversioners.*

Plaintiffs claimed as the collaterals of the last male owner to recover certain land which the widow of the deceased owner had gifted to the defendant, who also alleged adoption. The lower Court threw out the plaintiffs' claim on the ground that they had not proved that they had any *locus standi* as reversioners, holding that they had failed to prove any definite relationship to the late owner, though the lower Appellate Court admitted that the plaintiffs were of the same "*got*" as the deceased, and therefore were presumably at some remote period descended from a common ancestor. It further apeared that the plaintiffs were co-proprietors in the same "*thullah*" (of Kherawat Jats) as that of the late owner, and as such would appear to be his heirs, though possibly in common with other Kherawat Jats in other "*thullahs.*"

Held (on the above facts) that the plaintiffs had established such ancestral connection with the late owner—a co-proprietor in the same sub-division and of the same *got*—that in the absence of nearer and better entitled heirs they should be held to be the reversioners and entitled to maintain the suit.

Mussammat Bhupia v. *Jamna Dass* (No. 80 *P. R.* 1885), referred to. LEHNA *v.* KISHAN.

78 P R 1888

15. *Adoption—Brahmins of Kangra—Right of collaterals of adoptive father to contest alienation by adopted son's widow.*

On the death of one G., who had succeeded as adopted son of one H., G.'s widow gifted some of H.'s land to G.'s daughter, whereupon the collaterals of H. sued for cancellation of the gift. The lower Appellate Court, holding that the adoption was of an informal character, which though it made G. heir, personally, to H. did not completely take him into H.'s family, decided that plaintiffs as collateral's of H. had no *locus standi* to object to the alienation.

Held (reversing the order of the lower Appellate Court) that the adoption, even if all the precise requisites of a Hindu Law *dattaka* adoption were not gone through, was nevertheless a formal one, and intended to make G. a son of H.'s family ; and further, that even if the adoption could rightly be held to be an informal adoption, the limitation of G.'s privileges on this account could not be interpreted to make him or his widow more absolute owners of his inheritance than they would be if he were a true member of H.'s family.

Dewa Singh v. *Nihal Singh* (No. 9 *P. R.* 1880), *Jowala Singh* v. *Mussammat Lachmi* (No. 14 *P. R.* 1884) *Arur Singh* v. *Jawala Singh* (No. 89 *P. R.* 1885, and *Uttam Singh* v. *Wazir Singh* (No. 84 *P. R.* 1887), cited. NAURANG *v.* MUSSAMMAT DEOKO.

85 P R 1888

16. *Will—Awans of Jullundur* tahsil—*Validity of will by widow in favour of her unmarried daughter.*

Held, that no custom had been shown to exist among the Awans of Jullundur *tahsil* permitting a widow in possession of her husband's estate to make a will bequeathing the whole estate to her unmarried daughter. MUSSAMMAT BHATO *v.* FATU. **171 P R 1889**

17. *Bokhari Saiyad Shiahs of* kasba *Sadhowra, Ambala District—Suit by collaterals in the seventh remove from the common ancestor—Muhammadan Law—Agricultural custom—Widow's tenure of her husband's estate—Life interest—Power of gift.*

B.—ALIENATION BY WIDOW— *contd*—**(a) Gifts**—*contd.*

In a suit to set aside an alienation made by widows of a Bokhari Sayad Shiah family, residing at *kasba* Sadhowra, Amballa District, the collaterals (related in the tenth degree from the common ancestor) contended that the widows having succeeded to the entire estates of their respective husbands, it was clear that devolution to property was not governed by Muhammadan Law; and that in the absence of such rule, the general custom governing the agricultural classes of the Punjab applied, whereby widows succeeded to a life tenure only with no power of alienation, and that they (the collaterals), however distantly related, were competent to have the gift set aside.

Held, that the contention was not correct. Given that the widows did not succeed according to strict Muhammadan Law, it did not follow (i) that they took only a life interest similar to that of a Hindu widow and such as is commonly found among agriculturists in this Province; and (ii) that any reversioner, however remote, could sue to contest their alienation.

Held, further, that the plaintiffs had failed to prove that the widows had not by custom governing the parties a limited power of gift. RAHMAT HUSSAIN *v.* MUSSAMMAT FAHIM-UN-NISSA. **25 P R 1890**

18. *Gujars of* tahsil *Gujar Khan, District Rawalpindi—Right of collaterals in the eighth degree to contest alienation by the widow and the mother of the deceased proprietor in favour of his sister and daughter.*

Found, that there is no well established custom prevailing among Muhammadan Gujars of the Gujar Khan *tahsil*, Rawalpindi District, whereby male collaterals so distantly related as the eighth degree from the common ancestor are permited to contest an alienation by a widow in favour of her deceased husband's daughter. SHARAF *v.* MUSSAMMAT BEGAM. **88 P R 1890**

19. *Gift by widow of a sonless proprietor to her daughter—Bhatti-Rajputs of Lahore* tahsil—*Suit by collaterals in the seventh degree from the common ancestor—Burden of proof—Mode of calculating degrees of relationship.*

In a suit the parties to which were Bhatti Rajputs of Lahore *tahsil*, the widow of a sonless proprietor gifted her husband's land in favour of their daughter. Collaterals of her husband in the seventh degree from the common ancestor contested the alienation.

Held, that they were too remote to entitle them to sue the daughter.

In calculating degrees of relationship, the proper course is to begin with the generation of the deceased and to count upwards, until the common ancestor is reached, whose generation should be also included. All the descendants of the common ancestor, however remote, are entitled to succeed. LADHU *v.* MUSSAMMAT DAULATI. **126 P R 1890**

B.—ALIENATION BY WIDOW— *contd*—**(a) Gifts**—*contd.*

20. *Gift by a widow of a sonless proprietor to their daughter's sons*—Riwaj-i-am—*Powers of a* sahib-i-jaidad—*Construction—Pathans of Daudzai and Doaba—District Peshawar.*

Held, on a proper construction of the *Riwaj-i-am* of *tahsil* Daudazai, District Peshawar, that a widow of a sonless proprietor is a *sahib-i-jaidad*, and can alienate her husband's immovable property to their daughter's sons in the presence of collaterals. KUTAB *v.* ISMAIL. **157 P R 1890**

21. *Mussalman Naru Rajputs of Gorewah*, tahsil *Dasuha, Hoshiarpur District—Power of widow to make a gift to daughter's son—Collaterals—Burden of proof.*

In a suit the parties to which were Mussalman Naru Rajputs of the village of Gorewah in the Dasuha *tahsil* of the Hoshiarpur District all residing in the same village and all descended from the same common ancestor, found that by custom it was not competent to a widow who was in possession upon the customary estate for life, of land in the said village inherited by the widow after her husband's death from a collateral of the husband, to make a gift thereof to her daughter's son in the presence of *karabatis* related in the seventh degree to the widow's husband, and in the eighth degree to the collateral whose land had passed to the widow as representing her husband.

Held, also, that the burden of rebutting the presumption arising in favour of the collaterals lay upon the widow and the donee.

Observations as to the persons falling within the category of *karabatis*.

No. 179 *P. R.* 1889, relating to Naru Rajputs in the Hoshiarpur *tahsil* distinguished. No. 177 *P. R.* 1889, referred to. MUSSAMMAT JIWI *v.* GAHIYA. **98 P R 1891**

22. *Kakezais of Naushera*, tahsil *Pasrur, Sialkot District—Distinction between power of gift and bequest.*

Found, that among Kakezais of the village of Naushera in *tahsil* Pasrur of the Sialkot District, a widow was empowered to make a valid will in favour of her daughter's children. But independently of the mother's act the daughters were entitled to succeed under the provisions of their father's will.

Semble.—It is not correct to say that, in all cases no distinction is ever recognised between the power of gift *inter vivos* and the power of bequest by will. MANSABDAR *v.* SADAR-UD-DIN AND AHMAD DIN. **10 P R 1892**

23. *Compliance with conditions by donee—Gujars of Kharian* tahsil, *Gujrat District.*

Found, that among Mussalman Gujars of the Kharian *tahsil*, Gujrat District the

B.—ALIENATION BY WIDOW— *contd*—**(a) Gifts**—*contd.*

power of alienation by gift possessed by a widow is strictly limited, and that unless the donee can prove that he has complied with the conditions which would validate the gift, such as that he has in fact maintained her, the alienation is invalid.

No. 8 *P. R.* 1891, referred to. MAHMUD *v.* MOHAMDA. **14 P R 1892**

24. *Sonless proprietor—Gift of land by, to his wife and by her to her daughter—*Locus standi *of the* warisan ek jaddi—*Ancestral and acquired property.*

S., a Dogar of the Banhaj *got*, residing in a village in the Barwala *tahsil* of the Hissar District, being a sonless proprietor, transferred his land comprising some 42 *bighas* made up of three distinct lots shortly before his death to his widow F., purporting to do this in satisfaction of her dower.

Shortly after S.'s death his widow, F., made a gift of the same land to her daughter L.

The plaintiff's nephews and a nephew's son of S. contested the latter gift.

Held that the gift was valid as regards the self-acquired land comprised in the gift, the plaintiffs having no *locus standi* to contest S.'s disposition of it; but was invalid as regards the ancestral land. MUSSAMMATS FATO AND LALAN *v.* NIZAM DIN. **10 P R 1893**

25. *Succession—Arains of* mauza *Behni*, tahsil *Sharakpur, Lahore District—Gift by widow to daughter—Right of daughter as heir in absence of sons and in presence of brother's sons.*

M. and K. B., Arains of *mauza* Behni in the Sharakpur *tahsil* of the Lahore District, were full brothers; the village comprised two *tarafs* owned by Muhammandan Jats, Dogras, Arains and others.

M. died about thirty-five years ago, leaving a widow and an unmarried daughter. The widow married the daughter to C. D. (defendant), also an Arain. C. D. and his wife thenceforward resided with the widow, who made a gift of her husband's land to their daughter in March 1871.

Ten years before the present suit the widow died and her daughter also died before the suit.

Two of the three sons of K. B. now sued C. D.'s daughter claiming two-thirds of M.'s estate. The third son did not sue, he having sued (alone) in 1871 to set aside the gift by the widow of M., which suit was dismissed.

Held, that by custom the gift by the widow was invalid against the sons of her husband's brother, the burden of proof being upon those relying on the gift.

Held, also, that by custom the daughter was not full heir to her father in the absence of sons and in the presence of brother's sons.

No. 89 *P. R.* 1892, referred to. CHIRAGH DIN *v.* MAMMAN. **28 P R 1893**

26. *Gift by widow subject to a condition—Brahmins of mauza Kadirabad, tahsil Phalian, District Gujrat.*

Held that a gift of her husband's estate by the widow to her daughter on condition that the donee should maintain her, the husband's estate not being sufficient for that purpose, was valid as being an alienation for necessity.

No. 85 *P. R.* 1889, and No. 18 *P. R.* 1890, referred to. PRABH DIAL *v.* DEVI DIAL.

116 P R 1893

27. *Bhojkis of the Kangra District—Effect of bequest where property over which the testator has a power of disposition is mixed up in the devise with other property over which there is no such power—Costs.*

The plaintiffs, who, as well as the defendant, were Bhojkis or hereditary priests of the famous temple of Devi at Bhawan in the Kangra *tahsil*, sued as heirs of one Gurdial to recover certain movable and immovable property left by his widow, Mussammat Jamna, lately deceased.

For the defence, it was contended that the property in suit had been gifted or bequeathed by Mussammat Jamna Devi to K. R. who was her adopted son; that the property not being ancestral, but self-acquired by the widow, could be disposed of at her pleasure; and that to the extent of her personal estate at any rate the alienation was valid.

Held, that the most important part of the property was acquired by Mussammat Jamna Devi as representing her husband, and could not therefore be alienated, and, as regards the widow's savings which might have formed the subject of a valid gift or will, that these were not separated from the rest of the estate, but were mixed up and disposed of along with it, and that the bequest was therefore altogether invalid.

Held, also, that the lower Court had exercised a proper discretion in awarding full costs, although two-thirds of the claim had been dismissed.

I. L. R. X Colc., 324 (P. C.), referred to. KANSHI RAM *v.* JIWANUN.

121 P R 1893

28. *Gift—Muhammadan Law—Gift of undivided share of joint holding*—Mushaa—*Gift with condition attached—Voidability of gift—Consideration—Custom.*

Plaintiff, a widow in possession of her deceased husband's estate, which consisted of a seven-sixty-fourth share of certain land, admitted in her plaint that, in December 1889, she made a gift of a one-eighth share of the property to the defendant on condition that the defendant would thereafter render her service, but sued for possession of the gifted share and also to have the said gift declared null and void, on the grounds (1) that there had been no division of the joint holding when the gift was made, and (2) that the gift

was conditional on the rendering of service by the defendant and was therefore revocable. The defendant replied that the gift being for consideration—*viz.*, the marriage of defendant with plaintiff's daughter, and the rendering of service both in the past and for the future,—and being followed by possession, could not be cancelled. The defendant, therefore, pleaded that the gift was not conditional, and was not void either by Muhammadan Law or by custom and could not be set aside. The first Court finding that the gtft was a *hiba-ba-shart-i-iwaz* and revocable; that it did not even include the whole of the donor's share in an undivided holding and was, therefore, bad in accordance with the principle of *mushaa*; that its invalidity could not be cured by delivery of possession, and, finally, that it was a conditional gift, void *ab initio* and revocable at pleasure, decreed plaintiff's claim. On appeal by the defendant, and after a remand for the purpose of ascertaining whether the donee had obtained possession, the Divisional Judge reversed the decision of the first Court on the grounds that the principle of *mushaa* was not applicable to the case; that it was possible to make a gift of an undivided share of a joint holding and that the gift was not revocable. The plaintiff appealed to the Chief Court, and the appeal was argued, on her behalf, in accordance with Muhammadan Law.

Held, in accordance with the ruling of the Privy Council in *I. L. R. XI All.* 460, that inasmuch as the doctrine of Muhammadan Law as to the invalidity of gifts of *mushaa* has no application when possession of an undivided share has been obtained by the donee, the present gift, having been followed by possession, was good and valid, and could not be cancelled on the ground of invalidity.

Held, further, that the gift in question being for consideration—*viz.*, for services rendered and to be rendered—could not, in accordance with the doctrines of the *Hanafi* School of Muhammadan Law, be revoked except upon an adjudication by a Judge or *Kazi* upon the merits of the case.

It appeared, however, to the Court that the law applicable to the case was more probably agricultural custom than Muhammadan Law, but that there was nothing to show that a gift once completed and delivered was defeasible at the discretion of the donor.

I. L. R. XI All. 1 and No. 188 *P. R.* 1889, cited. MUSSAMMAT MURAD KHATUN *v.* AHMAD ALI.

91 P R 1894

29. *Gift by widow in favour of son-in-law—Power of daughter to contest such alienation—Manuzai Pathans of Ajnala* tahsil, *Amritsar District.*

In a case the parties to which were Manuzai Pathans, of the Ajnala *tahsil* in the Amritsar District, *found*, that by special custom a widow is entitled, in the absence of male collaterals within the fourth degree of re-

lationship, to make a gift of an estate inherited by her from her husband in favour of a son-in-law, where it appears that the gift to the son-in-law was really for the benefit of the daughter and her issue.

Held, further, that, though in the absence of true *warisan*, a daughter may be allowed to succeed to the estate, it does not necessarily follow that the mere expectation of thus succeeding gives her the power possessed by a true *waris* of controlling the acts of the present holder of the estate.

No. 15 *P. R.* 1894, referred to. SHER MUHAMMAD KHAN *v.* MUHAMMAD KHAN.

5 P R 1895

30. *Gift by widow for religious purposes—Succession of daughter—Agarwal Banias of Bhiwani in Hissar District.*

Found, that, among Agarwal Banias of Bhiwani in the Hissar District, (i) no special custom had been proved whereby a widow is competent to make a gift of part of the property to which she has succeeded in her husband's family, and (ii) that daughters are not entitled by custom to succeed in preference to collaterals. NARSINGH DAS *v.* RAM LAL.

55 P R 1895

31. *Gift by widow in favour of daughter married after death of widow's husband*—Khanadamadi—*Gujars of Gujrat*—Riwaj-i-am.

In a case in which the parties were Gujars of Gujrat District, *found* that the right which a landowner has to make his daughter and her issue heirs in *khanadamadi* cases cannot be extended in favour of such landowner's widow, and that the widow is not entitled by custom to gift her late husband's land to her daughter. IBRAHIM *v.* MUSSAMMAT FATIMA.

67 P R 1898

32. *Awans of Khushab* tahsil, *Shahpur District—Surrender of her life interest by widow in favour of next reversioner, effect of.*

Held, that under customary law it is open to a widow who is entitled to a life interest in her husband's property for her maintenance, to elect not to take possession of such property, but to take maintenance from her husband's male heir, and that in such an event the latter at once becomes invested with the right of ownership over such property, the same result following if the widow after taking possession, elects to surrender her life interest in favour of the next reversioner and to take maintenance in lieu thereof from the latter.

The nature of a widow's life estate under customary law considered and compared with a widow's life estate under Hindu Law. SHER MUHAMMAD *v.* PHULA.

9 P R 1899

33. *Gift by widow in favour of deceased husband's brother's daughter—Arains of Ludhiana* tahsil—Khanadamadi

CUSTOM I.—ALIENATION—*contd*
B.—ALIENATION BY WIDOW—*contd.*—**(a) Gifts**—*contd.*

In a case in which the parties were Arains of the Ludhiana *tahsil, found,* that a widow in possession of her deceased husband's estate for her life was not competent by custom to make a gift of a portion thereof to the daughter of her husbands' brother in the presence of the said brother's son and other collaterals.

There is no recognized custom in the Punjab according to which mere residence of a daughter and her husband in the house of her father from the day of her marriage *there being also sons,* would confer on the daughter and her sons any right of succession, the essential feature of the custom of *khanadamadi* being that *in default of male issue,* a proprietor may take his daughter and her husband to live with him in order to supply the want of male issue. MUSSAMMAT LADO *v.* NABI BAKHSH.

6 P R 1900

34. In a suit the parties to which were Kathana Gujars of the Jhelum *tahsit, found* that a gift of ancestral land by a widow in favour of one reversioner in the presence of other reversioners of equal degree is invalid. JUMMA *v.* MUBARIK.

70 P R 1901

35. *Alienation by husband of a portion of his property—Surrender of her life interest by widow of that part of her estate in favour of next reversioner—Suit hy reversioner in lifetime of widow—Right to sue.*

N. died possessed of certain immovable properties, leaving a widow, B, who succeeded to her husband's estate, including a mortgagor's interest in the disputed land which was mortgaged by her husband to the defendants during his lifetime for twenty years. The widow relinquished her rights in the mortgaged property in favour of the plaintiffs who, as the next reversioners, brought the present suit for possession alleging that their title to possession had accrued in consequence of the widow's act, and that the mortgage was without consideration or necessity.

Held, that the suit was not maintainable in the lifetime of the widow. The widow was competent to relinquish her whole estate and thereby to accelerate the succession of the plaintiffs to the property left by her husband, but that there could not be a valid renunciation of a part of the estate which could give rise to a right of succession in the reversioners to that part.

Sher Muhammad v. *Phula* (9 *P. R.*, 1899), distinguished, *Behari Lal* v. *Madho Lal* (*I. L. R., XIX, Calc.*, 236), *Marudamathu Nandan* v. *Srinivasa Pillai* (*I. L. R., XXI Mad.*, 128), *Nobo Kishore* v. *Hira Nath* (*I. L. R., X Calc.*, 1102), and *Hem Chander* v. *Sarnamoyi Debi* (*I. L. R., XXII Calc.*, 354), referred to. WAZIR CHAND AND OTHERS *v.* MAKHU AND OTHERS.

17 P R 1902

CUSTOM I.—ALIENATION—*contd.*
B.—ALIENATION BY WIDOW—*contd.*—**(a) Gifts**—*contd.*

36. *Gifts by widow with the consent of the nearer reversioner—Suit by reversioner of equal degree.*

Held, that the fact that certain nearer reversioners assented to a gift by a widow of her late husband's property in favour of a near reversioner does not bar the claim of a reversioner equally entitled with the alienee.

Jiwan Singh v. *Misri Lal* (*I. L R., XVIII All.*, 146 P. C.), *Harvans Singh* v. *Harnam Singh* (84 *P. R.*, 1898, F. B.), *Murad* v. *Mussammat Jannat* (67 *P. R.*, 1900), *Mussammat Fatteh Bibi* v. *Alla Bakhsh* (84 *P R.* 1900), *Gharib Khan* v. *Mirza Ali Bahadar Khan* (7 *P. R.*, 1893), and *Jumma* v. *Imam Bakhsh* (138 *P. R.*, 1889), referred to. THAKAR SINGH *v.* HIRA SINGH.

47 P R 1903

37. *Gift by widow with the consent of the reversioners—Sheikhs of Rupar, Umballa District*—Locus standi—*of the sons of the consenting reversioner to contest such alienation—Burden of proof.*

In a suit to contest the validity of a gift made by a widow of her late husband's property where it appeared that all the collaterals including the plaintiff's father attested the deed of gift which was duly registered and that subsequently the plaintiff's father brought a suit and sought to set aside the gift, but afterwards deliberately withdrew it (through the plaintiff's elder brother) without permission to sue again, it being shown that such an alienation would be valid according to custom, if made with the consent of the collaterals, and having been proved that such consent was given, it lay on the plaintiffs to show that there were such circumstances in the case as to render the assent inoperative for this purpose in this instance and that they had failed to do so.

Mussammat Fateh Bibi v. *Allah Bakhsh* (84 *P. R.*, 1900), *Harvans Singh* v. *Harnam Singh* (84 *P. R.*, 1898, F. B.), and *Jowala* v. *Hira Singh* (55 *P. R.*, 1903, F. B.), referred to. KAMAN AND OTHERS *v.* MUHAMMAD ALI AND OTHERS.

59 P R 1904

38. *Gift by widow of a sonless proprietor to her daughter—Further gift by the donee to her daughter—Chachars of* mauza *Chachar, Shahpur District.*

Found, that among Chachars of *mauza* Chachar in the Shahpur District a widow of a sonless proprietor is by custom competent to make an absolute gift of her husband's ancestral land in favour of her daughter who was married within the village, and that such daughter had power to make a further gift of the property so inherited by her in favour of her own daughter who was also married to a Chachar of that village. NAWAB *v.* WALLAN.

91 P R 1906

39. *Power of widow to make a son-in-law* khanadamad *or to gift to daughter and her husband—Arains of Naraingarh. Umballa District—Ancestral and acquired property*—Locus standi *of reversioner in presence of daughter.*

CUSTOM I.—ALIENATION—*contd.*
B.—ALIENATION BY WIDOW—*contd.*—**(a) Gifts**—*concld.*

Found, that among Arains of Naraingarh in the Umballa District no special custom has been proved whereby a widow in possession of her deceased husband's estate for life is competent, in the presence of the first cousins of her late husband, to make a son-in-law a *khanadamad* or to gift her husband's property to him or to her daughter.

In matters of alienation a widow in possession of self-acquired immovable property of her husband is subject to the same restrictions as if the property were ancestral; and the existence of a daughter does not preclude a near reversioner such as a first cousin from contesting an alienation effected by such a widow. MUHAMMAD UMAR *v.* ABDUL KARIM.

103 P R 1907

40. *Gift by widow to daughter and daughter's son in presence of collaterals of sixth degree—Gil Jats of Ajnala* tahsil, *Amritsar District.*

Found that by custom among Gil Jats of the Ajnala *tahsil* of the Amritsar District, a widow is not competent to make a valid gift of her husband's ancestral immovable property in favour of her daughter and daughter's son in the presence of collaterals related to her husband in the 6th degree. RAM KAUR *v.* BELA SINGH. **67 P R 1908**

41. *Gift by widow to her daughter*—Locus standi *of collaterals—Succession of daughter —Sayyads of* mauza *Chuma,* tahsil *and district Gurgaon.*

Held, that among Sayyads of *mauza* Chuma, *tahsil* and district Gurgaon, daughters succeed to the property of their fathers to the exclusion of the latter's collaterals and therefore the collaterals have no right to contest the gift made by the widow of the last male owner in favor of her daughter. MUZAFFAR ALI *v.* MUSSAMMAT ZAINAB **58 P R 1910**

(b) Sales and Mortgages.

1. A Hindu widow, having only a life interest in her deceased husband's estate, mortgaged that estate to the defendants for fifteen years. Plaintiffs (the husband's relatives and reversioners) sued to cancel the mortgage, and to have their rights declared; the Lower Appellate Court ordered the mortgage to be set aside, on the ground that it was not limited to the life of the widow. *Held,* by the Chief Court, that the mortgage could not be cancelled, but that it would enure for fifteen years if the widow should so long live—otherwise, it would be determined by her death. MANA *v.* KHAZANA.

22 P R 1872

2. *Hindu widow—Nature of debt.*

A Hindu widow is not absolutely incapacitated from selling or alienating the ancestral estate of her deceased husband, held by her on a life tenure. Without the consent

CUSTOM I.—ALIENATION—*contd.*
B.—ALIENATION BY WIDOW—*contd.*—**(b) Sales and Mortgages**—*contd.*

of the reversioners she can alienate for a justifiable cause; and if there be no justifiable cause, the alienation cannot at once be set aside, but holds good for her life-time. Where the estate is sold to meet decrees for debts against the widow, it is the duty of the Court to enquire into the nature of the debts, in order to ascertain whether the alienation be justifiable or not. AMIN CHAND *v.* MEHTAB SINGH. **82 P R 1876**

3. *Hindu widow—Necessity—When account of debt charged on estate should be taken.*

A Hindu widow, in 1870, borrowed Rs. 495 partly to pay the revenue and partly to defray the expenses of the marriage of her two daughters, and mortgaged her deceased husband's estate as security. By the terms of the mortgage, she was to remain in possession, paying 2 per cent. per mensem for interest, and in default the mortgagee was to take possession, pay the Government demand, and take the produce in lieu of interest, the estate remaining charged with the principal sum. The widow failed to pay the interest, but the mortgagee did not take possession; and in 1875 he took a second mortgage for Rs. 1,000, being the debt and interest up to date. In a suit by the reversioners, it was *held*, that the first mortgage was for legal necessity, but not the second; that the second mortgage was not binding upon plaintiffs, or reversioners entitled at the widow's death to the property, but that the account of what was chargeable to the estate for legitimate purposes would be taken at the widow's death and before the reversioners took possession. DAVI DITTA *v.* RUPA. **116 P R 1876**

4. *Suit for declaratory decree by reversioner.*

Where the right heir of a deceased Hindu sues to set aside so much of a conveyance made by the widow as will operate after the plaintiff's death, he is entitled to a decree; for even if it be necessary that he should show his right to consequential relief at the same time, he does show it; as upon obtaining a decree, he can have the proper entries made in the revenue papers. NUR BUKHSH *v.* MUSSAMMAT FAJJO. **121 P R 1876**

5. *Bona fide purchaser.*

A Hindu widow is capable of making a valid alienation of her husband's estate for certain purposes which are regarded as legal necessities, but an alienation made without legal necessity is not necessarily liable to be set aside, and it is not so liable when the purchaser has acted with due caution and honesty. BIRA *v.* MAMON. **74 P R 1877**

6. *Waiver by nearest reversioner—Suit to set aside alienation brought by distant reversioner.*

CUSTOM I.—ALIENATION—*contd.*
B.—ALIENATION BY WIDOW—*contd.*—**(b) Sales and Mortgages**—*contd.*

Plaintiffs, distant reversioners, sued to cancel a mortgage made by a Mahomedan widow, with a life interest only in her deceased husband's estate. *Held*, that the suit was not maintainable in the absence of proof that the immediate reversioner had waived or abandoned his rights in favor of plaintiffs.

Sikandar Khan v Bahadur Khan, No. 39 *of* 1876, Civil (see p. 192) commented on and explained. GULAM HAIDAR *v.* SIKANDAR KHAN. **66 P R 1873**

7. *Widow alienating for barred debts—Necessity.*

Held, that the payment of barred debts would not establish the necessity necessary to make an alienation by a widow of her husband's property valid beyond the duration of her own estate. MUL SINGH *v.* BAHADUR ALI. **129 P R 1883**

8. *Necessity—Responsibility of vendor for misapplication of money borrowed.*

The existence of a real necessity for borrowing protects the lender who deals with a widow and he is not responsible in the absence of collusion for the misapplication of the money borrowed. MUSSAMMAT CHANDO *v.* BUTA. **119 P R 1886**

9. *Sindhu Jats of Rohtak District—Necessity.*

Found, that there is no established custom among Sidu Jats of the Rohtak District authorizing alienations by widows of their husbands' land without necessity. HARGULAL *v.* ASA RAM. **64 P R 1889**

10. *Muhammadan butchers of town of Umballa—Widow.*

Found, in a suit the parties to which were Muhammadan butchers of the town of Umballa, that in the absence of necessity, a widow was not entitled by custom to sell immovable property left by her husband in the presence of a near collateral.

No. 85 *P. R.* 1887, and No. 25 *P. R.* 1890, referred to. IMAM DIN *v.* NANU AND MUSSAMMAT LADO. **119 P R 1891**

11. *Right of near female collateral—Kanwali Arains of Lahore District—Meaning of* aulad.

Found, in a suit the parties to which were Kanwali Arains of the Lahore District, that by custom a near female collateral was not competent to object to a sale of land and houses by the deceased owner's widow.

Observations as to the meaning of the term *aulad*. MUSSAMMAT RAKHI *v.* MUSSAMMAT FATMA. **89 P R 1892**

12. *Alienation by widow*—locus standi *of the sister of last male owner, in default of reversioners, to contest an alienation—Ghirths of* mauza *Baldhar,* tahsil *and district Kangra.*

Held, that among Ghirths of *mauza* Baldhar, *tahsil* and district Kangra, a sister of

CUSTOM I.—ALIENATION—*contd.*
B.—ALIENATION BY WIDOW—*contd.*—**(b) Sales and Mortgages**—*concld.*

the last male owner is, in the absence of collaterals, entitled as the next heir to contest an alienation made by the widow and to obtain a declaration that such alienation shall not affect her reversionary rights. MUSSAMMAT KOKAN *v.* MUSSAMMAT LAKHOO. **60 P R 1910**

13. *Custom—Alienation—Alienation of self-acquired property by mother and widow of the last male owner*—Locus standi *of collaterals residing in another village to contest the alienation—Syads of* mauza *Tal Khalsa—District Rawalpindi.*

Held, following 110 *P. R.*, 1906, *F. B.*, (*Daya Ram* v. *Sohel Singh*) that by custom among Syads of *mauza* Tal Khalsa, district Rawalpindi, collaterals of the last male owner residing in another village have a *locus standi* to contest a sale of self-acquired land made by the mother and widow of the deceased without legal necessity. CHANNAN SHAH *v.* AMAR DASS. **71 P R 1910**

14. *Custom—Alienation—Creation of* Mukarridari *rights by widow—Permanent alienation.*

Mussammat B. J., Pathan of Parnali in the Attock District, Rawalpindi Division, created *mukarridari* rights in a portion of her joint holding in favour of her son-in-law M. A. and received Rs. 300 *nazrana* from him, and mutation was sanctioned in favour of M. A. on 26th June 1908—B. J.'s husband's brothers (plaintiffs) sued for a declaration that this alienation should not affect their reversionary rights on the death or re-marriage of the widow. The First Court, holding the *mukarridari* to be a tenant and the alienation for necessity, dismissed the suit. The Divisional Judge on appeal held, that the creation of *Mukarridari* rights amounts to a permanent alienation, and passed a decree in favour of plaintiffs fixing Rs. 124 for valid necessity. On revision the Chief Court

Held, following 10 *P. R.*, 1896 Rev. *(Maya Dass* v. *Malik Aulia Khan)* that the creation of *mukarridari* rights amounts to a permanent alienation. MUSSAMMAT BEGAM JAN *v.* QADAR KHAN. **85 P R 1910**

(c) Necessity.

1. *Customary life estate of widow—Alienation—Execution of decree.*

Where a Muhammadan widow takes by custom a life interest in the estate of her deceased husband, she can alienate such estate only for proved necessity or with the consent of her husband's relatives.

Quære, whether the involuntary alienation arising from execution of decree by attachment of the estate falls under the rules relating to the widow's power of alienation. ALLI SHER *v.* MUSSAMMAT NUR JEHAN. **56 P R 1872**

2. *Bukhari Sayads of Jhang district—Mahomadan widow succeeding to life estate—Debt incurred by widow—Liability of estate in hands of reversioner—Necessity.*

CUSTOM I.—ALIENATION—*contd.* **B.—ALIENATION BY WIDOW**—*contd.*—**(c) Necessity**—*contd.*

Among Bukhari Sayads of the Jhang district, a widow by custom takes the entire estate of her childless husband with an interest therein which resembles generally the interest of a Hindu widow under the Hindu law, and she has a restricted power of disposing of the estate, certainly not more extensive than that of a Hindu widow, which may be exercised under necessity, so as to bind the estate in the hands of the reversioner.

By the same custom the reversioner is only liable for debts necessarily incurred by the widow, and not for all her debts without regard to their character or object or the circumstances under which they were incurred.

To test the validity of a disposition of property, and the liability of the reversioner, it is by no means sufficient in all cases to look merely at the purpose for which the debt is incurred, or even the object to which it was applied. The circumstances under which the widow had recourse to borrowing must also be regarded in order to see whether they justified such a proceeding on her part; and thus the sufficiency of the income of the estate in her hands for her ordinary expenses and for the purpose of meeting a particular exigency, is a most material point and one which must be considered with a view to determining whether there is any necessity for incurring a debt, when the question is whether a particular disposition of the estate by her on account of such debts binds the reversioners or whether they are liable for the debt. SHAHBAL *v.* RAM DASS.

95 P R 1879

3. *Necessity—Test of existence of necessity.*

There is no rule that a widow must live upon her income: but if the income is insufficient for her proper maintenance, and for the purposes for which a Hindu widow may, if necessary, charge her husband's estate, she has the power to raise the necessary funds as a charge upon the estate which will bind the heirs, or even to sell so much of it as may be necessary. She has full power, for necessary purposes, to dispose of the property as well as of its income, but to ascertain whether it is necessary to alienate or to charge the property, the income must be enquired into, and compared with her legitimate expenditure. If the result is that the widow could not, at the time the alienation took place, have provided for all legitimate expenditure out of her income, the charge would be valid for such sum as it was actually necessary to raise upon the property. OUTAR SINGH *v.* MEHR SINGH.

14 P R 1883

4. *Necessity—Marriage of daughters—Power to anticipate necessity—Duty of lender to satisfy himself of existence of necessity for the loan.*

While a widow with the customary life interest in her husband's property is under an obligation to perform the marriages of those who are chargeable to the estate, and may mortgage or sell the property to obtain the necessary funds if she has not

CUSTOM I.—ALIENATION—*contd.* **B.—ALIENATION BY WIDOW**—*contd.*—**(c) Necessity**—*contd.*

got them, she is not at liberty to anticipate her wants by raising money, or contracting for the discharge of such liabilities before they arise.

The expenditure on marriages and the like occasions is not purely optional expenditure, and as a rule it may be said that what would be reasonable expenditure for such a purpose if her husband were living, would be reasonable expenditure on the part of the widow after his death, if the circumstances of the estate remain the same. It is as much a duty for the widow to make proper provision for the marriages of her daughters as to provide for their maintenance, while this continues to be chargeable to her husband's estate.

The lender to a person who has a limited power of disposing of property, whether a widow, or the guardian of a minor, or the manager of a Hindu family, has to satisfy himself of the existence of necessity for the loan, and is bound to make proper enquiry for this purpose. If he does so, he is not responsible for the subsequent application of the money lent, but he must in the first place satisfy himself as well as he can that the necessity exists. To say that he was told the money was wanted for a particular purpose is not enough, unless he has made such enquiries as a reasonable man under the circumstances might be expected to make to satisfy himself that the necessity really exfsted. GURDIT SINGH *v.* MEHR SINGH.

67 P R 1884

5. *Hindu widow—Payment of time-barred debts of husband—Necessity.*

Held, that the payment by a Hindu widow of a time-barred debt of her deceased husband may be a " necessity " sufficient to support an alienation of her husband's estate. JHALLA *v.* JEWA. **117 P R 1884**

6. *Necessity—Widow's power to anticipate her wants—Future maintenance.*

Held, that a widow has no right to encumber an estate in which she has only a life interest by charging it with the expense of her future maintenance; she is not at liberty to anticipate wants by raising money or contracting for such liabilities before they arise. *Gurdit Singh* v. *Mehr Singh* (No. 67 *of* 1884, Civil), followed. NIHAL SINGH *v.* MUSSAMMAT RAJON. **11 P R 1885**

7. *Time-barred debt—Necessity.*

Held by a majority of the Full Bench, (*Tremlett*, J., dissenting). that except in those cases where a customary power to alienate for time-barred debts may be proved, neither a Hindu nor Muhammadan widow in possession of her deceased husband's estate on the usual widow's estate, where the strict Hindu law does not apply, is justified in paying out of the *corpus* of her husband's estate debts which were incurred by him, but have become barred by limitation.

Per *Tremlett*, J., *contra*.

Mul Singh v. *Bahadur Ali* (No. 129 of 1883, Civil) approved. *Jhalla* v. *Jewa* (No. 117 of 1884, Civil) distinguished. PHALLU *v.* SORAB

108 P R 1885 F. B.

CUSTOM I.—ALIENATION—*contd.* **B.—ALIENATION BY WIDOW**—*contd.*—**(c) Necessity**—*contd.*

8. *Necessity—Duty of purchaser from widow with limited interest.*

Though according to the general doctrine laid down by the Privy Council in *Hanuman Prasad Pande's* case, the lender to a widow with merely a life interest in her deceased husband's property is bound to enquire into the necessities for the loan, and to satisfy himself, as well as he can, with reference to the parties with whom he is dealing, that there is a need for the money, but is not bound to go further and to make a scrutiny into the application of the money, or to enquire as to the validity of every part of each debt, the exact application of the above rule must depend on the circumstances of each case as it arises ; and while a purchaser could not be expected on the one hand to go back step by step, to trace out a debt which the widow alleged she had to pay, and carry out, a long investigation, it would, on the other hand, be applying the rule too lightly to hold that on the mere assertion of the widow that she is going to pay sums to certain specified creditors, and on the mere deposit of receipts by these persons, purchaser may pay without even considering what sort of persons these are, whether persons likely to be in collusion with the widow or not, and whether their claims have even an apparent and *prima facie* air of truth and probability in their favour. MAHARAJA LAL *v.* KALLU.

39 P R 1889

9. *Necessity—Payment of Government revenue.*

An alienation by a widow of her husband's land to prevent a sale for Goverment revenue due is a justifiable cause for charging the estate, and a person advancing money to pay a debt of revenue is not bound to ascertain whether the default was due to waste or neglect on the part of the widow, there being in fact actual danger to the estate, which payment of the debt averts. RAMJAS *v.* RAM NATH. **76 P R 1889**

10. *Necessity—Daughter's marriage—Duty of alienee.*

It is not sufficient for the alienee from a Hindu widow to show that on inquiry he was told that the money *was* wanted for a particular purpose. His inquiry must go to show that the necessity really existed. To ascertain whether it is necessary to alienate or charge the property, the income and legitimate expenditure must be inquired into and compared. If at the time the mortgage took place, the income could not have provided for the expenditure, the charge is valid for such sum as it was actually necessary to raise.

No. 14 *P. R.* 1883, No. 39 *P. R.* 1889, No. 119 *P. R.* 1886, No. 67 *P. R.* 1884, referred to. KULJAS RAI *v.* SHER SINGH.

152 P R 1889

11. *Suit by reversioners to set aside mortgage by widow—Plea that the estate mortgaged had come to the widow charged with a debt contracted by her predecessor—Validity of such a plea—Inquiry into nature of debt where contracted by a female proprietor.*

CUSTOM I.—ALIENATION—*contd.* **B.—ALIENATION BY WIDOW**—*contd.*—**(c) Necessity**—*contd.*

Two brothers, A. and B., owned a plot of land. A. died leaving C., his widow, who succeeded to A.'s share, and in her life-time effected a mortagage of it. On the death of B. and C., D., the widow of B., succeeded to the entire plot. D. mortgaged the land for the purpose of paying off the mortgage debt contracted by C. In a suit brought by the reversioners to have it declared that the mortgage by D. was inoperative as against them, it was contended on her behalf that she was bound to pay the debt contracted by C., to wnose estate she had succeeded. The Divisional Court, without making any inquiry into the nature of the debt or the reasons for contracting it, held that the liquidation of the debt of C. was incumbent on D., that as an heir it was not for her to question C.'s acts, and that cousequently the payment of C.'s debt wss a necessity to D.

Held, that this view was wrong. The Courts were bound to inquire into the nature of the debt, and whether C. was justified in incurring, and the mere fact that D. succeeded C. was immaterial. The two widows stood on the same footing. What was unauthorized for one was not justifiable for the other. If C. had a necessity, D. was bound to pay the debt. If it had been incurred without any justifiable cause, D. should not be held bound by it, nor should the property be burdened by it to the prejudice of reversioners. BAGA SINGH *v.* SANT SINGH. **1 P R 1890**

12. *Widow—Debt—Necessity—Liability of her husband's estate.*

A Muhammadan widow, entitled to a life interest in her husband's estate, borrowed money from the plaintiff on an ordinary bond for the purpose of recovering the life-estate—a purpose which constituted a legal necessity for alienation. She did not, however, specifically charge the estate with the payment of the debt, though she might have legitimately bound her successors. After her death, the plaintiff sued to recover the amount from the estate in the hands of reversioners.

Held, that the estate not having been mortgaged or charged with the payment of the debt was not liable, and that the plaintiff's only remedy was against the widow's property, if any, in the hands of reversioners. ABDUL GHAFFUR SHAH *v.* PIR MUHAMMAD KHAN. **22 P R 1890**

13. *Widow—Necessity—Legal expenses incurred in defending life-estate.*

Money borrowed to defray legal expenses incurred by a widow in defending her life-estate constitutes legal necessity for which she may legitimately alienate her husband's estate. RAM LABHAYA *v.* ZULFIKAR. **44 P R 1890**

14. *Civil Procedure Code*, 1882, *section* 43 —"*Cause of action*"—*Identity of defendants —Mortgage by widow—*"*Necessity*"*—Duty of mortgagee when advancing money to widow.*

One B. D., a *bania* of Amritsar, died leaving property of large value which his widow, Mussammat Bilas Devi, held on a life tenure, and on the 20th April 1887, mortgaged certain houses and shops forming part of the said property, in favour of defendant. On the death of Mussammat Bilas Devi, which took place about six years before the institution of the present suit, one K. S., claiming to be the adopted son of B. D. and Mussammat Bilas Devi, took possession of the whole property, whereupon plaintiff sued for and obtained a decree for one-half, in which the property now in dispute was, with the exception of a small fraction, included. Inasmuch, however, as the present defendant who was in possession of the said half share, was no party to the former suit, plaintiff now sued him for recovery of the same, the plaint alleging that Mussammat Bilas Devi was not competent to effect the mortgage and that there was no necessity for the alienation. Defendant pleaded (*inter alia*), that the present suit was barred by Section 43, Civil Procedure Code, that plaintiff was estopped by her conduct, at the time of execution of the mortgage and thereafter from disputing the mortgage; that the mortgage was for legal necessity and for the benefit of B. D.'s soul, and that the mortgagee was not bound to see to the application of the money. The lower Court having decreeed plaintiff's claim, defendant appealed to the Chief Court.

Held, that the suit was not barred by section 43, Civil Proceduee Code.

Held, further, that no circumstances constituting an estoppel had been proved against the plaintiff.

Held, also, that inasmuch as Mussammat Bilas Devi held a large amount of property, a mere statement on her part that she required to borrow the money for the construction of a *thakardwara* for the benefit of her deceased husband's soul, was not sufficient to justify the defendant in advancing the money, it being incumbent on him to make honest inquiries as to (1) whether the building of the *thakardwara* was a lawful necessity which authorized the widow to make a binding alienation of her husband's immovable property, and (2) whether she really had no funds to carry on its construction.

Held, upon the evidence that the building of the *thakardwara* was not intended for the benefit of the deceased husband's soul, but rather for the spiritual benefit of the widow herself, and was not, therefore, a lawful necessity which would support the alienation. DIAL SINGH *v.* MOSSAMMAT JOWALA DEVI. **58 P R 1896**

(d) Locus standi and assent of reversioners.

1. *Muhammadan Jats of tahsil Gujar Khan, Rawalpindi—Widow alienating in favour of her husband's sister's son—Right of collaterals in tenth degree to contest such alienation.*

Found, that there is no well established custom prevailing among Muhammadan Jats of the Gujar Khan tahsil, in the Rawalpindi district, whereby male collaterals so distantly related as the tenth degree are permitted to contest an alienation by a widow in favour of her deceased husband's sister's son. MUHAMMAD *v.* JAHAN KHAN. **119 P R 1883**

2. *Necessity—Assent by one of several reversioners of equal degree—Effect of such assent—Such assent no obstacle to the sale being set aside as a whole—Presumption of correctness of pedigree-table given in settlement record—Land Revenue Act (XXXIII of 1871), Sections* 14, 15, 16.

Held, that the mere act of one among several reversioners of equal degree in assenting to a sale by a widow of her late husband's property does not estop the other reversioners from suing to set aside the sale, inasmuch as one of the body of reversioners, unless specially authorized by the others, cannot sign away their rights, and further, that such assent has no effect upon the sale by the widow so as even to validate it in part, *i. e.*, to the extent of the interest of the reversioner who assented to it, or to be an obstacle to the sale being set aside as a whole.

Held, also, that the presumption of correctness which attaches to the record of rights under section 16, para. 2 of the Land Revenue Act, 1871, attaches also to a pedigree-table given in the Settlement record as though a pedigree table is not one of the documents mentioned in the six clauses of section 14 of the Act, whlch give in detail the different documents of which the record of rights consists, by section 15 of the same Act the Local Government is empowered to direct that other documents besides those specified shall be contained in the record of rights, and as a fact has directed that a *Shajra-Nasab* or pedigree table be so included (*vide* Rule C. 111, 26 of the rules under Act XXXIII of 1871). CHUNI LAL *v.* NANDA. **174 P R 1888**

3. *Consent of next reversioner—Suit for declaration of invalidity by remoter reversioners—Effect of next reversioner's consent*

The next reversioner having consented to an alienation by a widow, some remote reversioners sued to set it aside—*Held*, that the next reversioner's consent is not in all cases binding on the remoter reversioners. The circumstances of each case, the nature of consent and the position of the parties, *e.g.*, the respective ages of the consenting reversioner and the widow and the probability or otherwise of the former surviving the latter should all be examined and considered. PARTAPA AND MUSSAMMAT JEWNI *v.* SOBHA SINGH. **99 P R 1889**

4. *Right to sue—Declaratory decree—Specific Relief Act (I of 1877) section 42—Right of distant collaterals to question alienation by widow, in presence of daughter's sons —Sindhu Jats—Right of daughter and daughter's sons to succeed.*

Plaintiffs, the collaterals, heirs of one A. in the tenth remove, sued to set aside an alienation made by his widow. The defeudants contended that the plaintiffs had no right to sue, as they were not the nearest reversioners, the daughter and the daughter's sons of the deceased being the persons presumptively entitled to succeed if they survived the widow.

CUSTOM I.—ALIENATION—*contd.* B.—ALIENATION BY WIDOW—*contd.*—(d) Locus standi and assent of reversioners—*contd.*

The pedigree table prepared at Settlement showed that in the course of many generations, there was not a single instance of a daughter's succession to sonless proprietors. The *Wajib-ul-arz* and the *Riwaj-i-am* also clearly excluded the daughter from succession of her father's estate.

Held, that without finally deciding whether daughters and daughters' sons were by custom excluded from succession among Sindhu Jats, the tribe to which the parties belonged, the plaintiffs' position was sufficiently well established by the evidence to entitle them to maintain the suit as the nearest reversioners. RAM DITTA *v.* KISHAN SINGH.

4 P R 1890

5. *Alienation by widow—Contest of, by reversioners in seventh degree—Acquiescence of next collaterals who had sons living—Judicial discretion.*

The plaintiffs, collaterals in the seventh degree of M. K. who died in September 1890, leaving no male issue but leaving him surviving two widows, a mother and two stepmothers, sued alleging that after M. K.'s death the said persons had alienated the ancestral property in two villages to A. B., the son-in-law of M. K., and that they, the defendants, had obtained mutation of names in favour of A. B. falsely alleging that they were acting in accordance with the directions of a nuncupative will of the deceased, the *factum* of and the power to make such a will being also denied. It appeared that the nearer collaterals, *viz.*, the two second cousins of the deceased, who were also parties to the suit and who had sons living, had acquiesced in the alienation, and that the plaintiffs, the remote reversioners, would be wholly excluded from the succession by the near collaterals, and their sons, if all or any of the latter survived the widows.

Held, that the plaintiffs in the present case were not precluded from suing by the bare fact that they were not the next reversioners, as the near collaterals had precluded themselves from suing by concurring in the act of the widows, and their sons were bound by their father's consent.

But *held* further, that as the plaintiffs were remote reversioners with only a bare possibility of succeeding, and it was a question whether the assent of the heirs in the present case did not effectually validate the widow's action, and considering further that the consenting reversioners were not childless, but both had sons, the lower Court exercised a wise and judicial discretion in refusing to entertain the suit, and that the decree should be upheld upon that ground. GHARIB KHAN *v.* MIRZA ALI BAHADUR KHAN.

7 P R 1893

6. *Mortgage by widow in favour of her son-in-law—Necessity*—Locus standi *of reversioner whose father was converted to Muhammadanism to object to such mortgage—Agriculturist Jats of Sialkot District—Act XXI of* 1850, *section* 1.

CUSTOM I.—ALIENATION—*contd.* B.—ALIENATION BY WIDOW—*contd.*—(d) Locus standi and assent of reversioners—*contd.*

The parties were Jats of the Sialkot District, and on the death of one J. S. and thereafter of J. S.'s son, R. S.—the latter dying without male issue—Mussammat I. K., the widow of J. S., and mother of R. S., succeeded to the estate of J. S., and on the 29th March 1892 mortgaged it to her son-in-law, defendant No. 2. Thereupon G. and N., the nephews of J. S., sued for a declaration that the mortgage would not affect their rights on the death of Mussammat I. K.

Defendant No. 2 pleaded that plaintiffs and their father having been converted to Muhammadanism could not by custom object to the alienation; that the mortgage was for necessity, and that plaintiffs had no *locus standi* with regard to 17 *ghumaos* which had been acquired by R. S.

Held, that the parties being agriculturist Jats were governed by custom, and that defendant No. 2 had failed to prove that the mortgage was *bona fide* and for necessity, or valid by custom.

Held, further, that the alienation having been effected by a widow, plaintiff was entitled to ask for a declaration regarding acquired as well as ancestral property.

Quære: whether the Courts would not be debarred by the provisions of Act XXI of 1850, from giving effect to any such custom as was relied on by defendant, even if its existence had been established.

Semble.—Act XXI of 1850 was not intended to apply only to the person who has himself or herself renounced his or her religion or been excluded from caste, and the latter part of section 1 protects any person from having any right of inheritance affected by reason of any person having renounced his or her religion or having been excluded from caste. GULAB *v.* MUSSAMMAT ISHAR KOUR.

63 P R 1895

7. *Mortgage by widow—Suit by reversioners for recovery of land after death of widow—Limitation Act,* 1877, *2nd Schedule, article* 141— Res judicata*—Estoppel.*

Held, that as against a person in possession of land under a title created by a widow, or in virtue of a decree for possession obtained against a widow, the reversioners have, under article 141 of the Limitation Act, twelve years from the date of the widow's death within which they can sue for recovery of the land.

Held, further, that where a suit is brought against a female heiress in possession in respect of any matter which strikes at the root of her title to the property, decree fairly and properly obtained against her binds all the reversioners, but, inasmuch as the widow's estate is ordinarily a limited one, and as she represents the reversioners only in special cases, in order that such decree should bind the latter, it must be shown, in the first instance, that the litigation was one in which the entire interest in the estate she held in possession was at stake, and then, that she had sufficiently protected the re-

CUSTOM I.—ALIENATION—*contd.* B.—ALIENATION BY WIDOW—*contd.*—(d) Locus standi and assent of reversioners—*contd.*

versioner's interest, and that there was a fair and proper inquiry.

A widow's position with reference to the reversioners' interests is like that of a trustee, and any failure or neglect on her part to defend those interests in any such litigation render a decree obtained against her valueless against the reversioners. HIRA SINGH *v.* SHER SINGH. **29 P R 1898**

8. *Escheat—Right of proprietary body to contest alienation by widow of childless proprietor—Kangra District—Right to sue.*

Found, that there is no custom by which, in the Kangra District, the estate of a childless proprietor escheats (after the death of the widow of such proprietor) to the village community or the owners of the subdivision in which the land is situate.

Although under the existing revenue system two ingredients of jointness have been introduced among artificially created village communities, *viz.*, (*i*) joint right in the waste attached to each village, and (*ii*) joint liability for the revenue assessed on the village, the right of escheat is not a necessary consequence of such jointness, nor has it been declared to be so by any statutary provision.

Held, further, that even if by custom the widow of a childless proprietor was incompetent to alienate, or to give a valid title, except for necessity, it was not open to one who was not a reversioner to sue to set aside her act, and that in such a case the plaintiff must succeed on the strength of his own title and cannot derive help from the widow's incapacity to alienate.

The question as to the reversionary rights of the proprietary body in such cases discussed historically by *Chatterji*, J. SHAMAN *v.* SARDHA. **61 P R 1898**

9. *Subsequent surrender of life estate by widow in favour of reversioner—Right of reversioner to oust alienee—Succession of daughter's son—Trikha Brahmins of Jhang District—Limitation Act,* 1877, *2nd Schedule, Article* 141.

Held, that a transferree from a widow, who would ordinarily retain possession till the death of the widow, cannot be ousted before her death by a reversioner in whose favour she has surrendered her life estate, and that, therefore, the reversioner's cause of action for a suit for posssession does not arise until the death of the widow.

Found, further, that the parties who were Trikha Brahmins of the Jhang District, were governed by custom and not by Hindu Law, and that among them a daughter or a daughter's son was not entitled to succeed in the presence of the first cousin once removed of the deceased sonless proprietor. MOHAN LAL *v.* DEVI DAS. **43 P R 1899**

10. *Power of female heir to alienate—Mortgage on immovable property, sub-mortgage on "immovable property."*

Held, that a mortgage debt as long as it is charged on immovable property is itself "immovable property."

CUSTOM I.—ALIENATION—*contd.* **B.—ALIENATION BY WIDOW**—*contd.*—**(d) Locus standi and assent of reversioners**—*contd.*

Held, further, that under Customary law no less than under Hindu Law a female has merely a limited right of alienation in respect of inherited property, whether movable or immovable. SANT SINGH *v.* JOWALA SINGH **58 P R 1899**

11. *Alienation by widow assented to by next heir—Subsequent mortgage by heir—Right of mortgagee to contest previous alienation as made without necessity.*

On the 3rd March 1889 Mussammat G. B., a widow in possession, mortgaged the land in question to defendants for a sum of Rs. 800. After her death N., who had succeeded her as her husband's heirs, mortgaged the land in favour of plaintiffs but subsequently admitted, and assented to, defendants' mortgage. Plaintiffs sued for possession by redemption on payment of a sum of Rs. 418 and contended that, except in respect of such amount, the mortgage effected by the widow was not for necessity.

Held, that plaintiffs had acquired no *status* which enabled them to contest the mortgage by Mussammat G. B., on any such ground.

The control of a widow's alienation is a family matter and the right to such control cannot be transferred to a stranger with *ex-post facto* effect merely by a subsequent mortgage by the person entitled to such right of control. MAULADAD *v.* RAM GOPAL. **22 P R 1900**

12. *Collusion of nearest heir—Right of contingent reversionary heir to contest alienation—Suit by nephews in presence of their uncle's unmarried daughter to contest an alienation by his widow—Chajjra Jats of the Muzaffargarh District.*

In a suit by plaintiffs for declaration that a mortgage by their uncle's widow of her husband's property should not affect their reversionary rights, it was contended that in the presence of the deceased's unmarried daughter, who was the next reversionary heir by the custom of the parties, the plaintiffs had no *locus standi* and were not entitled to maintain the suit. *Held*, that the daughter (even if she was the next reversionary heir) having refused without sufficient cause to institute proceedings to challenge the mortgage in question and having by her acts and conduct precluded herself from doing so and having obviously colluded with her mother and admittedly concurred in the alienation, the plaintiffs being near reversionary heirs were fully competent to maintain the suit. MURAD AND ANOTHER *v.* MUSSAMMAT JANNAT AND OTHERS. **67 P R 1900**

13. *Custom—Alienation—Alienation by widow*—Locus standi *of reversioners of the fifth degree—Domra Jats of the Dera Ismail Khan* tahsil.

Found, that there was an established custom amongst Domra Jats of the Dera Ismail Khan *tahsil* that no male collateral, not descended from a common great-grand-father, along with a deceased person, whose widow

CUSTOM I.—ALIENATION—*contd.* **B.—ALIENATION BY WIDOW**—*contd.*—**(d) Locus standi and assent of reversioners**—*contd.*

had alienated the deceased's property, had a right to object to such alienation.

Rahmat Hussain and others v. *Mussammat Fahim-un-Nissa* (25 *P. R.* 1895 referred to. DILAWAR *v.* MUSSAMMAT JATTI. **2 P R 1901**

14. *Alienation by widow* - Locus standi *of step-daughter to contest alienation—Ghelna Arains of Lahore District*—"Aulad," *meaning.*

In a suit the parties to which were Ghelna Arains of the Lahore District, *held*, that by custom a daughter (assuming her to be the heir of her father) is entitled to contest an alienation of her father's estate made by her stepmother being made without necessity or consideration.

Held, also, that in places where the right of females to succeed is widely recognized the word "*auald*" should be construed as including both male and female issue.

Mussammat Rakhi v. Mussammat Fatima (89 *P. R.* 192), *Miran Bakhsh v. Allajawai* (25 *P. R.* 12), *Zainab* v. *Amir* (174 *P. R.* 1889), and *Sher Muhammad Khan* v. *Muhammad Khan* (5 *P. R.* 195), referred to. CHIRAGH BIBI *v.* HASSAN. **19 P R 1908**

15. *Custom—Alienation by widow—Consent of nearer reversioners—Right of more remote reversioners in presence of daughters of the deceased owner to contest such alienation—Mode of calculating degrees of relationship.*

In a suit by the reversioners of the sixth degree for a declaration that a sale of immovable property effected by the widow of a sonless proprietor should not affect their reversionary rights, it was contended that in the presence of the deceased's daughters who were the next reversionary heirs by the custom of the parties, and other descendants nearer in relationship than the plaintiffs, several of whom had consented to the sale, the plaintiffs had no *locus standi* and were not entitled to maintain the suit.

By the *Riwaj-i-am* of the village it appeared that daughters only succeeded in the absence of the collaterals up to the fifth degree.

Held that as it was by no means certain that the daughters (even if they were the next reversionary heirs) would interpose to contest the alienation by their own mother, with whom they were living until they married, or would never succeed as heirs, as several collaterals of the fifth and lesser degrees were in existence, the plaintiffs were fully competent to maintain the suit. GIRDHARI RAM *v.* FAIZULLAH KHAN. **48 P R 1908**

16. *Custom—Alienation—Gift by widow to her daughter*—Locus standi *of collaterals—Succession of daughter—Sayyads of* mauza *Chuma*, tahsil *and district Gurgaon.*

Held, that among Sayyads of *mauza* Chuma, *tahsil* and district Gurgaon, daughters succeed to the property of their fathers to the exclusion of the latter's collaterals and therefore the collaterals have no right to

CUSTOM I.—ALIENATION—*contd.* **B.—ALIENATION BY WIDOW**—*concld.*—**(d) Locus standi and assent of reversioners**—*concld.*

contest the gift made by the widow of the last male owner in favour of her daughter. MUZAFFAR ALI *v.* MUSSAMMAT ZAINAB. **58 P R 1910**

17. *Custom—Alienation—Alienation by widow*—locus standi *of the sister of last male owner, in default of reversioners to contest an alienation—Ghirths of* mauza *Baldhar*, tahsil *and district Kanngra.*

Held, that among Ghirths of *mauza* Baldhar, *tahsil* and district Kangra, a sister of the last male owner is, in the absence of collaterals, entitled as the next heir to contest an alienation made by the widow and to obtain a declaration that such alienation shall not affect her reversionary rights. MUSSAMMAT KOKAN *v.* MUSSAMMAT LAKHOO. **60 P R 1910**

18. *Custom—Alienation—Alienation of self-acquired property by mother and widow of the last male owner*—Locus standi *of collaterals residing in another village to contest the alienation—Syads of* mauza *Tal Khalsa—District Rawalpindi.*

Held, following 110 *P. R.* 1906 *F. B* (*Daya Ram* v. *Sohel Singh*) that by custom among Sayads of *mauza* Tal Khalsa, district Rawalpindi, collaterals of the last male owner residing in another village have a *locus standi* to contest a sale of self-acquired land made by the mother nnd widow af the deceased without legal necessity. CHANNAN SHAH *v.* AMAR DAS. **71 P R 1910**

19 *Custom—Alienation—widow's right to alienate—Sayads of Sialkot City—Muhammadan Law.*

Held, that although the initial presumption in the case of non-agricultural Sayads, residents of a city, is that they follow Muhammadan law, yet where in defiance of that law, widows take over the whole of their husband's immovable estate, a natural presumption arises that they do so, as life holders only subject to control by male reversioners

Held, therefore, that among the parties to the suit, Sayads of Sialkot City, there is a presumption in favour of a custom, under which alienations by a widow of house property inherited from her husband are liable to be contested by the husband's brother. **14 P R 1911**

C.—ALIENATION BY DAUGHTER.

1. *Chimbhas of Wazirabad—Daughters' power of alienation.*

In a suit the parties to which were Chimbhas of *mouza* Khasra in the Wazirabad *tahsil* of the Gujranwala district, *found*, that no power of alienation was by custom permitted to daughters, who had been allowed to succeed to their fathers' land. PIR BAKHSH *v.* MUSSAMMAT AMIR BIBI. **17 P R 1885**

2. *Daughter's power to gift land inherited from her father—Gift to sister's sons.*

In a suit by the collateral heirs for cancellation of a gift of certain land by a female

CUSTOM I.—ALIENATION—*contd.*
C.—ALIENATION BY DAUGHTER—*contd.*

donor in favour of her sister's sons, it appeared that the land gifted was a moiety of the paternal estate, to which the two daughters of the last male owner, who had no sons, had succeeded in equal shares on their father's death, having up to that time lived in the father's house with their husbands.

Held, that the plaintiffs were entitled to a decree, as the defendants had failed to show that the donor had by custom an unrestricted power of gift of her share of the paternal estate to which she had succeeded under the above circumstances. *Kutba v. Mussammat Abidan.*
19 P R 1887

3. *Gift—Muhammadan Jats of Gujrat District—Land gifted to daughter—Further gift of the land by the donee to her daughter.*

Found, in a suit the parties to which were Muhammadan Jats of the Gujrat District, that where a gift of his land by M. to his daughter had been allowed to pass unchallenged, this did not by custom confer any power enabling the daughter to make a further gift in favour of her own daughter. MUHAMMAD *v.* MUSSAMMAT UMAR BIBI. **129 P R 1893**

4. *Succession—Daughters—Suit by reversioners to contest daughter's succession—Compromise—Subsequent suit by same reversioners to set aside alienation by daughters—Civil Procedure Code, 1882, section 43.*

One K S., a Hindu Jat, died leaving a son, Kh., two daughters, the present petitioners, and certain immovable property. Kh. married and had a son L, who survived him. After the death of Kh., and the remarriage of his widow, the daughters of K. S. went to the house left by K. S., to reside with, and take care of, their minor nephew L. On the death of L., the reversionary heirs of K. S. sued the said daughters who had taken possession of both the land and houses left by K. S., but in 1860 this suit was compromised, one-third of the land and houses being left with the daughters. On the 28th January 1893, the daughters having sold part of the said house property to B. S. and C. S., the reversioners again sued, praying for a declaration that the sale should not affect their rights after the death of the female vendors, and they pleaded that the sale was not for a necessary purpose and that the consideration was fictitious. The defendants, who were the daughters and the vendees, pleaded that the daughters had inherited the property in dispute from K. S., that they were full owners and had been in possession for the preceding 27 years, and that the sale was for necessity and for full consideration.

The lower Courts found that, in the absence of evidence to the contrary, the presumption was that the daughters were not full owners but merely life tenants; that their possession was permissive and not adverse to the plaintiffs; that the sale was not for necessity or for consideration, and that the plaintiffs were not barred, under section 43 of the Civil Procedure Code, from suing by reason of their suit in 1860, and decreed plaintiff's claim. A certificate to appeal having been refused by the Divisional Judge, the defendant daughters

CUSTOM I.—ALIENATION—*contd.*
C.—ALIENATION BY DAUGHTER—*contd.*

applied to the Chief Court on the Revision side to admit a further appeal on the following grounds:

"(I). That the certificate should have "been granted as there is a "point of law and custom "involved;
"(*a*) does section 43 apply or not?
"(*b*) have, or have not, the "daughters by custom "more than a life tenancy?
"(II). The daughters have full power "to alienate.
"(III). There was necessity."

Held, that the real question was not whether the daughters by custom took more than a life tenancy, but what were their rights under the compromise of 1860, and that there was no ground for admitting an appeal upon that question.

Held, further, that the present suit being upon an entirely new cause of action was not barred under section 43 of the Civil Procedure Code by the omission to claim the house in the former suit. MUSSAMMAT IND KAUR *v.* SUJAN SINGH. **47 P R 1894**

5. *Power of daughter who has succeeded to alienate in presence of her sister's sons—Respective rights of husband's brother and sister's sons—Sarsut Brahmins owning land in Tarn Taran tahsil, Amritsar District—Succession.*

In a case in which the parties were Sarsut Brahmans owning land in Tarn Taran *tahsil*, Amritsar District, *found*, after a remand for further inquiry, (i) that a daughter who has succeeded, in the absence of male lineal descendants, to her father's property, is not competent by custom to alienate the said property in favour of her deceased husband's brother in the presence of her sister's sons; and (ii) that by custom the sister's sons are entitled to succeed to such daughter in preference to the brother of her deceased husband.—JAI DIAL *v.* SANTU. **74 P R 1899**

6. *Sials of Maghiana, Jhang District—Succession of daughter in presence of sons.*

Held, in a suit the parties to which were Sials of Maghiana in the Jhang District, that the defendant had failed to prove that a gift by a proprietor of a part of his ancestral property to a wife and her daughter in the presence of a son should be regarded as an absolute gift of right of ownership and not one merely for their joint lives and life of the survivor.

Mussammat Subhan v. Ghazi (50 P. R. 1885) and *Bakhu* v. *Amir* (47 P. R. 1896), cited. AMIR *v.* NUR MUHAMMAD.
82 P R 1902

7. *Alienation by daughter—Necessity—Suit by reversioners to set aside alienation by daughter.*

Found, in a suit the parties to which were governed by the Punjab Customary Law that an alienation by a daughter holding land until her marriage for necessity was valid against the customary heirs.

CUSTOM I.—ALIENATION—*contd.*
C.—ALIENATION BY DAUGHTER—*contd.*

As a general rule daughter's tenure of her father's land until death or marriage is very analogous to that of a widow in her husband's property. MUL SINGH *v.* KHANU.
90 P R 1903

8. *Competency of daughter to gift land inherited from her father—Mithu Jats of Muzaffargarh District.*

Found, that by the custom prevailing among Mithu Jats of the Muzaffargarh District, a daughter was competent to make a valid gift of property inherited from her father to a stranger. ALAM *v.* NUR. **62 P R 1905**

9. *Daughter's power to alienate land inherited from her father—Sayads of* mauza *Shahabad, Karnal District—Burden of proof.*

In a suit the parties to which were Sayads of *mauza* Shahabad in the Karnal District, *held*, that the defendants, upon whom the burden of proof lay, had failed to establish that by custom governing the parties a daughter, in the absence of male lineal descendants, inherits the paternal property in absolute estate with unlimited power of alienation.

Such an assertion being contrary to the general rule of inheritance for females, the *onus* of proving a custom contrary to it rests on the party who asserts its existence.

Rahmat Hussain v. *Fahim-un-Nissa* (25 P. R. 1890), distinguished.

Imam Din v. *Nanu* (119 P. R. 1891), and *Muhammad Anwar-ul-Huq* v. *Habib-ul-Rahman* (74 P. R. 1902), cited and followed. ABUL HASSAN *v.* HABIB ULLAH.
18 P R 1906

10. *Gift by daughter of ancestral paternal estate inherited in absence of male collaterals—Suit by father's brother's daughters to contest such alienation—Khattaris of Attock District.*

In a suit the parties to which were Khattars of the Attock District the nieces of the last male owner sued for a declaration, that a gift by the latter's childless daughter to her husband's collaterals of ancestral paternal estate inherited by her in absence of male collaterals would not affect their reversionary rights.

Held, that the plaintiffs had no *locus standi* to maintain the suit. The alienor in this case was holding as owner by inheritance from her father; and thus, there being no presumption in favour of control by a female over such an owner, it was not open to the plaintiffs to contest the alienation unless they were in a position to establish a custom *ad hoc*. NUR-UL-NISSA AND OTHERS *v.* GAUHAR-UL-NISSA AND OTHERS. **61 P R 1906**

11. *Awans of Pind Dadan Khan* tahsil, *Jhelum District—Rights of daughters succeeding to their father's property—Burden of proof.*

In a suit the parties to which were Awans of Pind Dadan Khan *tahsil* in the Jhelum District, *held* that the defendants upon whom the burden of proof lay had failed to establish a custom under which the daughter of a sonless proprietor who has succeeded to the non-ancestral property of her father by inheritance has an unlimited estate or has full

CUSTOM I.—ALIENATION—*contd.*
C.—ALIENATION BY DAUGHTER—*concld.*

power of disposition in the presence of collaterals related to the deceased in the ninth degree.

Distinction between a gift by a father of his self-acquired land to his daughter and the inheritance of such land by her in absence of male lineal descendants explained. BAHADUR *v.* ABDULLAH. **121 P R 1908**

12. *Alienation by daughter of ancestral paternal estate inherited in absence of male collaterals—Right of a female prospective heir to contest such alienation—Sayads of Gurgaon District.*

In a suit the parties to which were Sayads of the Gurgaon District, the sister of the last male proprietor and her son sued for a declaration that a certain alienation by the daughter of such proprietor of ancestral paternal estate inherited by her in default of male lineal descendants would not affect their reversionary rights.

Held that by custom among the parties the alienor had succeeded to the ancestral landed property of her deceased father as a full owner and the plaintiffs had therefore no *locus standi* to maintain the suit.

A female with a right to succeed to the estate held by another female is competent to control the acts of the latter, provided she establishes—

(*i*) that she is in fact entitled to succeed on the death of the alienor, and

(*ii*) that the alienor is holding only a limited estate resembling that of a widow,

but she can in no case challenge an alienation by a male proprietor even if he be childless or by a female holding as a full owner on the same tenure as a male proprietor. MAQSUD-UL-NISA *v.* KANIZ ZOHRA. **135 P R 1908**

D.—ALIENATION BY MOTHER.

1. *Muhammadan Rajputs of Karnal District—Power of mother who has succeeded for life to the share of one son to gift such share to one of the agnates to the exclusion of the other heirs.*

In a suit the parties to which were Muhammadan Rajputs of the Karnal District, *found* that no special custom existed under which a mother who had succeeded on a life interest to the share of one of her sons in the ancestral estate could make a valid gift of that share to one of the agnates to the exclusion of the other heirs on the ground that the said donee had rendered service to the widow. ABDUL HASSAN KHAN *v.* QUTAB ALI KHAN. **79 P R 1889**

2. *Gift by mother of last male owner—Sayads and Pathans of Basti Baba Khel, Jullundur District.*

Found in a suit the parties to which were Sayads, or possibly Pathans settled in the village or *kasba* of Basti Baba Khel in the Jullundur District not agriculturists in the strict sense of the term (their ancestors being said to have been horse dealers), that a presumption existed in favour of the right of collaterals in the ninth degree from the last male

CUSTOM I.—ALIENATION—*contd.*
D.—ALIENATION BY MOTHER—*concld.*

owner to contest a gift by the said owner's mother (who had been recorded as a proprietor of half the estate on the death of her son, the other half going to his widow) in favour of a son of her late husband's sister, and that the donor and donee had failed to rebut the presumption. MUSSAMMAT AISHAN AND ABDUL HAQ *v.* MUHAMMAD JAMIL. **74 P R 1892**

E.—ALIENATION BY HEAD OF RELIGIOUS INSTITUTION—

vide RELIGIOUS INSTITUTION.

F.—ALIENATION BY NON-PROPRIETOR.

See UNDER COMMON LAND.

124 P R 1888
13 P R 1889
40 P R 1889
50 P R 1889
102 P R 1891
99 P R 1892
38 P R 1895

1. *Houses of non-agricultural residents.*

According to the stipulations of the *Wajib-ul-urz*, the houses of non-agricultural residents in the village reverted to the proprietors of the village on the occupants quitting them. Since the time of settlement the village had expanded into a town. One of the non-agricultural residents, not of long occupation, sold his house to another, and the proprietors claimed under the *Wajib-ul-urz*. *Held*, that they were entitled to the value of the site, the property in the building remaining with the purchaser. MAHILA *v.* MUSSAMMAT GUNGA DEVI. **86 P R 1867**

2. *Mortgage of house by cultivator—Wajib-ul-urz—Persons not parties to it.*

One of the defendants, a cultivator in the village, mortgaged his house to the other defendant; the *Wajib-ul-urz* declaring that the right to sell his house did not belong to a cultivator. Plaintiff, a zemindar, sued to set aside the mortgage. *Held*, that the cultivators, who were not parties to the *Wajib-ul-urz*, were not bound by it and that the mortgage could not be disturbed. GOOJUR SINGH *v.* HEERA. **33 P R 1869**

3. *Co-sharers.*

A co-sharer in a tenancy cannot make a gift of his share without the consent of the other co-sharers. JUGUT RAM *v.* LUCHMUN DAS. **48 P R 1870**

4. *Sale by village resident, a non-proprietor of the village, of his house to one of the proprietors.*

A resident of *mauza* Mohna Kalan, Hoshiarpur District, a non-proprietor sold his house to one of the proprietors of the village. The sale was contested by the purchaser's co-proprietors.

Held, that in the absence of a custom to the contrary the sale to one proprietor without the consent of the rest was invalid.—MYA DAS *v.* FATTEH DIN. **25 P R 1875**

5. *Right of* kamins *to sell* kothas*—Attempt to sell—Form of decree*

The general custom of the Punjab is against the power of a *kamin* to make a valid transfer

CUSTOM .—ALIENATION—*contd.*
F.—ALIENATION BY NON-PROPRIETOR—*contd.*

of the house in his occuption, but a mere attempt to sell does not operate as a forfeiture of the *kamin's* right to reside in the house while he continues to dwell in the village.

Where a *kamin* sells his house but continues to reside in it, the proper decree to pass is, to declare the sale not binding as against the proprietors, and that upon the house being quitted by the *kamin* or his heirs the proprietors will be entitled to possession of the site, while the kamin or his representatives or assigns will be entitled to remove the materials. REHMAT KHAN *v.* KUTBA. **3 P R 1879**

6. Mauza *Saroki, Gujrat—Sale of houses by non-proprietary residents.*

By the custom of the village of Saroki in the Gujrat District non-proprietary occupants of houses cannot sell them unless they hold the sites by purchase or gift from the proprietors. ALLA DITTA *v.* DINA. **125 P R 1879**

7. *Village artizans*—Mauza *Nathana, Moga* tahsil—*Power of sale.*

Held, that there is no established custom in the village of Nathana in the Moga *tahsil* of the Ferozepore District, whereby a village artizan is at liberty to sell his dwelling house situated within the village site.

The general rule, in the absence of evidence of custom to the contrary, is, that non-proprietary residents cannot dispose of the sites of their houses without the consent of the proprietors, and the consent of the proprietors in several such cases would not prove a custom authorizing sale.

Mya Das v. *Fatteh Din*, (No. 25 of 1875, Civil), cited and approved. BIKA SINGH *v.* LAKHU. **92 P R 1880**

8. Mauza *Bahroki, Sialkot*—Kamins, *power of, to sell houses.*

Held, that no well established custom is proved in the village of Bahroki in the Sialkot District, permitting a *kamin* to sell his house, even where the purchaser is a proprietor in the village. SAHIBA *v.* PREMA. **93 R P 1880**

9. *Mortgage of house in* mohalla *Ansarian, city of Jullundur, by a non-proprietary resident—Landlord and tenant—Death of mortgagor—Suit by landlord to eject mortgagee—Structures put up by tenant—Compensation.*

On the 13th June 1893, one J., a tenant of a house in *mohalla* Ansarian in the city of Jullundur, the site of which admittedly belonged to plaintiffs, executed a deed whereby he mortgaged the said house in favour of one B., the present appellant. J. died shortly afterwards, and on the 28th May 1894 plaintiffs brought a suit against B. for possession of the house and site, and alleged that the mortgage was fictitious, that J. had no power of alienation and that his right of residence was extinguished by his death. B. pleaded, *inter alia*, that the materials of the house belonged to J., and that the latter had by custom power to mortgage the house, plaintiff's right being saved.

CUSTOM I.—ALIENATION—*contd.*
F.—ALIENATION BY NON-PROPRIETOR—*contd.*

Held, by the Chief Court, that by custom J. had no power to effect the mortgage in favour of B. without the consent of plaintiffs.

Held, further, that, though such alienation would not as regards the tenant himself, have worked a forfeiture of his interest, plaintiffs, who were admittedly owners of the site, were competent by custom, upon the death of J., to sue for the eviction of B., and were entitled to the decree prayed for.

But, *held*, that plaintiffs' decree should be coupled with a condition that they should pay to B. the value of the structures found by the Court to have been J.'s property. BUG *v.* ASAD ALI. **75 P R 1897**

10. *Sale by non-proprietor of residential site in* abadi—*Purchase of plot of land to make a tank, effect of, as regards* status *of non-proprietor—suit by some only of proprietary body*—Mauza *Mator, Gujar Khan.*

Found, that defendants, upon whom the *onus* rested, had failed to prove a special custom whereby a non-proprietor in *mauza* Mator, Gujar Khan, is competent to sell his residential site in the *abadi* without the permission of the proprietary body, and that it is immaterial whether the sale be in favour of one of the latter body or not.

Held, that the mere purchase by a non-proprietor jointly with others of a plot of land to make a tank cannot alter his *status* so as to make him a member of the proprietary body.

Held, further that plaintiffs, who were some only of the proprietors, were entitled to sue on behalf of the whole body. KAHN SINGH *v.* WARIS KHAN. **48 P R 1899**

11. *Power of non-proprietor to alienate house—Suit by village proprietors—Nature of relief*—Mauza *Nand Rampur Bas*, tahsil *Rewari, Gurgaon District.*

Plaintiffs, proprietors of the village of Nand Rampur Bas, Rewari *tahsil*, Gurgaon District, sued for possession of the site of a shop, admittedly erected on land owned by the plaintiffs by a non-proprietor who had been allowed to erect it and who had sold it to a non-proprietor who did not reside in the village but let the shop in suit to tenants. Plaintiffs further prayed for an injunction to the effect that the defendants should remove the materials of the shop within a period to be fixed by the Court.

Found, on the evidence, that the shop could not be sold without the consent of plaintiffs and that no such consent had been given.

On this finding *held*, that plaintiffs were entitled to the relief prayed for. HARSAHAI *v.* GANGA RAM. **7 P R 1900**

12. *Alienation of houses by non-proprietors*—Mauza *Siwan, Karnal District.*

Found, that in *mauza* Siwan in the district of Karnal, non-proprietors occupying house property for three generations (from a period antecedent to the record of rights prohibiting transfer of houses), can transfer their houses without the consent of the proprietors. BADRI *v.* UDHO. **73 P R 1903**

CUSTOM I.—ALIENATION—*contd.*
F.—ALIENATION BY NON-PROPRIETOR—*concld.*

13. *Custom—Mortgagee rights—Right of mortgagee's heirs to contest alienation of those rights—Ancestral land—land purchased by one of the decendants from another descendant of a common ancestor.*

Held, that for the purpose of the Customary law of this Province mortgagee's rights do not amount to such rights in the land charged as would give the mortgagee's heirs a right to contest an alienation of those rights.

Held, also, that when a mortgagee purchases the equity of redemption in respect of land mortgaged, the mortgagee rights merge in the rights of ownership.

Held, further, that land ceases to be ancestral if it comes into the hands of an owner otherwise than by descent or by reason merely of his connection with the common ancestor. SRI RAM *v.* RAMJI DAS. **59 P R 1909**

14. *Sale of house by non-proprietor*—Mauza *Talwandi Kalan*, tahsil *Jagraon, District Ludhiana—Suit for ejectment of vendee—Acquiescence by proprietors.*

Held, that a custom had not been established authorising the non-proprietors of *mauza* Talwandi Kalan, *tahsil* Jagraon, district Ludhiana, to alienate without the consent of the proprietary body their right of residence in houses occupied or erected by them, and that on leaving the village they were entitled merely to sell or remove the materials.

Held, also, that a proprietor by attesting the sale-deed of a non-proprietor and appearing before the Sub-Registrar acquiesces in the alienation and is debarred from contesting it. MALLA *v.* MUNSHI RAM. **69 P R 1910**

G.—ALIENATION BY GUARDIAN.

1. *Alienation by guardian—Muhammadan Law.*

Held, following Civil Judgment No. 144 *P. R.* 1883, in a suit among Muhammadans that in the absence of a special custom to the contrary a *de facto* guardian, who is neither guardian by Muhammadan Law nor by an appointment by the Court, cannot bind a minor's property by her acts of alienation. DAD *v.* GALA RAM. **45 P R 1889**

2. *Alienation of minor's property by natural guardian and* sarbarah—*Necessity—Power of guardian not appointed under Act XL of* 1858—*Validity of mortgage.*

In a suit to enforce a mortgage-deed executed by one Mussammat Thakri and her minor son of land which was admittedly, the minor's, the mortgage money was said to consist of a debt due from the minor's father, and a further sum advanced for purposes of litigation. It appeared that though Mussammat Thakri was the natural guardian of the minor's person, and had also been appointed his *sarbarah* for the purposes of dealings by the Government and its officers in the Revenue Department,

CUSTOM I.—ALIENATION—*contd.*
G.—ALIENATION BY GUARDIAN—*contd.*

she had taken no steps to be appointed to the charge of his property under Act XL of 1858.

Held, that the plaintiff's suit must be dismissed; that assuming that there were debts which could be enforced against the minor, and that his property might be brought to sale to satisfy them, it did not follow that his mother had any legal authority to mortgage his land to secure the repayment, or that she was curator of his property for all purposes and competent to mortgage it. MUSSAMMAT THAKRI *v.* MIRZA MAL. **83 P R 1889**

3. *Minor—Mortgage of minor's property by natural and* de facto *guardian—Validity of mortgage—Necessity—Minor benefiting by mortgage—Compensation—Ratification.*

The mother and *de facto* guardian of a Muhammadan minor mortgaged the minor's estate for the alleged purpose of celebrating her marriage. The mortgage deed was attested by the *fiance* of the minor. After the death of the minor the mortgagee sued the mother, the husband and the son of the minor to enforce his mortgage.

Held, (i) That the mother was not authorized by Muhammadan law to effect the mortgage, which was consequently invalid.

(ii) That it is the person who *seeks* equity who is compelled by the Courts to do equity. The minor or her heirs did not in this case ask for a declaration that the mortgage was invalid, and could not consequently be subjected to any conditions.

(iii) That the husband's share in the minor's estate could not be charged with the payment of the debt by reason of his ratification, as he was sued in a representative capacity only and if the minor was not liable he could not be held to be so.

(iv) That an extravagant *trousseau* is not a necessity. FAZL ILAHI *v.* YAKUB MIRZA **192 P R 1889**

4. *Minor—Mortgage by mother—Muhammadan Law—Absence of custom—Validity of mortgage—Equitable rights of mortgagee.*

The mother of a Muhammadan minor, not his legal guardian, executed a mortgage-deed for and on behalf of the minor, the greater portion of the mortgage money being said to be due on account of paternal debts. It was not alleged that any custom existed contrary to the Muhammadan Law governing the question of the power of a self-constituted or *de facto* guardian to bind the interest of the minor.

Held, in a suit by the mortgagee to enforce the mortgage that in accordance with the principles of Muhammadan law the mortgage must be held to be invalid (so far as the minor mortgagor was concerned), inasmuch as it was effected on his behalf by a person not even possessing the restricted power of alienation given to near guardians, but was by a wholly unauthorized guardian. No. 144 *P. R.* 1883, and Nos. 45 and 192, *P. R.* 1889 followed.

Although when a person comes into Court to get the acts of his guardians during his

CUSTOM I.—ALIENATION—*contd.* G.—ALIENATION BY GUARDIAN—*concld.*

minority set aside, and he is found to have benefited from those acts, a condition may be attached to the decree made in his favour, there is no authority for holding that a person suing to enforce a mortgage made by one who had no authority to effect such mortgage, is entitled to a decree against the owner of the property for compensation for any advantage the owner may have derived from the transaction.

No. 144 P.R., 1883, followed. DHARM SINGH *v.* SAYAD ZAHUR-UL HUSAIN AND FAIZ MOHY-UD-DIN. **58 P R 1891**

5. *Gujars of* mauza *Daliwal*, tahsil *Hoshiarpur—Muhammadan Law—Guardianship—Power of sale.*

The plaintiff having sued for recovery from the defendants of his share of land that had been sold to them by his brother during his minority, it was contended by the defendants that the sale was for necessity, and that the plaintiff's brother as guardian, was by law and custom entitled to make the alienation.

The parties were Gujars, residents of Daliwal *tahsil* and district Hoshiarpur, and the plaintiff's claim was to succeed to his share of the land left by his father.

Held, that by Muhammadan Law it is only near guardians (including the father and paternal grandfather) and testamentary guardians appointed by them who are empowered to alienate a ward's estate even for purposes beneficial to him, and that, notwithstanding many instances of acquiescence in similar alienations in the village, no special rule of custom at variance with Muhammadan Law had been established, and that the sale was therefore invalid. RAHIM BAKHSH *v.* GHULANI. **65 P R 1893**

6. *Right of widow to the management of land belonging to her deceased husband's infant son—Mortgage by such widow, validity of—Widow appointed* sarbarah *by Revenue authorities—Muhammadan Jats of Jhelum District.*

Found that there is no custom among Muhammadan Jats of *mauza* Aryala Jagdeo in the Jhelum District, whereby a widow is entitled to the management of land belonging to her deceased husband's infant son, nor can a widow, who has taken charge of such land, make a valid mortgage thereof.

The mere circumstance of the widow in such a case being appointed *sarbarah* by the Revenue authorities for the purpose of representing the infant owner, *held*, not to give her power to create a valid charge upon the land belonging to such infant. ISMAIL *v.* KISHEN SINGH. **71 P R 1894**

H.—ALIENATION OF REVERSIONARY RIGHTS.

1. *Power of a reversioner to alienate his right of succession—Muhammadan Gujars of Hazara District—Analogy of Hindu Law—Transfer of Property Act,* 1882, *section* 6, *(a).*

CUSTOM I.—ALIENATION—*contd.* H.—ALIENATION OF REVERSIONARY RIGHTS—*concld.*

G. S. and H. S., two brothers, jointly owned two fields, in which, however, G. S., mortgaged his half share to H. S., and thereafter ceased to have any possession over the joint land. H. S., died in 1891, and was succeeded in his rights by his widow Mussammat K., who obtained mutation of names in her own favour. On the 12th October 1892, G. S. transferred all his rights in the said fields (including his right of succession to Mussammat K. on the termination of her estate by death or re-marriage) to the present plaintiffs. On the 3rd January 1893 Mussammat K. mortgaged one of the said fields to appellants, and on the 22nd October 1894, plaintiffs sued to have it declared that the mortgage by Mussammat K. would be inoperative against their reversionary interests. Defendants pleaded that plaintiffs were not competent to sue, and that the mortgage was for necessity. It appeared that Mussammat K. had married one W. after the death of H. S., but whether before or after execution of the mortgage-deed, was disputed. She had, however, two daughters by H. S., who were alive and unmarried, and were admittedly entitled to enjoy possession of their father's land till marriage. The first Court held that plaintiffs were not competent to sue, and that the mortgage had been effected by Mussammat K. before her re-marriage in order to pay off her husband's debts, but the Divisional Judge, on appeal, held that plaintiffs were competent to sue, and that the mortgage was effected by Mussammat K. after her re-marriage, and was, therefore, bad, though it was made to pay off the said debts. Defendants appealed to the Chief Court. The parties were Mussalman Gujars of the Hazara District.

Held, by the Full Bench, that a reversioner cannot transfer his right of succession and that, therefore, plaintiffs were not competent to sue, and that their suit must be dismissed.

Per ROE, C. J.—Though in the present case the principles of Hindu Law and the principles underlying the Transfer of Property Act, 1882, had some bearing on the point in question, the true test was the fundamental principle of the Customary or Tribal Law, according to which the holder of an estate for the time being is subject to the control of his agnatic kinsmen because the estate has come down to him from an ancestor common to him and them. When an alienation of the whole or part of the estate held by the individual proprietor is made to a stranger, and is not set aside at the suit of the agnates, it can only hold good to the extent of what the proprietor actually held and alienated and can give no right of succession to the alienee. In the present case, therefore, the proper person to question alienation by the widow was the next agnate and not the plaintiff, who was a stranger.

Per REID, J.—The principle contained in Section 6 (*a*) of the Transfer of Property Act, embodies the spirit of the customs which limit the powers of alienation in this Province. TOLA *v.* ABDULLA KHAN. **66 P R 1897**

CUSTOM I.—ALIENATION—*contd.* I.—ALIENATION OF OCCUPANCY RIGHTS.

1. *Sindhu Jats of Jalandhar—Grant of occupancy rights—Lease of cultivaion for a term or in perpetuity.*

Found, that by the agricultural custom prevailing among Sindhu Jats of Jalandhar a proprietor has the power in the management of his estate to lease its cultivation for a term or in perpetuity. PREMA *v.* JOWAHIR SINGH. **100 P R 1886**

2. *Punjab Tenancy Act,* 1887*—Unauthorised alienation by occupancy tenant—Suit by landlord against tenant and mortgagee—Form of decree.*

L., a tenant with rights of occupancy under section 5, Act XXVIII of 1868, mortgaged his rights to H. L. and H. R., in 1885.

No notice of the mortgage was given to the landlord in pursuance of the provisions of section 34 of the Act of 1868 (= section 53, Act XVI of 1887).

In 1891 H. L. and H. R. obtained a decree for foreclosure of mortgage and were in due course put in possession of the land.

The plaintiff (the landlord) now sued the occupancy tenant and H. L., and H. R., for possession.

Held, that the proper decree to make in such a suit was that the plaintiff (the landlord) be given possession as against H. L. and H. R., the mortgagees only.

No. 17 P. R. 1892 (F. B.) referred to and followed. NIHAL *v.* LAKHNA. **6 P R 1893**

3. *Gift of occupancy rights, with landlord's consent, to adopted son.*

One S. S., an occupancy tenant of certain land, of which one G. J. S. was owner, gifted by registered deed, dated the 18th December 1869—*i. e.*, while the Punjab Tenancy Act, 1868, was in force—his occupancy rights to defendant, whom (it was alleged,) he had previously adopted. The deed of gift was confirmed by G. J. S., the landlord, on 21st December 1869. Plaintiff, who was the nephew of the donor, S. S., sued on the grounds that defendant had obtained, after the death of S. S. in November 1892, mutation with respect to the land; and that S. S. had no authority by custom to adopt defendant, or to make him a gift of the occupancy rights. The first Court dismissed the suit on the ground that the adoption was valid and the plaintiff's claim time-barred, and the Divisional Court, on appeal, while holding that the claim was within time, concurred in dismissing the suit on the ground that S. S. had virtually appointed defendant his heir. The plaintiff having appealed to the Chief Court.

Held, that this being a case, not of a gift of ancestral land, but of a special interest in land created and regulated by statute in the Punjab and the alienation in 1869 having been made with the consent of the landlord, the present donee was in possession by the act of the said landlord, and there was nothing left for the plaintiff to succeed to. NIHALA *v.* ISHAR SINGH. **68 P. R. 1894**

CUSTOM I.—ALIENATION—*contd.*
I.—ALIENATION OF OCCUPANCY RIGHTS—*contd.*

4. *Perpetual lease of occupancy rights—"Ancestral property"—Illegitimacy of descendants, effect of, upon character of inherited property—"Necessity"—Sodhi Khatris of Muktsar* tahsil, *Ferozepore District.*

Found, that by custom among Sodhi Khatris of Muktsar *tahsil*, Ferozepore District, a childless male proprietor is incompetent to make a perpetual lease of ancestral property without necessity in the presence of nephews. SODHI KARTAR SINGH *v.* SHER SINGH.

50 P R 1895

5. *Bequest of occupancy rights to more remote in presence of nearer collateral—Awans of Talagang* tahsil, *Jhelum District*—Riwaj-i-am.

One J. was a joint half-sharer in an occupancy holding in a village, plaintiff, his cousin being entitled to the other half. On 17th March 1891, J. made a bequest of his said share in favour of defendant, a collateral one degree more remote than plaintiff, whereupon plaintiff sued to have it declared that the will was not genuine and, in any event, invalid by custom. The parties were Awans of the Talagang *tahsil* of the Jhelum District, and the property in dispute was ancestral.

Found, that the defendant, upon whom the *onus* rested, had failed to prove that the bequest was valid by the custom of the parties. MUKARRAB *v.* FATTA. **88 P R 1895**

6. *Occupancy rights, mortgage of, by widow,—Punjab Tenancy Act*, 1887, *sections* 59, 111, 112—*Entry in* Wajib-ul-urz.

Held, that an entry in the *Wajib-ul-arz* to the effect that an occupancy tenant has the power of sale (*ikhtiar farokht maurusiyat ka hai*), does not enable the widow of a deceased tenant to mortgage her right of occupancy, although in the case of the occupancy tenant himself such power of sale would include the lesser power of mortgage. SURAB *v.* CHIRAGH.

3 P R 1897 Rev.

7. *Occupancy right, sale of—"Landlord" and "tenant"—Punjab Tenancy Act*, 1887, *sections* 4 (5), (6), 6, 60—*Mortgage by landlord of half his rights—Sale by occupancy tenant without consent of mortgagee.*

On the 5th July 1888, one L. S, the proprietor of the whole village, mortgaged half his rights as landlord to plaintiff, who thereafter took half the proceeds from the village under a mutual arrangement with L. S., whereby it was agreed that plaintiff should receive the rents paid in kind and L. S., those paid in cash, the accounts being adjusted at the end of each year.

On the 15th May 1895, one G. S., an occupancy tenant who had hitherto paid his rent in cash to L. S., in conjunction with the latter, sold the occupancy right in part of his holding to one T. R. N., who, on the 17th of the said month, purchased the whole proprietary right from L. S.

Plaintiff's suit to have the said sale set aside on the ground that it had been effected without his consent, having been decreed by the Assistant Collector, and, on appeal, by the Collector, T. R. N., applied to the Financial Commissioner on the revision side, and contended (*i*) that the relationship of landlord and tenant did not exist between G. S. and plaintiff, and (*ii*) that, being himself a proprietor, he could not be ejected in such a case.

Held, that on the facts of the case the relationship of landlord and tenant existed between G. S. and plaintiff within the meaning of the Punjab Tenancy Act, 1887.

Held, therefore, that the sale by G. S. to T. R. N. having been made without plaintiff's consent was, under section 60 of the Act, voidable at his option.

Held, further, as to the second contention, that T. R. N. was not a landlord at the time of purchase from G. S., and that in any event he was sued in his capacity as purchaser of a tenancy and not in that of purchaser of proprietary right. TIKA RAM NARAIN SINGH *v.* SODHI NARINDAR SINGH.

6 P R 1897 Rev.

8. *Punjab Tenancy Act*, 1887, *sections* 6, 8, 56, 60—*Transfer of rights by occupancy tenant—Acquiescence on part of landlord, effect of—Facts constituting acquiescence.*

Held, that when a tenant holding under section 6 or section 8 of the Punjab Tenancy Act, 1887, has transferred his right of occupancy without having previously obtained the consent of the landlord in writing, unless the landlord sues within a reasonable time to cancel the voidable transfer, his acquiesence may be inferred, and, if proved, will disentitle him to the relief claimed, although his suit has been instituted within the period of limitation, *viz.*, within 6 years from the date when the right to sue accrued.

Held, further, that though "a reasonable time" must depend on the circumstances of each case, yet in cases in which the payment of rent by the alienee to the landlord or his representative is proved or may be legally presumed, he having already full knowledge of the *status* of the alienee, the acceptance of such rent by the landlord and his omission to sue for the cancelment of the voidable transfer constitute, in the absence of any satisfactory explanation of his conduct, acquiescence on his part in the transfer.

Held, on the facts of the present case, that the landlord had acquiesced in the transfers, and that, therefore, his suit must be dismissed. JIWAN SINGH *v.* MAHARAJA JAGGAT SINGH.

1 P R 1898 Rev.

9. *Punjab Tenancy Act*, 1887, *sections* 6, 8, 51, 53, 56, 57, 60—*Exchange of rights of occupancy without consent of landlord—"Transfer"—Right of landlord who has acquiesced in such transfer to subsequently sue to avoid it—Acquiescence, what constitutes.*

An exchange of their respective holdings by two tenants holding under section 8 of the Punjab Tenancy Act, 1887, is a "transfer" within the meaning of section 56 of the Act.

When a landlord is fully aware that a tenant holding under section 6 or section 8 of the Act has transferred his right of occupancy without having previously obtained the consent in writing of that landlord, unless the latter sues within a reasonable time to cancel the voidable transfer, his acquiescence therein may be inferred, and if proved, will disentitle him to the relief claimed, although his suit is instituted within six years from the date of transfer. As to what period constitutes "a reasonable time" must depend on the circumstances of each case, but in cases in which the payment of rent by the alienee to the landlord or his representative is proved or may be legally presumed, he having already full knowledge of the *status* of the alienee, in the absence of satisfactory explanation by the landlord for his conduct, the acceptance of rent for more than one harvest without bringing a suit for the cancelment of the voidable transfer is an act, which amounts to acquiescence. BAKHSHA *v.* FATEH MUHAMMAD.

2 P R 1898 Rev.

10. *Occupancy rights—Alienation by widow in favour of proprietor—Right of reversioner to object—Punjab Tenancy Act*, 1887, *section* 59 (3).

Held, that a mortgage of occupancy rights by a widow is void under section 59 (3) of the Punjab Tenancy Act, 1887, and none the less so because such mortgage is in favour of some of the proprietary body.

Held, also, that plaintiff, as the reversionary heir to the widow and a co-sharer with her in the holding which was undivided, was entitled to sue for a declaration that such mortgage was void. ISHAR SINGH *v.* LAL SINGH.

39 P R 1898

11. *Punjab Tenancy Act*, 1887, *sections* 53, 56, 60—*Unauthorised alienation of occupancy rights—Customary right of collaterals to object to alienation.*

Held, by the Full Bench, that when an occupancy tenant has not complied with the provisions of sections 53 and 56 of the Tenancy Act, 1887, by giving notice to the landlord of his intention to alienate, or obtaining the landlord's previous consent in writing, the alienee obtains no indefeasible title to the tenancy under the Act, such alienation being voidable under section 60 of the Act at the instance of the landlord, or by a collateral under customary law if the collateral is able to establish the custom.

In considering whether such custom exists the Court may take into consideration the custom applicable as regards alienations of proprietary rights, a very strong inference arising from the existence of the custom in the latter case that it exists also in the former case. KARAM DIN *v.* SHARAF DIN.

89 P R 1898 F B

CUSTOM I.—ALIENATION—*contd.*
I.—ALIENATION OF OCCUPANCY RIGHTS—*contd.*

12. *Alienation by sonless proprietor—Gift of land and rights of occupancy in favour of daughter—Arains of* mauza *Gujarwala, Ludhiana* tahsil *and District.*

Found, that by custom among Arains of the Ludhiana *tahsil* and district, a sonless proprietor is not competent to gift his land in favour of his daughter in the presence of near collaterals, and, *held,* following No 89 *P. R.,* 1898, that in the absence of any proof to the contrary, the custom found to exist in respect of the land was equally applicable as regards a gift of rights of occupancy in favour of the same donee. GULAB *v.* MUSSAMMAT JEONI. **49 P R 1899**

13. *Occupancy rights, sale of, by widow—Re-marriage of widow—Punjab Tenancy Act,* 1887, *section* 59—*"Acquiescence."*

A suit instituted in 1898 by a landlord to cancel an alleged oral sale of occupancy rights by a widow in 1893, on the ground that it had been effected without notice to the said landlord and was illegal was dismissed by the first Court on the ground that the landlord had acquiesced in the sale by receiving rent. This order was upheld by the Collector on appeal. It appeared that the widow had re-married.

Held, reversing the orders of the lower Courts, that the widow had no power to sell the occupancy rights, section 59 (3) of the Punjab Tenancy Act, 1887, being an absolute bar to such sale, and that in any case her interest in the said rights became extinguished on her re-marriage under clause (*b*) of the said section. HANWANTA *v.* CHOUTH MAL. **2 P R 1900 Rev.**

14. *Punjab Tenancy Act,* 1887, *sections* 59 (3), 60—*Occupancy rights—Mortgage by widow to some of the landlords—Rights of reversioners and landlords, notwithstanding acquiescence of some of the landlords in the acts of the widow.*

An occupancy tenant under section 5 mortgaged half of his holding to some of his landlords. After his death his widow, who succeeded him, mortgaged the remainder of his occupancy rights to the same landlord. Other landlords, who were not interested in the mortgages, sued for the cancellation of the mortgage and possession of the land. The defendants pleaded acquiescence on the part of the landlord. The Assistant Collector set aside the alienation holding that a widow could not alienate under section 59 (3) and gave a decree in favour of the landlords. On appeal the Collector dismissed the plaintiffs' suit on the ground that although the mortgage was an irregular transfer it was rectified by the acquiescence of the landlords. On further appeal the Commissioner held that the spirit of section 60 is opposed to section 59 (3), and that the transfer was void *ab initio* and could not be validated by acquiescence, and gave plaintiffs a decree. *Held,* that a mortgage of a right of occupancy by a widow cannot be validated merely by the acquiescence of the landlords.

CUSTOM I.—ALIENATION—*contd.*
I.—ALIENATION OF OCCUPANCY RIGHTS—*contd.*

Held, further, that in order to give full effect to section 59 (3) in all suits brought by landlords for possession by cancellation of a transfer of a right of occupancy made by a widow holding under section 59, the reversioners of the late occupancy tenant, if any, should be summoned, and if they consent, be made plaintiffs; for in the event of the transfer being cancelled, the reversioners are entitled to possession, and the landlords only if the former waive their claim, or there are no reversioners. To hold that the landlords are so entitled without regard to the claims of reversioners would be to allow widows in collusion with their landlords to make a spurious alienation to some of the latter for the purpose of enabling the whole body of landlords to extinguish the occupancy right. PREM SINGH AND OTHERS *v.* JAMIT SINGH AND OTHERS. **4 P R 1900 Rev.**

15. *Alienation of occupancy rights with the consent of landlords when Act XXVIII of* 1868 *was in force—Right of collaterals by custom to object to such alienations.*

Held, following the full Bench ruling in *Karm Din* v. *Sharaf Din* (89 *P. R.,* 1898) that the plaintiff as reversionary heir of an occupancy tenant was competent to dispute the validity of the alienation, in favour of a stranger, of his ancestor's occupancy rights, although such alienation had received the assent of his landlords and was made under Act, XXVIII of 1868, the right of the said landlords not being in question. PURAN CHAND *v.* MAHESHA AND OTHERS.

69 P R 1900

16. *Alienation of occupancy rights—Right of reversioner to restrain such alienation—Burden of proof—Punjab Tenancy Act,* 1887, *sections* 53, 56, 60.

Held, that when a collateral of an occupancy tenant seeks to restrain an alienation which has not been objected to by the landlord he has to prove the existence of a custom by which he is entitled to do so, *i. e.,* the burden of proof is upon the collateral asserting the rights to restrain the alienation.

Karam Din v. *Sharaf Din* (89 *P. R.* 1898) and *Kidara* v. *Banna* (31 *P. R.* 1896), referred to. FAIZ BAKHSH AND OTHERS V. DITTA AND OTHERS. **115 P R 1901**

17. *Alienation of rights of occupancy—Sale by tenant to landlord*—Locus standi *of reversioners—Punjab Tenancy Act.* 1887, *sections* 53, 56.

Held, that a reversioner of an occupancy tenant cannot impugn a sale of occupancy rights entered into by a tenant in favour of one of his landlords.

Didaru v. *Banna* (31 *P. R.,* 1896, *F. B.*), *Karam Din* v. *Sharaf Din* (89 *P. R.,* 1898, *F. B.*), *Nihala* v. *Ishar Singh* (68 *P. R.,* 1894), and *Puran Chand* v. *Mahesha* (68 *P. R.* 1900), referred to. NIHAL SINGH V. KHAZAN SINGH AND ANOTHER. **24 P R 1902, F. B.**

CUSTOM I.—ALIENATION—*contd.*
I.—ALIENATION OF OCCUPANCY RIGHTS.—*concld.*

18. *Alienation of occupancy rights in contravention of the provisions of the Tenancy Act.*

See OCCUPANCY RIGHTS.

3 P R 1907 Rev.

19. *Alienation of occupancy rights—Rights of reversioners to restrain such alienation—Burden of proof—Punjab Tenancy Act,* 1887, *section* 59.

See OCCUPANCY RIGHTS.

98 P R 1907 F. B.

J.—CUSTOMARY LAW—RULE OF DECISION.

1. *Udasi faqirs of Jullundur—Self-acquired property*—Onus *of proof.*

In a suit to succeed as heir under the will of one B D., an *Udasi faqir,* to his self-acquired property where the defendant, the disciple of the deceased, alleged that he was incapable of disposing of such property as he pleased, and it appeared that the deceased B. D. was not one of those *Udasi faqirs* who have wholly renounced worldly affairs, but who both trade and marry.

Held, that it lay upon the defendant to establish a custom prevailing among Udasi faqirs of this class overriding the general rules of law as to the acquisition and disposition of property by private persons, which in this case he had failed to do. LACHMAN DAS V. MUSSAMMAT THAKURI.

29 P R 1881

2. *Pathans of Dipalpur* tahsil, *Montgomery District—Will—Acquired property.*

Found, in a suit the parties to which were Pathans of the Dipalpur *tahsil* in the Montgomery District, that the parties followed custom and not Muhammadan Law, and that under the custom a disposition by a proprietor of his acquired property by will was valid. MUSSAMMAT BUBU BEGAM V. ASADULA.

170 P R 1888

3. *Will*—Awal *Khatri agriculturists of* tahsil *Ajnala, (Amritsar)*—Onus *of proving invalidity of will by custom.*

Found, that by the custom prevailing among Awal Khatris of *mauza* Chak Awal, *tahsil* Ajnala, the alienation by will of land by a childless proprietor is not invalid by custom.

Held further, that the burden lay upon the defendants to prove affirmatively that such alienation was opposed to custom. GANESHA *v.* GANPAT. **198 P R 1889.**

4. *Gift by a sonless proprietor in favour of daughter—Banda Rajputs of Ludhiana city known as Malak Rajputs in Jullundur City—Right of widow of a collateral—Accretion from ancestral property—Hindu Law.*

Held, in a suit by a collateral to question an alienation, that on the death of the plaintiff during the pendency of the suit, his

widow was entitled to represent her husband and to proceed with the suit instituted by him. *Mussammat Rakhi* v. *Mussammat Fatima* (89 *P. R.* 1892), and *Mussammat Aso* and *another* v. *Mussammat Tobi* and *another* (77 *P. R.* 1893) distinguished.

Held also, that the parties, though residents of a city, being agriculturists, were governed by custom, and that the donor was competent under the custom prevalent amongst his tribe to transfer his self-acquired immoveable property by gift to his daughter.

The rule of Hindu Law, that, as accretions from ancestral property, the acquisitions are themselves ancestral, cannot be applied to those who are governed by custom.

Mussammat Fakharunissa v. *Malik Rahim Bakhsh* (23 *P. R.* 1897), *Nura* v. *Tora* 46 *P.* R. 1900), *Ghausa* v. *Nathu* (82 *P.* R., 1900) *Devi Ditta and others* v. *Mussammat Hukmi and others* (85 *P. R.* 1900), *Lehna and another* v. *Mussammat Thakri* (32 *P. R.*, 1895), *Muhammad Kalu Khan* v. *Saifulla Khan* (91 *P.* R., 1887), referred to. NAWAB-UD-DIN *v.* MUSSAMMAT KAMI.

12 P R 1901

5. *Gift—Immoveable property—Gift without delivery of possession—Revocation of gift by donor—Hindu Law.*

Held, that the primary rule of decision in a case of gift in the Punjab is custom, and possession is ordinarily necessary to complete it, and that even under Hindu Law a gift which the donor repudiated immediately after, and which he did not do all in his power to perfect and which he did not give actual possession of the gifted property, is not valid.

Balmokand v. *Bhagwan Das (I. L. R., XVI All.*, 185*)*, *Manbhari* v. *Naunidh (I. L. R. IV All.*, 40) *Raja Ram* v. *Ganesh (I. L. R. XXIII Bom.* 131), and *Parema Shah* v. *Chet Ram* (38 *P. R.* 1899*)*, distinguished. *Kalidas Mullick* v. *Kanhaya Lal Pandit (I. L. R., XI Calc.*, 121) relied on. CHAUDHRI LILA KISHEN AND OTHERS *v.* CHAUDHRI HOA RAM.

45 P R 1901

6. *Alienation by father of ancestral land —Objection by sons—*Lohars *of Jamsher*, tahsil *Jullundur, District Jullundur.*

Held, that the plaintiffs and their fathers having actually cultivated land for a considerable period, extending over several generations, though *lohars*, had become agriculturists, and even thus governed by the custom prevailing amongst agricultural tribes, which limits the alienation of ancestral agricultural land and were entitled to question the alienation by their father.

Khazan Singh and others v *Maddi and others (*122 *P. R.*. 1893), *Gurmukh* v. *Ganga Ram* (81 *P. R.* 1895), *Uttam Singh* v. *Jhanda Singh* (21 *P. R.* 1896*)*, and *Ram Mal* v. *Mussammat Miran* (30 *P. R.* 1896), referred to. KAKA AND OTHERS *v.* RANJIT SINGH AND OTHERS.

51 P R 1901

7. *Alienation of ancestral land by a proprietor without proved necessity—Rawals of* mauza *Budala*, tahsil *Nurpur, District Kangra—Burden of proof—Undue influence —Inequitable conditions.*

Found, that the Rawals of *mauza* Budala, in the Nurpur *tahsil*, of Kangra district, in matters of alienation are governed by Punjab Customary Law, and that the *onus* of proving a custom authorizing alienation of ancestral land by a proprietor without proved necessity rests on the person so alleging.

Inequitable conditions affixed to a mortgage should not be enforced by Courts against the mortgagor or his successors in title. SHER MUHAMMAD *v.* FATTEH DIN.

6 P R 1902

8. *Alienation of ancestral property—Bhabras of Rawalpindi city—Hindu Law.*

Held, that the Bhabras of Rawalpindi city in matters of alienation are governed by the ordinary Hindu Law. SOHNA SHAH AND OTHERS *v.* DIPA SHAH AND OTHERS.

15 P R 1902

9. *Distinction between gifts* inter vivos *and wills among Punjab agriculturists.*

Held, by a majority (Clark, C. J., dissenting) that the distinction under Punjab Customary Law between power of gift *inter vivos* and power of testation is a matter of degree and form only and where power of gift is shown to exist an initial presumption arises that there is a co-extensive power of testation.

B. Per Clark, C. J., contra, that under the Punjab Customary Law there is a marked distinction between the power of gift and the power of will, and that though the existence of a power of gift is a strong point in favour of the party asserting a power of will, it is not sufficient to relieve him of the *onus* of proving the existence of the latter.

Partab Singh v. *Bishen Singh (*81 *P. R.* 1877), *Ganesha* v. *Ganpat* (198 *P. R.* 1889), *Ali Muhammad* v. *Dulla* (26 *P. R.* 1901), *Anokha* v. *Mohan Lal* (2 *P. R.*, 1870), *Tagore* v. *Tagore* (9 *Beng. L. R.* 377*)*, *Mussammat Ghulam Fatima* v. *Mussammat Maqsudan* (69 *P. R.* 1890), *Kesar Singh* v. *Sundar Singh* (59 *P. R.* 1889*)*, *Rahmat* v. *Azimulla (*34 *P R.* 1884), *Kalandar Khan* v. *Ata-ulla* (44 *P. R.* 1897), *Shad Ali Khan* v. *Abdul Ghafur Khan* (80 *P. R.* 1901), referred to.

Suchet Singh v. *Banka* (90 *P. R.* 1891*)*, *Umar* v. *Mussammat Sahib Khatun* (76 *P. R.* 1892), *Fatta* v. *Bakhra* (15 *P. R.* 1895), *Mukarrab* v. *Fatta* (88 *P. R.* 1895), *Shad Ali Khan* v. *Abdul Ghafur Khan* (24 *P. R.* 1898), and *Sukha* v. *Amira* (81 *P. R.* 1893), considered and disapproved MUSSAMMAT BANO *v.* FATEH KHAN.

48 P R 1903 F. B.

10. *Gift by sonless proprietor to daughter's son in presence of collaterals in the fifth degree—Hindu Zargars of Umballa City—Burden of proof—Hindu Law—Adoption—Ceremonies.*

Held, that the plaintiffs upon whom the *onus* lay had failed to establish that Hindu Zargars of Umballa city in matters of inheritance were governed by custom and not by Hindu Law or that collaterals in the fifth decree were entitled to succeed to the exclusion of a daughter's son.

The burden of proof that non-agricultural Hindus in matters of alienation and succession follow Punjab Customary Law rests on the person making such an allegation.

Semble.—The necessity of ceremonies in constituting an adoption among non-agricultural Hindu discussed.

Harnaman v. *Atma Ram (*24 *P. R.* 1900), *Sohnu* v. *Ram Dial* (79 *P. R.* 1901), *Bishen Das* v. *Thakar Das (*119 *P. R.* 1901), *Moti Ram* v. *Sant Ram* (103 *P. R.* 1902), and *Girdari Lal* v. *Dalla Mal* (3 *P. R.* 1901), cited.

Ralla v. *Budha (*50 *P. R.* 1893, F. B.) distinguished. MANGTU *v.* CHUNI LAL.

51 P R 1903

11. *Right of son to contest alienation made by his own father—Muhammadan law —Koreshis of* mauza *Kareli, Pind Dadan Khan* tahsil, *Jhelum District—Burden of proof—Punjab Alienation of Land Act, 1900, section 4—Value of declaration under, to prove that the person declared follows customary law.*

Held, that in matters of alienation the Koreshis of *mauza* Kureli, Pind Danan Khan *tahsil* in the Jhelum District, were not governed by the general rules of agricultural custom, but by the principles of their personal law, *i. e.*, Muhammadan law, and that a son was therefore not entitled to contest an alienation of ancestral property made by his own father on the ground that it was made without necessity or consideration.

Ghulam Shah v. *Zain Shah* (101 *P. R.* 1902), *Ahmad Din* v. *Fazlan* (175 *P. R.* 1883), and *Karam Bibi* v. *Hussain Bakhsh* (92 *P. R.* 1901), referred to.

Held also, that the inclusion of a tribe among the list of the agricultural tribes of a district under section 4 of the Punjab Alienation of Land Act, 1900, should not be regarded as a conclusive proof that the tribe has adopted the general rules of customary law observed by the agricultural tribes in that district. JOWAHIR SINGH *v.* YAQUB SHAH.

5 P R 1906

12. *Alienation of ancestral propety—Sayads of* mauza *Khanpur, Hoshiarpur District—Muhammadan Law—Omission to include a tribe in the Notification under Punjab Alienation of Land Act*, 1900, *as an agricultural tribe, effect of—Occupancy rights—Grant of, by landowner in ancestral land—Competency of such landowner's heirs to contest his actions.*

Held, that in matters of alienations the Sayads of *mauza* Khanpur in the Hoshiarpur District who have for generations passed followed agriculture as a landholding occupa-

tion were governed by the general rules of agricultural custom of the Province and not by Muhammadan Law.

Muhammad Hussain v. *Sultan Ali* (54 *P. R.* 1903), *Mussammat Sardar Bibi* v. *Sayad Ali Shah* (4 *P.R.* 1888), *Nasir-ud-din Shah* v. *Mussammat Lal Bibi* (89 *P. R.* 1888), and *Rahmat Hussain* v. *Mussammat Fahim-un-Nissa* (25 *P. R.* 1890), referred to and distinguished.

The fact that a tribe is not notified as an agricultural tribe for the purposes of the Punjab Alienation of Land Act is not conclusive in itself to prove that such tribe is not bound by the restrictive rules ordinarily observed by the agricultural tribes of the Province.

Held, also, that it is open to a landowner to create occupancy rights in his ancestral land, and that as a general rule it is not open to such landowner's heirs to challenge his action, unless it is shown that the transaction was in reality a sale of the land itself or of the proprietary rights therein.

Prema v. *Jowahir Singh* (100 *P. R.* 1886), *Sodhi Kartar Singh* v. *Sher Singh* (50 *P. R.* 1895), and *Suba* v. *Mohra* (71 *P. R.* 1898), cited and followed. *Gahna* v. *Sohan Lal* (11 *P. R.* 1904), referred to. FAQIR MUHAMMAD *v.* FAZAL MUHAMMAD. **16 P R 1906**

13. *Alienation by childess proprietor*—Locus standi *of reversioner to contest alienation - Bawarias of* tahsil *Muktsar, Ferozepore District—Burden of proof.*

Held, that the plaintiff upon whom the *onus* lay had failed to establish that a childless Bawaria of *tahsil* Mukhtsar of the Ferozepore District was governed by the custom prevailing amongst agricultural tribes which restricts the power of alienating ancestral agricultural land. WAZIRA *v.* RAM SINGH. **36 P R 1906**

14. *Alienation of ancestral property—Objection by sons of the alienor—Lohar Tarkhans of Lorai* got *of Kunjah, Gujrat District*

In a suit by the sons of a Lohar Tarkhan of Lorai *got* of Kunjah in the Gujrat District to contest an alienation made by their father upon the ground of absence of valid necessity for the alienation, *held*, that in matters of alienation the parties were governed by the general custom prevailing amongst agricultural tribes which limits the alienation of ancestral agricultural property and were entitled to question the alienation. KASIM *v.* HASHAM. **39 P R 1906**

15. *Sale of ancestral Land—Brahmans of Chaowala,* tahsil *Jagadhri, District Ambala—Hindu Law.*

Held, that in matters of alienation Sikh Brahmans of *mauza* Chaowala, *tahsil* Jagadhri, in the Ambala District, who have abandoned the Brahmanical thread do not perform priestly functions and have for generations past followed agriculture and are mainly dependant on land, were governed by

the general rules of agricultural custom of the tract in which they reside and not by Hindu Law. GOPAL SINGH *v.* SUKHA SINGH. **58 P R 1906**

16. *Alienation by widow—Lohars of Kotli Loharan, Sialkot District—Burden of proof—Muhammadan Law.*

Held, that the plaintiff npon whom the *onus* lay had failed to establish that in matters of alienation the Lohars of Kotli Loharan in the Sialkot District were governed by custom and not by Muhammadan Law. UMAR-UD-DIN *v.* JANTO. **101 P R 1906**

17. *Alienation by childless proprietor—Khatris of* mauza *Bhagtana Talianwala,* tahsil *Batala, Gurdaspur District—Burden of proof—Hindu Law.*

Held, that the plaintiffs upon whom the *onus* lay had failed to establish that Khatris of *mauza* Bhagtana Talianwala, *tahsil* Batala, Gurdaspur District, in matters of alienation were governed by the ordinary agricultural custom of their neighbours and not by their own personal law. KAKA *v.* LABH CHAND. **106 P R 1906**

17A. *Gift of land inherited by daugter in favour of her adopted son—Suit by reversioner of the last male owner for possession on ground that the gift was invalid as against them—Plea of estoppel by conduct of acquiescence—Inducing person to believe in and act upon the truth of anything—Evidence Act, 1872, Section 115—Ansari Sheikhs of Basti Danishmandan, Jullundur District.*

In 1832 'J,' a sonless Ansari Sheikh of Basti Danishmandan in the Jullundur District gifted his ancestral land in lieu of his wife's dower to his daughter, 'M,' which in accordance with the wishes of the donor passed on her death in 1849 to her husband 'S.' In 1851,'S' in return gifted the said property along with what he had inherited from his own father to his daughter 'Z' in lieu of her mother's dower. Z married B and being childless adopted a boy, M, defendant in this case, by a registered deed which was executed in 1887 and soon after settled the property, which had come to her from her father 'S' on her adopted son by a deed of gift, dated 4th May 1888, mutation of which was duly effected in the course of the same year in favor of M, as the adopted son of Z. In 1895 a private partition was made, the parties appearing before the revenue authorities and requesting that the arrangement be recorded and entries made in accordance the reof and allowing defendant in connection with this land to be described as the adopted son of Z. This arrangement was sanctioned on 11th June 1896 with full consent of all persons concerned, and the parties then took possession of their respective shares in pur suance thereof.

On the death of Z, which occurred on 4th May 1899, the plaintiffs instituted the pre-

sent claim for possession on the allegation that they being the nearest collaterals were the rightful heirs to the property held by him, and that defendant had no title thereto, the deed of gift and his alleged adoption being both fictitious and invalid by law and custom. The defence *inter alia* pleaded estoppel by conduct and acquiescence.

Held, that the plaintiffs were precluded from making the present claim, the facts noted above shewing acquiescence in the adoption and alienations.

Found, upon the evidence that in matters of alienation and succession the parties were governed by Muhammadan Law and not by custom, and therefore a male proprietor was competent to make an absolute gift of his ancestral immovable property in favour of his daughter. MUHAMMAD NIAZ-UD-DIN KHAN v. MUHAMMAD UMAR KHAN. **1 P R 1907**

18. *Alienation by sonless proprietor*—Locus standi *of reversioner—Bedi Khatris of Kalewal,* tahsil *Dasuha, Hoshiarpur District—Hindu Law—Burden of proof.*

Held, that the plaintiff upon whom the *onus* lay had failed to establish that in matters of alienation a sonless Bedi Khatri of Kalewal, *tahsil* Dasuha, in the Hoshiarpur District, was governed by custom and not by Hindu Law. NIHAL CHAND *v.* BHAGWAN SINGH. **33 P R 1907**

19. *Alienation of ancestral property—Aroras of* tahsil *Chakwal, Jhelum District—Hindu Law or Custom—Burden of proof.*

Held, that in matters of alienation of ancestral property the Aroras of *tahsil* Chakwal in the Jhelum District are not governed by custom but by Hindu Law, and that a sale of ancestral land by a sonless proprietor in favour of his sister's son cannot be questioned by his collaterals on the ground that it was made without necessity or consideration.

Members of non-agricultural tribes are not to be held bound by customs prevailing among agricultural tribes simply because they happen to own land and to be living with members of agricultural tribes, and the burden of proof therefore, that in matters such as alienation or succession they are governed by custom, rests always on the party making such an allegation. GOHRA *v.* HARI RAM. **1 5 P R 1907**

20. *Custom—Alienation—Sale of ancestral urban immovable property—Non-agricultural Rajputs—Burden of proof—Presumption—Necessity.*

Held, that in matters of alienation the descendants of a Rajput who had acquired urban immovable property, as a means of investment, out of his earnings in Government service, should not be presumed, merely because they were Rajputs, to be governed by the general rules of the customary law, and the burden of proof as to the existence of a special custom, whereby the descendants were incompetent to alienate without necessity rests on the person who asserts its existence.

Presumption in favour of a restricted power of alienation of ancestral immovable property, as laid down in *Gujar v. Sham Das*, applies only to members of agricultural tribes who are members of village communities and whose main occupation is agriculture, but not to those who have altogether drifted away from agriculture as their main occupation, and have settled for good to urban life and have adopted trade, industry or service as their principal occupation and means and source of livelihood.

Held, also, that a sale of ancestral immovable property by a limited owner to pay debts actually due is binding unless the objector establishes that the debts had been contracted for immoral purposes and in reckless extravagance. MUHAMMAD HAYAT KHAN *v.* SANDHE KHAN. **55 P R 1908**

21. *Alienation of ancestral property—Right of son to contest alienaton made by his own father—Hindu Law—Brahmans of Gopalpur in the Amritsar District.*

Held, that in matters of alienation the Brahmans of *mauza* Gopalpur, in the Amritsar District, were governed by Hindu Law and not by agricultural custom and that a son was therefore not competent to contest an alienation of ancestral property made by his own father on the ground that it was made without necessity or consideration. LACHMAN DAS *v.* PAHLA MAL. **59 P R 1908**

22. *Ancentral land—*Julahas *of Pajawa*, tahsil *Fazilka, Ferozepore District—Burden of proof.*

Held, that the plaintiff, upon whom the *onus* lay, had failed to establish that *Julahas* of Pajawa in the Fazilka *tahsil* are governed by the Customary Law prevailing amongst agricultural tribes which restricts the power of alienating ancestral agricultural land.

In such cases the Courts must consider the history of the tribes, the history of the village, actual practice in regard to such alienations, and the general circumstances of the case. HABIB *v.* FATTU. **69 P R 1908**

23. *Alienation of ancestral property by sonless proprietor in favour of daughter's son in presence of brother's son—Brahmins of Rawalpindi* tahsil*—Hindu Law.*

Found, that in matters of succession to, and alienation of, ancestral immovable property the Brahmins of village Adiala in the Rawalpindi *tahsil* were governed by Hindu Law and not by custom. HIRA NAND *v.* HARI CHAND. **125 P R 1908**

24. *Alienation by a widow—Hindu Law or Custom—Brahmans of* mauza *Sambaka, Ambala District—Declaratory suit—Right of remote reversioner to maintain in presence of the widow's daughter.*

Held, that the plaintiffs, upon whom the *onus* lay, had failed to establish that in matters of alienations Brahmans of *mauza* Sambaka in the Ambala District were governed by custom and not by Hindu Law.

Held also, that in case of an alienation by a widow a distant reversioner is competent to maintain a declaratory suit in presence of the widow's daughter where the latter has no male issue. KAPURIA *v.* MANGAL. **149 P R 1908**

25. *Sale by male proprietor—Kashmiris of* mauza *Panjorian, Gujrat District—Burden of proof.*

Held, that the plaintiff, upon whom the *onus* lay, had failed to establish that in matters of alienation the Kashmiris of *mauza* Panjorian in the Gujrat District were governed by custom and not by Muhammadan Law. KHUDA BAKHSH *v.* IMAM DIN. **17 P R 1909**

26. *Hindu Law—Saihgal Khatris of Jullundur city.*

Held, that Saihgal Khatris, though owning some land in Jullundur city, are not governed by agricultural customs in matters of alienation but by Hindu Law.

Also, that the initial presumption in regard to Khatris is, that they follow Hindu Law and not agricultural customs. PRABH DIAL *v.* BAKSHI RAM. **58 P R 1909**

See CUSTOM I.—ALIENATION, A 7. **12 P R 1906**

27. *Hindu Law—Alienation by childless proprietor—Sodhi Khatris of* mauza *Hardo Jhanda*, tahsil *Batala, district Gurdaspur—*Onus probandi.

Held, that among Sodhi Khatris of *mauza* Hardo Jhanda, *tahsil* Batala, District Gurdaspur, the *onus* of proving that they follow agricultural custom in regard to alienations is on the person alleging it. SARDAR SINGH *v.* MAHARAJ DAS. **79 P R 1909**

28. *Succession—Alienation of gifted land—Brahmans of* mauza *Charori Dakhli Majara*, tahsil *Nurpur, Kangra District—Hindu Law not applicable.*

Held, that Brahmans of *mauza* Charori Dakhli Majara, *tahsil* Nurpur, Kangra District, are governed by custom in matters of succession and alienation and not by Hindu Law, and that by custom land gifted by one of them reverts to the donor's family on the death of the donee or of his male issue, in default of lineal descendants.

Held also, that by custom the donee or his descendant has no right to make a gift of such land to a stranger. DALO *v.* MOHLU. **87 P R 1909**

29. *Alienation by father—Ancestral and self-acquired property—*Onus *of proof—Suit to set aside alienation as being made without legal necessity—conjecture and positive proof.*

In a suit to set aside a deed of sale of immovable property executed by the plaintiff's father, who had succeeded to it as the next reversionary heir on the death of the widow of the last male-owner, the plaintiff alleged that the land sold was ancestral property, and that the alienation had been made without legal necessity and was therefore void.

The evidence showed that the last male-owner had acquired some lands in the district by purchase and others on abandonment by collateral relatives, but there was no evidence defining the boundaries of these portions respectively, that being merely a matter of conjecture.

Held, that the *onus* of proving that the property alienated was not self-acquired in the hands of the last male-owner, was on the plaintiff, who could not under the circumstances derive any assistance from conjectures however reasonable, in place of positive proof.—ATAR SINGH *v.* THAKAR SINGH. **42 P R 1910 P C**

30. *Custom—Alienation—Alienation of ancestral property—Brahmans of Ajnala, District Amritsar.*

Held, that the parties to the suit, Brahmans of Ajnala, District Amritsar, whose family for the most part lives, and has lived in past generations by agriculture and has given up priestly functions, follow agricultural custom and not Hindu law, and can therefore contest a transaction which was in effect an unauthorized and unlawful alienation of ancestral property. BISHEN DAS *v.* RAM DHAN. **63 P R 1910**

31. *Custom—Alienation—Bunjahi Khatris of* mauza *Nara*, tahsil *Khuta, District Rawalpindi, do not follow agricultural custom in matters of alienation.*

Held, that the Bunjahi Khatris of *mauza* Nara, *tahsil* Kahuta, district Rawalpindi, (*dhobi* by occupation), do not follow agricultural custom in matters of alienation. DHERA SINGH *v.* TARA SINGH. **88 P R 1910**

32. *Custom—Alienation—Khokhars of Gujrat.*

Held, that in matters relating to alienation Khokhars of the town of Gujrat (who are not dependent upon agriculture as a means of livelihood) do not follow custom but Muhammadan Law. BAIJ NATH *v.* GULAB DIN. **90 P R 1910**

II.—ALLUVION AND DILUVION.

See JURISDICTION OF CIVIL COURT. **10 P R 1875**

1. *Custom—Regulation XI of* 1825.

Where two adjoining estates are divided by a river, questions as to proprietorship arising from accretion or dereliction by the action of the stream will be decided primarily by the well established usage of these two villages; but if the usage be doubtful then according to the rule laid down by Regulation XI of 1825.

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CUSTOM II.—ALLUVION AND DILUVION—*contd.*

Shera v. *Sahiba* (No. 53 of 1867, Civil *Changr* v. *Bahadur Singh* (No. 47 of 1868, Civil), *Haq Nawaz Khan* v. *Khanun* (No. 72 of 1869, Civil), *Rama* v. *Shere Singh*. **15 P R 1872**

2. Plaintiff's village was on the west side of an old bed of the river Indus, and this old bed was made the eastern boundary of the plaintiff's village long after the river had changed its course, in proceedings taken in 1859. Defendant had for many years cultivated the land situated between this old bed and the main stream. Plaintiff in this suit claimed this land on the ground that it had accreted to his village by change of the course of the river. *Held*, that under the circumstances the question was not one of alluvion and diluvion, but one of boundaries only. MULLICK SOHARA *v.* GHOLAM MAHOMED. **23 P R 1869**

3. *Custom—Kishtibunna—Alteration of custom by contract.*

The parties to the suit were proprietors respectively of *Mauza* Soomrao and *Mauza* Thalee, between which the Beas flowed. From annexation up to the commencement of 1867 claims to alluvial land between villages on opposite banks of the Beas were uniformly decided by the Courts of both districts according to the *Kishtibunna* or deep stream rule, *i.e.*, the transfer both of proprietary right and of cultivating possession followed the transfer of the land from one bank of the deep stream to the other, and this change of property and cultivation took place even when the land was transferred bodily to the opposite bank by a sudden change in the course of the river which did not carry away the surface of the ground or destroy its identity. On the 5th February 1867, a meeting was convened by the Deputy Commissioner at Noushera Ghat of the zaildars of other villages similarly situated, but none of the lambardars or proprietors of either Soomrao or Thalee were present at this meeting. From the answers of the zaildars thus assembled to questions put in reference to the *Kishtibunna* rule, it appeared that the rule had existed from time immemorial. The zaildars agreed that the rule was bad and should be abrogated; and they put their seals and signatures to a document agreeing to lay down boundaries for themselves which they would abide by in future irrespective of changes in the course of the river.

Held, that the custom of *Kishtibunna* was established, and that it governed this case; and that the agreement of the 5th February 1867 was not in any away binding upon the parties to the suit.

Held, also, that the custom of *Kishtibunna* could be altered by contract between the parties interested, *i. e.*, the proprietors of two coterminous villages on opposite banks. SODHA *v.* FUTTEH KHAN. **56 P R 1869**

4. *Identification of land—Regulation XI of* 1825.

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CUSTOM II.—ALLUVION AND DILUVION—*contd.*

If there be no custom to the contrary land carried away to the opposite bank of the river may be followed by its owners provided it be identifiable. *Rama* v. *Shere Singh* (15 of 1872, Civil) and *Yoosaf* v. *Sardar Dewa Singh*. (12 af 1870, Civil).

The reforming of land which has been removed by sudden avulsion in a river to which Regulation XI of 1825 applies does not render the land reclaimable unless its identity is proved; and it is not to be presumed that land lost to an owner by the erosion of the river bank is recovered when an equal quantity of land is left dry by the river taking another course. Independently of custom a title to such reformed land is not necessarily established by mere proof of general inclusive boundaries at a time long preceding the reforming of the land but if a custom is proved it is to be followed *Haq Nawaz Khan* v. *Khanun* (No. 72 of 1869, Civil). *In Changar* v. *Bahadur Singh* (47 of 1868, Civil) the Chief Court held that land could not be identified by the laying down of survey boundaries; the mode of identification was indicated in clause 2, section 4 of the Regulation.

Plaintiffs, zamindars of *Mauza* B. on the Sialkote side of the Chenab sued the defendants, zemindars of *Mauza* M. on the Gujrat side of the river, for alluvial land situated on the Sialkote side. The parties admitted that the case was governed by section 4 of Regulation XI of 1825 The land had been carried across from *Mauza* M. but not bodily and its identity was destroyed. The defendant as well as the plaintiffs were entitled to take by accretion any land which was thrown up between their land and the main stream. Another piece of land besides that in dispute had come bodily across from M. to B. of which the defendants still kept possession. The land in dispute did not lie between this piece of land and the river.

Held, that plaintiffs were entitled to the land sued for. NOORDEEN *v.* FUTTEH ALI. **65 P R 1869**

5. *River boundaries between British and Independent Territory.*

With regard to river boundaries between British and independent territory, in the case of alluvion, the main stream forms the boundary irrespective of other circumstances; but in cases of avulsion the boundary question should in each case be determined on its own merits. YOOSUF *v.* SARDAR DEWA SINGH. **12 P R 1870**

6. *Submersion.*

Village Kaluwal was entirely submerged about nine years before suit, and the river (Sutlej) flowed along the boundary of village Ajayab Singhwala, cutting away a portion of that village. Three years before suit, land began to re-appear as the river receded from village Ajayab Singhwala. To this land plaintiff laid claim, alleging that it formed a part of village Kaluwal The Lower Courts found that the land was identified as having

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CUSTOM II.—ALLUVION AND DILUVION—*contd.*

belonged to village Kaluwal, and that by custom plaintiff (proprietor of the village) was entiled to it.

The Chief Court (LINDSAY and MELVILL, JJ.) remanded the case, not being satisfied with the evidence as to the custom, and holding that by law the land belonged to village Ajayab Singhwala, and that, if it belonged by custom to village Kaluwal, still village Ajayab Singhwala was entitled to a portion of the land equivalent to that which it had lost.

Found, after remand (by BOULNOIS and LINDSAY, JJ.), that by custom as well as law plaintiff had no right to the land. SHERE SINGH *v.* KALU. **7 P R 1873**

7. *Hereditary cultivator.*

Where land which has been submerged reforms and forms by accretion part of a particular estate, the owner of that estate is entitled to it. This rule refers to accretions to the land cultivated by a tenant with right of occupancy and gives the tenant the right to take possession of and cultivate the land so re-forming. Such tenant has distinct rights of property qualified though they be, in the land of which he is tenant. The fact that land remained submerged or unclaimed for several years, *held*, not to affect the tenant's right; for, though cultivating rights are lost by abandonment or voluntarily ceasing to occupy, ordinarily the only legal bar is the twelve years limitation. SAHIB RAI *v.* KHAIR SHAH. **19 P R 1876**

8. *Hereditary cultivator.*

About ten years before the suit the land of the plaintiffs (hereditary cultivators) was carried away by the river with the exception of a small piece of *banjar* which the plaintiffs gave up. Two years later the land appeared in the same place where the plaintiffs' land had been submerged and accreted to the piece of *banjar*. The defendants took possession of and cultivated the newly formed land and held possession for eight years, when plaintiffs sued. *Held*, that the plaintiffs were estopped from claim—this land as having relinquished it. *Sahib Rai* v. *Khair Shah*, (No. 19 of 1876, Civil), observed upon. BAKHTAWAR *v* SULTAN AHMAD. **83 P R 1876**

9. *Hereditary tenants—Abandonment—Estoppel.*

Where the land has been submerged and forms by accretion part of a particular estate, hereditary tenants have the right to take possession of the land. Delay in taking possession or in asserting occupancy rights may operate as an equitable estoppel and bar the claim without regard to the law of limitation. RUTTU *v.* MAL SINGH. **122 P R 1876**

10. *Alluvial lands—Abandonment—Estoppel.*

The plaintiff, an hereditary tenant, between the years 1863 and 1866, lost part of his land by the action of the river Jhelum.

CUSTOM II.—ALLUVION AND DILUVION—*contd.*

The land was submerged for a considerable period and, the river having receded, re-appeared *in situ* in 1868 and 1869. When the land re-appeared the defendants, the proprietors, took possession and made arrangements for its cultivation.

The land which was carried away became *banjar* of the village, and the revenue on it was paid by plaintiff. The revenue on the land submerged was paid by defendants.

The land in dispute was, at the time of its submersion, not land bounded by a shifting river bank, but land bounded by fixed lines and susceptible of being at any moment ascertained. It was not claimed immediately on its re-appearance because tenants did not know, until recently, that they retained any rights in land after it was once submerged; such non-claim was not shown to have induced the proprietor to alter his position for the worse, the fact being that both parties were under a mistaken impression as to their respective rights.

In a suit instituted by the plaintiff, a tenant to recover the occupancy of his land recovered from the river, *held* (by BOULNOIS, LINDSAY and FITZPATRICK, JJ.), no custom to the contrary being proved, that the tenant did not lose his occupancy rights by reason of the land being submerged.

Held, further, that the tenant had not voluntarily abandoned his land on its re-appearance.

Held, further, that under the above circumstances, the tenant was not estopped from asserting his rights merely by reason of his having stood by and allowed the proprietor to act as if those rights had been abandoned. SULTAN KHAN *v.* SYAD MAHOMED SHAH. **59 P R 1877**

11. *Occupancy rights in alluvial lands—Jhelum river.*

Found that by the custom of *Mauza* Kachwala, *tahsil* and Zillah Shahpur, tenants with right of occupancy lose their rights in lands carried away by the action of the river, and that such rights cannot be claimed on the lands being again thrown up by the action of the river. MIAN MAHOMED SHARAF *v.* KHODA BAKSH. **89 P R 1877**

12. *Sutlej river Lahore and Ferozpur districts*—Mauzas *Machiwara and Gholam Hoseinwala—Kishtibunna Custom.*

Certain land belonging to *mauza* Gholam Hoseinwala, on the Ferozpur side of the Sutlej river, was thrown up in a recognizable form before *Mauza* Machiwara on the Lahore side of the deep stream, which the proprietors claimed to retain. *Found*, that the *Kishtibunna* custom, or deep stream rule, did not prevail at the part of the Sutlej where the land in dispute was affected by the action of the river, and *held* therefore that the original proprietors of Gholam Hoseinwala were entitled to recover the land. BHANA *v.* BALANDA. **48 P R 1879**

13. *Lands gained by alluvion—Hereditary cultivators, right of, to share in—Practice—*

CUSTOM II.—ALLUVION AND DILUVION—*contd.*

Absence of provision in wajib-ul-arz as to rights in alluvial land.

Plaintiffs, hereditary cultivators, held 16½ ploughs, and defendants, proprietors, 18 ploughs of the village of Jodhwal, the revenue of the village being assessed on plough. On several previous occasions plaintiffs obtained a share of the land added to the area of the village by alluvion, the revenue payable by them being proportionately increased, but there was no provision in the *wajib-ul-arz* or settlement papers as to the distribution of alluvial lands.

The proprietors having now refused to divide the land added by alluvion, according to former practice, plaintiffs sued for a share, alleging that they were entitled to it by the custom of the village and surrounding locality. *Held*, that the practice hitherto followed was insufficient, in the absence of express provision in the *wajib-ul-arz*, to raise a presumption of right in plaintiffs, hereditary cultivators, to share in the land added by alluvion, and that the proprietors were competent to object to division, discontinuing at the same time the rule to charge plaintiffs with additional revenue. THARRA *v.* KASHI RAM. **52 P R 1879**

14. Mafidar, *Agreement at Settlement to pay* batai *to—Submersion of* mafi *land—Effect of, in respect to right of* mafidar.

Plaintiff claimed from defendants value of half produce of certain lands cultivated by the latter. Plaintiff at Settlement was recorded *mafidar* of 37 *ghumaos* 6 *kanals* 10 *marlas* of land (of which defendants were recorded proprietors, and which was cultivated in part by tenants with occupancy rights, and in part by tenants-at-will) with the right to take *batai*, and levied revenue accordingly, until 1869 when the land was submerged.

In 1873 a considerable portion of it re-appeared and was taken possession of by the proprietors, and had since been cultivated in part and in part used by them as grazing lands, the revenue being fixed at Rs. 10-12-0 which the defendants did not dispute their liability to pay in cash.

Held, by PLOWDEN and SMYTH, JJ. (ELSMIE, J., dissenting) that the mutual rights and obligations of the parties survived in their integrity notwithstanding the occurrences above described, and, therefore, that plaintiff was entitled to recover the value of the half produce as claimed, until the completion of a new settlement. KARIM BAKSH *v.* ALLA JCWAYA KHAN. **61 P R 1879**

15. *Custom*—Mauza *Khairpur,* tahsil *Khushab, District Shahpur—Rights of hereditary cultivators in submerged lands.*

Found that there is no established uniform and general custom in the Shahpur district among the village affected by river action, by which the right of occupancy of an hereditary cultivator in his holding is destroyed upon its submersion.

Where plaintiffs, who were hereditary cultivators of *mauza* Khairpur, *tahsil*

CUSTOM II.—ALLUVION AND DILUVION—*contd.*

Khushab in the Shahpur district, sued to recover from the proprietors certain lands which had been submerged by river action and had subsequently re-appeared, *held* (reversing the orders of the Lower Courts), that notwithstanding an entry in the *wajib-ul-arz* in favour of the proprietors, no established custom was shown to exist in the village in question by which the plaintiffs had lost their hereditary rights of cultivation in the lands in suit and that, therefore, there was no obstacle to the operation of the general rule laid down by the Full Bench judgment in Civil Ruling No. 59, Punjab Record for 1877, and that the plaintiffs were entitled to recover their lands. LAL SHAH *v.* KARIM BAKHSH. **96 P R 1879**

16. *Rights of occupancy tenant in submerged land on re-appearance—Custom—* Mauza *Chak Ramdas,* tahsil *Bhera,* Zillah *Shahpur—Condition in* wajib-ul-arz.

Plaintiff, a tenant with rights of occupancy, sued to recover certain land situated in *mauza* Chak Ramdas, *tahsil* Bhera in the Shahpur district, which had been submerged by river action and had subsequently re-appeared. It was found that no custom prevailed in the village in question which was opposed to plaintiff's claim but there was a provision in the *wajib-ul-arz* that in cases of submersions of tenant's holdings the tenent should receive an equivalent out of the *banjar shamilat* and should pay revenue to the *maliks* according to the *khewat* of the submerged holding. Previous to this suit the present plaintiff sued the present defendant for an equivalent of his share in the submerged holding to be made good out of the *shamilat* land, but his suit was dismissed on the ground that there was no *banjar shamilat* to give him and that he had not paid the revenue of the submerged holding. Subsequently the present suit was brought to recover the holding itself which had re-appeared in whole or in part from the river.

Held, following the decision in Punjab Record, Civil Ruling No. 59 of 1877, that there being no custom to the contrary, the plaintiff's title to the right of occupancy claimed was not extinguished, but still attached to the land now that it had re-appeared, that the provision in the *wajib-ul-arz* was not inconsistent with the right claimed, though if the defendant had given the plaintiff an equivalent for the land submerged, the plaintiff's right in that land would have been transferred to the defendant; that the non-payment of revenue of the land during the period of its submersion was not fatal, as the plaintiff was not bound to pay that except in case of being supplied with land in its place, and that the plaintiff was therefore entitled to recover the land in suit conditionally upon payment of the revenue paid upon it by the proprietor, the defendant, since the date of its re-appearance. MORID *v.* MUSSAMMAT RAM DEVI. **127 P R 1879**

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CUSTOM II.—ALLUVION AND DILUVION—*contd.*

17. Malik Kabza—*Right to submerged lands on re-appearance—Custom*—Mauza *Shergarh, Shahpur district.*

Found that there is no established custom in *Mauza* Shergarh, *tahsil* Khushab, in the Shahpur district, whereby a *malik kabza* loses his right in lands which have been submerged by river action.

Held, therefore, applying the general principles laid down in *Sultan Khan* v. *Syad Muhammad Shah*, No. 59 of 1877, Civil, that a *malik kabza*, whose land has been submerged and has afterwards emerged, is entitled to recover, on its re-appearance, whatever proprietary interest he had in the land before its submersion. CHIRAGH v. TUREL KHAN.

1 P R 1880

18. *Custom*—Mauza *Sadda Kambo, Shahpur—Occupancy tenant's right to land carried away by diluvion on its re-appearance—General rule—Special custom—Tenant preserving his right by payment of revenue during period of submersion.*

The plaintiffs, residents of the village of Sadda Kambo in the Shahpur *tahsil* of the Shahpur district, sued to enforce their occupancy rights in certain lands which had been carried away by diluvion and which, on their re-appearance, had been taken possession of by the defendants, the proprietors. The defendants pleaded that according to the custom as stated in the *Wajib-ul-arz* of the village the tenants lost all their rights on the submersion of lands held by them on a right of occupancy and the lower Courts finding the custom proved dismissed the plaintiffs' claim.

Held, that the general rule to be applied in dealing with cases of the above description is that, no custom to the contrary being proved, an occupancy tenant does not lose his occupancy rights by reason of the land being submerged; that though there did exist in the plaintiffs' village a custom by which occupancy tenants became liable, under certain circumstances, to lose their rights on the submersion of their lands, still under that custom the tenants could preserve their rights intact, notwithstanding the submersion of their land by paying the revenue assessed thereon during the period of submersion, though if they failed to do so during such period their right of occup ncy ceased to exist; and that on the facts of the present case the plaintiffs were entitled to succeed. RAJA v. SARFARAZ.

152 P R 1883

19. *Custom prevailing in the village on the Soan river in the Una* tahsil *of the Hoshiarpur district—Kishtihunna or deep stream rule.*

Plaintiffs, who represented the proprietors of Punjawar, a village on the right bank of the Soan river in the Una *tahsil* of the Hoshiarpur district, sued to obtain from the proprietors of Bhera, a village on the left bank of the same river, certain land which had been transferred by avulsion from the Bhera to the Panjawar side. Defendants

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CUSTOM II.—ALLUVION AND DILUVION—*contd.*

pleaded *inter alia* that though the rule that the deep stream should be the boundary was prevalent on the Soan, the rule was only applicable as regards land which had been transferred from one bank to another by gradual accretion and that it was not applicable when the land had been transferred by avulsion.

Held, that the general custom in the tract in question was proved to be in accordance with a strict observance of the deep stream rule, whether or not the land had come over by avulsion and was identifiable. MAHAR SINGH v. ACHRA. **164 P R 1883**

20. *Naubaramad (new alluvial) land—Manner in which such land should be recorded in the Patwari's annual paper—Entries in Settlement Record—Jurisdiction of revenue Courts to entertain suit of correction of Patwari's paper.*

The appellants applied to the Deputy Commissioner for correction of the patwari's papers in respect of certain new alluvial land alleged to be held by them under an entry in the Settlement Record as owners, but which the patwari had entered as *shamilat*. The Deputy Commissioner decided that the ownership of the land in question should be recorded as laid down in the Settlement Record. The Commissioner, on appeal, reversed the Deputy Commissioner's orders, and, in effect, directed that the patwari's papers should stand as drawn up, the patwari had made entries which could not be reconciled with the Settlement Record, and the Commissioner informed the parties who were dissatisfied with the patwari's entries that their only remedy was by suit in the Civil Courts.

Held, by the 2nd Financial Commissoner that the patwari was bound to draw up his annual papers and all other revenue papers in general conformity with the entries in the Settlement Record, and in cases of doubt or error the owners of land were entitled to apply to the Deputy Commissioner for an order directing the patwari to do so. The patwari and all Revenue Officers are bound to presume that the entries in the Settlement Record are correct and, further it is rarely right for a Revenue Officer to refer parties to a suit as, if the subject-matter of the application is not within the jurisdiction of the Revenue authorities, it is sufficient for the Revenue Officer to say so. But the case urged by the appellants was one in respect of which the Revenue authorities only could give them relief. NAURANGE v. NABI BAKHSH. **7 P R 1886 Rev**

21. *Rule of* "mahaz."

The meaning of the term "*mahaz*" as used in a rule laid down in the Settlement Record that in cases of alluvion each of two or more adjoining villages is entitled to the land in front of (*mahaz*) such village discussed. *Haidar Shah* v. *Shujawal* (No. 67 of 1887, Civil) referred to. FAZAL v. GHULAM ALI SHAH. **45 P R 1888**

22. *Limitation Act*, 1877, *section* 13, *and 2nd schedule, articles* 142, 144—*Alluvion and diluvion—Custom of Bias river—Land*

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CUSTOM II.—ALLUVION AND DILUVION—*contd.*

taken over by avulsion—Dispossession or discontinuace of possession—Exclusion of time of defendants' absence from British India.

Plaintiffs, the proprietors of a village on the Amritsar side of the Bias, claimed certain land lying between their village and the present deep stream, alleging that the said land originally formed part of their village, but was transferred in Sambat 1923 to the Kapurthala side of the river, returning to the Amritsar side in Sambat 1927-28, but remained part of Kapurthala territory till Sambat 1937 or 1938. The transfer on each occasion was found to be by a sudden change in the course of the river or what is generally called "avulsion," and it was found by the Lower Courts (and the finding was accepted as correct by the Chief Court) that by the custom of the Bias, when land is transferred from one side of the river to another by a sudden change, there is no disturbance of proprietary right; but the lower Courts considered that plaintiffs had lost their rights, because they had not been in possession of the land, or any part of it, within twelve years before suit.

On the question of limitation, *held* that the case was governed by article 142 of the 2nd schedule of the Limitation Act, as plaintiffs were certainly dispossessed or discontinued possession in Sambat 1923 when the land went over to Kapurthala.

But *held* further that in reckoning limitation plaintiffs were entitled to deduct the period from Sambat 1923 to Sambat 1937-38, during which the land remained part of the Kapurthala territory under section 13 of the Limitation Act, as the defendants were certainly absent from British India during that period, and the fact that the subject-matter of the suit was also so absent was rather an additional than a less reason for holding that the section applied. GULAB KHAN v. PEERA. **34 P. R 1889**

23. Ala *and* adna maliks—*Land submerged—Re-appearance—Right of possession*—Wajib-ul-arz.

The parties to the case were *ala* and *adna maliks* of *mauza* Thoa in the Dera Ismail Khan district. As regards the preservation or loss of rights of *adna maliks* in cases of alluvion and diluvion, the *Wajib-ul-arz* provided that the land attached to wells will on restoration belong to the former owner (*adna malik*); that in case of lands not attached to wells, if a *portion* of a field or plot be carried away and be again thrown up opposite the remaining land, the former *adna maliks* will take so much of it as is required to make up his old holding; but if the *whole* field or land be carried away, it will belong on restoration to the *ala maliks* as *shamilat*, and the *ala maliks* will have full power to give it to *adna maliks* or not, and for its cultivation those powers and rules will come into force which are laid down for the *shamilat*. It also contained the following clause. *Lakin jis malik adna ki*

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zamin amum burd hogi banisbat digar malikan adna uska pahle hak hai ki banjar shamilat se ya zamin baramad shuda se bakdar rakba burd shuda ke usko mile aur aisi zamin ki liye malik adna ko jadid jhuri ko ek rupaya fi acre se ziyada na howe, deni hogi aur khilaf dastur ala malikan ko aisi zamin ke liya jhuri lene se inkar karne ka ikhtiyar na hoga.

Held, that the proper interpretation of this clause was that if the *ala maliks* did not require the lands themselves and it became a question of letting them out then the first persons entitled to admission were the *adna maliks* who had lost a good deal of land (*amum*). Both those who had lost all their land and those who had lost a considerable part (and who might not wish to wait for a chance of a restoration—*mahaz*) would come under this head and might claim to be accepted in preference to other *adna maliks* or outsiders on payment of the fair customary rent which the *ala maliks* might not refuse to accept on a plea that they could get a higher rent by competition. MUBARAK SHAH *v.* ABDULLA. **125 P R 1889**

24. *Alluvion and diluvion—Title to land acquired by accretion—Land subsequently retransferred by avulsion—Identification of site.*

Owing to changes in the course of the river Chenab, which was identified as having originally belonged to plaintiffs, after being submerged, gradually re-appeared on the Muzaffargarh side as the river receded, but was subsequently bodily transferred to the Multan side by a sudden change in the course of the river. While the land was on the Muzaffargarh side the defendants brought a few detached plots under cultivation and were still cultivating them at the time of the suit. The burden of suing for possession of the said land was in consequence upon plaintiffs. The latter instituted a suit and obtained a decree in the first Court, which was, however, reversed on appeal by the Divisional Judge.

Held, in accordance with the principle laid down in Lopez' case (5 B. L. R. 521), that in as much as the site of the land in question had been duly identified as the plaintiffs' the latter were entitled to succeed and that the mere facts that they did not follow the land when it went to the Muzaffargarh side and that the defendants had brought a few scattered plots thereof under cultivation did not affect plaintiffs' right as owners of the site.

I. L. R. XIX Allahabad, 238 not followed. CHUNDAR BHAN *v.* AHMAD YAR KHAN. **36 P R 1893**

25. *Custom—Alluvion and diluvion—"Deep stream rule"*—Mauza *Mianwal*, tahsil *Phillour and* mauza *Bholewal*, tahsil *Ludhiana*—Riwaj-i-am.

Found, that by custom obtaining in the villages of Mianwal, *tahsil* Phillour, and of Bholewal, *tahsil* Ludhiana, if any area, though

CUSTOM II.—ALLUVION AND DILUVION—*contd.*

capable of identification, lying on one side of the river (the Sutlej) is in consequence of a change in the course of the river, washed up and thrown on the other side, the proprietors of the village to which it has been so annexed come into proprietary possession thereof. The weight to be given to the *Riwaj-i-am* discussed. HASHIM *v.* NATHU. **13 P R 1900**

26. *Occupancy rights—Alluvion and diluvion—Rights of occupancy tenants in submerged land on re-appearance—Custom.*

See OCCUPANCY RIGHTS. **8 P R 1901**

27. *Regulation XI of* 1825, *section* 4—*Alluvion—Title to land acquired by accretion—Identification of site.*

Where upon the facts it was found that a certain area, which was some 30 years ago submerged in the river, and which had recently emerged owing to the recession of the river, and which had mainly, if not entirely, re-appeared in one year and was identifiable *in situ* as the tract of land which belonged to the plaintiff.

Held, that the re-appearance not being a gradual accession within the meaning of the 1st clause of section 4 of Regulation XI of 1825, and the land being identifiable *in situ* the plaintiffs who owned it prior to its submersion were entitled to its possession under the fith clause of that section on the general principles of equity and justice.

Lopez v. *Maddan Mohan Thakoor* (5 *B. L. R.* 521) and *Chunder Bhan* v. *Ahmad Yar Khan* (36 *P. R.* 1898) followed. *Debi Bakhsh Singh* v. *Tribhawan Singh* (*I. L. R. XIX All.* 238), explained. HASHMAT AND OTHERS *v.* DULLA AND OTHERS. **66 P R 1901**

28. *Alluvion and diluvion—Rights of* adna maliks *in submerged land—Custom*—Mauza *Muradpur*, tahsil *Alipur*, *Muzaffargarh district*—Wajib-ul-arz—Haq Juri.

The plaintiffs who were *adna maliks* in *mauza* Muradpur, *tahsil* Alipur, in the Muzaffargarh district, sued for a declaration of *adna malkiyat* rights in certain land which had been submerged by river action, which, on its re-appearance in accordance with a provision of the *Wajib-ul-arz*, had been recorded as the sole property of the defendants. The provision of the *Wajib-ul-arz* was to the effect: "that in this village there are two kinds of property, *ala* and *adna*. If the land belonging to any *adna malik* is washed away, at the time of its being thrown up it becomes the property of *ala malik*. The *adna maliks* retain no right in the land. The *adna maliks* after paying *haq Juri* to the *ala maliks* will be entitled to get possession. Without paying *haq Juri* they will have no right. If the *ala maliks* intentionally refuse to take *Juri* the *adna maliks* are not entitled to take possession. The arrangement as to *Juri* is to depend upon the value of the land and the *status* of the *adna malik*. But it shall not be less then Re. 1 per *bigha* or more

CUSTOM II.—ALLUVION AND DILUVION—*contd.*

than Rs. 2 per *bigha*. The *adna maliks* shall have the same power whether the whole or a portion of any wells are carried off."

Held, that as the payment of *haq Juri* or an institution fee for the recovery of land cannot be considered opposed to the principles founded on universal law and justice, it was for the *adna maliks* to rebut the presumption in favour of the correctness of the entries after record of custom and to prove that they were not bound to pay it.

Held, on the evidence that the plaintiffs have failed to rebut the entry in question or to prove that they were entitled to the land without payment of *haq Juri*.

Ghulam Mohy-ud-din v. *Faiz Bakhsh* (97 *P. R.* 1902) and *Mubarik Shah* v. *Abdulla* (125 *P. R.* 1889), referred to AHMAD SHAH *v.* KHUDA BAKHSH. **33 P R 1903**

29. *Alluvion and diluvion—Title to land transferred by gradual accretion—Custom with respect to land bordering the Sutlej river between Jullundur and Ferozepore districts*—Riwaj-i-am.

Found, that by custom prevailing in respect of land bordering the Sutlej river between the Julundur and Ferozepore districts, the proprietors of a village become entitled to any area of land, whether it is the whole or a portion of a village, which, in consequence of a change in the course of that river, is thrown up by gradual accretion.

Held, that, as in the river Sutlej between the Jullundur and Ferozepore districts, the changes of deep stream are more considerable and sudden than in English and Italian rivers, the rules applicable to gradual accretions of the descriptions contemplated by the English and Roman Law should not be followed.

All disputes relating to such accretions should be decided by giving full effect to the provision of the *Riwaj-i-am* of the villages concerned.

Ghulam Mohy-ud-din v. *Faiz Bakhsh* (97 *P R.* 1902), *Hashim* v. *Nathu* (13 *P. R.* 1900), *Chunder Bhan* v. *Ahmad Yar Khan* (36 *P. R.* 1898), and *Lopez* v. *Maddan Thakur* (5 *Ben. L. R.* 521, P. C.), referred to. BANDU KHAN v. MUSSAMMAT UMRI. **63 P R 1903**

30. *Alluvion and diluvion—Land—submerged land on re-appearance—Custom*—Wajib-ul-arz, Mauza *Khanpur*, *Gujrat.*

Held that in case of diluvion, according to the custom prevailing in *mauza* Khanpur, a proprietor loses all his rights on the submersion of his land, as such land on restoration becomes *shamilat deh* and not the property of the proprietor to whom it belonged at the time of its submersion. SAHIB DIN *v.* ILAM DIN. **15 P R 1904**

31. *Occupancy rights—Rights of occupancy tenant in submerged land on re-appearance—Custom*—Mauza *Pakhiwan Gurdaspur district.*

CUSTOM II.—ALLUVION AND DILUVION—*concld.*

Found, that by custom of the village Pakhiwan in the Gurdaspur district an occupancy tenant does not lose his rights by reason of the land of his holding being submerged and is entitled to claim his rights on the land being again thrown up by the action of the river. DEWA SINGH *v.* BISHAMBAR DAS. **80 P R 1905**

CUSTOM III.—APPOINTMENT OF HEIR.

A.—ADOPTION OF COLLATERAL.

B.—APPOINTMENT OF DAUGHTER AS HEIR.

C.—ADOPTION OF DAUGHTER'S SON OR GRANDSON.

D.—ADOPTION OF SISTER'S SON OR GRANDSON.

E.—ADOPTION OF OTHER STRANGERS.

F.—GENERAL PROHIBITION.

G.—ADOPTION BY WIDOW.

H.—OBSERVANCE OF FORMALITIES WHAT CONSTITUTES ADOPTION.

I.—*Locus Standi* OF REVERSIONERS AND OTHERS TO CONTEST ADOPTION.

J.—ASSENT OF SOME ONLY OF REVERSIONERS.

K.—REPUDIATION OF ADOPTION.

L.—GIFTS TO ADOPTED SONS.

M.—SUCCESSION OF ADOPTED SON.

N.—LIMITATION.

O.—RULE OF DECISION.

P.—ADOPTION OF SONS AND STEP-SON.

Q.—ADOPTION AMONG FAQIRS.

A.—ADOPTION OF COLLATERAL.

1. *Bujwa Rajputs of Sialkot district—Construction of* riwaj-i-am—*Near relative.*

B. S., whose father D. S. had been adopted by a collateral, G., was adopted by S. D., own brother of D. S. The *riwaj-i-am* of the district ran to the effect that "among Bujwa "Rajputs a proprietor may, having regard "to near relationship, adopt a son from "collaterals descended from the same common ancestor, but may not adopt a person "from another caste, or a daughter's son, or "a sister's son, or a son-in-law."

It was also found after a local enquiry that no custom existed which would render the adoption invalid.

Held, that the proper construction of the *riwaj-i-am* was not that the *nearest* relative *must* be adopted, so as to invalidate the adoption of a relative, otherwise eligible. The rule of *factum valet* would apply; and as no other custom existed rendering the adoption invalid, it must be upheld. CHANNU *v.* DEVI SINGH. **47 P R 1878**

2. *Sainis of Hoshiarpur district—Appointment of son-in-law as heir—Right of son-in-law to inherit collaterally.*

CUSTOM III.—APPOINTMENT OF HEIR—*contd.*

A.—ADOPTION OF COLLATERAL—*contd.*

Found, that, by the custom of Sainis in the Hoshiarpur district the son-in-law of a proprietor of land appointed by the latter to be his heir, is not entitled to inherit as an heir of the collateral relations of his father-in-law, in the presence of male collateral kinsmen by blood. BADHAWA SINGH *v.* GANESHA. **97 P R 1879**

3. *Jats of Dodwar got, Jullundur district—Quasi-adoption—Appointment of heir by childless landowner.*

Among Jats of the Dodwar *got* in the Jullundur district, a near relative, brought up by and appointed to succeed a childless landowner, is by custom entitled to succeed like an adopted son. HIRA *v.* RODA. **108 P R 1879**

4. *Appointment of heir—Rajputs of Jullundur.*

Found that among Ghorawala Rajputs of the Jullundur district, the appointment by a childless proprietor of one of his relatives as his heir is not invalid by custom. MOULA BAKHSH *v.* HAME KHAN. **71 P R 1880**

5. *Pathans of Kaithal—Gift to adopted son.*

In a suit between Daudzai Pathans of *tahsil* Kaithal in the Karnal district, *held*, that according to the custom followed by the parties, adoption does not in itself confer any rights of inheritance.

But *held*, further, that according to custom a gift to a brother's son adopted by the donor, is valid when followed by possession, and that a share in an undivided estate may be so given. SIRMAST KHAN *v.* FAIZAL HASAN KHAN. **99 P R 1880**

6. *Ghori Pathans, Sialkot—Appointment of heir.*

In a suit to cancel a deed of adoption by a childless proprietor appointing his brother's grandson to be his heir, the parties to which were Ghori Pathans of the Sialkot district, it appeared that for some 12 years at least the deceased lived with the defendant and his natural father, and that before his death, and while in full possession of his senses, he formally executed a registered deed of appointment in the defendant's favour.

Held, that the plaintiffs had failed to discharge the *onus* which lay upon them of proving that the custom generally prevailing among the agricultural classes in the central parts of the Punjab, whereby a childless landowner has power to appoint one of his kinsmen to succeed him as his heir as if he were his own son, did not apply to the tribe to which the parties belonged.

Held, further, that the plaintiffs had failed to prove that the appointment in the above case was by custom invalid owing to the omission of any of the incidents essential to the validity of an appointment among Ghori Pathans. *Amir-ud-din* v. *Pira*

CUSTOM III.—APPOINTMENT OF HEIR—*contd.*

A.—ADOPTION OF COLLATERAL—*contd.*

(No. 58 of 1879, Civil), *Chatra* v. *Dera* (No. 92 of 1879, Civil), and *Sobha Singh* v. *Hazara* (No. 103 of 1880), Civil), referred to SAWAN *v.* KARAMDIN. **98 P R 1883**

7. *Sindhu Jats of* tahsil *Kasur—Gift to nephew—Invalidity of such gift by custom—Appointment of heir.*

In a suit by the parties representing two of the brothers of one K. S. for two-thirds of his land, the defendant, the son of a nephew of K. S., claimed to inherit the whole of K. S.'s property by virtue of an adoption of his father by K. S. The parties were Sindhus of M. Rajah Jang, *tahsil* Kasur, *zilla* Lahore. The lower Courts found that the adoption of defendant's father by K. S. was not proved, and that though K. S. had executed a deed of gift of his land in favour of his nephew, defendant's father, such gift was by custom invalid, and they therefore decreed the plaintiffs' claim.

Held, that though a formal adoption would not be required to be proved if it were shown that the deceased had brought up defendant's father, and clearly indicated his intention to make him his heir, still in the absence of a finding of appointment as heir, the mere fact of a deed of gift having been executed was not enough to support the claim to succeed to the property, it being found that by custom the gift was inoperative. *Lakha* v. *Wallah* (No. 42 of 1875, Civil) and *Sultan Buksh* v. *Raja* (No. 126 of 1883, Civil), cited. RATTAN SINGH *v.* MALA SINGH. **4 P R 1884**

8. *Gil Jats of Firozpur—Burden of proof.*

In a suit the parties to which were Jats of the Gil tribe resident in the Moga *tahsil* of the Firozpur district, the plaintiff who was a brother's daughter's son of the deceased owner of the land in suit, claimed to succeed as the adopted son of the deceased, in preference to the defendants, the collaterals. It was found that the plaintiff had been brought up by the deceased from infancy, and had been formally adopted before a large number of persons, a deed having been drawn up in an open manner and attested by witnesses.

Held, that under the above circumstances it was for the defendants to prove the invalidity of the adoption, and that they had failed to do so. *Sobha Singh* v. *Hazara* (No. 103 of 1880, Civil), and *Hazara* v. *Ishar* (No. 72 of 1882, Civil), referred o. RATHA SINGH *v.* GURDIT SINGH. **27 P R 1884**

9. *Siddhu Barar Jats of Firozpur—Brother's daughter's son—Burden of proof.*

In a suit the parties to which were Jats of the Siddhu Barar tribe of the Moga *tahsil* of the Firozpur district, the plainttiff, as a collateral of the deceased owner of the land in suit, sought to have the adoption of the defendant, a brother's daughter's son, set

CUSTOM III.—APPOINTMENT OF HEIR—*contd.*

A.—ADOPTION OF COLLATERAL—*contd.*

aside on the ground that it was opposed to the custom of the tribe. There was no want of publicity in the adoption, the defendant having been brought up by the adoptor, and a deed having been executed and registered in 1875.

Held that, under the circumstances, it was for the plaintiff to establish the invalidity of the adoption. *Ratha Singh* v. *Gurdit Singh* (No. 27 of 1884, Civil) cited. ALBEL SINGH v. VIR SINGH. **86 P R 1885**

10. *Tung Jats of Amritsar—Brother's daughter's only son.*

In a suit to cancel an adoption the parties to which were Tung Jats of the Amritsar district, *held*, that the plaintiffs had failed to prove that an adoption by the defendant of his brother's daughter's only son was invalid by custom. *Bhupa* v. *Uttam Singh* (No. 61 of 1880, Civil) cited. HUKAM SINGH v. MANGAL SINGH. **43 P R 1886**

11. *Bhindar Jats of Gujranwala—Adoption by childless Jat of distant relative.*

In a suit, the parties to which were Bhindar Jats of the Gujranwala *tahsil*, it appeared that one J., a childless Jat, and a very old man, shortly before his death, executed and registered a deed of adoption of the defendant, a very distant relative, who lived in a neighbouring village.

Held, that the defendant had failed to prove that such an adoption was valid by custom. DUNI CHAND v. RAM CHAND. **28 P R 1887**

12. *Sainis of Rupar* tahsil *(Amballa)—Adoption by a sonless uncle of a nephew—Suit by other nephews to declare its invalidity.*

Found, that by the custom of Sainis of Rupar *tahsil* (Amballa) the adoption by a childless uncle of a nephew is valid. GOBINDA v. TEKU. **95 P R 1889**

13. *Restrictions as to relationship of the person to be adopted—Saraha Jats of Ludhiana.*

Found, that by the custom of Saraha Jats of Ludhiana there was no restriction as regards the degree of relationship of the person to be adopted, and that the adoption of a remoter collateral in the presence of nephews was valid. PALA v. BUTA. **114 P R 1889**

14. *Appointment of heir—Dhariwal Jats of the Ferozepore district—Restriction as to age and relationship.*

In a case among Dhariwal Jats of the Ferozepore district, where the facts found were that the defendant, who was the son of the step-son of the adoptive parent, and also a remote collateral, had been brought up by the latter, treated as his heir, and a deed of appointment executed in his favour.

CUSTOM III.—APPOINTMENT OF HEIR—*contd.*

A.—ADOPTION OF COLLATERAL—*contd.*

Held, that the adoption was valid, and could not be set aside at the instance of the collaterals. DASAUNDA SINGH v. BUDH SINGH. **38 P R 1890**

15. *Appointment of heir—Restriction as to relationship—Dogar Jats of Delhi district—Validity for adoption.*

In a suit, the parties to which were Dogar Jats of the Delhi district *found*, that by custom a remoter collateral may be adopted in the presence of nearer heirs, who were not sons or grandsons of an own brother. DILSUKH v. RAM SINGH. **39 P R 1890**

16. *Appointment of heir—Sonless proprietor—Hindu Jats, Tank* got, *Sonepat* tahsil, *Delhi district.*

M. S., a childless propietor and an old man, wished to appoint M., a collateral related in the fourth degree from the common ancestor, as sole heir to his property, to the exclusion of his other heirs, who were related in the same degree as M.

M. S. executed and registered a deed in which he recited that he had adopted M. and gifted him his land. He further made some sort of declaration before the brotherhood, accompanied probably by some simple ceremonies for the purpose of giving publicity to his already expressed intention to make M. his heir.

M. was about twenty years of age at the time, and up to this period he had not been brought up as a son by M. S., nor had he lived with him, or been married by him, but after the deed was executed M. resided with M. S., who died very shortly afterwards.

The parties were Hindu Jats (Tank) *got* of the Sonepat *tahsil*, Delhi district. *Found*, that the adoption or appointment of M. as heir of M. S. was valid by custom. JERAM v. MANPHUL. **4 P R 1892**

17. *Custom—Alienation—Arains of* tahsil *and District Gujrat—Gift to son of first cousin in presence of nephews of donor—Adoption.*

Held, that no custom was established by which, amongst Arains of the Gujrat *tahsil*, a sonless proprietor could make a gift to, or adopt a son of, his first cousin in the presence of brothers' sons.

No. 8 *P. R.* 1891, referred to. MUSSAMMAT JOWAI v. JIWAN. **79 P R 1893**

18. *Adoption of broher in-law's son—Hindu Law or Custom—Sikh Khatris of Rawalpindi—Burden of proof—"Agricultural tribe."*

One K. S., a Sikh Khatri of the Bindra section, having adopted G. S., his wife's brother's son, plaintiff sued for a declaration that the adoption was invalid by custom and would not affect his reversionary rights. It appeared that the families of plaintiff and K. S. had held land for at least two generations, and that the total ancestral land

CUSTOM III.—APPOINTMENT OF HEIR—*contd.*

A.—ADOPTION OF COLLATERAL—*contd.*

in the possession of K. S. was about 4 *ghumaos* 5 *kanals*. The lower Courts decreed plaintiff's claim on the ground that defendants had failed to prove that the said adoption was valid by custom.

Held, that though the primary rule of decision in a suit of the present character is custom, there is no necessary legal presumption that a particular custom bearing on the point in issue exists, section 5 of the Punjab Laws Act, 1872, only casting on the Court the duty of enquiring whether there is any such custom binding on the parties, and, if there is, to decide the suit in accordance therewith.

Held, further, that under Hindu Law, which was the personal law of the parties, the adoption in question was perfectly valid.

Held, therefore, that plaintiff who was suing to set aside an adoption, which was valid by the personal law of the parties, on the ground that it was invalid by custom, must fail if the custom upon which he relied was not proved, and that he was accordingly bound by the rules of pleading to establish that custom affirmatively.

Held, further, that inasmuch as Khatris do not ordinarily form an agricultural but a trading community, the usages of agriculturists cannot be presumed to apply to them, and therefore that plaintiff could not claim the benefit of the presumption laid down by the Full Bench in No. 50 *P. R.* 1893, so as to shift the burden of proof from himself to defendants. *Found*, upon the evidence, that plaintiff had failed to prove that by custom among the parties the adoption of a wife's brother's son was invalid. KARTAR SINGH v. MATHAR SINGH. **94 P R 1898**

19. *Custom—Adoption—Dhawan Khatris of Ferozepore—Wife's sister's son—Ceremonies.*

Found, that adoption of wife's sister's son among Dhawan Khatris of Ferozepore was not opposed to custom or Hindu Law, and that in the absence of proof as to the necessity of ceremonies in constituting such an adoption valid, and unequivocal declaration of intention coupled with previous and subsequent treatment would be sufficient for the purpose.

Ganda Mal v. *Mussammat Radhi* (57 *P. R.* 1886) referred to. GIRDHARI LAL v. DALA MAL. **3 P R 1901**

20. *Custom—Adoption—Adoption of a brother's daughter's son—Brahmans of* mauza *Chiragh in the suburbs of Delhi—Burden of proof.*

Held, in a suit the parties to which were Brahmans of *mauza* Chiragh in the suburbs of Delhi, a non-agricultural class, though in the present case holding land in the village, that the plaintiff had failed to discharge the burden which under the circumstances lay upon him of proving that the adoption of a brother's daughter's son was invalid by custom.

CUSTOM III.—APPOINTMENT OF HEIR—*contd.*

A.—ADOPTION OF COLLATERAL—*concld.*

Held, also, following *Sohnun* v. *Ram Dial* (79 *P. R.* 1901), that in cases where the right of adoption is admitted or is found to prevail, the *onus* lies upon those w o allege that a particular kind of adoption, *e.g.*, that of a daughter's or sister's son, cannot be made.

Hukam Singh v. *Mangal Singh* (43 *P. R.* 1886), and *Albel Singh* v. *Vir Singh* (86 *P. R.* 1885), cited. *Bhagwan Singh and others* v. *Bhagwan Singh* (*I. L. R. XXI All.* 412 P. C), and *Ralla* v. *Budha* (50 *P. R.* 1893 F. B.) referred to. CHUTTAN *v.* RAM CHAND.
86 P R 1904

21. *Custom—Adoption—Adoption of wife's brother's son—Hindu Law or custom—Brahmans of* mauza *Dialpur*, tahsil *Kasur*, *Lahore district*—Locus standi *of the reversioners of the eighth degree to contest such adoptions—Burden of proof.*

Held, that in matters of adoption Brahmans of *mauza* Dialpur, *tahsil* Kssur, in the Lahore district, who are full proprietors with share of *shamilat* in the village and had settled with the founder, had for eight generations cultivated land, and had closely associated themselves with the Jat proprietors of the village, were governed by the general rules of agricultural custom and not by Hindu Law, and that the defendants had failed to discharge the burden which, under the circumstances, lay upon them of proving that the adoption of a wife's brother's son was valid by custom, or that the collaterals of the eighth degree were not entitled to contest such an adoption. RAM CHAND *v.* THAKAR DAS.
94 P R 1907

22. *Custom—Adoption of distant married collateral in presence of near collateral—Lohars of* tahsil *Amritsar.*

Found, that among Lohars of *tahsil* Amritsar the adoption at the age of 26 of a married man with children is not invalid by custom. CHANDA *v.* AKBAR.
49 P R 1909

23. *Custom—adoption—Adoption of brother's daughter's son without the consent of adopter's reversioners—Validity of Hindu Jat agriculturists of Hoshiarpur* tahsil—Onus probandi.

Held, that among Hindu Jat agriculturists of the Hoshiarpur *tahsil* of the Hoshiarpur district adoption of a brother's daughter's son is not valid without the consent of adopter's reversioners.

Held, also, that the rule laid down in 50 *P. R.* 1893 *F. B.* (*Ralla* v. *Budha*) is that among agriculturists the *onus* of establishing the unfettered power to adopt a person who is not an agnate is on the party who sets up the power, and that evidence of power to adopt a daughter's son does not shift the burden of establishing the power to adopt the son of a brother's daughter. AMRU *v.* MOHAN SINGH.
47 P R 1910

CUSTOM III.—APPOINTMENT OF HEIR—*contd.*

B.—APPOINTMENT OF DAUGHTER AS HEIR.

1. *Gujars of Gujrat—Appointment of daughter as heir*—Khana-damad.

In a suit, the parties to which were Gujars of the Gujrat district, *held*, that no custom had been proved to exist under which an adoption or appointment as heir of a *daughter* was valid, nor any custom extending to the husband of a niece the principle of the species of *quasi*-adoption under which a man succeeds as *khana-damad*, which is usually confined to the case of a husband to a man's own daughter. UMRA *v.* MUSSAMMAT BEGAM.
8 P R 1888

2. *Custom—Moghals of Patti, in* tahsil *Kasur—Sonless proprietor—Appointment of daughters to be heirs.*

Found, in a suit, the parties to which were Moghals of Patti, in the Kasur *tahsil* of the Lahore district, that by custom it was competent to a sonless proprietor to appoint his daughters to be his heirs and succeed to his land, to the exclusion of collaterals.

No. 126 *P. R.* 1890 referred to. BUDHA BEG *v.* MUSSAMMAT BUDHAI BEGAM.
71 P R 1895

C.—ADOPTION OF DAUGHTER'S SON OR GRANDSON.

1. *Daughter's son.*

Whether the adoption by a Khatri of his daughter's son is a valid adoption, will depend upon the custom of the caste in the Punjab, which must be found as a fact. HURSAHAI *v.* BHAWANI DASS.
9 P R 1868

2. *By maternal grandfather.*

Plaintiff was adopted by his maternal grandfather in the time of the Sikh rule. The adoption was found valid according to the custom prevailing at the time; but it appeared that no similar adoptions had been made since that time. *Held*, that plaintiff's was a valid adoption. HIRA SINGH *v.* MASTAN SINGH.
19 P R 1872

3. The adoption of a daughter's son in the time of the Sikh rule was valid according to the custom of certain Jats. HIRA *v.* MUSSAMMAT DHARMO.
26 P R 1872

4. Adoption of daughter's son upheld. *Dhani Ram* v. *Mussammat Man Kour* (No. 13 of 1873, Civil); and again, by Punjab custom, the adoption of a daughter's son decided to be valid. HARRI SINGH *v.* GULABA.
50 P R 1874

5 *Step-daughter's son.*

The adoption of a step-daughter's son is valid amongst the Jats of the Hoshiarpur district. RAM DITTA *v.* PHULA SINGH.
59 P R 1874

6. *Khatris—Kakri* got*—Firozpur district.*

CUSTOM III.—APPOINTMENT OF HEIR—*contd.*

C.—ADOPTION OF DAUGHTER'S SON OR GRANDSON—*contd.*

Found that, by the custom of Khatris of the Kakri got, in *mauza* Salibvah, *tahsil* Moga, *zillah* Firozpur, the adoption of a daughter's son is valid. Adoption of a brother's daughter's son accordingly upheld. SIRDAR DIWAN SINGH *v.* MUSSAMMAT SUBHAN.
72 P R 1878

7. *Daughter's son—Kalals of Jhandiala, Amritsar district.*

Found that, by the custom among Kalals of Jhandiala in the Amritsar district, the adoption of a daughter's son is valid. ATAR SINGH *v.* GURAN DITTA.
50 P R 1879

8. *Raiens of Jullundur district—Daughter's son—Appointment of heir.*

Found that, among Raiens, an appointment by a childless village proprietor of a daughter's son to be his heir, in presence of and to the exclusion of brother's sons, is valid according to custom. In the absence of evidence to the contrary, it is not fatal to the validity of such an appointment that it has not been made at an early age in the life of the person appointed, or that it has been made by a testamentary instrument shortly before the appointer's death. AMIR-UD-DIN *v.* PIRA.
58 P R 1879

9. *Mahomedan Jats, Gujrat district—Gift to daughter's son—Appointment of heir.*

Found that by the custom of Mussulman Jats of the Baraich *got* in the Gujrat district the adoption of a son is not allowed; nor by the same custom, can a sonless proprietor make valid gift of his land to his daughter's son or appoint him to be his heir after his death. MUSSAMMAT KARM BHARI *v.* HYAT BAKHSH.
15 P R 1880

10. *Kerwal Jats—General custom.*

According to the general custom in the Punjab, an adoption of a daughter's son is found to be valid among Jats.

Held, therefore, that the mere circumstance that no instance of an adoption of the kind among Jats of the Kerwal *got* in the Ludhiana district could be adduced, was not sufficient to establish affirmatively that the custom of that *got* differed from the general custom, and that in such *got* such an adoption was not valid. BHUPA *v.* UTAM SINGH.
61 P R 1880

11. *Jats of Rai* got, *Ludhiana—General custom.*

By the general custom applicable to Jats in the Punjab, the adoption of a daughter's son is allowed.

Where, therefore, in a suit to set aside such an adoption, the parties to which were Jats of the Rai *got* in the Ludhiana district, the plaintiffs failed to prove any special custom rendering such an adoption invalid in that *got*, *held*, that the suit was rightly dismissed. MANGAT *v.* SIHAN.
66 P R 1881

CUSTOM III.—APPOINTMENT OF HEIR—*contd.*

C.—ADOPTION OF DAUGHTER'S SON OR GRANDSON—*contd.*

12. *Muhammadan Jats of Ludhiana district—Appointment of heir—Power to revoke such appointment.*

In a suit the parties to which were Muhammadan Jats of *mauza* Bhalolpur in the Ludhiana district, who were found to have a recognized power to adopt or appoint an heir, *held*, that no customary power was proved to exist whereby a childless proprietor who had once appointed a person, *e.g.*, his daughter's son, as his heir was entitled thereafter to revoke that appointment, and to deprive the appointee on his death of the rights which he would otherwise have acquired. MANA *v.* ABDULLA. **98 P R 1882**

13. *Jat Sikhs of* tahsil *Kharar, Amballa district.*

Found, that no well established custom exists (contrary to the general custom of the Punjab) among Jat Sikhs of the Kharar *tahsil* of the Amballa district, by which the adoption of a daughter's son is prohibited. *Hira* v. *Mussammat Dharmo* (No. 26 of 1872, Civil), *Harri Singh* v. *Gulaba* (No. 50 of 1874, Civil), and *Bhupa* v. *Utam Singh* (No. 61 of 1880, Civil) cited. BHUP SINGH *v.* NIHAL SINGH. **129 P R 1882**

14. *Kahilwan Jats of Gurdaspur—General custom.*

In a suit the parties to which were Kahilwan Jats of the Gurdaspur district, *held*, that no special custom was proved rendering the adoption of a daughter's son invalid. SHER SINGH *v.* NARANDAR SINGH. **167 P R 1883**

15. *Hindu Rujar Jats of* tahsil *Batala.*

Found, that there is no well established custom among Rujar Jats of the Batala *tahsil*, contrary to the custom generally prevailing among Hindu Jats in the Punjab, under which a daughter's son cannot be lawfully adopted.

Sher Singh v. *Narandar Singh* (No. 167 of 1883, Civil) referred to. BELI *v.* SHAM SINGH. **154 P R 1884**

16. *Gil Jats of Amritsar.*

Found, that the adoption of a daughter's son by a sonless Gil Jat of the Amritsar district is valid by custom. DIAL SINGH *v.* DEWA SINGH. **5 P R 1885**

17. *Kapur Khatris of Amritsar—General custom.*

Found, that no special custom exists among Kapur Khatris of Amritsar, different from that which has been found to generally prevail in the Punjab, rendering the adoption of a daughter's son invalid. ATMA SINGH *v.* JATTA SINGH. **64 P R 1883**

18. *Khatris of Nurmahal, Jalandhar—General custom.*

Found, that there is no special custom amongst the Khatris of Nurmahal in the Jalandhar district, contrary to the general

CUSTOM III.—APPOINTMENT OF HEIR—*contd.*

C.—ADOPTION OF DAUGHTER'S SON OR GRANDSON—*contd.*

custom of Khatris in the Punjab, to render invalid the adoption of the only son of a daughter. TABA *v.* SHIB CHARN. **162 P R 1883**

19. *Aroras of Lahore—Burden of proof.*

It is established in the Punjab that the person who denies the validity of a customary adoption of a daughter's son among such classes as Khatris or Aroras, must prove the allegation. *Harri Singh* v. *Gulaba* (No. 50 of 1874, Civil), *Uttam Chand* v. *Bysakhi* (No. 77 of 1878, Civil), and *Taba* v. *Shib Charan* (No. 162 of 1883, Civil), cited. MUSSAMMAT PARMESHRI *v.* VASDEO. **35 P R 1885**

20. *Choprah Khatris of Firozpur—Only son.*

Found, that no special custom exists among Choprah Khatris of the Firozpur district by which the adoption of a daughter's son, though he be an only son, is invalid. GANDA MAL *v.* MUSSAMMAT RADHI. **57 P R 1886**

21. *Bablas of Shujabad*—Onus *of proof.*

In a suit to cancel an adoption, the parties to which were Bhatiyas of the Babla *got* of Shujabad in the Mooltan district, *held*, that the plaintiffs (upon whom the *onus* lay) had failed to prove that the appointment of a daughter's son as heir was invalid according to the custom of the *got*. *Harri Singh* v. *Gulaba* (No. 50 of 1874, Civil), *Uttam Chand* v. *Bysakhi* (No. 77 of 1878, Civil), *Atma Singh* v. *Jatta Singh* (No. 64 of 1883, Civil), and *Taba* v. *Shib Charn* (No. 162 of 1883, Civil), cited. CHAUDHRI ASA NAND *v.* KALA RAM. **85 P R 1886**

22. *Muhammadans of M. Golera, Rawalpindi district*—Wajib-ul-arz.

In a suit, the parties to which were Muhammadans, residents of M. Golera in the Rawalpindi district, it appeared that one F. K. took his daughter's son, N., to live with him and adopted him in the manner customary among agriculturists in the Punjab, and further, a few days before his death, executed a will in which, after reciting that he had adopted N. he declared him to be his heir and successor. The provisions of the *Wajib-ul-arz* of the village limited the class of person who might be adopted to the near relatives of the adoptor in the male line; the *Wajib-ul-arz* also provided that, unless the adoptor made a gift of his estate or devised it by will to the adopted son, he would only succeed to the share to which he was entitled by the rules of the Muhammadan law; and further, that in the event of the person adopted being from another tribe and family, he should have no right, unless he took possession after the death of his adoptive father and held possession for two years, in which case his title became unimpeachable. It was contended, on appeal, that the adoption was invalid under the terms of the *Wajib-ul-arz*, and that the instrument relied on was not a will but a deed

CUSTOM III.—APPOINTMENT OF HEIR—*contd.*

C.—ADOPTION OF DAUGHTER'S SON OR GRANDSON—*contd.*

of gift, and failed to convey the land by gift because it was not followed by possession.

Held, upholding the orders of the lower Courts, that the enquiry showed that while adoptions among the Muhammadan tribes of the circle were common as among other agricultural classes in the Punjab, they were subject to no peculiar or special limitations such as those described in the *Wajib-ul-arz*: that the adoption of N. was therefore valid, no gift or will being necessary to perfect his title as adopted son, though the instrument produced by N. was as a fact a will, as recited in the deed itself. NAJIBULLA *v.* NADIR. **120 P R 1881**

23. *Syads of Firozpur—Appointment of heir.*

Found, that among Syads of Firozpur and the neighbourhood, a landowner who has no male descendants or near collateral relatives, may by custom appoint a child of tender years to be his heir, especially a daughter's son or other near relative in the female line, no particular form of ceremony or writing being necessary to give validity to the appointment so long as the intention to make the child his heir is unmistakably manifested by the appointor. GHULAM HUSAIN *v.* MUSSAMMAT FATTEH BANO. **102 P R 1884**

24. *Arains of Sialkot.*

Found, that among Arains of the Sialkot district the custom allowing the adoption of daughters' sons is not restricted to cases in which there are no brothers' sons. *Aladin* v. *Badra* (No. 119 of 1882, Civil) distinguished. SHAH MUHAMMAD *v.* HASHAM. **20 P R 1886**

25. *Gorcha Jats of Ludhiana district.*

In a suit to set aside the adoption of a daughter's son among Gorcha Jats of the Ludhiana district, the plaintiffs failed to prove any special custom rendering such an adoption invalid. *Held*, that the burden of proof lay on the plaintiffs, and that the suit had been rightly dismissed. DASWANDA SINGH *v.* ACHRU. **93 P R 1890**

26. *Radhawa Jats of Jullundur* tahsil—*Validity of adoption of daughter's son.*

In a suit, the parties to which were Radhawa Jats of the Jullundur *tahsil*, *found*, that the collaterals of the adoptive parents had failed to prove a custom invalidating the adoption of a daughter's son.

The question of burden of proof discussed. UTTAM SINGH *v.* KESRA SINGH. **159 P R 1890**

27. *Muhammadan Chuhan Rajputs of* mauza *Golra, Umballa* tahsil—*Custom—Adoption—Daughter's son.*

In a suit, the parties to which were Muhammadan Chuhan Rajputs of *mauza* Golra, *tahsil* and District Umballa, *found*, that no custom was established recognizing as valid the adoption of a daughter's son.

No. 124 *P. R.* 1886, referred to. MIR DAD *v.* KARIM BAKHSH. **40 P R 1891**

28. *Custom—Adoption—Daughter's son—Bagri Jats, Sirsa* tahsil—Riwaj-i-am—*Burden of proof.*

Found, that by the custom of the Bagri Jats of the Sirsa *tahsil* the adoption of a daughter's son without the consent of the collateral heirs, is invalid. No. 197 *P. R.* 1889, and No. 159 *P. R.* 1890, referred to.

Observations by Stogdon, J., as to the burden of proof in this and cognate cases.

Observations by Plowden, J., as to the weight to be given to the *Riwaj-i-am*, and as to the relevancy, under the Indian Evidence Act of the entries therein. No. 24 *P. R.* 1884, and No. 86 *P. R.* 1885, referred to. JODHA *v.* MUSSAMMAT JASSAN.

81 P R 1891

29. *Custom—Marriage by* chadar andazi—*Adoption—Illegitimate daughter's son—Agricultural Brahmins of* tahsil *Batala, Gurdaspur district.*

Found, in a suit, the parties to which were agricultural Brahmins of *mauza* Tara in the Batala *tahsil* of the Gurdaspur District, (1) that a marriage by *chadar-andazi* between a Brahmin and a widow, called a *dharel* wife, is not valid by custom; (2) that the burden of proving the validity, by custom, of the adoption by the husband of the son of a daughter of such marriage against male collaterals descended from the grandfather of the adoptor, lay on the adopted son, and had not been discharged. NANAK *v.* BUA DITTA. **5 P R 1893**

30. *Custom—Adoption—Daughter's son—Hindu Rajputs of Hoshiarpur and Kangra Districts—General custom of the Punjab regarding such adoptions.*

Per PLOWDEN, S. J.,—No. 50 *P. R.* 1874, has been taken to decide much more than it really does decide.

It is a good authority to this extent, that it is often found that in the Punjab the adoption of a daughter's son is not invalid by custom as opposed to Hindu Law by which such an adoption is invalid. But it is far from being an authority for the proposition that adoption of a daughter's son, *without consent of agnates*, is *prima facie* valid throughout the Province.

Quære.—Whether among Rajputs, Hindu or Muhammadan, of any caste or tribe, an adoption of a daughter's son, without consent of the agnates of the adoptor, would be *prima facie* valid. PARTAB SINGH *v.* JAI SINGH. **12 P R 1893**

31. *Custom—Adoption—Daughter's son—Muhammadan Arains of Nawashahr* tahsil, *Jullundur District—Burden of proof.*

Banna, deceased, a Muhammadan Arain of a village in the Nawashahr *tahsil* of the

Jullundur District, died sonless, possessed of land and a house. It was assumed that the title to the house, which was in suit, followed that to ancestral land, which had come into the possession of the plaintiffs, brother's sons of deceased, who now sued for possession of the house.

The plaintiffs and the deceased, Banna, were of the Mandan *got*.

The defendants who contested the claim were Mussammat S., daughter of B., her husband B. of the Chachar *got*, and their son A.

One ground of defence was that A. having been adopted by B. was his heir.

The question was, whether the burden of proving the validity of this adoption by custom lay upon the plaintiffs, the brother's sons, or upon the defendant, the daughter's son, and those who joined in setting up his title.

Held, by the Full Bench, that the burden of proof was on the defendants, who alleged an adoption of a daughter's son to be valid against the plaintiffs, brother's sons of the adoptor, irrespective of their assent.

Held, also, generally—creed, tribe and locality apart—that when a sonless man in any land holding group which recognises a power to adopt, asserts that he is competent to adopt a daughter's son or other non-agnate in presence of near agnates, irrespective of their assent the presumption at the outside is against the power.

The effect of No. 50 *P. R.* 1874, and other cases of adoption of non-agnates considered, and the subject of adoption among land-holding tribes in the Punjab discussed by Plowden, S. J. RALLA *v.* BUDHA.

50 P R 1893 F B

32. *Custom—Adoption of daughter's son—Village artizans—Zargars of* mauza *Naro Nangal*, tahsil *Hoshiarpur.*

Found, in a suit, the parties to which were artizans (goldsmiths) of *mauza* Naro Nangal in the Hoshiarpur *tahsil*, that the adoption of a daughter's son when made with the express consent of one of the heirs and the tacit acquiescence of another, was valid by custom. PHERA *v.* BABU. **113 P R 1893**

33. *Custom—Adoption—Hindu Bhatti Jats of Samrala* tahsil, *Ludhiana District—Validity of adoption of daughter's son—Burden of proof.*

Found, that by custom among Hindu Bhatti Jats of Samrala *tahsil*, Ludhiana District, the adoption of a daughter's son in the presence of brother's sons without their consent invalid.

The initial presumption is against the validity of such an adoption. No. 50 *P. R.* 1893 (F. B.) cited. SOHEL SINGH V. SAIDHU.

3 P R 1894

34. *Custom—Adoption of daughter's son—Anand Khatris of* mauza *Kalan Chakian, Pasrur* tahsil, *Sialkot District*—Riwaj-i-am.

Found, that by coustom among Anand Khatris of *mauza* Kalan Chakian, Pasrur *tahsil*, in the Sialkot District, the adoption of a daughter's son in the presence of the "*baradar zada*" is invalid. NARAIN SINGH *v.* PRABH DIAL. **30 P R 1894**

35. *Custom—Adoption—Daughter's son—Manj Rajputs of* tahsil *Ludhiana—Burden of proof.*

Found, in a suit, the parties to which were Muhammadan Manj Rajputs of *tahsil* Ludhiana that the validity of the adoption of a daughter's son (who was also a distant collateral) had not been established by the party setting up the adoption and alleging its validity. GHULAM NABI *v.* HASSU KHAN. **34 P R 1894**

36. *Custom—Adoption—Alienation—Gift to daughter's son who had been adopted by donor—Sayads of Rawalpindi* tahsil.

Found, that by custom among Sayads of Rawalpindi *tahsil* the adoption of a daughson, who was also a grandnephew of the adoptor, was invalid.

A disposition by deed by a Sayad proprietor of the whole of his property, giving three fifths to the said adopted son, one-fifth to the widow and reserving one-fifth for himself, which was to go after his death to his two daughters and ultimately to the adopted son, found to be invalid by custom.

No. 120 *P. R.* 1881, referred to. ABDULLA SHAH *v.* KAIM SHAH. **86 P R 1894**

37. *Custom—Adoption of daughter's son—Burden of proof—Dewal Jats of the Ludhiana District*—Riwaj-i-am

Fouud, in a suit the parties to which were Hindu Jats of Dewal *got* of Ludhiana District that the defendants, upon whom the *onus probandi* rested, had failed to prove any custom which recognised the validity of the adoption of a daughter's son. CHATRA AND OTHERS *v.* CHANAN. **19 P R 1895**

38. *Custom—Adoption of daughter's son—Sindhu Jats of Lahore* tahsil—*Burden of proof.*

Found, that the adoption of a daughter's son is not valid by custom among Sindhu Jats of the Lahore *tahsil*. NATHA SINGH *v.* SHER SINGH AND OTHERS. **47 P R 1895**

39. *Custom—Adoption of daughter's son—Gil Jats of Jagraon* tahsil, *Ludhiana District—Burden of proof.*

Found, in a case, the parties to which were Gil Jats of Jagraon *tahsil* of the Ludhiana District, that the defendants had failed to prove that the adoption of a daughter's son was valid by custom. MAHAN SINGH *v.* MUSSAMMAT DHARMON AND ANOTHER.

58 P R 1895

40. *Custom—Adoption of daughter's son—Hindu Kalkat Jats of Dhalewal, Hoshiarpur* tahsil—Riwaj-i-am.

CUSTOM III.—APPOINTMENT OF HEIR—*contd.*

C.—ADOPTION OF DAUGHTER'S SON OR GRANDSON—*contd.*

Found, that, by custom among Kalkat Jats (Hindu) of Dhalawal in the Hoshiarpur *tahsil*, the adoption of a daughter's son is invalid in the presence of collaterals. BUDHU *v.* BUR. **34 P R 1895**

41. *Custom—Adoption of daughter's son —Garewal Jats of Ludhiana District.*

In a case, the parties to which were Garewal Jats of Ludhiana District, *found*, that defendant, upon whom the *onus* rested, had failed to prove that the adoption of a daughter's son was valid by custom. RAM SINGH AND OTHERS *v.* NAND SINGH. **103 P R 1895**

42. *Custom—Adoption of daughter's son —Randhawa Jats of Amritsar* tahsil—Riwaj-i-am.

Found, in a case in which the parties were Jats of the Randhawa *got* of Dhardeo in the *tahsil* and district of Amritsar, that defendants, upon whom the *onus* rested, had failed to prove that the adoption of a daughter's son is valid by custom. WASAWA SINGH *v.* BUA DITTA. **38 P R 1896**

43. *Custom—Adoption of daughter's son —Ghumman Jats of Sialkot District—Perversion of next collaterals to Muhammadanism.*

According to the *Riwaj-i-am* of the Sialkot District, it is competent to a Ghumman Jat to adopt his daughter's son, but a nephew has a prior right to be adopted. Where, however, the nephews had perverted to Muhammadanism, *held*, that it lay upon them to prove that they were entitled to be adopted in preference to a daughter's son, and that their existence rendered the adoption of such daughter's son invalid, and that they had failed to prove this. *Found*, under the circumstances of the case, that the *factum* of adoption had been sufficiently proved. NIZAM DIN *v.* JAGAT SINGH. **25 P R 1898**

44. *Adoption of daughter's son—Hindu Law—Banias of Jagraon—Burden of proof —Omission to perform certain ceremonies.*

Plaintiff sued for a declaration that a deed of adoption whereby defendant No. 1, plaintiff's brother, adopted his daughter's son was invalid, and would not affect plaintiff's reversionary rights. Plaintiff admitted the *factum* of adoption, but contended that it was illegal by "law and custom," and was, moreover, invalid owing to the non-performance of certain necessary ceremonies. The parties were banias of Jagraon, The lower Courts dealt with the question as one of custom, and dismissed the suit on the ground that the adoption had not been proved to be invalid by custom among the parties.

Held, that the parties being Bania residents of a town, of the ordinary mercantile class, were governed by Hindu Law and not by custom, and that plaintiff had failed to prove that under Hindu Law a daughter's son was not a proper person to be adopted.

Held, further, that the *factum* of adoption not being disputed and the daughter's son being a person who might legally be adopted, the adoption was not invalid on account of the omission of any particular ceremony.

I. L. R. XVII All. 294 followed. GANDA MAL *v.* THAKAR MAL. **97 P R 1898**

45. *Custom—Adoption of the daughter's son—Jats of* mauza *Thaona, Rupar* tahsil, *Amballa District.*

Found, that among Jats of the Rupar *tahsil*, Ambala District, the adoption of a daughter's son is invalid by custom. LALU *v.* FATTEH SINGH. **18 P 1899**

46. *Custom—Adoption of daughter's son —Lehl Jats of Hoshiarpur District*—Riwaj-i-am—*Acquiescence in adoption.*

Found, that by custom among Lehl Jats of the Hoshiarpur District, the adoption by a sonless man of his daughter's son is valid.

The Court also *found*, on the evidence, that the reversioners had acquiesced in the adoption both at the time when it was made and subsequently at the time of the adoptive father's death. NATHA SINGH *v.* SUJAN SINGH **34 P R 1899**

47. *Custom—Adoption—Daughter's son —Gil Jats of the Amritsar* tahsil—*Burden of proof.*

Found that amongst Gil Jats of the Amritsar *tahsil* the adoption of a daughter's son is invalid by custom.

Held, that the burden of proof was on the party alleging such adoption valid. SARDAR WASAWA SINGH *v.* SARDAR ARUR SINGH. **33 P R 1900**

48. *Custom—Adoption of daughter's son —Kalwan Jats of Sialkot District—Burden of proof.*

Found, that defendnat upon whom the *onus* rested had failed to prove that by custom among Kalwan Jats of Sialkot District the adoption of a daugter's son is valid. GANPAT AND ANOTHER *v.* NANAK SINGH. **81 P R 1900**

49. *Custom—Adoption—Gift to daughter's son—Kathana Gujars of the Gujrat* tahsil—*Limitation—Limitation Act,* 1877, *Schedule II, article* 118—*Suit to declare an adoption invalid.*

In a case the parties to which were Kathana Gujars of the Gujrat *tahsil*, *found* that an adoption of a daughter's son, or a gift of ancestral land to such a person by a sonless proprietor without consent of collaterals was invalid by custom.

Article 118 of the second Schedule of the Limitation Act of 1877 is not applicable where the adoptor has no inherent power to adopt.

Bhagat Ram v. *Tulsi Ram* (144 *P. R.* 1892) followed; *Jagadamba Chowdhrani* v. *Dekhina Mohum* (*I. L. R. XIII Calc.* 308) distinguished; *Gul Ahmad* v. *Sahibzada* (45 *P. R.* 1881) doubted; *Ilam Din* v. *Mubarak* (140 *P. R.* 1893), *Gaman* v. *Nadir Din* (35 *P. R.* 1896), *Nur Din* v. *Sahibzada* (18 *P. R.* 1880), *Fazla* v. *Fazlu* (53 *P. R.* 1889), and *Muhammad* v. *Sharf Din* (8 *P. R.* 1891), referred to. MUHAMMAD DIN AND OTHERS *v.* SADAR DIN AND OTHERS. **67 P R 1901**

50. *Custom—Adoption—Daughter's son—Hindu Jats of Hayatpur in the Garhshankar* tahsil *of Hoshiarpur District—Suit to obtain a declaration that an alleged adoption was invalid or had never taken place—Limitation from which period begins to run—Limitation Act,* 1877, *Schedule II, article* 118—*Burden of proof.*

On the 28th August 18 4, one K. executed a deed of adoption in favor of his daughter's son. In 1894 after the death of K. his widow assented to mutation of names being effected in favor of the adopted son. In 1897 the plaintiffs, who are the male collaterals of K., instituted a suit to obtain a declaration that the alleged adoption was invalid, and that it never took place. The first Court found that the plaintiffs' claim was barred by limitation, that the defendant was adopted by K., and that the adoption was not invalid. The Divisional Judge reversed the decree of the first Court on the grounds that the suit was not barred, that the fact of the widow of K. allowing mutation in favor of the adopted son gave plaintiff a fresh cause of action, and that the defendant was not formally adopted, and that as a daughter's son he could not be adopted.

Held, that as the title of the adopted son to the property was created by the adoption, and not by any subsequent admission on the part of the widow of the adoptive father that the title existed, such an admission did not give plaintiff any fresh cause of action, and as the plaintiffs had knowledge of the adoption more than six years previous to the institution of suit their claim was barred under Article 118 of the second schedule to the Limitation Act of 1877.

Held also, that although a presumption at the outset is against the power of an adoption of a daughter's son in a case where evidence such as an entry in a *Wajib-ul-arz* or *Riwaj-i-am* or precedents are produced by the adopted son, the burden of proof is shifted to the party denying the validity of such an adoption.

Found, upon the evidence that the defendant was formally adopted by K., and that his adoption was valid.

Parman v. *Gian Singh* (94 *P. R.* 1893), *Natha Singh* v. *Sujan Singh* (34 *P. R.* 1899), and *Ralla* v. *Budha* (50 *P. R.* 1893), referred to. HEM RAJ AND ANOTHER *v.* SAHIBA AND OTHERS. **116 P R 1901**

CUSTOM III.—APPOINTMENT OF HEIR—*contd.*

C.—ADOPTION OF DAUGHTER'S SON OR GRANDSON—*concld.*

51. *Custom—Adoption of daughter's son—Jats of Bassi Jalal,* tahsil *Dasuha, Hoshiarpur District*—Riwaj-i-am.

Found, that among Hindu Jats of Bassi Jalal in the Dasuha *tahsil* of the Hoshiarpur District the adoption of a daughter's son was valid by custom.

Natha Singh v. *Sujan Singh* (34 *P. R.* 1899) and *Hem Raj* v. *Sahiba* (116 *P. R.* 1901), cited.

Budhu v. *Bur* (84 *P. R.* 1895), and *Ralla* v. *Budha* (50 *P. R.* 1893 *F. B.*), referred to. BISHNA *v.* BANTA. **69 P R 1905**

52. *Custom—Adoption—Adoption of daughter's son—Sekhu Jats of* tahsil *Daska, Sialkot District—Burden of proof.*

Found, in a suit the parties to which were Sekhu Jats of the Daska *tahsil* of the Sialkot District, that no custom was proved recognizing the adoption of a daughter's son in presence of near collaterals such as a cousin or cousin's sons, the burden of proof being upon those setting up such adoption.

Ganpat v. *Nanak Singh* (81 *P. R.* 1900) and *Nanak* v. *Nandu* (29 *P. R.* 1904) referred to. MUHAMMAD DIN *v.* JAWAHIR. **69 P R 1907**

53. *Custom—Adoption—Adoption of daughter's son—Hindu Nandan Jats of Dasuha* tahsil, *Hoshiarpur District—Burden of proof*—Riwaj-i-am.

Found, in a case the parties to which were Jats of the Nandan *got* of Dasuha *tahsil* in the Hoshiarpur District, that plaintiffs upon whom, in the special circumstances of the case, the *onus* rested had failed to prove that the adoption of a daughter's son was invalid by custom. ACHHAR SINGH *v* MEHTAB SINGH. **81 P R 1907**

54. *Custom—Adoption—Adoption of daughter's son—Dhillon Jats of* mauza *Jawinda Khurd,* tahsil *Tarn Taran, Amritsar District.*

Found, in a suit the parties to which were Dhillon Jats of *mauza* Jawinda Khurd in the Tarn Taran *tahsil* of the Amritsar District that the validity of the adoption of a daughter's son had been established by the party setting up the adoption. SOHNA *v.* SUNDUR SINGH. **85 P R 1907**

55. *Custom—Adoption—Adoption of daughter's son—Dhillon Jats of* tahsil *Tarn Taran, Amritsar District.*

Found, that the adoption of daughter's son is valid by custom among Dhillon Jats of the Tarn Taran *tahsil*. BUTA SINGH *v.* RAM SINGH. **86 P R 1907**

D.—ADOPTION OF SISTER'S SON OR GRANDSON.

1. *Rajputs, Umballa.*

The adoption of a sister's son, who is also

CUSTOM III.—APPOINTMENT OF HEIR—*contd.*

D.—ADOPTION OF SISTER'S SON OR GRANDSON—*contd.*

the eldest son, is valid amongst the Rajputs of Umballa district. JITA *v.* SUNDAL. **35 P R 1874**

2. *Sister's son.*

By the custom of the Punjab the adoption of a sister's son is valid.

Mootsuddee Mal v. *Mussammat Lajwantee*—(*No.* 24 *of* 1867, Civil, and *No.* 83 *of* 1867 Civil *note*) *Mya Dass* v. *Sawun* (*No.* 83 *of* 1867, Civil); and HARRI SINGH *v.* GULABA. **50 P R 1874**

3. *Jats, Amritsar.*

The adoption of a sister's son amongst the Sindhoo Jats of the Amritsar district was valid during the Sikh rule. SAWAN SINGH *v.* SANT SINGH. **1 P R 1875**

4. *Bular Jats, Ferozepore.*

There is no custom (*per* BOULNOIS and CAMPBELL, JJ., LINDSAY, J., dissenting), contrary to the general custom of the Punjab, amongst the Bular Jats, Ferozepore district, with regard to the adoption of a sister's son; and such adoption is valid. NIHAL SINGH *v.* KAHN SINGH. **50 P R 1875**

5. *Sister's grandson—Aroras of Lahore.*

By the custom of Aroras of Lahore, the adoption of a sister's grandson is valid. UTTAM CHAND *v.* BYSAKHI. **77 P R 1878**

6. *Jats, Jullundur.*

The adoption of a sister's son amongst the Jats of the Jullundur district is not valid. *Moti* v. *Taba* (*No.* 31 *of* 1873, Civil). But where S., a Mahomedan Jat of the Nawashahr *tahsil*, Jullundur district, appointed J., his sister's son, as his *quasi* adopted son to be his heir, *held*, that custom recognized J's right under the circumstances to inherit the property. JEWA *v.* KARM BAKSH. **80 P R 1878**

7. *Appointment of heir—Sister's son, gift to, of ancestral estate in presence of first cousins in male line—Childless village proprietor—Hindu Jats.*

While one M was a child of 4 or 5 years of age his parents came from their own village of Nawapind to Bul, about a *koss* distant, to reside in a house in the same enclosure with Mutsaddi. While his parents were so residing in Bul, M. was married. It was not proved that Mutsaddi effected his marriage, the evidence tending rather to show that M's own parents married him, though the expenses might have been borne in whole or in part by M. M., widow of Mutsaddi's brother. After the marriage M. returned with his parents to live in Nawapind, coming occasionally to Bul to visit Mutsaddi and M. M., and occasionally assisting them in the cultivation of their lands.

On 8th May 1876, Mutsaddi executed a deed in M.'s favour which recited that, having no

CUSTOM III.—APPOINTMENT OF HEIR—*contd.*

D.—ADOPTION OF SISTER'S SON OR GRANDSON—*contd.*

sons or daughter's sons, he had from the beginning treated M. as a son, and that as life was uncertain, he made a gift of his land to M. and put him in possession. The deed provided that M. should maintain Mutsaddi. A very few days after its execution Mutsaddi died.

Held, that there was no evidence of Mutsaddi having appointed M. his heir; that the execution of the deed had not the effect of constituting M. his appointed heir; and that the deed having been executed in the near contemplation of death, was to all intents and purposes a will.

Held further, that Mutsaddi, a Hindu Jat, had not the right by custom to make a gift of his ancestral land to M., his sister's son, to the prejudice of the plaintiffs, his first cousins in the male line. MIYAN *v.* SANDHI. **64 P R 1879**

8. *Muhammadans of Gujrat—Appointment of heir.*

The Court remanded the case for a decision as to whether the defendant (the sister's son) was selected and appointed as heir by the deceased, during his lifetime, and if so, whether, according to the custom of the Muhammadan Jats of the Gujrat district, such a selection and appointment conferred on him the rights of an heir. GHULAM *v.* UMRA. **18 P R 1881**

9. *Jats of the Sahee got—Only son—Appointment of heir.*

The appointment of a sister's grandson, who was also an only son, as heir among Jats of the Sahee *got* in the Amritsar district, *held*, (in the absence of any proved custom to the contrary) to be valid in accordance with the general custom of the Punjab. *Majja Singh* v. *Ram Singh* (No. 43 *of* 1879, Civil), cited. HOSHANOQ *v.* JAIMAL SINGH. **57 P R 1881**

10. *Gujars of Gujrat—Sister's son and grandson—Collaterals—Appointment of two persons as successors—Adverse possession.*

The plaintiffs, who were male collaterals in the 7th or 8th degree from the common ancestor, sued to establish their right to succeed by customary inheritance to the estate left by one M. B., deceased, in preference to the defendants, the sister's son and grandson of the deceased, who had been associated by the latter with himself in cultivation for some years before his death, and were verbally appointed by him to succeed as his heirs. The parties were Gujars of the Gujrat District.

Held, that the evidence failed to prove a custom by which a Gujar is able to appoint two persons as his successors.

Case remanded for a decision with reference to defendants' plea that they acquired a title by 12 years' adverse possession. IMAM DIN *v.* NUR DIN. **85 P R 1881**

CUSTOM III.—APPOINTMENT OF HEIR—*contd.*

D.—ADOPTION OF SISTER'S SON OR GRANDSON—*contd.*

11. *Arains of Sialkot—Near collaterals.*

Found, that there is no settled custom prevailing among Arains of the Sialkot district whereby the adoption of a sister's son is rendered invalid by the presence of a paternal uncle or a paternal uncle's son. ALADIN *v.* BADRA. **119 P R 1882**

12. *Punjzati Brahmins of Amritsar.*

Found, that an adoption of a sister's son by a Brahmin of the Panjzati class in the city of Amritsar is not by custom invalid. *Dhani Ram* v. *Mussammat Mankaur.* (No. 13 *of* 1873, Civil) cited. LACHMI DHAR *v.* THAKUR DASS. **149 P R 1883**

13. *Hindu Jats of Amballa—General custom.*

Found, that no special custom exists among Hindu Jats of the Amballa *tahsil* contrary to the general custom of the Punjab, rendering the adoption of a sister's son invalid in the presence of near collaterals. *Hira* v. *Mussammat Dharmo* (26 *of* 1872, Civil), *Hari Singh* v. *Gulaba* (No. 50 *of* 1874, Civil), *Bhupa* v. *Uttam Singh* (No. 61 *of* 1880, Civil), and *Bhup Singh* v. *Nihal Singh* (No. 129 *of* 1882, Civil) cited. JODHA *v.* ATRA. **172 P R 1883**

14. *Jats of the Hajrat tribe residing in* tahsil *Pasrur, zilla Sialkot.*

In a suit for cancellation of an adoption, the parties to which were Jats of the Hajra tribe, resident in the Pasrur *tahsil* of the Sialkot district, found, that a valid adoption could only be made of an agnate of the adopter and of a sister's son. NATHU *v.* TAJ MUHAMMAD. **178 P R 1883**

15. *Parwal Jats of Amritsar district—Adoption of sister's grandson.*

Found, that among Parwal Jats of the Amritsar district the adoption of a sister's grandson is valid by custom. ATR SINGH *v.* LAKHMIR SINGH. **120 P R 1885**

16. *Gorayah Jats of tahsil Shakargarh, Gurdaspur.*

Found, that no special custom exists among Gorayah Jats of the Shakargarh *tahsil* in the Gurdaspur district prohibiting the adoption of a sister's son. *Rupa* v. *Uttam Singh* (No. 61 *of* 1880, Civil) referred to. MAN SINGH *v.* ARUR SINGH. **33 P R 1886**

17. *Saiyads of Gujrat district—Appointment of heir.*

Found, that among Saiyads of the Gujrat district, a childless proprietor can make a valid customary adoption of his sister's son, *Sher Shah* v. *Jafar Shah* (No. 51 *of* 1883, Civil), and *Ghulam Husain* v. *Mussammat Fatteh Bano* (No. 102 *of* 1884, Civil) cited. GHULAM SHAH *v.* AMIR SHAH. **84 P R 1886**

18. *Arains of the Phillour* tahsil—*Sister's son.*

Found, that among Arains of the Phillour *tahsil* the adoption of a sister's son is valid by custom. *Amir-ul-din* v. *Pira* (No. 58 *of* 1879, Civil), *Aladin* v. *Badra* (No. 119 *of* 1882, Civil), and *Shah Muhammad* v. *Hasham* (No. 20 *of* 1886, Civil) cited. SHADI *v.* RUKAN-UD-DIN. **128 P R 1886**

19. *Dhariwal Jats of Amballa District—Appointment of sister's son as heir.*

Found that among Dhariwal Jats of *mauza* Patherheri in the Rupar *tahsil* of the Amballa District, the appointment by a sonless proprietor of a sister's son as heir is not invalid by custom. SUBA *v.* GURDIT SINGH. **62 P R 1888**

20. *Sidhu Jats of Jagraon (Ludhiana)—Validity of the adoption of sister's son.*

Found that there is no well established custom among the Sidhu Jats of *Tahsil* Jagraon, District Ludhiana, contrary to the general custom of the Punjab, by which the adoption of a sister's son is invalid. DALEL SINGH *v.* KALA SINGH. **197 P R 1889**

21. *Sister's son—Lodi Pathans, Jullundur District.*

Found, that amongst the Lodi Pathans of the Jullundur District, a sonless proprietor cannot adopt his sister's son.

The parties being agriculturists were governed by custom and not by Muhammadan Law. UMER KHAN *v.* NAMDAR KHAN. **21 P R 1892**

22. *Custom—Alienation—Paswal Gujars* tahsil *Kharian, Gujrat District—Power of sonless proprietor to adopt or make a gift of his land to sister's son in the presence of collaterals in the fourth and fifth degrees.*

Found in a suit the parties to which were Paswal Gujars of *tahsil* Kharian in the Gujrat District, that it was not competent to a sonless proprietor to adopt or make a gift of his ancestral land to his sister's son in the presence of collaterals in the fourth and fifth degrees.

No. 8 *P. R.*, 1891, referred to—MAULU *v.* FAZAL AHMAD. **102 P R 1893**

23. *Custom—Adoption of sister's son of grandson—Muhammadan Bhatti Rajputs of Batala* tahsil—*Burden of proof*—Riwaj-i-am

Found, that by custom among Muhammadan Bhatti Rajputs of Batala *tahsil* the adoption of a sister's son or grandson in the presence of a brother's sons and irrespective of their consent is invalid. UMAR BAKHSH *v.* DHANDA. **39 P R 1894**

24. *Custom—Adoption—Sister's son—Power of widow to adopt—Hindu Jats of Jagraon* tahsil, *Ludhiana District*—Riwaj-i-am.

In a suit among Hindu Jats of the Jagraon *tahsil* in the Ludhiana District, it was *found* that an alleged adoption by a childless proprietor of his sister's son confirmed after his death, by a deed purporting to be executed by the widow with her late husband's authority, was not as a fact established, and it was further *held* that such an adoption, even if proved, would not be valid without the consent of the *warisan ekjadi*. GHULLU *v.* MOHABAT. **92 P R 1894**

25. *Custom—Adoption—Adoption of sister's grandson—Dhillon Jats of Ludhiana District*—Riwaj-i-am.

Found, that by custom among Dhillon Jats of the Ludhiana District, an adoption of a sister's grandson is invalid in the presence of near collaterals.

No. 57 *P. R.* 1881, and No. 130 *P. R.* 1885, referred to. DEVI DITTA *v.* JIVA. **129 P R 1894**

26. *Custom—Adoption—Alienation—Gift by sonless proprietor to son-in-law, who was also his sister's son—Muhammadan Guman Jats of Tarn Taran* tahsil, *Amritsar District*—Riwaj-i-am.

In a case the parties to which were Muhammadan Guman Jats of the Tarn Taran *tahsil*, Amritsar District, *found* (*i*) that defendant, upon whom the *onus* rested, had failed to prove that the adoption of a sister's son was valid by custom, but (*ii*) that a gift of all his property by a sonless proprietor in favour of his son-in-law, who was also his sister's son, was valid by custom, the said gift having been, so far as was possible, perfected by delivery of possession. KHAN AND ANOTHER *v.* HIRA. **98 P R 1895**

27. *Custom—Adoption—Gift by sonless proprietor—Khokhars of Gujrat District.*

In a case the parties to which were Khokhars of Gujrat *tahsil* and District, *found* that defendants upon whom the *onus* rested had failed to prove (1) that the adoption of sister's son (who was also the son of a cousin, by a sonless proprietor) was valid by custom or (2) that a gift of ancestral land to such a person by a sonless proprietor was valid by custom in the presence of male agnates. GAMAN *v.* NADIR DIN. **35 P R 1896**

28. *Custom—Adoption of sister's son—Authal Jats of Nizampur, Delhi—Burden of proof.*

Found, that defendant, upon whom the burden of proof rested, had failed to prove that by custom among Authal Jats of Nizampur, Delhi District, the adoption of a sister's son is valid in the presence of collaterals related to the adopter in the third degree. JHANDA *v.* BALVANT. **39 P R 1897**

29. *Custom—Adoption of sister's son—Muhammadan Jats of Zira* tahsil, *Ferozepore District.*

CUSTOM III.—APPOINTMENT OF HEIR—*contd.*

D.—ADOPTION OF SISTER'S SON OR GRANDSON—*contd.*

Found, that defendants, upon whom the *onus* rested, had failed to prove that by custom among Muhammadan Jats of the Zira *tahsil*, Ferozepore district, the adoption of a sister's son is valid in the presence, and without the consent, of the adoptive father's agnates. KHAIRA *v.* PIR BAKHSH.

1 P R 1898

30. *Custom—Adoption of sister's son—Khatris of* mauza *Kawari*, tahsil *Pipli, Umballa district.*

In a case in which the parties were Khatris of *mauza* 'Kawari, *tahsil* Pipli, not far south of Umballa, *found* that plaintiffs upon whom the *onus* rested had failed to prove that the adoption of a sister's son is invalid by custom. HARNAMAN *v.* ATMA RAM.

24 P R 1900

31. *Custom — Adoption — Adoption of sister's son—Acharjya Brahman of Goler in the Dehra* tahsil *of the Kangra district—Burden of proof.*

One R. D., an Acharjya Brahman of Goler in the Dehra *tahsil* of the Kangra district, executed a deed of adoption in favour of "K," his sister's son, reciting that K. had been adopted when two or three years old, and had ever since been treated as a son. Plaintiffs, collaterals of R. D., sued for a declaration setting aside the deed on the grounds that K. was, in fact, never adopted, and that the adoption was invalid by custom and Hindu Law. The first Court found that the adoption was not opposed to custom, but that there was in fact no adoption as recited in the deed, though K. had lived with R. D. for many years, and assisted him in his business, and gave plaintiffs a decree that K. was not the adopted son of R. D. The Divisional Judge on appeal reversed the decree, on the ground that the *factum* of adoption had been clearly established; and, further that by custom the adoption was valid. The plaintiffs preferred a further appeal against these findings to Chief Court.

Held, that where the parties are not members of an agricultural tribe or land holding group and where no ceremonies are essential, and the adoption not opposed to custom, a declaration by deed, if coupled with previous and subsequent treatment as an adopted son was sufficient to constitute adoption.

Held, also, that in cases where the right of adoption is admitted or is found to prevail and the parties are not members of an agricultural tribe, or land holding group, the burden of proof ought to lie on those who deny that a particular kind of adoption, *e. g.*, that of a daughter's or sister's son, cannot be made.

Found, upon the evidence that plaintiffs had failed to prove that by custom among Acharjya Brahmans of Kangra (who are not members of an agricultural tribe or land holding group) the adoption of a sister's son was invalid.

Ralla v. Budha (50 *P. R.* 1893, F. B.) distinguished, and the subject of adoption among non-agricultural twice-born Hindu classes in the Punjab discussed. SOHNUN AND OTHERS *v.* RAM DIAL AND OTHERS.

79 P R 1901

32. *Alienation by Jat proprietor—Gift in favour of sister's son—Suit by a reversioner to declare the gift invalid and not to be binding after the donor's death—Donee setting up his own adoption as a bar to the suit—Limitation Act*, 1877, *Schedule II, article* 118.

Held, that the term "adoption" in article 118 of Limitation Act includes a customary appointment of an heir and that the failure to sue within the period provided by that article for a declaration that an alleged adoption was invalid or had never taken place is fatal to a suit in which the validity of such adoption comes into question.

The knowledge of the factum of an adoption by the father or ancestors of the reversioners objecting to it, and his or their omission to sue within limitation prevents the reversioners from again raising the question of its invalidity.

Jagan Nath Parsad Gupta v. *Ranjit Singh* (*I. L. R. XXV Calc.* 354), and *Lali v. Murli Dhar* (*I. L. R. XXIV All.* 195), dissented from.

Shrinivas Murar v. *Hanmant* (*J. L. R. XXIV Bom.* 260), *Paronthi Ammal* v. *Samminatha Gurukal* (*I. L. R. XX Mad.* 40), *Gujar Singh v. Puran* (79 *P. R.* 1901), *Hemraj* v. *Sahiba* (116 *P. R.* 1901), and *Ganesha Singh* v. *Nathu* (20 *P. R.* 192), followed.

Roda v. *Harnam* (18 *P. R.* 1895), *Valiappu Nayer* v. *Paru Nethiar* (*IX Mad. L. J. R.* 1996), and *Dad* v. *Bagh Singh* (34 *P. R.* 1883, F. B.) distinguished.

Mussammat Lorindi v. Mussammat Kishen Kour (149 *P. R.* 1888), *Mussammat Fakirunnissa v. Malik Rahim Bakhsh* (23 *P. R.* 1897), and *Sodhi Kartar Singh* v. *Sher Singh* (50 *P. R.* 1895), referred to. BHUPA *v.* NAGAHIA.

68 P R 1903

33. *Custom—Adoption—Adoption of sister's son in presence of a cousin—Ghumman Jats of Sialkot district.*

Found, that by custom among Ghumman Jats of the Sialkot district, an adoption of sister's son is invalid in the presence of a cousin.

Ralla v. *Budha* (50 *P. R.* 1893) and *Nizam Din* v. *Jagat Singh* (25 *P. R.* 1898), referred to. NANAK *v.* NANDU.

29 P R 1904

34. *Custom—Adoption—Adoption of sister's son—Kalals of Butari*, tahsil *Ludhiana.*

Found, that among Kalals otherwise called Ahluwalias or Nebs of *mauza* Butari in the Ludhiana *tahsil* the adoption by a sonless proprietor of a sister's son is valid by custom. ATTAR SINGH *v.* SANT SINGH.

CUSTOM III.—APPOINTMENT OF HEIR—*contd.*

D.—ADOPTION OF SISTER'S SON OR GRANDSON—*concld.*

87 P R 1907

E.—ADOPTION OF STRANGERS.

1. *Appointment of heir—General custom—Riwaj-i-am—Rebuttal of presumption in favour of appointment.*

Where the facts found were that the defendant, who was the sister's son of the wife of one G. S. deceased, had been treated by the said G. S. as his heir and successor, had lived with him, and on his death continued so to live with his widow and was recorded at settlement not only as her agent, but also as an adopted son *held* that the said defendant was rightly considered to have been in fact appointed by G. S. to be his heir, and by the general custom among agriculturists entitled to succeed to his land.

Held further, that an entry in the *Riwaj-i-am* applicable to the parties, that no one can be adopted who is not a near relation of the adoptor in the male line, was not sufficient of itself to rebut the presumption arising in favour of an appointment made many years ago, and acted upon ever since, and concurred in by the majority of the reversioners who had waived their claim to their shares. *Kanhya* v. *Ganesha* (No. 5 of 1874, Civil) and *Chatru* v. *Dera* (No. 92 of 1879, Civil), cited. SUNDAR SINGH *v.* JHANDA SINGH.

51 P R 1881

2. *Dhandiwal Jats of Sirsa district—Wife's brother's son.*

An adoption by a Jat of the Dhandiwal *got*, resident in the Dabwali *tahsil* of the Sirsa district, of a wife's brother's son upheld, no custom being proved to exist in the said tribe rendering such an adoption invalid. NARAIN SINGH *v.* MASTAN SINGH.

35 P R 1882

3. *Muhammadan Rajputs of Ambala district—Adoption of wife's kinsman.*

Found, that no custom exists among the Muhammadan Rajputs of the Multani Bhatti *got* in the Ambala district, rendering valid the adoption of a wife's kinsman *e.g.*, a wife's brother's grandson, the presence of grand nephews. KASSU *v.* RAHIM BAKHSH.

120 P R 1884

4. *Awans of the Gujrat district—Wife's brother's son.*

Found, that by the custom of the Awans of the Gujrat district, though daughters' sons and resident sons-in-law may be adopted, the adoption of strangers and a wife's relation (*e.g.* a wife's brother's son) are not allowed. SADAR DIN *v.* CHOGATTA.

165 P R 1884

5. *Rathar Kashmiris of Gujrat—Right of "paiak" to succeed.*

CUSTOM III.—APPOINTMENT OF HEIR—*contd.*

E.—ADOPTION OF STRANGERS—*contd.*

Found, that by custom among Rathar Kashmiris of Gujrat a *palak* succeeds in the absence of male issue to the estate of the person who has adopted him. PIR BAKHSH *v.* FAZLA. **109 P R 1885**

6. *Khatra Jats of Ludhiana* tahsil—*Adoption of* ghair kaum.

Found, that among Khatra Jats of the Ludhiana *tahsil*, the adoption of a "*ghair kaum*," that is, a stranger to the *got* and tribe of the adopter, is invalid by custom. DULLA *v.* KHAZAN SINGH. **41 P R 1889**

7. *Adoption of a wife's brother's son—Burden of proving the validity of such adoption—Raihala Jats of Rupar* tahsil.

In the case of the alleged adoption of wife's brother's son among Raihala Jats of the Rupar *tahsil* of the Umballa district, *held*, that the *onus* of proving the validity of such adoption by custom lay on the defendants, and that they had failed to discharge it. There is a presumption in favour of the validity of the adoption of a sister's or daughter's son, but it cannot be stretched so far as to justify the Courts in presuming any person of a different *got* from the adopter is a fit subject for adoption. PAKHAR *v.* NATHA. **156 P R 1890**

8. *Custom—Adoption—Wife's brother—Bedis and Khatris of Pathankot* tahsil, *Gurdaspur district.*

In a suit the parties to which were Bedis of the Pathankot *tahsil*, Gurdaspur district, *found* that the alleged invalidity of the adoption of a wife's brother was not established.

Semble.—Bedis are a sub-division of the Khatri tribe, and in the Gurdaspur district follow the same customs.

No. 35 *P. R.* 1885, and No. 67 *P. R.* 1886, referred to. SARUP SINGH AND RADHA KISHEN *v.* MUSSAMMAT JASSI AND BELI RAM. **22 P R 1891**

9. *Custom—Adoption—Muhammadan Bhatti Jats, Kharian* tahsil, *Gujrat district.*

B. adopted his wife's sister's son and brought him up in his house from infancy. B. also perfected the adoption by a written instrument of gift. The parties were Muhammadan Bhatti Jats of the Kharian *tahsil* of the Gujrat district.

Held, that the adoption was not opposed to the custom of the Muhammadan Jats of the *tahsil*, and was valid.

No. 15 *P. R.* 1880, referred to. KALU *v.* NUR MAHI. **104 P R 1891**

10. *Bhullar Jats, Lahore district.*

Found, that the custom of the Bhullar Jats of the Lahore district does not sanction the adoption of a person of a *ghair kaum*. NATHA SINGH *v.* JODH SINGH. **69 P R 1892**

CUSTOM III.—APPOINTMENT OF HEIR—*contd.*

E.—ADOPTION OF STRANGERS—*contd.*

11. *Arains of* tahsil *Nakodar, Jullundur district.*

Found, in a suit the parties to which were Arains of *tahsil* Nakodar in the Jullundur district, that no custom was proved authorising the adoption of a wife's brother's son, the burden of proof being upon those setting up such adoption. NUR MUHAMMAD *v.* ALIMULLAH. **75 P R 1892**

12. Ghair kaum—*kalwal Jats (Muhammadans)*, tahsil *Kharian, Gujrat district.*

Found, in a suit the parties to which were Kalwal Jats (Muhammadans) of the Kharian *tahsil* of the Gujrat district, that no custom was proved recognising the adoption of a person of a *ghair kaum* such as a wife's brother's son. SAHIB DIN *v.* FATTEH DIN AND KHAIR MUHAMMAD. **81 P R 1892**

13. *Jats of Jaj* got, *Hoshiarpur* tahsil—*Gift to or adoption of step-son of another* got.

Found, in a suit the parties to which were Jats of the Jaj *got* in the Hoshiarpur *tahsil* (the alleged donee or adopted son being however of a different *got*), that no custom was proved authorising a gift of ancestral land to a step-son in the presence of near collaterals or the adoption of such son by his step-father, the burden of proof in either case being upon those seeking to maintain the gift or adoption. MUTSADA SINGH *v.* DEVI DITTA. **83 P R 1892**

14. *Person adopted of different* got.

Found in a suit the parties to which were Jaj Jats of the Hoshiarpur *tahsil*, that no custom was established permitting the adoption of a person of a different *got*—a step-son; or a gift of land to him in presence of near collaterals descended from the donor's father.

No. 156 *P. R.* 1890 referred to. MUTSADA SINGH *v.* DEVI DITTA. **98 P R 1892**

15. *Custom—Adoption—Jogi Rajputs of Bhagwanpura*, tahsil *Shakargarh, Gurdaspur district—Effect of a son being subsequently born to the adoptive father.*

In December 1874 J., who was then sixty-five years of age, sonless, and without hope of begetting a son, executed in the presence of a large gathering of the neighbours and brotherhood, a deed of adoption in favour of the defendant, a fondling, whose parentage was not known. The deed was attested by a large number of the brotherhood in token of their approval.

In 1877 Mussammat M., one of the wives of J., gave birth to a son (the plaintiff), and in the following year J. died. Mutation of names then took place, apparently with the consent of both widows, in favour of plaintiff and defendant, each being recorded owner of half the estate. An application by the defendant in 1891 for partition gave rise to the present suit, the plaintiff denying the adoption of the defendant and his right to share in the property.

CUSTOM III.—APPOINTMENT OF HEIR—*contd.*

E.—ADOPTION OF STRANGERS—*contd.*

Held as to the *factum* of the adoption, that it was proved.

Held also, as to the validity of the adoption that in the absence of any near collaterals of J. at the time the adoption was made, the adoption should be held to be valid by reason of the assent of the brotherhood and others whose consent might fairly be deemed necessary.

Held also, as to the effect of the adoption, that by clause 18 of the *Riwaj-i-am*, nothing having been urged in the lower Court to the contrary, the natural son and the previously adopted son would share the father's property equally. MALAGIR *v.* JAGIR. **93 P R 1893**

16. *Custom—Adoption of step-son—Mara Jats of Ludhiana* tahsil—Riwaj-i-am—*Presumption.*

Found, that by custom among Hindu Mara Jats of Ludhiana *tahsil*, the adoption of a step-son who was not a *waris* was invalid in the presence of *warisan yak jaddi*. Nos. 98 *P. R.* 1884, 23 *P. R.* 1886, and 38 *P. R.* 1890, referred to. JIWAN SINGH *v.* LAL SINGH. **48 P R 1894**

17. *Custom—Adoption of non-agnate—Adoption by deed without observance of ceremonies—Aulakh Jats of Ajnala* tahsil, *Amritsar district.*

Defendant No. 1, who was an Aulakh Jat of the Ajnala *tahsil* in the Amritsar district, on the 31st March 1884, executed and registered a deed in which he declared that he had brought up defendant No. 2, who was the son of his wife, a Pattar Jat of the Jullundur district, by a former husband, and had adopted him after the performance of the usual ceremonies, defendant No. 2 being at the time about 22 years of age. On the 25th July 1888, defendant No. 1 executed a deed of gift of his ancestral land and house in favour of defendant No. 2. In the deed he made no mention of the previous deed of adoption, but declared that he had brought up the donee as a son, that the latter had served him as a son and would continue to serve him as such as long as he lived. At mutation, which was effected on the 5th February 1889, it was settled that one B. S., brother of defendant No. 2, should be recorded as owner of the land as well as defendant No. 2, and no mention was made of the previous adoption of the latter. Plaintiffs, who were the donor's collaterals in the seventh degree of relationship, sued for a declaration that the gift would not affect their reversionary interest on the death of defendant No. 1, and denied both the *factum* and the validity of the adoption of defendant No. 2. They relied, *inter alia*, upon the entry in the *Riwaj-i-am* that among Jats of the *got* to which they and defendant No. 1 belonged, no person of another *got* can be adopted or a gift made in his favour. The lower Courts

CUSTOM III.—APPOINTMENT OF HEIR—*contd.*

E.—ADOPTION OF STRANGERS—*concld.*

having decided against plaintiffs on both grounds, they appealed to the Chief Court.

Held, with reference to the entry in the *Riwaj-i-am* and on the evidence, that even if the burden of proof was originally on the plaintiffs, it had been shifted to defendants, and that defendants had failed to prove that, among Aulakh Jats of the Ajnala *tahsil*, Amritsar district, a sonless proprietor is, by custom, competent to adopt a step-son in the presence of collaterals related to him in the seventh degree and without their consent.

No. 50 *P. R.* 1893 (F. B.), referred to. SUNDAR SINGH *v.* BUDHA SINGH.

122 P R 1894

18. *Custom—Adoption—Adoption of a distant agnate in presence of near collaterals—Khakka Jats of the Amritsar district.*

Found, that by custom among Khakka Jats of the Amritsar district the adoption of a distant agnate is valid in the presence of near collaterals. NIDHANA *v.* SHAMAN.

10 P R 1908

F.—GENERAL PROHIBITION.

1. *Custom—Adoption—Muhammadan Gujars of the Garshankar* tahsil *of the Hoshiarpur District.*

Found, that it was not established that any custom of adoption prevailed among Muhammadan Gujars of the Garshankar *tahsil* of the Hoshiarpur district. NAURANG *v.* JANG.

105 P R 1891

2. *Custom—Adoption—Hindu Rajputs,* got *Laddu, Una* tahsil, *Hoshiarpur district.*

Found that the custom of Hindu Rajputs, *got* Laddu of the Una *tahsil* in the Hoshiarpur district, is opposed to the practice of adoption. BISHEN SINGH *v.* AMIR CHAND.

13 P R 1894

G.—ADOPTION BY WIDOW.

1. *Widow—Sanction.*

A widow adopting a son is not confined in her selection to the family of her deceased husband; she may adopt a stranger. The sanction of the kindred of her deceased husband is not imperative. MUSSAMMAT LUDEEA *v* KOOLLA.

3 P R 1866

2. *By widow, effect of.*

The effect of adoption by a Hindu widow under an authority to adopt, is to render the adopted son heir to the widow's deceased husband. GOPEE RAM *v.* BULDEO SAHAI.

91 P R 1866

3. *Adoption by widow—Suit by reversioner to contest.*

The widow of D. D. (a Hindu Khatri of a town in the Lahore district), adopted her daughter's son, to whom she made a gift of her husband's estate. Plaintiff, cousin of D. D., sued as heir presumptive to set aside the adoption. The Lower Courts found the adoption invalid, as the consent or authority of the husband had not been proved.

Held, that plaintiff's suit would lie; and while the Chief Court on special appeal could not interfere with the finding of the Lower Courts as to the invalidity of the adoption, *held* that after the widow's death, it would be open to the daughter and her son to establish, if they could, that they were heirs to D. D., to the exclusion of plaintiff. MUSSAMMAT JIND KOUR *v.* MAJLIS RAI.

23 P R 1876

4. *Widow's power to adopt—Sanction of reversionary heirs—Estoppel.*

Found, that there is no established custom among Hindus of the Azarwal caste in the city of Delhi by which a widow can validly adopt by her own sole act in the absence of authority from her husband.

Quære, if such adoption would be valid if made by the widow with the sanction of the reversionary heirs?

Where a Hindu widow about a year after her husband's death adopted B. S. (defendant 1), who then sold the ancestral property to G. (defendant 2) to whom it had been previously mortgaged, and it was found that plaintiff who was B. S.'s brother and so entitled to succeed equally with B. S. after the widow's death, was present at the adoption and took part in the usual ceremonies, *held*, in a suit brought by plaintiff after the widow's death to establish his right to joint enjoyment of the property with G. (B. S.'s vendee), that plaintiff was not estopped from making his claim, as his acts were not shown to have validated the adoption by the widow, and constituted B. S. sole heir; nor did it appear that G. the vendee had been misled by such acts; nor was plaintiff obliged to take measures to question the acts of his brother in dealing with the property in which the widow had a life interest, so long as the widow was alive. KIDAR NATH *v.* BANARSI DAS.

62 P R 1880

5. *Power of widow to adopt—Absence of consent of husband or relatives—Subsequent consent by heirs.*

An adoption by the widow of an hereditary cultivator of her husband's nephew, without authority from the husband during his lifetime, or from his relatives after his death, *held*, not to be a valid adoption so as to make the adopted son heir to the widow's husband. *Held* also, that the subsequent consent of some of the heirs to the succession of the adopted son did not supply the want of the necessary authority. RAMJAS *v.* BALDEWA.

80 P R 1880

6. *Consent of heirs—Authority from deceased husband—Effect of adoption without such consent or authority.*

In a suit to establish the validity of an adoption by a Jat widow, where the plaintiff failed to prove either that the adoption was made by the direct order of the widow's husband, or with the consent of the heirs, and to establish any special custom under which a widow could adopt a son to her deceased husband without such consent, *held*, that the adoption could only make plaintiff heir to the widow's own private property, and would not make him an adopted son of, or heir to, the deceased husband. MASANIA *v.* RAM RATTAN.

15 P R 1881

7. *Adoption of heir by widow of one brother with consent of other brother—Effect of such adoption.*

M. and R. were two brothers. After the death of M., Mussammat C., his widow, obtained her husband's half share of the land. She then adopted as her heir, with the consent of R. and by written deed, the present plaintiff, who was the son of M.'s daughter. It appeared that plaintiff used generally to live with his own parents, and not his adoptive mother, and further that on the death of R. his share of the property went to Mussammat C. and not to plaintiff.

In a suit by plaintiff, after the death of Mussammat C., to recover the whole of the property held by R. and Mussammat C., *held* that the adoption by the widow was, with the consent of the next reversioner, R. sufficient to make plaintiff heir to the property held by Mussammat C. at the time of the adoption, but that the said adoption did not avail to pass to plaintiff any right in the property of R. RAM SINGH *v.* JASWANT SINGH.

88 P R 1881

8. *Bunyas of Hansi—Widow's power to adopt without authority of husband—Consent of kinsmen—Adopted son's right to inherit collaterally as well as lineally.*

Found, that there is no established custom prevailing among Bunyas of Hansi whereby a widow can, without authority from her husband, by consent of kinsmen adopt a son, who would inherit collaterally as well as lineally. *Kidar Nath* v. *Banarsi Das* (No. 62 of 1880, Civil) cited. MUSSAMMAT CHUNI *v.* LALMAN DASS.

198 P R 1882

9. *Gil Jats of Ferozepore—Adoption by widow with assent of next reversioner—Validity of such adoption as against the more remote reversioners.*

In a suit for cancellation of an adoption of a daughter's son purporting to be made by a widow to her late husband with the assent of the nearest reversioner, but in which no authority from the husband was pleaded the parties

CUSTOM III.—APPOINTMENT OF HEIR—*contd.*

G.—ADOPTION BY WIDOW—*contd.*

being Gil Jats of the Ferozepore district, *held*, that the assent of the said nearest reversioner would do no more than bind himself had he succeeded to the estate, and could not be held (after his death in the widow's lifetime) to bind the next reversioners claiming not through him but as heirs of the widow's husband. LEHNA SINGH *v.* MUSSAMMAT DHARMO.

77 P R 1888

10. *Khokhar Rajputs of* tahsil *Sharakpur, District Lahore—Adoption by widow of one of her husband's first cousins—Suit by another cousin to set it aside.*

Held, that by the custom obtaining among Khokhar Rajputs of *tahsil* Sharakpur, District Lahore, a widow is competent to adopt one of her husband's first cousins to the exclusion of another. HAKIM *v.* MUSSAMMAT BAKHTAWARI.

182 P R 1889

11. *Adoption by mother after succession had devolved on her son who died childless—Mother's authority to adopt.*

Where a widow has by law or custom a power to adopt, the fact that she has succeeded to her deceased husband's estate, not as his direct heir but as heir to her son, makes no difference, and she continues to have the same power to adopt as she would have had if her husband had died childless. MUSSAMMAT GANGA *v.* LEKH RAM.

30 P R 1890

12. *Custom—Adoption—Gift—Kathana Gujars of the Jhelum* tahsil.

In a suit the parties to which were Kathana Gujars of the Jhelum *tahsil*, *found* that adoption is not recognized in that tribe, and that a gift of ancestral land by a widow in favour of one reversioner in presence of other reversioners of equal degree is invalid.

Ilam Din and others v. *Mubarik and another* (140 *P. R.* 1893), *Gaman and another* v. *Nadir Din and others* (35 *P. R.* 1896), *Sahib Din and others* v. *Amira and others* (16 *P. R.* 1889), and *Muhammad and others* v. *Sharaf-ud-din and others* (8 *P. R.* 1891), referred to. JUMMA AND OTHERS *v.* MUBARIK AND OTHERS.

70 P R 1901

13. *Adoption by widow without authority from her husband—Validity of such adoption—Kashmiri Pandits of Punjab—Hindu Law.*

Held, that Kashmiri Pandits of the Delhi district are proved to be governed in matters of adoption by custom and not by the principles of the *Mitakshara* form of Hindu Law, and that amongst the members of that tribe a widow has full power after her husband's death, and without his express permission in this behalf, to adopt any boy whom she selects, provided he is of the same tribe. MAHARAJ NARAIN *v.* BANOJI. **34 P R 1907**

CUSTOM III.—APPOINTMENT OF HEIR—*contd.*

G.—ADOPTION BY WIDOW—*concld.*

14. *Custom—Adoption by widow without husband's authority—Succession—Exclusion of daughter by collaterals—Agarwal banias, Ludhiana city.*

Held, that among Agarwal *banias* of Ludhiana city who are not Jains, an adoption by a widow could not be effected without the authority of her husband.

Held also, that by a special custom among them near collaterals exclude the daughter in succession to ancestral property. CHAMPAT RAI *v.* DAULAT RAM. **68 P R 1909**

15. *Custom—Adoption—Jains of Delhi—Widow's power to adopt—Ceremonies and publication—Age of adopted son—Married man may be adopted—Also brother of widow's husband.*

Held, that by special custom among Jains—

(*a*) adoption is a purely secular transaction without any religious meaning,

(*b*) a sonless widow may adopt without any authorisation of her husband,

(*c*) no special ceremonies are necessary, all that is required is consent on both sides and due publication by some means recognized among the brotherhood.

(*d*) the distribution of *ladus* is sufficient publication in Delhi,

(*e*) there is no limit to the age of the adopted son,

(*f*) a married man with children may be adopted and so may a brother of the husband of the adopting widow, and

(*g*) that it has not been proved that the adopted son must be younger than the adopting widow. MANAK CHAND *v.* MUNNA LAL.

95 P R 1909

H.—OBSERVANCE OF FORMALITIES: WHAT CONSTITUTES ADOPTION.

1. *Forms and ceremonies.*

Under the Punjab Civil Code, a disregard of strict rules of Hindu Law did not vitiate a *bona fide* adoption. MUKHUN *v.* NIKKA.

37 P R 1868

2. In a contention regarding succession to a plot of land, one party claimed as adopted son of the deceased proprietor. It was fonnd that the claimant had lived with and served the deceased for many years, was separated from his own brothers, and had not taken a share of the land left by his natural father, had been treated by deceased as his son, and had performed his funeral obsequies; but that no ceremony of adoption had taken place. *Held*, that the absence of the ceremony did not, under the circumstances,

CUSTOM III.—APPOINTMENT OF HEIR—*contd.*

H.—OBSERVANCE OF FORMALITIES: WHAT CONSTITUTES ADOPTION—*contd.*

invalidate the adoption. LEHNA SINGH *v.* CHEINA. **111 P R 1868**

3. Where there was general evidence of plaintiff's adoption, but there had been no formal or ceremonial adoption, and the plaintiff, contrary to the custom of the caste of his alleged adoptive father, had married his daughter into the family. *Held*, that the plaintiff had prevented himself from taking the benefit of the adoption, as he had acted as if his status was not that of an adopted son. HURSUHAI *v.* BHOWANI DASS.

43 P R 1869

4. Defendant when about three months old, was taken over by B., a relation, who was childless, and lived with him for about forty years until B.'s death, cultivating his land and being supported by him. *Held*, that these facts were sufficient to support defendant's allegation that he was adopted by B. KANHYA *v.* GANESHA. **5 P R 1874**

5. The custom for a childless village landholder to take a relation into his house in infancy and bring him up as his son, to render him his heir and successor, as if adopted in the manner known among Hindus, is a general village custom with both Muhammadans and Hindus. HASSAN *v.* SAMMA.

54 P R 1874

6. *Hindu Jats, Hoshiarpur district—Appointment of heir—Presumption.*

Where one B., a Hindu Jat of the Khajja *got*, residing in the Hoshiarpur district, took C., his brother's son, into his house in youth or infancy, intending that he should be his heir, and recorded his intention subsequently in a deed of adoption, and further, during his lifetime, took the final step towards carrying out his intention by putting C. in possession of his property, and applying for *dakhil kharij* in his name; there being no sufficient proof that B. had no power to constitute C. his heir; *Held*, that C. was entitled to succeed as heir to B.'s property, the presumption being that a childless Hindu Jat proprietor has power to appoint an heir from among his kinsmen. CHATRA *v.* DERA.

92 P R 1879

7. *Death of adopted son without lineal heirs—Right of inheritance.*

One A. S., who had succeeded to the property of one D. S., a Bhular Jat, adopted S. S., a Manhes Jat. On the death of A. S., S. S. succeeded to the property of his adoptive father, and also took a share of the property left by his natural father. On the death of S. S. without lineal heirs, his widow succeeded to the possession of the land. On her death, the present defendants, who were distant collateral relatives of D. S., in the male line, took possession of the property,

CUSTOM III.—APPOINTMENT OF HEIR—*contd.*

H.—OBSERVANCE OF FORMALITIES—WHAT CONSTITUTES ADOPTION—*contd.*

whereupon the brothers' sons of S. S., brought the present suit to obtain possession of the land, as heirs of S. S.

Held, that the plaintiffs where entitled to succeed in their suit.

Per LINDSAY, J.—Because the adoption of S. S. was in the Kritima form, and under such form of adoption S. S. did not become incorporated with the Bhular Jats, but his adoptive father's land passed away from the family of the Bhular Jats, and therefore descended, on S. S's. death, to his natural family.

Per SMYTH, J.—Because S. S's. adoption was one of the informal adoptions common among Jats in the Punjab, and in the absence of a custom to the contrary, the property of a son thus adopted which he has inherited from his adoptive father, passes on his death without direct lineal descendants, not to the heirs of the adoptive father, but to the natural heirs of the adopted son. DEWA SINGH *v.* NIHAL SINGH. **9 P R 1880**

8. *Appointment of heir by will*

In a suit to set aside an adoption, where it was contended that a mere appointment by will executed shortly before the writer's death, could confer no rights of adoption on the appointed heir, *held*, that in each case where a power to adopt exists, the point for enquiry is, whether there was an intention to adopt, in the sense of a customary appointment as heir, and whether that intention has been manifested in the manner regulated by custom applicable to the parties concerned. SOBHA SINGH *v.* HAZARA. **103 P R 1880**

9. *Jats of the Gil* got—*Appointment of heir—Deed made shortly before the appointer's death.*

Found, that by the custom prevailing among Jats of the Gil *got*, the mere execution and registration of a deed of appointment a few days before and in contemplation of the appointer's death, no previous intention to adopt having been manifested, is not sufficient of itself to confer upon the boy appointed the rights of an adopted son, or to be a valid exercise of a power to appoint him as the heir of the appointer. HAZARA *v.* ISHAR. **72 P R 1882**

10. *Jats of* mauza *Bagli Kalan in the Ludhiana district—Validity of adoption—Requisites for completion of adoption—Special local custom.*

Found, that no special custom exists amongst the Jats of *mauza* Bagli in the Samrala *tahsil* of the Ludhiana district or in the neigebour hood, under which adoptions are not allowed, so as to make the adopted son an heir.

Where one F. S., some 4 or 5 years before his own death, and after the death of his wife went to live with one A. S., his nephew, and

CUSTOM III.—APPOINTMENT OF HEIR—*contd.*

H.—OBSERVANCE OF FORMALITIES—WHAT CONSTITUTES ADOPTION—*contd.*

not long after this executed a deed in which he declared that having no male issue to perform his funeral obsequies, he had adopted the infant son of A. S., and that he should perform such ceremonies and succeed him as heir; and it appeared that the act of F. S. was done with the consent of A. S., the father of the child, and that F. S., continued to live with A. S. and the boy until his own death, and never did any act not consistent with the view that the child was to him as a son, *held*, that under the above circumstances, and in the absence of proof that anything more was by local custom essential, it was impossible to hold that there had not been a valid exercise by F. S. of his power of adoption. KISHEN SINGH *v.* ATTAR SINGH. **79 P R 1882**

11. *Appointment of heir—Muhammadans of Mahr caste in Chakwal* tahsil—*Will.*

Found, that by custom in the Chakwal *tahsil* of the Jhelum District, Muhammadan proprietors of the Mahr caste can select one of their heirs, and by will in his favour confer on him a right of succession to the whole property. NIAZ ALI *v.* AHMAD DIN. **109 P R 1882**

12. *Adoption of Arora by Jat proprietor—Appointment of heir—Will—Deed of adoption.*

The defendant, an Arora, claimed to succeed as the adopted son of a Jat proprietor, who had executed and registered a deed declaring the defendant to be his adopted son and entitled to succeed as such on his death.

Held, that no custom had been proved, which would render an adoption of a person of an entirely different caste valid, and further, that the defendant could not succeed as an appointed son, whom the deceased had designated as his heir, as though the deceased took charge of the defendant and his brother when they were children and required a protector, as they had been left orphans, no custom was proved under which a Jat proprietor could appoint such persons, who though dependant on him, were in no way related to him, as his heirs, and moreover the deed was itself the only evidence of such appointment.

Held also, that the deed, which purported to be a deed of adoption, could not be given effect to as a will; as it is essential to a will that the person making it should intend it to operate as such, and a statement by a man that another person is his adopted son, and therefore his heir, is not equivalent to a will in his favour, in case it is found that there was no valid adoption. CHAMBA *v.* JOWAHIR SINGH. **170 P R 1882**

13. Riwaj-i-am *providing for performance of ceremonies and limiting age of adopted son—General custom—Proof of special custom—Validity of adoption.*

CUSTOM III.—APPOINTMENT OF HEIR—*contd.*

H.—OBSERVANCE OF FORMALITIES—WHAT CONSTITUTES ADOPTION—*contd.*

In a suit to set aside an adoption by a childless proprietor of his grandnephew, the parties to which were Jats of the Dudwal *got* of the Amritsar *tahsil* the lower Appellate Court held that the adoption was invalid under the provisions of the *Riwaj-i-am*, which were to the effect that adoptions were valid if performed with due ceremonies, and if the adopted son was under the age of 12 years.

Held, that the general custom of the Punjab being in favour of the adoption, and the plaintiffs having failed to prove that it was the special custom of the tribe to which they belonged that adoptions should not be valid without ceremonies, or that an adoption of a son over 12 years of age was invalid, there was no sufficient cause for setting aside the adoption, which was accordingly upheld. *Sundar Singh* v. *Chanda Singh* (No 51 of 1881 Civil) cited. KHARAK SINGH *v.* RUPA SINGH. **96 P R 1883**

14. *Ghorewaha Rajputs—Appointment of heir.*

Found, confirming, on review, the decision of the Chief Court in *Moula Baksh* v. *Hame Khan* (No. 71 of 1880, Civil), that no special custom exists among the Ghorewaha Rajputs of Jalandhar rendering invalid either adoption or the bringing up of a boy as a member of the family of a male proprietor who has no son, with the intention to make him heir to the property. *Amir-ul-din* v. *Pira* (No. 58 of 1879, Civil) cited. MOULA BAKSH *v.* HAME KHAN. **173 P R 1883**

15. *Entry in* Riwaj-i-am *fixing limit to age of son to be adopted—Presumption arising from such entry—Land Revenue Act (XXXIII of 1871), section 16.*

In a suit for certain property which the defendant claimed to hold as the adopted son of the deceased owner, the lower Courts held the adoption to be invalid, as the defendant was at the time of his adoption a grown-up man, 25 years of age, the lower Appellate Court holding that, as the *Riwaj-i-am* applicable to the parties, in which the age of fifteen was fixed as the limit after which adoption could not take place, formed part of the second regular Settlement, it must, under section 16 of the Land Revenue Act, be presumed to be true in the absence of proof to the contrary.

Held, that the terms of the *Riwaj-i-am* gave rise to no presumption against the defendant, even if no adoption took place until he had reached the age of 25, the last clause of section 16 of the Land Revenue Act applying only to the Record of Rights prepared for any village or place under section 14, and having no application to a *Riwaj-i-am* prepared for the whole district, and not for any village or estate.

Case remanded for a fresh decision as to whether defendant had been validly adopted or appointed as heir of the deceased proprietor. UTTAM SINGH *v.* MANGAL SINGH.

24 P R 1884

16. *Brahmin agriculturists of Rohtak district—Declaration of appointment of heir.* In a suit, the parties to which were agriculturist Brahmins of the Rohtak district, found, that a mere declaration made before the Settlement authorities, by a proprietor that he had adopted a certain boy 3 years previously and desired to transfer his land to him, was not in itself sufficient by custom to constitute a valid adoption or appointment of the boy as heir. RABIDAT *v.* HAR LAL.

36 P R 1884

17. *Muhammadan Ghorawaha Rajputs of the Ludhiana district—Appointment of heir.*

Found, that no custom exists among the Muhammadan Ghorawaha Rajputs of the Ludhiana district, whereby a proprietor can appoint a relative as his heir by taking him into his house and bringing him up as a son and declaring that he has adopted him by executing a deed of adoption shortly before his death. *Moula Baksh* v. *Hame Khan* (No. 173 of 1883, Civil,) cited. SONDHA *v.* MUSSAMMAT JIWAN.

124 P R 1886

18. *Appointment of heir—Declaration by adoptive father.*

That the alleged adopted son was brought up in the house of the adoptive father, was married in his family and that he managed his land are not sufficient to prove adoption. To make a *quasi* adoption valid there must be a manifested intention on the part of the owner that the person is to be his heir. SUKHAN *v.* GURDITTA.

101 P R 1889

19. *Custom—Adoption—Dhaliwal Jats, Ludhiana District—Adoption by deed—Course of treatment.*

The mere execution of a deed of adoption by a Dhaliwal Jat of the Ludhiana *tahsil* in favour of a collateral found to have been neither preceded nor followed by any treatment of the said collateral as a son, *held* to be insufficient to constitute by custom a valid adoption. PARMAN *v.* GIAN SINGH.

94 P R 1893

20. *Sindu Jats of Baga Purana, tahsil Moga, District Ferozepore—Adoption by deed—Recital in such deeds—Custom.*

The plaintiff, D. S., since deceased, sued as the adopted son of his uncle K. S., to recover land that had been gifted by the latter to F. S., the donor's brother. The plaintiff alleged, but was unable to prove, that he had been adopted during infancy, and it appeared that apart from the deed there had been no act of adoption by K. S.

Held, that adoptions by deed alone by an old man without male issue, to the prejudice of his presumptive heirs, are not ordinarily, if at all, recognized by custom as valid, and that the plaintiff had failed to establish his title. FATTEH SINGH *v.* SUCHELA.

142 P R 1893

21. *Formal and informal adoption—Hindu law—Custom.*

Although if in any case the parties to an adoption are punctiliousas to the observance of ceremonies prescribed by the Hindu ritual, all due weight should be given to the fact in deciding whether the consequences in accordance with the custom of the parties are in accordance with the rules of the Hindu Law, the distinction between formal and informal adoptions rests on no basis of fact or principle and is altogether opposed to the spirit of the institution of adoption as it prevails in the Punjab, one feature of which is the little heed it gives to the observance of ceremonies.

Nos. 97 *P. R.* 1879; 9 *P. R.* 1880; 88 *P. R.* 1881; 14 *P. R.* 1884; 89 *P. R.* 1885; 84 *P. R.* 1887; and 12 *P. R.* 1892, referred to. JEHNU *v.* SAUDAGAR. **138 P R 1894**

22. *Custom—Adoption—Deed of adoption reciting previous performance of ceremonies and treatment of adoptee as son—Mussalman Naru Rajputs of Hoshiarpur District.*

On the 10th October 1890 one S. K., a Mussalman Naru Rajput of the Hoshiarpur District, executed and registered a deed in which he declared that one A., the son of his deceased brother was his adopted son, and that he had adopted him some time previously with the usual ceremonies and had always treated him as a son. S. K. died about a month after the execution of the said deed On the 3rd October 1892, R. K., brother of S. K., executed a deed with similar recitals regarding S. A. R. K. died about twenty days after execution. The first Court found in favour both of the *factum* of adoptions and treatment as sons and also of the validity of the adoptions by custom, and the Divisional Judge, on appeal although finding that no formal adoptions had taken place, held that the documents executed by S. K. and R. K. were sufficient to constitute A. and S. A. the heirs of S. K. and R. K., respectively.

Held, by the Chief Court (concurring with the Divisional Judge as to the absence of any formal adoption), that there being no

sufficient proof that the alleged adoptees had been treated or brought up as sons by the alleged adoptors, the mere paper adoptions, executed in anticipation of death and containing false recitals of already completed adoptions, were not valid adoptions by custom. INAM DAS *v.* RUKAN KHAN.

25 P R 1896

23. *Custom—Adoption—Sandhu Jats of mauza Raja Jung, tahsil Kasur, District Lahore—Observance of formalities.*

In a case among Sandhu Jats of *mauza* Raja Jang, *tahsil* Kasur, in the Lahore District, where the facts found were that the defendant, who was the grandnephew of the adopted father, had been openly acknowledged by him as such, and that a deed had been executed making him heir, and reciting an adoption, and whose betrothal had taken place whilst he was of tender years in the adoptive father's house. *Held*, that the adoption was valid, and could not be set aside at the instance of the collaterals.

Hazara v. *Ishar* (72 *P. R.* 1882), *Sukhan* v. *Gurditta* (10 *P. R.* 1889), *Asa Singh* v. *Hari Singh* (61 *P. R.* 1892), and *Muhammad Din* v. *Sadir Din* (67 *P. R.* 1901), referred to. BUTA SINGH *v.* DIAL SINGH.

67 P R 1902

24. *Custom—Adoption—Hindu Jats of Gurdaspur District—Adoption by deed—Course of treatment—Observance of formalities.*

Held, that among agricultural tribes, where the right of adoption is admitted or is found to prevail, and where the person selected is a proper person to be adopted, the execution and registration of a deed of adoption, coupled with the adopter's clear declaration in a Court of law, and continuous, previous and subsequent treatment, is sufficient to constitute by custom such an adoption valid even without proof of any other formalities.

Parman v. *Gian Singh* (94 *P. R.* 1893), *Fatteh Singh* v. *Suchela* (142 *P. R.* 1893), *Sundar Singh* v. *Budha Singh* (122 *P. R.* 1894), *Inam Das* v. *Rukan Khan* (25 *P. R.* 1896), *Rattan Singh* v. *Mula Singh* (4 *P. R.* 1884), *Rahidat* v. *Har Lal* (36 *P. R.* 1884), *Thamman Singh* v. *Jit Singh* (9 *P. R.* 1893), *Jairam* v. *Manphul* (4 *P. R.* 1892), *Girdhari Lal* v. *Dala Mal* (3 *P. R.* 1901), referred to. BUDH SINGH *v.* MULA SINGH.

40 P R 1905

I.—LOCUS STANDI OF REVERSIONERS AND OTHERS TO CONTEST ADOPTION.

1. *Garhiwal* got, *Ludhana district—Suit by reversioners—Special custom.*

In a suit the parties to which belonged to the Garhiwal *got*, and were residents of *mauza*

CUSTOM III.—APPOINTMENT OF HEIR—*contd.*

I.—LOCUS STANDI OF REVERSIONERS AND OTHERS TO CONTEST ADOPTION—*concld.*

Almaghir in the Ludhiana district the plaintiffs, who were the reversionary heirs, sued to set aside an adoption by defendant 1 of the second defendant, on the ground that such adoption would defeat their reversionary interest, and, further, that adoptions were not allowed by the custom of their *got*.

Held, that, if the power to adopt existed, it could not be successfuly contended that the adoptor was not entitled to select the person to be adopted, and the result in depriving the plaintiffs of their expectancy of succession was precisely what would follow if the adoptor had a son born to him, and if he could make a valid adoption, the adopted son must take the place of a natural son.

Held, further, that the plaintiffs had failed to prove any special custom of their own *got*, either altogether prohibiting adoption or entitling them to have the adoption of a relative one degree more remote than themselves set aside. RAON *v.* JASSU. **15 P R 1883**

2. *Suit by* pattidars *to contest adoption by widow of deceased owner*—Locus standi *of plaintiffs.*

In a suit brought by the proprietors of the *patti* of the village in which the property in question was situated to set aside a deed of adoption executed by the widow of deceased *pattidar* in favour of the defendant, who was a cognate relation (*viz.*, a descendant of the paternal aunt) of the deceased, *held*, that the plaintiffs had failed to prove that they, as the collective *pattidari* body consisting of various castes and tribes, were, in the presence of the defendants, the next reversioners, and consequently they were not entitled to maintain the suit. BUDH SINGH *v.* BASAWA SINGH. **178 P R 1888**

J.—ASSENT OF SOME ONLY OF REVERSIONERS.

See Supra—(G)—ADOPTION BY WIDOW. **3 P R 1866**

(K).—REPUDIATION OF ADOPTION.

1. *Custom—Adoption—Evidence of Adoption—Right of adoptive father to repudiate the adoption.*

In a suit by plaintiff, claiming as the adopted son of defendant No. 2 for a declaration that a mortgage by defendant No. 2 to defendant No. 1 would not affect his right to succeed to property after defendant No. 2's death, the defendants denied that plaintiff had been validly adopted. It appeared that about two years before suit defendant No. 2 had executed and registered a deed of adoption in favour of plaintiff, who was a near agnate relation, stating (which was found to be substantially correct) that ten years before the deed he had selected plaintiff to look after him and be of service to him, and, as he had

CUSTOM III.—APPOINTMENT OF HEIR—*contd.*

K.—REPUDIATION OF ADOPTION—*contd.*

no son, had adopted him at the date of the document. Plaintiff was about twenty-five years old at the date of suit, and had been married in his natural family, and it was not proved that he and his wife and children ever took up their permanent abode with defendant No. 2, but affectionate treatment on both sides was established, both before and after the deed, until a quarrel arose about a Muhammadan woman who frequented defendant No. 2's house. The parties were Hindu Jats of the Ludhiana *tahsil*, and the *Riwaj-i-am* recognized the execution of a deed of adoption in favour of an agnate relation as sufficient to constitute a valid adoption.

Held, that the plaintiff's *locus standi* as validly adopted son was under the circumstances sufficiently established, and that it was not open to defendant No. 2 to change his mind two years after the execution of the deed and seek to repudiate the relationship. THAMMAN SINGH *v.* JIT SINGH. **9 P R 1893**

2. *Adoption—Suit by adoptor for declaration that relationship between him and adopted son is dissolved—Disobedience and bad behaviour of adopted son—Revocation of adoption—Mahommadan Man Jats of Nakodar* tahsil.

On the 20th June 1884, plaintiff, who was a Muhammadan Man Jat of the Nakodar *tahsil*, executed and registered a deed of adoption in favour of his sister's son who was at the time in his infancy. Subsequently plaintiff sued for a declaration that the deed of adoption was of no effect, on the grounds that the adoption, being by deed only was informal, and that the bad behaviour and disobedience of the adopted son rendered him unfit to so continue. Plaintiff finally prayed for cancellation of the deed of adoption and for a declaration that defendant was not his adopted son. The first Court passed a decree in plaintiff's favour, but this was reversed on appeal by the Divisional Judge. Plaintiff thereupon appealed to the Chief Court and the cause was remanded for inquiry as to whether by custom among Muhammadan Man Jats of the Nakodar *tahsil*, an adoption or appointment as heir could be revoked by the adoptor. As a result of the inquiry it was found that no Muhammadan Man Jat had ever been known, except in the present case, to have adopted a son.

Held, (*i*) that the suit could not be treated as one for the cancellation of the deed or for annulment of the adoption *ab initio* inasmuch as the deed was executed by plaintiff of his own free will and there was no allegation that it was obtained from him by means which would have rendered it either void or voidable, (*ii*) that, whatever the rights of plaintiff's collaterals might be plaintiff himself could not claim relief on the ground that the adoption was invalid by custom, and that in any event such claim to relief was barred by limitation, the deed having been executed

CUSTOM III.—APPOINTMENT OF HEIR—*contd.*

K.—REPUDIATION OF ADOPTION—*concld.*

more than 6 years previously to suit; and (*iii*) that there having been no contract, express or implied, on the part of defendant that he would always obey plaintiff, serve him and live with him, plaintiff was not entitled to a declaratory decree, that the tie which existed between him and defendant had been dissolved by the latter's disobedience. KADA *v.* NUR MUHAMMAD. **143 P R 1894**

L.—GIFTS TO ADOPTED SONS.

See CUSTOM II—ALIENATION (A) BY MALE PROPRIETOR; (*i*) PROVED. **83 P R 1900**

See GIFTS AND WILLS IN FAVOUR OF DAUGHTERS AND THEIR SONS; (*ii*) NOT PROVED. **86 P R 1894**

See GIFTS AND WILLS IN FAVOUR OF SISTERS AND THEIR SONS; (*ii*) NOT PROVED. **92 P R 1891**
102 P R 1893

See GIFTS AND WILLS IN FAVOUR OF STEP-SONS; (*ii*) NOT PROVED. **98 P R 1892**

See CUSTOM I.—ALIENATION BY WIDOW, GIFTS. **85 P R 1888**

Khanadamad—*Appointment of, to succeed to estate of sonless proprietor—Arains of* Tahsil *Zira, Ferozepore District.*

Found in a suit the parties to which were Arains of *tahsil* Zira, Ferozepore District, that according to the custom of the tribe a *khanadamad* may be appointed to succeed to the estate of a sonless proprietor to the exclusion of his brothers and nephews. PIR BAKHSH *v.* ISA. **107 P R 1892**

M.—SUCCESSION OF ADOPTED SON.

See CUSTOM VIII—INHERITANCE,—ADOPTED SON AND HIS HEIRS, *passim*.

See LAMBARDAR.

9 P R 1892 Rev.
10 P R 1892 Rev.
11 P R 1892 Rev.
12 P R 1892 Rev.
13 P R 1892 Rev.
2 P R 1899 Rev.

See OCCUPANCY RIGHTS.

40 P R 1894
43 P R 1895 (F B)
22 P R 1898

1. *Inheritance.*

The adopted son cannot inherit from his natural parents, but he succeeds to the property of his adoptive father. *Bhuggut Singh* v. *Boodhoo* (*No.* 51 *of* 1867, Civil); and *Gopee Rom* v. *Buldeo Sahai* (*No.* 91 *of* 1866, Civil); but *quære*, whether he inherits collaterally as well as lineally. HURSAHAI *v.* BHAWANI DASS. **9 P R 1868**

CUSTOM III.—APPOINTMENT OF HEIR—*contd.*

M.—SUCCESSION OF ADOPTED SON—*contd.*

2. *Muhammadans—Child brought up from infancy—Appointment of heir—Inheritance—Hoshiarpur District.*

N. M. was brought up from his infancy by K. B., lived with him and was married by him. In 1872 K. B. executed a deed of adoption, in which he declared that he regarded N. M. as his own begotten son and intended that he should inherit all his property. In 1873 K. B. caused mutation of names to be effected. It did not appear that N. M. was put in possession, but on the other hand there was no evidence that between 1873 and his death K. B. revoked his declaration that N. M. was his adopted son and was to be his heir. *Held*, that, under the circumstances, N. M. was entitled by custom to inherit the property of K. B. BUTA *v.* NUR MUHAMMAD. **70 P R 1878**

3. *Inheritance—Mahomedan Lohars of Lahore.*

Found, that no custom exists among the Mahomedan Lohars of Lahore under which a person adopted or treated as an adopted son is entitled as such adopted son to succeed as heir to the estate of his adoptive father. MAHOMED FIROZDIN *v.* SIRAJDIN. **5 P R 1879**

4. *Jats of Amritsar District*—Quasi-*adoption according to Punjab custom—Right of such adopted son to inherit property in his natural family.*

R. S., an only son, was adopted by his uncle according to the Punjab custom, that is, appointed to be his heir, and succeeded to the land of the latter. *Held*, that he was not thereby deprived of his right of inheritance in his natural family in the absence of proof of custom to that effect; and found, that no such custom was proved. MAJJA SINGH *v.* RAM SINGH. **43 P R 1879**

5. *Mussalman Rajputs.*

Found that by the custom of Mussalman Rajputs of the Many *got*, a childless proprietor can do an act analagous to adopting a son, and thereby create a right of succession. NAJIB KHAN *v.* HUSAIN KHAN. **43 P R 1880**

6. *Death of adopted son without lineal descendants—Right of inheritance.*

One N. S. was adopted by his uncle and step-father R. S. and, on the latter's death, succeeded to his estate. N. S. having died without lineal descendants, the representatives of his natural father retained possession of the estate. The plaintiffs, who were the representatives of N. S.'s adopted father, sought to recover a share in N. S.'s estate.

Held, in absence of a custom to the contrary, that in informal Jat adoptions such as the present, where the adopted son dies without lineal descendants, the succession passes, not to the heirs of the adoptive father, but to the natural heirs of the adopted son, and the plaintiffs' claim therefore failed. *Dewa Singh* v. *Nihal Singh* (No. 9 of 1880, Civil) followed. *Fouja* v. *Kasu* (No. 122 of 1879, Civil), *Gogan* v. *Taloka* (No. 163 of 1882, Civil), *Ditta* v. *Muhammad Baksh* (No. 146 of 1884, Civil), *Jowahir Singh* v. *Amrik Singh* (No. 9 of 1885, Civil) referred to. ARUR SINGH *v.* JOWALA SINGH. **89 P R 1885**

7. *Hir Jats of Garhshankar* tahsil, *Hoshiarpur District—Right of adopted son to succeed collaterally.*

In a suit the parties to which were Hir Jats of the Garhshankar *tahsil* in the Hoshiarpur District, *held*, that the plaintiff who represented the adopted son of one S. deceased, and on whom the burden of proof lay, had failed to prove that the adoption was of such a kind that it carried with it the right to succeed collaterally as well as to the direct estate of the adoptive father.

Deva Singh v. *Nihal Singh* (No. 9 *P. R.* 1880), *Jowala Singh* v. *Mussammat Lachmi* (No. 14 *P R.* 1884) and *Arur Singh* v. *Jawala Singh* (No. 89 *P. R.* 1885), referred to. UTTAM SINGH *v.* WAZIR SINGH. **84 P R 1887**

8. *Succession—Agricultural Khatris—Succession to adopted son dying childless.*

Held that in the absence of proof of the special custom applicable Khatris though living by agriculture in matters of succession are governed by Hindu Law. MUSSAMMAT RUKMANI *v.* MUSSAMMAT SALUKHNI. **147 P R 1889**

9. *Hindu Jats of Gurdaspur—Right of adopted son to succeed collaterally.*

Found, that among the Hindu Jats of the Gurdaspur District, when a man adopts a near agnate relation in his childhood such adopted son does not after his adoptive father's death take the share of the estate of collateral relatives which the adoptive father would have succeeded to had he survived. BIR SINGH *v.* LANA SINGH. **181 P R 1889**

10. *Agricultural Brahmans of the Amritsar District—Succession to adopted son dying sonless.*

Found, that no well-established custom prevails among agricultural Brahmins of the Amritsar District, whereby the estate inherited by an adopted son passes in the event of his dying sonless to his own natural heirs. In the absence of such a custom the Hindu Law was applied, and following it the right of the heir of the adoptive parent was considered superior to that of the heir of the adopted son. MUSSAMMAT SADA KAUR *v.* RAM SINGH. **21 P R 1890**

11. *Rights of appointed heir in adopting father's brother's land.*

In a suit the parties to which were Ghariwal Jats, originally of the Hissar District but now settled in Ludhiana, *held*, that an appointed heir—daughter's son—was not entitled to succeed to the land left by the adopting father's brother even although the land was self-acquired, in the presence of near collaterals. No. 61 of 1880, referred to. SOBA *v.* KALU. **107 P R 1891**

12. *Succession of collateral heirs in his natural family of person adopted in default of lineal descendants.*

Held, by the Full Bench, that there is no general custom prevalent amongst agriculturists in the Punjab by which the collateral heirs in his natural family of a man who has been adopted under a customary adoption succeed in default of his lineal heirs to the property which he acquired or inherited by virtue of his adoption.

Not only is there no such general custom but such a succession is quite opposed to the general principles which regulate the succession to land in the village communiites of the Punjab. SITA RAM *v.* RAJA RAM. **12 P R 1892 F B**

13. *Gujars of Kharian* tahsil *of the Gujrat District—Appointed heir—Collateral succession.*

Found, in a suit, the parties to which were Gujars of the Kharian *tahsil* of the Gujrat District, that no custom was proved by which an appointed heir becomes the representative of the person appointing him so as to entitle him to succeed to a share of land left by other members of the family. FAZLA *v.* ILAM DIN. **56 P R 1893**

14. *Gil Jats of* tahsil *Moga, Ferozepore District—Deceased sonless proprietor whose father was an adopted son—Rights of natural heirs of adopted son and of heirs of adoptive father.*

The question for decision was whether, by the custom of the Gil Jats (Hindus) of the Moga *tahsil* of the Ferozepore District, the estate of a proprietor dying without male issue whose father was an adopted son devolved upon the natural heirs of the adopted son or upon the heirs of the adoptive father.

Held, following the Full Bench ruling reported as No. 12 *P. R.* 1892, that it was for the defendants to rebut the general presumption arising in the plaintiff's favour against the right of the collateral heirs in the natural line to succeed to property that had been inherited by virtue of adoption, such adoption being the customary appointment of an heir common among agriculturist Jats of the Province. WARYAM *v.* MAN SINGH. **72 P R 1893**

15. *Right of adopted son to succeed collaterally in adoptive father's family—*

CUSTOM III.—APPOINTMENT OF HEIR—*contd.*

M.—SUCCESSION OF ADOPTED SON—*contd.*

Sohel Jats of Ajnala tahsil, *Amritsar District.*

Found, that plaintiff, upon whom was the *onus probandi*, had failed to prove a custom whereby among Sohel Jats of Ajnala *tahsil* in the Amritsar District, a non-agnate who has been adopted is entitled to succeed collaterally in the family of his adoptive father.

The distinction between the adoption of persons who are, and persons who are not, of the same *got* of the adoptor pointed out. MANGAL SINGH *v.* TILOK SINGH.

61 P R 1894

16. *Collateral succession of adopted son—Rajputs of Una* tahsil, *Hoshiarpur District*—Onus probandi.

Held, that the burden of proving the right of an adopted son to succeed collaterally in his adoptive father's family rests upon the party alleging such right.

Found, upon the evidence that the defendant upon whom the *onus* rested had failed to prove that by custom among Rajputs of the Una *tahsil* in the Hoshiarpur District, an adopted son is entitled to succeed to his adoptive father's brother.

Although if in any case the parties to an adoption are punctilious as to the observance of ceremonies prescribed by the Hindu ritual, all due weight should be given to the fact in deciding whether the consequences in accordance with the custom of the parties are in accordance with the rules of the Hindu Law, the distinction between formal and informal adoptions rests on no basis of fact or principle and is altogether opposed to the spirit of the institution of adoption as it prevails in the Punjab, one feature of which is the little heed it gives to the observance of ceremonies.

No. 97 *P. R.* 1879, No. 9 *P. R.* 1880, No. 88 *P. R.* 1881, No. 14 *P. R.* 1884, No. 89 *P. R.* 1885, No. 84 *P. R.* 1887, and No. 12 *P. R.* 1892, referred to. JEHNU *v.* SAUDAGAR

138 P R 1894

17. *Succession of adopted son to share of* birt*—Panjzati Brahmins of Amritsar city.*

Found, that no custom had been proved among Panjzati Brahmins of Amritsar city at variance with the rule of Hindu Law whereby an adopted son is entitled to succeed to a share of the family *birt.* BHAGAT RAM *v.* SHIV DATT.

141 P R 1894

18. *Right of adopted son to succeed collaterally in his adoptive father's family—Sarsut Brahmins of Amballa District*—Res judicata—*Previous decision in favour of adopted son against the widow of the adoptive father's brother in respect of the latter's joint property how far binding on the daughters of such brother claiming to succeed as heirs to their father's separate property—Daughters not parties to former suit—Civil Procedure Code*, 1882, *section* 13.

CUSTOM III.—APPOINTMENT OF HEIR—*contd.*

M.—SUCCESSION OF ADOPTED SON—*contd.*

In 1876, in a suit brought by plaintiff against Mussammat I. B., the widow of one B., for a declaratory decree that after the death of the said widow, plaintiff was entitled to succeed, as the adopted son of A., brother of B., to the entirety of B.'s *joint property*, it was decided that plaintiff was the validly adopted son of A., and as such, entitled to succeed as claimed. To this suit the daughters of B., by Mussammat I. B., were not parties. Subsequently Mussammat I. B. made a gift of the *separate property* left by B. in favour of her said daughters, whereupon plaintiff sued for a declaration that such gift should not affect his reversionary rights after the death of the widow, and made Mussammat I. B., and her daughters co-defendants. The latter pleaded that plaintiff was not the validly adopted son of A., and that in any event, he was not entitled, by custom, to succeed as claimed. For plaintiff it was contended that the question as to his right to succeed as the adopted son of A. to property left by B. was *res judicata* by the decision in the former suit.

Held (per Plowden S. J., and *Benton*, J.; *Frizelle*, J., dissenting) that inasmuch as (i) the widow of B., succeeding to her husband's estate as his heir, represented the estate fully; (ii) reversioners claiming to succeed after her were bound by decrees relating to her husband's estate obtained against her without fraud or collusion; and (iii) the widow's daughters were not necessary parties to the former suit, the daughters though not made parties in the former suit were bound by a decision on a relevant issue tried and decided therein, and that therefore the question as to the validity of plaintiff's adoption was *res judicata* and was not affected by the fact that the property now in dispute was different.

But, *held*, further, that it was competent to the said daughters to plead in the subsequent suit that the adopted son of A. was not entitled by custom to succeed as heir to the *separate* property of B.

Found, after a remand for further inquiry, that by custom among Sarsut Brahmins of Amballa District, an adopted son is not entitled to succeed to the property of his adoptive father's brother to the exclusion of the latter's daughters.

I. L. R. XI Calc., 186 *I. L. R. I. All.* 282 and No. 139 *P. R.* 1888, referred to. MUSSAMMAT INDRA BAI *v.* GADU DHAR.

29 P R 1895

19. *Collateral succession of appointed heir—Sidhu Jats of Gajjan Singhwala, Lahore District.*

In a case, the parties to which were Sidhu Jats of Gajjan Singhwala in the Lahore District *held*, that a person who had been jointly adopted in accordance with the customary mode of adoption, or appointed as their heir by two of three brothers, who were

CUSTOM III.—APPOINTMENT OF HEIR—*contd.*

M.—SUCCESSION OF ADOPTED SON—*contd.*

descended from a common ancestor and held land in the same village, has no right of succession, as such adopted son or appointed heir, to the third brother who had not joined in the said adoption or appointment. WADHAWA SINGH *v.* GAJJAN SINGH.

53 P R 1895

20. *Custom—Succession of adopted son in his natural family.*—Riwaj-i-am.

Held, as regards the conflicting claims of the collaterals *inter se*, that an adopted son and his descendants are entitled to succeed in the natural family of such adopted son. RUKAN DIN *v.* MUSSAMMAT MARIAM.

68 P R 1898

21. *Right of adopted son to succeed collaterally in adoptive family—Arains of Ludhiana* tahsil.

Found, that by custom among Arains of the Ludhiana *tahsil* and District, an adopted son is not entitled to succeed collaterally in the family of his adoptive father.

Where, therefore, one S. who died leaving no descendants or male collaterals, made a gift of his land in favour of his daughter, Mussammat N., *held*, that the descendants of an adopted son of one D., a brother of S. had no *locus standi* to contest a deed of gift made by Mussammat N. in favour of defendants. FATEH MUHAMMAD *v.* NIZAM-UD-DIN.

18 P R 1900

22. *Khatris of* mauza *Kawari*, tahsil *Pipli, Amballa District.*

Held, that an adopted son was entitled to succeed in preference to the nephews of the adoptive father. HARNAMAN *v.* ATMA RAM.

24 P R 1900

23. *Custom—Inheritance—Right of adopted son to succeed collaterally in adoptive father's family—Chima Jats of Daska* tahsil *of the Sialkot District.*

Found, that by custom among Chima Jats of the Daska *tahsil* of the Sialkot District an adopted son is entitled to succeed to the estate of his adoptive father's collaterals in the same manner and to the same extent as a natural son of such adoptive father would have succeeded. MAKHAN SINGH *v.* DULO.

4 P R 1906

24. *Custom—Inheritance—Right of the sons of an appointed heir who predeceased the adoptive father to succeed on the latter's death—Mahtons of Nowashar* tahsil, *Jullundur District.*

Held, that by custom among Mahtons of Nowashahr *tahsil* in the Jullundur District, the sons of an appointed heir who predeceased his adoptive father are entitled to succeed on the latter's death to his estate.

Ralla v. *Budha* (50 *P. R.* 1893 *F. B.)* and *Jehnu* v. *Saudagar* (138 *P. R.* 1894), referred to. CHAJJOO *v.* DALIPA.

51 P R 1906

25. *Custom—Inheritance—Right of the sons of an adopted son to succeed collaterally*

CUSTOM III.—APPOINTMENT OF HEIR—*contd.*

M.—SUCCESSION OF ADOPTED SON—*contd.*

in their natural family—Moghals of Pind Dadan Khan tahsil.

Found, that by custom among Moghals of the Pind Dadan Khan *tahsil* the sons of an adopted son are entitled to succeed collaterally in their natural family. *Diwan Singh* v. *Bhup Singh* (45 *P R.* 1884) cited. GHELA *v.* HAIDER. **59 P R 1906**

26. *Custom—Inheritance—Succession to adopted son in default of lineal descendants—Inherited and acquired property.*

Held that, although the property inherited by an adopted son by virtue of his adoption descends in default of his lineal heirs to the collaterals of his adoptive father, his self-acquired property passes to the heirs of his natural family.

Waryam Singh v. *Man Singh* (72 *P. R.* 1893), *Sita Ram* v. *Raja Ram* (12 *P. R.* 1892, *F. B.*), and *Sher Singh* v. *Kishen Singh* (4 *P. R.* 1900), referred to. PUNJAB SINGH *v.* KHAZAN SINGH. **88 P R 1906**

27. *Custom—Inheritance—Right of adopted son to succeed to his natural father in presence of brother—Jats of* tahsil *Panipat, Karnal District.*

Found, that among the Jats of *tahsil* Panipat in the Karnal District an adopted son is not entitled to succeed to his share in his natural father's property in the presence of a brother. MUKH RAM *v.* NOT RAM. **100 P R 1906**

28. *Custom—Inheritance—Succession to adopted son dying sonless—Jats of Ludhiana District.*

Found, that by custom prevailing among agricultural Jats of the Province, the estate held by an adopted son by virtue of his appointment as heir reverts in the event of his dying without male lineal decendants to the heirs of the adoptive father and not to the collateral heirs of the natural family.

Sewa Singh v. *Wasawa Singh* (58 *P. L. R.* 1901) dissented from.

Gholam Muhammad v. *Muhammad Bakhs* (4 *P. R.* 1891. *F. B.) and Sita Ram* v. *Raja Ram* (12 *P. R.* 1892, *F. B.*) followed GURDITTA *v.* ATTAR SINGH. **117 P R 1906**

29. *Custom—Inheritance—Right of adopted son to succeed collaterally in adoptive father's family—Chima Jats of Daska* tahsil *of the Sialkot District.*

Found, that by custom among Chima Jats of the Daska *tahsil* of the Sialkot District an adopted son is not entitled to succeed collaterally in his adoptive father's family.

Makhan Singh v. *Dulo*, 4 *P. R.* 1906, *dissented from.* RAM DITTA *v.* TAKHT MAL. **50 P R 1908**

30. *Custom—Succession by adopted son to the collaterals of adoptive father—Kong Jats of the Daska* tahsil, *disirict Sialkot.*

Held, that the defendant, the adopted son, on whom the *onus* lay, had failed to prove a custom by which an adopted son inherits

CUSTOM III.—APPOINTMENT OF HEIR—*contd.*

M.—SUCCESSION OF ADOPTED SON—*contd.*

to the collaterals of his adoptive father among Kang Jats of the Daska *tahsil*, district Sialkot. RALLA *v.* JAWAHIR SINGH. **61 P R 1909**

31. *Custom—Succession by adopted son collaterally in adoptive father's family—Jats of Rohtak district—Riwaj-i-am.*

Held, that among Jats of the Rohtak district an adopted son or his heirs can by custom succeed collaterally to property to which the adoptive father would have succeeded, if alive. MANSA *v.* SURTA. **99 P R 1909**

32. *Custom—Succession—Collateral succession of adopted son—Sikh Jats of* mauza *Chuhar Chak*, tahsil *Moga, district Ferozepore.*

Held, that among Sikh Jats of *mauza* Chuhar Chak in the Moga *tahsil* of the Ferozepore district, an adopted son, who is of the same *got* as the adoptive father, is entitled by custom to succeed collaterally in the family of his adoptive father. DIAL SINGH *v.* SEWA SINGH. **103 P R 1909**

33. *Adopted son and his son succeed to property in natural family, agricultural tribes, Gurdaspur District.*

Held, that the ordinary rule under the Customary Law is, that an adopted son does not lose the right of succeeding in his natural family except possibly in the eastern Punjab (*i. e.* the Delhi and Karnal districts), where the appointment of an heir approaches in nature more nearly to the adoption of the Hindu Law, and this applies *a fortiori* in the case of a son of the adopted son. JHANDA SINGH *v.* KESAR SINGH. **37 P R 1910**

N.—LIMITATION.

—Suit involving the establishment of the validity of plaintiffs' adoption as the basis of his title—Period of limitation applicable.

See LIMITATION ACT, 1877, ARTICLE 119. **3 P R 1904**

—Suit by reversioner for declaration—Defendants' title based on an alleged adoption —Invalidity of adoption—Limitation.

See LIMITATION ACT, 1877, ARTICLE 120. **35 P R 1904**

1. *Indian Limitation Act*, 1877, *Schedule II, article* 118*—Suit to declare an adoption invalid or as having never in fact taken place.*

Semble; The "alleged adoption" mentioned in Schedule II, article 118, Limitation Act, 1877, must be a transaction by person with some inherent right to adopt, and which is either denied as a fact by the plaintiff or challenged as being invalid upon some ground of law or custom, which does not go the length of asserting that the adoption, as an adoption, is wholly impossible. BHAGAT RAM *v.* TULSI RAM. **144 P R 1892**

2. *Suit for possession of land—Adoption —Limitation Act XV of* 1871, *Schedule II,*

CUSTOM III.—APPOINTMENT OF HEIR—*contd.*

N.—LIMITATION—*contd.*

articles 142, 144 *and* 118*—Act IX of* 1871, *Schedule II, article* 129*—Jaj Jats of Garshankar* tahsil, *Hoshiarpur District—Sonless proprietor*—Factum *of adoption.*

The plaintiffs sued as heirs to recover from the defendants possession of the estate of K., who had died about a year before suit. It was pleaded as an answer to the suit that the third defendant, N. S., had been adopted by K. in June 1877, and that no suit having been brought to set aside such adoption, the present suit was barred by Article 118 of the second Schedule of the Limitation Act, 1877.

Held, that the plaintiffs were not bound in a suit for possession to seek any direct relief by way of cancellation of the adoption; that the limitation applicable to the suit was provided for under article 142 or article 144, Schedule II, Act XV of 1877; and that the suit was within limitation.

Held, also, on the evidence, that no genuine adoption of N. S. had been proved to have taken place, the real transaction, viewed as a whole, being the appointment of three persons as heirs, which was not permitted by custom.

No. 116 *P. R.* 1890, F. B, referred to and distinguished. WAZIRA *v.* FATTU. **96 P R. 1893**

3. *Limitation Act (XV* 1877), *2nd Schedule, article* 118*—"Declaration that an alleged adoption is invalid or never in fact took place"—Suit for possession of immovable property.*

Held, by the Full Bench, that a suit which would fall under article 118 of the 2nd Schedule of the Limitation Act, 1877, cannot be barred under that article when it is found on the evidence that the alleged adoption never in fact took place or that there is no *prima facie* evidence that it did take place.

Per Plowden, S. J.—Inasmuch as there can be no adoption known to the law, whether the parties be governed by Hindu Law or by customary law, unless the adopter has manifested an intention to exercise his power to adopt, and as there must be in every valid adoption some external and visible act, or series of acts, done by the adoptor, or under express authority from him, which act or series of acts give effect to his intention, the mere fact that an allegation by the defendant that there had been an adoption had come to the knowledge of the plaintiff more than six years before suit is not sufficient to bar plaintiff's suit for possession of immovable property under article 118 of the 2nd Schedule of the Limitation Act, 1877. In such cases plaintiff's right to sue is based, not on the mere fact that an assertion of adoption has been made, but on the implied denial of plaintiff's title as heir, whether lineal or collateral, and where the defendant does not contest this title, there is no right to sue remaining

CUSTOM III.—APPOINTMENT OF HEIR—*contd.*

N.—LIMITATION—*concld.*

upon which the law of limitation can operate.

I. L. R. XIII Calc., 308 (P. C.), and *I. L. R. XX Calc.* 487 (P. C), distinguished. SULTAN *v.* ILAHI BAKHSH. **73 P R 1894 F B**

4. *Limitation Act*, 1877, *2nd Schedule, articles* 91, 118, 140—*Suit for possession of immovable property against an alleged adopted son—Suit instituted more than six years after alleged adoption, but within 12 years from date of estate falling into possession—Period of limitation applicable.*

On the 17th February 1885, one H executed a deed of adoption in favour of defendant, a previous adoption in infancy being alleged, and on the 18th December 1887 mutation of names was made in defendant's favour. H. died in 1890, and on the 5th February 1895 plaintiffs instituted the present suit against defendant for possession of H.'s estate. Both lower Courts found that the adoption had, in fact, taken place, and dismissed plaintiffs' suit as barred by limitation.

Held, that the suit having been brought within 12 years from the date of the estate falling into possession, was within time under article 140 of the 2nd Schedule to the Limitation Act, 1877 and was not barred under articles 91 or 118 by reason of plaintiffs' failure or omission to have the adoption set aside or declared invalid within the shorter period of limitation prescribed by those articles.

The principles of the law of limitation discussed and explained by *Chatterji*, J. RANGAN *v.* MAHTAB CHAND. **55 P R 1897**

5. *See* D. ADOPTION OF SISTER'S SON, *supra.* **68 P R 1903**

O.—RULE OF DECISION.

1. There is no custom against adoption amongst the Rajputs. GUJAR *v.* DUSOUNDI. **57 P R 1872**

2. *Kashmiri Sheikhs of Sialkot—Burden of Proof.*

In a suit by the daughter and sister of one H., a Kashmiri Sheikh of the town of Sialkot, to recover their share of the said H.'s estate, which was resisted by one of the defendants as the adopted son of H., *held*, that the defendants had failed to discharge the *onus* which lay upon them of proving that the custom of adoption was recognized among the tribe to which the parties belonged, and therefore the adoption of the defendant by H. conferred *per se* no interest in his property on the defendant. *Chamba* v. *Jowahir Singh* (No. 170 of 1882, Civil) cited. MUSSAMMAT TALIA BIBI *v.* MUSSAMMAT BUDI. **130 P R 1884**

3. *Inheritance—Agricultural Brahmins of the Amritsar District—Succession to adopted son dying childless.*

Found, that no well established custom prevails among agricultural Brahmins of the

CUSTOM III.—APPOINTMENT OF HEIR—*contd.*

O.—RULE OF DECISION—*concld.*

Amritsar District, whereby the estate inherited by an adopted son passes in the event of his dying sonless to his own natural heirs. In the absence of such a custom the Hindu Law was applied, and following it, the right of the heir of the adoptive parent was considered superior to that of the heir of the adopted son. MUSSAMMAT SADA KAUR *v.* RAM SINGH. **21 P R 1890**

4. *Adoption—Bedi Khatris of Pathankot Tahsil, Gurdaspur District—Adoption of wife's brother.*

Held, that Bedi Khatris as a class though they may hold land are not strictly agriculturists, and that in matter of adoption they are governed by custom. SARUP SINGH *v.* MUSSAMMAT JASSI. **22 P R 1891**

P.—ADOPTION OF SON AND STEPSON.

1. *Only son.*

Adoption of an only son is valid.—ADJOODHIA PERSHAD *v.* MUSSAMMAT DEWAN (*No.* 18 *of* 1870, Civil) ; HARRI SINGH *v.* GULABA (*No.* 50 *of* 1874, Civil) ; but amongst the Jats (Gill section) Ferozepore district, it is invalid. TEJA SINGH *v.* SOCHET SINGH. **33 P R. 1872**

2. *Age of adopted son.*

There is no restriction as to the age at which a person may be adopted. BHUGGUT SINGH *v.* BOODHOO (*No.* 51 *of* 1867, Civil) ; MUKHUN *v.* NIKKA (*No.* 37 *of* 1868, Civil) ; *and* GUJAR *v.* DUSOUNDI. **57 P R 1872**

3. *Step-son.*

Adoption of step-son (son of wife by former husband) is valid amongst the Jats of the Hoshiarpur district, whether or not there are living near or remote relations of the adopter. NATHA *v.* TAHLA. **45 P R. 1874**

4. *Badhal Jats of* tahsil *Ludhiana—Revocation.*

In a suit to set aside an adoption, the parties to which were Badhal Jats of the Ludhiana *tahsil*, *held*, that the plaintiff had failed to prove that the adoption of a step-son of a different *got* was invalid by custom.

Held, further, that there was no evidence of a custom that an appointment of an heir, when once it had been completely made, was revocable at the will of the appointor. WAZIRA *v.* KAHNA. **98 P R 1884**

5. *Sindhu Jats of* tahsil *Chunian—Appointment as heir of member of another* got.

Found, that among Sindhu Jats of the Chunian tahsil the appointment as heir of one who is not a member of that *got* is valid by custom, and the person appointed may be a step-son, whose father was not a Sindhu Jat. *Natha* v. *Tahla* (No. 45 of 1874, Civil) *Sawan Singh* v. *Sant Singh* (No. 1 of 1875, Civil), *Waziran* v. *Kahna* (No. 98 of 1884, Civil) and *Albel Singh* v. *Vir Singh* (No. 86 of 1885, Civil) referred to. GAGAN SINGH *v.* BULAKA SINGH. **23 P R 1886**

CUSTOM III.—APPOINTMENT OF HEIR—*concld.*

Q.—ADOPTION AMONG FAQIRS

1. *Ascetic.*—Adoption by an ascetic held to be invalid. TEKU *v.* BUSTI. **15 P R 1874**

2. *Natural son living, who had turned faqir.*

Where at the time of an adoption, the natural son was still alive. but had turned *faqir*, the adoption was held valid. MOHRU *v.* MOTI. **52 P R 1875**

IV—BETROTHAL, DOWER, MARRIAGE, DIVORCE.

—*Effect of.*
See HINDU LAW, BETROTHAL, GUARDIANSHIP.

—*Suit for breach of—Place of suing.*
See JURISDICTION. **57 P R 1874**
147 P R 1882
JURISDICTION OF SMALL CAUSE COURT **8 P R 1886**
35 P R 1875

—*Fees, Marriage Fees.*
See CUSTOM, CESSES AND DUES.
12 P R 1868
50 P R 1869
28 P R 1877
40 P R 1879
136 P R 1879
64 P R 1880
118 P R 1883
80 P R 1890

—*Marriage-brocage contract—Void agreement—Public policy.*
See CONTRACT ACT, 1872, SECTION 23.
46 P R 1887
128 P R 1889
112 P R 1892
15 P R 1900

—*Damages for breach of contract of betrothal—Jurisdiction of Small Cause Court.*
See SMALL CAUSE COURT - JURISDICTION OF. **43 P R 1887**
See SMALL CAUSE COURT ACT, 1887, SCHEDULE 2, ARTICLE 35 (*g*).
132 P R 1889

—*Succession to unpaid dower of a deceased female.*
See CUSTOM—INHERITANCE.
43 P R 1908

—*Marriage contracted before expiry of iddat.*
See BIGAMY. **43 P R 1882 Cr.**

—*Remarriage of widow.*
See CUSTOM, INHERITANCE,.
137 P R 1883
123 P R 1884
80 P R 1885
81 P R 1885
53 P R 1886
See CUSTOM, INHERITANCE WIDOW.
22 P R 1884
100 P R 1891

—*Marriage, performed by mother, validity of.*
See CUSTODY OF MINOR.
113 P R 1888

—*Marriage of Muhammadan woman converted to Sikhism with a Sikh.*
See ANCESTRAL PROPERTY.
50 P R 1895

1. *Parties to suit for breach of betrothal.* Under the Punjab Civil Court, *held* that when a betrothal contract had been entered into by a parent on behalf of his child, a suit for breach should be brought against the parent alone, and not against both parent and child. MAHOMED BUX *v.* MUSSAMMAT JEBUNT BEEBEE. **59 P R 1866**

2. *Betrothal to unborn child.*
A contract of betrothal made in regard to a girl not born at the time of the contract is null and void. DIYALA *v.* BHAMA. **60 P R 1866**

3. Buying a wife is not criminal. THE CROWN *v.* RODA. **19 P R 1867**

4. Where money was paid by plaintiff on account of defendant, as a consideration for a bride for defendant, the plaintiff knowing for what purpose the money was required, *held*, that he might recover the money paid; the purchase of a wife not being *malum in se*, and being *malum prohibitum*, by the Punjab Civil Code, only as between the parties to the sale. SHAH GOOL *v.* IKRAM. **88 P R 1867**

5. *Guardian's power to betroth.*
Where a parent makes a betrothal contract for his child and dies, the guardian is prevented by the contract from making another for the child. RAM CHAND *v.* LALJEE. **21 P R 1868**

6. Damages for injured feelings are not an independent personal wrong, but the consequential damages of the breach of contract. Indemnification for expenses incurred in gifts relates to all presents made in consequence of the betrothal, and no such distinction can be made as that some are given "socially" and others "ceremonially." NUBEE BUKSH *v.* SUDDEEK. **22 P R 1861**

7. *Held*, under the Punjab Civil Code, that although a suit would not lie to recover the consideration money paid to the parents of the bride elect to obtain their consent to the betrothal; yet a suit would lie to recover ornaments presented by a man to his betrothed in contemplation of marriage. GAMAN *v.* KABOOL. **69 P R 1868**

8. *Damages for procuring breach.*
In a suit for damages for breach of betrothal contract, the Lower Court awarded damages against the parents of the girl, and also against her husband, on the ground that by marrying her he had promoted the breach of contract. *Held*, that the suit as against the husband would not lie. JHANGIE RAM *v.* DASS RAM. **83 P R 1870**

9. *Marriage brocage contract.*
Where defendant agreed, in consideration of receiving Rs. 200, to find a wife for plaintiff, and the money was paid, but

defendant did not perform his part of the contract, and it was found by the Court trying the case that defendant never intended procuring a wife for the plaintiff, but obtained the money under false pretences. *Held*, that a suit to recover back the sum of Rs. 200 (plaintiff having discovered the agreement to be void), was maintainable, but the Judges (*Boulnois* and *Lindsay*, JJ.,) considered the contract opposed to public policy. GAHU *v.* HAKU. **86 P R 1875**

10. *Suit for breach—Marriage of plaintiff after contract to another woman, pleaded in bar.*
Plaintiff sued for damages for breach of betrothal contract. The plea was, that the plaintiff had married another woman, and for that reason, defendant refused to complete the contract. *Held*, that by law and custom, the plea was no bar to plaintiff's suit, but that the subsequent marriage went in mitigation of damages. The parties were Muhammadans of the Hissar district KANDHAL *v.* LAHIA. **59 P R 1876**

11. *Betrothal Contract, breach of—Money paid under void agreement—Act IX of 1872, section 57—Promises to do things legal and also other things illegal.*
Where money has been paid by a bridegroom to the bride's father in consideration of the marriage of the latter's daughter, and the promised marriage has not been performed: *Held*, that such money can be recovered back by suit.

The transaction between the parties comprises two distinct and separable sets of promises within the meaning of section 57 of the Contract Act, and while one set, that relating to the marriage, is lawful, and amounts to a contract, the other set, that relating to the pecuniary consideration, may be unlawful as opposed to public policy, and therefore a void agreement. But whether such agreement be void or not, the person who paid the money is in either case entitled to recover it back in the event of the father of the girl refusing to celebrate the marriage. KAHNA *v.* KAHN SINGH. **106 P R 1879**

12. *Hindu Jats—Absence of ceremonies—Validity of marriage.*
A Karewa marriage between a deceased Jat's widow and his brother upheld, although no marriage ceremony in the nature of *Chadar Andazi* or otherwise was proved.

Haku v. *Mahtab Singh* (No. 38 of 1879, Civil), cited and followed. MULA *v.* MUSSAMMAT CHANDO. **26 P R 1880**

13. *Reduction of dower—Reasonable amount.*
In a suit for dower plaintiff claimed Rs. 4,000 from the heirs of her deceased husband out of a fixed dower of Rs. 7,000. The lower appellate Court gave plaintiff a decree

for Rs. 3,045 and costs, out of which Rs. 1,045 was allowed on account of the penalty plaintiff had to pay as the deed of dower was unstamped, considering that a net sum of Rs. 2,000 was a reasonable amount for plaintiff to recover.

Held, by the Chief Court on defendants' appeal, that this amount was not unreasonable or improper under the circumstances of the case. MUHAMMAD WAZIR BEG *v.* MUSSAMMAT FATIMA BEGUM. **7 P R 1881**

14. *Karewa marriage during lifetime of former husband—Legitimacy of offspring. Bishnoi Jats.*
In a suit among Bishnoi Jats of the Sirsa district, *held*, that a karewa marriage during the lifetime of the woman's former husband, who had put her away, was invalid by custom, and conferred no rights of inheritance on the offspring. BHANI *v.* JAG RAM. **36 P R 1881**

15. *Children of "dharel" widow—Widow legitimately married—Khatris of M. Majitha, Amritsar.*
Found, that no special custom exists among Khatris of M. Majitha in the Amritsar district, whereby the children of a "dharel" mother succeed to the estate of their father to the exclusion of the widow legitimately married. DINA NATH *v.* MUSSAMMAT MANGO. **21 P R 1882**

16. *Suit for damages for breach of betrothal—Bride's father refusing to complete contract on ground that bridegroom was a confirmed gambler and unable to maintain a wife—Sufficiency of such plea as justification for breach of contract.*
In a suit for damages for breach of betrothal contract it appeared that the defendants had betrothed their daughter to the plaintiff about 11 years before suit, when the plaintiff was about 2 years old, and the girl 7 or 8 years of age. It further appeared that the plaintiff had fallen into confirmed habits of gambling, and that the defendant in consequence assembled a panchayat a year and a half before suit, who advised him to wait for six months longer in the hope that the boy would reform. A short time before suit, he assembled a second panchayat, and brought to their notice that the boy had not reformed, and apparently asked if any one would be surety for his daughter's support if the marriage was carried out, but no security was then offered. About three weeks before suit, the plaintiff's maternal uncle summoned a third panchayat saying that the boy had improved, and offered a cousin of the plaintiff's as surety for the girl's maintenance if the marriage were carried out. The defendant, however, appeared to be dissatisfied with the offer and finally married his daughter elsewhere. With regard to the security said at last to have been offered, it was admitted that no deed was executed, and the proposed surety

was not called as a witness, to show what extent of responsibility he was willing to take.

Held, that under the above circumstances the defendant was justified in breaking off a betrothal which offered no prospect of a suitable husband for his daughter, having first taken every means in his power to bring about a suitable arrangement before he did so. DHONU *v.* ISHAR DAS.

174 P R 1882

17. *Suit for breach of betrothal—Liability of guardians of minor girl other than those who betrothed her.*

In a suit for damages for breach of a betrothal contract brought against the mother of the girl and her two brothers, it was found that the girl had been betrothed to plaintiff by her mother and her father, since deceased: but it was contended by the two defendants, the girl's brothers, that they were not liable inasmuch as the contract had been entered into by the girl's parents.

Held, that as the said defendants were the present guardians of the girl, who was still a minor, and as they had knowingly repudiated the original contract and refused to complete it, plaintiff was entitled to a decree against all three defendants for damages to be paid by them if they did not marry the girl to plaintiff when she came to a marriageable age. *Ram Chund* v. *Laljee* (No. 21 of 1868, Civil), and *Mussammat Golabi* v. *Santa* (No. 7 of 1880, Civil), cited. GANDU *v.* ISHAR DAS.

197 P R 1882

18. *Validity of marriage between Bujju Rajput and Brahmin woman—Failure to prove marriage—Legitimacy of issue of continuous cohabitation—Legality of custom legitimating such issue.*

Plaintiffs claimed as the nearest male collaterals and legal heirs of one J. S., a Bujju Rajput, to inherit his estate. One of the defendants pleaded that she had lived with the deceased for many years prior to his death as his lawful wife, and that the minor defendant was her son by the deceased, and the rightful heir. The plaintiffs denied the *factum* of the marriage, and further contended that the deceased, who was himself a Bujju Rajput, could not contract a valid marriage with the defendant who was a Brahmin. In appeal to the Chief Court it was contended for the defendants, among other pleas, that even if there was no marriage in fact between the parents of the minor defendant, he was still entitled to inherit by custom on the ground of his mother's continued cohabitation with his father as a wife.

Held, that if the custom contended for merely inferred the existence of marriage from a long course of cohabitation between a man and woman in the avowed characters of husband and wife, and attached to it the legal consequences of marriage, there would be no valid reason for refusing to give effect

to it; for marriage as a consensual contract would be most satisfactorily established by evidence of this description, from which the intention to contract a permanent union could be fairly inferred. But if the custom went further and attributed to mere cohabitation, apart from any such distinctive character, all the legal effects of marriage so called, that would be an invalid custom confounding concubinage with the true marriage relation, and conferring on illegitimate offspring the *status* and rights of legitimate children. Such a custom would be bad as encouraging immorality, and unjust as depriving the collateral heirs of their legal rights of succession.

Held further, that inasmuch as both by Hindu Law and custom a marriage between the deceased and the minor defendant's mother (who was a Brahmin woman) would have been invalid, the absence of marriage was immaterial in determining the rights of the parties; but even if such a marriage had been valid, the minor son would have had no right to succeed to the estate of his deceased father, as it had been found as a fact that no such marriage tie existed between the deceased and the defendant's mother, and mere cohabitation which did not partake of the distinctive character of a permanent union as husband and wife, would not confer legitimacy on the issue of such cohabitation. PIRTHI SINGH *v.* BHOLA.

29 P R 1883

19. *Validity of second marriage in first husband's lifetime—Necessity for divorce in writing—Custom rendering second marriage valid irrespective of divorce—Bajwa Jats, Sialkot.*

Found, that by the custom of the Bajwa Jats of the Sialkot district a second marriage in the first husband's lifetime is illegal, in the absence of proof of a divorce in writing by the first husband.

Held also, that a custom rendering a *chadardaina* marriage with a woman whose husband is alive valid, whether a divorce has been given or not would not be a good custom. MUSSAMMAT JASSAN *v.* NIHALA.

78 P R 1884 Note

See ALSO BAJA SINGH *v.* MUSSAMMAT CHANDO. **78 P R 1884**

20. *Non-payment of prompt dower—Muhammadan Law—Custom.*

Quære, whether there is any rigid rule which is binding throughout the Punjab as between all husbands and wives who are by religion Muhammadans, that a wife who has not received her prompt dower is entitled either before or after consummation to refuse to reside with her husband. *Mussammat Zebo* v. *Jewan Khan* (No. 35 of 1873, Civil), and *Mouladad Khan* v. *Wazir Shah* (No. 45 of 1876, Civil), referred to. MUHAMMAD BAKHSH *v.* MUSSAMMAT BEGAM.

141 P R 1884

21. *Capacity of minor to contrct to pay dower.*

Quære, whether a Muhammadan minor can validly contract to pay dower. KHUDA BAKHSH *v.* MUSSAMMAT ABADI.

155 P R 1884

22. *"Jhanjrara" marriages—Lalotra Brahmins of the Kangra district.*

Found, that no special custom exists under which *jhanjrara* marriages among Lalotra Brahmins of the Kangra district are recognized. *Zoolfoo* v. *Ahmed* (No. 2 of 1872, Civil), and *Gobinda* v. *Kahna* (No. 22 of 1873, Civil), cited. MUSSAMMAT BUNDHO *v.* MUSSAMMAT LACHMI.

113 P R 1885

23. *Non-payment of prompt dower before suit—Payment before decree.*

In a suit for custody of wife, it appeared that the plaintiff had not paid or tendered before the institution of his suit the amount due to the defendant as prompt dower, urging that he had been excused such payment, but that on the Court finding against him on this point he paid the dower into Court, and obtained a decree for the possession of his wife.

This decree was upheld by the Chief Court on second appeal. *Mussammat Zebo* v. *Jewan Khan* (No. 35 of 1873, Civil) and *Muhammad Bakhsh* v. *Mussammat Begam* (No. 141 of 1884, Civil) cited. MUSSAMMAT MULKAN *v.* MUHAMMAD HUSAIN. **119 P R 1885**

24. *Custody of wife—Muzaffargarh district—Inter-marriage between Saiyad and Panja Shahi.*

In a suit for custody of wife, in which the defendant denied the marriage and alleged that as she was a Saiyad and the plaintiff only a Panja Shahi faqir, she could not marry him, the parties being of the Muzaffargarh district, found, that no such customary bar had been shown to exist between Saiyads and others, so that a valid marriage could not take place between them, the difference being rather a social than a legal one. MEHAR SHAH *v.* MUSSAMMAT ZAINAB.

101 P R 1886

25. *Suit for damages for breach of betrothal—Defendant justifying his refusal to carry out the oontract by custom—Onus probandi—Custom of Aroras—Riwaj-i-am.*

In a suit for damages for breach of a betrothal contract, the parties to which were Aroras, it appeared that the existence of the contract and the subsequent refusal to perform it were facts not denied by the defendant, the father of the girl, but that the contention was, that owing to physical infirmities produced by supervening disease, *viz.*, small-pox, contracted by plaintiff about two years after the betrothal, the plaintiff was not a fit person to contract marriage, and that the father of the girl was therefore excused by custom, from performing his

CUSTOM IV.—BETROTHAL, DOWER, MARRIAGE, DIVORCE—*contd.*

promise of giving the plaintiff his daughter in marriage. It was admitted that the custom by which the parties were governed in matters relating to contracts of betrothal was correctly stated in the *Riwaj-i-am* prepared at Settlement, which provided that "if after "betrothal the boy or girl * * * * * "contracts any disease whereby the healthy "condition of the body may be permanently "impaired * * * * the other party "is at liberty to cancel the betrothal."

Held, that the defendant, upon whom the *onus* under the circumstances lay, had failed to prove that the boy's health of body was permanently impaired, and that therefore the custom as embodied in the *Riwaj-i-am* justified him in refusing to perform the contract to give his daughter in marriage to the plaintiff's son. CHANDAN MAL *v.* MITTA RAM.

132 P R 1888

26. *Remarriage of divorced wife—Legitimacy of offspring—Ghumman and Chimmah Jats of Sialkot.*

Found, that by the custom of the Ghumman and Chimmah Jats of Sialkot, a woman who has received a written divorce from her husband, is free to contract a valid marriage, and the issue of the second marriage will be considered the legitimate children of their father. SUNDAR *v.* NIHALA.

84 P R 1889

27. *Issue by a Rajput woman who occupied the position of a* karewa *wife—Legitimacy—Brahmin agriculturists of Rupar* tahsil, *Amballa district.*

According to the custom obtaining among Brahmin agriculturists of the Rupar *tahsil*, Amballa district, the issue by a Rajput woman who stood in the position of a *karewa* wife is not excluded from inheritance. RALLA RAM *v.* ASA RAM. **48 P R 1890**

28. *Validity of marriage of a woman whose husband was alive, though insane—Legitimacy of issue of continuous cohabitation with such woman—Legality of custom—Legitimatizing such issue.*

A custom that a married woman may, in the lifetime of her first husband, contract a second marriage with another man, and which recognises the issue by the second marriage as the legitimate heir of the second husband, is bad as being immoral, and is one to which a Court of Justice will not give effect. INDAR *v* JEWA. **49 P R 1890**

29. *Essentials of marriage—What does not amount to marriage.*

Held, that a statement made by a Muhammadan father in his will that he had accepted a certain person as husband for his daughter is not equivalent to marriage. MUSSAMMAT GHULAM FATIMA *v.* MUSSAMMAT MAKSUDAN. **69 P R 1890**

30. Jhanjrara *form of marriage—Rajputs of sartora clan of Kangra.*

Found that by the custom of Sartora Rajputs of the Kangra district a *jhanjrara* or

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widow marriage is valid. MUSSAMMAT DEOKIE *v.* RAM DHAN. **98 P R 1890**

31. *Suit for damages for breach of betrothal contract—Recovery of money paid under the agreement.*

Held, that a suit for damages for breach of a betrothal contract is maintainable. Sums advanced to the father of the girl may be taken into consideration in assessing such damages.

Civil Ruling No. 128 *P. R.* 1889, explained and distinguished.

Civil Ruling No. 106 *P. R.* 1879, followed. JESA RAM *v* GHAUSAM. **141 P R 1890**

32. *Apostacy—Dissolution of marriage—Singha Jats of Tarn Taran.*

In a suit the parties to which were Singha Jats of *tahsil* Tran Taran, District Amritsar, *found* that no custom had been established whereby apostacy caused a dissolution of marriage. NARAINA *v.* HUKM SINGH.

152 P R 1890

33. *Sunni Muhammadan—Prompt dower—Restitution of conjugal rights—Plea of non-payment of prompt dower—form of decree.*

Non-payment of prompt dower is not a bar to the maintenance by the husband of a suit for restitution of conjugal rights, when the wife has once yielded her person to her husband. No. 164 *P. R.* 1889, *I. L. R. VIII All.* 149; *I. L. R. XI Mad.* 327 and *I. L. R. XVII Calc.* 170, followed.

But the Court, in the exercise of an equitable discretion, may, when granting the husband a decree for custody of his wife impose upon him, as a condition of the decree, the payment to her of the prompt dower. The principle appears to be that, when a plaintiff resorts to an Indian Court for specific performance of an obligation he has not an absolute right to insist upon the assistance of the Court. 11 *M. I. A.* 551, followed.

By Muhammadan Law, among the Sunni sect, a fair proportion of the dower must be considered as "prompt." What is a fair proportion must be determined with reference to the woman, the amount of dower, and, also what is customary. No. 109 *P. R.* 1880, followed.

Directions as to the form of decree. MUSSAMMAT AISHA BI *v.* MUHAMMAD SADIQ.

5 P R 1891

34. *Muhammadan Law—Prompt dower—Restitution of conjugal rights—Plea of non-payment of prompt dower—Condition of decree.*

In the case of a Muhammadan wife whose marriage has been consummated, and who was not a minor or insane, a plea of non-payment of dower is not a defence to a suit by the husband for restitution of conjugal rights.

At the same time, it is competent to a Court granting its aid to a husband seeking

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restitution of conjugal rights to grant it only upon terms of his securing the wife in the enjoyment of her personal safety and her other legal rights. *Bazloor Raheem* v. *Shums-un-nissa Begum* (11 *M. I. Apps.* 551; S. C. 2 Suth. P. C. Judgments, 59).

Whether the decree in favour of the husband ought to be made conditional on the payment of the prompt dower is a matter of judicial discretion to be exercised with reference to the circumstances of the particular case.

The Full Bench Ruling No. 164, *P. R.* 1889, adopted the view affirmed by the High Court of Allahabad in *Indian Law Reports, VIII All.* 149, and by necessary implication overrule the decisions reported as No. 35 *P. R.* 1873, and No. 45 *P R.* 1876.

[NOTE—For a more detailed consideration of these principles, *see* No. 5 *P. R.* 1891.]

JAN MUHAMMAD *v.* CHANGA. **14 P R 1891**

35. *Custody of minor wife by minor husband—Hindu Jats of Rohtak.*

In a suit the parties to which were Hindu Jats of Rohtak, *held*, that no custom had been proved by which a minor husband was entitled to the custody of a minor wife before she attains puberty. SHEO NAND *v.* SHEO CHAND. **64 P R 1891**

36. *Muhammadan Law—Dower—Debt—Necessity of a certificate under the Succession Certificate Act*, 1889.

Dower whether prompt or deferred, is until paid a debt due from the husband to the wife, and as such is subject to the provisions of the Succession Certificate Act, 1889.

Although the said Act by section 4, forbids the Court "to pass a decree against a debtor of a deceased person for payment of his debt" except on the production of a certificate, there is nothing in the Act to prevent the Court from entertaining a suit, or even indicating that ordinarily, in the absence of a certificate, an order of dismissal is the proper order to pass. The certificate may be produced after institution of the suit, but prior to decree. SAYAD AHMED SHAFI *v.* MUSSAMMAT BUNYADI BEGUM. **88 P R 1891**

37. *Indian Limitation Act*, 1877, *Schedule II, article* 103—*Dower—Demand and refusal, nature of.*

The demand and refusal to pay dower must be made in clear and unambiguous language, otherwise article 103, Schedule II of the Limitation Act, 1877, will not come into operation (*Cf. XV B. L. R.* 306.) MUSSAMMAT HAJRA *v.* MEHR ALI BEG.

63 P R 1892

38. The sons of a childless Sindu Jat proprietor, their mother being the wife of another man, must be deemed to be illegitimate. GANGA SINGH *v.* INDAR SINGH.

72 P R 1892

39. *Marriage by* chadar andazi*—Agricultural Brahmins of* tahsil *Batala, Gurdaspur district.*

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Found, in a suit, the parties to which were agricultural Brahmins of *mauza* Tara, in the Batala *tahsil* of the Gurdaspur district, that a marriage by *chadar-andazi* between a Brahmin and a widow, called a *dharel* wife, is not valid by custom. NANAK *v.* BUA DITTA. **5 P R 1893**

40. *Marriage with a Brahmin woman—Right of son to succeed—Illegitimacy—Diwania Rajputs—Zafarwal* tahsil, *Sialkot district.*

Found, after remand for further inquiry that by the custom of the Diwania tribe of Rajputs of the Zafarwal *tahsil* of the Sialkot district the issue by a *kareva* marriage of a Diwania Rajput with a Brahmin woman was illegitimate.

No. 29 *P. R.* 1883, referred to. NATHU *v.* GOKAL. **57 P R 1893**

41. *Suit by a Hindu Jat husband of Jullundur district for custody of wife whom he has deliberately abandoned.*

The plaintiff executed an instrument by which he deliberately abandoned his wife, recording that he gave her up and had no further claim upon her. He now sued for the custody of his wife, who was living with another man. The parties were Hindu Jats of different *gots* of Jullundur district. *Held* that the husband had deprived himself of all right to the custody of his wife.

Quære.—Whether by custom in the Jullunpur district a Hindu Jat can divorce his wife. MUSSAMMAT UTTI *v.* HIRA SINGH. **78 P R 1893**

42. *Renunciation of wife by husband—Validty of custom—Ghumman (Hindu) Jats of Gurdaspur* tahsil.

One Mussammat C. was originally the wife of K. S., but after K. S. had left her and his village she went to live with one I. S. and had by him a son, Lachu. K. S. returned to the village after an absence of eight or nine years but made no attempt to get back his wife. Upon the death of I. S. plaintiff sued to recover certain property left by the deceased, and contended (*inter alia*) that, even if custom recognized the union of Mussammat C. and I. S. as legitimate, such a custom would be immoral and should not be recognized by the Civil Courts.

Held, reversing the order of the Divisional Judge, that in cases such as the present the question of the validity of a marriage and the consequent legitimacy of children must be decided, not by any standard of abstract morality, but by custom, and that the question in each case being whether there has, in fact, been such a repudiation of the wife by the husband as amounts to a divorce, the reasonable inference from the circumstances of the present case was that K. S., on leaving his village, had renounced his rights as a husband and that his acts were equivalent to a divorce, entitling Mussammat C. to marry I. S.

Although divorce is not recognized *eo nomine* by Hindu Jats, it is in no way

repugnant to the tribal law, by which they are governed in such matters, that a man who takes a wife should have the power of repudiating her, and that, when so repudiated, she should be free to marry another man. LACHU *v.* DAL SINGH. **33 P R 1896**

43. *Custom—Succession—Right of offspring of permanent union to succeed as legitimate—Union of Jats with woman of Jhewar caste—No formal marriage.*

Found, that, by custom, when a permanent connection, like that of husband and wife, is formed by a Jat with a woman of a different caste (such as Nai, Jhewar Kalal and other similar castes), the children of such connection are treated as legitimate, whether or not a formal *chadar-andazi* has taken place between the parents.

In the present case, however, the Court found that an actual formal marriage had taken place between the father, a Jat of the Khaira *got*, and the mother, a Jhewari, of the defendant minor, who was therefore, in any case, entitled to succeed as legitimate. CHANDA SINGH *v.* MELA. **73 P R 1897**

44. *Legitimacy*—Chadar-andazi *marriage, proof of.*

Plaintiff claimed to succeed to part of the estate of one K. on the ground that he was the legitimate son of K. by one Mussammat R. D. who, he alleged, had been married by *chadar-andazi* to K. after the death of her former husband, one M. Defendants denied that Mussammat R. D. had ever been married to K. and that plaintiff was K.'s son. It appeared that after the death of M. K. and Mussammat R. D. lived together, and were regarded by the *baradari* as man and wife, and that plaintiff after K.'s death was entered in the revenue records as K.'s son. The parties were residents of the Garhshankar *tahsil*, Hoshiarpur district.

Held, that under the circumstances above mentioned it had been sufficiently proved that the ceremony of *chadar-andazi* had actually been performed, and that, therefore, plaintiff was entitled to succeed as prayed.

Quære: Whether in the said district the ceremony of *chadar-andazi* is necessary to validate marriage. HAMIRA *v.* SUNDAR. **13 P R 1898**

45. *Issue of woman whom a man could not legally marry, but treated by him as his wife—Varaich Hindu Jats of* tahsil *Gujranwala*—Riwaj-i-am.

Found, that no custom had been proved amongst Varaich Hindu Jats of Gujranwala *tahsil* whereby, when a proprietor has through out his life lived with a woman whom he could not legally marry and has treated her as his wife and his sons by her as ordinary sons, such sons succeed to his estate on his death. HAKIM *v.* JAGAT SINGH. **87 P R 1898**

46. *Husband not entitled to custody of wife once divorced.*

Where it appeared that plaintiff's wife, of whom custody was sought, had some time previously absconded with another man, against whom plaintiff instituted criminal proceedings under section 498 of the Penal Code, which he subsequently compromised by divorcing his wife, and that the defendant, R. S. thereafter married the said woman by *karewa*, *held*, that inasmuch as plaintiff had done all he could to divest himself of connection with, and responsibility for, his wife, the Court was not justified in putting in force the discretionary power vested in it and giving plaintiff a decree for the custody of his wife. HARNAM SINGH *v.* MUSSAMMAT KISHNI. **95 P R 1898**

47. *Sons by a Khatrani widow who lived with a Khatri as his* dharel—*Khatris of* qasba *Majitha, Amritsar district.*

Held, that the offspring of a union between a Khatri and a Khatrani widow, where there had been no marriage, but the latter lived with the former as his *dharel*, were illegitimate.

Held, also, that no amount of recognition could alter the character of the union, or give a higher *status* to the offspring than that of illegitimate children.

Held, further, that a custom entitling such children to succeed to their natural father's property after the death of his lawful widow and to the exclusion of his brother's sons would be invalid, as confounding concubinage with the true marriage relation, and conferring on illegitimate offspring the *status* and rights of legitimate children. DINA *v.* KARAM CHAND. **52 P R 1899**

48. *Marriage by* chadar-andazi *between a Jat and a Brahman woman—Legitimacy of children of such marriage.*

Found, that by custom when a permanent connection like that of husband and wife is formed by a Jat with a Brahman woman, the children of such connection are treated as legitimate whether or not a formal *chadar-andazi* has taken place between the parents.

Chanda Singh v. *Mela* (No. 73 *P. R.* 1897) and *Hamira and others* v. *Sundar* (No. 13 *P. R.* 1898), approved and followed. SAHIB DITTA *v.* BELA AND OTHERS. **50 P R 1900**

49. *Jat woman living as wife—Children—Legitimacy—Burden of proof.*

Held, that a woman who lived for 18 years with a Jat, bore him children and was treated as his wife, her daughters being married by their father among his own *baradari*, it is to be presumed that she was the lawful wife of such a man and that the child born within 280 days after the death of his father was legitimate.

The register of births kept by a chaukidar of a village is not by itself conclusive proof of its contents and that the burden of proof of illegitimacy lies on the party alleging it. MANGAL SINGH AND OTHERS *v.* MUSSAMMAT CHANDI AND OTHERS. **51 P R 1900**

50. *Union between a Kahnan Jat of the Gurdaspur district and his deceased brother's wife—Children of such union—Legitimacy of.*

CUSTOM IV.—BETROTHAL, DOWER, MARRIAGE, DIVORCE— *concld.*

Found, that among the Kahnan Jats of the Gurdaspur district when a man takes the wife of his deceased brother into his house without any marriage ceremony, the children of such connection are treated by custom as legitimate. CHET SINGH AND OTHERS *v.* ASU. **54 P R 1900**

51. *Widow's lien for dower—Partition—Consent of heirs to possession of widow.*

Where a Muhammadan widow, whose dower or any part of it is due and unpaid is in lawful possession of her deceased husband's property, she is entitled against the co-heirs (though not necessarily against any creditors of her husband) to retain possession of such property and object to partition until her dower debt is paid. MUSSAMMAT BENAZIR BEGAM *v.* AHMAD YAR KHAN. **80 P R 1900**

52. *Marriage—validity of a* chadar-andazi *marriage between a Minhas Rajput and a Mahajan woman of Gujrat district—Legitimacy of children of such marriage.*

Held, that a *chadar-andazi* marriage between a Minhas Rajput and a Mahajan woman of the Gujrat district is valid, and the son of such a marriage is entitled to succeed to the estate of his deceased father. KHAIRU *v.* FAKIR CHAND. **57 P R 1909**

53. *Custom—Marriage—Validity of* Karewa *marriage between a Jat and Koli woman—Succession.*

Held, that among Jats a *karewa* marriage of a Jat with a Koli woman is valid by custom, and such widow is entitled to succeed to the property of her late husband for her life. MUSSAMMAT AS KAUR *v.* SAWAN SINGH. **79 P R 1910**

CUSTOM V.—CESSES AND DUES.

—Birt—*Rule of succession in regard to* birt *dues.*

See CUSTOM VIII—INHERITANCE, WIDOW. **17 P R 1891**

—*Suit by owner of canal for a share of the produce of land watered therefrom—Customary dues.*

See JURISDICTION—CIVIL OR REVENUE COURTS. **103 P R 1887**

—*Hak-buha.*

See JURISDICTION OF CIVIL OR REVENUE COURTS. **11 P R 1890 Rev.**

—*Kamiana—Non-agriculturist resident in village—Village cess.*

See JURISDICTION OF CIVIL OR REVENUE COURTS. **49 P R 1891**

—*Suit for value of skins of certain animals—Defendants pleading custom authorising them to secure such skins from the* chumars *of the village.*

See SMALL CAUSE COURT, JURISDICTION OF. **34 P R 1887**

—*Suit for* ' Kudhi Kamini '—*Ground rent.*

See SMALL CAUSE COURT ACT, 1865, SECTION 6. **21 P R 1888**

—*Suit for* Atrafi *dues.*

See SMALL CAUSE COURT ACT, 1865, SECTION 6. **81 P R 1888**

CUSTOM V.—CESSES AND DUES —*contd.*

—*Haq Malikana—Customary dues.*

See SMALL CAUSE COURT ACT, 1865, SECTION 6. **125 P R 1888**

—*Suit for* Dharat.

See SMALL CAUSE COURT ACT, 1865, SECTION 6. **29 P R 1889**

See CAUSE OF ACTION. **28 P R 1894**

—*Suit for* birt *realized by defendant and claimed by plaintiff as payable to him.*

See SMALL CAUSE COURT ACT, 1887, SCHEDULE II, ARTICLE 13. **81 P R 1889**

1. Talukdari *dues.*

Plaintiff, in August 1853, obtained a decree constituting him *Talukdar*, of the village of Noon in the Sialkot district, with a right to levy 12 maunds of grain per annum. In the Settlement record however which was subsequently prepared no mention was made of these *talukdari* dues. In November 1864 plaintiff sued to recover these dues for three years and obtained a decree from the Superintendent of Settlement which was confirmed by the Extra Assistant Commissioner. On appeal however to the Commissioner of Settlements he rejected the claim on the ground that plaintiff had received nothing since 1852, that he ought to have sued (Financial Commissioner's Book Circular XLVI of 1860, para. 7, Rule VI), within six years of the decree passed in 1853 and that as he had not done so the claim was barred by limitation. *Held*, by the Financial Commissioner, that even if the dues had not been realized year by year that was not sufficient reason for refusing plaintiff a decree; that plaintiff had up to twelve years from date of decree in 1853 wherein to sue and in a suit brought within that time the right to recover for three years' arrears. MEER BUKSH *v.* MEHTAB. **1 P R 1867 Rev.**

2. *Lambardari.*

Held, that *lambardari* dues are not claimable from a mafidar unless he is also a proprietor in the village. HUZAREE LALL *v.* SALIG RAM. **42 P R 1867**

3. The right to levy *lambardari* cesses at rates fixed at Settlement accrues year by year, and is not necessarily extinguished by disuse for several years though such disuse may lead to a presumption of abandonment. GOLAB SINGH *v.* BOOTA. **75 P R 1867**

4. *Marriage fees.*

The collection of any cess (*e.g.*, marriage fees) not entered in the Settlement record, *held* to be illegal. *Junga* v. *Nagur Mull* (No. 12 of 1868, Civil); unless there is a custom to collect the cess. ZUBURDAST *v.* MAHOMED BUKSH. **50 P R 1869**

5. *Marriage fees—Right of lambardar and co-sharers to them.*

The right to *huq bukree* or marriage fees does not generally belong to the lambardar solely, by virtue of his office, but is an incident attached to the proprietary right of the land occupied by the cess-payers. ZUBURDAST *v.* MAHOMED BUKSH. **50 P R 1869**

CUSTOM V.—CESSES AND DUES *contd.*

6. Puchotra — Wajib-ul-arz —*Settlement record—Alteration of, without sanction of Government.*

The parties to this suit signed the *Wajib-ul-arz* of their village at the Settlement in 1853, declaring they had never taken, or given, and did not intend to take, or give *puchotra*, the arrangement being made with the consent of the Settlement Officer and ratified by Government. In 1864, upon a reference from the Commissioner, Lahore, the Financial Commissioner, without the sanction of Government directed all claims to *puchotra* to be heard and decided on their merits, notwithstanding such entries in the *Wajib-ul-arz* which he held did not bind the parties.

Held, by BOULNOIS AND LINDSAY, JJ., that a revision or rectification of a Settlement record (*Wajib-ul-arz*) to be binding on the parties must be ordered by Government, and that the Financial Commissioner had no authority to declare that the existing entries did not bind the parties; that the provisions of the *Wajib-ul-arz* are binding till properly set aside, and the suit would not lie.

Held, by CAMPBELL, J., that the matter was not one for the parties to agree about, being a definite arrangement by Government for the remuneration of the lambardar; that no agreement on the subject should have found its way into the *Wajib-ul-arz*, and that the lambardar was entitled to his dues notwithstanding such entry. BHUGWAN SINGH *v.* KHAN SINGH. **55 P R 1871**

7. Puchotra—*Share of Sudder Malguzar—Claim to a recurring claim.*

In the village there were two bodies of cultivators of different castes. Plaintiff and defendant were lambardars of their respective castes. Plaintiff's caste paid through him two-thirds of the Government revenue, and defendant's caste paid the remaining third through defendant. *Held*, that plaintiff was entitled to *puchotra* in proportion to the amount of revenue for which he was Sudder Malguzar—*viz.*, two-thirds, and that the claim to *puchotra* being a recurring one, plaintiff was not precluded from now recovering two-thirds merely because he had in the time of defendant's predecessor drawn only one-third. BUDHA *v.* GULSHER. **14 P R 1873**

8. *Atrafi, or Kamiana.*

Whether a particular class are liable to pay the cess, is a question of custom. *Bhuggo* v. *Peer Buksh* (No. 36 of 1867, Civil), and IMAM BAKSH *v.* NAZAR MAHOMED. **65 P R 1873**

Quaere: whether the tax is legal under the Land Revenue Act. IMAM BAKSH *v.* NAZAR MAHOMED. **65 P R 1873**

9. *Suit for* puchotra—*Agreement not to take pleaded in bar—Punjab Government Circular Order, No.* 536, 16*th April* 1872.

Plaintiff and defendant were brothers, and in 1864 litigation arose between them as to their respective shares in Pindi Gheb. The

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suit was compromised, and it was agreed that plaintiff and defendant were thenceforth to own certain specified shares, and plaintiff (who was village headman) was to release defendant from payment of *puchotra*.

Plaintiff, notwithstanding this compromise, sued for Rs. 69-2 on account of *puchotra* for the year 1928, defendant not having been called upon to pay *puchotra* since 1864. Defendant pleaded the compromise abovementioned in bar of this suit. The Court of first instance decreed for plaintiff, but the Commissioner found for the defendant on the ground that the agreement of 1864 was binding on the parties. *Held*, that under Rule 9 of the Rules framed under sections 6 and 65 of the Punjab Land Revenue Act, plaintiff was entitled to recover the *puchotra*, notwithstanding the agreement of 1864. MALIK OULIA KHAN *v.* MALIK FUTTEH KHAN. **73 P R 1873**

10. *Grazing dues—Revision at new Settlement.*

Plaintiff, jagirdar and land-owner of *mauza* Hajipur, *Zilla* Karnal, sued defendants, his cultivators for grazing dues basing his claim upon the *wajib-ul-arz* of 1856, and decrees which he had formerly obtained for grazing dues against some of the defendants. In the Regular Settlement of 1847 the residents of the village were specially exempted, and this provision remained in force till 1856, when a revision was made imposing the dues.

Held, that plaintiff's rights to the dues was not established by custom or by the *wajib-ul-arz* of 1856 (for a new Settlement could not take away from any tenant rights acquired under or recorded in the old settlement) ; and that the decrees in former suits were relevant evidence under the Evidence Act, section 43, but not sufficient to bind those who were not parties to the suits, though they established the right of the plaintiff as *res judicata* against those defendants who were parties thereto. AZMUT ALI KHAN *v.* HARNAM. **61 P R 1875**

11. The *wajib-ul-arz* did not show any existing custom to pay *atrafi*, but there was evidence that at intervals the proprietors managed to levy it from the *kamins* at various rates, and had brought two or three suits to recover the cess, which suits were compromised. *Held*, that a right to demand *atrafi* from the *kamins* had not been established. MOUJDIN *v.* WAZIR SINGH. **107 P R 1876**

12. *Right of lambardar to marriage fees.*

The post of lambardar does not give its holders the exclusive right to levy marriage fees against his co-sharers in the village. MADAT KHAN *v.* TORA KHAN. **28 P R 1877**

13. *Chowdriat dues—Nowshera bazar*

Plaintiff sued a for declaration of his right to one-fourth seer per maund on all foreign grain weighed within the Nowshera bazar

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in lieu of service as Chowdry, according to ancient custom. *Found*, by the Full Bench that no such custom was proved ; that it was only with the consent of the shop-keepers, defendants, that plaintiff, as Chowdry, could levy the fees ; and that unless with such consent, or as remuneration for services actually rendered at the request of parties, plaintiff was not entitled to levy the fees. DEVI DAS *v.* NARAINA. **45 P R 1878**

14. *Rayatana or Rayatgiri dues—Umballa city.*

Found that, by custom, *rayatana* or *rayatgiri* dues are leviable from owners of houses in *Mohalla* Mehr in the Umballa city. AHMED HUSSAN *v.* MAHOMDA. **14 P R 1879**

15. *Levy of* Thana Patti, *or marriage fees.*

A. S. and 35 others, proprietors of *Patti* Thambu Sahib, *Kasba* Mokatsar, district Firozpur, sued D. S. and 6 others, tenants with and without occupancy rights, for declaration of their right to levy *Thana Patti*, or marriage fees at weddings. The former Settlement contained a provision about the division of such dues among the proprietors, but the present Settlement papers and the *Riwaj-i-am* made no mention of them at all.

Held, by the Chief Court, affirming the finding of the Courts below, that the entry in the first Settlement record was only an agreement between proprietors, and did not bind the defendants D. S and others ; and that the plaintiffs A. S. and others, having failed to prove a custom of recovering such dues, or the continuous levying of them from defendants since Settlement, their suit was rightly dismissed. ARUR SINGH *v.* DAL SINGH. **40 P R 1879**

16. Atrafi *dues—Co-proprietor carrying on trade as artizan—Onus of proof.*

Plaintiffs sued to recover from defendants, proprietors of *Mauza* Chougawan, *tahsil* Moga, District Firozpur, *atrafi* dues by reason of their being carpenters by caste and of their plying their trade as artizans in addition to cultivating their lands. *Held*, that the *onus* lay upon plaintiffs to prove that they were entitled by custom to realize *atrafi* from co-proprietors carrying on trade as artizans, and that, not having discharged themselves of this *onus*, they were not entitled to recover. NIDHANA *v.* SODHI VIR SINGH. **49 P R 1879**

17. Kuri Kamini *dues—Delhi district.*

Found, that *Kuri Kamini* dues were leviable from shopkeepers in *mauza* Bahalgarh, *tahsil* Sonepat in the Dehli district. DEWAK RAM *v.* KOUR PIRTHI SINGH. **74 P R 1879**

18. Dharat—*Mauza Booteewala*, tahsil *Mukhtsar.*

A custom found to exist in *mauza* Bhooteewala in the Muktsar *tahsil*, Firozpur district, whereby *dharat* is leviable on grain sold in the village. NAND SINGH *v.* BHOLA SINGH. **89 P R 1879**

19. Kamiana *dues, collection not authorised by entry in Settlement papers—*

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Legality of collection.

Where plaintiffs, the proprietary body claimed payment of *kamiana* from defendants, who were non-agricultural residents in the village ; and there was no provision in the Settlement papers by which the collection of such dues was authorised :

Held, that where the collection of *kamiana* dues is authorised by custom, such collection may be lawful, although the proceeds have not been taken into account at Settlement or the collection been sanctioned by the Local Government. KHODA BUKSH *v.* DULLA. **118 P R 1879**

20. *Marriage fees, customary right to levy—Entry in Settlement Records.*

Held, (applying the principle of the decision in *Punjab Record* Civil Ruling No. 118 of 1879) that the existence of a customary right to levy marriage fees may be proved independently of the Settlement record, and if proved may be enforced. MADA KHAN *v.* MALLA SINGH. **136 P R 1879**

21. Hag tora *or marriage fees*—*Mauza Hoti, Eusafzai—Legality of cess.*

In a suit by the Khan of Tuppa Hoti, in the Eusafzai district, to recover a sum of money as *haq tora*, or marriage fees, from defendant, a Hindu shopkeeper residing in *mauza* Hoti, on the occasion of his marriage, the allegation for the plaintiff being that by custom he was entitled to levy such fees, *held, per Curiam*, that the plaintiff's suit must be dismissed.

Per PLOWDEN, J.—Because, assuming the alleged custom to be proved, it is not a valid custom such as can be enforced in a Court of law.

Per SMYTH, J.—Because it is shown that after the British annexation such fees were abolished by the British Government in Eusafzai and it is not proved that, notwithstanding the orders for such abolition, the fees have been since levied generally and as of right from the non-proprietary residents. GANDA *v.* KHWAJA MUHAMMAD KHAN. **64 P R 1880**

22. Muhtarfa, *or* Haq Bua—*Burden of proof—Hazara Settlement Regulation, section 48—Right to levy the cess.*

In a suit for *muhtarfa*, or ground-rent, by the proprietors of Kot Najibulla, against defendants who were non-proprietary residents (weavers) of the same village, it appeared that the plaintiffs were entered in the *Wajib-ul-arz* of the village as the owners of the sites of the houses to which the suit related, and the defendants as owners of the materials or superstructure of the houses, but in the column for cesses payable by the occupants, no entry whatever appeared opposite to the names of any occupants.

Held that, under section 48 of the Hazara Settlement Regulation, the defendants must be presumed not to be liable to pay any dues, or *haq bua*, to the proprietors of the site, and the burden of rebutting this presumption rested upon the plaintiffs, the proprietors of the sites.

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Held, further, that the plaintiffs had failed to rebut such presumption in the present case, and had not proved that they were entitled to levy the dues. MIR AHMAD *v.* AMIR. **53 P R 1881**

23. Mauza *Nizamabad, Wazirabad—Right of proprietors to proprietary dues on sales of houses.*

A custom found to exist in *mauza* Nizamabad in the Wazirabad *tahsil* of the Gujranwala district, under which the proprietors are entitled to ¼th of the proceeds of sales of houses in the village as proprietary dues.

Held also, that such a custom is not contrary to justice, equity, or good conscience. RULDU *v.* FATTEH ALI. **27 P R 1882**

24. Mauza *Chandnawa, Firozpur—Right of lambardars to levy* atrafi *from hereditary cultivators also working as artizans.*

In a suit by the lambardarsof *mauza* Chandnawa in the Firozpur district to recover certain arrears of *atrafi* dues from several defendants who were alleged to be liable to pay the cess by reason of their being artizans, *held*, that the plaintiffs had failed to prove that by custom they were entitled to levy such dues from hereditary cultivators in the village, whenever such cultivators, being artizans, plied their trade as artizans, as well as cultivating their lands. *Nidhana* v. *Sodhi Vir Singh* (No. 49 of 1879, Civil) cited. KAHNA *v.* DYAL SINGH. **126 P R 1882**

See also HIRA *v.* KHAZAN SINGH. **126 P R 1882 Note**

25. *Mauza Moga, Firozpur—Right to levy* kamiana—*Abandonment of right.*

In a suit to recover *kamiana* brought by the lambardars of *Tarf* Jit Singh, *mauza* Moga in the Firozpur district, against the defendants, who were weavers and mochis, residents of the same *Tarf*, *held*, that abandonment of the right to collect such dues from artizans who were not proprietors nor hereditary cultivators in the village was not proved, and that by custom all the defendants (except one, who appeared to be a hereditary cultivator) were liable to pay such dues. KAMMAN *v.* BUDH SINGH. **146 P R 1882**

26. *Betrothal fees—Right of ala lambardar to levy from Khatri.*

In a suit by the ala lambardar against the defendant, who was a Khatri, for one rupee on account of *sarpanchi* dues in connection with a betrothal, *held*, that the evidence failed to prove that a custom had always existed enabling headmen to levy fees on the betrothal of sons, and that this custom applied to Khatris. *Madat Khan* v. *Malla Singh* (No. 136 of 1879, Civil) referred to. DEVI DITTA *v.* GOBIND SAHAI. **118 P R 1883**

27. *Marriage dues—Agreement at Settlement—Oppressive exaction.*

In a suit, the parties to which were both proprietorsof*mauza* Charsadda in thePeshawar district, the plaintiff sued as lambardar to recover certain marriage dues on account of the marriage of defendant's son. The lower

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Courts decreed Rs. 7, finding that, by the terms agreed on at Settlement, and attested by all the proprietors, the lambardar was entitled to collect this sum, of which one rupee went to himself and Rs. 6 to certain specified village servants. On second appeal it was contended that the levy of the dues was contrary to custom and oppressive.

Held, that as the due was levied in accordance with the above agreement, and formed a portion of the remuneration of the lambardar and of the village servants specified in the agreement, it could not be held to be oppressive to levy it, and no question of custom arose. *Madat Khan* v. *Tora Khan* (No. 28 of 1877, Civil), *Arur Singh* v. *Dal Singh* (No. 40 of 1879, Civil), and *Ganda* v. *Khwaja Muhammad Khan* (No. 64 of 1880, Civil) cited and distinguished. ABDUL HANAN *v.* MUHAMMAD AKRAM KHAN. **140 P R 1883**

28. Mauza *Koofri*, tahsil *Talagang, Jhelum—Marriage fees.*

In a suit against the defendants, who were mochis, residents of the village of *mauza* Koofri in the Talagang *tahsil* of the Jhelum district, for one rupee each, as dues alleged to be payable to the plaintiff on the marriage of their daughters, *found*, that no custom was established under which the lambardars of the village were entitled to levy the fee claimed from the present defendants. KARIM BAKHSH *v.* SHARFA. **7 P R 1884**

29. Mauza *Dhodi, Pind Dadan Khan—Marriage fees.*

In a suit by one of the proprietors (the sole lambardar) of *mauza* Dhodi in the Pind Dadan Khan *tahsil*, to recover Rs. 5 as *hak bakri* or marriage fees from the defendant, a Tirkhan resident, and occupancy tenant in the village found, that a custom existed entitling the plaintiff to the fee at the rate claimed. *Zuburdust* v. *Mahomed Buksh* (No. 50 of 1869, Civil) cited. KADA *v.* CHOUDHRI FATTEH ALI. **20 P R 1884**

30. Mauza *Karmunwala*, tahsil *and* zilla *Firozpur—Marriage fees—Liability of hereditary cultivator who has kamins of his own.*

In a suit for marriage fees brought by the lambardars of Karmunwala in the Firozpur district against a Jat hereditary cultivator of the village, *held*, that no custom was established under which an occupancy tenant, who has *kamins* of his own, and contributes to the support of a *faqir* of his own, is bound to make any payment to the lambardars on occasion of marriages in his family. MALHA *v.* BAMAN. **31 P R 1885**

31. Mauza *Dudi, Pind Dadan Khan—Right of lambardar to levy marriage fees—* Wajib-ul-arz.

A claim by the lambardar of *mauza* Dudi in the Pind Dadan Khan *tahsil* for Rs. 5, on account of "*hak bakri*" (a cess levied at the above rate for every daughter's marriage) against a shopkeeper and non-proprietor in the village, decreed in accordance with the entry in the *Wajib-ul-*

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arz of the village, defendant having failed to prove that such entry was incorrect.

Kada v. *Choudhri Fateh Ali* (No. 20 *P. R.* 1884), observed upon and explained PHIRAYA *v.* SHAHBAZ KHAN. **30 P R 1888**

32. Haq-tora—*Betrothal fees—Right of lambardar to levy on behalf of menials—Kandi Patti Khel Adenzai.*

In a suit by the lambardar against the defendant, a carpenter and proprietor of the house for Rs. 12 on account of *hak-tora* in connection with a betrothal and marriage.

Held, that the evidence failed to prove that a custom existed enabling the headman as such to levy fees from proprietors of houses for payment to certain village menials. NUR GUL *v.* HABIB KHAN. **80 P R 1890**

See ALSO SMALL CAUSE COURT ACT, 1865, SECTION 6. **33 P R 1887**

33. *Village dues—*Atrafi*—Public policy.*

The levy of *atrafi* from such persons as are liable to pay the same to the village proprietary body is not opposed to public policy. CHAUGATTA *v.* NAND SINGH. **18 P R 1892 Rev.**

34. *Custom, validity of—Unreasonable custom—Chuhras of Kasur, Lahore district.*

Plaintiffs, certain Chuhras of Kasur, claimed to be entitled by custom to half the value of the skins of all animals dying in the said town, as against Chuhras who actually disposed of the carcases, and would ordinarily have been entitled to the whole value of the skins.

Held, by the Full Bench, that such custom was invalid on the ground that it was unreasonable. BUDHA *v.* NANAK. **2 P R 1896 F B**

35. *Custom—Suit for value of buffalo skin in return for services rendered—Reasonable custom.*

Held, that a custom under which plaintiffs claimed the value of a buffalo skin on the ground that they were entitled under the *Wajib-ul-arz* to the skin in return for certain customary services (*begar*) rendered by them was not unreasonable or invalid.

No. 2 *P. R.* 1896 and No. 49 *P. R.* 1897 distinguished. PARTAB SINGH *v.* BARU. **11 P R 1900**

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See JURISDICTION OF REVENUE COURT. **71 P R 1875**, **40 P R 1876**, **97 P R 1876**

See JURISDICTION OF SMALL CAUSE COURT. **110 P R 1876**, **80 P R 1877**

See PARTITION. **17 P R 1867 Rev.**, **8 P R 1868 Rev.**, **66 P R 1869**

See TENANCY ACT, SECTION 9. **2 P R 1871 Rev.**, **33 P R 1871**, **30 P R 1872**, **49 P R 1874**, **9 P R 1876**, **20 P R 1876**

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—Ala *and* adna *maliks—Re-appearance of submerged land—Right of possession*—Wajib-ul-arz.

See CONSTRUCTION OF DOCUMENT. **125 P R 1889**

—*Construction of document—" Kul haqiat Ka tisra hissa "—Inclusion or exclusion of share of* shamilat

See CONSTRUCTION OF DOCUMENT. **42 P R 1897**

—*Suit to restrain proprietors of one* patti *from closing pathway over the* shamilat *of the village—Necessity to implead other proprietors of village.*

See JOINDER OF PARTIES. **41 P R 1888**

—*Parties to suit—Dispute as to* shamilat—*Necessity to implead all co-sharers.*

See JOINDER OF PARTIES. **108 P R 1889**

—*Portion of* shamilat—*granted to ala-lambardar in virtue of his office—Landlord and tenant.*

See JURISDICTION OF CIVIL OR REVENUE COURT. **66 P R 1893**, **123 P R 1893**, **104 P R 1894**, **105 P R 1894**, **23 P R 1895**, **28 P R 1895**

—*Suit for declaration of plaintiff's right to a partition of the village common land without consent of defendants.*

See JURISDICTION OF CIVIL OR REVENUE COURTS. **82 P R 1893**

—*Suit for possession of portion of common land allotted by instrument of partition.*

See JURISDICTION OF CIVIL OR REVENUE COURTS. **63 P R 1894**

—*Suit for pre-emption - Sale of separate holding with share of* shamilat—*Physical possession—Limitation.*

See LIMITATION ACT, 1877, 2ND SCHEDULE, ARTICLE, 10 **65 P R 1889**

—*Occupancy rights in* shamilat—*Proprietor—Agreement.*

See OCCUPANCY RIGHTS. **155 P R 1889**

—*Pre-emption—Preferential rights of owner of land in same* taraf *to rights of purchaser, owner of land in* shamilat.

See PRE-EMPTION, RIGHT OF, IN VILLAGES. **169 P R 1889**

—*Pre-emption—House on village site—Suit between non-proprietary residents in village—Vicinage—Special custom.*

See PRE-EMPTION, RIGHT OF, ON ACCOUNT OF VICINAGE OR RELATIONSHIP. **85 P R 1893**

—*Suit by non-proprietors for declaration of right to hold their houses free from certain fees and dues—Right to maintain suit.*

See SPECIFIC RELIEF ACT, 1877, SECTION 42. **48 P R 1887**

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CUSTOM VI.—COMMON LAND—*contd.*

—*Grant of a portion of the village common land to a person holding the office of* ala *lambardar rent free—Suit for dispossession by the proprietors of the land—Landlord and tenant—Punjab Tenancy Act, 1887, section 4, clause 5—Jurisdiction.*

See JURISDICTION OF CIVIL OR REVENUE COURT. **101 P R 1911**

—*Mortgage of common land—Redemption—Right of one of several joint mortgagors to redeem the whole estate.*

See MORTGAGE. **2 P R 1904**

1. *Joinder in suit of the full proprietary body.*

Where the right to common land was in issue, *held*, that the whole proprietary body should be parties to the suit. HOOKMA SINGH *v.* FUTTEH SINGH (*No.* 103 *of* 1866, Civil) and KAHN SINGH *v.* GOBIND DASS. **39 P R 1866**

2. Where a person was found to be owner of a holding in a village, *held*, that the presumption was that he was entitled to a share in the common land; but if there had been non-user for more than twelve years, the right must be presumed to have been abandoned. KISHEN LALL *v.* MOOTSUDDEE. **52 P R 1866**

3. *Digging* kunker.

A deed purporting to convey the right of entry to dig *kunker* in common land, is not valid unless all the proprietors join in it. ANDERSON *v.* TAYLOR. **70 P R 1866**

4. *Ejectment by others than the full proprietary body.*

The user of *shamilat* land is very different from the occupation of a plot of private property. The owner of private lands may be taken conclusively to part with the property which another occupies without leave or license for seventeen years, but there are circumstances in the case of common land belonging to a village, to rebut any such presumption. A suit was brought by a lambardar, backed by the majority of the proprietors, who were then proceeding to partition, to eject an occupier of 17 years' standing. Thirty-eight proprietors were in favour of ejectment; and fourteen for the defendant's remaining. *Held*, that these fourteen should be joined as defendants; and on that being done, a decree might be passed to eject the occupier on giving compensation. GULAB SINGH *v.* HEERA LAL. **92 P R 1866**

5. Delay on the part of the co-proprietors in objecting to a sale by one of the proprietary body, entitles a *bonâ fide* purchaser for value to be maintained in possession. BUKSHAN *v.* NOOR MAHOMED. **96 P R 1866**

6. *Ejectment of tenant-at-will by proprietary body.*

A *khewatdar* cultivating common land by consent of his co-proprietors, may become a tenant-at-will of the rest of the co-proprietors, and may be ejected; but the act of ejectment must proceed from the proprietary body generally and not from a portion only. NEHAL SINGH *v.* RUTTUN SINGH. **99 P R 1866**

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7. *Sub-proprietors' right.*

In certain cases sub-proprietors may receive a proportionate share in the *shamilat*. Both parties were Gukkurs, the dominant tribe in the village. Appellants had been out of proprietary possession for 20 years and were recorded as *malik qabzas*; on this ground the lower Courts would not allow appellant a share in the *shamilat*. *Held*, that as the Settlement Officer had intermediately recognized a distinction between *malik qabzas* who were Gukkurs and *malik qabzas* who belonged to other castes, the rule which excluded sub-proprietors from a share in common land might be relaxed, and that appellants should receive a share in the *shamilat* proportionate to their *khewat* holding or actual possession. ROOSTUM KHAN *v.* AZEEMOOLLAH. **5 P R 1867 Rev.**

8. *Hereditary cultivator.*

Under the general system of property established in this province, a hereditary cultivator is not entitled to a share in the *shamilat* or common land of the village. Therefore a claim to such share set up by a hereditary cultivator was, in the absence of any express provision on the subject in the *Wajib-ul-arz*, held to be untenable. AKBUR *v.* FUTTEH SHAH. **8 P R 1867**

9. *See* 110 P. R. 1876 BELOW FOR. **18 P R 1867**

10. *Mafidar's right.*

A right to share in the common land does not necessarily attach to the *biswadars* of a *mafi* plot within the village. ABDOOL SUMUND *v.* ROOLDOO. **45 P R 1867**

11. *Lambardar.*

The office of lambardar confers no right *per se*, to dispose of the common land. NEBA MULL *v.* ROOPA **48 P R 1867**

12. The devotion of a piece of land (not being *gora deh* or common building site) to a common village purposes, as the location of a *faqir*, requires to be established by long use for the particular object; failing which, if the occupant be not one of the proprietary body he can be ejected by the majority of the proprietors. HEERA MULL *v.* GOLAB SINGH. **56 P R 1867**

13. Artizans located on the common by the majority of the proprietors cannot, in the absence of special damage to any one and of provision by the contrary in the *Wajib-ul-arz*, be ejected to the majority. LUCHMUN *v.* TEJ RAM. **43 P R 1868**

14. A *mafidar* is not entitled to share in the *shamilat*, merely by reason of his being an assignee of the Government revenue; but if he be also proprietor of the *mafi* holding, whether he is entitled to share in the *shamilat* or not will depened upon how he

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obtained the proprietorship of that holding. BUSSAWA SINGH *v.* GOLAB SINGH.

44 P R 1868

15. *Waste Land.*

The waste land attached to a *mehal* consisting of an aggregate of independent wells, does not necessarily belong exclusively to the owner of the site of the principal village which gives its name to the whole *mehal.* KAEM SHAH *v.* MOHUMDA. **64 P R 1868**

16. A *faqir* who has been allowed without opposition to squat on the common, and to plant trees thereon and enjoy the fruit, cannot be disturbed by hereditary cultivators of the land, though it is open to the proprietary body to dispute his right. GOORDIT SINGH *v.* GABEEA. **103 P R 1868**

17. *Co-parceners—Allotment on partition.*

The *Wajib-ul-arz* gave to the lambardars the right of allocating *shamilat* land to the cultivators, and reserved the prior right to a co-parcener to break up land bordering on his cultivated field ; but it was not clear from the *Wajib-ul-arz* whether sanction of a lambardar was required for breaking up *shamilat* land not situated on the borders of his field. The land in dispute did not border upon the cultivated fields of the plaintiff, who was a lambardar, nor of defendants, whose eldest brother was also a lambardar. The land was first broken up by defendants, but plaintiff objected to this from the first, and never assented to defendants' possession. *Held*, that until application was made to divide the *shamilat*, the defendants' possession must be maintained, but not so as to necessitate allotment to them of the land in dispute on a partition of the *shamilat*, and that if the land should be allotted to another co-parcener, defendants must surrender possession. KURM *v.* HUSSUN ALI.

34 P R 1869

18. A claim allowed where the consent of the proprietary body had been given some years before in partition proceedings. *Ameera* v. *Dan Singh* (No. 25 of 1868, Civil) ; and where the *Wajib-ul-arz* provided for it. GOLAB SINGH *v.* KANH SINGH. **84 P R 1869**

19. *Transfer—Consent of joint proprietors.*

With regard to village affairs, a *temporary* alienation of a portion of joint-property without the consent of the joint-owners may be valid. The allotment of a portion of *shamilat* land to a head lambardar is not a transfer which requires the consent of all the shareholders. JUGGUT SINGH *v.* BAGH SINGH.

4 P R 1870 Rev.

20. *Gift of share in divided land—Right of donee to* shamilat.

Defendants held certain shares in the divided land of the village by gift from the original proprietors. *Held*, that the defendants were entitled in virtue of their separate holdings to share in the common land

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according to the usual division of the profits of the common land among the proprietary body. MAHOMED SADIK *v.* ABDULLA.

52 P R 1871

21. *Appropriation of part of* shamilat—*Assent of majority of proprietors disregarded.*

The contention between the parties was as to whether a piece of *shamliat* land should be used for the site of a serai. Inasmuch as it appeared that the dispute had arisen out of the attempts of certain individual members of the proprietary body to get possession of a piece of *shamilat* ground for themselves, and that the object for which the ground was to be used was only colourable, the Chief Court *held* that, whatever might be the rights of disputing parties in a village community where a *bonâ fide* dispute had arisen as to the use of the common land, it could not allow the assent of the majority of the proprietors of the *thoke* to which the *shamilat* belonged, to outweigh in this case the declared wish of the minority. HIDAYAT ALI *v.* AKBAR ALI.

76 P R 1873

22. The proprietary body of *muaza* Chatera, *zillah* Rohtak, gave a portion of the *shamilat* as *dhol* (or rent free) to a *faqir*. The proprietors of Pana Begwan, objecting to the conduct of the *faqir*, sued to oust him, the proprietors of Pana Chaja wishing to retain the grantee in possession.

Held, that the suit of the proprietors of Pana Begwan would not lie ; that their proper course was to apply for partition RATU DAS *v.* INDRAJ **40 P R 1875**

23. *Grazing—Rights of common pasture.*

The *Wajib-ul-arz* of village B was as follows : " The cattle of the entire village, without distinction of proprietors and non-proprietors, shall continue to graze in future in the same manner as they have grazed from old times ; no grazing dues shall be collected." The plaintiffs resided elsewhere, and resorted to village B merely for the purposes of cultivation.

Held, that their right to depasture cattle free of charge in village B was limited to such cattle as they *bonâ fide* used for cultivating the lands held by them in that village, and did not extend to all the cattle they might possess; but that the right extended to all parts of the waste of village B on which the proprietors grazed their cattle. A claim asserted by the proprietors of one village to common of pasture in another, must be supported by the very fullest and clearest evidence when the *Wajib-ul-arz* is silent on the point. BHUP SINGH *v.* SARDHA SINGH. **108 P R 1876**

24. No decree regarding rights in common land can be made adverse to the proprietary body unless they are parties to the suit either as a body or through their ordinary representatives. BOOTA *v.* WUZEERA (*No.* 18 *of* 1867, Civil), and JAFIR KHAN *v.* FIROZ KHAN. **110 P R 1876**

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25. *User by kamins—Right to continue the user.*

Where certain paper-makers had by the consent of the proprietary body erected trade-buildings on the common land a few years previously, and a partition had followed, *held*, that the purchaser from the proprietor to whom fell that portion on which the buildings stood could not eject the paper-makers. DASONDHI *v.* GHULAM ALI.

3 P R 1877

26. The plaintiffs, weavers, claimed the right to have and use holes or pits in the *abadi* for the purpose of their trade, the defendant, a proprietor, to whom that portion of the *abadi* had been allotted on partition, resisting the claim. The plaintiffs had used the holes for many years, and the Lower Court found that by custom they were entitled to use them.

Per BOULNOIS, J.—It is open to the proprietary body to allow persons to occupy part of the commom land for their use and benefit in such a way as to acquire a right of user ; and under some circumstances, especially after a long lapse of time, it is not open to the proprietary body, or individuals claiming under it, after a partition, to oust the occupants. It is not a question whether there has been occupation for 12 years or not.

Per BOULNOIS and CAMPBELL, JJ.—The custom having been satisfactorily found by the lower Courts, the plaintiff's claim must be admitted.

Per LINDSAY, J.—The custom had not been satisfactorily found, and in the absence of proof of custom, plaintiffs should establish an easement. DEWA SINGH *v.* BILLA.

4 P R 1877

27. *Held*, that a non-proprietor (tenant) can by long use and prescription obtain a right to use part of the common land for the purpose of his agricultural employment, *i. e.*, by erecting a *bara* or cattle-trough on the common land.

Held, further, that such a user will survive partition of the common land, so long as the non-proprietor (tenant) continues in the occupation of his cultivating land, and so long as he uses the *bara* as a tenant properly should. GHOUSA *v.* ABADAN. **34 P R 1877**

28. *Appropriation of* shamilat *for specific object—Dissent of minority of proprietors.*

Held that, in the absence of any custom, the will of the majority of a village community cannot prevail against that of the minority when the question is one as to the disposal of the common property in such a way as to preclude all use of it by the owners. SOHEIL SINGH *v.* ABDULLA. **78 P R 1877**

29. Abadi—*Village site—Sale of vacant site occupied by proprietor for many years—Consent of co-sharers—Custom.*

Where the *abadi* was recorded in the *Wajib-ul-arz* as the common property of the

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village proprietors, *held* (no special custom being proved), that the fact of one of the proprietors having held a vacant site in the *abadi* gave him no right to sell it to one who was not a member of the village community, without the consent of the co-sharers. HEBA *v.* RAM SINGH. **24 P R 1878**

30. *Ejectment—Suit by one of several co-sharers.*

A suit by one of several co-sharers in a plot of land to eject a tenant of such land will not lie. All the co-sharers must join in the action. ATTAR SINGH *v.* DEWA SINGH. **17 P R 1879**

31. *Lease against wishes of proprietary body—Lambardars, powers of, in respect of common land.*

The lambardars of the village of Rurki in the Rohtak district, gave a contract to K. for the manufacture of saltpetre out of certain lands which were the undivided common property of the village proprietors, 264 in number.

Four proprietors brought a suit against K. and the lambardars, to restrain K., the contractor, from manufacturing saltpetre, on the ground that they had not consented to the contract and objected to the manufacture. On taking the votes of the proprietary body, it was found that 162 objected and 10? were in favor of the manufacture being permitted.

Held, as the majority of the village proprietors were opposed to the grant of a lease for the manufacture of saltpetre from the common land of the village, as no custom was shown to exist in the locality under which lambardars had the power to grant such a lease in opposition to the wishes of the proprietary body, and as the lambardars had no such power in virtue of their office, that the plaintiffs were entitled to the relief claimed. KASHINATH *v.* LEKH RAM. **30 P R 1879**

32. *Malik Kabza—Right to share of common lands—Onus of proof.*

The status of *malik khudkasht* or *malik kabza* does not ordinarily confer a right to share in the common lands of a village. Where, therefore, plaintiffs occupying that status sued for a declaration of their right to such share, *held*, that the burden of proving that they were entitled to it, lay upon them.

The fact that a *malik khudkasht* or *malik kabza* has been allowed to break up and cultivate portions of the common lands without being called upon to pay anything more than the revenue and cesses assessed on such la d. is not ordinarily sufficient to show that he holds the land as of right in virtue of his status as such *malik khudkasht* or *malik kabza*. SEWA SINGH *v.* GANESHA. **53 P R 1879**

33. *Right of one proprietor to sue for share of produce of portion of common land.*

The plaintiff, who had established his right to a fourth share in the common land

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of the village, but had failed to obtain partition from the revenue authorities, sued the defendants, co-proprietors of the village, for the value of his share of the produce of a portion of the common land which they cultivated.

Held, that as the defendants did not cultivate as tenants of the plaintiff, and were not liable to be ejected or have their rent enhanced in a suit brought by him alone, and as, moreover, they were rightly in possession of the land under a well defined and recognized title, the suit was not maintainable. JAMUN SHAH *v.* AHMED SHAH. **65 P R 1879**

34. *Sale of mango grove by majority of proprietors—Dissent of minority—Suit by purchasers to compel partition of trees.*

Where a majority of the proprietary body sold to the plaintiffs the trees standing in a mango grove, which was joint undivided property of all the proprietors, whereupon the plaintiffs brought a suit to compel the dissentient proprietors to partition off their share in the trees.

Held, that the sale passed no interest whatever in the trees of the grove: that the plaintiffs could stand in no better position as against the defendants (the dissentient proprietors) who were no parties to the sale, than their own vendors. That these vendors could not before partition claim any particular trees as their own; and could not have claimed partition of the trees as distinct from the soil on which they stood; and that therefore plaintiffs' suit failed. The decision in *Punjab Record*, No. 70 of 1866, cited and followed. GUJAR *v.* SAHAB SINGH. **109 P R 1879**

35. *Construction of enclosure with consent of co-sharers—Subsequent suit by minority of proprietors for removal of enclosure.*

Where all the co-sharers of the village consented to the construction of a thorn hedge on the common land of the village, *held*, that a suit by a minority of the proprietors for the removal of the hedge was not maintainable, it not being shown that the enclosure was being devoted to any use materially different from what was contemplated when the assent was given, nor that any damage accrued to plaintiffs from the continuance of the hedge. KHET SINGH *v.* KISHNA. **158 P R 1879**

36. *Hoshiarpur district.*

Found, that no established custom exists in *mauza* Bassimoda, in the Hoshiarpur district, whereby a non-proprietary occupant of a site in the village can make a valid transfer of house and site, otherwise than with the consent of the proprietors. SOUDHA *v.* USMAN KHAN. **8 P R 1881**

37. Mauza *Bahtar, Rawalpindi—Power of sale.*

Found, that by the custom of the village of Bahtar in the Fattehjhang *tahsil* of the

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Rawalpindi district, non-proprietary residents have power to sell the houses in their occupation. KALA KHAN *v.* SARU. **48 P R 1881**

38. Mauza *Bilgah, Jullundur district—Power of non-proprietor to sell his house without permission of proprietors—Proprietors' right to site.*

Held, that a non-proprietary resident of *mauza* Bilgah in the Phillour *tahsil* of the Jullundur district may sell his house without the permission of the proprietors, though he has no power to sell the site. RAMJI DAS *v.* HAMIR CHAND. **9 P R 1882**

39. *Acquiescence—Suit for cattle-enclosure—Long possession by plaintiff—Power of village proprietors to evict where possession has not lasted for 12 years—Customary right of occupant to retain possession.*

Plaintiff sued to recover possession of a piece of land adjacent to and enjoyed with his house as a cattle enclosure, on the ground of his long possession and recent dispossession by defendants. Defendants pleaded that the land was *shamilat* of the village, was not the plaintiff's cattle-yard, and had never been in his possession. The lower Courts found that plaintiff had held the cattle-enclosure for a long time, and accordingly held that his possession could not be disturbed by the defendants.

Held, that the judgments of the lower Courts could be supported on the simple ground that the occupation of the land adjacent to the plaintiff's residence as a cattle-enclosure had long been acquiesced in by the defendants, the village proprietors, and that such occupation by general custom was not liable to be determined at the mere will of the proprietors at any time if it had not lasted for 12 years, such acquiescence implying a tacit consent to the occupation of the enclosure as annexed to the residence, and that consent not being liable to be revoked merely at the caprice of those who gave it. *Dasondhi* v. *Ghulam Ali* (No. 3 of 1877, Civil), *Deva Singh* v. *Billa* (No. 4 of 1877, Civil) and *Ghousa* v. *Abadan* (No. 34 of 1877, Civil) referred to. NARAIN SINGH *v.* HAMIR SINGH. **36 P R 1882**

40. *Suit for removal of Chabutra—Co-sharers altering character of portion of common land without consent of the proprietary body.*

It is not competent to one or two co-sharers alone, and without the consent of the proprietary body, to take possession of a portion of the common land of the village and to alter its character in such a manner as to exclude permanently the remaining co-sharers from the possession or use of it.

Where therefore the defendants (who were three of the co-sharers of the village) erected a *chabutra* in front of their houses on a portion of the common land of the village which was used as a lane, thus narrowing the lane to the material inconvenience of the

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persons using it, *held*, that the plaintiffs (the remainder of the proprietary body) were entitled to a decree to the effect that the defendants must remove the *chabutra*, and restore the site to the condition in which it was before the erection of the *chabutra*. GHAN SINGH v. SADDA SINGH.

73 P R 1882

41. Mauza *Bagha Purana*, *Moga* tahsil—*Right of non-proprietors to sell their dwelling-houses with the sites—General custom—Proof of special custom.*

The general rule, applicable to agricultural villages in the Punjab, is that a non-proprietary resident in such village cannot, unless there be a well established custom to the contrary, sell his dwelling-house with its site to a stranger without the permission of the proprietors of the village.

Found, that no well-established custom exists in the village of Bagha Purana in the Moga *tahsil* of the Ferozepur district, opposed to the general custom, allowing non-proprietary residents to sell their sites without the consent of the proprietors.

To prove a local custom that the owners of the houses are also full owners of their sites, and can dispose of them without permission, it is not enough to show that some sales of sites have taken place which were not objected to, and that in a particular case some of the proprietors objected without success. Proof of particular sales having taken place without objection would be very good evidence of the title of the purchaser to the lands actually sold ; but while such sales would give a good title to individuals in particular portions of the village site, they would not prove that the rights of the proprietary body over the remainder of the site had been extinguished, and that possession whether by proprietors or non-proprietors had come to be the only measure of right. *Mya Das* v. *Futteh Din* (No. 25 of 1875, Civil), *Bika Singh* v. *Lakhu* (No. 92 of 1880, Civil), *Sahiba* v. *Prema* (No. 93 of 1880, Civil), *Ramji Das* v. *Hamir Chand* (No. 9 of 1882, Civil), and *Bishen Chand* v. *Jawanda Mal* (C. A. No. 1313 of 1876, unpublished), cited. KHARK SINGH v. ALLADITTA.

85 P R 1882

42. *Lease of common land by some co-sharers without consent of rest—Validity and effect of such disposition.*

In a suit brought to enforce specific performance of a lease executed by some of the proprietors of the village, whereby they transferred to the plaintiff all their rights and interests in the *shamilat* land of the village, the defendants who contested the case pleaded *inter alia* that the lease of joint property like *shamilat* land by only some of the co-sharers without the consent of the rest was invalid.

Held, that the fact of some of the proprietors not having joined in the lease did not, in the absence of a contrary custom (which was not alleged to exist in the present

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case), render the contract void and inoperative.

Although in certain villages a local custom may exist whereby a co-sharer may be restrained from alienating even for temporary purposes his own share except under specified conditions, there is nothing on general legal grounds to prevent a co-sharer from validly disposing of his own share in common property, and thereby substituting the purchaser or alienee in his own stead as a tenant in common with the rest of the proprietary body, so long as such a disposition does not interfere improperly with the enjoyment by the latter of the property in the usual manner. *Anderson* v. *Taylor* (No. 70 of 1866, Civil), and *Gujar* v. *Sahab Singh* (No. 109 of 1879, Civil) referred to. JHANDA v. NANA LAL.

148 P R 1882

Cited and followed in GURADITTA v. JOWALA SHAH. **102 P R 1883**

43. *Suit by proprietors to oust occupancy tenants from baras—Tenants' right to retain possession.*

In a suit by the proprietors of the village to oust the defendants, who were occupancy tenants, from certain *baras* or enclosures situated near the village site and occupied by defendants, it was found that the defendants had been in possession of the *baras* for a long time and had been using them for the storage of bhusa and for agricultural purposes.

Held, that the defendants' occupation of the *baras* should not be disturbed so long as they remained hereditary tenants in the village, and used the *baras* for purposes connected with the tenancy of their lands. *Ghousa* v. *Abadan* (No. 34 of 1877, Civil) followed. SHEOJI RAM v. PAUKAR.

152 P R 1882

44. Mauza *Bhirwal*, tahsil *Chunian*—*Right of non-proprietor to sell the site of his house*

In a suit for possession of a house in *mauza* Bhirwal, *tahsil* Chunian, Lahore district, on the ground of purchase from a non-proprietary resident in that village, *held*, that the plaintiff had failed to establish any custom, contrary to the generally prevailing custom in the Punjab, whereby a non-proprietary resident could dispose of the site as well as the materials of his house ; the evidence establishing that while the materials might be sold, the site was the property of the proprietors of the village and could not be transferred by sale without their consent. NANDA v. PUNJU SINGH. **193 P R 1882**

45. *User by kamin—Presumption from long user—Bara.*

Plaintiff, who was a kamin and a non-proprietor, claimed a *bara* or enclosure situated in the common land, from which he alleged the defendant's the proprietors, had ejected him. It was found that plaintiff had had possession of the *bara* for about 25 years, but there was no proof that the plaintiff had received actual

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permission from the proprietors to occupy the land

Held that, considering the plaintiff's long possession, it was fair to infer that he obtained such permission from the owners, and that he had acquired a right of user in the enclosure. *Dewa Singh* v. *Billa* (No. 4 of 1877, Civil, F. B.) cited. LALA v. PARMESARYA. **73 P R 1883**

46. *Suit by one proprietor to eject occupant of common land—Joinder of proprietary body—Right to sue—Decree for ejectment.*

Plaintiff, one of the proprietors of the village, sued to eject defendant from a plot of land in the village *abadi* upon which the defendant had constructed a hut, alleging that the building interfered with the discharge of water from his roof, which was accustomed to flow on to the land now built upon. The lower Appellate Court, after impleading the remainder of the proprietary body as defendants, gave a decree to the effect that the defendant was to be ejected from the land in suit, which decree purported to be in favour of the plaintiff and 38 co-proprietors, who, when joined as co-defendants, agreed with the plaintiff in demanding the defendant's ejectment from a portion of the common land.

Held, that a decree in the above form could not be sustained in the present case ; that the plaintiff as a mere member of the proprietary body was not entitled *eo nomine* to maintain the suit, unless he could show that by long possession of the site in question he had acquired a title which, against a trespasser, was entitled to protection ; and if the proprietary body as such, or a majority of them, claimed to eject the defendant as a mere trespasser, they must bring a suit for that purpose, the present suit not being of that character. NANU v. RAM SAHAI.

99 P R 1883

47. *See* 148 *P. R.* 1882 ABOVE. **102 P R 1883 Note**

48. Mauza *Parawala*, tahsil *Phalian*, zillah *Gujrat*—*Right of non-proprietor to sell his house.*

In a suit for cancellation of a sale made by a non-proprietor of a house situated in *mauza* Parawala, *tahsil* Phalian, in the Gujrat district, *held*, that the defendant had failed to prove that a custom had grown up allowing sales by non-proprietary residents of the village in general. JIT SINGH v. IMAM BAKSH. **151 P R 1883**

49. Mauza *Chiryawala*, tahsil *Kharian*—*Power of non-proprietors to alienate their houses.*

Held, that no special custom was shown to exist in *mauza* Chiryawala in the Kharian *tahsil* of the Gujrat district, allowing non-proprietary residents to alienate their houses without the consent of the owners. GURDIT SINGH v. FATTEH ALI. **6 P R 1884**

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50. *Mortgage of undivided share in* shamilat—*Legality of mortgage—Possession by Mortgagee of share subsequently falling to mortgagor at division.*

There is no rule of law prohibiting the mortgage by an owner of his share in *shamilat* and before it has been divided.

In such a case when the mortgagee has taken up a certain definite share at the time of the mortgage, and that share has subsequently fallen to the mortgagor at division, and has been held since by the mortgagee, *held*, that the said mortgagee is entitled to hold such share as mortgagee in preference to a subsequent alienee of the mortgagor. BULAKI *v.* BAHALA SINGH.

37 P R 1884

51. Mauza *Mudki, Ferozepur—Transfer by one proprietor of his right of occupancy of a piece of* shamilat *land to another proprietor.*

Found, that no custom exists in *mauza* Mudki in the Ferozepur district by which a proprietor in possession of a piece of *shamilat* land within the site of a *qasbah* is restrained from transferring his right of occupancy in such land to another proprietor. BHAGWAN DAS *v.* FUTTEH SINGH. **42 P R 1884**

52. Mauza *Chabal*, tahsil *Tarn Taran, Amritsar—Power of non-proprietor to transfer his right in a site on which he has been allowed to build.*

Found, that no custom exists in *mauza* Chabal in the Tarn Taran *tahsil* of the Amritsar district, whereby a non-proprietor who has been allowed by the proprietors to build on a site given by them acquires a transferable right in such site. *Ramji Das* v. *Hamir Chand* (No. 9 of 1882, Civil), *Kharak Singh* v. *Alladitta* (No. 85 of 1882, Civil), and *Bishen Chand* v. *Jawanda Mal* (C. A. No. 1313 of 1876, unpublished), cited. PREM SINGH *v.* NATHU RAM. **73 P R 1884**

53. Mauza *Somryal*, tahsil *Daska, Sialkot —Right of non-proprietary resident to sell his house with right of occupancy of the site.*

Found, that a non-proprietary resident at *muuza* Somryal in the Daska *tahsil* of the Sialkot district, who is the owner of the building in which he has resided, can by custom sell the house as it stands, including the right to occupy the site, but that such sale merely gives the purchaser the same right of occupancy in the site which his vendor had, he being liable to the payment of the same dues to which the vendor would have been liable. *Mya Das* v. *Fatteh Din* (No. 25 of 1875, Civil), *Alla Ditta* v. *Dina* (No. 125 of 1879, Civil), *Bika Singh* v. *Lakhu* (No. 92 of 1880, Civil), and *Kharak Singh* v. *Alladitta* (No. 85 of 1882, Civil), cited. MEWA SINGH *v.* HAKAM ALI.

87 P R 1884

54. *Non-proprietary resident claiming proprietary right in site which he occupies—Burden of proof.*

In cases where a non-proprietary resident claims to have a proprietary right in the

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site occupied by him, the main issue is whether he has such right, and the burden of proof rests on him in the first instance to show that he has it, and not on the proprietary body to show that he has not. The latter may rely in the first instance on the facts that they are the proprietary body, and that the proprietary body is as a rule owner of the habitable site, and therefore any body controverting their general title has to establish his proposition affirmatively. *Alla Ditta* v. *Dina* (125 of 1879, Civil), and *Kharak Singh* v. *Alladitta* (No. 85 of 1882, Civil) cited. AMAN SINGH *v.* KALLA.

119 P R 1884

55. *Non-proprietor's right of residence in house on village site—Right to materials of house—Property in site after materials have been removed*—Wajib-ul-arz.

Where the *Wajib-ul-arz* of the village provided that if a non-proprietor had built a house the materials of which were worth more than Rs. 30, he could sell the materials of the house with the right of residence therein, *held* that such right of residence could not be taken to include the right of residence on the bare site after the house had been removed from it, or to render the bare site alienable at the pleasure of non-proprietors after they had taken away their materials. HAR SARUP *v.* HANWANTA. **7 P R 1885**

56. *Right of village proprietors to restrain alienation of* shamilat—*Right of majority to restrain permanent alienation.*

Where a suit is brought to restrain the permanent alienation of the common land, *i. e.*, an alienation calculated to prevent any part of the common land from being hereafter divisible among the owners, there is no reason why a minority of the village proprietors should not sue: but where the alienation is not permanent, but the rights of the alienee, whatever they may be, are subject to the the future division of the *shamilat*, then the will of the majority will prevail. *Hidayat Ali* v. *Akbar Ali* (No. 76 of 1873, Civil), *Soheil Singh* v. *Abdulla* (No. 78 of 1877, Civil) and *Kashinath* v. *Lekhram* (No. 30 of 1879, Civil) cited. HAR SARUP *v.* HANWANTA.

7 P R 1885

See also GULAB *v.* LALJI. **7 P R 1885 Note**

57. *Suit by proprietors to oust occupancy tenant—Tenant's right of occupation—Tenant using the site for purpose other than that for which it was given—Custom.*

Held, that by custom a hereditary cultivator who occupies a portion of the *shamilat* land with the consent or acquiescence of the proprietor for storing manure for agricultural purposes cannot be disturbed in his possession so long as he remains a tenant in the village and uses the site for the purposes for which it was given; but if he diverts the site to other purposes, as for instance to build upon, and disclaiming the title of the proprietors sets up an adverse title himself, he for-

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feits his right of user and is liable to ejectment at the suit of the proprietors. *Narain Singh* v. *Hamir Singh* (36 of 1882, Civil), and *Sheoji Ram* v. *Paukar* (No. 152 of 1882 Civil), cited and followed. BHANI *v.* BHAG MAL. **65 P R 1885**

58. *Suit for removal of cattle-trough erected by a co-sharer without the consent of the proprietary body—Altering character of common land in such a way as to prevent other proprietors from using it in the way they intended it should be used.*

Twenty-nine of the proprietary body of the village brought a suit against the remaining proprietors (14 in number) for the demolition of a cattle-trough erected by one of them on common land, alleging that the trough had been erected seven months before suit and that it caused inconvenience to the people of the village. Defendants replied that the trough had been erected eighteen years previously on joint land in possession of one of their number, and that it caused no inconvenience. The first Court gave a decree for demolition of the trough, but, on appeal, the Judicial Assistant Commissioner held that the plaintiffs had not a cause of action cognizable by the Civil Courts and dismissed the suit. On appeal, the Commissioner reversed the Judicial Assistant's order, holding that the suit would lie.

Held that the plaintiffs could maintain the suit, not simply on the ground that the cattle-trough caused obstruction to a public road, but on the ground that one of the proprietary body had taken possession of joint land and had altered its character in such a way as to prevent the remaining proprietors from using it in the way they intended that it should be used. *Ghan Singh* v. *Saddha Singh* (No. 73 of 1882, Civil), cited. CHUHAR SINGH *v.* DHAUNKAL SINGH. **74 P R 1885**

59. *Suit for removal of wall and dahliz—Co-sharers have no right to exclusive possession of joint property or to alter the condition of any portion thereof without the consent of the proprietary body—Acquiescence in wrongful act.*

In a suit for a mandatory injunction to compel defendants to remove certain obstruction erected by them on common land, the lower Courts dismissed the suit on the ground that the plaintiffs' conduct in allowing nearly a year to clapse before suing, amounted to acquiescence in the wrongful act committed by the defendants and barred them from claiming an injunction.

Held, following, *Ghan Singh* v. *Sadda Singh* (No. 73 of 1882, Civil), that co-sharers have no right to take exclusive possession and alter the conditions of any portion of joint property without the consent of the other co-sharers, and that, as the defendants in the present instance took advantage of the temporary absence of the plaintiffs to hurriedly run up the obstructions complained of, and plaintiffs on their return to the village at once objected to the acts of the defend-

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ants and continued so to object, the fact that they allowed almost a year to elapse before bringing their suit could not disentitle them to the relief claimed, as mere delay in enforcing a right does not constitute acquiescence.

To constitute a bar by acquiescence the conduct of the party entitled to offer opposition to the act of the other must be such as to give rise to a reasonable belief of his consent, and the other must have been induced thereby to do something from which he might otherwise have abstained. *Gouhar* v. *Fazla* (No. 53 of 1878, Civil) and *Tronson* v. *Official Liquidator, Punjab Bank* (No. 38 of 1881, Civil) cited. GHASITA MAL *v.* GOGA.

121 P R 1885

60. Mauza *Hatin*, tahsil *Nuh*, zillah *Gurgaon—Right of non-proprietors to sell the sites of their houses.*

Found that no well established custom exists in *mauza* Hatin in the Nuh *tahsil* of the Gurgaon district under which non-proprietors can sell the sites of the houses occupied by them so as to extinguish the rights of the proprietary body in the village site. KALLU *v.* AMIAN SINGH. **40 P R 1886**

61. *User by Kamins—Erection of kothas without permission of proprietors—Suit for ejectment—Right of minority of proprietors to maintain suit—Forfeiture of rights of user—Custom.*

A suit brought for the demolition of certain buildings erected by the defendants on common land without the consent of the proprietary body, *held*, to be maintainable by a minority of the proprietary body, the act complained of amounting to an infringement of their rights as co-owners, which alone was sufficient to sustain the action.

Where it appeared that the defendants who were weavers, and who had been permitted to erect their looms on a portion of the common land, subsequently built *kothas* on the land without the consent of the proprietors, whereupon the plantiffs, a portion of the proprietary body, sued to eject them from the land, *held*, that though so long as the defendants used the land for carrying on their trade, they could not under a well-recognized custom be ejected, when they diverted the site to another purpose not warranted by the grant and built upon it, they forfeited their rights of user and were liable to ejectment. *Her Sarup* v. *Hanwanta* (No. 7 of 1885, Civil), and the earlier cases therein relied upon cited AMIN CHAND *v.* DASOUNDHA SINGH.

54 P R 1886

62. *Non-proprietary resident of* Mauza *Badli, Hoshiarpur—Right of succession by remote collateral of last occupant of house on village site—Custom*—Onus probandi.

Plaintiff, a non-proprietor of the village of Badli in the Hoshiarpur *tahsil*, claimed to succeed to the house of a deceased non-proprietor to whom he was only remotely related. The proprietors resisted the claim

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on the ground that the right of succession by non-proprietors to the sites in the village was limited to direct descendants (son, grandson, &c.) and collaterals as near as nephews only.

Held that, under the circumstances of the case, it lay upon the plaintiff to show that collaterals more distantly related than a nephew were by custom entitled to succeed, and that he had failed to discharge the *onus* cast upon him in the present case. ATTRA *v.* MODA. **37 P R 1887**

63. *Custom—Non-proprietor resident on village site—Right of ejectment by proprietor.*

In a suit by the proprietors of the village for ejectment of a non-proprietary resident, *held* that the plaintiffs had failed to prove a special custom whereby they could eject such non-proprietary resident from a house built by him, so long as he remained in the village and paid the customary fees or rendered the customary services. *Muhammad Alam* v. *Ajab* (No. 34 *P. R.* 1882) cited and followed. ZARIF *v.* AKBAR. **50 P R 1888**

64. *Appropriation by one proprietor of houses built for common purposes—Suit for ouster of such proprietor—Joinder of proprietary body—Will of majority.*

Plaintiffs, who were some of the proprietary body of the village, sued on the allegation that one of the defendant proprietors had set up an exclusive title to certain houses, which had been built on common land for common purposes by the whole proprietary body. The lower Appellate Court dismissed the suit on the ground that a proprietor holding common property could only be ousted by a clear majority of the proprietors, holding that such a majority did not exist against the defendant in the present case.

Held, reversing the above order, that in a case like the present, even a single proprietor would have a right to protect himself by a suit in Court against such an infringement of his rights. NAZAR SINGH *v.* HIRA SINGH. **74 P R 1888**

65. Mauza *Nagar*, *Rohtak—Succession to houses held by non-proprietary residents—Power to alienate such houses—Custom.*

Held, that no special custom was proved to exist in *mauza* Nagar in the Rohtak District, by which only direct lineal heirs were entitled to succeed to the houses of non-proprietary residents in the village, and that the right to succeed therefore extended also to near collaterals. *Attra* v. *Moda* (No. 37 *P. R.* 1887), distinguished.

But, *held* further that, by the custom of the same village, non-proprietors, who either are or are in the position of mere *kamins* have no right to sell or mortgage either the sites of their houses or a right of residence therein. WALI MUHAMMAD KHAN *v.* MUSSAMMAT SURJI.

76 P R 1888

CUSTOM VI.—COMMON LAND—*contd.*

66. Mauza *Kanet Khalil*, tahsil *Gujar Khan—Right of non-proprietors to alienate their houses and site without the permission of the proprietor—Right to sell materials—Custom.*

Held, that no well-established custom was shown to exist in the village of Kanet Khalil in the Gujar Khan *tahsil* (contrary to the general prevailing custom of agricultural villages in the Punjab) by which a non-proprietary resident could sell his house and site without the permission of the proprietor of the site, nor was it even proved that he could sell the materials. *Mya Das* v. *Fatteh Din* (No. 25 *P. R.* 1875), *Bishen Chand* v. *Jawanda Mal* (No. 1313 of 1876, unpublished), *Rehmat Khan* v. *Kutha* (No. 3 *P. R.* 1879), *Alla Ditta* v. (*Dina* No. 125 *P. R.* 1879), *Bika Singh* v. *Lakhu* (No. 92 *P. R.*) 1880), *Sahiba* v. *Prema* (No. 93 *P. R.* 1880) *Soudha* v. *Usman Khan* (No. 8 *P. R.* 1881, *Mir Ahmad* v. *Amir* (No. 53 *P. R.* 1881), *Ramji Dass* v. *Hamir Chand* (No. 9 *P. R.* 1882), *Kharak Singh* v. *Alladitta* (No. 85 *P. R.* 1882), *Prem Singh* v. *Nathu Ram* (No. 73 *P. R.* 1884), *Mewa Singh* v. *Hakam Ali* (No. 87 *P R.* 1884), and *Kallu* v. *Amian Singh* (No. 40 *P. R.* 1886), cited. TEJA SINGH V. MIRZA SAYAD MUHAMMAD KHAN.

124 P R 1888

67. Mauza *Hassellanwala*, tahsil *Phalian*, *Gujrat District—Right of non-proprietors to transfer the sites of their houses.*

Found, that no custom exists in *mauza* Hassellanwala in the Phalian *tahsil* of the Gujrat District, according to which non-proprietors generally can transfer the sites of their houses without the consent of the proprietors. MAYA DAS *v.* JAN MUHAMMAD.

13 P R 1889

68. Mauza *Ghartal*, tahsil *Daska*, *Sialkot—Right of non-proprietors to sell their houses.*

Found, that no established custom exists in *mauza* Ghartal in the Daska *tahsil* of the Sialkot District by which non-proprietors can sell even their houses, apart from the sites, without the consent of the proprietors. BUTA MAL *v.* RULDU. **40 P R 1889**

69. Mauza *Bhagowal*, *Gujrat District—Right of non-proprietors to transfer their houses.*

Found, that in *mauza* Bhagowal in the *tahsil* and district of Gujrat, non-proprietors can by custom transfer the materials of their houses on the *abadi* without the consent of the proprietors, but that such customary right does not involve a power to transfer the site also. KHUDA YAR *v.* KAPUR SINGH.

50 P R 1889

70. Mauza *Chabal Kalan*, tahsil *Tarn Taran*, *Amritsar District—Succession to houses of non-proprietors—Near and remote collaterals.*

In a suit for possession of a house by the collaterals (related in the 6th and 7th degree)

of the deceased non-proprietary resident in *mauza* Chabal Kalan in the Tarn Taran *tahsil* of the Amritsar District, in which it appeared that the deceased was not an absolute owner of the house in question and the site, *held*, that the plaintiffs had failed to prove any custom whereby the right of succession extended beyond very near collaterals. KARAM CHAND *v.* HAKAM SINGH. **71 P R 1889**

71. Mauza *Ambadher*, tahsil *Doaba*, zillah *Peshawar—Right of proprietors to eject non-proprietors from their houses.*

Found that no custom prevails in *mauza* Ambadher, in the Doaba *tahsil* of the Peshawar District, by which the proprietors of the village can eject a non-proprietary resident from a house occupied by him, and which was built by him or his ancestors, even on payment of the value of the materials of the house. HAMID KHAN *v.* TOTA SINGH. **88 P R 1889**

72. *Co-sharers—Exclusive possession of one—Dispossession—Suit for restoration of possession—Proper parties.*

In a suit for possession of a plot of *shamilat* land, it was alleged that the plaintiffs had reclaimed the land and had long been in possession, but that the defendants had recently ousted them. Both parties were co-sharers in *shamilat*. The Divisional Judge dismissed the suit on the ground that plaintiffs could not sue for exclusive possession of joint property. *Held*, that one co-sharer may, under certain circumstances, take and keep exclusive possession of a portion of *shamilat* land for his own use until partition, and that another joint owner is not by reason of the land being *shamilat* necessarily entitled to disturb his possession.

Held, also, that it was not necessary to make all the co-sharers parties to the suit, as there was no dispute as to the land being *shamilat*. WAZIR SINGH *v.* MAHTAB SINGH. **108 P R 1889**

73. *Grazing rights—Common land—Occupancy tenants—Proprietor's right to partition and cultivate.*

In a suit by occupancy tenants against proprietors for a declaration of right to graze their cattle on the original common land, the lower Appellate Court held that the plaintiff's right was conditional on the land continuing *shamilat*, and that, as the land had been partitioned in 1871, the right ceased. The plaintiffs based their claim on the *Wajib-ul-arz* prepared previous to partition, which provided that all the village cattle were to graze in future upon the common land of the village, without distinction of proprietors or non-proprietors. *Held*, that this provision did not mean either that the grazing right extended over the *shamilat* as it was constituted at the time of settlement, or that the right extended over the *shamilat* as constituted for the

time being. The provision could not exclude absolutely the liability of a *shamilat-i-deh* to be partitioned at the will of the proprietors collectively. At the same time the partition could not of itself, by converting the property divided from joint into several, extinguish the right of grazing over it. The right of grazing over what was *shamilat* at the time of settlement and the proprietary right therein, may and do co-exist side by side, both before and after partition. Neither right overrides the other so as to extinguish it, but each right limits and is limited by the other. The proprietary rights of the proprietors whether collectively before, or individually after, partition may be fully exercised, so long as this exercise leaves a sufficient area to graze the cattle of the non-proprietors. But the mere act of partitioning the *shamilat* does not entitle the non-proprietors to sue the proprietors to have a portion of the original *shamilat* sufficient to graze their cattle demarcated and reserved by a Civil Court. When, however, a large portion of the original *shamilat* has after partition been enclosed or reduced to cultivation and the non-proprietors' grazing rights are seriously thereatened they may jointly sue the proprietors to prevent any further interference with what remained open of the original *shamilat*, or possibly to have some portion of the enclosed or cultivated land thrown open, so as to secure to them the proper enjoyment of the grazing right. HIRA *v.* NATHU. **119 P R 1889**

74. *Partition*—Pattis—*Village site—Common land.*

Each of two *pattis* in a village claimed exclusive proprietary right in a plot of land. It appeared that the village site was not divided into blocks belonging to several parties, but that the land belonging to them was *her mer* or scattered over the village-site. It was also found that in Sambat 1920, defendants' *patti* sold some portion of the land in dispute to persons who were still in possession. *Held*, that considering how the land was distributed among the *pattis*, this did not prove that the defendants were entitled to the rent. Where adjoining *pattis* own common land, the general rule is that their rights in it are measured by the extent of land they hold in the village. MASTAN SINGH *v.* DEWA SINGH. **151 P R 1889**

75. Gora-deh—*Erection of sugar-press by one proprietor—Suit for its demolition by another—Appreciable injury—Alteration of character of joint property.*

A., one of the proprietors in a village, erected a *belna* or sugar-press and a *kotha* in the *goradeh*. B., another proprietor, sued for a declaration that A. had no right to erect the buildings complained of and for their removal. *Held* that the erection caused no injury or inconvenience to the plaintiff who could protect his rights by applying for partition of his share in the *shamilat*. Plain-

tiff could succeed only on proof that the act was intended as an assertion of individual right, which, if unchecked, might deprive the proprietors of a portion of the common land altogether and prevent its being hereafter divisible among the co-sharers, or that the user by defendant materially interfered with plaintiff's own right of user. GHULAM MUHAMMAD KHAN *v.* BUTA. **187 P R 1889**

76. *Alienation—Powers of chief headmen and headmen of village to alienate portions of common land—Suit by other co-sharers to set aside sale and for possession—Previous sales by headmen of* shamilat *plots without objection by co-shares—Estoppel.*

The chief headmen and headmen of a village sold a portion of the *shamilat* land, not as agents and on behalf of the proprietary body, but as principals. Other co-sharers sued to set aside the sale and for possession. The purchaser pleaded that the vendors represented the proprietary body and had as such sold plots of *shamilat* land previously without objection by the rest of the proprietors, whereby he had been induced to believe that the sale of common land was within the scope of the authority of the vendors.

Held that the vendors had no authority to sell common land. They were agents of the proprietary body for certain purposes only, *i. e.*, for management of common land. *Held* also that it had not been shown that the plaintiffs had ratified the previous sales. MALLIK BASSU *v.* MRS. C. BRYAN. **191 P R 1889**

77. *Right of hereditary tenants to cut wood and grass from the common land of the village for purposes of sale—Profits* a prendre—*Easement*—Mauza *Mangharwal, Hoshiarpur District.*

Certain hereditary tenants of *mauza* Mangharwal, District Hoshiarpur, claimed the right to cut wood and grass from the village *shamilat* not only for their own agricultural purposes, feeding cattle, &c., but for sale. The proprietors resisted the claim.

Held, that the tenants had failed to prove that they had any such right by easement or custom. ABDULLA *v.* PRABHU DIAL. **29 P R 1890**

78. *Village site—Custom—Ejectment of non-proprietor from house made habitable by him—Compensation*—Mauza *Jhawarian*, tahsil *Shahpur.*

In the village of Jhawarian, *tahsil* Shahpur, proprietors by custom make over houses without roofs or in an unfinished condition to non-proprietors for use and eject them at pleasure either on payment of compensation or on permission granted to remove the materials.

Held, that this custom was good and binding. BUTA *v.* MOTI RAM. **37 P R 1890**

See also EJECTMENT. **62 P R 1899**

79. *Non-proprietors, mortgage of houses by—Custom.*

CUSTOM VI.—COMMON LAND—*contd.*

Found, that in the village of Kot Mahmud Khan, in the Tarn Taran *tahsil* of the Amritsar District, (which, apparently, was not historically speaking, a mere village homestead, but had been the seat of Nawab Mahmud Khan, a Governor under the Mughal Emperor, and had been founded by him), the proprietors were not competent to object to a mortgage of a *kutcha* house which had recently belonged to a non-proprietor, a Khatri ekka-driver, possession of which had been taken by his father's sister's son and mortgaged to one of the village proprietors and a goldsmith.

No. 73 *P. R.* 1884 and Nos. 9 and 85 *P. R.* 1882, referred to. GURDITTA MALL *v.* MOTA SINGH. **102 P R 1891**

80. *Partition*—Shamilat taraf *and* shamilat deh—*Ala lambardar*—Muafi *land held by ala lambardar in which he had no proprietary right.*

In a claim to partition certain *shamilat taraf* and *shamilat deh* land, it was sought to exclude the *muafi* land, which was *shamilat taraf*, held by the *ala* lambardar by virtue of his office and in which he had no proprietary right.

Held, that there was no reason for excluding this land from partition. This land was entered in the revenue records as common land of certain *tarafs* of the village and the records contained nothing which precluded the holding from being brought into partition. ARJAN SINGH *v.* SUCHET SINGH. **15 P R 1892**

81. *Joint owners—Erection of building by one on common land—Absence of special damage to others.*

The defendant, who was a proprietor in Gohana (Rohtak District), erected a *pakka* building upon a portion of the *abadi*—208 yards in extent—or common property of the village. The building was commenced within a very few months before suit, and was immediately objected to by at least one of the plaintiffs. It was completed in spite of the plaintiffs' protests, and appeal to the Revenue authorities at or about the date when the present suit was launched The defendant spent Rs. 1,000 or thereabouts upon the building, which was adjacent to, if not built on to his own house. No acquiescence on the plaintiffs' part was established.

The plaintiffs, sixteen proprietors of Gohana, sued to have the building demolished. They did not succeed in proving any substantial damage from the building over and above the fact that defendant had probably monopolized a larger share of this particular portion of the common land than would fall to him at a division.

Held, that the plaintiffs' appeal must be dismissed upon the ground that, it not being satisfactorily established that any substantial mischief had accrued to the plaintiffs from the completed building erected at considerable expense, the lower Court had exercised a

CUSTOM VI.—COMMON LAND—*contd.*

wise discretion in refusing to order its demolition. HIDAYAT ALI KHAN *v.* BASIT ALI KHAN. **54 P R 1892**

82. *"Custom"—Village menials—Sale of their houses by, without consent of proprietors.*

Found, that in the village of Haria in the Bhera *tahsil*, Shahpur District, no custom was established permitting menials to sell their houses without the consent of the proprietary body. MIRZA *v.* SAMDILI. **99 P R 1892**

83. Shamilat *land—Suit by khewatdar to obtain share in village common land*—Wajib-ul-arz.

Plaintiff, who was a *khewatdar* in the village although not an original proprietor, sued for a declaration that he was entitled to a share of the common land of village Pindi Maddu in proportion to his holding. In the *Wajib-ul-arz* of the village it is laid down that the common lands are to be partitioned proportionately to the *khewat* holdings and certain particulars are given as to the permission to occupy and cultivate the *shamilat* and as to the disposal of those lands when partition takes place. In accordance with this permission plaintiff had been cultivating a considerable extent of the common lands.

The defendants contended that as plaintiff was not originally a proprietor in the village but only a purchaser, he was not entitled to any share in the common land.

The deeds of sale by which plaintiff or his predecessor in title became purchasers of lands in the village contained no reservation to the vendors of the common land which belonged to them.

The lower Courts dismissed the claim, the Divisional Judge, holding that plaintiff was not entitled to claim a share in the common land because such share was not specifically included in the deeds of purchase.

Held, that the plaintiff by the deeds of sale acquired certain holdings and became a *khewatdar* and the *khewat* carried with it as appurtenant to it a proportionate share of the common land. PAREM CHAND *v.* SARDARA. **10 P R 1894**

84. *Gift of share of land in village—Right of donee to share in village* shamilat—Onus probandi.

Held, that in the case of a deed of gift whereby a share in certain land in a village is gifted to a person, the *onus* of proving that the deed carries with it, as accessory thereto, a proportionate share of *shamilat* lies, when the deed is silent upon the subject, upon the person who asserts that the gift operates to grant more than it purports to grant.

No. 65 *P. R.* 1889 and Civil Appeals Nos. 239 and 1389 of 1890 (unpublished), cited. FAZAL SHAH *v.* SIKANDAR ALI. **115 P R 1894**

85. *Village site*—Abadi—*Suit for partition of village site*—Bhayachara *village divided into* "pattis" *and* "dheris."

CUSTOM VI.—COMMON LAND—*contd.*

Plaintiffs, alleging themselves to be owners of a one-third share in the village of Bhadana, Lahore District, sued for partition of the whole of the village site according to a particular scheme, and based their claim solely on an entry in the Settlement record that " the " *abadi-deh* is *shamilat* and is divisible *hasab* " *rasad khewat*." The defendants pleaded that the entry was incorrect; that the tenure of the village was *bhayachara*, and that there was no *shamilat* in the *abadi* which was divisible. The District Judge having found that there was no divisible common land of the village in the *abadi*, gave plaintiffs a decree, in accordance with defendants' admission, for partition solely of any common land within their *patti* that might be found unoccupied. Plaintiffs appealed to the Divisional Judge, who reversed the decree of the lower Court and granted plaintiffs a decree for separation of their share in the *shamilat abadi-deh*, but did not specify the exact land assigned thereby to plaintiffs. Defendants appealed to the Chief Court, and it was held that the *onus* of proving that there was *shamilat* in the *abadi* which could be partitioned and that partition thereof was feasible rested upon the plaintiffs, and that they had failed to rebut the statement in the earlier Settlement record that the village site was not liable to partition.

The nature of an ordinary village site as a subject of partition discussed by *Benton J.* ISHWAR SINGH *v.* ATMA SINGH. **117 P R 1894**

86. *Custom—Right of non-proprietors to alienate without consent of Kamboh proprietors—Transfer of house in Khem Karan, Kasur* tahsil, *Lahore District.*

Found, that by the custom of Khem Karan, in the Kasur *tahsil* of the Lahore District, non-proprietors, though they have no rights in the sites of their houses, can transfer the houses themselves, with a right of residence, without the consent of the Kamboh proprietors. BHAG SINGH *v.* KHANAYA MAL. **38 P R 1895**

87. *Punjab Tenancy Act*, 1887, *sections* 5 (1) (*d*), 10—*Occupancy rights in common land—Jagirdar—Punjab Tenancy Act*, 1868, *section* 9 (2)—Pattidari *village.*

Held, following No. 15 *P. R.* 1880, Rev., that section 9, clause (2) of the Tenancy Act, 1868, read with section 10 of the Tenancy Act, 1887, should be construed to mean that no right of occupancy in the common lands of a *pattidari* village community should be acquired by a *pattidar* of the village under Chapter II of the said Acts, there being in this respect no distinction between pure and impure *pattidari* villages.

No. 1 *P. R.* 1897, Rev., referred to and considered.

The distinction between a pure and an imperfect *pattidari* village does not depend upon the maintenance or disuse of ancestral shares, but upon the existence or absence of *shamilat-i-deh* belonging to the village pro-

prietors as a body. If there is no such *shamilat-i-deh* the tenure is pure *pattidari:* if there is such, the tenure is *pattidari Ghairmukammal.* JHANDU KHAN *v.* SAMMAN.

1 P R 1899 Rev.

88. Shamilat *land—Suit by khewatdar to obtain share in village common land—Relinquishment of part of claim.*

Plaintiffs and defendants were representatives of two families who originally owned each a half share of a certain *putti.* Previous to 1864 plaintiffs' ancestors had been absentees, but in that year they returned and instituted a suit against the ancestors of the defendants for possession of their original half share. The dispute was eventually compromised, the plaintiffs agreeing to accept 7 *ghumaos* of land and to relinquish the remainder of their claim. In 1896, the village *shamilat* was divided, 202 *canals* 7 *marlas* falling to the share of the *patti* owned by the parties. Shortly after plaintiffs applied for partition of the latter. The application was opposed by defendants, who denied that plaintiffs had any share in the land so allotted : the plaintiffs were referred to a regular suit to establish their right by the Revenne Courts. They therefore filed a suit for half of the *shamilat* that had fallen to the share of their *patti.* The first Court dismissed the suit as barred by sections 13 and 43 of the Civil Procedure Code, inasmuch as the present claim should have been included in the suit brought by the plaintiff's predecessors in 1864. On appeal the Divisional Judge held that plaintiffs were entitled to a decree for possession of a share in the *shamilat* proportionate to their holding of 7 *ghumaos.*

Held, that the suit as laid was not barred by reason of section 43, Code of Civil Procedure, even if that section could otherwise be applied, as the plaintiffs' predecessors were under no obligation in 1864 to expressly sue for a share in the *shamilat* in addition to their claim for possession as *khewatdars* of part of the holding, and that when the 7 *ghumaos* were awarded to them, they became in respect of such land full proprietors with a right to the enjoyment of everything appurtenant to their holding.

Kishen Lal v. *Mootsuddee* (52 *P R.* 1866), *Prem Chand* v. *Sardara* (10 *P. R.* 1894,) *Baju Shah* v. *Hukma* (42 *P. R.* 1897), *Fazal Shah* v. *Sikandar Ali* (115 *P. R.* 1894), and *Maluk Singh* v. *Muhammad* (65 *P. R.* 1889), followed. BURA AND ANOTHER *v.* JHANDA AND ANOTHER.

113 P R 1900

89. *Common land*—Gora-deh—*Erection of* kotha *by non-proprietary resident with the permission of a proprietor in possession—Absence of special damage.*

A non-proprietor was allowed by one of the proprietors of the village to build a *kotha* on a portion of the *gora-deh* which he (the proprietor) had previously used himself as a cattle pen. The plaintiff and the proprietor in the village sued for demolition; the

defendant and the consenting proprietor admitted that on the vacation of the site by them it would revert to the whole proprietary body.

Held, that in the absence of proof of substantial damage to the plaintiff his suit must fail, as he had not proved that he had ever exercised any specific rights over the site, or that the consenting proprietor had disposed of more than would fall to his share on partition, or that the alienation was a permanent one.

Hidayat Ali Khan v. *Basit Ali Khan* (54 *P. R.* 1892), followed; *Paras Ram* v. *Sherjit* (*I. L. R. IX All.* 661), *Shadi* v. *Anup Singh* (*I. L. R. XII All.* 436), *Najju Khan* v. *Imtiaz-ud-din* (*I. L. R. XVIII All.* 115), *Soheil Singh* v. *Abdulla* (78 *P. R.* 1877), *Har Sarup* v. *Hanwanta* (7 *P. R.* 1885), *Amin Chand* v. *Dasaundha Singh* (54 *P. R.* 1886), *Ghulam Muhammad Khan* v. *Buta* (187 *P. R.* 1889), and *Kanakayya* v. *Narasim Hulu* (*I. L. R. XIX Mad.* 38), referred to. RAM *v.* PIR BAKHSH.

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90. *Common land—Joint vacant piece of land in* mohalla—*Right of suit of some of the inhabitants of the* mohalla *affecting such land—Plaint—Alternative reliefs—Injunction when to be granted—Discretion of Court—Damages.*

The plaintiffs sued to recover possession of a piece of land situate in front of their houses and shops alleging that it had been jointly enjoyed by them, and that the defendants Nos. 1 and 2 having obtained a fictitious deed of sale of a portion thereof from defendant No. 5 had taken possession and commenced to build thereon, the relief sought being either a decree for possession of the land or an injunction restraining the defendants Nos. 1 and 2 from building thereon. The lower Appellate Court gave the plaintiffs, "as members of the community," a decree for possession, and also issued a permanent injunction to the defendants prohibiting the erection of any building on or other interference with the land in suit.

Held (*i*) that the claims were not inconsistent, the difference being between sole right and joint right, and that the plaintiffs were at liberty to claim in the alternative exclusive possession or an injunction to restrain the defendants from interfering with their rights as co-sharers in the land in suit ;

(*ii*) that the land in suit not being a public thoroughfare, the suit lay ;

(*iii*) that the plaintiffs were entitled to sue in their own right for a relief common to themselves and others, and that the failure to sue on behalf of those others was not a bar to their suit ;

(*iv*) that inasmuch as the exclusive occupation by the defendants would have materially injured the plaintiffs they were entitled to the injunction issued by the first Court.

Raja Bijoy Keshub Roy v. *Obhoy Churn Ghose* (16 *W. R.* 198), *Muhammad Sharif* v. *Shamsher Khan* (11 *P. R.* 1891), *Mussammat*

Parpati and others v. *Kaur Singh* (85 *P. R.* 1896), *Nur-ul-Hussein* v. *Sheosahai Lal* (*I. L. R. XX Cal. I. P. C.*), *Ningapa* v. *Shivappa* (*I. L. R. XIX Bom.* 323), *Raghubar Dial and others* v. *Kesho Ramaunj Das* (*I. L. R. XI All.* 18), *Amin Chand* v. *Dasaundha Singh and others* (54 *P. R.* 1886), *Hira Lal* v. *Bhairon* (*I. L. R. V All.* 602, *F. B.*), *Baiju Lal Parbatia and others* v. *Bulak Lal Pathuk* (*I. L. R. XXIV Calc.* 385), *Tanudin and others* v. *Pandu and others* (*I. L. R. XVIII Bom.* 699), *Baldeo Bharthi* v. *Bir Gir and others* (*I. L. R. XXII All.* 269), *Framji Cursetji* v. *Gokul Das Madhowji* (*I. L. R. XVI Bom.* 338), *The Shamnagger Jute Factory Coy., Ld.,* v. *Ram Narain Chatterjee* (*I. L. R. XIV Calc.* 189), *Joy Chander Rokhit* v. *Rippo Churn Rukhit* (*I. L. R. XIV Calc.* 236), and *Ram* v. *Pir Bakhsh* (33 *P. R.* 1901) referred to. GUJAR MAL AND OTHERS *v.* RAM RICHPAL AND OTHERS.

91 P R 1901

91. *Limitation Act,* 1877, *section* 28—*Suit for recovery of possession of common waste land encroached upon by a trespasser—Limitation—Adverse possession—Burden of proof—Suit by some of the several co-sharers against the trespasser affecting common land—Effect of non-joinder of other co-sharers—Civil Procedure Code,* 1882, *section* 30—*Decree, form of.*

In suits for the recovery of possession of immovable property when resisted by a plea of adverse possession, the plaintiff is bound to prove possession and dispossession within twelve years, but where the property in dispute, up to a short time before suit, remained waste and unoccupied, *held,* that the plaintiffs were not required to prove acts of possession within twelve years of suit, they had only to prove a *prima facie* title not extinguished by limitation in such a case. Waste land allowed to remain so by the proprietor cannot be held to be a discontinuance of possession, and the *onus* is in such a case shifted on to defendant to prove when his possession became adverse.

Held, also, that one or several of many co-sharers can sue to prevent invasion of their common property by a mere trespasser, and that in such a case a decree for sole possession, or for possession on behalf of other co-sharers, should not generally be given, the proper form of decree should be for the restoration of the property to its condition prior to the trespasser's invasfon, and so preserve the invaded rights which the plaintiff and other co-sharers possessed in the property.

Tanudin v. *Pandu* (*I. L. R. XVIII Bom.* 699), *Inayat Husen* v. *Ali Husen* (*I. L. R. XX All.* 182), *Muhammad Ali Khan* v. *Khaja Abdul Guny* (*I. L. R. IX Calc.* 744), *Muhammad Yar* v. *Ghulam* (49 *P. R.* 1884), *Hira Lal* v. *Bhairon* (*I. L. R. V All.* 602), and *Hidayat Ali Khan* v. *Basit Ali Khan* (64 *P. R.* 1892), cited *Mohima Chunder Mozoomdar* v. *Mohesh Chunder Neogi* (*I. L. R. XVI Calc.* 473), *The Secretary of State for*

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India in Council v. *Vira Rayan* (*I. L. R. IX Mad.* 175), and *Jafar Hussain* v. *Mashuq Ali* (*I. L. R. XIV All.* 193), referred to. RAMZAN ALI *v.* BASHARAT ALI AND OTHERS.
105 P R 1901

92. *Common land—Purchase of separate holding in a village—Suit by purchaser for a declaration that he is entitled to a share in the* shamilat—*Inclusion or exclusion of share of* shamilat—*Burden of proof.*

Held, that as the rights of a proprietor in the *shamilat* of a village are not a mere accessory to the land separatety held by him, and that a sale of the latter does not *ipso facto* convey any rights in the former to the purchaser.

A clause in the *Wajib-ul-arz* providing that shares in the *shamilat* are proportional to the *khewat* lands *held* by each proprietor cannot confer any rights in the common land on the purchaser not conveyed by his deed of sale.

Maluk Singh v. *Muhammad* (65 *P. R.* 1889) and *Baju Singh* v. *Hukma* (42 *P. R.* 1897) cited; and *Prem Chand* v. *Sardara* (10 *P. R.* 1894) referred to. RAM DAS AND OTHERS v. AMIR SHAH AND OTHERS. **113 P R 1901**

93. *Partition—Partition of* shamilat-deh *including the land which had been assigned to an* ala lambardar *in virtue of his office—Compensation for disturbance or improvements—Punjab Tenancy Act*, 1887, *sections* 69, 72.

Plaintiffs sued for partition of the *shamilat-deh* including land which had been assigned to an ala-lambardar in virtue of his office, and which since his death had remained in possession of his heirs. The deceased ala-lambardar and his brother had sunk a well, built a house, and made an enclosure wall on the land the subject-matter of the dispute. The points in dispute were whether the occupants of that plot on being dispossessed of so much of it as exceeded their shares were entitled to compensation for improvements or disturbance; and, if so, whether such compensation should be paid by the proprietors who under the partition would benefit by the improvements or by the whole body of persons who sought partition.

Held, on the analogy of the proviso to section 69 of the Tenancy Act, that the heirs of the original ala-lambardar were not entitled to any compensation for disturbance, but that they were entitled to receive compensation for improvements as a condition precedent to partition from those vlllage proprietors only who would benefit by the improvements for the cost of so much of the same as such heirs would cease to enjoy.

In estimating the compensation to be awarded for auy improvement the Revenue Officers should act upon the principles laid down by section 72 of the Tenancy Act.

Salig Ram v. *Badhawa Mal* (3 *P. R.* 1886. Rev.), referred to and followed. SHERA *v.* ALI BAKHSH. **9 P R 1902 Rev.**

94. *Mortgage—Mortgage of common holding—Part of mortgaged land already heavily encumbered—Remedies of mortgagee.*

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A being in possession of a part of the common holding, mortgaged certain specific portions out of it to B. Subsequently the mortgagee, being deprived of his security on account of the mortgagor's title being defective and the existence of a prior mortgage, claimed to have his security made good out of the remainder of the common land forming part of the mortgagor's share.

Held, that as the mortgagee was deprived of his security by the wrongful act of the mortgagor, he was entitled to have his security made good to him out of the common holding in possession of the mortgagor.

Byjnath Lal v. *Ramoo-deen Chowdry* (21 *W. R.* 233), *Beli Ram* v. *Mussammat Shahzada Begum* (101 *P. R.* 1894), *Ajij-ud-din Sahib* v. *Sheikh Budan Sahib* (*I. L. R. XVIII Mad.* 492), and *Babu Rai* v. *Nathu* (32 *P. R.* 1900), referred to. SUNDAR SINGH *v.* NATHA.
89 P R 1903

95. *Mortgage—Mortgage of common land—Redemption—Right of one of several joint mortgagors to redeem the whole estate.*

The plaintiff having purchased 36 shares out of a total of 180 shares in the common land of their village, which had been previously mortgaged by certain of the sharers to the defendants, claimed to redeem the whole of the mortgaged land on payment of the whole of the mortgage money, and joined the other mortgagors as co-defendants with the mortgagees. The mortgagees resisted the claim on the ground that the plaintiffs were not entitled to redeem the whole, and that their only right was to redeem a share equal to that purchased by them.

Held, that a part owner of the equity of redemption could not insist on redeeming his own share only the right of redemption being a right to redeem the whole property mortgaged, the plaintiffs were entitled to the decree asked for subject to the equities between them and their co-owners.

Naro Hari Bhave v. *Vithalbhat* (*I. L. R. X Bom.*, 648), *Hall* v. *Heward* (*L. R.* 32 *Ch. Dn.* 430), *Pearce* v. *Morris* (*L. R.* 5 *Ch Dn.*, 227) and *Charter* v. *Watson* (*L. R.* 1 *Ch. Dn*, 175), cited and followed.

Marakar Akath Konda Rakayil Mamo v. *Punjapatath Kuthi* (*I. L. R. VI Mad.* 61), distinguished.

X Thillai Chetti v. *Ramanatha Ayyan* (*I. L. R. X Mad.* 295), not followed. BAHRAM KHAN *v.* SAIDAL KHAN. **2 P R 1904**

96. *Custom—Right of village menials to build a mosque over the site occupied by them without consent of the proprietors*—Mauza *Bakipur, Amritsar District.*

Held, that as a *kamin* generally gets land from the proprietary body on the implied understanding that it is only to be used for purposes of residence and for plying his trade, he is not competent to build a mosque or temple on it without the consent of the proprietors. KALU AND OTHERS *v.* WASAWA SINGH AND OTHERS.
19 P R 1904

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97. *Partition—Common land—Right of proprietors to partition land used for tethering cattle.*

Held, that village common land used by the co-sharers for tethering cattle is not precluded from being brought into partition. MAKHAN SINGH *v.* ISHAR SINGH.
136 P R 1906

98. *Common land—Partition—Suit for partition of portion of common land.*

Held that a suit for partition of a portion of the *shamilat* is not maintainable, and consequently a purchaser from a co-sharer is not entitled to obtain partition of his share alone in the village common land SHEO NATH *v.* PARMA NAND. **32 P R 1908**

99. *Common land—Possession of one co-sharer—Adverse possession—Abandonment.*

Held, that as in common holding the possession of one co-sharer is the possession of all, mere occupation and enjoyment by one to whatever period it may extend to does not constitute an adverse possession as against the other co-sharer, unless the one in possession is able to show most clearly and emphatically his own adverse possession or abandonment by other.

An absentee in a common holding who leaves his property in the hands of a co-sharer, asserts his rights to succeed to a relative on the opening out of a succession in the village and objects on the first invasion of his rights by the person left by him in charge of his share of the holding cannot be deemed to have abandoned his property, as in sach cases mere length of time or absence does not affect his rights. RAM CHAND *v.* KIRPA RAM. **120 P R 1908**

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— *Right of hereditary tenants to cut wood and grass from the common land of the village for the purpose of sale—Profits* a prendre—Mauza *Mangharwal, District Hoshiarpur.*
See COMMON LAND. **29 P R 1890**

— *Suit to restrain the proprietors of one* patti *from closing a pathway over the* shamilat *of the village—Necessity to implead the other proprietors of the village.*
See JOINDER OF PARTIES.
41 P R 1888

— *Suit for injunction against defendant to remove obstruction to plaintiff's widow—Valuation of suit.*
See JURISDICTION. **52 P R 1887**

1. An owner of land is at liberty to erect a water mill on his own ground without the consent of other owners of land in the same village, provided he so uses the water as not to injure others below him who have a right to its use. NOOR MAHOMED *v.* KHANEE MOOLA.
12 P R 1867

2. *Flow of water.*

A claim to demolish an embankment erected by a person on his own land which intercepts

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the natural flow of water on to the land of another, cannot be maintained by the other so long as a reasonable and fair quantity of water is allowed to pass. WAZEERA *v.* SIPADAR KHAN. **33 P R 1867**

3. *Right of way—Grant—Easement of necessity.*

A gateway was opened in 1847 between two estates, the joint property of a certain family. The property was afterwards divided, and one of the estates came into A's possession (a stranger), who in 1867 was sued by those in possession of the other estate to have the doorway closed. Plaintiff's suit was decreed, on the grounds that A's right to the way was not supported by any express grant or as an easement of necessity; and after the division of the two estates, the joint enjoyment of the way ceased. BARLOW *v.* MANAGER OF SKINNER ESTATES. **44 P R 1867**

4. A right of way imports the right of passing in a particular line, and not the right of varying it at pleasure. KHEWAN *v.* DEWAN JOWAHIR MULL. **80 P R 1867**

5. *Opening door-way.*

Claim to close a door-way newly opened by defendants leading into a court-yard the joint property of the parties.

Held, that defendant was at liberty to open a door-way in his own house opening on to common property—provided he did not thereby render such common property less useful to the co-sharer, or deprive the latter of any right which he otherwise would have had. HEERA SINGH *v.* TELOO. **46 P R 1868**

6. *Disturbance of privacy—Opening of door or window upon a neighbour.*

With regard to the usages and habits of the natives, the right of privacy in a dwelling house is protected, and the invasion of it may give a cause of action; for instance, where defendants opened a new door-way in an upper storey in such a way as to invade the privacy of plaintiff, *held*, that the Court could make a special order directing the closing of the door. NANUCK CHUND *v.* LALLA. **21 P R 1869**

7. *Privacy—Right to complain of disturbance of, depends upon the decree of privacy to which plaintiff is entitled.*

Though with regard to the usages of the country, the right of privacy in dwelling houses is recognized, yet the Court will not necessarily interfere in every case of disturbance of privacy, but will look to the degree of privacy to which the plaintiff is under the circumstances of the particular case entitled. Therefore, where the houses of defendant and plaintiff faced each other in a street common to both parties and to a third person, and the defendant by sitting in his own door-way could see the plaintiff's women if they sat in front of plaintiff's house, it was *held* that the plaintiff's

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degree of privacy was not so great as to preclude the defendant from making a window in his own house which looked upon the plaintiff's premises. GOHREE *v.* JAINTEE. **91 P R 1869**

8. *Extinguishment of easement, by showing intention to permanently abandon the use, or by inducing owner of servient tenement to believe it was so abandoned.*

The plaintiff's premises abutted on the defendant's, and both originally formed part of a single tenement. Twenty-five years before suit, defendant sold to plaintiff's father the portion which plaintiff occupied at the time of the suit, and secured by deed to plaintiff's father the use of an ancient drain which existed under both houses. For six years before action brought, plaintiff ceased to use the drain, and it was alleged by defendant that plaintiff could carry off his drainage without using the drain in question. In a suit by plaintiff to compel defendant to keep open the drain, it was *held*, that if plaintiff had for any space of time discontinued the use of the drain, and caused defendant to incur expense in altering or filling it up in belief that the drain had been permanently abandoned, or if he had manifested any intention of permanently abandoning the use of the drain, the servitude might be considered extinguished. PUNDIT RAI LALL *v.* HAFIZ KHODA BUKSH. **97 P R 1869**

9. *Extinguishment—Cessation of enjoyment—Evidence.*

Mere cessation of enjoyment of an easement does not necessarily extinguish the right; but the cesser of use, coupled with any act or omission on the part of the owner of the dominant tenement indicative of an intention to abandon the right, is equivalent to an express release of the easement. Interruption of the use of a drain, without objection on the part of the claimant, for three years, coupled with other circumstances indicating intention, *held* to extinguish the easement. KHODA BUX *v.* PUNDIT JEEA LALL. **30 P R 1871**

10. *Opening windows—Invasion of privacy.*

Defendant opened a window which looked down upon the contiguous houses and into the court, yard belonging to the plaintiff, who complained that his privacy was thereby invaded. By going upon the roof of his house, the defendant could also look into the plaintiff's court yard. *Held*, per BOULNOIS and LINDSAY, JJ. (CAMPBELL, J. dissenting) that it was not a case in which the Court could restrain the defendant from exercising his ordinary right of opening new windows.

Semble, per BOULNOIS and LINDSAY, JJ.). The right to disturb a neighbour's privacy by opening new windows (subject to the neighbour's right of building against them within 20 years) should be recognized with reference to the English law and recent High Court decision. SHIBDAYAL *v.* GOLAB. **96 P. R. 1876**

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11. *Light and air.*

Plaintiff's house stood at right angles to defendant's house and adjoined it. In the upper story of plaintiff's house were two small windows; defendant built a balcony to his house some twenty feet from the ground but not in a way to diminish the access of light and air to plantiff's small windows. Plaintiffs then enlarged the windows in such a way that he encountered inconvenience from the balcony—the end of the balcony crossing in a vertical direction the enlarged opening. *Held*, that as the erection of the balcony did not infringe the existing prescriptive rights of the plaintiff, the fact that it interfered with the enlarged windows gave him no right to any relief, to grant wnich would be to impose a new burden on the defendant. RALLA RAM *v.* HUZURI MALL. **99 P R 1876**

12. *Support to roof from neighbouring wall.*

Where the plaintiff had the right to support from the wall of defendant's house for the beams of the roof of plaintiff's house, *held*, that he had not also the right to alter the position of the beams and in raising his roof to insert the beams in another part of defendant's wall. SHIB DIYAL *v.* SUDDA NUND. **21 P R 1877**

13. *Afghans of Basti Ghuzan, Jalandhar city—Right of privacy—Easement—Suit to compel defendants to build a screen on upper story of their house—Proof required from plaintiffs in such case.*

When a suit is brought to restrain the owner of a house from adding an upper story to his own house, or to compel him to make some addition for the protection of the plaintiff's privacy strict proof should be demanded from the plaintiff (1) that the custom of domestic privacy is observed among that section of society of which he is a member, and (2) that the domestic privacy of individuals is generally regarded among the community of the locality where the plaintiff resides, as being of so much importance that by common consent it is considered incumbent upon owners of land and houses either to abstain from elevating their houses, or to elevate them with precaution against the violation of such privacy.

Where, therefore, in a suit, the parties to which were residents of Basti Ghuzan in the city of Jalandhar, the plaintiffs, who were Afghans, sued to compel the defendants to build a screen on the top of the upper story recently added to their house, so that persons using the roof of the latter should not command a view of the interior of the plaintiffs' premises, and it was proved that the plaintiffs and the tribe of Afghans to which they belonged did observe the practice of domestic privacy, but the evidence failed to establish the second point noted above, *held* that the lower Appellate Court had properly refused to grant the relief sought by the plaintiffs, leav-

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ing them to the remedy which lay in their own power, namely, to deal as they might think best with their own premises in order to protect their own domestic privacy. *Nanak Chund* v. *Lalla* (No. 21 of 1869, Civil), *Gohree* v. *Jaintee* (No. 91 of 1869, Civil), and *Shibdayal* v. *Golab* (No. 96 of 1876, Civil), cited. YASIN *v.* GOKAL CHAND.

19 P R 1882

14. *Amballa district—Easement—Profit à prendre—Right of one village to cut brushwood in neighbouring village for repairs to watercourse—Reasonableness of custom.*

In a suit between the representatives of two of the villages in the Mani Majra *illaqa* of the Amballa district, in which the plaintiffs sued to establish their right to cut brushwood for the repair of their watercourse from the defendants' lands in the neighbourhood of the watercourse, it was found that the said right had been long exercised by the plaintiffs.

Held further, that the custom under which the right was exercised was not unreasonable one. NODHA *v.* KAPURIA. **31 P R 1882**

15. *Right of way—Defendants closing old and opening out new right of way over their fields—Actual damage—Allegation by plaintiff of probable prospective damage—Right to injunction—Pecuniary compensation—Obligation upon servient owner not to render plaintiff's right of way less easy than before—Failure to prove such effect—Dismissal of suit.*

Plaintiff sued to restrain defendants from closing an old and opening out a new right of way over their (defendants') fields, alleging ancient user of the old way, and fears that the opening out of the new passage which was close to plaintiff's land, would cause damage to such land by cattle straying across and destroying the cultivation.

Held, that the defendants had an undoubted right to create a new right of way over their own land, so long as by doing so they did not injure their neighbours : that the damage alleged by the plaintiff, not being actual but prospective damage, was too remote to entitle him to the remedy he was seeking of a permanent injunction; that if the defendants by allowing cattle to come upon their land afterwards negligently suffered them to stray into and to do damage to the plaintiffs' property that might be a wrong to the plaintiff for which the defendants might be liable to an action, but that the remedy in such a case would be adequately met by pecuniary compensation and would not entitle the plaintiff to ask for a perpetual injuction against the use of the new right of way, and that therefore the plaintiff was not entitled to ask to close up the new passage.

Held, further, that as regards the substitution of the old by the new line of road-way the only obligation upon the defendants, the servient owners, was that they should not render the plaintiff's right of way less easy than it had been hitherto, and that the plaintiff having failed to prove that the new

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line would have any such effect, his claim must be dismissed. BUTA SINGH *v.* HAMIR SINGH. **22 P R 1888**

16. *Right of way—Public thoroughfare—special damage—Public and private injuries.*

Plaintiff sued to restrain defendant from preventing his passing through a covered porch, which opened on each side into a lane, each lane being admittedly a public lane, and each having at the end of it a house belonging to plaintiff, alleging that he had used this route for over twenty years. It appeared that by passing through these lanes and the porch the distance between plaintiff's two houses was considerably diminished. The Lower Appellate Court, finding it proved that the porch was a public thoroughfare, *held* that the plaintiff's suit would not lie as he had not sustained any "special damage."

Held, reversing the order of the lower Appellate Court, that the plaintiff was entitled to succeed in his suit. The injury complained of by the plaintiff was a private injury, in that he had been deprived, by the wrongful act of the defendant, of a right which he had hitherto peaceably enjoyed, and been driven to a circuitous, and therefore inconvenient, route, and that this injury would be equally a private injury to him, whether the right of the public to pass through the porch was or was not interfered with at the time. BELI RAM *v.* KAKU. **39 P R 1888**

17. *Right to use of water—Natural stream.*

In the case of a natural stream flowing through several owners' land, the persons through whose lands it passes are all entitled to a reasonable use of the water, and in the absence of evidence as to the exact share enjoyed, the presumption is that they are equal. AHMAD ALI *v.* MALAK HASHU. **49 P R 1888**

18. *Grant by owner of tenement of part of that tenement—Easements passing to grantee of such grant—Reservation of rights over tenement granted—Express and implied reservation—Easements of necessity—Right to support from adjoining buildings.*

On the grant by the owner of a tenement of part of that tenement as it is then used and enjoyed, there will pass to the grantee all those *quasi* easements of an apparent and continuous character, *i.e.*, all those easements which are necessary to the reasonable enjoyment of the property granted and which have been and are at the time of the grant used by the owners of the entirety for the benefit of the part granted.

If the grantor intends to reserve any right over the tenement granted, it is his duty to reserve it expressly in the grant; but this rule is subject to the exception relating to way and other easements of necessity; an easement of necessity being one without which the enjoyment of the severed tenements could not be had at all.

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A right of support for buildings from the subjacent and adjacent soil and from adjoining buildings arises by implied grant, in the absence of express stipulation, in every case where a grant of land for purposes of building is made by the owner of the adjoinining house. ATTAR SINGH *v.* JAWAHIR LAL. **60 P R 1888**

19. *Kasur city—Party wall—Joint ownership—Easement.*

In a suit in which plaintiff sought a declaration that he was at liberty to raise a wall which separated his house from that of the defendants, and which he claimed to be a joint wall, which defendants denied, the plaintiff alleged a general custom of Kasur (where the parties resided) under which the mere existence of rafters on an intervening wall constituted the owner of the premises to whom the rafters belonged a joint owner of the wall itself, and entitled him, even without the consent of the other adjoining owner, to raise the wall as he pleased—the adjoining owner, merely having the option of purchasing a share of the super-added wall by paying half its cost.

Held, that the plaintiff had failed to establish the custom contended for, and further, that it was very doubtful whether such a custom could operate to convert what was originally granted as an easement into a right of a much higher kind, constituting the person, to whom permission was given to place his rafters on the wall, a joint owner of the wall itself. CHIRAGH DIN *v.* BUTA. **82 P R 1888**

20. *Easement—Light and air—Obstruction—Injunction or damages—Specific Relief Act, 1877.*

The plaintiffs owned a three-storeyed house in the city of Amritsar; the defendants owned a house alongside consisting of a single storey.

The defendants added a second and third storeys to their house so as to obstruct the plaintiffs' right to light and air on the defendants' side of the plaintiffs' house.

The plaintiffs, on the commencement of defendants' operations, served the defendants with notice not to interfere with their rights (which the defendants ignored), and then instituted a suit two-and-a-half months afterwards.

Held, that the plaintiffs were entitled to a mandatory injunction.

Form of relief to be given to the plaintiffs under such injunction considered. KIRPA RAM *v.* GURBAKHSH. **2 P R 1893**

21. *Easement, acquisition of—Use of water from natural stream—Rights of riparian owners—Limitation Act, 1877, section 26.*

Plaintiffs alleged that they were the owners of a water-mill, situated on the banks of the river Leh, which they and their predecessors in title had worked on

the same spot since the year 1863 by appropriating all the water of the river at that place; that defendants, who had purchased a plot of land on the opposite bank of the river at a place higher up the stream, were constructing a watermill of their own, and for the purpose of working the same, were diverting the water at the said place by a channel; that the defendants were thereby depriving the plaintiffs of the exclusive use of the water to which they had been accustomed and would so diminish the supply as to cause material loss and inconvenience to plaintiffs in the working of their said mill. Plaintiffs, therefore, prayed that a perpetual injunction be granted restraining defendants from so diverting the water of the river and from cutting the channel. Defendants pleaded, *inter alia*, that, in any event, plaintiffs were not, as a matter of law, entitled to the injunction prayed for, inasmuch as plaintiffs' user had not been "as an easement" or "as of right" because (*a*) they had been enjoying nothing in excess of their natural rights as riparian owners, and (*b*), in any case, they had been asserting no rights as against riparian owners higher up the stream, whose mere omission to exercise rights similar to those actually enjoyed by plaintiffs neither curtailed nor destroyed such rights.

Held, that the rights acquired by plaintiffs being rights in excess of their own natural riparian rights, and in derogation of the natural rights of all adjacent riparian owners, whether above or below stream, were rights of easement within the meaning of section 26 of the Limitation Act, 1877, and anything done or threatened by the defendant which would interfere with such prescriptive rights would give rise to a cause of action and afford grounds for an injunction.

I. L. R. XI Mad. 16, referred to. SARDAR KIRPAL SINGH *v.* LAL KHAN. **35 P R 1895**

22. *Suit for declaratory decree that plaintiffs are entitled to perform certain religious ceremonies on behalf of an indeterminate class of persons on property belonging to third parties—Customary right—Unreasonable custom—Easement.*

Plaintiffs, four Brahmins of Mooltan city, sued the defendants, Marhotra Khatris of the same place, for a declaration in respect of a house in the latter's possession, to the effect that they were entitled, by custom, to take their *jajmans* of certain specified castes to a certain portion of the said house in order to worship the goddess *Bhawani* at the time of various ceremonies and festivals, and prayed also for an injunction prohibiting defendants from rebuilding it in such a way as to prevent plaintiffs from performing such worship, and ordering them to restore the portion already demolished to its former condition. Defendants denied the competency of the plaintiffs to sue and their right to perform such worship without defendants' consent, but disclaimed

any intention to prevent it. They also asserted their ownership over, and their right to build, the house. The first Court having held that plaintiffs were competent to sue, and were entitled to worship as claimed, defendants appealed to the Divisional Judge, who upheld the findings of the lower Court, but held that the defendants were owners of the house in dispute and modified the decree by granting an injunction prohibiting defendants from interfering with the plaintiffs' customary right of access to and worship in the specified portion of the house when accompanying their *jajmans* there, but limited their right to the above. Defendants appealed to the Chief Court, but plaintiffs did not file any cross-objections to the findings of the Divisional Court.

Held, that the house in dispute not being a place of public worship, but private property, the right of plaintiffs to perform their worship therein, irrespective of the consent of the owners, could only exist by virtue of some special custom, but that in the present case the alleged custom was too uncertain and unreasonable to be enforced at law or to form the foundation of a suit for an injunction.

Held, further, that the evidence entirely failed to establish any local custom recognizing the existence of the right claimed. SONU MAL *v.* DARYAI. **4 P R 1896**

23. *Easement—Suit for declaratory decree that plaintiffs have a right to dry tobacco on certain land—User for twenty years and upwards—Dominant tenement.*

Plaintiffs, who were snuffgrinders, and millowners, sued for a declaration that they were entitled to dry tobacco on certain land adjacent to their mills, and proved that they had used the said land for that purpose for more than twenty years before suit. Defendants contended that there was no dominant tenement and that plaintiffs were merely licensees.

Held, distinguishing *I. L. R. VIII All.* 69, and Civil Appeal No. 90 of 1893, that plaintiffs were entitled to the declaration prayed for, there being ample evidence that a drying ground in the immediate proximity of the mills was essential to their use, and that the land in question had been used by plaintiffs for that purpose as of right for more than twently years. ILAHI BAKHSH KHAN *v.* DIN MUHAMMAD. **14 P R 1897**

24. *Easement—Right of way—Public or private road—"Question of law"—Limitation Act,* 1877, *section* 26—*User of road by public for less than* 20 *years—Presumption as to dedication—English law.*

The principles of the English law regarding the presumed dedication of a road to the public arising from user of such road by the public, being founded on reason and common sense and conducive to public convenience, are applicable to India.

Held, therefore, that the user of a road by the public, openly and as of right, is

sufficient, apart from the law laid down in the Limitation Act, 1877, section 26, to raise a presumption of its dedication to their use, though such presumption might be rebutted by evidence of the owner's intention that the public should only have a permissive user.

In the present case the evidence clearly showed that the road in dispute had been used as a public road for at least ten years prior to suit, but the Divisional Judge, treating the case as one of prescription, found in favour of defendants because 20 years had not elapsed since the road was opened (section 26 of Limitation Act, 1877).

Held, under the circumstances as above set forth, that there was a presumption, that the road had been dedicated to the use of the public, and *found*, upon the evidence and facts of the cause, that defendants had failed to rebut such presumption.

The right of the public to pass over a public road is not in the nature of an easement properly so called, nor is it acquired by prescription under section 26 of the Limitation Act, 1877.

A preliminary objection on behalf of the defendants that there was no ground for admitting a further appeal in the case as there was no "question of law" involved, overruled on the grounds that the questions (*a*) whether plaintiff had not acquired a right of way over the road in dispute either by long user or grant; (*b*) whether the road came under the category of a public or a private road, involved consideration of points of law and were not simple questions of fact.

Held, further, that the Divisional Judge's error in law in deciding the point under section 26 of the Limitation Act was of itself a sufficient ground for admitting a further appeal, though it was not the ground on which the appeal was admitted by the Judge in Chambers. RANA GANPAT SINGH *v.* KANGRA VALLEY SLATE COY. **62 P R 1898**

25. *Suit alleged to be based on easement and decreed on custom—Inconsistent right—Right to stack grain in front of shop—Customary right—Validity of custom.*

Plaintiff, a grain-dealer, filed a suit against defendant for the issue of a perpetual injunction restraining defendants and their servants from the use of the site, of which the area was specified, in front of his shop which was situate in a rectangular collection of shops to which access was obtained by openings at the four corners. The use was stacking or spreading grain. The Divisional Judge remanded the case, on appeal, for inquiry as to (i) "whether defendants or any of them had prevented plaintiffs from exercising over the land in dispute the rights which he had been exercising, and (ii) whether such rights were justified by the practice and usage of the *chauk*." A return having been made to the order of remand, the Divisional Judge decreed the claim on the ground that a custom was proved to exist in the *bazar* entitling each shop-keeper therein to use the

CUSTOM VII.—EASEMENTS AND PROFITS—*contd.*

land in front of his shop for stacking grain, &c. Defendants appealed to the Chief Court, and it was contended, on their behalf, that (*a*) the suit was based on easement and was decreed on custom, an inconsistent right not set up or disclosed by plaintiff; (*b*) the site was public property and that a prescriptive or customary right could not be asserted in respect of such property; (*c*) that plaintiff had exercised the alleged right merely on sufferance; and (*d*) that the alleged custom could not be maintained as it was variable and uncertain.

Held, overruling the said contentions, that (*a*) the recital in the plaint of some of the elements of an easement, as defined in the Limitation Act, did not alter the fact that the claim was for maintenance of the right which had been maintained, and that in any event the defendant had an opportunity of meeting the case, founded on custom in remand; (*b*) that the site had not been proved to have been dedicated to the public or used by the public except for the purpose of access to the shop of plaintiff and possibly to the shops of others in this *bazar*, the soil of *bazar* being entered in the official papers as occupied by the owners or the residents, and (*c*) that the custom alleged by the plaintiff was neither unreasonable nor uncertain, nor opposed to public policy, the fact that the precise amount of grain to be stacked was not settled not introducing an element of uncertainty.

Nos. 2 and 4 *P. R.* 1896, and No. 49 *P. R.* 1897, and *I. L. R. XX All.* 200, distinguished. *I. L. R. IX All.* 434 followed. JHANDU *v.* DIWAN CHAND. **7 P R 1899**

26. *Limitation—Adverse user of land for more than twelve years.*

Held, that the user by plaintiffs of a certain ladder, one end of which rested on defendant's land, and of a platform which projected over the said land even if such user were adverse and had extended over a period of twelve but less than twenty years, neither extinguished the right of defendant in the said land nor gave plaintiffs a right of easement in respect thereof.

I. L. R. III Bom. 174, not followed.

On the evidence, *found*, that plaintiffs had failed to establish adverse possession. SHARAF HUSSAIN *v.* RAM KISHAN DAS. **68 P R 1899**

27. *Discharge of water and drainage—Removal of obstruction—Right of access for the purpose of supervision of the right to discharge water and drainage—Pecuniary compensation—Perpetual injunction—Specific Relief Act, Chapter IX.*

The premises owned by the appellant and respondent were owned by one Babu Mohan Bannerjee, on whose death his sons by one wife became owners of the appellant's premises, while his sons by another wife became owners of the respondent's premises. In about 1880 both sets of premises were entirely re-constructed. In 1884 a plot of

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land to the east of the respondent's premises was sold for building purposes to a stranger, which necessitated the rain and refuse water drainage of the respondent's premises being turned from eastward to northward, and the respondent's premises, including his bath-rooms, remained up to the date of suit practically unchanged from the state in which they were when the change in drainage was effected by the owners of both sets. In February 1896 the present appellant who has derived his title from the owners of one set of the premises, erected a wall which obstructed the rain and refuse water of respondent's premises from going to the public drain by passing through his courtyard. The respondent filed a suit on 6th April 1896, and the District Judge passed a decree in his favour which was confirmed by the Divisional Judge. On appeal to the Chief Court, *held*, that the right to discharge the drainage was an apparent and continuous easement which passed to the respondent from his predecessor in title, that an injunction was necessary for the enjoyment of the respondent's premises, pecuniary compensation would not afford adequate relief as the effect of the obstruction would render the premises unfit for habitation, and that the right of access for the purpose of supervision of the drainage was a necessary adjunct to the right of drainage, and that the doctrine of apparent continuous easement applies to India. SULTANI *v.* RAM SARAN DAS. **49 P R 1900**

28. *Right of passage included by implication—Construction to be placed on the order of a Judicial Court—Justice and equity—Easement of necessity.*

The respondent obtained a decree for possession of a one-fourth share of the entire house on payment of Rs. 350 for cost of repairs to the appellant. In execution a partition was made by the Divisional Judge who awarded the respondent the upper and lower stories of the *kothri* marked "A" on the plan, but made no mention of any passage through the appellant's portion of the house. There was no dispute as respects the property to be awarded to respondent in lieu of his one-fourth share under the original decree, but the respondent insisted that he had the right of passage through the appellant's share of the house and the right of user thereof for all purposes necessary for the enjoyment of the portion awarded to him. This the appellant objected to on the ground of infringement of the privacy of his females, and that the value of his share would be practically destroyed. And further contended that respondent could not claim the right as an easement of necessity as he could open a passage to his house from the lane which ran to the north of *kothri* "A," or from his own house whtch adjoins the one partitioned.

Held, that as no express provision was made for the right of way in the order of the Divisional Judge partitioning the property,

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the order being clear by itself, and as the respondent could easily open a passage from the street or from his other house and could not therefore claim the right of way as an easement of necessity, such right of way could not be presumed to be implied in the order. MUHAMMAD ASHRAF KHAN *v.* MIR MUHAMMAD KHAN AND OTHERS. **76 P R 1900**

CUSTOM VIII.—MAINTENANCE AND SUCCESSION.

See ALSO UNDER HINDU LAW.
MUHAMMADAN LAW
CUSTOM—III. APPOINTMENT OF HEIR; (M.—SUCCESSION OF ADOPTED SON AND HIS HEIRS).
LAMBARDARI (SUCCESSION TO OFFICE)
RELIGIOUS INSTITUTION (SUCCESSION TO OFFICE OF *Mohant*).
PUNJAB LAND REVENUE ACT (SUCCESSION TO *Jagir*).

A.—RULE OF DECISION.

1. *Minor Cis-Sutlej Chiefs—Rules of Inheritance—Custom of the families—Females do not succeed.*

The orders of Government, considered by the light of the correspondence on the subject, show that the families of the minor Cis-Sutlej Chiefs have been allowed to follow their own rules of inheritance, apparently established during the independence of those Chiefs, but at all events confirmed by those orders. *Held*, that such orders have the force of law. *Held* also, that the rules acted upon in these families both before and since 1849, do not permit the succession of females; that in this respect there is no distinction between movable and immovable property, and that such females are only entitled to maintenance suitable to their condition. JUSMAER SINGH *v.* MUSSAMMAT HUR KOUR. **40 P R 1869**

2. *Hindu Jats—Representation—Burden of proof.*

Held, that among Hindu Jats of the Umballa district, it is not necessary for the party alleging a customary right of representation, which extends to collateral, as well as to lineal succession, to give evidence in order to establish such a custom. CHANDA *v.* MUSSAMMAT GUJOR. **91 P R 1879**

3. *Agarwal Baniyas of the Gurgaon district—Hindu law.*

Found, that the Agarwal Baniyas of the Gurgaon district do not follow strict Hindu Law, but a custom which allows representation amongst collateral heirs. KANHYA LAL *v.* KISHNA. **39 P R 1884**

4. *Khatris of Lahore—Immoveable property ancestral and acquired—Hindu Law.*

In a suit for inheritance the parties to which were Khatris of the Lahore district, *found*, that the said parties had adopted and were governed by the local custom, so far as regards succession to ancestral immoveable property, but that it was not proved that that custom overrode the Hindu Law in regard to any other kind of property, and that in respect to such property the rule of succession to be applied was the Hindu Law, which gives a preference to the associated over the disassociated brother. ABNASHI RAM *v.* MUL CHAND. **44 P R 1884**

5. *Kakazais of Lahore—Muhammadan Law.*

Found, that among Kakazais of Lahore there is no well established custom, contrary to the Muhammadan Law, regulating the inheritance to the property of a proprietor dying without male issue. MUSSAMMAT FAZL-UN-NISSA *v.* CHIRAGH DIN. **10 P R 1885**

6. *Ranjha Jats of* tahsil *Bhera,* zilla *Shahpur—Muhammadan law.*

In a suit for cancellation of a mortgage made in favour of one son and the sons of another son to the prejudice of the descendants of a third son, the parties to which were Ranjha Jats of the Bhera *tahsil* of the Shahpur district, *found*, that inheritance in the family of the parties was governed by custom, which allowed representation, and not by strict Muhammadan Law, which would exclude a grandson whose father died in the grandfather's lifetime from sharing with his uncles in his grandfather's estate. RUKN-I-ALAM *v.* FAZL AHMAD. **26 P R 1885**

7. *General rule as to interest of descendants in different degrees from a common ancestor—Sonless proprietor.*

As a general rule among agriculturists, whether Hindus or Muhammadans, the descendants in different degrees from a common ancestor are usually regarded as equally interested in matters of succession to sonless members of the family. NUR MUHAMMAD *v.* LAL. **130 P R 1888**

See also SHARF *v.* MUSSAMMAT SAHIBJI. **130 P R 1888 Note**

8. *Punjab Laws Act (IV of 1872), section 5—Custom the primary rule of decision in the matters specified in the section—Onus of proving alleged custom*

Section 5 of the Punjab Laws Act discussed and explained.

The intention of the above section is, that the primary rule of decision in all questions relating to the matters specified shall be custom, where a custom exists, and that the Hindu and Muhammadan Law shall only be applied where no such customary rule prevails. The section does not *presume* that custom is to govern the parties to the exclusion of the ordinary law, but it *prescribes* that it shall govern them in certain matters in the first instance, and though, except in certain cases where the custom contended for is so general, that it may be presumed to exist, the person who alleges a custom contrary to some precept of his personal law is *primâ facie* bound to prove that custom, the regulation or this burden depends on a rule of procedure or evidence only, in order to ascertain whether the special custom does or does not exist. The rule of decision remains the same, and its operation is merely suspended until the ascertainment of a fact, *e.g.*, the existence of a custom. If a custom is proved, it must be applied to the exclusion of the personal law; if it is not the second branch of the rule must then receive effect. *Mussammat Uttar Kaur* v. *Atma Singh* (No. 47 *P. R.* 1870), referred to. MUSSAMMAT LORENDI *v.* MUSSAMMAT KISHEN KAUR. **149 P R 1888**

9. *Custom—Alienation—Bokhari Saiyad Shiahs of* Kasba *Sadhowra, Ambala district—Suit by collaterals in the seventh remove from the common ancestor—Muhammadan Law—Agricultural custom—Widow's tenure of her husband's estate—Life interest—Power of gift.*

In a suit to set aside an alienation made by widows of a Bokhari Saiyad Shiah family, residing at *Kasba* Sadhowra, Ambala district, the collaterals (related in the tenth degree from the common ancestor) contended that the widows having succeeded to the entire estates of their respective husbands, it was clear that devolution to property was not governed by Muhammadan Law; and that in the absence of such rule the general custom governing the agricultural classes of the Punjab applied, whereby widows succeeded to a life tenure only, with no power of alienation, and that they (the collaterals), however distantly related, were competent to have the gift set aside.

Held, that the contention was not correct. Given that the widows did not succeed according to strict Muhammadan Law, it did not follow (*i*) that they took only a life interest similar to that of a Hindu widow and such as is commonly found among agriculturists in this province; and (*ii*) that any reversioner, however remote, could sue to contest their alienation.

Held, further, that the plaintiffs had failed to prove that the widows had not by custom governing the parties a limited power of gift. RAHMAT HUSSAIN AND OTHERS *v.* MUSSAMMAT FAHIM-UN-NISSA AND OTHERS. **25 P R 1890**

10. *Bedis of Mohalla Wahidpur, tahsil Garhshankar, Hoshiarpur district—Sale without necessity of ancestral land—Objection of near kinsmen—Burden of proof.*

Held, in a suit the parties to which were Bedis of *mauza* Mohalla Wahidpur in the Garhshankar *tahsil* of the Hoshiarpur district, a non-agricultural class, though in the present case holding land in the village, the tenure of which was incomplete *bhaiachara*, but having no share in the *shamilat* that the plaintiffs had failed to discharge the burden, which under the circumstances lay upon them, of proving that certain alienations of divided ancestral land by a deceased collateral male without necessity were liable to be set aside as contrary to custom.

A presumption that may be applicable to Jats or other tribes who have long followed agriculture as a landholding occupation is therefore not necessarily applicable in the case of non-agricultural tribes who have acquired land in villages. KHAZAN SINGH AND OTHERS *v.* MADDI AND OTHERS. **122 P R 1893**

11. *Punjab Laws Act, section 5—First rule of decision in cases of succession—Duty of Court trying such cases to determine what law was applicable to the facts, whether Hindu or Muhammadan Law, or the customary law.*

Where the plaintiffs claimed to inherit certain property in accordance with Muhammadan Law, which law was alleged to be identical with the custom by which the parties to the suit were governed, and the lower Courts finding that Muhammadan Law was not applicable, dismissed the suit.

Held, that an adjudication upon the legal rights of a suitor cannot properly be refused merely because the suitor erroneously alleges that he is governed by law, while he is really governed by customary law; and that it was for the Court to determine what law was applicable to the facts, whether the Hindu or Muhammadan Law, or the customary law; and having determined what law was applicable, to apply it to the ascertained facts. MUSSAMMAT FATIMA BIBI *v.* GUL. **127 P R 1893**

12. By Hindu Law, though a widow is not competent of herself to institute partition proceedings in respect of her deceased husband's property, yet when such proceedings have been commenced by an heir entitled to demand partition and the paternal estate is divided by the sons after their father's death the widow is entitled for her life to a share equal to that of a son, and it is immaterial whether she is allotted a share as a defendant or claims it as a plaintiff.

In questions relating to inheritance, partition, alienation and the like, where the parties are high caste Hindus of good position, residents of a town and, though

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A.—RULE OF DECISION—*contd.*

holding land, non-agriculturists, depending for their livelihood on avocations other than cultivation of land, while the Court should see in the first instance whether there is any custom bearing on the question in issue, no presumption in favour of the existence of such a custom should be made and its existence should be left to be established by the evidence of the parties. MUSSAMMAT PAL DEVI *v.* FAKIR CHAND. **60 P R 1895**

13. *Succession to childless* mukarraridar *in Pindigheb* tahsil, *Rawalpindi district—Claim by collaterals whose common ancestor never held the land—Customary right of succession*—Status *of* mukarraridar *in said district—Punjab Tenancy Act*, 1887, *section* 59—*Punjab Laws Act*, 1872, *sections* 5, 7.

In the Rawalpindi District a *mukarraridar* is a tenant, but there is a difference between his *status* and that of a tenant with ordinary rights of occupancy.

Held, therefore, that the succession to a deceased *mukarraridar* of the said district is not governed by section 59 of the Punjab Tenancy Act, 1887, and that his right devolves according to the law applicable to the parties, as if it were a proprietary right.

In the case of a deceased childless *mukarraridar* of the Pindigheb *tahsil*, Rawalpindi district, who had acquired his right by constructing a well in the land of a proprietor with his consent, *found*, that the question of succession was governed by custom, and that by such custom collaterals, whose common ancestor had never held the lands in dispute, were entitled to succeed, subject to the life interest of the widow of the deceased. MAYA DAS *v.* MALIK AULIA KHAN.

10 P R 1896 Rev.

14. Section 5 of the Punjab Laws Act, 1872, does not require it to be *presumed* that in the matters therein specified a custom governs the parties to the exclusion of their personal law, but merely *prescribes* that it shall govern them in such matters in the first instance. All that the said section lays down is that an enquiry should first be directed to ascertain whether there is any custom applicable to the parties in respect of those matters, and if one is established that it shall furnish the rule of decision to the supersession of their personal law. When, therefore, a person alleges a custom contrary to some precept of his personal law, he is *primâ facie* bound to prove that custom. MUSSAMMAT FAKHIR-UN-NISSA *v.* MALIK RAHIM BAKHSH.

23 P R 1897

15. *Custom—Succession—Muhammadan carpenters of Moolton city—Punjab Laws Act* (*IV of* 1872), *section* 5 (*b*).

Held, that among Muhammadan carpenters, resident in Mooltan city, there being no definite custom as regards succession at variance with Muhammadan Law, the rules of that law must be followed. ABDUL HAKIM AND OTHERS *v.* MUSSAMMAT BILOCHNI.

47 P R 1900

CUSTOM VIII.—MAINTENANCE AND SUCCESSION—*contd.*

A.—RULE OF DECISION—*contd.*

16. *Custom—Succession—Succession of daughter—Sheikhs of Badli, Rohtak district—Non-agriculturists*—Onus probandi—*Punjab Laws Act*, 1872, *section* 5.

In a suit the parties to which were Sheikhs of the village of Badli, in the Rohtak district, *found*, in the absence of a custom to the contrary, that the daughters succeed in preference to collaterals such as the defendants. Where *primâ facie* it is apparent that the parties to a suit were not ordinary agriculturists or carrying on the pursuit of agriculture, but had been employed for generations in State service, there is no initial presumption in favour of the existence of a custom under section 5 (*a*) of the Punjab Laws Act, 1872. In such cases it should be ascertained whether the rule of descent is governed by custom or by the personal law of the parties. MUSSAMMAT FATIMA *v.* ARJMAND ALI. **41 P P 1901**

17. *Custom—Inheritnce—Koreshis of Gujranwala—Muhammadan Law.*

In a suit the parties to which were Koreshis of the town of Gujranwala and not agriculturists, and the property in dispute was situate in that town, *found*, in the absence of a special custom to the contrary, that the rule of inheritance was governed by Muhammadan Law.

Ahmad Din v. *Mussammat Fazlan* (175 *P. R.* 1883) cited. MUSSAMMAT KARAM BIBI AND OTHERS *v.* HUSSAIN BAKHSH AND ANOTHHR.

92 P R 1901

18. *Custom—Inheritance—Shiah Sayads of Umballa City—Punjab Laws Act*, 1872, *section* 5—*Muhammadan Law.*

In a suit, the parties to which were non-agriculturist Shiah Sayads residing in the Kazi *mohalla* of Umballa city and owning little land outside, *held*, that the plaintiffs had failed to establish that they were governed by agricultural custom under which collaterals related in the fifth degree have a right to succeed to non-ancestral house property situated in the Umballa city or cantonments to the exclusion of a grandmother succeeding her grandson, or a married daughter succeeding her mother.

Held, further, that in matters of succession under dispute the parties were governed by Muhammadan Law and being Shiah Sayads by the Imamia Code.

As the Punjab Laws Act gives equal protection to those governed by their personal law as well as to those governed by custom, there can be no legal presumption in any case coming before a Court in the Punjab that it is to be governed by custom rather than the personal law of the parties. But in every case where a custom is set up it is the duty of the person alleging it to prove where it is not admitted that it exists and is applicable to the points in issue. MUHAMMAD HUSSAIN *v.* SULTAN ALI. **54 P R 1903**

19. *Custom—Inheritance—Muhammadan Kashmiris of Lahore city—Muhammadan Law.*

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A.—RULE OF DECISION—*contd.*

In a suit the parties to which were Muhammadan Kashmiris of the city of Lahore engaged in trade and manufacture, *found* that in matters of inheritance they were governed by Muhammadan Law and not by custom.

Miran Bakhsh v. *Allajawai* (25 *P. R.* 1882). *Kasim Ali* v. *Zinat-un Nissa* (35 *P. R.* 1891), *Sardar Bibi* v. *Sayad Ali Shah* (4 *P. R.* 1888), *Lorendi* v. *Kishan Kaur* (149 *P. R.* 1888), *Har Narain* v. *Deoki* (24 *P. R.* 1893). *Fakhar-un-Nissa* v. *Malik Rahim Bakhsh* (23 *P. R.* 1897), *Abdul Hakim* v. *Mussammat Belochni* (47 *P. R.* 1900), *Mussammat Fatima* v. *Arjmand Ali* (41 *P. R.* 1901), *Mussammat Karam Bibi* v. *Hussain Bakhsh* (92 *P. R.* 1901), *Moti Ram* v. *Sant Ram* (103 *P. R.* 1902), *Mussammat Jumna Devi* v. *Chuni Lal* (30 *P. R.* 1903), *Mangtu* v. *Chuni Lal* (51 *P. R.* 1903), *Muhammad Hassain* v. *Sultan Ali* (54 *P. R.* 1903), *Husani Begam* v. *Sahani Begam* (51 *P. L. R.* 1904), *Lal Din* v. *Mussammat Junian* (114 *P. R.* 1893), and *Ram Lal* v. *Mussammat Miran* (3) *P. R.* 1896), referred to. MAULA BAKHSH *v.* MUHAMMAD BAKHSH.

54 P R 1906

20. *Custom—Inheritance—Land acquired in a village other than that of the owner's origin—Right of descendants of a commom ancestor who resided in village of owner's origin to succeed by reason of mere community of descent—Rule of decision in cases of successions, etc.—Punjab Laws Act*, 1872, *section* 5.

Held, by the whole Court that it has not been laid down by *Lakha* v. *Hari* (64 *P. R.* 1893) and other rulings on the point that mere community of descent does not give agnates of a deceased landowner a right of succession to acquired land left by him in a village in which they do not own any land.

Such a rule is neither borne out by the results of judicial enquiries nor deducible from the general principles of customary law.

Ichhri v. *Jowihira* (18 *P. R.* 1896), *Sham Ram* v. *Hemi Bai* (73 *P. R.* 1896) and *Khuda Yar* v. *Sultan* (103 *P. R.* 1900) considered and discussed.

Held, also that among parties generally following customary law it is permissible to fall back as a last resort on their personal law for the decision of the point in issue where no definite rule of the former law applicable to the case before a Court can be found. DAYA RAM *v.* SOHEL SINGH.

110 P R 1906 F B

21. *Custom—Inheritance—Succession to unpaid dower of deceased female—Rajputs of Ludhiana district—Muhammadan Law.*

Held, that in matter of succession to unpaid dower of a deceased female the Muhammadan Rajputs of the Ludhiana district (who in matters of succession generally are governed by the general rules of agricultural custom of the Province) are governed by Muhammadan Law. FAQIR MUHAMMAD *v.* MIRAN BAKHSH.

43 P R 1908

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CUSTOM VIII. MAINTENANCE AND SUCCESSION—*contd.*

A.—RULE OF DECISION—*contd.*

22. *Custom—Inheritance—Koreshis of Guliana,* tahsil *Gujar Khan, Rawalpindi district—Muhammadan Law.*

In a suit the parties to which were Koreshis of Guliana in the Gujar Khan *tahsil* of the Rawalpindi district, belonging to a family of Pirs who practise *Pir Muridi, found* that in matters of inheritance they were governed by Muhammadan Law and not by custom. MUSSAMMAT BAKHT BANO *v.* CHIRAGH SHAH. **45 P R 1908**

23. *Chief of Kunjpura—Succession—Family custom—Primogeniture—Right of junior members of the family—Muhammadan Law.*

In a suit by the younger brothers against the eldest for partition of the Kunjpnra estate *held,* that it is established that by family custom all the property which once appertained to that State (which ceased to exist as a semi-independant State in 1894) descended to the eldest son, the others being entitled to maintenance only, but that the rule of succession to lands and property acquired since 1849 was subject to the personal law of the parties. MUHAMMAD AHSANULLA KHAN *v.* MUHAMMAD IBRAHIM ALI KHAN. **47 P R 1908**

24. *Custom—Inheritance—Kilchi Moghals of Mudki,* tahsil *Ferozepore—Muhammadan Law.*

Held that in matters of succession Kilchi Moghals of Mudki in the Ferozepore *tahsil* are governed by Muhammadan Law and not by the general rules of agricultural custom. NIZAM *v.* BHANA. **71 P R 1908**

25. *Custom—Inheritance—Natkani Bilochis of Sanghar* tahsil, *Dera Ghazi Khan district—Rights of collaterals to succeed in preference to a daughter—Muhammadan Law.*

Held that the plaintiff upon whom the *onus* lay had failed to establish that in matters of succession the Natkani Bilochis of the Sanghar *tahsil* in the Dera Ghazi Khan district were governed by custom and not by Muhammadan Law, or that collaterals were entitled to succeed to the exclusion of a daughter. GHULAM HAIDAR *v.* PHAPHAL. **92 P R 1908**

26. *Custom—Inheritance—Non-agricultural Awans of Ludhiana city—Muhammadan Law—Attestation of* Riwaj-i-am.

Held that in matters of succession the Awans of Ludhiana city who were for generations past dependent either upon service or other independent means of livelihood were governed by Muhammadan Law and not by custom.

The mere attestation of a *Riwaj-i-am* by a non-agriculturist who had acquired agricultural land in a village as a means of investment is not *ipso facto* sufficient to prove that in matters of alienation or succession his family residing in a town followed the ordinary customary rules of dominant agricultural tribes. JAMIAT-UL-NISA *v.* HASHMAT-UL-NISA. **124 P R 1908**

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CUSTOM VIII. MAINTENANCE AND SUCCESSION—*contd.*

A.—RULE OF DECISION—*concld.*

27. *Custom—Inheritance—Shamsi Khojas of Lahore—Muhammadan Law—Right of representation.*

Found that in matters of succession the Shamsi Khojas of Lahore were governed by custom and not by Muhammadan Law and that among them the sons of a pre-deceased collateral were entitled to succeed by right of representation in presence of their uncle. MEHTAB-UD-DIN *v.* ABDULLAH. **140 P R 1908**

28. *Hindu Law—Brahmins of mauza Mankiala,* tahsil *Gujar Khan, district Rawalpindi*—Onus probandi.

Held, that apart from local and special circumstances and conditions, the initial presumption in regard to Brahmins is, that they are governed by Hindu Law, and that the defendants, on whom the *onus probandi* rested, have failed to prove that Brahmins of *mauza* Mankiala, *tahsil* Gujar Khan, district Rawalpindi, follow agricultural custom in matters of succession. MUSSAMMAT MAYA *v.* GURDIT SINGH. **1 P R 1910**

29. *Hindu Law—Succession—Tarkhans of Amritsar city.*

Held, that Hindu non-agriculturists residing in a city are, in the absence of proof of a custom by specific instances modifying Hindu Law, presumably governed by that law, and that among Hindu Tarkhans of the Amritsar city a grandnephew as a *sapinda* succeeds in preference to a great-grandnephew and to the widow of a *sapinda* whose husband predeceased the widow of the last male owner. SARDUL SINGH *v.* KARM SINGH. **30 P R 1910**

B.—PAGVAND AND CHUNDAVAND.

1 *Raien tribe.*

Sons succeed *per capita* and not *per stirpes* amongst the Raien tribe, in the Ludhiana and Jullundur districts. EESSA *v.* KAIMOOLLA. **74 P R 1870**

2. Pagvand *and* chundavand—*Half-brothers—Aroras of Moolton*

Among the Aroras of the Mooltan district, if a man has sons by two wives, the property is divided equally between them by custom of *pagvand*; and if one of the sons die without male issue, his property is divided amongst the his own brothers and their issue, to the exclusion of the half-brothers. CHAHDA *v.* WALLIA MAL. **25 P R 1873**

3. *Bagri Jats, Ferozepore district*—Pagvand *and* chundavand.

Found, that by custom amongst the Bagri Jats of the Ferozepore district inheritance is according to the *pagvand* rule (*per capita*) and not the *chundavand* rule (*per stirpes*). AMRIKA *v.* SARMUKH **105 P R 1876**

4 *Jats*—Pagvand—chundavand

Found, that *chundravand* was not the customary rule of succession amongst Jats of *mauza* Kolaran, *tahsil* Rupar, district Umballa, and neighbouring villages. ALA SINGH *v.* LEHNA SINGH. **34 P R 1879**

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CUSTOM VIII. MAINTENANCE AND SUCCESSION—*contd.*

B.—PAGVAND AND CHUNDAVAND—*contd.*

5 Pagvandda—chunvand—Onus probandi—*General custom.*

Inheritance as a rule goes *per capita* (according to the *pagvand* rule) and not *per stirpes* (*chundavand*). It therefore lies upon the parties alleging the special custom of *chundavand* to establish such custom; and, in the absence of such proof, the general custom of *pagvand* will apply without any proof being necessary. DHYAN CHAND *v.* MEHTAB SINGH. **101 P R 1879**

6. *Acharjis of M. Bhawani, Hissar district*—Pagvand.

Found, that no well-established custom of division by the rule of *chundavand* exists amongst Acharjis of *mauza* Bhawani in the Hissar district. KANHU RAM *v.* DEVI SAHAI. **81 P R 1884**

7. *Sidhu Berar Jats of Moga* tahsil—Pagvand.

In a suit the parties to which were Sidhu Berar Jats of the Moga *tahsil* of the Firozpur district, *held* that no well established custom of *chundavand* was proved to prevail so as to govern the inheritance among the class or family to which the parties belonged, and that therefore the general custom of *pagvand* must be held to apply to the case. *Dhyan Chand* v. *Mehtab Singh* (No. 01 of 1879, Civil) cited. ATAR SINGH *v.* NIHAL SINGH. **125 P R 1884**

8. *Hindu Jats* (*Sindhu* got) *of* tahsil *Jagadhri,* zilla *Amballa*—Pagvand.

In a suit, the parties to which were Sindhu Jats residing in the Jagadhri *tahsil* of the Amballa district, *held,* that the defendant had failed to prove that *chundavand* was the recognized rule of inheritance in the tribe to which the parties belonged, and that therefore the general rule of *pagvand* must prevail. *Albela* v. *Pat Ram* (No. 21 of 1881, Civil) referred to PARTAB SINGH *v.* NATHA SINGH. **127 P R 1884**

9. *Padda Jats of Gurdaspur*—Pagvand.

Found, that no well established custom of inheritance by the rule of *chundavand* prevails among Padda Jats of the Gurdaspur *tahsil.* CHATTAR SINGH *v.* HEM SINGH. **62 P R 1885**

10. *Sindhu Jats of Kot Jagraj, Gurdaspur*—Pagvand.

In a suit the parties to which were Sindhu Jats of Kot Jagraj in the Gurdaspur *tahsil,* found to have originally settled there from Kana Kacha in the Lahore district *found,* that when a proprietor dies leaving sons by different wives, the inheritance is by custom divided according to the *pagvand* rule, and not in accordance with *chundavand.* CHARN SINGH *v.* SOBHA SINGH. **63 P R 1885**

11. *Chundavand—Chibhs—Gujrat district.*

Found, that among the Chibhs of the Gujrat district the general custom is to treat the offspring of each Rajput wife, and not the sons individually, as the units between which property should be divided on the

father's death. ATA MUHAMMAD KHAN *v.* FAUJDAR KHAN. **77 P R 1885**

See also MUSAHIB KHAN *v.* AGAR KHAN. **77 P R 1885 Note**

12. Chundavand—*Aulakh Jats, Amritsar district.*

In a suit to have it declared that certain property was not liable to division according to *chundavand*, the parties to which were Aulakh Jats of the Amritsar district, the lower Court after a remand for further enquiry as to custom found that the rule of *chundavand* was applicable to the parties, and therefore dismissed the plaintiffs' claim It appeared that at Settlement one of the plaintiffs attested the *Riwaj-i-am* in which the custom of the Aulakh Jats was recorded as *chundavand*, and was a party to an entry of the holding in dispute and other holdings as belonging half to the plaintiffs, whose father was then dead, and half to himself, his brothers and nephews.

Held, on an appeal by plaintiffs to the Chief Court, that the evidence on remand certainly did not show that the custom was erroneously entered as *chundavand*, and as the shares of the parties entered at settlement raised a strong presumption that *chundavand* was the custom, which was also deposed to by several witnesses, the appeal must be dismissed. BISHEN SINGH *v.* MANGAL SINGH. **48 P R 1886**

13. *Hindu Jats (Sanwan* got, *Rohtak district*—Chundavand.

In a suit the parties to which were Hindu Jats of the Sanwan *got*, residents of *mauza* Daolu, *tahsil* Jhajjar, *zilla* Rohtak, *found*, that *chundavand* was the customary rule of succession applicable to the parties. *Sahiba* v. *Ameer Chund* (No. 82 of 1866, Civil) referred to. SITA *v* KHUBA. **53 P R 1886**

14. *Pathans of Amritsar district.*

In a suit, the parties to which were Pathans of the Amritsar district, *found*, that the *pagvand* was the rule of succession applicable to the parties. SHER KHAN *v.* SULTAN KHAN. **35 P R 1889**

15. *Muhammadan family residing in Yusafzai* parganah.

Found, in a case of a Muhammadan family who originally came from the Hastnagar *parganah*, but had resided for two or three generations in the Yusafzai *parganah* in which the land in dispute lay, that the customary rule of succession applicable to the parties was *chundavand*. ABDUL RAHMAN *v.* KHALIL-UR-RAHMAN. **51 P R 1889**

16. *Chohl Jats of Lahore district—Whole and half blood.*

In a suit, the party to which were Chohl Jats of the Lahore district, *found*, that the rule of succession applicable to the parties was *pagvand* and that no distinction was recognized between whole and half blood as between surviving brothers and their descendants. HIRA *v.* FAIZ BAKHSH. **75 P R 1889**

17. *Sanghera Jats of* tahsil *Zira*, zilla *Ferozepore.*

In a suit, the parties to which were Sanghera Jats of *tahsil* Zira, *zilla* Ferozepore, *held* that no well-established custom of *chundavand* had been proved to prevail, and therefore the general custom of *pagvand* must be held to apply to the case. PARAS *v.* IMAM DIN. **178 P R 1889**

18. *Succession by collaterals—Pagvand* (per capita) *and chundavand* (per stirpes)—*Whole and half blood—Burden of proof.*

Held, by the Full Bench, that in cases of collateral succession arising in the Punjab, of which the decision is governed by custom, and in which a portion of the property of a common ancestor of the deceased and of the claimants is in dispute :—

When it appears—

(*a*) that the property of the common ancestor was distributed according to the rule of *chundavand* ; or

(*b*) that the property of the common ancestor was distributed according to the rule of *pagvand* ;

the Court may presume, until the contrary is proved,

in case (*a*) that the whole blood excludes the half blood ; and

in case (*b*) that the whole blood and half blood succeed together :

Explanation of the grounds for his opinion, and remarks on the burden of proof by *Plowden*, J.

Appendix of decided cases collected with remarks thereon by RIVAZ, J. GHOLAM MUHAMMAD *v.* MUHAMMAD BAKHSH. **4 P R 1891 F B**

19. *Baryah Rajputs, Jullundur district.*

In a suit, the parties to which were Baryah Rajputs of the Jullundur district *held*, that by reason of the presumption arising from the distribution of the estate on the death of the common ancestor, the collaterals were governed by the *pagvand* rule in succeeding to the share of another collateral.

No. 4 *P. R.* 1891, followed. SUKHE KHAN *v.* SOHNE KHAN. **110 P R 1891**

20. *Randhawa Jats of* tahsil *Ajnala, Amritsar district.*

Found, in a suit the parties to which were Hindu Randhawa Jats of the village of Chamiari in the Ajnala *tahsil* of the Amritsar district, that by the existing custom of such Jats in this village, the *chundavand* and not the *pagvand* rule of distribution applied to the deceased father's land.

Remarks on the custom in the Amritsar district being in a state of transformation from *chundavand* to *pagvand*. HUKM SINGH *v.* SOCHET SINGH. **134 P R 1892**

21. *Samrai Jats*, tahsil *Batala, District Gurdaspur.*

Found, in a suit, the parties to which were Samrai Jats of *tahsil* Batala, Gurdaspur district, that they were governed by the

chundavand and not by the *pagvand* rule of succession. GANDA SINGH *v.* TEHL SINGH. **84 P R 1893**

22. *Bundher Jats of Kohli Khurd, Ludhiana* tahsil.

Found, in a suit, the parties to which were Bundher Jats of *mauza* Kohli Khurd in the Ludhiana *tahsil*, that the *chundavand* rule of inheritance prevailed.

Nos. 176 and 178 *P. R.* 1889, and Nos. 4 and 110 *P. R.* 1891, referred to. KAKU *v.* BHAGWAN SINGH. **119 P R 1893**

23. *Ghumman Jats of* mauza *Sambaryal, Daska* tahsil, *Sialkot district.*

Found, that the customary rule of succession among Ghumman Jats of the Asman *mahal* of *mauza* Sambaryal, Daska *tahsil* in the Sialkot district, is that of "*chundavand.*" NATHA SINGH *v.* HARNAM SINGH. **3 P R 1894**

24. *Mitha Khels of Peshawar* tahsil.

In a case the parties to which were Mitha Khels of Peshawar *tahsil*, *found*, that plaintiffs had failed to prove that they, as collaterals of the whole blood of one Syad Khan were entitled to succeed to the whole of his estate to the exclusion of defendants, collaterals of the half blood. GHAZAN KHAN *v.* MUHAMMAD AMIR KHAN. **68 P R 1896**

25. *Jhawar Jats of Amritsar* tahsil—Riwaj-i-am.

Found, that defendants, upon whom the *onus* rested, had failed to prove that among Jhawar Jats of *tahsil* Amritsar succession is governed by the *chundawand* and not by the *pagvand* rule, SANT SINGH *v.* SOHAN SINGH. **46 P R 1897**

26. *Sindhu Jats of Bagiana Kalan, Chunian* tahsil, *Lahore district—Burden of proof.*

In a case in which the parties were Sindhu Jats of Bagiana Kalan, Chunian *tahsil*, Lahore district, *found*, that plaintiffs, upon whom the *onus* rested, had failed to prove that in questions of succession the parties were governed by the *chundavand* and not by the *pagvand* rule. KUNDAN *v.* SUNDER SINGH. **74 P R 1898**

27. *Kataria Jats of* mauza *Mokhra*, *Rohtak* tahsil.

In a case the parties to which were Kataria Jats of *mauza* Mokhra in the *tahsil* and district of Rohtak, *found*, that plaintiffs had failed to prove that the custom of *chundavand* succession prevails universally among the Kataria *got* of Jats of Rohtak generally or in the family to which the parties belonged. GOPAL *v.* SHEWAG RAM. **12 P R 1899**

28. *Awans of Talagang* tahsil, *Jhelum district.*

Found, that among Awans of the Jhelum district the tribal rule of succession is that of *pagvand*, and that defendant, upon whom the burden of proof rested, had failed to prove a special family custom of *chundavand* at variance therewith.

The *chundavand* and *pagvand* rules of

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succession are not on equality, and it is for the party alleging the applicability of such a custom as that of *chundawand* to establish it clearly. GHOLAM MUHAMMAD *v.* ABBAS KHAN.
22 P R 1899

29. *Custom—Succession* – Chundavand *and* pagvand—*Bedi Khatris of* mauza *Chavinda*, tahsil *Zafarwal, Sialkot district.*

In a case to which the parties were Bedi Khatris of *mauza* Chavinda, Zaffarwal *tahsil*, Sialkot District, *found*, that the plaintiff has failed to establish his allegation that the parties were governed, by the *chundavand*, rule. BAWA SANT SINGH *v.* GANGA SINGH AND OTHERS.
47 P R 1901

30. *Custom—Inheritance*—Pagvand *or* Chundavand—*Whole and half-blood—Rathis of Danwan got of* tahsil *Palampur, Kangra District.*

Found, in a suit the parties to which were Rathis of Palampur *tahsil*, that the customary rule of succession applicable to the parties was *chundavand*, and that the collaterals of whole blood of a deceased sonless proprietor were entitled to succeed to the half blood. MUSSAMMAT KUNDO AND OTHERS *v.* SHIB DIAL AND OTHERS.
22 P R 1902

31. *Custom—Inheritance*—Pagvand *and* chundavand -*Naru Rajputs of Hoshiarpur—Whole and half-blood.*

In a suit the parties to which were Naru Rajputs of *tahsil* Hoshiarpur where the ancestral land had been divided on the *chundavand* and not on the *pagvand* principle *held* that the agnates of the whole blood had preference over the agnates of the half-blood.

Jahangir v. *Ghulam Kadir* (45 *P. R.* 1890), *Gholam Muhammad* v. *Muhammad Bakhsh* (4 *P. R.* 1891) F. B. *Mohar Singh* v. *Kala Singh* (32 *P. R.* 1891, *Sohel Singh* v. *Uttam Singh* (48 *P. R.* 1891), *Pir Bakhsh* v. *Karim Bakhsh* (22 *P. R.* 1895), and *Ahmad Shah* v. *Mussammat Talia Bibi* (34 *P. R.* 1900), referred to. NATHA AND OTHERS *v.* HURMAT AND OTHERS.
22 P R 1903

32 *Custom—Inheritance*—Pagvand *or* Chundavand—*Sheikhs of Mulana, District Umballa.*

In a suit the parties to which were Sheikhs of Mulana in the Umballa district, *found*, that the customary rule of succession applicable to the parties was *pagvand*. KAMAR DIN *v.* NASIR-UD-DIN.
11 P R 1905

33. *Custom—Inheritance*—Pagvand *or* Chundavand—*Yusafzai Pathans of Dujana, Rohtak district.*

Found, in a suit the parties to which were Yusafzai Pathans of *mauza* Dujana in the Rohtak district, that they were governed by the *pagvand* and not by the *chundavand* rule of succession. ISHRAT ALI KHAN *v.* AHMAD ALI KHAN.
29 P R 1905

34. *Custom—Inheritance*—Pagvand *or* Chundavand—*Samra Jats of* tahsil *Hafizabad, Gujranwala district.*

Found, in a suit the parties to which were Samra Jats of tahsil Hafizabad, Gujranwala

district, that they were governed by the *pagvand* and not by the *chundavand* rule of succession. LABH SINGH *v.* SUNDAR SINGH.
148 P R 1908

35. *Custom—Inheritance*—Pagvand *or* Chundavand—*Sarai Jats of Dholpur*, tahsil *Batala, Gurdaspur district.*

Found in a suit the parties to which were Sarai Jats of *mauza* Dholpur in the Batala *tahsil* of the Gurdaspur district, that they were governed by the *chundavand* and not by the *pagvand* rule of succession. LABH SINGH *v.* NARAIN SINGH.
5 P R 1909

36. *Custom—Inheritance*—Pagvand *or* Chundavand—*Gujars of* mauza *Hailakh*, tahsil *Shakargarh, Gurdaspur district.*

Found in a suit the parties to which were Gujars of *mauza* Hailakh in the Shakargarh tahsil of the Gurdaspur district, that they were governed by the *pagvand* and not by the *chundavand* rule of succession. RANJHA *v.* BULANDA.
14 P R 1909

37. *Custom—Inheritance*—Pagvand *or* Chundavand—*Sials of Jhang district—Alienation—Gift to one son in excess of his share—Equalisation of shares.*

Found, in a suit the parties to which were Sials of the Jhang district, that they were governed by the *pagvand* and not by the *chundavand* rule of succession.

Held, that a gift of land to one son in excess of his ordinary share effected by a father in order to equalise the shares of his sons is not ordinarily void. AHMAD *v.* HAJI MAHMUD.
50 P R 1909

38. *Custom—Succession*—Chundawand *or* Phagwand—*Sidhu Musalman Jats*, mauza *Pakhowali*, tahsil *Gurdaspur*—Riwaj-i-am.—

Held, that notwithstanding the entry in the *Riwaj-i-am* of the Gurdaspur district in favour of the *chundavand* rule, the *onus probandi* that this rule exists among Sidhu Musalman Jats of *mauza* Pakhowali, *tahsil* Gurdaspur, is on the person asserting it, and that he had failed to prove it.
58 P R 1911

C.—SUCCESSION OF SONS AND GRANDSONS.

1. *Mahomedan Law—Sons and Grandsons—Right of representation.*

S. A., died leaving him surviving K. A., a son, and two grandsons, S. and M., the sons of A. A., who predeceased his father S. A. In a suit by K. A. claiming, under Mahomedan Law, the entire estate of S. A. deceased,

Found, that custom recognized the right of representation, and, therefore, that the grandsons were not excluded from inheriting. KADAR ALI *v.* SIKANDAR ALI.
60 P R 1878

2. *Hindu Jats—Contract of Marriage—Absence of ceremonies—Legitimacy of offspring.*

One J, a Hindu Jat, on the death of D. S., his collateral relative, took the latter's widow, Mt. D., to his house. It was not

CUSTOM VIII.—MAINTENANCE AND SUCCESSION—*contd.*

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proved that any marriage ceremony of the nature of *chadarandazi* or otherwise was performed: but Mt. D. lived with J. till his death, (a period of 14 or 15 years) as his wife: was treated by him as such, was regarded as such by the people of the village, and bore sons to J.—*Held*, in a suit brought on J.'s death to oust the widow and her son by J. from the deceased's property, that J.'s son was entitled to inherit, as it was reasonable to presume that a contract in the nature of marriage was entered into between J. and the woman sufficient to legitimatize the offspring. HAKU *v.* MEHTAB SINGH.
38 P R 1879

3. *Succession—Eldest grandson.*

Held, that the son of an eldest son who predeceased his father if of full age and thoroughly fit has a better claim to succeed to the lambardarship than the eldest surviving son. IMAM BAKHSH *v.* KASU.
9 P R 1880 Rev.

4. *Mandal family—Muhammadan Law—Legitimacy—Acknowledgment.*

Held, by the Privy Council, that no custom was established in the Mandal family varying the general rule of the Muhammadan law relating to inheritance, or to the effect of the acknowledgment of son.

The rule of Muhammadan law that the acknowledgment and recognition of children by a Muhammadan as his sons gives them the *status* of sons, capable of inheriting as legitimate sons, applied to the facts found by the Privy Council. NAWAB MUHAMMAD AZMAT ALI KHAN *v.* MUSSAMMAT LALLI BEGUM.
17 P R 1882

5. *Mahajans of Karnal—Children of grandsons who died before the deceased claiming to succeed with grandsons.*

In a suit the parties to which were Mahajans of Karnal, *found*, that by custom the grandsons of a deceased Mahajan did not succeed as a class to the exclusion of the children of grandsons who died before the deceased, but that tne latter succeeded with their uncles by right of representation of their deceased father. *Devi Sahai* v *Mangal Sein* (No. 81 of 1874, Civil) cited ADJUDHIA PARSHAD *v.* DWARKA DAS.
71 P R 1882

See also AJUDHIA PERSHAD *v.* DWARKA DAS. **71 P R 1882 Note**

6. *Pathans of Attock—Muhammadan law.*

In a suit for inheritance, the parties to which were Pathan zamindars of the Attock tahsil, found, that by custom the right of representation accrues to grandsons in presence of an uncle, when their father has predeceased their grandfather.

Kadar Ali v. *Sikandar Ali* (No. 60 of 1878, Civil) cited. FAIZ TALAB *v.* KARM KHAN
80 P R 1882

7. *Gil Jats of* tahsil *Ajnala—Formal adoption—Appointment of heir.*

Found, that by the custom prevailing among the Gil Jats of the Ajnala *tahsil*, though

where a regular adoption has taken place, the adopted son succeeds not only lineally, but also to collaterals, the mere appointment of an heir does not give the right to succeed to collaterals. *Badhawa Singh* v. *Ganesha* (No. 97 of 1879, Civil), *Dewa Singh* v. *Nihal Singh* (No. 9 of 1880, Civil), and *Ram Singh* v. *Jaswant Singh* (No. 88 of 1881, Civil), cited. JOWALA SINGH *v.* MUSSAMMAT LACHMI.
14 P R 1884

8. *Gil Jats of* tahsil *Moga—Appointment of heir—Right of appointed heir to succeed to property left by descendants of his natural father.*

In a suit the parties to which were Gil Jats, residents of M. Ramonwala, *tahsil* Moga, *zilla* Firozpur, *found*, that an appointed heir does not by custom forfeit his right to succeed as heir to property left by his brother's sons along with the sons of another brother. DIWAN SINGH *v.* BHUP SINGH.
45 P R 1884

9. *Brahmin agriculturists of Hoshiarpur district—Right of adopted son to succeed in his natural family.*

Found, that among Brahmin agriculturists of the Hoshiarpur district an adoption of the customary kind prevailing in the Punjab does not involve an exclusion of the adopted person from the succession to his natural family. NARAIN *v.* RADHA.
42 P R 1886

10. *Brahmins of Sialkot district—Son's right to enforce partition of ancestral property—Liability of son's interest in ancestral property to attachment and sale in execution.*

Found that, among Brahmins of the Sialkot district, a son cannot by custom enforce partition of ancestral immovable property during his father's lifetime.

Held, therefore, in a suit among Brahmins of Pasrur in the above district, that a son's interest in joint ancestral property in possession of his father is not liable to attachment and sale in execution of a decree against the son. *Heera Singh* v. *Sobha* (No. 11 of 1870, Civil), *Devi Suhai* v. *Mungal Sein* (No. 81 of 1874, Civil, F. B.), *Mussammat Thakuri* v. *Ganda Mall* (No. 78 of 1879, Civil), *Dhanpat* v. *Haku* (No. 58 of 1880, Civil, F. B.) and *Banke Rai* v. *Madho Ram* (No. 153 of 1883, Civil) referred to. NATHE RAI *v.* MANNU RAM.
113 P R 1886

11. *Sayads of Kharkhanda, Rohtak district.*

Found, that the Sayads of Kharkhanda, Rohtak district, were not bound by the strict Muhammadan Law of representation, but by the usual custom among agriculturists, whereby sons succeed even though their parents may have pre-deceased them. *Kadar Ali* v *Sikandar Ali* (No. 60 *P. R.* 1878) cited and followed. MIR MUMTAZ ALI *v.* JAWAD ALI.
82 P R 1887

12. *Khojas of Kasur—Exclusion of daughters by sons.*

Found, that among the Khojas of Kasur, by custom, in the succession to immovable property of an owner who dies leaving male and female issue the sons exclude the daughters. MUSSAMMAT ALLA JOWAI *v.* MUSSAMMAT FATIMA.
52 P R 1888

13. *Muhammadan Law—Distant relations—Chauhan Rajputs of Hoshiarpur.*

In a case relating to the estate of a Chauhan Rajput of the District of Hoshiarpur, in the absence of a well-established custom, the Muhammadan Law was held to govern the parties in the matter of inheritance, and under that law the grandsons and great-grandsons of the great-grandfather of the deceased proprietor were held not to come under any of the three classes of heirs, sharers, residuaries, and distant relations. DHANNI *v.* KHARA.
54 P R 1890

14. *Gujars of Rawalpindi district—Power of father to exclude son.*

In a suit the parties to which were Gujars of the Rawalpindi District, *found* that a father had no power by custom to disinherit a son. ILAHI BAKHSH *v.* HASU KHAN.
43 P R 1891

15. *Custom—Agriculturists—Succession to the estate of a female inherited from her father.*

In a suit for succession of land left by a female who had inherited it from her father, and who first married her cousin and by him had a son and who after her first husband's death married another man by whom she had three sons, *held*, that the son of the first marriage could not exclude the sons of the second marriage on the ground that he was the collateral of the original owner. The collaterals of a deceased person who has been succeeded by a female as his heiress have no *locus standi* with regard to his property so long as the female's male lineal descendants are in existence. ALAM AND OTHERS *v.* AKBAR ALI.
52 P R 1901

16. *Custom—Inheritance—Right of grandson whose father has pre-deceased the grandfather in the estate of the latter—Kaka Khels of Parang Kandi Akhund Khel, of Peshawar district.*

Found, that by custom among Kaka Khels of Parang Kandi Akhund Khel, of Peshawar district the son of a father who has pre-deceased him succeeds to the property of the grandfather as representing his father and is not passed over. KHARUD MIAN *v.* BADSHAH.
50 P R 1904

17. *Custom—Inheritance—Right of grandson whose father has pre-deceased the grandfather in the estate of the latter—Muhammadan Kashmiris of Banga,* tahsil *Nawashahr, Jullundur district.*

In a suit the parties to which were Muhammadan Kashmiris of Banga, *tahsil* Nawashahr, Jullundur district, *found* that in matters of inheritance they were governed

by custom and not by Muhammadan Law, and that among them the son of a pre-deceased son was entitled to succeed to his grandfather's estate by right of representation. SIRAJ-UD-DIN *v.* MUHAMMAD FARUK.
8 P R 1907

18. *Custom—Inheritance—Succession of illegitimate son in presence of daughter lawfully born—Saidhu Jats of Nakodar* tahsil, *Jullundur district.*

Found, that by custom among Saidhu Jats of the Nakodar *tahsil*, Jullundur district, an illegitimate son is not entitled to succeed to his mother's property in the presence of a daughter lawfully born of that mother. MEHNGA *v.* ASO.
22 P R 1909

19. *Custom—Inheritance—Right of collaterals who had abandoned his ancestral holding and resided in a different village.*

Held, that the fact of a person having abandoned his ancestral holding and severing his connection with his village of origin and settling in another village for good, does not necessarily debar him or his sons from succeeding to his or their collaterals' property in the ancestral village. RAJ MAL *v.* SANDHI.
41 P R 1809

20. Haq-i-dastar—*Eldest son entitled to larger share—Janjiana Siyals,* mauza *Kharanwala, District Jhang.*

Held, that by a special custom prevailing among Janjiana Siyals of *mauza* Kharanwala, in the Jhang district, the eldest son is entitled upon final partition to receive certain extra land in addition to his share by way of "Haq-i-dastar" or "Haq-i-pagri." MIAN KHAN *v.* SAMAIL.
4 P R 1910

D.—SUCCESSION OF (PRE-DECEASED) SON'S WIDOW.

1. *Varaiches of Gujrat—Right of widow whose husband has pre-deceased his father to share with the brothers of the deceased.*

Found, that a custom exists amongst Varaiches of the Gujrat District, whereby the widow of a man who pre-deceases his father is entitled to succeed on her father-in-law's death to the share of her pre-deceased husband. MUSSAMMAT HAYAT BIBI *v.* SULTAN.
75 P R 1888

2. *Gujars of* tahsil *Kharian, Gujrat District—Right of widow of son who has pre-deceased his father to succeed to her husband's share—Representation.*

Found, that by custom among Gujars of the Kharian *tahsil* of the Gujrat district, the widow of a son who has pre-deceased his father succeeds to the share which her husband would have succeeded to, had he survived his father. MUSSAMMAT FAZLAN *v.* KAMMAN.
8 P R 1889

3. *Chimbah Jats of Sialkot district—Right of widow of son who has died sonless before his father.*

In a suit the parties to which were Chimbah Jats of the Sialkot district, *found* that no

CUSTOM VIII.—MAINTENANCE AND SUCCESSION—*contd.*

D.—SUCCESSION OF (PRE-DECEASED) SON'S WIDOW—*contd.*

custom existed by which the widow of a son, who had died sonless before his father, was entitled to succeed to what would have been her husband's share had he survived his father, but that such share was taken by the surviving brother, leaving the widow only a right to maintenance. MUSSAMMAT JIWAN *v.* HARI SINGH. **62 P R 1889**

4 *Sayad agriculturists of Unchagaon, Delhi district—Succession of widow of only son who pre-deceased his father.*

In a suit, the parties to which were Sayad agriculturists of *mauza* Unchagaon, Delhi district, the widow of an only son who pre-deceased his father claimed to succeed by custom to a life-interest in his father-in-law's estate.

Held, that the burden of proving such a custom lay on her, and that she had failed to discharge it. MUSSAMMAT ASMAT-UN-NISSA *v.* SAYAD AHMAD ALI. **123 P R 1890**

5. *Hoshiarpur Jats—Widow of son who has pre-deceased his father—Right to succeed—Maintenance.*

Held, that no custom had been proved whereby, among Hoshiarpur Jats, the widow of a son who had pre-deceased his father, was entitled to succeed to her husband's share of the land, and not to maintenance only. CHET SINGH *v.* MUSSAMMAT RATAN KAUR **93 P R 1891**

6. *Katana Gujars of* tahsil *Kharian, Gujrat district—Rights of widow of son who has pre-deceased his father - Representation.*

Found, that by the custom of Khatana Gujars, *tahsil* Kharian, Gujrat District, the widow of a son who has pre-deceased his father is not entitled to succeed to the share which her husband would have taken had he survived.

No. 8 *P. R.* 1889, not followed. MUHAMMAD KHAN *v.* MUSSAMMAT HUSSAIN BIBI. **97 P R 1891**

7. *Widow of son who has pre-deceased his father—Muhammadan Gorewaha Rajputs, Garhshankar* tahsil, *Hoshiarpur district.*

Found, that among Muhammadan Gorewaha Rajputs of the Garhshankar *tahsil*, Hoshiarpur district, the widow of a man who pre-deceased his father succeeds by custom on the father's death to the estate to which her husband would have succeeded if he had survived his father—the succession being to the usual widow's estate without power of alienation, except for valid necessity. SANDAL KHAN *v.* MUSSAMMAT AKKI. **23 P R 1892**

8. *Hindu Mahton of* mauza *Bohan,* tahsil *Hoshiarpur—Right of widow, whose husband pre-deceased his father, in the estate of the father who died leaving a son.*

The parties to the suit were Hindu Mathons of the Hoshiarpur *tahsil*. The question for decision was whether the widow of a pre-deceased son takes on the death of his father a son's share in the ancestral land, without the consent of the other sons or direct lineal heirs, that is to say, takes it as

CUSTOM VIII.—MAINTENANCE AND SUCCESSION—*contd.*

D.—SUCCESSION OF (PRE-DECEASED) SON'S WIDOW—*contd.*

of right for her lifetime.

Held that the burden of proof was on the widow, who asserted this unusual right, and that it was not proved that the defendant-widow had by custom the right she claimed irrespective of the assent of the heirs male. TEJA SINGH *v.* MUSSAMMAT ATRI. **115 P R 1893**

9. *Widow of son who has pre-deceased his father—Panwan Jats of Tarn Taran* tahsil, *Amritsar District*—Onus probandi.

In a case the parties to which were Panwan Jats of the Tarn Taran *tahsil*, Amritsar District, *found*, that the plaintiff upon whom the *onus probandi* rested, had failed to prove that the widow of a son who had pre-deceased his father was entitled by custom to succeed to her deceased husband's share and not merely to maintenance.

No. 75 *P. R.* 1888, No. 93 *P. R.* 1891, and No. 115 *P. R.* 1893, referred to. MUSSAMMAT RUP KAUR *v.* KISHEN SINGH. **9 P R 1895**

10. *Widow of pre-deceased son—Muhammadan Rajputs of* tahsil *Chunian, Lahore district.*

Found, in a case the parties to which were Muhammadan Rajputs of tahsil Chunian, Lahore district, that the plaintiff had failed to prove that a widow whose husband had pre-deceased his father was by custom entitled for life to what would have been her husband's share of the father's estate, along with the other brothers of her husband. SOHNA *v.* MUSSAMMAT BHAGO. **50 P R 1897**

11. *Custom—Inheritance—Right of widow of son who has pre-deceased his father—Isa Khel Pathans* of tahsil *Isa Khel, Mianwali district.*

Held, that by custom among Isa Khel Pathans of the Isa Khel *tahsil* of the Mianwali district the widow of an only son who pre-deceased his father is entitled to succeed to a life interest in her father-in-law's estate. MEHR KHAN *v.* AZIZ-ULLAH. **84 P R 1908**

12. *Custom—Inheritance—Widow of son who has pre-deceased his father—Randhawa Jats of Amritsar district.*

Found, that by custom among Randhawa Jats of the Amritsar district the widow of a pre-deceased son succeeds to the property of her father-in-law against the brother of the last male owner. PREMI *v.* KHUSHAL SINGH. **30 P R 1909**

13. *Succession of widowed daughter-in-law in presence of near collateral*—Onus *of proving a special family custom—Quraishies of Ferozepore city.*

Held, that the defendant on whom the *onus* lay had failed to prove that among the Quraishies of Ferozepore city a widowed daughter-in-law succeeds to the property of her father-in-law in the presence of a near male collateral of the latter. No special family custom excluding the operation of Muhammadan Law was proved in this case.

CUSTOM VIII.—MAINTENANCE AND SUCCESSION—*contd.*

D.—SUCCESSION OF (PRE-DECEASED) SON'S WIDOW—*concld.*

MUSSAMMAT AISHA BIBI *v.* AZIZ-UD-DIN. **50 P R 1910**

E.—SUCCESSION OF BROTHER.

1. *Brothers—Separation—Hindu Law.*

G. J. and K. were brothers. K. separated and G. and J. continued to hold in common. Five years after this separation, J. died, and left a widow, who held with G.; after her death the descendants of K. claimed half of J.'s share from the descendants of G. *Held*, that by custom among the agriculturists where the case arose (Umballa district), the descendants of K. were entitled to the half share claimed. BHOLA *v.* NANKU. **18 P R 1872**

2. *Associated and unassociated brothers—Parganah Phillour.*

N. (deceased) and one of his brothers (defendant's father) were joint in estate but not in food; and after the death of his father, defendant and N. were similarly associated. The remaining brothers of N. (the plaintiffs) were separate in food and estate both with regard to N. and each other. Plaintiffs claimed a share in N.'s estate. The parties were Jats of Parganah Phillour. *Found*, that by custom the associated brother or his son did not exclude the unassociated brother. RODA *v.* AMAR CHUND. **75 P R 1873**

3. *Hindu Law—Associated and dis-associated brothers.*

The grandfather of plaintiffs, father of K. (deceased), and grandfather of defendants were brothers. Plaintiff's grandfather lived separately from the father of K. and grandfather of defendants who were associated. *Held*, that plaintiffs had no claim by law or custom to a share in the estate of K. TEKHU *v.* WALIAH. **8 P R 1876**

4. P. S. had another brother, D. S, who was separate; who died leaving H. S. (plaintiff) and D. sons, and two grandsons, G. and P. (plaintiffs), by a third son.

In a suit by H-S. G. and P. to recover a share of the estate of P. S. deceased *found* that the custom of the Jats of the Ludhiana district did not exclude disasssociated nephews from inheriting in the presence of associated nephews. *Held*, therefore, that plaintiffs were entitled to recover one-third of the estate of P. S. HAZARA *v.* JAMITA. **76 P R 1879**

5. *Associated and disassociated brothers—Agricultural Brahmins of* tahsil *Zira, Firozpur.*

Among agricultural Brahmins of Dharm Kot, of *tahsil* Zira, Firozpur, *found* that, by custom, a disassociated brother is not excluded from sharing equally with an associated brother the property of a deceased brother. RAM DITTA *v.* BISHEN. **123 P R 1879**

6. *Brahmin agriculturists of M. Tatta Basaon,* tahsil *Gujranwala.*

Found, that among Brahmin agriculturists of M. Tatta Basaon in the Gujranwala *tahsil*

CUSTOM VIII.—MAINTENANCE AND SUCCESSION—*contd.*

E.—SUCCESSION OF BROTHER —*concld.*

an associated brother of a deceased proprietor does not by custom exclude the son of a brother who was not associated with the deceased from his share of the property. *Khurka* v. *Soojan Singh* (7 *P R* 1870), and *Phaggan* v. *Buta Singh* (9 *P R* 1877), referred to. MAYA DAS *v.* BISHEN DAS.
23 P R 1884

7. *Widow marrying her husband's brother —Succession to her late husband's estate in presence of his brother—Hindu Sikh Jats of Ferozepore district.*

Held, following 117 *P. R.* 1888 (*Mussammat Jai Devi* v. *Harnam Singh*) and 46 *P. R.* 1891 F. B. (*Mussammat Desi* v. *Lehna Singh*) that among Hindu Sikh Jats of Ferozepore district a widow having married her husband's brother no longer remains the widow of her first husband, and consequently, after the death without issue of her first husband's son, she cannot succeed to a life interest in her deceased husband's estate in preference to his brothers.

88 *P. R.* 1900 (*Punjab Singh* v. *Mussammat Chandi*) and 115 *P. R.* 1900 (*Mussammat Indi* v. *Bhanga Singh*) distinguished. HARNAM SINGH *v.* MUSSAMMAT MAHAN KAUR.
64 P R 1910

F.—SUCCESSION OF BROTHER'S WIDOW.

Arains of Nakodar tahsil—*Brother's widow —Male collaterals in seventh degree.*

Found, that by the custom of Arains of Nakodar *tahsil*, the widow of a brother succeeds to the exclusion of male collaterals in the seventh degree. RANI *v.* MAKHI.
146 P R 1889

G.—SUCCESSION OF HUSBAND.

1. *Sayals of Jhang district—Right to succeed to daughter who has inherited from her father—Collaterals claiming in preference to daughter's husband—Onus of proof.*

In a suit the parties to which were Sayals of the Jhang district, it appeared that on the death of one N. without sons, he was succeeded by his widow, and on her death, by N.'s minor daughter P., who was successful in a suit brought against the present plaintiffs and other agnates to have her right to her father's estate declared. On the death of P. at the age of ten years plaintiffs claimed the estate as being the heirs of N. in the male line, and were resisted by the defendant, the cousin and husband of P., who claimed the property as P.'s sole representative.

No custom having been proved by either side (though both sides distinctly relied upon custom), *held* that the plaintiffs were entitled to a decree, as, under the circumstances of the case, the burden was upon the defendant

CUSTOM VIII.—MAINTENANCE AND SUCCESSION—*contd.*

G.—SUCCESSION OF HUSBAND —*concld.*

to prove that the effect of his marriage was to constitute him a nearer heir than the agnate relations, and so exclude those who would have otherwise succeeded, and he had failed to discharge the *onus* which thus lay upon him. MUHAMMAD *v.* AMIR.
31 P R 1889

2. *Land gifted to sister who has died childless—Right of husband in presence of brother of deceased*—Mauza *Rajoki*, tahsil *Gujrat.*

The husband and the brother's sons of the deceased, Mussammat Bibi Rani, who had died childless, were rival claimants for the land left by her which had been given to her by her brother (father of the plaintiffs). The plaintiffs and the donee were Varaiches of the Gujrat *tahsil.*

Held, that it was for the defendant (the husband) to prove a custom entitling him to succeed to land given to his wife only, and intended for her benefit and that of her children, and that he had failed to establish any such custom. CHAUGHATTA *v.* MOHKAM DIN.
75 P R 1893

3. *Custom—Inheritance—Right to succeed to wife who has inherited from her father—Ancestral property.*

Held, that among Hindu Jats of the Moga *tahsil*, Ferozepore district, a husband is not entitled to succeed to the ancestral property in possession of his wife inherited from her father, especially where her possession was only permissive.

Lehna v. *Mussammat Thakri* (32 *P. R.* 1895), referred to. KALA SINGH *v.* BUTA SINGH.
16 P R 1903

H.—SUCCESSION OF WIDOWS.

1. *Widows.*

The general custom of the Punjab is that Muhammadan widows inheriting land from their husbands take only a life interest without power of alienation (except with consent or for necessity) and without a right to partition. TALEWUND KHAN *v.* MUSSAMMAT KHAN ZADEE
5 P R 1868

and SHER ALI *v.* MUSSAMMAT NUR JIHAN
56 P R 1872

The same custom found to exist in the Mooltan district amongst childless Muhammadan widows. BHAWUL SHAH *v.* MUSSAMMAT ROSHUN BEEBEE.
87 P R 1868

And in Gurgaon SEPAH DAR KHAN *v.* MUSSAMMAT BEGUM.
8 P R 1874

2. According to the custom of the Khojas of Kussoor, the entire property of a man who dies without sons, devolves on the widow in full proprietorship, to exclusion of sisters and their heirs. MUSSAMMAT BEGUM *v.* MUSSAMMAT HIJANEE.
27 P R 1868

CUSTOM VIII.—MAINTENANCE AND SUCCESSION—*contd.*

H.—SUCCESSION OF WIDOWS—*contd.*

3. *Raiens of Karnal—Widow's life interest.*

Held, that among Raiens of Karnal no special custom was established, as distinguished from the general custom of the Punjab under which a widow or a mother succeeding by inheritance to land takes only a life interest in the property. MUSSAMMAT IZZO *v.* MUSSAMMAT LADO.
34 P R 1880

4. *Partition—Widow—Joint holding—Separate possession.*

Plaintiff sued for a decree declaring that the defendant, who was the widow of his deceased brother, and entitled to a ½ share in the holding in dispute on the usual life interest of a widow, could not claim partition of the joint holding. No custom was proved which precluded the widow from obtaining separate possession of her husband's share.

Held, that plaintiff was entitled to a decree declaring that though defendant was owner of the ½ share of the holding upon the usual widow's tenure, and entitled to be put into separate possession of such share for her life, she was not entitled to have a partition of the proprietary right effected. *Nupa Singh* v. *Mussammat Sobrai* (116 *P R* 1879), and *Mussammat Hussan Bibi* v. *Fatteh Mahomed* (156 *P R* 1879), cited. MUSSAMMAT MANSOMAN *v.* ABDUL KADIR KHAN.
65 P R 1881

5. *Widow's right to separate possession—Moghals of Rawlapindi.*

Held, there being no special custom established among the parties (Moghals of the Rawalpindi district) as to the mode of enjoyment by the widow of her husband's property, that the said widow was entitled in the present case to a declaration of her right to the estate jointly with the nephew, their respective shares being ⅔rd and ⅓rd and the widow being entitled to separate possession of ⅓rd of the estate for her life, the specific lands to be enjoyed by her being ascertained as usual by the Revenue authorities. *Nupa Singh* v. *Mussammat Sobrai* (116 *P R* 1879), and *Mussammat Hussain Bibi* v. *Fatteh Mahomed* (156 *P R* 1879), cited. MUSSAMMAT BAKHT BEGUM *v.* FAJA KHAN.
104 P R 1881

6. *One brother and the widows of two other brothers acquiring property—Daughter's right to succeed as heir to her mother's share*

One of three brothers (Muhammadans) and the two widows of the remaining two brothers, joined in purchasing land, each becoming owner of a third share. After the death of the three original purchasers the widow of the first brother claimed the whole of the land as heir of her husband, to whom she alleged the whole land passed on the death of the two purchasing widows

CUSTOM VIII.—MAINTENANCE AND SUCCESSION—*contd.*

H.—SUCCESSION OF WIDOWS—*contd.*

Held, in a suit by the daughter of one of the two widows who joined in the purchase, to establish her right to succeed to the third share acquired by her mother, that she was so entitled as the only blood relation of her mother, the land not being the ancestral property of the husband, but acquired after his death by the widow with her own funds. MUSSAMMAT JINDO *v.* MUSSAMMAT KAKO. **105 P R 1881**

7. *Dhillon Jats of Firozpur—Sonless widow's right of inheritance in presence of sons of her husband by another wife—Widow's right to maintenance—Mode of calculating such maintenance.*

In a suit, the parties to which were Dhillon Jats of the Firozpur district, *held*, that no custom was proved under which, among Dhillon or any other class of Jats, a sonless widow was, in presence of sons of her husband by another wife, entitled to succeed as heir to a share of her husband's land; but that she was entitled to maintenance which might be assigned to her in the form of a portion of her husband's land, to be made over to her for her own use upon the usual tenure of a widow, such portion being determined with reference to the circumstances ordinarily taken into consideration in determining the amount of maintenance to be assigned to a widow from her husband's estate, such as the size of the estate, the number of persons to be provided for, the fair wants of a person in her position and rank of life, &c. JAIMAL SINGH *v.* MUSSAMMAT MANO. **11 P R 1882**

8. *Sudhs of Lahore—Widow's interest in her husband's property—Burden of proof.*

In a suit the parties to which were Sudhs of Lahore, it was contended by the defendant that a special custom existed among Sudhs whereby a sonless widow takes an absolute interest in the property, movable or immovable, of her husband with full power of disposal over it, and on her death the property, if not previously disposed of by her, devolves by inheritance on her heirs and not on the heirs of her husband.

Held, that the burden of proving the custom was on the defendant, and that he had failed to discharge it. LAL MAL *v.* DEWA SINGH. **192 P R 1883**

9. *Manhas Rajputs of* tahsil *Shakargarh, Gurdaspur—Co-widow—Right of* karewa *widow to succeed equally with other widow.*

In a suit the parties to which were the two widows of a Manhas Rajput, resident in the Shakargarh *tahsil* of the Gurdaspur district, *held*, that the plaintiff (upon whom under the circumstances the *onus* lay) had failed to prove a custom in her favour excluding the defendant, who was a co-widow by a *karewa* marriage, from succeeding to a share in the deceased husband's estate. MUSSAMMAT DAKHO *v.* MUSSAMMAT GANO. **22 P R 1884**

10. *Syads of Firozpur—Widow's life interest.*

Found, that among Syads of Firozpur and the neighbourhood when a landowner dies without leaving descendants in the male line, or without having appointed an heir, his widow by custom succeeds to the estate as heir according to the ordinary custom governing the widow's estate. GHULAM HUSAIN *v.* MUSSAMMAT FATTEH BANO. **102 P R 1884**

11. *Kasuria Pathans of Bannu—Widow's right of inheritance—Muhammadan Law.*

In a suit the parties to which were Kasuria Pathans who had for some time been settled in Bannu, *found*, that the inheritance descended according to custom and not according to Muhammadan Law, and *held*, that the plaintiff (who was a distant cousin of the deceased proprietor) had failed to prove that he had by such custom any right to recover any part of the estate from the widow of the deceased so long as she lead a moral life, and did not re-marry. MUSSAMMAT DAULAT BIBI *v.* ATTA MUHAMMAD KHAN. **89 P R 1886**

12. *Sayads of Kharkhanda, Rohtak district—Rights of widows succeeding to their husband's property.*

In a suit, the parties to which were Sayads of Kharkhanda in the Rohtak district, *held* that no custom was proved by which widows succeeded to more than a life interest in their deceased husbands' estate or were able to make alienations to the prejudice of the next heirs otherwise than for necessity. MIR MUMTAZ ALI *v.* JAWAD ALI. **82 P R 1887**

13. *Pathans of Panipat, Karnal—Widow's interest in deceased husband's property*—Onus probandi.

The question for decision was, whether in the family of the parties, who were Pathans of Panipat in the Karnal district, residing in the town but owning land outside, a widow's interest in her husband's property was that of a full proprietor or a life interest only.

Held, that the plaintiffs (upon whom under the circumstances of the particular case the burden of proof lay) had failed to establish a custom under which whatever the widow succeeded to was held by her not as full proprietor but on a life tenure only. HASAN KHAN *v.* HUSAIN BAKHSH. **85 P R 1887**

14. *Gardezi Sayads of Mooltan district—Widow's right of inheritance—Muhammadan Law.*

In a suit, the parties to which were Gardezi Sayads of the Mooltan district in which the plaintiff sued to recover the immovable property of his deceased brother in the hands of the widow of the deceased, *held*, that no positive custom was proved regulating the rights of the parties, and that no customary rule being established notwithstanding the failure of the plaintiffs to establish that Muhammadan Law was followed. Muhammadan Law must furnish the rule for the case by force of the provisions of the Punjab Laws Act. MUSSAMMAT SARDAR BIBI *v.* SAYAD ALI SHAH. **4 P R 1888**

15. *Sudhs of* tahsil *Tarn Taran—Widow's right to succeed to her husband's share in joint estate.*

In a suit for partition of a shop and house the parties to which were Sudhs of the Tarn Taran *tahsil*, *held* that the plaintiff, the widow of one of two brothers, who were joint in estate, had succeeded in proving a custom whereby she was entitled to succeed to the share held by her husband in the property in dispute. MUSSAMMAT LORENDI *v.* MUSSAMMAT KISHEN KAUR. **149 P R 1888**

16. *Rajputs of Hoshiarpur—Widow's right to succeed to her husband's collaterals.*

Found that by the custom governing the Rajputs of the Hoshiarpur district, a widow after her husband's decease not only holds possession of his estate, but also inherits (on the same tenure) any property that would have come to her husband had he survived. EDA KHAN *v.* MUSSAMMAT AMERI **177 P R 1889**

17. *Brahmins of Pehowa, Umballa district—Widow—Succession to dues.*

Held, after further enquiry upon remand, that there is no custom among the Brahmins of Pehowa in the Umballa district who practise as *parohits*, whereby in regard to *birt* dues the rule of succession is that a widow succeeds to her deceased husband's dues equally with sons. MUSSAMMAT MAYA DEVI *v.* MUSSAMMAT TABI. **17 P R 1891**

18. *Boriah Rajputs (Hindus) of the Sandal* got, mauza *Abber, Una* tahsil, *Hoshiarpur district—Right of widow to succeed collaterally in same way as her deceased husband.*

Found, that by the custom governing Hindu Rajputs of the Hoshiarpur district, a widow of a deceased proprietor succeeds collaterally to a share of the estate of another childless proprietor (after the death of the latter's widow) either equally with other male collaterals descended from the same common ancestor, or to the exclusion of male collaterals not so descended. In other words, in the matter of collateral succession, the widow is in the same position as her husband would have been had he been alive when the succession opened out.

Civil Judgments, No. 992 of 1886 (unpublished) and 177 *P. R.* 1889, referred to. PURAN *v.* MUSSAMMAT RAJ DEVI AND MUSSAMMAT MOHRO. **56 P R 1891**

19. *Rains of Sirsa district—Marriage of widow of donee to donor.*

The widow of I., deceased, married K. (a cousin of deceased), who had made a gift of the land in suit to I. I. also left him surviving a mother, daughter and sisters. The parties were Rains of the Sirsa district.

Held, that the parties were governed by custom and not by Muhammadan Law, and that by the former the widow was entitled to remain in possession of the land notwithstanding her second marriage, and that the plaintiffs (the cousins of I.) were not entitled to succeed to any share of I.'s estate during the lifetime of his widow. KANDAL *v.* BHIWAN. **100 P R 1891**

20. *Basal Banias of Jullundur city—Childless widow—Rights of, in husband's estate.*

In a suit, the parties to which were Basal Banias of Jullundur city, *found*, that by custom a childless widow, whose husband had been in joint possession of jointly acquired property (movable and immovable) with one of two or more brothers, was not entitled to succeed to her deceased husband's share. MUSSAMMAT NIHAL DEVI *v.* BEHARI LAL. **103 P R 1891**

21. *Hindu Rajputs, Hoshiarpur district—Right of widow to succeed collaterally in same way as her deceased husband.*

Found, that by the custom governing Hindu Rajputs of the Hoshiarpur district, a widow in possession of her husband's estate succeeds to property left by her husband's collaterals on the same footing as the husband himself would have done if living.

No. 56 *P. R.* 1891, followed. MUSSAMMAT SHIBBO *v.* BUTA. **111 P R 1891**

22. *Khanna Khatris residing at Peshawar.*

Found, that no special custom at variance with Hindu Law was proved that among Khanna Khatris carrying on business in the cantonment of Peshawar a widow was excluded from her legal share receiving maintenance only. HAR NARAIN *v.* MUSSAMMAT DEOKI. **24 P R 1893**

23. *Aulok Jats of Ferozepore tahsil—Possession of husband's separate land—Maintenance.*

The plaintiffs, widows, respectively, of K. S. and F. S. sued T., widow of a third brother, W. S., for recovery of two-thirds of W. S.'s estate on the ground that T. had by her remarriage with B. S., a fourth brother, forfeited her life interest in W. S.'s estate. K. S. and F. S. had predeceased W. S.: the *khata* had been held jointly by the four brothers in equal shares and remained joint till after the death of the last surviving brother, B. S.

Held, that the claim of the plaintiffs was to represent their husbands, and that the *onus* was on them to establish their right to inherit. The right of a widow is primarily to be maintained though she commonly, unless the deceased husband was joint, receives possession of his land for her life. The right of a widow to inherit collaterally is exceptional; and found that the evidence in the present case was insufficient to establish the existence of any such custom among Hindu Jats in the Ferozepore district. MUSSAMMAT ASO *v.* MUSSAMMAT TABI. **77 P R 1893**

24. *Kashmiri non-agriculturist weavers residing in the town of Sialkot—Widow's estate.*

Found, in a suit the parties to which were Kashmiri weavers residing in the town of Sialkot, that the widow, in presence of collaterals, succeeded for life to the property of her deceased husband. LAL DIN *v.* MUSSAMMAT JAINAN. **114 P R 1893**

25. *Habib Khel Pathans of Khalil Tappa, Peshawar district—Several widows holding jointly—Right of succession to share of a deceased widow in presence of a collateral.*

One Mir Alam, a Habib Khel Pathan, Peshawar district, left four widows, who succeeded jointly to his estate. In a suit brought by the plaintiffs, as a reversioner, for possession of the share vacated by the death of one of the widows.

Held, that in the absence of any special rule of custom to the contrary, the share of the deceased widow passed by survivorship to the remaining widows.

Per PLOWDEN, S. J.—In the absence of any evidence to the contrary, the presumption is that all the widows take the entirety of the separate land on one group, that is, with a joint title in a legal point of view, with the legal consequence that the death or remarriage of one only enlarges the interest of the rest, and gives no opening for a right of succession so long as the title continues joint. NUR AFZAL *v.* NUR SHAH KHANAM. **128 P R 1893**

26. *Jats (Hindu) of tahsil Ajnala, Amritsar district—Widow's right to succeed to the estate of her husband's deceased brother in presence of collaterals—Burden of proof.*

Found, in a suit the parties to which were Jats (Hindu) of the Ajnala *tahsil*, Amritsar district, that by custom the widow of a predeceased brother was entitled to succeed to the estate of a late deceased brother as against collaterals not descended from the father of the said brothers. BAHADAR SINGH *v.* MUSSAMMAT NIHALI. **133 P R 1893**

27. *Right of widows in presence of a son—Awans of Rawalpindi district—Riwaj-i-am.*

Found, that no custom was proved by which among Awans of Rawalpindi district, a widow is entitled to a share in the property of her deceased husband in the presence of a son. MUSSAMMAT AMBO *v.* GHULAM HASSAN. **59 P R 1894**

28. *Right of reversioners to sue during lifetime of widow—Gil Jats of Ludhiana district.*

One Bh., a Gil Jat of the Ludhiana district, died leaving certain land which went half to his widow, Mussammat S. and half to Dh., his son by another wife. On the death of Dh., his share passed to Mussammat C. K. Plaintiffs, who were the sons of Bh.'s two brothers, sued to deprive Mussammat S. of her half share on the ground of her unchastity, and made the sons of Bh.'s two other brothers, whose equal claims they admitted, and Mussammat C. K. co-defendant. Defendants pleaded that Mussammat S. had not, as a matter of fact, forfeited her rights by unchastity, but that in any event Mussammat C. K. was the next reversioner, and during her lifetime plaintiffs could not sue. The first Court dismissed the suit on this ground, but the Divisional Judge held that inasmuch as Mussammat S. had obtained her share under the *chundavand* rule, plaintiffs (with the sons of the other two brothers of Bh. who refused to join plaintiffs in suing) were the next reversioners and could maintain the suit. He therefore remanded the case for inquiry as to whether Mussammat S. had in fact forfeited her right. Mussammat C. K. appealed to the Chief Court.

Held, that the order of remand must be set aside. By general custom as well as by the custom among Jats of the Ludhiana district, the widow of a sonless proprietor is entitled to succeed on a life tenure to any estate or share to which her husband would have succeeded, and Mussammat C. K.'s rights as next reversioner were not affected by the fact (which was not proved) that the *chundavand* rule governed the parties, or that Bh., had made a distribution of his estate.

56 *P. R.* 1891 referred to. MUSSAMMAT CHAND KAUR *v.* RAM SINGH. **20 P R 1895**

29. *Widow's estate—Sayads of Ambala district.*

In a case the parties to which were Sayads of the Ambala district and (as found by the Chief Court) governed by custom and not Muhammadan Law, *held*, that the widow of a sonless proprietor succeeded on his death to the whole of his property, which was partly ancestral and partly self-acquired, under a customary rule which it was not proved constituted her full owner of the

property in the sense that on her death it would descend to her heirs and not to those of her late husband or gave her an unrestricted power of alienation which would enable her to give away the whole of the property to her brothers. WAJID ALI *v.* LATAFAT ALI. **11 P R 1896**

30. *Succession of widow—Right of stranger in possession to plead that widow was disqualified by mental defect from inheriting.*

Held, that the lower Court had erred in dismissing the suit on the ground that the plaintiff was disqualified by mental defect from inheriting. Defendants being admittedly strangers whose sole title to the property was based on a will, the validity of which was denied on plaintiff's behalf, the first question that necessarily arose in the case was as to the validity or otherwise of that will, for if it was valid, plaintiff's suit must fail, whereas if it was invalid, defendants would be mere trespassers, and, as such, not entitled to take possession of the property, and then plead that plaintiff could not succeed by reason of mental defect, a plea of such kind being open only to a person who had a valid title in the land. MUSSAMMAT JAINDI *v.* KASHI RAM. **19 P R 1899**

31. *Widow—Life estate or maintenance.*

Found, that defendants, upon whom the *onus* rested, had failed to prove a special custom whereby the *karewa* widow of a sonless proprietor could be compelled to accept a fixed maintenance instead of succeeding to the family holding for life. RALIA *v.* MUSSAMMAT RATTAN KAUR. **54 P R 1899**

32. *Custom—Inheritance—G a r d e z i Sayads of Mooltan district—Widow's right of inheritance—Muhammadan Law.*—Wajib-ul-arz—*Application of* Wajib-ul-arz *to an owner who is not specifically mentioned therein.*

In a suit the parties to which were Gardezi Sayads of the Mooltan district, *found* that the parties were governed as regards the matter in question by custom, and not by Muhammadan Law, and that among them a sonless widow was entitled to succeed to her husband's estate or life.

The *Wajib-ul-arz* of a village should be presumed to apply to all landowners in the village as a body unless they are specifically exempted. *Mussammat Ghulam Zohra* v. *Ruku Abdullah Shah* (18 *P. R.* 1899) followed and *Mussammat Sardar Bibi* v. *Sayad Ali Shah* (4 *P. R.* 1888) distinguished. SAYAD RAHIM SHAH AND OTHERS *v.* SAYAD HUSSAIN SHAH AND OTHERS. **102 P R 1901**

33. *Custom — Inheritance — Bukhari Sheikhs of* mauza *Bakarwala, Delhi district—Right of widows succeeding to their husbands' property—Burden of proof.*

In a suit the parties to which were Bukhari Sheikhs of *mauza* Bakarwala, in succession the parties were governed by custom and not by Muhammadan Law, and that a widow succeeded to the whole of her husband's property on the ordinary widow's life tenure. Held, also, that the defendant upon whom the burden of proof lay had failed to establish a custom under which the widows succeeded to the whole estate of her husband as absolute owner with full power of alienation. MUHAMMAD ANWAR-UL-HAQ *v.* HABIB-UL-RAHMAN. **74 P R 1902**

34. *Custom—Inheritance—Right of reversioner whose grandfather was converted to Muhammadanism to succeed to ancestral property—Agricultural Jats of Sialkot district—Act XXI of* 1850.

On the death of the widow of a sonless Hindu Jat proprietor, the defendants, who were the nearest collaterals of her husband, but whose grandfather had been converted to Muhammadanism, succeeded to her husband's immovable property. The plaintiffs, who were distant collaterals of the widow's husband, sued for possession of his property, on the ground that the conversion of the defendant's grandfather to Muhammadanism entailed the forfeiture of all rights to the ancestral property which the defendants, his descendants, might otherwise have possessed.

Held, that the plaintiffs' contention must fail. Under Act XXI of 1850 the convert could have succeeded to the property notwithstanding his conversion, and there was no valid reason why his descendants, who derived their right through him, should not be entitled to succeed to it. Act XXI does not apply only to the convert himself, but affords relief to the descendants of that convert.

Bhagwant Singh v. *Kallu* (*I. L. R. XI All.* 100) and *Gulab* v. *Mussammat Ishar Kaur* (63 *P. R.* 1895), cited.

Kanshi Ram v. *Jiwan* (82 *P. R.* 1890), not approved. MAHNA *v.* CHAND. **104 P R 1902**

35. *Custom—Inheritance—Chohan Rajputs of Rawalpindi district—Right of a childless widow to succeed to a share of her husband's property along with his sons by another wife—Maintenance.*

Held, that among Chohan Rajputs of the Rawalpindi district there is no custom whereby a childless widow can claim any definite share of her husband's estate in the presence of the sons of her husband by another wife, but that she is entitled to a definite portion of her husband's estate to be allotted to her for life sufficient for her maintenance, which may be, under the circumstances of a case, equal to that allotted to a son

Mussammat Ambo v. *Ghulam Hassan* (59 *P. R.* 1894) and *Jaimal Singh* v. *Mussammat Mano* (11 *P. R.* 1882), referred to. SHER KHAN *v.* MUSSAMMAT BIBI. **30 P R 1905**

36. *Custom—Inheritance—Widow's right to succeed to her husband's collaterals—Bhanant Rajputs of Hoshiarpur district.*

Found, in a suit the parties to which were Bhanant Rajputs of the Garhshankar *tahsil*, Hoshiarpur district, that by custom a widow, even though she was not in possession of her husband's estate, was entitled to succeed to property left by her husband's collateral, for life, in the same way as her husband himself could have succeeded had he been alive at that time.

Eda Khan v. *Mussammat Ameri* (177 *P. R.* 1889), *Puran* v. *Mussammat Raj Devi* (56 *P. R.* 1891), *Rani* v. *Makhi* (146 *P. R.* 1889), *Mussammat Shibbo* v. *Buta* (111 *P. R.* 1891), and *Bahadur Singh* v. *Mussammat Nihali* (133 *P. R.* 1893), referred to. ANAR DEVI *v.* KAULAN. **43 P R 1905**

37. *Custom—Inheritance—Rights of widows succeeding to their husbands' property—Majawars of Mailsi* tahsil, *Multan district.*

In a suit, the parties to which were Majawars of the Mailsi *tahsil* in the Multan district, *held* that no custom had been proved by which widows succeed to more than a life interest in their deceased husband's estate. GHULAM MUHAMMAD *v.* NUR SAIN. **66 P R 1905**

38. *Custom—Inheritance—Brahmans of Karnal city—Widow's right to succeed to her husband's share in joint ancestral property.*

Held, that among non-agricultural Brahmans of Karnal city a widow is entitled to succeed to the share held by her deceased husband in joint ancestral property. GOKAL CHAND *v.* RAJA DEVI. **83 P R 1905**

39. *Custom—Inheritance—Right of widow to succeed collaterally in same way as her deceased husband—Johal Jats of the Jagraon* tahsil, *Ludhiana district.*

Found, that by custom among Johal Jats of the Jagraon *tahsil* of the Ludhiana district a widow of a sonless proprietor was entitled to succeed on a life tenure to property left by her husband's collaterals, in the same way as her husband himself would have succeeded had he been alive at the time the estate was created.

Mussammat Chand Kour v. *Ram Singh* (20 *P. R.* 1895), *Puran* v. *Raj Devi* (56 *P. R.* 1891), *Bahadur Singh* v. *Nihali* (133 *P. R.* 1893), *Mussammat Rani* v. *Makhi* (146 *P. R.* 1889) *Mussammat Anar Devi* v. *Mussammat Kaulan* (43 *P. R.* 1905), *Shibbo* v *Buta P.* (111 *P. R.* 1891), and *Eda Khan* v. *Amiro* (177 *P. R.* 1889,) cited and discussed.

Mussammat Aso v. *Mussammat Tabi* (77 *P. R.* 1893), *Fatteh Ali* v. *Abdulla* (112 *P. R.* 1900), *Mussammat Khemi Bai* v. *Bhiwani Das*) (69 *P. R* 1896), referred to. SADDAN *v.* KHEMI. **15 P R 1906**

CUSTOM VIII.—MAINTENANCE AND SUCCESSION—*contd.*

H.—SUCCESSION OF WIDOWS—*contd.*

40. *Custom—Inheritance—Widow's right to succeed to her husband's collaterals—Alienation by widow*—Locus standi *of the widow of a collateral to contest alienation—Ghirths of Kangra district—Specific Relief Act*, 1877, *section* 42.

Held, (*i*) that by custom among Ghirths of the Kangra district a widow was entitled to succeed collaterally to any property to which her husband if alive could have succeeded, and

(*ii*) that a widow so entitled to succeed was competent to contest the validity of an alienation made by the widow of a collateral of her husband.

Puran v. *Raj Devi* (56 *P. R.* 1891), *Shibbo* v. *Buta* (111 *P. R.* 1891), *Chand Kaur* v. *Ram Singh* (20 *P. R.* 1895) referred to. LAHORI *v.* RADHO. **72 P R 1906**

41. *Custom—Inheritance—Right of widows in presence of a step-son—Arains of Ludhiana district*—Riwaj-i-am.

Found, that among Arains of Ludhiana district there is no custom whereby a widow was entitled to succeed to the property of her deceased husband equally with her step-son.

Shada v. *Jio* (107 *P. R.* 1886), referred to. ELLAHI BAKHSH *v.* KHEWNI. **116 P R 1906**

42. *Custom—Inheritance—Gurmani Bilochis of Dera Ghazi Khan* tahsil—*Widows and daughter's right of inheritance—Muhammadan Law.*

Held, that in matters of succession Gurmani Bilochis of the Dera Ghazi Khan *tahsil* were governed by custom and not by Muhammadan Law and that among them a widow is entitled merely to maintenance and a married daughter does not in any case succeed to any portion of her father's ancestral property in the presence of male collaterals of the latter. BAKHT SAWAI *v.* SARDAR KHAN. **119 P R 1907**

43. *Custom—Inheritance—Sahswal Rajputs of the Fatehjang* tahsil, *Attock district—Widow—Life estate or maintenance.*

In a suit the parties to which were Sahswal Rajputs of Fatehjang *tahsil* of the Attock district, *held* that no special custom had been established under which a childless widow of an inferior caste was entitled to maintenance instead of a life interest in her deceased husband's property. PIR BAKHSH *v.* SARDAR BANO. **73 P R 1908**

44. *Custom—Inheritance—Widow's right of inheritance—Life estate or maintenance—Khatri Sodhis of Ferozepore district.*

Found that the plaintiff upon whom the *onus* rested had failed to prove a special custom whereby among Jagirdar Khatri

CUSTOM VIII.—MAINTENANCE AND SUCCESSION—*contd.*

H.—SUCCESSION OF WIDOWS—*concld.*

Sodhis of Ferozepore district a widow of a deceased proprietor was entitled merely to maintenance and not to a life estate in the landed property of her deceased husband. HUKAM SINGH *v.* BHAGWAN DEVI. **133 P R 1908**

45. *Custom—Inheritance—Widow's right to succeed to her husband's collaterals—Brahmans of the Shakargarh* tahsil, *Gurdaspur district.*

Found, that by custom among Brahmans of the Shakargarh *tahsil* in the Gurdaspur district a widow was entitled to succeed collaterally for her life to any property to which her husband, if alive, could have succeeded. SATGUN *v.* BHAGWAN DAS. **7 P R 1909**

46. *Custom—Inheritance—Widow's right to succeed to her husband's collaterals—Udasi Sadhs of* tahsil *Muktsar, District Ferozepore.*

Found, that by custom among Udasi Sadhs of the Muktsar *tahsil* of the Ferozepore district a widow of a sonless proprietor was entitled to succeed collaterally to any property to which her husband, if alive, could have succeeded. MAHAN KAUR *v.* SUNDAR DAS. **40 P R 1909**

47. *Custom—Inheritance—Right of widow to succeed to her husband's collaterals—Bhullar Jats of Amritsar and Gurdaspur districts.*

Found, that by custom among Bhullar Jats of the Amritsar and Gurdaspur districts a widow of a sonless proprietor was entitled to succeed collaterally to any property to which her husband, if alive, could have succeeded. GURDIAL SINGH *v.* ARUR SINGH. **51 P R 1909**

48. *Barren widow claiming a definite share in her husband's estate along with his son by another wife—Mughals of* tahsil *Rawalpindi.*

Held under the *Riwaj-i-am* of Rawalpindi district, which in the absence of evidence throwing doubt on its correctness, should be followed, that among Mughals of Badia Qadir Bakhsh, *tahsil* Rawalpindi, a barren widow is entitled to a definite portion of her husband's estate for life by way of maintenance in the presence of his son by another wife. AMIR *v.* MUSSAMMAT SHARF NUR. **49 P R 1910**

49. *Collateral succession of widow—Muhammadan Jats of* tahsil *Nakodar, District Jullundur.*

Held, that by custom among Muhammadan Jats of *tahsil* Nakodar, District Jullundur, a widow succeeds collaterally to the property to which her husband would have succeeded, if alive. FATTA *v.* JIWAN. **98 P R 1910**

CUSTOM VIII.—MAINTENANCE AND SUCCESSION—*contd.*

I.—REMARRIAGE AND UNCHASTITY OF WIDOW.

1. *Widow's unchastity.*

Held, that a Hindu widow guilty of unchastity forfeited her life interest in the estate of her deceased husband. RAMDHUN *v.* MUSSAMMAT KARM KOUR. **85 P R 1868**

But that case was itself subsequently reviewed (*p.* 209, P. R. 1869, Note), and overruled by *Mamraj* v. *Bhola* (78 *P. R.* 1869), when it was held that by Act XXI of 1850 the general Hindu Law is, *in the absence of local custom*, repealed, *viz.*, that unchastity depriving a widow of caste deprives her also of her estate inherited from her deceased husband.

2. *Remarriage of widow with her deceased husband's brother—Forfeiture of life estate in first husband's property—Sikh Jats, Sirsa district.*

Found, that by the custom of the Sikh Jats in the Sirsa district a widow marrying her husband's brother does not ordinarily forfeit her life estate in the property left by her first husband. *Mussammat Rajo* v. *Ramrukh* (C. A. No. 1211 of 1876) referred to. PREMA *v.* MUSSAMMAT PARDHAN. **137 P R 1883**

3. *Aroras of Multan—Hindu widow—Unchastity.*

Found, that according to the custom prevailing in the Multan district, a Hindu widow forfeits her husband's estate by unchastity after it has vested in her. *Ramdhan* v. *Mussammat Karm Kour* (No. 85 of 1868, Civil), *Mamraj* v. *Bhola* (No. 78 of 1869, Civil), and *Guttea* v. *Mussammat Jowalo* (No. 92 of 1869, Civil), referred to. MUSSAMMAT GELI BAI *v.* GELA RAM. **158 P R 1883**

4. *Muhammadan Chimba Jats of the Gujranwala district—Forfeiture by widow of her husband's estate for unchastity.*

In a suit the parties to which were Muhammadan Chimba Jats, resident in the Gujranwala district, *held*, that the plaintiffs had failed to prove any special custom whereby a widow could be deprived of her husband's ancestral land by reason of unchastity. *Mussammat Geli Bai* v. *Gela Ram* (No. 158 *P. R.* 1883, Civil) cited. KARAM DAD *v.* MUSSAMMAT BEGAM. **118 P R 1884**

5. *Remarriage of widow—Forfeiture of estate—Right of next heirs to claim forfeiture against the widow—Remoteness of heirship no bar to such claim.*

The plaintiffs claimed possession of the estate of the defendant's deceased husband, on the ground that, by remarrying, she had, by the custom of the tribe, forfeited her rights in the said estate. It was found that the plaintiffs were the next heirs of the deceased, but in an extremely remote degree, comprising the whole of the proprietors of the village, descended from one common ancestors. The question was whether heirs so remote could interefere to claim a forfeiture against the widow.

CUSTOM VIII.—MAINTENANCE AND SUCCESSION—*contd.*

I.—REMARRIAGE AND UNCHASTITY OF WIDOW—*contd.*

Held, that the remoteness of their relationship did not deprive the plaintiffs of their right of succession, the general rule being that succession passes to the next heir without any restriction as to the degree of relationship. If there were no natural heirs at all, the succession would pass to the whole of the proprietary body, or to the Crown. This would certainly be the case if the interest of the incumbent in the estate were terminated by death, and, if the occurrence of a particular contingency had the same effect as death in terminating the incumbent's interest, there appeared no reason why the next heirs, however remote, should not put forward their claim on the occurrence of this contingency. MUSSAMMAT BHUPIA *v.* JAMNA DAS. **80 P R 1885**

6. *Sheikhs, Rohtak district—Widow—Remarriage—Forfeiture of first husband's estate.*

Found, that by custom among the Sheikhs of the Rohtak district, which is in accordance with the general custom which prevails among agriculturists, (whether Hindu or Muhammadan), the widow forfeits her first husband's estate by re-marriage, and that the rule does not differ when the second husband is not a member of the first husband's family. MUSSAMMAT HAKIMAN *v.* AMIR ALI. **81 P R 1885**

7. *Ahirs of Delhi—Unchastity of widow—Forfeiture of estate—General custom.*

In a suit the parties to which were of the Ahir tribe, resident in the Delhi *tahsil held*, that no special custom was proved whereby unchastity works a forfeiture of the estate which a widow has inherited from her husband.

There is no general custom in the Punjab making forfeiture of her estate the result of unchastity on the part of a Hindu widow. *Mamraj* v. *Bhola* (No. 78 *P. R.* 1869), *Mussammat Geli Bai* v. *Gela Ram* (No. 158 *P. R.* 1883), and *Karam Dad* v. *Mussammat Begam* (No. 118 *P. R.* 1884), cited. MUSSAMMAT BHURIAN *v.* MUSSAMMAT PURAN. **105 P R 1885**

8. *Rors of Karnal tahsil—Re-marriage of widow with her late husband's brother—Forfeiture of first husband's estate.*

In a suit, the parties to which were by caste Rors of the Karnal *tahsil*, *held*, that no special custom was established by which a widow, who has married a brother of her late husband, is entitled to recover her first husband's share in the estate against the other brothers, and that therefore under the general custom she must be held to have forfeited the estate by such re-marriage. *Mussammat Rajo* v. *Ramrukh* (C. A. No. 1211 of 1876) cited. MUSSAMMAT LACHMI *v.* HARJAS. **123 P R 1884**

Cited in SITA *v.* KHUBA. **53 P R 1886**

CUSTOM VIII.—MAINTENANCE AND SUCCESSION—*contd.*

I.—REMARRIAGE AND UNCHASTITY OF WIDOW—*contd.*

9. *Jats of Kaithal tahsil—Immorality of widow—Forfeiture of estate.*

Found, that among the Jats of the Kaithal *tahsil* in the Karnal district, a widow who is notoriously immoral loses her right to retain her husband's land to which she has succeeded with the customary life interest. GURMUKH SINGH *v.* MUSSAMMAT KHEM KOUR. **75 P R 1886**

10. *Pathans of Hoshiarpur—Unchastity of widow—Forfeiture of estate.*

Found, that by the custom of Pathans of Hoshiarpur unchastity in a widow involves the forfeiture of her rights in her deceased husband's estate.

Mussammat Geli Bai v. *Gela Ram* (No. 158 *P. R.* 1883), cited. MUSSAMMAT NUR BEGAM *v.* SADAR-UD-DIN KHAN. **2 P R 1888**

11. *Two widows succeeding in equal shares to estate of deceased proprietor—Remarriage of one widow—Non-forfeiture of her share by such widow—Death of second widow—Right of surviving widow to succeed to share of deceased widow.*

One G. S. died leaving an estate to which his two widows, Mussammat D., the present plaintiff, who made a *karewa* marriage with the brother of G. S., and Mussammat J. succeeded in equal shares. In a suit brought by Mussammat J. against the present plaintiff and in a subsequent suit brought by the brothers of G. S. as reversioners which was dismissed as *res-judicata*, it was held that the *karewa* marriage of Mussammat D had not by custom caused a forfeiture of her own share in G. S.'s estate. Mussammat J. having died, plaintiff claimed to succeed as surviving co-widow to her half share which had been taken by the brothers of G. S. and the lower Courts allowed her succession.

Held, that under the circumstances the plaintiff's claim had been rightly decreed. DIDAR SINGH *v.* MUSSAMMAT DHARMON. **25 P R 1888**

12. *Hindu Rajputs of Gurdaspur District—Unchastity of widow—Forfeiture of estate.*

In a suit the parties to which were Rajputs residing in *mauza* Lohara, *tahsil* Shakargarh in the Gurdaspur District, *held*, that no custom was proved by which the unchastity of a widow involved the forfeiture by her of her husband's estate.

Mamraj v. *Bhola* (No. 78 *P. R.* 1869) *Mussammat Geli Bai* v. *Gela Ram* (No. 158 *P. R.* 1883) and *Mussammat Nur Begam* v. *Sadar-ud-din Khan* (No. 2 *P. R.* 1888), cited. PARTABA *v.* MUSSAMMAT PHANGO. **90 P R 1888**

13. *Bagri Jats of Sirsa District—Unchastity of widow—Forfeiture of estate—General custom—Hindu law.*

CUSTOM VIII.—MAINTENANCE AND SUCCESSION—*contd.*

I.—REMARRIAGE AND UNCHASTITY OF WIDOW—*contd.*

Found, that there is no established custom among the Bagri Jats of the Sirsa District whereby a widow forfeits her estate by unchastity after the death of her husband.

There is no general custom in the Punjab by which a Hindu widow forfeits her husband's estate when vested in her, by an act of unchastity. In the absence of a proved special custom where the parties are Hindus, the Hindu Law applies, and according to that law the widow's estate is not forfeited.

Mamraj v. *Bhola* (No. 78 *P. R.* 1869), *Mussammat Geli Bai* v. *Gela Ram* (No. 158 *P. R.* 1883), *Karam Dad* v. *Mussammat Begam* (No. 118 *P. R.* 1884) and *Mussammat Bhurian* v. *Mussammat Puran* (No. 105 *P. R.* 1885) cited. FATTEH SINGH *v.* KALU. **107 P R 1888**

14. *Sus Jats of Hoshiarpur—Succession of mother—Remarriage.*

Found, that by the custom of the Sus Jats of Hoshiarpur a mother is excluded from the succession to her son's estate when he has left uncles and cousins, at least when she has contracted a second marriage before her son's death.

Hira Singh v. *Sobha* (No. 11 *P.R.* 1870) and *Mussammat Roopan* v. *Hakim Singh* (No. 37 *P. R.* 1870), referred to. MUSSAMMAT JAIDEVI *v.* HARNAM SINGH. **117 P R 1888**

15. *Muhammadan Dogars of Hissar District—Grand-mother and grand-uncle—Remarriage—Forfeiture of estate.*

In a suit the parties to which were Muhammadan Dogars of the Hissar District, *held* that the defendant, the grand-mother of one M., a boy who had died without male issue, was entitled to succeed to the estate which M. had inherited from his grand-father in preference to the plaintiff who was M.'s grand-uncle; and further that the said defendant had not forfeited her rights by a remarriage with a member of the same branch of the family as that to which her first husband belonged.

Mussammat Roopan v. *Hakim Singh* (No. 37 *P. R.* 1870), *Mussammat Lachmi* v. *Harjas* (No. 123 *P. R.* 1884), *Mussammat Hakimon* v. *Amir Ali* (No. 81 *P. R.* 1885), and *Partaba* v. *Mussammat Phango* (No. 90 *P. R.* 1888) referred to. GAMAN *v.* MUSSAMMAT AMAN. **171 P R 1888**

16. *Re-marriage of widow—Hindu Jats of Moga tahsil.*

In a suit the parties to which were Hindu Jats of Moga *tahsil* of the Ferozepore District, *found*, that no custom existed under which a widow who had contracted a *karewa* marriage with a near relative did not forfeit her life interest in her first husband's estate. MUSSAMMAT RAMON *v.* BAISAKHA SINGH. **90 P R 1889**

CUSTOM VIII.—MAINTENANCE AND SUCCESSION—*contd.*

I.—REMARRIAGE AND UNCHASTITY OF WIDOW—*contd.*

17. *Utal Jats, village Utalna, Ludhiana District—Custom—Widow—Unchastity.*

In a suit the parties to which were Utal Jats, village Utalna in the Ludhiana District, *found*, that according to custom a widow by unchastity forfeits her interest in her deceased husband's estate. No. 107 *P. R.* 1888 referred to. MUSSAMMAT SOBHI *v.* BHANA. **25 P R 1891**

18. *Remarriage of Hindu widow—Rights in deceased husband's property—Act XV of 1856—Punjab Laws Act, 1872, section 5—Effect of the Act of 1856 upon a custom recognizing the remarriage of widows.*

R. S. a Sandhu Jat (Hindu) of the Chunian *tahsil*, Lahore District, died 14 years before suit, leaving 456 *ghumaos* of land. The land then devolved on his two sons, who both died without issue, the second death, that of P. S. who was unmarried, being about a year before suit.

The plaintiff D. was the widow of R. S. and mother of P. S.: she claimed to be the heir of P. S., son of R. S., her late husband and herself, as his mother: and as such she demanded possession from the defendants.

The defendants were the collateral heirs of P. S. distantly related, but still the heirs subject to the right, if any, of the plaintiff D. The defendants' case was that the plaintiff married a second husband soon after the death of R. S., and that whatever rights she had as widow of R. S. she lost by remarriage. The second marriage was denied, but was found to be proved.

Held, by the Full Bench that D. had no right to succeed, and that her claim failed.

Per PLOWDEN and RIVAZ, JJ., because the question of her right to succeed to the ancestral estate of the deceased, P. S., was a question to be decided according to custom under section 5 (*a*) of the Punjab Laws Act, 1872, and was not affected by the provisions of Act XV of 1856; and that according to custom she had not the right claimed.

According to custom the plaintiff was not entitled to succeed as mother: according to custom she was no longer the widow of the father of the deceased, and therefore had no title to the estate in dispute against reversioners.

Act XV of 1856 is an authoritative interpretation, as regards the Courts, of the Hindu Law on the subject of the remarriage of a Hindu widow, and the consequences and incidents of such a marriage. In any case in the Punjab to which the Hindu Law is to be applied in furnishing the rule of decision under clause (*b*) of section 5 of the Punjab Laws Act, 1872, Act XV of 1856 must receive full effect as being a legislative exposition of the Hindu Law. But this is quite consistent with the view that the Act does not alter or abolish any custom regarding succession or marriage, which is not at variance with section 1 of the Act, and which, that Act apart, is the rule of decision prescribed by clause (*a*) of section 5 of the Punjab Laws Act.

Per BENTON, J., because the whole Act (XV of 1856) is universally applicable to cases of widow remarriage among Hindus, whether the persons concerned be subject to Hindu or to customary law, and the said Act on its true interpretation bars the present claim. MUSSAMMAT DESI *v.* LEHNA SINGH. **46 P R 1891**

19. *Rains of Sirsa District—Gift—Marriage of widow of donee to donor.*

The widow of I, deceased, married K. (a cousin of deceased), who had made a gift of the land in suit to I. I. also left him surviving a mother, daughter and sister. The parties were Rains of the Sirsa District.

Held, that the parties were governed by custom and not by Muhammadan Law, and that by the former the widow was entitled to remain in possession of the land notwithstanding her second marriage, and that the plaintiffs (the cousins of I.) were not entitled to succeed to any share of I.'s estate during the lifetime of his widow. KANDAL *v.* BHIWAN. **100 P R 1891**

20. *Right of widow who has been guilty of unchastity to succeed to her deceased husband's estate.*

The plaintiff lived in adultery for eighteen years with one Bur Singh, and bore him children, while her husband was undergoing a sentence of transportation, and on his return she was repudiated by her husband, who died shortly afterwards.

The plaintiff claimed possession of her husband's land as his widow against his agnate kinsmen; and alleged that her husband had taken her back into his house. It was found that he had not done so.

The parties were Sikh Jats of the Amritsar District.

Held, that by custom the plaintiff had no right to her husband's land against the agnate heirs.

A wife among exogamous tribes, such as Jats, Hindu or Sikh, is entitled to be maintained from her husband's property as being a member, not of his family of origin (of which she is not a member by birth, being of another *got*), but of his household. If during his life she quits his house to reside with another man, or is turned out of it by the husband for adultery, she ceases to be a member of the household, and her title to maintenance, as a right, comes to an end.

The same principle may be traced in the custom as to widows. MUSSAMMAT KAURI *v.* JAMIAT SINGH. **34 P R 1893**

21. *Hinjra Jats of Amritsar* tahsil—*Remarriage by* karewa *of widow who continues to live in her husband's house—Absence of ceremony—Forfeiture of estate.*

The defendant, on the death of her husband, J. S. continued to reside in the house common to the two brothers, J. S. and S. S., and she had a daughter by S. S. The plaintiffs, brothers of J. S. and S. S., thereupon sued for their share of the estate of J. S., which they contended had been forfeited by the defendant in consequence of her cohabitation with her husband's brother.

The parties were Hinjra Jats of the Amritsar *tahsil*.

Held, that by custom such cohabitation did not necessarily entail a forfeiture of widow's interest in her husband's land.

No. 137 *P. R.* 1883, No. 53 *P. R.* 1886, and No. 90 *P. R.* 1889, referred to. HIRA SINGH *v.* MUSSAMMAT RAMI. **74 P R 1893**

22. *Sayads of Kharkhanda*, tahsil *Sampla, Rohtak District—Forfeiture by widow on re-marriage—Burden of proof.*

Found, in a suit, the parties to which were Sayads of Kharkhanda in the Sampla *tahsil* of the Rohtak District, that the defendant had failed to establish her right to retain her husband's land after her remarriage.

Held also that the burden of proof had been rightly placed upon the defendant to prove the custom pleaded by her.

No. 60 *P. R.* 1878, No. 82 *P. R.* 1887, No. 173 *P. R.* 1889, and No. 71 *P. R.* 1892, referred to. MUSSAMMAT UMAT-UL-ALA *v.* MUSSAMMAT SAID-UL-NISSAR. **143 P R 1893**

23. *Sayads of Kharkhanda,* tahsil *Sampla, Rohtak District—Forfeiture by widow on remarriage—Continuing to live in first husband's house.*

Found, in a suit, the parties to which were Sayads of Kharkhanda, *tahsil* Sampla, Rohtak District, that they followed the general custom of the agriculturists amongst whom they live, and that this custom provides that a widow on remarriage forfeits her first husband's estate.

But this is subject to the very important proviso that she leaves her first husband's house and goes to reside with her second husband. If she continues to live in her first husband's house she retains his estate.

No. 143 *P. R.* 1893, referred to. MUSSAMMAT EMNA BEGUM *v.* JAWAD ALI. **144 P R 1893**

24. *Pathans of Kharkhanda,* tahsil *Sampla, Rohtak District, who intermarry with Sayads—Forfeiture by widow on remarriage—Residence in house of first husband after second marriage.*

Found, in a suit, the parties to which were Pathans of Kharkhanda, *tahsil* Sampla, Rohtak District, who intermarried with Sayads, that they followed the ordinary custom by which remarriage by a widow entails forfeiture of her first husband's land.

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CUSTOM VIII.—MAINTENANCE AND SUCCESSION—*contd.*

I.—REMARRIAGE AND UNCHASTITY OF WIDOW—*contd.*

Held also, that the parties were governed by the proviso to that custom, that where the widow after remarriage does not go to reside in the house of her second husband, but continues to reside in her first husband's house, she retains for life her first husband's estate also. MUSSAMMAT ILAHI BEGUM *v.* MIR WILAYAT ALI. **145 P R 1893**

25. *Forfeiture of life estate by widow by reason of unchastity—Sikh Jats of Amritsar District.*

Found, that plaintiff had established the existence of a custom among Sikh Jats of the Amritsar District, whereby a widow, who abandons her deceased husband's household and contracts an irregular but more or less permanent union with another man, forfeits her life estate in her late husband's land. WADHAWA SINGH *v.* MUSSAMMAT RAJ DEVI. **40 P R 1899**

26. *Remarriage of widow with her deceased husband's brother—Forfeiture of life estate in first husband's property—Gil Sikh Jats of Bhanjal*, tahsil *Fazilka of the Hissar (old Sirsa) District.*

Held, following *Prema* v. *Mussammat Pardhan* (No. 137 *P. R.* 1883), that amongst Sikh Jats in the Sirsa District a widow marrying her husband's brother retains by custom her life estate in her first husband's property. PUNJAB SINGH AND ANOTHER *v.* MUSSAMMAT CHANDI AND ANOTHRR. **88 P R 1900**

27. *Remarriage of Sikh Jat woman with her deceased husband's brother—Forfeiture of life estate in her former husband's property—Sikh Jats of the Ferozepore District.*

Held, that amongst Sikh Jats in the Ferozepore District, a widow marrying her husband's brother does not forfeit by custom her life estate in her former husband's property.

Lachu v. *Dal Singh* (No. 33 *P. R.* 1896), *Chanda Singh* v. *Mela* (No. 73 *P. R.* 1897), and *Harsarn Das* v. *Nandi* (*I. L. R. XI All.*, 330), followed. MUSSAMMAT INDI *v.* BHANGA SINGH AND OTHERS. **115 P R 1900**

28. *Custom—Inheritance—Unchastity of widow—Effect of, in regard to estate vested in her—Hindu Law.*

A Hindu widow who had inherited the estate of her deceased husband in the absence of a special custom to the contrary is not liable to forfeit that estate by reason of her unchastity after the death of her husband.

Fatteh Singh and another v. *Kalu and another* (107 *P. R.* 1888), and *Moni Ram Kolita* v. *Kheri Kolitani* (*I. L. R. V. Calc.*, 776. *P. C.*) followed. MUSSAMMAT ATRI *v.* DIDAR SINGH AND OTHERS. **76 P R 1901**

29. *Forfeiture of widow's estate—Effect of unchastity of widow subsequent to*

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CUSTOM VIII.—MAINTENANCE AND SUCCESSION—*contd.*

I.—REMARRIAGE AND UNCHASTITY OF WIDOW—*concld.*

taking possession—Somal Jats of tahsil *Phillour, district Jullundur.*

Held, that it was not established that by custom prevailing among Somal Jats of the Phillour *tahsil* in the Jullundur District a widow forfeits her right by reason of unchastity subsequent to taking possession of her late husband's estate. MUSSAMMAT MALAN *v.* RURA. **74 P R 1910**

J.—MAINTENANCE.

—*Widows, right to*—

See CUSTOM I—ALIENATION BY MALE PROPRIETOR—LOCUS STANDI OF REVERSIONER AND WIDOW. **127 P R 1894**

See CUSTOM I—ALIENATION BY WIDOW—GIFTS, **16 P R 1893**

See CUSTOM VIII—H.—SUCCESSION OF WIDOW, **24 P R 1893**, **77 P R 1893**

See CUSTOM VIII—H.—REMARRIAGE OR UN-CHASTITY OF WIDOW, **34 P R 1893**

See HINDU LAW, WIDOW. **72 P R 1888**, **112 P R 1888**, **10 P R 1889**, **190 P R 1889**, **60 P R 1895**

See SMALL CAUSE COURT ACT, 1887, ARTICLE 38. **123 P R 1889**

1. *Singhpooria Jagirdars.*

According to the custom of this class, a childless widow is entitled to receive for life some portion of her deceased husband's holding, in addition to any cash allowance assigned for her maintenance: she may even succeed for life to the whole of the land, if the quantity be not excessive. SIRDAR SOBA SINGH *v.* MUSSAMMAT ATTUR KOUR. **30 P R 1868**

2. *Gift of land—Equitable charge for maintenance of donor—Restraint of alienation.*

W. S. (plaintiff) adopted K. S. (defendant), and made a gift of his land to him, giving him possession, on the condition that the donor was to receive from the donee Rs. 30 per annum and grain to the amount of 30 maunds per annum. K. S. mortgaged a portion of the land to C. S. after W. S. had obtained a decree of Court, ordering his maintenance in pursuance of the above arrangement. *Held*, that W. S. had an equitable lien on the land for his maintenance, and that K. S. could not alienate the land or any portion of it unless he made sufficient provision for W. S. or left unalienated sufficient for the maintenance of W. S. WAZIR SINGH *v.* KHAZAN SINGH. **17 P R 1874**

3. *Customary right of widow of Jagirdar to obtain maintenance from Jagir income—Jurisdiction of Revenue Court.*

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CUSTOM VIII.—MAINTENANCE AND SUCCESSION—*contd.*

J.—MAINTENANCE—*contd.*

Held, that by the custom of the Amballa district, the widow of a deceased Jagirdar can claim from the heirs of the deceased a portion of the Jagir income as maintenance.

Held, further, that a claim of the above nature may be heard by the Revenue Courts. SANT SINGH *v.* MUSSAMMAT CHANDAN. **19 P R 1880 Rev.**

4. *Illegitimate son—Rathor Rajputs of Jodhpur State—Misconduct of illegitimate son.*

Found, that by the custom of Rathor Rajptus of the Jodhpur State, an illegitimate son by a concubine is entitled to maintenance for life from his father's estate, provided he does nothing seriously detrimental to the interests of the head of the family, but on his death his children are not entitled to maintenance from the legitimate son of his father, unless with the consent, and at the pleasure of such a son. SHIMBU SINGH *v.* RAJA SARHAL SINGH. **40 P R 1880**

5. *Dodh Rajputs—Family custom—Rights of widow—Maintenance.*

A special custom found to exist in the family of the Rana of Manaswal in the Hoshiarpur district, differing from that of the Dodh Rajputs, by which the widows of a childless Rana do not succeed as heirs to the estate of their late husband, but are entitled only to maintenance. RANI HAMEL DEVI *v.* RANA LEHNA SINGH. **52 P R 1886**

6. *Muhammadan Arains of Firozpur—Widow's maintenance—Right to share of deceased husband's land in presence of sons of another wife.*

In a suit the parties to which were Muhammadan Arains of the Firozpur district, *found*, that a childless widow is not by custom entitled as of right to a share of her deceased husband's land by way of maintenance in presence of sons by another wife. C. A. No. 1131 of 1873 (unpublished), *Ranjha* v. *Mussammat Rajji* (No. 22 *P. R.* 1878, *Nupa Singh* v. *Mussammat Sobrai* (No. 116 *P. R.* 1879, *Mussammat Hussan Bibi* v. *Fatteh Mahomed* (No 156 *P. R* 1879, *Jaimal Singh* v. *Mussammat Mano* (No. 111 *P. R.* 1882,), C. A. No. 124 of 1884 (unpublished), and C. A. No. 381 of 1886 (unpublished) refered to. SHADA *v.* MUSSAMMAT JIO. **107 P R 1886**

7. *Arrears of—Punjab Laws Act, 1872, sections 5 and 6—Muhammadan Law—Justice, equity, and good conscience.*

Held, (*i*) that the maintenance of a wife is a question relating to marriage and governed by the personal law of the parties as laid down in section 5, Punjab Laws Act; (*ii*) that the Muhammadan Law by which the parties were governed does not permit of a claim being made for arrears of maintenance unless the same has been previously.

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CUSTOM VIII.—MAINTENANCE AND SUCCESSION—*contd.*

J.—MAINTENANCE—*concld.*

determined or agreed to by the parties. MIRZA SURAYA JAH *v.* MUSSAMMAT HAJRA SULTAN ZAMANI BEGAM. **57 P R 1890**

8. *Held* under the *Riwaj-i-am* of Rawalpindi district, which in the absence of evidence throwing doubt on its correctness should be followed, that among Mughals of Badia Qadir Bakhsh, *tahsil* Rawalpindi, a barren widow is entitled to a definite portion of her husband's estate for life by way of maintenance in the presence of his son by another wife.—AMIR *v.* MUSSAMMAT SHARF NUR. **49 P R 1910**

K.—SUCCESSION OF DAUGHTERS.

1. Although amongst the Muhammadan Rajputs of the Jullundur district there is a strong feeling against succession to ancestral land in the female line, yet the succession of daughters is not unknown, and there is no clearly defined custom on the subject. MEERAN BUKSH *v.* PEEROO. **29 P R 1868**

2. But *held*, that there being no proof of any custom in point, cousins were excluded by the daughter and her son. MUNSA RAM *v.* PUNNOO. **38 P R 1870**

3. *Succession of Females—Daughters—Brahmins—Sialkot district—Acquired Property—Nephews.*

Plaintiffs sued for a house under the following circumstances.—M, whose acquired property the house was, died leaving a widow and daughter. The widow succeeded to the house, and made a gift of it to her daughter, who allowed her son, one of the defendants, to sell the house to the other defendant. The widow having died, the plaintiffs, nephews of M., asserted their claim to the house. The family were Brahmins, of the Sialkot district (*tahsil* Daska)—*Found*, that by custom the daughter of M. excluded his nephews from inheriting the property in suit. RAJ RUP *v.* LADHU. **51 P R 1873**

4. A died without male issue, leaving daughters, who were married and living in other villages than A's. After his death, his widow succeeded to his estate, and upon her death, M and others, cousins of A, claimed to succeed to his land. The *wajib-ul-arz* stipulated that a widow might succeed when her husband left no male issue, and that after her, the near relatives of tbe husband should succeed. *Held* by LINDSAY and WILKINSON, JJ. that M and his co-suitors were excluded by the daughters and their sons. *Held* by CAMPBELL, J., that in such a case the custom of the Punjab excluded the daughters and their sons, and that M and his co-suitors were "near relatives" of A within the *wajib-ul-arz* and entitled to succeed. MOLUK *v.* MUSSAMMAT DYAN. **2 P R 1874**

5. *Mahomedan Jogis of Lahore—Daughters.*

Found, that no custom existed amoug Mahomedan Jogis of Lahore excluding daughters from inheritance in the presence of sons. MUSSAMMAT MEHTAB BIBI *v.*

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CUSTOM VIII.—MAINTENANCE AND SUCCESSION—*contd.*

K.—SUCCESSION OF DAUGHTERS—*contd.*

MUSSAMMAT SHAHZADI. **56 P R 1879**

6. *Syads of Shia sect, in M. Sadhoura, Umballa Division.*

B. A., the common ancestor of the parties, died leaving three sons—K. B., H. B. and T. B. and one daughter. The three sons succeeded equally to their father's immovable property, the daughter taking no share.

On T. B.'s death, about 45 years ago, leaving a widow and three daughters (the present defendants), the widow succeeded to her husband's one-third share in the estate H. B., who died about 16 years ago, leaving a widow and two sons and two daughters was succeeded by his two sons, to the exclusion of the widow and daughters; subsequently the elder of the two sons died leaving a widow who succeeded to his share. K. B. died about 11 years ago, leaving a widow who succeeded to his one-third share of the estate, and upon whose death *dakhil kharij* of this one-third share was formally effected in favour of the descendants of H. B., and the widow of T. B., equally. The property remained joint up to suit; and the parties were Syads of the Shia sect. In 1873 T. B.'s widow gifted her husband's one-third share, and the one-sixth share entered in her name on the death of K. B's widow, to her three daughters and their sons. In a suit by the daughter-in-law and grandson of H. B., against the donor and donees, to set aside the gift—

Held, (upholding the orders of the Lower Courts) that as regards the one-third share of the property which devolved on T. B.'s widow on T. B.'s death, the gift was valid, as by custom the daughters of T. B. were entitled to succeed to their father's share on their mother's death; but that, as regards the one-sixth share alleged to have been inherited on the death of K. B.'s widow, the gift was invalid as on the death of K. B.'s widow, the whole of his share devolved by custom on the male descendants of H. B., K. B's brother REHMAT ALI *v.* MUSSAMMAT HAMID-UL-NISSA. **75 P R 1879**

7. *Awans of* mauza *Dehwal,*tahsil *Khoshab, district Shahpur—Daughters—Collaterals.*

By custom among Awans of M. Dehwal in the Khoshab *tahsil*, Shahpur district, where a proprietor dies, leaving unmarried daughters but no sons, the daughters succeed to his land, and hold it until their marriage; but upon their marriage they cease to have any interest in the land, which then passes to the collaterals in the male line. MUSSAMMAT PANA BIBI *v.* KHODAYAR. **81 P R 1879**

8. *Daughter's right of residence in house left by father.*

Found, that among Awans residing in *mauza* Daiwal, *tahsil* Khushab, in the Shahpur district, daughters, even though married, have by custom a right of residence for their lifetime in the house property left

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CUSTOM VIII.—MAINTENANCE AND SUCCESSION—*contd.*

K.—SUCCESSION OF DAUGHTERS—*contd.*

by their father. MUHAMMAD YAR *v.* MUSSAMMTA PANAH BIBI. **72 P R 1880**

9. *Gujars of Firozpur—Daughters—Distant collaterals—Acquired property—* Onus probandi.

There is no general custom of inheritance among Gujar agriculturists in the Punjab by which distant collaterals in the male line are entitled to succeed to land not derived from a common ancestor but acquired by the deceased person himself, in preference to the daughter of such person.

Held therefore, in a suit among Gujars of Firozepur district, that the *onus* of proving such a custom lay on the plaintiffs, who were grandsons or great grandsons of deceased's second cousins.

Held further, that plaintiffs had failed to prove the existence of such a custom. ALA *v.* MUSSAMMAT RAJO. **77 P R 1881**

10. *Koreshis of Wazirabad—Daughters—Muhammadan law.*

Found, that there is no special custom contrary to Muhammadan law among Koreshis of Wazirabad by which daughters are excluded from taking their legal shares in their father's property by their father's brothers AHMAD DIN *v.* MUSSAMMAT FAZLAN. **175 P R 1883**

11. *Hindu Baniyas of Peshawar city—Daughter's right to succeed in presence of nephews—Hindu law.*

In a suit for partition of an ancestral house in Peshawar city, the parties to which were Hindu Baniyas, not forming an undivided family, *found*, that by the rule of succession applicable to the parties daughters were preferred to nephews. *Prem Singh* v. *Mussammat Chandi (*No. 150 *P. R.* 1879, cited. LAKHMI DAS *v.* KISHEN CHAND. **9 P R 1884**

12. *Aggarwala Baniyas of Jagadhri, Amballa district—Succession of daughters—Brothers and nephews—Acquired property.*

Found, that no uniform custom exists among Aggarwala Baniyas of Jagadhri in the Amballa district by which brothers and nephews exclude daughters from succession to acquired property *Lakhmi Das v. Kishen Chand* (No. 9 *P. R* 1884, Civil) cited. MUSSAMMAT MENGLAM *v.* LEKHRAJ. **110 P R 1884**

13. *Bhular and Panu Jats of Kasur tahsil—Gift of land to females or their husbands—Succession to such land on failure of male issue of the donees.*

Found, that there is no established custom among Bhular and Panu Jats, or among Jats generally in the Kasur *tahsil* or the neighbourhood, under which on a gift of land to sisters or daughters or their husbands, and on failure of male issue of the donees, the property reverts to the heirs of the donors, and does not descend to the

CUSTOM VIII.—MAINTENANCE AND SUCCESSION—*contd.*

K.—SUCCESSION OF DAUGHTERS—*contd.*

heirs of the donees. *Gogan* v. *Taloka* (No. 163 *P. R.*, 1882), cited. JOWAHIR SINGH *v.* AMRIK SINGH.

9 P R 1885

14. *Golras of Rawalpindi—Right of daughter to succeed in preference to collaterals—Daughter marrying within her "khandan."*

In a suit the parties to which were Golras of M. Jodh, *tahsil* and *zillah* Rawalpindi, the plaintiff, a married daughter, claimed to succeed as heir of her father, (his widows being dead), and of her cousin, one Mussammat R., to the land in suit in preference to the defendants, who were distant collaterals. The *Wajib-ul-arz* was to the effect that daughters will succeed unless there are brothers or uncles or their issue, provided they do not marry out of their own "*khandan.*"

Held, that there was no reason for regarding the word "*khandan*" as used in the *Wajib-ul-arz* in any but its ordinary popular sense of "family," and as the plaintiff's husband was a distant agnate, it rested with the defendants to show that such a marriage was not a marriage in the "family," and that in the absence of such proof, the plaintiff could not be held to be disqualified on the ground of being married out of the family. MUSSAMMAT MIRZA NUR *v.* BAHADUR ALI.

16 P R 1885

15. *Gujars of Lahore—Daughter's right to succeed in preference to nephew.*

Found, that by the custom of Gujars resident in the city of Lahore, a daughter succeeds in preference to a brother's son. GOPAL *v.* MUSSAMMAT MAMU.

41 P R 1885

16. *Arains of Kaithal* tahsil, *Karnal—Unmarried daughter's right of succession in presence of male collaterals.*

In a suit the parties to which were Arains of *mauza* Shadipur in the Kaithal *tahsil* of the Karnal district, *found*, that on the death of a landowner of the tribe leaving an unmarried daughter, but no widow or descendant in the male line, such daughter was entitled by custom to succeed to his land in presence of collateral relative of the deceased in the male line, related in the 4th or 5th degree. *Mussammat Izzo* v. *Mussammat Lado* (No. 34 *P. R.* 1880), referred to. BHAGA *v.* MUSSAMMAT SANDI.

52 P R 1885

17. *Kakazais of Batala—Succession of daughters—Widow.*

Found, that according to the custom of the Kakazai residents of the town of Batala a daughter, whose mother is dead, succeeds to her share of the inheritance left by her father who has died without male issue, as she is not excluded by the surviving widow of the deceased. MUSSAMMAT SALIA BIBI *v.* MUSSAMMAT PIRAN DITTI.

57 P R 1885

18. *Zargars of Amritsar—Succession of daughter*—Onus probandi—*Daughter's life interest—Power of alienation—Necessity.*

In a suit, the parties to which were Zargars of the Amritsar district, it appeared that the plaintiff was suing for a house left by one R., who died in 1876, which had been taken possession of by the defendant, the second cousin and nearest male collateral of R., as heir at law, the said defendant having obtained actual possession by paying off a mortgage by R., while plaintiff relied on a deed of sale in his favour of 1880 by Mussammat M., daughter of the deceased R.

Held, that the defendant (upon whom under the circumstances the *onus* had been rightly laid) had failed to prove any custom under which a male collateral, as distantly related as he was, excluded a daughter from succeeding to her father.

But, *held*, further, that as Mussammat M. was not shown to have succeeded otherwise than as a daughter under the ordinary rules of inheritance, the presumption was that her interest in the property was, like that of a widow, a life interest only, and that therefore plaintiff could only maintain the validity of the sale to him by proving that it was for necessity.

It being found that part only of the consideration stated in the deed could be accepted as advanced for necessary expenditure, the Court granted plaintiff a decree for possession as mortgagee with a lien on the property to the extent of the sum so advanced, declaring that when defendant or the next heirs of R. paid off such lien they might recover possession. DEVI DIAL *v.* HIRA SINGH.

68 P R 1887

19. *Khojas of Kasur—Exclusion of daughters by sons and of sisters by daughters.*

Found, that among the Khojas of Kasur, by custom, in the succession to immoveable property (1) of an owner who dies leaving male and female issue, the sons exclude the daughters, and (2) of an owner who dies without male issue leaving daughters and a sister, the daughters exclude the sister. MUSSAMMAT ALLA JOWAI *v.* MUSSAMMAT FATIMA.

52 P R 1888

20. *Khatris of Peshawar city—Succession of daughter and daughter's son in presence of nephews.*

Found, that among Khatris of the Peshawar city a daughter and her son by custom succeed in preference to a nephew of the last male owner.

Lakhmi Das v. *Kishen Chand* (No. 9 *P. R.* 1884, cited. NATHU MUL *v.* BIHARI.

67 P R 1888

21. *Gilani Sayads of Mooltan—Succession of daughters—Muhammadan Law—Limitation Act (XV of 1877), schedule II, articles* 127, 144—*Joint family—Adverse possession—Minority.*

Found, that among the Gilani Sayads of Mooltan there is no definite customary rule regarding the succession of daughters modifying the Muhammadan Law, and that therefore in cases of dispute the said Muhammadan Law must be followed.

Mussammat Sardar Bibi v. *Sayad Ali Shah* (No. 4 *P. R.* 1888), cited. NASIR-UD-DIN SHAH *v.* MUSSAMMAT LAL BIBI.

89 P R 1888

22. *Athbans Brahmins of Amritsar city—Succession of daughter in preference to near agnates.*

Found that among Athbans Brahmins of Amritsar city, there is no well-established custom whereby self-acquired real property, on the death of the acquiror's widow, descends to the near agnates to the exclusion of a daughter.

Munsa Ram v. *Punnoo* (No. 38 *P. R.* 1870), *Raj Rup* v. *Ladhu* (No. 51 *P. R.* 1873), *Hira* v *Mula* (No. 44 *P. R.* 1879), *Mussammat Bhagwandevi* v. *Nihal Chand* (No. 73 *P. R.* 1879), *Prem Singh* v. *Mussammat Chandi* (No. 150 *P. R.* 1879), *Ami Chand* v. *Ghasita Mal* (No. 143 *P. R.* 1882), *Lakhmi Das* v. *Kishen Chand* (No. 9 *P. R.* 1884), *Mussammat Menglam* v. *Lekhraj* (No. 110 *P. R.* 1884), and *Nathu* v. *Bihari* (No. 67 *P. R.* 1888), cited. MUSSAMMAT MULO *v.* PHULO MISSAR.

108 P R 1888

23. *Pathans of Sirsa district—Exclusion of daughters—Muhammadan Law.*

Found, that there is no well-established custom amongst agricultural Pathans in the Sirsa district, by which daughters are excluded from a share in their father's property in the presence of sons. KUTAB-UD-DIN KHAN *v.* MUSSAMMAT AMIR BEGAM.

36 P R 1889

24. *Sabazwari Sayads of Shakargarh* tahsil—*Distant collaterals.*

In a suit, the parties to which were Sabazwari Sayads of *mauza* Dinpanah in the Shakargarh *tahsil* of the Gurdaspur district, and in which the collaterals of a deceased sonless proprietor (the nearest of whom was related to the deceased as his second cousin once removed) were claiming in opposition to the daughter of the deceased, *held* that no custom was proved by which collaterals, so distantly related as plaintiffs, excluded a daughter. RAMZAN SHAH *v.* SOHNA.

60 P R 1889

25. *Sayads of Jullundur—Succession of daughters and their sons before collaterals.*

CUSTOM VIII.—MAINTENANCE AND SUCCESSION—*contd.*

K.—SUCCESSION OF DAUGHTERS—*contd.*

By the custom governing the Sayads of Jullundur the immoveable property of a deceased proprietor dying sonless and leaving a widow and daughters devolves after the widow's death upon the daughters and after them upon their sons, to the exclusion of male collaterals so far removed as the 4th degree from the common ancestor. MUSSAMMAT FATIMA *v.* GHULAM MUHAMMAD SHAH.

172 P R 1889

26. *Naru Rajputs of Hoshiarpur—Succession of females—Construction—* "Karabati."

In a suit among Naru Rajputs of Hoshiarpur *tahsil*, *found* that daughters were by custom entitled to succeed in preference to collaterals more remote than the descendants of the great-grandfather of the deceased proprietor.

"*Karabati*" means not only a male collateral but a *near* male collateral. RANJHE KHAN *v.* MUSSAMMAT KAMAN.

179 P R 1889

27. *Sayads of Kharar, Umballa district—Non-agriculturists owning land—Custom—Succession.*

In a suit the parties to which were Sayads of Kharar in the Amballa district, not agriculturists in the strict sense of the term though owning land but not cultivating themselves, *found* that though by custom sons exclude daughters, there was no well-established custom by virtue of which collaterals can claim to exclude them. The rules of Muhammadan Law therefore applied.

No. 4 *P. R.* 1888 referred to. KASIM ALI *v.* MUSSAMMAT ZINAT-UN-NISSA.

35 P R 1891

28. *Unmarried daughter—Maintenance out of or succession to deceased father's estate—Hindu Jats, Ludhiana district.*

Found, that among Hindu Jats of the Ludhiana district, custom recognises the right of the unmarried daughters to be maintained out of the estate of the deceased father, and even in some cases a right to possession of the estate until marriage. MUSSAMMATS KISHNO AND PARTAPO *v.* RAMAN.

50 P R 1892

29. *Right of daughter to exclude nephews—Jhiwars (Awans) of Rawalpindi.*

Found, in a suit the parties to which were Awans by tribe and Jhiwars (water-carriers) by occupation, in the town of Rawalpindi, that no custom was proved entitling a daughter to exclude a brother and nephews in succession to acquired immoveable property (a water-mill). MUSSAMMAT SHARFAN AND FIROZ *v.* KAMMU. **115 P R 1892**

30. *Kalru Jats, Mooltan district—Exclusion of nephews by daughters of deceased.*

Found, in a suit the parties to which were Kalru Jats (Muhammadans) of *tahsil* and District Mooltan, that no uniform custom was established by which daughters were excluded by brother's sons from taking the share of their father's estate falling to them under Muhammadan Law.

No. 12 *P. R.* 1889, referred to and followed. KHANAN *v.* MUSSAMMAT JATTI.

116 P R 1892

31. *Awans of Daudzai* tahsil, *Peshawar district—Right of daughter to inherit in presence of near male collaterals.*

By custom prevailing among the Awans of Doaba Daudzai *tahsil* of the Peshawar district, a daughter, in the presence of near male collaterals, is only entitled to maintenance and not to possession of her father's land, provided that the collaterals are willing to maintain and marry her. MUSSAMMAT MIRJAN *v.* RAHMAT. **31 P R 1893**

32. *Land devolving on owner's death to daughter—Nature of daughter's estate.*

Held, that although often, by custom, when a man dies without male issue his ancestral land, before passing into the possession of his collateral kinsmen, passes into that of his widow, and, on her death, into that of his unmarried daughter, there is no custom known to the Court by which land devolves upon a married, but widowed daughter, and devolves after her death upon her unmarried daughter for life nor is there any authority for the statement that an unmarried granddaughter succeeds her mother and excludes both collateral kinsmen and also a married granddaughter and her issue and a deceased grandson's daughter. ZAIDULLA *v* MADAR.

18 P R 1894

33. *Succession—Daughters—Suit by reversioner to contest daughter's succession—Compromise—Subsequent suit by same reversioners to set aside alienation by daughters.*

See CUSTOM I.—C. ALIENATION BY DAUGHTER. **47 P R 1894**

34. *Succession of married daughter—Khattars of Rawalpindi district—Suit by married daughter for declaration that she was entitled to reversionary right after death or remarriage of widow.*

One M. K., a Khattar of the Rawalpindi district, died some years ago leaving two widows, Mussammat B. and Mussammat M. N., and a married daughter, Mussammat N. K., the present plaintiff. The widows thereupon succeeded to the estate in equal shares and mutation was effected in their favor. In 1883 Mussammat B. gifted her half share in the estate to one Nawab Khan, the son of her husband's sister, and Mussammat N. K. sued for a declaration that the gift would not affect her reversionary interests on the death or remarriage of Mussammat B., Mussammat M. N., the other widow, being made a co-defendant because she refused to join the plaintiff in suing. The District Judge dismissed the suit on the ground that inasmuch as females were never regarded as reversioners in the same sense as male agnates, the plaintiff if really entitled to succeed as her father's heir, succeeded in the same way as a son would succeed, and should therefore have sued for possession of the estate, allowing maintenance to the widows. The Divisional Judge, on appeal, refused to allow the plaintiff to amend her plaint to one for possession, and dismissed the appeal. The plaintiff appealed to the Chief Court, and it was argued, on her behalf, that the suit as instituted was maintainable.

Held, that the right of the widows was superior by custom to that of the daughter, that as there were no male kindred, there was no one who had a better right than the daughter to succeed on the death of the widows, and that her only remedy, if any, was by suit for a declaratory decree. The case was therefore remanded under section 562, Civil Procedure Code, for disposal on the merits. MUSSAMMAT NUR KHANAM *v.* MUSSAMMAT BANI BEGAM.

90 P R 1894

35. *Succession of married daughter in presence of collaterals*—Riwaj-i-am—*Muhammadan Gujars of Ludhiana district*—Res judicata—*Waiver.*

On the death in 1854 of one Shahbaz, a Muhammadan Gujar of the Ludhiana district and a landed proprietor in *mauza* Bhukri Khurd, his widow, Mussammat Raso, was entered in the village records as proprietor of his lands and in 1861 gifted the said lands to her two sons-in-law, B., plaintiff's husband, and M. The reversionary heirs of Shahbaz thereupon sued to set aside the gift and obtained a decree to the effect that the gift would be considered effectual only for the widow's lifetime and that after her death whosoever proved his title would be considered the proprietor. In 1878 the widow gifted the same lands to her two daughters, plaintiff and Mussammat J., wife of M. The reversioners again brought a suit which was decided in their favour in both the first and the Appellate Courts, and on the death of the widow in 1886 they sued B. and M. for possession of Shahbaz's lands and obtained a decree for their respective shares in the same. Subsequently plaintiff sued the said reversioners and her own husband, B., claiming the lands of Shahbaz, her father, on the ground that by custom among Muhammadan Gujars of the Ludhiana district, the daughter of a sonless proprietor who has never left her father's house is, on the father's death, entitled to succeed to the exclusion of her father's male relatives. Plaintiff relied in support

CUSTOM VIII.—MAINTENANCE AND SUCCESSION—*contd.*

K.—SUCCESSION OF DAUGHTERS—*contd.*

of her claim upon the entry in the *Riwaj-i-am*. Defendants, with the exception of plaintiff's husband, who admitted the claim, denied plaintiff's right and pleaded, *inter alia*, that the matter was *res judicata*; that plaintiff by her conduct in the previous litigation had waived her title to succeed as heir of her father, and that in any event she was not entitled to so succeed by custom. The first Court decreed plaintiff's claim, but the decree was reversed, on appeal, by the Divisional Judge, on the ground that plaintiff had by her conduct waived her right to succeed as her father's heir. Plaintiff appealed to the Chief Court, and it was

Held, that inasmuch as the officer who tried and decided the suit in 1878, when the reversioners contested the gifts by the widow to her two daughters, would not have had jurisdiction to try the present suit, plaintiff's claim was not *res judicata* by reason of the former decision.

Held also, that as plaintiff could not have objected to the gift to her sister and her sister's husband during the lifetime of her sister and her mother, her conduct did not amount to waiver of her right to succeed, after their death, as the heir of her father.

Found lastly, that by custom among Muhammadan Gujars of the Ludhiana district, a married daughter who has never left her father's house to live elsewhere from the time of her marriage has a preferential right of succession to his estate as against his collaterals on the failure of male lineal descendants, and that defendants, upon whom the *onus probandi* rested, had failed to prove that the custom in their *got* was different from the general custom. MUSSAMMAT BASRI *v.* MOHKAM. **146 P R 1894**

36. *Succession of married daughter to exclusion of collaterals—No definite act of donation by sonless proprietor—Gujars of Gujrat district*—Riwaj-i-am.

Found, that by custom among Gujars of the Gujrat district, a married daughter is entitled to succeed her father, a sonless proprietor, in a case where, though no definite act of donation is proved, it is a fair inference from the established facts that the sonless proprietor settled that daughter and her husband in his house and on his land with a view to their succeeding him as his heirs to the exclusion of his collaterals. MUSSAMMAT BAGGI *v.* MAMUN. **31 P R 1895**

37. *Moghals of Patti in* tahsil *Kasur—sonless proprietor—Appointment of daughters to be heirs.*

Found, in a suit the parties to which were Moghals of Patti in the Kasur *tahsil* of the Lahore district, that by custom it was competent to a sonless proprietor to appoint his daughters to be his heirs and

CUSTOM VIII.—MAINTENANCE AND SUCCESSION—*contd.*

K.—SUCCESSION OF DAUGHTERS—*contd.*

succeed to his land, to the exclusion of collaterals.

No. 126 *P. R.* 1890, referred to. BUDHA BEG *v.* MUSSAMMAT BUDHAI BEGAM. **71 P R 1895**

38. *Land acquired by last owner's father and situate in a village other than that of the owner's origin—Claim by descendants of a common ancestor who resided in village of owner's origin—Succession of daughter—Rawats of Hoshiarpur district.*

Two brothers, T. and S., Rawats, originally resided in the village Chak Gujran, in the Garshankar *tahsil*, Hoshiarpur district, but subsequently migrated, T. to *mauza* Chak Raotan, also in the Garshankar *tahsil*, where he acquired certain land of which his descendants, the plaintiffs, were in possession at time of suit, and S. to *mauza* Chak Bhairon Majra, in the Rupar *tahsil*, Umballa district, where he acquired the land in dispute. After the deaths of S. and S.'s son L., the latter's daughter, Mussammat I., who was married to a Rawat proprietor of *mauza* Bhairon Majra, entered upon actual possession of the land. Thereupon plaintiffs who were the collaterals of L. but admittedly owned no land in *mauza* Bhairon Majra, instituted the present suit. The Divisional Court finding that plaintiffs had proved themselves to be the collateral heirs of L. decreed the claim, holding that defendant had failed to prove a custom under which the daughter succeeded in preference to the collaterals of the last owner.

Defendant appealed to the Chief Court.

Held, that under the special circumstances of the case, the land not being ancestral and plaintiffs not being residents of the village in which it was situate, the *onus* rested upon plaintiffs to prove that they were entitled to oust the daughter from her father's inheritance, and that they had failed to discharge it. MUSSAMMAT ICHHRI *v.* JOWAHIRA. **18 P R 1896**

39. *Succession of unmarried daughter in presence of nephew—Burden of proof—Razzar Pathans of Peshawar district*—Riwaj-i-am.

In a case in which the parties were Razzar Pathans of Peshawar district, *found*, that by custom an unmarried daughter is only entitled to maintenance till marriage, and does not succeed to any landed property in the presence of male kindred of her father. MANDAS *v.* MUSSAMMAT SHAH WASIM. **44 P R 1896**

40. *Succession of daughter—Acquired property situate in village other than that of proprietor's origin—Non-agriculturists—Dhal Khatris of Muzaffargarh district*—Onus probandi—Riwaj-i-am.

CUSTOM VIII.—MAINTENANCE AND SUCCESSION—*contd.*

K.—SUCCESSION OF DAUGHTERS—*contd.*

In a case, in which the parties were non-agriculturists, Dhal Khatris of the Muzaffargarh district, *found*, that plaintiffs, upon whom the *onus* lay, had failed to prove that in the succession to property which a sonless proprietor had acquired in a village other than that of his origin, daughters were excluded by near collaterals who resided in a different village.

The entry in the *Riwaj-i-am* and the weight to be attached thereto discussed. SHAM RAM *v.* MUSSAMMAT HEMI BAI. **73 P R 1896**

41. *Sons and daughters—Punjabi Arains of Sabz Mandi, Delhi—Non-agriculturists*—Onus probandi—*Punjab Laws Act*, 1872, *section* 5, *clause* (*a*).

In a case where the parties, though originally of Punjabi Arain descent, had for many generations lived amongst, and given themselves out as, Muhammadan Sheikhs of Sabz Mandi, a suburb of Delhi, and, though owning land, did so rather as market-gardeners and capitalists than as true agriculturists, *held* that the *onus* of proving that in matters of succession they were governed by a family custom whereby sons excluded daughters and not by their personal law—in the present case Muhammadan Law,—was upon defendants who asserted it; and *found* upon the evidence and the facts of the case, that defendants had failed to establish the existence of any such family custom, or to prove that the parties were not governed by Muhammadan Law.

Section 5 of the Punjab Laws Act, 1872, does not require it to be *presumed* that in matters therein specified a custom governs the parties to the exclusion of their personal law, but merely *prescribes* that it shall govern them in such matters in the first instance. All that the said section lays down is that an inquiry should first be directed to ascertain whether there is any custom applicable to the parties in respect of those matters and if one is established, that it shall furnish the rule of decision to the supersession of their personal law. When, therefore, a person alleges a custom contrary to some precept of his personal law, he is *prima facie* bound to prove that custom. MUSSAMMAT FAKHAR-UN-NISSA *v.* MALIK RAHIM BAKHSH. **23 P R 1897**

42. *Right of daughter to succeed to her father's first cousin—Kanets of Kangra district.*

Found, that plaintiff had failed to prove that, by custom among Kanets of Kangra district, a woman is entitled to succeed to the estate of her father's first cousin after the succession and subsequent death of the latter's widow to the exclusion of the agnatic heirs.

CUSTOM VIII.—MAINTENANCE AND SUCCESSION—*contd.*

K.—SUCCESSION OF DAUGHTERS—*contd.*

Semble.—Among Kanets of the Kangra district a daughter is entitled to succeed to her father's estate to the exclusion of remote collaterals. MUSSAMMAT MANSO *v.* RATNU. **3 P R 1898**

43. *Unmarried daughters of sonless proprietor—Life estate or maintenance—Khots of* mauza *Udharwal,* tahsil *Chakwal, Jhelum district.*

Found, after remand for further inquiry, that by custom among Khots (Kahuts) of the village of Udharwal, *tahsil* Chakwal, in the Jhelum district, unmarried brotherless daughters are entitled to possession of the lands of their father for life, or so long as they remain unmarried. MUSSAMMAT NUR BHARI *v.* DULLA. **56 P R 1899**

44. *Lahori Khatris of Batala—Succession of brothers and nephews in preference to daughters and their sons—Hindu Law.*

Held, that plaintiff had failed to prove that Lahori Khatris of Batala are governed by custom in matters of succession. BABU PHERU MAL *v.* RAM KISHEN. **87 P R 1900**

45. *Custom—Succession — Succession of daughter—Sheikhs of Badli, Rohtak district—Non-agriculturists*—Onus probandi—*Punjab Laws Act,* 1872, *section* 5.

In a suit the parties to which were Sheikhs of the village of Badli, in the Rohtak district, *found,* in the absence of a custom to the contrary that the daughters succeed in preference to collaterals such as the defendants. Where *primâ facie* it is apparent that the parties to a suit were not ordinary agriculturists or carrying on the pursuit of agriculture, but had been employed for generations in State service, there is no initial presumption in favour of the existence of a custom under section 5 (*a*) of the Punjab Laws Act, 1872. In such cases it should be ascertained whether the rule of descent is governed by custom or by the personal law of the parties. MUSSAMMAT FATIMA AND OTHERS *v.* ARJMAND ALI AND OTHERS. **41 P R 1901**

46. *Custom — Inheritance — Unmarried daughters of sonless proprietors—Succession to deceased father's estate in presence of distant collaterals—Hindu Jats of Panipat* tahsil, *Karnal district.*

Found, that by custom among Hindu Jats of Panipat *tahsil,* Karnal district, unmarried daughters of a sonless proprietor are entitled as the most sure, certain and secure form of maintenance for them to the possession of the landed property of their fathers for life so long as they remain unmarried in presence of collaterals seven degrees removed from the deceased, their estate being of the same nature as that of a widow. *Mussammat Kishno* v. *Roman* (50 *P. R.* 1892), *Rustam Khan* v. *Mussammat Jio* (139 *P. R.* 1892), *Zaidull* v. *Modor* (18 *P. R.* 1894), referred to. **12 P R 1902**

CUSTOM VIII—MAINTENANCE AND SUCCESSION—*contd.*

K.—SUCCESSION OF DAUGHTERS—*contd.*

47. *Custom—Inheritance—Right of daughter to inherit in presence of son—Sayads of Bannu.*

Found, that among the Sayads of Bannu *tahsil* unmarried daughters are entitled to succeed to their share in their father's property in accordance with Muhammadan Law in the presence of sons. KHAMIM SHAH *v.* AMIRZADA SHAH. **62 P R 1904**

48. *Custom—Inheritance—Aroras of Amritsar city—Succession of brother in preference to a daughter—Hindu Law—Burden of proof.*

Held, that the defendant upon whom the *onus* lay had failed to establish that in matters of succession the Aroras of Amritsar city were governed by custom and not by Hindu Law, or that collaterals were entitled to succeed to the exclusion of a daughter. RADHO *v.* HARNAMAN. **99 P R 1907**

49. *Bunjahi Khatris of Rawalpindi city.* Custom excluding daughters not proved. **102 P R 1907**

50. *Custom—Inheritance—Exclusion of collaterals of the seventh degree by daughter—Muhammadan Chohan Rajputs of Kharwan,* tahsil *Jagadhri, Ambala district—Burden of proof.*

Found, that plaintiffs have failed to prove that by custom among Chohan Rajputs of *mauza* Kharwan, *tahsil* Jagadhri in the Ambala district, collaterals of the seventh degree were entitled to succeed in preference to a married daughter of the deceased sonless proprietor.

There is no general presumption that regardless of tribe and creed agnates, however remote, exclude daughters from succession to ancestral property. ABDUL KARIM *v.* SAHIB JAN. **5 P R 1908**

51. *Custom—Inheritance—Right of daughter to succeed to her father in presence of nephews—Sayyads of Basti Sayyadan,* tahsil *Shujabad, Multan district.*

Found, that among Sayyads of Basti Sayyadan, *tahsil* Shujabad, in the Multan district, there is no custom whereby a daughter was entitled to succeed to her father's estate in preference to the nephews of the deceased. AHMAD SHAH *v.* AHMAD SHAH. **68 P R 1908**

52. *Custom—Inheritance—Succession of daughters in presence of distant collaterals—Hindu Chohan Rajputs of the Naraingarh* tahsil, *Ambala district—Burden of proof.*

Found, that no custom is established among Chohan Rajputs of the Naraingarh *tahsil,* Ambala district, by which daughters are excluded from succession to ancestral property by male collaterals related in the sixth degree.

The burden of proof as to whether remote collaterals such as of the sixth degree exclude daughters rests on the party who asserts its existence. BHOLI *v.* MAN SINGH **86 P R 1908**

CUSTOM VIII.—MAINTENANCE AND SUCCESSION—*contd.*

K.—SUCCESSION OF DAUGHTERS—*contd.*

53. *Custom — Inheritance — Right of daughter to succeed to her father in presence of collaterals—Laghari Bilochis of* tahsil *Sanghar, Dera Ghazi Khan district—Muhammadan Law.*

Held, that among the Laghari Bilochis of the Sanghar *tahsil* of the Dera Ghazi Khan district, daughters are entitled to succeed to their share in their father's ancestral property in accordance with Muhammadan Law in the presence of his male agnatic heirs, descendants of his grandfather. SABHAI *v.* ALI. **136 P R 1908**

54. *Custom—Inheritance—Right of daughter to inherit self-acquired land in presence of near male collaterals—Hindu Rajputs of Kangra district.*

Found, that defendant had failed to prove that by custom among Hindu Rajputs of the Kangra district near male collaterals were entitled to succeed to the self-acquired property of a sonless proprietor held by him in a different village in preference to his daughter. NIDHU *v.* RAM SINGH. **2 P R 1909**

55. *Custom—Inheritance—Rights of daughter to succeed to her father in presence of collaterals—Muhammadan Prachas of Bhera city.*

Found, that by custom among Muhammadan Prachas of the Bhera city daughters are entitled to succeed to the urban immovable property of their father to the exclusion of male collaterals. GHULAM HASSAN *v.* FAZAL DIN. **15 P R 1909**

56. *Custom—Succession—Daughter's right to succeed to property gifted to her grandfather in preference to male descendants of donor.*

Held, that daughters are heirs under Hindu Law as well as under Customary Law, and that under Customary Law, the male descendants of a donor are not entitled to oust the female descendants of the donee in the direct line. GURDIT SINGH *v.* MUSSAMMAT PREM KAUR. **84 P R 1909**

57. *Custom—Succession of daughter to her mother's estate—Sayads of* mauza *Masanian,* tahsil *Batala, district Gurdaspur.*

Held, following *Shah Nawaz* v. *Azamat Ali* (No. 40 *P. R.* 1907) that Sayads of *mauza* Masanian, *tahsil* Batala, district Gurdaspur, are governed by the general rules of agricultural custom of the Punjab.

Held also, that land which has come to a daughter from her father and has become her absolute property and has been gifted by her to her husband, reverts to her on his death and descends to her daughter as her heir, and not to the collaterals of her deceased husband. MUSSAMMAT ALLAH RAKHI *v.* ZAKAR-HUSSAIN. **96 P R 1909**

58. *Succession of daughter—Gujars of Ludhiana district—Ancestral property—Will—Appointment of future* khana-damad.

Held, that land acquired by pre-emption, the price of which was raised by mortgage

CUSTOM VIII.—MAINTENANCE AND SUCCESSION—*contd.*

K.—SUCCESSION OF DAUGHTERS—*concld.*

of part of ancestral land, is not itself ancestral land.

Held also, that it has not been proved that among Mussalman Gujars of the Ludhiana district a sonless proprietor has the power to alter the ordinary rule of succession by will, in the sense that he can will ancestral land in absolute ownership to a daughter in presence of near collaterals or that he can by will appoint a future possible husband of his infant daughter to be his *khana-damad*.

Held, further, that an unmarried daughter among these Gujars does hold her father's estate until death or marriage. NABIA *v.* MUSSAMMAT FATTO. **2 P R 1910**

59. *Land inherited by daughters—Daughters' daughter and sister and sisters' sons exclude collaterals—Muhammadan Rajputs, Hoshiarpur district.*

Held, that among Muhammadan Rajputs of Hoshiarpur (an endogamous tribe) where daughters have succeeded to their father's land as heirs, excluding his collaterals, their daughters are entitled to succeed to their mother's estate in the absence of direct male heirs, on the death of any of them, and a sister or her sons would also exclude the collaterals in respect of such property. ILAHI BAKHSH *v.* MUSSAMMAT BUDHI. **5 P R 1910**

60. *Custom—Succession—Generally daughter succeeds in preference to* pattidars—Wajib-ul-arz--Riwaj-i-am—Onus probandi—*Jats of* mauza *Kharindwa*, tahsil *Thanesar*, *district Karnal.*

Held, that exclusion of daughters by *pattidars* is opposed to the general custom, and that the burden of proving a special custom entitling them to exclude the daughter is on the *pattidars*.

Also, that an entry in the record of rights and *Riwaj-i-am* in their favour, unsupported by any instances, is not sufficient to discharge the *onus* and that the *onus* had not been discharged. GANPAT RAI *v.* MALLA MAL. **11 P R 1911**

61. *Custom—Succession to gifted land on death of donee sonless—daughters' succession—reversion to donor.—*

Held that in the absence of proof of a special custom daughters of the donee, who has died sonless, succeed in the same way as sons, and that they pass on the succession to their children, the land reverting to the donor's line only in the event of the total extinction of descendants of the donee.

84 *P. R.* 1909 followed. KHUDA BAKHSH *v.* SHAMAS. **68 P R 1911**

L.—SUCCESSION OF DAUGHTERS' SONS AND DAUGHTERS.

1. *Dakot Brahmins of Rupar—Daughter's son.*

Found that, by the custom of the Dakot Brahmins of Rupar, a daughter's son cannot inherit to the exclusion of near collaterals—

CUSTOM VIII.—MAINTENANCE AND SUCCESSION—*contd.*

L.—SUCCESSION OF DAUGHTERS' SONS AND DAUGHTERS—*contd.*

(cousins and nephews). HIRA *v.* MULA. **44 P R 1879**

2. *Hindu Law—Gift of house to daughter—Collaterals.*

One M. gave a house, situate in Kartarpur to M. R his daughter, in token of his love, more than 12 years prior to the institution of the present suit. On the death of M. R. plaintiffs, collateral male relative of G., brother of M. R. claimed to recover the house from M. T. daughter of M. R.,

Held, no custom to the contrary being proved, that M. T. was entitled to inherit the house under the Hindu Law.

Ameer Singh v. *Kanh Singh* (*No.* 56 *P. R.* 1870), approved. SHIB DYAL *v.* MUSSAMMAT TABI. **88 P R 1879**

3. *Mahtams of Hoshiarpur—Daughter's son—Collaterals.*

Found, that no established custom exists among Mahtams of the Hoshiarpur district by which daughters' sons, as a class, have a right of inheritance superior to collaterals as nearly related as the fifth generation. BUTA *v.* AMAR SINGH. **55 P R 1881**

4. *Daughter's son succeeding to property of his maternal grandfather—Death of daughter's son without male issue—Right of heirs of original proprietor to object to alienation by widow.*

In a suit for cancellation of a deed of sale by a widow of property situated in M. Boh in the Amballa district, *found*, that when a daughter's son has succeeded to his maternal grandfather, whether by gift or otherwise, and dies leaving no male issue, the property according to custom does not revert to the relatives in the male line of the original proprietors, so as to entitle them to restrain alienations by his widow, but descends like other property belonging to him to his own heirs, his mother's relatives having therefore no right to object to the widow's alienations. DASAUNDHA SINGH *v.* MUSSAMMAT PARTAB KOUR. **53 P R 1882**

5. *Khatris of Lahore—Daughter's son—*Khana-damad.

Found, that no well established custom was shown to exist among the parties (who were Khatris of Lahore city) which would exclude daughters' sons from the succession to ancestral immovable property in the presence of a brother's son.

Quære, whether such a custom, if proved, would have been applicable to a case where the daughter's husband had been taken by the father (whose property was in dispute) to live with him as a *khana-damad*, and the daughter's sons had been born and brought up in the said proprietor's house. AMIR CHAND *v.* GHASITA MAL. **143 P R 1882**

6. *Mehmars of Ludhiana—Collaterals beyond the 6th degree claiming to exclude daughter's sons whose father was a* khana-damad—*Right of sons of* khana-damad *to succeed by representation where their father*

CUSTOM VIII.—MAINTENANCE AND SUCCESSION—*contd.*

L.—SUCCESSION OF DAUGHTERS' SONS AND DAUGHTERS—*contd.*

has pre-deceased their grandfather.

Found, that no custom exists among Mehmars of the Ludhiana district, whereby the male collaterals of the deceased beyond the 6th degree exclude the daughter's sons of a sonless proprietor, when their father had been a *khana-damad* and intended to succeed his father-in-law.

Held also, that the evidence fairly established a custom whereby the sons of a resident son-in-law succeeded by representation to their father's rights in their grandfather's estate where the father has predeceased the grand-father. SANTU *v.* MUSSAMMAT MANU. **172 P R 1882**

7. *Aroras of Amritsar—Daughter's son—Nephew.*

In a suit the parties to which were Aroras of Multan origin, but residing at Amritsar, *held*, that no custom was established whereby in the absence of a gift or something to show that the deceased intended to make his daughter's son his heir, such a relative was entitled to succeed to the immovable property of his maternal grandfather in preference to a nephew. MOKANDA *v.* BALLI SINGH. **85 P R 1884**

8. *Mirasis of Firozpor district—Daughter's son—First cousin once removed.*

Found, that no custom exists among Mirasis of the Firozpur district, contrary to the Muhammadan Law, by which a first cousin once removed can succeed in preference to a daughter's son whose mother has succeeded to his father's immovable property. WARIAMAN *v.* MUSSAMMAT RUPAN. **113 P R 1884**

9. *Muhammadan Jats of* tahsil *Gujrat—Right as between heirs of the donor and donee to succeed to land gifted to a daughter's son.*

In a suit the parties to which were Muhammadan Jats of the Gujrat *tahsil*, *held*, that no custom was proved to exist under which, where land had been gifted to a daughter's son, the inheritance passed on the death of the donee, not to the donee's heirs, but to the donor or his heirs. *Dasaundha Singh* v. *Mussammat Partab Kour* (No. 53 *P. R.* 1882) and *Gogan* v. *Taloka* (No. 163 *P. R.* 1882) cited. DITTA *v.* MUHAMMAD BAKSH. **146 P R 1884**

10. *Bhats of Sonepat, Delhi district—Right of collaterals of donee to succeed in preference to the collateral relatives of the donor.*

In a suit the parties to which were Bhats of the Sonepat *tahsil* in the Delhi district *held*, that no special custom was proved under which, in default of lineal heirs of the donee (a daughter's son), property received by gift would revert to the family of the donor. MANGAT *v.* WAZIR SINGH. **82 P R 1885**

11. *Kambohs of Lahore district—Daughters' and sisters' sons—Collaterlas.*

In a suit the parties to which were Kambohs of the Lahore district, *held*, that the

CUSTOM VIII.—MAINTENANCE AND SUCCESSION—*contd.*

L.—SUCCESSION OF DAUGHTERS' SONS AND DAUGHTERS—*contd.*

plaintiffs had failed to establish a custom whereby the sons of a daughter or the sons of a sister of a sonless proprietor inherited ancestral land in preference to an agnate as nearly related as a second cousin of the last male owner.

Mussammat Bhagan v. *Gahna* (No. 177 *P. R.* 1883), *Sawan Singh* v. *Nihal Singh* (No. 48 *P. R.* 1885), and *Budhu* v. *Chiragh* (No. 3 *P. R.* 1886), cited. THAKUR SINGH *v.* TARA SINGH. **40 P R 1888**

12. *Right of daughter and daughter's son to succeed—Sindhu Jats.*

The pedigree table prepared at Settlement showed that in the course of many generations there was not a single instance of a daughter's succession to sonless proprietors. The *Wajib-ul-arz* and the *Riwaj-i-am* clearly excluded the daughter from succession of her father's estate—*Held*, therefore, that without finally deciding whether daughters and daughters' sons were by custom excluded from succession among Sindhu Jats, the tribe to which the parties belonged, the plaintiffs position was sufficiently well established by the evidence to entitle them to maintain the suit as the nearest reversioners. RAM DITTA *v.* KISHEN SINGH. **4 P R 1890**

13. *Sayyads of Kharkhauda, Rohtak district—Doughter's son succeeding to property of his maternal grandfather—Death of daughter's son without male issue—Right of heirs of original proprietor to succeed.*

L. and Z. were two brothers, Sayyads of Kharkhauda, in the Rohtak district. Z. was succeeded by his widow, daughter and daughter's son, S., in consecutive order, S. died childless, leaving a widow, A., who remarried. B., the son of L., claimed the property on her remarriage. *Held*, that B. had failed to prove a custom where on the death of a daughter's son dying childless, the estate to which he had succeeded by gift or otherwise reverts to the relatives in the male line of the original proprietor. AMAN ALI *v.* MUSSAMMAT AMINA BEGAM. **46 P R 1890**

14. *Daughter's son — Muhammadan Awans, Ludhiana district.*

Found, in a suit the parties to which were Muhammadan Awans of the Ludhiana district that agnates whose common ancestor was in the tenth generation from the deceased, were entitled to succeed in preference to the daughter's son. SHARF-UD-DIN *v.* NABIA BAND ISMAIL **64 P R 1892**

15. *Right of daughter's son to exclude nephews—Jhiwars (Awans) of Rawalpindi.*

Found, in a suit the parties to which were Awans by tribe and Jhiwars (water-carriers) by occupation, in the town of Rawalpindi, that no custom was proved entitling a daughter's son to exclude a brother and nephews in succession to acquired immovable property (a water-mill). MUSSAMMAT SHARFAN AND FIROZ *v.* KAMMU. **115 P R 1892**

16. *Daughter's son—Trikha Brahmins of Jhang district.*

Found, that the parties, who were Trikha Brahmins of the Jhang district, were governed by custom and not by Hindu Law, and that among them a daughter or a daughter's son was not entitled to succeed in the presence of the first cousin once removed of the deceased sonless proprietor. MOHAN LAL *v.* DEVI DAS. **43 P R 1899**

17. *Self-acquired land—Daughter's sons succeed in preference to distant collaterals—Telis of Pachnand, Shahpur district—Burden of proof.*

Held, that the land not being ancestral and plaintiffs not being owners in the village in which it was situated, the *onus* rested upon them to prove that they had a superior claim to defendants, who were the original owner's daughter's sons, and that they (plaintiffs) had failed to discharge it.

Ala v. *Mussammat Rajo* (No. 77 *P. R.* 1881), *Miran Bakhsh* v. *Mussammat Alla Jawai* (No. 25 *P. R.* 1882), *Mussammat Zainab* v. *Amir* (No. 174 *P. R.* 1889) and *Lokha* v. *Haria* (No. 64 *P. R.* 1893), followed. *Mussammat Ichhri* v. *Jowahira* (No. 18 *P. R.* 1896), *Ram Mal* v. *Mussammat Miran* (No. 30 *P. R.* 1896), and *Sham Ram* v. *Mussammat Hemi Bai* (No. 73 *P. R.* 1896), referred to. KHUDAYAR AND OTHERS *v.* SULTAN AND OTHERS. **103 P R 1900**

18. *Custom—Inheritance—Lodhi Pathans of* mauza *Dhogri*, tahsil *Jullundur—Right to succeed to daughter who has inherited from her father—Collateral claiming in preference to daughter's daughters—Reversion to collateral heirs of last full owner in presence of daughter's daughters—Reversion to collateral heirs of last full owner in presence of daughter's daughter.*

In a suit the parties to which were Lodhi Pathans of *mauza* Dhogri, *tahsil* Jullundur, where on the death of one N. without sons he was succeeded by his daughter M. the plaintiffs claimed the property by customary right of inheritance as daughters M. whom they represent as the last full proprietor. The defendant, a collateral of N, in the 6th degree, while admitting that daughters succeeded a fathers pleaded that by custom collaterals succeeded in preference to daughter's daughters or daughter's son, *found*, that under the custom established by the plaintiffs they succeed as daughters of the last full owner in preference to collaterals, *held* that defendant had failed to prove a custom whereunder there is a reversion to the collateral of the last male owner in the presence of the daughter's daughters.

Ladhu v. *Mussammat Daulati* (126 *P. R.* 890), *Kutb* v. *Mussammat Abidan* (19 *P. R.* 887), *Karm Din* v. *Umar Bakhsh* (3 *P. R.* 1888), *Muhammad* v. *Amir* (31 *P. R.* 1889), *Sita Ram* v. *Raja Ram* (12 *P. R.* 1892), *Chaughatta* v. *Mokam Din* (75 *P. R.* 1893), *Nihal* v. *Mohlar* (19 *P. R.* 1897) and *Sher Muhammad Khan* v. *Muhammad Khan* (5 *P. R.* 1895), referred to. WAZIR ALI KHAN *v.* MUSSAMMAT ASMAR BUB. **61 P R 1902**

19. *Custom—Inheritance—Bunjahi Khatris of Rawalpindi—Right of collaterals to succeed in preference to daughter's sons and grandsons—Hindu Law.*

Held, that the defendant upon whom the *onus* lay had failed to establish that in matters of inheritance the Bunjahi Khatris of Rawalpindi city were governed by custom and not by Hindu Law, or that collaterals were entitled to succeed to the exclusion of daughter's sons and grandsons of the deceased sonless proprietor. BURA MAL *v.* NARAIN DAS. **102 P R 1907**

20. *Custom—Inheritance—Right of descendants of a daughter of the deceased's ancestor to succeed in preference to village community.*

Held that in accordance with the recognized principles of customary law direct descendants of a daughter and daughter's son of a deceased proprietor's ancestor are entitled in the absence of all male collaterals to succeed to the estate of the latter in preference to a heterogeneous proprietary body of a different got.

Badhawa v. *Dewa Singh* (No. 141 *P. R.* 1893) dissented from. WARYAMA *v.* HIRA NAND. **63 P R 1908**

21. *Custom—Inheritance—Exclusion of daughter's son by collaterals—Rajputs of Attock district.*

Found, that among Rajputs of the Attock district daughter's sons are not entitled by custom to succeed in preference to collaterals who were descendants of the grandfather of the last male owner. JAHAN KHAN *v.* SHAHAMAD. **134 P R 1908**

22. *Custom—Inheritance—Khatris of Satghara, Montgomery district—Succession of collaterals in preference to a daughter's son—Hindu Law—Burden of proof.*

Held, that the plaintiffs upon whom the *onus* lay had failed to establish that in matters of succession the Khatris of Satghara were governed by custom and not by Hindu Law or that collaterals were entitled to succeed to the exclusion of a daughter's son. GANPAT RAI *v.* KESHO RAM. **34 P R 1909**

M.—EXCLUSION OF DAUGHTERS.

1. *Succession of females—Daughters.*

According to the general custom of the Punjab, married Hindu or Muhammadan

CUSTOM VIII.—MAINTENANCE AND SUCCESSION—*contd.*

M.—EXCLUSION OF DAUGHTERS—*contd.*

daughters are not entitled, in the presence of nephews, to inherit a share of their father's landed estate, but only to maintenance. WAGA *v.* MUSSAMMAT MEHUR BEEBEE.

78 P R 1868

2. *Muhammadan Rajputs of Hoshiarpur.* Plaintiff, fifth in descent from the common ancestor, claimed the property of M. K., deceased, to the exclusion of his daughter. The parties were Muhammadan Rajputs of the Hoshiarpur district. The *Wajib-ul-arz* provided that when a proprietor died without male issue his widow should succeed, and her husband's *karabtian* should look after her, and on her death the *karabtian* of her husband should succeed. Witnesses were called to prove the custom, of whom about twenty deposed adversely to the claim of the daughter, and about twelve in her favour. *Held*, that the oral evidence and the *Wajib-ul-arz* showed that the daughter did not succeed; and that the word *karabtian* referred to next heirs male. MUSSAMMAT SAHABJAN *v.* KARM BUKSH.

80 P R 1875

3. *Muhammadan Tarkhans of Lahore district—Muhammadan Law.*

Held, that no established custom was proved to exist among Muhammadan Tarkhans of the Lahore district, by which either a daughter or a grandson of the paternal uncle has an exclusive right of inheritance to a deceased landholder. By Muhammadan Law the daughter was held entitled to one-half of her father's estate, and the grandson of the paternal uncle, as a residuary in his own right, to the remaining half. MUSSAMMAT JOWAI *v.* CHUHAR. **87 P R 1879**

4. *Exclusion of daughters by near collaterals—Burden of proof.*

The general customary rule among Hindus in the Punjab is that daughters and their sons are excluded by near male collaterals.

Where, therefore, plaintiff, the nephew of a deceased Hindu landowner, sued to set aside an alienation by the deceased's widow of part of her husband's land, and was met by the defendants with the contention that the deceased's daughters were the next heirs to the land, *held*, that it lay upon the defendants to prove that by custom daughters and their sons succeeded in preference to nephews. PREM SINGH *v.* MUSSAMMAT CHANDI. **150 P R 1879**

5. *Meos of Ludhiana—Daughter—Paternal uncle's son.*

Held, that there is no established custom among Meos, by which a married daughter living with her husband and separately from her father, takes the father's estate to the exclusion of a paternal uncle's son, or nephew. PIRAN DITTA *v.* MUSSAMMAT TABI. **31 P R 1881**

CUSTOM VIII.—MAINTENANCE AND SUCCESSION—*contd.*

M.—EXCLUSION OF DAUGHTERS—*contd.*

6. *Manjh Rajputs of Nakodar* tahsil, *Jalandhar—Collaterals—Daughters.*

In a suit among Manjh Rajputs of the Nakodar *tahsil* of the Jalandhar district, *found*, that collaterals descended in the male line from the great-grandfather of a deceased proprietor were by custom entitled to succeed in preference to the daughters of the deceased. MUSSAMMAT NURAN *v.* JIWA.

176 P R 1882

7. *Mujawars of shrine of Data Gang Baksh—Muhammadan law—Exclusion of daughters by widows on failure of male issue.*

In a suit regarding the succession to the private property of one A., a Mujawar of the shrine of Data Gang Baksh, *found*, that the inheritance was governed not by Muhammadan Law, but by custom, the custom being that sons excluded widows, and on failure of male issue, widows excluded daughters.

The two widows of the deceased were therefore *held* entitled to succeed to his property half and half. MUSSAMMAT AMIR BEGAM *v.* MUSSAMMAT MEHR BIBI. **38 P R 1883**

8. *Muhammadan Sayals of Jhang district—Daughters—Male collaterals.*

Found, that there is no well-established custom among Muhammadan Sayals of the Jhang district under which daughters succeed in preference to male collaterals. MUSSAMMAT SAHBAN *v.* GHAZI. **50 P R 1885**

9. *Kalra Jats of Mooltan district—Succession of daughters—Brother's sons.*

In a suit the parties to which were Kalra Jats of the Mooltan district *found* that no custom was proved by which daughters succeeded to their father's immovable property to the exclusion of brother's sons. MUSSAMMAT KHAIRAN *v.* KHANAN.

12 P R 1889

10. *Gardezi Sayads of Mooltan district—Widow's life interest—Daughter's right of succession—Exclusion of daughters by collaterals.*

In a case of succession among Gardezi Sayads of *tahsil* Sarai Sidhu in the Mooltan district, *found* that the plaintiffs were entitled by custom to succeed on the death of the widow of their uncle's son, in the presence of his daughter's daughter, to the property held by the widow, the custom being that, in the absence of sons a widow succeeds to a life interest in her husband's immovable property to the exclusion of a daughter, and that uncle's sons on the death of the widow exclude a daughter's daughter. MUSSAMMAT GHULAM ZOHRA *v.* RUKN ABDULA SHAH. **18 P R 1889**

11. *Sheikhs of Amballa* tahsil—*Daughter—Collateral.*

CUSTOM VIII.—MAINTENANCE AND SUCCESSION—*contd.*

M.—EXCLUSION OF DAUGHTERS—*contd.*

Found in a suit among Sheikhs of the Amballa *tahsil* that no customary rule prevailed whereby a daughter had any right to succeed to agricultural land and village houses in preference to male collaterals. GHULAM KADIR *v.* SHAIB-UL-NISSA.

44 P R 1889

12. *Hindu Varaiches of Pasrur* tahsil, *Sialkot district—Collaterals in eighth degree*—Onus probandi.

In a suit among Hindu Varaiches of the Pasrur *tahsil* of the Sialkot district, in which the plaintiffs (collaterals in the eighth and more remote degrees) were claiming the land of a deceased sonless proprietor in opposition to a daughter, *held* that the latter, upon whom the *onus probandi* lay, had failed to prove that by custom the collaterals who were opposed to her were too remote in relationship to be able to claim in opposition to her, and that the plaintiffs were therefore, entitled to succeed in their claim. GURDITTA *v.* MUSSAMMAT PREMAN.

48 P R 1889

13. *Pathan agriculturists of Peshawar district—Collaterals—Married daughters—Right of collaterals suing without joinder of others equally entitled to recover whole property.*

In a suit by certain collaterals in the estate of a Pathan agriculturist of the Peshawar district, it appeared that the said agriculturist was succeeded by his widow, who died leaving two daughters, who, with their husbands, were the present defendants. It also appeared that the parties were governed by custom, and not by Muhammadan Law, and that by the custom, daughters when married had no share; but as the pedigree-table showed that plaintiff's father had a brother whose descendants appeared to be also entitled to share in the inheritance, the lower Court decreed the plaintiff's claim to the extent of one-half of the estate only. Neither party raised any plea in the lower Courts as to the non-joinder of any other co-sharers as parties.

Held, that as the defendants had no right to any customary share, the plaintiffs were entitled to a decree for the entire estate. NIZAM DIN *v.* MUSSAMMAT FARIGA.

68 P R 1889

14. *Lodhran Jats—Jagirdars of Geeron got, Ludhiana district—Exclusion of females.*

In a suit among Lodhran Jat Jagirdars of the Ludhiana district, *found*, that a special custom exists—contrary to the general custom of Jat agriculturists in the Punjab—whereby females are altogether excluded from inheritance.

The rule in section 8, Punjab Laws Act (IV of 1872), deals with the devolution of revenue assignments only, with which alone

the Government is concerned, and has nothing to do with private property. MUSSAMMAT MUL KAUR *v.* SARDAR MAHTAB SINGH. **16 P R 1890**

15. *Right of daughter married into another tribe to succeed in presence of her father's brothers—Uthera Jats of Kotgarh in the Dera Ismail Khan* tahsil.

The plaintiffs, Uthera Mussalman Jats of *tahsil* Dera Ismail Khan, claimed the estate of their brother B. who died without male issue leaving an only daughter, the defendant, who had married into another tribe. For the defendant, it was contended that by Muhammadan Law she was entitled to inherit.

Held, that the entry in the *Riwaj-i-am* and the instances cited in the case were in accordance with the general principle of tribal succession, and that the defendant had failed to prove that, contrary to an almost universal custom, a daughter married into another tribe succeeds to her father's estate in preference to his near collaterals. SULTAN *v.* MUSSAMMAT SUBHAI. **73 P R 1893**

16. *Brahmins of* mauza *Kadirabad*, tahsil *Phalian, district Gujrat—Daughter—Collaterals.*

Found, in a suit the parties to which were Brahmins and high caste Hindus of the Phalian *tahsil*, Gujrat district, that daughters and their sons are excluded by collaterals.

No. 85 *P. R.* 1889 and No. 18 *P. R.* 1890, referred to. PRABH DIAL *v.* DEVI DIAL. **116 P R 1893**

17. *Succession of married daughter—Ganga Jats of Muzaffargarh district—Limitation*—Riwaj-i-am.

Found, in a case the parties to which were Ganga Jats of the Muzaffargarh district, that a daughter who has married outside her own *khandan* loses whatever right she might have had by custom to succeed to her father's estate. MUSSAMMAT FATIMA *v.* KHANDA. **25 P R 1895**

18. *Succession of daughter in presence of collaterals related in the fifth degree—Pathans of Kala Afghanan, Batala* tahsil, *Gurdaspur district*—Riwaj-i-am.

Found, in a case the parties to which were Pathans of Kala Afghanan in the Batala *tahsil* of Gurdaspur district, that collaterals related in the fifth degree were entitled by custom to succeed in preference to daughters. MUSSAMMAT JIWI *v.* SARDAR KHAN. **39 P R 1895**

19. *Succession of daughter—Agarwal Banias of Bhiwani in Hissar district.*

Found, that among Agarwal Banias of Bhiwani in the Hissar district, daughters are not entitled by custom to succeed in preference to collaterals. NARSINGH DASS *v.* RAM LAL. **55 P R 1895**

20. *Succession of daughter in presence of near collaterals—Lodhi Pathans of Hoshiarpur district.*

In a case in which the parties were Lodhi Pathans of the Hoshiarpur district, *found*, that the *onus* of proving that daughters were entitled to succeed to ancestral property in the presence of near collaterals was on defendants, and that they had failed to sustain it. NAJABAT KHAN *v.* ABDUL RAHMAN KHAN. **27 P R 1896**

21. *Succession of daughter in presence of brother—Telis of Lahore—Muhammadan Law.*

In a case in which the parties were Telis of Lahore district, *held*, that the parties were governed by custom and not by Muhammadan Law, and that as they were members of a labouring and *quasi*-agricultural class, there was a strong presumption (which plaintiffs had failed to rebut) that brothers excluded daughters in the succession to house property. RAM MAL *v.* MUSSAMMAT MIRAN. **30 P R 1896**

22. *Succession of daughters—Muhammadan Sayyal Rajputs of Jhang district.*

Found, that by custom among Muhammadan Sayyal Rajputs of Jhang district, a daughter, who is married to a distant agnate, is not entitled to succeed in preference to male collaterals. BAKHU *v.* AMIR. **47 P R 1896**

23. *Succession of daughter.*

Held, that no special custom had been proved to exist among the parties whereby daughters were entitled to succeed in the presence of male collaterals. MUSSAMMAT GULAB KHATAN *v.* MIAN MUHAMMAD. **5 P R 1898**

24. *Respective rights of daughters and collaterals—Sabzani Lund Bilochis, Dera Ghazi Khan district*—Riwaj-i-am.

Found, that defendants had failed to prove that, by custom among Sabzani Lund Bilochis of Dera Ghazi Khan district, daughters are entitled to succeed in preference to collaterals.

In such cases the mere fact that the daughter has married in the tribe and is in actual possession of the land gives her no right of succession superior to that of the collaterals. MUSSAMMAT EMNA *v.* SAJAWAL KHAN. **37 P R 1898**

25. *Succession to sonless proprietor—Exclusion of brother and brother's son by daughters—Agricultural Sayyads of Jullundur* tahsil—*Burden of proof.*

Found, that defendant upon whom the *onus* rested had failed to prove that by custom among agricultural Sayyads of Jullundur *tahsil*, a daughter married out of the family excludes a brother or brother's son. NABI BAKHSH AND OTHERS *v.* MUSSAMMAT ZEBO. **86 P R 1900**

26. *Succession of daughter in preference to a collateral related in the fifth degree—Pathans of Hoshiarpur*—Riwaj-i-am.

Found, in a case the parties to which were Pathans of Hoshiarpur that the *onus* of proving that daughters were entitled to succeed to ancestral property in preference to a collateral related in the fifth degree was on defendant, who had failed to discharge it. An entry in a *Riwaj-i-am* unsupported by instances is not sufficient to override the ordinary custom.

Mussammat Jivi v. *Sardar Khan* (No. 39 *P. R.* 1895), *Najabat Khan* v. *Abdul Rahman Khan* (No. 27 *P. R.* 1896), approved and *Chirag Din* v. *Mamman* (No. 28 *P. R.* 1893), referred to. NIZAM DIN *v.* SHAHAB-UD-DIN AND OTHERS. **108 P R 1900**

27. *Custom—Inheritance—Aroras of Kasur, District Lahore—Exclusion of daughters by brother—Burden of proof.*

In a case the parties to which were non-agricultural Aroras, a shop-keeping and money-lending class of Kasur, Lahore district, *held* that the *onus* of proving that in matters of succession they were governed by a family custom whereby brothers excluded daughters was upon plaintiffs, who asserted it. *Found* upon the evidence that the plaintiffs had proved that by custom in his brotherhood or family, brothers of a deceased sonless proprietor were entitled by custom to succeed in preference to a daughter. *Mussammat Lacho Bai* v. *Asa Nand* (No. 144 *P. R.* 1882), *Mokand* v. *Bal Singh* (No. 85 *P. R.* 1884) and *Pitamber* v. *Ganesha Ram* (No. 148 *P. R.* 1890), referred to. ANANT RAM *v.* HUKMAN MAL **62 P R 1902**

28. *Custom—Inheritance—Jatoi Biloch of the Muzaffargarh district—Right of sister in presence of daugher—Muhammadan Law.*

In a case in which the parties were Jatoi Biloch of the Muzaffargarh district, *held*, that the parties were governed by Muhammadan Law and not by custom and that a sister of a sonless proprietor was entitled to inherit half of the property as a residuary, the other half going to the daughter or a sharer. MUSSAMMAT BAKHT WADI *v.* SAYAR KHAND. **66 P R 1902**

29. *Custom—Inheritance—Succession of daughters in presence of distant collaterals—Naru Rajputs of Mamun Mazra, Thanesar* tahsil, *Karnal district.*

Held, that defendants had failed to prove that by custom among Naru Rajputs of Mamun Mazra in the Thanesar *tahsil* of

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CUSTOM VIII.—MAINTENANCE AND SUCCESSION—*contd.*

M.—EXCLUSION OF DAUGHTERS—*concld.*

Karnal District, daughters are entitled to succeed to ancestral property in preference to collaterals related in the fifth degree. SAMANDA *v.* MUSSAMMAT NURBI.

36 P R 1905

30. *Custom—Inheritance—Right of daughter to succeed to her father in presence of collaterals—Muhammadan Jats,* tahsil *Leiah, Dera Ismail Khan District.*

Found, that defendant had failed to prove that by custom among Muhammadan Jats of the Leiah *tahsil* in the Dera Ismail Khan District a daughter is entitled to succeed to her father's estate to the exclusion of his near collaterals. MALIK NUR *v.* AISHAN.

105 P R 1906

31. *Custom—Inheritance—Sarsut Brahmans of Gurdaspur—Right of collaterals to succeed in preference to daughters and their sons—Hindu Law.*

Held, that in matters of succession Sarsut Brahmans of Gurdaspur are governed by the general rules of agricultural custom and not by Hindu Law, and consequently daughters and their sons are excluded by near agnates of the last male proprietor. NANAK CHAND *v.* BASHESHAR NATH.

3 P R 908

32. *Custom—Inheritance—Brahmans of Rawal in the Rawalpindi* tahsil—*Right of collaterals to succeed in preference to daughter—Hindu Law.*

Held, that in matters of succession Brahmans of Rawal in the Rawalpindi district are governed by the general rules of agricultural custom and not by Hindu Law, and consequently daughters are excluded by near agnates of the last male proprietor. DEVI DITTA SINGH *v.* DROPTI.

56 P R 1909

33. *Held,* that by a special custom among Agarwal banias of Ludhiana city, near collaterals exclude the daughter in succession to ancestral property. CHAMPAT RAI *v.* DAULAT RAM.

68 P R 1909

N.—SUCCESSION OF DAUGHTER'S HUSBAND (KHANADAMAD)

1. Khanadamad (*resident son-in-law*) *Gujrat.*

Found, by the custom of Parganah Gujrat, that a son-in-law, who has been brought up and married in his father-in-law's house, has lived there continuously to his death, and been joint in cultivation with him, is entitled to succeed to his land with the consent of the widow, and in accordance with the expressed desire of the deceased proprietor. SHAH MUHAMMAD *v.* MUSSAMMAT IMAM BIBI.

56 P R 1878

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CUSTOM VIII.—MAINTENANCE AND SUCCESSION—*contd.*

N.—SUCCESSION OF DAUGHTER'S HUSBAND (KHANADAMAD)—*contd.*

2. *Ancestral property of natural family, right to claim in.*

Held no custom to the contrary being proved, that a *khanadamad* (resident son-in-law) or his descendants are not precluded from claiming a share in the ancestral property of their natural family, merely by reason of the fact that such *khanadamad* had succeeded to the estate of his father-in-law. BADHAWA *v.* GANDHELLA.

68 P R 1878

3. *Gujrat district—Varaitch tribe*—Khanadamad, (*resident son-in-law*)—*Appointment of heir.*

Found, by the custom of the Varaitch tribe in the Gujrat district, that a childless propietor may take his daughter's husband to live with him and cultivate his land for him and inherit it when he dies. KARIM BAKSH *v.* HAKU.

24 P R 1879

4. Mauzah *Allowal, Ludhiana district—Land given to "khana-damad"—Failure of direct heirs of donee.*

Found, that there is no established custom in *mauzah* Allowal, in the Ludhiana district, by which land given to a "*khanadamad*" on failure of direct lineal heirs of the donee reverts to the heirs of the donor. FOUJA *v.* KASU.

122 P R 1879

5. *Sahus of Montgomery—Khana-Damad.*
Found, that among Mahomedan Sahus of the Montgomery district, there is no established custom (at variance with the general custom of the Punjab) which renders the selection of a son-in-law as heir invalid or confers on him no rights of inheritance. AHMAD *v.* DAD.

66 P R 1880

6. *Daughter and daughter's husband*—Khanadamad—*Appointment of heir—Daughter's right to succeed in preference to collaterals.*

Where the Courts below found, that when the defendant was married, her father took her and her husband to live with him in his own house, intending to make them his own heirs, and it appeared that on the death of the defendant's father her mother succeeded and held for 15 years, but the defendant and her husband continued to live with the mother, the latter managing the cultivation, *held,* that the defendant was entitled to succeed in preference to the plaintiffs, who were collateral relatives. *Shah Muhammad* v. *Mussammat Imam Bibi* (No. 56 *P. R.* 1878, Civil), and *Karim Bakhsh* v. *Haku* (No. 24 *P. R.* 1879, Civil) cited. MUHAMDA *v.* MUSSAMMAT GAURIAN.

162 P R 1882

7. *Khana-damad—Right of daughter to succeed where she and her husband were not actually married till after her father's death—Intention of deceased.*

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CUSTOM VIII.—MAINTENANCE AND SUCCESSION—*contd.*

N.—SUCCESSION OF DAUGHTER'S HUSBAND (KHANADAMAD)—*contd.*

In a suit by the nephews of one F. B deceased, to recover his land from his daughter, the defendant, the latter pleaded that her father, the said F. B. had brought her husband, B. from another district, and married him to her, and kept him in his house, as a resident son-in-law. It appeared that though there was an express intention on the part of F. B. to make B. his son-in-law, in furtherance of which he had brought B. to live with him, the marriage was not actually effected in the lifetime of F. B. on account of the youth of the parties, but by his widow after his decease.

Held, that as the intention of F. B. to make B. his son-in-law was proved, the non-performance of the marriage in F. B.'s lifetime was no bar to the defendant's succession. *Karim Bakhsh* v. *Haku* (No. 24 *P. R.* 1879, Civil) and *Muhamda* v. *Mussammat Gaurian* (No. 162 *P. R.* 1882, Civil) referred to. RULDU *v.* MUSSAMMAT HYAT BIBI.

133 P R 1883

8. *Mussalman Varaichs of Gujrat—Rights of daughters whose husbands have lived with deceased proprietor—Collaterals.*
In a suit the parties to which were Mussalman Varaichs of *tahsil* Gujrat the plaintiffs who were cousins of one J. deceased, claimed his land in preference to his three daughters, the defendants. It was found that two of the defendants and their husbands had lived with J. one from her marriage and the other for some years up to J.'s death, the third daughter and her husband not so residing with J.

Held, that the plaintiffs were not entitled to the land claimed, as at least one of the defendants had by custom a title superior to that of the plaintiff. *Ditta* v. *Khudayar* (No. 46 *P. R.* 1878, Civil), *Shah Muhammad* v. *Mussammat Imam Bibi* (No. 56 *P. R.* 1878, Civil), *Jowahir* v. *Faiz Bakhsh* (No. 137 *P. R.* 1879, Civil), *Husain Bakhsh* v. *Ghulam Kadir* (No. 65 *P. R.* 1880, Civil) *Gul Ahmed* v. *Sahibzada* (No. 45 *P. R.* 1881, Civil), *Imamdin* v. *Nurdin* No. 85 *P. R.* 1881, Civil), *Mehr Din* v. *Mussammat Neki* (No. 67 *P. R.* 1882, Civil), and *Muhamda* v. *Mussammat Gaurian* (No. 162 *P. R.* 1882), Civil), cited. NATHU *v.* MUSSAMMAT KARMBHARI.

15 P R 1884

9. *Wes Jats of Phalian tahsil, Gujrat district—Rights of married daughters—Khanadamad—Nephew.*

Found, that among the Wes Jats of the Phalian *tahsil* of the Gujrat district, the fact that a sonless proprietor has kept his daughter and her husband in his house and has during his lifetime placed them in cultivating possession of a portion of his landed estate, intending them to be his heirs to that extent, is sufficient by custom

CUSTOM VIII.—MAINTENANCE AND SUCCESSION—*contd.*

N.—SUCCESSION OF DAUGHTER'S HUSBAND (KHANA-DAMAD)—*contd.*

to defeat the claims of a brother's son to inherit that share of the estate. *Waga* v. *Mussammat Mehur Beebee* (No. 78 *P. R.* 1868, Civil), *Mahomed* v. *Walidad* (No. 164 *P. R.* 1879, Civil), *Mehr Din* v. *Mussammat Neki* (No. 67 *P. R.* 1882, Civil), and *Sultan* v. *Fatah Din* (No. 127 *P. R.* 1883, Civil) referred to. JOWAYA *v.* MUSSAMMAT FAZLAN. **45 P R 1885**

10. *Jats of Varaich got of tahsil Phalian—Property gifted to* khana-damad—*Succession to such property as between collaterals of donor and donee.*

Found, that no special custom exists among Muhammadan Jats of the Varaich *got* of *tahsil* Phalian in the Gujrat district, by which property gifted to a *khanadamad* who dies without issue, descends to the collateral heirs of the donor in preference to the collaterals of the donee. *Fouja* v. *Kisu* (No. 122 *P. R.* 1879, Civil), *Dasaundha Singh* v. *Mussammat Partab Kour* (No. 53 *P. R.* 1882, Civil) *Gogan* v. *Taloka* (No. 163 *P. R.* 1882, Civil) *Ditta* v. *Muhammad Bakhsh* (No. 146 *P. R.* 1884, Civil), *Jowahir Singh* v. *Amrik Singh* (No. 9 *P. R.* 1885, Civil) and *Mangat* v. *Wazir Singh* (No. 82 *P. R.* 1885, Civil) cited. ATRA *v* UMRA. **1 P R 1886**

11. Among Awans of the Kharian *tahsil* of the Gujrat district gifts to daughters whose husbands are resident with the donor are valid by custom, though gifts to daughters whose husbands are not so resident are invalid. JIWAN *v.* WAZIR. **39 P R 1887**

12. Among Gujars of the Gujrat district no custom had been proved to exist extending to the husband of a niece the principle of the species of *quasi* adoption under which a man succeeds as *khanadamad* which is usually confined to the case of a husband to a man's own daughter. UMRA *v.* MUSSAMMAT BEGAM. **8 P R 1888**

13. Among Lalla Jats of Gujrat no custom had been proved to exist entitling sister's sons to claim on the ground that they had lived with the deceased like *khanadamads.* FAZLA *v.* ALLA BAKHSH. **128 P R 1890**

14. *Chauhans (Muhammadan Rajputs) of Jhelum* tahsil.

In a suit the parties to which were Chauhans (Muhammadan Rajputs) of Gara Uttam Singh in the Jhelum *tahsil*, *held*, that by custom a deed of gift by a sonless proprietor in favour of his five sons-in-law was valid in the presence of nephews of the donor.

No. 53 *P. R.* 1884 and 132 *P. R.* 1890, referred to. KARM BAKHSH *v.* FATTA. **108 P R 1891**

CUSTOM VIII.—MAINTENANCE AND SUCCESSION—*contd.*

N.—SUCCESSION OF DAUGHTER'S HUSBAND (KHANA-DAMAD)—*contd.*

15. *Gujars of Kharian* tahsil (*Resident son-in-law.*

Found, that among Gujars of the Kharian *tahsil* gifts to daughters whose husbands are resident with the donor are valid by custom. No. 39 *P. R.* 1887, referred to. The fact of the daughter's *doli* being taken to her father-in-law's house in another village after her marriage did not operate to render the gift invalid. MUHAMMAD *v.* MUSSAMMAT HAYAT BIBI. **109 P R 1891**

16. The course of decisions, that among Muhammadan Jats and Gujars of the Gujrat district—whose customs in this respect appear to be identical—gifts to daughters whose husbands are *khana-damads*, are permitted, but not gifts to daughters whose husbands do not answer the above description, referred to and followed.

No. 39 *P. R.* 1887 and No. 109 *P. R.* 1891, referred to. KAMMAN *v.* NATHU. **96 P R 1892**

17. *Found*, in a suit the parties to which were Arains of *tahsil* Zira in the Ferozepore district, that according to the custom of the tribe a *khana-damad* may be appointed to succeed to the estate of a sonless proprietor to the exclusion of his brother and nephews. PIR BAKHSH *v.* ISA. **107 P R 1892**

18. *Found* in a suit the parties to which were Manjh Rajputs (Mussalmans) of Raisur *tahsil* and District Ludhiana, that no custom was established by which a resident son-in-law succeeded as heir to his father-in-law in the presence of collaterals. RUSTAM KHAN *v.* MUSSAMMAT JIO. **139 P R 1892**

19. Khana-damad—*Title of, to father-in-law's land in presence of collaterals—Burden of proof.*

Found, in a suit the parties to which were Faoni Rajputs (Muhammadans) of *mauza* Chaper Chari in the Kharar *tahsil* of the Umballa District, that by custom a *khana-damad* has no title in his wife's right or his own to hold the land of his wife's father against the collaterals of the latter, after the death of the father's widow.

The burden of proof is upon a resident son-in-law who claims to have, as such a customary right of inheritance, to prove that he has by custom the right claimed to the exclusion of the ordinary heirs.

Semble.—It seems well established now that where the usage of *khana-damad* is recognized as giving rise to customary rights, the purpose is to benefit the daughter's sons, the daughter and her husband only benefitting incidentally. GHULAM BHIKH *v.* MASSANIA. **22 P R 1893**

CUSTOM VIII.—MAINTENANCE AND SUCCESSION—*contd.*

N.—SUCCESSION OF DAUGHTER'S HUSBAND (KHANA-DAMAD)—*contd.*

20. Among Bariar Jats of *tahsil* Sialkot gift of whole ancestral land to the daughter of a brother who with her husband had resided in the donor's house and rendered him service held to be invalid. MUSSAMMAT TABAN *v.* BHAGA. **33 P R 1893**

21. *Right of* khanadamad—*Gujars of the Awan* got, tahsil *Kharian, Gujrat district.*

Found in a suit, the parties to which were Gujars of the Awan *got tahsil* Kharian Gujrat district, that the custom relied upon by the defendant, namely, that as resident son-in-law (although not resident from the date of the marriage) he was entitled to inherit the estate of his deceased father-in-law, was not established, the evidence in the present case carrying the custom no farther than that laid down in the *Riwaj-i-am* and previously reported decisions of this Court, namely, that if a daughter and son-in-law are resident continuously from the time of marriage the land goes to the daughter and her sons in preference to collaterals even without a gift.

No. 56 *P. R.* 1878, No. 24 *P. R.* 1879, No. 162 *P. R.* 1882, and No. 15 *P. R.* 1884, referred to. AMANULLA *v.* GHULAM MUHAMMAD. **134 P R 1893**

22. *Isa Khel (or Niazi) Pathans of the Bannu district - Rule of succession to land not ancestral but acquired in a village to which a member of the family has migrated from the village of origin in a different* tahsil.

Found, in a suit, the parties to which were Isa Khel (or Niazi) Pathans of the Bannu district that succession to the land in dispute, which was not ancestral but acquired and situate in a village to which a member of the family had migrated from the village of origin in a different *tahsil*, was governed by the custom of the Mianwali *tahsil* in which it was situate.

Held also, that the plaintiffs as collaterals of the deceased owner had not proved a better title than that of the defendant the *khana-damads.* MUHAMMAD AZIM KHAN *v.* HASSAN KHAN. **138 P R 1893**

23. Muhammadan Basra Jats of *mauza* Jaguwala in the Raya *tahsil* are not competent to make a gift to a daughter without the consent of the next heirs, even when the donee is found to be the wife of a *khana-damad.* MUSSAMMAT PARDHAN *v.* WAZIRA. **11 P R 1894**

24. A Bangial Jat of Gujrat district can make a gift of all his land to a daughter whose husband is a resident son-in-law, notwithstanding that the residence has not been since the date of marriage. HASSAN MUHAMMAD *v.* ILAM DIN. **50 P R 1894**

CUSTOM VIII.—MAINTENANCE AND SUCCESSION—*contd.*

N.—SUCCESSION OF DAUGHTER'S HUSBAND (KHANA-DAMAD)—*contd.*

25. *Gift by sonless proprietor to daughter's and sister's son—Gaurewaha Rajputs, Garshankar* tahsil, *Hoshiarpur district—Succession of* khana-damad.

Found, that by custom among Gaurewaha Rajputs of Garshankar *tahsil* in the Hoshiarpur District, gifts by a sonless proprietor to a sister's son or grandson and to a daughter's son are inadmissible in the absence of an adoption of the donee.

No. 173 *P. R.* 1883, No. 174 *P. R.* 1883, No. 152 *P. R.* 1884, No. 113 *P. R.* 1891, and No. 50 *P. R.* 1893 (cited as No. 813 of 1891, unpublished) referred to. SULTAN BAKHSH *v.* MUSSAMMAT MAHIAN. **64 P R 1894**

26. *Gift by sonless proprietor to* khana-damad—*Awans of Sialkot district*—Riwaj-i-am.

Found, that by custom among Awans of the Sialkot district a sonless proprietor is competent to make a gift of one-half of his land in favour of a resident son-in-law who has inherited no share in his own father's land.

No. 39 *P. R.* 1887, cited. ALI BAKHSH *v.* NATHU. **93 P R 1894**

27. *Gift to resident son-in-law—Heritable interest—Awans of Sialkot district—Onus* probandi.

One F. who was the grandson of F. K., an Awan of the Jand *got* of the Sialkot *tahsil*, married one of his daughters to H. M., an Awan of a different *got* and village, and in 1867 made a gift of land by deed in his favour and delivered over possession to him. This gift the kinsmen of F. descended from the said F. K. sought to set aside, but their suit was dismissed after a reference to arbitration. On the death of H. M. the donee, without issue, defendants who were the collaterals of F. descended from the common ancestor, took possession of the land gifted as aforesaid, whereupon plaintiffs, the brothers of the deceased donee, sued to recover possession as his heirs. The lower Courts having laid the burden of proof upon the defendants and decreed plaintiff's claim, defendants appealed to the Chief Court.

Held, with reference to the deed of gift and the entry in the *Riwaj-i-am*, that the gift in question having been made to H. M. in his character of resident daughter's husband, and the presumption in the case of such gifts ordinarily being that the purpose of the donor is to make a settlement for the benefit of the daughter's sons, plaintiffs, upon whom the *onus probandi* rested, had failed to prove that H. M. had taken an interest heritabe by his collateral kinsmen.

No. 19 *P. R.* 1887, No. 3 *P. R.* 1888, No. 12 *P. R.* 1892 (F. B.), referred to. MIRAN BAKHSH *v.* ALA DITTA. **126 P R 1894**

CUSTOM VIII.—MAINTENANCE AND SUCCESSION—*contd.*

N.—SUCCESSION OF DAUGHTER'S HUSBAND (KHANA-DAMAD)—*contd.*

28. *Succession—Nature of* khana-damad's *estate—Varaiches of* tahsil *Gujrat*—Riwaj-i-am.

The parties in this case were Varaiches of Gujrat *tahsil*, and the plaintiffs who were related to the donor, Nur, in the fourth degree, sued to contest the right of defendant, a resident son-in-law, to retain after the death of his wife certain land which the said Nur had by will directed his widow to make over to his daughter and her husband, the defendant. The point for decision was as to the rights of a resident son-in-law in a case where the daughter of the proprietor had died without male offspring before her husband.

Held, that the rights of a resident son-in-law are the same, however he may have been appointed whether by gift to himself or by gift to his wife or by the expressed wishes of his father-in-law that he should succeed, the condition of residence having in all cases to be fulfilled, and that he is entitled to hold for life, irrespective of the failure to beget male offspring or of the decease of his wife during his lifetime.

No. 39 *P. R.* 1887, and No. 22 *P. R.* 1893, referred to. MAHLA *v.* SHAH MUHAMMAD. **134 P R 1894**

29. Among Gujars of the Gujrat district, a married daughter is entitled to succeed her father, a sonless proprietor, by custom, in a case where though no definite act of donation is proved it is a fair inference from the established facts that the sonless proprietor settled that daughter and her husband in his house and on his land with a view to their succeeding him as his heirs to the exclusion of his collaterals. MUSSAMMAT BAGGI *v.* MAMUN. **31 P R 1895**

30. *Gift by sonless proprietor to married daughter*—Khanadamad—*Muhammadan Jats of Gujrat District.*

Found, in a case, the parties to which were Muhammadan Jats of the Gujrat District, that a gift, followed by possession, by a sonless proprietor to a grand-daughter living with him, whose husband was a *ghar-jawai*, entitled the said grand-daughter and her sons to succeed to the donor's estate upon his death. KHAN MUHAMMAD *v.* ALAM. **92 P R 1895**

31. Gift by a sonless Muhammadan Guman Jat of Tarn Taran *tahsil*, Amritsar district, of all his property in favour of his son-in-law, who was also his sister's son, was valid by custom. KHAN *v.* HIRA. **98 P R 1895**

32. *Gift by sonless proprietor to daughter's husband—Right of donee's children by second wife to succeed—Hindu Jats of Delhi* tahsil.

CUSTOM VIII.—MAINTENANCE AND SUCCESSION—*contd.*

N.—SUCCESSION OF DAUGHTER'S HUSBAND (KHANA-DAMAD)—*contd.*

Plaintiffs sued for recovery of certain land which had originally been gifted by one D. to his resident son-in-law, S., who had died a few weeks before suit. Defendants, who were the sons of S. by a wife other than the daughter of the said D., contended that the gift in favour of their father was absolute, while plaintiffs contended that the gift was strictly conditional for the maintenance of D.'s daughter and any children she might have by S.

Held, following the rule laid down in No. 12 *P. R.* 1892 (F. B.), that on the death of S., plaintiffs, as the collaterals of D., were entitled to succeed to the said land in preference to defendants, who were not the "male children" of S. within the meaning of the ruling in No. 134 *P. R.* 1894. NIHAL *v.* MOHLAR. **19 P R 1897**

33. *Succession of married daughters whose husbands were* khana-damads—*Chohan Gujars of Kharian* tahsil, *Gujrat district—Evidence.*

The true use of the *khana-damad* in customary law being to pass on the inheritance to the daughter's sons, there is no reason why the property of a sonless proprietor should not devolve upon several daughters, and through them on their descendants, provided that the conditions required by custom to create a valid title are satisfied.

Found, on the facts of the case, that the husbands of both his married daughters had been received by the sonless proprietor into his house as *khana-damads* with the intention of securing the succession to his estate to the said daughters and their respective sons, and that there was nothing opposed to the principles of custom in such action on the part of the said proprietor. DITTA *v.* MUSSAMMAT FAZLAN. **35 P R 1897**

34. *Right of son-in-law, whose wife has predeceased her father, to succeed—Girths of Kangra* tahsil.

Found, after a remand for further inquiry, that, according to the custom of the Girths of Kangra *tahsil*, when the wife of a resident son-in-law predeceases her father and leaves no sons, her husband on the death of her father is not entitled to succeed, either absolutely or for life, to the latter's immovable ancestral property. BHOTU *v.* LAHRU. **54 P R 1897**

35. *Gift by widow in favour of daughter married after death of widow's husband*—Khana-damadi—*Gujars of Gujrat*—Riwaj i-am.

In a case, in which the parties were Gujars of Gujrat district, *found* that the right under which a landowner has to make his daughter and her issue heirs in *khana-damadi* cases cannot be extended in favour of such landowner's widow, and that the widow is

CUSTOM VIII.—MAINTENANCE AND SUCCESSION—*contd.*

N.—SUCCESSION OF DAUGHTER'S HUSBAND (KHANA-DAMAD—*concld.*

not entitled by custom to gift her late husband's land to her daughter. IBRAHIM *v.* MUSSAMMAT FATIMA. **67 P R 1898**

36. *Gift by widow in favour of deceased husband's brother's daughter—Arains of Ludhiana* tahsil—Khana-damadi.

In a case in which the parties were Arains of the Ludhiana *tahsil*, *found*, that a widow in possession of her deceased husband's estate for her life was not competent by custom to make a gift of a portion thereof to the daughter of her husband's brother in the presence of the said brother's son and other collaterals.

There is no recognized custom in the Punjab according to which mere residence of a daughter and her husband in the house of her father from the day of her marriage, *there being also sons*, would confer on the daughter and her sons any right of succession, the essential feature of the custom of *khana-damadi* being that, *in default of male issue*, a proprietor may take his daughter and her husband to live with him in order to supply the want of male issue. MUSSAMMAT LADO *v.* NABI BAKHSH. **6 P R 1900**

37. *Custom—Inheritance—Right of married daughters*—Khana-damad—*Exclusion of brothers and nephews—Muhammadan Bangial Jats of Kharian* tahsil, *Gujrat District*.

Among Bangial Jats of Kharian *tahsil*, Gujrat District, by custom a married daughter is entitled to succeed her father, a sonless proprietor, who settled her and her husband in his house in order that they might perform services for him and manage his cultivation, intending to pass his estate to her and her sons to the exclusion of his brothers and nephews, even though the daughter's husband had been a resident son-in-law in his first wife's family, where the first father-in-law died before the second marriage.

Shah Muhammad v. *Mussammat Imam Bibi* (56 *P. R.* 1878), *Karim Bakhsh* v. *Haku* (24 *P. R.* 1879), *Mehr Din* v. *Mussammat Niki* (67 *P. R.* 1882) *Muhammada* v. *Mussammat Gauriar* (162 *P. R.* 1882), *Nathu* v. *Mussammat Karam Bhari* (15 *P. R.* 1884) *Jowaya* v. *Mussammat Fazlan* (45 *P. R.* 1885) and *Mussammat Baggi* v. *Mamun* (31 *P. R.* 1895) cited. SAMMAN AND OTHERS *v.* ALA BAKHSH AND ANOTHER. **106 P R 1901**

38. *Custom—Inheritance—Right of a son-in-law of a* khanadamad *to succeed—Gujars of Gujrat District*.

Found, in a case the parties to which were Gujars of the Gujrat District that by custom the son-in-law of a *khanadamad* was not entitled even if he had been appointed *khanadamad* by his father-in-law to succeed as such to the estate of the father-in-law of the latter. SHARFO *v.* RAMZAN. **14 P R 1907**

CUSTOM VIII.—MAINTENANCE AND SUCCESSION—*contd.*

O.—SUCCESSION OF SISTERS AND THEIR DESCENDANTS—*contd.*

1. *Sucsession of female—Sisters.*

Sisters are not heirs by the custom of the Sikh Jats; the custom following the Hindu Law. MUSSAMMAT UTTUR KOUR *v.* ATMA SINGH. **47 P R 1870**

2. *Jats of Hoshiarpur district—Sister's son—Collaterals*—Onus probandi.

The plaintiffs, who were the great grandsons of the common ancestor of themselves and the deceased, sued the defendant, a sister's son, for possession by right of inheritance of the deceased's property. No custom was proved under which a sister's son took as heir to the exclusion of collaterals as nearly related to the deceased as the plaintiffs.

Held, that the burden of proving such a custom clearly lay upon the defendant, and that not having discharged himself of it, the claim of the male collaterals must succeed. WAZIRA *v.* NATHA. **12 P R 1882**

3. *Bhatti section of Arains, Lahore and Amritsar—Sister—Brothers' sons.*

Held, upholding the findings of the lower Courts, that no established custom exists among the Bhatti section of Arains in Lahore and Amritsar whereby sisters are excluded from inheritance by brothers' sons. MIRAN BAKSH *v.* MUSSAMMAT ALLAJAWAI. **25 P R 1882**

4. *Chanda Jats of* tahsil *Jagraon, district Ludhiana—Succession to land given by brother to his sister, who had been abandoned by her husband, for maintenance—Right of heirs of sister's husband to succeed in preference to those of donor.*

Held, in a suit the parties to which were Chanda Jats of the Jagraon *tahsil* in the Ludhiana district, that the defendants had failed to establish a special custom, under which the succession to land, which had been given by a brother to his sister, who had been abandoned by her husband, for the maintenance of herself and her son, reverted on the death of the sister's son without direct lineal heirs, to the heirs of the donor, instead of going to those of the sister's husband. *Fouja* v. *Kasu* (No. 122 *P. R.* 1879, Civil) cited. GOGAN *v.* TALOKA. **163 P R 1882**

5. *Gujars of* tahsil *Kharian*, zilla *Gujrat—Right of collaterals to exclude sister of last owner—Muhammadan law.*

In a suit for certain land, the parties to which were Gujars of the Kharian *tahsil* of the Gujrat district, *held* that the plaintiffs, who were male collaterals related in the 6th and 7th degree, had failed to prove that they were by custom entitled to exclude the defendant, who was the sister of the last owner of the property.

Held, therefore, applying the Muhammadan law, that the defendant was entitled to half of the inheritance, and the plaintiffs to the remaining half as residuaries. MAKHAN *v.* MUSSAMMAT NUR BHARI. **116 P R 1884**

CUSTOM VIII.—MAINTENANCE AND SUCCESSION—*contd.*

O.—SUCCESSION OF SISTERS AND THEIR DESCENDANTS—*contd.*

6. *Muhammadan Gujars of the Rupar* tahsil—*Preferential title of female relation of last owner over co-proprietor of the village.*

Held, in a suit the parties to which were Muhammadan Gujars of the Rupar *tahsil*, that no custom was proved by which a female relation so close in degree as a sister and first cousin of the last two male owners respectively was excluded by a co-proprietor of the village who was not even a distant agnate. MUSSAMMAT GHAUSAN *v.* SHAHZADA. **136 P R 1884**

7. *Sayads of Kharkhoda, Rohtak District—Sister's sons and male agnates.*

Held, that by the custom applicable to the Sayads of Kharkhoda, Rohtak District, sister's sons inherit before male agnates as far removed as second cousins of the deceased. MIR MUMTAZ ALI *v.* JAWAD ALI. **82 P R 1887**

8. *Kambohs of Lahore District—Sister's sons—Collaterals.*

In a suit, the parties to which were Kambohs of the Lahore District, *held* that the plaintiffs had failed to establish a custom whereby the sons of a sister of a sonless proprietor inherited ancestral land in preference to an agnate as nearly related as a second cousin of the last male owner.

Mussammat Bhagan v. *Gahna* (No. 177 *P. R.* 1883), *Sawan Singh* v. *Nihal Singh* (No. 48 *P. R.* 1885) and *Budhu* v. *Chiragh* (No. 3 *P. R.* 1886), cited. THAKUR SINGH *v.* TARA SINGH. **40 P R 1888**

9. *Arains of Lahore District—Niece—Sister.*

In a suit, the parties to which were Arains of the Balli *got* resident in the Lahore District, *held* that the plaintiff had failed to prove any custom by which, as a niece, she was entitled to succeed in preference to sister of the last owner.

Miran Bakhsh v. *Mussammat Allajawai* (No. 25 *P. R.* 1882) cited. MUSSAMMAT IMAM BIBI *v.* MUSSAMMAT FAZAL BIBI. **180 P R 1888**

10. *Sayads of Kharkhoda (Rohtak)—Sister's son does not inherit before first cousins on father's side.*

Found, that by the custom applicable to Sayads of Kharkhoda in the Rohtak District, a sister's son does not succeed before a paternal uncle's son.

No. 82 *P. R.* 1887, distinguished and commented upon. BUNYAD ALI *v.* FAIZ MUHAMMAD. **173 P R 1889**

11. *Ghelan Arain of Lahore District—Sister succeeds in preference to cousins.*

Found, that by the custom governing the Ghelan Arains of the Lahore District, sister of a deceased proprietor succeeds in prefer-

ence to his cousins. MUSSAMMAT ZAINAB *v.* AMIR. **174 P R 1889**

12. *Hindu Law—Sister's grandson—* Bandhu—*Brahmins of Multan.*

Per curiam.—By custom obtaining among the Brahmins of Multan, a sister's grandson is entitled to succeed to the estate left by his grandmother's brother.

Per BENTON, J.—He is also entitled to succeed as a *bandhu* under Hindu Law, which presumably govern Brahmins, the enumeration of *bandhus* given in the commentaries not being exhaustive but illustrative only. MULTANI CHAND *v.* LALU MAL. **180 P R 1889**

13. *Brahmins of Gujrat—Right of sisters to succeed with sister's son.*

Found, that by custom obtaining among Brahmans of Gujrat, a sister does not succeed together with sister's sons to the estate of her deceased brother. MUSSUMMAT DYAN *v.* JAI RAM. **47 P R 1890**

14. *Sheikhs of Jhajjar, Rohtak District —Succession of sister in preference to half brothers.*

In a suit the parties to which were Sheikhs of Jhajjar, Rohtak District, *found* that no custom had been established whereby sisters succeeded in preference to the half-brother of the deceased proprietor. AHMAD ALI *v.* MUSSAMMAT FATIMA. **163 P R 1890**

15. *Moghuls of Kharkhoda, Rohtak District—Sister and sister's sons—Burden of proof.*

Found, in the suit, the parties to which were the descendants of a common ancestor, a Moghul resident in the village or *kasba* of Kharkhoda in the Rohtak District, that it was proved that, by the custom of the village, a sister and a sister's son excluded descendants of the deceased's grandfather.

Held, also that the burden of proof lay in the first instance on the sister and sister's sons claiming in opposition to the male issue of the grandfather; but that they had made out a *prima facie* case shifting the *onus* to the other side.

As a general rule, by agricultural custom, females or the issue of females do not inherit ancestral land. Occasionally, daughters and daughters' sons do inherit after their father in the absence of sons. More rarely, sisters and their issue inherit after brothers. The right of females and their issue, to succeed when it exists, generally exists only in presence of remote collaterals, and the sons of a grandfather of deceased are not remote collaterals. FAIZ-UD-DIN *v.* MUSSAMMAT WAJIB-UN-NISSA. **71 P R 1892**

16. *Right of sister and sister's son—Dhariwal Jats, Fazilka* tahsil, *Ferozepore District.*

Found, in a suit, the parties to which were Dhariwal Jats of the Fazilka *tahsil* of the Ferozepore District, that no custom was established by which a sister and her son were entitled to inherit acquired landed property in preference to collaterals descended from the grandfather of the deceased owner. SOHNA SINGH AND MUSSAMMAT KISHNO *v.* KAHAN. **113 P R 1892**

17. *Bukhari Sayads of Jhang District.*

In a case, the parties to which were Bukhari Sayad agriculturists of the Jhang District, *found*, that plaintiffs had failed to prove any custom whereby a sister's son was entitled to succeed to the exclusion of a collateral related in the fifth degree to the deceased proprietor. MUSSAMMAT JINDWADDI *v.* HASSAN SHAH. **41 P R 1895**

18. *Succession of sister's grandson in presence of male collaterals—Lodi Pathans of Jullundur District*—Riwaj-i-am.

Found, that among Lodi Pathans of the Jullundur District the grandsons of a sister of the last male owner are not entitled to succeed to ancestral property in the presence of near male collaterals of the deceased owner. FATTEH MUHAMMAD KHAN *v.* DAULAT KHAN. **46 P R 1895**

19. *Sarsut Brahmins owning land in Tarn Taran* tahsil, *Amritsar District—Sister's son.*

In a case in which the parties were Sarsut Brahmins owning land in Tarn Taran *tahsil*, Amritsar District, *found*, that by custom the sister's sons are entitled to succeed to a daughter who in the absence of male lineal descendants had inherited her father's property in preference to the brother of her deceased husband. JAI DIAL *v.* SANTU. **74 P R 1899**

20. *Custom—Inheritance—Channar Jats of* tahsil *Lodhran, District Mooltan—Exclusion of collaterals by sister of deceased—Muhammadan Law—Burden of proof*—Riwaj-i-am—*Punjab Laws Act* 1872, *section* 5.

Held, that in a suit the parties to which were Channar Jats of *tahsil* Lodhran, District Mooltan, that the burden of proof lay, in the first instance, on the sister claiming in opposition to the collaterals, but that the rules of inheritance detailed in the *Riwaj-i-am* of the *tahsil* were sufficient to shift the burden of proof, and that the collaterals having failed to establish a custom by which the collaterals descended from the great-great-grandfather of the deceased owner were entitled to inherit landed property in preference to a sister, and that in the absence of a proved positive custom regulating their rights, rules of Muhammadan Law must be followed in accordance with the provisions of section 5 of the Punjab Laws Act, 1872.

Mussammat Sardar Bibi v. *Sayad Ali Shah* (4 *P. R.* 1888), *and Nasir-ud-din Shah* v. *Mussammat Lal Bibi* (89 *P. R.* 1888), cited. SHERAN AND OTHERS *v.* MUSSAMMAT SHARMAN. **117 P R 1901**

21. *Custom—Inheritance—Bhatias of Bannu District—Right of sister to succeed for life or until marriage.*

In a suit, the parties to which were Bhatias of the Bannu District, *held*, that a sister was entitled to succeed for life or until marriage to the estate of her deceased brother. WASNA RAM *v.* MUSSAMMAT UTTAM BAI. **79 P R 1903**

22. *Custom—Inheritance—Sister succeeds in preference to village community—Hindu Jats of* mauza *Raipur, Umballa District*—Riwaj-i-am.

Found, that by custom among Jats of *mauza* Raipur, Umballa District, in the absence of near collaterals the sister of a deceased sonless proprietor was entitled to succeed in preference to the village proprietors. BISHEN SINGH *v.* BHAGWAN SINGH. **28 P R 1904**

23. *Custom—Inheritance—Sister's son—Ghirths of Tika Bonehr of the village of Baldhar in the Kangra District.*

In a suit, the parties to which were Ghirths of Tika Bonehr of the village of Baldhar in the Kangra District, *held*, that a sister's son of a childless male proprietor, who had rendered service to the deceased owner, was by custom entitled to succeed to the estate left by him in preference to the owners of the Tika who were utter strangers to the deceased. *Mussammat Dyan v. Jai Ram* (47 *P. R.* 1890). *Shaman* v. *Sardoha* (61 *P. R.* 1898), referred to. BALLU *v.* GUR DYAL. **95 P R 1905**

24. *Custom—Inheritance—Right of sister's son to succeed in preference to the* Jagirdar ala malik—*Takhar Rajputs in Dada Siba* jagir. *Kangra District.*

In a case the parties to which were Thakar Rajputs of the Dada Siba *jagir* in the Kangra District, *held*, that the defendant had failed to establish a custom whereby a sister's son inherited his maternal uncle's ancestral property in preference to the *jagirdar ala malik.* GURDITTA *v.* JAI SINGH. **72 P R 1907**

25. *Custom—Inheritance—Sister's right to succeed as a daughter of the penultimate male holder.*

Held, by the Full Bench that among parties following customary law the position of a sister of a male proprietor without issue cannot be assimilated for purposes of inheritance to that of a daughter, and she must therefore in such matters be regarded as a sister of that proprietor and not as a daughter of his father. HAMIRA *v.* RAM SINGH. **134 P R 1907 F. B.**

26. *Custom—Inheritance—Dogars of Amritsar district—Sister succeeds to acquired property in preference to collaterals of the sixth degree.*

Found, that by custom among Dogars of the Amritsar district a sister is entitled

CUSTOM VIII.—MAINTENANCE AND SUCCESSION—*contd.*

O.—SUCCESSION OF SISTERS AND THEIR DESCENDANTS —*concld.*

to inherit acquired landed property in preference to collaterals of the sixth degree. BHOLI *v.* KAHNA. **35 P R 1909**

27. *Custom—Inheritance—Sister succeeds in preference to collaterals—Panwars of* mauza *Bhotapir*, tahsil *Muzaffargarh.*

Found, that among Panwars of *mauza* Bhotapir, *tahsil* Muzaffargarh, a sister succeeds to the ancestral property of a deceased proprietor in preference to his collaterals in the fifth degree. SAWAN *v.* SAHIB KHATUN. **44 P R 1909**

28. *Custom—Inheritance—Sister's right to succeed in preference to collaterals in the seventh degree—Afghans of* mauza *Nasran*, tahsil *Hoshiarpur.*

Found, that the plaintiff, upon whom the *onus* rested, had failed to prove a custom whereby among Afghans of *mauza* Nasran, *tahsil* Hoshiarpur, a married sister was entitled to succeed to the ancestral property of her deceased brother in the presence of his male collaterals of the seventh degree. SAHIB *v.* NIAZ MUHAMMAD KHAN. **55 P R 1909**

P.—SUCCESSION OF NEPHEWS AND NIECES.

1. *Succession of males—Nephew excluded by brother—Rajputs.*

The custom of the Rajputs is to allow a nephew, provided he has succeeded to his deceased father's estate, to share with his uncle the estate of a deceased uncle. GOPAL *v.* GHUSEETA. **63 P R 1871**

2. *Associated and disassociated nephews.* It is the general custom that associated and disassociated nephews share equally in the estate of their deceased uncle. PHAGGAN *v.* BUTA SINGH. **9 P R 1877**

3. *Exclusion of daughter's son by nephews.*

The question was whether nephews (Hindus) by custom excluded a daughter's son. The Lower Court found that they did; and on appeal to the Chief Court, LINDSAY, J. differed from this finding, but CAMPBELL, J. concurring in it, his judgment prevailed, and the appeal was dismissed under section 23, Act XXIII of 1861. MEHTAB SINGH *v.* PERTAB SINGH. **16 P R 1877**

4. *Muhammadans—Weavers of Jullundur—daughters—Succession of brothers' sons and grandsons—Ancestral house property.*

Found that, by the custom among weavers of Jullundur, in the presence of daughters, brothers' sons and grandsons are not entitled

CUSTOM VIII.—MAINTENANCE AND SUCCESSION—*contd.*

P.—SUCCESSION OF NEPHEWS AND NIECES—*contd.*

to succeed to ancestral house property. MUSSAMMAT RABIA *v.* MAHOMED BAKSH. **69 P R 1878**

5. *Jats of Ludhiana district—Associated and disassociated nephews—Hindu Law—Joint Hindu family.*

P. S. and his nephew J. (the only son of M. S. brother of P. S.), living as a joint Hindu family, owned certain land which was recorded in their joint names. Seven years ago P. S. died, when the entire holding was recorded as the sole property of J.

P. S. had another brother—D. S. who was separate; who died leaving H. S. (plaintiff) and D. sons, and two grandsons, G. and P. (plaintiffs), by a third son.

In a suit by H. S., G. and P. to recover the share of the estate of P. S. deceased, *found* that the custom of the Jats of the Ludhiana District did not exclude disassociated nephews from inheriting in the presence of associated nephews. *Held*, therefore that the plaintiffs were entitled to recover one-third of the estate of P. S. HAZARA *v.* JAMITA. **76 P R 1897**

6. *Hindu Jats of* Mauza *Sokiwar*, tahsil *Pasrur, District Sialkot—Right of representation—Association and disassociation.*

In a suit, the parties to which were Hindu Jats of *mauza* Sokiwar, *tahsil* Pasrur, District, Sialkot, *found* that by custom grand-nephews and great-grand-nephews succeeded with nephews by right of representation, and that association with the deceased gave no preferential right of inheritance. CHET SINGH *v.* BUDHA SINGH. **129 P R 1890**

7. *Aroras of Dera Ismail Khan and Bhakkar—Exclusion of daughter by nephew—Rights of representation—Uncle and nephew.*

In a suit among town Aroras of Dera Ismail Khan and Bhakkar, *found* that by custom (*i*) nephews succeed equally with brothers by right of representation, and (*ii*) that nephews succeed in preference to daughters to the ancestral and acquired immovable property of a sonless owner. PITAMBER *v.* GANESHA RAM. **148 P R 1890**

8. *Succession of niece—Arains of Lahore District.*

In a case in which the parties were Arains of the Lahore District, *found*, that a niece is not entitled by custom to succeed in preference to a first cousin once removed. PIR BAKHSH *v.* MUSSAMMAT TABAN. **46 P R 1896**

9. *Custom, Inheritance—Tewari Brahmins of Amritsar city—Right of nephew to succeed in preference to daughter's son—Hindu Law.*

Held, that plaintiff has failed to prove that Tewari Brahmins of the city of Amritsar are governed by custom, by which a daugh-

CUSTOM VIII.—MAINTENANCE AND SUCCESSION—*contd.*

P.—SUCCESSION OF NEPHEWS AND NIECES—*concld.*

ter's son is excluded in succession by a nephew, and that in the absence of such custom the personal law of the parties (Hindu Law) must prevail according to which a nephew has no right to succeed in preference to a daughter's son.

Chandika Bakhsh v. *Muna Kanwar* (*I. L. R. XXIV All.*, 273), and *Mussammat Mulo* v. *Phulo Missar* (No. 108 *P. R.* 1888) cited. *Prabh Dial* v. *Devi Dial* (No. 116 *P. R.* 1893), and *Mohan Lal* v. *Devi Das* (No. 43 *P. R.* 1899), distinguished. MUSSAMMAT JAMNA DEVI *v.* CHUNI LAL. **30 P R 1903**

10. *Custom—Inheritance—Hindu* zargars *of Dagshai—Exclusion of nephews by daughter's son—Hindu Law.*

In a case, the parties to which were non-agricultural Hindu *zargars* trading at Dagshai who had migrated from the Saharanpur District, *held*, in the absence of a special custom to the contrary, that in matters of succession they were governed by the ordinary Hindu Law, and that daughter's sons were consequently entitled to succeed in preference to nephews.

Nihal Singh v. *Hira Singh* (No. 98 *P. R.* 1889) and *Radha Mal* v. *Mussammat Kirpi* (No. 100 *P. R.* 1901), referred to. BARU *v.* MAKHAN. **61 P R 1903**

11. *Collateral residing in another village or village proprietary body—Escheat—*Onsprobandi.

Held, that a nephew of a deceased proprietor, who does not reside in the village where the deceased left land and is not a proprietor in it, succeeds to his uncle's property in preference to the proprietors of the village—And that the initial *onus*, generally speaking, would lie on the proprietary body to show that they had a right to exclude a near agnatic relative of the deceased owner from the inheritance.

Held also, that a right of escheat to the proprietary body cannot be presumed to exist; it must be affirmatively proved. DASOUNDA SINGH *v.* MANGAL. **18 P R 1910**

Q.—SUCCESSION OF COUSIN.

See CUSTOM VIII—INHERITANCE—K. DAUGHTERS. **68 P R 1887** **60 P R 1889**

1. *Abbas Kheyl Pathans of Bannu* tahsil *—Right of representation—Children of first cousin who died before the deceased claiming to succeed with first cousins.*

In a suit the parties to which were Abbas Kheyl Pathans of Bannu *tahsil*, *found* that the defendant, on whom, under the circumstances of the case, the burden of proof lay, had failed to prove that by custom first cousins of a deceased Pathan succeeded to his property to the exclusion of the children

CUSTOM VIII.—MAINTENANCE AND SUCCESSION—*contd.*

Q.—SUCCESSION OF COUSIN—*concld.*

of a first cousin, who died before the deceased: MIR AZAM *v.* SHER DOST. **3 P R 1890**

2. *Custom—Inheritance—Pathan agriculturists of the Bannu* tahsil—*Right of representation among collaterals.*

Held, following the ruling in Civil Judgment No. 3 *P. R.* 1890, that the defendant had failed to establish any custom under which among Pathan agriculturists of *tahsil* Bannu, the nearest collaterals exclude those more remote in cases of collateral succession. PAINDA KHAN *v.* SHAHWALI KHAN. **99 P R 1893**

3. *Custom—Inheritance—Succession per stirpes—Mughal Khels of Bannu.*

In a case, in which the parties were Mughal Khels of the Bannu District, and (as found by the Chief Court) governed by custom and not by Muhammadan Law, *found*, that, in the succession to a deceased unmarried female, the sons of her deceased brother were entitled to inherit *per stirpes* with her brother who was alive. AKBAR KHAN *v.* ZAFAR KHAN. **51 P R 1896**

R.—SUCCESSION OF STEP-MOTHER.

A step-mother does not by Hindu Law or custom succeed to the estate of her step-son. MUSSAMMAT KIRPI *v.* RAMJAS. **153 P R 1889**

S.—SUCCESSION OF STEP-SON.

1. *Nakodar, Jullundur district—Kung Jats—Step-sons.*

Found, that no custom existed amongst Kung Jats of Nakodar entitling step-sons as a class to succeed to the lands of their deceased step-father, in the presence of male collaterals, even where such step-sons had long lived with, and been brought up by, their step-father. SAWAN SINGH *v.* RULDO. **18 P R 1879**

2. *Custom—Inheritance—Bangal Jats of the Ludhiana* tahsil—*Adoption of step-son—Right of step-son to succeed as a collateral in family of step-father.*

Found, in a suit the parties to which were Bangal Jats of the Ludhiana *tahsil*, that an adopted step-son of another *got* does not succeed collaterally in the family of his step-father, nor does he by such adoption become a member of the family of the ancestor of his adoptive father or enter the Bengal *got*. WAZIRA V. KAHNA. **111 P R 1893**

3. *Custom—Inheritance—Right of a son of a widow by her second husband in the estate of her first husband—Sikh Jats of Sirsa* tahsil.

CUSTOM VIII.—MAINTENANCE AND SUCCESSION—*contd.*

S.—SUCCESSION OF STEP-SON—*concld.*

Found, in a suit, the parties to which were Sikh Jats of the Sirsa *tahsil*, that the son of a widow by her second husband was not entitled to succeed by custom to the property of her first husband, in the presence of male collaterals of the latter. KANWAR SINGH *v.* SAMPURAN SINGH. **75 P R 1906**

T.—WHOLE AND HALF-BLOOD.

1. *Jats of Hoshiarpur district—Whole and half-blood—Hindu Law.*

Found, that there is no established custom among Jats of the *Her got* in the Hoshiarpur district, whereby relatives of the half-blood are entitled to succeed equally with the relatives of the whole blood to the property of a deceased landowner.

Held, therefore, in the present case, (following the Hindu Law) that the succession of the half blood must be postponed in favour of the whole blood. MEHTAB SINGH *v.* JOWAHIR. **21 P R 1880**

2. *Succession—Whole and half-blood.*

Held, by the Financial Commissioner, that as between sons of the same father by different wives a full brother has not by custom or feeling of the country any better right than a half brother to succeed to an office like that of lambardar. JOT RAM *v.* AMIN LAL. **3 P R 1883**

3. *Khosa Rajputs of Moga* tahsil.

Found, that no established custom exists by which nephews of the half-blood succeed equally with those of the whole blood among Khosa Rajputs in *tahsil* Moga, district Firozpur. *Mehtab Singh* v. *Jowahir* (No. 21 *P. R.* 1880, Civil) cited. MAHTABA *v.* JAIMAL SINGH. **187 P R 1883**

4. *Jats of M. Bilgah,* tahsil *Phillour, Jalandhar.*

Found, that no custom exists among the Jats of *mauza* Bilgah in the Phillour *tahsil* and the neighbourhood, under which brothers or cousins, some of the half-blood and some of the full blood, share alike in the property left by a brother or cousin, those of the full blood excluding those of the half-blood, as is the rule according to Hindu Law. *MohtabSiugh* v. *Jowahir* (No. 21 *P. R.* 1880, Civil) cited. BUTA *v.* GURMUKH. **5 P R 1884**

5. *Succession—Claims of cousin of the whole blood and uncle of the half-blood—Custom.*

In a case of succession to the office of lambardar in which the dispute was between the cousin of the whole blood and the uncle of the half-blood of a deceased lambardar.

Held by the Financial Commissioner, following *Jot Ram* v. *Amin Lal* (No. 3 *P. R.* 1883, Revenue), that as between sons of

CUSTOM VIII.—MAINTENANCE AND SUCCESSION—*contd.*

T.—WHOLE AND HALF BLOOD—*contd.*

the same father by different wives a full brother has not by custom or feeling of the country any better right than a half-brother to an office like that of lambardar. On the contrary, the feeling would be in favor of the brothers succeeding to the post in order of age without any distinction of full or half-blood. KAMMA KHAN *v.* PAHLWAN KHAN. **8 P R 1886 Rev.**

6. *Hindu Jats* (*Sanwan* got), *Rohtak district.*

In a suit the parties to which were Hindu Jats of the Sanwan *got*, residents of *mauza* Daolu, *tahsil* Jhajjar, *zillah* Rohtak, *found* that by custom relations of the whole blood excluded those of the half-blood. *Sahiba* v. *Ameer Chund* (No. 82 *P. R.* 1866, Civil) cited. SITA *v.* KHUBA. **53 P R 1886**

7. *Hindu Jats of* tahsil *Rupar, District Amballa—Whole and half-blood.*

In a suit the parties to which were Hindus Jats of the Rupar *tahsil* of the Umballa District, *found* that by custom brothers of the whole blood and brothers of the half-blood were entitled to inherit equally to the estate of a deceased brother.

Golab Singh v. *Nihal Singh* (No. 112 *P. R.* 1868) cited. GOPAL SINGH *v.* NAINU. **71 P R 1887**

8. *Bhatti Rajputs of Shahpur District—Whole and half-blood.*

In a suit the parties to which were a branch of Bhatti Rajputs of the Shahpur District, *held* that the plaintiffs had failed to prove a custom under which in their tribe the whole and half-blood succeeded equally.

Chahda v. *Willia Mal* (*No.* 25 *P. R.* 1873) *Mehtab Singh* v. *Jawahir* (*No.* 21 *P. R.* 1880), *Mehtaba* v. *Jaimal Singh* (*No.* 187 *P. R.* 1883) and *Buta v. Gurmukh* (*No.* 5 *P. R.* 1884) cited. SARDAR BAKHSH *v.* AHMAD YAR. **150 P R 1888**

9. *Dogar Jats of Ferozepore District.*

Found that among Dogar Jats of the Ferozepore District, there is no established custom, whereby, in succession to a brother's estate, a half-brother can claim to succeed to a share in the presence of a full brother. MUHAMMAD *v.* HASHMAT. **11 P R 1889**

10. *Muhammadan Rajputs of Pipli* tahsil *—Whole and half-blood—Muhammadan Law.*

In a suit the parties to which were Muhammadan Rajputs of the Pipli *Tahsil* of the Umballa District *found* that the custom as to inheritance fluctuated between *chundavand* and *pagvand*, and that when the former prevailed, the whole blood excluded the half and that no custom at variance with the Muhammadan Law being adequately established under the Punjab Laws Act, the Muhammadan Law must be fallen back

CUSTOM VIII.—MAINTENANCE AND SUCCESSION—*contd.*

T.—WHOLE AND HALF BLOOD—*contd.*

upon, which gave the preference to the whole blood. ALA DIN *v.* BARKAT.
57 P R 1889

11. *Jats of Ludhiana* tahsil—*Relations of whole blood and of half blood.*

Found that by the custom of Jats of the Ludhiana *tahsil* relations of the whole blood do not exclude those of the half blood. MAHTAB SINGH *v* HIRA SINGH.
176 P R 1889

12. *Naru Rajputs of Hoshiarpur.*

In a suit, the parties to which were Naru Rajputs of the Hoshiarpur District *found* that by custom the half blood succeeded with the whole blood. JAHANGIR KHAN *v.* GHULAM KADIR. **45 P R 1890**

13. *Succession by collaterals—Whole and half blood—Burden of proof.*

Held by the Full Bench, that in cases of collateral succession arising in the Punjab, of which the decision is governed by custom, and in which a portion of the property of a common ancestor of the deceased and of the claimants is in dispute:—

When it appears—

(*a*) that the property of the common ancestor was distributed according to the rule of *chundavand*, or

(*b*) that the property of the common ancestor was distributed according to the rule of *pagrand*;

the Court may presume, until the contrary is proved, in case (*a*) that the whole blood excludes the half blood; and in case (*b*) that the whole blood and half blood succeed together. Explanation of the grounds for his opinion, and remarks on the burden of proof by *Plowden, J.*

Appendix of decided cases collected with remarks thereon by *Biraz J.* GHOLAM MUHAMMAD *v.* MUHAMMAD BAKHSH.
4 P R 1891 F B

14. *Muhammadan Jats, Hoshiarpur District.*

In a suit the parties to which were Muhammadan Jats of the Hoshiarpur District, *found* that the full brother of a deceased proprietor was not entitled to succeed to the whole estate of the deceased to the exclusion of the relations of the half blood, *viz*, the half brothers and cousins of the deceased.

No. 4 *P. R.* 1891, referred to. KALA *v.* BURA. **12 P R 1891**

15. *Succession by collaterals—Whole and half blood.*

H. S. had issue by two wives. At a division in 1868, the land was allotted among his descendants in two groups according to wives, and each group had ever since dealt with its portion separately.

The old rule of distribution in the village was *chundavand* and not *pagrand*.

CUSTOM VIII.—MAINTENANCE AND SUCCESSION—*contd.*

T.—WHOLE AND HALF BLOOD—*contd.*

Held, that the facts pointed to the conclusion that in the distribution in 1868, the parties to it intended that thenceforward each group of sons should hold its own portion independently of the other, and as each group of whole blood relations had ever since held its portion separately from the other, this was virtually a *chundavand* distribution by the descendants of H. S., and in the absence of proof of a customary right, the plaintiffs, as members of one group had no title to the share of B. a deceased sonless member of the other group, as against other members of the same group, representing their deceased father, a full brother of B.

No. 4 *P. R.* 1891, referred to. MOHR SINGH *v.* KALA SINGH. **32 P R 1891**

16. *Sikhan Jats,* mauza *Barwali, Ludhiana District.*

In a suit the parties to which were a family of Sikhan Jats of *mauza* Barwali in the Ludhiana District, *found*, that relations of the whole blood excluded those of the half blood in the inheritance to the estate of a deceased sonless proprietor.

No. 4 *P. R.* 1891, followed. No. 71 *P. R.* 1887, and No. 176 *P. R.* 1889, distinguished. SOHEL SINGH *v.* UTTAM SINGH. **48 P R 1891**

17. *Sheikhs of* mauza *Saman,* tahsil *Attock.*

Found, in a suit between the whole and the half blood, the parties to which were Sheikhs of *mauza* Saman, *tahsil* Attock, Rawalpindi District, descended from a Hindu ancestor, who became a convert to Islam some six or seven generations back, that the custom of the family being found to be *pagrand*, the burden of proof that the whole blood excluded the half blood in succession to a deceased brother lay upon the defendant, the full brother of the deceased, and had not been discharged.

No. 4 *P. R.* 1891, referred to. FAIZULLA *v.* ABDUL HAMID. **58 P R 1892**

18. *Sidhu Barar Jats of Fattehabad* tahsil *in the Hissar District.*

Found, in a suit, the parties to which were Sidhu Barar Jats of *mauza* Budladha in the Fattehabad *tahsil* of the Hissar District, that the relations of the whole blood excluded those of the half blood in succession to a deceased collateral.

The family land having been divided on the *chundavand* and not on the *pagrand* principle, the *onus* was on the plaintiffs, the half blood relations, to establish that they were entitled to share with the defendants, the relations of the whole blood, in the inheritance of the deceased.

No. 125 *P. R.* 1884, and No. 4 *P. R.* 1891 (F. B.), referred to. RURA *v* WAZIR SINGH.
143 P R 1892

CUSTOM VIII.—MAINTENANCE AND SUCCESSION—*contd.*

T.—WHOLE AND HALF BLOOD—*contd.*

19. *Jats of* tahsil *Moga, Ferozepore District.*

G., a Jat of *mauza* Raman in the Moga *tahsil* of the Ferozepore District, had issue by two wives. The quantity of land found with the descendants of each wife corresponded neither with a *pagvand* nor a *chundavand* division. There was little to indicate that the sons of G., after their father's death, formed two separate groups, including the sons of each mother.

Held, in accordance with the *Riwaj-i-am* prepared at the recent settlement, that the rule of partition applicable was *pagvand* and that the kinsmen of the whole blood had no advantage in succession over those of the half blood.

No. 12 *P. R.* 1891, and No. 32 *P. R.* 1891 referred to. BASAWA SINGH *v.* LEHNA SINGH.
4 P R 1893

20. *Hindu Jats, Nawashahr* tahsil, *Jullundur District.*

The plaintiffs and defendants were kinsmen equally near, by collateral descent, of one J. S., who died without male issue, but the plaintiffs were of the half-blood and the defendants of the whole blood by relation to the common ancestors' wives. The parties were Hindu Jats of Nawashahr *tahsil*, Jullundur District.

Held, upon a consideration of the entries at the first settlement and on the distribution of the land of the common ancestor in the *Riwaj-i-am* that the plaintiffs were entitled to succeed equally with the defendants. KAHNA *v.* WAZIRA. **68 P R 1893**

21. *Succession*—Chundavand *or* pagvand.

One M. had issue by two wives and divided his land in his lifetime between K. his son by Mussammat B., and J. and M., his sons by Mussammat N., giving to the former two-fifths and to the two latter three-fifths of the said property. It was admitted that the two groups held their respective shares separately under different *khatas*, and that J. and M. held jointly up to the time of the latter's death, whereupon K., B. and S., the sons of K., sued for a share of M.'s property, on the ground that, by custom among their tribe, the half blood succeeded equally with the whole blood.

Held, that the principle of the Full Bench decision, reported as No. 4 *P. R.* 1891, applied to the present case, where the father himself distributed his family *per stirpes*, notwithstanding that he did not allot exactly equal shares to the descendants of each wife, allotment according to groups formed by such descendants being a far more essential feature of such division than equality of the shares given to each group.

Held, on the evidence, that plaintiffs had failed to show that they were by custom entitled to succeed, in the face of the said

CUSTOM VIII.—MAINTENANCE AND SUCCESSION—*contd.*

T.—WHOLE AND HALF BLOOD —*contd.*

distribution and allotment, to a share in the property of M.

Nos. 32 and 48 *P. R.* 1891, cited. PIR BAKHSH *v.* KARIM BAKHSH. **22 P R 1895**

22. *Succession* per stirpes—*Mughal Khels of Bannu.*

In a case, in which the parties were Mughal Khels of the Bannu District, and (as *found*, by the Chief Court) governed by custom and not by Muhammadan Law, *found* that, in the succesion to a deceased unmarried female, the sons of her deceased brother were entitled to inherit *per stirpes* with her brother who was alive. AKBAR KHAN *v.* ZAFAR KHAN. **51 P R 1896**

23. *Awans of Talagang* tahsil, *Jhelum District.*

Held, that defendants, who were the descendants by one wife, had failed to prove that on the death of their father they had formed themselves into a separate family so as to exclude from collateral succession the other branches of the family.

The *Riwaj-i-am* contained a clause to the effect that sons by a woman of an inferior tribe do not take a full share of an inheritance, but are merely allowed some land by way of maintenance. It appeared that certain of the plaintiffs were descendants of N. K., the common ancestor of the parties, by a Bilochi woman, and that on the distribution of N. K.'s estate these plaintiffs, who were then minors, received only one share between them instead of two.

Held, that (even if effect were to be given to the provision in the *Riwaj-i-am*) it had not been proved that the mother of these plantiffs was a woman of "an inferior tribe," and it was probably because these plaintiffs were not then in a position to assert their rights that they had been put off with less than their rightful share on the original distribution. GHULAM MUHAMMAD *v.* ABBAS KHAN. **22 P R 1899**

24. *Kutb Shahi Awans of* mauza *Paur Miana*, tahsil *Attock*—Riwaj-i-am.

In a case, in which the parties were Kutb Shahi Awans of *mauza* Paur Miana, *tahsil* Attock *found* that nephews of the full blood were not entitled by custom to exclude nephews of the half blood in succession to the lands of their common maternal uncle, the former not having been any more than the latter associated with the deceased in any separate family group. HAYAT MUHAMMAD *v.* NAWAB. **29 P R 1900**

25. *Succession by collaterals—Whole and half blood.*

Held, that, though the rule of descent, is generally determined with reference to the original mode of distribution of property left by a common ancestor, yet when brothers of the whole blood subsequently form separate

CUSTOM VIII.—MAINTENANCE AND SUCCESSION—*contd.*

T.—WHOLE AND HALF BLOOD —*concld.*

groups and so regulate succession among themselves as to alter the original rule of distribution, the presumption arising from the original rule of distribution ceases to operate owing to the altered conditions, and following the principles laid down in *Ghulam Muhammad* v. *Muhammad Bakhsh* (No. 4 *P. R.* 1891, F. B). the whole blood now excludes the half blood in this family of Qureshis of *mauza* Pindi Miani, *tahsil* and district Gujrat. AHMAD SHAH *v.* MUSSAMMAT TALIA BIBI. **34 P R 1900**

U.—SUCCESSION OF MOTHER.

See CUSTOM VIII.—I. REMARRIAGE OR UNCHASTITY OF WIDOW.
117 P R 1888
171 P R 1888

1. *Gujars of Gujrat—Mother's right to succeed to estate of deceased son in presence of collaterals.*

Found, that by the custom prevailing among Gujars of the Gujrat district, a mother takes her son's estate, when he dies childless in preference to collaterals distantly related. MUSSAMMAT JINAT BIBI *v.* MUHAMMAD YAR. **95 P R 1882**

2. *Mother's right to succeed to the property of her childless son in preference to her husband's collaterals.*

In a suit for possession of immovable property situated in M. Chawar in the Gurdaspur district, *found*, that by the local custom a mother inherits the property of her childless son in preference to the collateral heirs of her late husband. SHAM SINGH *v.* MUSSAMMAT SADDAN. **49 P R 1883**

3. *Gharbari Gosains of the Kangra Valley—Mother claiming in preference to widow of deceased holder.*

Found, that there is no well established custom among Gharbari Gosains of the western part of the Kangra Valley by which a mother is preferred to the widow of a deceased holder of shrine property. MUSSAMMAT LAKHI *v.* MUSSAMMAT JAI DEVI. **135 P R 1884**

4. *Custom—Succession—Mother—Succession of sister or sister's son in presence of collateral related in fifth decree—Bukhari Sayads of Jhang District.*

In a case, the parties to which were Bukhari Sayad agriculturists of the Jhang District, *found* (i) that where a widow succeeds in default of male issue, a mother of the deceased owner has, by custom, only a right to be maintained in the presence of such widow: where, however, such maintenance takes the form of possession being given of a half share in the estate, there is the strongest *prima facie* presumption (which in the present case had not been rebutted

CUSTOM VIII.—MAINTENANCE AND SUCCESSION—*contd.*

U.—SUCCESSION OF MOTHER—*contd.*

that the mother holds on a life tenure only, without power of alienation except for necessity; and (ii) that plaintiffs had failed to prove any custom whereby a sister or a sister's son was entitled to succeed to the exclusion of a collateral related in the fifth degree to the deceased proprietor. MUSSAMMAT JINDWADDI *v.* HASSAN SHAH. **41 P R 1895**

V.—SUCCESSION AMONG PROSTITUTES.

1. *Brothel-keeper claiming to succeed to estate left by her nochi—Invalid custom.*

Held, by a majority of the Full Bench (*Plowden, J.*, dissenting) that a custom by which the keeper of a brothel is entitled to succeed by right of inheritance to the estate left by her *nochi* is invalid and one which should not be enforced by the Court, as it is not only an immoral custom, but opposed to good conscience. *Har Dyal* v. *Imam-ud-din* (C. A. No. 1411 of 1875) referred to. MURAD BAKHSH *v.* MUSSAMMAT DOWLA. **89 P R 1884**

2. *Kanchanis of Delhi—Succession to childless female adopted according to the practice of the caste—Muhammadan Law.*

In a suit the parties to which were by caste Kanchanis resident in Delhi, *held*, that the evidence failed to establish any definite custom applicable to the parties concerned at variance with the Muhammadan law, regulating the succession to a childless female "adopted" according to the practice of the Kanchanis. MUSSAMMAT GHASITI *v.* MUSSAMMAT BANNO JAN. **95 P R 1884**

3. *Kanchans of Amballa—Succession of daughters—Absolute right in property inherited.*

Found, that among Kanchans of Amballa there is no established custom limiting the interest which a Kanchan woman takes in property which she inherits; but that she is absolute owner of such property, and has full power of alienation over it. SHAHZADA *v.* RAMDIYA. **98 P R 1885**

4. *Kanchans of Delhi—Brothers and sisters—Muhammadan Law.*

In a suit the parties to which were Kanchans of Delhi, the dispute was as to the right of inheritance to a female Kanchan, who died leaving the property in dispute, and brothers and sisters of legitimate birth surviving her. It appeared that the female in question had left the family brothel of which she was formerly a member and become a member of another institution of which at the time of her death she was the last survivor, so that there was no competition as to inheritance between her natural heirs and any surviving member of the brothel which she had joined.

V.—SUCCESSION AMONG PROSTITUTES—*concld.*

Held, that there was no custom of inheritance applicable to the above case: that the Muhammadan Law must therefore prevail, and that under that law the brothers were entitled each to one-fourth, and the sisters each to one-eighth of the estate of the deceased.

Mussammat Gasiti v. *Mussammat Banno Jan* (No. 95 *P. R.* 1884), referred to. MUSSAMMAT GHASITI *v.* MUSSAMMAT AMIR JAN.
166 P R 1888

5. *Married and unmarried daughters—Kanjars of Lahore.*

Found, that by the custom of Kanjars of Lahore, married daughters are not excluded by unmarried daughters in succession to their father's estate. MUSSAMMAT JIWAN *v.* MUSSAMMAT KARM-UN-NISSA.
148 P R 1889

6. *Prostitutes of Lahore—Muhammadan Law.*

Found, in a suit, the parties to which were profe sed prostitutes residing at Lahore, that no special custom was proved regulating the succession to the property of a collateral, and that, therefore, Muhammadan Law must be applied. NATHU *v.* MUSSAMMATS IDO AND MIRAN.
62 P R 1892

7. *Kanchans of Delhi—Muhammadan Law—Invalidity of transaction intended for the furtherance of prostitution.*

B., a Kanchan of Delhi, died in 1871, leaving a substantial property. She survived her parents; had left no issue, but left her surviving two brothers and four sisters.

All the parties to the present dispute belonged to the people of Kanchans, among whom the business of brothel-keeping and prostitution is carried on by families or communities who are recruited by adoption of females to females.

B. had left her own family to be adopted by one D., who was the head of another establishment of the same kind, and she had succeeded to the whole of D.'s property on her death.

The question was, how the property of B. was to devolve?

All the parties professed the Muhammadan religion.

Held, by the Privy Council, that there was no severance of B. from her natural family by the adoption, and that it was impossible to say that such customs as were alleged to exist among the Kanchans were not contrary to the policy of the great religious community to which the Courts found that all the parties belonged.

The decree of the Chief Court, finding that there was no custom of inheritance applicable to the case, and that the brothers and sisters were entitled to the shares allowed by Muhammadan Law, upheld by the Privy Council. MUSSAMMAT GHASITI *v.* UMRAO JAN.
52 P R 1893 P. C.

W.—MISCELLANEOUS.

1. *Succession to ownership of land.—Suit for possession of the holding of a deceased khewatdar.*

The parties belonged to the same *patti* as deceased; defendants claimed the whole as belonging to the same *thola*; plaintiffs, who belonged to other *tholas*, claimed to share on the ground that all were descended from a common ancestor, the original sole proprietor of the *patti*. *Held*, that, in the absence of proof of village custom, the fact that defendants were liable for the Government revenue before plaintiffs, and that they had paid up a balance before getting possession of the land, was sufficient to establish a superior right in them. MEGHA *v.* KHUZANA.
54 P R 1868

2. *Karewa Marriage—Rajputs.*

The descendants of a union according to the *Karewa* form of marriage are, by custom, excluded from inheriting amongst the Rajputs.—ZOOLFOO *v.* AHMED (*No.* 2 *P. R.* 1872, Civil); the custom is the same with the Brahmins, Firozpur district. GOBINDA *v.* KHANA.
22 P R 1873

3. *Associated and disassociated cousins—Duty of Court to inquire into custom.*

Two brothers, Doorga Dat and Boodh Singh, separated. The former had two sons (Bugwan Singh and Mangal Sein, the defendants in the suit), and the latter a son, Girdharee Lal. Bugwan Das, who had three sons (plaintiffs) died in the lifetime of Boodh Singh. Mangal Sein and Girdharee Lal re-associated, and so remained until the death of the latter. The three sons of Bugwan Das sued Mangal Sein for a half share of Girdharee Lal's property. The parties were bunniahs in the Umballa district. *Found* that, by custom the plaintiffs, though disassociated, were entitled to the half share claimed.

Held, by a Full Bench that, unless the parties to a suit expressly declare that they desires to abide by Muhammadan or Hindu Law (as the case may be), the Court is bound, under section 5 of Act IV of 1872, to enquire whether a custom exists contrary to the general rule of law, although the parties themselves have not sued upon or pleaded any sush custom. DEVI SUHAI *v.* MANGAL SEIN.
81 P R 1874

4. *Disassociation—Hindu Jats.*

In the absence of a clear separation by which all claim for the future is relinquished to family property that may fall in by the death of any of the members of the family, holding land separately does not bar the right of succession by heirship to a share in a holding held jointly by others of the family. JAGGA *v.* RAM CHAND.
102 P R 1876

W.—MISCELLANEOUS—*contd.*

5. *Byraghi Faqir.*

Held, that in the absence of an established custom to the contrary, a Byraghi *faqir* who has not given up the world, does not forfeit his rights to succeed in his natural family. BANSI *v.* MIHAN SINGH.
24 P R 1880

6. *Kadiri Faqirs of Khangah Shahgadda.*

Found that no established custom prevails among Kadiri Faqirs of Khangah Shah gadda in the village of Garhi Sahu in the Lahore district, whereby a *chela* succeeds to the exclusion of all the natural heirs, however near in degree, of a deceased *gaddinashin*. ALAM SHAH *v.* BULAKI SHAH.
57 P R 1880

7. *Jats of Pipli tahsil, Amballa District.*

Found, that among Jats of the Pipli *tahsil* in the Amballa district, association with the deceased gives no preferential right of inheritance among heirs otherwise equally entitled. *Khurka* v. *Soojan Singh* (No. 7 *P. R.* 1870, Civ l) cited. ALBELA *v.* PAT RAM.
21 P R 1881

8 *Succession to land gifted to sister on death of donee and her husband without heirs—Reversion to collateral heirs of donor.*

In a suit by the plaintiffs, the first cousins and next agnates of one M. claiming to succeed to certain land which had been gifted by N. to his sister on the occasion of her marriage with M. *found*, that, on the death of the donee and her husband without sons, the land reverted to the sons of the donor and did not descend to the plaintiffs, the collateral heirs of M.

Fateh Din v. *Mussammat Karm Behari* (Civil Revision No. 342 of 1885, unpublished), and *Kutba* v. *Mussammat Abidan* (No. 19 *P. R.* 1887), cited. KARM DIN *v.* UMAR BAKHSH.
3 P R 1888

9. *Proprietor of two villages making partition between his sons and grandsons—Right of the branch of the family settled in village A. to succeed jointly with those settled in village B. to the land of one son dying without heirs in village B.—Complete separation—Survivorship.*

One M. S. who had five sons and ten grandsons, and was sole owner of two villages, B and G. made in his lifetime an absulute partition without any reservation between his sons, assigning village B. to two sons (with their five sons), and village G. to three sons (with their five sons). Neither on M. S.'s death which occurred some fifty years before suit, nor subsequently, was any attempt made at any adjustment or redistribution, but one of the G. branch of the family having died without lineal descendants and his widow who succeeded him having recently lost her rights by remarriage, the branch

CUSTOM VIII.—MAINTENANCE AND SUCCESSION—*contd.*

W.—MISCELLANEOUS—*contd.*

of the family in village B. claimed to succeed equally with the surviving members in village G. to the share of the land which belonged to the deceased in village G.

Held, that the view most consonant to the custom of family land-holding in the Punjab and to the equity and reason of the case was to hold that M. S. had effected a complete partition, and that by custom all the heirs in village G. must be exhausted before any of the members in village B. could come in, and that the conduct of the parties all along showed that they always recognized, as far as circumstances permitted, a complete separation, which would naturally produce this result. KALLA SINGH *v.* TAHAL SINGH. **143 P R 1888**

10. *Girths of Kangra District—Self-acquired land not situate in village of owner's origin, but in a village to which he had migrated—Gift by widow of son to her daughter's sons—Claim by descendants of a common ancestor who resided in the village of owner's origin—Custom—Burden of proof.*

The parties were Hindu Girths of the Kangra District. The land in dispute was situate in *mauza* B. and was self-acquired by one A. who had migrated from N. the village of his origin.

A.'s son K. died sonless leaving a widow who gave the land to her daughter's sons.

The plaintiffs, residents of N. were descendants of an ancestor of A. and claimed the land.

Held, that the true issue arising was whether the plaintiffs were by custom heirs to the deceased in respect of land held by him *in a different village*; and that the burden of proof was on the plaintiffs.

P. R. No. 77 of 1881, referred to. LOKHA *v.* HARI. **64 P R 1893**

11. *Custom—Succession—Hindu exogamous Jats of Musapur*, tahsil *Jullundur—Land vacated by death of last male descendant of donee—Suit by uncle's daughter's son—Rights of village proprietors—Burden of proof.*

The plaintiff was uncle's daughter's son of A., the last male representative of R., to whom the land in suit had originally been gifted by one of the village proprietors. The defendants (the proprietors of the village) were Jats of a different *got*. The lower Courts, finding that there was no custom embracing the issue exactly in point, gave the plaintiff a decree on the ground that he was entitled to succeed by Hindu Law.

Held, by the Chief Court, that Hindu Law was not applicable to the case, the customary rule which governs the devolution of ancestral land amongst Hindu exogamous Jats being well ascertained; and that the plaintiff, not being in the line of *ekjaddis* or even of *rishtedars* of the last

CUSTOM VIII.—MAINTENANCE AND SUCCESSION—*contd.*

W.—MISCELLANEOUS—*contd.*

holder, was not an heir of the deceased in respect of his land, and that the *onus*, which had not been discharged, lay upon him to show a better title than that of the village proprietors who were in possession.

A. (the deceased owner) was a Hindu Jat, and among Hindu Jats, being exogamous, the customary rule of succession to ancestral land is well established. The land of a sonless man devolves upon his *warisan ekjaddi*—male descendants in the male line only of a common ancestor—to the exclusion of females and their issue.

P. R. No. 43 of 1877, *P. R.* No. 136 of 1884 and *P. R.* No. 49 of 1886, distinguished., *P. R.* No. 12 of 1822 referred to. BADHAWA *v.* DEWA SINGH.

141 P R 1893

12. *Right of thuladars to succeed to deceased childless co-proprietor—Presumption*—Onus probandi.

One D. S. a Kalal, *got* Kaithal, died in 1865, leaving certain lands and no heirs except his widow, Mussammat T. who held possession of the said lands after the death of D S. and on the 18th May 1889 executed a deed of gift in favour of her brother's son, Ude Ram, reciting that she had adopted him as her son under authority given her by her husband and transferred to him a house in the city of Umballa and a greater part of the land in dispute. Mussammat T. died on the 31st December 1891, and thereafter, certain suits were instituted in respect of the said lands and were all heard together, the present suit being by the proprietors of the *thula* to which D. S. belonged, who claimed to succeed, *in virtue of their co-proprietorship* to the lands left by D. S.

Held, that, inasmuch as Ude Ram was in possession of the said lands it was incumbent on plaintiffs to prove a superior title thereto, and that they had failed to do so.

The members of a village community are not the ultimate heirs of any co-sharer among them, who dies without heirs, in every instance without regard to the constitution of the village or the facts of the particular case which comes up for decision. KIRPA RAM *v.* UDE RAM.

77 P R 1896

13. *Right of collaterals also related through female line to succeed in preference to nearer collaterals—Sayads of Umballa.*

Found, that plaintiffs had failed to prove that, by custom among Sayads of Umballa *tahsil* and District, distant male collaterals who were also related through the female line, had rights of succession superior to nearer male collaterals. NAWAB ALI *v.* NATHU

40 P R 1897

14 Ala *and* adna maliks—Mauza *Manabad*, tahsil *Moga*, *Ferozepore District.*

CUSTOM VIII.—MAINTENANCE AND SUCCESSION—*contd.*

W.—MISCELLANEOUS—*contd.*

Held, that *mauza* Manabad, *tahsil* Moga, Ferozepore District, an *ala malik* is merely entitled, as a *taluqdar*, to 5 *per cent.* on the revenue, and further, that on the death of an *adna malik* without issue, the latter's estate does not revert to the *ala maliks*, but to the collaterals of the deceased.

Semble.—In the said village, which is divided into *pattis*, on the death of an *adna malik* his land would, for default of nearer heirs, become *shamilat* of the *patti*, and be divided among the *pattidars*. SARDAR SARUP SINGH *v.* SUNDAR. **9 P R 1898**

15. *Custom—Succession to childless proprietor—Exclusion of near collaterals by proprietors of village—Village founded within boundaries of old village—Right of collaterals residing in latter to succeed to land in former*—Riwaj-i-am.

In the present case it appeared that *mauza* Ferozabad had been founded by the grandfather of the two deceased proprietors, the succession to whose lands was in dispute within the boundaries of *mauza* Rania. The two proprietors having died childless, the proprietors of *mauza* Ferozabad claimed to exclude the near collaterals who lived in *mauza* Rania, and based their claim on an entry in the *Wajib-ul-arz* to the effect that on the death of a landowner without issues his near collateral should succeed provided he lived in the same *patti*; otherwise the landowners of that *patti* should succeed. There was no such en ry in the *Wajib-ul-arz* of *mauza* Ferozabad, but it was contended that the entry in question applied eqnally to that village inasmuch as it had been founded from the other.

Held, that the said entry was very unusual and not very reasonable, and should not, therefore, be extended to *mauza* Ferozabad so as to give the proprietors of that village a preferential right over the near collaterals.

Held, further, that the decision of the Court in No. 64 *P. R.* 1893, did not apply to the present case, inasmuch as the founder of *mauza* Ferozabad did not go and acquire land in a remote village, but merely assisted in founding a new village within the boundaries of his old village, and also because the collaterals, as descendants of the founder, were claiming property which, so far as they were concerned, was ancestral property. RUKAN DIN *v.* MUSSAMMAT MARIAM. **68 P R 1898**

16. *Custom—Succession—Suit between co-proprietors of village in which the land was situate and deceased's near agnates residing in another village—Finding in a previous suit that one of the co-proprietors was deceased's collateral, effect of*—Res judicata—*Dhillon Jats of Naraingarh, Amritsar District.*

Plaintiffs, who were residents of Bhutiwala in the Ferozepore District, claimed certain land left in Naraingarh, Amritsar District,

by one Mussammat Premi, widow of Attar Singh, a Dhillon Jat, on the ground that they were descendants of Budh Singh, grandfather of Attar Singh, one plaintiff being his son and the others grandsons and great-grandsons. The defendants were Dhillon Jats of Naraingarh, but claimed no relationship with the deceased and belonged to a different *taraf* to that of Attar Singh. On the death of Mussammat Premi defendants obtained mutation of names in their favour despite the objections of plaintiffs, who, therefore, instituted the present suit. In the first Court defendants pleaded, *inter alia*, that plaintiffs were not the agnates of the deceased's husband, and that being residents of another village and district, and having had no connection with Naraingarh or the family of the deceased, they were excluded by law and custom. The first Court drew issues, in accordance with the pleadings, and decided them all in favour of plaintiffs. Defendants appealed to the Chief Court on the same grounds as were urged in the lower Court, and at the hearing it was also contended on their behalf that plaintiffs' claim was barred by a judicial decision of the Assistant Commissioner of Amritsar, dated 25th August 1871, by which defendants were declared reversioners of the deceased widow, and obtained a decree setting aside, as far as their interests were concerned, a certain mortgage effected by her of part of the land left by her husband. The ground upon which the defendants' contention was based was that in the former suit, the widow represented the interests of the reversioners, and that the decision that one of the defendants was her reversioner bound the present plaintiffs if they were the persons by agnatic descent entitled to succeed to the estate left by her.

Held, overruling the said contention, that the finding in the former case was merely to the effect that the defendant in question was a collateral of the widow, and as such was competent to contest the widow's mortgage, and that the said finding in no way precluded plaintiff from proving that they were nearer collaterals, and had a preferential claim to succeed to the property.

Found, upon the evidence, that plaintiffs were nearer collaterals than the defendants.

Held, therefore, that the plaintiffs' relationships being established, they were the *warisan ek jaddi* of the deceased widow's husband, and their common ancestor had been in possession of the land in suit, and that in such a case there was no authority for holding that the collaterals, because residents in another village, were excluded by the other proprietors, in the deceased's village, though not related to him. CHET SINGH *v.* SAMAND SINGH. **78 P R 1898**

17 *Forfeiture of inheritance by a person who has murdered or been instrumental in murdering another to the latter's estate—Public policy.*

In 1891, plaintiff was convicted by the District Magistrate of Hazara of the abetment of the murder of his half-brother, Ahmad Khan, and sentenced to seven years' rigorous imprisonment and fine, &c. The defendant, the mother of the deceased, Ahmad Khan, succeeded to his property; the plaintiff on completion of his sentence instituted the present suit for possession of his half-brother's property, and based his claim on the ground of his being a customary heir to his murdered brother. The defendant contended that plaintiff was excluded from inheriting on the principle of Muhammadan law, which precludes the slayer inheriting from the person whom he has slain, and that she was as mother under the circumstances entitled to a life interest.

Held, that plaintiff was disentitled to succeed upon that principle of public policy and justice which demands that no criminal should benefit by the result of his crime, and that it is unnecessary to consider either the Muhammadan or Customary law on the point.

Held, further, that even if it could be shown (as admittedly it could not) that a custom expressly recognized the right of a person who had abetted the murder of his relation to inherit that relation's property, it would be *contra bonos mores* and therefore invalid. MUSSAMMAT SHAH KHANAM *v.* KALANDHAR KHAN. **74 P R 1900**

18. *Custom—Succession—Preferential rights of collaterals of donor who died childless as against the collatearls of the donee.*

One S. D., who was blind from birth, made a gift of his land to. S A., one of his grand-nephews. Plaintiff's father thereupon sued for cancellation of the gift, the suit being dismissed on the ground that the alienation being in favour of an agnate was valid by custom. The donee, S. A., died childless in 1894, and his widow also before the present suit. The plaintiffs, who were grand-nephews of the donor, sued for their share of the property gifted, and contended that on the death of the donee without male issue the property reverted to the heirs of the donor.

Held, that on the death of the donee without male issue the ancestral property reverted to the donor's collaterals as a body, and that the donee's brothers could not claim a preferential right to it as against the collaterals of the donor.

Sita Ram v *Raja Ram* (No. 12 *P. R.* 189?), *Lehna* v. *Mussammat Thakri* (No. 32 *P. R.* 1892), and *Mussammat Aso* v. *Mussammat Tabi* (No. 77 *P. R.* 1893), referred to. FATEH ALI AND OTHERS *v.* ABDULLA AND OTHERS. **112 P R 1900**

19. *Waraich Jats of Gujrat tahsil—Failure of direct heirs of donee—Right of heirs of donor to succeed to property gifted in preference to those of donee—Suit by a*

reversioner for possession of immovable property—Defendant in possession under will made by testator without title—Reversioner not barred by reason of his having failed to contest such will within three years.

In a suit the parties to which were Waraich Jats of the village of Kaka in the Gujrat District, *found* that when a gift of ancestral property has been made to a daughter's son in virtue of that relationship and he dies without issue, the property reverts on the death of the original donee to the heirs of the donor and not to those of the donee.

Held, that a suit by a reversioner to recover possession of immovable property in the hands of a defendant under an alleged will cannot (where the testator had no power to dispose of the property by will) be barred by reason of his (the reversioner) having failed to contest the validity of such will within a period of three years.

Sita Ram v. *Raja Ram* (12 *P. R.* 1892, F. B.) *Muhammad* v. *Mussammat Umar Bibi* (129 *P. R.* 1893), *Ghulam Muhammad* v. *Muhammd Rakhsh* (4 *P. R.* 1891, F. B.) *Fauja* v. *Kasu* (122 *P. R.* 1879), *Dasaunda Singh* v. *Mussammat Partab Kaur* (53 *P. R.* 1882), *Gogan* v. *Taloka* (163 *P. R.* 1882), *Ditta* v. *Muhammd Bakhsh* (146 *P. R.* 1884), *Mangat* v. *Wazir Singh* (82 *P. R.*, 1885), *Atra* v. *Umra* (1 *P. R.* 1886), *Aman Ali* v. *Mussammat Amina Begam* (46 *P R.* 1890), and *Fatteh Ali* v. *Abdulla* (112 *P. R.* 1900). referred to. HAYAT MUHAMMAD *v.* ALA BAKHSH. **19 P R 1903**

20. *Custom—Inheritance—Right of* pattidars *to succeed to a co-sharer who died without heirs*—Onus probandi—Mauza *Murtazapur*, tahsil *Kaithal*, *Karnal District.*

In a suit brought by the proprietors of the *patti* for the possession of land left by a co-sharer of another tribe who had died without heirs on the allegation that they, as co-proprietors of the *patti*, had a customary right of succession.

Held, that the plaintiffs had failed to prove that by custom they, as mere *pattidars*, were entitled to succeed as ultimate heirs to the estate of the deceased co-sharer who was of a different tribe. HARNAM SINGH *v.* PARTAB SINGH. **102 P R 1906**

21. *Absconding offender — Attachment and sale of ancestral property subject to Punjab Customary Law—Effect of such sale upon the rights of inheritance of the absconder's male lineal descendants and collaterals—Criminal Procedure Code,* 1898, *sections* 87, 88.

Held by a majority of the Full Bench (Johnstone, J., dissenting), that where ancestral immovable property held by a person subject to Punjab Customary Law is attached and sold by order of a Criminal

CUSTOM VIII.—MAINTENANCE AND SUCCESSION—*concld.*

W.—MISCELLANEOUS—*concld.*

Court under section 88 of the Code of Criminal Procedure the sale conveys the life interest of that person only and does not extinguish the right of inheritance after his death of his male lineal descendants or of collaterals descended from the original holder of the property. SADHU SINGH *v.* SECRETARY OF STATE. **18 P R 1908 F B**

22. *Custom—Inheritance—Right of the proprietary body of the* pana *to succeed to a co-sharer in preference to the deceased's aunt's son*—Mauza *Balana*, tahsil *Panipat, Karnal District.*

In a suit brought by the proprietary body of the *pana* for possession of land left by a co-sharer of another tribe who had died without male lineal descendants, *held* that the plaintiffs had failed to prove that by custom they as mere co-sharers in the *pana* were entitled to succeed in preference to the aunt's son of the deceased proprietor.

Query.—Whether joining another person as a co-sharer in the village as a *bhum bhai* amounts to a gift so as to render applicable the rule of reversion as prevailing in cases of pure gifts? NIHALA *v.* RAHMATULLAH. **137 P R 1908**

23. *Custom—Inheritanee—Gift of landed property by way of dowry to a female—Mutation in favour of her husband—Death of donee without issue—Right of husband in presence of donor.*

Held, that a gift of landed property expressly made by way of dowry to a female on the occasion of her marriage enures solely for the benefit of the donee and her issue, and in case of her dying childless reverts to the donor.

The mere circumstance of her husband's name having been entered as donee in mutation proceedings does not after her death entitle him to retain possession of the property. KHAIRAN *v.* NAURANG KHAN. **54 P R 1909**

CUSTOM IX.—MERCANTILE USAGES.

1. *Amritsar City -Mercantile usage—Deposit of property—Depositor borrowing money from bailee—Lien on property deposited.*

A mercantile usage found to obtain in the city of Amritsar by which where a person leaves any property with another and then borrows money from him, the money will be understood to be advanced on the security of the property and the sale-proceeds from it will be credited towards the debt. PIRTHI MAL *v.* GOPI NATH. **34 P R 1886**

2. *Shah and Gumashta—Shahpur District—Repayment of capital when agency is dissolved—Priority in payment.*

The plaintiff, as the principal in a Shah and Gumashta business in the Shahpur

CUSTOM IX.—MERCANTILE USAGES—*concld.*

District, sought, on the closing of the business, to establish his right to be repaid the capital advanced by him from the assets in hand before the defendant was repaid, notwithstanding that the latter had advanced capital to a greater extent than the plaintiff.

Held, that no special custom had been proved to exist under which the principal would be first repaid the capital advanced by him, the general rule among the bankers and traders of the Shahpur District being that on the closing of a business each party gets back the capital advanced by him less his share of the losses, and that no question of priority would arise. NARSINGH DAS *v.* HIRA NAND. **79 P R 1895**

CUSTOM X.—RELIGIOUS INSTITUTIONS.

(*a*) Suit by persons interested in shrine.
See CIVIL PROCEDURE CODE, 1908, SECTIONS 92, 93. **94 P R 1885**

(*b*) Suit for share of offerings.
See CIVIL PROCEDURE CODE, 1908, SECTIONS 92, 93. **76 P R 1886**

(*c*) Claims to pre-emption by proprietors of.
See PRE-EMPTION. **100 P R 1885**
153 P R 1884

(*d*) Suit to set aside alienation of shrine property.
See RIGHT TO SUE. **75 P R 1884**
27 P R 1885

(*e*). *Suit by worshippers to restrain alterations of temple property—Right to maintain suit without the consent of the Advocate General.*
See CIVIL PROCEDURE, CODE, 1908, SECTIONS 92, 93 **29 P R 1897**

(*f*). *Suit for removal of Mahant and for declaration of right to appoint a successor and to enforce the provision of a will.*
See COURT FEES ACT, 1870, SECTION 7 (iv) (c). **58 P R 1893**
See APPEAL XI, VALUATION OF— **58 P R 1893**
56 P R 1895

(*g*). *Customary right of certain persons to perform certain religious ceremonies on behalf of an indeterminate class of persons on property belonging to third parties.*
See CUSTOM VII—EASEMENTS AND PROFITS. **4 P R 1896**

1. *Maintenance.*

In a claim for maintenance by a disciple of a religious institution, *held*, that it was wrong to award plaintiff "a reasonable supply of necessaries," and in the event of further disputes between plaintiff and the *guddeenashin* a fixed sum; the proper decree was to award simply that plaintiff was entitled to such maintenance as befitted his condition. HOOSAIN SHAH *v.* HUSSUN SHAH. **84 P R 1866**

CUSTOM X.—RELIGIOUS INSTITUTIONS—*contd.*

2. *Succession.*

Plaintiff claimed to succeed to a *thakoordwara* in possession of defendant, on the ground that plaintiff was the *chela* of the last *mahant*. *Held*, that as defendant had built the *thakoordwara* with the consent of the *mahant*, and had been named by the latter as his successor with the consent of the city people, while plaintiff's title as *chela* was not clearly made out; defendant was entitled to be maintained in possession. POORUN CHUND *v.* SOONDUR DASS. **32 P R 1867**

3. *Succession.*

Parus Ram, Gooroo, had two *chelas*, Mungal Dass and Ramjee Dass (plaintiff). Before his death, Parus Ram verbally appointed Mungul Dass, the senior *chela*, to succeed him until Ramjee Dass should have attained his majority; Mungal Dass subsequently died, having by a written will constituted his *chela*, Rugbeer Dass (defendant), to be his heir and successor. Ramjee Dass claimed to succeed under the original appointment of Parus Ram. Rugbeer Dass contended that Parus Ram could not appoint more than his *immediate* successor. *Held*, that the custom of the institution did not sanction the appointment of an intermediate director of the *guddee* pending minority of the intended successor, so as to give a title to the latter. Plaintiff's suit dismissed, and the appointment of Rugbeer Dass upheld. RAMJEE DASS *v.* RUGBEER DASS. **52 P R 1867**

4. *Birt.*

Where there are two *parohits* in a village, either has a right to collect *birt* from those of the villagers who prefer him as their priest; but effect may be given by the Courts to any valid contract between the priests for division of the fees. RAM KISHEN *v.* DOONEE CHUND. **62 P R 1867**

5. *Management of affairs of the institution.*

A *muafi* had been released by Government for the support of a *thakoordwara*. The grant was originally made to S. B., who left four *chelas* (one of whom was the plaintiff). After the death of S. B. the *chelas* jointly administered the grant. Defendant claimed the exclusive right to administer, on the ground that he was *mahant* in succession to S. B.—*Held*, that even if defendant had succeeded S. B. as *mahant* by virtue of his connection with another temple (which was not satisfactorily shown), there was evidence of a custom to support plaintiff's case, *viz.*, that the administration of the grant should be given to the disciples jointly. In cases of disputes as to the management of religious endowments, the general presumption is that the *mahant* alone is entitled to administer; but the decision as regards any particular institution must be guided by the custom pertaining to that institution. RAM SOOKH DASS *v.* PERMESHREE DASS. **76 P R 1867**

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CUSTOM X.—RELIGIOUS INSTITUTIONS—*contd.*

6. No Muhammadan or Hindu official can claim a prescriptive right to render certain services to any member of his faith. GHUNIA v. BOOTA. **94 P R 1867**

7. *Protection of sacred buildings.*

A, a Hindu, purchased a piece of land from B a Muhammadan, owner of the village, and built a temple and located a priest thereon. At Settlement the priest was recorded *mafidar* for life; and on his death the descendants of B took possession while the descendant of A claimed the proprietary rights. The Lower Courts found for the descendants of B. *Held*, in appeal, that the latter could not destroy the temple as long as there were worshippers at the shrine. ASA NUND v. RAJA SHUMSHER KHAN. **3 P R 1868 Rev.**

8. *Property—Inheritance.*

Property attached to a *khangah*, if not specially devoted to religious uses, may be subject to the ordinary laws of inheritance. HOSSEIN SHAH v. ZAHOOR SHAH. **67 P R 1868**

9. *Sujadanashin and Mutwalli.*

The offices of the two are distinct; the former is charged with the spiritual affairs of the endowment, and the latter is trustee of its temporal affairs. HOSSEIN SHAH v. ZAHOOR SHAH. **67 P R 1868**

10. *Wakf.*

No property should be considered *wakf* unless specially appropriated by the donor. HOSSEIN SHAH v. ZAHOOR SHAH. **67 P R 1868**

11. A grant of land, made by the proprietors to a person in consideration of his acting as *imam* of the village mosque, is of the nature of a grant to a village servant, and tenable only during the pleasure of the grantors. But if the grant be made jointly by the village proprietary body, and their shares are joint, the grant is resumable only as a whole and not piecemeal; and it cannot be resumed until proprietors representing the major part of the property of the village, desire to resume it. MAZOOLA v. BAHADUR KHAN. **70 P R 1868**

12. *Wakf.*

The consignment and delivery of consecrated real property to a *Mutwali* is not necessary to render a *wakf* legal; a bare declaration in words is sufficient, and no particular formality or ceremony is necessary to make the declaration binding and the appropriation complete; but there should be clear proof that such a declaration has really been made; and this should not be hastily presumed from casual remarks let fall by the alleged appropriator in the course of conversation unsupported by his acts and conduct. The only things capable of being appropriated by user alone are those mentioned in Chapters VII and VIII, Book IX of Baillie's Digest of Muhammadan law, *viz.*, mosques, caravanserais, cemeteries, inns, reservoirs, ways and aqueducts. Buildings susceptible of use for secular as well as religious purposes, such as *imambaras*, cannot be so appropriated. Once created, a *wakf* is irrevocable. THAKOOR DASS v. MUSSAMMAT HAJEE BEGUM. **100 P R 1868**

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CUSTOM X.—RELIGIOUS INSTITUTIONS—*contd.*

13. *Succession—Custom.*

The Punjab Civil Code (Section XXII, para 6) laid down the general rule, but did not obviate the necessity of an enquiry into the usage of a particular institution. The Chief Court directed an enquiry into the customary succession of a *dharmsala* and the neighbouring *dharmsalas* occupied by the same section of *faqirs*, where the contest was whether plaintiff was to succeed on the ground of discipleship, or the defendant on the ground of his election by the neighbouring *faqirs*. ADJODDIA DASS v. DEVI DASS. **73 P R 1869**

14. *Mutwalli—Tenure of office by, consistent with right of worshippers to restrain his acts—Power of, to determine what is for benefit of mosque.*

In a suit brought by the worshippers at a mosque to restrain the Mutwalli from encroaching upon the enclosure of the mosque —*Held*, that the plaintiff's remedy was not necessarily by obtaining the removal of the defendant from the office of Mutwalli; but it was consistent with the defendant's right to be Mutwalli and to continue in the trust, that the plaintiffs should have the right to restrain him by an order of Court from doing a particular act. *Held*, also, that the defendant's right to encroach upon the enclosure of the mosque depended either upon his power as Mutwalli to determine whether the encroachment was for the benefit of the mosque, independently of the opinion of the plaintiffs; or upon the question whether the defendant *bona fide* permitted the encroachment for the benefit of the mosque. *Found*, also, that the defendant had not as Mutwalli power to determine whether or not an encroachment of the sort was for the benefit of the mosque independently of the opinion of the worshippers. WULLEE OOLA v. KURREEM BUKHSH. **81 P R 1869**

15. *Sikh temple at Umritsar—Office of "Grunthee" or "Guddee Nasheen" not a descendible inheritance.—Special offerings intended for use of "Grunthee" are not joint family property.*

The plaintiffs and defendant were cousins, and grandsons of one Mukkun Singh, who was some time *Grunthee* of the Temple at Umritsar. During Mukkun Singh's lifetime the defendant had officiated as *Grunthee* or *Guddee Nusheen*, and continued to do so after his grandfather's death. Certain special offerings called *ardass* went to the *Grunthee*, and these offerings the defendant shared with the plaintiffs during their grandfather's lifetime, and for a time after his death. Disputes then arose, and the defendant refused any longer to share the *ardass* with the plaintiffs. *Held*, that in the absence of an agreement binding between the parties that the plaintiffs should receive a share of the *ardass*, they had no claim to any such share; that the office of *Guddee Nusheen* was not a descendible inheritance; that the *ardass* was not joint family property, but went separately to the *Guddee Nusheen*, though he was a member of a joint undivided Hindu family; and that only what was thrown into the joint family fund must be divided equally between the parties. NOWRUNG SINGH v. BHUGUT SINGH. **4 P R 1870**

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CUSTOM X.—RELIGIOUS INSTITUTIONS—*contd.*

16. *Power of Court to appoint imam—Act XX of 1863, section 22.*

Under Act XX of 1863, a Court can declare the right of a particular person to appoint the *imam* of a mosque, but cannot nominate the *imam* or declare a given nomination to be right. BUDDER DIN v. MULLIK ATTAR. **35 P R 1871**

17. *Right of member of parohit's family to a share in birt.*

Defendant, a *parohit*, received *birt* or fees from pilgrims who stopped at defendant's house. Plaintiff, on the ground of relationship, claimed from the defendant a share of these fees; the defendant resisted the claim with the plea that he obtained the fees by performing services, and the plaintiff without rendering any services was not merely as a relative entitled to a share in the fees. The Lower Courts held this plea a good answer to the action, and dismissed plaintiff's suit. *Held*, by the Chief Court remanding the case for a new trial, that such a suit as the plaintiff's might be maintainable if there were any relation of ancestral right or contract or customary proceeding between the parties, giving rise to a liability on the part of the *parohit* to allow his relative to share in the fees. RAM RUTTUN v. GORI. **38 P R 1872**

18. *Suit for profits of a shrine—Res Judicata—Effect of decision upon property in foreign territory—Jurisdiction of Small Cause Court.*

Sodi Utum Singh had four sons—*viz.*, Ranjit Singh (father of plaintiff) by his first wife, and the three defendants by his second wife. Plaintiff sued for Rs. 148-8-3, being a share of the profits of a share at Kiratpur in the Jullundur district, claimed by him on the ground that by custom the sons of the senior or first married wife were entitled to a tenth share in addition to what they would obtain on division. Plaintiff based his claim on a decision of the Political Agent, Ambala, (dated 14th December 1837), which then determined a dispute between the defendant and plaintiff's father relating to Utam Singh's estate, and which, the plaintiff now contended, judicially established the custom in his favour and made the matter *res judicata*. The Political Agent's

CUSTOM X.—RELIGIOUS INSTITUTIONS—*contd.*

order was—"to divide the estate in the "following way—*viz.*, that each of the four "brothers was to have an equal share, and "Sodi Ranjit Singh, (plaintiff's father,) the "eldest son, was to have a tenth share of "all the property, both movable and im-"moveable, in addition to his regular share." *Held*, that this decision only affected property situated in British territory, and did not therefore extend to the Kiratpur shrine, which at the time of the decision was in territory under the rule of Maharajah Ranjit Singh; and that the matter in suit was not consequently *res judicata*. *Held* also that the claim was not one of the nature cognizable by Small Cause Court. SODI BRIJ BULLAB SINGH *v.* SODI KARTAR SINGH. **41 P R 1872**

11. *Private or separate estate of members—Custom.*

Plaintiff, *mahant* of a religious institution, sued the defendant, a member or *suniassi*, in order to be recorded proprietor of certain land, as head of the institution, which land defendant alleged he had purchased from his own resources. *Held*, that the position of *suniassis* being in many cases such that they could not acquire private property, and all that they acquired went to the benefit of the institution, the proper points for inquiry were,—first, what was the custom of *suniassis* generally as to holding private property; secondly, what was the practice of this institution, and was that practice sufficiently in conformity with general custom to be enforceable. TOTA PURI *v.* PADAM PURI. **21 P R 1874**

20. *Succession of females.*

Plaintiff, a female, *found* to be entitled to succeed as *mahant* of a religious institution, having been nominated successor by the deceased *mahant*. MUSSAMMAT MUNNIA *v.* JIWAN DAS. **76 P R 1874**

21. *Nature of relationship—Office of parohit—Hereditary right of heir of deceased parohit to sue for fees paid to another parohit.*

A. and B. were members of a family of *parohits*. Under an arrangement between the ancestors of both, it was settled that A.'s ancestor C. should receive the fees paid by the *jujmans* during two months of each year. This arrangement was carried out during C.'s lifetime, and after his death his widow received the dues in his place. At her death certain *jujmans* erroneously thinking that B. was the heir of C. and that A had no pretensions to be such heir, paid their fees to B. during the said months. A., C.'s daughter's son, sued B. to recover the amounts so paid.

Held, by a Full Bench (BOULNOIS, LINDSAY and CAMPBELL, JJ). affirming the order proposed by PLOWDEN, J. and dissenting from that of FITZPATRICK, J. that the suit would lie.

CUSTOM X.—RELIGIOUS INSTITUTIONS—*contd.*

Per PLOWDEN, J.—The office of *parohit* was herditary as amongst his successors and descendants, and gave the heir the right to share the emoluments of the office; but the relation of *parohit* and *jujman* was voluntary, the latter being at liberty to pay his fees to the priest of his own choice, and the *parohit* being entitled to exercise his office in his individual capacity and retain the fees paid to him in that capacity as his own,—in what capacity a particular fee was received being a matter of evidence in each instance. A. as daughter's son of C. was the heir of C. and entitled to recover from B. the fees received by the latter during the appointed months.

Per FITZPATRICK, J.—At a time when the exclusive right of a *parohit* to minister to and receive fees from his *jujmans*, was recognized by the Courts, the claim of A. would have been maintainable, but as the office was now, as between *parohit* and *jujman*, voluntary, the question of hereditary right could not arise. A contract between the relations of a deceased *parohit* as to officiating at different seasons and their shares in the fees, might be enforced, and a fee paid to one *parohit* but intended for a whole collective body, might be recovered from the receiver of it. As A sued as heir of C, his suit should be dismissed. GOBIND *v.* SADDA. **7 P R 1877**

22. *Donation made to member of family of priests—Express exclusion of specified parohit from benefit of donation.*

Where a *jujman* in making a donation (birt) to a member of a family of priests intentionally and expressly excludes another member of the family from the benefit of the donation, *held*, that the latter is not entitled upon the mere ground of hereditary right to recover the whole or a part of the donation so made to the recipient. MATHRA *v.* KANHYA. **119 P R 1879**

23. *Jurisdiction of Civil Court—Suit for the right to a religious office—Custom—Kangra Bhojkis of Bhowan shrine—Right to officiate at temple.*

A suit by a family of priests for a decree prohibiting another branch of the family from conducting religious services in a shrine, *held*, to be cognizable by the Civil Courts.

Found that by the custom of the Bhojkis of the Bhowan shrine at Kangra, only Bhojkis by wives who are the daughters of Kangra Bhojkis are entitled to officiate at the temple, and not sons of Kangra Bhojkis by daughters of Jawala Mukhi or Naina Devi Bhojkis. BHAG MAL *v.* SANT. **21 P R 1880**

24. *Suit on mortgage bond—Omission by defendant to plead that the mortgaged property was* wakf—*Subsequent suit by defendant in former case to release from attachment the mortgaged property on the ground of its being* wakf.

CUSTOM X.—RELIGIOUS INSTITUTIONS—*contd.*

The plaintiff in the present case was sued as a defendant in a former suit based on two mortgage bonds, the prayer of the plaint being in the alternative either for payment of principal and interest or for possession of the mortgaged property. The then defendants pleaded that the money lent had been returned: the fact of the mortgage was not denied, but no plea was raised that it was inoperative as against the property on the ground that it was *wakf*. The present suit was for a declaration that the mortgaged property, which the plaintiff had attached in execution of the money decree obtained in the first suit, was *wakf*, and for its release from attachment.

Held, that the plaintiff might and ought to have pleaded in the former suit that the mortgage was inoperative to bind the property of which the plaintiff sought possession in the alternative that the plea would have been relevant and would, if decided in the defendant's favour, have been a complete answer to the prayer for possession, and that therefore the present suit was rightly dismissed as *res judicata*. BANNE SHAH *v.* KARM CHAND. **89 P R 1881**

25. *Alienation by manager of property attached to institution—Necessity.*

A *mahant*, who holds the position of manager of the property of a religious institution, has the power in that capacity to alienate such property, if it is necessary to resort to this means of raising money for the purposes of the institution.

In considering whether it was necessary to raise money for the purposes of the institution the income as well as the necessary expenses of the institution must be taken into account, and it should further be shown how much of the money was required for such purposes: the power to incur debts binding the institution must be measured by the necessity of incurring them. *Shahabal* v. *Ram Das* (No. 95 *P. R.* 1879 Civil) referred to. BISHEN DAS *v.* GHASITA. **39 P R 1882**

26. *Relative position of* mujawars *and* sajjada-nashin *of shrine—Liability of* mujawars *to dismissal at will of* sajjada-nashin—*Custom of Peshawar district—Suit for declaratory decree.*

A suit brought by certain *mujawars* of a shrine in the Peshawar district for a declaration that they were entitled to receive a third share of the offerings of the shrine whilst the defendant (who it appeared was the *sajjada-nashin*) was entitled to the other two-thirds, dismissed on the ground that it was fully established by the evidence in the case that *mujawars* generally in the shrines of the Peshawar District were servants liable to be dismissed by the *sajjada-nashin* at pleasure and that the plaintiffs had failed to prove that they, owing to the post having come down to them from three generations, or for any other cause, were on a more privileged footing; and that this being so,

they were not entitled in a suit for a declaratory decree, to require the Courts to define and ascertain their rights. MUHAMMAD TAHIR v. NAJIBULLA. **154 P R 1888**

27. *Succession to office of* mahant—*Custom of Institution—Onus of proof—Nomination or election—Will of deceased mahant.*

Plaintiff sued to dispossess defendant from a shrine and property which he held as *mahant* elected by the brotherhood, on the strength of a will executed by the last *mahant*, nominating him as his successor and alleged to have been confirmed (after registration) before the brotherhood.

Held that to succeed in his suit, plaintiff had to show that he had a better title than defendant, that is, that according to the rule of succession governing that particular shrine he, as nominee of the last *mahant*, had a right to oust defendant, and that as he had failed to prove this, his suit failed. GURDIT SINGH v. RANJIT SINGH. **87 P R 1889**

28. *Custom—Alienation—Nirmala Sadhs of Amritsar—Power of* chela *to alienate property inherited from* guru.

Found that by the custom of Nirmala Sadhs of Amritsar, a *chela* who succeeds to the estate of his Guru has no power to alienate any portion of that estate. RAM SINGH v. NIHAL SINGH. **136 P R 1889**

29. *Custom—Succession—Bairagis of Rawalpindi—Nomination—Election—*Chela.

J., the *mahant* of a Bairagi shrine at Rawalpind, executed a will whereby he nominated his own brother R., as his successor. It was found that the will was not executed in the presence, or with the consent, of the members of his religious brotherhood, and that R. had never been initiated as a *chela*. *Held* that by the custom applicable to the institution to which the deceased *mahant* belonged, a *mahant* may appoint his successor from among his *chelas* with the approval of an assembly of the religious brotherhood, and some of the respectable *Chowdhris* of the place, and if one has not been so appointed in the life-time of the said *mahant*, that he is elected by an assembly of the brotherhood on the death of his predecessor, and that defendant's nomination, not being of this character, failed and must be set aside. BABA RAM KAUR DAS v. GOPAL DAS. **175 P R 1889**

30. *Suit to recover possession of shrine—Civil Procedure Code,* 1882, *section* 539—*Right of* sewaks *or worshippers to remove a mahant for alleged misconduct—*Onus probandi.

In a suit by a person claiming as the lawful *mahant* of a shrine for recovery of possession thereof and of the lands attached thereto, defendant who had been elected *mahant* by the worshippers of the shrine pleaded *inter alia* that section 539, Civil Procedure Code, 1882 (Section 92 of the Code of 1908,)

barred the suit. *Held*, that section 539 had no application to such a suit, ; that section deals with two classes of cases—(*i*) where there is an alleged breach of any trust created for public, charitable or religious purposes, and (*ii*) where the direction of the Court is necessary for the administration of any such trust. On the facts of the case, *held*, that the defendant, on whom the *onus* lay, had failed to prove—(*i*) that by general or special custom the worshippers of a shrine were competent to remove a *mahant*, and to appoint his successor, and (*ii*) that the plaintiff had acquiesced in his removal. BAWA SUKHRAM DAS v. BURHAM PURI. **122 P R 1890**

31. *Nirmala Sadhs—*mahant*—Nomination of* chela *by, as his successor—Consent of* gurbhai.

Found that no custom was proved whereby among Nirmala Sadhs the nomination of a *chela* by a *mahant* as his successor was invalid as having been made without the consent of a *gurbhai*. BHAI CHET SINGH v. BHAI NIHAL SINGH. **87 P R 1891**

32. *Sadhs—Alienation—Power of father to alienate his life estate.*

Found, that no special custom applicable to the parties who were *sadhs* (Bairagis) was proved justifying a departure from the usual rule in the Punjab, that a proprietor with a restricted power of alienation can, even in the case of ancestral property, deal with such property so as to bind the heirs during his life-time. FATTEH SINGH v. HARI AND OTHERS. **112 P R 1891**

33. *Golden Temple, Amritsar—Succession of* gaddi-nashin,*—Custom as to—Survivorship.*

In determining the right of succession to the office of *gadai-nashin*, the only law to be observed is to be found in the custom and practice, which must be proved by evidence.

Hitherto the rule of succession in the case of the Darbar Sahib, or Golden Temple at Amritsar, has been that the *gaddi-nashins* have nominated successors, who have been installed in each case without objection.

Held, that no good grounds existed for applying the doctrine of survivorship to a case such as this, there being no analogy between three *gaddi-nashins*, who were to all intents and purposes separate and not joint, and the case of an undivided Hindu family among whom the doctrine of survivorship prevails.

Held, also, that it would not be just or equitable to reduce the customary number of *gaddinashins* from three to two, merely to benefit the plaintiff and to the detriment of the institution and its supporters. BHAI BHAGAT SINGH v. HARNAM SINGH. **49 P R 1892**

34. Dharmsala—*Right of worshipper at, to contest alienation of property attached to—Application of section* 539, *Civil Procedure Code.*

The plaintiffs were worshippers at a *dharmsala*, and interested in the maintenance of the institution and preservation of the property intact.

Held, that in this capacity they had a *locus standi* to challenge certain alienations of property alleged and found to be *waqf* and attached to the *dharmsala*, not as self-constituted representatives of the body of worshippers who should have obtained an order under section 30, Civil Procedure Code, butas persons themselves interested in the preservation of the property.

Held, further, that section 539, Civil Procedure Code, (Section 92 of the Code of 1908) has no application to a suit of this description. SEWA SINGH v. BUDH SINGH. **66 P R 1892**

35. *Right to sue—Habitual worshipper at mosque—Ejectment of trespasser.*

In a suit by one who was a habitual worshipper at a certain Muhammadan mosque, of which he was also a neighbour and a supporter or well-wisher, for the ejectment of the defendant from certain land alleged to be attached to the mosque and to have been unlawfully encroached upon, the Divisional Judge dismissed the plaintiff's suit, holding that he was not competent to maintain it.

Held, that the suit would lie. Every Muhammadan who has a right to use a mosque is competent to maintain a suit against any one who interferes with the exercise of his such right to use: and by the same analogy every Muhammadan has a right to maintain a suit against persons who commit an injury upon property which has been devoted to the support of a mosque. MUHAMMAD UMAR v. RAM CHAND. **87 P R 1892**

36. *Custom—Succession to office of* mahant—*Dharmsala Thakar Bhawal Singh, Amritsar—Nomination of successor—Approval of brotherhood.*

In a suit regarding the succession to the office of *mahant* of the *dharmsala* of Nirmala Sadhs, known as Thakar Bahawal Singh, situate outside the city of Amritsar, *held*, that by custom the rule of succession was that the *mahant* may nominate his successor, but that the nomination will not prevail unless the brotherhood formally approve the appointment.

If there be no nomination, then the brotherhood meet and formally appoint.

If the *mahant* misconducts himself the brotherhood have the power to dismiss him.

The brotherhood, strictly speaking, are those connected by spiritual ties with the founder of the institution, although it apparently may be held to include also the whole sect who are also related to each other by spiritual ties.

No. 37 *P. R.* 1891, referred to. ARBEL SINGH v. BAJ SINGH. **105 P R 1892**

37. *Muhammadan shrine, Dera Ismail Khan District—Succession to land and offerings—Alienation—Religious office.*

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CUSTOM X.—RELIGIOUS INSTITUTIONS—*contd.*

J. M., who died about a year before suit, was owner of half the land attached to the Shah Habibwala *khangah* in the Dera Ismail Khan District and was entitled to a half share in the management and offerings of the shrine; he settled this property on N. M., his sister's son, on condition that he (the grantor) should receive maintenance during his life-time.

The plaintiffs, members of the family and related to J. M. in the fourth degree (computed in accordance with the opinion expressed in No. 126 *P. R.* 1890) were entitled to a two-thirds share of the other moiety of the management and offerings, sued to set aside the above arrangement on the grounds (1) that the property was *waqf*; and (2) that J. M. was not competent to make the alienation.

Held, that by custom the plaintiffs were entitled to inherit the share in the management and offerings in preference to N. M., a sister's son, his place being after collaterals related in the fourth degree.

Held, also, that assuming that J. M. as proprietor could alienate only for necessity, there appeared to be satisfactory reasons for holding that the alienation of the land was justified by necessity. The land was simply heritable property unconnected with the shrine, save that hitherto both had belonged to the same people.

Held, also, that the shrine must be regarded as a religious institution of a sort. It could not be regarded as a *waqf*, it being nowhere laid down that a mausoleum raised to a saint is to be so treated. The succession to the superintendence and management of the shrine are to be determined by the rules and customs which have hitherto been applied to the particular institution, as in other like cases.

Held, further, that the transfer of a share in the shrine and the offerings was akin to the transfer of a religious office and was invalid. *I. L. R VI Mad.* 76, referred to and followed. NUR MUHAMMAD *v.* GHULAM HABIB.

106 P R 1892

38. *Management of religious institution. Founder's rights.*

There is no authority for the proposition that the management of a Hindu religious or charitable institution is on the footing of a joint tenancy and that the succession goes to the survivor. SAIN DAS *v.* MUSSAMMAT SAHIB DEVI. **140 P R 1892**

39. Mahant, *appointment or deposition of—Powers of* bhekh—*Jurisdiction of Civil Court—Chitta Akhara, Amritsar City.*

Questions of succession and appointment to, and dismissal from, the office of *mahant* must be governed by the evidence in each case.

In a case relating to the mahantship of the Chitta Akhara, Amritsar City, *found*, on the evidence, that the *bhekh*, or college of *mahants*, when composed of the *mahants* of the principal *akharas* at Amritsar, includ-

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CUSTOM X.—RELIGIOUS INSTITUTIONS—*contd.*

ing *mahants* nominated by the *guru* of the *mahant* who has to be dealt with, has full power to remove a *mahant* for misconduct, and that in the event of a vacancy in the mahantship, whether caused by the removal or otherwise of the *mahant*, a successor can be validly appointed only with the sanction of, or ratification by, the *bhekh*.

Held, that when a *mahant* has been appointed by the *bhekh*, a Civil Court should not interfere with the appointment except for very cogent reasons.

Quære: whether a Civil Court, after it has once held that a *bhekh* has power to depose a *mahant* for misconduct and has actually deposed him, can go into the question whether such *mahant's* conduct was or was not bad. GIYAN PARKASH *v.* HUZURA SINGH.

3 P R 1899

40. *Suit by plaintiff as* mutwali *of mosque—Dismissal of suit and death of plaintiff pending appeal—Application by persons named by plaintiff in plaint as* co-mutwalis *to be brought on record as legal representatives—Burden of proof.*

One I B. sued as *mutwali* of a certain mosque, and in his plaint named the present appellants as joint *mutwalis* with him, but at the time resident at Mecca. I. B., whose suit was dismissed in the District Court, appealed to the Chief Court but died pending the appeal, whereupon the appellants applied to be brought on the record as the legal representatives of the deceased. The Chief Court refused to allow this to be done until appellants had proved by a regular suit that they were joint *mutwalis* with deceased, the appeal of I. B. being meantime postponed. Appellants accordingly instituted the present suit, but their claim was dismissed. On appeal to the Chief Court it was contended that inasmuch as appellants had been named by I. B. as his co-trustees, there could be no objection to their obtaining a decree declaring them his legal representatives for the purpose of continuing the appeal originally preferred by him, without going into the question of how they may have become co-trustees.

Held that, in accordance with the previous order of the Chief Court, it was incumbent on appellants to prove their *status* as joint *mutwalis* with the deceased before their application to be brought on the record could be entertained.

Held, on the evidence, that appellants had failed to prove that they were the duly appointed joint *mutwalis* of the mosque in question, and that accordingly, whether defendants' title to retain possession of it was good or bad, appellants had no right to interfere in its management. ABDUL HAMID *v.* AHMAD HUSSAIN. **28 P R 1900**

41. *Jurisdiction of Civil Court to remove* kardar *or manager from the management of the endowed property*—Locus standi *of plaintiff—Act XX of* 1863, *sections* 14 *and* 18—*Regulation XIX of* 1810.

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CUSTOM X.—RELIGIOUS INSTITUTIONS—*contd.*

In a suit which was instituted after sanction of the District Judge under section 18 of Act XX of 1863 by some of the tenants of the land endowed on two temples in Kulu along with several others against the defendants, who was the *kardar* or manager, asking for a decree for the money value of the property belonging to the temples, which was alleged to have been misappropriated by the defendant, the first Court gave a decree for the major portion of their claim and directed his removal from the office of *kardari*. On appeal the Divisional Judge found that the defendant was not responsible for the loss for property, but upheld the order of his removal. The defendant preferred a further appeal to the Chief Court on the grounds—

(*i*) that the order of dismissal was without jurisdiction, as Act XX of 1866 was not applicable;
(*ii*) the plaintiffs had no *locus standi*;
(*iii*) no legal permission has been obtained; and
(*iv*) the order of dismissal was not justified

Held, that Bengal Regulation XIX of 1810, was extended to the Punjab by general rules and order which were given the force of law by the Indian Councils Act, and that Act XX of 1863 is applicable to this Province; that the endowment, the subject-matter of the present dispute, was one of the nature of those contemplated in that Act; that the suit had been rightly instituted after obtaining permission under section 18; and that the facts that the application asking permission made no mention of the Act, and that all the plaintiffs were not applicants for permission to sue did not constitute defects vitiating the order for the dismissal of defendant from managership.

Budder Din v. *Malik Attar* (35 *P. R.* 1871), and *Sukhram Das* v. *Sunder Mal* (75 *P. R.* 1884), referred to. GOKAL RAM *v.* KAHANI RAM AND OTHES. **95 P R 1900**

42. *Management of—Funds of the temple—Worshippers not entitled to call for accounts from the* mahant *unless there is proof of a custom or practice entitling them to do so—Civil Procedure Code,* 1882, *section* 539—*Sanction—Court cannot grant relief outside the sanction.*

Where the plaintiffs had applied for permission under section 539 of the Code of Civil Procedure to sue to have a committee appointed by a Civil Court for the management of a certain religious trust, and to obtain such other relief as they might be entitled to under the said section and the Collector had merely "accorded permission."

Held, that the suit must be limited to matters covered by the sanction and that the plaintiffs were not competent to sue for the removal of the defendant from the office of *mahant*, the Court having no authority to enlarge the scope of the suit and to grant any other reliefs other than those included in the terms of the sanction.

CUSTOM X.—RELIGIOUS INSTITUTIONS—*contd.*

Held also, that the *mahant* of a religious institution is presumed to be the manager of the institution over which he presides, and is not bound to submit accounts for the information or approval of the worshippers at the shrine unless it is proved by evidence that it is the custom and practice of the institution for him to do so. Civil Courts are not justified in forcing a scheme of management on a religious or charitable institution unless there is clear proof that there has been such mismanagement or misconduct as calls for judicial interference. PREM SINGH *v.* LABH SINGH AND OTHERS.

89 P R 1901

43. *Religious Institution—Alienation of immovable property belonging to a shrine—Power of* mahant*—Necessity—Burden of proof.*

Held, that the powers of a *mahant* of a religious institution in matters of alienations of the endowment property are analogous to those of a Hindu widow. He can only alienate for the necessary purposes of the institution, and it should be shown that such purposes could not be fulfilled by contracting debts, and that the ordinary income of the endowment was not available, and was insufficient for them, and that the debts could not be disharged from the income.

The lender advancing money to such a person on the security of trust property must show that he has made a proper enquiry as to the necessity, which will be tested by the principles enunciated above.

Prosunno Kumari Debya v. *Gulab Chand Baboo* (14 *B. L. R.* 450), and *Shahabal* v. *Ram Das* (95 *P. R.* 1879) cited. KASHI RAM *v.* BAWA TOLA. **3 P R 1902**

44. *Religious Institution—management of Religious Institution—Founder's right—Bungah Nur Mahlyanwala, attached to Golden Temple, Amritsar.*

Held, that the *bungahs* in the outer quadrangle of the tank of the Golden Temple, according to Hindu Law, were (where the nature of the property remains unchanged and its management at the discretion of the founder or his representatives) imperfect trusts and not religious institutions pure and simple and that the *bungahs* were not equal in status to *mahants*. KISHEN SINGH *v.* SARDARNI PARTAB KAUR. **81 P R 1902**

45. *Religious Institution—Liability of debts incurred by* mahant*—Duty of lender when advancing money to heads of religious institutions—Necessity.*

Held, that it is not sufficient for persons who lend money to heads of religious institutions and desire to charge the institution with liability to show that the purposes for which the loans are taken are necessary, but they must also show that they made inquiries and satisfied themselves that on the occasion on which they made the advance the loan was justified by the state of the institution's finances.

CUSTOM X.—RELIGIOUS INSTITUTIONS—*contd.*

Kashi Ram v. *Bawu Tola* (3 *P. R.* 1902), cited and followed. GURMUKH SINGH *v.* SUNDER SINGH. **45 P R 1903**

46. *Religious institution—Suit by person interested in endowed property for dispossession of an assignee of the last manager—Limitation—Limitation Act, 1877, Schedule II, article 120.*

In 1899 plaintiff brought a suit as a worshipper to contest an alienation made in 1889, by the last manager of the endowed property and asked for the dispossession of the assignee in favour of the endowment, *held*, that the limitation applicable to such suit was that prescribed by article 120 of the Second Schedule to the Limitation Act, and that time began to run for the purposes of limitation from the date of the alienation.

Narain Singh v. *Isher Singh* (8 *P. R.* 1899), *Behari Lal* v. *Muhammad Mutaki* (*I. L. R. XX All.* 482), and *Chukkun Lal* v. *Lolit Mohan Roy* (*I. L. R. XX Calc.* 906), referred to. ASA RAM *v.* PARAS RAM. **9 P R 1904**

47. *Religious Institution*—Mahant—*Right of supporters or worshippers to remove a* mahant *for immorality.*

In a suit by a person claiming as the lawfull *mahant* of a *dera* for recovery of possession thereof and of the lands attached thereto, where it appeared that the plaintiff enticed away a young widow from the village and had gone off with such property belonging to the *dera* as he was able to seize, and deserted the *dera* which had been entirely supported by the villagers, and in the arrangements for which they had always taken a predominant part, and had after the plaintiff's desertion installed another *mahant* in his place and to which appointment the *bhekh* had taken no exception, either as to the rejection of plaintiff or as to the appointment of the substitute in his place.

Held, that the plaintiff's conduct being unworthy of his office, the worshippers of the *dera* were fully justified in removing and competent to remove him and to appoint his successor.

Bawa Sukhram Das v. *Barhampuri* (122 *P. R.* 1890), and *Giyan Parkash* v. *Hazura Singh* (3 *P. R.* 1899), referred to. ASA RAM *v.* HARI SINGH. **53 P R 1904**

48. *Religious Institution—Endowment—Succession to endowed property—Right of a son or widow to succeed—Udasi Sahds.*

Held, that according to general principles regulating the devolution of endowed property belonging to a religious institution of *Udasi sahds*, where the last incumbent dies without leaving a spiritual disciple or *chela*, the endowment reverts to that order, and that a claim by a son or widow of the last incumbent to succeed to such property under the ordinary law of inheritance is not maintainable. HER DEVI *v.* CHARN DAS. **101 P R 1905**

CUSTOM X.—RELIGIOUS INSTITUTIONS—*concld.*

49. *Religious Institution—Succession to office of* mahant*—Right of a son to succeed—Udasi Sahds of Ludhiana District.*

Held that, by the custom prevailing among married (Bindi) Udasi Sahds of the Ludhiana District, the son of a deceased Bindi *mahant* of a religious institution has a right as such to succeed to the office and property appertaining to such institution.

Her Devi v. *Charan Das* (101 *P. R.* 1905) and *Ram Singh* v. *Nehal Singh* (136 *P. R.* 1889) referred to. DASAUNDHI RAM *v.* KHAZAN DAS. **112 P R 1906**

50. *Right of a head of a religious institution to succeed to occupancy rights in his representative capacity—Punjab Tenancy Act, 1887, section 59.*

Held, that where occupancy rights belong to a religious institution the *chela* of the last incumbent who has become *mahant* of the institution is entitled to succeed to them in his representative capacity as head of such institution. SHER SINGH *v.* SAYA RAM DAS. **2 P R 1907 Rev.**

51. *Religious institution*—Mahant—*Suit relating to appointment and removal of—Right to sue without obtaining sanction—Civil Procedure Code, 1882, section 539.*

Held, that a suit for the removal of the incumbent *mahant* of a *dharmsala* who has misbehaved as *mahant* and misused the funds of the institution and for the appointment of the plaintiff in his place falls within the scope of section 539 of the Code of Civil Procedure (section 92 of new Code) and is not maintainable without obtaining previous sanction of the Collector to the institution of such suit. DALIP SINGH *v.* SHAR SINGH. **78 P R 1907**

52. *Religious Institution—Removal of a duly constituted manager—Discretionary power of a temple committee to remove the existing manager and to appoint his successor—Procedure—Religious Endowments Act, 1863, sections 14, 18—Civil Procedure Code, 1882, section 539.*

Held, that a duly constituted manager of a religious institution cannot be removed from his office otherwise than by a civil suit instituted with a previous sanction obtained under either sections 14 and 18 of Act XX of 1863 or section 539 (new section 92) of the Civil Procedure Code.

It is not open to a self-constituted temple committee in the event of dispute with the manager either to suspend or remove him from office or to appoint another in his place.

Application to the Punjab or Bengal Regulation. XIX of 1810. BANSI DHAR *v.* CHHANGA RAM. **7 P R 1903**

53. *Mortgage of property attached to religious institution—Suit by* mahant *to set aside various mortgages made by his predecessor in office to several persons—*

CUSTOM X.—RELIGIOUS INSTITUTIONS—*concld.*

Limitation for such suit—Starting point of Limitation—Limitation Act, 1877, *Schedule II, articles* 134, 144—*Misjoinder of causes of action and parties—Civil Procedure Code*, 1882, *sections* 28, 45.

Held by the Full Bench (1) that the limitation applicable to a suit by a *mahant* to set aside a mortgage of *waqf* property attached to a religious institution by his predecessor in office on the ground that the alienor had no power to alienate such property is that prescribed by article 144 of the Second Schedule to the Limitation Act and not that prescribed by article 134, and that it begins to run from the date of the plaintiff's appointment as *mahant, i. e.*, the date on which he becomes entitled to possession by virtue of his appointment.

(2) That a suit for possession of land and also for a sum of money realized by the defendants as rent from persons to whom the said land had been leased, is not bad for misjoinder of causes of action. BASHESHAR LAL *v.* NATHA SINGH. **30 P R 1908 F B**

Note.—But see 127 *P. R.* 1908 F. B. and altered Article 134 in the Indian Limitation Act, 1908.

54. *Sale by* mahant *of immovable property belonging to his shrine—Suit by his successor to recover property—Limitation for such suit—Starting point of limitation—Limitation Act*, 1877, *Schedule II, Article* 134.

Held by the Full Bench that where immovable property conveyed in trust to a *mahant* of a religious institution for the time being for the benefit of the institution is sold by him for value, a suit by his successor in office to recover the property so alienated is governed by article 134 of the Indian Limitation Act, and is barred if the purchaser has been in possession of such property for more than twelve years from the date of his purchase. HAR GIAN DEO *v.* BALDEO DAS. **127 P R 1908 F. B.**

55. *Custom—Religious institutions—*Darbar Sahib, *Amritsar—Adopted son—Succession to* rozina *dues—Hindu Law not applicable*

Held, that an adopted son does not come under clause (*b*) of the *Dastur-ul-aml* of *Darbar Sahib*, Amritsar, and therefore cannot succeed to the *rozina* dues of the said institution; the matter is not one to be decided under Hindu law but under the custom and practice of the institution. HIRA SINGH *v.* GUR BAKHSH SINGH. **94 P R 1909**

CUSTOM XI—SERVANT'S' WAGES.

1. *Custom—Reasonable or unreasonable custom—Gold lace weavers of Amritsar.*

A custom of the gold lace weavers of Amritsar, whereby the employer of a workman becomes liable to the previous employer of such workman for any balance due to the

CUSTOM XI.—SERVANTS' WAGES—*concld.*

former for wages received in advance by the latter, *held* to be unreasonable as opposed to equity, justice and good conscience. ARURI *v.* KALLU. **49 P R 1897**

CUSTOM XII—VILLAGE MENIALS.

1. *Custom—Village menials—Sale of their houses by, without consent of proprietors.*

Found that in the village of Haria in the Bhera *tahsil*, Shahpur District, no custom was established permitting menials to sell their house without the consent of the proprietary body. MIRZA *v.* SAMDILI. **99 P R 1892**

2. *Custom—Right of village menials to build a mosque over the site occupied by them without consent of the proprietors*—Mauza *Bakipur, Amritsar District.*

Held, that as a *kamin* generally gets land from the proprietary body on the implied understanding that it is only to be used for purposes of residence and for plying his trade, he is not competent to build a mosque or temple on it without the consent of the proprietors. KALU AND OTHERS *v.* WASAWA SINGH AND OTHERS. **19 P R 1904**

CUSTOM XIII—WELLS.

See IRRIGATION.

1. *Co-sharers—Suit for share in the wheel of well on payment of share of expenses.*

In a suit by some of the co-sharers in a well in *mauza* Taju Chak, *tahsil* Tarn Taran, for a one-fourth share of a wheel added by the other co-sharers at their own cost, *held*, that the plaintiffs were entitled to succeed in their suit by virtue of a custom under which where a sharer constructs an additional wheel in a well at his own expense, the other sharers are entitled to come in and share its use on payment of their proportion of the cost. NATHA SINGH *v.* GURDIT SINGH. **9 P R 1887**

2. *Irrigation—Sinking wells by persons other than owners of land*—Mauza *Bhukkar—Tahsil and District Shahpur—Claim by owners of the fabric of a well to share in its water.*

The plaintiffs in this case claimed a right to irrigate their lands from a certain well on the ground that they were assignees of certain sharers in the fabric of the well. Defendants denied their right to do so.

Held, that by the custom prevailing at *mauza* Bhukkur in the Shahpur District and the neighbourhood generally, persons other than the owners of the land irrigable by a well may contribute to the cost of sinking a well as a speculation, on the understanding that they can let their share of the water to others who require it for lands irrigable by the well. TAHIR *v.* GHULAM **168 P R 1889**

1. *Share in well for irrigating agricultural land—Land suit—Course of appeal.*

CUSTOM XIII.—WELLS—*concld.*

A suit for a share in a well sunk for the purpose of irrigating agricultural land is a "land suit" and the course of appeal is to the Divisional Court. The land on which the well is sunk is used "for purposes subservient to agriculture" and the well itself is a "structure on such land" within the definition of "land" in section 4 subsection (1), Punjab Tenancy Act, 1887. IMAM DIN *v.* MOHKU. **62 P R 1891**

CUSTOM XIV—WAJIB-UL-ARZ.

See CUSTOM, III.—APPOINTMENT OF HEIR—C. ADOPTION OF DAUGHTER'S SON. **120 P R 1881**

See LAMBARDARS. **13 P R 1881 Rev.** **2 P R 1882 Rev.** **4 P R 1883 Rev.**

See OCCUPANCY RIGHTS. **100 P R 1881**

See PARTITION. **9 P R 1885 Rev.**

See PRE-EMPTION. **49 P R 1881** **14 P R 1882** **114 P R 1884** **58 P R 1885** **69 P R 1885** **103 P R 1885**

—*Suit for cancellation of condition in, providing for partition by mutual consent of proprietors or by order of competent authority* (*ba hukm sirkar*).

See RIGHT TO SUE. **100 P R 1884**

—Agreements in, between landlord and tenant.

See TENANCY ACT (XXVII OF 1868), SECTION 2. **42, 43 and 108 P R 1881** **1, 22, 32, 116 and 183 P R 1882** **50, 90 and 121 P R 1883** **8, 21 and 161 P R 1884** **104 P R 1885** **9 P R 1886**

—*Construction of* wajib-ul-arz.

See CONSTRUCTION OF DOCUMENTS. **125 P R 1889**

See CUSTOM II—ALIENATION BY MALE PROPRIETOR—GIFTS AND WILLS IN FAVOUR OF DAUGHTERS AND THEIR CHILDREN (proved). **133 P R 1890**

See IRRIGATION. **66 P R 1837**

See PARTITION. **11 P R 1896 Rev.**

See PRE-EMPTION — CONSTRUCTION OF *wajib-ul-arz, passim.*

See PUNJAB TENANCY ACT, 1868, SECTION 2. **3 P R 1888 Rev.** **3 P R 1889 Rev.**

See PUNJAB TENANCY ACT, 1868, SECTION 36. **196 P R 1889**

See WATER-COURSE. **37 P R 1899**

1. The decision of the Chief Court (No. 160 *P. R.* 1890), that in a case where the *Wajib-ul-arz* of the old Settlement provided for the succession of collaterals to an occupancy tenant, while that of the new

CUSTOM XIV.—WAJIB-UL-ARZ —*contd.*

settlement contained no similar provision but merely declared that occupancy tenants would be dealt with according to law, and that a suit brought after the new *Wajib-ul-arz* had come into force must be decided in accordance therewith, and not under the old *Wajib-ul-arz*, overruled upon application for review of judgment. HARJALU *v.* WAZIRA **87 P R 1891**

2. The parts of a *Wajib-ul-arz* referring to custom are not provisions intended to be in force for a limited period only,—they are statements that a certain custom exists. The statement may or may not be correct, but if it is correct, there would be a natural presumption that the custom continued to exist, and it would be for those alleging that a change had subsequently taken place to prove the allegation.

The production of a later Record of Rights containing entries opposed to the earlier one would no doubt be some proof of such a change, but there would then merely be a balance of evidence on either side: it could not be said that the second Record destroyed or abrogated the earlier one.

No. 107 *P. R.* 1887, referred to. RAHIMAN AND SOHNA *v.* BALA. **8 P R 1892**

3. An agreement recorded in the *Wajib-ul-arz* between the proprietors of a village as to the persons to whom the right of pre-emption would belong in future cannot prevail against the provisions of section 12, Punjab Laws Act, 1872, as amended, which give a detail of the persons to whom the right to pre-empt property in a village belongs in the absence of a custom to the contrary. Such agreements are not saved by the section, and the law must therefore prevail against them. JAFAR KHAN *v.* FAZAL MOHI-UD-DIN. **44 P R 1892**

4. Entries in *Wajib-ul-arz* that a landowner desirous to alienate his holding first should make an offer to certain specified persons are not agreements but are sufficient evidence to prove a custom. DILSUKH RAM *v.* NATHA SINGH. **98 P R 1894 F B**

5. Entries in Settlement Records relating to questions of rent are ordinarily only binding during the currency of the settlement in which they were made, and cannot be held to constitute an agreement which debar, the landlords in such cases from enhancing their tenant's rent for all time. MAMRAJ *v.* MUSSAMMAT SARAYAN. **5 P R 1895 Rev.**

6. Entry in a *Wajib-ul-arz* when relating to custom should not be understood as one in force for a limited period only, and such entry must be deemed sufficient proof of the custom stated therein in the absence of evidence to the contrary and throws on the party denying its validity the *onus* of proving that it was wrong.

The fact that the provisions of a former *Wajib-ul-arz* were not repeated in the present

CUSTOM XIV.—WAJIB-UL-ARZ —*concld.*

Wajib-ul-arz are not sufficient to rebut the presumption in favour of the correctness of the previous entry as a record of custom. MASTA *v.* POHLO. **52 P R 1896**

7. An entry in the *Wajib-ul-arz* to the effect that an occupancy tenant has the power of sale does not enable the widow of a deceased tenant to mortgage her right of occupany. SURAB *v.* CHIRAGH. **3 P R 1897 Rev.**

8. Where a *Wajib-ul-arz* gives a right of pre-emption to collaterals, it follows, either as a necessary inference from such provision or on general grounds, that those who are more nearly related would, as in cases of succession, exclude the more remote. NARAIN SINGH *v.* HARI SINGH. **28 P R 1899**

9. *Application of, to an owner who is not specifically mentioned therein.*

Held, that the *Wajib-ul-arz* of a village should be presumed to apply to all landowners in the village as a body unless they are specifically exempted. SAYAD RAHIM SHAH *v.* SAYAD HUSSAIN SHAH. **102 P R 1901**

10. An entry in a *Wajib-ul-arz* should not be considered as conclusive evidence of a custom, specially where the custom set up is one opposed to the principle founded on universal law and justice. GHULAM MOHAY-UD-DIN *v.* FAIZ BAKHSH. **97 P R 1902**

See ALLUVION AND DILUVION. **15 R P 1904**

11. *Effect of aentry in, especially when inconsistent with that of the subsequent* Wajib-ul-arz.

See PRE-EMPTION. **78 P R 1904**

12. *Value of* chakwar Wajib-ul-arz—*Conflict between earlier and later* Wajib-ul-arz.

See PRE-EMPTION. **44 P R 1907**

D.

DAKHIL KHARIJ.

1. Appeal from order passed in mutation proceedings.

See APPEAL, VII **Revenue.** **6 P R 1881 Rev** **6 P R 1883 Rev**

2. Defendant who had obtained *dakhil kharij* of his deceased brother's estate denying that he represented such estate.

See ESTOPPEL. **104 P R 1882**

3. Ordering *dakhil kharij* does not constitute the matter *res judicata*. HEERA SINGH *v.* JAGEER BEG. **3 P R 1868**

4. It is an administrative act only—a record of an accomplished fact; its performance or omission neitner creates nor destroys a right. PATHAN *v.* SHEIKH AHMED **34 P R 1872.**

DAKHIL KHARIJ—*concld.*

5. Mutation proceedings have no judicial character. The process is a mere declaration of fact. It is the entry in a register of the name of the proprietor of the land, and the object of the proceeding is to keep the revenue registers up to date in order that the Collector may know whom to look to as responsible for the payment of revenue. The person to enter in the register is the person in possession—the *de facto* proprietor. SIRDAR NURAN KHAN *v.* NAWAB IMAM BAKSH KHAN. **6 P R 1883 Rev.**

DAMAGE—SPECIAL.

. *Erection of* kotha *on* gora-deh *by non-proprietary resident with the permission of a proprietor in possession—Absence of special damage.*

See COMMON LAND. **33 P R 1901**

2. *Easement—Obstruction to private right of way—Necessity of special damage.*

See EASEMENT. **64 P R 1901**

3. *Public thoroughfare—Suit to remove obstruction—Special damage.*

See EASEMENT. **39 P R 1888**
See JURISDICTION OF CIVIL COURT **73 P R 1877**

4. *Actual pecuniary.*

See JURISDICTION OF SMALL CAUSE COURT. **143 P R 1884** **11 P R 1886**

DAMAGES.

1. *Breach of marriage contract—Injured feelings—What damages for presents are recoverable.*

See BETROTHAL. **22 P R 1869**

2. *For procuring breach of betrothal.*

See BETROTHAL. **83 P R 1870**

3. *For breach of betrothal.*

See BETROTHAL. **174 P R 1882** **197 P R 1882**

4. *Suit for damages for breach of betrothal contract—Defendant justifying his refusal to carry out the contract by custom—*Onus probandi.

See BETROTHAL. **132 P R 1888**

5. *Suit for damages for breach of betrothal contract—Recovery of money paid under the agreement.*

See BETROTHAL. **141 P R 1890**

6. *House in Cantonments—Liability of landlord to repair—Damages for injuries caused from non-repair.*

See CANTONMENTS. **38 P R 1877**

7. *Carrier of passengers—Damages for in convenience.*

See CARRIERS No. 10 **77 P R 1867**

8. *Suit for damages for wrongful seizure of cattle.*

See CATTLE TRESPASS ACT 1871, SECTION 20. **92 P R 1877**

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DAMAGES—*contd.*

9. *Suit for damages for wrongful act—Previous suit for injunction restraining same wrongful act.*

See Cause of Action—I. Distinct Causes of Action. **190 P R 1888**

10. *Unascertained—Set off.*

See Civil Procedure Code, 1908, O. VIII, R. 6. **47 P R 1885**

11. *Suit for damages for malicious prosecution.*

See Civil Procedure Code, 1908, O. XXII, R. 4. **4 P R 1897**

See Jurisdiction of Small Cause Court. **86 P R 1874**
11 P R 1886

12. *Application for attachment before judgment—Suit by former defendant for compensation on ground that such application was made maliciously and without reasonable cause—Burden of proof.*

See Civil Procedure Code, 1908, O. XXXVIII, R. 5. **86 P R 1895**

13. *Injunction when to be granted—Discretion of Court—Damages.*

See Common Land. **91 P R 1901**

14. *Suit for damages for money paid for expenses of marriage afterwards found to be a nullity.*

See Contracts. **107 P R 1879**

15. *Measure of damages for not accepting goods sold.*

See Contracts. **51 P R 1866**

16. *Measure of damages of goods delivered to a carrier at one place to be conveyed to another and lost en-route.*

See Contracts. **10 P R 1866 Civ. Ref.**

17. *Measure of damages in cases of guarantee.*

See Contracts. **106 P R 1866**

18. *Measure of damages for breach of contract of sale of corn.*

See Contracts. **15 P R 1867**

19. *Measure of damages for refusing to enter into a partnership according to agreement.*

See Contracts. **68 P R 1867**

20. *Measure of damages for breach of contract for supply of sleepers at a given rate.*

See Contracts. **103 P R 1867**
59 P R 1868

21. *Suit for compensation for non-fulfilment of contract which was voidable by reason of the misrepresentation of the defendant but was not rescinded.*

See Contracts. **60 P R 1882**

22. *Betrothal—Barter of one girl in marriage for another—Breach of promise of marriage—Void agreement—Public policy—Measure of damages.*

See Contract Act, 1872, section 23. **50 P R 1903**

23. *Breach of contract to transfer business—Measure of damages.*

See Contract Act, section 73. **20 P R 1889**

24. *Bond payable by instalments—Interest payable on default from date of bond—Penalty—Compensation for breach of contract.*

See Contract Act, 1872, section 73. **99 P R 1894**
36 P R 1894

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DAMAGES—*contd.*

25. *Compensation for breach of contract—Sum named to be paid in case of breach.*

See Contract Act, section 74. **106 P R 1887**

26. *Penal contract—Reasonable compensation.*

See Contract Act, 1872, section 74. **3 P R 1875**

27. *Penalty—Liquidated damages.*

See Contract Act, 1872, section 74. **25 P R 1879**
51 P R 1879

28. *Suit for damages for defamation arising out of evidence given in a criminal trial.*

See Defamation. **25 P R 1867**
48 P R 1868
146 P R 1879

29. *Remoteness of—Measure of damages.*

See Defamation. **140 P R 1882**

30. *Defendants closing old and opening out new right of way over their fields—Actual damage—Allegation by plaintiff of probable prospective damage.*

See Easement. **22 P R 1888**

31. *Easement—Light and air—Obstruction—Injunction or damages.*

See Easement. **2 P R 1893**

32. *Suit for damages for false and malicious report to the police authorities.*

See False Information. **19 P R 1879**

33. *Redemption—Interest—Damages by way of compensation for breach of contract—Charge on property mortgaged.*

See Interest. **8 P R 1890**

34. *Mortgage—Absence of covenant to pay interest after due date—Allowance of by way of damages—charge.*

See Interest. **73 P R 1892**

35. *Suit for damages or the money value of the share of the produce which plaintiff, muafidar, was entitled to receive from the defendant.*

See Jurisdiction of Civil or Revenue Courts. **52 P R 1890**

36. *Suit for damages for wrongful seizure of produce.*

See Jurisdiction of Civil or Revenue Courts. **80 P R 1891**

37. *Purchaser of growing crop undertaking to clear land of it by stipulated time—Suit by owner of land for damages and value of crop.*

See Jurisdiction of Civil or Revenue Courts. **14 P R 1894**

38. *Suit for compensation for forcibly cutting and carrying away reeds.*

See Jurisdiction of Civil or Revenue Courts. **119 P R 1894**
Small Cause Court Act, 1887, schedule II, article 11. **94 P R 1900**

39. *Suit for damages for breach of contract.*

See Jurisdiction of Small Cause Court. **2 P R 1866**
35 P R 1875
8 P R 1866

40. *Suit for damages for an assault.*

See Jurisdiction of Small Cause Court. **53 P R 1868**

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DAMAGES—*contd.*

41. *Suit for damages by purchaser of land tortiously prevented from cultivating it.*

See Jurisdiction of Small Cause Court. **29 P R 1870**

42. *Suit for compensation for land taken up by Government.*

See Jurisdiction of Small Cause Court. **59 P R 1881**

43. *Suit to recover value of movable property attached and sold in execution.*

See Jurisdiction of Small Cause Court. **97 P R 1883**

44. *Suit for damages for stoppage of a watercut.*

See Jurisdiction of Small Cause Court. **8 P R 1885**

45. *Suit for damages on account of defamation.*

See Jurisdiction of Small Cause Court. **143 P R 1884**

46. *Suit by one lambardar against another for dues alleged to have been wrongly collected and retained by the defendant—Damages.*

See Jurisdiction of Small Cause Court. **2 P R 1887**

47. *Suit for damages for breach of betrothal contract—Damages for injured affections as well as for actual expenditure.*

See Jurisdiction of Small Cause Court. **43 P R 1887**

48. *Suit for, after avoiding sale on the ground of fraud—Jurisdiction of Small Cause Court.*

See Jurisdiction of Small Cause Court. **49 P R 1904**

49. *Suit by tenant against landlord for repairs of premises tenanted.*

See Landlord and Tenant. **14 P R 1868**

50. *Implied warranty of premises being safe and habitable—Damages—Remoteness.*

See Landlord and Tenant. **33 P R 1875**

51. *Monthly tenant wrongfully holding over—Damages.*

See Landlord and Tenant. **33 P R 1898**

52. *Landlord and tenant—Notice to quit or to pay higher rate of rent—Tenant holding over after tenancy—Landlord's right to demand enhanced rent—Tenants obligation to observe fresh terms—Damages for use and occupation.*

See Landlord and Tenant. **5 P R 1904**

53. *Liquidated damages and penalty.*

See Liquidated Damages and Penalty. **26 P R 1871**
69 P R 1873

54. *Suit for—in respect of an act done by a public body—Period of Limitation.*

See Limitation Act, 1877, section 24. **72 P R 1909**

DAMAGES—*contd.*

55. *For malicious prosecution.*
See MALICIOUS PROSECUTION.
4 P R 1868
11 P R 1886
40 P R 1884
4 P R 1887
30 P R 1889
112 P R 1901
60 P R 1902

56. *Infringement of patent—Measure of damages.*
See PATENT. **115 P R 1889**

57. *Liability of pretended agent—"Loss or damage"—Compensation how to be estimated.*
See PRINCIPAL AND AGENT.
160 P R 1882

58. *Liability of Railway Company for.*
See RAILWAY COMPANY.
127 P R 1882
92 P R 1883

59. *Suit for damage sustained in consequence of defendant's neglect to drain his garden.*
See RIGHT TO SUE. **30 P R 1883**

60. *Plaintiff failing in suit for land because defendant had made over title-deed to the original donors—Measure of damages.*
See RIGHT TO SUE. **116 P R 1883**

61. *Husband's right to maintain a suit in his own name for slanderous imputations against his wife—Special damage.*
See RIGHT TO SUE. **27 P R 1887**

62. *Suit for damages caused by a Civil action.*
See RIGHT TO SUE. **162 P R 1889**

63. *Competency of minor to sue for damages for breach of his betrothal contract made by his father.*
See RIGHT. **3 P R 1909**

64. *Suit for, for breach of betrothal contract.*
See RIGHT. **82 P R 1909**

65. *Damages for defamation of character—Actual pecuniary damage.*
See SMALL CAUSE COURT ACT, 1865, SECTION 6. **98 P R 1888**

66. *"Damages" as used in section 6 of Act XI of 1865.*
See SMALL CAUSE COURT ACT, 1865, SECTION 6. **100 P R 1888**

67. *Suit for damages for non-delivery of goods by Government Railway Company.*
See SMALL CAUSE COURT ACT, 1887, SECTION 15. **97 P R 1894**

68. *Suit for damages for trespass and diversion of watercourse.*
See SMALL CAUSE COURT ACT, 1887, SECTION 15. **71 P R 1896**

69. *Suit for damages for wrongful ouster, based on lease—Question of plaintiff's title as lessee involved.*
See SMALL CAUSE COURT ACT, 1887, ARTICLE 11. **80 P R 1896**

70. *Act IX of 1872, section 74—Bond providing for higher rate of interest in default of payment within a certain time—"Sum named" in case of breach—Power to award reasonable compensation not exceeding the amount so named*

DAMAGES—*contd.*

Held, by the Full Bench, that a provision in a promissory note for the payment of a higher rate of interest in default of payment of the principal debt and a lesser rate of interest within a certain time, may be regarded as a provision for the payment of a "sum named" in case of breach, within the meaning of section 74 of the Contract Act, in accordance with which the Court is not bound to award more than reasonable compensation not exceeding the amount so named.

It is otherwise where the higher rate of interest becomes payable not on breach, but in pursuance of the contract. *Tek Chand* v. *Morice* (No. 5 *P. R.* 1877), *Honda Mal* v. *Muhammad Baksh* (No. 25 *P. R.* 1879) and *Barma Mal* v. *Gokal Chand* (No. 51 *P. R.* 1879), cited. ABDULLA *v.* MUSSAMMAT KULVANTI. **150 P R 1883**

71. *Act IX of 1872, section 74—Compensation for breach of contract—Interest—Penalty—Reasonable compensation.*

Plaintiff sued on a bond executed by defendant in his favour for Rs. 500, the condition in which was that the money should be paid in full by a specified date, or in default the obligor agreed to pay a sum of Rs. 300, by way of interest, in addition to the principal sum of Rs. 500.

Held, that the case fell within the provisions of section 74 of the Contract Act, and the Courts had full power to award "reasonable compensation" only to the plaintiff for the defendant's failure to pay the Rs. 500 on the date fixed by the bond. *Bhora Mal* v. *Devi Din* (No. 40 *P R.* 1882) distinguished. *Abdulla* v. *Mussammat Kulvanti* (No. 150 *P. R.* 1883, F. B.) followed. ILAHI BAKHSH *v.* KHIWANI. **55 P R 1885**

72. *Compensation—Death caused by actionable wrong—Compensation to family of deceased—Competency of son to maintain action against the wrong-doer—Act XIII of 1855—Measure of damages.*

Held, that an action for compensation for loss occasioned by the death of a person caused by actionable wrong can be sustained under Act XIII of 1855 by a representative of the deceased for the benefit of the deceased's wife, parent and children against the persons guilty of the wrongful act.

Held, also, that even in cases where the estate of the deceased survived for the benefit of his family, the relatives are entitled to compensation in respect of their reasonable expectations of the value of the deceased's services which are lost to them.

The Secretary of State v. *Muhammad* (85 *P. R.* 1894) and *Queen-Empress* v. *Saif Ali* (17 *P. R.* 1898, F. B.), referred to. MAHI *v.* AMBO. **56 P R 1905**

73. *Husband and wife—Suit by husband for dissolution of marriage—Death of respondent—Abatement of suit.*

Held, that a suit by a husband for dissolution of marriage abates on the death of the respondent pending the suit, and that such

DAMAGES—*concld.*

abatement entails the abatement of a claim for damages against the co-respondent. S. *v.* S. & B. **60 P R 1906**

74. A suit for damages for malicious prosecution will lie against a Municipal Committee. AMAR NATH *v.* MUNICIPAL COMMITTEE, KARTARPUR. **86 P R 1906**

75. Upon a wrongful renunciation of contract by tenant before time, the measure of damages is the loss of rent suffered by the landlord from the non-performance of the contract at the appointed time after deducting such sum as he might by reasonable efforts recover from another tenant. LACHMI NARAIN *v.* VERNON.
137 P R 1906

76. *Damages for breach of contract—Mesaure of—Indian Contract Act, IX of 1872, section 74.*

Held, that in cases in which *ex-necessitate rei* it is impossible to fix the exact amount of damages actually resulting from a breach of contract, Courts of equity do not interfere with the contract of the parties who, in anticipation of the breach, have stipulated that a fixed sum should be regarded as the measure of compensation to be paid by the person violating the contract. In such cases the Courts will not exercise the power conferred by section 74 of the Indian Contract Act of reducing the contract damages. MIR HAZAR KHAN *v.* SAWAN ALI. **81 P R 1910**

DAMS, SUIT FOR REMOVAL OF.

Suit for removal of dams—Value of subject matter.
See JURISDICTION. **163 P R 1888**

DAUGHTER.

1. *Appointment of, as heir.*
See CUSTOM—APPOINTMENT OF HEIR—B.—APPOINTMENT OF DAUGHTER.
8 P R 1888
71 P R 1895

2. *Gift to.*
See CUSTOM—I. A. ALIENATION—(1) (*e*) GIFTS TO DAUGHTERS, &c.
67 P R 1882
177 P R 1883
147 P R 1883
17 P R 1904
67 P R 1904
28 P R 1905
93 P R 1905
14 P R 1906
88 P R 1907
58 P R 1908
67 P R 1908
31 P R 1910
58 P R 1910
13 P R 1911
23 P R 1911

DAUGHTER—*concld.*

3. *Reversion of estate, gifted to.*
See CUSTOM—VIII. MAINTENANCE AND SUCCESSION—K. SUCCESSION OF DAUGHTER. **9 P R 1885**

4. *Will in favour of—*
See CUSTOM—I. A. ALIENATION BY MALE PROPRIETOR—1 *(e)* GIFTS AND WILLS IN FAVOUR OF DAUGHTERS, &c.—(*i*) PROVED. **122 P R 1884**
93 P R 1885
93 P R 1905
62 P R 1906
15 P R 1907
11 P R 1908
70 P R 1908
25 P R 1910

(*ii*) NOT PROVED. **28 P R 1905**

5. *Alienation by—*
See CUSTOM—I. (c).—ALIENATION BY DAUGHTER. **17 P R 1885**
18 P R 1906
61 P R 1906
1 P R 1907
121 P R 1908
135 P R 1908

6. *Succession of—*
See CUSTOM—VIII. MAINTENANCE AND SUCCESSION—K. SUCCESSION OF DAUGHTER—*Passim.*

7. *Exclusion of—*
See CUSTOM—VIII. MAINTENANCE AND SUCCESSION—(M) EXCLUSION OF DAUGHTER—*Passim.*

8. *Marriage of, by mother without father's consent—Disqualification of father by reason of leprosy—Delegation of authority.*
See HINDU LAW, MARRIAGE. **64 P R 1884**

DAUGHTER-IN-LAW.

1. *Right of reversioner to contest alienation by a sonless proprietor in presence of daughter-in-law.*
See CUSTOM—ALIENATION. **29 P R 1903**

2. *Succession of widowed daughter-in-law in presence of near collaterals.*
See CUSTOM—VIII. MAINTENANCE AND SUCCESSION—D. SUCCESSION OF (PREDECEASED) SON'S WIDOW—*Passim.*

DAUHTER'S DAUGHTER.

1. *Bequest of ancestral property to—*
See CUSTOM—I. A. ALIENATION BY MALE PROPRIETOR—(1) *(e)* GIFTS AND WILLS IN FAVOUR OF DAUGHTERS AND THEIR CHILDREN—(*ii*) NOT PROVED. **67 P R 1904**

2. *Held* that among Muhammadan Rajputs of Hoshiarpur district, where daughters

DAUGHTER'S DAUGHTER—*concld.*

have succeded to their father's land as heirs, excluding his collaterals, their daughters are entitled to succeed to their mother's estate in the absence of direct male heirs. ILAHI BAKSH *v.* MUSSAMMAT BUDHI. **5 P R 1910**

DAUGHTER'S SON.

1. *Adoption of—*
See CUSTOM—III C. ADOPTION OF DAUGHTER'S SON OR GRANDSON—*Passim.*

2. See HINDU LAW—I. ADOPTION. **93 P R 1909 P. C.**

3. *Gift to—*
See CUSTOM—I. A. ALIENATION BY MALE PROPRIETOR—(1) *(e)* GIFTS, &c., TO DAUGHTERS, &c.—*Passim.*

4. *Reversion of estate gifted to—*
See CUSTOM—VIII. MAINTENANCE AND SUCCESSION—L. SUCCESSION OF DAUGHTER'S SONS, &c. **53P R 188 2**
146 P R 1884
82 P R 1885

5. *Will in favour of—*
See CUSTOM—I. A. ALIENATION BY MALE PROPRIETOR—(1) *(e)* GIFTS AND WILLS IN FAVOUR OF DAUGHTERS AND THEIR CHILDREN. **7 P R 1886**
56 P R 1881
62 P R 1906

6. *Succession of.*
See CUSTOM—VIII. MAINTENANCE AND SUCCESSION—L. SUCCESSION OF DAUGHTER'S SONS, &c.—*Passim.*

DEATH.

1. *Of respondents—Plea of ignorance till after expiry of limitation does not justify departure from order XXII, Rule 4 (3), Civil Procedure Code,* 1908.
See APPEAL—I. CIVIL. **60 P R 1911**

2. *Death caused by actionable wrong—Contributory negligence.*
See CAUSE OF ACTION—IV. MISCELLANEOUS. **85 P R 1894**

3. *Presumption of death—Rule of Muhammadan Law superseded by Evidence Act.*
See EVIDENCE ACT, SECTION 108. **42 P R 1892**

DEATH OF PARTY.

1. *Suit to cancel gift of hereditary land against donor and donee—Death of one appellant (the donor defendant) after filing of appeal—absence of application to place legal representative on record.*
See ABATEMENT OF APPEAL. **109 P R 1881**

DEATH OF PARTY—*contd.*

2. *Death of appellant during pendency of appeal—Suit against Sovereign as Ruler of State—Public Functionary.*
See ABATEMENT OF APPEAL. **51 P R 1886**

3. *Appeal filed against decree inadvertently passed against deceased defendant—Effect of decree passed against non-existing person—Proper order to pass in appeal filed by person calling himself the legal representative of the deceased defendant.*
See APPEAL—VI. PROCEDURE IN— **31 P R 1886**

4. *Death of respondent during pendency of appeal—Revision to apply within time to substitute legal representatives of deceased—Right to sue surviving against surviving respondents alone—Suit for partition of undivided estate of joint family—Necessity for placing divided brother or widow of deceased co-parcener on the record.*
See ABATEMENT OF APPEAL. **86 P R 1886**

5. *Civil Procedure Code (Act X of* 1877), *sections* 368, 372—*Death during pendency of appeal of defendant-respondent—Appellant omitting to apply within* 60 *days to place deceased's legal representative upon the record—Suit for immovable property.*
See ABATEMENT OF APPEAL. **76 P R 1884**

6. *Abatement of appeal owing to death of respondent—Application to set aside order of abatement.*
See ABATEMENT OF APPEAL. **22 P R 1885**

7. *Death of respondent—Omission to apply within* 60 *days to place representative of deceased on record—Sufficient cause for not applying within such period.*
See ABATEMENT OF APPEAL. **39 P R 1885**

8. *Application to make the representative of a deceased respondent a respondent—Sufficient cause for not applying within the prescribed period—Ignorance of law.*
See ABATEMENT OF APPEAL. **81 P R 1886**

9. *Of respondent in a suit for dissolution of marriage.*
See ABATEMENT OF SUIT. **60 P R 1906**

10. *Appeal from decree passed by inadvertence against or in favour of a party who was dead at the time.*
See APPEAL—II. COMPETENCY OF **7 P R 1889**

11. *Death of sole appellant—Nullity of decree—Remedy.*
See CIVIL PROCEDURE CODE, 1908, O. XXII, R. 3. **78 P R 1891**

DEATH OF PARTY—*contd.*

12. *Death of sole appellant—Abatement of appeal.*

See CIVIL PROCEDURE CODE, 1908, O. XXII, R. 3. **23 P R 1889**

13. *Suit by widow with life interest to recover from collaterals property of her deceased husband—Legal representative of such widow for the purpose of continuing the suit or appeal on widow's death.*

See CIVIL PROCEDURE CODE, 1908, O. XXII, R. 3. **97 P R 1893**

14. *Death of sole plaintiff after conclusion of case, but before delivery of judgment—Decree drawn up in favour of deceased plaintiff.*

See CIVIL PROCEDURE CODE, 1908, O. XXII, R. 3. **20 P R 1898**

15. *Death of respondent during pendency of appeal—Legal representative.*

See CIVIL PROCEDURE CODE, 1908, O. XXII, R. 4. **29 P R 1888**

16. *Application to implead the legal representative of a deceased respondent—Sufficient cause for not applying within the prescribed period—Ignorance of law.*

See CIVIL PROCEDURE CODE, 1908, O. XXII, R. 4. **43 P R 1889**

17. *Death of respondent—Duty of appellant to bring the right person on the record—Duty of Court.*

See CIVIL PROCEDURE CODE, 1908, O. XXII, R. 4. **5 P R 1890**

18. *Death of respondent pending appeal—Application by appellant to have certain persons brought on record as deceased's legal representatives—Similar application by third party who alleges himself to be deceased's legal representative—Procedure.*

See CIVIL PROCEDURE CODE, 1908, O. XXII, R. 4. **66 P R 1894**

19. *Death of one of several defendants pending appeal—No application by plaintiff within prescribed period to put legal representative of deceased on the record.*

See CIVIL PROCEDURE CODE, 1908, O. XXII, R. 4. **53 P R 1896**

20. *Suit for damages for malicious prosecution—Death of appellant pending appeal.*

See CIVIL PROCEDURE CODE, 1908, O. XXII, R. 4. **4 P R 1897**

21. *Death of one respondent member of insolvent firm pending appeal by creditor—Partial abatement of appeal—Survival of right to sue.*

See INSOLVENCY. **69 P R 1888**

22. *Application to have representative of deceased respondent made a respondent.*

See LIMITATION ACT, 1877, ARTICLE 171 B. **113 P R 1882**

DEATH OF PARTY—*concld.*

23. *Application to substitute heirs of deceased respondent.*

See LIMITATION ACT, 1877, ARTICLE 171 B. **165 P R 1882**

24. *Death of respondent during pendency of appeal—Limitation for application to place legal representative on record—Abatement of appeal.*

See LIMITATION ACT, 1877, ARTICLE 171 B. **133 P R 1884**

25. *Application to place representative of deceased respondent upon the record.*

See LIMITATION ACT, 1877, ARTICLE 171 B. **81 P R 1886**

26. *Application to have the representative of a deceased respondent made a respondent.*

See LIMITATION ACT, 1877, ARTICLE 171 B. **103 P R 1886**

27. *Application to place legal representative of deceased defendant-respondent on the record after prescribed period.*

See LIMITATION ACT, 1877, SCHEDULE II, ARTICLE 171 B. **42 P R 1887**

28. *Pre-emption—Death of claimant pendente lite—Abatement of suit.*

See MUHAMMADAN LAW—RULE OF, WHEN SUPERSEDED. **98 P R 1898**

29. *Of one of several defendants—Application for substitution—Sufficient cause for not applying within prescribed period.*

See PARTIES. **113 P R 1907**

30. *Suit by plaintiff as Mutwali of mosque—Dismissal of suit and death of plaintiff pending appeal.*

See RELIGIOUS INSTITUTION. **28 P R 1900**

DEATH-BED GIFT.

1. *Death-bed gift*—Hiba bil-iwaz—*Muhammadan Law.*

See CONTRACT ACT, SECTION 25. **61 P R 1893**

2. See LIMITATION ACT, 1877, SCHEDULE II, ARTICLE 91. **52 P R 1895**

3. By Muhammadan Law, a gift made *inter vivos* by a father to his married daughter, followed by possession, is valid, provided it be not made in a death disease. A death-disease is not necessarily a disease of which a man dies, but a disease which is generally looked upon as fatal, or from which he is in daily expectation of death. MEERAN BUKSH *v.* PEEROO. **29 P R 1868**

4. *Death-bed gift and legacy—Consent of some of the heirs—Revocation.*

A death-bed gift or a legacy, under Muhammadan Law, does not require the consent of all the heirs: if some consent and the rest dissent, the gift or legacy is valid *quoad* the

DEATH-BED GIFT—*concld.*

shares of the former. Such consent cannot be revoked, if given after the donor's or testator's death. FUZL AHMED *v.* ROSHUN DIN. **37 P R 1872**

5. A gift obviously made in contemplation of death within the meaning of the Muhammadan Law relating to death-bed dispositions was inoperative. FATTA *v.* BAKHRA. **15 P R 1895**

DEBT.

1. *Equitable assignment of.*
See ASSIGNMENT OF DEBT.

2. *Attachment of.*
See ATTACHMENT.

3. *Certificate for collection of.*
See CERTIFICATE UNDER ACT XXVII OF 1860.

4. *Contracted for immoral purposes—Liability of ancestral or acquired property for.*

See HINDU LAW—ANCESTRAL PROPERTY

5. *Acknowledgment of.*
See CONTRACT ACT, 1872, SECTION 230 (3). **43 P R 1910**
See LIMITATION ACT, 1877, SECTION 19. PRINCIPAL AND AGENT. **55 P R 1910**

6. *Barred as against principal, discharge of, by surety.*

See PRINCIPAL AND SURETY.

DEBTOR AND CREDITOR.

1. *Suit against representative of deceased debtor—Proof of receipt of assets.*
See RIGHT TO SUE. **11 P R 1881**

2. *Suit by creditor impeaching alienation by debtor.*
See RIGHT TO SUE. **10 P R 1882**

3. *Suit for an account.*
See RIGHT TO SUE. **122 P R 1881**

4. The relationship between banker and customer is that of debtor and creditor, and the right of the customer to recover a deposit could become barred by time. BHOWANI DASS *v.* BHAI NUNDGOPAL. **17 P R 1869**

5. *Debtor and Creditor—Money-lender and zemindar—Bond—Usurious rate of interest—Act IX of* 1872, *clause* (1), *section* 16, *and section* 19—*Undue influence—Act I of* 1872, *section* 114—*Presumption.*

Plaintiff, a village money-lender, sued defendant, a zemindar, for Rs. 700 principal and interest, due on a bond. Defendant admitted execution of the bond, but pleaded that the greater part of the claim consisted of interest at an usurious rate, and prayed for an examination of the accounts. It was found that the parties had had dealings as debtor and creditor for a considerable time previous to the execution of the bond: and that of the amount claimed Rs. 145 only was principal, while the remaining Rs. 555 was charged for interest. The Lower Court therefore decreed Rs. 145 and Rs. 197-1-3 interest, total Rs. 342-1-3.

Held, per Curiam, that the orders of the Lower Courts should be upheld.

DEBTOR AND CREDITOR—*contd.*

Per SMYTH, J.—Because, having regard to the fact that the bond was extortionate and unconscionable, and considering the relations between the parties, they were justified in the absence of rebutting proof from plaintiff in holding that the bond was executed under "undue influence" as defined in clause (1) section 16 of the Contract Act, and were therefore justified under section 19 of the same Act in treating the bond as void, and in decreeing to plaintiff only the amount equitably due.

Per PLOWDEN, J.—Because the bare facts, that the parties to a contract, the subject of litigation, are village money-lender and a zemindar, may justify a Court in presuming (within the meaning of section 114 of the Evidence Act) that the zemindar did not give a free consent to the terms of the particular agreement, when such presumption is not inconsistent with the other facts disclosed, though there be no other evidence on the part of the zemindar to prove that he had been induced by the exercise of undue influence to consent to the terms of the particular agreement. RAMDHAN *v.* JIWAN KHAN. **110 P R 1879**

6. *Contract Act,* 1872, *sections* 28 *and* 127, *Ill.* (*b*)—*Promise by creditor to forbear to sue debtor—Void agreement—Agreement partly void and partly enforceable.*

Forbearance by a creditor to sue a debtor, or a promise to forbear either absolutely or for a time, is not unlawful. On the contrary, there is express authority in section 127, illustration (*b*) of the Contract Act, for holding that a promise to forbear for a time is lawful, and by consequence a promise to forbear absolutely, and the forbearance itself, are lawful.

Where the agreement between the parties consisted of a promise by the plaintiff to forbear to sue a third party absolutely or for a time, and in consideration thereof the defendants made certain promises to indemnify plaintiff for any loss he might incur thereby, *held*, that such agreement would be void under section 28 of the Contract Act only as far as it restricted the plaintiff from suing his debtor. Upon performance by plaintiff of his promise, such performance having taken place at defendant's desire, plaintiff would be entitled to enforce defendant's promise according to its tenor. MATHRA DAS *v.* MAHOMED DIN. **120 P R 1879**

7. *Debtor and creditor—Registered bond—Agriculturists—Rate of interest—Undue influence—Presumption.*

Where defendants, who were agriculturists, entered into a bond with plaintiffs whereby they agreed to pay interest on the principal sum at the rate of 24 per cent., per annum, which bond was duly registered before the Tahsildar of the locality, *held* (reversing the orders of the Lower Courts) that under the circumstances of the case and in the absence of evidence of the exercise of undue influence on the defendants, the lower Courts were not warranted in reducing the rate of interest agreed upon from 24 per cent. to 6 per cent. per annum. RADHA *v.* GOLAB SINGH. **145 P R 1879**

8. *Civil Procedure Code,* 1882, *section* 45—*Misjoinder of causes of action—Creditor claiming in one suit to enforce two bonds executed separately by father and son—Undue influence—Unconscionable bargain—Dispensing power of Courts of equity—Interest—Penalty.*

The creditor of two Muhammadans, father and son, sued in one case to enforce two bonds of different dates and by different executants on the ground that the obligors formed a joint family and were as such liable on each bond.

Held that the plaintiff could not join the two causes of action and must elect which of the bonds he would proceed against in the present case.

The bond on which the plaintiffs elected to proceed provided as follows: "that the "obligors owed obligee Rs. 396 cash and "443 maunds of wheat; that the cash would "be paid on a certain date without interest; "that in default interest would be paid at "the rate of 2 annas *per cent. per* six "months; that as regards grain, 1¼ times "as much grain would be delivered on a "certain other date, and in default obligors "would go on paying 1¼ times as much of "the amount due for each year, year by year." In other words, the agreement was to pay the money with single interest at 25 *per cent. per annum* and to pay compound interest on the grain at the rate of 50 *per cent. per annum.*

It was contended for the defendant that (*i*) the interest agreed upon should be treated as a penalty, and (*ii*) the agreement should not be enforced, having been obtained by the exercise of undue influence.

Held, (*i*) that the interest agreed upon could not be looked upon as a penalty, as it was payable not on the breach of the agreement but in pursuance of the contract on the occurrence of a certain contingency; (*ii*) that the defendants had failed to prove that they reposed confidence in the plaintiff, or that the latter had any real or apparent authority over them and had obtained an undue advantage by the exercise of this confidence or authority, or that any of the circumstances existed from which undue influence as defined in section 16 of the Contract Act could be presumed. From the mere circumstance that a man has made a bad bargain, it does not follow that this was due to abuse of confidence or authority; (*iii*) that as the rule as to undue influence in contracts has been fixed by statute for this country, the statutory rule should be followed, although it is less flexible and does not permit the much wider discretion enjoyed by the Courts in England. *I. L. R. IX All.* 74 and 228, not followed. GOKAL CHAND *v.* KHWAJA ALI SHAH. **32 P R 1890**

9. *Undue influence—Money-lender—Unconscionable bargain—Court's right to interfere—Contract Act,* 1872, *section* 16.

DEBTOR AND CREDITOR—*concld.*

A professional money-lender advanced to a person in distress for money and in fear of summary dismissal as warrants were out on his pay Rs. 1,755, taking from him promissory notes for Rs. 5,510, bearing interest at Rs. 24 per centum per annum. Upon a suit by the lender against the borrower for recovery of the amount due on the promissory notes

Held that the bargain was oppressive and unconscionable, and the plaintiff was under the circumstances disclosed only entitled to recover the principal sum advanced by him with simple interest at the rate of Rs. 18 per centum per annum. RAM DAS *v.* NETTO. **115 P R 1908**

DECLARATORY DECREE.

1.—DECLARATION OF TITLE.
2.—SUITS CONCERNING DOCUMENTS.
3.—REVERSIONARY RIGHTS.
4.—ENFORCING OR REMOVING LIEN OR ATTACHMENT.
5.—RELATIONSHIP.
6.—MISCELLANEOUS.

1. Declaration of Title.

1. *Suit for declaration of title—Adverse entry in Revenue Papers.*
See CAUSE OF ACTION—IV. MISCELLANEOUS. **20 P R 1900**

2. *Suit for declaration of confirmation of title in land without consequential relief.*
See COURT FEES ACT, 1870, SECTION 12. **2 P R 1889**

3. *Valuation of suit for—*
See JURISDICTION. **98 P R 1886**

4. *Limitation to suit for—*
See LIMITATION ACT (XV OF 1877), SCHEDULE II, ARTICLE 120.
27 P R 1881
88 P R 1882
19 P R 1883
111 P R 1884

5. *Suit by a person in possession for a declaration of title in immovable property—Cause of action against defendant—Adverse entry in revenue papers—Limitation.*
See LIMITATION ACT, 1877, ARTICLE 120. **140 P R 1907**

6. *Suit for declaration of ownership—Adverse possession of co-sharer.*
See LIMITATION ACT, 1877, ARTICLE 144. **116 P R 1900**

7. *Suit for declaration of occupancy status of highest class—Duty of Court to consider whether plaintiff entitled to an inferior right than that claimed.*
See OCCUPANCY RIGHTS. **3 P R 1898**

8. *Suit for—Previous suit for correction of Settlement Record.*
See RES JUDICATA. **190 P R 1883**

9. *Suit by creditor impeaching alienation by debtor—Fraud—Declaratory decree.*
See RIGHT TO SUE. **10 P R 1882**

10. *Declaration of right to build a wall—Subsequent obstruction by defendant—Right*

1.—Declaration of Title—*contd.*

of plaintiff to maintain a fresh suit for an injunction.

See RIGHT TO SUE. **111 P R 1882**

11. *Criminal Procedure Code, 1882, sections 133 and 137—Public place—Right to sue for declaration of rights in Civil Court.*

See RIGHT TO SUE. **34 P R 1892**

12. *Suit by non-proprietors for declaration of their right to hold their houses free from certain fees and dues.*

See SPECIFIC RELIEF ACT, 1877, SECTION 42. **48 P R 1887**

13. *Plaintiff alleging title as well as possession asking for declaration as to possession only—Judicial discretion.*

See SPECIFIC RELIEF ACT, SECTION 42. **48 P R 1892**

14. *Trees—Conflicting provisions in Settlement Record—Form of suit.*

The Settlement record contained conflicting provisions as to right in trees; the *ikrarnamah* signed by the proprietors allowing the hereditary cultivators to cut trees for agricultural purposes with the proprietors' consent; the tenants' *ikrarnamah* giving the right without such consent. One of the proprietors sued to have his "rights "declared to enter his tenants' lands and "cut trees which had grown spontaneously." The Lower Courts decreed that plaintiff could not enter the lands without the tenants' consent, and that the tenants could not cut trees without the landlord's permission. The landord appealed to the Chief Court and the tenants preferred a cross-objection. *Held*, that the suit did not lie; that if the parties felt aggrieved the proper course was to sue under section 20 of Act XXXIII of 1871 to correct the record, the Government and other persons interested being joined. KANH SINGH *v.* DASAUNDHA SINGH.

111 P R 1876

15. *Absentee—Sale by proprietor of his own lands as also land held by him for an absentee proprietor.*

S. and others, village proprietors, sold to D. the lands held by them, and executed a deed of sale. Part of the land so sold and conveyed by deed was the property of G., an absentee proprietor, and was held by S. and others merely on the footing on which the lands of absentees are ordinarily held by members of the proprietary body present in the village.

In a suit by D. against S. and others for a decree declaring that he had purchased the lands conveyed by deed to him, the facts of the case being such that D. could maintain, and the Court in the exercise of its discretion would grant such a decree, *held* by *Fitzpatrick* and *Plowden, JJ.* (*Lindsay J.*, dissenting) that the circumstance that part of the lands sold and conveyed belonged to G., an absentee, was not a ground for refusing D. a declaratory decree.

Held, further, that the only decree to which D. was entitled was one declaring that there was a completed transfer from S. and others to D. of all such right, title and interest in the property described in the deed of conveyance as the vendors were competent to convey. DAD *v.* SUBA. **68 P R 1877**

16. *Act VIII of 1859, section 15—Consequential relief—Title to future interests.*

A declaratory decree is not to be made under section 15, Act VIII of 1859, unless there is a right on the part of plaintiff to consequential relief, which, although not asked for, might, if asked for, have been given, or unless the declaration of right may be made the foundation of relief to be had in another Court.

The Courts will not try questions of title as to future interests, where neither claimant has a right to present possession, especially questions of title which may never arise.

The decision of the Privy Council in the *Shivagunga* case (15 *B. L. R.* 83) cited and followed. LEKH RAJ *v.* HARCHARAN.

94 P R 1879

17. *Specific Relief Act (I of 1877), section 42—Suit for half share of property alleged to be joint ancestral—Question of possession and enjoyment—Plaintiff when entitled to further relief—Relief where the property is joint ancestral—Decree for delivery of possession of undivided share—Injunction.*

Plaintiff sued for a declaratory decree of half the proprietary title in *mauza* P., and for a declaration of right to a one-half share of the malikana of *mauza* B. claiming that the land and malikana were ancestral estate, that the parties were an undivided Hindu family, and that each party was in possession of his right. Defendant denied that the land and proprietary dues claimed were ancestral, or that plaintiff had ever been in possession of the rights claimed. It appeared that the land in *mauza* P. was not in the actual possession of either party, being cultivated by tenants paying rent.

Held, that it was incumbent upon the lower Courts upon the pleadings to decide whether or not the plaintiff was in possession, that is, in actual enjoyment of the right he claimed in either village. If he was, that is to say, if he was *de facto* collecting or receiving as proprietor from the defendant a half share of the rents or profits due or realised from the tenants in the village of P., or a half share of the proprietary dues in the village of B. then he was entitled to a declaration of his proprietary title, upon proof of his own title which the defendant denied. If, on the other hand, the plaintiff had not such *de facto* possession, there was further relief, within the meaning of the Specific Relief Act, which the plaintiff might and ought to have claimed.

Held further, that assuming the allegation to be true that the parties were members of a joint Hindu family, whose estate had not been divided, the denial of the plaintiff's title to share in what was alleged to be a portion of the ancestral estate, and his exclusion from participation in the profits of such portion by the defendant, was undoubtedly a cause of action, and one which admitted of relief other than a mere declaration of title to such portion. The plaintiff could ask, and the Court could decree, delivery of possession of the undivided share in the land of P. owned by plaintiff and defendant jointly, either with or without an injunction to restrain the defendant from interfering with the future enjoyment by plaintiff of his share, and a similar injunction could be granted as regards the future enjoyment of his share of the malikana of *mauza* B. SODHI HARNAM SINGH *v.* SODHI SUNDAR SINGH. **73 P R 1881**

18. *Specific Relief Act (I of 1877), section 42—Suit for declaratory decree dismissed in accordance with award of arbitrators—Appeal by plaintiffs on ground that first Court had no jurisdiction to entertain the suit for a declaration only.*

Plaintiffs, who alleged that they were heirs of one D. S. deceased, and that the female defendants in possession of his estate were wasting the said estate, prayed for a perpetual injunction. Issues were fixed and referred to arbitrators by consent of the plaintiffs in person and of the defendants, through their recognized agent. The award, which was adverse to the plaintiffs, was confirmed by the first Court, who dismissed the suit, and a subsequent appeal to the Commissioner was also rejected. Plaintiffs then preferred a second appeal to the Chief Court, and urged that inasmuch as they were heirs of the last proprietor and entitled to possession of the land in suit, and yet did not sue for possession but for a declaratory decree, the Courts had no jurisdiction to entertain the suit, and ought to have dismissed it at once.

Held, that the above contention could not prevail, as the Courts had made no declaration of the plaintiffs' title, and further, as, assuming that the plaintiffs asked for a declaration of title, they also asked for relief in the form of a perpetual injunction, there was nothing in section 42 of the Specific Relief Act, nor any other ground, that deprived the Court of its jurisdiction. HARI SINGH *v.* MUSSAMMAT LACHMI.

1 P R 1882

19. *Specific Relief Act (I of 1877), section 42—Suit by chumars to have their share in certain village perquisites declared—" Right as to any property "—Right to maintain suit.*

DECLARATORY DECREE—*contd.*

1.—Declaration of Title—*concld.*

In a suit the parties to which were *chumars* of one of the *panas* of a village in the Rohtak district, the object of the plaintiffs was to have it declared that they were entitled to a ⅓rd share in the skins of all animals dying in their *pana*, according to the rules of inheritance, the said plaintiffs alleging in their plaint that the defendants had during the last year appropriated more of the profits than they were entitled to, and hence the present suit to have a declaration of their rights for the future.

Held, per *Elsmie* and *Rattigan, JJ.*, (*Smyth, J.*, dissenting), that the suit was not legally maintainable under the provisions of section 42 of the Specific Relief Act.

Per *Rattigan, J.*—Because the right claimed was not such a right to property as would entitle the plaintiffs to a declaration within the terms of the section, which contemplates a right to property which is *in esse*, though the right itself may be deferred, as that of a reversioner, and not a right to property *in posse*, or which is non-existent at the time the right is asserted, and which may or may never come into existence.

Per *Elsmie, J.*—Because what the plaintiffs were really suing for was a declaration that they, as against the defendants, were entitled to perform ⅔rds of certain village services, and to receive fees whether in the form of skins or otherwise, in that proportion, and could not therefore be said to be suing to establish a right as to any property

Held, per *Smyth, J.*—That the suit was maintainable, as the words "right as to any property" in section 42 of the Specific Relief Act, do not necessarily refer only to property actually in existence, but may also refer to property which accrues or is acquired in the future. RAMDIAL *v.* BUDHA.

115 P R 1883

20. *Specific Relief Act*, 1877, *section* 42—*Suit for declaration—Further relief—Amendment of plaint.*

Held, that a suit for a declaration should not be dismissed merely because the plaintiff being able to seek further relief has omitted to claim it. In such a case the Court must allow plaintiff to amend his plaint by asking for the further relief. HAZARA *v.* BISHEN SINGH. **128 P R 1907**

21. *Declaration of status of right—Specific Relief Act*, 1877, *section* 42.

Where the property in dispute was in the actual possession of mortgagees and tenants and the mutation entry in favour of one party and that of *girdawri* in favour of the other, *held* that under such circumstances a suit for a mere declaration of title was maintainable. ABDUL KARIM *v.* SAHIB JAN.

5 P R 1908

DECLARATORY DECREE—*contd.*

2.—Suits Concerning Documents.

1. *Suit to obtain a declaratory decree where no consequential relief is prayed for.*

See COURT FEES ACT, 1870, SCHEDULE II, ARTICLE 17. **109 P R 1893**

2. *Suit for declaratory decree by person aggrieved by entry in a record of rights.*

See JURISDICTION OF CIVIL OR REVENUE COURTS. **89 P R 1895**

3. *Suit for cancellation of instrument and for declaration that a transaction of sale by occupancy tenant (to which plaintiff is not a party) is void.*

See LIMITATION ACT, 1877, ARTICLE 91. **135 P R 1888**

4. *Suit for declaration that an alleged will was a forgery, and that testator had no power to make such will.*

See LIMITATION ACT, 1877, SCHEDULE II, ARTICLE 93. **5 P R 1898**

5. *Declaratory decree—Cancellation of instrument—Balance entered in account book professing to have been struck by a certain person—Written instrument—Threat of Civil suit—Reasonable apprehension of injury—Discretion of Court.*

See SPECIFIC RELIEF ACT, 1877, SECTION 39. **12 P R 1890**

6. *Deed of grant, construction of*—Adhlapi *tenure—Declaratory decree.*

See SPECIFIC RELIEF ACT, 1877, SECTION 42. **27 P R 1899**

7. Gobind Das by will appointed a successor to the *guddi* of a certain religious institution; plaintiffs sued for a declaration of their right to succeed, Gobind Das being still alive. *Held*, that as the will could not take effect until after the death of Gobind Das, and might be revoked at any time, a suit to set it aside would not lie; and as plaintiff's rights were not in any way affected by the will, a suit for a declaration of their rights would not lie. PREM DAS *v.* GOBIND DAS.

58 P R 1873

8. *Suit to set aside will of Hindu widow still living—Cause of action.*

Held, that a suit will not lie for a declaratory decree setting aside a will made by a Hindu widow, still living and purporting to dispose after her death of the immoveable property of her husband, on the ground that the widow has no power to dispose of such property; no cause of action arising in such a case, till the widow's estate has come to an end. MUSSAMMAT BADHO BAI *v.* CHATTA RAM. **111 P R 1880**

3.—Reversionary Rights.

1. *Suit to declare an alienation of land to be not binding after grantor's death.*

See APPEAL—VIII. SECOND.

145 P R 1892

2. *Declaratory decree—Right of distant collaterals to question alienation by widow in presence of daughter's sons.*

See CUSTOM—I. ALIENATION.—B. ALIENATION BY WIDOW—(*d*) *Locus standi* AND ASSENT OF REVERSIONERS. **4 P R 1890**

DECLARATORY DECREE—*contd.*

3.—Reversionary Rights—*contd.*

3. *Alienation by widow—Right of remote reversioner to maintain declaratory suit in presence of the widow's daughter.*

See CUSTOM—I. ALIENATION—J. RULE OF DECISION. **149 P R 1908**

4. *Suit by married daughter for declaration that she was entitled to reversionary right after death or remarriage of widow.*

See CUSTOM—VIII.—MAINTENANCE AND SUCCESSION K.—SUCCESSION OF DAUGHTERS. **90 P R 1894**

5. *Alienation by Muhammadan widow—Widow handing over property to her deceased husband's adopted son.*

See LIMITATION ACT, 1877, SCHEDULE II, ARTICLE 118. **45 P R 1892**

6. *Sale of land by female entitled thereto for her life—Subsequent alienation by vendee more than twelve years after previous sale—Suit for declaratory decree by reversioners of the female in respect of the second alienation.*

See LIMITATION ACT, 1877, ARTICLE 125. **26 P R 1896**

7. *Suit to contest validity of sale—Right of plaintiffs to attack mortgage made in favour of vendee more than* 12 *years before suit—Merger of mortgage in sale.*

See MORTGAGE, MERGER.

71 P R 1898

8. *Alienations by a widow—Sui for declarations by reversioner against the widow and various alienees claiming under distinct titles—Misjoinder of causes of action—Civil Procedure Code*, 1882, *sections* 28, 45.

See MULTIFARIOUSNESS.

1 P R 1905

9. *Suit for declaration of right to half share of joint undivided holding—Suit by co-sharer.*

See PUNJAB LAND REVENUE ACT, 1887. SECTION 158 (2) (XVII).

12 P R 1899

10. *Alienation by a widow (occupancy tenant)—Suit for declaration by reversioners.*

See SPECIFIC RELIEF ACT, 1877, SECTION 42. **205 P R 1889**

11. *Speculative suit for declaratory decree by reversioner.*

See SPECIFIC RELIEF ACT, 1877, SECTION 42. **42 P R 1898**

12. Decree granted to plaintiff, nephew of N (Hindu) deceased, that an alienation effected by the widow of N should not affect plaintiff as reversioner, but that on the widow's death plaintiff should take possession. NARAIN DASS *v.* MUKHUN. **22 P R 1866**

13. *Held*, that no suit for a declaratory decree can be maintained unless the plaintiff be entitled to consequential relief; that is the declaration of right can only be made when the decree is to be the foundation of relief to be obtained elsewhere. DEWAN KIRPA RAM *v.* SARDAR JOWAHIR SINGH.

19 P R 1874

3.—Reversionary Rights—*contd.*

14. *Specific Relief Act (I of* 1877), *section 42—Right of collaterals to question alienation by widow in presence of daughter and daughter's son—Custom, Inheritance—Aroras of Mooltan—Right of daughter's son—Will—Right to declaratory decree with regard to alienation by will—Alienation of widow's right as mortgagee of house—Widow's power of disposal of movable property inherited from her husband.*

Plaintiffs, who claimed to be the collateral heirs of one G. R. deceased, sued for a declaration that the alienation of two houses (one by way of will and the other by way of sub-mortgage) made by Mussammat L, one of the widows of the said G. R., was not binding on them. It was contended by the defendants that the plaintiffs were not entitled to maintain the suit as they were not the persons presumptively entitled to possess the property if they survived the widow. It was first alleged that a son of G. R., by another wife was still in existence and was the next reversioner, but this plea was eventually abandoned, it being found (after a remand had been made by the Chief Court for further enquiry on the point) that he was hopelessly imbecile and would therefore not be entitled to inherit by custom. It was, however, alleged that one K. C. would inherit as the adopted son of G R. and that if the adoption were not proved, G. R.'s daughter would succeed on the death of the widow, and, on her death, her son K. C. would succeed as daughter's son.

Held, that the existence of a daughter entitled to succeed on the widow's death would probably, if there were no daughter's sons, not be enough to bar the right of the person presumptively entitled next after the death of both the widow and the daughter to obtain such a declaration, for the daughter's interest in her father's property was, like the widow's, only a restricted interest, and on her death the property devolved on the line of the last male owner. But if the daughter's son was a nearer reversioner than the plaintiffs, either as daughter's son or as adopted son, as he would, in the event of his succession, take an absolute estate, it would be difficult to hold that the plaintiffs were entitled to any right as to the property which would enable them to maintain a suit for a declaratory decree under section 42 of the Specific Relief Act; and in any case if the daughter's son was found to be a nearer reversioner, the Court should in the exercise of its discretion refuse to give them a declaratory decree. MUSSAMMAT JIND KOUR *v.* MAJLIS RAI. **23 P R 1876**

15. Plaintiff sued for a decree declaring that a sale effected by defendant I in favour of defendant II, should stand good only for the lifetime of the vendor as against the plaintiff, who, if he survived the vendor and the latter died childless, would be the next heir. *Held*, that the plaintiff was in a position similar to that of a reversioner suing a Hindu widow for waste or to contest an alienation; that a suit of the latter description involving a declaratory decree would lie, and therefore plaintiff's suit would also lie. The broad rule (that a declaratory decree cannot be made unless there be a right to consequential relief at the same time), does not apply to such cases. HIRA SINGH *v.* DHANA SINGH. **112 P R 1876**

16. *Suit by reversioner—Alienation by Hindu widow.*

Where the right heir of a deceased Hindu sues to set aside so much of a conveyance made by the widow as will operate after the plaintiff's death, he is entitled to a decree, for even if it be necessary that he should show his right to consequential relief, at the same time, he does show it; as upon obtaining a decree, he can have the proper entries made in the revenue papers. NUR BUKSH *v.* MUSSAMMAT FAJJO. **121 P R 1876**

17. *Suit by distant reversioner, next reversioner being a minor.*

Plaintiffs sued for a decree declaring that a mortgage by a widow was invalid. The next reversioner was an infant; and on his failing to succeed, plaintiffs would inherit. *Held*, that the suit would lie. MEHTAB KHAN *v.* MUSSAMMAT MEHTAB BIBI. **24 P R 1877**

18. *Suit by reversioners in respect of alienation by Hindu widow—Court Fees Act, VII of* 1870, *Schedule II, article* 17, *No. III.*

Held, that a person entitled as a reversioner after a Hindu widow, can maintain a suit for a decree simply declaring (without giving any relief) that a conveyance by the widow is void in respect of anything beyond her life estate.

Held, further, that the plaint in such a suit is properly stamped with a stamp of the value of ten rupees under Schedule II, article 17, No. III of the Court Fees Act, 1870. BAKSHISH SINGH *v.* NARAIN SINGH. **70 P R 1877**

19. It being found in the present case that the alleged adoption of K. C. was not established, and further that there was sufficient evidence of a custom prevailing among the class to which the parties belonged (Aroras of Multan) excluding daughters' sons to justify the Court in refusing to treat the daughter's son as the nearest reversioner, and to hold that the plaintiffs' suit should therefore not be entertained, *held*, that though no declaration should be given in regard to the validity of the will, which being a revocable instrument which had no operation during the widow's life, was not an alienation (following *Mussammat Badho Bai* v. *Chatta Ram*, No. 111 *P. R.* 1880, Civil), still the plaintiffs were entitled to a declaration that the mortgage was made without legal necessity, and was therefore void beyond the widow's lifetime.

With regard to the contention that the house mortgaged, not being the property of G. R., but having been held by him merely as mortgagee, the plaintiffs should not be allowed to dispute this alienation, *held*, that the mortgagee's interest while unredeemed was undoubtedly an interest in immovable property, and though the mortgagor might redeem, this did not enable the widow to dispose of her interest in the mortgage to persons not entitled to redeem, and, further, that a widow's powers of disposal of movable property inherited from her husband was subject to the same restrictions as in the case of immovable property, and that therefore the contention failed. MUSSAMMAT LACHO BAI *v.* ASA NAND. **144 P R 1882**

20. *Declaratory suit after the death of alienor in the lifetime of the widow.*

Held, that where a suit for possession is impossible owing to the presence of females entitled to hold for life, a suit on the part of the reversioners for a declaration to the effect that an alienation by a sonless proprietor shall not affect their reversionary rights is maintainable, notwithstanding that the alienor is dead at the time when the suit is brought.

Held also, that article 1 of the Punjab Limitation Act is applicable to such a suit. JIWANA *v.* ABDULLAH. **64 P R 1909**

21. *Declaratory suit by reversioners—Alienation found to be in part without necessity—Form of decree.*

Held, that in declaratory suits by reversioners to have an alienation declared void after the death of the alienor, if the Court finds, that the alienation is in part only for necessity, the decree should declare (1) that the alienation shall not take effect *at all* against the reversioners after the death of the alienor, *and* (2) that the reversioners shall not be entitled to possession until they have paid the sum found to be for "necessity." FAZAL AHMED *v.* SHAHAB DIN. **92 P R 1909**

4.—Enforcing or removing lien or attachment.

1. *Attachment—Property liable to be attached—Form of plaint for declaration that a judgment-debtor had a mortgage on certain property.*

See CIVIL PROCEDURE CODE, 1908, O. XXI, R. 63. **111 P R 1900**

2. *Suit to establish right to attach and sell property in execution of decree.*

See JURISDICTION. **50 P R 1890**

3 *Suit by a decree-holder to establish his right to attach certain property.*

See JURISDICTION. **121 P R 1890**

4. *Suits for declaratory decree that land has reverted to landlord free of maintenance—Suit by landlord to set aside transfer of right of occupancy.*

See JURISDICTION OF CIVIL OR REVENUE COURT. **70 P R 1892**

4.—Enforcing or removing lien or attachment—*concld.*

5. *Suit for declaration that the defendant could not redeem the property mortgaged to plaintiff by two successive mortgages without paying off the debt due on the second mortgage.*

See SPECIFIC RELIEF ACT, 1877, SECTION 42. **35 P R 1890**

6. *Right to consequential relief.*

Plaintiff and M. were joint owners of a piece of land, and the latter mortgaged a portion of it to defendant by way of conditional sale. Plaintiff, who was in possession, sued to have the mortgage declared void. *Held*, that as plaintiff could not, if he obtained the decree prayed for, seek relief elsewhere, the declaratory decree could not be granted. MUTSADDI *v.* PARBHU. **6 P R 1876**

7. *Specific Relief Act, (I of 1877), section 42—Mortgage by one joint owner—Suit by other joint owner that the mortgage does not bind him—"Further relief."*

Held, that where A. and B. are joint owners of several properties, and B. denying that one of such properties is joint, deals with it as his exclusive property by mortgaging it without transfer of possession, a suit by A. for a declaration that the mortgage does not bind him because the property is joint, is maintainable under section 42 of the Specific Relief Act, the plaintiff in such a case not being able to seek "further relief" within the meaning of that section. RAM RAKHA *v.* NARINJAN DAS. **182 P R 1883**

5.—Relationship.

1. *Suit by adoptor for declaration that relationship between him and adopted son is dissolved.*

See CUSTOM III—APPOINTMENT OF HEIR —K. REPUDIATION OF ADOPTION. **9 P R 1893**

2. *Marriage—Suit for a declaration that the defendant is not the lawful wife of the plaintiff—Jurisdiction of Civil Court to entertain such a suit when an order for maintenance passed under section 488 of the Criminal Procedure Code is in force against the plaintiff*

See HUSBAND AND WIFE. **26 P R 1903**

3. *Suit for a declaration that the defendant is not the lawful wife of the plaintiff—Jurisdiction of Civil Court to entertain such a suit when an order for maintenance passed under section 488 of the Criminal Procedure Code is in force against the plaintiff.*

See JURISDICTION OF CIVIL COURT. **50 P R 1901**

4. *Suit by adopted son to contest alienation by Hindu widow—Possession of widow adverse to the adopted son—Suit by the adopted son more than six years after interference with his right—Suit to obtain declaration of the validity of an adoption.*

See LIMITATION ACT, 1877, ARTICLE 119. **3 P R 1904**

5. *Suit by a wife for a declaration that by reason of certain acts her husband had lost his conjugal rights against her.*

See MARRIAGE. **31 P R 1908**

6. *Suit for declaration of invalidity of marriage of defendant 1 with defendant 2.*

See SPECIFIC RELIEF ACT, 1877, SECTION 42. **205 P R 1889**

7. *Suit for declaration that plaintiff being the adopted son was entitled to succeed to his deceased adoptive father's share of the family birt.*

See SPECIFIC RELIEF ACT, 1877, SECTION 42. **141 P R 1894**

8. *Suit to have plaintiff declared the son of defendant.*

Plaintiff sued to have himself declared the son of defendant (who had married the mother of plaintiff, his—defendant's—brother's widow). Defendant asserted that plaintiff was his nephew, son of his wife by her first husband. *Held*, that the suit for the declaration prayed for would lie, as consequential relief (*e. g.*, asserting claims and protecting rights, &c., which plaintiff otherwise could not enforce) would follow the result of the suit. JAGAT SINGH *v.* JIT SINGH. **41 P R 1876**

9. *Act I of 1877, section 42—Consequential relief.*

In a suit brought to obtain a declaration that the alleged adoption of the defendant by one D. was invalid, in which it appeared that the plaintiffs and defendants were equally entitled as heirs of D., if the adoption were invalid, the plaint asked for no consequential relief, but the motive of the suit was stated to be to enable the plaintiffs to partition the property of which they alleged and the defendants denied that they were in joint possession.

Held, that the suit must be dismissed on the ground that the Courts were not competent under section 42 of the Specific Relief Act to give the plaintiffs the relief they sought, inasmuch as they had omitted to seek further relief. RAM CHAND *v.* RADHA KISHEN. **63 P R 1882**

10. *Specific Relief Act (I of 1877) section 42—Suit by plaintiff to be declared the eldest son of his father—"Legal character."*

A suit by plaintiff asking for a declaratory decree that "he is the eldest son of the late N. S." *held*, not to be maintainable under section 42 of the Specific Relief Act, as the mere fact of being the first born son does not, in the absence of special facts (which must be alleged), disclose any cause of action; in other words, the being an eldest son is not a "legal character" within the meaning of the above section. JAI SINGH *v.* UTTAM SINGH. **148 P R 1884**

6.—Miscellaneous.

1. *Suit for declaratory decree that plaintiffs are entitled to perform certain religious ceremonies on behalf of an indeterminate class of persons on property belonging to third parties.*

See CUSTOM VII—EASEMENTS AND PROFITS. **4 P R 1896**

2. *Suit for declaratory decree that plaintiffs have a right to dry tobacco on certain land.*

See CUSTOM VII—EASEMENTS AND PROFITS. **14 P R 1897**

3. *Jurisdiction of a Civil Court to entertain a suit for a declaration that a partition effected by the Revenue authorities was not binding on the reversioners of one of the parties.*

See JURISDICTION. **104 P R 1900**

4. *Suit for declaration that land was not subject to partition.*

See JURISDICTION OF CIVIL OR REVENUE COURT. **39 P R 1892**

5. *Held*, that a declaratory decree can have no operation in reference to a person not a party to the suit. MUSSAMMAT RAZEE KOUR *v.* ZALIM. **29 P R 1866**

6. *Suit to declare right to dispose of a girl in marriage.*

Plaintiff, paternal uncle of a girl, sued the girl's mother for a decree that he had the right to dispose of the girl in marriage, and that the defendant should not marry her to any one without plaintiff's consent. The Lower Courts decreed that a marriage brought about by the mother without the consent of the girl's uncle (plaintiff) would be illegal. The parties were Muhammadans. *Held*, that plaintiff could not obtain a declaratory decree as prayed for, and that the orders of the Lower Courts were wrong; but that, if the mother did any act which infringed the uncle's rights as guardian or set aside his authority, he might then sue to restrain her. MUSSAMMAT JANNAT *v.* NOWRANGA. **42 P R 1876**

7. *Plaintiff in position to maintain a suit for possession—Discretion of Court—Objection taken on second appeal.*

The plaintiff sued for a declaration of his right to succeed to the office of *muhant* of a shrine, being at the same time in a position to maintain a suit for possession.

Held, that the Courts should, as a general rule, in such cases, in the exercise of the discretion allowed them, refuse to grant a declaratory decree and require the plaintiff to sue for possession.

DECLARATORY DECREE—*contd.*

6.—Miscellaneous—*contd.*

The objection that the Court of first instance had exercised a wrong discretion in permitting plaintiff to sue for a declaratory decree having been taken for the first time on second appeal, the Chief Court refused to interfere in the matter. BAIKUNT DAS *v.* HUKAM DAS. **55 P R 1877**

8. *Specific Relief Act (I of* 1877), *section* 42—*Creditor suing for a declaration that defendant is a member of the firm indebted to him—Further relief—Power to sue one partner alone for partnership-debt.*

A suit by plaintiff for a declaration that defendant was a member of a firm which was indebted to and liable to him as such, *held*, to be barred by the proviso to section 42 of the Specific Relief Act, as under the provisions of the Contract Act the plaintiff could seek further relief than a mere declaration of title by suing to recover the partnership-debt from defendant as one of the partners, subject to any order which the Court might pass under section 32 of the Civil Procedure Code. LAUNKRA LAL *v.* MOHAR SINGH. **93 P R 1884**

9. *Specific Relief Act (I of* 1877), *section* 42—*Right to erect a fish-trap—"Right to property."*

Held, that a right to erect a "*chip*" or fish-trap is a "right to property" which may form the subject of a declaratoy decree to be passed under section 42 of the Specific Relief Act. MAKHAN *v.* GOKUL. **32 P R 1885**

10. *Specific Relief Act (I of* 1877) *section* 42—*Declaratory decree—Consequential relief.*

Plaintiff, the grandfather of two minor girls, sued for a declaration that he was their guardian for the purpose of marrying them, but asked for no consequential relief, although the plaint averred that defendant, the mother of the girls, was going to betroth them elsewhere.

Held, that the suit was barred by the proviso to section 42 of the Specific Relief Act, inasmuch as further relief could have been asked for, *viz.*, an injunction to restrain the defendant from giving away the girls in marriage. GHULAM NABI *v.* MUSSHMMAT ABIDAN. **125 P R 1886**

11. *Satisfaction of decree out of Court—Civil Procedure Code* 1882, *section* 258—*Suit for declaration that the decree had been satisfied—Maintainability of such suit.*

Held, that notwithstanding the provisions of section 258, Civil Procedure Code 1882, a suit for a declaration that a decree had been satisfied is maintainable. DIWAN SINGH *v.* AMIR SINGH. **16 P R 1910**

12. *Declaratory suit, to effect that plaintiff is the real decree-holder of a decree obtained by defendant—Court fees—Consequential relief—Specific Relief Act, I of 1877, section* 42.

DECLARATORY DECREE—*concld.*

6.—Miscellaneous—*concld.*

Held, that in a suit for a declaration that plantiff is the real holder of a decree obtained by defendants against a third party and praying also that the decree be transferred to the plaintiff the latter prayer is mere surplusage and may be disregarded—the result being that no consequential relief has been sought in the plaint and a ten-rupee Court-fee stamp is adequate.

Held also, that it is for the lower Court to decide whether the plaintiff could seek further reliefs which would bring the proviso to section 42 of the Specific Relief Act 1877, into operation. GANESHI LAL *v.* BENI PRASHAD. **1 P R 1911**

13. *Declaratory suit in respect of right to realise* birt—Parohit *and* jujmans. *Maintainability of such suit.*

Held that plantiff's claim to a decree declaratory of their so-called right as heirs of one Buta to realise *birt* could not be recognized by a Civil Court, the so-called right not being *property* within the meaning and for the purpose of section 42 of the Specific Relief Act, 1877. GURDAS *v.* BHAG. **96 P R 1911**

DECREE.

1.—ADJUSTMMENT OF.
2.—AMENDMENT OF.
3.—CONSTRUCTION OF.
4.—DRAWING UP OF.
5.—EFFECT OF.
6.—EFFECT OF VOLUNTARY SATISFACTION OF.
7.—EX PARTE.
8.—FORM OF.
9.—OBTAINED BY FRAUD.
10.—INSTALMENTS.
11.—INTEREST ON.
12.—MESNE PROFITS.
13.—MODIFICATION OF.
14.—MORTGAGE.
15.—NEW.
16.—NULLITY OF.
17.—PARTIES.
18.—PARTITION.
19.—PRE-EMPTION.
20.—REBUILDING OF PARNALA.

See CIVIL PROCEDURE CODE, 1908, SECTION 152.
DECLARATORY DECREE.
DECREE OR ORDER.
EXECUTION OF DECREE.

1.—Adjustment of Decree.

1. *Mortgage—Construction of mortgage deed—Satisfaction of judgment debt—Uncertified adjustment of decree.*

See CIVIL PROCEDURE CODE, 1882, SECTION 257 A. **54 P R 1894**

2. *Adjustment of decree not certified—Adjustment not between decree-holder and judgment-debtor.*

See CIVIL PROCEDURE CODE, 1908, O. XXI, R. 2. **137 P R 1888**

DECREE—*contd.*

1.—Adjustment of Decree—*concld.*

3. *Money paid out of Court in satisfaction of, and not certified—Suit to recover.*

See RIGHT TO SUE.

4. *Execution proceedings—Jurisdiction of Court to entertain application after full satisfaction of the decree being entered.*

Section 244 of the Civil Procedure Code does not apply to a Court which has fully executed a decree and has thereby become *functus officio*, it applies only to a Court executing a decree at the time when an application connected with execution is made. CHOADRI GURMUKH SINGH *v* MUSSUMMAT MIRZA NUR. **63 P R 1901**

2.—Amendment of Decree.

1. *Amendment of decree—Variance between decree and judgment must be patent on the documents—Power of lower Court to amend decree confirmed on appeal by higher Court.*

See CIVIL PROCEDURE CODE, 1908, SECTION 152. **94 P R 1888**

2. *Duty of Court executing decree—Clerical error—Amendment of decree—Stay of exection.*

See CIVIL PROCEDURE CODE, 1908, SECTION 152. **78 P R 1889**

3. *Decree of Appellate Court confirming decree of District Court—Jurisdiction of District Court to amend original decree.*

See CIVIL PROCEDURE CODE, 1908, SECTION 152. **32 P R 1896**

4. *Decree not in conformity with judgment—Application by decree-holder to amend decree rejected as time-barred.*

See CIVIL PROCEDURE CODE, 1908, SECTION 152. **12 P R 1897**

5. *Decree not in conformity with judgment—Application by plaintiff to amend decree after it has been upheld by the Chief Court—Jurisidiction.*

See CIVIL PROCEDURE CODE, 1908, SECTION 152. **59 P R 1900.**

6. *Amendment of decree—Appeal—Revision.*

See REVISION IN CIVIL CASES. **101 P R 1888**

3.—Construction of Decree.

1. *Delivery of property—Certain date—Construction of decree.*

See CIVIL PROCEDURE CODE, 1908, SECTION 48. **159 P R 1889**

2. *Execution of decree—Certain date.*

See CIVIL PROCEDURE CODE, 1908, SECTION 48. **199 P R 1890**

3. *Annual or monthly payments—Decree directing payment at a certain date.*

See CIVIL PROCEDURE CODE, 1908, SECTION 48. **13 P R 1892 F B**

4. *Decree for specific movables or their value—Construction.*

See CIVIL PROCEDURE CODE, 1908 O. XXI, R. 32. **64 P R 1890**

DECREE—*contd.*

3.—Construction of Decree—*contd.*

5. *Final decree—Leave to appeal to Her Majesty in Council.*

See CIVIL PROCEDURE CODE, 1908, SECTION 109. **12 P R 1896**

6. *Conditional decree—Possession to be given on certain payment being made—Mortgage—Adverse possession.*

See CONSTRUCTION OF DOCUMENT. **137 P R 1889**

7. *Decree payable by instalments not fixed prior to decree—Executing Court fixing amount of instalments—consent of decree-holder.*

See EXECUTION OF DECREE. **46 P R 1881**

8. *Power of executing Court to look at judgment to explain ambiguous parts of decree.*

See EXECUTION OF DECREE. **45 P R 1882**

9. *Decree silent as to interest—Variances between judgment and decree—Power to realise interest in execution.*

See EXECUTION OF DECREE. **13 P R 1886**

10. *Decree for payment of money in accordance with written compromise.*

See EXECUTION OF DECREE. **84 P R 1885**

11. *Merger of decree in subsequent arrangement.*

See EXECUTION OF DECREE. **51 P R 1885**

12. *Agreement for carrying out decree.*

See EXECUTION OF DECREE. **195 P R 1882**

13. *Arrangement for satisfaction of, by temporary alienation of land of which sale is sought.*

See EXECUTION OF DECREE. **114 P R 1886**

14. *Against elder member of undivided family—Power to go behind decree in subsequent suit to show that the debt was a family debt and the decree binding on the minor members.*

See HINDU LAW, UNDIVIDED FAMILY. **70 P R 1883**

See MORTGAGE. **78 P R 1885**

15. *Decree varied by agreement.*

See LIMITATION ACT, 1871, SCHEDULE II, ARTICLE 167. **46 P R 1876**

16. *Adjustment of—Agreement to make payments at a certain date.*

See LIMITATION ACT (XV OF 1877), SCHEDULE II, ARTICLE 179. **61 P R 1886**

17. *Directing payment at a certain date—Limitation for application to execute.*

See LIMITATION ACT (XV OF 1877, SCHEDULE II, ARTICLE 179. **29 P R 1885**

18. *Decree made on a compromise that after expiration of fifteen years plaintiff would be entitled to possession.*

See LIMITATION ACT, 1877, SCHEDULE II, ARTICLE 179. **126 P R 1892**

19. *Decree providing that execution shall take place after expiry of a certain period.*

See LIMITATION ACT, 1877, SCHEDULE II, ARTICLE 178. **65 P R 1897 F B**

DECREE—*contd.*

3—Construction of Decree—*contd.*

20. *Decree payable by instalments—No condition as to default.*

See LIMITATION ACT, 1877, SCHEDULE II ARTICLE 179. **48 P R 1900.**

21. *Decree, Construction of—Decree payable by instalments—Default in payment of instalments—Execution of decree—Limitation.*

Held, in the case of a decree for money payable by instalments with a proviso to the effect that in case of default of payment of any instalment the defendant should pay the amount decreed in a lump sum, that the decree-holder had the option to take advantage of any default, and was entitled to execute his decree for any of the instalments that were not barred by limitation, and was not bound to apply for execution within three years from the date of the first default.

Karakaralasa Appayya v. *Karaman Pappaya* (*I. L. R. III Mad.* 256), *Ram Gulpo Bhattacharji* v. *Ram Chander Shome* (*I. L. R. XIV Calc.* 352), and *Shankar Prasad* v. *Jalpa Prasad* (*I. L. R. XVI All.* 371), cited.

Shib Dat v. *Kalka Parsad* (*I. L. R. I. All.* 443), *Monmohan Roy* v. *Durga Churn Gree* *I. L. R. XV Calc.* 502), *Sital Chand Nahr* v. *Hydermall* (*I. L. R. XXIV Calc.* 281), *Kanheya Lal* v. *Fattu* (48 *P. R.* 1900), and *Bihari Lal* v. *Baness* (109 *P. R.* 1889), referred to. ALLAH BAKHSH *v.* BHAWANI.

100 P R 1902

22. *Decree—Decree for possession of immovable property—Omission to specify boundaries or numbers of property decreed—Construction—Civil Procedure Code,* 1882, *section* 207.

In a case for possession by pre-emption of a certain area of land and of a house, the Court decreed the claim and described the property decreed as the property "in suit" without specifying its boundaries or *khasra* numbers.

Held, that the decree was not imperfect so as to be incapable of execution, inasmuch as the details given in the plaint in the case could be read into the decree, and that the executing Court should have proceeded to execute with the help of those details.

GORDHAN DASS *v.* RUGHNANDAN DAS.

74 P R 1905

23. *Pre-emption—Conditional decree—Appeal by purchaser for enhancement of purchase money—Duty of Appellate Court to extend time allowed for payment of price when confirming-decree of first Court—Construction of decree of Appellate Court confirming decree of original Court but silent as to time for payment of purchase money—Civil Procedure Code,* 1882, *section* 214.

Held, by the Full Bench (*Reid, J.* dissenting)—

(*i*) that an Appellate Court when deciding an appeal by a purchaser from a decree for pre-

DECREE—*contd.*

3.—Construction of Decree—*concld.*

emption and dismissing the same is not bound to fix a period subsequent to the date of its decree within which the price fixed by the Court of first instance is to be paid;

(*ii*) that the decree of an Appellate Court dismissing the purchaser's appeal on the ground that the price fixed by the Court below in a pre-emption suit was correct but silent as to time for the payment of pre-emptive money must be construed to have incorporated all the terms of the decree confirmed including the provision fixing the date or time for payment, and that in such cases the time allowed must be calculated from the date of the orginal and not of the appellate decree. WASAWA SINGH *v.* LAL SNGH.

48 P R 1906 F B

24. *Decree—Decree based on a judgment in terms of an award—Award charging jagir income with the amount due—Decree silent as to such charge—Execution of decree—Power of Court to refer to judgment or award to interpret the decree—Civil Procedure Code,* 1882, *section* 206—*Pensions Act,* 1871, *section* 11.

A decree was passed against the defendant-appellant (a *Mandal jagirdar*) for Rs. 6,000 payable by instalments. The decree was based on a judgment given in terms of an award. The award specified the instalments, and further declared that the amount due should be a charge on the *jagir* income of the defendant-appellant. The decree was altogether silent as to the charge.

Held (1) that the *jagir* income being a pension within the meaning of section 11 of the Pensions Act, 1871, was not liable to attachment;

(2) that the judgment and award could not be referred to to explain the decree which was clear and unambiguous in its terms; that the decree might be amended under section 206 of the Civil Procedure Code, but until that was done, the decree must be read as it stood, and not, by a strained interpretation, taken to contain a provision which would be illegal. QAMARUD-DIN KHAN *v.* LACHMI NATH. **95 P R 1906**

Cf. ALSO QAMAR-UD-DIN KHAN *v.* MANI RAM. **96 P R 1906**

25. *Decree—Construction of decree—decree in favour of appellant with costs.*

Held, that the proper interpretation of the words "appeal dismissed or accepted with costs" is that the costs of the Appellate Court alone are awarded and not that of the Conrts below.

Ramji Das v. Charanji Lal (45 P. R., 1887), followed. BAKHSHI RAM *v.* GUMANO

18 P R 1907

DECREE—*contd.*

4.—Drawing up Decrees.

1. *Necessity for drawing up decree when Appellate Court dismisses appeal at preliminary hearing—Necessity for Judge to sign decrees himself.*

See CIVIL PROCEDURE CODE, 1908, O. XLI, R. 11. **7 P R 1888 Rev.**

2. *Decree of first Court reversed by Divisional Court—Further appeal dismissed without summoning respondent—Necessity for drawing up decree.*

See CIVIL PROCEDURE CODE, 1908, O. XLI, R. 11. **9 P R 1900**

5.—Effect of Decree.

1. *Effect of decree passed against deceased defendant.*

See APPEAL—VI. PROCEDURE IN—

31 P R 1886

2. *Decree professing to follow an award of arbitrators, but not in accordance therewith.*

See ARBITRATION. **60 P R 1896**

3. *Appeal from decree made under section* 102.

See CIVIL PROCEDURE CODE, 1908, O. IX, R. 8. **32 P R 1889**

4. *Decree drawn up in favour of deceased plaintiff.*

See CIVIL PROCEDURE CODE, 1908, O. XXII, R. 3. **20 P R 1898**

5. *Compromise of suit—Finality of decree—Allegation of fraud by party to compromise.*

See CIVIL PROCEDURE CODE, 1908, O. XXIII, R. 3. **114 P R 1882, 24 P R 1893**

6. *Compromise of suit—Finality of decree in accordance therewith—Unauthorised compromise.*

See CIVIL PROCEDURE CODE, 1908, O. XXIII, R. 3. **48 P R 1895**

7. *Suit on foreign judgment—Decree passed* in absentem *and* ex parte *by Foreign Court—Jurisdiction of Court—*Actorsequitur forum rei—*Cause of action.*

See FOREIGN JUDGMENT.

112 P R 1894

8. *Decree of Civil Court passed without jurisdiction—Power of Revenue Court to ignore such decree.*

See PUNJAB LAND REVENUE ACT, 1887, SECTION 158 (2) (XVII).

2 P R 1895 Rev

9. *Suit to compel registration—Omission by plaintiff to present his deed for registration within 30 days of obtaining a decree in such suit—Effect of such omission—Lapse of decree.*

See REGISTRATION ACT, 1877, SECTION 75. **70 P R 1887**

10. *Two suits tried together by consent of parties—No appeal from decree in one suit.*

See RES JUDICATA.

23 P R 1897

11. *Effect of decree as regards minor who was unrepresented in former suit.*

See RES JUDICATA. **38 P R 1897**

DECREE—*contd.*

5.—Effect of Decree—*concld.*

12. *Appeal after execution of decree.*

Where a plaintiff obtains a decree for part only of his claim, and sues out execution of that decree, his right of appeal against the order disallowing the remainder of his claim is barred. MAHOMED KHAN *v.* FIDA MAHOMED.

82 P R 1868

13. A Court may make a decree declaring a lien respecting property situated out of its jurisdiction, when the defendant is within the Court's jurisdiction. SIMLA BANK *v.* DUDDY *Obsolete. See* SECTION 16, CIVIL PROCEDURE CODE.

77 P R 1875

14. *Agreement to liquidate decree by instalments—Validity of contract—Appeal by judgment-debtor subsequent to agreement—Dismissal of appeal.*

Plaintiff having obtained an *ex-parte* decree against defendant, which was appealed unsuccessfully to the Commissioner, proceeded to attach defendant's property in execution, whereupon a written agreement was entered into by the parties by which defendant undertook to liquidate the decree by specified instalments, which agreement was ratified before the execution Court, and proceedings in execution stayed. Two days after such ratification defendant filed a petition for revision (for which an appeal was afterwards substituted) in the Chief Court, praying for reversal of the Commissioner's judgment.

Held, that the appeal must be dismissed, as the arrangement entered into to liquidate the decree was not a voidable contract, but a reasonable arrangement for a good consideration, and one which should be enforced. SIRDAR AMRIK SINGH *v.* RAMBHAJ.

161 P R 1879

15. *Decree in favour of plaintiff for a part of his claim—Execution of such decree by plaintiff—Subsequent appeal for remainder—Estoppel.*

Held, that a plaintiff who has obtained a decree for a part of his claim and has executed the same is not by the mere fact of his having taken out execution of that decree debarred from prosecuting the appeal as regards the remainder of his claim which had been disallowed by the first Court.

Mahomed v. Fida Mahomed 82 *P. R.* 1868 over-ruled. RAGHU MAL *v.* BANDU.

31 P R 1907 F B

16. *Decree in contravention of the Punjab Alienation of Land Act*, 1900—*Effect of.*

Held, that a decree passed in violation of the terms of section 3, clause 2 of the Punjab Alienation of Land Act, 1900, is not a nullity. Section 9 of Punjab Act I of 1907, amending the Punjab Land Alienation Act, 1900, provides for such a case. DARGA DITTA *v.* MANA SINGH. **60 P R 1909**

6.—Effect of voluntary satisfaction of.

Appeal by judgment-debtor who has voluntarily satisfied decree.

See ESTOPPEL. **142 P R 1888**

DECREE—*contd.*

7.—Ex parte Decree.

1. *Application to set aside* ex parte *decree—Transfer of officer who passed the decree.*

See CIVIL PROCEDURE CODE, 1908, O. IX, R. 13. **153 P R 1890**

2. *Order under section* 108 *of the Civil Procedure Code setting aside an* ex parte *decree—Revision.*

See CIVIL PROCEDURE CODE, 1908. O. IX, R. 13. **125 P R 1892, 60 P R 1897 F B**

3. Ex parte *decree—Defendant present at first but absent at adjourned hearing—Order for case to proceed* ex parte*—Application to set aside* ex parte *decree—Rejection of such application—Appeal.*

See CIVIL PROCEDURE CODE, 1908, O. IX, R. 13 **82 P R 1895**

4. *Money paid into Court—*Ex parte *decree upheld—Application by decree-holder for payment of deposit.*

See CIVIL PROCEDURE CODE, 1908, O. IX, R. 13. **8 P R 1898**

5. Ex parte *decree confirmed on appeal—Power of original Court to subsequently set aside such decree.*

See CIVIL PROCEDURE CODE, 1908, O. IX, R. 13 **30 P R 1900**

6. *Jurisdiction of District Judge to re-open an* ex parte *decree which was appealed against to the Chief Court by the plaintiff.*

See CIVIL PROCEDURE CODE 1908, O. IX, R. 13. **4 P R 1901**

7. Ex parte *decree—death of judgment-debtor—Competency of the legal representative of the judgment-debtor to have the* ex parte *decree set aside.*

See CIVIL PROCEDURE CODE, 1908, O. IX, R. 13. **36 P R 1903**

8. *Application by defendant to have* ex parte *decree set aside—substituted service, effect of.*

See CIVIL PROCEDURE CODE, 1908, O. IX, R. 13. **42 P R 1904**

9. *Setting aside* ex parte *decree on condition of payment of costs.*

See CIVIL PROCEDURE CODE, 1908, O. IX, R. 13. **60 P R 1904**

10. *Setting aside decree* ex parte *against a defendant.*

See CIVIL PROCEDURE CODE, 1908, O. IX, R. 13. **72 P R 1905**

11. *Transfer of* exparte *money decree—Competency of transferee to prosecute suit on original cause of action if the* ex parte *decree is set aside.*

See CIVIL PROCEDURE CODE, 1908, O. XXI, R. 16. **78 P R 1905**

12. Lis pendens—*Mortgage—Mortgagor's title based on* ex parte *decree—*Ex parte *decree subsequently set aside—Rights of mortgagee.*

See LIS PENDENS. **56 P R 1896**

13. *Suing defendant in wrong name.*

A summons was erroneously addressed to the defendant under the name of Faddy instead of Free. The summons was served upon Free, but he did not appear to answer

DECREE—*contd.*

7.—Ex parte Decree—*contd.*

the suit, and an *ex parte* decree was given against him. When execution was applied for, the error was detected.

Per BOULNOIS, J, (ROBERTS, J. concurring). If Lieutenant Free had appeared to the summons and the suit had been decided against him, or the name and description of the defendant in the summons even without his appearance had been so close as to admit of no reasonable doubt, the plaintiff could proceed on this record notwithstanding the misnomer. All he would have to do would be to identify his defendant as the person whom he meant to sue, whom he did actually summon, and against whom in reality, with whatever error of name, the decree was made, But in this case, the name in the summons admits of doubt as to whether Lieut. Free must have known himself to be the man intended to be summoned. It admits of this doubt apparently, and although such a doubt might be removed on enquiry, as, for instance, if it appeared that he had gone by this *alias*, yet the circumstances of this case render it likely that the plaintiff could not show that the defendant, although so miscalled, ought to have appeared on the summons. If there was no sufficient summons the proceedings fall to the ground, and no warrant can issue. It is not necessary for the defendant to come in and set aside the proceedings under section 119 of the Civil Procedure Code. That is a course which might be adopted by a person who appeared on the face of the summons to have been properly summoned, but in fact was not. There can be no doubt that the proper course for the plaintiff in this case is to sue again, as if nothing had been done. In fact, no proceedings, on this view, have been taken against Lieut. Free, and no warrant can issue or be executed against him on this record. But care must be taken, in reference to cases like this, to avoid establishing a principle, that every man must necessarily be sued by his right name, for it is only so far as the error may have reasonably led to actual mistake that the proceedings are vitiated ; and when the defendant has appeared to the summons, I do not believe that there is any occasion to sue again. NIDHAN *v.* FREE.

9 P R 1866 Civil Ref.

14. Where the defendant was falsely personated at the hearing, held, that the decree passed in the suit for the plaintiff was *ex parte*. JAMAL DEEN *v.* NIHAL SINGH.

87 P R 1869

15. *Section* 119.

Plaintiff obtained a decree *ex parte* against the defendant for possession of certain property, and a few months afterwards applied for execution. The usual notice to show cause was issued, but, the defendant being absent, was not served. Upon the defendant's non-appearance, the Assistant Commissioner issued the order to carry out execution of the decree. Subsequently, the plaintiff filed and attested a *dakhlnama*, upon which the proceedings

DECREE—*contd.*

7.—Ex parte Decree—*concld.*

were consigned to the record-room. About a year afterwards, the defendant applied under section 119 of Act VIII of 1859, to set aside the *ex parte* decree urging that he had no notice either of the suit or of the execution of decree, and that he was still in possession of the land. *Held,* that no process for enforcing the judgment had been executed, and consequently the application was not barred by time. MOOLA SINGH *v.* WASAWA SINGH.

94 P R 1869

16. *Sections* 119, 239—*Ex parte decree—Application to set aside, made after time—Discretion of Court to admit—Informality in process of execution under section* 239—*Effect of.*

On 28th April 1876, C. H. and W. obtained an *ex parte* decree against J. K., in execution of which certain shops were attached on 29th June 1876. On 2nd August 1876, J. K. applied under section 119, Act VIII of 1859, to have the *ex parte* decree set aside. The process of execution issued under section 239, Act VIII of 1859, was informal, because (*a*) no copy of the prohibitory order was attached to the door of the Court, or other conspicuous part of the Court-house, and (*b*) the order was not read aloud in any place on or adjacent to the shops sought to be attached.

Held, by PLOWDEN AND ELSMIE, JJ., that no legal process of execution was executed under section 239 within 30 days of the application made by J. K. on 2nd August 1876, and therefore, that his application was within time.

Per FITZPATRICK AND PLOWDEN, JJ.—A Court has no discretion to set aside an *ex parte* decree on application made more than 30 days after process for enforcing the decree has been executed, even though it appear that the defendant had, as a matter of fact, not known of the execution till within 30 days before he made his application.

A party insisting upon the provisions of a severe and stringent law, like that relating to *ex parte* decisions, is bound to see that every formality is strictly complied with; where this is not done a Court is bound to hold for the purposes of section 119, Act VIII of 1859, that no process has been executed. CHOWDRI HIAT *v.* JAI KISHEN.

32 P R 1878

8.—Form of decree.

1. *Arbitration—Consent of all the parties to the suit—Section* 506, *Civil Procedure Code—Appellate Court remanding an appeal under section* 562 *as regards one defendant and dismissing the appeal as regards the other defendants—More than one decree in same suit.*

See ARBITRATION. **3 P R 1892**

2. *Unauthorised alienation by occupancy tenants—Suit by landlord against tenant and mortgagee—Form of decree.*

See CUSTOM I—(I)—ALIENATION OF OCCUPANCY RIGHTS.

6 P R 1893 Rev.

DECREE—*contd.*

8.—Form of decree—*contd.*

3. *Sunni Muhammadan—Prompt dower—Restitution of conjugal rights—Plea of non-payment of prompt dower—Form of decree.*

See DOWER. **5 P R 1891**

4. *Purchase of property by father in the name of one of his sons—Mortgage by such son—Suit to contest that mortgage by other heirs of the father—Form of decree.*

See HINDU LAW—ALIENATION.

6 P R 1893

5. *Suit for redemption of mortgage—Decree silent as to relief it gave to the plaintiff.*

See MORTGAGE—REDEMPTION.

34 P R 1896

6. *Form of decree in suit where some of the several co-sharers sue a trespasser affecting common land.*

See PARTIES. **105 P R 1901**

7. *Pre-emption—Compensation for improvements made by original purchaser—Form of decree.*

See PRE-EMPTION, COMPENSATION FOR IMPROVEMENT. **91 P R 1892**

8. *Occupancy rights—Decree—Specification of land.*

In making a decree for ejectment, the decree must specify the precise lands from which a tenant is to be ejected. Similarly a decree declaring occupancy rights under section 5, sub-section (1) (*c*), Tenancy Act, 1887, should specify the precise lands of which the tenant was in possession on the 21st October 1868, and in which he is found to have acquired occupancy rights. MUSSAMMAT ALA DI BEGUM *v.* TILOKA.

6 P R 1891 Rev.

9. *Decree—Form of, in cases for redemption of mortgage—Decree for redemption should not be conditioned on payment within fixed time.*

Held, that as a mortgagor in the Punjab, who has obtained a decree for redemption, is not debarred by reason of such decree from maintaining a second suit for redemption of the same mortgage where he has not availed himself to enforce the former decree, a Court should not in a decree for redemption fix any time limit for the payment of money found to be due under the mortgage and attach a condition that on failure to pay the right of redemption would be barred.

Shibbu Mul v. *Paira Singh* (86 *P. R.* 1877), *Nathu Singh* v. *Rura* (14 *P. R.* 1881), *Balmookand* v. *Ramji Lal* (20 *P. R.* 1887), *Ram Singh* v. *Nodh Singh* (93 *P. R.* 1879), *Periandi*, v. *Angappa* (*I. L. R. VII Mad.* 423), *Karuthasami* v. *Jaganatha* (*I. L. R. VIII Mad.* 478) and *Nainappa* v. *Chidambaram* (*I. L. R. XXI Mad.* 18), referred to. HIMAYAT ALI *v.* JOWALA SARUP. **100 P R 1905**

10. *Declaratory suit by reversioners—Alienation found to be in part without necessity—Form of decree.*

Held, that in declaratory suits by reversioners to have an alienation declared void after the death of the alienor, if the Court

DECREE—*contd.*

8.—Form of Decree—*concld.*

finds, that the alienation is in part only for necessity, the decree should declare (1) that the alienation shall not take effect *at all* against the reversioners after the death of the alienor, *and* (2) that the reversioners shall not be entitled to possession until they have paid the sum found to be for "necessity." FAZAL AHMED *v.* SHAHAB DIN. **92 P R 1909**

9.—Obtained by Fraud.

1. *Setting aside decree passed on compromise—Minor guardian* ad litem—*Fraud in equity—Knowledge.*
See CIVIL PROCEDURE CODE, 1908 O. XXIII R. 3 **24 P R 1893**

2. A suit lies to set aside a decree obtained by fraud. MALAK SHAHBAZ *v.* MOWAZ. **31 P R 1868**

10.—Instalments.

The rule (in *Judicial Commissioner's Circular No.* 80 *of* 1858) that instalments were not to extend over more than two years without the consent of the parties, had ceased to be in force in 1867. KHOOSHEE RAM *v.* KOUR SEIN. **69 P R 1867**

11.—Interest on decree

See INTEREST.

12.—Mesne profits.

Decree for redemption and possession on payment of a certain sum—Modification of decree—Final decree making redemption conditional on payment of larger sum—Suit for recovery of mesne profits which accrued between date of obtaining possession under first decree and payment under final decree.
See CIVIL PROCEDURE CODE, 1908, SECTION 47. **60 P R 1890**

13.—Modification of Decree.

1. The correction of an error and consequent modification of the decree of a Court of first instance by the Collector on appeal gives a further appeal on the whole case to the Commissioner under section 80, proviso (*iii*), Punjab Tenancy Act, 1887. JAIMAL AND FATTU *v.* MAIDHAN. **3 P R 1891 Rev.**

2. Reversal of whole decree on appeal by one of several plaintiffs or defendants when the decree proceeds on ground common to all. **26 P R 1881**
71 P R 1883

3. An Appellate Court can only modify judgment or decree so far as it affects the appellant, without interfering as to parties who do not appeal. RAM DITTA *v.* MOHKAM. **46 P R 1892**

14. Mortgage.

See MORTGAGE—REDEMPTION.

DECREE—*contd.*

15.—New Decree.

Review of judgment—New decree—Appeal.
See APPEAL II—Competency of. **85 P R 1891**

16. Nullity of Decree.

1. *Appeal from decree passed by inadvertence against, or in favour of, a dead party.*
See APPEAL II—Competency of. **7 P R 1889**

2. *Decree in favour of deceased appellant.*
See CIVIL PROCEDURE CODE, 1908, O. XXII R. 3 **78 P R 1891**

3. *Decree drawn up in favour of deceased plaintiff.*
See CIVIL PROCEDURE CODE, 1908, O. XXII R. 3. **20 P R 1898**

4. *Decree in contravention of the Punjab Aleination of Land Act* (1900)—*Effect of—held*, that a decree passed in violation of the terms of section 3, clause (2), of the Punjab Alienation of Land Act, XIII of 1900, is not a nullity. Section 9 of Punjab Act (1) of 1907, amending the Punjab Land Alienation Act, 1900 provides for such a case. DARYA DITTA *v.* MANA SINGH. **No. 60 P R 1909**

17.—Parties.

See CIVIL PROCEDURE CODE, 1908, SECTION 47. **9 P R 1889**

1. *Surety.* **151 P R 1890**

A decree cannot be executed against one who, after decree passed, becomes surety for its performance. BUNSIDHAR *v.* BEHARI LALL. **62 P R 1871**

2. *Execution against one who undertakes to satisfy a decree.*

Plaintiff obtained a decree against A. personally for a sum of money. B., on the ground that A. was his (B.'s) agent, and that the subject-matter of the suit concerned B. and not A., agreed to satisfy the decree. *Held*, that execution of the decree could not be had against B. whose undertaking might furnish a separate cause of action. DIWAN RAM CHAND *v.* MUHAMMAD SULTAN. **75 P R 1876**

18.—Partition.

1. *Decree for partition of estate—Partition referred to Collector—Powers of Civil Courts to interfere.*
See CIVIL PROCEDURE CODE, 1882, SECTION 54. **73 P R 1889**

2. *Order fixing plaintiff's share in suit for partition and directing partition—Decree.*
See CIVIL PROCEDURE CODE, 1908, O. XXVI R. 3. **37 P R 1896**

19.—Pre-emption.

1. *Decree for pre-emption omitting to state consequence of non-payment of pre-emptive price within the time prescribed thereby for payment—Civil Procedure Code,* 1882, *section* 214.
See CIVIL PROCEDURE CODE, 1908, O. XX R. 14. **53 P R 1903**

2. *Pre-emption suit—Execution of decree—Transfer of right to execute decree for present possession, right of ownership*

DECREE.—*concld.*

19.—Pre-emption—*concld.*

being reserved—Refusal of execution Court to allow transferee to execute decree, suit by transferee to establish his right.
See CIVIL PROCEDURE CODE, 1908, O. XXI. R. 16. **78 P R 1896**

3. *Decree for pre-emption—Question whether decree-holder has paid money into Court within time.* 1908
See CIVIL PROCEDURE CODE, 1908, SECTION 47. **38 P R 1898**

4. *Decree for pre-emption directing money to be paid into Court by certain date, but not stating consequences of non-compliance.*
See LIMITATION ACT, 1877, SCHEDULE, II, ARTICLE 179. **47 P R 1898**

5. *Decree subject to payment of a certain sum within a fixed period, and also awarding plaintiffs their costs—Payment of such sum within the specified period less the costs awarded.*
See PRE-EMPTION—PAYMENT INTO COURT. **70 P R 1888**

6. *Decree of lower Court fixing time for payment modified subsequently to expiry of such period, by decree of Appellate Court.*
See PRE-EMPTION—PAYMENT INTO COURT. **10 P R 1895**

20.—Re-Building of Parnala, Decree directing.

See CIVIL PROCEDURE CODE, 1908, O. XXI. R. 32 **107 P R 1889**

DECREE OR ORDER.

1. *Decree or order—Order refusing to entertain a plea—Civil Procedure Code, Act V of* 1908, *section* 2, *clauses* (2) *and* (14)—*right of appeal.*

The purchaser of the equity of redemption sued the mortgagee for a perpetual injunction to restrain the latter from effecting certain repairs. One of the pleas of the defendant was that he held a mortgage from a co-owner in the mortgaged property, from whom he had a separate mortgage empowering him to effect the repairs. The District Judge held that he was in law debarred from going into the question of the rights of a co-owner and refused to go into them. The defendant thereon preferred an appeal to the Divisional Judge from the order of the District Judge on this point. The Divisional Judge held that the order amounted to a preliminary decree and was consequently appealable.

Held, that the order of the District Judge was not a preliminary decree but merely an order as defined in section 2 (14) of the Code of Civil Procedure and that no appeal lay therefrom to the Divisional Judge. KANSHI NATH *v.* NATHU RAM. **41 P R 1911**

2. *Decree (preliminary)—meaning of—Civil Procedure Code, Act V of* 1908, *section* 2 (2)—*appeal—revision.*

Held, that in the definition of "decree" in section 2 (2) of the Civil Procedure Code of 1908 the words "rights of the parties" must be taken to be the rights of the parties *inter se* in regard to the subject-matter of

DECREE OR ORDER—*contd.*

the suit and that preliminary orders passed upon :—

(*a*) an objection, as to part of the suit, based upon the terms of the Pension Act ;

(*b*) a question as to how that portion of the claim dealing with profits is to be determined ;

(*c*) a demand by defendant that security should be taken from plaintiff before the case proceeds further ; and

(*d*) an allegation by the defendant that the total Court-fee stamp now required from plaintiff is largely deficient ;

are consequently not decrees and not appealable.

Held also, that as an appeal will lie from the decree in the suit, the Court must decline to interfere with the orders on revision.

146 *P. R.* 1908 distinguished. MIR UMAR ALI *v.* MUSSAMMAT NASIB-UN-NISA. **82 P R 1911**

3. *Preliminary decree—Civil Procedure Code, Act V of* 1908, *section* 2 (2)—*order returning plaint for amendment—appeal—revision—declaratory decree in respect of right to realise* birt—parohit *and* jujmans—*Specific Relief Act, I of* 1877, *sections* 40 *and* 54.

Where the first Court passed the following order :—" Plaintiffs cannot bring a suit for " declaration of *birt* and should bring a suit " for injunction" and added—" order an- " nounced to counsel of parties and plain- " tiff's counsel are directed to comply with " the order till 14th August 1909, for which " date the case is postponed."

Held, that this was merely an order returning the plaint for amendment within a specified period and not a preliminary decree within the meaning of section 2 (2), Civil Procedure Code, and that consequently no appeal was competent under the provisions of the Code.

Held also, that although the order was only interlocutory, the very peculiar circumstances of the case justified the Chief Court in dealing with it on the revision side.

Held also, that plaintiff's claim to a decree declaratory of their so-called right as heirs of one Buta to realize *birt* could not be recognized by a Civil Court, the so-called right not being *property* within the meaning and for the purpose of section 42 of the Specific Relief Act, 1877.

[The relations between a *parohit* and his *jujmans* discussed.]

8 *P. R.* 1901 differed from, and

7 *P. R.* 1877, *Strimathoo Mootho* v. *Darasinga Tevar*, (1875) 15 *B. L. R.* 108 (*P. C.*), *Samarindra Chandra Deb* v. *Birendra K. Deb*, (1908) *I. L. R.* 35 *Calc.*, 789—794 and 115 *P. R.* 1883, referred to.

Held further, that the objections to the grant of a declaratory decree are equally fatal to the grant of an injunction, in the absence of a specific agreement between the parties (*vide* section 54, Specific Relief Act).

DECREE OR ORDER—*concld.*

Rajavalad Shivapa v. *Krishnabhat*, (1879), *I. L. R.* 3 *Bom.* 232 and *Daya Rum Hargovan* v. *Jetha Bhat Lakhmiram*, (1896) *I. L. R.* 20 *Bom.* 784, referred to. GURDAS *v.* BHAG, &C. **96 P R 1911**

DEDICATION OF ROAD TO PUBLIC.

Right of way—Public or private road—User of road by public for less than 20 *years—Presumption as to dedication—English Law.*

See EASEMENT. **62 P R 1898**

DEEP-STREAM RULE.

See ALLUVION AND DILUVION.

DEFAMATION. 13 P R 1900

1. *Husband's right to maintain a suit in his own name for slanderous imputations against his wife—Special damages.*

See RIGHT TO SUE. **27 P R 1887**

2. *Damages for defamation of character—Actual pecuniary damage.*

See SMALL CAUSE COURT, 1885, SECTION 6. **98 P R 1888**

3. Plaintiff sued defendant for damages, the latter having accused the former of murder, and plaintiff having been kept several days in custody upon the charge and then discharged. There being no express malice shown against defendant, and there not being an entire absence of reasonable and probable cause for the accusation, plaintiff's suit dismissed. MAYA *v.* MUTHRA DASS. **25 P R 1867**

4. An action does not lie for a defamatory statement made on oath in the course of litigation, relevant to the matter litigated, though the statement be untrue. MOHUN LALL *v.* LEVINGE. **39 P R 1868**

5. A charged *B* with theft of his mare ; the criminal charge having failed, *A* sued *B* on the Civil side for restitution of the mare ; this suit having also failed, *B* sued *A* for damage for injury to reputation. *Held*, that to support this suit, it was not necessary to prove express malice—it would be sufficient to establish absence of reasonable and probable cause ; but such absence could not be inferred in this case, where the civil suit of *A* v. *B* failed by reason of the evidence being nearly balanced. MOTEE RAM *v.* HEERA NAND. **48 P R 1868**

6. *Libel—Public acts of a public man—Defamatory comments upon—Privileged, if made* bona fide *and upon reasonable grounds, though inferences not fully warranted—Not privileged, if reckless or coupled with unjustifiable invective.*

Plaintiff was Sanitary Commissioner of the Punjab, and the defendants were connected with a newspaper published at Lahore. In May 1869 cholera broke out at Amritsar ; on the 29th of that month was reported to prevail by the Civil Surgeon to plaintiff ; on 15th June was reported epidemic by the Civil Surgeon, and increased in severity during the months of June, July, and August, the deaths amounting to several thousands. Plaintiff visited Amritsar on the 2nd August, and remained there till the 6th ; and during his visit made an inspection of the city with the Civil Surgeon, which the latter stated in evidence was "sufficient to give him " (plaintiff) a general idea of the sanitary " state of the city, of the nature of the " epidemic, and of the precautionary and " remedial measures that were taken by " himself (the Civil Surgeon) and the Civil " authorities." At the close of this inspection, in the course of which plaintiff and the Civil Surgeon had visited the filthiest parts of the city, plaintiff was sickened by a particularly foul stench to which the Civil Surgeon had led him by way of a joke, and returned to his buggy. This incident the Civil Surgeon afterwards jestingly related to one Rodgers, who thereupon wrote an article, which was published in defendants' newspaper on the 17th August, and which contained *inter alia* the following expressions : " Instead of search, patient and " investigating, the Doctor" (thereby meaning the plaintiff) " took to inglori- " ous flight. We do not want a man with " so delicate a nervous system that if he " meets with one foul smell he flies. " . . . . What boots such untiring " efforts and such unselfish devotion " (alluding to the Civil Surgeon) " now that " the enemy occupies the field, with such " allies as the utter carelessness of the " people, the idleness of the conservancy " contractor, and the cowardice of the " Inspector Chief of Nuisances " (meaning the Sanitary Commissioner). In an action for libel based upon this article, the Court *held*, that to determine whether or not the above comments were privileged, as being fair remarks upon the public acts of a public man, the question was whether Rodgers, the author of the article, had brought to the task of condemning plaintiff's conduct an honest sense of justice, and a reasonable degree of judgment, and moderation ; that the imputations must not only be honest, but if mistaken must be made upon some reasonable ground. *Held*, also that the shortness of plaintiff's visit to Amritsar and his delay in making the visit, upon which defendants insisted, did not reasonably permit the inference that he was actuated by a fear of the epidemic ; that the imputation of cowardice, resting upon what the Civil Surgeon had said in jest, was reckless, and in excess of the privilege of the occasion ; and that therefore the article sued upon was libellous and actionable without proof of express malice. DERENZY *v.* GRIFFIN. **8 P R 1870**

7. *Libel—Publication—Document sent by post—Jurisdiction.*

DEFAMATION—*contd.*

Where the defendant posted a newspaper (alleged to contain a libel upon plaintiff) at Agra, addressed to C. at Lahore and the newspaper was delivered to C.'s servant at Lahore, and forwarded by him unopened to his master at Amritsar (where C. was temporarily staying)—*held*, that the publication was at Lahore, and the Civil Court at that place therefore had jurisdiction to entertain the suit. DENGO *v.* KIRBY.

33 P R 1874

8. *Libel—Privilege—Charge of corruption against arbitrator by party to suit.*

Plaintiff was umpire in a Civil suit to which defendant was a party in which defendant filed a petition objecting to the award and imputing corruption to the plaintiff and claimed to recover Rs. 3,000 damages for defamation.

Held, that the charge having been preferred in the course of a Civil suit to which the defendant was a party, the occasion was privileged, and that, even if the charge was false and unfounded and made from express malice, no action for damages would lie. ALI KHAN *v.* MALIK YARAN KHAN.

16 P R 1879

9. *Suit for damages—Witness giving evidence in judicial proceeding.*

Held, that a suit for damages for defamation of character in respect of evidence given by a witness on oath in a judicial proceeding is not maintainable. KUNDAN *v.* RAMJI DAS.

146 P R 1879

10. *Exclusion of plaintiff from caste owing to defendant's imputations—Ground of action—Special damage—Remoteness of damage—Privilege—Reasonable cause for belief in truth of imputations—Measure of damages—Ground for second appeal.*

The allegations upon which plaintiff's suit was based, and which were found to be proved, were that in consequence of certain statements which were falsely and maliciously published by the defendants to the effect that plaintiff's wife was a woman of low caste, between which and the plaintiff's own caste inter-marriage and intercourse of any kind were prohibited, the plaintiff's brotherhood had expelled him and his wife from caste, and that they had thus been deprived of the social *status* which they formerly enjoyed. It appeared that these statements were not only contained in a letter which the defendants had procured to be written and which they had subsequently read before the assembled brotherhood, but they were also repeated orally on the same occasion by the defendants who thus vouched for their accuracy.

Held, that the above facts furnished ample grounds for an action for defamation.

Held further, that the expulsion from caste could not be said to be too remotely connected with the publication of the defamatory statements to constitute damage for which the defendants were answerable, as although the act of a third party, the expulsion was

DEFAMATION—*concld.*

the natural consequence of the defendants' conduct which they must have contemplated, and which therefore must be fairly attributed to their wrongful act.

Held also, that defendants' contention on the ground of privilege failed, as to entitle a defendant to succeed on such a plea, it is necessary to show not only that the occasion was privileged, but that it was made use of *bonâ fide* and without malice; the defendant must not only have believed in the truth of the statement he has repeated, but the belief must have been one for which there was reasonable and probable cause, formed after due enquiry and with proper caution: whereas in the present case the defendants had proved none of the above conditions, but were on the contrary found to have been actuated by express malice.

In the above case the plaint failed to set out the grounds upon which the amount claimed as damages was estimated, and no evidence was adduced by either party to guide the Court in estimating the proper amount to be awarded, but the defendants did not in the first Court plead that the damages claimed were excessive, nor did they raise the point in the lower Appellate Court, and only inferentially in second appeal to the Chief Court. *Held*, that under the above circumstances unless the amount awarded was palpably excessive, which it did not appear to be in the present case, the Court was not called upon to interfere at the stage of a second appeal. SANT *v.* BHAG MAL.

140 P R 1882

11. *Defamation—Communication by clergyman to a lady attached to his mission as to her proposed marriage—Moral or Social duty—Qualified privilege.*

Held that a communication from a clergyman in charge of a charitable mission to a lady attached to his staff intimating his disapproval of her proposed marriage (the ceremony of which he had previously promised to perform) and containing imputations affecting the moral character of the person whom she was about to marry is a privileged communication, and not actionable, unless malice is shown. X. V. Z.

83 P R 1908

DEFAULT.

See APPEAL. II.—COMPETENCY OF.

9 P R 1883

VI. PROCEDURE IN—

113 P R 1876
48 P R 1878
61 P R 1878
139 P R 1879

CIVIL PROCEDURE CODE, 1908, O. IX, R. 8 and 9 *Passim.*
O. XVII, R. 2 and 3 *Passim.*
O. XLI, R. 11 and 19 *Passim.*
O. XXXIII, R. 7.

64 P R 1896

Order XLVII, rule 1.

1 P R 1889

DEFAULT—*concld.*

LIMITATION ACT, 1877, SECTION 14.
17 P R 1873
63 P R 1886

LIMITATION ACT, 1877, ARTICLE 168.
44 P R 1882
76 P R 1882

PRACTICE. **83 P R 1890**

RES JUDICATA. **104 P R 1883**
177 P R 1888 P. C.
80 P R 1899

REVISION IN CIVIL CASES.
75 P R 1881
34 P R 1890

SMALL CAUSE COURT, JURISDICTION OF. **52 P R 1889**

DEFECT IN PROCEDURE.

See REGISTRATION ACT, 1877, SECTIONS 23, 26. **93 P R 1883**

DEFENDANT.

1. *Summons to, under wrong name.*
See DECREE, 7 EX PARATE **9 P R 1866**

2. *Defendant—Absence of, from British India.*
See LIMITATION ACT, 1877, SECTION 13, *Passim.*

3. *Death of one of several—Application for substitution—Sufficient cause for not applying within prescribed period.*
See PARTIES. **113 P R 1907**

DEFENCE.

Held that, in pre-emption suits, a vendee cannot improve his own position subsequent to sale and set this up in defence, so as to defeat the pre-emptor's suit. SANWAL DAS *v.* GUR PARSHAD. **90 P R 1909 F B**

DEGREES OF RELATIONSHIP.

1. *Mode of calculating degrees of relationship.*

In calculating degrees of relationship, the proper course is to begin with the generation of the deceased and to count upwards until the common ancestor is reached, whose generation should be also included. All the descendants of the common ancestor, however remote, are entitled to succeed. LADHU *v.* MUSSAMMAT DAULATI.

126 P R 1890

2. *Mode of calculating degrees of relationship.*

The method of counting degrees of relationship in the Bannu district is from the collateral to the common ancestor, both being included. GIRDHARI RAM *v.* FAIZULLAH KHAN. **48 P R 1908**

DELHI PALACE FORTIFICATIONS.

See COMPENSATION. **57 P R 1869**

DELHI, EX-KING OF.

See ACT OF STATE. **2 P R 1872 P. C.**

Claims against—Suit against Government of India for a bond debt of the Ex-King of Delhi.

DELHI, EX-KING OF—*concld.*

The money was advanced to the King in 1840; payments on account were made up to 1850, and then ceased. In 1852 plaintiff sued on the bond in the Civil Court of Delhi, but the case was thrown out for want of jurisdiction. In 1860, plaintiff claimed from Government, under an order of the Governor-General in Council, authorizing all loyal subjects having claims against the ex-King to come forward, and if the claims were approved, the Government would satisfy them.

The Punjab Courts found that, although plaintiff was loyal, yet the proofs were not sufficient, and that at the time the ex-King's estate was confiscated, this claim was hopeless; and held that the Government was under no obligation, legal or moral, to pay a bad debt, or to place plaintiff in a better position than he would have occupied had the ex-King remained *in statu quo*; that the paying of such claims at all was a mere act of grace and favour on the part of the Government; and that, as the claim was not brought within six years, it was barred by the law of limitation.

In appeal to the Privy Council, *found*, that the bond on which the claim was founded was genuine, and that no portion of the principal amount was paid; *held*, that in the peculiar circumstances of a case like this, the Government did no more than what was incumbent upon it in narrowly and jealously scrutinizing the claim, and that it was not required to satisfy a stale demand, but that the law of limitation did not apply to the present case. Judgment for appellant, for the principal amount, with interest from 1852, and costs. LALLA NARAIN DAS *v.* ESTATE OF EX-KING OF DELHI. **Privy Council Judgment, 1868.**

DEL CREDERE AGENT.

See PRINCIPAL AND AGENT. **98 P R 1869**

DELIVERY.

Non-delivery of document by executant after registration—Validity and operation—Complete transaction.

See DOCUMENT. **40 P R 1906**

DEMAND.

Demand of payment of principal and interest before issue of notice of foreclosure is a condition precedent to the validity of such notice. **16 P R 1888**

See MORTGAGE—FORECLOSURE. **106 P R 1889**

DEMOLITION OF BUILDINGS.

1. *Erection of building by one joint owner on common land.*

See COMMON LAND **54 P R 1892**

2. *Tenant's right to erect buildings on arable land without landlord's consent.*

See OCCUPANCY RIGHT, **122 P R 1888**

3. *Erection of buildings by one man on the land of another.*

See PRE-EMPTION—COMPENSATION FOR IMPROVEMENTS. **38 P R 1889**

DEMURRAGE.

See RAILWAY COMPANY. **92 P R 1883**

DEPOSIT.

See BANK. **17 P R 1869**

See LIMITATION ACT, 1859, SECTION 1. **23 P R 1872** **74 P R 1882**

See LIMITATION ACT, 1877, ARTICLES 59, 60. **95 P R 1885**

See IB., ARTICLE 145. **74 P R 1882**

DESERTION.

See DIVORCE. **51 P R 1869**

See RESTITUTION OF CONJUGAL RIGHTS. **82 P R 1908**

DEVISE.

To defendant if no male child was born to testator—Birth of male child who died the same day—Defendant's right to succeed.

See WILL. **181 P R 1882**

DEVOLUTION OF INTEREST PENDING SUIT.

1. *Devolution of interest pending suit—Joinder of parties.*

See CIVIL PROCEDURE CODE, 1908, O. XXII, R. 10. **29 P R 1887**

2. *Transfer of interest pending suit or appeal.*

See CIVIL PROCEDURE CODE, 1908, O. XXII, R. 10 **143 P R 1889**

DHAREL MARRIAGE.

See CUSTOM—IV. BETROTHAL, DOWER, MARRIAGE, DIVORCE. **5 P R 1893** **52 P R 1899**

DHAREL WIFE.

See CUSTOM—IV. BETROTHAL, DOWER, MARRIAGE AND DIVORCE. **21 P R 1882**

DHARMARTH.

See CUSTOM—I. A. (4) ALIENATION FOR RELIGIOUS PURPOSES. **51 P R 1884** **159 P R 1884** **3 P R 1885**

DHARMSALA.

See RELIGIOUS INSTITUTION. **66 P R 1892**

—Claim for pre-emption by proprietors of.

See PRE-EMPTION. **100 P R 1885**

DHART.

See CUSTOM—V. CESSES AND DUES. **89 P R 1879**

See JURISDICTION OF CIVIL COURT. **8 P R 1872**

See CAUSE OF ACTION. **28 P R 1894**

See SMALL CAUSE COURT ACT, 1865, SECTION 6. **29 P R 1889**

DHERI.

1. Bhayachara *village divided into* pattis *and* dheris—*Suit for partition of village site.*

See COMMON LAND. **117 P R 1894**

DHERI—*concld.*

2. Whether the provisions of section 12, Punjab Laws Act, are applicable to a *dheri* or sub-division of a *patti*. JAFFAR KHAN *v.* FAZAL MOHI-UD-DIN. **44 P R 1892**

DILUVION.

See ALLUVION AND DILUVION.

DIRECTORS.

1. *Power and authority of—Public Company—Articles of Association—Ratification by Company of acts* ultra vires *of Directors.*

See COMPANY. **17 P R 1901** **57 P R 1902**

2. *Public Company—Contract on behalf of Company—Directors and officers—Warranty of authority—Duty of third parties to see that the Directors and officers are acting within their authority—Presumption as to observation of formalities requisite to confer authority upon Directors.*

See COMPANY. **81 P R 1903**

3. *Public Company—Articles of Association—Directors exceeding borrowing powers—Adoption and ratification of* ultra vires *acts of Directors.*

See COMPANY. **57 P R 1902**

4. *Acts done* bonâ fide *by Director, not properly appointed—Validity of.*

See COMPANY. **46 P R 1911**

DISCOVERY OF DOCUMENTS.

Suit for dissolution of marriage on the ground of wife's adultery—Power to order discovery of documents in the possession of wife or co-respondent to prove adultery.

See DIVORCE ACT, 1869, SECTION 51. **11 P R 1902**

DISCRETION.

Held, that where the Courts below have refused to exercise in favour of the plaintiff their discretion to allow an amendment of the plaint after a very full consideration of the circumstances of the case, and the consequences of such refusal are in no way serious, the Chief Court should not interfere with that discretion, where it was not exercised arbitrarily or without the Courts knowing all the facts of the case and applying their minds to them. ABDUL GHAFUR *v.* MUSSAMMAT MEHAR-UN-NISA. **101 P R 1909**

DISMISSAL OF LAMBARDAR.

See LAMBARDAR.

DISMISSAL OF SUIT—PRINCIPLES WHICH SHOULD REGULATE.

1. *Dismissal of suit on the ground that the plaint was signed and verified by some only of the plaintiffs.*

See APPEAL.—VI. PROCEDURE IN. **48 P R 1896**

2. *Dismissal of suit pending reference to arbitration.*

See ARBITRATION. **10 P R 1899**

3. *Dismissal of suit—Subsequent suit between same parties.*

See CIVIL PROCEDURE CODE, 1908, O. XVII, R. 2, 3. **80 P R 1899**

DISMISSAL OF SUIT—*contd.*

4. *Dismissal of suit of pre-emption on the ground that the plaintiff did not expressly sue for the share of* shamilat *included in the sale.*

See Plaint—Form of.

7 P R 1896

See Pre-emption—Loss, or Waiver of Right. **9 P R 1896**

5. *Suit for ejectment of widow—Court finding plaintiff not entitled to immediate possession, but declaring his right as heir on the widow's death—Dismissal of suit.*

See Pleadings. **159 P R 1888**

6. *Dismissal of suit of pre-emption on ground that plaintiff after obtaining an* ex-parte *decree (afterwards set aside) had re-sold the land at first decreed to him—Legality of such ground of dismissal.*

See Pre-emption—Loss of Waiver of Right. **22 P R 1887**

7. *Dismissal of suit by Appellate Court on a point not taken in the first Court.*

See Principal and Agent

21 P R 1897

8. *Suit for recovery of movable property and for an account—Plaintiffs claiming as owners by succession and as principals who had appointed defendants to manage their property—Statement by plaintiff that she had never appointed defendants as her agents—Dismissal of suit—Principles which should guide Courts in such cases.*

Plaintiffs, in their plaint, alleged that one M. D. died on 6th Jeth 1948 Sambat, leaving plaintiffs as his heirs; that he had long been separate in business from his brothers, the defendants; that his property was self-acquired; that defendants, as the nearest male relatives of M. D., were appointed by plaintiff as their agents, and entrusted with the management of the entire movable property; that K. S., one of the defendants, took out a certificate under Act VII of 1889, for the collection of debts due to the deceased; that at plaintiffs' instance, K. S. was made to file accounts in Court, but that they were incorrect; that plaintiffs did not wish to allow the management of the property to remain any longer in defendants' hands, but that on plaintiffs demanding return of it from them they had refused to comply, and that, therefore, plaintiffs had been compelled to come into Court to ask for its restitution and for rendition of proper accounts. Defendants pleaded (*inter alia*) that plaintiffs were not entitled to succeed to the property of M. D., but only to maintenance; that plaintiffs had agreed to take, and had been receiving, maintenance from defendants, and that for this same reason and because they had admitted defendants as the brothers of M D., to be his rightful heirs, in consequence of which the said certificate had been granted to them, plaintiffs were precluded from bringing the present suit; that the accounts filed by them were correct; and that the greater part of the property was ancestral while no part of it was admitted to have been acquired by the deceased.

DISMISSAL OF SUIT—*concld.*

Plaintiffs' pleader, in reply traversed the said allegations, and Mussammat P., one of the plaintiffs, was then examined by the Court, and stated that she had never appointed the defendants as her agents, nor had she entrusted anything to them, and that they had "looted" all the property.

Thereupon the Court, holding this statement to be utterly inconsistent with the plaint, forthwith dismissed the suit without drawing any issues or making any inquiry, on the ground that no amendment of the plaint could be allowed under the circumstances, and that as the plaint disclosed a cause of action, the Court was precluded from rejecting it under Section 54, Civil Procedure Code.

Held, that the suit should not have been dismissed. Inasmuch as plaintiffs in their plaint based their suit on two distinct titles—(1) as owners of the property as heirs of M. D. and (2) as principals who had appointed defendants to manage the said property for them, plaintiffs were entitled, even if they had failed to establish the allegation of agency and trust, to fall back upon their ground of action as owners by succession of the said property, and their suit should not have been dismissed until this had been enquired into and decided.

As regards respondents' contention that inasmuch as the suit as laid in the plaint was simply one against agents for an account and for recovery of property belonging to the principals in their hands, while according to the statement of Mussammat P., it was one against a trespasser and wrong-doer for recovery of specific property, the two suits were of a wholly different character, *held,* that the original claim was based on plaintiffs' title as owners of the property and not merely as principals of the defendants, and that K. S., who had obtained the said certificate, was clearly accountable for all his realizations if plaintiffs' titte were made out.

Held, further, that even if plaintiffs were not entitled to an account, it might be a ground for not giving them that relief, but would not justify the dismissal of their claim for return of the property in defendants' hands. Mussammat Parbatti *v.* Kaur Singh.

85 P R 1896

DISMISSAL OF ZAILDAR.

See Zaildar.

DISQUALIFICATION OF JUDGE

Judge during pendency of suit concluding transactions of mortgage and sale with one of the plaintiffs—Bias—Cancellation of proceedings—Act XVII of 1877, *section* 46.

While a suit was still pending in his Court, the Judge concluded a transaction by way of conditional sale of a well and certain lands, which were situate close to his house, over which he claimed to have a right of pre-emption, and which he did not wish to pass into other hands, from one of the plaintiffs. It further appeared that within six days of passing a decree in the plaintiffs' favour, the said Judge purchased another portion of the lands watered by the

DISQUALIFICATION OF JUDGE —*concld.*

same well, but which had not been included in the mortgage by way of conditional sale, from the same plaintiff.

Held, that the Judge had disqualified himself from acting as a Judge in the suit in which the said mortgagor and vendor was a co-plaintiff, as it was impossible to deny that his conduct was such as was calculated to throw a substantial doubt on the purity of his administration of justice in the case, and whether the above transactions had or had not in fact created a bias in his mind, they were at all events of such a character as to show that the Judge had put himself in a position that was inconsistent with a fair and unbiassed discharge of his duties.

Held further, that the proper course to pursue was to treat the proceedings of the said Judge as those of an incompetent Court by reason of bias, and thus dealing with the suit as one which had not yet been legally tried, to transfer the same for trial to another Court.

Held also, that there was no bar to the adoption of the above course by reason of section 46 of Act XVII of 1877, as disqualifications of the above kind arise out of procedure, and are not therefore governed by the above quoted section, which merely refers to disqualifications which prevent Judges from exercising their jurisdiction *in limine,* and not to disqualifications which arise from the conduct of a Judge in the course of a suit which he was competent to try in the first instance. Gulsher *v.* Hemraj.

7 P R 1883

DISQUALIFIED PERSON.

Incapacity of, to contract.

See Court of Wards. **18 P R 1884**

DISSOLUTION OF MARRIAGE.

See Abatement of Suit. **60 P R 1906**

See Custody of Wife,

193 P R 1889
78 P R 1893
95 P R 1898

1. *Hindus—Suit by wife for dissolution of marriage—Ante-nuptial agreement—Public policy.*

See Contract Act, section 23

15 P R 1900

2. *Apostacy—Singh a Jats of Tarn Taran.*

See Custom—IV.—Betrothal, Dower, Marriage and Divorce.

152 P R 1890

3. *Renunciation of wife by husband—Validity of custom—Ghumman (Hindu) Jats of Gurdaspur* tahsil.

See Custom—IV.—Betrothal, Dower, Marriage and Divorce.

33 P R 1896

4. *Jurisdiction of courts in British India to hear suits for dissolution of marriage when the parties were married in England and have an English domicile.*

See Divorce Act, 1869, section 2.

64 P R 1900

5. *Dissolution of marriage by reason of wife's apostacy.*

See Muhammadan Law Divorce.

106 P R 1891

DISSOLUTION OF MARRIAGE—*concld.*

6. A wife's conversion from Islam to Christianity effects a complete dissolution of her existing marriage with her Muhammadan husband. IMAM DIN *v.* HASAN BIBI. **85 P R 1906**

DISSOLUTION OF PARTNERSHIP.

See UNDER PARTNERSHIP.

DISTANT KINDRED.

See UNDER MUHAMMADAN LAW—INHERITANCE.

DISTINCT SUBJECTS.

See CAUSE OF ACTION. **96 P R 1895**

DISTRIBUTION OF ASSETS.

See SUCCESSION ACT, 1865, SECTION 282.

DISTRICT COURT.

Suit for custody of minor—Jurisdiction of Court other than District Court.

See CUSTODY OF MINOR. **10 P R 1897**

DISTRICT JUDGE.

Power of, to assign function of trying a case to Additional District Court—Case in excess of pecuniary limit of latter Court's jurisdiction.

See PUNJAB COURTS ACT, 1884, SECTION 75. **46 P R 1898**

DIVERSION OF WATER-COURSE, SUIT FOR.

See SMALL CAUSE COURT ACT, 1887, SECTION 15. **71 P R 1896**

DIVORCE.

See CUSTOM IV. BETROTHAL DOWER, MARRIAGE AND DIVORCE.
84 P R 1889
152 P R 1890
78 P R 1893
33 P R 1896
95 P R 1898

See HINDU LAW, MARRIAGE.
32 P R 1870
16 P R 1875

See MAHOMEDAN LAW, DIVORCE—*Passim.*

1. *Money advanced to married woman to procure divorce from her husband and to pay her debts.*

See CONTRACT ACT, SECTION 23. **46 P R 1887**

2. *Hindu Jats, Jullundur district—Suit by husband for custody of wife whom he has deliberately abandoned.*

See CUSTODY OF WIFE. **78 P R 1893**

3. *Agreement to divorce.*

See MUHAMMADAN LAW—DIVORCE. **193 P R 1889**

4. *Exclusion of unchaste wife from inheritance in absence of divorce.*

See MUHAMMADAN LAW—INHERITANCE. **37 P R 1888**

5. *Appeal against the order of a single Bench dismissing an application for dissolution of marriage—Limitation for such appeal—Limitation Act, 1877, Schedule II, article*

DIVORCE—*contd.*

151—Necessity for copy of decree appealed against accompanying a memorandum of appeal—Civil Procedure Code, 1882, section 541.

See APPEAL—V. LIMITATION OF. **22 P R 1903**

6. *Act IV of 1869—Desertion—Offer to return.*

The wife left her husband without reasonable cause at Delhi in 1853. The husband then came to Lahore, and within a year after the original desertion the wife agreed to join her husband on getting from him Rs. 60 for travelling expenses from Delhi to Lahore. This the Court found to be a reasonable sum for the journey. The husband did not send the money, and the wife found her own way to Lahore. She afterwards at Lahore offered to rejoin her husband who was then cohabiting with another woman, on condition that he discontinued the cohabitation. This he refused. *Held*, that a *primâ facie* case of desertion for two years and upwards was not made out. ALEXANDER *v.* ALEXANDER. **51 P R 1869**

7. *Act IV of 1869—Limitation.*

A suit for divorce under Act IV of 1869 cannot be barred by limitation; but delay in suing, unless satisfactorily explained, may bar the remedy.

The admissions of a respondent are not evidence against the co-respondent. GORDON *v.* GORDON. **53 P R 1870**

8. *Custody of children.*

Where the respondent in a suit under the Indian Divorce Act, IV of 1869, broke up the common home by introducing prostitutes into the house and subsequently lived in adultery with a governess hired for the education of his children,—it was *held* that his conduct was such as to render him unfit to have the care of the children of the marriage, and there being nothing to show that the wife was unfit to be trusted with them, the Court decreed the custody of the children to the wife.

Under the Indian Divorce Act, the Court has a very wide discretion with regard to the custody of children, and is not bound by the ordinary law on the subject as administered by the Court of Chancery. GOAD *v.* GOAD. **69 P R 1870**

9. *Native Converts Act (XXI of 1866).*

The "Principal Civil Court of Original Jurisdiction of the District," within the meaning of section 3 of the Native Converts Marriage Dissolution Act (XXI of 1866), is the Court of the Deputy Commissioner. IN RE SHERE SINGH. **44 P R 1871**

10. *Act IV of 1869, sections 13, 14—"Similar Petition" to Chief Court, under section 13, after appeal from District Court—Evidence—Prior acts of adultery—Relevancy—Misconduct of petitioner's agents—Discretionary bar.*

The petitioner filed a suit for divorce in the District Court on the ground of his

DIVORCE—*contd.*

wife's adultery; the suit was dismissed, and the petitioner appealed to the Chief Court, his appeal being dismissed for default of prosecution. *Held*, that the petitioner could bring a *similar* suit in the Chief Court, but that there could not be a fresh case compounded of new acts of adultery and of acts previously in litigation.

Evidence is admissible of acts of adultery prior to those complained of, as relevant to and bearing on the question whether the latter acts have been committed.

Where the agents of the petitioner employed by him to watch the respondent after his separation from her, by giving false information to her of the co-respondent's wishes and by carrying letters, brought about the meeting at which the adultery complained of took place, *Boulnois, J.*, dismissed the petition under section 14 of the Indian Divorce Act. BEANLANDS *v.* BEANLANDS. **45 P R 1871**

11. *Act IV of 1869—Evidence—Condonation—Collusion—Custody of child.*

Where there is proof of guilty affection and opportunity, the presumption is that adultery has been committed.

Words alone, however strong, cannot amount to condonation. There must be a return to conjugal cohabitation, and such a blotting out of the offence as restores the guilty party to his or her former position.

Where a husband is in possession of evidence of his wife's adultery, it is not sufficient, in order to establish condonation, merely to show that there was a return to cohabitation: it must also be shown that the husband gave credit to that evidence, and took his wife back, believing her to be guilty and intending to forgive her.

To support the plea of collusion, there must be an agreement between the husband and wife either to put forward a false case or to stifle a defence: or an agreement that the respondent shall assist the petitioner by furnishing evidence.

Where the Court granted a decree *nisi* on the ground of the wife's adultery, it ordered the petitioner to have the custody of the issue of the marriage (a female child, aged 3 years), and refused to make any order for the respondent to see the child. ADLEY *v.* ADLEY. **70 P R 1873**

12 *Presumption of adultery from visiting a brothel—Rebuttal of presumption.*

A married man going to a brothel for the purpose of dressing himself for a calico ball, he being aware of the nature of the house, furnishes a violent presumption of his adultery, which must be rebutted by the very best evidence.

The respondent, who was an apothecary, left his wife at Lahore upwards of two years before suit, having obtained from her Rs. 2,000 to set up a dispensary at Mooltan. He did not set up the dispensary, or communicate with her, and she did not hear of him again until he was met in Calcutta by a friend from Lahore, whom he took to a house (which turned out to be a brothel), for the purpose, as the respondent said, of

"tidying himself up a bit" for a calico ball. He also told his friend that he was the medical attendant of the inmates of the house.

In a suit for divorce instituted by the wife on the grounds of the respondent's adultery and desertion, and in which he did not appear to answer to the charges,—*held*, that the desertion for two years and upwards, was established, and (*Campbell, J.*, dissenting as to this) that the presumption of adultery had not, under the circumstances, been repelled. McCulloch *v.* McCulloch.

84 P R 1875

13. *Divorce Act (IV of 1869), sections 12, 14—Omission by Court to frame issues—Defective investigation—Countercharges—Duty of Court before pronouncing decree nisi.*

In a suit for dissolution of marriage, where the Court recorded the statements of the petitioner and respondent and caused the documentary evidence produced by both to be filed, and thereupon proceeded at once to pronounce judgment granting a decree *nisi* without fixing issues upon the statements of the parties, nor causing any further enquiry to be made, although the respondent alleged acts of cruelty and adultery against the petitioner subsequent to her marriage, which allegations the petitioner denied:

Held, that the decree *nisi* should not be confirmed, as the investigation was defective to a substantial extent, with referenee to sections 12 and 14 of the Indian Divorce Act. Cooper *v.* Warne. **130 P R 1879**

14. *Dissolution of marriage—Sodomy committed by husband upon his wife without her consent.*

Held, by the Full Bench, that carnal knowledge against the order of nature committed by a man with a woman is sodomy within the meaning of section 10 of the Divorce Act, and when it is committed by a husband upon his wife, she not being a consenting party, the husband is guilty of "sodomy" within the meaning of section 10, so as to afford valid grounds for a petition for dissolution of marriage. B. *v.* B.

68 P R 1882

15. *Restitution of conjugal rights—Plea of cruelty—Cruelty of petitioner when ground for Seringpnfus etitio.*

In a suit for restitution of conjugal rights brought by the husband under Act IV of 1869, the question for decision was whether such cruelty had been proved as constituted a legal ground why the application should not be granted. It appeared that the petitioner had entertained from the commencement of the cohabitation a suspicion regarding his wife's ante-nuptial conduct for which there was a merely fanciful and insufficient foundation, and which he abandoned before the Court hearing his petition, and that on one particular occasion the petitioner beat his wife, using a degree of violence which undoubtedly caused physical

pain to her, and in consequence of which she lodged a criminal complaint against him and left him. It further appeared from the evidence that the petitioner handled his wife roughly on other occasions during the short period of their cohabitation, *viz.*, two months; that their cohabitation had resulted in the pregnancy of the respondent with a child of which the petitioner claimed the paternity without contradiction, and lastly, that the husband had without unreasonable delay again sought the society of his wife by instituting the present proceedings.

Held that, under the above circumstances, it could not be said that there was any such probability of a recurrence of ill treatment on the petitioner's part amounting to legal cruelty as would justify the Court in refusing him the relief he sought; but that there ought to be a renewal of cohabitation before any decree involving final separation, the practical effect of a decree dismissing the present application, was pronounced.

It cannot be affirmed generally that every act of personal violence, or that every combination of acts of personal violence, voluntarily inflicted and productive of hurt or alarm, constitutes legal cruelty: the extent of the injury, the causes conducting to the use of violence by the husband, the circumstances under which it occurred, the probability of the recurrence of similar or greater violence, are all matters requiring consideration. Baptist *v.* Baptist. **101 P R 1882**

16. *Act IV of 1869—District Judge passing decree for dissolution of marriage (subject to confirmation) with costs against respondent—Power to execute the decree as to costs before confirmation.*

The District Judge having made a decree in a divorce proceeding, under Act IV of 1869, dissolving the marriage subject to the confirmation of the Chief Court with costs payable by the respondent to the petitioner, an application was made by the latter for exclusion of the decree so far as it related to costs by issue of a warrant of arrest.

Held, that the decree of the District Judge must be regarded as a final decree as far as he was concerned, consisting of two parts, *viz.*, the order dissolving the marriage and the order as to costs. Consequently the order as to costs was not a separate order and could not be treated as distinct from the decree for dissolution, and that decree including the order as to costs being subject to confirmation by the Chief Court no portion of it was in the meantime capable of execution. Coates *v.* Coates. **35 P R 1887**

17. *Countercharges—Custody of children.*

In a suit for dissolution of marriage under the Divorce Act (IV of 1869), which was undefended, it appeared that, after service of the summons, a letter purporting to be from the respondent was received by the Judge by post, which letter imputed gross misconduct to the petitioner, such as if the respondent had appeared and put in a formal answer would have amounted to counter-

charges within the meaning of section 12 of the Act. The letter announced that the writer was unable to appear to defend for want of means.

Held, that the Court was not bound on this communication to take action under section 12 of the Act and inquire into the imputations made; as that section must be construed as limited to countercharges duly made by a party to the proceedings in accordance with the rules of procedure and practice applicable to such party.

The decree of the Judge of the District Court in the above case contained the following passage: "The Court further awards the petitioner the custody of the children."

Held, that this order should not have been contained in the decree for dissolution, as section 43 of the Act only enables the District Court to make, from time to time before its decree is confirmed, *interim* orders with respect to the custody, etc., of children: on confirmation of the decree it may make such provision as it thinks fit in this matter under section 43 of the Act. Burroughs *v.* Burroughs. **62 P R 1887**

18. *Petition for dissolution of marriage—Court refusing relief on ground of petitioner's adultery—Such refusal no bar to Courts granting relief on subsequent proceeding—Reference to previous record admissible in proof of petitioner's adultery—Duty of Court exercising jurisdiction under the Divorce Act.*

Held, that the circumstance that in a former suit for dissoution of marriage under the Indian Divorce Act, the Court decided to exercise its discretionary power of withholding relief from the petitioner on the ground of his adultery, is no bar to the Court exercising that discretion in his favour in a subsequent proceeding notwithstanding his adultery be found proved.

Such discretion *held* to have been properly exercised in the petitioner's favour, where it appeared that, assuming he had been guilty of adultery since his marriage with the respondent, the adultery had been condoned: that such adultery had no connection whatever with the separation of the wife from her husband since the decision of the former suit, nor with her subsequent life of profligacy and prostitution.

Held further, that in a second suit for dissolution of marriage instituted under the above circumstances, the Court is at liberty to regard the record in the former suit upon reference to it without further evidence to find that the petitioner has been guilty of adultery.

In India, where there is no public officer corresponding to the Queen's Proctor, a Judge exercising jurisdiction under Act IV of 1869 ought to make a large use of his power to look into any matters which may come under his notice, affecting the proper exercise of the discretionary power of the Court to grant or withhold a divorce under specified circumstances, even though such matters are not brought to his notice

DIVORCE—*contd.*

by a party to the proceedings, or an intervenor. LISBEY *v.* LISBEY. **6 P R 1888**

19. *Permanent alimony—Order for, when to be made by District Judge—Examination of party.*

Under the Indian Divorce Act, section 37, an order for permanent alimony cannot be made by a District Judge, until his decree in the suit has been confirmed by the High Court.

A party to a suit for dissolution of marriage is not entitled, as of rights to give evidence by affidavit. When a petitioner in a suit for dissolution of marriage offers himself or herself as a witness under the permission contained in section 51, clause 1, of the Act, it is desirable that the examination should be oral, and in the presence of the Court trying the petition. SKINNER *v.* SKINNER.

13 P R 1891

20. *Jurisdiction of Courts in British India to hear suits for dissolution of marriage when the parties were married in England and have an English domicile.*

Held, by the majority of the Full Bench (*Robertson, J.*, dissenting) that the words "resides in India at the time of presenting the petition" in section 2 of the Indian Divorce Act preclude all questions of the effect which domicile may have on jurisdiction, and that the fact that the spouses are domiciled in England does not deprive the Court in India of jurisdiction to decree dissolution of marriage. WARWICK *v.* WARWICK.

64 P R 1900

21. *Divorce—Suit for dissolution of marriage on the ground of wife's adultery—Power to order discovery of documents—Civil Procedure Code,* 1882, *sections* 59, 129.

The petitioner in a suit for the dissolution of his marriage on the ground of his wife's adultery served the co-respondent with an order under section 129 of the Civil Procedure Code, calling upon him to declare by affidavit all the documents which were or had been in his possession or power relating to any matter in question in the suit, and particularly all letters from either the petitioner or respondent to him. The co-respondent served the petitioner with an order, under section 59 of the Civil Procedure Code, to file a list of all documents relied upon by him in support of his suit. The co-respondent objected to the production of, or supplying information as to, any letters from the respondent to him and cited *Redfern* v. *Redfern* (*L. J.* (1891), 139) and *DeBretton* v. *DeBretton* (*I. L. R. IV All.* 49) and sections 51 and 52 of the Divorce Act, and the petitioner objected to the co-respondent's application on the ground that until issues had been framed or until the defence had been filed he did not know what documents might be relevant.

Held, that as in a suit by the husband for dissolution of his marriage on the ground of the adultery of his wife neither the wife

DIVORCE—*contd.*

nor the co-respondent could be compelled to give evidence unless they offered themselves as witnesses, the petitioner was not entitled to the information he asked for, except in so far as it applied to the correspondence between himself and the co-respondent, especially if it was for the purpose of proving the alleged adultery, and that the petitioner was bound under section 59 of the Civil Procedure Code to file a list of all letters and documents in his possession or power which he relied on relating to the adultery charged. C. *v.* C. AND B.

11 P R 1902

22. *Divorce—Dismissal by single Judge of application for dissolution of marriage—Appeal from such order of dismissal—Punjab Courts Act,* 1884, *section* 9.

Held, that an appeal lies from all decrees and orders passed by a single Bench in the exercise of its original jurisdiction in proceedings under the Indian Divorce Act, 1869, by virtue of section 55 of that Act, and section 9 A of the Punjab Courts Act. C. *v.* C. AND B. **18 P R 1903**

23. *Application of judicial separation on the grounds of adultery and cruelty—Decree on the ground of cruelty only—Right of petitioner to have the finding as to adultery set aside—Appeal.*

On a petition for judicial separation filed by the wife on the ground of her husband's adultery and cruelty, the District Judge found the first charge unproved but the second charge proved and granted her a decree on that ground alone. The petitioner preferred an appeal to the Chief Court to set aside the finding of the District Judge as to the first charge.

Held, that inasmuch as the finding against the petitioner on the issue as to adultery could not affect her remedy for subsequent misconduct by her husband, the existence of that finding did not entitle her to appeal or to have that finding specifically embodied in the decree for the purposes of appeal.

Kayalash Chunder Koesari v. *Ram Lal Nag* (*I. L. R. VI Calc.* 206), *Niamat Khan* v. *Phadu Buldia* (*I. L. R. VI Calc.* 319, F. B.), *Mrs. Mary Eliza Stephenson* v. *Unnoda Dossee* (6 *W. R. Mis.* 18), *Jamait-un-nissa* v. *Lutf-un-nissa* (*I. L. R. VII All.* 606), *Jamna Das* v. *Udhey Ram* (*I. L. R. XXI All.* 117), *Thakar Magan Deo* v. *Thakar Mahadeo* (*I. L. R. XVIII Calc.* 647), *Run Bahadur Singh* v. *Luche Koer* (*I. L. R. XI Calc.* 301 P. C.), *Bland* v. *Bland* (35 *L. J. P.* and *M.* 104), *Green* v. *Green* (43 *L. J. P.* and *D.*, 6.), *Tomkins* v. *Tomkins* (1 *S. and T.* 168). *Curtis* v. *Curtis* (28 *L. J. P.* 55), and *Milford* v. *Milford* (37 *L. J. P.* 77), referrred to. WINGROVE *v.* WINGROVE. **56 P R 1904**

24. *Judicial separation—Jurisdiction of Court over parties living abroad.*

Held, that in matrimonial cases the place of original residence of the husband will sustain the jurisdiction of the Court, though

DIVORCE—*contd.*

the parties may have resided always and last cohabited together in other place after the marriage. The expression, reside or last resided in section 3 (3) of the Indian Divorce Act, means the fixed home of the husband and he must be regarded as residing, though he may not have any permanent abode or may be working for gain abroad. *Skinner* v. *Orde* (7 *I. A.* 196), referred to. A. *v.* A. **77 P R 1905**

25. *Judicial separation—Cruelty—Charge of unnatural offence by wife without corroboration.*

Held, that a charge of unnatural offence on her person by a wife against her husband in a suit for judicial separation cannot be accepted without corroboration as an act of legal cruelty justifying a decree of judicial separation. A. *v.* A.

77 P R 1905

26. *Divorce—Jurisdiction of Chief Court, both parties residing within its jurisdiction though not together—Indian Divorce Act, IV of* 1889, *section* 3 (1).

Held, that the Chief Court, Punjab, has jurisdiction to entertain a petition for divorce filed by a petitioner who last resided *with* her husband within the jurisdiction of the Bombay Court and at the date of filing the petition resided within the jurisdiction of the Chief Court, the respondent also residing at that date within the jurisdiction of that Court, though apart from the petitioner. GALE *v.* GALE.

47 P R 1911 (F B)

27. *Divorce—When petitioner has himself been guilty of adultery—Indian Divorce Act, IV of* 1869, *section* 14.

Held, that where the petitioner has during the marriage been guilty of adultery, the Court has discretion to pass a decree, in spite of such adultery (*vide* section 14 of the Indian Divorce Act, 1869) and that the Courts are bound by the rules which bind the English Courts under the English Divorce Act.

Held also, following *Wyke* v. *Wyke* (*L. R.* 1904, *Probate* 149), that adultery by the petitioner is, except under very peculiar circumstances, a bar to a decree, but that the circumstances in this case were of a nature to justify the passing of a decree. M. *v.* M.

70 P R 1911

28. *Divorce—Petition by husband against wife who had a child* 330 *days after date of last access—Proof of adultery—Legitimacy of child—Indian Evidence Act, I of* 1872, *section* 112.

Where the husband prayed for a divorce from his wife on the sole ground that the latter had given birth to a child 333 days after last cohabitation between them and the Court found that she had done so 330 days after the last cohabitation and that there was no evidence at all to prove immorality on the part of the wife, or adultery with any particular person.

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DIVORCE—*concld.*

Held, that there being no inherent impossibility of gestation of 330 or 333 days after cohabitation, this fact alone, though suspicious, was not conclusive as to the wife's adultery, and that the child must be held to be legitimate having regard to section 112 of the Evidence Act. P. *v.* P.

77 P R 1911

DIVORCE ACT, 1869.
See DIVORCE.

DOCTOR'S FEES.
See FEE FOR MEDICAL ATTENDANCE.

DOCUMENT.

Document—Non-delivery of, by executant after registration—Validity and operation—Completed transaction.

Held, in the case of a registered document for valuable consideration, that mere non-delivery thereof by its executant to the party claiming under the same is immaterial if after execution it has been presented for registration by the executant and acknowledged before the registering officer.

Doe v. *Knight* (5 *B. & C.* 692), cited and followed. KANSHI RAM *v.* TOTA RAM.

40 P R 1906

DOWER.
See MUHAMMADAN LAW—DOWER.

DRAWEE.
Not named by the drawer himself—liability of.

See NEGOTIABLE INSTRUMENTS ACT, 1881. **71 P R 1909**

DURESS.

1. *Arrest and imprisonment in execution of decree—Subsequent application stating judgment-debtor's intention to apply to be declared insolvent—Rejection of application—Illegal confinement.*

See CIVIL PROCEDURE CODE, 1908, SECTION 55. **59 P R 1898**

2. Where defendant signed an acknowledgment of a debt barred by limitation, under a threat that if he did not sign a suit would be filed against him and his arrest before judgment applied for, *held*, that the acknowledgment was void. HAMILTON *v.* SHOWERS.

62 P R 1873

3. An agreement to pay a decree by instalments made by a military officer under threat of arrest set aside as void. BANESS *v.* TURTON.

83 P R 1875

DUSTOORI.

Dustoori *or commission—Public policy.*

Held, that a claim for *dustoori* or commission on purchases is unlawful as being immoral and opposed to public policy. MADHO RAM *v.* BADR-UD-DIN. **91 P R 1910**

DWELLING HOUSE.

Wife or widow's right of residence in.

See HINDU LAW—FAMILY DWELLING HOUSE. **36 P R 1907**

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E.

EASEMENT.

1. *Right of hereditary tenants to cut wood and grass from the common land of the village for the purpose of sale—Profits* a prendre—Mauza *Mangharwal*, *District Hoshiarpur.*

See COMMON LAND. **29 P R 1890**

2. *Right of privacy.*

See CUSTOM—VII. EASEMENTS AND PROFITS. **19 P R 1882**

3. *Profit* a prendre—*Right to cut brushwood.*

See CUSTOM—VII. EASEMENTS AND PROFITS. **31 P R 1882**

4. *Suit for declaratory decree that plaintiffs are entitled to perform certain religious ceremonies on behalf of an indeterminate class of persons on property belonging to third parties.*

See CUSTOM—VII. EASEMENTS AND PROFITS. **4 P R 1896**

5. *Suit for declaratory decree that plaintiffs have a right to dry tobacco on certain land—User for* 20 *years and upwards—Dominant tenement.*

See CUSTOM—VII. EASEMENTS AND PROFITS. **14 P R 1897**

6. *Suit alleged to be based on easement and decreed on custom—Inconsistent rights—Right to stack grain in front of shop.*

See CUSTOM—VII. EASEMENTS AND PROFITS. **7 P R 1899**

7. *Suit to restrain the proprietors of one patti from closing a pathway over the* shamilat *of the village—Necessity to implead the other proprietors of the village.*

See JOINDER OF PARTIES.

41 P R 1888

8. *Suit for injunction against defendant to remove obstruction to plaintiff's window—Valuation of suit.*

See JURISDICTION. **52 P R 1887**

9. *Right of way.*

See LIMITATION ACT (IX OF 1871), SECTION 27. **25 P R 1878**

10. *Abandonment—Discontinuance of right.*

See LIMITATION (ACT XV OF 1877), SECTION 26. **68 P R 1880**
38 P R 1886

11. *Easement—Obstruction—Meaning of interruption.*

See LIMITATION ACT, 1877, SECTION 26.

73 P R 1905

12. An owner of land is at liberty to erect a water mill on his own ground without the consent of other owners of land in the same village, provided he so uses the water as not to injure others below him who have a right to its use. NOOR MAHOMED *v.* KHANEE MOOLA. **12 P R 1867 Rev.**

13. *Flow of water.*

A claim to demolish an embankment erected by a person on his own land which intercepts the natural flow of water on to the land of another, cannot be maintained by the other so long as a reasonable and fair quantity of water is allowed to pass. WAZEERA *v.* SIPADAR KHAN. **33 P R 1867**

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EASEMENT—*contd.*

14. *Right of way—Grant—Easement of necessity.*

A gateway was opened in 1847 between two estates, the joint property of a certain family. The property was afterwards divided, and one of the estates came into A's possession (a stranger), who in 1867 was sued by those in possession of the other estate to have the door-way closed. Plaintiff's suit was decreed, on the grounds that A's right to the way was not supported by any express grant or as an easement of necessity; and after the division of the two estates, the joint enjoyment of the way ceased. BARLOW *v.* MANAGER OF SKINNER ESTATES. **44 P R 1867**

15. A right of way imports the right of passing in a particular line, and not the right of varying it at pleasure. KHEWAN *v.* DEWAN JOWAHIR MULL. **80 P R 1867**

16. *Opening door-way.*

Claim to close a door-way newly opened by defendants leading into a court-yard the joint property of the parties. *Held*, that defendant was at liberty to open a door-way in his own house opening on to common property—provided he did not thereby render such common property less useful to the co-sharer, or deprive the latter of any right which he otherwise would have had. HEERA SINGH *v.* TELOO.

46 P R 1868

17. *Disturbance of privacy—Opening of door or window upon a neighbour.*

With regard to the usages and habits of the natives, the right of privacy in a dwelling house is protected, and the invasion of it may give a cause of action; for instance, where defendants opened a new door-way in an upper storey in such a way as to invade the privacy of plaintiff, *held*, that the Court could make a special order directing the close of the door. NANUCK CHUND *v.* LALLA.

21 P R 1869

18. *Privacy—Right to complain of disturbance of, depends upon the degree of privacy to which plaintiff is entitled.*

Though with regard to the usages of the country, the right of privacy in dwelling houses is recognized, yet the Court will not necessarily interfere in every case of disturbance of privacy, but will look to the degree of privacy to which the plaintiff is under the circumstances of the particular case entitled. Therefore, where the houses of defendant and plaintiff faced each other in a street common to both parties and to a third person, and the defendant by sitting in his own door-way could see the plaintiff's women if they sat in front of plaintiff's house, it was *held* that the plaintiff's degree of privacy was not so great as to preclude the defendant from making a window in his own house which looked upon the plaintiff's premises. GOHRFE *v.* JAINTEE.

91 P R 1869

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EASEMENT—*contd.*

19. *Extinguishment of easement, by showing intention to permanently abandon the use, or by inducing owner of servient tenement to believe it was so abandoned.*

The plaintiff's premises abutted on the defendant's, and both originally formed part of a single tenement. Twenty-five years before suit, defendant sold to plaintiff's father the portion which plaintiff occupied at the time of suit, and secured by deed to plaintiff's father the use of an ancient drain which existed under both houses. For six years before action brought, plaintiff ceased to use the drain, and it was alleged by defendant that plaintiff could carry off his drainage without using the drain in question. In a suit by plaintiff to compel defendant to keep open the drain, it was *held* that if plaintiff had for any space of time discontinued the use of the drain, and caused defendant to incur expense in altering or filling it up in belief that the drain had been permanently abandoned, or if he had manifested an intention of permanently abandoning the use of the drain, the servitude might be considered extinguished. PUNDIT RAI LALL *v.* HAFIZ KHODA BUKSH. **97 P R 1869**

20. *Extinguishment—Cessation of enjoyment—Evidence.*

Mere cessation of enjoyment of an easement does not necessarily extinguish the right; but the cesser of use, coupled with any act or omission on the part of the owner of the dominant tenement indicative of an intention to abandon the right, is equivalent to an express release of the easement. Interruption of the use of a drain, without objection on the part of the claimant, for three years, coupled with other circumstances indicating intention, *held* to extinguish the easement. KHODA BUX *v.* PUNDIT JEEA LALL. **30 P R 1871**

21. *Opening windows—Invasion of privacy.*

Defendant opened a window which looked down upon the contiguous houses and into the courtyard belonging to the plaintiff, who complained that his privacy was thereby invaded. By going upon the roof of his house, the defendant could also look into the plaintiff's courtyard. *Held*, per *Boulnois* and *Lindsay, JJ.* (*Campbell, J.*, dissenting) that it was not a case in which the Court could restrain the defendant from exercising his ordinary right of opening new windows.

Semble, (per *Boulnois* and *Lindsay, JJ.*). The right to disturb a neighbour's privacy by opening new windows (subject to the neighbour's right of building against them within 20 years) should be recognised with reference to the English law and recent High Court decisions. SHIBDAYAL *v.* GOLAB. **96 P R 1876**

22. *Light and air.*

Plaintiff's house stood at right angles to defendant's house and adjoined it. In the upper story of plaintiff's house were two small windows; defendant built a balcony to his house some twenty feet from the ground, but not in a way to diminish the access of light and air to plaintiff's small windows. Plaintiff then enlarged the windows, in such a way that he encountered inconvenience from the balcony—the end of the balcony crossing in a vertical direction the enlarged opening. *Held*, that as the erection of the balcony did not infringe the existing prescriptive rights of the plaintiff, the fact that it interfered with the enlarged windows gave him no right to any relief, to grant which would be to impose a new burden on the defendant. RALLIA RAM *v.* HUZURI MAL. **99 P R 1876**

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EASEMENT—*contd.*

23. *Support to roof from neighbouring wall.*

Where the plaintiff had the right to support from the wall of defendant's house for the beams of the roof of plaintiff's house, *held*, that he had not also the right to alter the position of the beams, and in raising his roof, to insert the beams in another part of defendant's wall. SHIB DIAL *v.* SUDDA NUND. **21 P R 1877**

24. *Right of way—Defendants closing old and opening out new right of way over their fields—Actual damage—Allegation by plaintiff of probable prospective damage—Right to injunction—Pecuniary compensation—Obligation upon servient owner not to render plaintiff's right of way less easy than before—Failure to prove such effect—Dismissal of suit.*

Plaintiff sued to restrain defendants from closing an old and opening out a new right of way over their (defendants') fields, alleging ancient user of the old way, and fears that the opening out of the new passage, which was close to plaintiff's land, would cause damage to such land by cattle straying across and destroying the cultivation.

Held, that the defendants had an undoubted right to create a new right of way over their own land, so long as by doing so they did not injure their neighbours: that the damage alleged by the plaintiff, not being actual but prospective damage, was too remote to entitle him to the remedy he was seeking of a permanent injunction; that if the defendants by allowing cattle to come upon their land afterwards negligently suffered them to stray into and to do damage to the plaintiff's property that might be a wrong to the plaintiff for which the defendants might be liable to an action, but that the remedy in such a case would be adequately met by pecuniary compensation and would not entitle the plaintiff to ask for a perpetual injunction against the use of the new right of way, and that therefore the plaintiff was not entitled to ask to close up the new passage.

Held further, that as regards the substitution of the old by the new line of road-way the only obligation upon the defendnts, the servient owners, was that they should not render the plaintiffs' right of way less easy than it had been hitherto, and that the plaintiff having failed to prove that the new line would have any such effect, his claim must be dismissed. BUTA SINGH *v.* HAMIR SINGH. **22 P R 1888**

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EASEMENT—*contd.*

25. *Right of way—Public thoroughfare—special damage—Public and private injuries.*

Plaintiff sued to restrain defendant from preventing his passing through a covered porch, which opened on each side into a lane, each lane being admittedly a public lane, and each having at the end of it a house belonging to plaintiff, alleging that he had used this route for over twenty years. It appeared that by passing through these lanes and the porch the distance between plaintiff's two houses was considerably diminished. The lower Appellate Court, finding it proved that the porch was a public thoroughfare, *held* that the plaintiff's suit would not lie as he had not sustained any "special damage."

Held, reversing the order of the lower Appellate Court, that the plaintiff was entitled to succeed in his suit. The injury complained of by the plaintiff was a private injury, in that he had been deprived, by the wrongful act of the defendant, of a right which he had hitherto peaceably enjoyed, and been driven to a circuitous, and therefore inconvenient, route, and that this injury would be equally a private injury to him, whether the right of the public to pass through the porch was or was not interfered with at the same time. BELI RAM *v.* KAKU. **39 P R 1888**

26. *Right to use of water—Natural stream.*

In the case of a natural stream flowing through several owners' land, the persons through whose lands it passes are all entitled to a reasonable use of the water, and in the absence of evidence as to the exact share enjoyed, the presumption is that they are equal. AHMAD ALI *v.* MALAK HASHU. **49 P R 1888**

27. *Grant by owner of tenement of part of that tenement—Easements passing to grantee of such grant—Reservation of rights over tenement granted—Express and implied reservation—Easements of necessity—Right to support from adjoining buildings.*

On the grant by the owner of a tenement of part of that tenement as it is then used and enjoyed, there will pass to the grantee all those *quasi* easements of an apparent and continuous character, *i.e.*, all those easements which are necessary to the reasonable enjoyment of the property granted and which have been and are at the time of the grant used by the owners of the entirety for the benefit of the part granted.

If the grantor intends to reserve any right over the tenement granted, it is his duty to reserve it expressly in the grant; but this rule is subject to the exception relating to

EASEMENT—*contd.*

way and other easements of necessity; an easement of necessity being one without which the enjoyment of the severed tenements could not be had at all.

A right of support for buildings from the subjacent and adjacent soil and from adjoining buildings arises by implied grant, in the absence of express stipulation, in every case where a grant of land for purposes of building is made by the owner of the adjoining house. ATTAR SINGH *v.* JAWAHIR LAL. **60 P R 1888**

28. *Easement—Light and air—Obstruction—Injunction or damages—Specific Relief Act, 1877.*

The plaintiffs owned a three-storeyed house in the city of Amritsar; the defendants owned a house alongside consisting of a single storey.

The defendants added a second and third storey to their house so as to obstruct the plaintiffs' right to light and air on the defendants' side of the plaintiffs' house.

The plaintiffs, on the commencement of defendants' operations, served the defendants with notice not to interfere with their rights (which the defendants ignored), and then instituted a suit two-and-a-half months afterwards.

Held, that the plaintiffs were entitled to a mandatory injunction.

Form of relief to be given to the plaintiffs under such injunction considered. KIRPA RAM *v.* GURBAKHSH. **2 P R 1893**

29. *Easement, acquisition of—Use of water from natural stream—Rights of riparian owners—Limitation Act, 1877, section 26.*

Plaintiffs alleged that they were the owners of a water-mill, situated on the banks of the river Leh, which they and their predecessors in title had worked on the same spot since the year 1863 by appropriating all the water of the river at that place; that defendants, who had purchased a plot of land on the opposite bank of the river at a place higher up the stream, were constructing a water-mill of their own, and, for the purpose of working the same, were diverting the water at the said place by a channel; that the defendants were thereby depriving the plaintiffs of the exclusive use of the water to which they had been accustomed, and would so diminish the supply as to cause material loss and inconvenience to plaintiffs in the working of their said mill. Plaintiffs, therefore, prayed that a perpetual injunction be granted restraining defendants from so diverting the water of the river and from cutting the channel. Defendants pleaded, *inter alia*, that, in any event, plaintiffs were not, as a matter of law, entitled to the injunction prayed for, inasmuch as plaintiffs' user had not been "as an easement" or "as of right" because (*a*) they had been enjoying nothing in excess of their natural rights as riparian owners, and (*b*), in any case, they had

EASEMENT—*contd.*

been asserting no rights as against riparian owners higher up the stream, whose mere omission to exercise rights similar to those actually enjoyed by plaintiffs neither curtailed nor destroyed such rights.

Held, that the rights acquired by plaintiffs, being rights in excess of their own natural riparian rights, and in derogation of the natural rights of all adjacent riparian owners, whether above or below stream, were rights of easement within the meaning of section 26 of the Limitation Act, 1877, and anything done or threatened by the defendant which would interfere with such prescriptive rights would give rise to a cause of action and afford grounds for an injunction.

I. L. R. XI Mad. 16, referred to. SARDAR KIRPAL SINGH *v.* LAL KHAN. **35 P R 1895**

30. *Easement—Right of way—Public or private road—"Question of law"—Limitation Act, 1877, section 26—User of road by public for less than 20 years—Presumption as to dedication—English law.*

The principles of the English law regarding the presumed dedication of a road to the public arising from user of such road by the public, being founded on reason and common sense and conducive to public convenience, are applicable to India.

Held, therefore, that the user of a road by the public, openly and as of right, is sufficient, apart from the law laid down in the Limitation Act, 1877, section 26, to raise a presumption of its dedication to their use, though such presumption might be rebutted by evidence of the owner's intention that the public should only have a permissive user.

In the present case the evidence clearly showed that the road in dispute had been used as a public road for at least ten years prior to suit, but the Divisional Judge, treating the case as one of prescription found in favour of defendants because 20 years had not elapsed since the road was opened (section 26 of Limitation Act, 1877).

Held, under the circumstances as above set forth, that there was a presumption, that the road had been dedicated to the use of the public, and *found*, upon the evidence and facts of the case, that defendants had failed to rebut such presumption.

The right of the public to pass over a public road is not in the nature of an easement properly so called, nor is it acquired by prescription under section 26 of the Limitation Act, 1877.

A preliminary objection on behalf of the defendants that there was no ground for admitting a further appeal in the case as there was no "question of law" involved, overruled on the grounds that the questions (*a*) whether plaintiff had not acquired a right of way over the road in dispute either by long user or grant; (*b*) whether the road came under the category of a public or a private road, involved consideration of points of law, and were not simple questions of fact.

EASEMENT—*contd.*

Held, further, that the Divisional Judge's error in law in deciding the point under section 26 of the Limitation Act was of itself a sufficient ground for admitting a further appeal, though it was not the ground on which the appeal was admitted by the Judge in Chambers. RANA GANPAT SINGH *v.* KANGRA VALLEY SLATE COY. **62 P R 1898**

31. *Limitation—Adverse user of land for more than twelve years.*

Held, that the user by plaintiffs of a certain ladder, one end of which rested on defendant's land, and of a platform which projected over the said land even if such user were adverse and had extended over a period of twelve but less than twenty years, neither extinguished the right of defendant in the said land nor gave plaintiffs a right of easement in respect thereof.

I. L. R. III Bom. 174, not followed.

On the evidence, *found*, that plaintiffs had failed to establish adverse possession. SHARAF HUSSAIN *v.* RAM KISHAN DAS. **68 P R 1899**

32. *Discharge of water and drainage—Removal of obstruction—Right of access for the purpose of supervision of the right to discharge water and drainage—Pecuniary compensation—Perpetual injunction—Specific Relief Act, Chapter IX.*

The premises owned by the appellant and respondent were owned by one Babu Mohan Bannerjee, on whose death his sons by one wife became owners of the appellant's premises, while his sons by another wife became owners of the respondent's premises. In about 1880 both sets of premises were entirely reconstructed. In 1884, a plot of land to the east of the respondent's premises was sold for building purposes to a stranger, which necessitated the rain and refuse water drainage of the respondent's premises being turned from eastward to northward, and the respondent's premises, including his bathrooms, remained up to the date of suit practically unchanged from the state in which they were when the change in drainage was effected by the owners of both sets. In February 1896 the present appellant, who has derived his title from the owners of one set of the premises, erected a wall which obstructed the rain and refuse water of respondent's premises from going to the public drain by passing through his courtyard. The respondent filed a suit on 6th April 1896, and the District Judge passed a decree in his favour which was confirmed by the Divisional Judge. On appeal to the Chief Court, *held*, that the right to discharge the drainage was an apparent and continuous easement which passed to the respondent from his predecessor in title, that an injunction was necessary for the enjoyment of the respondent's premises, pecuniary compensation would not afford adequate relief as the effect of the obstruction would render the premises unfit for habitation, and that the right of access for the purpose of

EASEMENT—*contd.*

supervision of the drainage was a necessary adjunct to the right of drainage, and that the doctrine of apparent continuous easement applies to India. SULTANI *v.* RAM SARAN DAS. **49 P R 1900**

33. *Right of passage included by implication—Construction to be placed on the order of a Judicial Court—Justice and equity—Easement of necessity.*

The respondent obtained a decree for possession of a one-fourth share of the entire house on payment of Rs. 350 for cost of repairs to the appellant. In execution a partition was made by the Divisional Judge who awarded the respondent the upper and lower stories of the *kothri* marked " A " on the plan, but made no mention of any passage through the appellant's portion of the house. There was no dispute as respects the property to be awarded to respondent in lieu of his one-fourth share under the original decree, but the respondent insisted that he had the right of passage through the appellant's share of the house and the right of user thereof for all purposes necessary for the enjoyment of the portion awarded to him. This the appellant objected to on the ground of infringement of the privacy of his females, and that the value of his share would be practically destroyed. And further contended that respondent could not claim the right as an easement of necessity as he could open a passage to his house from the lane which ran to the north of *kothri* " A," or from his own house which adjoins the one partitioned.

Held, that as no express provision was made for the right of way in the order of the Divisional Judge partitioning the property the order being clear by itself, and as the respondent could easily open a passage from the street or from his other house and could not therefore claim the right of way as an easement of necessity, such right of way could not be presumed to be implied in the order. MUHAMMAD ASHRAF KHAN *v.* MIR MUHAMMAD KHAN AND OTHERS. **76 P R 1900**

34. *Easement—Private right of way—Obstruction—Special damage, necessity of—Injunction.*

In order to maintain an action for obstructing a way, a person must suffer some substantial damage peculiar to himself, beyond that suffered by the rest of the public who use the way, where the respondent purchased a *tavela* from the appellant about 25 years before suit and the appellant had within two years of the suit obstructed a way which had in the interval been used continuously by the respondent and others having business with him as the direct way to the *tavela*, and the only alternative way being circuitous and practically impassable for carts in wet weather, *held*, that the respondent had sustained a particular direct and substantial injury inasmuch as the value of the property (*tavela*) has been diminished by the obstruction, access thereto being necessary for the profitable enjoyment thereof,

EASEMENT—*concld.*

and was therefore entitled to maintain the suit.

Winterbottom v. *Derby* (*L. R.* 2 *Ex.* 316), *Ricket* v. *Metropolitan Railway* (34 *L. J. Q. B.* 257), *Siddeswara* v. *Krishna* (*I. L. R. XIV Mad.* 177), *Fattehyab Khan* v. *Muhammad Yusaf* (*I. L. R. XIX All.* 434), and *G. I. P. Railway Company* v. *Nauroji Pestonji* (*I. L. R. X Bom.* 390), referred to. JOWAND SINGH AND OTHERS *v.* SARDAR INDAR SINGH. **64 P R 1901**

35. *Easement—Light and air—Obstruction—General principles.*

Held, that the rule of decision in an action in respect to a right to light and air obstructed by a permanent erection is, whether in consequence of the obstruction the plaintiff has less light and air than before to such an appreciable a degree as to injure his property in point of value, comfort, convenience or usefulness, according to its character as a residence or a place of business or warehouse, and that an injunction is the proper remedy where substantial and wrongful injury has been done to the plaintiff's rights. VIR BHAN *v.* RAMJI DAS. **8 P R 1909**

EASEMENT ACT, 1882.

Applicability of the Indian Easement Act to Punjab.

Although the Indian Easement Act is not in force in the Punjab, the Punjab Courts when deciding cases in which principles of law dealt with by the provisions of those Acts are involved may adopt those provisions as embodying the law applicable to the case, especially where the law enunciated therein coincides with the principles of equity, good conscience, and justice, and for which there is no statutory law applicable to the Punjab. BHAGWAN DEVI *v.* BUNYADI KHANUM. **85 P R 1902**

EJECTMENT.

See ACQUIESCENCE.
JURISDICTION OF CIVIL OR REVENUE COURT.
LANDLORD AND TENANT.

1. *Wrongful ouster and wrongful possession of profits are different causes of action.*
See CAUSE OF ACTION. IV. MISCELLANEOUS. **129 P R 1889**

2. *Ejectment of non-proprietary resident on village site by proprietor.*
See COMMON LAND. **92 P R 1866**
99 P R 1866
56 P R 1867
43 and 103 P R 1868
40 P R 1875
17 P R 1879
36 and 152 P R 1882
73 and 99 P R 1883
65 P R 1885
54 P R 1886
50 P R 1888
37 P R 1890

EJECTMENT—*contd.*

3. *Ejectment of tenant who has improved his shop—Custom of Basti Ghuzan, Jullundar.*
See CUSTOM. **40 P R 1885**

4. *Suit by mortgagee for possession of immovable property against third party in actual possession.*
See JURISDICTION. **1 P R 1896 F B**

5. *Suit for ejectment of tenant.*
See JURISDICTION OF CIVIL OR REVENUE COURT. **102 P R 1887**
9 P R 1888 F B
110 P R 1889
162 P R 1890
19 P R 1893
53 P R 1893
41 P R 1894
46 P R 1894 F B
57 P R 1894
3 P R 1895
23 P R 1895
See LANDLORD AND TENANT. **16 P R 1887**

6. *Suit for recovery of possession of land allotted to plaintiff on partition—Ejectment.*
See JURISDICTION OF CIVIL OR REVENUE COURTS. **31 P R 1890**

7. *Suit by mortgagee for value of profits of mortgaged land—Illegal ejectment of mortgagee by mortgagor.*
See JURISDICTION OF CIVIL OR REVENUE COURT. **68 P R 1891**

8. *Suit to recover possession from defendant on the basis that plaintiff is the proprietor of the land.*
See JURISDICTION OF CIVIL OR REVENUE COURT. **18 P R 1893**

9. *Suit by mortgagee to recover possession on failure of mortgagor to pay rent.*
See JURISDICTION OF CIVIL OR REVENUE COURT. **19 P R 1893**

10. *Suit by village proprietors to recover land granted to office of* Ala Lambardar.
See JURISDICTION OF CIVIL OR REVENUE COURT. **123 P R 1893**
104 P R 1894
105 P R 1894
23 P R 1895
28 P R 1895
See LAMBARDAR, ALA LAMBARDAR. **1 P R 1896 Rev.**
OCCUPANCY RIGHTS. **1 P R 1897 Rev.**

11. *Suit for ejectment—Trespasser.*
See JURISDICTION OF CIVIL OR REVENUE COURT. **40 P R 1893**

12. *Ejectment suit—Suit to establish proprietary rights.*
See JURISDICTION OF CIVIL OR REVENUE COURT. **22 P R 1894**

13. *Suit to contest liability to ejectment.*
See JURISDICTION OF CIVIL OR REVENUE COURT. **3 P R 1895**

14. *Suit by tenant who has been ejected for possession.*
See LANDLORD AND TENANT. **52 P R 1881**
112 P R 1886
64 P R 1898

EJECTMENT—*contd.*

15. *Landlord and tenant—Liability to ejectment on the ground of non-payment of rent—Plea of absence of such condition—Punjab Tenancy Act*, 1887, *section* 41.
See LANDLORD AND TENANT.
10 P R 1905 Rev.

16. *Ejectment of proprietor by ex-mafidar.*
See MAFIDAR. **184 P R 1883**

17. *Ejectment of tenant occupying for* 12 *years in Delhi District.*
See OCCUPANCY RIGHTS.
39 P R 1881
18 P R 1885
12 P R 1886

18. *Ejectment of tenant.*
See PUNJAB TENANCY ACT, 1868.
SECTION 2. **128 P R 1883**
SECTION 19. **87 P R 1881**
13 P R 1882
19 P R 1886
SECTION 25. **91 P R 1881**
96 P R 1881
18 P R 1883
39 P R 1883
111 P R 1883
SECTION 37. **136 P R 1883**
12 P R 1885

19. *Liability to ejectment on the ground of the alteration of the holding from arable to building land—Relief against forfeiture.*
See PUNJAB TENANCY ACT, SECTION 39.
4 P R 1904 Rev.

20. *Ejectment—Compensation.*
See PUNJAB TENANCY ACT, 1887, SECTION 45. **9 P R 1890 Rev.**
3 P R 1895

21. *Landlord and tenant—Suit by tenant who has been served with a notice of ejectment—Suit instituted more than two months after the service of such notice.*
See PUNJAB TENANCY ACT, 1887, SECTION 45. **2 P R 1902 Rev.**

22. *Right to sue—Habitual worshipper at mosque—Ejectment of trespasser.*
See RELIGIOUS INSTITUTIONS.
87 P R 1892

23. *Ejectment—Omission to direct tenant to file a statement of claim to compensation.*
See REVISION IN REVENUE CASES.
6 P R 1892 Rev.

24. *Suit by tenant to contest liability to ejectment—Suit withdrawn without permission of Court—Subsequent suit for the same matter.*
See RES JUDICATA.
6 P R 1904 Rev.

25. *Ejectment of tenant by landlord—Suit by tenant for refund of portion of rent paid in advance.*
See SMALL CAUSE COURT ACT, 1887, SCHEDULE II, ARTICLE 44.
172 P R 1888

26. *Takiadar.*

The lambardars of the *taraf* in which a *takia* was instituted, sued to eject the faqir and *takiadar*. *Held*, that plaintiffs, though proprietors of the soil, could not eject the faqir (although he had not occupied 12 years), unless some specific misbehaviour were

EJECTMENT—*concld.*

proved against him. GOLAM MAHOMED *v.* BARA SHAH. **7 P R 1866**

27. *Right of proprietors of site to eject non-proprietor from house built by the latter—Agreement*—Mauza *Ali Beg*, *Nowshera* tahsil, *Peshawar district.*

Plaintiffs, proprietors in the village of Ali Beg, Nowshera *tahsil*, Peshawar district, sued to eject defendants, non-proprietors and dyers, from a house in the village on the allegations that the house was their ancestral property, that defendants had been put in possession thereof twenty years previously, and had occupied it *bataur karaidar* on condition that they paid certain dues and dyed plaintiffs' clothes when required, and that defendants had failed to observe the said conditions. The lower Courts found that there was no proof that the defendants had taken possession on the agreement that they might be ejected at will; that defendants had either themselves built the house or greatly enlarged it, and that in the absence of any proof of special custom, they must be held to occupy it on the ordinary village custom. The lower Courts further found that no such special custom had been proved, and dismissed the suit. On appeal to the Chief Court—

Held, accepting the facts as found by the lower Courts, that plaintiffs had failed to prove a special custom whereby they, as village proprietors and original owners of the site, were entitled at their pleasure or on the failure of defendants to pay dues, to eject the latter, who were non-proprietors with a right of residence, and to whom the building belonged. LODHI KHAN *v.* ALI JAN. **62 P R 1899**

EJECTMENT, NOTICE OF.

See NOTICE OF EJECTMENT.

EJECTMENT OF TENANT.

See PUNJAB TENANCY ACT.

ELDEST SON.

Succession of eldest son to office of lambardar.
See under LAMBARDAR.

ELDEST GRANDSON.

Succession of, to office of lambardar.
See under LAMBARDAR.

ELECTION.

1. *For office of lambardar.*
See under LAMBARDAR.

2. *Vendor's right of election in pre-emption.*
See under PRE-EMPTION.

3. *For office of zaildar.*
See under ZAILDAR.

EMOLUMENTS OF VILLAGE OFFICE.

See JURISDICTION OF CIVIL OR REVENUE COURTS. **66 P R 1893**
123 P R 1893
104 P R 1894
105 P R 1894
23 P R 1895
28 P R 1895
See LAMBARDAR. (ALA LAMBARDAR).
1 P R 1896 Rev.
See OCCUPANCY RIGHTS.
4 P R 1897 Rev

ENDORSEMENT.

See *under* PROMISSORY NOTE.

ENDOWMENT.

See RELIGIOUS INSTITUTIONS.
See LIMITATION ACT, 1877, SCHEDULE II, ARTICLE 120. **8 P R 1899**

ENGLISH MORTGAGE.

Suit to recover the principal and interest due upon a simple deed of mortgage by sale of the mortgaged property.
See LIMITATION ACT, 1877, SCHEDULE II, ARTICLE 132.
112 P R 1890 F B

ENHANCEMENT.

Enhancement of Rent.
See JURISDICTION OF CIVIL OR REVENUE COURTS. **2 P R 1890 Rev.**
OCCUPANCY RIGHTS.
5 P R 1893
PUNJAB TENANCY ACT, 1868, SECTION 2. **73 P R 1887**
110 P R 1887
9 P R 1888 Rev.
3 P R 1889 Rev
PUNJAB TENANCY ACT, 1868, SECTION 11. **9 P R 1887 Rev.**
10 P R 1887 Rev.
11 P R 1887 Rev.
24 P R 1888
PARTIES. **3 P R 1905 Rev.**

1. Rule of *res judicata* applies to suits of enhancement of rent. **142 P R 1884.**
80 P R 1899

2. In a suit for enhancement of rent, defendant pleaded that he was proprietor and not tenant. The Commissioner decreed enhancement, leaving the defendant to sue for declaration of proprietary right in the Civil Court.

Held, that the Commissioner was bound to decide the question of title.

A Revenue Court has jurisdiction to decide all points necessary to the decision of the questions before it. MUNSHI *v.* KESAR.
2 P R 1890 Rev.

3. *Fixing rent without regard to the section under which the tenants come.*

It is a material irregularity to ignore the distinction made by law between the different classes of tenants, and to fix rent without regard to the section under which they come SHERA *v.* JALLA. **12 P R 1890 Rev.**

4. *Occupancy tenants—Suit by proprietor for enhancement of rent—Entry* in Wajib-ul-arz *of previous settlement—Status of tenants, inquiry as to.*

In a suit by the proprietors for enhancement of rent, defendants, who were occupancy tenants, pleaded that in the *Wajib-ul-arz*

of the previous settlement there was an entry to the effect that their rent could not be enhanced so long as they paid revenue and cesses under certain specified circumstances. This entry was not repeated in the *Wajib-ul-arz* of the present settlement, but the Commissioner held that the entry amounted to an agreement which, on its wording, was intended to run for ever, and that the proprietors were bound thereby.

Held, reversing the order of the Commissioner, that entries in Settlement Records relating to questions of rent are ordinarily only binding during the currency of the settlement in which they were made, and cannot be held to constitute an agreement which debars the landlords in such cases from enhancing their tenants' rent for all time.

Held, further, that in all suits for enhancement of rent, the *status* of the tenants, if in dispute, should be inquired into and determined before the question of enhancement can properly be dealt with. MAMRAJ *v.* MUSSAMMAT SAVYAN. **5 P R 1895 Rev.**

5. *Suit for enhancement of rent—Plea that landlord had sold the land to defendants. Written agreement to sell, reciting payment of purchase money—Consideration only partly paid.*

In 1881 plaintiff's father served defendants, who were then recorded as tenants-at-will, with a notice of ejectment from the land in suit. The case was contested, but ended in a compromise, under which defendants were given occupancy rights under section 8 of the Punjab Tenancy Act, paying revenue and cesses only. It was further arranged between the parties that defendants should buy out the landlord's interest for Rs. 200, the transaction being reduced into writing in the form of two sale-deeds, each for Rs. 98, and each purporting to be a full conveyance. In both deeds it was stated that the whole purchase-money had been paid and delivery made.

In 1884, during revision of settlement, defendants applied for mutation of names, and plaintiff's said father stated that he, as landlord, had no objection, provided that the defendants carried out the conditions agreed upon in 1881, *viz*, paid him Rs. 150, the balance still due of the Rs. 200. The facts of the transaction of 1881 were then publicly gone into in the village, and it was held proved that the real contract between the parties was that the landlord had engaged to surrender his proprietary title to his tenants, provided that they first paid him Rs. 200 in full; that of that sum only Rs. 50 had been paid in fact, and that until the balance was paid, the recorded relations between the parties were to hold good, and mutation was not to take place.

Subsequently plaintiff sued defendants (as occupancy tenants) for enhancement of rent and obtained a decree in the Court of the Assistant Collector, who held that there had been no completed sale, defendants not having paid the full consideration or taken steps to have their change of title shown in the papers. This decree was reversed on appeal by the Commissioner, who held on the authority of the judgments of the Chief Court in Civil Appeal No 1911 of 1888 (unreported) and No. 132 *P. R.* 1879, that defendants were the legal owners of the land, and none the less so because they had not paid the full purchase money. Plaintiff appealed to the Financial Commissioner.

Held, that upon the facts of the case there had been no completed sale between the parties, and that plaintiff's suit should be decreed.

Although an otherwise completed contract of sale cannot be avoided by the mere fact that part of the consideration remains outstanding, it is the duty of the Court to go behind the written terms of a contract when such terms are challenged, and to enquire into the real nature of the contract between the parties. Further, when the ordeal of compulsory registration is evaded by the device practised in this case, the real nature of the contract should be enquired into with extraordinary care.

Civil Appeal No 1911 *of* 1888 (unreported) and No. 132 *P. R.* 1879, distinguished. GHANNYA SINGH *v.* NIHAL SINGH. **7 P R 1897 Rev.**

6. *Status of tenant—Punjab Tenancy Act*, 1887, *section* 4, (10), *(a)*, 5 *(i)* *(c)*, 22 *(i)* *(b)*—"*Water-advantage rate*"—*Land revenue—Foundation of village.*

Held, that in a suit for enhancement of rent, the *status* of the tenant should be defined once for all inasmuch as future claim for further enhancement may depend upon the determination, and that the mere fact that under section 22 *(i)* *(b)* of the Punjab Tenancy Act, 1887, the tenants who claimed occupancy rights under section 5 *(i)* *(c)* would, even if their claim was established, be equally liable to the enhancement decreed, is no ground for refusing to determine their *status*.

Held, further, that for the purposes of section 5 *(i)* *(c)* of the Act, all that the Court should look to is the latest foundation of any village, and should disregard any plea on the part of the landlord in bar of the tenants' claims, to the effect that there had been some previous foundation of the village.

The canal advantage land-revenue rate levied in the Montgomery District is essentially part of the land-revenue and falls within the meaning of section 4 (10) *(a)* of the Act; and the landlords are entitled to have their rent calculated on the fixed land-revenue, *plus* the amount of such fluctuating canal-advantage land-revenue rate as may be from time to time ascertained.

The Courts are not bound to decree in every case the full enhancement permissible under section 22 of the Act. HIRA SINGH *v.* RULIA. **3 P R 1900 Rev.**

7. *Enhancement of rent—Landlord and tenant—Liability to pay compensation for improvement to tenant on enhancement of his rent—Matters to be regarded in assessment of compensation for improvements—Punjab Tenancy Act*, 1887, *sections* 22, 68, 72.

In a suit by the proprietors for enhancement of rent the defendant who was a section 6 tenant pleaded that he had sunk a well in the tenancy and was entitled to compensation. The first Court allowed enhancement to 6 annas per rupee of revenue on payment of Rs. 100 as compensation for the well. On appeal the Commissioner maintained the order as to enhancement, but set aside the order of compensation on the ground that the enhancement was made on the revenue assessed before the well was made, and that the landlord was not liable to pay compensation for the improvements from which he had derived no benefit.

Held, that although section 22 of the Tenancy Act under certain circumstances gives a discretionary power to a Court to allow an enhancement, yet where a tenant has made an improvement in his tenancy in accordance with the Act, the provisions of section 68 are imperative and his rent cannot be enhanced until he has received compensation for such improvement except in cases where the landlord has tendered a twenty years' lease under section 67 or where the tenant has had the benefit of the improvement for so long a time that under section 72 *(e)* he has become disentitled to any compensation.

Held, *further*, that where in a case of enhancement the tenant has enjoyed the benefit of the improvement for twenty years there is no necessity to compensate him, but where he has enjoyed the benefit for less than twenty years the full compensation should be reduced by the rule of proportion. NATHA SINGH *v.* BURA. **7 P R 1902 Rev.**

ENHANCEMENT OF REVENUE.

See JAGIR AND MAFI ESTATES.

EQUITABLE ASSIGNMENT.

See ASSIGNMENT OF DEBT.

Rights arising out of a contract—Intention—Notice—Assignment of debt.

The rights arising out of a contract, when the matter of the contract permits it, are assignable in equity for a valuable consideration: such assignment may be made by any words or acts showing a clear intention to assign, and may be valid as against the assignor without any notice to the debtor. Nor is notice necessary as against third parties, including judgment-creditors of the assignor, who simply stand in the same position as the assignor. But the intention to create a charge must be shown, and therefore a promise to pay money when the debtor receives a debt due to him from a third person does not constitute an equitable assignment so as to charge the debt in the hands of such third person.

Defendant, who had a contract with the postal department for the maintenance of a certain postal stage at a monthly payment of Rs. 600, mortgaged to the plaintiff his *chauki* and horses with possession, and agreed

EQUITABLE ASSIGNMENT— *concld.*

with the plaintiff, his mortgagee, that the said monthly payment accruing to him under his contract would be paid to the mortgagee of which Rs. 200 should be credited to the mortgage-debt, and Rs. 400 should be applied to the maintenance of the horses.

Held, that the interest affected in the above case wss one which admitted of being assigned, and further, that there was a sufficient indication of an intention to transfer or appropriate the debt to the plaintiff or for his use, the assignment thus falling within the principle of an equitable assignment and creating a valid equitable charge upon the fund. If defendant had received the money, he would have been bound to hold on account of the plaintiff, and if it had been attached in his hands, the plaintiff might have had it released under section 280 of the Civil Procedure Code. *Mool Chand* v. *Jumayat Singh* (No. 63 *P. R.* 1873, Civil) cited. GURDITTA MAL *v.* SULTAN MUHAMMAD. **60 P R 1884**

EQUITABLE MORTGAGE.

— *Presumption where third party pays off original mortgagee.*

See MORTGAGE. **59 P R 1882**

EQUITY.

See DEBTOR AND CREDITOR. **115 P R 1908**

See FRAUD. **150 P R 1908**

Meaning of, in Act IV of 1872, *section* 6.

The rules of "equity" referred to in section 6, Punjab Laws' Act, are rules of law, of the nature of broad and general principles, recognised by most systems of jurisprudence with greater or less distinctness, and applied in India where questions arise for which neither the written nor customary law provides (*per* BOULNOIS, J.,) GAMI *v.* SABIR. **91 P R 1875**

EQUITY PURCHASE SUBJECT TO.

See EXECUTION OF DECREE. **148 P R 1879**

EQUITY AND JUSTICE.

1. *Unconscionable bargain— Dispensing power of Courts of Equity.*

See CAUSE OF ACTION V. – MISJOINDER. **32 P R 1890**

2. *Future interest– Sum named—Penalty —Equitable relief.*

See CONTRACT ACT, SECTION 74. **99 P R 1891**

3. *It is the person who seeks equity is compelled by the Courts to do equity.*

See CUSTOM I. G — ALIENATION BY GUARDIAN. **192 P R 1889**

4. *Pre-emption—Rival claimants with equal rights—Vicinage—Procedure to be adopted in such cases.*

See PRE-EMPTION, RIGHT OF, ON ACCOUNT OF VICINAGE OR RELATIONSHIP. **83 P R 1888**

5. A Court in the exercise of an equitable discretion may, when granting the husband a decree for custody of his wife, impose upon him, as a condition of the decree, the payment to her of the prompt dower. The

EQUITY AND JUSTICE—*concld.*

principle appears to be that when a plaintiff resorts to an Indian Court for specific performance of an obligation, he has not an absolute right to insist upon the assistance of the Court. MUSSAMMAT AISHA BI *v.* MUHAMMAD SADIQ. **5 P R 1891**

6. Although when a person comes into Court to get the acts of his guardians during his minority set aside, and he is found to have benefited from those acts, a condition may be attached to the decree made in his favour, there is no authority for holding that a person suing to enforce a mortgage made by one who had no authority to effect such mortgage is entitled to a decree against the owner of the property for compensation for any advantage the owner may have derived from the transaction. DHARM SINGH *v.* ZAHAR-UL HUSAIN. **58 P R 1891**

7. Decree for custody of wife in favour of a husband who was undergoing a sentence of transportation for life at the penal settlement of Port Blair in the Andaman islands being not in accordance with the principles of equity and good conscience that a young woman, who had hardly attained maturity when her husband was transported for life, should be directed to proceed to a penal settlement and cohabit with him there. MUSSAMMAT JOWALI *v.* KARM SINGH. **47 P R 1892**

8. A plaintiff in a pre-emption case cannot claim any right on the basis of Muhammadan Law, or on what might be called general grounds of equity and good conscience. By the Punjab Laws Act, 1872, pre-emption is not one of the matters specified in section 5 as a matter to which, in the absence of proof of special custom, Hindu or Muhammadan Law is to be applied; and as the subject of pre-emption is specially provided for by other sections of the Act, it cannot fall under section 6 as a matter to be decided on grounds of equity and good conscience. MIRZA ANWAR ALI *v.* SHAM NARAIN. **8 P R 1893**

9. A Court which dismisses an appeal upon the assumption that there was some rule of equity, justice, and good conscience is bound to specify the same in its judgment ROEBUCK *v.* HENDERSON. **54 P R 1896**

EQUITY OF REDEMPTION.

See APPEAL XI.—VALUATION OF. **28 P R 1908**

1. *Mortgage—Mortgagee obtaining money decree against his mortgagor not allowed to purchase equity of redemption in the property mortgaged to him—Effect of prohibited purchase.*

Held that a mortgagee under a conditional sale cannot by purchasing the equity of redemption in execution of a money decree obtained by him against his mortgagor, acquire a complete title as of purchaser in the property mortgaged to him so as to deprive the mortgagor of his legal privileges regarding the equity of redemption.

Such purchases being absolutely unlawful do not confer an irredeemable title on a

EQITY OF REDEMPTION—*concld.*

mortgagee without his having recourse to the proper procedure prescribed for that purpose and without giving the mortgagor an opportunity to redeem. JAGAN NATH *v.* BUDHAWA. **2 P R 1907**

2. *Mortgage—Mortgage for a fixed period—Representative of the mortgagor not allowed to redeem before the expiry of the term—Long term alone does not amount to clogging the equity of redemption.*

Held, that a period fixed for redemption by the parties in a mortgage bond cannot be regarded as one fixed without legal necessity and as such inequitable and unenforceable on the mere ground of its being unusually long, and the representative of the mortgagor cannot be allowed to redeem before the term fixed on that behalf, especially where it is shown to have been fixed by the mortgagor in good faith and with due regard to his best interest. PURAN SINGH *v.* KESAR SINGH. **39 P R 1907**

3. *Mortgage — Redemption — Suit by mortgagor for redemption—Dismissal of suit for default—Subsequent suit for the same object.*

Held, that a dismissal under section 102 of the Code of Civil Procedure of a suit by a mortgagor for redemption of mortgaged property precludes the plaintiff under section 103 from bringing a fresh suit for the redemption of the same property.

Shankar Bakhsh v. *Daya Shankar* (*I. L. R. XV Cal.* 422), *Mam Raj* v. *Chandwa Mal* (117 *P. R.* 1891), and *Imdad Ali* v. *Hurmat Ali*, (32 *P. R.* 1905), referred to. GURDITTA *v.* NARAIN DAS. **43 P R 1907**

4. *Gift of equity of Redemption prior to expiry of mortgage term—Validity of such gift under Mohamedan Law.*

Held, dissenting from *Mohi-ud-din* v. *Manohar Shah* (1882) *I. L. R.* 6 *Bom.*, 650 and *Ismail* v. *Ramji* (1889) 23 *Bom.* 682, that under Muhammadan Law a gift by a mortgagor of immovable property of the equity of redemption was valid, placed the donee in the shoes of the donor, and necessitated notice to the donee of foreclosure although the donor was still alive. HARNAM SINGH *v.* SAJAWAL. **86 P R 1910**

ERROR-IN-LAW.

See REVISION. **27 P R 1908**

ESCHEAT.

1. *Escheat to the proprietary body cannot be presumed to exist—Must be affirmatively proved.*

Held, that a nephew of a deceased proprietor, who does not reside in the village where the deceased left land and is not a proprietor in it, succeeds to his uncle's property in preference to the proprietors of the village—And that the initial *onus*, generally speaking, would lie on the proprietary body to show that they had a right to exclude a near agnatic relative of the deceased owner from the inheritance

Held also, that a right of escheat to the proprietary body cannot be presumed to exist: it must be affirmatively proved. DASOUNDA SINGH *v.* MANGAL. **18 P R 1910**

ESCHEAT—*concld.*

2. *Custom—Succession—heirless estate—village community—escheat to Crown—Hindu Law.*

Held, that the following propositions are applicable to the subject of escheat to the Crown:—

1. The right of the Crown to claim escheat rests not on customary or Hindu Law, though Hindu Law recognizes escheat, but on grounds of general or universal law.

2. The right can only arise in the absence of relations entitled by law or custom to inherit.

3. The right of the proprietary body as a whole to succeed in cases in which it exists is primarily based on real or assumed relationship to the holder of the land or to the member of the proprietary body from whom his title was derived.

4. Such a right should be assumed in the case of homogeneous estates or sub-divisions of estates where the owners are all or nearly all of the same tribe as the last holder of the land or the member of the proprietary body from whom he derived his title.

5. It should not be assumed in the case of heterogeneous estates or sub-divisions of estates held by persons of different tribes or different *gots* of the same tribe. The presumption in such cases is that the State has a right of escheat.

6. When the property in the land was originally derived by gift from a member of the tribe of the original proprietary body the right of the body should be recognized on failure of the donor's and donee's lines.

7. In any case in which the *Wajib-ul-arz* declares the right of the proprietary body to succeed to the land of heirless owners Government should set up no claim.

Held, accordingly, that the heirless land concerned, being situate in *patti* Mohra of *mauza* Kaliana, Thanesar *tahsil*, Karnal district, a village owned by an utterly heterogeneous proprietary body, where even the Jat proprietors are of different *gots* both in the village as a whole and in the *patti* concerned, and the land having been owned originally by a Jat of a *got* of which he was the only representative in the village and having been held after his death by his wife's nephews belonging to a village in the Ambala district, that there was no possible claim of successions in the proprietary body of the village or the *patti* as a whole or in the Jat proprietors separately, and it must be held that the land escheats to the Crown and must be recorded as Government property.

2 P R 1911 Rev.

ESTATE MEANING OF.

See JURISDICTION OF CIVIL OR REVENUE COURTS. **13 PR 1895**
30 P R 1895

ESTOPPEL.

See ALSO ABANDONMENT.
——ACQUIESCENCE.
——ALLUVION AND DILUVION.
——CONTRACTS.
——EVIDENCE ACT, SECTION 115.

ESTOPPEL—*contd.*

See FRAUD.
—— HINDU LAW. ANCESTRAL PROPERTY
——LANDLORD AND TENANT.
——MORTGAGE.
——PRE-EMPTION.
—— RES JUDICATA.
—— VENDOR AND PURCHASER.

1. *Of party pleading his own mistake—Rigister of document in wrong district.*

See REGISTRATION ACT (VIII OF 1871), SECTION 28. **67 P R 1883**

2. *Reference of case to arbitration—Award of arbitrators—Acceptance of award on date of delivery of both parties—Subsequent objection to award by both parties—Court setting aside award and adjudicating on case—Estoppel.*

See ARBITRATION. **15 P R 1899**

3. *Suit to include whole claim—Plaintiff having several causes of action suing in respect of one only—Subsequent suit in respect of another cause of action.*

See CAUSE OF ACTION IV.—MISCELLANEOUS. **23 P R 1894**

4. *Succession—Daughters—Suit by reversioners to contest daughters' succession—Compromise—Subsequent suit by same reversioners to set aside alienation by daughters.*

See CAUSE OF ACTION. II.—FRESH **47 P R 1894**

5. *Commission to make partition after disposal of the suit—Irregularity in the procedure—Estoppel of party acquiescing.*

See CIVIL PROCEDURE CODE, 1908, O. XXVI. R. 13 **124 P R 1893**

6. *Joint suit by alleged partners inrespect of leases made in the names of certain individual members of the alleged partnership—Joint undivided Hindu family—Omission in plaint to specify grounds entitling plaintiffs to sue jointly in respect of such leases.*

See CIVIL PROCEDURE CODE, 1908, SECTION 80. **67 P R 1894**

7. *Minor—Compromise of suit—Sanction of Court—Statement of minor at mutation proceedings—Estoppel.*

See CIVIL PROCEDURE CODE, 1908, O. XXXII R. 7 **17 P R 1899**

8. *Powers of chief headmen and headmen of village to alienate portions of common land—Suit by other co-sharers to set aside sale and for possession—Previous sales by headmen of* Shamilat *plots without objection by co-sharers—Estoppel.*

See COMMON LAND. **191 P R 1889**

9. *Estoppel of adoptive father to repudiate the adoption.*

See CUSTOM. III K.—REPUDIATION OF ADOPTION. **4 P R 1893**

10. *Cause of action—Identity of defendants—Estoppel.*

See CUSTOM I. B. —ALIENATION BY WIDOW, (c) NECESSITY. **58 P R 1896**

11. *Purchase of property by father in the name of his son—Alienation by son after the death of his father—Joint Hindu family—Suit by other heirs to contest such alienation—Estoppel.*

ESTOPPEL—*contd.*

See HINDU LAW, ALIENATION. **6 P R 1893**

12. *Sale of land by female entitled thereto for her life—Subsequent alienation by vendee more than twelve years after previous sale—Suit for declaratory decree by reversioners of female in respect of the second alienation—Estoppel.*

See LIMITATION ACT, 1877, SCHEDULE II, ARTICLE 125. **26 P R 1896**

13. *Interlocutory decision of lower Court not reversed on appeal, how far binding on Appellate Court on appeal from a final order in same proceeding.*

See LIMITATION ACT, 1877, SCHEDULE II, ARTICLE 179. **89 P R 1894**

14. *Estoppel—Drawee of Bill of Exchange—Conduct.*

See NEGOTIABLE INSTRUMENT ACT, 1881. **71 P R 1909**

15. *Tenant recorded with consent of proprietors as occupancy tenant—Subsequent admission by tenant, made previous to 1887, that he was merely tenant-at-will.*

See OCCUPANCY RIGHTS. **4 P R 1896 Rev.**

16. *Pre-emption on sale—Colourable transaction—Defendant alleging his own fraud—Executory contract—Estoppel*—Par delictum.

See PRE-EMPTION—CONSTRUCTION OF TRANSFERS. **61 P R 1895**

17. *Pre-emption—Mortgage or sale—Right of mortgagee to plead that that mortgage was colourable to avoid pre-emption—Fraud—Condition in mortgage deed restricting equity of redemption—Estoppel.*

See PRE-EMPTION—CONSTRUCTION OF TRANSFERS. **99 P R 1895**

18. *Partnership or co-ownership—Estoppel on account of failure to contribute towards the expenses of repairs.*

See REGISTRATION ACT, 1877, SECTION 17. **51 P R 1898**

19. A person who stands negligently by and allows another to contract on the faith of a fact which he can contradict, cannot afterwards dispute that fact in an action against the person whom he has assisted in deceiving; but a wilful, negligent and culpable misrepresentation is not sufficient to create an estoppel of this kind, unless it is followed by an act on the part of the person deceived, in accordance with the misrepresentation. ANDERSON *v.* TAYLOR. **70 P R 1866**

20. *Misrepresentation—Choice of trustworthy sources of information—Belief.*

The plaintiff released a right to the defendant, upon a misrepresentation by the latter. The Courts below concurred in finding that the plaintiff trusted to the statement of the defendant, they being friends, in preference to getting information of the facts eleswhere, which information he might however have obtained. On special appeal the Chief Court, upon the facts found, supported an order relieving the plaintiff from fulfilling the terms of the release. MELA RAM *v.* DEVRE DYAL. **75 P R 1869**

ESTOPPEL—*contd.*

21. Contract between parties pleaded by defendant in bar of suit. Plaintiff estopped from reply that contract was illegal. I. HAKAM *v.* KAHNA. **10 P R 1870**

22. The village of Malpura consisted of two *pattis*, one of Jats, the other of Brahmins. In 1837, the proprietors of both *pattis* were unable to pay the revenue demand, and the whole village, the plaintiffs alleged, was farmed, the Jats' *patti* to S. R. for thirty years, and the Brahmins' *patti* to another person. The defendant alleged that the village was not farmed but that the proprietors, whom plaintiffs now represented, in 1837 relinquished their proprietary as well as *malguzari* rights, and in support of this allegation produced a document which they contended was an *istifanamah* or deed of relinquishment. In 1852, C. B. purchased at a sale in execution of a decree, the rights of S. R. in the Jats' *patti*; and was recorded as proprietor; in 1858 C. B. sold his interest in the *patti* to Sita Ram, who effected *dakhil kharij*. Plaintiff now claimed on the ground that the 30 years' lease to S. R. had expired; defendant (claiming through Sita Ram) resisted the claim of the plaintiffs on the grounds (1) that there was no farm, but a relinquishment by the proprietors of all their rights; (2) that plaintiffs had allowed their full rights to be transferred (firstly to C. B., secondly to Sita Ram) without asserting an adverse title, and were thus barred by acquiescence; and (3) that more than 12 years' possession as proprietors by those through whom defendant claimed, also barred the plaintiff's suit. The lower Courts found as a fact that there was farm-lease to S. R. only and no relinquishment of proprietary rights, and decreed plaintiffs' claim. On defendant's special appeal to the Chief Court, it was *held* that as plaintiffs had no right of suit to recover possession until 1867 (the year the farm-lease expired) their suit was not barred; that as to their lying by in 1852 and 1858 when the transfers were effected, this was only some evidence that they had no claim and had actually relinquished their rights: and moreover their position in the village as cultivators did not entitle them to take part in its affairs, and they were not shown to have had express notice of the transfers. PHULA *v.* KRISHNA. **10 P R 1874**

23. *Plaintiff alleging his own fraud.*

Plaintiff sued to cancel a deed of mortagage, alleging that the transaction was a fictitious one effected for the purpose of depriving plaintiff's nephew, his reversionary heir, of his right to the mortgaged property. *Held*, that plaintiff's suit must be dismissed, as he was estopped from alleging his own fraud. MUTSADDI *v.* BHAGWAN SINGH. **11 P R 1875**

24. If the owner of property stands by and sees his property sold, without any objection on his part, to a *bonâ fide* purchaser, he cannot afterwards dispute the sale, and the property passes to the purchaser. JOWALA SINGH *v.* JEWAND SINGH. **87 P R 1875**

25. Plaintiff sued defendant for a half-share of certain property, the estate of the D. S. deceased, on the ground that they were the descendants of a common grand-father. In 1870 H. S. sued the now defendant for a share in the same property on the ground of title by relationship to D. S.; and in that suit defendant, denying H. S.'s asserted relationship, stated that he and the now plaintiff were the only surviving heirs of D. S., being descendants from the same grand-father, and that defendant intended to give plaintiff his share. The now plaintiff was then joined as a defendant in that suit, which was in the end dismissed. The present suit was decreed in plaintiff's favour by the lower Courts on the ground that defendant's statement in the former suit was conclusive as to plaintiff's right to share D. S.'s property.

Held, that defendant's statement in the suit in 1870 did not necessarily estop him from now disputing plaintiff's title to a share in D. S.'s property; but that it must be shown that the plaintiff had acted upon the statement, the defendant intentionally causing him so to act, so as to raise an estoppel under section 115, Indian Evidence Act. Case remanded accordingly.

Per PLOWDEN, J. The defendant's statement as to intention availed nothing, unless it amounted to a contract. DULA SINGH *v.* KISHAN SINGH. **86 P R 1876**

26. *Plaintiff accepting the part of his claim decreed by the first Court—Subsequent appeal for remainder.*

Held, that a plaintiff who without putting his decree in execution accepts the amount of his claim decreed by the first Court and paid in by judgment-debtor, is not by the mere fact of such acceptance debarred from appealing for the remainder of his claim. MUHAMMAD HASSAN *v.* GHOUS BAKHSH. **49 P R 1880**

27. *Suit for pre-emption—Parties to suit—Defendant who had obtainend* dakhil kharij *of his deceased brother's estate denyiug that he represented such estate.*

In a suit for pre-emption in respect of certain property purchased by one M. S. and his brother jointly, which was instituted in the first instance against M. S. personally and as representative of his brother who had died before the date on which the suit was brought, it was objected by M. S. that his brother had left a widow, who, as one of his heirs, was entitled to one-fourth of his estate and who accordingly should be joined as a defendant in the suit. The first Court, considering that the widow should be made a party, passed an order to that effect, but the lower Appellate Court on the ground that the defendant M. S. had represented in certain proceedings before the Deputy Commissioner that he alone was entitled to succeed to his brother's share in the land in dispute, as well as to his shares in other lands and had procured *dakhil kharij* in respect of such shares in his own name alone, held that M. S. was estopped from denying that he was the representative of his late brother, and that the order of the first Court directing the widow to be made a party being wrong, her name should be removed from the record.

On the question of estoppel, *held*, that M. S. was not estopped by his conduct from alleging that he did not sufficiently represent the estate of his brother; that there was no reason to suppose that the plaintiffs were in any way misled by the statements alleged to have been made at *dakhil kharij*; that the widow was their own sister, and they were aware that by Muhammadan law she was entitled to succeed to a fourth of her husband's estate, and they at once admitted her right to a share of the land in dispute when the question was first put to them in the Deputy Commissioner's Court. KHAN MUHAMMAD SHAH *v.* MUHAMMAD JAN. **104 P R 1882**

28. *Admission of receipt of consideration befor registering officer—Effect of such admission.*

In a suit by plaintiff as mortgagee for recovery of the produce of certain land which he alleged had been mortgaged to him by the defendants, who, while admitting the execution of the deed of mortgage, pleaded that they had received no consideration upon it, *held*, that the admission of receipt of consideration made by the mortgagor before the Registrar could not be held to operate as an estoppel in the case, as although such an admission was entitled to much weight as evidence, and might, in conjunction with other circumstances or possibly by itself, throw the *onus* on to the other side of rebutting the presumption of the receipt of money which it raised, it was not *per se* conclusive on the point. ALA BAKHSH *v.* SHAMA. **153 P R 1882**

29. *Suit for pre-emption—Foreclosure of mortgage—Omission of mortgagee to take preliminary proceedings under Section 8 of Regulation XVII of* 1806—*Acquiescence by mortgagor in such omission—Right of mortgagee who had obtained decree for foreclosure to plead that such decree was illegal and gave rise to no right of pre-emption.*

In a suit for pre-emption arising out of the foreclosure of a mortgage by way of conditional sale, it was urged (*inter alia*) on behalf of the mortgagee defendant, that the plaintiff could not claim pre-emption because the proceedings taken to foreclose the mortgage by the said defendant were not in accordance with the requirements of Regulation XVII of 1806, the result of which would be that, as between the mortgagor and mortgagee, the land in dispute must still be deemed to be held in mortgage and liable to redemption at the hands of the mortgagor with respect to which therefore no suit for pre emption could be maintained at the present time. It appeard that the mortgagee, instead of taking the preliminary proceedings contemplated by section 8 of Regulation XVII of 1806, brought a regular suit for proprietary possession of the mortgaged land, and obtained a decree conditional

ESTOPPEL—*contd.*

on the mortgagor's failure to pay by a specified date the amount due on the mortgage-bond. The mortgagor not having paid the sum decreed against him within the stipulated period, the mortgagee applied for execution and was formally placed in proprietary possession of the mortgaged property. No appeal was preferred by the mortgagor either against the above decree, or against the order in execution placing the decree-holder in possession of the land, and the mortgagee was shown to have continued in possession ever since.

Held, that the mortgagee was estopped from raising the contention noted above in the present case: that the mortgagor's conduct, both in not appealing from the decree for forclosure, and in allowing execution to take place under it, and also in not appealing from the decree of the lower Court in the present suit giving plaintiff a decree for pre-emption, was sufficient to indicate that he had acquiesced in the sale being made absolute; and this being so it did not lie in the mouth of the appealing defendant, the mortgagee, to repudiate a title which had been adjudicated in his favour at his own instance, in order to deprive the plaintiff of his right of pre-emption, which arose in consequence of that title being made absolute. *Fatteh* v. *Sainditta* (No. 76 *P. R.* 1877, Civil) referred to. JOWAHIR MAL *v.* KALANDAR KHAN. **155 P R 1882**

30. *Act I of* 1872, *section* 115—*Suit to establish adoption by defendant with her husband's authority—Defendant estopped by her conduct from denying such authority—Alteration of plaintiff's position by the adoption if found to be invalid—Representations made to plaintiff's father and not plaintiff personally, effect of—Necessity for precise finding that defendant,* pardah-nashin *woman, understood the nature of her acts.*

Plaintiff sued to establish his adoption by the defendant, a *pardah-nashin* woman, as son to her husband, alleging that the adoption was authorized by him, and it was urged that the defendant was estopped by her own conduct from denying this allegation (within the meaning of section 115 of the Evidence Act) inasmuch as she intentionally led the plaintiff's natural father, who gave him in adoption, to believe and to act in the belief that she was adopting him as a son to her husband.

Held, that if the widow intentionally caused the boy's father to believe that she had authority from her husband to adopt, and that she received him in adoption in pursuance of that authority, there would be no reason why she should not be held estopped from denying this in the present case: that there was no doubt that if there had been a *dattaka* adoption as alleged, the plaintiff's position would be altered, and even if he might succeed, in case he failed to prove that adoption, in establishing his claim to a share in his father's estate, he would probably, in consequence of the adoption, be driven to litigation to recover this share, so that a decision that there was no

ESTOPPEL—*contd.*

valid adoption would not restore him to his original situation: that it was not material that the representations which led the plaintiff's father to consent to the adoption were not made to the plaintiff personally, the plaintiff's father being his lawful guardian, and the person who would naturally see to the protection of his interests, and if the defendant intentionally misled him, the plaintiff was entitled to take advantage of the estoppel; but that before arriving at a finding as to whether the defendant did as a fact adopt the boy as son to her husband, it was necessary for the Court to take into consideration her position as a *pardah-nashin* woman, and to be satisfied that she understood the nature of her acts, for though it was not necessary that she should have intended to divest herself of the estate in her husband's property, there should be an express finding, if the facts were so that she intended to adopt the boy, not merely as son to herself, but as son to her husband. SIRDARNI DHARM KOUR *v.* RANDHIR SINGH. **169 P R 1882**

31. *Sale by occupancy tenant of his holding without landlord's consent—Landlord by his conduct affirming the transfer—Subsequent suit by landlord for pre-emption—Tenancy Act (XXVIII of* 1868*), section* 34.

In a suit for pre-emption, it appeared that the land in question formed part of a holding cultivated by the 1st defendant (the seller), as tenant with right of occupancy, and of which the plaintiffs were the proprietors. The land in suit was sold on the 24th February 1880 by registered deed to the second defendant, who forthwith began to sink a well in the land, whereupon on the 5th March 1880 the plaintiff brought a suit against the purchaser and his brother for an injunction to restrain them from sinking the well on the ground that it was provided in the *Wajib-ul-arz* that a hereditary cultivator was not entitled to sink a well in his holding without his landlord's consent. On the 26th April 1880 the Court granted the injunction prayed for, and this order was upheld on the 11th June 1880 on appeal. Meanwhile, on the 21st May 1880, the plaintiffs had brought the present suit against the vendor and the vendee to enforce their right of pre-emption in respect of the right of occupancy sold. The lower Courts held that the vendor was not entitled to sell any portion of his occupancy holding without his landlord's consent, and this finding was confirmed by the Chief Court. But it was contended for the defendants (the appellants in the Chief Court) that as the plaintiffs brought the former suit in which they recognized the vendee's *status* as occupancy tenant under the sale and sued to restrain him in that capacity from sinking a well on the land, they were estopped from denying the validity of the sale and from claiming the benefit of it as pre-emptors.

Held, *per* Curiam, that the plaintiffs were estopped by their action in the former suit from denying the validity of the sale of the occupancy right.

Held further, by *Plowden* and *Elsmie*, *JJ.*,

ESTOPPEL—*contd.*

Smyth, *J.* dissenting as to this, that the said estoppel was a bar to the present suit, which purported to be one for pre-emption, by the landlords.

Per *Plowden*, *J.*—Under the last clause of section 34 of the Tenancy Act, a right of occupancy, other than a right under section 5, is not a transferable right of occupancy within the meaning of section 11 of Act IV of 1872, and such transfer, whether it be made without or with the consent of the land lord, create no right of pre-emption in the landlord or in any other person The transfer is invalid except with the previous consent of the landlord: if made without his consent, he can at his option affirm or annul it, but he has no other remedy open to him. If with full knowledge of the facts, he intentionally acts in such a manner as to affirm the transfer, he cannot afterwards disaffirm it.

Per *Smyth*, *J. contra.*—As the plaintiffs did not seek in the present suit to deny the validity of the sale, but, on the contrary, accepted it as a thing that had taken place, and sued to obtain the benefit of it, there was nothing in the former proceedings nor in the action of the plaintiffs which could be held to estop them from bringing the present suit. FAZL *v.* GODAR KHAN. **161 P R 1883**

32. *Sale of house, part of which was mortgaged to plaintiff—Plaintiff after the sale demanding and accepting payment of the mortgage-money without any reservation of his right of pre-emption—Subsequent suit by plaintiff for pre-emption—Plaintiff estopped from maintaining such suit.*

In a suit for pre-emption it appeared that when the house of which plaintiff was claiming pre-emption was sold a ⅓rd share of it was under mortgage by one of the vendors to plaintiff, and that it was provided in the deed of sale that out of the nominal purchase money the amount due on the mortgage should be retained by the vendee for payment to the mortgagee. It further appeared that nearly two months after the sale the plaintiff gave a written notice to the vendee to pay the mortgage-debt threatening him with an action if he did not do so, but saying nothing in the notice about his right of pre-emption, whereupon the vendee paid the amount to the mortgagee who gave him a receipt. Subsequently plaintiff sued the vendee and the vendors for pre-emption, and among other pleas the vendee urged that plaintiff could not maintain this suit in view of the transaction above described.

Held that such contention was correct: that it was open to the plaintiff as between him and the defendant vendee either to dispute or to affirm the validity of the sale, that plaintiff as mortgagee having, without any reservation of his right as pre-emptor, called upon the vendee to pay up the mortgage-money and having accepted it from him had elected as between himself and the vendee to affirm the sale as valid and it was not open to him after such election to treat the sale as voidable. BAWA LEHNA SINGH *v.* JAGAN NATH. **138 P R 1888**

ESTOPPEL—*contd.*

33. *Appeal by judgment-debtor who has voluntarily satisfied decree.*

Held, that a person against whom a decree has been passed is not estopped from appealing against the decree by the fact that he has voluntarily paid the decree into Court before the appeal was lodged. MULA SHAH *v.* KIRPA RAM. **142 P R 1888**

34. *Estoppel—Pleader's admission on a law point.*

A party is not bound by his pleader's admission on a question of law. Estoppel refers to a belief in a fact and not in a proposition of law. NIHAL SINGH *v.* HIRA SINGH. **98 P R 1889**

35. *Estoppel—Pre-emption—Guardian of minor—Consent—Inability of guardian to contest his own acts.*

A was entitled to pre-emption by reason of being a neighbour. He was also *de facto* guardian of a minor co-sharer in the land sold. After having taken part in the negotiations for sale he brought a suit for pre-emption on behalf of the minor. *Held*, that he was entitled to insist that it was his own interest that he gave up and to distinguish between his own personal right and that of the minor. Case No. 112 *P. R.* 1881 distinguished. KADIR BAKHSH *v.* MUSSAMMAT NUR BIBI. **121 P R 1889**

36. *Estoppel—Witness attesting will—Subsequently suing to set it aside.*

Plaintiff signed a will as an attesting witness. His minor daughter was then heir to the property disposed of by the will. After the death of the testator the plaintiff's daughter died and thereupon, plaintiff as heir of his daughter, sued to set aside the will as made in derogation of her rights as heir. *Held*, that the plaintiff was estopped by his conduct from disputing the will. JUMMA *v.* IMAM BAKHSH. **138 P R 1889**

37. *Evidence Act (I of 1872), section 115.*

A. having obtained a decree against B. for pre-emption of certain land, conditional on payment of the price within a specified time, mortgaged the land to B. and in consequence of this transaction did not pay the price on the due date into court for payment to B. He subsequently sued for redemption. B. pleaded that A. lost his right of pre-emption by reason of non-payment of price within the time fixed in the decree, and that he was not entitled to mortgage the land, not having completed his title as proprietor.

Held, that B. was estopped for raising this plea by his accepting the mortgage by A. He caused A. to believe that he was proprietor of the land and to act on that belief by not paying the money into Court by the specified date. GULRANG *v.* VASUA. **131 P R 1890**

38. Par delictum—*Party estopped from pleading his own fraud.*

The plaintiff sued for possession of half a house which he alleged was the joint property of himself and the defendant; the latter relied upon a registered deed of sale to him from the plaintiff, purporting to sell his (plaintiff's) interest in the house. The plaintiff replied that this was a fictitious transaction entered into in fraud of his creditors.

Held, that the plaintiff was precluded by the rule of *par delictum* from relying on such an allegation. DOGAR MAL *v.* JAMIAT. **38 P R 1892**

39. *Estoppel — Fraud—Defrauded assignee pleading fraud of his assignor.*

Held, that, assuming that ordinarily an assignee is debarred from alleging the fraud of his assignor in a suit against a defendant *in pari delicto* with such assignor, such rule cannot apply when the assignee is himself the defrauded party. *III W. R.* 92, cited and followed. MANGAL SEIN *v.* HIRA LAL. **32 P R 1894**

40. *Pre-emption—Suit by pre-emptor with superior rights against pre-emptor with inferior right, who has obtained a decree—Waiver of right—Acquiescence—Estoppel—Collusion between plaintiff and vendor.*

Plaintiff sued for pre-emption of certain land sold on the 19th January 1891, the suit being instituted on the 8th January 1892. Certain other persons had previously sued the vendor and vendee in respect of the same land and had obtained a decree for pre-emption, and plaintiff now sued the decree-holders and joined the vendor and vendee as co-defendants. The decree-holders, while admitting plaintiff's superior right of pre-emption, pleaded (i) that they having shown superior diligence and obtained a decree, plaintiff had no cause of action against them so long as the decree subsisted; (ii) that plaintiff was estopped by his own conduct from suing; (iii) that the suit was not *bonâ fide* or for the benefit of the plaintiff, but was brought for the benefit, and at the instance, of the defeated vendee.

Held, as to the first plea, that plaintiff's right of pre-emption being admittedly superior to that of defendant's must *primâ facie* prevail, and inasmuch as the right of pre-emption attached to plaintiff as a personal privilege and inhered until lost by his own act, or exhausted by suit or barred by the law of limitation, plaintiff's said right was not affected by the existence of defendant's decree.

Held, as to the second plea, that notice of the original sale not having been given to plaintiff in the manner prescribed by law, plaintiff had no opportunity of electing whether he would prefer a right to purchase or would acquiesce in the sale, and could not, therefore, be said to have waived his right to accept an offer which was never made, and was within his rights in preferring his claim at any time within the period allowed him by law, and against any person, holding mediately or immediately under the original sale, who could not establish positively facts or conduct giving rise to an estoppel.

Held, as to the third plea, that, though plaintiff's conduct was suspicious, there was no sufficient certainty to justify the Court in holding that plaintiff's suit was for the benefit of the defeated vendee.

Per Bullock, J.—The nature of pre-emptive right being a personal privilege, exercisable only by the pre-emptor for his own benefit, his suit must fail if it be established that in suing he is seeking the benefit of it not for himself but for another.

No. 42 *P. R.* 1878, distinguished. BRIJ NATH *v.* JITA. **139 P R 1894**

41. *Estoppel—Evidence Act (I of 1872), section 115.*

In 1889 the Pathan proprietors of Yaru Khel brought a suit against certain Sayads, who appeared to be inferior proprietors of some description, claiming certain land on the ground that it was *shamilat-deh*. One of the Sayads, K. H. S. admitted plaintiff's claim, and stated that he would not defend the suit or render himself liable to any costs of the litigation. The rest of the Sayads contested the claim, and in the result it was found that the land in dispute was the property of the Sayads and not *shamilat-deh*, and the suit was dismissed in all the Courts. Thereafter the Sayads remained in possession of the land, the holding being recorded joint of all the Sayads. In 1893 K. H. S. sold his recorded share to one S. S. and upon the vendee's application for partition, the rest of the Sayads sued to have it declared that K. H. S. had, by his admissions in the former case, lost his interest in the land, and had no rights left to him therein which he could convey to S. S. Both lower Courts decreed the claim, the Divisional Judge holding that S. S. as representative of K. H. S. was estopped from denying what the latter had deliberately stated in the previous suit.

Held, that the statement relied upon was an admission receivable in evidence against the party making it and any one claiming under him, but did not amount to an estoppel, because, (i) the principal of an estoppel—*viz.*, that the statement made must be taken to be true for the purpose of subsequent proceedings—could not apply to a case where the former statement had been found by judicial decision to be and admittedly was false and not true; and (ii) it had not been shown that plaintiffs had at any time been in any degree misled into acting upon the representation or altering their position by reason of it. SOHAWA SHAH *v.* SHER ZAMAN SHAH. **49 P R 1895**

42. *Pre-emption on sale—Colorable transaction—Defendant alleging his own fraud—Executory contract—Estoppel—*" Par delictum."

Plaintiff suit for pre-emption of certain land and based his suit on a statement made by defendant No. 1 before the patwari, and recorded in the latter's diary of the 2nd February 1894, to the effect that defendant No. 1 had sold his interest in the said land to his wife for Rs. 15,000. Upon this statement an entry was made to the above effect by the patwari in the *naksha-intikal*, and was duly attested by the kanungo on the 7th February in the absence, however, of the parties to the alleged sale. Defendant pleaded, *inter alia*, that there had been no sale, that the entry was fictitious, and tha no consideration had passed, and gave evidence to prove that the

ESTOPPEL—*contd.*

alleged transfer was a colorable transaction without change of possession, made for the purpose of evading certain claims on the part of the Tank State in which defendant had been employed as a Mir Munshi, and which had dismissed him and seized his property within its territory for alleged misconduct. The Divisional Judge held that no sale had taken place, and dismissed the suit. Plaintiff appealed to the Chief Court, and it was contended *inter alia*, on his behalf that defendant was legally precluded from setting up his own fraud and from pleading that the transfer was fictitious, and was estopped from urging the said pleas as against plaintiff, who had sued relying on the truth of defendant's statement before the Revenue officials.

Held, that, there being no proof of the actual transaction beyond the defendant's admission, the statement of the defendant though it threw on him the burden of proving that there had been no sale, was not conclusive proof of the fact stated therein, unless it operated as an estoppel; nor did the fact that defendant had to allege his own fraud in order to show that no sale had actually taken place, preclude him from explaining the real nature of the transaction.

As regards the plea of estoppel *held*, that inasmuch as defendant's statement was not made to plaintiff or in order to make plaintiff act on it, and was not intended to come to plaintiff's knowledge, defendant could not be held to his statement to his detriment. HAFIZ ABDUL KARIM *v.* MUHAMMAD YUSAF.

61 P R 1895

43. *Pre-emption—Mortgage or sale—Right of mortgage to plead that mortgage was colorable to avoid pre-emption—Fraud—Condition in mortgage deed restricting equity of redemption—Estoppel.*

Plaintiffs alleging themselves to be purchasers for value of the equity of redemption of a mortgage of a house executed in favour of defendant, claimed redemption from the latter on payment of Rs. 1,400, the full amount of the mortgage-money. Defendant pleaded that the house was in reality sold, and not merely mortgaged to him, a mortgage-deed being executed instead of a deed of sale to avoid a suit for pre-emption, and that in any event, according to a condition in the mortgage-deed the mortgagor or his representative was not entitled to obtain possession till twelve years had elapsed from the date of the payment of the mortgage-money.

Held, that the condition entered in the mortgage-deed, that, even after redemption by payment of the mortgage-money, the mortgagor was to be debarred from ousting the mortgagee from actual possession for a period twelve years unduly fettered the mortgagor's equity of redemption and was one which no Court of Equity could be required to enforce.

Held, further, that plaintiffs having purchased for value from the representatives of the original mortgagors the equity of redemption which according to the deed, still remained vested in them, and there being nothing on the record which deprived plaintiffs of the character of *bonâ fide* purchasers for value,

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or indicated that they had any notice that their vendor had no interest left in the property to dispose of, the mortgagee was estopped from urging, as against them at any rate, that the transaction was other than it purported to be. GANDA MAL *v.* DHERI SHAH.

99 P R 1895

44. *Mortgage by widow—Decree of foreclosure against widow—Regulation XVII of 1806—Regularity of proceedings, presumption as to—Suit by reversioners for recovery of land after death of widow—Limitation Act, 1877, 2nd Schedule, article* 141—Res judicata—*Estoppel.*

Held, that as against a person in possession of land under a title created by a widow, or in virtue of a decree for possession obtained against a widow, the reversioners have, under Article 141 of the Limitation Act, twelve years from the date of the widow's death within which they can sue for recovery of the land.

Held, further, that where a suit is brought against a female heiress in possession in respect of any matter which strikes at the root of her title to the property, a decree fairly and properly obtained against her binds all the reversioners, but, inasmuch as the widow's estate is ordinarily a limited one, and as she represents the reversioners only in special cases, in order that such decree should bind the latter, it must be shown, in the first instance, that the litigation was one in which the entire interest in the estate she held in possession was at stake, and then that she had sufficiently protected the reversioner's interests, and that there was a fair and proper inquiry.

A widow's position with reference to the reversioner's interests is like that of a trustee, and any failure or neglect on her part to defend those interests in any such litigation render a decree obtained against her valueless against the reversioners.

Where certain mortgagees had, during the widow's lifetime, obtained a decree of foreclosure against her under Regulation XVII of 1806, *held*, that as against the reversioners, who sued for recovery of the land after the death of the widow, the *onus* of proving that the said foreclosure proceedings were in due form, and that the right of redemption was extinct, was on the mortgagees, there being no presumption in favour of the regularity and propriety of such proceedings.

A plea of estoppel by conduct, *held* not established. HIRA SINGH *v.* SHER SINGH.

29 P R 1898

45. *Suit for possession on ground that a certain sale was invalid as against plaintiff—Plea by defendants that plaintiff acquiesced in sale—"Acquiescence"—Estoppel.*

Plaintiff sued for possession of certain land and houses which had been sold in 1876, by their near collateral, one K., a childless proprietor, in favour of defendant. The defendant pleaded, and the lower Court found, acquiescence in the sale on the part of plaintiffs disentitling them to set aside the alienation, and dismissed the suit. It was proved that

ESTOPPEL—*contd.*

plaintiffs, whether or not they knew of the alienation at the time it was effected, had knowledge of it in 1878, when they gave evidence on behalf of defendants in a case in which he sued a certain tenant of his for damages for cutting a tree; that they made no mention of their rights, though present on each occasion, when the defendant twice applied, in 1880 and 1886, for partition on the strength of his deed of purchase; that they also raised no objection to his acquiring the rights of certain hereditary tenants, and that, finally, many years after the sale they took up some land from the defendant for the purpose of cultivation and tilled it almost up to the date of suit. In the last case it appeared that plaintiff, subsequently to partition proceedings, exchanged certain land allotted to them for others which had fallen to the share of defendant, and executed certain documents, in one of which they expressly stated that they accepted the purchase by defendant in 1876, and waived all rights to object thereto. On behalf of plaintiff it was contended that inasmuch as all the above specified acts took place *after* the sale, plaintiffs were not thereby estopped from attacking the said transfer as they had not by any such act misled the defendants or induced him to enter into the sale transaction.

Held, that plaintiffs were precluded by their acquiescence and express words from making the present claim, and that their suit had been rightly dismissed. NIHALA *v.* BIKHAM RAM.

81 P R 1898

46. *Estoppel by conduct—Acknowledgment (by receipt of rent) by landlord of a tenant's right to succeed as an agnatic heir of an occupancy tenant ten years before suit.*

In a suit by the landlord for possession of certain land which was formerly in possession of S. and R. N., two joint occupancy tenants, on the ground that the defendant had no right to occupancy right in the land as he was not an agnatic heir of the late R. N., who had died in 1888 and on whose death the defendant's father had applied for mutation in respect of half the land held by the deceased to be effected in his name, and that since that time the defendant's father or defendant had continued in possession with S. as joint occupancy tenants until he died childless in 1898 when defendant took possession of the whole holding, the plaintiffs having accepted rent from S. and defendant's father or himself for 1888 to 1898 for the land. The first Court gave a decree to the plaintiff on the ground that the land had not devolved from a common ancestor or that defendant or his father was an agnatic relation with R. N. The Divisional Judge, whilst agreeing with the first Court on the facts as found, dismissed the plaintiff's suit on the ground that in 1888 the plaintiff allowed the defendant's father to succeed as if the pedigree table was correct, and for ten years received from the defendant's father and defendant their share of the profit, *found*

ESTOPPEL—*contd.*

it was too late to object now. *Held*, that plaintiff have by their conduct estopped themselves from denying defendant's right to succeed to S. as his agnatic heir. GANDA *v.* RAMJI DAS. **73 P R 1900**

47 In matters of alienations under customary law subsequent long silence sometimes amounts to conduct precluding a suit to set aside the alienation, but where the collaterals not only delayed to attack the alienation but were also concerned either in purchasing from the alienor to the exclusion of the collaterals, or cultivating under or exchanging with the defendants alienees the disputed lands, *held*, that they had acquiesced in the alienation, and were estopped from bringing the suit. AMIR AND OTHERS *v.* MUSSAMMAT ZEBO AND OTHERS. **42 P R 1902**

48. *Guardian of minor—Lease of a portion of the property by guardian—Inability of minor to claim pre-emption.*

Held, that in a pre-emption suit the mere fact that the guardian of the minor plaintiff temporarily leased a small portion of the property in suit at a date between the transfer and institution of the suit did not amount to an estoppel. KISHEN SINGH *v.* JAI KISHEN DAS. **2 P R 1903**

49. There can be no estoppel if the party to whom the representation is made was not led to do anything thereby which he would not have done otherwise. THAKUR DAS *v.* JASWANT RAI. **1 P R 1904**

50. The fact that property not liable to attachment has been improperly attached on one or more occasions without objection does not debar the judgment-debtor from pleading exemption when it is subsequently attached. QAMAR-UD-DIN KHAN *v.* LACHMI NATH. **95 P R 1906**

51. Where a plaintiff sued for a sum of money in the Revenue Court, and insisted throughout on its jurisdiction, and there prosecuted his suit to the Court of final appeal, and ultimately failed not on the question of jurisdiction but on the merits, it would be opposed to all principles of justice and equity to permit him to ignore entirely the previous proceedings on the ground that the Revenue Court had no jurisdiction, and to prosecute his claim *de novo* in a Civil Court. Such a plaintiff is equitably estopped from pleading want of jurisdiction in the *forum* which he himself selected. JAMIAT MAL *v.* KHAIR MUHAMMAD. **126 P R 1906**

52. In a suit for rent it is not competent to the tenant to impeach the title of his landlord in whose favour he has executed a lease on the ground that his ostensible landlord was only a *benamidar* for a third party. BOGAR *v.* KARAM SINGH. **141 P R 1906**

53. *Custom—Alienation—Gift of land inherited by daughter in favour of her adopted son—Suit by reversioner of the last male owner for possession on ground that the gift was invalid as against them—Plea of estoppel by conduct and acquiescence—Inducing person to believe in and act upon the truth of anything—Evidence Act, 1872, section* 115.

In 1832 'J', a sonless Ansari Sheikh of Basti Danishmandan in the Jullundur District, gifted his ancestral land in lieu of his wife's dower to his daughter 'M,' which in accordance with the wishes of the donor passed on her death in 1849 to her husband 'S.' In 1851, 'S' in turn gifted the said property along with what he had inherited from his own father to his daughter 'Z' in lieu of her mother's dower. Z married B and being childless adopted a boy M., defendant in this case, by a registered deed which was executed in 1887 and soon after settled the property, which had come to her from her father 'S,' on her adopted son by a deed of gift, dated 4th May 1888, mutation of which was duly effected in the course of the same year in favour of M as the adopted son of Z. In 1895 a private partition was made, the parties appearing before the revenue authorities and requesting that the arrangement be recorded and entries made in accordance thereof and allowing defendant in connection with this land to be described as the adopted son of Z. This arrangement was sanctioned on 11th June 1896 with full consent of all persons concerned, and the parties then took possession of their respective shares in pursuance thereof.

On the death of Z, which occurred on 4th May 1899, the plaintiffs instituted the present claim for possession on the allegation that they being the nearest collaterals were the rightful heirs to the property held by him, and that defendant had no title thereto, the deed of gift and his alleged adoption being both fictitious and invalid by law and custom. The defence *inter alia* pleaded estoppel by conduct and acquiescence.

Held, that the plaintiffs were precluded from making the present claim, the facts noted above showing acquiescence in the adoption and alienations. MUHAMMAD NIAZ-UD-DIN KHAN *v.* MUHAMMAD UMAR KHAN. **1 P R 1907**

54. *Estoppel—Decree in favour of plaintiff for a part of his claim—Execution of such decree by plaintiff—Subsequent appeal for remainder.*

Held, that a plaintiff who has obtained a decree for a part of his claim and has executed the same is not by the mere fact of his having taken out execution of that decree debarred from prosecuting the appeal as regards the remainder of his claim which had been disallowed by the first Court.

Mahomed v. *Fida Mahomed*, 82 *P. R.* 1868, overruled. RAGHU MAL *v.* BANDU. **31 P R 1907 F B**

55. *Custom—Alienation—Suit by reversioner to enforce his right in respect to land on the ground that the alienation had been without necessity which alienation had already been challenged by his father on the ground of pre-emption only—*Locus standi*—Estoppel by acquiescence.*

Held, that the fact that at the mutation of a sale of ancestral immovable property by a childless male proprietor the nearest reversioner expressed his readiness to take it over on payment of the sale price, but abstained from taking any action whatsoever in respect to it during his lifetime, is evidence to prove that it had been acquiesced in as a valid sale, and consequently the son of such reversioner is debarred from suing to impeach the sale as invalid for want of necessity. LAKHA SINGH *v.* JOTA SINGH. **35 P R 1907**

56. *Held*, plaintiffs claiming title from an adopted son are not estopped by reason of their father having signed a sale-deed, as a witness, made by the widow of the adopted son and the latter's mother, in which they claim title derived from the adoptive father and from the collaterals of the adoptive father and not from the adopted son. RUP NARAIN *v.* MUSSAMMAT GOPAL DEVI. **93 P R 1909 P C**

57. *Estoppel—Civil Procedure Code, Act XIV of* 1882, *sections* 13 *and* 43—*Merger of mortgage in previous money decree—Cause of action—Relationship of landlord and tenant—Jurisdiction of Civil Court—Appeal under section* 70 (1) (*b*)—*Findings of fact.*

In 1888 B. S., a usufructuary mortgagee, sub-mortgaged his rights to G. S., the terms being that the latter should be put into possession and that the former should be personally liable for the mortgage-money. In 1900 G. S. sued for principal and interest, alleging that he had never been put into possession and obtained a decree for the principal only against the property mortgaged, as according to the statement of B. S. (the defendant) G. S. had been holding possession. This decree was affirmed on appeal in 1901, but in consequence of the enactment of the Land Alienation Act, XIII of 1900, G. S. did not execute his decree and in 1907 he brought the present suit for possession on the ground that B. S. had denied his title in 1905. The lower Courts found that G. S. had constructive possession of the land till 1905, and that there was no new agreement between the parties in 1901 and decreed plaintiff's claim.

Held, that as the value of the suit and appeal for purposes of jurisdiction was less than Rs. 1,000 no further appeal lay, and the lower Appellate Court's findings of fact could not be impugned—

Held, also that—

(1) G. S.'s. allegations in the former suit did not estop him from alleging in the present suit that he was in possession of the property up to within 12 years of the present suit;

(2) the suit was within limitation;

(3) neither section 13 nor section 43 of the Civil Procedure Code, Act XIV of 1882, was a bar to the suit;

(4) the mortgage did not merge in the decree obtained by G. S. in 1900, and a cause of action on the mortgage survived; and

(5) the facts found did not establish the relation of landlord and tenant between the parties and the Civil Courts consequently had

ESTOPPEL—*concld.*

jurisdiction. BAHADUR SHAH *v.* RAM SINGH.
32 P R 1910

EUROPEAN BRITISH SUBJECT

—*Act IX of* 1861, *does not apply to.*
See GUARDIAN. **23 P R 1867**

EVIDENCE.

See under ACCOUNTS.
See under BURDEN OF PROOF.
See under EVIDENCE ACT, 1872.
See APPELLATE COURT—POWERS AND DUTIES OF—
109 P R 1876
115 P R 1876
84 P R 1877
28 P R 1878
102 P R 1879
DIVORCE. **45 P R 1871**
70 P R 1873
84 P R 1875
77 P R 1905

1. *Admissibility of documents not filed with plaint—Objection first raised in appeal.*
See APPEAL—VI. PROCEDURE IN.
74 P R 1882

2. *Recorded by one Judge—Power of Judge to whom case has been transferred to decide upon—Notice to parties.*
See CIVIL PROCEDURE CODE, 1908, O. XVIII, R. 15. **110 P R 1886**

3. *Admissible in proceeding under section 47 of the Civil Procedure Code.*
See CIVIL PROCEDURE CODE, 1908, SECTION 47. **28 P R 1885**

4. *Evidence improperly recorded by first Court—Power of Appellate Court to remand cause on such ground.*
See CIVIL PROCEDURE CODE, 1908, O. XLI, R. 23. **45 P R 1896**

. *Relevancy of entries contained in a* Riwaj-i-am *and weight to be given under the Indian Evidence Act.*
See CUSTOM—III C. ADOPTION OF DAUGHTER'S SON. **81 P R 1891**

6. *Evidence of adoption.*
See CUSTOM—III H. ADOPTION—OBSERVANCE OF FORMALITIES.
101 P R 1889
94 and 142 P R 1893
138 P R 1894
25 P R 1896
67 P R 1902
40 P R 1905

6 (*a*). *Secondary evidence—Admissibility of.*
See EVIDENCE ACT, SECTION 90.
93 P R 1910

7. *Admissibility of, to prove that a transaction in form of mortgage was really a sale.*
See MORTGAGE—CONSTRUCTION.
131 P R 1894

8. *Evidence of pre-emption.*
See PRE-EMPTION—RIGHT OF, IN TOWNS—*Passim.*
PRE-EMPTION, RIGHT OF, ON SALE OF SHOPS—*Passim.*

EVIDENCE—*contd.*

9. *Admissibility of, to prove that a transaction in form of a gift was really a sale.*
See PRE-EMPTION—CONSTRUCTION OF TRANSFERS—*Passim.*

9 (*a*). *Admissibility of evidence of conduct of parties subsequent to contract.*
See EVIDENCE ACT, SECTION 92.
27 P R 1911

9 (*b*). *In pre-emption cases—value of proof of uncontested instances and instances in neighbourhood.*
See PRE-EMPTION IN TOWNS.
78 P R 1911

10. *Admissibility of unregistered documents.*
See REGISTRATION ACT, 1877, SECTION 17—*Passim.*
CIVIL PROCEDURE CODE, 1908, O. XXI, R. 95. **14 P R 1893**

11. *Inadmissibility of unregistered documents.*
See BURDEN OF PROOF.
26, 121, 122, 123 & 157 P R 1882
See REGISTRATION ACT (VIII OF 1871), SECTIONS 18, 19. **68 P R 1886**
See REGISTRATION ACT (III OF 1877), SECTION 49—*Passim.*
. *Admissibility of document registered in ong district.*
See REGISTRATION ACT (VIII OF 1871), SECTION 28. **67 P R 1883**

13. *Admissibility of document registered after period allowed by law.*
See REGISTRATION ACT (III OF 1877), SECTION 23—26. **93 P R 1883**

14. *Application for review on ground of discovery of new.*
See REVIEW OF JUDGMENT.
145 P R 1882

15. *Question as to admissibility of evidence was not a question of law involved within the meaning of section* 40 (2) *of the Punjab Courts Act,* 1884.
See REVISION. **68 P R 1897**

16. *Admissibility of document improperly stamped.*
See STAMP. **4 P R 1881**
195 P R 1883
73 P R 1886

17. *Admissibility of unstamped document.*
See STAMP ACT, 1879, SECTION 3.
69 P R 1894
See STAMP ACT, 1879, SECTION 34—*Passim.*

18. *Admission of document in evidence—Power of Appellate Court to question its admissibility.*
See STAMP ACT, 1879, SECTION 34.
139 P R 1890
2 P R 1891

19. *Of validity of will—Nature of proof—Testator dying shortly after will.*
See WILL. **51 P R 1882**

20. *Held*, before the passing of Act I of 1872, that the declarations of persons who, though not related by blood or marriage to the family, were intimately acquainted with its members and state, were admissible after the death of the declarant, in the same manner and to the same extent as those of deceased members of the family. MOHUNNEE RAM *v.* MOHUNNA RAM. **35 P R 1866**

EVIDENCE—*contd.*

21. *Held*, that evidence having once been received, cannot afterwards be objected to; the objection should have been made before reception. ANDERSON *v.* TAYLOR.
70 P R 1866

22. *Unstamped agreement, varying contemporaneous stamped agreement—Admissibility of.*
Where there was a stamped agreement, and a contemporaneous unstamped memorandum of agreement, varying the terms of the former document. *held*, that the unstamped memorandum was not admissible in evidence. KHURHO *v.* BOOTA SINGH.
23 P R 1870

23. Where an investigation of accounts is submitted to a Commissioner under section 181, Civil Procedure Code, the Court is not bound to take any other evidence than that furnished by the Commissioner's report. KISHEN SHAH *v.* GURMOKH. **40 P R 1870**

24. Admissions of a respondent are not evidence against the co-respondent in a suit under the Indian Divorce Act. GORDON *v.* GORDON. **58 P R 1870**

25. *Acknowledgment of debt.*
Defendant sealed a balance of Rs. 233-4-6 against himself in plaintiff's book. *Held*, that the entry was admissible in evidence though unstamped. KALU *v.* BASANTA MAL.
33 P R 1873

26. But where the defendant wrote an acknowledgment of a debt in plaintiff's account-book, and the entry was not stamped,—*held*, that though, under Act XVIII of 1869, Schedule II, para. 5, the acknowledgment was not admissible against the defendant, the book itself was admissible as corroborative evidence of plaintiff's claim. DEVI DITTA *v.* MIAN SINGH. **43 P R 1874**

27. *Destruction of Settlement record—Secondary evidence.*
The Patwari's papers held to be secondary evidence, the Settlement record being destroyed. FATTU *v.* DALELA.
1 P R 1875 Rev

28. A party to a suit for dissolution of marriage is not entitled, as of right, to give evidence by affidavit. When a petitioner in a suit for dissolution of marriage offers himself or herself as a witness under the permission contained in section 51, clause 1 of the Act, it is desirable that the examination should be oral, and in the presence of the Court trying the petition. SKINNER *v.* SKINNER. **13 P R 1891**

29. *Suit for declaration of exclusive possession—Finding that exclusive possession not proved—Decree according to evidence.*
The plaintiffs alleging exclusive possession of two small plots of land, sued for a declaration of their title.
The first Court found their possession and title proved and gave them a decree.
On appeal, the Divisional Judge held that as the plaintiff's exclusive possession was not proved, their suit must be dismissed, and that they should sue for possession and prove their title, if so advised.
Held, that it was competent to the Court to decree title according to the evidence,

EVIDENCE *-contd.*

even if exclusive possession was not shown, and even to amend the plaint and decree exclusive possession if desired.

I. L. R. XVII Calc., 814, referred to. BUTA *v.* SATAR BAKHSH. **67 P R 1891**

30. *Custom*—Wajib-ul-arz—*Evidence*—*Modification of custom.*

The parts of a *Wajib-ul-arz* referring to custom are not provisions intended to be in force for a limited period only,—they are statements that a certain custom exists. The statement may or may not be correct, but if it is correct, there would be a natural presumption that the custom continued to exist, and it would be for those alleging that a change had subsequently taken place to prove the allegation.

The production of a later Record of Rights containing entries opposed to the earlier one would no doubt be some proof of such a change, but there would then merely be a balance of evidence on either side; it could not be said that the second record destroyed or abrogated the earlier one.

No 107 *P. R.* 1887, referred to. RAHIMAN AND SOHNA *v.* BALA. **8 P R 1892**

31. Marriage may be presumed presumptively by the statement of the parties, or their general conduct towards each other. MUSSAMMAT SATARA BEGUM *v.* MUSSAMMAT HUSSAINI KHANAM. **16 P R 1897**

32. *Admission of fresh evidence by Appellate Court on further appeal—Discretion—Civil Procedure Code*, 1882, *section* 56-8.

Held, that an appellant, who had deliberately declined to produce any evidence in the original Court and chose to stake his case on the record as it stood, ought not to be allowed on a further appeal another opportunity of producing fresh evidence on the ground that he was mistaken in that view. SUNDAR SINGH *v.* JALLANDAR. **51 P R 1905**

33. *Written statement—Defence must be confined to the pleas put in—Evidence inconsistent to the pleas not allowed—Civil Procedure Code*, 1882, *section* 114.

As a general rule a defendant must be confined to the pleas he puts forward in his defence: and in a case for pre-emption, where the main plea put forward was the cancellation of the bargain by consent, but during the trial the defence tried to prove it as fictitious, *held*, that the defence was not entitled to rely on such an inconsistent plea, and that no evidence in support of such defence should have been allowed to go on record. RAM RAKHA MAL *v.* DEVI DAS. **89 P R 1905**

34. An assignment of a mortgage of immovable property where the amount secured on the mortgage is over Rs. 100 even for a consideration of less than Rs. 100 is not admissible in evidence under section 49 of the Act if unregistered. RAM SARUP *v.* MUBARAK SINGH. **1 P R 1906**

35. An unstamped pro-note cannot be received in evidence for any purpose even if the maker admits its execution. GANGA RAM *v.* AMIR CHAND. **66 P R 1906**

36. The mere attestation of a *Riwaj-i-am* by a non-agriculturist who had acquired agricultural land in a village as a means of

EVIDENCE—*concld.*

investment is not *ipso facto* sufficient to prove that in matters of alienation or succession his family residing in a town followed the ordinary customary rules of dominant agricultural tribes. JAMIAT-UL-NISA *v.* HASHMAT-UL-NISA. **124 P R 1908**

37. *Custom—Adoption—how manifested—registered deed of adoption—subsequent treatment—proof of.*

Held, that in a case where the power of customary adoption by a sonless proprietor is not disputed, all that is necessary to constitute an adoption is the clear expression of an intention on the part of the adoptive father to adopt the boy concerned as his son, and a sufficient manifestation of that intention, by the execution and registration of a deed of adoption coupled with a clear declaration in Court and subsequent treatment as adopted son.

Proof of such subsequent treatment cannot, however, be reasonably demanded in a case where very soon after the execution of the deed of adoption, the reversioners of the adoptive father sue for a declaration that the adoption did not in fact take place, and where therefore the adoptive father cannot *ex necessitate rei* prove continuous subsequent treatment. **42 P R 1911**

EVIDENCE ACT, 1872.

Section 2.

Muhammadan Law—Legitimacy—Period of gestation—Evidence.

The rule of Muhammadan Law, which fixes two years as the period of gestation, is a "rule of evidence" within the meaning of section 2, Indian Evidence Act, 1872: the effect of the section, when read with section 5 of the Punjab Laws Act, 1872, is that under the latter Act, the Courts are not bound by the rule of Muhammadan Law. No. 1 *P. R.* 1884, followed. WARAS MUHAMMAD *v.* ALI BAKHSH. **76 P R 1891.**

Sections. 13 and 40

1. *Admissibility of judgment* inter partes. *See* RES JUDICATA. **70 P R 1875**

2. *Admissibility of judgment not* inter partes.

See JUDGMENT. **56 P R 1906**

Section 23.

Admission in deed of compromise.

On appeal a compromise was entered into, which was subsequently set aside on the ground that the agent of one of the parties to the suit was not empowered to enter into it. The Appellate Court, taking into consideration the facts admitted by appellant in the deed of compromise, dismissed the appeal. *Held*, that the Court was precluded by section 23, Act I of 1872, from making use of the admissions in the deed of compromise. ILAHIA *v.* MAKHAN. **83 P R 1877**

Section 32.

Evidence Act (I of 1872), sections 32 (2), 65 and 90—Admissibility in evidence of copy of mortgage—Attestation by Kazi—Production from proper custody—Statement made in ordinary course of business—Secondary evidence.

In a suit for redemption of mortgage, the contention for the defendant was that the

EVIDENCE ACT, 1872—*contd.*
Section 32—*concld.*

copy of the mortgage to the defendant's ancestors produced by the plaintiff, and in accordance with which his claim was decreed, was not admissible in evidence. It appeared that the said copy was attested by a certificate under the seal of a Kazi as a true copy of the mortgage in question, which itself bore the seal of the same Kazi and the attestations of certain specified witnesses. The certificate and seal attached to it were documents produced from proper custody, so that under section 90 of the Evidence Act it might be presumed that the certificate was that of the Kazi who had attested the original document. It was further admitted that it was part of the ordinary course of business of the said Kazi (who was dead) to attest documents, so that the certificate was admissible under section 32, clause (2) of the Evidence Act as a statement made by him.

Held, that the copy was admissible as secondary evidence as a copy made from or compared with the original, the original not being produced, and the defendant, in whose possession it should have been, denying that he had it. TEJU MAL *v.* ZULFAKAR SHAH. **49 P R 1882**

Section 34.

See BAHI ACCOUNT. **80 P R 1910**

1. *Account-books—Revision—Small Cause Court Act*, 1887, *section* 25.

The Small Cause Court gave plaintiff a decree on his account-books and evidence of his book-keeper, who deposed that the books were kept by him from memoranda supplied to him by plaintiff, the entries in the books being made on the days on which memoranda were supplied. The plaintiff did not himself give evidence in support of his claim, nor was his absence from the witness-box accounted for.

Held, that plaintiff having declined ot support his claim by the best evidence available was not entitled to succeed. HIRA BHAGAT *v.* GOBIND RAM. **63 P R 1897**

2. *Account-books—Relevancy of.*

Held, that under section 34 of the Evidence Act, 1872, it is not a condition precedent to accepting entries in account-books as relevant that it should be proved how the accounts came to be written and that they were regularly kept in the course of business, though it is necessary that there should be other evidence in support of the liability sought to be established thereby.

Where, therefore, the *gomashta*, who kept the books and a member of the firm were examined as witnesses and testified that books were regularly kept, *held*, that their evidence though given by them as witnesses for the defence, was, in the absence of any evidence to the contrary, sufficient corroboration of the accounts as a whole. BICHHA LAL *v.* JAI PARSHAD. **45 P R 1899**

Section 35.

And sections 74, 80, 90—*Public Record—Ancient documents—Presumption as to their genuineness—Production from proper custody—Mortgage—Acknowledgment of liability—*

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EVIDENCE ACT, 1872—*contd.*

Section 35—*concld.*

Limitation Act, 1877, *section* 90.

In a case where the question of age of a person at a certain time was disputed, *held*, that the descriptive roll of that person prepared by a public officer in accordance with the law in force at that time and a patwari's statement about an entry in the Revenue papers (both of which documents were more than 50 years old) and the Municipal Register of Deaths were relevant under section 35 of the Evidence Act, and being public documents within the meaning of clause (*iii*) (1) of section 74 of that Act and produced from proper custody presumed to be genuine. ANIS-UL-REHMAN KHAN AND OTHERS *v.* BENI RAM AND OTHERS. **59 P R 1901**

Section 42.

Judgments not *inter partes* are admissible in evidence when they relate to a question of custom which is a matter of a public nature. BUNYAD ALI *v.* FAIZ MUHAMMAD. **173 P R 1889**

Section 43.

1. *Relevancy of judgments in other suits.*

Plaintiff, *jagirdar* and landowner of *mauza* Hajipur, *zillah* Karnal, sued defendants, his cultivators, for grazing dues, basing his claim upon the *wajib-ul-arz* of 1856, and decrees which he had formerly obtained for grazing dues against some of the defendants. In the Regular Settlement of 1847 the residents of the village were specially exempted, and this provision remained in force till 1856 when a revision was made imposing the dues. *Held* that plaintiff's right to the dues was not established by custom or by the *wajib-ul-arz* of 1856 (for a new Settlement could not take away from any tenant rights acquired under or recorded in the old Settlement); and that the decrees in former suits were relevant evidence under the Evidence Act, section 43, but not sufficient to bind those who were not parties to the suits, though they established the right of the plaintiff as *res judicata* against those defendants who were parties thereto. AZMUT ALI KHAN *v.* HARNAM. **61 P R 1875**

2. *Section* 43—*Judgment in criminal case —Admissibility of, in evidence in civil suit—inspection of, under section* 138, *Civil Procedure Code.*

A sued for the custody of his wife, who pleaded cruelty. The only evidence taken was a judgment decreeing maintenance (under section 536, Act X of 1872) to the wife, and showing that she had left *A* owing to his cruelty. *Held*, that if the judgment was admissible in evidence, it was not conclusive. *Quære*—whether the judgment was admissible.

Per Lindsay, J.—The record of the criminal case might be inspected under section 138, Act VIII of 1859. FAKIR-UD-DIN *v.* MUSSAMMAT HOSEIN BIBI. **32 P R 1874**

Section 65.

1. *Section* 65—*Public document—Secondary evidence other than certified copy—Admissibility of, when document is lost.*

Held, that secondary evidence of a lost

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EVIDENCE ACT, 1872—*contd.*

Section 65—*concld.*

public document, other than a certified copy, is admissible upon proof of loss or destruction of the original, and further proof that no certified copy of the original is available to the party seekng to prove the contents of the original.

Held, further, that so long as the original is in existence, no secondary evidence other than a certified copy is admissible. SYAD PIR SHAH *v.* GULAB SHAH. **63 P R 1878**

2. *And section* 91—*romissory Note—Instrument inadmissible in evidence—Original consideration—Stamp Act* (*I of* 1879), *section* 34, *and* 1*st Schedule, article* 1—*Construction of documents.*

When a document is in admissible in evidence under section 34 of the Stamp Act, 1879, section 65 of the Evidence Act, 1872, does not allow, and therefore section 91 expressly forbids,secondary evidence of the document to be given. Whether there is a cause of action independent of the instrument upon which independent evidence may be given, depends upon the question whether plaintiff can allege any contract as the basis of his suit which is not the contract reduced to the form of the document excluded froms consideration under the aforesaid provision of law.

I. L. R. VII Calc. 260 and No. 4 *P. R.* 1881, No. 73 *P. R.* 1886, No. 61 *P. R.* 1888 and No. 82 *P. R.* 1891, referred to. BAKHSHI RAM LUBHAYA *v.* KAKA RAM. **42 P R 1895**

Section 74 and Sections 80—90.

See SECTION 35 SUPRA. **59 P R 1901**

Section 90.

1. *Ancient documents—Presumption as to their genuineness.*

Held, that in India where forgery and fraud are matters, comparatively speaking, of common occurrence, there is a very real and considerable danger in treating documents which purport to be ancient as established, merely because they are said to be more than thirty years' old and come from proper custody, and that although the Courts are empowered to adopt thte rule of presumption laid down in secion 90 of the Evidence Act, they are not bound to do so in all cases and must apply it with exceeding caution and may, if the circumstances of any particular case require it, call for proof of, or refuse in the absence of proof to accept as established, any document irrespective of its alleged age or of the custody from which it is produced.

Trailokia Nath Nandi v. *Shurno Changoni* (*I. L. R. XI Calc.* 539), *Mussammat Phool Bibee* v. *Goor Surun Das* (18 *W. R.* 485), *Raikunth Nath Kundu* v. *Lukhun* (9 *Calc. L. R.* 425), and *Shaikh Husain* v. *Govardhan Das* (*I. L. R. XX Bom.* 1), cited. AMIR *v.* NUR MUHAMMAD. **82 P R 1902**

2. *Indian Evidence Act, I of* 872, *section* 90—*Ancient document.*

Held, that section 90, Indian Evidence Act, 1872, is not limited to cases in which the document is actually produced in Court and consequently secondary evidence of an

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EVIDENCE ACT, 1872—*contd.*

Section 90—*concld.*

ancient document is admissible without proof of the execution of the original, when the document is shown to have been lost and to have been last heard of in proper custody. SAWAN SINGH *v.* KARIM BAKHSH. **93 P R 1910**

Section 91.

See CAUSE OF ACTION—IV, MISCELLANEOUS. **42 P R 1895**

See also under REGISTRATION ACT, SECTIONS 17 AND 49.

1. *Promissory Note—Bill of Exchange—Original consideration—Stamp—Construction of instrument.*

Though in certain cases where a negotiable instrument, taken on account of a pre-existing debt and as a conditional discharge of such debt, is inadmissible in evidence for want of a proper stamp or for some other reason, the creditor may, if payment be not made when the instrument falls due, revert to his original rights, and disregarding the instrument, sue for the original consideration, provided he has not endorsed or lost or parted with the instrument under circumstances which would make the debtor liable upon it to some third person, yet when the original cause of action is the instrument itself, and does not exist independently of it, *e. g.*, when money is lent upon it, in such case there is no cause of action for money lent otherwise than upon the instrument itself, and the instrument, being the only contract between the parties, the plaintiff cannot (with reference to section 91 of the Evidence Act) establish his case without it. SHEO DAS *v.* KANHYA LAL. **61 P R 1888**

2. *Document, construction of—Promissory note or acknowledgment of liability—Suit based on document stamped with anna stamp—Admissibility of document in evidence—Right of plaintiff to fall back on originnal consideration—Evidence Act,* 1872, *section* 91—*Stamp Act,* 1879, *section* 34.

Plaintiff in his plaint alleged that "on "the 17th June 1897 defendant raised Rs. 500 "cash at Lahore and wrote the promis-"sory note. He agreed to repay the money "by monthly instalments of Rs. 100, and "further agreed to pay Re. 1 per cent. per "mensem as interest," that demand for payment had been made, and that the cause of action arose on the expiry of the period for the payment of each instalmnt, the suit being filed on the 14th October 1897 for three instalment and interest as above stated. The document referred to had affixed to it an anna stamp, and was in the following terms:—"Received from Mr. E. G., Superintendent "Punjab Dairy, the sum of Rs. 500 only "as advance, repayable by instalments of "one hundred per month, and to bear "interest at Rs. 12 per cent.—17 June 1897." It was signed by the defendant.

The first Court dismissed the suit on the ground that the document upon which it was based was a promissory note payable other-

EVIDENCE ACT, 1872—*contd.*

Section 91—*concld.*

wise than on demand, and, being insufficiently stamped as such, could not, under section 34 of the Stamp Act, 1879, be admitted in evidence for any purpose, even on payment of a penalty, in a civil suit. Plaintiff applied for revision of this order, and it was contended on his behalf that the document bore a dual character, as a promissory note and as an admission of liability, and was admissible in evidence as an acknowledgment. It was further contended that the Rs. 500 were made up of advances for milk made at various times and that plaintiff was in any event entitled to fall back upon the original consideration of the contract.

Held, that the document upon which plaintiff based his suit was a promissory note, payable otherwise than on demand, and, being insufficiently stamped as such could not, under section 34 of the Stamp Act, be received in evidence or acted upon in a civil suit.

Held, further, that plaintiff was not entitled to aver against his plaint, or to amend his plaint in such a manner as to sue on the original consideration.

Held also, that from the frame of the suit it was clear that the document sued on embodied the contract between plaintiff and defendant, and was the contract out of which defendant's liability arose, and that under section 91 of the Evidence Act the document was the best evidence of the contract, and no other evidence of the terms thereof could be given. MR. O'GORMAN *v.* MAHTAB SINGH. **92 P R 1898**

Section 92.

1. *Suits to cancel bonds executed in favour of separate parties in respect of the same transaction—Evidence Act, 1872, section 92.*

See CAUSE OF ACTION—V. MISJOINDER. **5 P R 1896**

2. *Hundi—Separate oral agreement to pay interest—Admissibility of.*

See INTEREST. **52 P R 1911**

3. *Section 92, provisos 2 and 3—Contract reduced into writing—Admissibility of evidence of oral agreement constituting a condition precedent to the attaching of any obligation under such contract.*

The plaintiff sued to recover the amount due on two promissory notes in the following words:—

"To Lalla Asa Ram.

"With reference to our verbal conversation of this morning, I promise to pay you "hereafter the sum of Rs. (2,400 in one and "Rs. 400 in the other) on account of your "claim against Messrs. C. W. Kinlock and "Sons.—C. W. Kinlock."

The defendant pleaded that there existed a separate oral agreement constituting a condition precedent to the attaching of the obligation expressed in the two notes. The oral agreement was to the effect that the amount should not be paid in cash, but be obtained by plaintiff from profits that would accrue from his trading in the sale of cotton on

EVIDENCE ACT, 1872—*contd.*

Section 92—*contd.*

commission jointly with defendant. In that trade the shares of defendant and plaintiff were to be equal, but until the sum of Rs. 2,800 should have been realized by plaintiff, the entire profits were to be his. And it was contended that the word "hereafter" used in the notes alluded to this arrangement.

Held, by BOULNOIS and CAMPBELL, JJ. (LINDSAY, J. dissenting) that the alleged oral agreement was inconsistent with the notes.

Held, further by BOULNOIS and LINDSAY, JJ. (CAMPBELL, J. dissenting) that evidence of the alleged oral agreement was admissible under proviso 3, section 92 of the Evidence Act (I of 1872).

Per LINDSAY, J.—The alleged oral agreement was not inconsistent with the notes, the evidence was therefore also admissible under proviso 2, section 92 of the Evidence Act (I of 1872). KINLOCK *v.* ASA RAM. **51 P R 1877**

4. *Evidence Act (I of 1872), section 92—Bond—Plea that bond was given for money lent for immoral purpose—Admissibility of evidence in proof of such plea.*

In a suit on a bond, defendant admitted execution, but pleaded that it was invalid, as plaintiff gave her the money to enable her to build an apartment in which she could carry on her trade as a prostitute. The lower Court, on the ground that there was a recital in the bond that the money was required by the defendant to enable her to build a stable and shops, held, with reference to the provisions of section 92 of the Evidence Act, that it was not competent to the Court to admit evidence for the purpose of varying or contradicting the terms of the written agreement between the parties.

Held, that the first proviso to section 92 of the Evidence Act shows that any fact may be proved which would invalidate any document, such as fraud, illegality etc., that as it was alleged by the defendant that the bond was invalid by reason of its having been given to secure money lent to promote an immoral purpose, the defendant was entitled to show, as pleaded by her, the purpose for which she borrowed the money from the plaintiff, that such purpose was an immoral one, and that it was known to the plaintiff at the time that he lent her the money; and that if she succeeded in proving these pleas, the plaintiff's suit would fail. MUSSAMMAT ALLAJULAI *v.* OUNKAR LAL. **61 P R 1882**

5. *Evidence Act (I of 1872), section 92, Cl. 4—Admissibility of evidence of oral agreement substituting new contract for contract in writing—Act IX of 1872, section 62.*

Held, that clause 4 of section 92 of the Evidence Act does not exclude evidence of a subsequent oral agreement substituting a new contract for one reduced to writing and registered according to law, the said clause only referring to a subsequent oral agreement to rescind or modify such contract. JAGGAT SINGH *v.* DEVI DITTA MAL. **169 P R 1883**

6 *Evidence Act (I of 1872), section 92,*

EVIDENCE ACT, 1872—*contd.*

Section 92—*contd.*

Cl. 4—Contract in writing—Transaction rescinding or modifying contract—Merger of previous transaction in new contract.

In a suit for redemption of mortgage in which the defendant pleaded a sale of the mortgaged property, *held*, that evidence of the sale was not excluded by the 4th proviso to section 92 of the Evidence Act, on the ground that it rescinded or modified the mortgage, the addition of a new contract, in which the previous transaction merges, being a very different thing from rescinding or modifying the former contract. BADHAWA MAL *v.* HIRA. **30 P R 1884**

7. *Exclusion of evidence of oral agreement to vary or contradict written instrument—Admissibility of evidence of subsequent new oral agreement superseding the old contract.*

The provisions of section 92 of the Evidence Act discussed and explained and compared with the provisions of the English law from which they are borrowed.

The general rule which is embodied in the above section, against allowing verbal evidence to vary or contradict written instruments, is aimed at the exclusion of *contemporaneous* verbal evidence of this character, and superadded to this rule is another, embodied in proviso (4) to the section, which prevents the admission of verbal evidence even of a subsequent oral agreement, the effect of which is to rescind or modify a contract, grant or disposition of property which is by law required to be in writing or which has been registered according to the law in force for the time being as to the registration of documents. The terms of proviso (4) do not, however, exclude evidence of a distinct subsequent new oral agreement superseding the old contract *in toto*.

The distinction between a substituted new agreement by novation and the mere alteration of an old contract is that in the former case the old contract is extinguished, while in the latter it remains binding subject to the alteration which the parties have agreed to. LAKHU RAM *v.* AMIR KHAN. **14 P R 1889**

8. *Joint suit by alleged partners in respect of cases made in the names of certain individual members of the alleged partnership—Joint undivided Hindu family.*

Plaintiffs in their notice of action described themselves as Toll Bar contractors, Dharmpur, and residents of Simla, and stated that they intended to sue the Secretary of State for India in Council for damages for breach of the terms of three several leases granted to them and the plaint was in conformity with the said notice. The leases filed purported to be executed as follows :—(1) that for the first year by plaintiff III alone; (2) that for the second year by plaintiffs I and II alone; and (3) that for the third year also by plaintiffs I and II alone. The plaint contained no statement of the circumstances which entitled the three plaintiffs to sue jointly for damages in respect of each of the three leases, none of which purported to be granted to all of them, but in answer to defendant's first plea that he

EVIDENCE ACT, 1872—*contd.*

Section 92—*contd.*

had contracted if at all with pliantiff III alone in respect of the first lease and with plaintiffs I and II alone in respect of the two other leases, plaintiffs replied that the contract was with all three and all were entitled to sue because "they were then and still are members of a trading partnership and also of an undivided Hindu family." Defendant having thereupon rejoined that the notice of action was insuffıcent the lower Court dismissed the plaintiffs' suit on a preliminary issue, that the mere fact that plaintiffs are partners or members of a joint Hindu family was not sufficient in law to include them all in the contract, if any—so as to enable them to sue jointly.

Held, that the fact that the lease for the first year was in the name of plaintiff III alone, and the two other leases in the names of plaintiffs I and II alone, was not of itself conclusive proof that plaintiffs were not jointly interested therein, and that section 92 of the Evidence Act, 1872, would not debar plaintiffs I and II from proving that they were interested in the first lease or plaintiff III from proving that he was interested in the two other leases. TANI MAHESHA *v.* SECRETARY OF STATE FOR INDIA. **67 P R 1894**

9. *Provincial Small Cause Court Act, 1887, section 25—Revision—Wagering transaction—Written contract—Admissibility of evidence to prove that contract was void under section 30 of the Contract Act—Evidence Act, 1872, section 92.*

The Judge of the Small Cause Court dismissed plaintiffs' suit on the ground that the evidence proved that the written agreement sued upon, which purported to be one for sale of silver, was not a *bonâ fide* transaction, no actual interchange of silver being contemplated but merely an adjustment of profit and loss with reference to a difference in the market rates. Plaintiffs applied to the Chief Court for revision of the order of dismissal on the ground, (1) that there was no evidence to show that delivery of silver was not intended, and (2) that oral evidence was inadmissible to contradict the terms of the written agreement according to which silver was to be delivered.

Held, that as there was evidence on which the Judge of the Small Cause Court might base his finding that the transaction was a wager, that finding should not be disturbed on revision.

Held, further, that the oral evidence was admissible, under the first *proviso* to section 92 of the Evidence Act, for the purpose of invalidating the written agreement.

I. L. R. XVII Mad. 480 and *I. L. R. XII Bom.* 585, followed; *I. L. R. IX Calc.* 791, not followed. DHOLAN DAS *v.* RALYA SHAH. **85 P R 1898**

10. *Mortgage or sale—Oral evidence to prove that an apparent sale was a mortgage—Admissibility of parol evidence to vary a written contract—Conduct of parties—Fraud or mistake.*

Held, that under section 92 of the Indian

EVIDENCE ACT, 1872—*contd.*

Section 92—*contd.*

Evidence Act, 1872, oral evidence is not admissible to vary or alter the terms of a written contract in which there is no fraud or mistake, and in which the parties intend to express, in writing, what their words import, but that evidence of acts and conduct of the parties subsequent to the deed is admissible to show that something different from the written contract was intended by them.

Balkishen Das v. *Legge (I. L. R. XXII All.* 149), *Muhammad Ali Hussain* v. *Mir Nazar Ali (V Calc. W. N.* 326), and *Kashee Nath Chatterji* v. *Chundu Charn Banerjee* (5 *W. R.* 68) followed. *Bhagwan Sahai* v. *Bhagwan Din (I. L. R. XII All.* 387) and *Ali Ahmad* v. *Rahmatulla (I. L. R. XIV All.* 195), referred to. *Baksu Lakshmun* v. *Govinda Kanji (I. L. R. IV Bom.* 594), *Behari Lall Doss* v. *Tejnarain (I. L. R. X Calc.* 764), *Hem Chunder Soor* v. *Kally Churn Das (I. L. R. IX Calc.* 528), *Venkatratman* v. *Reddieh (I. L. R. XIII Mad.* 495), *Rakken* v. *Allagappudayon (I L. R. XVI Mad.* 80), *Balkishen Das* v. *Legge (I. L. R. XIX All.* 434), *Preo Nath Shaha* v. *Madhu Sudan Bhuiya (I. L. R. XXV Calc.* 603), and *Govinda* v. *Jehsa Premaji (I. L. R. VII Bom* 73), dissented from. ABDUL GHAFUR KHAN *v.* ABDUL KADIR AND OTHERS. **72 P R 1901**

11. *Admissibility of evidence to vary terms of a written contract.*

In 1901 plaintiff sued for settlement of accounts. The case was referred to arbitration. The arbitrator having induced the parties to enter into a compromise to the effect that they had settled all the accounts and had no further dispute, forwarded the same to the Court together with a petition asking that the suit should be consigned to the record room. The parties acknowledged the terms of the compromise before the Court, whereupon the suit was dismissed.

Subsequently the plaintiff brought a second suit against the same defendant which was in substance to the same purport and for the same relief with the addition of a statement to the effect that the defendant had in the presence of the arbitrator promised to explain the accounts to him and to pay whatever sum was found due thereon, provided that a compromise was first filed in the case then pending, that although relying on that promise compromise had been filed in Court, the defendant had not yet rendered the accounts as agreed. The defendant objected that the alleged promise being wholly inconsistent with the terms of the compromise, evidence of such oral promise was inadmissible under the provisions of section 92 of the Indian Evidence Act.

Held, that the compromise should not be treated as the original contract between the parties, but must be held with reference to the surrounding circumstances and the acts, conduct and intention of the parties at the time of its execution to be a mere recital of the terms of the settlement for the information of the arbitrator and to support

EVIDENCE ACT, 1872—*contd.*

Section 92—*concld.*

his petition to the Court, and verbal evidence was therefore admissible as to any covenant omitted in it.

Indarjit v. *Lal Chand (I. L. R. XVIII All.* 168), *Sah Lal Chand* v. *Inderjit (I. L. R. XXII All.* 370 P. C.) *Hukam Chand* v. *Hira Lal (I. L. R. III Bom.* 159), *Banapa* v. *Sundar Das Jagjiwan Das (I. L. R. I Bom.* 333), *Kashee Nath Chatterji* v. *Chandy Charn Banerjee* (5 *W. R.* 68), *Abdul Ghafur Khan* v. *Abdul Kadir* (72 *P. R.* 1901), and *Prabh Dyal* v. *Gurmukh* (98 *P. R.* 1902). THAKUR DAS *v.* JASWANT RAI. **1 P R 1904**

12. *And 94—Admissibility of evidence of conduct of parties subsequent to contract.*

Held that, although, under section 92 of the Evidence Act, no evidence of any oral agreement or statement can be admitted as between the parties to a contract in writing for the purpose of contradicting, varying, adding to or subtracting from its terms, evidence of the conduct of the parties subsequent to the execution of the document is admissible—

(1) as it may serve to show what the real meaning of the contract was, and

(2) as it may operate as an estoppel when it amounts to part performance of the contract.

Held also, (*a*) that on the evidence produced in this case the defendant had succeeded in showing that the real contract was different from that set out in the Pro-note sued upon and was as alleged by defendant; and (*b*) that as the plaintiff had never set defendant right about the terms of the contract as understood by the defendant, the plaintiff was now estopped from setting up different terms. BULAKI MAL *v.* FLOYD. **27 P R 1911**

Section 108.

Presumption of death—Rule of Muhammadan Law superseded by Evidence Act.

The rule of Muhammadan Law which refuses to presume a person dead until ninety years from the date of his birth is a rule of evidence, and not of substantive law, and is superseded in all cases in which the question of the presumption whether a man is alive or dead arises under section 108, Indian Evidence Act (*cf.* also section 2 of the Act). IMDAD ALI *v.* GHULAM JILANI. **42 P R 1892**

Section 109.

See BURDEN OF PROOF.
See PARTNERSHIP. **11 P R 1897**

Section 110.

See BURDEN OF PROOF.
See MORTGAGE, REDEMPTION. **38 P R 1893**

Section 111.

See CONTRACT ACT, 1872, SECTION 16. **77 P R 1903**

Section 112.

1. *Child born 330 days after date of last access—Legitimacy.*
See DIVORCE. **77 P R 1911**

2. *Presumption as to paternity of child born of a married women during lifetime of*

EVIDENCE ACT, 1872—*contd.*

Section 112—*concld.*
husband—Woman living with another person —Right of children to maintenance from such person.

Held, that the presumption that children born of a married woman during the lifetime of her husband are the legitimate offsprings of that woman and her husband is not conclusive proof of their legitimacy and must be regarded as fully rebutted where the woman admittedly lived for years with another person and they both asserted such children to be the offsprings of their union. In such a case the children thus begotten, though illegitimate, are entitled to receive maintenance from their natural father. BAHADUR SINGH *v.* VIRU. **28 P R 1906**

3. *Husband and wife—Legitimacy of children—Presumption as to legitimacy of child born after marriage.*

Held, that on the birth of a child during marriage the presumption of legitimacy is conclusive, no matter how soon the birth occurs after the marriage. UMRA *v.* MUHAMMAD HAYAT. **79 P R 1907**

4. *Muhammadan Law—Acknowledgment —Child born more than* 280 *days after the dissolution of his mother's marriage but less than* 6 *months after second marriage,—legitimacy of—Indian Evidence Act, I of* 1872, *section* 112.

One Mussammat R. was divorced by her first husband on the 1st October 1895. She married G. N. on the 4th February 1896 and bore a child on the 17th July 1896, the child was thus born more than 280 days after the dissolution of his mother's marriage with her first husband but less than 6 months after her marriage with G. N. The plaintiff contended that under Muhammadan Law no acknowledgment of paternity by G. N. could legitimise the child, and it was found that the *iddat* of repudiation had terminated before the marriage with G. N., although the child must have been procreated before the termination of that *iddat*. G. N. acknowledged the child and treated it as his own.

Held, that the marriage of Mussammat R. with G. N., though irregular, was not void, that when the child was born a marriage between his mother and G. N. subsisted; that section 112 of the Indian Evidence Act, 1872, was applicable to the case and the child was entitled to inherit to G. N. as his legitimate son. NUR-UL-HASAN *v.* MUHAMMAD HASAN. **78 P R 1910**

Section 114.
See INTEREST. **110 P R 1879**

See BURDEN OF PROOF. **121 P R 1882**

See HINDU LAW—JOINT FAMILY. **13 P R 1883**
86 P R 1886
45 P R 1899

Section 115.
See ESTOPPEL—*Passim.*

EVIDENCE ACT, 1872—*concld.*

Section 116.
Landlord and tenant—Suit by landlord for rent—Denial by tenant of landlord's title—Estoppel of tenant.

Held, that in a suit for rent it is not competent to the tenant to impeach the title of his landlord in whose favour he has executed a lease on the ground that his ostensible landlord was only a *benamidar* for a third party.

Jai Narayan Bose v. *Kadimibani Dasi* (7 *B. L. R.* 723), followed. *Donzelle* v. *Kidar Nath* (7 *B. L. R.* 720) and *Mussammat Inderbuttee Kooer* v. *Shaikh Mahbub Ali* (24 *W. R.* 44), dissented from. BOGAR *v.* KARAM SINGH. **141 P R 1906.**

EXCHANGE.

1. *Not a sale for purposes of pre-emption*
See PRE-EMPTION—CONSTRUCTION OF TRANSFERS. **12 P R 1884**
111 P R 1885
97 P R 1900

2. See PUNJAB TENANACY ACT, 1868, SECTION 7. **124 P R 1884**

3. See REGISTRATION ACT, SECTION 17. **120 P R 1894**

4. The registration of an instrument of exchange, the first portion of which was nothing more than a recital of what had already taken place: and the operative part merely provided for the payment of a penalty by either party who prevented the arrangement being fully and finally carried into effect was not compulsory. AMIR-UD-DIN *v.* JAMAL-UD-DIN. **26 P R 1891**

5. A permanent transfer of land in a village for a sum of money, plus something that is not money, does not, merely because of such addition, of necessity cease to be a sale. GUL MUHAMMAD KHAN *v.* KHAN AHMAD SHAH. **29 P R 1893**

6. An exchange which is intended to be an exchange is not a sale merely because the value of the properties exchanged is equalised by the addition of a comparatively small sum of money, or by the mere fact that the two deeds of sale were drawn up contemporaneously which was merely the method employed to arrange the transfer. NATHU MAL *v.* HAR DIAL. **97 P R 1900**

7. *Held*, that a widow, in possession of her deceased husband's land, is not authorised by custom to effect an exchange of land except for necessity. MUSSAMMAT NIHALI *v.* LEHNA. **2 P R 1911**

EXCISE ACT, XII OF 1896.

Partnership between a licensee under Act XII of 1896 *and other persons—Valid contract—Public policy—Contract Act,* 1872, *section* 23.

A., being the holder of a license under the Excise Act, XII of 1896, for wholesale vend of liquor entered into an agreement of part-

EXCISE ACT, XII OF 1896—*concld.*

nership, with B. and C. in the business carried on under the license. One of the conditions subject to which the license was granted, was "No license is transferable."

Held, (1) that under the circumstances of the case there had been no transfer of the license within the meaning of the rules;

(2) that the contract was not void as opposed to public policy but was capable of being enforced by one partner against the other.

Jai Narain v. *Sultan Muhammad Khan* (96 *P. R.* 1902), referred to. BASHESHAR DAS *v.* GOBIND RAM. **114 P R 1906**

EXCLUSION FROM CASTE.

See CUSTODY OF WIFE. **18 P R 1877**

EXCLUSION FROM INHERITANCE.

See HINDU LAW—INHERITANCE.

EXECUTION OF DECREE.

See ATTACHMENT.
See ARREST.

1. *Appeal after execution of decree.*
See APPEAL—II. COMPETENCY OF. **82 P R 1868**

2. *Execution—Imprisonment.*
See APPEAL—II. COMPETENCY OF. **22 P R 1871**

3. *Appeal from order refusing to release judgment-debtor arrested in.*
See APPEAL—II. COMPETENCY OF. **55 P R 1886**

4. *Order in execution by Munsiff in suit other than Small Cause not exceeding Rs. 500—Course of appeal.*
See APPEAL—III. COURSE OF APPEAL. **115 P R 1886**

5. *Order passed by Munsiff in execution in suit not cognizable by Small Cause Court—Decree—Course of appeal.*
See APPEAL—III. COURSE OF APPEAL. **4 P R 1887**

6. *Order passed in execution in small cause—Decree giving effect to compromise dealing with immovable property—Course of appeal.*
See APPEAL—III. COURSE OF APPEAL. **55 P R 1887**

7. *Material irregularities in publishing or conducting the sale—Fatal defects—Non-compliance with the provisions of the Code as regards attachment.*
See CAUSE OF ACTION—VI. SPLITTING CAUSE OF ACTION. **76 P R 1890**

8. Ex parte *decree—Application to set aside, made after time—Discretion of Court to admit.*
See CIVIL PROCEDURE CODE, 1908, O. IX, R. 13. **32 P R 1878**

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EXECUTION OF DECREE—*contd.*

9. *Power of Court to execute decree in excess of the limits of its pecuniary jurisdiction as an original Court.*
See CIVIL PROCEDURE CODE, 1908, SECTION 6. **9 P R 1901**

10. *Application for attachment—Effect of objection by defendant dismissed for default.*
See CIVIL PROCEDURE CODE, 1908, O. IX, R. 8. **62 P R 1894**

11. *Money paid into Court under section* 108 *of the Civil Procedure Code*—Ex parte *decree upheld—Application by decree-holder for payment of deposit—Execution of decree.*
See CIVIL PROCEDURE CODE, 1908, O. IX, R. 13. **8 P R 1898**

12. *Decree silent as to instalments fixed by judgment—Power of executing Court to go behind decree—Stay of proceedings to allow amendment of decree—Stay of proceeding to allow amendment of decree—Civil Procedure Code*, 1882, *sections* 206, 239*—Court ordering execution to issue before any instalment had fallen due—Execution sale—Judgment-debtor alleging fraud and injury—Premature confirmation of sale.*
See CIVIL PROCEDURE CODE, 1908, O. XX, R. 6. **61 P R 1887**

13. *Decree too indefinite to be capable of execution.*
See CIVIL PROCEDURE CODE, 1908, O. XX, R. 6. **67 P R 1887**

14. *Decree of Court executing decree—Clerical error—Amendment of decree—Stay of execution.*
See CIVIL PROCEDURE CODE, 1908, SECTION 152. **78 P R 1889**

15. *Jurisdiction of Court to attach salary disbursed outside local limits of Courts' jurisdiction.*
See CIVIL PROCEDURE CODE, 1908, SECTION 39. **40 P R 1895**

16. *Sale of property outside jurisdiction of Court in execution of decree—Jurisdiction.*
See CIVIL PROCEDURE CODE, 1908, SECTION 38. **8 P R 1902**

17. *Power of Court to which decree has been transmitted to transmit to another Court for execution.*
See CIVIL PROCEDURE CODE, 1908, SECTION 42. **83 P R 1887**

18. *Twelve years' old decree.*
See CIVIL PROCEDURE CODE, 1908, SECTION 48—*Passim.*

19. *Each of several assignees of portions of a decree not entitled to execution separately.*
See CIVIL PROCEDURE CODE, 1908, SECTION 48. **19 P R 1889**

20. *Decree—Provision for payment at a certain date.*
See CIVIL PROCEDURE CODE, 1908, SECTION 48. **199 P R 1890**
13 P R 1892

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EXECUTION OF DECREE—*contd.*

21. *Execution of decree—Application by representative of deceased decree-holder—Absence of certificate under Act VII of* 1889, *section* 4*—Subsequent applications.*
See CIVIL PROCEDURE CODE, 1908, SECTION 48. **27 P R 1894**

22. *Hindu widow assigning decree obtained by her deceased husband—Effect of absence of certificate under the Act of* 1889.
See CIVIL PROCEDURE CODE, 1908, O. XXI, R. 16. **37 P R 1893**

23. *Pre-emption suit—Execution of decree—Transfer of right to execute decree for present possession, right of ownership being reserved—Refusal of execution Court to allow transferee to execute decree—Suit by transferee to establish his right—Procedure.*
See CIVIL PROCEDURE CODE, 1908, O. XXI, R. 16. **78 P R 1896**

24. *Execution of decree—Application for attachment and sale of property—Subsequent application for arrest of judgment-debtor—Form of application—Property duly attached and deposited with care-taker—Disappearance of attached property—Right of decree-holder to proceed against person of judgment-debtor.*
See CIVIL PROCEDURE CODE, 1908, O. XXI, R. 11. **21 P R 1899**

25. *Evidence admissible in proceeding under section* 244 (c), *Civil Procedure Code.*
See CIVIL PROCEDURE CODE, 1908, SECTION 47. **28 P R 1885**

26. *Order refusing execution against surety—" Party to the suit "—" Decree "*
See CIVIL PROCEDURE CODE, 1908, SECTION 47. **104 P R 1886**

27. *Passed against person in his representative capacity—Party to suit.*
See CIVIL PROCEDURE CODE, 1908, SECTION 47. **88 P R 1886**

28. *Question for Court executing the decree—Parties—Representative.*
See CIVIL PROCEDURE CODE, 1908, SECTION 47. **12 P R 1887**
47 P R 1887
87 P R 1887
97 P R 1887
58 P R 1888
9 P R 1889
151 P R 1890

29. *Party to suit—Surety.*
See CIVIL PROCEDURE CODE, 1908, SECTION 47. **99 P R 1887**

See CIVIL PROCEDURE CODE, 1908, SECTION 145. **77 P R 1895**

See CIVIL PROCEDURE CODE, 1908, O. XLI, R. 10. **136 P R 1892**

See CIVIL PROCEDURE CODE, 1908, O. XLI, R. 23. **59 P R 1896**

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EXECUTION OF DECREE—*contd.*

30. *Mesne profits—*
See CIVIL PROCEDURE CODE, 1908, SECTION 47. **60 P R 1890**

See CIVIL PROCEDURE CODE, 1908, SECTION 144. **28 P R 1896**

31. *Interest on money taken out of Court in execution of decree—Separate suit.*
See CIVIL PROCEDURE CODE, 1908, SECTION 47. **82 P R 1896**

32. *Power of Court executing transferred decree to implead representative of deceased judgment-debtor—" Court which passed the decree "—Application for execution dismissed for default—Subsequent application without fresh certificate from Court which passed the decree.*
See CIVIL PROCEDURE CODE, 1908, SECTION 47. **70 P R 1897**

33. *Application for execution of whole decree by one of several joint decree-holders—Dismissal of application.*
See CIVIL PROCEDURE CODE, 1908, SECTION 47. **28 P R 1898**

34. *Partnership suit—Specific sum—Realisation by execution of decree or by separate suit.*
See CIVIL PROCEDURE CODE, 1908 SECTION 47. **48 P R 1900**

35. *Execution proceedings—Jurisdiction of Court to entertain application after full satisfaction of the decree being entered.*
See CIVIL PROCEDURE CODE, 1908, SECTION 47. **63 P R 1901**

36. *Stay of execution pending suit between decree-holder and judgment-debtor.*
See CIVIL PROCEDURE CODE, 1908, O. XXI, R. 29. **41 P R 1904**

37. *Application by judgment-debtor that more had been realized from him than was due under the decree—Procedure.*
See CIVIL PROCEDURE CODE, 1908, SECTION 47. **45 P R 1904**

38. *Attachment of property—Judgment debtor adjudicated insolvent and property vested in official assignee—Objection to attachment by judgment-debtor in interest of official assignee—Letter from official assignee praying for release of property.*
See CIVIL PROCEDURE CODE, 1908, O. XXI R. 24. **57 P R 1897**

39. *Legal representative not bound to pay all the creditors of the deceased—" Duly applied such property of the deceased," meaning of.*
See CIVIL PROCEDURE CODE, 1908, SECTION 52. **68 P R 1895**

40. *Against surety.*
See CIVIL PROCEDURE CODE, 1908 SECTION 145. **109 P R 1886**

EXECUTION OF DECREE—*contd.*

41. *Agreement to give time to judgment debtor—Sanction of "Court which passed the decree."*
Under CIVIL PROCEDURE CODE, (ACT XIV OF 1882), SECTION 257, *now obsolete.* **61 P R 1886**

42. *Court compelling decree-holder to grant time to judgment-debtor.*
Under CIVIL PROCEDURE CODE, (ACT XIV OF 1882), SECTION 257, *now obsolete.* **127 P R 1886**

43. *Agreement for satisfaction of judgment-debtor—Decree passed by Judicial Assistant Commissioner—Jurisdiction of District Judge to sanction such agreement after Judicial Assistant Commissioner's Court has ceased to exist.*
See CIVIL PROCEDURE CODE, 1882, SECTION 257 (*a*). **25 P R 1887**

44. *Execution of decree—Payment by instalments—Agreement to give time for satisfaction of judgment-debt—Alteration of decree.*
See CIVIL PROCEDURE CODE, 1882, SECTION 257 (*a*). **26 P R 1894**

45. *Uncertified adjustment of decree.*
See CIVIL PROCEDURE CODE, 1882, SECTION 257 (*a*). **54 P R 1894**

46. *Bond executed in satisfaction of decree—Subsequent suit on bond.*
See CIVIL PROCEDURE CODE, 1882, SECTION 257 (*a*). **16 P R 1900**

47. *Competency of one of several joint decree-holders to certify satisfaction of entire decree.*
See CIVIL PROCEDURE CODE, 1908, O. XXI, R. 2. **34 P R 1906**

48. *Uncertified adjustmant out of Court—Subsequent execution by decree-holder—Pleas of adjustment not maintainable.*
See CIVIL PROCEDURE CODE, 1908, O. XXI, R. 2. **44 P R 1906**

49. *Execution—Decree for restoration of parnala.*
See CIVIL PROCEDURE CODE, 1908, O. XXI, R. 32. **107 P R 1889**

50. *Execution of decree—Decree for specific movables or their value—Construction.*
See CIVIL PROCEDURE CODE, 1908, O. XXI, R. 32. **64 P R 1890**

51. *Sale of share of residential house by one of four Hindu co-sharers—House occupied by tenant—Right of vendee to joint physical possession.*
See CIVIL PROCEDURE CODE, 1908, O. XXI, R. 35. **16 P R 1898**

52. *Decree for partition of estate—Partition referred to Collector—Power of Civil Court to interfere.*
See CIVIL PROCEDURE CODE, 1908, SECTION 54. **73 P R 1889**

EXECUTION OF DECREE—*contd.*

53. *Attachment—Right of residence in house belonging to a shrine.*
See CIVIL PROCEDURE CODE, 1908, SECTION 60. **8 P R 1900**

54. *Execution of decree—Attachment of house mortgaged by agriculturists—Liability of such house to attachment.*
See CIVIL PROCEDURE CODE, 1908, SECTION 60 (*c*). **1 P R 1889**

55. *Attachment of houses belonging to agriculturists.*
See CIVIL PROCEDURE CODE, 1908, SECTION 60 (*c*). **47 P R 1897**

56. *Building site of houses occupied by agriculturists not liable to attachment and sale in execution of decree.*
See CIVIL PROCEDURE CODE, 1908, SECTION 60 (*c*). **59 P R 1902**

57. *Liability of* jagir *income to attachment.*
See CIVIL PROCEDURE CODE, 1908, SECTION 60 (*g*).
133 P R 1888
47 P R 1893
4 P R 1894 Rev.

58. *Liability of political pension to attachment.*
See CIVIL PROCEDURE CODE, 1908, SECTION 60 (*g*). **137 P R 1890**
35 P R 1900

59. *Attachment of pay of Officer of British Regiment serving in India.*
See CIVIL PROCEDURE CODE, 1908, SECTION 60 (*h*). **59 P R 1897**

60. *Validity of attachment.*
See CIVIL PROCEDURE CODE, 1908, O. XXI R. 54. **83 P R 1898**

61. *Sale of attached property during the continuance of the attachment—Property belonging to a third person not a party to the decree.*
See CIVIL PROCEDURE CODE, 1908, O. XXI, R. 54. **139 P R 1893**

62. *Attachment and sale of immovable property in execution of decree—Private alienation of property after attachment and sale but prior to confirmation—Title of alienee against the auction purchaser.*
See CIVIL PROCEDURE CODE, 1908, SECTION 64. **11 P R 1906**

63. *Attachment—Property liable to be attached—Cause of action—Form of plaint for declaration that a judgment-debtor had a mortgage on certain property—Plaint—Relief claimed.*
See CIVIL PROCEDURE CODE, 1908, O. XXI. R. 63. **111 P R 1900**

64. *Application to share in assets by decree-holder who has not applied for execution.*
See CIVIL PROCEDURE CODE, 1908, SECTION 73 **93 P R 1889**

EXECUTION OF DECREE—*contd.*

65. *Ratable distribution among rival decree-holders.* 1908
See CIVIL PROCEDURE CODE, 1908, SECTION 73. **60 P R 1892**

66. *Suit for refund of sale proceeds paid in accordance with order for distribution under section* 295.
See CIVIL PROCEDURE CODE, 1908, SECTION 73. **65 P R 1895**

67. *"Assets realized by sale or otherwise in execution of a decree"—Money realized under an* ultra vires *attachment—Ratable distribution.*
See CIVIL PROCEDURE CODE, 1908, SECTION 73. **P R 1903**

68. *Questions for Court executing the decree—Suit for compensation for injury caused by irregularity in conducting sale.*
See CIVIL PROCEDURE CODE, 1908, O. XXI, R. 78. **14 P R 1886**

69. *Irregularity in conducting execution sale—Failure to obtain sanction of Financial Commissioner—Substantial injury.*
See CIVIL PROCEDURE CODE, 1908, O. XXI, R. 90. **5 P R 1888**

See CIVIL PROCEDURE CODE, 1908, SECTION 97. **95 P R 1888**

70. *Sale in execution of decree—Sale in favour of decree-holder—Objections to confirmation of sale—Substantial injury.*
See CIVIL PROCEDURE CODE, 1908, O. XXI, R. 90. **30 P R 1899**

71. *Salable interest of judgment-debtor.*
See CIVIL PROCEDURE CODE, 1908, O. XXI, R. 93. **42 P R 1896**

72. *Application under section* 318, *Civil Procedure Code, for possession of house purchased at sale in execution of decree—Refusal of such application—Subsequent suit for possession—House sold privately by judgment debtor before grant of certificate of sale—Irregularities in attachment and sale.*
See CIVIL PROCEDURE CODE, 1908, O. XXI. R. 95.
92 P R 1893

73. *Incompetency of judgment-debtor to charge land farmed out by collector.*
See CIVIL PROCEDURE CODE, 1908, SCHEDULE, III. **42 P R 1899**

74. *Order by execution Court for imprisonment of judgment-debtor.*
See CIVIL PROCEDURE CODE, 1908, SECTION 55. **69 P R 1895**

75. *Arrest and imprisonment in execution of decree—Subsequent application stating judgment-debtor's intention to apply to be declared an insolvent—Rejection of application—Illegal confinement—Duress.*
See CIVIL PROCEDURE CODE, 1908, SECTION 55. **59 P R 1898**

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EXECUTION OF DECREE—*contd.*

76. *Correlation of—Subsistence allowance of civil prisoner—Clothing, bedding and cooking utensils of prisoner.*
See CIVIL PROCEDURE CODE, 1908, O. XXI, R. 39. **43 P R 1893**

77. *Insolvency—Decree-holder whose name has been entered as a creditor by a judgment-debtor executing his decree.*
96 P R 1891

78. *Death of decree-holder—Abatement of execution proceedings—Admission of application to set aside abatement after time—Sufficient cause—Civil Procedure Code, 1882, sections 365, 366, 371, 372 A.—Limitation Act, 1877, section 5.*
See CIVIL PROCEDURE CODE, 1908, O. XXII, R. 3. **39 P R 1903**

79. *Applicability of section 373 of the Code of Civil Procedure to proceedings in execution of decree.*
See CIVIL PROCEDURE CODE, 1908, O. XXIII, R 1. **37 P R 1892**

80. *Effect of section 373, Civil Procedure Code, on proceedings in execution of decree.*
See CIVIL PROCEDURE CODE, 1908, O. XXIII, R. 1. **22 P R 1905**

81. *Partition suit—Decree omitting to specify the particular property decreed—Determination of such question by executing Court.*
See CIVIL PROCEDURE CODE, 1908, O. XXVI, R. 13 **31 P R 1887**

82. *Commission to make partition after disposal of the suit.*
See CIVIL PROCEDURE CODE, 1908, O. XXVI, R. 13. **124 P R 1893**

83. *Stay of execution of decree for restitution of conjugal rights—Substantial loss to party applying.*
See CIVIL PROCEDURE CODE, 1908 O XLI, R. 5.
2 P R 1894

84. *Stay of sale of immovable property in execution of decree—Appeal against which is pending.*
See CIVIL PROCEDURE CODE, 1908, O. XLI, R. 6. **120 P R 1890**

85. *Execution of decree of Appellate Court—Restoration of land to party dispossessed.*
See CIVIL PROCEDURE CODE, 1908, SECTION 144. **28 P R 1896**

86. *Custody of wife—Execution.*
See CUSTODY OF WIFE. **7 P R 1868**
2 P R 1871
15 P R 1876

87. *Liability of son's interest in ancestral property to attachment and sale in.*
See CUSTOM, INHERITANCE.
113 P R 1886

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EXECUTION OF DECREE—*contd.*

88. *Decree payable by instalments—Default in payment of instalment—Limitation.*
See DECREE—3. CONSTRUCTION OF.
100 P R 1902

89. *Decree based on a judgment in terms of an award—Award charging* jagir *income with the amount due—Decree silent as to such charge—Execution of decree—Power of Court to refer to judgment or award to interpret the decree.*
See DECREE—3. CONSTRUCTION OF.
95 P R 1906

90. *District Judge passing decree for dissolution of marriage (subject to confirmation) with costs against respondent—Power to execute the decree as to costs before confirmation.*
See DIVORCE.
35 P R 1887

91. *Sale of ancestral property in satisfaction of father's debt, liability of son's share.*
See HINDU LAW, ALIENATION OF ANCESTRAL PROPERTY.
87 P R 1887

92. *Suit against a member of joint Hindu family—Death of defendant pending suit—Decree against son as legal representative—Right of son to question the legality of the debt covered by the decree in execution proceedings.*
See HINDU LAW—JOINT FAMILY.
147 P R 1907

93. *Right of decree-holder who has omitted to register his claim to take out execution against insolvent.*
See INSOLVENCY. **150 P R 1882**

94. *Decree for partition—Execution—Jurisdiction.*
See JURISDICTION OF REVENUE COURT.
126 P R 1879

95. *Suit for attached property.*
See JURISDICTION OF SMALL CAUSE COURT. **167 P R 1882**
97 P R 1883
91 P R 1886

96. *Power of Court to execute decree in excess of the limits of its pecuniary jurisdiction as an Original Court.*
See JURISDICTION. **31 P R 1887**

SEE CIVIL PROCEDURE CODE, 1908, SECTION 47. **70 P R 1897**

97. *Suit to establish right to attach and sell property in execution of decree.*
See JURISDICTION. **50 P R 1890**
121 P R 1890

98. *Sale by Collector at instance of Civil Court—Jurisdiction of Civil Court in execution of decree to confirm such sale.*
See JURISDICTION OF CIVIL OR REVENUE COURTS. **83 P R 1896**

99. *Execution of decree for money.*
See LIMITATION ACT, 1859, SECTION 2.
7 P R 1878

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EXECUTION OF DECREE—*contd.*

100. *Execution of decree.*
See LIMITATION ACT, 1871, SCH. II, ART. 167. **5 P R 1875**
51 P R 1876
89 P R 1876
46 P R 1876

101. *Limitation—application made after 1st October 1877.*
See LIMITATION ACT (XV OF 1877), SECTIONS 1, 3. **23 P P 1883**
143 P R 1883

102. *Limitation—Acknowledgment of decree-holder's right to execute.*
See LIMITATION ACT (XV OF 1877), SECTION 19. **28 P R 1885**

103. *Application to revive suspended proceedings—Limitation.*
See LIMITATION ACT (XV OF 1877), SCH. II, ART. 178, *Passim.*

104. *Limitation to application for.*
See LIMITATION ACT (XV OF 1877), SCH. II, ART. 179, *Passim.*

105. *Decree whose execution has become barred by limitation—Extinguishment of right.*
See LIMITATION ACT, 1877, SECTION 28.
3 P R 1887

106. *Suit to recover amount paid out of Court in execution of decree*
See LIMITATION ACT, 1877, SCH. II, ART. 97. **63 P R 1892**

107. *Decree providing that execution shall take place after expiry of a certain period—Date from which limitation begins to run.*
See LIMITATION ACT, 1877, SCH. II, ART. 178.
65 P R 1897 F B

108. *Step in aid of execution—Revival of previous application.*
See LIMITATION ACT, 1877, SCH. II, ART. 179. **27 P R 1888**

109. *Limitation.*
See LIMITATION ACT, 1877, SCH. II, ART. 179.
CIVIL PROCEDURE CODE, 1908, SECTION 48. **109 P R 1889**
40 P R 1898
9 P R 1891

110. *Execution of decree—Limitation—Subsequent order—Modification or alteration of original decree.*
See LIMITATION ACT, 1877, SCH. II, ART. 179.
89 P R 1894

111. *Execution of decree—Attachment and sale—Sale subsequently set aside for irregularity—Resale without fresh attachment—Application for execution of decree or for revival of suspended proceedings.*
See LIMITATION ACT, 1877, SCH. II, ART. 179.
106 P R 1894

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EXECUTION OF DECREE—*contd.*

112. *Application for execution not in accordance with law— Step in aid of execution.*
See LIMITATION ACT, 1877, SCH. II, ART. 179. **98 P R 1901**

113. *Mortgage by Hindu widow—Attachment in execution of decree obtained on the mortgage—Claim by collateral to attached property—Order passed against claimant to establish his title—Limitation.*
See LIMITATION ACT, ART. 11. **32 P R 1904**

114. *Civil Procedure Code, 1882, sections 278—283—Attachment in execution of decree —Application by third party for removal of attachment—Default of claimant—Claim disallowed—Suit by claimant to establish right to attached property—Limitation.*
See LIMITATION ACT, 1877, ART. 11. **87 P R 1904**

Step-in aid of execution.
See LIMITATION ACT, 1877, ART. 179. **18 P R 1904** **55 P R 1904**

116. *Defective application for—when treated to be a step in aid of execution.*
See LIMITATION ACT, 1877, ART. 179. **116 P R 1907**

117. *Step in aid of.*
See LIMITATION ACT, 1877, ART. 179. **103 P R 1908 F B**

118. *Second suit for mesne profits.*
See MESNE PROFITS. **44 P R 1869** **72 P R 1875**

119. *Execution of decree for possession of immovable property—Obstruction by person other than the judgment-debtors—Procedure.*
See OBSTRUCTION TO EXECUTION OF DECREE. **118 P R 1907**

120. *Execution of decree—Competency of judgment-debtor on a subsequent application for execution to raise objection on ground that a preceding application was barred—* Res judicata—*Limitation Act*, 1877, *section* 11, *articles* 178, 179.
See PARTITION. **47 P R 1906**

121. *Sale of land in execution of decree—Punjab Alienation of Land Act*, 1900, *section* 16.
See PUNJAB ALIENATION OF LAND ACT, 1900, SECTION 16. **45 P R 1902**

122. *Admissibility in evidence of certificate of sale without registration.*
See REGISTRATION ACT, 1877, SECTION 17 **14 P R 1839**

123. *Omission to execute within thirty days decree obtained in suit to compel registration—Effect of such omission.*
See REGISTRATION ACT, 1877, SECTION 77. **70 P R 1887**

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124. *Suit for redemption of mortgage—Previous unexecuted decree for redemption—Right to maintain second suit.*
See "RES JUDICATA." **20 P R 1887**

125. *Order releasing property from attachment—Finality of such order.*
See RES JUDICATA. **90 P R 1902**

126. *Court refusing to execute decree on ground of indefiniteness—Power of Court to make enquiry or take evidence as to meaning of decree.*
See REVISION IN CIVIL CASES. **16 P R 1894**

127. *Refusal to release property from attachment—Power of Chief Court to revise such order.*
See REVISION IN CIVIL CASES. **8 P R 1897**

128. *Suit for land allotted in—Formal possession.*
See RIGHT TO SUE. **75 P R 1882** **103 P R 1884**

129. *Suit for money due under an arrangement made by the Court in satisfaction of decree.*
See SMALL CAUSE COURT, JURISDICTION OF. **74 P R 1887**

130. *Civil Procedure Code*, 1882, *sections* 287, 311—*Material irregularity in publishing or conducting a sale—Omission to state the nature of property.*
See SALE IN EXECUTION OF DECREE. **47 P R 1905**

131. *Release of debtor after furnishing security—Right of decree-holder to recover the decree from surety by execution, Civil Procedure Code*, 1882, *section* 337 *A*.
See SURETY. **50 P R 1905**

132. Execution cannot issue against the estate of a deceased person, unless there is some one on the record to represent the deceased. GOKUL SUDH *v.* WILLSEY. **65 P R 1867**

133. *Suit to set aside the sale of immovable property.*
In a suit to set aside the sale of a house and premises in execution of decree it was found that the Court making the decree had no jurisdiction: and that the Court executing the decree sold before the expiration of the time required by law between advertisement and sale. Sale cancelled accordingly with mesne profits, as the purchaser had full notice from plaintiff, but the former allowed compensation for *bonâ fide* improvements. HAMILTON *v.* PATTERSON. **8 P R 1868**

134. *Execution sales.*
Where there is substantial error as to the subject-matter of a sale in execution of decree, that sale cannot be repaired and made efficacious by a subsequent investigation as to the nature of the property sold,

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irrespectively of the terms of the sale. If the Court cannot definitely decide what the purchaser had right to consider as sold to him, the proper course is to cancel the sale. JOWREE MULL *v.* FENWICK. **89 P R 1868**

135. Plaintiffs having established their right of pre-emption, obtained a decree for 8 beegas of land in defendant's possession. In execution, the Tahsildar (incorrectly) reported that the decree was merely for mutation of names, which had been effected, and not for a specific plot; and that plaintiff's refusal to give a *dakhilnamah* unless put into possession was due to spite. Upon this the Deputy Commissioner referred plaintiffs to the Civil Court which made the decree, or if so advised to a separate suit for the specific piece of ground claimed. Plaintiffs accordingly brought a separate suit, which the Deputy Commissioner (upheld in appeal by Commissioner) dismissed, on the ground that the matter was one for *butwara* and not for a Civil suit. The Chief Court dismissed the plaintiffs' appeal from this order on the ground that their proper remedy was to execute the original decree for possession which the lower Courts, on the incorrect report of the Tahsildar, had refused. BIRJ LALL *v.* BURKUT ALI. **109 P R 1868**

136. *Interest.*
Where the decree did not provide for the payment of interest, *held*, that the Court executing the decree, or the appellate Court, could not award it, although the judgment-debtor promised to pay it while the decree was in course of execution. Such promise could go no further than to afford a new cause of action. *Thakoor Dass* v. *Mahomed Buksh* (*No.* 15 *of* 1866, Civil Reference), and JUSSOO MULL *v.* AZIM JOO. **30 P R 1869**

137. Where the copy of a decree is transmitted for execution in another Court the former Court is prevented from executing the decree until the transmitted copy is returned with a certified result. KHOOSALA *v.* MUSUDDA SINGH. **49 P R 1869**

138. *Held*, that a plaintiff was not entitled to claim in a Civil Court the execution of the order of a Revenue Officer awarding upon partition a certain portion of the common land of the village to him in virtue of his share. NIDHAN SINGH *v.* ATTUR SINGH. **54 P R 1869**

139. A house in cantonments is not property in land within the notification (*No.* 1225 *of* 1866) requiring the sanction of the Chief Court for sale; "land" meaning immovable property subject to a settlement of land revenue. MOOTSUDDEE MULL *v.* ABDOOLA KHAN. **26 P R 1870**

140. *Act VIII of* 1859, *section* 387—*Execution of decree—Court executing decree of another Court—Power of, to inquire into adjustment.*

EXECUTION OF DECREE—*contd.*

Proceedings in execution of a decree in a suit pending at the time of the introduction of Act VIII of 1859, are governed by that Act, and not by the old law. Section 387 of the Act does not relate to such proceedings.

Section 11 of Act XXIII of 1861 does not allow a Court executing the decree of another Court to determine questions relating to sums alleged to have been paid in Satisfaction of the decree. INNIS *v.* THE DELHI BANK.

51 P R 1870

141 The commanding Officer acting under section 177, Act V of 1869, does not represent the deceased. IN RE THE ESTATE OF JEMADAR NIHAL SINGH. **85 P R 1870**

142. *Act VIII of* 1859, *sections* 206, 208—*Payment without notice.*

A and B obtained a joint decree against C, in which *A's* interest was Rs. 2,787-2-7 and *B's* Rs. 471. *A* assigned his interest in the decree to *B*, and under section 208, Civil Procedure Code, the Court ordered execution against *C* in favour of *B* solely. Subsequently *A* petitioned the Court to cancel the assignment, and allow him (*A*) to be again recognized as one of the decree-holders; the Court assented, and passed an order accordingly. *B* obtained an injunction to restrain *C* from paying *A*, and also appealed from the order cancelling the assignment. This order was reversed on appeal, the decree being held to be *B's* solely; but in the meantime, and before the injunction was served on *C* *A* received the amount of the decree from *C*, *held*, that *B* could not execute the decree against *C*. BERTOLA *v.* JEEWUN RAM. **29 P R 1871**

143. *Act VIII of* 1859, *section* 206—*Adjustment certified to Court.*

Kishen Chand was liable as surety for the payment of the amount of a certain money decree. The judgment-creditor gave Kishen Chand out of Court a receipt for Rs. 1,150 stating in the receipt that the matter was settled as far as Kishen Chand was concerned. Subsequently the judgment-creditor applied for execution against Kishen Chand for the full amount of the decree Rs. 1,350. Kishen Chand produced the receipt in Court with a view to stay execution and the judgment-creditor, on being questioned admitted that he had signed the receipt, but urged that he had done so because Kishen Chand threatened to become bankrupt. The Court disallowed execution against Kishen Chund. On appeal the judgment-creditor again contended that the receipt was given under duress, and further, that as the adjustment was made out of Court, he should still be allowed to execute the decree against Kishen Chand. *Held*, that the adjustmen was virtually certified to the Court under section 206, and that the order of the Lower Court was correct. BHOWANI DASS *v.* KISHEN CHAND. **32 P R 1871**

144. *Execution against surety.*

A decree cannot be executed againsts a person who after the decree is passed, becomes surety for the performance of it. BUNSIDHAR *v* BEHARI LALL. **62 P R 1871**

EXECUTION OF DECREE—*contd.*

145. *Act II of* 1863, *section* 14—*Execution of decree of Privy Council—Proper procedure pointed out.*

A party seeking to execute a decree or order of Her Majesty in Council, should bring the decree or order to the High Court [in the Punjab, the Chief Court], and ask that Court to enforce and execute the decree; whereupon it becomes the duty of that Court, under section 14 of Act II of 1863, to give directions for that purpose to the Court by which the suit was originally tried. It is no objection to the execution of a decree or order of Her Majesty in Council, that the decree or order is declaratory only and not mandatory. It is the duty of the Privy Council, frequently and all that it can do, to make a declaration; and then the form in which that declaration is conceived, and the words in which the order is framed, amount to a direction to the High Court to clothe that declaration in the proper form of a mandatory order, and to give effect to the mandatory order so expressed. BARLOW *v.* ORDE. **3 P R 1872 P C**

146. *Act XXXIII of* 1871, *sections* 42 *and* 43—*Execution of decree of Civil Court—Lien for revenue.*

There is no lien for revenue, until the revenue is in arrear under section 42, Act XXXIII of 1871, and attachment has been made under section 43 Therefore, where a Civil Court attaches in execution of decree the immovable property of an agriculturist, it is not necessary to arrange first for the payment of the revenue, paying the balance to the judgment-creditor, but the judgment-creditor is entitled to payment in full. OOMUR DEEN *v.* HASHUM. **52 P R 1874**

147. *Act VIII of* 1859, *section* 203—*Decree against representative—Obligation of representative of party to a contract—Liability of representative for waste or misapplication—Assets—Section* 37, *Act IX of* 1872.

By section 37 of Act IX of 1872, "promises "bind the representatives of the promisors in "case of the death of such promisors be-"fore performance, unless a contrary inten-"tion appears from the contract." And by section 203, Act VIII of 1859, if a "decree "be against a party as the representative of "a deceased person, and such decree be for "money to be paid out of the property of "the deceased person, it may be executed "by the attachment and sale of any such "property, or if no such property can be "found, and the defendant fail to satisfy the "Court that he has duly applied such pro-"perty of the deceased as shall be proved "to have come into his possession, the decree "may be executed against the defendant to "the extent of the property not duly applied "by him, in the same manner as if the "decree had been against the defendant "personally."

Held, that the legal representative of the deceased, whether the latter were a Hindu or not, was only liable to perform the promise or pay the debts of the deceased, to the extent of the property of the deceased

EXECUTION OF DECREE—*contd.*

received by him. *Held also*, that the existence of assets and receipt or possession thereof by the representative must be enquired into before decree, unless a *primâ facie* case of receipt, or right to receive, not denied by the defendant, appeared; and that such case appeared on proof that the defendant was entitled to existing assets without proof that they had come into his actual possession. *Held* also, that a decree against the representative which did not specify that it should be payable out of the assets of the deceased, was an erroneous decree. MADHO DASS *v.* RADHA MAL.

65 P R 1874

148. *Execution of decree against representative—Act VIII of* 1859, *sections* 216 and 217.

Plaintiff sued S for a debt, and before judgment S died. The suit was proceeded with against Mussammat B S's widow, and a decree was passed against her to be realised from S's assets. Mussammat B died without satisfying the decree; and the judgment-creditor applied for execution against G, alleging that G was S's representative. *Held*, that if G admitted that he was heir to S the Court executing the decree should enquire and find whether G held assets of S or not; but if G denied he was S's heir it would be necessary for the judgment creditor to establish in a regular suit (1) that G was S's legal representative, and (2) had taken his property. SHEO SEHAI *v.* MUSSAMMAT BHAGAN. **12 P R 1875**

149. *Refusal by Commissioner to sanction sale.*

The Commissioner refused to sanction the sale of a house in execution of decree, on the ground that the debtor would greatly suffer from a sale by public auction. *Held*, not to be sufficient ground for refusing sanction. RATTAN CHUND *v.* KHUSHI RAM.

10 P R 1876

150. *Agreement varying decee.*

Where the parties to a suit, in the course of execution of decree, come to an arrange ment varying the decree, which compromise they file in Court, *held* that the Court executing the decree can enforce the terms of the agreement by process of execution, and that the jugdment-creditor is not driven to a regular suit on the agreement. BHAI CHARANJIT SINGH *v.* KASHI RAM.

16 P R 1876

151 *Execution against one who undertakes to satisfy decree.*

Plaintiff obtained a decree against *A* personally for a sum of money. *B* on the ground that *A* was his (*B's*) agent, and that the subject-matter of the suit concerned *B* and not *A*, agreed to satisfy the decree. *Held*, that execution of the decree could not be had against *B*, whose undertaking might furnish a separate cause of action. DIWAN RAM CHAND *v.* MUHAMMAD SULTAN.

75 P R 1876

152. *Agreement varying decree.*

S. R. obtained a decree for Rs. 5,565 against R. C., and commenced proceedings in exe-

cution. R. C., pending these proceedings, sued S. R. for an adjustment of accounts, and while his suit was going on, some house property of R. C., attached in the execution proceedings, was sold, S. R. being the purchaser, for Rs. 2,425. S. R. and R. C., in June 1872, filed *razinamahs* in regard to their respective claims; S. R.'s *razinamah* recited the purchase of the houses for Rs. 2,425, and stated that he relinquished the rest of his claim; the Court accepted the *razinamah* and struck the case off: R. C.'s *razinamah* stated that the accounts were adjusted and he had no further claim, and that if he paid Rs. 2,300 to S. R. within one year, he was to redeem or receive back the houses purchased by S. R.; the Court on this, dismissed R. C.'s suit. In July 1874 S. R. applied to the Court for possession of the houses; R. C. objected, urging that he had paid S. R. Rs. 2,375 in full satisfaction: the Court ordered possession to be given to S. R. without going into the question of this alleged payment.

Held, that the order giving possession to S. R. was illegal, inasmuch as the proceedings shewed that in June 1872, S. R. had certified satisfaction to the Court; and, further, his application for possession was not to enforce the decree of the Court, but to compel summary performance of an agreement substituted for that decree, which agreement was not one that could be enforced as a decree. RUP CHAND *v.* SANT RAM.

85 P R 1876

153. *Suit by judgment-debtor to recover money paid out of Court—Fraud.*

Held, that a suit by a judgment-debtor to recover money paid to a judgment-creditor, and which such judgment-creditor refuses to certify to the Court executing the decree, will lie upon equitable grounds, independent of fraud. MAMU *v.* KALU MALL.

66 P R 1877

154. *Civil Procedure Code (Act VIII of* 1859), *section* 206—*Payments in satisfaction of decree made out of Court, but not certified to the Court.*

D. obtained a decree against K. and S. A. for possession of certain mortgage land, subject to the condition that K. and S. A. were to continue in cultivation thereof for three years, paying D. the proprietors' share of the produce, out of which D. was to pay the Government revenue, and apply the surplus (if any) to paying off the principal debt, and in the event of the principal debt not being paid off, D. was to obtain cultivating possession. At the end of three years, D. applied for possession under the decree, alleging non-receipt of any payments under it, while K. and S. A. alleged payment in full satisfaction of the principal debt. *Held*, that the Court executing the decree was precluded by section 206, Act VIII of 1859 from recognizing the payments alleged to have been made out of Court, and which were not certified to the Court.

Semble, that even if it was intended that the payments under the decree obtained by D. should be made out of Court, K. and S. A. were not relieved from the duty of seeing that such payments were certified to the Court by D. DULLA *v.* KARM.

26 P R 1878

155. *Sale of movable property—Title acquired by purchaser—Property wrongly attached and sold—Remedies of real owner of goods—Civil Procedure Code (Act X of* 1877), *sections* 266 *and* 287.

Where movable property belonging to *A* was attached and sold in execution of a decree against *B*, *held*, that *A* was entitled to sue the auction-purchaser for the restoration of the specific movable or for its value.

The purchaser of movable property at an execution sale does not take an absolutely unimpeachable title to the property, and the fact that the real owner may have a remedy by a suit for damages against the execution creditor for causing the property to be attached and sold does not debar him from bringing a suit to recover the property itself from the auction-purchaser. MANGAL SAIN *v.* DABI DAS.

82 P R 1878

156. *Act XXIII of* 1861, *section* 11—*Question arising in execution of decree—Separate suit—Res judicata.*

Plaintiff sued to recover land of which possession was given to defendant in execution of a decree for pre-emption. In that suit the decree-holder (now defendant) paid into Court Rs. 124-3-3 and took credit for Rs. 50-12-9 costs payable by the judgment-debtor (now plaintiff) in accordance with an order of the Court executing the decree, which directed possession to be given on payment of the amount above-mentioned. Plaintiff claimed to recover possession on the ground that the decree became void on 14th July 1875, because the decree-holder (now defendant) had not paid in Rs. 175 in cash, and that the execution Court could not allow the decree-holder to pay less than that sum, or to pay any portion of it after July 14th.

Held, that the question raised being identical with that which occurred in the course of the former suit, it was "a question arising "between the parties to the suit in which "the decree was passed, and relating to the "execution of the decree," which by section 11, Act XXIII of 1861, was "a question to "be determined by the Court executing the "decree, and not by separate suit," and, therefore, that the second suit was barred. MEHTAB SINGH *v.* BELA SINGH.

32 P R 1879

157. *Transfer of decree—Act VIII of* 1859, *sections* 285, 286—*Powers of Court to which decree has been transmitted.*

Held, that the Court to which a copy of a decree has been transmitted for execution under section 286 of Act VIII of 1859, is only authorized to execute it within its own jurisdiction: and cannot authorise any other Court to execute the decree; as when such authority is necessary it can only be granted by the Court whose duty it was originally to execute the decree. BHAG SINGH *v.* BISHAMBER DAS.

129 P R 1879

158. *Act X of* 1877, *section* 315—*Execution sale—Error in extent of saleable interest of judgment-debtor—Suit against decree-holder for purchase-money—Caveat emptor.*

Held, that, neither section 315 of Act X of 1877, nor the principle of that section, applies to a purchase in execution of decree, where the judgment-debtor has a saleable interest in the property sold, and the only error is as to the extent of such interest.

The maxim of *caveat emptor* applied as between the auction purchaser and decree-holder in suit by former against latter for compensation in respect of loss consequent upon such error. BUTA SINGH *v.* CHATTAR SINGH.

131 P R 1879

159. *Sale—Purchase of house subject to an equity—Notice.*

Held, that a purchaser in execution of decree of a house subject to an equity created by the owner through whom he has derived title to it, with due notice of such equity, takes the house subject thereto. RAMJI DAS *v.* HIRA LAL.

148 P R 1879

160. *Agreement to liquidate decree—Breach of such agreement by judgment-debtor—Remedy of decree-holder.*

Where the parties to a decree, itself silent as to interest, entered into an agreement for liquidating the decree by instalments, which agreement provided that in case of the judgment-debtor's default, the decree-holder might at once execute his decree with interest, but it was found that the case was not one in which the arrangement between the parties had been acted on as a decree, *held*, the judgment-debtor having made default as aforesaid, that the decree-holder was not entitled to recover his debt with interest by summary proceeding in execution, but that he might either sue out execution for any sum still due on the decree, waiving his right to interest, or bring a separate suit for such sum as he might consider to be due with interest, *i. e.* sue to enforce the terms of the arrangement made between him and his debtor. SIRDAR AMIR SINGH *v.* JOWAHIR SINGH.

48 P R 1880

161. *Agreement by third parties to liquidate decree—Power to execute decree against such parties—Jurisdiction—Consent.*

An engagement entered into with a decree-holder by the sons of a judgment-debtor, who were themselves strangers to the original decree, to liquidate the decree against their father, *held*, by a majority of the Court (LINDSAY, J. dissenting), to be an agreement which the Court executing the decree was not competent to enforce summarily by process of execution.

Held, further, that consent of parties could not give the Court jurisdiction to permit the summary procedure provided for decrees made in regular suits to be substituted for

a regular suit between the parties to the agreement.

Diwan Ram Chand v. *Muhammad Sultan* (No. 75 *P. R.* 1876, Civil), and *Bunsidhar* v. *Behari Lall* (No. 62 *P. R.* 1871) followed.

Held, contra, per LINDSAY, J., that the arrangement between the parties was substituted for the decree by consent of parties and of the Court, and effect subsequently given to the substituted decree through the same Court; that the sureties by order of Court and with consent of the decree-holder became parties to the suit: and that the decree could be executed against them in terms of the agreement. RAI BHAG SINGH *v.* HARDIT SINGH.

59 P R 1880

162. *Assignment of decree—Suit to set aside attachment by assignee—Act X of* 1877, *section* 232—*Absence of written assignment—Objection to attachment by plaintiff on ground of such irregularity.*

The assignee of a decree attached in execution as the property of the judgment-debtor certain monies in the hands of a third party. In a suit by one K. S. against the judgment-debtor and the assignee to set aside the attachment on the ground that the judgment-debtor had no attachable interest in the property in question, it was held by the Chief Court (reversing the orders of the lower Courts) that the judgment-debtor had no attachable interest in the monies: whereupon it was contended for the plaintiff that the attachment was null and void with reference to section 232, Act X of 1877, because the assignment of the decree was not in writing, as contemplated by that section.

Held, that this objection could not prevail, as for the purposes of the present suit, and more especially in special appeal, the Court was bound to presume that the Court executing the decree had done all things which the law prescribed to be necessary, and that an assignment in writing existed, though it did not appear to have been filed.

Held further, that in the present suit it was not open to the plaintiff to set up an irregularity in the execution proceedings which could only be contested as between the execution-creditor and the judgment-debtor, the sole question being one of title, which, if established would prove that the property in dispute was not liable to attachment as against the judgment-debtor.

Semble, that even the judgment-debtor could not recover back his money from the assignee merely because the execution proceedings were *ultra vires*, unless he could show that he had in some way been defrauded by the transaction. TOTA SINGH *v.* KAHN SINGH.

87 P R 1880

163. *Decree payable by instalments not fixed prior to decree—Executing Court fixing amount of instalments—Act X of* 1877, *section* 210—*Consent of decree-holder—Irregularity—Appeal.*

Where the original judgment in the case provided that the amount decreed might be paid by instalments, but did not fix their amount, and the decree was silent as to instalments, and it further appeared that an appeal by the decree-holder objecting to instalments was dismissed, after which in execution of decree the executing Court fixed certain instalments, the amount of which was doubled on appeal by the Additional Commissioner, *held*, on a second appeal by the decree-holder from the last mentioned order of the Additional Commissioner, that the debt must be taken to have been decided to be one payable by instalments, just as if the decree was in conformity with the judgment, and that therefore the consent of the decree-holder was not requisite for the fixing of instalments.

Held further, that though the fixing of the amount of the instalments at time of execution was irregular and ought to have been done before the decree was drawn up, yet this was not a sufficient ground for setting aside the order of the Additional Commissioner. KIDARNATH *v.* BHOLE KHAN.

46 P R 1881

164. *Execution-sale—Auction-purchaser—Judgment-debtor having no saleable interest in property sold—Right of purchaser to recover his purchase-money from decree-holder under Act VIII of* 1859—*Act X of* 1877, *section* 315, *retrospective effect of.*

In May 1877 the plaintiff became auction-purchaser of certain property attached at the defendant's instance in execution of decree. In 1879 the plaintiff brought the present suit to recover Rs. 507 from defendant, alleging that he had paid that sum into Court for the property purchased at the above sale, and that he had now been evicted from the property by the true owner.

Held, that plaintiff could not recover, as under Act VIII of 1859, which was in force at the time of the sale transaction, the rule of law was that the auction-purchaser bought at his own risk, and if he got nothing for his money the decree-holder was not liable.

Held, further, that plaintiff was not entitled to recover by reason of section 315 of Act X of 1877, as the provisions of that section are not retrospective, so as to subject a decree-holder who brought property to sale under Act VIII of 1859 to a liability towards the auction-purchaser to which he was not liable at the time of the sale. DEBI PERSHAD *v.* MUHAMMAD IBRAHIM.

99 P R 1881

165. *Sale of house property—Sanction of Commissioner and Chief Court—Notification No.* 3859, *dated October 3rd*, 1877.

Held, that under the terms of the Punjab Government Notification No. 3859, dated the 3rd October 1877, the sanction of the Commissioner is not required to sales of house property in execution of decree. Nor is the sanction of the Chief Court required to sales of such property. NIRMAL DAS *v.* MUHAMMAD YAR.

6 P R 1882

166. *Act X of* 1877, *section* 266—*Attachment of pay—Native grass-cutter attached to European battery—Indian Articles of War (Act V of* 1869)—*Army Discipline and Regulation Act*, 1879.

Held, that neither the Army Discipline and Regulation Act of 1879, nor the Indian Articles of War, 1869, contains any provision which exempts from attachment the pay of a Native grass-cutter attached to a battery of artillery of H. M.'s British Army while cantoned in British India, and not on active service within the meaning of that expression, as defined in the former Act. THALLI *v.* GANGA.

41 P R 1882

167. *Jurisdiction of Court to execute decree exceeding the pecuniary limits of its jurisdiction for suits—Construction of decree—Power of executing Court to look at judgment to explain ambiguous parts of decree.*

Held, that there is nothing, either in the Civil Procedure Code or in the Punjab Courts Act, to disable a Court the jurisdiction of which for the adjudication of original civil suits is restricted to suits not exceeding a certain pecuniary limit of value, from executing the decree of a competent Court for an amount exceeding that limit, when such decree is duly sent to it for execution either under section 223, Civil Procedure Code, or under section 34, Act XVII of 1877.

In a suit to recover a sum of money secured by the mortgage of a house, a compromise was come to by the parties, whereby the plaintiff agreed to accept Rs. 1,650 in full satisfaction of the claim. It was arranged that the payment of this amount should be deferred for 5 years, that as regards Rs. 1,200 the house should remain in the possession of the plaintiff as mortgagee, the rent being taken by him in lieu of interest, and that as regards the remainder, *viz.* Rs. 450, the defendant should pay interest year by year at the rate of 8 annas per cent. per mensem, it being further provided that if default was made in payment of such interest, so that at the end of any year the interest for that year remained unpaid, it would be competent to the plaintiff to enforce payment of the principal sum of Rs. 450, and any interest remaining due thereon by execution of decree. It was further provided that though defendant should have paid the interest on the Rs. 450 regularly year by year, if he failed to pay the Rs. 1,650 at the end of the five years, it would be competent to the decree-holder to put the decree in execution and realize the amount from the mortgaged and other property of the judgment-debtor. The Court gave judgment in accordance with this compromise, and after reciting its terms, directed that a decree for Rs. 1,650 be given in plaintiff's favour "in accordance with "the terms aforesaid" (*ba shara sadr).* A decree was drawn up accordingly on the 15th August 1872, which merely followed the concluding words of the judgment, and directed that Rs. 1,650 be paid *ba shara sadr.*

An application for execution of the decree having been made on the 7th May 1880 in which it was stated that the judgment-debtor had paid interest for 5 years, but not for the last 3 years, with regard to which it was contended that default of payment of the interest occurred 2 years after the date of the decree and more than 3 years before the making of the application *held*, that though as a general rule a decree must be construed by its own terms, and it is not advisable to incorporate anything into it or attach to it a meaning which the words of the decretal order do not properly and clearly express; still in the present case, as the decree was drawn up most carelessly, and the words *ba shara sadr*, if the Court looked merely to what went before them, were unmeaning, though they became at once intelligible if reference was made to the judgment, the Courts were fully justified in referring to the judgment and in giving to the words in question the meaning which a reference to the judgment clearly showed that they were intended to bear. RAM LAL *v.* NATHA SINGH.

45 P R 1882

168. *Sale of land—Sanction for sale—Procedure—Duty of Deputy Commissioner and Commissioner—Act X of* 1877, *section* 326.

It is the duty of the Deputy Commissioner on receiving from the Court executing a decree an application for sanction to sell land, to report in the proper column what measures he has taken to give effect to the provisions of section 326 of Act X of 1877, and to forward the statement to the Commissioner, whose duty it is to transmit the statement to the Chief Court after recording his own opinion in the proper column. No option is left to the Deputy Commissioner or Commissioner as to whether or no they will forward the statement to the Chief Court for sanction. BHAGWAN DAS *v.* BAGA. **96 P R 1882**

169. *Finality of order passed in execution proceedings—Application for execution—Omission to pass order of attachment—Subsequent application—Plea of limitation.*

It was contended that an application for execution of decree was barred by limitation because *inter alia* the last previous application was itself beyond time. With reference to this objection, it appeared that no order for attachment was issued under the said application, it having been necessary first to issue notice to the judgment-debtor, after which the case having been postponed from time to time, was somewhat irregularly struck off the file, no objection that the proceedings were barred by limitation having been raised either by the Court or the judgment-debtor.

Quaere whether the above facts took the case out of the ruling of the Judicial Committee of the Privy Council in *Mungal Parshad Dichit* v. *Grija Kant Lahiri* (I. L. R. 8 Calc., 51) to the effect that when an order for attachment has been made by a competent Court, that Court must be considered to have determined that the execution was not barred, and such decision must be regarded as binding until it is reversed. LAKMI DAS *v.* GOBIND RAM. **105 P R 1882**

170. *Agreement as to how decree should be carried out—Effect of such agreement.*

In a case of execution of a decree, it appeared that the parties to the decree attested an agreement before the Court in which the decree was being executed, whereby certain land was to be made over to the decree-holder for a period of years until the profits received by him equalled the amount of the decree, and that the Court, after attesting this agreement, directed that the case should be filed. Subsequently, after the assignee of the original decree-holder had made various attempts to execute the decree, the Court referred him to a civil suit to enforce the agreement above mentioned, and the assignee accordingly filed a suit to enforce the said agreement which was dismissed, on the ground that the original deed of agreement was unregistered. The decree-holder's assignee again applied for execution, but his application was thrown out on the ground that the original decree had been superseded by the agreement, which constituted a new contract, and which alone could give plaintiffs a right of action.

Held, that the above order was incorrect; that the said agreement was entered into by the parties not in supersession but in pursuance of the decree, the agreement in fact being as to how the decree should be carried out, and that the case should not have been struck off, but kept on the file of the Court till the decree was satisfied: that now that that agreement had been declared by a competent Court to be inoperative, there was no reason why the representative of the decree-holder should not be allowed to execute his unsatisfied decree in the absence of any other legal objections to his doing so. SALAMAT RAI *v.* AKBAR.

195 P R 1882

171. *Finality of order passed in execution proceedings*—Res judicata—*Civil Procedure Code (Act X of* 1877), *section* 13, *Explanation IV—Order passed on objection by judgment-debtor—Plea of limitation raised during pendency of same proceedings.*

Certain proceedings in execution of decree having been struck off on 21st February 1875, a fresh application was brought on 1st February 1878, which, together with a subsequent application, dated 10th March 1880, went off in default. Another application was filed in April 1881, and whilst this was still pending, an order for attachment of a house was passed on 28th June 1881, and an objection by the judgment-debtor that he had paid in full, was dismissed on the 27th October. While these same proceedings were still pending, the judgment-debtor for the first time filed an objection, on 5th December 1881, to the effect that the application of 1st February 1878 was barred as out of limitation.

Held, that though the decision of October 1881 was final under Explanation IV to section 13 of the Civil Procedure Code in regard to the objections actually taken, that decision did not operate as a bar to the plea of limitation subsequently raised in December 1881, as the decision of October being limited to objections actually taken could not be said to have decided the question of limitation; and it therefore remained open to the Court executing the decree as long as the application for execution was not disposed of, to entertain a plea that the application was barred by limitation. FATTEH MUHAMMAD *v.* LALJI MAL. **143 P R 1883**

172. *Civil Procedure Code (Act X of* 1877), *sections* 312, 313, 315—*Execution-sale—Application by purchaser for refund of purchase-money deposited on account of sale afterwards set aside—Purchaser's right to refund of amound paid to Sheriff out of the sale-proceeds.*

Under section 315 of the Civil Procedure Code, when an execution sale is set aside under section 312 or 313, the purchaser is entitled to receive back his purchase-money from any person to whom the purchase-money has been paid.

Held, that under the terms of the above section, the purchaser is entitled to a refund of a sum paid to the Sheriff, who conducted the sale under the orders of the Court, out of the sale-proceeds. MUSSAMMAT PREM VANTI *v.* MOKAND LAL. **183 P R 1883**

173. *Civil Procedure Code (Act XIV of* 1882), *sections* 311, 312—*Confirmation of execution-sale before period for making application to set it aside has elapsed—Irregularity in conducting sale—Sale at undervalue—Allegation that property was not liable to attachment.*

No order confirming a sale made in execution of decree should be made under section 312 of the Civil Procedure Code, until the time (thirty days, *vide* Art. 166, Sch. II, Act XV of 1877) has elapsed within which an application under section 311 could be made.

Sale at an undervalue would only be a material ground of application under section 311 if there had been any irregularity in publishing or conducting the sale, as a proof that the applicant had sustained substantial injury, but does not in itself amount to such an irregularity.

An allegation that the property sold was not liable to attachment would not support an application under the same section, though it might be a ground for a separate suit, either to recover the property, so long as the sale had not been made absolute according to law, or to recover compensation from the decree-holder. ATAR SINGH *v.* LAJPAT RAI. **19 P R 1884**

174. *Civil Procedure Code (Act XIV of* 1882), *section* 266 (*g*)—*Liability of jagir income to attachment—Pensions Act (XXIII of* 1871), *section* 11—*Attachment of assigned land revenue in hands of lambardars.*

There is nothing either in clause (*g*) of section 266 of the Civil Procedure Code, or section 11 of the Pensions Act, which protects the income of a *jagir* from attachment in execution of decree.

Quære, whether assigned land revenue can be attached in the hands of the lambardars of the village before it has reached the assignee. KUNDAN LAL *v.* DALIP SINGH.

57 P R 1884

175. *Civil Procedure Code (Act XIV of 1882), section 266 (g)—Property liable to attachment—Pension payable by Government other than British Government.*

Clause (*g*) of section 266 of Act XIV of 1882 refers to pensions payable by the British Government and not by other authorities, and has no application to a sum of money paid as a charitable allowance out of the revenues of the Mamdot estate. HAZARI MAL *v.* KHAN BAHADUR KHAN.

58 P R 1884

176. *Civil Procedure Code (Act XIV of 1882), section 315—Execution-sale—Saleable interest—Refund of purchase money.*

Held, that an auction-purchaser of a house which has been sold in execution of decree can, after the sale has been set aside in a suit brought by a third party against the auction-purchaser and the judgment-debtor, recover from the judgment-creditor by summary process, under section 315 of the Civil Procedure Code, the money which he has paid for the house on the ground that the judgment-debtor had no saleable interest in the property. NIHAL CHAND *v.* JIWAN SINGH. **157 P R 1884**

177. *Merger of decree in subsequent arrangement—Arrangement enforcible by suit and not by execution.*

Plaintiff obtained a decree against defendant on account of certain instalments due on a bond executed by the defendant. While this decree was in course of execution, defendant presented a petition to the Court executing the decree, setting forth the amount due on the decree with interest, and that for the total amount thus arrived at the petitioner agreed that the plaintiffs should receive certain specified half-yearly instalments from his *jagir* income to be paid to the plaintiff from the Tahsildar's office for a specified period, wherefore he applied that the said instalments might be paid half-yearly from the *tahsil*, and that the adjustment of the plaintiff's claim being approved, the necessary orders should be issued to the Tahsildar, adding that, until the plaintiff's claim was satisfied, the petitioner should have no claim on any grounds to receive the money either from the zemindars or from the Government. The petitioner's seal was attached to the petition, which was also signed by the decree-holder for the purpose of showing his assent to the terms set forth. The Court therefore recorded an order, stating the terms of the agreement as acknowledged by the judgment-debtor in person, an addition being

made that the village should be hypothecated as security for the debt due to the decree-holder, adding that the decree-holder's consent was conditional on the money being paid to him from the *tahsil*, and directing that the instalments agreed to by the parties being approved, the case should be filed, and a proceeding be sent to the Revenue Officer asking that payment might be made through the Tahsildar after deducting the fixed charges for collection.

Held, that the agreement constituted an obligation which merged not only the decree, but other claims existing between the parties and which could not therefore properly be enforced in execution of the decree. SIRDAR AMAR SINGH *v.* BASWA MAL. **51 P R 1885**

178. *Sale of immovable property—Refund of purchaser's deposit when sale is not confirmed—Commission paid to Nazir.*

On the auction sale of immovable property in execution of a decree, the property was knocked down to the petitioner and he deposited one-fourth of the price. The Nazir deducted his commission from this amount and deposited the balance in the Treasury. The sale was not completed, as a private arrangement was come to between the parties to the execution-sale. Subsequently, the petitioner applied to the Court executing the decree for the refund of his deposit, but was referred to a suit against the judgment-debtor.

Held, that under the last clause of section 315 of the Civil Procedure Code, there was no cause of action against the judgment-debtor, and it was doubtful whether the purchaser could have been referred to a separate suit against the Nazir, as the amount deposited was recoverable under the rules applicable to execution of decrees. Therefore the sale having been treated as incomplete, the Nazir's right to deduct anything for commission had not arisen, and the sale having been afterwards rendered unnecessary by the compromise entered into, the purchaser was entitled to the refund of his money, and the Nazir being an officer of the Court, the Court had authority to direct him to refund it. *Mussammat Prem Vanti v. Mokand Lal* (No. 183 *P. R.* 1883) cited. PALA SHAH *v.* SYAD HAMID SHAH.

68 P R 1885

179. *Decree for payment of money in accordance with written compromise—Construction of decree—Security for payment of decree.*

On 14th February 1883, the decree-holders obtained a decree which ran as follows:—"The defendants do pay to the plaintiffs the "sum of Rs. 15,000, including costs *as agreed* "*upon, viz.*, Rs. 600 in monthly instalments, for "which 25 *hundis* of Rs. 600 each have been "given. If any *hundi* be not paid on due "date, the plaintiffs will be entitled to sue "on it." The indenture between the parties on which the suit was disposed of, and which is the one alluded to in the words "as agreed upon" in the decree, provided

that the plaintiffs should be paid Rs. 15,000, by monthly instalments of Rs. 600 each, "*and that the payment of the several instalments should be secured by* 25 *hundis.*" Fourteen of the *hundis* having been dishonored, the decree-holders moved the Court to execute the decree. The judgment-debtor objected that this could not be done, and that the decree-holders had no remedy but to sue on the *hundis*. The executing Court having rejected this plea, the judgment-debtors appealed to the Chief Court.

Held, that as the Court, by the language used in the decree, intended to pass a decree in accordance simply and fully with the compromise arrived at by the parties, as it was bound to do, and the deed showed that the parties agreed absolutely that the instalments should be paid, the *hundis* being merely given as further security for the same, the creditors could enforce this right as embodied in the decree in the appropriate form, namely, by way of proceedings in execution. Therefore, on its being proved that the *hundis* had been dishonored, and on their being delivered to the Court so as to protect the judgment-debtors from the risk of having to satisfy them in the hands of third parties, the decree-holders were entitled to execute their decree of the 14th February 1883. NAOBAT RAI *v.* TAJ MUHAMMAD. **84 P R 1885**

180. *Civil Procedure Code (Act XIV of 1882), sections 311 and 314—Sale in execution of decree—Irregularity in conducting sale.*

On an application to set aside a sale in execution of decree by a decree-holder, who alleged that the sale had not been properly conducted, having been held at 7 a. m., though the proclamation had fixed noon as the hour at which the sale should take place, and that he had in consequence suffered substantial injury, the Munsiff, after an enquiry, but without coming to any finding as to the facts alleged, held that no important irregularity was proved to have been committed, and after expressing an opinion that the Court was not at liberty to break a contract entered into by it, rejected the application and confirmed the sale.

Held, that on its being proved that material irregularities had taken place, and that substantial injury had been caused by reason thereof, the Court had jurisdiction to deal with the case under section 311 of the Civil Procedure Code without any reference to considerations arising from the law of contract, as under section 314 the sale does not become absolute until confirmed; that the irregularity in selling the property before the time fixed by the proclamation would clearly be material, and the allegations of injury resulting therefrom should therefore have been enquired into. RAM RATTAN *v.* MANJA. **96 P R 1885**

181. *Execution proceedings—Order releasing property from attachment—Finality of such order.*

The decree-holder having attached in execution of decree a house, the property of the judgment-debtor, the house was on the latter's objection released from attachment on the

25th May 1883, under section 266 (c) of the Civil Procedure Code. No appeal was preferred from this order, but on 4th February 1884 the house in question was again attached in execution of the decree-holder's decree, an objection raised by the judgment-debtor was disallowed on 10th March 1884, and finally, on 19th May 1884, the sale of the house was ordered.

An appeal from this last order having been rejected by the lower Court, *held*, that the subsequent attachment was barred by the previous order of release, dated 25th May 1883, as that order not having been appealed against was final and conclusive between the parties on the points decided therein. *Lakmi Das* v. *Gobind Ram* (No. 105 *P. R.* 1882), cited. FAKIR BAKSH *v.* MAYADHARI. **4 P R 1886**

182. *Decree silent as to interest—Variance between judgment and decree—Power to realize interest in execution.*

A decree-holder is not entitled to realize interest in execution of a decree which does not provide for the payment of interest, though the judgment in the case professes to be given in accordance with a confession of judgment which made the judgment-debtor liable for interest, so long as the decree is intelligible in itself and is capable of execution without reference to the judgment. CHANDA MAL *v.* BAKSHA. **13 P R 1886**

183. *Civil Procedure Code (Act XIV of* 1882), *sections* 287, 291, 315—*Execution sale—Postponement of sale—Omission to issue fresh proclamation—Material irregularity—Sale set aside subject to auction-purchaser's right of refund—Refund of Nazir's commission.*

Held, that the omission, after an execution sale has been adjourned, to issue a second proclamation showing the true time and place of the sale, as required by sections 287, 291 of the Civil Procedure Code, when the second proclamation is not waived, is so material a violation of the prescribed procedure that it vitiates the sale.

Where on an appeal by the judgment-debtor to set aside an execution sale on the above grounds, it appeared that the auction purchaser had paid the price and taken possession of the property sold, the Chief Court ordered that a refund of the purchase-money to the said auction-purchaser should be made a condition precedent to the appellant getting the relief he asked, and that the appellant must see that within two months the refund to which the auction-purchaser was entitled under section 315, Civil Procedure Code, was paid into Court to his credit, or the decree in his favour should be void, and his appeal stand dismissed.

It was further ordered in the above case (following *Mussammat Prem Vanti* v. *Mokand Lal*, No. 183 *P. R.* 1883, that the Nazir

should be directed to pay back into the executing Court the part of the price which he had received as commission. NARANJAN DAS *v.* RAM RAKHA. **45 P R 1886**

See also GHULAM SHAH *v.* GANPAT RAI. **45 P R 1886 Note**

184. *Civil Procedure Code (Act XIV of* 1882), *section* 326—*Power of Collector to arrange for satisfaction of decree by temporary alienation of land—Duty of Collector to represent proposed arrangement to executing Court—Procedure to be adopted.*

A decree-holder having applied for execution of his decree by sale of the judgment-debtor's land, a statement of sale was prepared and forwarded through the Deputy Commissioner for sanction of the Chief Court. The Commissioner declined to submit the statement until the Deputy Commissioner had reported whether any arrangement could be made for the payment of the decree by a temporary alienation of the land, whereupon the Deputy Commissioner, without being moved or authorized by the Court executing the decree and without consulting either the decree-holder or the executing Court as to the propriety of the arrangement, entered into an arrangement with a third party to take the land on payment of 18 yearly instalments until the judgment-debt was cleared off. On hearing of this arrangement, the executing Court ordered the case to be consigned to the record room. An appeal from this order to the Divisional Court having been rejected, *held* by the Chief Court, on further appeal, that the appeal must be accepted, and the orders of the lower Courts being set aside, the case be remanded to the executing Court with directions to re-open the case and pass orders thereon in accordance with law.

It is the province of the Collector, if he considers the sale of the land objectionable, and that the decree can be satisfied within a reasonable time by a temporary alienation of the land, to represent the arrangement he considers suitable to the Court executing the decree, which should then decide after hearing the decree-holder and the judgment-debtor whether or not effect should be given to the proposed arrangement. Such arrangement cannot be considered a final settlement of the decree until it has been accepted by the Court, and the Court has authorized the Collector to give effect to it. GUJAR SINGH *v.* MIT SINGH. **114 P R 1886**

185. *Sale of land—Sanction for sale—Procedure.*

Held by the Financial Commissioner, following *Bhagwan Das* v. *Baga* (No. 96 *P. R.* 1882), that no option is left to the Deputy Commissioner or Commissioner as to whether or not they will forward on for the sanction of the Financial Commissioner applications for the sale of a judgment-debtor's immovable property in execution of decree. JAHAN KHAN *v.* AMIR BAZ. **1 P R 1887 Rev**

186. *Execution of decree—Non-existence of decree—Order in execution passed in ignorance—Admissions by judgment-debtors made under misconception—Validity of such orders.*

An application being made for execution of a decree, it was objected that there was no decree to execute. The facts appeared to be as follows:—

The Deputy Commissioner originally dismissed the suit. The Commissioner remanded it for further inquiry. During the progress of the inquiry defendant confessed judgment on 27th November 1873, and agreed to pay a certain sum by instalments. Plaintiff accepted this settlement. The case was submitted to the Commissioner, whose decree, dated the 11th December 1872, was to the following effect :—" The appeal be struck off, the parties having come to an adjustment."

Applications for execution were made from 1877 to 1884, in each of which the decree sought to be executed was stated as that of the Deputy Commissioner, on some of these orders for attachment were issued, and on two occasions small sums were realized through the Court.

The judgment-debtor also admitted on two occasions the existence of a decree against him ; on these facts it was contended for the decree-holder that the confession of judgment should be read into the Commissioner's decree, and that the judgment-debtor should be held estopped by his admissions from disputing the existence of the decree.

Held, that there was no decree which could be executed, and its place could not be supplied by orders of attachment passed under mistake or by acts of parties done under misconception. RAM DHAN *v.* JALAL. **143 P R 1890**

187. *Execution of decree—Sale of agricultural land—Sanction of Financial Commissioner.*

When the Financial Commissioner had refused to sanction the sale in execution of decree of agricultural land described as a garden, *held* that the Civil Courts were not competent either to sell the land, or to sell the trees upon the land. LEHNA *v.* DEVI DITTA. **59 P R 1891**

188. *Insolvent Estates' Court—Attachment of insolvent's property—Property already under attachment by District Judge.*

Makhan Lal was declared an insolvent under the provisions of Act IV of 1872. The Insolvent Estates' Court issued a *robkar* to the District Judge, calling upon him to make over certain property of the insolvent which was then under attachment, or to withdraw the attachment. The District Judge declined to accede to this request.

Held, that the Insolvent Estates' Court was not competent to issue such a *robkar*, and that the District Judge was not bound to recognise it. *In re-petition of* MAKHAN LAL. **61 P R 1891**

189. *Sale in execution of decree—Absence of certificate of sale—Suit by purchaser—Title against party to the suit or his representative in interest.*

The plaintiff sued, alleging that he was the purchaser of a house at an execution sale following decree against B. defendant No. 2 on account of a debt due from B.'s deceased husband. The defendant No. 1 was B.'s second husband, and defendant No. 3 her son. The plaintiff could produce no certificate of sale.

Held, that the non-production of a certificate was not fatal to the plaintiff's claim.

When the plaintiff is suing to eject not a third party, but the very person who was a party to the suit which led to the execution sale, or persons whose interests are identical with such party, the mere omission to produce a certificate of sale is not fatal to the success of the suit. A party to the suit, or his representative in interest, cannot, after the sale has been confirmed, dispute the purchaser's title, as the order confirming the sale completes the title as against the parties to the suit.

I. L. R. 12 *Bom.* 589, followed. BUDHU *v.* HIRA. **27 P R 1892**

190. *Joint Hindu family*—Mitakshara—*Liability of ancestral property in execution of decree against father alone.*

The authorities governing the question as to how far in a joint Hindu family governed by the law of the *Mitakshara*, consisting of a father and sons, the ancestral property is liable in execution of decrees obtained against the father alone, collected and discussed. AMAR SINGH and SUNDAR DAS *v.* AZIZ-UD-DIN. **33 P R 1892**

191. *Interest on decree—Principle of calculation—Semble.*

The correct method of calculating interest on a decree is to take each payment made: calculate the amount of interest due on the decree up to the date of this payment: credit the payment of this interest : and carry the surplus of the payment to the credit of the principal, and strike a fresh balance. BHAJAN LAL *v.* DELHI AND LONDON BANK, LD. **55 P R 1892**

192. *Decree for possession of land—Failure to obtain possession by execution of decree—Bar of second suit for possession.*

The plaintiff sued to recover from the defendant possession of 480 *kanals* of land which had previously been decreed to her in accordance with a compromise in a suit brought against the present defendant upon 6th October 1881.

No execution of decree was ever applied for, but the plaintiff alleged that she had enjoyed possession of her rights under the decree until one and a quarter years before the present suit, when she was dispossessed by the defendant. Both the Courts below found that the plaintiff had never held possession of the land, but decreed the claim in the plaintiff's favour on the ground that

there was nothing to prevent the maintenance of the present suit.

Held, following the decision of the Full Bench, No. 93 *P. R.* 1879, that the decrees of the Courts below could not be sustained on the ground on which they proceeded.

Decrees are ordinarily absolute and unconditional, and as to such decrees it is clear that, as a rule, they must be enforced by process of execution and not by separate suit, and that if they be not enforced within the period of limitation fixed by law for their execution the decree-holder has lost his remedy. HAFIZ BAHA-UD-DIN *v.* MUSSAMMAT FATTEH BIBI. **16 P R 1893**

193. *Indian Limitation Act*, 1877, *schedule II, article* 179, *clause* 4—*Application in accordance with law—Absence of Certificate under the Succession Certificate Act*, 1889.

An application for exclusion by the heir of a deceased decree-holder may be in accordance with law within the terms of article 179, clause 4 of the Limitation Act, notwithstanding that at the date of the application no certificate under section 4 of the Succession Certificate Act, 1889, has been obtained, the latter section not forbidding the Court to *entertain* an application of a person claiming to be the heir of a deceased person without production of a certificate, but merely directing that the Court shall not *proceed* on such application except on the production of the certificate. SOBHA SINGH *v.* FATTA. **54 P R 1893**

194 *Application for execution of decree—Sale in execution thereof—Application subsequently set aside by Appellate Court on ground that it was time-barred—Effect of such reversal on sale—Suit by auction purchaser, not party to decree against decree-holder for refund of purchase-money.*

Held, that where an application for execution of a decree by sale of the judgment-debtor's property has been granted, and a sale has taken place and been duly confirmed, the fact that the said application has subsequently to such sale been set aside by the Appellate Court on the ground that it was time-barred does not *ipso facto*, annul the sale, and there being no privity between the auction-purchasers and the decree-holders, there is no legal obligation upon the latter to refund the purchase-money received by them to the auction-purchasers, nor can the auction-purchasers recover the purchase-money from the decree-holders either upon the ground that they have not obtained a certificate under section 316 of the Civil Procedure Code, or possession of the property sold, or by electing to renounce their claims to the property.

I. L. R., X All., 166, *I. L. R. XI Calc.* 287, and *L. R. XIII Ind. App.* 106, cited. MUSSAMMAT MANSA DEVI *v.* RAHIM BAKHSH. **49 P R 1894**

195. *Execution of decree—Attachment—Objection to attachment dismissed for default—Power of Court to restore such application*

to the file—Remedy of objector—Procedure—Civil Procedure Code, 1882, *sections* 103, 278, 623, 647—*Revision in Civil Cases—Chief Court's powers of revision—Practice—Punjab Courts Act*, 1884, *section* 70.

Held, that the procedure prescribed for original suits by the Code of Civil Procedure does not apply to execution proceedings under Chapter XIX, and accordingly the remedy provided by section 103 of the Code is not open to an objector whose objections under section 278 to an attachment of certain property in execution of decree owing to his absence on the date fixed for hearing have been dismissed in default.

When a person making an application within Chapter XIX fails to prosecute it, the Court must dispose of it by dismissing it in default, and in such cases the objector is only entitled to make a fresh application to obtain his relief if he is not otherwise barred, but when such an application has been disposed of on the merits the Court cannot entertain another of the similar nature or can alter or set aside its order except on review under section 623 the provisions of which do apply to such proceedings.

Thakar Prashad v. *Fakir-ulla* (*I. L. R. XVII All.* 106 P. C.) and *Dhonkal Singh* v. *Phakkar Singh* (*I. L. R., XV All.*, 84 F. B). followed. COATES *v.* KASHI RAM. **76 P R 1903**

196. *Execution of decree—Limitation—Starting point for limitation where an application for revision was admitted, Limitation Act*, 1877, *Schedule II, article* 179.

A brought a suit against B for the possession of a house and obtained a decree on the 28th April 1898. The defendant preferred an appeal, which was dismissed by the Divisional Judge on 7th October 1898. He then filed an application for revision to the Chief Court, which was admitted as a further appeal, but was finally rejected on 29th July 1901. On an application on the 10th February 1903 by the decree-holder to execute the said decree an objection was raised by the judgment-debtor that execution was barred by lapse of time.

Held, that the order passed by the Chief Court rejecting the application for revision must be treated as the "final order or decree of the Appellate Court" within the meaning of clause 2, Article 179 of the second Schedule to the Indian Limitation Act, 1877, and that the application of the 10th February 1903 for execution was, therefore, within time. RALLA MAL *v.* MUSSAMMAT MALAN. **8 P R 1905**

197. *Limitation Act*, 1877, *Schedule II, article* 179, *clauses* (4) *and* (5)—*Application by the decree-holder asking for notice to be issued—Step in aid of execution—Limitation.*

Held, that an application by the decree-holder under section 248 of the Code of Civil Procedure asking for notice to be issued to the judgment-debtor is an application to the Court to take a step in aid of execution of the decree within the meaning of Article 179 of Schedule II of the Limitation Act

and the issuing of the notice contemplated by that section allows a fresh starting point for limitation under clause (5) of that article.

Dhonkal Singh v. *Phakhar* (*I. L. R. XV All.*, 84), *Behari Lal* v. *Salik Ram* (*I. L. R. I All.* 675), *Baness* v. *Turton* (23 *P. R.* 1883) and *Gopal Chander Manna* v. *Gosain Das Kalay* (*I. L. R. XXV Calc.*, 594), cited.

Gopal Sah v. *Janki Kore* (*I. L. R., XXIII Calc.* 217), referred to.

Provisions of section 373 of the Code of Civil Procedure are not applicable to proceedings in execution of decrees. MUHAMMAD NAWAZ-KHAN *v.* RAM DAS. **22 P R 1905**

198. An order under section 545 of the Code of Civil Procedure refusing to stay execution of a decree is not appealable. CAMERON *v.* BULAKI MAL.

146 P R 1907

199. *Execution of decree—Sale of third person's property—Liability of decree-holder to owner of property wrongfully sold by him—Estoppel by conduct—Measure of damages.*

'A' rented a *serai* from 'B' for storing his machinery. 'C' with A's permission stored some goods in the same place. Some time after 'A' removed his machinery but 'C's' goods remained there. 'B' obtained an *ex-parte* decree for rent against 'A' and in execution thereof sold up 'C's' goods, who thereupon sued 'B' for their value.

Held, that 'B' was liable to make good the loss caused by such sale, although he may have acted unintentionally and may not have been aware at the time the goods attached were of plaintiff, yet he had committed a tort in selling the property of a stranger in execution of a decree against 'A.'

The mere fact that 'C' took no steps to notify 'B' that the goods were his did not amount to an estoppel by conduct which might afford a ground for refusing the relief sought for by 'C'. PREMESHARI DAS *v.* BASHESHAR NATH. **129 P R 1908**

200. *Execution of decree—Stay of execution pending suit between decree-holder and judgment-debtor—Civil Procedure Code,* 1882, *section* 228.

Held, that a Court to which a decree is transmitted for execution is competent to act under section 243 of the Code of Civil Procedure and to stay execution during the pendency of a suit in such Court between the judgment-debtor and holder of the decree. BHAGWAN KOUR *v.* GAJINDAR SINGH.

130 P R 1908

201. *Execution of decree—Surety under Chief Court Circular Order LVII, rule II (i)—Liability of such surety—How and when enforceable.*

Held, that where a man stands surety under Chief Court Circular Order LVII, rule II (*i*), for a petitioner for revision to the Chief Court, the security must be limited

to the security demandable under the rules of the Court, no matter in what terms the security bond is worded and must, therefore, necessarily be confined to the performance of the order under revision.

Held, therefore, that no liability could be attached to the surety in the case unless and until the decree-holder had failed to satisfy his decree by the sale of the properties attached under the order under revision. AGIA SINGH *v.* BALLA MAL. **66 P R 1909**

202. *Execution of decree—Attachment of salary of Assistant Surgeons in military employ Army Act,* 1881, *sections* 136, 144, *proviso* 1, *and section* 190—*Civil Procedure Code,* 1908, *sections* 2 (17) *and* 60 (1) (*i*)—*Procedure where Commanding Officer refuses to carry out attachment—Order XXI, rule* 48 (3).

Held, that the pay of an Assistant Surgeon in military employ, not being a public officer within the meaning of section 60 (1) (*i*) Civil Procedure Code, 1908, is protected from attachment in execution of a decree

Held also, that where a Commanding Officer refuses to comply with an order of attachment, although the pay is attachable, the Court under order XXI, rule 48 (3), Civil Procedure Code, should proceed to recover from Government for the benefit of the decree-holder the sums which should have been stopped out of the judgment-debtor's pay, leaving Government to settle up as it pleases with its officer, the judgment-debtor. OAKES COMPANY *v.* J. P. DISCARCIE. **10 P R 1910**

203. *Execution of decree—Decree for possession—Resistance by a third party in possession—Procedure of executing Court—Difference between the old and new Code—Civil Procedure Code,* 1882, *section* 331—*Civil Procedure Code,* 1908, *Order XXI, rules* 97, 99 *and* 103.

Held, that where in execution proceedings of a decree for possession the property is found to be in possession of a third party, who resists delivery of possession to the decree-holder, the executing Court should proceed under rules 97 and 99. Order XXI of the new Civil Procedure Code, 1908, and make a summary enquiry into the claim of the third party, that he is holding possession in good faith, and pronounce a decision, leaving the aggrieved party to his remedy by suit under rule 103.

The difference in procedure between the new Code and the old Code, section 331, pointed out. HAR NIHAL *v.* SHAMJI MAL.

14 P R 1910

204. *Execution of decree—Continuation of previous application.*

Where an application for execution of a decree was made on the 11th May 1906 by attachment and sale of *movable property*, which was fully attached and sold, but the money was not paid to the decree-holder owing to an appeal filed by the judgment-debtor nor had the application ever been definitely struck off the file or consigned to the Record-room, and other applications were

made on the 10th March and 15th June 1908 for attachment and sale of houses not mentioned in the application of the 11th May 1906

Held, that the applications of 1908 were fresh applications and not merely continuations of the former application. HIRU *v.* GUR CHARAN. **17 P R 1910**

205. *Execution of decree—Civil Procedure Code,* 1882, *sections* 244 *and* 311—*Application to have sale set aside by reason of defective attachment—Limitation—Indian Limitation Act, XV of* 1877, *Schedule II, article* 166.

The decree-holder applied for execution by attachment and sale of the four shops 2115 to 2118 and filed a plan, correctly showing the boundaries of the shops. In the warrant of attachment the numbers were recorded as 2115, 2125, 2118, but the boundaries and measurements were accurately recorded and in the advertisement of sale the correct numbers were recorded. The sale was effected on the 10th May 1907. On the 14th August 1907 another application was filed under section 311-244 of the Civil Procedure Code, 1882, and was dismissed by the first Court on the ground that it was an application under section 311, and time-barred under article 166 of the Indian Limitation Act, 1877. The lower appellate Court, following 76 *P. R.* 1890 (*Lala Seva Ram* v. *Kanshi Ram*) found that section 311 did not apply, the sale being void by reason of the attachment being imperfect. On appeal to the Chief Court—

Held, dissenting from 76 *P. R.* 1890 (*Lala Seva Ram* v. *Kanshi Ram*) and following *Sheodhyan* v. *Bhola Nath* (1899) *I. L. R.* 21 *All.* 311 that the error in the warrant of attachment constituted merely a material irregularity which could be the subject of objection to the sale under section 311, Civil Procedure Code, 1882, and did not render the sale void *ipso facto*, and thereby oust the provisions of section 311 and make section 244, Civil Procedure Code, 1882, applicable. The application must be treated as having been made under section 311, Civil Procedure Code, and was barred by limitation under article 166 of the second Schedule of the Indian Limitation Act, 1877. MADHO MAL *v.* JAWAHIR SINGH. **40 P R 1910**

206. *Execution of decree—Joint decree for possession of immovable property—Devolution of right upon judgment-debtor by inheritance—Decree extinguished* pro tanto—*Execution by one of several decree-holders.*

Held, following *Khudai* v. *Sheo Dayal* (1888) *I. L. R.* 10 *All.* 570, that where subsequent to a decree a portion of the right to which the decree relates devolves either by inheritance or otherwise upon the judgment-debtor or is acquired by him under a valid transfer, the inheritance or decree does not become incapable of execution, but is extinguished only. This rule of law is sufficiently general to comprehend alike cases in which decree is for money

EXECUTION OF DCEREE—*concld.*

only and where it is for immoveable property.

Held, also following *Harrish Chunder* v. *Koli Sundere Debi* (1882) *I. L. R.* 9 *Cal.* 482, P. C. that co-plaintiff can obtain execution according to the extent of his interest in the decree and that there is nothing in the former Code of Civil Procedure which bars such an application. FAZAL ILAHI *v.* HABIB BAKHSH. **61 P R 1910**

208. *Execution of decree—Application by judgment-debtor to set aside sale, after the auction sale had taken place—Refusal of such application—Appeal—Civil Procedure Code, Act V of* 1908, *Order XXI, rules* 83 *and* 89, *and Order XLIII, rule* 1 (*j*).

Held, that an application made by the judgment-debtor to have a sale of immoveable property set aside, after the auction sale had taken place, without, at the same time, making a deposit, does not fall within the purview of either rule 83 or rule 89 of Order XXI of the Civil Procedure Code, 1908, and consequently under Order XLIII, rule 1 (*j*) an appeal does not lie from the order of the first Court refusing to set aside the sale. GHANIA LAL *v.* POHLO MAL. **72 P R 1910**

209. *Execution of decree—Attachment of land by Civil Court—Submission of record to Collector for intervention—No appeal, if Collector refuses.*

Held, that where in execution of a decree after attaching agricultural land, a Civil Court sends the record to the Collector, it amounts to an order enquiring from the Collector whether he wishes to intervene under section 72, Civil Procedure Code, Act V of 1908, and that no appeal lies against the order of the Collector if he refuses to intervene. RAJA RAM *v.* DURGA DUT. **5 P R 1910 Rev.**

EXECUTION SALE.

See SALE IN EXECUTION OF DECREE.

EXECUTORS.

See PROBATE.
PROBATE AND ADMINISTRATION ACT.
Succession Act.

1. *Lower Court refusing to grant probate of will to executor but granting letters of administration without the will annexed to testator's representative—No appeal by executor*—Locus standi *of party interested in will to appeal against grant of letter of administration.*

See APPEAL I.—CIVIL. **55 P R 1894**

. *Release of surety for an executor on ground of waste of estate by the executor—Appeal from an order refusing discharge—Probate and Administration Act,* 1881, *section* 86.

See APPEAL I.—CIVIL. **52 P R 1902**

EXECUTORS—*concld.*

3. *Payment of debt to representative of deceased person—Discharge—Right of executors of the deceased to ignore such payment—Notice of claim—Duty of executors—Negligence, effect of.*

See REPRESENTATIVE OF DECEASED PERSON. **72 P R 1903**

4. *Application by one of two executors for revocation of grant of probate—"Grant has become useless and inoperative through circumstances—Dissensions between co-executors—Indian Succession Act (X of* 1865), *section* 234 (4)—*Court referring question to arbitrators.*

Held, on an application under section 234 of the Indian Succession Act, 1865, by one of two executors for revocation of a probate previously granted to both that the expression that "the grant has become useless and inoperative through circumstances" in clause (4) of the section did not apply to a case where the allegation was that the two executors appointed by the will to whom probate had been granted, found it difficult to work harmoniously in concert.

Semble: that, though under section 261 of the Act the proceedings in contentious cases are to take as nearly as may be, *the form of a regular suit* according to the provisions of the Civil Procedure Code, the Court before whom an application under section 234 of the Act is instituted has no jurisdiction to delegate the decision of the question raised to arbitrators, even with the consent of the parties. CAMPBELL *v.* MRS. SIMPSON. **72 P R 1894**

5. *Executor—Commission on collection of assets allowed where executor had no legacy for his trouble.*

Held, that an executor in India is entitled to receive a commission on the assets collected by him where no legacy has been devised to him by the testator for the former's trouble and services. IN RE THE ESTATE OF THE LATE SARDAR DAYAL SINGH. **76 P R 1905**

EX PARTE DECREE.

1. *Competency of appeal from* ex parte *Decree.*

See APPEAL II.—COMPETENCY OF. **105 P R 1880**

2. *Order refusing to re-hear* exparte *case—Order passed before Act XII of* 1879—*Appeal filed after Act XII of* 1879.

See APPEAL II.—COMPETENCY OF. **75 P R 1881**

3. *Appeal from.*
See APPEAL II.—COMPETENCY OF, **60 P R 1883**

4. *Appeal from an order setting aside an* ex parte *decree.*

See APPEAL II.—COMPETENCY OF. **103 P R 1905**

EX PARTE DECREE—*concld.*

5. *Power of Appellate Court to order security to be given for satisfaction of decree before re-hearing of appeal decided* ex parte.

See APPEALLATE COURT, POWER OF. **70 P R 1885**

6. *Death of judgment-debtor—Competency of the legal representative of the judgment-debtor to have the* ex parte *decree set aside.*

See CIVIL PRPCEDURE CODE, 1908 O. IX, R. 13. **36 P R 1903** **42 P R 1904** **60 P R 1904**

7. *Setting aside decree* ex parte *against a defendant.*

See CIVIL PROCEDURE CODE, 1908, O. IX, R. 13. **72 P R 1905**

8. *Transfer of* ex parte *money decree—competency of transferee to prosecute suit on original cause of action if the* ex parte *decree is set aside.*

See CIVIL PROCEDDRE CODE, 1908, O. XXI, R 16. **78 P R 1905**
DECREE.

9. *Application by respondent for re hearing appeal decided* ex parte.

See LIMITATION ACT, 1877, SCHEDULE II, ARTICLE 164. **5 P R 1897**

10. *Application for rehearing of appeal heard* ex parte—*Limitation.*

See LIMITATION ACT (XV OF 1877), SCHEDULE II, ARTICLE 169 **66 P R 1885**

11. *Value of, as evidence.*
See RES JUDICATA. **78 P R 1883**

12. *Application for revision of order rejecting appeal from order refusing to set aside.*

See REVISION IN CIVIL CASES. **114 P R 1883**

13. *Payment of decretal amount in executing Court on an* ex parte *decree by another Court is equivalent to paying into the latter Court and does not bar an application for setting aside the* ex parte *decree.*

See SMALL CAUSE COURT ACT 1887. **54 P R 1910**

EX PARTE SUITS.

1. In an *ex parte* cause sufficient evidence must be taken to show completely upon what the claim is based, and the plaintiff must make out a *primâ facie* case, although slight evidence of what is not contradicted may be sufficient; but plaintiff must not leave any main portion of his case to be taken for granted. RADHA LALL *v.* MOHKUM DASS. **85 P R 1866**

2. A case should not be decided *ex parte* when it is brought on, on the day appointed, at a place distant from that at which the defendant was summoned to appear. GOORDIAL SINGH *v.* MUHEED DASS. **61 P R 1667**

EX PARTE SUITS—*concld.*

3. In an *ex parte* case, if the summons on defendant is not good in law, he is entitled to a new trial. GOORMOOKH SINGH *v.* KOORA. **79 P R 1868**

4. When a defendant applies within 30 days after process for executing the decree has been executed, for an order to set aside an *ex parte* decree of a small Cause Court, he is not bound to deposit in Court the amount decreed, but the Court has a discretion to pass an order as to costs. MAMOOLA *v.* RAM GOPAL.

59 P R 1871

5. Ex parte *decree—Application by defendant to set aside—Act XI of* 1865, *section* 21—*Act X of* 1877, *section* 100—*Sufficient cause.*

Held, that a defendant who is absent at an adjourned hearing, the adjournment having been granted for his benefit, is not precluded from showing sufficient cause for setting aside an *ex parte* decree passed against him for default.

The question of what is sufficient cause, in a particular case, to account for the non-appearance of the defendant, is a question not of law but of fact, dependent upon the circumstances of the case. SHANKAR DASS *v.* CROHAN. **26 P R 1879**

6. *Application to set aside* ex parte *decree previous to plaintiff's suing out execution.*

Where the lower Court declined to entertain defendant's application to set aside an *ex parte* decree obtained against him upon the ground that such application could not be entertained until plaintiff had sued out execution of his decree, the Chief Court, on the revision side, set aside the lower Court's order as erroneous, and directed him to dispose of defendant's application on the merits. SIRDAR GURBAKHSH SINGH *v.* HURBUNS. **152 P R 1879**

EXTINGUISHMENT OF RIGHT.

See ABANDONMENT.

1. *Decree whose execution has become barred by limitation—Extinguishment of right.*

See LIMITATION ACT, 1877, SECTION 28. **3 P R 1887**

2. *Letter intimating that plaintiff did not wish to purchase certain land—Abandonment—Extinction of right to immoveable property.*

See REGISTRATION ACT, 1877, SECTION 17. **58 P R 1890**

EXTURPI CAUSA ACTION ON ORITUR.

See FRAUD. **42 P R 1883**

F.

FAQIR.

1. *Will by Udasi Fakir.*
See CUSTOM—ALIENATION. **29 P R 1881**

2. *Succession of Byraghi Fakir to his natural family.*
See CUSTOM VIII.—MAINTENANCE AND SUCCESSION.
W. MISCELLANEOUS. **24 P R 1880**

3. *Succession—Kadiri Fakir of Khangah Shahgadda.*
See CUSTOM VIII.—MAINTENANCE AND SUCCESSION.
W. MISCELLANEOUS **57 P R 1880**

4. *Hindu becoming a fakir—Right of.*
See HINDU LAW—INHERITANCE. **1 P R 1868**
15 P R 1874

5. *Sanyasi Fakir—Succession to occupancy right.*
See TENANCY ACT, 1868, SECTION 36. **82 P R 1883**

FALSE PERSONATION OF DEFENDANT.

Where the defendant was falsely personated at the hearing, *held* that the decree passed in the suit for the plaintiff was *ex parte*. JAMAL DEEN *v.* NIHAL SINGH. **87 P R 1869**

FALSE REPORT.

Damages, suit for—False and malicious report—Absence of reasonable and probable cause.

Plaintiff sued to recover from defendant's Rs. 320 damages, on the allegation that defendants had falsely and maliciously reported to the Police authorities that he, plaintiff, had poisoned his step-son, in order to get his land.

Held, that to entitle plaintiff to a decree for damages, it was incumbent on him to prove that the report was made by the defendants and was false in fact, that the defendants were actuated by malice, and that the report was made without any reasonable or probable cause for so doing.

It is not sufficient to prove malice. It is essential to the success of such an action that the plaintiff should also prove the absence of any reasonable or probable cause for making the imputation complained of. MOSALLI KHAN *v.* HABIB KHAN. **19 P R 1879**

FALSE STATEMENT OF FACTS. SUIT BASED ON.

See VENDOR AND PURCHASER. **85 P R 1879**

FARIDKOT STATE. STATUS OF.

1. *Suit on foreign judgment—Status of Faridkot State.*

Held, that Faridkot is not, by reason of being a Protected Dependent State, devoid of the power to prescribe the rules of civil jurisdiction for its own tribunals, *e. g.*, a rule empowering those tribunals to hear and decide a cause against a non-resident alien, when the obligation sought to be enforced was one contracted by him while resident in the State.

Held, further, that the Faridkot State is situate beyond the limits of British India as defined in the Code of Civil Procedure, and that the Faridkot Court is a foreign Court within the meaning of section 2 of the Code. RAJA OF FARIDKOT *v.* BIR SINGH.

191 P R 1888

2. *Foreign judgment, suit on—Status of Faridkot State.*

Held, that Faridkot being a Native State, the Raja of which has been recognized by Her Majesty as having an independent civil, criminal and fiscal jurisdiction, the judgment of its Courts are, and ought to be, regarded in Her Majesty's Courts of British India as foreign judgments. SIRDAR GURDYAL SINGH *v.* RAJA OF FARIDKOT. **112 P R 1894**

FARM.

See ADVERSE POSSESSION. **63 P R 1875**

See LIMITATION ACT, 1871, SCHEDULE II, ARTICLE 44. **41 P R 1881**

See LIMITATION ACT, 1877, SCHEDULE II, ARTICLE 142. **36 P R 1885**

See MUNICIPAL COMMITTEE. **10 P R 1867**

FARMER OF OPIUM MONOPOLY

See OPIUM ACT 1878. **114 P R 1881**
105 P R 1883

FATHER'S RIGHT TO GUARDIANSHIP.

Conduct of natural guardian—Application by father who had changed his religion for the guardianship of his minor sons who had been brought up with his acquiescence as Muhammadans—Waiver of right—Welfare of minor.

See GUARDIAN. **84 P R 1894**

FEES.

See under ADVOCATE.
ARBITRATOR.
COUNSELS' FEES
CUSTOM CESSES.
LEGAL PRACTITIONER ACT, 1879, SECTION 28.
PLEADER'S FEE.
PLEADER AND CLIENT.
RELIGIOUS INSTITUTION.

FEES—*concld.*

1. *Absence of agreement—Reasonable remuneration.*

In the absence of any agreement between a medical man and his patient, the former is entitled to recover as fees for medical attendance whatever appears a reasonable remuneration under the circumstances of the case.

Held, in the present case, that the sum of Rs. 376 awarded by the Commissioner was not an unreasonable amount of remuneration for 73 professional visits paid by plaintiff to defendant. ADLARD *v.* CLIMO.
104 P R 1879

FEMALE.

1. *Competency of a female prospective heir to control the acts of a daughter who had succeeded to her father's estate.*

See CUSTOM I. C.—ALIENATION BY DAUGHTER. **61 P R 1906**

2. *Competency of a widow entitled to succeed collaterally to contest the validity of an alienation made by the widow of a collateral of her husband.*

See CUSTOM VIII H.—SUCCESSION OF WIDOWS. **72 P R 1906**

FERRY.

1. *Ferry rights—Act of State—Jurisdiction.*

See ACT OF STATE. **56 P R 1876**

2. *Suit for share of ferry income.*

See SMALL CAUSE COURT, JURISDICTION OF. **51 P R 1887**

3. *Suit for ferry tolls.*

See SMALL CAUSE COURT, ACT, 165, SECTION 6. **173 P R 1888**

4. *Suit by lessee of Government ferry for recovery of tolls.*

See SMALL CAUSE COURT ACT, 1887, SCHEDULE II, ARTICLE 13.
48 P R 1887
80 P R 1898

5. *Tort—Breach of contract—Cause of action.*

The plaintiffs purchased the ferry lease of the Chenab and Phulku rivers at Wazirabad giving them the exclusive right to levy tolls on those rivers. The defendant conveyed materials and workmen from the north and the south side, to the middle of the bed of the Chenab by means other than the ferry bridge thereby causing an alleged loss to plaintiffs. *Held*, that the action of the defendant amounted to a tort, and not to a breach of contract.

Held, further, that to create a disturbance of the rights of an ancient ferry, there must be a *carrying* of passengers, &c., from *point* to *point* in the *line* of such ferry, whether direct-

FERRY—*concld.*

ly or indirectly, and defendant not having thus invaded the plaintiffs' exclusive right, the plaintiffs have no cause of action. MAKHAN SINGH *v.* THE SECY. OF STATE FOR INDIA IN COUNCIL. **30 P R 1877**

FINANCIAL COMMISSIONER.

See APPEAL VII.—REVENUE.
41 P R 1867

JURISDICTION OF SETTLEMENT COURT.
50 P R 1873
39 P R 1874

MUNICIPAL COMMITTEE.
79 P R 1870

REVIEW OF JUDGMENT.
38 PR 1869
16 P R 1871
1 P R 1872 Rev.
5 P R 1881

REVISION—REVENUE.
2 P R 1910 Rev.

FODDER.

—*Agriculturist—Decree against—Fodder—Liability to attachment.*

See ATTACHMENT. **93 P R 1904**
82 P R 1907

FORECLOSURE.

See MORTGAGE—FORECLOSURE.

See PUNJAB ALIENATION OF LAND ACT, 1900.

1. *Suit for pre-emption—Foreclosure of mortgage—Omission of mortgagee to take steps under section 8 of Regulation XVII of 1806—Acquiescence by mortgagor in such omission—Right of mortgagee who had obtained decree for foreclosure to plead that such decree was illegal and gave no rise to pre-emption.*

See ESTOPPEL. **155 P R 1882**

2. *Extinction of mortgagee's rights—Suit for foreclosure-form of decree.*

See LIMITATION ACT, 1877, SECTION 28
83 P R 1883

3. *Foreclosure proceedings instituted more than 12 years after determination of mortgagor's right to possession.*

See LIMITATION ACT, 1877, SCHEDULE II, ARTICLE 135. **35 P R 1899**

4. *Suit for—Limitation.*

See LIMITATION ACT, 1877, SCHEDULE II, ARTICLE 147.
151 P R 1888, F B

FORECLOSURE—*concld.*

5. *Foreclosure proceedings—Suit by mortgagor for redemption after expiry of year of grace.*

See MORTGAGE—REDEMPTION.
27 P R 1900

6. *Suit for—Regulation XVII of 1806.*

See MORTGAGE—FORECLOSURE.

7. *Notice of—Gift of equity of redemption prior to the expiry of mortgage term—Places donee in shoes of donor—Notice of, to donee necessary though donor alive.*

See MORTGAGE—FORECLOSURE.
86 P R 1910

8. *Mortgage by conditional sale—Mortgagee's remedy since passing of Punjab Land Alienation Act.*

See MORTGAGE—FORECLOSURE.
22 P R 1910

9. *Notice to pre-emptors—Person proposing to foreclose.*

See PRE-EMPTION—NOTICE.
35 P R 1881
155 P R 1882
90 P R 1887

10. *Regulation XVII of 1806—Application to foreclose—Minor—Notice how to be served.*

Held, that the copy of the application and *parwana* referred to in section 8, Regulation XVII of 1806 were sufficiently served on a minor mortgagee for whom no guardian had been appointed under the Act by service on his brother with whom he lived.

2. *N. W. P. Reps.*, 444, followed. LAL SINGH *v.* GOPAL DAS. **94 P R 1892**

FOREIGN JUDGMENT.

1. *Suit for recovery of money misappropriated by Khazanchi of Native State—Defect of jurisdiction or other like cause—Suit based on void judgment of foreign Court.*

See LIMITATION ACT, 1877, SECTION 14.
34 P R 1898

2. *Suit on a foreign judgment does not lie in a Small Cause Court.* KANHYA LAL *v.* ALLA DITTA. **97 P R 1888**

See also UDE RAM *v.* MUSSAMMAT DAYAN. **37 P R 1889**

3. *Suit on—A decree of a foreign Court (e. g. of Faridkot).*

Held, to be a cause of action in a Court of British India KHETA MALL *v.* JAWAHIR MALL. **4 P R 1874**

4. *Suit on—Power and status of Faridkot State—Power of State to prescribe rules of Civil jurisdiction for its own tribunals—"Foreign Court"—Competency of Raja of Faridkot to sue in British Courts—Right to*

FOREIGN JUDGMENT—*contd.*

sue on foreign judgment—Judgment of Native State—Cause of action—Defence to suit on foreign judgment—Plea that Court was not of competent jurisdiction—Plea of want of notice by defendant—Other admissible pleas —Civil Procedure Code (Act XIV of 1882), *sections* 2, 14, 430—433.

In a suit based upon judgment of the Civil Court of the Faridkot State *held* that that State is not, by reason of being a Protected Dependent State, devoid of the power to prescribe the rules of Civil jurisdiction for its own tribunals, *e. g.* a rule empowering those tribunals to hear and decide a cause against a non-resident alien, when the obligation sought to be enforced was one contracted by him while resident in the State.

Held further, that the Faridkot State is situate beyond the limits of British India as defined in the Code of Civil Procedure, and that the Faridkot Court is a foreign Court within the meaning of section 2 of the Code.

Held, also, that the Raja of Faridkot is competent to sue in the British Courts under one or other of the sections 430—433 of the Code, either as the head of a Foreign State, recognized by the Governor-General in Council (section 431), or as a Sovereign Prince, or Ruling Chief, in alliance with the British Government (as implied by sections 432, 433), or as an alien friend (section 430), or a subject of Her Majesty, in which latter case there can be no doubt of his competency to sue.

The "private rights" referred to in section 431 (*b*) of the Code are those private rights of the State which must be enforced in a Court of Justice as distinguished from its political or territorial rights which must, from their very nature, be made the subject of arrangement between one State and another.

Held, that a foreign judgment may constitute a cause of action in a Court in British India, and that the judgments of Courts of Native States in India do not form any exception to the general rule.

Held, also, that it may be pleaded in our Courts as a defence to a suit on a foreign judgment that the Court which made it was not a Court of competent jurisdiction.

Held, further, that, according to the law to be administered in our own Courts, a foreign Court may be a Court competent to try the case and pronounce the judgment, notwithstanding the defendant was not a subject of or resident in the State, or present when the proceedings commenced, if the obligation in respect of which the foreign judgment was pronounced was one contracted by the defendant during his residence in the State and intended to be there fulfilled.

Held, further, that it may be a good defence in our Courts, in an action on a foreign judgment, that the defendant had no opportunity to defend himself in the foreign Court and no notice sufficient to give him such opportunity as required by the principles of natural justice, but not that the notice was not served in strict accordance with

FOREIGN JUDGMENT—*contd.*

the rules of the foreign Court in that behalf.

Held, further, that it may be pleaded to an action in our Courts upon a foreign judgment pronounced on the merits that it is, upon its face, founded upon an inaccurate view of the law of British India, or of International Law, or that it is contrary to natural justice or has been obtained by fraud, but not that the judgment is erroneous upon the merits of the questions decided. *Kheta Mull* v. *Jowahir Mull* (No. 4 *P. R.* 1874) cited. RAJA OF FARIDKOT *v.* BIR SINGH. **191 P R 1888**

5. *Suit on judgment of Nahan Court—Right to sue—Cause of action—Jurisdicton—* Ex parte *decree—Judgment not on merits of the case—Proper procedure where Court has not gone into merits owing to omission of defendants to appear and plead in foreign Court.*

A judgment of a Civil Court in the Nahan State *held* to form a good cause of action in a Biritish Court, No. 191 *P. R.* 1888, cited and followed.

Though want of jurisdiction in the foreign Court which passed the judgment sued upon is a good ground for defending a suit brought on that judgment, *held* that a finding by the lower Court that the foreign Court had no jurisdiction, merely because the defendants were not residing in the foreign State when the suit commenced, held no property there, were not subjects of the State, and never recognized the authority of the Court which tried the case, is not sufficient to dispose of the question of jurisdiction in the absence of a finding as to where the cause of action arose. It is a good defence to a suit brought on a foreign judgment that it has not been given on the merits; when therefore it appeared that the judgment sued upon was not on the merits at all, and only professed to be so sufficiently to justify the passing of an *ex parte* decree (the defendant not having appeared, and defended the suit in the foreign Court, *held* that this was not enough, as even in an *ex parte* case, the judgment should be on the merits as far as they can be ascertained *ex parte*.

But *held* further, that it did not therefore follow that plaintiff's suit should be dismissed, but that the proper order to pass was that plaintiff should now be allowed to prove his case on the merits, and that there should be a full enquiry and a decision on the merits, as if the suit had been originally brought in the British Court. MR. F. R. JONES *v.* ZAHRU MAL. **66 P R 1889**

6. *Civil Procedure Code,* 1882—*Suit on foreign judgment—Enquiry into the merits of case in which the judgment was passed.*

According to the Code of Civil Procedure, 1882, section 14, as amended by Act VII of 1888, when a suit is instituted in British India on the judgment of a Court of a Native State in India, the Court in which the suit is instituted is not precluded from inquiry into the merits of the claim. RAMJI DAS *v.* MOKANDI LAL. **102 P R 1892**

FOREIGN JUDGMENT—*contd.*

7. *Foreign judgment, suit on*—status *of Faridkot State—Decree passed* "in absentem" *and* "ex-parte" *by foreign Court—Jurisdiction of Court*—"Actor sequitur forum rei" —*Cause of action.*

Held, that Faridkot being a Native State, the Raja of which has been recognized by Her Majesty as having an independent civil, criminal and fiscal jurisdiction, the judgments of its Courts are, and ought to be, regarded in Her Majesty's Courts of British India as foreign judgments.

Held further, that in a personal action in a Court to which the defendant is not subject at the time of suit, there being no exception in favour of the exercise of jurisdiction against a defendant not otherwise subject to it by the Courts of the country in which the cause of action arose, or (in cases of contract) by the Courts of the *locus solutionis*, a decree pronounced *in absentem* by a foreign Court, to the jurisdiction of which the defendant has not in any way submitted himself, is by international law an absolute nullity ; that the defendant is under no obligation to obey it, and that it must be regarded as a mere nullity by the Courts of every nation, except (when authorized by special local legislation) in the country of the *forum* by which it was pronounced. SARDAR GURDYAL SINGH *v.* RAJA OF FARIDKOT. **112 P R 1894, P C**

8. *Civil Procedure Code,* 1882, *sections* 13, 14—*Decree of foreign Court—Kabul Court—Compromise.*

Plaintiff sued on the allegations that defendant had entered into a sort of partnership with his Highness the Amir of Kabul in regard to the tolls to be levied on fruits leaving Kabul territory, one of the terms of such agreement being that defendant was to receive one-third share and His Highness the Amir the remaining two-thirds share of the said dues; that defendant had sold his one-third share to plaintiff, and that the said transaction had resulted in a profit. Plaintiff, therefore, claimed a settlement of accounts and a sum of Rs. 17,500 to be due to him. Defendant in reply pleaded that there was a loss and not a profit on the transaction, that nothing was due to plaintiff, and that the plaintiff had already sued him in the Kabul Court, which had found that a certain sum was due to defendant, that this claim had been settled, and that plaintiff's present claim was barred by the decision of the Kabul Court. Defendant further pleaded that as plaintiff had affixed his seal to the said decision and as it had been acted upon, it should be regarded as a mutual settlement and should stand as a bar to the plaintiff's suit. It was alleged that plaintiff in December 1894, filed a petition praying His Highness the Amir to have plaintiff's accounts with defendant settled, and that this petition was referred by his Highness to the officers in charge of the *Panchayatkhana* at Kabul "to be directed to decide according to the principles of equity and justice the case relating to partnership

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business between plaintiff and defendant." It appeared that some of defendant's witnesses were examined by the said *Panchayat-khana*, but on plaintiff asking for time to produce his witnesses from Peshawar, the Court rejected his application on the ground that if plaintiff could produce proof from Peshawar, he might bring this fact to the notice of His Highness, "so that His Highness may pass orders on his behalf." On the 20th January 1895 the *Panchayat-khana* submitted its findings to His Highness, and on the receipt of his orders upon them, the Court, on the 3rd February 1895, passed its judgment whereby plaintiff was directed to pay defendant Rs. 3,213 of Kabuli coin, and defendant was mulct in Rs. 1,150 Queen's coin. The seal of plaintiff and the signature of defendant were then taken upon the said judgment.

The lower Court held that though the order of the Kabul Court, considered as the judgment of a Foreign Court, could not be pleaded as a bar to the present suit, it amounted to a compromise binding on the plaintiff, and therefore dismissed the suit.

Held, on the facts of the case, that the said order did not amount to a compromise binding on plaintiff.

Held, further, that the judgment pleaded in bar to plaintiff's suit had not been shown to be the order of a regularly constituted tribunal having jurisdiction to pass final orders in this case, and that it had not in fact passed any such final orders, the fact that the *Panchayat-khana* did not pass orders on its own authority, but before giving judgment referred the case for the opinion of His Highness, clearly showing that the Court was not one of independent jurisdiction capable of finally deciding the matter before it.

When the judgment of a Foreign Court is pleaded in bar, under sections 13 and 14 of the Civil Procedure Code, it must be shown that the judgment so relied on is the judgment of a duly and regularly constituted Court of law, having independent jurisdiction to decide the matter in dispute, and, so far as the Court itself is concerned, to decide it finally. SHAHBAZ KHAN *v.* NUR MUHAMMAD KHAN. **2 P R 1899**

9. *Suit on foreign judgment—Jurisdiction of High Court of Judicature in England over Indian British subjects residing in India, under contract made and broken in England —Interest.*

Held, that according to English Law, it is the duty of the debtor to seek out his creditor and pay him wherever he may be, and therefore the fees of a solicitor residing in England for work done are payable in England, when no particular place of payment is named, and non-payment is a breach within the jurisdiction of the contract, which was to be performed in England.

Held also, that a defendant who has made and broken a contract in England, and who is a British subject, is amenable

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FOREIGN JUDGMENT—*concld.*

to the jurisdiction of the High Court of Judicature in England, after he has been properly served with notice of action in accordance with the English rules of procedure notwithstanding that he is a native of British India and residing there.

Held also, that a judgment passed in England against a defendant in India, who has been duly served with a writ of summons but who did not enter appearance or deliver a defence, when the proceedings have been strictly in accordance with the existing rules, must be considered as one passed on the merits.

Held further, that the English Statute as to judgments carrying interest does not apply to India nor does such a case fall within the scope of Act XXXII of 1839 and plaintiff suing on a foreign judgment cannot, therefore, recover more than appears on the face of the judgment.

See JURISDICTION.

RAM CHAND *v.* MR. JOHN BARTLETT.
75 P R 1909

FOREIGN STATE.

—Contract made in Foreign State—Application of law of British India.
See PRINCIPAL AND SURETY.
7 P R 1882 P C

FOREIGN TERRITORY.

See BRITISH INDIA.

1. *Service of summons in foreign territory.*
See CIVIL PROCEDURE CODE, 1908, O. V, R. 25, &c. **82 P R 1869**

2. *Cause of action in Foreign Territory—Intricate nature of enquiry.*
See JURISDICTION OF SMALL CAUSE COURT. **55 P R 1872**

3. *Liability contracted in foreign territory—Right to sue in British India.*
See RIGHT TO SUE.
4 P R 1885

FOREST ACT, 1878.

Sections 2 and 67.

—Indian Forest Act, 1878, *sections* 2, 67 *—Contract made by Military Officer invested with certain powers as forest officer—Unauthorized contract—Principal and agent—Contract Act,* 1872, *section* 237*—Continuing breach of contract—Limitation Act,* 1877, *section* 23 *and 2nd Schedule, article* 115.

A certain forest reserve containing valuable forest produce was made over temporarily by Government to a cavalry regiment for the purposes of supplying the regiment with grass, and the officer commanding the regiment was, by two notifications issued by Government, appointed to be a forest officer for the purpose of holding charge of the area in question and was given powers under section 67 of the Forest Act in respect of such area. Thereupon the officer commanding, under the impression that he had been given unlimited powers of dealing with all the produce of

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FOREST ACT, 1878—*contd.*
Sections 2 and 67—*contd.*

the reserve, entered into a contract with plaintiff whereby the latter, in return for a consideration which the Court held to be quite inadequate, was given the power of cutting down, removing and disposing of for his own benefit practically the whole of the forest produce. The term of the contract was for the year ending 31st December 1890, but the operations of the plaintiff under the contract was brought to an end by an order of the General Officer Commanding, dated the 23rd April 1890, which was communicated to plaintiff on the 24th or 25th *idem.* On the 2nd January 1894 (the 1st January being a *dies non*) plaintiff sued the Secretary of State for India in Council for damages for breach of contract. For the defendant it was pleaded that the suit was barred by limitation; that the contract was *ultra vires* the authority of the officer commanding the regiment; that it had never been ratified by defendant, and that the latter was in no way bound by it. For plaintiff it was contended that the suit was within time, and the officer commanding had authority to make the contract either under the general notification of the Local Government (No. 400 F., dated 6th November 1878) or under the special notification referring to this particular reserve and constituting the officer commanding a forest officer in respect thereof. It was also urged that even if the contract was unauthorized, the Secretary of State was bound by the obligation with reference to section 237 of the Contract Act, and was estopped from denying the authority of the officer commanding, whom defendant had held out as having authority.

Held, that, assuming there was a valid and binding contract between the parties under which plaintiff had the right to remove the forest produce to the end of 1890, it was not within the power of defendant arbitrarily to terminate the contract before the period agreed upon had expired, and consequently the relation between the parties would continue in spite of defendant preventing plaintiff from carrying out his part of it, and the breach would continue so long as defendant prevented plaintiff up to the expiry of the period fixed.

Held, therefore, that though a cause of action arose in favour of plaintiff when his operations were stopped in April 1890 and he could have sued at once on that, plaintiff had a further cause of action in respect of loss sustained subsequently to that and up to the end of the period of contract, and that consequently plaintiff's suit, which was instituted within three years of the 31st December 1890, was within time.

But, *held,* that defendant was in no way bound by the contract in question. Punjab Government Notification No. 400 F., dated 6th November 1878, by which powers to contract within certain pecuniary limits are conferred on different grades of forest officers, is not applicable to the case of an officer of another Department who has been appointed a forest officer for the purpose of

FOREST ACT, 1878—*concld.*

Sections 2 and 67—*concld.*
looking after some petty area, and the special notifications under which the officer commanding was appointed to be a forest officer were intended merely to invest that officer with certain powers under section 67 of the Forest Act.

Held, therefore, that the notifications referred to did not in any way affect the decision of the case, which must turn on the power of the officer commanding the regiment to bind the defendant in virtue of the former's position as such commanding officer and the position which he held, because the reserve had been made over to his charge for the purpose of being used as a source of grass-supply to the regiment.

Held, upon a consideration of the special circumstances of the transaction in question, that the officer commanding the regiment, whatever his powers of contracting in respect of the area might be, had no power or authority to enter into this particular contract, regard being had to its nature, and that defendant by merely making the area over to that officer's regiment for the purpose of supplying it with grass, had not in any way held out the officer commanding as having authority to enter into a contract of this kind.

Held, further, that the evidence, oral and documentary, did not show that there had been any subsequent ratification of the contract by the defendant. GURMUKH SINGH *v.* SECRETARY OF STATE. **16 P R 1899**

FORFEITURE.
See ACT OF STATE.
CONFISCATION OF PROPERTY.

FORFEITURE, SUIT FOR.
See LIMITATION ACT, 1877, SCHEDULE II, ARTICLE 143.
180 P R 1883

FORFEITURE BY TENANT.
—*Unauthorized alienation by tenant—Forfeiture.*
See PUNJAB TENANCY ACT, 1868, SECTION 34. **138 P R 1883**
54 P R 1884
74 P R 1884
See PUNJAB TENANCY ACT, 1887, SECTION 38. **2 P R 1901 Rev.**

FORFEITURE BY WIDOW.
1. *Remarriage of widow—Forfeiture.*
See CUSTOM—VIII. SUCCESSION 1. REMARRIAGE AND UNCHASTITY OF WIDOW.
137 P R 1883
123 P R 1884
80 P R 1885
81 P R 1885
25 P R 1888
117 P R 1888
171 P R 1888
90 P R 1889
46 P R 1891
100 P R 1891
74 P R 1893
143 P R 1893
144 P R 1893
145 P R 1893
88 P R 1900
115 P R 1900

FORFEITURE BY WIDOW—*concld.*

2. *Unchastity of widow—Forfeiture.*
See CUSTOM—VIII. SUCCESSION—1. REMARRIAGE AND UNCHASTITY OF WIDOW
158 P R 1883
118 P R 1884
105 P R 1885
75 P R 1886
2 P R 1888
90 P R 1888
107 P R 1888
25 P R 1891
34 P R 1893
40 P R 1899

FORFEITURE OF PROPERTY.

—*Inheritance—Forfeiture of, by a murderer and his descendants where the sole object of the murder was to secure the property of the deceased—Public policy.*

Held, that when a person has been murdered with the sole object of securing his property, both the murderer and his descendants are excluded from inheriting the property of the deceased as their succession is opposed to public policy.

Mussammat Shah Khanam v. *Kalandar Khan* (74 *P. R.* 1900), and *Roda* v. *Harnam* (18 *P. R.* 1895, *F. B.*) cited and followed. MUHAMMAD KHAN *v.* SIS BANO. **41 P R 1906**

FORM OF DECREE.
See DECREE—FORM OF.

FORM OF SUIT.
—*Relief prayed for not affecting each defendant equally.*
See COMPANY.
46 P R 1911

FORMAL POSSESSION.
See RIGHT TO SUE.

FRAUD.

1. *Agreement to refer to arbitration—Application to file such agreement—Plea that consent to agreement was fraudulently and improperly obtained—Power of Court to investigate such plea.*
See ARBITRATION. **49 P R 1893**

2. *Suit to set aside award of arbitrators appointed by Revenue Officer in partition proceedings—Allegation of fraud, but no dispute as to title.*
See ARBITRATION. **52 P R 1898**

3. *Promissory note—Consideration—Shares—Bank Directors—Fraud and misrepresentation—How far misrepresentation of a Director binding on the Bank.*
See BANKS. **127 P R 1889**

4. *Fraud and misrepresentation.*
See BANKS. **72 P R 1891**

5. *Rights of obligor in bond paper—Cancellation to prevent fraud.*
See BOND. **8 P R 1869**

6. *Suit to set aside decree based on award—Fraud.*
See CAUSE OF ACTION—IV. MISCELLANEOUS **124 P R 1880**

FRAUD—*contd.*

7. *Compromise of suit—Finality of decree—Allegation of fraud by party to compromise.*
See CIVIL PROCEDURE CODE, 1908, O. XXIII, R. 3. **114 P R 1882**

8. *Setting aside decree passed on a compromise—Minor—Guardian* at litem—*Fraud in equity—Knowledge.*
See CIVIL PROCEDURE CODE, 1908, O. XXIII, R. 3 **24 P R 1893**

9. *Money paid for expenses of marriage afterwards found to be a nullity—Fraudulent misrepresentation.*
See CONTRACTS. **107 P R 1879**

10. *Purchase of Bank shares—Fraud and misrepresentation.*
See CONTRACT ACT, 1872, SECTION 17.
117 P R 1879

11. *Contract entered into with one person on his representation he was another person—Fraud.*
See CONTRACT ACT, 1872, SECTION 17.
63 P R 1884

12. *Gift of land by husband to wife—Statement before Settlement Officer—Subsequent mortgage of gifted property by donor—Voluntary conveyance in fraud of creditors.*
See CONTRACT ACT, SECTION 25.
38 P R 1899

13. *Plaintiff alleging his own fraud.*
See ESTOPPEL. **11 P R 1875**

14. *Party estopped from pleading his own fraud.*
See ESTOPPEL. **131 P R 1890**

15. *Estoppel—Fraud—Defrauded assignee pleading fraud of his assignor.*
See ESTOPPEL. **38 P R 1892**

16. *Fraudulent alienation by insolvent—Want of consideration.*
See INSOLVENCY. **1 P R 1877**

17. *Bill of sale—Fraudulent transfer—Insolvent—Evidence of fraud.*
See INSOLVENCY. **162 P R 1879**

18. *Suit for damages after avoiding sale on the ground of fraud—Jurisdiction.*
See JURISDICTION OF SMALL CAUSE COURT. **49 P R 1904**

19. *Party kept from knowledge of his rights through fraud—Limitation.*
See LIMITATION. **67 P R 1866**

20. *Fraud—Pre-emption—Omission to give notice of sale to pre-emptor—Concealment of sale—Limitation.*
See LIMITATION ACT, 1871, SECTION 19.
46 P R 1879

21. *Fraudulent concealment of sale from pre-emptor.*
See LIMITATION ACT, 1877, SECTION 18.
32 P R 1881
3 P R 1882
120 P R 1883
73 P R 1885
12 P R 1898

22. *Necessity for specific finding on question of fraud.*
See LIMITATION ACT, 1877, SECTION 18.
3 P R 1882

FRAUD—*contd.*

23. *Suit for rectification of a deed on the ground of fraud—Limitation.*

See LIMITATION ACT, 1877, SCHEDULE II, ARTICLE 95. **62 P R 1901**

24. *Mortgage for valuable consideration—Intent to defeat and delay a particular creditor—Fraud.*

See MORTGAGE. **6 P R 1901**

25. *Suit for pre-emption—Sale by vendee after institution of suit, to rival pre-emptor—Fraudulent transaction—Superior diligence.*

See PRE-EMPTION, PURCHASE MONEY. **32 P R 1899**

26. *Gift or sale—Allegation that a certain transaction in the form of a gift was really a sale—Admissibility of evidence to prove the real nature of the transaction—Fraud.*

See PRE-EMPTION, CONSTRUCTION OF TRANSFERS. **117 P R 1890**

27. *Pre-emption—Construction of deed—Colorable mortgage for purpose of evading law of pre-emption—Fraud.*

See PER-EMPTION, CONSTRUCTION OF TRANSFERS. **45 P R 1895**

28. *Pre-emption on sale—Colorable transaction—Defendant alleging his own fraud.*

See PER-EMPTION, CONSTRUCTION OF TRANSFERS. **61 P R 1895**

29. *Pre-emption—Mortgage or sale—Right of mortgagee to plead that mortgage was colorable to avoid pre-emption—Fraud.*

See PRE-EMPTION, CONSTRUCTION OF TRANSFERS. **99 P R 1895**
100 P R 1895

30. *Pre-emption—Mortgage or sale—Colorable transaction.*

See PRE-EMPTION, CONSTRUCTION OF TRANSFERS. **20 P R 1899**

31. *Fraudulent concealment of sale—Pre-emption—Burden of proving when fraud first became known to the plaintiff.*

See PRE-EMPTION—LOSS OR WAIVER OF **34 P R 1904**

32. *Agency—Merchant buying goods in a foreign market on behalf of another—Principal and agent—Vendor—Fraud.*

See PRINCIPAL AND AGENT **21 PR 1897**

33. *Promissory note—Endorsement—Absence of consideration—Fraud.*

See PROMISSORY NOTE **39 P R 1880**

34. *Mortgage deed relating to immovable property compulsorily registrable, but registered in wrong Registry office—Admissibility of deed in evidence—Fraud.*

See REGISTRATION ACT, 1877, SECTION 49. **44 P R 1898**

35. *Registration Acts—Priority of registered deed of sale over unregistered deed of mortgage—Explanation to section 50, Act III of 1877—Deed executed before Act XVI of 1864 came into operation—Fraud.*

See REGISTRATION ACT, 1877, SECTION 50. **95 P R 1893**

36. *Review of judgment—Sufficient cause allegation of fraud.*

See REVIEW OF JUDGMENT. **47 P R 1880**

FRAUD—*contd.*

37. *Suit for possession—Transfer of property without consideration—Fraud—*Ex turpi causa non oritur actio.

See VENDOR AND PURCHASER. **114 P R 1879**

38. *Refund of purchase-money of sale induced by fraud.*

See VENDOR AND PURCHASER. **26 P R 1884**

39. *Transfers* pendente lite.

Held, that transfers *pendente lite* raised a presumption of fraud which might be rebutted. NIHAL SINGH *v.* MEWA RAM. **14 P R 1866**

40. *Decree obtained by fraud.*

A suit will lie to set aside a decree obtained by fraud. MALAK SHAH BAZ *v.* MOWAZ. **31 P R 1868**

41. *Disposal of property by an accused person pending trial.*

While plaintiff was in jail under trial on a criminal charge, his wife deposited the property in suit with defendant. The result of his trial was that plaintiff was discharged. *Held*, that the deposit was not fraudulent. MUNNOO KHAN *v.* JOWALA SINGH. **5 P R 1869**

42. A decree obtained by false personation of defendant is an *ex parte* decree under section 119, Act VIII of 1859. JAMAL DEEN *v.* NIHAL SINGH. **87 P R 1869**

43. *Plaintiff and defendant in* pari delicto—*Intention to defeat creditors.*

The defendant, in order to defeat his creditors, executed a deed of mortgage in favour of the plaintiff, who was aware of the mortgagor's intention. There was no consideration for the mortgage. Plaintiff's suit upon the mortgage deed was dismissed the Court holding that the plaintiff was not entitled to the assistance of the Court as his claim was based on a fraudulent transaction. ANOOPA *v.* BHAN SINGH. **65 P R 1871**

44. *"Puffing"—Fraud.*

No action will lie against an employer for remuneration where the customer, in ignorance of a secret agreement between the employer and the person employed to "puff," is led to suppose that the recommendation is made, not in consequence of the pecuniary reward that the "puffer" is to get for recommending his employer's wares, but with regard to the known character and reputation of the employer. Plaintiff was about to visit the Rajah of Ulwar, by whom he was held in confidence and esteem, and agreed with the defendant to exercise his personal influence with the Rajah to induce the latter to purchase some pictures belonging to the defendant in consideration of the defendant paying him (the plaintiff) a commission at the rate of ten per cent on the amount realized by the sale. The plaintiff succeeded in getting the pictures sold to the Rajah, whom he did not acquaint with the arrangement made with the defendant as to re-

FRAUD—*contd.*

muneration; and sued the defendant for the commission agreed upon. *Held*, that plaintiff was not entitled to recover the commission. KHUAJA BUDRUDDIN *v.* MAHOMED FAZUL. **40 P R 1873**

45. By Hindu Law, as by English Law, when a voluntary transfer or settlement of property so reduces the means of the person making it as necessarily to defeat or delay creditors, the transfer or settlement is fraudulent and void, without proof of an actual intention to defeat or delay creditors. A gift by a defendant (a Hindu) *pendente lite* out of the ancestral estate, for the maintenance of his father's widow, is not altogether "voluntary"; there being a customary obligation to provide maintenance for a father's widow. SUKH DIAL *v.* MUSSAMMAT RAM DITTI. **31 P R 1874**

46. *Plaintiff alleging his own fraud.*

Plaintiff sued to cancel a deed of a mortgage, alleging that the transaction was fictitious and effected for the purpose of depriving plaintiff's nephew of his rights.

Held, that the plaintiff's suit must be dismissed, as he could not be permitted to allege his own fraud. MUTSADDI *v.* BHAGWAN SINGH. **11 PR 1875**

47. *Held*, that a judgment-debtor may sell his property at any time before seizure or until it is in *custodia legis*, although his intent may be to defeat or delay the judgment-creditor. Such an alienation can only be vitiated by proof that there was in truth no sale at all, and that the object was to put the ownership of the property into a state of concealment; and this is not dependent only on the payment of the purchase-money, for a sale is complete when the purchase-money is agreed to be paid. LAKHA MAL *v.* MULAH. **21 P R 1875**

48. *Gift by debtor of all his property—Fraud on creditors—Presumption.*

D., being indebted to plaintiff, who held a decree against him for Rs. 640, gifted a house, which was all the property he possessed, to defendant. In a suit by plaintiff to establish his right to attach the house in execution of his decree, *held*, (confirming the orders of the Lower Courts) that he was entitled to such a declaration; and that the gift was void as a fraud on defendant's creditors, even though no attachment had been made at the time of the gift.

Punjab Record, Civil Ruling No. 31 of 1874, cited and followed. MUSSAMMAT GANGI *v.* MEHR CHAND. **86 P R 1879**

49. *Alteration of receipt tendered in evidence—Material alteration—Inability of plaintiff to explain alteration.*

In a suit by plaintiff to recover the difference between the sums alleged to have been advanced on a written contract for the supply of *kankar*, and the value of the

FRAUD—*contd.*

kankar alleged to have been delivered, it was contended that the plaintiff was not entitled to recover on one of the receipts tendered by him in evidence, as the document on the face of it appeared to have been tampered with while in the plaintiff's possession, and the plaintiff had offered no explanation of the altered appearance which the receipt when produced in evidence bore. An examination of the document in question showed that a large bit had been torn off the paper on which the receipt was written from the bottom left-hand corner, and a date inserted on the top of the paper at the right hand corner which was apparently written at a different time from the body of the receipt, with different ink, and in a different hand-writing. It also appeared that in all the other English receipts filed by the plaintiff the date was written on the bottom left hand corner, and not at the top of the document as in this instance.

Held, that the condition of the receipt was clearly such as to call for a satisfactory explanation from the plaintiff, more especially as the defendant had from the first denied its genuineness, but that as no opportunity had been afforded to the plaintiff of offering any explanation, such an opportunity should be given before the appeal was finally disposed of.

Per *Barkley, J.*—If the alteration merely expressed the date the receipt originally bore, it would be an immaterial alteration, and in that case, unless it were made fraudulently, it would not vitiate the receipt.

The plaintiff, at the hearing consequent on the above remand, being unable to give any reasonable explanation of the suspicious appearance of the document, or to give any independent proof of the alleged payment, was *held* to be not entitled to receive credit for such payment which was accordingly disallowed. SETH EDULJEE BYRAMJI *v.* ARJAN DAS. **22 P R 1883**

50. Ex turpi causa non oritur actio *explained—Suit for contribution—Suit to enforce obligation not arising out of fraud of parties.*

Plaintiff, a lambardar and a joint proprietor with the defendant of the village of K., sued to recover from the defendant a moiety of certain revenue which had been realized from him as lambardar by Government. It appeared that the revenue of K. had been assigned at a former Settlement to two Jagirdars, and that one of these having died at the beginning of the new settlement the fact of his death was suppressed, and the revenue which lapsed to Government remained unpaid for several years, till Government realized the whole amount from the plaintiff, who brought the present suit to recover a moiety of the amount thus realized. The lower Appellate Court dismissed the plaintiff's suit, holding that both parties having combined to conceal the fact of the Jagirdar's death were *participes criminis*, and the maxim *ex turpi causa non oritur actio* applied.

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Held, that even assuming the facts to be as stated by the lower Appellate Court (which the Chief Court found not to be borne out by the record) the above principle had not been correctly applied to the present case: that the obligation which the plaintiff was seeking to enforce did not arise from the fact of concealing the Jagirdar's death, and therefore as the Government realized the lump sum due by the defendant and plaintiff jointly from the plaintiff as lambardar, the plaintiff in suing for contribution from his joint proprietor was not suing *ex turpi causa* but upon an obligation arising against the defendant by his having lawfully paid money on the defendant's account not intending to do so gratuitously (section 70, Act IX of 1872). MOHAR SINGH *v.* SHER SINGH. **42 P R 1883**

51. *Material alteration of document sued upon—Dismissal of suit* in toto.

In a suit on a balance of account which was proved to have been fraudulently altered in a material part by the addition of the words "with interest," *held*, that the plaintiff's claim could not be allowed to stand for even the principal sum admitted by the defendant. NIHAL CHAND *v.* LAKHAN. **103 P R 1883**

52. *Act IV of* 1872—*Pre-emption—Fraud—Section* 18, *Limitation Act*, 1877.

In a suit for pre-emption, which was *prima facie* time-barred, the plaintiff relied upon section 18 of the Limitation Act as operating to save the claim. The specific allegations of fraud made in the plaint were found not to be substantiated, but the lower Courts held that the plaintiff was entitled to the benefit of the section upon the grounds:—

(1). That the purchaser was already in possession as mortgagee.

(2). That the witnesses to the execution of the deed of sale were Hindus, and were not taken before the Sub-Registrar.

(3). That the vendor now admits that he agreed with his purchaser to conceal the fact of the sale in order to defeat the right of pre-emptors.

(4). That the plaintiff had no knowledge of the sale.

(5). That great delay occurred in applying for mutation of names, the first intimation to the patwari being given in February 1889, and the proceedings even after that suspiciously hanging fire until August 1890.

Held, that as the plaintiff had failed to substantiate the specific acts relied upon in his plaint as constituting the fraud practised upon him, the Court could not feel satisfied upon the grounds stated that any active concealment of the sale had taken place, and that the suit therefore failed.

No. 46 *P. R.* 1879, No. 3 *P. R.* 1882, and *I. L. R.* 15 *Calc.*, 533, referred to. ATMA RAM. *v.* MEHARDIL KHAN. **91 P R 1893**

FRAUD—*contd.*

53. *Pre-emption—Fraudulent concealment of sale—Limitation Act*, 1877, *section* 18, *knowledge of facts, presumption as to.*

In a suit for pre-emption it appeared that the deed of sale, which was described in two places in itself as a mortgage-deed, was dated 12th December 1876, and was registered on the same date at the *tahsil*, three or four miles from the village in which the land in suit was situate; that the marginal witnesses were residents of villages other than that in which the vendor and vendee resided and where the land was situate; that from 1876 till 1895 the vendee continued to be recorded, as before as tenant of the said land; that on the 19th September 1894, a measurement clerk reported that a sale had taken place and that the vendee was in possession; that on the 1st October 1895 mutation of names was effected in the vendee's favour by order of the Tahsildar, and that the residents of the village in which the land was situate, as a body, were not aware of the sale. The plaint was filed in February 1896, concealment of the sale being therein alleged and the pre-emptor, when examined before issues were framed, pleaded fraud by which he had been deceived. The first Court decreed the claim, finding that the fact of the sale became known to plaintiff on the 1st October 1895, and that there had been frandulent conceal ment thereof, but the Divisional Judge on appeal dismissed the suit as barred by limitation calculating either from the date of registration or from the 19th September 1894.

Plaintiff appealed to the Chief Court, and in addition to the facts above-mentioned, on which his allegation of fraudulent concealment was based further urged in support of such allegation the fact that on the death of the vendor in 1881, his son was recorded as owner in his place.

Held, that though each of the facts above set forth when taken alone might be merely suspicious, yet when found to concur, they established fraudulent concealment within the meaning of section 18 of the Limitation Act.

Held, further, that, fraudulent concealment having been established respondent, upon whom the *onus* rested, had not proved that the appellant had knowledge of the sale more than one year before suit, which was therefore within time. ABDUL RAHIM KHAN *v.* MUHAMMAD YAR. **12 P R 1898**

54. *Pre-emption—Fraudulent concealment of sale—Limitation Act*, 1877, *section* 18—*Burden of proving when fraud first became known to the plaintiff.*

Where an original transaction is tainted by fraud it lies on the party against whom fraud is found to prove that the want of knowledge was not caused by fraud or that the plaintiff had a clear and definite knowledge of the fraud for more than the period of limitation allowed.

Abdul Rahim Khan v. *Muhammad Yar and others* (12 *P. R.* 1898), cited. GORDHAN DAS *v.* AHMAD. **34 P R 1904**

FRAUD—*contd.*

55. *Fraud—Alleging or pleading fraud.—Defendant pleading joint fraud*—Par delictum.

On 15th June 1896 the plaintiff, an occupancy tenant, mortgaged his land to the defendant. His landlord thereupon brought a suit for the cancellation of the mortgage, the present plaintiff resisted the claim, on the ground that the contract had been rescinded, and filed a receipt in which the present defendant acknowledged the repayment of the mortgage debt. In 1899 mutation of names as mortgagee were granted in favour of the defendant who has since then been admittedly in possession of the mortgaged property. In 1902 the plaintiff filed the present suit for possession of the land, on the allegation that the mortgage having been mutually rescinded, the defendant had no right to remain in possession. The defendant pleaded, that in order to avoid the landlord's suit, plaintiff and he had made a pretence of redeeming the mortgage which had never been actually redeemed. Both the lower Courts ignored the defendant's pleadings, on the ground that he could not plead his own fraud.

Held, that the defendant was not precluded from pleading the joint fraud of himself and the plaintiff and showing the real nature of the transaction. The fraud was concocted between the parties with a view to defeat the landlord's claim, and it did not prevent either of them from pleading it against the other.

Hafiz Abdul Karim v. *Muhammad Yusaf* (61 *P. R.* 1895), cited and followed. JIWAN SINGH *v.* JORA. **25 P R 1905**

56. *Fraud and misrepresentation—Defendant's reliance on plaintiff's representation—Estoppel by conduct—Equity.*

One 'B' died in October 1900, leaving behind him an uncle aged 34, two minor cousins, and three sisters. The uncle took possession of the estate left by the deceased and managed it. On 25th July 1901 an agreement was executed by the uncle and the mothers of the two minor cousins, appointing one 'D,' the brother-in-law of 'B,' as an arbitrator for adopting one of the cousins named Bhagat Ram, aged 14 years, whom according to the agreement, the deceased had, during his lifetime, nominated to be appointed as his adopted son. This clause was subsequently added on the margin of the agreement at the uncle's request and was attested by him. The award was given by the arbitrator on 27th July. It contained that according to the desire expressed by the deceased during his lifetime his cousin Bhagat Ram should be made his adopted son, and provisions for charitable funds and for marriages of minor sisters of the deceased and maintenance of the uncle and others as required by the reference were reserved. Thereupon the uncle executed a deed of release whereby he and the other reversionary heirs acknowledged Bhagat Ram as adopted son of 'B', and agreed to abide by the settlement made by the arbitrator, which document was registered with the award on 30th July.

FRAUD—*concld.*

Immediately after an agreement was executed by the mother of the adopted son giving her son in adoption, and a power of attorney appointing the arbitrator as a general agent for managing his business. On 31st July the uncle handed over the estate and books of the deceased of which he had hitherto held possession as a manager and heir to the arbitrator.

On 26th July 1904, the uncle sued for his one-third share on the allegation that he was induced to execute the several documents described above in consequence of the fraud and undue influence of the arbitrator. As a fact, there was no proof to substantiate either of the allegation of misrepresentation, fraud or undue influence, but the Court decreed the claim on the ground that the transaction was not an equitable one, the adoption being invalid, and the plaintiff sustained damage in consequence thereof.

Held that the relative circumstances of the parties and the voluntary and deliberate actions of the plaintiff throughout the whole transaction negatived the slightest chance of any false inducement, representation or undue influence, and under no circumstances could he now recede from the position deliberately adopted by him in the matter, and that he was stopped from questioning the validity of the adoption which he himself had encouraged and concurred in.

Equity alone will not grant relief and avoid the deeds where the person executing is not only cognizant of the facts but had initiated the whole proceedings and had secured a personal benefit for himself to which he was not otherwise entitled. BHAGAT RAM *v.* GOKAL CHAND. **150 P R 1908**

57. *Civil Procedure Code*, 1882, *section* 230—*Execution of decree—Limitation—Continuation of previous application for execution—Fraud, question of, raised for the first time on appeal.*

Held, that it is doubtful whether it is open to the decree-holder to raise questions of fraud for the first time in appeal and that the mere fact that the judgment-debtor filed an appeal in connection with the execution proceedings does not constitute fraud. HIRU *v.* GURCHARAN. **17 P R 1910**

58. *Pre-emption—Fraudulent over-statement of sale price—How far successful pre-emptor bound by.*

Held, that though a pre-emptor who obtains a decree becomes in many respects identified in interest with the original vendee, he cannot be held a *particeps criminis* in a fraud perpetrated by the vendee, which he himself brought to light and succeeded in frustrating. DAN SINGH, &c. *v.* PHANGAN SINGH, &c. **83 P R 1911**

FRUIT GARDEN.

1. Suit for possession of—value of, for purposes of Court-fee.

See COURT FEE, ACT, 1870, SECTION 7 V (*e*). **33 P R 1880**

2. A suit for land occupied as a fruit garden is a land suit within the meaning of the Punjab Courts Act, unless such land be

FRUIT GARDEN—*concld.*

the courtyard or the compound of a house. JHANDA KHAN *v* FATEH DIN. **111 P R 1890**

3. A suit for possession of a half share in an orchard, that is, in the fruit trees, is not a land suit, within the definition of that term contained in section 3, Punjab Courts Act, 1884. DHANI DAS *v.* AYA RAM. **15 P R 1892**

4. A suit for date trees, no claim being made in respect of the land upon which the trees stand, is not a land suit within the definition of that term contained in section 3, Punjab Courts' Act, 1884, as amended. YARU *v.* ADIL. **46 P R 1893**

5. Right to future fruit crops and fruit on trees is a right in immovable property under the General Clauses Act, X of 1897, section 3, clause 25, but they are movable property for the purposes of Registration Act. ASA RAM *v.* NUR DIN. **66 P R 1900**

FRUIT UPON TREES.

Moveable property.

See REGISTRATION ACT, 1877, SECTION 17. **72 P R 1884**

FURTHER APPEAL.

See APPEAL, SECOND.

PUNJAB COURTS ACT, 1884, SECTION 40.

FURTHER RELIEF.

See DECLARATORY DECREE.

Held, a plaintiff cannot bring a mere declaratory suit in respect of land, because it is not in possession of the defendant but in possession of tenants under the defendant. ABDUL GHAFFUR *v.* MUSSAMMAT MEHAR-UN-NISA. **101 P R 1909**

G.

GAMING AND WAGERING.

See BADNI TRANSACTIONS.

—*Raffles—Wagers.*

The value of the property raffled was divided into shares of Rs. 4 each, defendant purchasing several shares for which he gave a promissory note. For every share certain throws with dice were allowed, and the person throwing highest was declared the owner of the property.

Held, that under Act V of 1844 and XXI of 1848, defendant was not liable on the promissry note. ORAM *v.* HAWKES. **16 P R 1868**

GENERAL CLAUSES ACT (I OF 1868).

Section 2.

1. "*Immoveable property,*" *definition of—Benefit to arise out of land—Jagir income.*

A suit was filed on the 4th January 1892, based on a bond, dated the 13th June 1883, hypothecating certain *jagir* income.

GENERAL CLAUSES ACT (I OF 1868)—*concld.*

Section 2—*concld.*

The lower Courts dismissed the claim as barred by limitation, according to the first Court under Article 75, and according to the Divisional Court, under Article 116 of the 2nd Schedule to the Limitation Act.

Held, that looking at the definition of immoveable property given in section 2 of the General Clauses Act, *jagir* income is a "benefit to arise out of land" within the meaning of that definition and that, therefore, the suit was within time under Article 132 of the 2nd Schedule to the Limitation Act. RAM PERSHAD *v.* KISHEN SINGH.

4 P R 1894

2. *Pre-emption—Punjab Laws Act*, 1872, *section* 9—*Rights to use water of perennial stream—"Immovable property"—General Clauses Act*, 1868, *section* 2 (5).

Held, that inasmuch as the water of a perennial stream comes out of land, the right to use such water is "a benefit arising out of land," and is, therefore, "immovable property" within the meaning of section 2 (5) of the General Clauses Act, 1868, so as to found a suit for pre-emption in respect of a sale thereof under section 9 of the Punjab Laws Act, 1872. ALAM SHER *v.* RAM CHAND.

11 P R 1898

Section 3 (2).

Time within which a document should be registered—Within four months from its execution—Construction of "from."

In computing the period of four months provided for registration by section 23, Registration Act, the day on which the document was executed is excluded by force of section 3 (2) of the General Clauses Act, (I of 1868. MALIK PARMANAND *v.* KALA.

90 P R 1890

Section 6.

See REPEAL OF ACT.

121 P R 1879

GENERAL CLAUSES ACT (X OF 1897).

Section 3.

Right to future fruit crops and fruit on trees is a right in immovable property under clause 25 of section 3 of the General Clauses Act, X of 1897—though they are movable property for the purposes of the Registration Act. ASA RAM *v.* NUR DIN.

66 P R 1900

Section 6.

1. *Effect of a new Act on the previous operation of the enactment repealed.*

See APPEAL II—COMPETENCY OF

12 P R 1900

2. *Applies to points of* resjudicata.

See HINDU FAMILY. **97 P R 1910**

3. *Provincial Insolvency Act* 1907, *sections* 27 *and* 43—*Applicability of to proceedings*

GENERAL CLAUSES ACT (X OF 1897)—*concld.*

Section 6—*concld.*

commenced under section 25 *and* 28 *of the Punjab Laws Act*, 1872.

Held, that under the provisions of section 6 of the General Clauses Act, 1897, proceedings against an insolvent begun under the Punjab Laws Act, 1872, sections 25 and 28, and pending when the Provincial Insolvency Act, 1907, came into force, must be continued under the former Act. GANPAT RAI *v.* MALLA MAL.

11 P R 1910

KISHEN CHAND *v.* SASSOON.

12 P R 1910

Section 14.

Cantonments Act, 1889, *section* 4 (2)—*Power of Government to define the limits of any cantonment so as to extend them—General Clauses Act*, 1897, *section* 14.

See CANTONMENTS ACT, 1889, SECTION 4 (2). **24 P R 1910**

GENERAL HYPOTHECATION.

See MORTGAGE.

GESTATION.

Period of gestation.

See EVIDENCE ACT, 1872, SECTION 2.

76 P R 1891

GHARJAWAI.

See KHANA-DAMAD.

GHAIR-MUMKIN LAND.

—*Ghair-mumkin* land outside the *abadi* and attached to a well upon which *khurlis* are built and *bhusa* is stacked is "land" within the meaning of section 4 (1) of the Punjab Tenancy Act, 1887. GHANDU SINGH *v.* NATHA SINGH. **12 P R 1907**

GIFT.

See under CUSTOM I.—ALIENATION.
HINDU LAW, GIFT.
MUHAMMADAN LAW, GIFT.

1. *Gift by Hindu Widow—Suit by daughter for possession of property gifted—Adverse possession by donee.*

See ADVERSE POSSESSION.

15 P R 1879

2. *Admissibility of unregistered deed of gift to prove collateral fact.*

See CAUSE OF ACTION IV.—MISCELLANEOUS. **16 P R 1897**

3. *A paid money to B to be distributed for charitable purposes—Suit by A to recover such money from B.*

See CHARITABLE TRUSTS.

43 P R 1867

4. *Document described as will but giving specific shares to the heirs of the executant—Followed by possession.*

See CONSTRUCTION OF DOCUMENT.

74 P R 1904

GIFT—*contd.*

5. *Death-bed gift*—Hiba bil iwaz.

See CONTRACT ACT, SECTION 25.

61 P R 1893

DEATH-BED GIFT.

15 P R 1895

LIMITATION ACT, 1877, SCHEDULE II, ARTICLE 91. **52 P R 1895**

6. *Gift by debtor of all his property—Presumption—Fraud.*

See FRAUD. **86 P R 1879**

7. *Gift to certain persons for purposes of a society not then in existence—Subsequent incorporation of such society under Act XXI of* 1860—*No formal written transfer of rights by original donees—Right of Managing Committee to sue in respect of such gift.*

See INCORPORATED SOCIETY.

41 P R 1897

8. *Suit by reversioner for possession of immovable property—Defendant in possession under an alleged gift or will—Reversioner not barred by reason of his having failed to contest such gift or will within the period prescribed by article* 91 *of the Limitation Act.*

See LIMITATION ACT, 1877, ARTICLE 91.

79 P R 1905

9. *Gift of equity of redemption prior to the expiry of the mortgage term—Validity of such gift under Muhammadan Law.*

See MORTGAGE—FORECLOSURE.

86 P R 1910

10. *Gift by occupancy tenant without offer to landlord.*

See PUNJAB TENANCY ACT, 1868, SECTION 34. **109 P R 1881**

11. *Oral gift of immovable property creating charitable trust—Indian Trust Act*, 1882, *section* 5—Locus standi *of third parties to contest gift.*

Held, that a gift of immovable property creating a public charitable trust does not fall within the purview of the Trust Act, 1882 and that therefore it is not essential that it should be in writing signed by the author of the trust or the trustee and registered.

Held, also that when such a gift is upheld by the donor in Court, third parties cannot contest the donee's title. SANATAN DHARM SABHA, HOSHIARPUR *v.* MUSSAMMAT SOBHI.

75 P R 1903

12. *Gift to two or more persons without specifying their respective shares—Construction and nature—Tenants in common—Share of each passes to his representative.*

'A,' a Hindu widow, by a registered deed gifted one of her houses to her four married daughters without specifying the shares, upon which the donees were to hold the house severally. After the death of one of the daughters the other three sold the entire house. Thereupon the husband of the deceased donee sued to recover one-fourth share of the sale price in respect of her one-fourth share of the house. The defence contended that the gift was one in joint tenancy with right of survivorship, and that therefore on the death of one of the four donees the share of the deceased lapsed to the survivors; and that in any case the share of the deceased being her *stridhan* would go to her mother, and failing the latter, to her sister.

GIFT—*concld.*

Held, that a gift to two or more persons is not a gift in joint tenancy merely because the shares of the donees are not defined therein, and that in cases where the donees are incapable of forming a joint Hindu family, they should, in the absence of a declaration in the deed of gift to the contrary, be presumed to hold as tenants in common without benefit of survivorship, in which case the share of those dying passes to their personal representatives.

Held also, that the *stridhan* of a Hindu wife dying childless who has been married in one of the four approved forms of marriage devolves upon her husband and not on her parents or their heirs. MUNNI *v.* UMRAO SINGH. **39 P R 1909**

GOMASHTA.

Appointment of one member of a joint Hindu Family *gomashta* and partner—*All the family not thereby made members of partnership.* HONDA RAM *v.* DESU RAM. **162 P R 1888**

GOOD FAITH.

See PRE-EMPTION. **13 P R 1908**

GOVERNMENT CURRENCY NOTE.

—*Stolen currency note*—Bona fide *holder—Liability of.*

See CONTRACT ACT, 1872, SECTION 108. **18 P R 1905**

GOVERNMENT—GRANT BY.

See GRANT BY GOVERNMENT.

GOVERNMENT OFFICERS.

See ACT OF STATE.

1. *Compensation to house owners—Delhi Palace fortifications—Act of Government Officer binding on Government.*
See COMPENSATION. **57 P R 1869**

2. *Suit against a Government Officer as representative of Government—Jurisdiction.*
See JURISDICTION OF SMALL CAUSE COURT. **89 P R 1867**

3. *Public agent—Scope of authority—Liability of Government for unauthorized acts of agent.*
See PRINCIPAL AND AGENT. **64 P R 1875**

GOVERNMENT TENANTS ACT, 1893.

In matters of succession special tenancies created by this Act, are governed by the provisions of the Punjab Tenancy Act, 1887. SAHIBZADA *v.* JAWAYA. **14 P R 1908**

GRAIN PAYMENTS.

See JAGIR AND MAFI ESTATES.
OCCUPANCY RIGHTS.
PUNJAB TENANCY ACT, 1868, SECTION 16.

GRAND-DAUGHTER.

—*Gift to.*
See under CUSTOM I.—ALIENATION A (1) (*e*)—GIFTS, &C., TO DAUGHTERS AND THEIR CHILDREN.

GRAND-MOTHER.

—*Succession of—Re-marriage.*
See CUSTOM VIII.—MAINTENANCE AND SUCCESSION. I.—REMARRIAGE, &C., OF WIDOWS. **171 P R 1888**

GRAND-NEPHEW.

—*Gift to.*
See CUSTOM I.—ALIENATION A (1) (*c*) (*i*)—GIFTS IN FAVOUR OF NEPHEWS AND GRAND-NEPHEWS, PROVED. **33 P R 1905**

GRAND-SON.

1. *Right of, whose father has pre-deceased the grand-father in the estate of the latter.*
See CUSTOM VIII.—MAINTENANCE AND SUCCESSION. C.—OF SONS AND GRANDSONS. **50 P R 1904**

2. *Held*, that by custom among Nigar Jats of the Jullundur *tahsil*, the widow of the grandson is entitled to succeed for life or until remarriage equally with the son of a deceased proprietor. ISHAR, &C., *v.* MUSSAMMAT BASANTI, &C. **19 P R 1911**

GRANT BY GOVERNMENT.

1. *Construction of—Joint and several interest—Survivorship.*
See CONSTRUCTION OF DOCUMENT. **27 P R 1891**

2. *Lease of Government village on condition that if certain stipulations entered into by the lessee were fulfilled, propietary rights in the village would be conferred on him—Power of such lessee to alienate his rights without sanction of Government*
See CAVEAT EMPTOR. **62 P R 1893**

3. *Jagirdar under grant from Sikh Government—Occupancy rights.*
See JAGIR. **2 P R 1892, Rev**

4. *Grant of* muafi *originally made by Moghal Emperors—Jagirdar—Occupancy rights.*
See JAGIR. **2 P R 1897, Rev**

5. *Pensions Act, (XXIII of* 1871) *sections 406—Crown grant—Certificate—Omission to obtain certificate before institution of suit.*
See JURISDICTION OF CIVIL COURT. **17 P R 1882**

6. *Grant of* shamilat *land by Government—Succession to, on death of grantee.*
See LIMITATION. **20 P R 1910**

GRANT OF LAND REVENUE.

See JURISDICTION OF CIVIL COURTS. **36 P R 1874**
9 P R 1875
10 P R 1875
1 P R 1876

GRAVEYARD.

—*A suit for a portion of village graveyard is not a land suit.*
See APPEAL VIII.—SECOND **20 P R 1892**

GRAZING DUES.

See CUSTOM V.—CESSES AND DUES. **61 P R 1875**
See JURISDICTION OF SMALL CAUSE COURT. **11 P R 1872**
109 P R 1876
63 P R 1877
See LIMITATION ACT, 1871, SCHEDULE II, ARTICLE 6 **3 P R 1875**
See TIRNI. **142 P R 1879**

GRAZING RIGHTS.

See COMMON LAND. **108 P R 1876**
119 P R 1889
See LIMITATION ACT, 1877, SECTION 28. **106 P R 1883**
See OCCUPANCY RIGHTS. **100 P R 1881**

GROUND RENT—SUIT FOR.

See JURISDICTION OF SMALL CAUSE COURT. **177 P R 1882**
166 P R 1883
See SMALL CAUSE COURT ACT, 1865, SECTION 6. **21 P R 1888**
See SMALL CAUSE COURT ACT, 1887, SCHEDULE II, ARTICLE 8. **1 P R 1894**

GROSS ANNUAL RENT.

—*Includes house-tax payable by tenant to landlord.*
See PUNJAB MUNICIPAL ACT, 1891. **46 P R 1910**

GROWING CROPS.

See JURISDICTION OF CIVIL OR REVENUE COURTS. **14 P R 1894**
See PUNJAB TENANCY ACT, 1868, SECTION 27. **99 P R 1879**
See VENDOR AND PURCHASER. **36 P 1883**

GRUNTHEE AND GUDDEE NASHIN.

See RELIGIOUS INSTITUTION.

GUARANTEE.

See CONTRACT ACT, 1872, SECTION 23. **112 P R 1892**
See PRINCIPAL AND AGENT. **98 P R 1869**
See PRINCIPAL AND SURETY, *Passim.*

GUARDIAN.

See MINOR.

1. *Parent making a betrothal contract for his child and then dying—Power of guardian to make another contract for such child.*
See BETROTHAL. **21 P R 1868**
7 P R 1880

2. *Guardian of minor—Liability for breach of betrothal contract.*
See BETROTHAL. **197 P R 1882**

3. *Suit to redeem property first mortgaged and afterwards sold during plaintiff's minority by guardian.*
See BURDEN OF PROOF. **117 P R 18[illegible]0**

4. *Guardian of minor Widow.*
See CERTIFICATE UNDER ACT XL OF 1858. **25 P R 1881**

5. *Guardianship of minor—Application by mother who had previously entrusted her children to a third party under an agreement not to take them back during their minority without repaying the outlay incurred—Mother's right to an unconditional order notwithstanding such agreement.*
See CUSTODY OF MINOR. **15 P R 1887**

GUARDIAN—*contd.*

6. *Custody of minor—Division of guardianship between two guardians.*
See CUSTODY OF MINOR.
44 P R 1887

7. *Application by father for custody of minor girl—Defendant setting up marriage with the girl performed in absence of father by authority of her mother—Defendant's right to inquiry as to validity of marrige set up by him—Summary proceeding—Separate suit.*
See CUSTODY OF MINOR.
113 P R 1888

8. *Discretion of Court under Act IX of 1861—Principles on which such discretion should be exercised—Guardianship of minor for purposes of marriage.*
See CUSTODY OF MINOR.
163 P R 1889

9. *Suit for custody of minor—Jurisdiction of Court other than District Court—Munsif of first class—Guardian and Wards Act, 1880, sections 17, 48.*
See CUSTODY OF MINOR.
10 P R 1897

10. *Application by guardian for custody of minor—Appeal—Guardian and Wards Act, 1890, sections 12, 25, 47 (c)—Revision—Right of guardian to custody of minor.*
See CUSTODY OF MINOR.
13 P R 1897

11. *Hindu Law—Marriage of minor, minor given in marriage by person other than her guardians—Suit by guardians for custody of minor.*
See CUSTODY OF WIFE.
24 P R 1897

12. *Alienation by guardian—Validity of mortgage.*
See CUSTOM I. G.—ALIENATION BY GUARDIAN. **58 P R 1891**

13. *Invalidity of sale of a Muhammadan minor's property—Gujar of* mauza *Daliwal,* tahsil *Hoshiarpur.*
See CUSTOM II.—ALIENATION BY DE FACTO GUARDIAN.
65 P R 1893

14. *Guardian of minor—Consent—Inablity of Guardian to contest his own acts.*
See ESTOPPEL. **121 P R 1889**

15. *Girl of 6 years of age—Betrothal—Right of father—Hindu Law.*
See HINDU LAW, GUARDIANSHIP.
101 P R 1866

16. *Mother's right to select a husband for her daughter with the advice of the kinsman—Validity of marriage entered into without guardian's consent.*
See HINDU LAW—MARRIAGE.
64 P R 1884

17. *Marriage of a minor Hindu widow by* chadar-andazi—*Consent of lawful guardian*

GUARDIAN—*contd.*

to such marriage necessary—Presumption of legality of marriage—Khatris of Lahore—Act XVI of 1856.
See HINDU LAW—MARRIAGE.
49 P R 1903

18. *Of minor—Application by, during minor's infancy.*
See LIMITATION ACT (XV OF 1877), SECTION 7. **91 P R 1885**

19. *Suit by minor against guardian for an account and for possession of immovable property—Trustee.*
See LIMITATION ACT, 1877, SECTION 7.
33 P R 1897

20. *Power of, to sign acknowledgment binding on minor—Duly authorised agent.*
See LIMITATION ACT, (XV OF 1877), SECTION 19. **25 P R 1886**

21. *Acknowledgment—Duly authorised agent—Sale of goods to firm represented by minors—Appointment of two joint guardians by Court under Act XL of 1858—Power of one guardian to sign acknowledgment on his behalf and on behalf of his Co-guardian.*
See LIMITATION ACT, 1877, SECTION 19.
7 P R 1890

22. *Acknowledgment of debt by Court of Wards as guardian of minor.*
See LIMITATION ACT, 1877, SECTION 19.
1 P R 1897

23. *Suit by minor on attaining majority to set aside a sale by person purporting to act as guardian.*
See LIMITATION ACT, 1877, SCHEDULE II, ARTICLE 44. **135 P R 1892**

24. *Suit by minor after attaining majority to recover land sold by his guardian—Nature of purchaser's title.*
See LIMITATION ACT, 1877, SCHEDULE II, ARTICLE 44. **57 P R 1891**
19 P R 1902

25. *Suit against, for specified sums received during plaintiff's minority—Limitation.*
See LIMITATION ACT, (XV OF 1877), SCHEDULE II, ARTICLE 62.
56 P R 1883

26. *Suit by minor on attaining majority to recover land mortgaged by his guardian—Limitation.*
See LIMITATION ACT, 1877, ARTICLE 91.
23 P R 1904
28 P R 1909

27. *Guardian and ward—Suit by ward after attaining majority for account.*
See LIMITATION ACT, 1877, SCHEDULE II, ARTICLE 120. **84 P R 1891**

28. *Civil Procedure Code,* 1882, *section* 463—*Suit on behalf of alleged lunatic not so adjudged—Appointment by Court of guardian* ad litem—*Practice—Act XXXV of* 1858.
See LUNATIC. **31 P R 1905**

29. *Period of minority where guardian has once been appointed but appointment considered improper by Appellate Court.*
See MINORITY. **45 P R 1900, F B**

GUARDIAN—*contd.*

30. *Pledge of joint family property by elder brothers how far binding on minor brothers—Presumption.*
See MUHAMMADAN LAW—JOINT FAMILY.
66 P R 1899

31. *Contract of marriage—Infant—Parent or guardians.*
See MUHAMMADAN LAW—MARRIAGE.
53 P R 1875
157 P R 1879

32. *Guardians for marriage—marriage contracted by mother in lifetime of father—Effect of delegation of his right by nearer to more remote guardian—Power of minor female whose marriage has been contracted by guardian other than father to repudiate the marriage on attaining puberty.*
See MUHAMMADAN LAW—MARRIAGE.
51 P R 1888

33. *Pre-emption—Guardian and minor—Claim of minor barred by conduct of guardian.*
See PRE-EMPTION. **1 P R 1873**

34. *Liability of minor for the acts of the agent of his guardian.*
See REGISTRATION ACT, 1877, SECTION 17. **37 P R 1900**

35. *Suit to recover money spent in connection with the guardianship of a minor—Suit relating to a trust.*
See SMALL CAUSE COURT, JURISDICTION OF. **58 P R 1902**

36. *Compromise of suit by guardian* ad litem *without sanction of Court—Competency of guardian to give away portion of property to which ward's title was in dispute.*
See WITHDRAWAL OF SUIT.
3 P R 1905

37. *Held,* that Act IX of 1861 gave jurisdiction to the Punjab Courts as to the appointment of guardians, but that the Act did not apply to European British subjects. IN RE TWITCHEN. **23 P R 1867**

38. *Suit against minor—Appointment of guardian—Procedure.*

Where plaintiff sued defendant, a minor, and obtained a decree against him, the Chief Court reversed the decree and ordered the suit to be tried by the Deputy Commissioner, with instructions to him to appoint a guardian or manager under Act XL of 1858, and to direct plaintiff to implead the person so appointed. FAZL BEG *v.* CHELA MULL.
45 P R 1872

39. *Mortgage—Necessity.*

A *surbarah* or manager of a minor's property can, without the intervention of the Court, mortgage the estate to meet pressing demands against it. ALLA DITTA *v.* HIMMAT.
52 P R 1872

40. *Custody of Minor—Contract Act, section 23—Void contract—Act IX of 1861, discretion of Court under,—Principles on which such discretion should be exercised.*

GUARDIAN—*contd.*

A contract by which the parents of a minor child who professed the Jewish religion made over their child to a clergyman of the Church of England for a certain period on certain conditions *held* (*per* THORNTON, J.) to be void under section 23 of the Contract Act, as being of such a nature that if permitted it would defeat the provisions of Act IX of 1861, and Act IV of 1872.

Per Curiam.—When a Court is called upon to exercise jurisdiction under Act IX of 1861, it has an absolute judicial discretion to make such order as it shall think fit in respect to the custody or guardianship of the minor. The exercise of such a jurisdiction is not fettered by any agreement entered into by a parent with another person as to the custody of the infant, though the fact of such an agreement having been made may properly be considered and may influence and direct the Court in its determination of the order to be made in a particular case.

The principles which should influence the Court in the exercise of its jurisdiction under Act IX of 1861 discussed. MURRAY *v.* SASSOON BIN SOLOMON. **140 P R 1879**

41. *Act XL of 1858—Certificate—Specification of property of minor.*

It is incorrect for the District Judge to specify the property in respect of which a certificate is granted under Act XL of 1858, nor has he power to make any binding declaration as to the amount or description of the minor's property. MUSSAMMAT RAMBHAJJI *v.* HARNARAIN. **15 P R 1889**

42. *Suit against guardian of minor, instead of against minor under the guardianship of his mother—Power to rectify such error.*

In a suit brought upon a foreign judgment it appeared that the plaintiff had committed the error of making the mother and guardian of the real defendant (a minor) the defendant, instead of making the minor the defendant under the guardianship of his mother. The Chief Court, while pointing out that the mistake could be rectified by striking out the name of the mother, against whom no cause of action was disclosed, and entering the name of the minor as defendant, refused to adopt the above course in the present case on the ground that the suit would *primâ facie* have to be dismissed as barred by limitation since limitation would run from the date of the judgment sued upon to the date of the order making the minor a defendant (Civil Procedure Code, section 32), and the period of limitation under article 117 of the 2nd Schedule of the Limitation Act had thus expired, and the appellant was unable to suggest any valid ground for an extension of the period. UDE RAM *v.* MUSSAMMAT DAYAN. **37 P R 1889**

43. *Creditor—Liability of minor on balance struck by* de facto *guardian.*

Held, that a balance struck by a *de facto* guardian on behalf of a minor should be strictly examined. The minor will not be bound unless great care and caution are shown by the guardian and the transaction is proved to be for the minor's benefit. HIRA SINGH *v.* CHETU. **97 P R 1889**

GUARDIAN—*contd.*

44. *Act XL of 1858, section 3.*

The mode of appointment of a guardian under section 3, Act XL of 1858, is by a certificate. MUSSAMMAT RAMBHAJJI *v.* HARNARAIN. **105 P R 1889**

45. *Act XL of 1858, section 21—Minor—Revocation of certificate granted to guardian—Making over the property to successor—Accounting for money received and disbursed.*

A. a Hindu, died leaving as heirs a brother B. and a minor widow C. B. was at first appointed guardian of C. under Act XL of 1858. Disputes having arisen between B. and C., B. sued C. for possession of the entire estate of A. on the ground of survivorship, to the exclusion of C. C. asserted her own exclusive right to succeed to the whole. Arbitrators were appointed, D. being one of them, and the suit decided according to the award, which divided A.'s estate among his relations. On the same date the District Judge granted a certificate to D. in supersession of that previously granted to B. D. then applied under section 21 of the Minors Act, that B. be compelled to make over to him the entire estate of A. and also to account for moneys received and disbursed. The District Judge rejected the application. D. appealed to the Chief Court from both the last mentioned order and the decree based on the award. The Chief Court held in the appeal from the decree that the case should be remanded for an inquiry into the question, whether the compromise was for the benefit of the minor, and directed that in case this question were answered in the negative, the case be proceeded with on its merits. On the appeal from the order, *held*, that assuming that a Court, acting under section 21 of Act XL of 1858, can issue an order to a person whose certificate has been recalled, the order must be limited to property of the estate of the minor in the hands of the late grantee, and to account of moneys forming part of that estate. When the respective titles of the first grantee and of the minor (under the guardianship of the second grantee) to take the whole estate of a deceased person are in dispute and *sub judice*, it would be injudicious to direct a second inquiry under Act XL of 1858, as to what estate the minor was entitled to and the application should consequently be refused. This would not have the effect of excluding the petitioner, for he could sue the first grantee under section 19, or might on the termination of the pending suit apply again under section 21.

IN THE MATTER OF THE ESTATE OF MUSSAMMAT RAMBHAJJI, A MINOR, SETH DORABJI *v.* HARNARAIN. **117 P R 1889**

46. *Act XL of 1858, sections 7, 9, 10 and 12—Minor—Land-holder—Guardianship—Near relation—Collector.*

The District Judge appointed a Tahsildar as curator of the property of a minor landholder under section 10.

Held, that the order was *ultra vires*. A Civil Court has no authority under the Act to appoint an official, *virtute officii*, as manager of a minor's estate except under section 12, which empowers the Civil Court to direct the Collector to take charge of the minor's estate when it consists in whole or in part of land or of any interest in land. MUSSAMMAT PAREMON *v.* HIRA. **124 P R 1889**

GUARDIAN—*contd.*

47. *Act XL of 1858—Power to appoint two managers of property of minor.*

Held, that Act XL of 1858, though it provides that the manager of the minor's estate and the guardian of his person may be different persons, does not empower the Court to appoint different managers for different portions of the estate. MUSSAMMAT BAL KOUR *v.* GANPAT. **181 P R 1888**

48. *Act XL of 1858, sections 6, 7, 9—Guardianship of minor's property.*

An application having been made to a District Judge for the appointment of a guardian to take charge of the property of certain minors, the latter officer made over the case for inquiry and report to a Tahsildar, and on receipt of a return to the order, summarily rejected the application. *Held*, that the District Judge was not justified in disposing of the case so summarily. Before passing orders in the case, he was bound to consider whether there was any near relative of the minors willing and fit to be entrusted with the charge of the property, and in the absence of such, whether it was necessary for the interests of the minors, that provision should be made for the charge of their property. CHARINJIT SINGH *v.* RAM SINGH. **202 P R 1889**

49. *Act XL of 1858, section 18—Sale by certificated guardian with sanction of Court—Nature of sanction.*

The District Judge passed an order under section 18, Act XL of 1858, permitting an alienation of the minor's property if it be done in good faith for their benefit. The guardian alienated the property for the purpose of discharging ancestral debt. The minors impugned the sale on the ground (*inter alia*) that the permission given did not satisfy the requirements of section 18, Act XL of 1858.

Held, that the permission was legal and valid, and sufficient to render the sale binding if the conditions laid down were complied with. On the facts of the case, it was found that the sale was for necessary purposes.

A certified copy of the order granting permission to sell was produced in the case. The original could not be found. The copy was admitted in evidence, and presumed to be genuine under the provisions of section 79, Evidence Act (I of 1872). CHAUTH MAL *v.* GODHU. **56 P R 1890**

GUARDIAN—*contd.*

50. *Act XL of 1858—Recall of certificate—Summary order to account for moneys received and disbursed—Reference to a civil suit—Proper procedure.*

An administrator appointed under Act XL of 1858, section 10, is bound to keep proper accounts and may properly be required by summary order under section 21 to furnish to his successor an account of receipts and disbursements. DAL SINGH *v.* RAJA HARBANS SINGH. **66 P R 1890**

51. *Hindu law—Powers of uncertificated guardians—Act XL of 1858, section 18.*

Held, by the Full Bench, that a *bonâ fide* incumbrance, made by the *de facto* guardian of a Hindu minor for the benefit of the estate, and with due regard to the minor's interests, cannot be impeached by the minor on attaining majority, on the ground that the guardian who purported to act on his behalf was not a guardian legally constituted under Act XL of 1858. No. 83 *P. R.* 1889, overruled. MASTU *v.* NAND LAL.

73 P R 1890

52. *Guardian and ward—Lease of ward's property to guardian—Introduction of outsider into management of ancestral holding.*

The District Judge appointed L. S., a connection by marriage, guardian of the property and person of a minor on the ground, apparently, that he was willing to take the minor's land on a lease of Re. 1-3-0 per *ghumao* instead of Re. 1 offered by K. S., the minor's grand-uncle.

Held, that the appointment must be cancelled. Not only is a lease to a guardian of his ward's land most objectionable, but also the effect of the District Judge's order would be to transfer the control of a large share in an ancestral holding from the family of the co-sharers to the family of another tribe, *i.e.*, to the husband of the father's sister. Such an order would only be justified if it were clearly proved that the members of the minor's own family were unfit to be his guardian. KISHEN SINGH *v.* LAHAB SINGH.

78 P R 1892

53. *Guardian and ward—Appointment of guardian—Construction of will—Guardian and Wards Act, 1890, section 39.*

G. M., a Khatri of the town of Rawalpindi, applied to be appointed under Act VIII of 1890, guardian of the property of a minor son of his widowed sister, and was opposed by L. C., paternal uncle of the minor.

L. C. relied upon the will of the grandfather of the minor, by which he alleged that he was appointed guardian.

Held, that before the true construction of the will L. C. had been validly appointed guardian, and that the application of G. M. could not succeed until L. C. had been removed by a proceeding under section 39 of the Act. LAKHMI CHAND *v.* GANDA MAL.

39 P R 1893

54. *Guardian and Wards Act, 1890—sections 7, 8, 10, 11, 13—Appointment of guardian.*

GUARDIAN—*contd.*

The District Judge, acting *proprio motu*, appointed as guardian of the property of a minor, J. B., the defendant, who had not only not applied to be appointed guardian, but whose appointment had been objected to by the appellant.

Held, that there is no authority in the Act to appoint a person guardian who does not claim by his own application, or a person who has not been proposed in accordance with the terms of the Act. BADR BAKSH *v.* JANGBAZ KHAN.

135 P R 1893

55. *Guardian and Wards Act, 1890, sections 8, 25, 26—Person residing out of British territory, appointment of, as guardian—Heir of ward.*

It is against the spirit, if not the letter of Act VIII of 1890, that a person who resides out of British territory should be appointed guardian of the person of a minor.

It is also objectionable that a minor should be made the ward of his own heir. SAMAND SINGH *v.* DUSANDI.

137 P R 1893

56. *Guardian and Wards Act (VIII of 1890) sections 7, 8, 17—Conduct of natural guardian—Application by father who had changed his religion for the guardianship of his minor sons who had been brought up, with his acquiescence, as Muhammadans—Waiver of right—"Welfare of minor."*

In 1884 one B. K. who was formerly a Muhammadan, became a convert to Christianity, whereupon a disruption of his family ensued, he and his wife ceasing to live together, and his sons remaining with their mother and being brought up, with the acquiescence of B. K., as Muhammadans. In 1893 B. K. applied, under section 8 of the Guardian and Wards Act, 1890, to the District Judge to be appointed guardian of his two sons, aged 9 and 11 respectively, and on his application being rejected appealed to the Chief Court.

Held, that the paramount consideration for the Court, under the Act, being what appears in the circumstances to be for the welfare of the minors consistently with the law to which they are subject, that is, in the present case, the Muhammadan Law as modified by any legislative enactment, and conceding that the father is the person *primâ facie* entitled to the custody of his minor sons, of the ages of the sons in the present case, the petitioner had by his conduct waived his right to the care and custody of his minor sons by his acquiescing for a long series of years in a course of education opposed to that which he now sought to impose upon them. *I. L. R. XVI Bom.* 307, referred to. BARKHURDAR KHAN *v.* MUSSAMMAT GHULAM FATIMA.

84 P R 1894

57. *Guardian and Wards Act, 1890, sections 34, 39 (b)—Appointment of guardian of*

GUARDIAN—*contd.*

property—Appointment of person residing outside British India.

Respondent who resided in the State of Bikanir was appointed (though apparently not by will or other instrument) guardian of the property of a minor which was situate in the adjoining district of Hissar.

Held, that there was nothing in the Guardian and Wards Act, 1890, to suggest that respondent was not a fit person to be so appointed. AMAR CHAND *v.* BAHADUR MAL.

65 P R 1896

58. *Application to remove guardian on ground of failure to furnish security*—Ex parte *order removing guardian—Application to set a side* ex parte *order—Procedure.*

Appellant was duly appointed guardian and received a certificate, but the order of the Court appointing him, while directing him to file security, did not specify the amount thereof, or the time within which it was to be filed. Subsequently, on an application by respondent, the District Judge in an *ex parte* order directed that the guardian should be removed on the ground that he had not furnished security within a reasonable time. The guardian's application to have the *ex parte* order set aside was rejected on the ground that his only remedy was by way of appeal therefrom.

Held, that the District Court had erred in holding that the application to have the *ex-parte* order set aside could not be entertained, the provisions of the Civil Procedure Code as regards procedure being applicable to cases under the Guardian and Wards Act, unless the contrary is expressly declared.

Held, further, that the guardian should not have been removed for failure to give security, until a distinct order had been passed fixing the amount and the time within which it was to be filed, and the guardian had thereafter failed to comply with such order. MUHAMMAD AZIM *v.* MUHAMMAD JI.

7 P R 1898

59. *Guardian and Wards Act, 1890, sections 12 (3) (b), 47—Preliminary order as to custody of property—Revision—Civil Procedure Code, 1882, section 591.*

At the hearing of an application, under Act VIII of 1890, for the custody of the person and property of a minor at the time living with his step-mother, the Court by an interlocutory order issued a commission to a certain Munsif to make a list of the property of the minor and to lodge it in Court for safe custody, care being taken that the step-mother was given the necessary utensils, clothes, etc., for her support and maintenance. The step-mother applied to the Chief Court on the Revision Side to set aside the said order but it was objected on behalf of the respondent that, inasmuch as an appeal from the final order of the lower Court in this case lay to the Chief Court, the order in question was not open to revision. On behalf of petitioner it was contended that, the property affected being

GUARDIAN—*contd.*

in her possession, no order passed in appeal could remedy the injury caused by the order, which was *ultra vires* with reference to the provisions of section 12, sub-section (3), clause (*b*), of Act VIII of 1890, and further, that the petitioner was not bound to appeal against an order appointing the respondent guardian, while, in the event of his application being dismissed, she could not appeal against the order in question, which in any event did not affect the decision of the case, in the terms of section 591 of the Civil Procedure Code.

Held, that the order in question being passed by the Court for the temporary custody and protection of the minor's property, and the custody of the Munsif being in effect the custody of the Court, did not violate the rule contained in section 12 (3) (*b*) of Act VIII of 1890, and that the words "any person" in the said clause could not be interpreted to include the words "the Court."

The Court being satisfied that this was not a case in which the revisional powers of the Court should be exercised, dismissed the application. MUSSAMMAT HEM KAUR *v.* RAI DAULAT RAM. **10 P R 1898**

60. *Guardian and Wards Act, 1890, sections 3, 7—"Will or other instrument"—Nuncupative will—Appointment of minor's heir as guardian of property.*

Held, that the provisions of section 7 of the Guardian and Wards Act, 1890, do not apply to nuncupative wills.

Held, further, that inasmuch as a minor's heir is peculiarly interested in the good management of the property to which he hopes to succeed, there is no objection to the appointment of such a person as guardian of the minor's property as distinct from the minor's person. AMIN CHAND *v.* PHAGGU MAL. **54 P R 1898**

61. *Guardian—Competency of a married woman to represent a minor in an Appellate Court—Civil Procedure Code, 1882, sections 445, 457, 582, 587—Quære.*

Can a married woman who acted as next friend of a minor in an original Court legally continue to represent him when he becomes respondent in a Court of appeal. WADHAWA MAL *v.* WADHAWA. **8 P R 1908**

62. *Guardian and minor—Appointment of guardian of person of a minor—Joint Hindu family—Jointness—Separation.*

Held, following *Gharibullah* v. *Khalak Singh* (1903) *I. L. R.* 25 *All.* 407 that the fact, that a Hindu minor and his uncle are joint in property as members of a joint Hindu family, does not bar the appointment of a third person as guardian of the minor's person, but does bar the appointment of such person as guardian of the minor's property.

Held also, that there is no inconsistency in a guardian of the minor's person being appointed without any appointment of a

GUARDIAN—*concld.*

guardian of the joint property, of which he is a co-parcener. RAM KISHEN *v.* BELIRAM. **23 P R 1910**

See CASES UNDER MINOR.

GUARDIAN AD LITEM.

1. *Omission by Court to appoint for minor defendants—Effect of such omission—Appointment by Court to be formally made.*

See CIVIL PROCEDURE CODE, 1908, O. XXXII, R. 3. **100 P R 1882**

2. *Guardian and Ward—Act XL of 1858—Guardian* ad litem—*Compromise.*

See CIVIL PROCEDURE CODE, 1908, O. XXIII, R. 3. **105 P R 1889**

3. *Setting aside decree passed on a compromise—Minor—Guardian* ad litem, *—Fraud in equity—Knowledge.*

See CIVIL PROCEDURE CODE, 1908, O. XXIII, R. 3. **24 P R 1893**

4. *Suit by next friend of minor—Absence of certificate, omission to record a formal order granting permission to sue.*

See CIVIL PROCEDURE CODE, 1908, O. XXXII, R. 1. **166 P R 1889**

5. *Duration of authority of.*

See CIVIL PROCEDURE CODE, 1908, O. XXXII, R. 3. **115 P R 1885**

6. *Suit against minor—No formal order appointing guardian* ad litem—*Informal sanction of Court.*

See CIVIL PROCEDURE CODE, 1908, O. XXXII, R. 3. **67 P R 1897**

7. *Oaths Act, 1873—Offer to be bound by oath of other party—Power of next friend to bind.*

See CIVIL PROCEDURE CODE, 1908, O. XXXII, R. 7. **186 P R 1889**
18 P R 1891

8. *Minor—Compromise of suit—Sanction of Court—Statement of minor at mutation proceedings.*

See CIVIL PROCEDURE CODE, 1908, O. XXXII, R 7. **17 P R 1899**

9 *Suit against minor—Application for appointment of guardian* ad litem *not filed with the plaint—Suit when instituted.*

See LIMITATION ACT, 1877, SECTION 4. **18 P R 1901**

10. *Of person of unsound mind.*

See MUHAMMADAN LAW, JOINT FAMILY. **91 P R 1887**

11. *Omission by guardian* ad litem *of minor to appeal against decree—Gross negligence on part of guardian—Effect of such decree.*

See RES JUDICATA. **35 P R 1898**

12. *Suit by minors to set aside decree—Bonâ fides of previous guardian* ad litem.

See RIGHT TO SUE. **72 P R 1887**

GUARDIAN AD LITEM—*concld.*

13. *Held*, that a minor not having been represented by a guardian, could not be treated as having appeared, though actually present in Court. MUSSAMMAT IDO *v.* RULIA. **35 P R 1910**

GUARDIAN AND WARDS ACT, 1890.

—Suit to establish right to betrothal and marriage of minor—Suit by collaterals against the natural guardian.

Held, that the provisions of the Guardian and Wards Act, 1890, do not bar a suit against the natural or appointed guardian for the establishment of the right to betroth or give in marriage a minor by the person who claims that right. There is nothing in that Act which deprives collaterals of their rights in these matters under Hindu Law, and the Act does not provide that these rights can be established only by proceedings under it.

Brohmomoyee and another v. *Kashi Chundar Sen* (*I. L. R. VIII Calc.* 266), *Sham Kaur* v. *Mohanunda Sahoy* (*I. L. R. XIX Calc.* 301), *Harenda Nath Chowdhury* v. *Brinda Rani Dassi* (*II Calc. W. N.* 521), *Jairam Luxmon* (*I. L. R. XVI Bom.* 634), *Ghasita* v. *Wazira* (10 *P. R.* 1897), and *Khushal Chand Lal Chand* v. *Bai Mani* (*I. L. R. XI Bom.* 247), referred to. MUSSAMMAT UTTAM DEVI AND OTHERS *v.* MAYA RAM AND ANOTHER. **10 P R 1904**

Section 3.

See GUARDIAN. **54 P R 1898**

Section 7.

See GUARDIAN. **135 P R 1893**
84 P R 1894
54 P R 1898

1. An order made by a District Judge under this section refusing to appoint a guardian is not open to review. Section 623 of the Code of Civil Procedure which deals with reviews of judgments has no application to the proceedings under the Guardian and Wards Act, 1890. FARID *v.* MITHO. **143 P R 1906**

2. *Guardian of property—Power of Court to appoint guardian to the property of a minor who is a member of a joint Hindu family.*

Held, that it is not competent to a Court to appoint a guardian of the property of a minor who is a member of a joint Hindu family. KURI MAL *v.* BHANA MAL. **43 P R 1909**

See ALSO **23 P R 1910**

Section 7 (1).

Where a *de facto* guardian of a minor applied for and obtained letters of administration under section 13 of the Probate and Administration Act, 1881, to an estate to which that minor was heir and described himself as *wali* of the minor *held* that the order thereupon of the Court granting the letters was not a declaration of guardianship within the meaning of section 7 (1) of the Guardian and Wards Act, 1890. GANESHI LAL *v.* SURAJ MAL. **89 P R 1906**

GUARDIAN AND WARDS ACT, 1890—*contd.*

Section 7 (3).

—*Guardian and Wards Act, VIII of* 1890, *section* 7 (3)—*Muhammadan Law—Appointment of guardian by will—Right of maternal grandmother.*

Held, that under Muhammadan Law the father of a girl who has not attained the age of puberty is not her lawful guardian in the presence of her maternal grandmother, and is not entitled to appoint a guardian by his will in supersession of the grandmother, and that a guardian so appointed is not a guardian appinted by will within the terms of section 7 (3) of the Guardian and Wards Act, 1890. BAHADUR ALI *v.* MUSSAMMAT BIVI. **48 P R 1910**

Section 8.

See GUARDIAN.

135 P R 1893
137 P R 1893
84 P R 1894

Section 10.

See GUARDIAN.

135 P R 1893

Section 11.

See GUARDIAN.

135 P R 1893

Section 12.

See CUSTODY OF MINOR. **13 P R 1897**

See GUARDIAN. **10 P R 1898**

—*And section* 48—*Order of District Judge fixing the fee of a custodian of the property of the ward appointed under section* 12—*Appeal—Civil Procedure Code,* 1882, *section* 588 (24)—*Revision—Punjab Courts Act,* 1884, *section* 70.

See APPEAL—II. COMPETENCY OF. **48 P R 1901**

Section 13.

See GUARDIAN.

135 P R 1893

Section 17.

See GUARDIAN. **84 P R 1894**

—*Guardian—Appointment of—Application by a Muhammadan maternal grandmother to be appointed guardian of her Muhammadan minor grandchildren who were in the custody of their father who had changed his religion—Father's right to custody—Act XXI of* 1850, *section* 1—*Interpretation of the expression "rights"—Equity.*

See CUSTODY OF MINOR.

60 P R 1901

Section 25.

See CUSTODY OF MINOR. **13 P R 1897**

See GUARDIAN. **137 P R 1893**

Section 26.

See GUARDIAN.

137 P R 1893

Section 34.

See GUARDIAN. **65 P R 1896**

Held, that a guardian appointed by Court under the Guardian and Wards Act, 1890,

GUARDIAN AND WARDS ACT, 1890—*contd.*

Section—34—*concld.*

even if he may be a testamentary guardian, is liable to give security under this section. SUKH DIAL *v.* KARAM CHAND.

99 P R 1908

Section 39.

See GUARDIAN.

39 P R 1893
65 P R 1896

Section 47.

See CUSTODY OF MINOR. **13 P R 1897**

See GUARDIAN. **10 P R 1898**

Section 48.

See SECTION 12 *supra.*

48 P R 1901

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HANDWRITING.

—*Comparison of handwriting by experts.*

A comparison of handwriting by experts is generally an unsafe test if it has to stand by itself. JAGNA *v.* GAINDA. **62 P R 1897**

HAQ BAKRI.

1. *Right of Lambardar to levy* haq bakri *or marriage fees.*

See CUSTOM—V. CESSES AND DUES.

50 P R 1869
20 P R 1884
30 P R 1888

2. *Suit for* haq bakri.

See JURISDICTION OF REVENUE COURTS. **1 P R 1876 Rev.**

HAQ BUA.

1. *Right to levy.*

See CUSTOM—V. CESSES AND DUES. **53 P R 1881**

2. *Suit for* haq bua—*Jurisdiction.*

See JURISDICTION OF CIVIL OR REVENUE COURTS. **11 P R 1890 Rev.**

3 *Suit for declaration that occupancy tenants in the village are not liable to pay* haq bua—*Jurisdiction.*

See JURISDICTION OF CIVIL OR REVENUE COURTS. **33 P R 1908 F B**

HAQ-I-DASTAR.

Held, that among Janjiana Sials of *mauza* Kharanwala in the Jhang district, the eldest son is entitled upon final partition to receive extra land, in addition to his share, by way of *haq-i-dastar* or *haq-i-pagri.* MIAN KHAN *v.* SARNAIL. **4 P R 1910**

HAQ MAHSUL.

—*Suit for land revenue*—Haq mahsul—*Cash assessment.*

See JAGIR. **28 P R 1888**

HAQ MALIKANA.

See SMALL CAUSE COURT ACT, 1865, SECTION 6. **125 P R 1888**

HAQ SEP.

—*Suit for recovery of* haq sep—*Jurisdiction.*

See JURISDICTION OF CIVIL OR REVENUE COURTS. **41 P R 1908**

HAQ TORA.

1. *Legality of cess*—Haq tora *or marriage fees.*

See CUSTOM—V. CESSES AND DUES. **64 P R 1880**

2. *Right of Lambardar to levy on behalf of menials.*

See CUSTOM—V. CESSES AND DUES. **80 P R 1890**

3. *Suit for* haq tora—*Jurisdiction.*

See SMALL CAUSE COURT ACT. 1865, SECTION 6. **33 P R 1887 F B**

HAQIYAT, MEANING OF.

Held, that the word *haqiyat* means rights in immovable property and though used as a rule in connection with landed property, there is nothing to prevent its application to house property also. BAWA SINGH *v.* LACHMAN SINGH. **24 P R 1911**

HAZARA CIVIL COURTS.

—*Jurisdiction of Hazara Civil Courts over Upper Tanawal tract—Effect of Regulation II of* 1900 *on suits pending at the time the Regulation came into force.*

Held by the Full Bench—

(*i*) That the Civil Courts of the Hazara District had jurisdiction over the Upper Tanawal tract prior to the enactment of Regulation II of 1900.

(*ii*) That Regulation II of 1900 has no application to a suit pending in the Civil Courts before it came into force.

Crown v. *Fazal Nur* (6 *P. R.* 1878 Cr.), referred to. SAMUNDAR KHAN *v.* ATTA MUHAMMAD. **73 P R 1904 F B**

HAZARA SETTLEMENT RULES.

See CUSTOM—V. CESSES AND DUES **53 P R 1881**

1. *Hazara Settlement Rules—Suit to correct entry in Settlement Record—Jurisdiction.*

Held, that under the rules made for the Hazara Settlement, a suit is not maintainable in a Civil Court to set aside an entry in the Settlement record.

The proper mode of correcting an entry (other than an entry made in accordance with a decree) would be either by suit in the Settlement Court, or by proceedings by way of appeal or application for revision. RAJA FIROZ KHAN *v.* RAJA MAHOMED KHAN.

111 P R 1879

2. *Hazara Settlement Rules, section* 60—*Suit to correct entry in Settlement Record contrary to Settlement award.*

Where plaintiff sued for correction of the Settlement Record of a village in the Hazara

HAZARA SETTLEMENT RULES —*concld.*

district on the allegation that the entry in the record was, as regards the land in suit, contrary to a Settlement award in respect of it, as contained in a judgment of the Superintendent of Settlement, *held*, reversing the orders of the lower Courts, that the suit as brought was not barred by section 60 of the Hazara Settlement Rules. SHAM PERKASH *v.* ILAHI BAKSH KHAN. **3 P R 1880**

3. *Rule No. 60—Finality of entry in Settlement Record.*

Quære, whether the 60th Rule of the Hazara Settlement Regulation can be rightly construed so as to give finality to the decisions of a Settlement Superintendent on every point incidentally dealt with in preparing the record. SHER ALI *v.* MIRWALI KHAN. **17 P R 1887**

HEREDITARY TENANTS.

See OCCUPANCY RIGHT.
TENANCY ACT, 1868.

HIBA-BIL-IWAZ.

—*Gift made in consideration of services rendered.*

See CONTRACT ACT, 1872, SECTION 25. **61 P R 1893**
DEATH-BED GIFT. **15 P R 1895**
LIMITATION ACT, 1877, SCHEDULE II, ARTICLE 91. **52 P R 1895**
MUHAMMADAN LAW, GIFT, *Passim.*

HIGH COURT.

—*Entry as advocate of any High Court—Court of the Judicial Commissioner of Burma not a High Court within the meaning of Stamp Act of* 1879.

See STAMP ACT, 1879, SCHEDULE 1, ARTICLE 27. **14 P R 1889**

HIGHWAY—DEDICATION OF.

See EASEMENT. **62 P R 1898**

HINDU FAMILY.

—*Hindu family—Partnership—Dissolution by death of partner—Indian Contract Act, IX of* 1872, *sections* 238 *and* 253 (10)—*Suit by widow of deceased partner for account and share in specific assets—Limitation—Indian Limitation Act, XV of* 1887, *article* 106—*Khatris—Presumption of jointness—Disruption and re-union of some members—Hindu Law*—Status *of widow—Self-acquired property*—Res judicata—*Application of old or new Code of Civil Procedure—General Clauses Act, X of* 1897, *section* 6—*Profits in land—Jurisdiction of Civil Court—Punjab Tenancy Act, XVI of* 1897, *section* 77 (3) (*k*).

Held, that where the allegations for the plaintiff, the widow of a deceased member of a Hindu family (though not a joint family) were, that her husband's father was the sole proprietor of a business and had gifted to each of his two nephews (the defendants) a share in the business and they had allowed such shares to remain in the business ever since, and it was not denied that they were

HINDU FAMILY—*contd.*

all entitled to a share in the profits of the business to the extent of their respective shares, the relationship thus created is a partnership as defined in section 238, Indian Contract Act, and not a " hereditary trading partnership " under Hindu Law.

Held also, that this partnership was dissolved by the death of plaintiff's husband in 1900 under section 253 (10) of the Act, and that this suit, instituted in 1906, which was in substance merely a suit for an account of a dissolved partnership, was consequently barred by time under Article 106 of the Indian Limitation Act.

Held also, that it was the duty of the Court *suo moto* to see, if, upon the allegations in the plaint, a suit was in time as a whole or in part, notwithstanding that the defendants pleaded limitation only in regard to part of the claim, and that this rule applied equally to a Court of appeal.

Held further, dissenting from *Merwanji Harmasji* v. *Rustamji* (1882), *I. L. R.* 6 *Bom.* 628 (635), and *Sokhanada* v. *Sokhanada*, (1905) *I. L. R.* 28 *Mad.* 344 and following *Rivett Carnac* v. *Gocul Das*, (1896) *I. L. R.* 20 *Bom.* 15, that the suit for a general account being barred by time, it was also barred in respect of specific assets of the business acquired within three years of institution of suit.

And that article 106, Limitation Act, applied to every suit in which plaintiff claimed an account of the general partnership property and his share *in the same* and its profits.

Held also, that among Khatris, residents in a town and in no way agriculturists, brothers were presumably members of a joint family.

And following *Bala Baksh* v. *Rukhma Bai*, (1903), *I. L. R.* 30 *Cal.* 725 P. C. that where one co-partner separated from the others, there was no presumption that the latter remained united, and, when upon such separation the shares of the other co-partners were fixed, there was a virtual separation of all and an agreement amongst the remaining members of a joint Hindu family to remain united, had to be proved like any other fact.

(The meaning of the ruling by their Lordships of the Privy Council in *Parbati* v. *Naunihal Singh*, (1909) *I. L. R.* 31 *All.* 412 P. C. explained.)

Held further, following *Bala Baksh* v. *Rukhma Bai* (1903), *I. L. R.* 30 *Cal.* 725 P. C. that " a re-union in estate" properly so called can only take place between persons who were parties to the " original partition."

Held also, following *Balwant Singh* v. *Rani Kishori*, (1878) *I. L. R.* 20 *All.* 267 P. C. that as regards self-acquired property a Hindu has plenary powers of disposition.

Held also, that where in a previous suit by the present defendants as plaintiffs for recovery of a book debt the defendants, while admitting the debt, pleaded that it was due to the firm in which the husband of the widow (present plaintiff) had a two-third share and the widow was added as a co-plaintiff under section 32, Civil Procedure Code, 1882, and an issue was framed, *inter alia*, as to what

HINDU FAMILY—*concld.*

was her share in the amount claimed and the Court found that she was entitled to the share which her husband would have had if alive, that this was *res judicata* between her and her then co-plaintiffs (present defendants), and that it followed that she was equally entitled to a similar share in the rest of the property.

But, that a mere substitution as legal representative of her deceased husband in another suit had not the same effect.

Held further, that this question must be decided under the provisions of the *old* Civil Procedure Code of 1882, notwithstanding that the new Code of 1908 had come into force before the decision of the appeal in the Chief Court, as it involved a substantive and very real right to which the provisions of section 6 of the General Clauses Act, X of 1897, applied.

But also, that the rule enunciated in 20 *P. R.* 1891 *F. B.* (*Shamas Din* v. *Ghulam Kadir*) was applicable only to ordinary Courts established in this country and was not affected by the question, whether, having regard to the value of the two suits, a further appeal might be to the Judicial Committee in the one and not in the other, there being no appeal *as of right* in any case to His Majesty in Council.

Held also, that section 77 (3) (*k*) of the Punjab Tenancy Act, 1887, did not oust the jurisdiction of the Civil Courts from entertaining the claim for a share in profits of agricultural land, which had been realised by the defendants and entered in the books as part and parcel of the assets of the business. MUSSAMMAT NEHAL DEVI *v.* KISHORE CHAND. **97 P R 1910**

HINDU LAW.

1. ADOPTION.
2. ALIENATION.
3. ANCESTRAL PROPERTY.
4. BETROTHAL.
5. GIFT.
6. GUARDIANSHIP.
7. INHERITANCE.
8. JOINT FAMILY.
9. MAINTENANCE.
10. MARRIAGE.
11. MINOR.
12. PARTITION.
13. STRIDHAN.
14. SURETYSHIP.
15. WIDOW.
16. WILL.

I.—ADOPTION.

See CUSTOM, APPOINTMENT OF HEIR.

1. *Relinquishment of status—Disinherison.*

Held, that, according to Hindu law, an adopted son cannot relinquish his status, nor be disinherited by his adoptive father. LATCHMAN *v.* HEMRAJ. **17 P R 1878**
Following JHUNDA *v.* SAHIBA. **15 P R 1877**

HINDU LAW—*contd.*

I.—ADOPTION—*contd.*

2. *Wife's brother—"* ***Reflexion of a son.***"
Held that, according to the Hindu Law, the adoption of a wife's brother is not prohibited. The rule recorded in the *Dattaka Mimansa*, that the boy adopted should be "the reflexion of a son," discussed.

Per BARKLEY, J.—The meaning of the rule simply is, that it excludes the sons of women whose *original* relationship to the adopter was such that they could not have been his wives. NUND LAL *v.* LAKHA.

125 P R 1880

3. *Adoption of brother-in-law's son—Hindu Law or Custom—Sikh Khatris of Rawalpindi—Burden of Proof—" Agricultural tribe."*

One K. S., a Sikh Khatri, of the Bindra section, having adopted G. S., his wife's brother's son, plaintiff sued for a declaration that the adoption was invalid by custom and would not affect his reversionary rights. It appeared that the families of plaintiff and K. S. had held land for at least two generations, and that the total ancestral land in the possession of K. S. was about 4 *ghumaos* 5 *kanals*. The lower Courts decreed plaintiff's claim on the ground that defendants had failed to prove that the said adoption was valid by custom.

Held, that though the primary rule of decision in a suit of the present character is custom, there is no necessary legal presumption that a particular custom bearing on the point in issue exists, section 5 of the Punjab Laws Act, 1872, only casting on the Court the duty of enquiring whether there is any such custom binding on the parties, and, if there is, to decide the suit in accordance therewith.

Held, further, that under Hindu Law, which was the personal law of the parties, the adoption in question was perfectly valid.

Held, therefore, that plaintiff, who was suing to set aside an adoption, which was valid by the personal law of the parties, on the ground that it was invalid by custom; must fail if the custom upon which he relied was not proved, and that he was accordingly bound by the rules of pleading to establish that custom affirmatively.

Held, further, that inasmuch as Khatris do not ordinarily form an agricultural but a trading community, the usages of agriculturists cannot be presumed to apply to them, and therefore that plaintiff could not claim the benefit of the presumption laid down by the Full Bench in No. 50 *P. R.* 1893, so as to shift the burden of proof from himself to defendants.

Found, upon the evidence, that plaintiff had failed to prove that by custom among the parties the adoption of a wife's brother's son was invalid. KARTAR SINGH *v.* MATHAR SINGH.

94 P R 1898

4. *Adoption of daughter's son—Hindu Law—Banias of Jagraon—Burden of proof Omission to perform certain cermonies.*

Plaintiff sued for a declaration that a deed of adoption whereby defendant No. 1,

HINDU LAW—*contd.*

I.—ADOPTION—*contd.*

plaintiff's brother, adopted his daughter's son, was invalid, and would not affect plaintiff's reversionary rights. Plaintiff admitted the *factum* of adoption and contended it was illegal by " law and custom," and was, moreover, invalid owing to the non-performance of certain necessary ceremonies. The parties were Banias of Jagraon. The lower Courts dealt with the question as one of custom, and dismissed the suit on the ground that the adoption had not been proved to be invalid by custom among the parties.

Held, that the parties being Bania residents of a town, of the ordinary mercantile class, were governed by Hindu Law and not by custom, and that plaintiff had failed to prove that under Hindu Law a daughter's son was not a proper person to be adopted.

Held, further, that the *factum* of adoption not being disputed, and the daughter's son being a person who might legally be adopted, the adoption was not invalid on account of the omission of any particular ceremony.

I. L. R. XVII All., 294, followed. GANDA MAL *v.* THAKAR MAL.

97 P R 1898

5. *Custom—Adoption—Adoption of sister's son—Acharjya Brahman of Goler in the Dehra* tahsil *of the Kangra District—Burden of proof.*

One R. D., an Acharjya Brahman of Goler in the Dehra *tahsil* of the Kangra District, executed a deed of adoption in favour of " K.," his sister's son, reciting that K. had been adopted when two or three years old, and had ever since been treated as a son. Plaintiffs, collaterals of R. D., sued for a declaration setting aside the deed on the grounds that K. was, in fact, never adopted, and that the adoption was invalid by custom and Hindu Law. The first Court found that the adoption was not opposed to custom, but that there was in fact no adoption as recited in the deed, though K. had lived with R. D. for many years and assisted him in his business, and gave plaintiffs a decree that K. was not the adopted son of R. D. The Divisional Judge on appeal reversed the decree, on the ground that the *factum* of adoption had been clearly established; and, further that by custom the adoption was valid. The plaintiffs preferred a further appeal against these findings to Chief Court.

Held, that where the parties are not members of an agricultural tribe of land-holding group and where no ceremonies are essential and the adoption not opposed to custom, a declaration by deed, if coupled with previous and subsequent treatment as an adopted son was sufficient to constitute adoption.

Held, also, that in cases where the right of adoption is admitted or is found to prevail and the parties are not members of an agricultural tribe, or land-holding group, the burden of proof ought to lie on those who deny that a particular kind of adoption,

HINDU LAW—*contd.*

I.—ADOPTION—*contd.*

e. g., that of a daughter's or sister's son cannot be made.

Found, upon the evidence that plaintiffs had failed to prove that by custom among Acharjya Brahmans of Kangra (who are not members of an agricultural tribe or land holding group) the adoption of a sister's son was invalid.

Ralla v. *Budha* (50 *P. R.* 1893, F. B.) distinguished, and the subject of adoption, among non-agricultural twice-born Hindu classes in the Punjab discussed. SOHNUN AND OTHERS *v.* RAM DIAL AND OTHERS.

79 P R 1801

6. *Custom—Adoption—Daughter's son—Hindu Jats of Hayatpur in the Garhshankar* tahsil *of Hoshiarpur District—Suit to obtain a declaration that an alleged adoption was invalid or had never taken place—Limitation from which period begins to run—Limitation Act,* 1877, *Schedule II, article* 118—*Burden of proof.*

On the 28th August 1884, one K. executed a deed of ad option in favour of his daughter's son. In 1894 after the death of K. his widow assented to mutation of names being effected in favour of the adopted son. In 1897 the plaintiffs, who are the male collaterals of K., instituted a suit to obtain a declaration that the alleged adoption was invalid, and that it never took place. The first Court found that the plaintiffs' claim was barred by limitation, that the defendant was adopted by K., and that the adoption was not invalid. The Divisional Judge reversed the decree of the first Court on the grounds that the suit was not barred, that the fact of the widow of K. allowing mutation in favour of the adopted son gave plaintiff a fresh cause of action, and that the defendant was not formally adopted, and that as a daughter's son he could not be adopted.

Held, that as the title of the adopted son to the property was created by the adoption and not by any subsequent admission on the part of the widow of the adoptive father that the title existed, such an admission did not give plaintiff any fresh cause of action, and as the plaintiffs had knowledge of the adoption more than six years previous to the institution of suit their claim was barred under Article 118 of the second schedule to the Limitation Act of 1877.

Held also, that although a presumption at the outset is against the power of an adoption of a daughter's son in a case where evidence such as an entry in a *Wajib-ul-arz* or *Riwaj-iam* or precedents are produced by the adopted son, the burden of proof is shifted to the party denying the validity of such an adoption.

Found, upon the evidence, that the defendant was formally adopted by K., and that his adoption was valid.

Parman v. *Gian Singh* (94 *P. R.* 1893) *Natha Singh* v. *Sujan Singh* (34 *P. R.* 1899), and *Ralla* v. *Budha* (50 *P. R.* 1893), referred to. HEM RAJ AND ANOTHER *v.* SAHIBA AND OTHERS.

116 P R 1901

HINDU LAW—*contd.*

I.—ADOPTION—*contd.*

7. Among non-agricultural Hindus a declaration by deed, coupled with previous and subsequent treatment without the performance of any ceremonies, is sufficient to constitute an adoption valid. MANGTU *v.* CHUNI LAL.
51 P R 1903

8. *Suit by adopted son to contest alienation by Hindu widow—Possession of widow adverse to the adopted son—Suit by the adopted son more than six years after interference with his rights—Suit to obtain declaration of the validity of an adoption.*

In 1900 the plaintiff, who claimed to have been adopted by A. in 1871, sued to obtain a declaration that certain alienations of immovable property made by the widow of his adopted father were invalid as against his interests. It was admitted that on A.'s death, which took place in 1879, his widow had contested and denied plaintiff's right as an adopted son and had insisted on her own succession, and that she had ever since been allowed to retain undisturbed possession of the property. The plaintiff's contention was that her possession was not adverse, as it was the result of a family arrangement by which his possession was postponed by consent, and that she had admitted the plaintiff's adoption and was allowed to hold as a widow for life.

Held, on the facts that the plaintiff has failed to prove an arrangement by which his alleged adoption was recognized by the widow and that she had been allowed to succeed to her husband's estate for life. Moreover, as the widow had no title to succeed as such in the presence of the plaintiff holding the character of an adopted son of her deceased husband, her possession was adverse to him to the fullest extent of ownership, which having continued for more than twelve years the plaintiff had no right of succession to the property belonging to her.

Held also, that the suit was barred under article 119 of the Limitation Act, as it involves the establishment of the validity of plaintiff's adoption as the basis of his title, the period of limitation having commenced to run from 1879, the date when his rights as an adopted son were interfered with. RAM NARAIN *v.* MAHARAJ NARAIN. **3 P R 1904**

9. Kashmiri Pandits of the Delhi District are proved to be governed in matters of adoption by custom and not by the principles of the *mitakshara* form of Hindu Law, and that amongst the members of that tribe a widow has full power after her husband's death and without his express permission in this behalf to adopt any boy whom she selects provided he is of the same tribe. MAHARAJ NARAIN *v.* BANOJI. **34 P R 1907**

10. *Daughter's son.*

Held, that though by strict Hindu Law a daughter's son cannot be adopted, this general rule may be, and often is in the Punjab,

HINDU LAW—*contd.*

I.—ADOPTION—*concld.*

varied by family custom. RUP NARAIN *v.* MUSSAMMAT GOPAL DEVI.
93 P R 1909 P C

11. *Adopted son—Succession of, to rozina dues.*

Held, that an adopted son cannot succeed to *rozina* dues under the rules of the Darbar Sahib, Amritsar. The matter is not one to be decided under Hindu Law, but under the custom and practice of the institution. HIRA SINGH *v.* GUR BAKSH SINGH. **94 P R 1909**

12. *Hindu Law—Adoption, validity of—Bhabra Jains of Kaithal—Result.*

Held, that the result of an adoption is to make the adopted son a co-parcener with the adoptive father in the joint family property, and that the latter was consequently incompetent to bequeatth or devise any part of that property in the presence of the adopted son. MUSSAMMAT AKI *v.* KUNDAN LAL.
74 P R 1911

II.—ALIENATION.

See CUSTOM—ALIENATION.

1. *Brahmans of Lahore—Alienation of ancestral property—Liability of son's interest—Son's right to enforce partition in father's lifetime—Alienation of son's undivided interest in family estate—Hindu Law.*

See CUSTOM II—ALIENATION BY MALE PROPRIETOR, SALES AND MORTGAGES IN FAVOUR OF STRANGERS.
109 P R 1888

2. *Alienation—Necessity.*

Necessity, *inter alia*, exists where the alienation is for the preservation of the family credit, such as necessary marriage expenses. NARAIN *v.* DHUNNA. **63 P R 1866**

3. *Alienation.*

By Hindu law, land cannot be sold without consent of heirs, except in case of necessity or for cogent reasons. *Moheer Singh* v. *Hazara Singh (No.* 36 *P. R.*, 1866, Civil), *Mussammat Kurm Kour* v. *Ramdhun* (*No* 89 *P. R*, 1866 Civil) *Luckhee* v. *Mussammat Bhoochee* (*No.* 11 *P. R.*, 1867, Civil) *and* MUST RAM *v.* MUSSAMMAT LOORINDEE. **40 P R 1867**

4. *Mortgage by father of ancestral property.—Right of son to a declaratory decree protecting his interest—Such decree granted in suit for cancellation of instrument of alienation.*

Where the plaintiff's father mortgaged a portion of the ancestral property to a third person, *held*, that the plaintiff was entitled to a decree, by virtue of his inchoate right in the ancestral estate, declaring that his interest in the property should be unaffected after his father's death. *Held*, also that the plaintiff was entitled to such decree, notwithstanding that he sued for cancellation of the mortgage deed and not for a declaratory decree. RAMU *v.* KANH SINGH. **96 P R 1869**

HINDU LAW—*contd.*

II.—ALIENATION—*contd.*

5. Under Hindu Law, a son has inchoate rights in ancestral real property distinct from those of his father's and the rights of the son are not saleable in execution of a decree against the father, unless the debt for which the decree was made was incurred for a purpose sufficient in law to justify alienation by a father without the consent of his son. RUGHNATH *v.* RUHEEM BUX *No.* 53 *of* 1869 Civil); *and* JANKI DAS *v.* SANCHI RAM.
11 P R 1871

6. *Immovable and movable, acquired and ancestral property—How far chargeable for debts.—Debts contracted for immoral purposes.*

By Hindu Law, a son takes joint immovable ancestral property by survivorship and not by inheritance , and such property is not answerable for the private or personal debts of the deceased fatber not incurred for the family benefit. *Aliter* as to acquired property movable or immovable and as to ancestral movable property. Money borrowed, and spent in drink or given to dancing women, may by Hindu Law constitute a debt for which the heir is liable. ARUR SINGH *v.* GUNESH RAI. **28 P R 1872.**

7. *Debts contracted by drunkard—Right of plaintiff to recover for, when no undue advantage taken by him—Necessary debt.*

Plaintiffs, cloth merchants, sued the defendants, the son and widow of Sirdar Harnam Singh, for goods supplied to the deceased Sirdar. The claim was resisted on the grounds that the deceased, through his intemperate habits, was incapable of managing his affairs; that the goods supplied (*dana* and other muslins and dress pieces) were not necessaries, or for family use, and were in part given by the Sirdar as presents to prostitutes. *Held*, that as there were intervals during which the deceased was sufficiently sober to conduct his business, there was no ground for supposing that plaintiffs took undue advantage of his condition; and that as the goods supplied were not unsuited to his position and (with the exception of one item entered in the name of a prostitute and valued at Rs. 20) were not adapted to his mere personal gratification, apart from his position as head of the family plaintiffs were entitled to recover for all the goods supplied against all the property which had come into the possession of the defendants, whether by survivorship or inheritance. HUR NARAIN *v.* ARUR SINGH. **44 P R 1872**

8. A decree was obtained against the manager of a banking business upon some dishonored *hundis* drawn by the manager. The business belonged to a Hindu undivided family. In execution of the decree, ancestral immovable property of the family was attached. *Held*, that the property was liable to be sold in satisfaction of the decree. KIRPAL SINGH *v.* LALLOO MULL.
64 P R 1873

9. Money borrowed for the purpose of starting a trade to be carried on for the support or benefit of the family, is by Hindu Law a legal necessity for the alienation of ancestral property. ACHRU MULL *v.* JAWALA DASS. **67 P R 1873**

10. *Personal and acquired immovable property—Suit by son.*

Plaintiff, a Hindu, sued for a decree declaring that he had a right to share in the ancestral property in the possession of his father, who, it was alleged, had alienated a part of the property and committed acts of waste. *Held*, by BOULNOIS and CAMPBELL, J. J. (LINDSAY, J. dissenting), that as plaintiff could have obtained an injunction had he prayed for it, the suit for a declaratory decree would lie.

Held, by BOULNOIS and LINDSAY, JJ. that personal property of every description, ancestral or acquired, and immovable property acquired by the owner in occupation, might be used by him as he pleased, subject only to spiritual responsibility. BISHEN SINGH *v.* JIWAN SINGH. **70 P R 1876**

11. *Charge upon ancestral property—Nature of debt.*

Upon objection taken by a Hindu son to the alienation or sale of ancestral immovable property to discharge a debt contracted by his father, the question is not whether the debt was incurred for the family benefit or a necessary purpose, but whether the debt was of an immoral nature. If the debt be not of such nature, the ancestral property is liable to be charged with it.

A debt incurred by a Hindu zemindar to speculate in trade, is not an "immoral" debt. GANGA *v.* KHUSHAL SINGH.

77 P R 1876

12. *Ancestral and acquired property—Liability of, for father's debts contracted for immoral purposes—Suit against son as representative—Omission to plead that debts were contracted for immoral purposes—Estoppel.*

In October 1875 the present defendants sued the present plaintiff and his brother as the legal representatives of the deceased debtor, Sher Singh, their father. They both admitted the debt, but the present plaintiff pleaded that he had no assets, and that he had been separated 20 years before from his father. The Court granted a decree against the brothers jointly, as representatives, recoverable from the property of Sher Singh, deceased, in their hands.

In execution of that decree, a house in the possession of the present plaintiff was attached. He applied for its release on the ground that it had been in his possession for 30 years and was ancestral property, and that the debt sued for had been contracted for an immoral purpose. His application having been rejected he instituted the present suit.

Held, that by Hindu law, both ancestral and acquired estates in the hands of a son

are upon an equal footing, and not liable for the father's debts if contracted for an immoral purpose: and; therefore, that as the plea that the debts had been contracted for an immoral purpose would have been a complete answer to the former suit and the plaintiff had omitted to put it forward he was now estopped from doing so. JOWAHIR SINGH *v.* GUNGA PERSHAD.

13 P R 1878

13. *Onus of proof—Liability of ancestral property for debts contracted for immoral purposes.*

No inflexible general rule can be laid down, in a suit by a creditor against the son of a deceased Hindu, in order to declare ancestral property in the hands of the latter liable to sale in satisfaction of the debt sued upon, as to whether the plaintiff is bound to prove the nature of the debt or the defendant. Question discussed as to whom the onus would lie on under certain circumstances. MAMRAJ *v.* MUSSAMMAT BELASO.

16 P R 1878

14. *Alienation—Hindu Tarkhans—Alienation of joint ancestral immovable property—Necessity—Form of decree where alienation is justifiable quoad part of the property.*

According to the Hindu law, as interpreted in the Punjab, in the absence of proof of any custom to the contrary, a Hindu father cannot alienate joint ancestral immovable property without necessity, even to the extent of the father's own share.

Payment of a debt of the father, not contracted for an illegal or immoral purpose, may be a justifiable occasion for alienation.

In a suit by the son of a Tarkhan to set aside the sale by his father of the family dwelling house, and recover possession thereof from the purchaser, it was found that of the whole purchase money paid to the father, a portion, Rs. 50, had been applied in payment of the father's legitimate personal debts. *Held*, that the plaintiff was entitled to a decree that the sale was of no effect against him, save to this extent—that he would not be entitled to be put in possession of the house on his father's death until he had recouped the purchaser the sum of Rs. 50. But, inasmuch as by general custom in the Punjab, a son cannot compel his father to partition of joint ancestral immovable property, nor compel his father to give him a portion of the house for a residence, the plaintiff was not entitled to a decree for possession against the purchaser. MUSSAMMAT THAKURI *v.* GANDA MALL. **78 P R 1879**

15. *Ancestral Property, Liability of, in hands of sons for father's debt—Debt—Judgment debt—Decree.*

D. C. sued his brother N. C. for a division of the ancestral property. Arbitrators de-

cided that the brothers were in possession of equal shares of the immovable property and that D. C. should receive Rs. 3,500 from N. C. as his share of movable property. D. C. endeavoured to execute the decree, which followed the award, against N. C.'s immovable property: whereupon N. C.'s sons, (N. C. having died) after an objection made in execution of D. C.'s decree had been disallowed, brought the present suit for a declaration that N. C.'s share of the immovable estate was not liable to attachment and sale in satisfaction of D. C.'s decree.

Held, (reversing the orders of the Lower Courts) that the estate in the hands of N. C.'s sons was liable to satisfy D. C.'s decree; the principle being that ancestral estate in the hands of the son is liable for the father's debt, unless the nature of the debt be such as to free the son from the obligation to discharge it. ACHRU RAM *v.* MEHR CHAND. **98 P R 1879**

16. *Ancestral property, Liability of, in hands of son for father's debt—Illegal or immoral purpose—Compensation for illegal or immoral act.*

One B. S. stole and converted to his own use certain property belonging to H. M. (the defendant in the present case), who sued and obtained a decree against B. S. for the value oi the property. In execution of this decree land belonging to B. S. was attached for the purpose of being sold in satisfaction of the decree. N. S. a son of B. S. brought the present suit through his guardian to set aside the attachment on the ground that the ancestral property was not liable for his father's debt, such debt having been contracted for an immoral purpose.

Held, that the property was liable to be attached and sold in satisfaction of plaintiff's decree.

Per PLOWDEN, J.—It is impossible to hold that the debt created by the decree is a debt contracted for an illegal or immoral purpose, merely because the act from which the obligation to make compensation arose was an illegal or immoral act, or both illegal and immoral. KARTAR SINGH *v.* HARJI MAL.

128 P R 1879

17. *Alienation by son of deceased father's estate—Lien of creditor—*Bona fide *purchaser.*

Held, that the son of a deceased Hindu may alienate his father's estate to a *bona fide* purchaser for valuable consideration, and that a creditor who has not acquired a legal lien on the property cannot follow the assets into the hands of a stranger who has acquired the property *bona fide* and for valuable considertion. SEWA RAM *v.* BODH RAJ.

135 P R 1879

18. *Alienation by father of joint ancestral property—Necessity—Suit by son to set aside the alienation—*Bona fide *purchaser.*

HINDU LAW—*contd.*

II.—ALIENATION—*contd.*

A Hindu father governed by the Mitakshara law has power to alienate joint ancestral property in order to raise money to pay off an antecedent debt, and his sons by reason of their duty to pay their father's debt cannot recover that property unless they show that the debts were contracted for immoral purposes and that the purchasers had notice that they were so contracted.

Where by the sale of such property a larger sum is raised than is necessary to pay off the debt, a son would not ordinarily be barred from suing to set aside the sale if the property sold was of very large value and the sale was effected for the ostensible purpose of paying off a comparatively small debt; but a sale is not liable to be impeached simply on the ground that a somewhat larger sum was realized by the sale than was necessary for the purpose in view, if the purchaser has satisfied himself by reasonable enquiry that the father as manager of the joint family property required money for a necessary purpose, and that the money was not forthcoming otherwise than by alienation of the property, and that a sale was the form of alienation which a prudent man would resort to for the purpose of raising the money. KANHYA LAL *v.* HAZURA SINGH.

44 P R 1880

19. *Hypothecation by father of ancestral property—Necessity—Rights of mortgagee.*

Held, that in a Mitakshara family consisting of the father and one minor son, where the father, being manager, raises money by hypothecating ancestral family property, and it is not proved on the one hand that there was any legal necessity for his raising the money, nor on the other that it was expended for immoral or illegal purposes, or that the lender made any enquiry as to the purpose for which it was required, the mortgage itself cannot be enforced, but the mortgagee, in a suit brought against the father and the son would be entitled to a decree directing the debt to be raised out of the whole ancestral estate inclusive of the mortgaged property. SUKH RAM *v.* GHASITA **166 P R 1882**

20. *Alienation by one co-parcener without consent of others—Voidable transaction—Ratification by co-parceners—Assent how established.*

According to the Hindu law as interpreted in the Punjab, no member of a joint Hindu family can, in the absence of custom to the contrary, alienate even his own share in the undivided estate without the consent of his co-parceners: but such an alienation is an act which is not necessarily and *ipso facto* void, but is merely voidable by the co-sharers if they choose to repudiate it.

In order to prove that the co-sharers assented to the transaction, all that need be established is that, having the power to forbid the act, which implies that they knew of it, they neglected to exercise that power.

HINDU LAW—*contd.*

II.—ALIENATION—*contd*

Mussammat Zahro v. *Lallu Mal* (No 21 *P. R.*, 1879, Civil) cited. BANKE RAI *v.* MADHO RAM.

153 P R 1883

21. *Execution of decree—Sale of ancestral property in satisfaction of father's debt—Liability of son's shares.*

Held, citing the decision of the Privy Council in *Nanomi Babuasian* v. *Madhun Mohun* (*I. L. R. XIII Calc.* 21) that under Hindu Law a son cannot object to the sale of ancestral property in satisfaction of a judgment-debt of his father, in the absence of proof that the debt was contracted for an immoral purpose. RAM CHAND *v.* GHOLU SHAH. **87 P R 1887**

See ALSO HAZURA SINGH *v.* CHANDA SINGH. **87 P R 1887 Note**

22. *Mortgage—Decree—Sale in execution.*

A. and B. who were members of a joint family mortgaged ancestral family property to the plaintiff to secure an advance made for payment of a debt due from a firm which was carried on by A. and B. and of which the present defendants, two minor members of the family, were also members. The mortgage deed recited that A. and B. were the sole owners of the property. Plaintiff obtained a decree against A. and B. on the mortgage and purchased the property at a sale in execution.

Held, by the Privy Council, that the sale in the execution passed the whole of property, and not merely the shares of A. and B. notwithstanding that the present defendants had not been parties to the former suit. DAULAT RAM *v.* MEHAR CHAND.

1 P R 1888 P C

23. *Son's right to obtain a declaration that he is not bound by his father's mortgage—Debts contracted for immoral purposes—Notice to mortgagee that they were so contracted.*

In cases governed by the Hindu Law of the Mitakshara, where a son sues for a declaration that a mortgage of the ancestral property made by his father and to which he is no party will bind the property only during the lifetime of his father and is void as against himself, the plaintiff cannot obtain such declaration, unless it be shown that the debts of the father, secured by the mortgage, were contracted for immoral purposes, and that the mortgagee had notice that they were so contracted.

Hurnarain v. *Arur Singh* (No. 44 *P. R.* 1872), and *Mussammat Imarti* v. *Buta Singh* (No. 144 *P. R.* 1884) cited. JAMNA DAS *v.* SARDAR BHANGA SINGH. **93 P R 1888**

24. *Son suing to set aside his father's alienation—Distinction between cases where consideration is by way of present payment and antecedent debt—Onus Probandi—Legal necessity—Immoral debt—Liability of son for father's debt.*

In suits where a son, in a Hindu family governed by the *Mitakshara* law, seeks to set aside an alienation of ancestral property by his father, the rule of decision depends on whether the alienation in question has been made (*a*) in consideration of a loan, or of a payment made to the father on the occasion of his making the alienation, or (*b*) for the payment of antecedent debts.

HINDU LAW—*contd.*

II.—ALIENATION—*contd.*

In the former case, inasmuch as a Hindu father has, under the *Mitakshara* law, no absolute power of disposition over ancestral immovables, except for the purpose of meeting some urgent family necessity, the person who takes a mortgage of such property from the father, in consideration merely of a present advance, is bound to establish, in a suit brought by a son to challenge the validity of the alienation so far as it affects his interests, that the advance was made by him after a reasonable and fair enquiry which satisfied him, as a prudent man, that the money was required for the legal necessities of the family, in respect of which the father, as head and managing member, could deal with, and bind the ancestral estate.

In the latter case, the rule of law is, that the freedom of the son from the pious obligation to pay his father's antecedent debt, which is enjoined by the Hindu *Shastras*, has reference to the nature and character of the debt, and not to that of the estate sought to be charged with its payment; and it is not enough for the son to contend that the debt in question was not justified by any pressing family necessity, as the Hindu Law imposes upon him the duty of discharging his father's debt, and this duty he can only escape by showing the debt in question was tainted with immorality.

Jamna Das v. *Sardar Bhanga Singh* (No. 93 *P. R.* 1888) cited. CHARANJIT SINGH *v.* TELU. **152 P R 1888**

25. *Khatris of the city of Lahore—Joint Hindu family—Mortgage of a portion of the joint estate by one member—Mortgaged property purchased* benami *in name of mortgagor—Estoppel—Mortgage for value without notice.*

H. D., now deceased, a Khatri, purchased a house in the city of Lahore in the name of his son, L. D., who mortgaged it to the defendants for Rs. 600. Prior to the mortgage H. D. had died, leaving considerable property which was inherited by his heirs as joint Hindu family.

H. D.'s widow and R. M. (a son) sued to contest the mortgage by L. D. to the defendant.

Held, that the purchase of the house by the father in the name of his son, L. D. was *benami*, the father being the real owner, and that his (the father's) heirs were not estopped from proving the true nature of the transaction even against a *bona fide* mortgagee from the *benamidar*.

Held, further, that under the circumstances of the case, the proper decree to make was one:

(1) that the mortgage should not affect the widow's lien for maintenance in respect of this portion of the estate of her late husband;

(2) that the property be regarded as now partitioned between R. M.

(the other son) and L. D. each taking a half share; and

(3) that R. M. recover possession of his half share unencumbered, the mortgage being valid only in respect of the remaining share belonging to L. D. DHARAM CHAND *v.* MUSSAMMAT KAMM DEVI.

6 P R 1893

26. *Hindu Law—Joint ancestral property—Partition, proof of—Power of member of Joint Hindu family to dispose of his share in immovable property without consent of co-parceners—Succession of daughter's son.*

Held, following the ruling of the Privy Council in *I L. R. XVIII Calc.* 157, that a member of a joint Hindu family, governed by the *Mitakshara* law, becomes sole owner of his share in the ancestral property and has the same power of disposal as if it had been acquired property, as soon as partition of such ancestral property has been made.

It is not necessary to show that the property itself has been actually severed or divided; a division of the right or title is sufficient without an actual partition of the property itself by metes and bounds. The test is the intention to be inferred from the acts done and the instruments executed by the parties themselves, and the Court must find in each particular case whether the parties have agreed that the property in question shall henceforth be the subject of ownership in defined shares, and have taken away from it the character of undivided property and joint enjoyment.

Held, also, that by Hindu Law a daughter's son succeeds in preference to grand-nephews (brother's grandsons).

I. L. R. XVIII Calc. 157; *XI M. I. App.* 75, and No. 2 *P. R.* 1892, cited. NANAK CHAND *v.* MUSSAMMAT DAYAN.

103 P R 1894

27. *Hindu Law—Sale of ancestral dwelling house in execution of decree—Widow's right of residence.*

After the death of a certain Hindu his family dwelling-house was sold in execution of a decree against him based on a mortgage of immovable property, including the said house. It was not found by either of the lower Courts that the mortgage consideration was immoral or for purposes other than those of the family, or that the whole of the family property passed at the auction sale above referred to. But the widow of the deceased judgment-debtor contended that she was absolutely, and under all circumstances, entitled to reside in, and be maintained from, the ancestral dwelling-house even after its sale as aforesaid.

Held, that the said house having been sold in execution of a decree based on a mortgage executed by the widow's late husband, who was presumably able and willing to maintain her in another house, and the mortgage consideration not having been shown to be immoral or unjustifiable, the widow was not entitled to continue to reside in it after its purchase even though the purchaser had notice of her alleged claim.

I. L. R. XII Mad., 260, followed; *I. L. R. III All.*, 353, and No. 144 *P. R.* 1884, not followed. MUSSAMMAT KARAM KAUR *v.* MUSSAMMAT KISHEN DEVI. **39 P R 1896**

28. *Hindu Law—Liability of son for father's debt—Onus of proving that debt was incurred for immoral purposes—Minor son—"Antecedent debt," meaning of.*

There being no reason why a minor son should not just as much as an adult son be under a pious obligation to discharge his father's debts, the *onus* of proving that a father's debts were immoral, when it is sought to set aside an alienation by the father, lies no less upon minor sons than upon adult sons, the former being in no better position than the latter.

In 1892 one G. C. mortgaged six houses to one T. D. for Rs. 5,500 by two deeds, and out of the consideration Rs. 3,000 was for the payment of an antecedent debt and Rs. 2,500 was taken by G. C. in cash. G. C. then rented the houses from T. D. and executed leases to him. In 1894 T. D. brought two suits against G. C. for possession of the houses, and obtained two decrees for possession with costs in the two cases amounting, respectively, to Rs. 329 and Rs. 327. On the 24th August 1895 T. D. executed the decrees for costs and attached the six houses, and further prayed that a sum of about Rs. 7,000 which was due to him under the mortgage-deed should be reserved and the houses sold, the proceeds being applied towards the satisfaction of the sums due on the decrees. The minor son of G. C. objected to the attachment, but his objection was dismissed. He accordingly filed the present suit on the 20th February 1896 for release of the houses from attachment, and it was contended on his behalf that G. C.'s debts were incurred for immoral purposes, and that the *onus* of proving that they were not so rested in this case upon T. D. because (*a*) the son was a minor, and (*b*) Rs. 2,500 of the original debt having been taken in cash by G. C, at the time of mortgage was not an antecedent debt.

Held, that the minority of the son was no reason why the burden of proof should be shifted from him.

Held, further, that inasmuch as there were decrees for Rs. 329 and Rs. 327 against G. C. at the time when plaintiff instituted the present suit, such decrees were antecedent debt which plaintiff was under a pious obligation to pay unless he could prove that they bore an immoral taint.

"Antecedent debt" means with regard to a mortgage a "debt antecedent to the transaction," and in the case of a proceeding by suit a "debt antecedent to the suit."

I. L. R. XX Calc., 328, followed.

As regards the contention that, though the amounts of the decrees might be antecedent debts, yet that this did not apply to the whole of the mortgage money due on the mortgages, *held*, that inasmuch as the decrees for possession and the order in execution for sale of the houses subject to T. D.'s mortgages substantially charged the whole mortgage-money on the property, plaintiff in suing to set aside orders passed against him in furtherance of T. D.'s remedy for his debt, was attempting to set up his right against the creditor's remedy for his debt, which, on the authority of *I. L. R. XIII Calc.* 21, he could not be allowed to do.

Found, on the evidence, that plaintiff had failed to prove that the debts of G. C. were for immoral purposes. JAGAN NATH *v.* TULSI DAS. **72 P R 1898**

29. *Power of female heir to alienate.*

Held, that under customary law no less than under Hindu Law a female has merely a limited right of alienation in respect of inherited property, whether movable or immovable. SANT SINGH *v.* JOWALA SINGH.

58 P R 1899

30. *Sale by a Sikh Jat without male issue at the date of the sale—Right of subsequently born male issue to object to a sale of land made prior to his birth.*

Held, in the absence of special custom to the contrary, that as an heir takes a vested interest on birth only in that property which is his father's at the time of birth, he cannot object to a sale of land effected by his father prior to his birth. SHAM SINGH AND OTHERS *v.* SUCHA. **79 P R 1900**

31. *Hindu Law—Widow—Decree on mortgage entered into by a widow—Execution of decree against the widow's husband's representatives—Frame of suit—Necessity—Self-acquired property.*

A Hindu widow mortgaged certain immovable property of her husband, the mortgagee having sued the widow for possession of the property and the rent without making the reversioners parties, obtained a decree. On the widow's death the decree-holder in execution endeavoured to execute the decree against her representatives, and asked to be put in possession of the property and for recovery of the money due under the decree.

Held, that the mortgagee had no charge on the estate, the action as brought was only a personal one, and even though the foundation of a decree be a liability which might bind the reversioners, that alone is not sufficient. The suit must be so framed as to show that it is not merely a personal demand upon the female in possession, but that it is intended to bind the entire estate and the interest of all those who come after her. The question of necessity for the mortgage in order to charge the heirs cannot be gone into in execution proceedings, but the execution Court was bound to enquire if the property sought to be attached was the widow's self-acquired property, and if so, have executed the money decree against it.

HINDU LAW—*contd.*

II.—ALIENATION—*contd.*

Hira Singh and others v. *Sher Singh and others* (29 *P. R.* 1898), approved; *Liladhar* v. *Chatur Bhuj* (*I. L. R. XXI All.*, 278, *Ramayya* v. *Venkatarantam* (*I. L. R. XVII Mad.* 123), and *Ariabudra* v. *Dorasami* (*I. L. R. XI Mad.*, 413) followed. TEKOO RAM *v.* KARAM CHAND. **105 P R 1900**

32. *Hindu Law—Alienation—Gift—Gift of immovable property without delivery of possession—Revocation of gift by a donor.*

Held, that under Hindu Law a gift which the donor repudiated immediately after and which he did not do all in his power to perfect and which he did not give actual possession of the gifted property is not valid. CHAUDHRI LILA KISHEN *v.* CHAUDHRI HOA RAM. **45 P R 1901**

33. *Hindu Law—Alienation—Alienation by Hindu widow—Right of collaterals to question such alienation in presence of daughters and their sons—Burden of proof—Collusion—Mahrotra Khatris of Mooltan city.*

Plaintiffs, the brother and nephews of one "P." sued for a declaration that the gift of a house formerly the property of P., made by his widow to the Sanatan Dharm Sabha for the good of her soul and that of her husband, being without necessity, was inoperative so far as it affected their reversionary rights. The defendant pleaded that by special custom she had the power to alienate the property at pleasure, that under an oral will she had authority to do so, that the gift being for spiritual benefit of her late husband was justified by Hindu Law, and that the plaintiffs were not the next reversioners under custom and that they could not sue in presence of daughters and their sons who would succeed after the widow. The first Court found all the points against the defendants and decreed the plaintiffs' claim. The Divisional Judge while agreeing with the first Court's finding on the first three points, disagreed with it on the fourth, holding that the plaintiffs upon whom the *onus* of proof lay have failed to prove that among non-agricultural Khatris of the Mooltan city the collaterals not members of a joint family succeeded to the self-acquired property of the deceased in preference to the daughters and their sons, and that, therefore, they as near collaterals had no *locus standi* in the presence of the daughters of the deceased and their sons, and cannot maintain a suit for a declaratory decree as sued for. On appeal by the plaintiffs to the Chief Court—

Held, that where the daughters and their sons are held to be the heirs of the deceased male proprietor, the collaterals cannot maintain their action unless they can prove that the abstention of their daughters and their sons who are heirs were in collusion with the widow, or did not sue for some improper and insufficient reasons.

Held, also, that where the daughters or their sons agreed to the widow making the gift of a portion of her deceased husband's property to a religious institution for the good of her oul and that of her

husband, their agreement was an act of filial piety against their own interest, and was not collusion in the sense in which collusion would give collaterals a right to sue to set aside the alienation. *Bona fide* agreement in an act or recognition of the right of the person dealing with property to deal with it, as has been done in the present case, was not collusion, and does not give a more remote reversioner any right to sue for a declaratory decree that such act will not affect his rights.

Held, further, that no rule of custom governing the parties (who were Mahrotra Khatris of Mooltan city) being established the burden of proof being on plaintiffs, the personal law of the parties must furnish the rule under the provisions of section 5 of the Punjab Laws Act, under which law collaterals are excluded by daughters and their sons. WISHAN DAS AND OTHERS *v.* THAKAR DAS AND OTHERS. **119 P R 1901**

34. *Alienation of ancestral property—Bhabras of Rawalpindi City.*

Held, that the Bhabras of Rawalpindi City in matters of alienation are governed by the ordinary Hindu Law. SOHNA SHAH AND OTHERS *v.* DIPA SHAH AND OTHERS. **15 P R 1902**

35. The burden of proof that Khatris, who do not depend entirely on land, in matters of alienation and succession, follow Punjab Customary Law rests on the person making such an allegation. The mere fact that a Khatri family had held land for a long time is not *ipso facto* sufficient to shift the burden on the other side.

Nanak Chand v. *Mussammat Dayan* (103 *P. R.* 1894), *Kartar Singh* v. *Mathar Singh* (94 *P. R.* 1898), *Harnam Singh* v. *Devi Chand* (107 *P. R.* 1901), and *Hassan* v. *Jahana* (70 *P. R.* 1904), cited and followed. *Ralla* v. *Budha* (50 *P. R.* 1893, *F. B.*), referred to. ATAR SINGH *v.* PREM SINGH. **12 R P 1906**

36. Accordingly the Khatris of Hasil, *tahsil* Chakwal in the Jhelum District, were found not to be governed by the ordinary agricultural custom of their neighbours but by their own personal law. ATAR SINGH *v.* PREM SINGH. **12 P R 906**

37. And so were the Khatris of Bhagtana Talianwala *tahsil* Batala, in the Gurdaspur District. KAKA *v.* LABH CHAND. **106 P R 1906**

38. But the Sikh Brahmans of *mauza* Chaowala, *tahsil* Jagadhri in the Ambala District, who have abandoned the Brahmanical thread, do not perform priestly functions and have for generations past followed agriculture and are mainly dependent on land, were held to be governed by the general rules of agricultural custom of the tract in which they reside and not by Hindu Law. GOPAL SINGH *v.* SUKHA SINGH. **58 P R 1906**

39. *Hindu Law—Family debt—Sale of ancestral dwelling house in execution of decree—Wife or widow's right of residence.*

HINDU LAW—*contd.*

II.—ALIENATION—*concld.*

Held, that the right of a Hindu wife or widow to reside in the ancestral family dwelling house is, as a general rule, superseded by debts incurred by her husband in the ordinary way of business and living. NIHAL DEVI *v.* SHIB DIAL. **36 P R 1907**

40. *Alienation by Hindu widow of self-acquired property of her husband—Right of reversioner to question such alienation.*

Held, that there is no distinction between ancestral and acquired property inherited by a Hindu widow from her husband and a reversioner has as much right to contest her alienation of the one as of the other. KIRPA RAM *v.* RAKHI. **114 P R 1907**

41. *Competency of father over self-acquisition—Joint property—Validity of a testamentary disposition of his share by a member of joint Hindu family—Effect of partition by testator before death.*

Held, that a Hindu father is competent to dispose of all his self-acquired property at pleasure, and his sons cannot dispute the disposition even though it be in favour of a stranger.

Held, also, that a testamentary disposition of his share of the joint property by a member of an undivided family would not be invalid if the interest of the testator had been separated off by means of a partition before his death. SOHAN LAL *v.* LABHU RAM. **150 P R 1907**

42. *Hindu Law—Initial presumption—Custom.*

Held, that the initial presumption in regard to Khatris is that they follow Hindu Law and not agricultural customs. PRABBH DIAL *v.* BASKHI RAM. **58 P R 1909**

See ALSO **34** AND **79 P R 1909**

43. *Hindu Law—Self-acquired property; powers of disposal of.*

Held, following *Balwant Singh* v. *Rani Kishori I. L. R.* 20 *All.* 267 *P. C.* that as regards self-acquired property a Hindu has plenary powers of disposition. MUSSAMMAT NEHAL DEVI *v.* KISHORE CHAND. **97 P R 1910**

44. *Custom—Alienation—Alienation by father—Suit to contest alienation by sons—Sodhi Khatris of* mauza *Thathi Khara*, tahsil *Tarn Taran, district Amritsar—*onus probandi—*Hindu Law.*

Held, that the plaintiff, on whom the *onus* lay, had failed to prove that Sodhi Khatris of *mauza* Thathi Khara, Tarn Taran *tahsil* of the Amritsar District, in matters of alienation were governed by agricultural custom and not by Hindu Law. 79 *P. R.* 1909 (*Sardar Singh* v. *Maharaj Das*) followed. **28 P R 1911**

45. *Collaterals in 4th degree do not exclude daughters by Hindu Law.*

Held, that it had not been proved that Sodhi Khatris of *mauza* Bhamipura, *tahsil* Jagraon, district Ludhiana, follow agricultural custom in connection with alienation of or succession to, sancestral immovable property and by Hindu Law collaterals in the 4th degree do not exclude daughters. **43 P R 1911**

HINDU LAW—*contd.*

III.—ANCESTRAL PROPERTY.

See Hindu Law—Inheritance.
—*Accretion from ancestral property.*

The run of Hindu Law that, as accretions from ancestral property, the acquisitions are themselves ancestral cannot be applied to those who are governed by custom. Nawab-ud-din *v.* Mussammat Kami.
12 P R 1901

IV.—BETROTHAL.

See Hindu Law—Marriage.

V.—GIFT.

See under Custom—Alienation.
Hindu Law—Alienation.

1. *Revocation.*

By Hindu law a gift is revocable under circumstances which would invalidate a contract. Chujjoo *v.* Mussammat Beeba.
87 P R 1866

2. By Hindu law, a gift followed by possession cannot be revoked. Dewa Singh *v.* Kurm Singh. **50 P R 1867**

3. *Possession.*

Quœre, whether by Hindu law, a gift effected by a deed requires possession to follow in order to perfect it. Possession is not necessary to make a bequest valid. Anokha *v.* Mohun Lall. **2 P R 1870**

4. *Gift by husband to wife of share of ancestral property and acquired property—Legality of gift—Right of succession to property gifted—Stridhan.*

A gift by a husband to his wife, which was found to include ancestral property which was held in specific shares, and acquired lands and outstanding debts which were the exclusive property of the donor, *held* to be one which in the absence of any special custom, the donor, being sonless, had by Hindu law the power to make, and by virtue of which the donee became the absolute proprietress of the entire estate belonging to her husband.

According to the Hindu law of the Mitakshara school a donation of the above kind by a husband to his wife is regarded as the wife's *stridhan*, and although in the absence of an express power of alienation being conferred on the wife, which was given in the present instance, she has not a free power of disposal over the immovable portion of the property, the right of succession after her death passes to her heirs, and not to the reversionary heirs of her husband. Joti Ram *v.* Mussammat Surasti. **13 P R 1883**

5. *Gift to wife and mother—Power of revocation.*

A gift to a wife and mother made from affection is by Hindu law irrevocable by the donor. Banke Rai *v.* Madho Ram.
153 P R 1833

6. *Gift without possession—Validity.*

HINDU LAW—*contd.*

V.—GIFT—*concld.*

Held, that when a donor has taken all possible steps to complete a gift the non-delivery of actual possession is immaterial and the gift is not invalid merely because the donee was not put in actual possession. Partab Singh *v.* Fatta. **45 P R 1906**

7. *Hindu Law—Gift—Necessity for exclusive possession—Irrevocable if completed.*

According to Hindu Law the giving of actual and exclusive possession is not necessary for the completion of a gift, and therefore where a person executed and registered a deed of gift of his residential house in favour of his mistress, who was at the time living in it with him and gave her the power to receive the document after registration *held* that the gift was complete and binding upon the donor. Ram Charan Das *v.* Bhagwati.
52 P R 1908

8. *Gift to Hindu female—Hindu Law—Interpretation of deed of Gift.*

Held, following *Suraj Mani* v. *Rabi Nath Ojha* (1908) *I. L. R.* 30 *All.* 84 *P. C.* that a deed in favour of a Hindu female has to be interpreted in the same way as any other deed, and that if the wording of the deed, taken as a whole, points to an intention to confer full ownership, the full ownership is conveyed, just as if the beneficiary was a man.

Held also, that the *dictum* of their Lordships of the Privy Council must be taken as rendering obsolete the main principal on which the ruling in 27 *P. R.* 1898 was based. Gurmukh Singh *v.* Makhan Singh.
61 P R 1911

VI.—GUARDIANSHIP.

See Guardian.

By the Hindu Law where a girl of six years of age is betrothed, the father is still entitled to the custody of the child, as against the man betrothed to her. Ram Singh *v.* Bhugwan Singh.
101 P R 1866

VII.—INHERITANCE.

See Custom VIII.—Maintenance and Succession.
Remarriage of Widows.
Partition. **2 P R 1911 Rev.**

1. *Custom—Succession—Abandonment of worldly affairs—Gosains.*

See Abandonment of worldly affairs.
93 P R 1898

2. Improvements effected by one of a joint undivided Hindu family do not confer on him a title to a greater share. Ameer Chand *v.* Mya Singh. **16 P R 1866**

3. *Held*, in a suit between Hindus tha lineal descendants within the fourteenth decree excluded a sister's son. Goormookh

HINDU LAW—*contd.*

VII.—INHERITANCE—*contd.*

v. Goomanee (*No.* 30 *P. R.* 1866, Civil); *and* Mohunnee Ram *v.* Mohunna Ram.
35 P R 1866

4. If a Hindu widow be allowed to succeed to a life tenure, the sons' claims to the inheritanne run from the date of her decease. Gunesha *v.* Baree Mull.
55 P R 1866

5. The widow of a deceased son cannot inherit on the death of her husband's father, in priority of her deceased husband's sister living at the time of the father's death. Mussammat Roop Kour *v.* Mool Singh. **65 P R 1866**

6. The widow of a first cousin in the male line, *held* to succeed to immovable property before the grandson (daughter's son) of a sister. Moola *v.* Mussammat Raj Devee. **76 P R 1866**

7. *Succession of Males—Whole and half-blood.*

There was no distinction under the Punjab Civil Code in the case of Hindus between uterine brothers and brothers of the half blood. By Hindu law, when the claim is to succeed to property left by a brother, the sons af a brother who died previously to the devolution of the property cannot share in the succession. The dispute was as to the succession to K.'s property. There survived K. S. his uterine brother, and A. and B. half-brothers; C, also a half-brother, died before K, leaving a son. *Held*, that C's son had no claim; but that K's property must be equally divided between S, A, and B. Sahiba *v.* Ameer Chand. **82 P R 1866**

8. A widow may alienate for cogent reasons, which the expressed wish of her husband that she should build a *thakoordwara* and sink a well, does not amount to. Mussammat Kurm Kour *v.* Ramdhun.
89 P R 1866

9. The son of a paternal uncle is not entitled to share the inheritance with another paternal uncle of deceased, except in the case of succession, to the estate of a grandfather. Sobha Singh *v.* Churut Singh.
16 P R 1867

10. A childless widowed daughter (Hindu) in the absence of custom, does not inherit property absolutely from her father, but only for life; and she cannot alienate any portion of it save for necessity. Must Ram *v.* Mussammat Loorindee. **40 P R 1867**

11. *Widow.*

Where a Hindu widow in default of issue succeeds to her husband's estate as tenant for life, she cannot alienate or devise the estate, which on her death devolves on the legal heirs. If she re-marry

HINDU LAW—*contd.*

VII.—INHERITANCE—*contd.*

her interests in the estate cease and determine as if she had then died, and the next heirs thereupon succeed. If after remarriage she retain the property beyond the period of limitation, the question whether the claim of heirs is barred will depend upon whether her possession was adverse or permissive. NARAIN DASS *v.* MUKHUN (*No.* 22 *P R* 1866) *and* BHOOLER *v.* MUSSAMMAT BHOOCHEE.
82 P R 1867

12. Whether the sister's son of a deceased Hindu can inherit ancestral land in the presence of remote kindred in the male line, is a question to be determined by the custom of the place to which the parties belong, if the existence of such a custom is established; although according to the *Mitakshara* he cannot so inherit. GUNPUT *v.* KANAH. **19 P R 1868**

13. In the absence of any express agreement, the mere fact that in the division of joint ancestral property the eldest brother received a larger share than his younger brothers (even though they be sons of another mother), does not operate to deprive him of any right which may subsequently accrue to him to inherit the property of such younger brothers. GOPAL SINGH *v.* KHOSHAL SINGH. **62 P R 1868**

14. *Held*, that by Hindu Law, brothers of the whole blood had a preferential right to brothers of the half blood; and similarly, the sons of uterine brothers took before the sons of half-brothers. GOLAB SINGH *v.* NEHAL SINGH. **112 P R 1868**

15. Succession to the lands of a deceased Hindu proprietor, claimed by a daughter, having been judicially disallowed—*held*, that the daughter's sons (who claimed through their mother) had no right to the inheritance. *Query* whether, under some circumstances, the right of a daughter's son to inherit is not superior to that of his mother. NANUK *v.* RAM RAJ. **2 P R 1868 Rev.**

16. *Association and disassociation*—four brothers. There were four brothers *viz.* B. S., R., G. S., and J. M. The eldest and youngest (B. S. and J. M.) separated in food and estate from the other two, and jointly acquired by their services and exertions certain villages from the Sikh Government. They did not confer any proprietary right on their brothers, and themselves held the villages in joint tenure. B. S. died leaving a son H. *Held*, that H, then succeeded to half these villages, holding them jointly with J. M. J. M. died leaving two widows. —*Held*, that as to J. M.'s half share, the widows were entitled to hold it for their lives, as J. M. was at the time of his death separated in food and estate from his two brothers; and that the reversion went to J. M.'s unassociated brothers (or their representatives) in preference to H., J. M.'s associated nephew. After the death of B. S.,

HINDU LAW—*contd.*

VII.—INHERITANCE—*contd.*

J. M. purchased certain villages. J. M. was then separated in food and estate from his brothers, R. and G. S., and was in a state of jointness with his nephew H. the son of B. S. *Held*, that the purchase was made out of the joint funds of J. M. and H.; and that H. was entitled on the death of J. M. to the exclusive proprietary right in these villages, the widows of J. M. having no claim to a life interest as the property was joint. The acquisition by one member of a family while living in coparcenary is not joint property, unless the acquisition was made with the aid of the joint funds. DEWAN SUPA CHAND *v.* DEWAN HEMRAJ. **59 P R 1869**

17. *Laik Beta.*

Sirdar Bhag Singh was succeeded in his *jagir* by his eldest son, the plaintiff, and the rest of his sons, the defendants. No special order was made at the time of his succession in reference to the shares of the sons of Bhag Singh, but plaintiff sued the defendants for Rs. 140-4-5 in respect of the kharif crop of the year of their father's death as "*huq sirdari*," on the ground that he was his father's eldest and qualified son, or "*laik beta*." About seven years before his death, Sirdar Bhag Singh, with twenty-two other jagirdars in the same district, executed a document to the effect that being summoned by Government to make inquiries about the custom relating to succession to inheritance amongst themselves, the ancient and prevailing custom was to divide the *jagir* equally amongst the sons, the fittest son receiving double share on account of the *sirdari*; and they further stated that they desired this custom to be maintained, the "*laik beta*", where the *jagir* was more than Rs. 1,000 per annum, receiving a double share. Two years after this document was executed, Sirdar Bhag Singh divided his liabilities equally amongst his sons, to whom he gave equal shares of the *jagir*. Between this and his death, he became a *Kooka*, in which the plaintiff followed him. *Held*, that as Government was no party to the document signed by the twenty-three jagirdars, it being in fact a voluntary promise on their part unsupported by any consideration moving from the Government, and as Sirdar Bhag Singh had afterwards of his free will departed from the arrangement which he agreed to along with the jagirdars, in such case even assuming that Sirdar Bhag Singh had distinguished the plaintiff as his "*laik beta*" the inheritance would devolve according to Hindu Law, and not according to the principle subscribed to by the twenty-three jagirdars. SIRDAR SUJAN SINGH *v.* MAN SINGH. **63 P R 1869**

18. A Hindu widow was held liable in *Ramdhun* v. *Mussammat Kurm Kour* (*No.* 85 *P, R.*, 1868) to forfeither life interest for unchastity; but that case was over-ruled by *Mamraj* v. *Bhola* (*No.* 78 *P. R.*, 1869), which proceeded upon Act XXI of 1850, and found no custom in point. MAMRAJ *v.* BHOLA. **78 P R 1869**

HINDU LAW—*contd.*

VII.—INEERITANCE—*contd.*

19. *Widow's right not accruing at husband's death, does not afterwards arise.*

Upon the death of the plaintiff's husband, his brother, who had been jointly possessed with him of certain land, succeeded by survivorship to the entire property. The brother died childless ten years afterwards. The widow them preferred a claim to a life interest in the whole of the land against the collateral kindred, not having raised any claim against her husband's brother. *Held*, that the widow could not claim a life interest even in the share of which her husband had been possessed. Where no inheritance devolves upon heirs, but an additional joint interest passes by survivorship on the death of a co-parcener to another co-parcener, the widow cannot claim a life interest in the share of her husband: if the widow's right does not accrue at her husband's death, it cannot afterwards arise. GUTTEA *v.* MUSSAMMAT JOWALO. **92 P R 1869**

20. *Nephews—Disassociation.*

A brother's son succeeds before a brother's son's son. An associated nephew, who had been re-united to his uncle and lived with him in a state of commensality and jointness for several years before the uncle's death, *held* entitled to succeed in preference to a disassociated nephew. KHURKA *v.* SOOJAN SINGH.
7 P R 1870

21. *Mother's title to life tenure in estate of son to exclusion of others—Remarriage of the mother.*

A mother is entitled to a life tenure in the estate of her deceased son, inherited from his father, to the exclusion of the son's uncle and step-father, who is also the husband of the mother, and in preference to the half-brother of the son; and this notwithstanding the mother's remarriage with the uncle. HEERA SINGH *v.* SOBHA. **11 P R 1870**

22. *Widows.*

By remarriage a Hindu widow forfeits her rights,—*Bhooler* v. *Mussammat Bhoochee* (*No.* 49 *P. R.*, 1866,); but her existing rights only; *held*, accordingly, that she was entitled on the death of her son to succeed to the property which he inherited from his father, her first husband. MUSSAMMAT ROOPAN *v.* HAKIM SINGH.
37 P R 1870

23. *Succession of females—Daughter's son and cousins.*

There being no proof of any custom in point, *held*, that a first cousin and second cousin once removed of the deceased were excluded by his daughter and her son. MUNSA RAM *v.* PUNNOO. **38 P R 1870**

24. *Apostacy.*

A Hindu by becoming a Muhammadan does not forfeit his right or his son's right to inherit. *Jabha* v. *Mehtaba* (*No.* 67 *P. R.*, 1867), *Gurmukh Singh* v. *Malla* (*No.* 12 *P. R.*, 1872); *and* GOVARDHAN *v.* PIARA.
6 P R 1872 Rev.

HINDU LAW—*contd.*

VII.—INHERITANCE—*contd.*

25. A Hindu inheriting property from his mother, is liable for her debts to the extent of the property inherited. BISHEN DASS *v.* SIRDAR DIAL SINGH. **9 P R 1873**

26. *Widow and brother—Separation.*

Plaintiff, as widow of C. S, sued defendant for half share of a sum of money paid to defendant for the redemption of certain land from mortgage. The property was mortgaged either to the father of C. S. and defendant or to C. S. and defendant. The evidence as to this was not clear. *Held*, that if the father was the original mortgagee, as C. S. and defendant, although separate in every other particular, remained joint as to the land mortgaged, C. S.'s widow had no claim to the half share of the said sum of money; the same also, if the mortgage was first taken by C. S. and his brother as, though separate in every other respect they re-united as to the mortgage. MUSSAMMAT CHATTI BAI *v.* DHALU MAL. **9 P R 1874**

27. *Faqir.*

A Hindu who becomes a *faqir* loses by law all claim to his patrimony. *Gopal Singh* v. *Jowahir Singh* (*No.* 1 *P R.* 1868); and he cannot renounce his religious order, and return to the world. TEKU *v.* BUSTI. **15 P R 1874**

28. H. S. had two wives: by the first, he had two sons, A. S. and P. S. and by the second, also two sons, J. S. and G. S. In 1856, A. S and P. S. separated from J. S. and G. S. In 1858, P. S. died leaving a widow, who took a life interest in her husband's property: A. S. also died leaving two sons, Achra Singh and Sampuran Singh. P. S.'s widow alienated a portion of her deceased husband's property. J. S. and Sampuran Singh sued for a declaratory decree protecting their rights as reversioners, and pronouncing the sale invalid as against them. The Lower Appellate Court decided in favour of the claim. On defendant's appeal to the Chief Court, Sampuran Singh withdrew from the suit:—

Held, by BOULNOIS and CAMPBELL, JJ., that as Sampuran Singh had joined in the suit, the sale must be declared void, whether or not J. S. had any *locus standi* as a reversioner, notwithstanding Sampuran Singh's withdrawal from the case. *Held* by LINDSAY, J., that J. S. was not entitled to sue, inasmuch as a disassociated half-brother has no right during the lifetime of the members of an associated family to question the alienation by the widow of a deceased member of that family unless the living members sanctioned his action and relinquished their rights. DEWAN KIRPA RAM *v.* SIRDAR JOWAHIR SINGH. **19 P R 1874**

29. *Custom—Daughter—Brahmins—Baraker Got residing in Nurmahal—Onus of proof as to custom—Distant collaterals.*

Plaintiff, the daughter of one D. C. who died 14 years ago, and was succeeded in

HINDU LAW—*contd.*

VII.—INHERITANCE—*contd.*

his estate by his widow, who recently died, claimed to recover from defendants a holding of 5 bigas 14 biswas in the town of Nurmahal in the Jullundur district. Defendants were the descendants in the 5th degree of R. R., the common ancestor, from whom D. C. was descended in the 3rd generation. The parties were Brahmans of the Baraker Got, and resident in the town of Nurmahal. *Held*, by the Chief Court, that the defendants, not being near male collaterals, the burden of proof lay upon them; that it was incumbent upon them to show that there was a locally prevailing custom which deprived plaintiff of her right of succession under Hindu Law; and that, not having discharged themselves of this *onus*, plaintiff was entitled to the land in suit, to hold the same for her life with an interest similar to that of a widow. MUSSAMMAT BHAGWANDEVI *v.* NIHAL CHAND. **73 P R 1879**

30. *Exclusion from inheritance—Insanity.*

Held that by Hindu Law it is not necessary that insanity should be congenital to exclude from inheritance; insanity at the time the succession opens being sufficient to disqualify. LACHMI DHAR *v.* THAKUR DAS. **149 P R 1883**

31. *Will—Construction—Vested and contingent interest—Provision for maintenance of widow—Respective rights of succession of co-widow and son's widow.*

B. S., who died in 1859, leaving three widows and a son, H. S., him surviving, made a will shortly before his death by which he left the property in dispute to one of his widows Mussammat S. K.—H. S. died in 1866, and on the death of Mussammat S. K. in 1886, the sole surviving widow of B. S. (the third widow having died in 1862) sued to recover the property left by Mussammat S. K. from Mussammat N. K., the widow of H. S., who left no children. The bequest to Mussammat S. K. was held, on the true construction of the will to be for maintenance only, and not to create an ordinary widow's estate.

Held, that under the above circumstances the property in question vested in H. S. on the death of his father, that the plaintiff had therefore no right to inherit as heir of her husband in preference to the defendant, the heirs of H. S., and consequently any claim she made upon that basis must fail, as she had no *locus standi*. *Jusmaer Singh* v. *Mussammat Hur Kour* (*No.* 40 *P. R.* 1869) referred to. SARDARNI RATTAN KAUR *v.* MUSSAMMAT NIHAL KAUR. **72 P R 1888**

32. *Adopted son—Natural mother—Adoptive mother.*

By Hindu Law the widow of the adoptive father succeeds to her husband's property on the death of his adopted son without issue. The adopted son's natural mother has no right in the estate which devolved on her son from the adoptive father.

HINDU LAW—*contd.*

VII.—INHERITANCE—*contd.*

Quære.—Whether the Kritrima form of adoption prevails or has ever prevailed in the Punjab generally? MUSSAMMAT RUKMANI *v.* MUSSAMMAT SALUKHNI. **147 P R 1889**

33. *Hindu Law—Sister's grandson—Bandhu—Brahmans of Multan.*

A sister's grandson is entitled to succeed as a Bandhu under Hindu Law, which presumably governs Brahmans, the enumeration of Bandhus given in the commentaries not being exhaustive but illustrative only. MULTANI CHAND *v.* LALU MAL. **180 P R 1889**

34. *Udasi faqir—Abandonment of worldly affairs—Loss of rights of inheritance.*

By Hindu Law, if a man becomes an Udasi faqir, he abandons worldly affairs and loses his civil rights of inheritance in his natural family. But it is yet possible that a man may resolve to become a faqir of the Udasi sect and yet resolve not to abandon worldly affairs, and his civil rights of inheritance, the effect that such a course might have upon his status as a faqir in the eyes of other Udasi faqirs not being material.

The true issue in such cases is, did the man on becoming a faqir also intend to renounce, and did he renounce the world, the burden of proof that he did not being upon him. BADHAWA SINGH AND SOCHET SINGH *v.* ANAUKHA. **7 P R 1892**

35. *Hindu Law—Succession to right of realizing "birt" offerings—Acharaj Brahmins of Batala, Gurdaspur district.*

Held, that among Acharaj Brahmins of Batala, Gurdaspur district, in the absence of any proof of custom to the contrary, daughter or a daughter's son is, by Hindu Law, entitled to succeed to the right of realizing "*birt*" offerings in preference to collaterals. NIHAL CHAND *v.* RAM SARAN. **75 P R 1894**

36. *Succession—Hindu Law—Whole and half blood.*

Held, that the preference accorded by Hindu Law to the whole over the half blood is confined to brothers and nephews, and does not extend to descendants of the same grandfather and higher ancestor.

I. L. R. VI Bom. 394 and No. 156 *P. R.* 1883 and 36 *P. R.* 1890, referred to. HIRA NAND *v.* MAYA DAS. **83 P R 1894**

37. *Hindu Law—Custom—Succession of adopted son to share of "birt"—Panjzati Brahmins of Amritsar city.*

Found, that no custom had been proved among Panjzati Brahmins of Amritsar city at variance with the rules of Hindu Law whereby an adopted son is entitled to succeed to a share of the family "birt." BHAGAT RAM *v.* SHIV DATT. **141 P R 1894**

HINDU LAW—*contd.*

VII.—INHERITANCE—*contd.*

38. *Suit for dissolution of partnership and for rendition of accounts—Suit by adopted son of widow of deceased partner—Joint Hindu family—Limitation Act of* 1877, *2nd Schedule, articles* 106, 120—*Hindu Law—Devolution of ancestral trade—Power of Jain widow of Saraogi sect, Karnal District, to adopt son to her late husband—Ancestral property.*

The parties were Jain Saraogis of the Karnal district, and plaintiff, who alleged that he was adopted to one M. L. by the widow of the said M. L., sued for rendition of accounts, dissolution of partnership existing between himself and the late M. L. and defendants, and for a decree for half the total assets of the said firm. The lower Court having decreed the claim, defendants appealed to the Chief Court, and contended that the suit was barred by limitation; that on the death of M. L. his estate devolved on the surviving members of the firm, and could not be diverted by the alleged subsequent adoption; and that, in any event, plaintiff's adoption gave him no right to the ancestral property of the deceased M. L.

Held that inasmuch as by Hindu Law an ancestral trade may descend, like other inheritable property, upon the members of a Hindu undivided family the partnership was not dissolved by the death of M. L.

Held, further, that a valid adoption by a widow to her husband has the effect of placing the adopted son in the position which he would have occupied had he been adopted by that husband or been a posthumous child of that husband, and that the adopted son must be received into the joint family partnership on adoption, and is entitled to all the rights of an ordinary member of that partnership, which has continued to exist in spite of the death of the deceased partner.

Held, therefore, that plaintiff's suit, which was instituted within six years of the date of adoption, was within time under article 126 or 127, Limitation Act, the partnership not having been dissolved by the death of M. L., and no dissolution subsequent to his death and before adoption having been proved.

Held, further, that the adoption by the widow, if valid, divested any estate which was not superior to that of the adopted son, and that plaintiff on adoption became *ipso facto* a member of the family partnership.

Found upon the evidence, without laying down a general rule, that the adoption was valid and had the effect of vesting in the adopted son the share of the deceased in the joint family property of every description. KAPUR CHAND *v.* NARINJAN LAL.

20 P R 1897

39. *Succession of widow—Right of stranger in possession to plead that widow was disqualified by mental defect from inheriting.*

HINDU LAW—*contd.*

VII.—INHERITANCE—*contd.*

On the death of one K. childless and without leaving any reversioners, a suit for the whole of his property was instituted on behalf of his widow, Mussammat J. a congenital idiot, by Kanhya, who had been appointed, under Act XXXV of 1858, manager of Mussammat J.'s estate. The persons impleaded as defendants were—(1) Mussammat B. who had lived with K. as his mistress, and (2) Kanshi, who was no relation of deceased, but in whose favour deceased had apparently made a will; which, however, it was alleged on plaintiff's behalf, was invalid. The defendants took a so-called "preliminary plea" to the effect that plaintiff, being a congenital idiot, was not entitled to succeed, and in reply thereto it was contended on plaintiff's behalf that by custom an idiot widow was not disqualified from inheriting. The Court, without considering the question as to the validity of the will, dismissed the suit on the ground that no such custom as alleged had been proved, and that the rule of decision must be taken from Hindu Law under which plaintiff, as a congenital idiot, must be considered as incapable of inheriting.

Held, that lower Court had erred in dismissing the suit on the ground that the plaintiff was disqualified by mental defect from inheriting. Defendants being admittedly strangers whose sole title to the property was based on a will, the validity of which was denied on plaintiff's behalf, the first question that necessarily arose in the case was as to the validity or otherwise of that will, for if it was valid, plaintiff's suit must fail, whereas if it was invalid, defendants would be mere trespassers and, as such, not entitled to take possession of the property and then plead that plaintiff could not succeed by reason of mental defect, a plea of such kind being open only to a person who had a valid title in the land. MUSSAMMAT JAINDI *v.* KANSHI RAM.

19 P R 1899

40. *Inheritance—Custom—Inheritance—Widow of pre-deceased son—Gahi Khatris of Aklaba, Ludhiana district—Hindu Law*—Mitakshara.

In a case the parties to which were non-agricultural Khatris of village Aklaba in the Ludhiana district, *held*, in the absence of a special custom, that succession was to be decided by the Mitakshara, under which law, as applicable to the Punjab, the widow of a pre-deceased son has no right to succeed to her father-in-law's property.

Held also, that the defendant upon whom the *onus probandi* rested had failed to prove that she (a daughter-in-law, whose husband had pre-deceased his father) was entitled by custom to succeed to her father-in-law's property.

Teja Singh v. *Mussammat Atri* (115 *P. R.* 1893), *Mussammat Rup Kaur* v. *Kishen Singh* (9 *P. R.* 1895), *Sohna* v. *Mussammat Bhago* (50 *P. R.* 1897), *Bahadur Singh and others* v. *Mussammat Nihali* (133 *P. R.* 1893), *Ananda Bibee* v. *Nownit Lall* (*I. L. R. IX Calc.* 315), *Jagadamba Koer* v. *Secretary of State for India in Council* (*I. L R. XVI Calc.* 367), *Gauri Sahai* v. *Rukko* (*I. L. R. III All.* 45) and *Mari* v. *Chinnam Mal* (*I. L. R. VIII Mad.* 107) followed. *Lullubhai Bapubhai* v. *Cassibai* (*I. L. R. V Bom.* 110) and *Madhavram Manjutram* v. *Deve Trambaklal Bhawanishankar* (*I. L. R. XXI Bom.* 739), disapproved. *Mussammat Chand Kaur* v. *Ram Singh and others* (20 *P. R.* 1895) distinguished. RADHA MAL *v.* MUSSAMMAT KIRPI AND OTHERS.

100 P R 1901

HINDU LAW—*contd.*

VII.—INHERITANCE—*contd.*

41. *Hindu Law—Inheritance—Exclusion of nephews by daughter's sons—Custom—Hindu zargars of Dagshai.*

Held, that Hindu zargars trading at Dagshai, having migrated from the Saharanpur district, in the absence of a special custom to the contrary in matters of succession were governed by the ordinary Hindu Law, and that daughter's sons were consequently entitled to succeed in preference to nephews.

Nihal Singh v. *Hira Singh* (98 *P. R.* 1889) and *Radha Mal* v. *Mussammat Kirpi* (100 *P. R.* 1901) referred to. BAROO, &c. *v.* MAKHAN, &c.

61 P R 1903

42. *Hindu Law—Inheritance—Great-grandfather's daughter's son succeeds in preference to sister's daughter*—Bandhu.

Held, that under the Hindu Law of the *Mitakshara* School a great-grandfather's daughter's son is entitled to succeed to the estate of his maternal grandfather's great-grandson as a *bandhu* in preference to the deceased's sister's daughter.

Query.—Can a sister's daughter succeed as a *bandhu* to her mother's deceased brother in Northern India.

Thakoorain v. *Mohun* (11 *Moo. I. A.* 386), cited and followed.

Bansidhar v. *Ganeshi* (*I. L. R. XXII All.* 338), *Mari* v. *Chinnam Mal* (*I. L. R. VIII Mad.* 107), *Balamma* v. *Pullayya* (*I. L. R. XVIII Mad.* 168), *Lakshmanammal* v. *Tiruvengada Madalai* (*I. L. R. V Mad.* 241), *Nalonna* v. *Ponnal* (*I. L. R. XIV Mad.* 149), and *Venkatasubramaniam Chetti* v. *Thayarammah* (*I. L. R. XXI Mad.* 263), referred to. MANGAT RAM *v.* DEVI CHAND. **20 P R 1906**

43. In matters of inheritance the Aroras of Amritsar city are governed by Hindu Law and that collaterals are therefore excluded by daughters. RADHO *v.* HARNAMAN.

99 P R 1907

44. And similarly among Bunjahi Khatris of Rawalpindi city collaterals are excluded by daughter's sons and grandsons. BURA MAL *v.* NARAIN DAS. **102 P R 1907**

45. Sarsut Brahmans of Gurdaspur are governed by the general rules of agricultural custom and not by Hindu Law. **3 P R 1908**

HINDU LAW—*contd.*

VII.—INHERITANCE—*concld.*

46. *Inheritance of* stridhan—*Marriage in approved form.*

Held, that the *stridhan* of a Hindu wife dying childless who has been married in one of the four approved forms of marriage, devolves upon her husband and not on her parents or their heirs. MUNNI *v.* UMRAO SINGH. **39 P R 1909**

47. *Brahmins.*

Held, that the initial presumption in regard to Brahmins is that they are governed by Hindu Law. MUSSAMMAT MAYA *v.* GURDIT SINGH. **1 P R 1910**

48. *Hindu Law—Succession—Tarkhans of Amritsar city—Custom.*

Held, that Hindu non-agriculturists residing in a city are, in the absence of proof of a custom by special instance, modifying Hindu Law, presumably governed by that law, and that among Hindu Tarkhans of the Amritsar city a grand-nephew as a *sapinda* succeeds in preference to a great-grand-nephew and to the widow of a *sapinda* whose husband predeceased the widow of the last male owner. SARDUL SINGH *v.* KARM SINGH. **30 P R 1910**

VIII.—JOINT FAMILY.

See HINDU LAW—ALIENATION. **166 P R 1882** **153 P R 1883**

See HINDU LAW—INHERITANCE. **20 P R 1897**

1. *Suit for partition of undivided estate—Death of defendant-respondent during pendency of appeal by plaintiff—Necessity for placing divided brother or widow of deceased coparcener on record.*

See ABATEMENT OF APPEAL. **86 P R 1886**

2. *Join suit by alleged partners of joint undivided Hindu family in respect of leases made in the names of certain individual members of the alleged partnership.*

See CIVIL PROCEDURE CODE, 1908, SECTION 80. **67 P R 1894**

3. *Suit for recovery of a debt due to a joint Hindu family—Joinder of a coparcener as defendant after period of limitation.*

See LIMITATION ACT, 1877, SECTION 22. **20 P R 1909**

4. *Mortgage in name of two members of joint Hindu family—Right of such members to sue alone—Non-joinder of other members.*

See PARTIES. **15 P R 1902**

5. *Joint Hindu familly—Suit by the managing member for debt due to the family—Joinder of other members interested in the family as defendants after the period of limitation—Limitation Act, 1877, section 22.*

Se PARTIES. **57 P R 1905 F B**

HINDU LAW—*contd.*

VIII.—JOINT FAMILY—*contd.*

6. *Joint Hindu family—Suit by the managing member for debt due to the family—Non-joinder of other members—Procedure.*

See PARTIES. **69 P R 1906**

7. *Suit by son for pre-emption on sale of house property in presence of father.*

See PRE-EMPTION ACT, 1905, SECTION 13. **35 P R 1908**

8. *Hindu Law—Joint Hindu family—Presumption of joint ownership—Necessity for certificate.*

See SUCCESSION CERTIFICATE ACT, 1889, SECTION 4. **20 P R 1901**

9. Houses erected on joint undivided land by one of the sharers, become, by Hindu Law, the joint property of all the sharers. AMEER CHUND *v.* MYA SINGH. **16 P R 1866**

10. In a suit for the division of ancestral property of a joint Hindu family, the rule is that the right is not barred by limitation except where the shares have been actually severed and separately occupied, or the plaintiff has been absolutely excluded from possession and profits. ATTER SINGH *v.* KAN SINGH. **46 P R 1866**

11. As between two Hindu brothers, joint in estate for some purposes, the presumption is that all the property in the possession of either of them is joint; and the *onus* is on him who claims a portion of it as separate to show that it is so. RAI KISHEN CHUND *v.* BISHESHUR SINGH. **85 P R 1867**

12. The acquisition by one member of a Hindu family while living in coparcenary is not joint property unless the acquisition was made with the aid of the joint funds. DEWAN SUFA CHUND *v.* DEWAN HEMRAJ. **59 P R 1869**

13. The burdens of proving separation of interests in a Hindu family rests with the member of the family asserting that a separation has taken place; and he is not relieved from this *onus* by the fact that the other members of the family have not enjoyed any of the actual proceeds of the particular property within the period limited for bringing the suit. HURBHUJ RAI *v.* BOODOO MUL. **17 P R 1870**

14. The legal presumption is that a Hindu family is joint and undivided in business, as well as in other respects; and it rests with the party denying such jointness to prove that the family is divided as to trading or business operations. MUSSAMMAT KOONDAN *v.* RAMDYAL. **33 P R 1870**

15. In the case of a joint undivided Hindu family, the possession of one member or more cannot be adverse as against an absent member. LALLA *v.* JEYGOPAL. **49 P R 1870**

HINDU LAW—*contd.*

VIII.—JOINT FAMILY—*contd.*

16. *Undivided family—Mortgage by co-sharer—Rights of creditors.*—Res judicata.

One N. was joint in estate with J. father of R. C., defendant, and they owned in undivided moieties the house in dispute which was ancestral property. After J.'s death N. in 1868 mortgaged the whole property to M. C. for Rs. 1,500. After N.'s death M. C. in 1873 sued his widow M. M. on the mortgage. At her request L. M. and H. S. plaintiffs paid M. C. Rs. 1,200 in 1874, which with other monies discharged the property from incumbrances, and the suit between M. C. and M. M. was compromised.

L. M. and H. S. then sued M. M. for specific performance of an alleged agreement to sell the property to them for the Rs. 1,200 advanced, making R. C. and his grandmother and guardian M. Z. also defendants. That suit was dismissed on the ground that M. M. widow of N. had no power to convey the interest of R. C. whose guardian she was not.

L. M. and H. S. then instituted the present suit against the same defendants, seeking to recover Rs. 1,200 lent with interest and to bring to sale the interest of N. in the ancestral property for the possession of which they formerly sued, excluding the interest therein which devolved on R. C. through his father, J. Both the lower Courts found that L. M. and H. S. plaintiffs, did in fact pay M. C. Rs. 1,200 in order to discharge the mortgage created by N. and decreed their claim in its entirety.

In 1868, when the mortgage was made by N. to M. C. possession was given to M. C. and N. became his tenant. The tenancy determined on the mortgage to M. C. being discharged, and it was not continued or renewed as M. M. promised to convey the house to plaintiffs in a fortnight. The mortgage was not for legal necessity so as to bind the whole joint interest of N. and R. C., but was for a separate debt of N.'s, or to raise money on his own account.

Held, that according to Hindu Law, as interpreted in the Punjab, a Hindu co-parcener in undivided family property, not being a member of a village community, is in the absence of proof of custom to the contrary, incompetent to make a valid alienation by mortgage of his share.

Held further, treating the suit as in substance a suit by creditors of a deceased co-parcener to recover a separate debt incurred by him, by a sale of ancestral property, in which the debtor's interest had devolved by survivorship upon his surviving co-parcener, that such co-parcener was liable to the extent of the interest in the joint estate devolving on him by survivorship, unless it could be shown that there was separate property available.

Held further, that the present suit was not barred by the rule of *res judicata.* MUSSAMMAT ZAHRO *v.* LALLU MAL. **21 P R 1879**

17. *Sale by one sharer—Suit by another joint owner to cancel sale—Consequential relief—Partition.*

HINDU LAW—*contd.*

VIII.—JOINT FAMILY—*contd.*

One of several sharers in joint ancestral property executed a deed of sale purporting to convey the whole interest in a portion of the joint property, whereupon plaintiff, another joint owner, sued for possession of the land sold in respect of his one-tenth share by cancelment of the sale.

Held, reversing the order of the Lower Court, that plaintiff was entitled to ask for the relief for which he asked, and that his suit was maintainable : and that he was not bound to sue for a general partition though it was competent to him to do so. LACHMAN DAS *v.* SUNDER DAS. **124 P R 1879**

18. *Joint property—Execution sale of share in undivided estate—Purchaser's right to compel partition—Purchaser's power to alienate—Hindu widow, power of, to dispose of immoveable property purchased with her husband's money—Waste.*

Held, per LINDSAY and PLOWDEN, JJ. that the share and interest of one co-sharer in joint ancestral estate may be sold in execution to satisfy a decree obtained against him personally, even if he be incompetent to make a valid alienation of his share voluntarily, and the purchaser at such sale acquires a right to compel the partition which his debtor might have compelled had he been so minded before the alienation took place.

The purchaser at an execution sale of a share in joint undivided property does not occupy the same position in all respects as the co-sharer whose interest he has purchased. He does not become a co-sharer with the other co-sharers, and therefore the rule that prohibits alienation by a co-sharer of his own interest without the consent of his co-sharers does not apply to him, and there is no reason, such as may be conceived in the case of members of a joint family, why the purchaser of a co-sharer's interest at an execution-sale should not make a transfer of his rights as such purchaser.

Held further, *per* LINDSAY and SMYTH, JJ. (PLOWDEN, J, dissenting as to this), that a Hindu widow, though entitled to the absolute and uncontrolled possession of the moveable estate of her husband, and to the full enjoyment of the usufruct thereof may not waste the *corpus*, and if she converts it into immoveable property she may not dispose of such property otherwise than she might have disposed of it if it had descended to her in that form from her husband.

Per PLOWDEN, J. *contra.*—A Hindu widow is not subject to the control of her husband's reversioners in dealing with the moveable property of her husband, or immoveable property purchased therewith, unless her dealings amount to waste, or risk of waste. DHANPAT *v.* HAKU. **58 P R 1880**

19. *Partition—Separation of interest—Evidence of separation.*

While the mere absence of commensality does not necessarily prove that a Hindu family has ceased to be joint, so on the other

HINDU LAW—*contd.*

VIII.—JOINT FAMILY—*contd.*

hand it does not follow that because there has been no physical separation of a joint holding that the persons entitled to that property may not be *de facto* separate in their interest. The question in all such cases is really one of intention, and if there has been a conversion of what was once a joint tenancy of an undivided family into a tenancy in common of the members of that family, the undivided family becomes a divided family with reference to the property that is the subject of such conversion, although not immediately followed by a *de facto* actual division of the subject-matter. GOPAL SINGH *v.* KHOSHYAL SINGH. **136 P R 1882**

20. *Separation—Presumption—Partial disruption.*

The ordinary rule is that when once a Hindu family is shown to have been joint, it is presumed to remain so until an actual separation is proved : but this presumption is not applicable where it is admitted that a disruption of the unity of the family has already taken place, and a presumption under such circumstances cannot arise as to whether the other members of the family remained joint or became separate. AMI CHAND *v.* GHASITA MAL. **143 P R 1882**

21. *Presumption of joint ownership—Rebuttal of presumption*—Onus probanai—*Modes of proving partition*—Onus *of proving self-acquisition.*

It is settled law that the normal state of every Hindu family is joint, and, in the absence of proof of division, the presumption of law is that every such family is joint in food, worship, and estate : but this is only a presumption, and, although perfectly true as an abstract principle, the degree of weight to be attached to it, or the extent of proof required to rebut it, must depend on the circumstances of each case and the way in which the principle is sought to be applied.

Where, therefore, in a suit to recover possession of property alleged to have been held in joint ownership by the plaintiffs and their deceased uncle, and which it appeared was transferred by a registered deed of gift by the latter to his wife, it was established that some of the said property was ancestral, and it was not contended that it had ever been divided by metes and bounds, or that the plaintiffs had ceased to have a share in it, but what was contended was, that the shares in it had been so ascertained and so dealt with that it had ceased to retain its character of joint undivided property, *held* that the ordinary presumption must receive its full force, and the *onus* clearly lay on those who asserted that what was once the ancestral estate of a joint and undivided Hindu family had since become separate by partition or otherwise, to prove their allegation.

The modes of proving a contested partition, which are recognized in the Hindu law, discussed and explained.

HINDU LAW—*contd.*

VIII.—JOINT FAMILY—*contd.*

Held further, that where there is ancestral property by means of which other property may possibly have been acquired, it is for the party alleging self-acquisition to prove that it was acquired without any aid from the family estate. JOTI RAM *v.* MUSSAMMAT SURASTI. **13 P R 1883**

22. *Power of managing member to give discharge binding on minor—Act IX of* 1872, *section* 251—*Partner's power to bind co-partners.*

Held, following *Sadulla Khan* v. *Bhana Mal* (*No.* 58 *P. R.*, 1882, Civil), that the managing member of an ancestral business belonging to an undivided Hindu family can give a discharge without the concurrence of a member, who is at the time a minor, when a discharge under the same circumstances by an adult partner would bind a minor co-partner. In such cases the rule laid down in section 251 of the Contract Act applies, and the managing member can bind the firm by any act necessrry for, or usually done in carrying on the business, to the same extent as if he were an agent duly appointed for the purpose. RAM CHAND *v.* NIHAL CHAND. **63 P R 1883**

23. *Payment of father's debts by one son—Liability of other sons to contribute—Suit by creditor against one son barred as against others.*

In a suit for contribution, it appeared that the present plaintiff had been sued by a creditor of his father, and having pleaded that a portion of the debt claimed was his father's and that his brothers who had shared equally in the paternal estate should therefore be joined, they were accordingly made parties, but it being found that on the date when they were joined in the suit, the creditor's claim against them was barred by limitation, the suit was dismissed as against them, but a decree was given against the present plaintiff for the whole debt.

Held, that the defendants were liable to contribute to the plaintiffs, and that the circumstances that they were impleaded at the instance of the present plaintiff, and the creditor's claim against them was found to be barred by limitation made no difference, as the whole claim had been decreed against one of the heirs, and had been satisfied by him. *Mussammat Nurbhari* v. *Anwar Ali* (*No.* 8. *P R.*, 1883, Civil, F. B.) referred to. BHAGWAN SINGH *v.* PREM SINGH. **79 P R 1883**

24. *Suit for debt against elder brother without impleading minor members of family—Absence of proof that elder brother was sued in representative capacity—Power of decree-holder to adduce evidence in subsequent suit to show that the debt was a family debt and that the decree was binding on the minors' shares in the family property.*

The question for decision was whether in a suit by the plaintiffs to recover their

shares in a house attached by the defendant in exceution of a decree obtained against one M., the elder brother of the plaintiffs, and others, evidence could be received to show that, though the plaintiffs were not parties to the previous suit, the debt then claimed was a family debt binding on them, and the decree against M., who was at the time the only adult member of the family, should therefore be held to bind the plaintiffs' shares in the family property. There was nothing either in the previous proceedings, or the decree, to show that M. was sued as representing the interests of others as well as his own.

Held, that the decree-holder could not go behind the decree to show that the minors were interested in the matter in litigation in the former suit, in which they were not made parties or represented in any way, and that their property should be made liable for the satisfaction of the decree passed in that suit; but that the plaintiffs were entitled to succeed in the present suit. JASSU *v.* HAMIR CHAND. **70 P R 1883**

See also DAULAT RAM *v.* MEHR CHAND. **70 P R 1883, Note**

25. *Liability of sons to pay their father's debts—Onus of proving that the debts were incurred for immoral purposes.*

The house in dispute—the sole property of the family of one S.—having been attached in execution of a debt decreed against S. alone, the sons and the mother of the said S. (the latter claiming also in the capacity of widow of S.'s father) contested the attachment on the ground that the debt being for immoral purposes, and for no legal necessity, the sons' shares in the estate ought to be reserved and also a share for the widow's residence.

Held, that under the Hindu law of the Mitakshara (which was admitted to be the law applicable to the parties), it was incumbent on the sons to prove that the debt was incurred for immoral purposes, and that as they had failed to do so, even though legal necessity did not exist and no specific application of the money to family purposes was shown, still the duty of the son to pay the debts (which extended to the father's lifetime) made the whole property liable. MUSSAMMAT IMARTI *v.* BUTA SINGH. **144 P R 1884**

26. *Presumption that property continues joint—Rebuttal of such presumption—Evidence Act (I of 1872), section 114—Partial partition.*

The presumptions as to the property of a Hindu family descended from a common ancestor remaining joint property until separation is shown, are presumptions of fact, such as are provided for by section 114 of the Evidence Act. Such presumption may be weakened or even rebutted by proof of facts which give rise to an inference that the property is held in separate ownership

even though there is no evidence of a formal partition. There may, however, be a partial partition of the family property, while the other members remain united. BUDHA MAL *v.* BHAGWAN DAS. **86 P R 1886**

27. *Appointment of one member of family as gomashta and partner—All the family not thereby made members of partnership.*

It is not a correct contention that when there is a joint Hindu family with a father at its head, and one of the sons is appointed a *gomashta* and partner, all the members of the family, father and sons, thereby become *gomashtas* and partners. The members of such a family do not constitute a single person to all intents and purposes to a person who enters into partnership with one of them, and though they are all joint *inter se* as respects ancestral and it may be other property, as regards a stranger who enters into partnership with one of them, the other members of the family are strangers to the partnership. HONDA RAM *v.* DESU RAM. **162 P R 1888**

28. *Ancestral trade—Business carried on by some members only of the family—Non-participation in profits—Partition implied.*

A Hindu family carried on a trading business which was originally ancestral. No partition had been made of the ancestral property or the firm. A suit was brought agaist all the members of the family for price of goods supplied to the firm in its course of business. Of the defendants, two pleaded that for considerable time they had lived separate, and had not taken any share in the mangement of the firm. It was not shown that they had at any time received any share of the profits of the firm, or possessed any ancestral property. Some items of credit and debit in one year only were, however, shown in their names in the firm's book.

Held, that these were no evidence to show that they belonged to the firm or had any interest in it; that the point for enquiry in such cases is, how far the family is joint; that in Punjab the true and perfect joint Hindu family of the *Mitakshara* rarely exists, an d that disruptions of joint families frequently take place without express partitions.

Held, also, that looking to the acts and conduct of the appellants, they could not be made personally liable for payment of the firm's debts. RUP CHAND *v.* BASANTA MAL. **102 P R 1889**

29. *Hindu Law—Joint undivided family—Survivorship—Principles governing question, whether a partition has taken place.*

Plaintiff sued to recover the amount of principal and interest alleged to be due on a bond executed by K. S., deceased, who died in 1884, leaving a widow and two brothers, all three being made defendants, in the suit.

The first Court decreed the claim against the two brothers only to the extent of the principal sum named in the bond, together with simple interest.

The two brothers appealed to the Chief Court, contending that they and the deceased formed a joint Hindu family, and that they consequently took the whole of the joint property by survivorship, and were therefore not liable for the present debt of the deceased.

Held, after enquiry upon remand, that the previous litigation which had taken place between the parties effected such a separation of interests as to have destroyed the jointness of the estate according to the principle enunciated by the Privy Council in *Apporier's* case and other subsequent decisions.

The principles and authorities governing the question whether a parition can in any case be held to have taken place, in fact or in law, stated and discussed. BISHEN SINGH *v.* KISHEN CHAND. **2 P R 1892**

30. *Joint Hindu family*—Mitakshara—*Liability of ancestral property in execution of decree against father alone.*

The authorities governing the question as to how far in a joint Hindu family governed by the law of the *Mitakshara* consisting of a father and sons, the ancestral propery is liable in execution of decrees obtained against the father alone, collected and discussed. AMAR SINGH *v.* AZIZ-UD-DIN. **33 P R 1892**

31. *Hindu Law—Joint family—Partial disruption—Presumption.*

The presumption in favour of a Hindu joint family remaining joint is no longer applicable when it is admitted that a disruption of the family has once taken place.

No. 143 *P. R.* 1882, referred to and followed. SAIN DAS *v.* MUSSAMMAT SAHIB DEVI. **140 P R 1892**

32. *Mortgage of a portion of the joint estate by one member.*

Held, that a member of a Joint Hindu family is not competent to make a valid mortgage of part of the joint property without the consent of the other partners. DHARAM CHAND *v.* MUSSAMMAT KARAM DEVI **6 P R 1893**

33. *Joint Hindu family—Separation of one member—Presumption arising from—Powers of managing member of ancestral trading business—Liability of minor partner.*

Of three brothers who had lived together as a joint Hindu family in Peshawar, and carried on for some years an ancestral business of a miscellaneous character, one, N. S., separated from his brethren, taking Rs. 600 in cash out of the firm, but retaining his share in the immoveable property. The other brothers, of whom S. S.

HINDU LAW—*contd.*

VIII.—JOINT FAMILY—*contd.*

was a minor, to continued to live together the business of the firm being carried on as before by the adult brother G. S. The plaintiff, who was the holder of a promissory note for Rs. 1,000 drawn in the name of the firm by G. S. sued both the brothers for recovery of the above sum. It was contended for S. S. that he had no concern with any business carried on after the father's death by G. S. that the latter had started an entirely new business of dealing in *hundis* on his own account; that after the partition with N. S. they were no longer members of a joint family, and that G. S. as guardian of the minor brother and manager of his property, was not entitled to pledge the minor's credit on this new business of his own.

Held, concurring with the findings of the lower Courts as to this, that the ancestral business of the firm J. S. G. S. continued to be carried on after the father's death, and after the separation of one of the sons, and that S. S. was one of the partners in such business.

Held, also, differing from the lower Appellate Court as to this, that although the business had gradually extended and developed, its character had not changed to that of banking, pure and simple; that the *hundi* in question had been drawn in the ordinary course of business and in the name of the firm by the managing member G. S., that the liability of the minor was not affected by any dishonesty on the part of G. S., of which the plaintiff was not shown to be cognizant; and that the plaintiff was consequently entitled to a decree against both the defendants. MUL CHAND *v.* SADHU SINGH. **59 P R 1893**

34. *Joint Hindu family—Burden of proving separation—Power of one member of family to bind the others—Contract Act, 1872, section 251—Limitation Act, 1877, section 21—"Only," meaning of—Account-books, relevancy of—Evidence Act, 1872, section 34*

In the Punjab as elsewhere the normal state of a Hindu family is joint, and the burden of proving a separation between the members of such a family rests upon the party who so alleges.

Where one member of a joint family carrying on a trading business, struck a balance relating to the concerns of the partnership, *held*, that whether or not such member was the manager of the business, he was a partner therein, and his act, being one usually done in carrying on the business of the partnership, and having been done while the partnership subsisted, bound the other members of the family to the same extent as if he were their agent duly appointed for that purpose. (Contract Act, 1872, section 251).

Held, also, that the meaning of the word "only" in section 21 of the Limitation Act, 1877, is that the partner signing the

HINDU LAW—*contd.*

VIII.—JOINT FAMILY—*contd.*

acknowledgment must also be shown to have had the express or implied authority of the other partners to do so, and that in a going mercantile concern such authority is to be presumed as an ordinary rule.

Held, further, that under section 34 of the Evidence Act, 1872, it is not a condition precedent to accepting entries in account-books as relevant that it should be proved how the accounts came to be written, and that they were regularly kept in the course of business, though it is necessary that there should be other evidence in support of the liability sought to be established thereby.

Where, therefore, the *gomashta* who kept the books and a member of the firm were examined as witnesses and testified that the books were regularly kept, *held*, that their evidence, though given by them as witnesses for the defence was, in the absence of any evidence to the contrary, sufficient corroboration of the accounts as a whole. BICHHA LAL *v.* JAI PARSHAD. **45 P R 1899**

35. *Property acquired by members of a joint family by their joint labour—Father and son—Widow of son.*

Where a father and his son, Hindus, governed by Hindu Law, worked in the same shop as goldsmiths, though in different branches of the same trade, and no partition had been effected between them, *held*, that the survivor of them was entitled to the joint property, the widow of the deceased member of the joint family being entitled only to maintenance. HARSA SINGH *v.* MUSSAMMAT GURDEVI. **71 P R 1899**

36. *Hindu Law*—Mitakshara—*Joint Hindu family—Alienation of ancestral property—Suit by son against his father and a mortgagee for declaration that the mortgage entered into by his father should not affect his rights—Present payment—Legal necessity—Liability of son for father's debts.*

In a suit filed by a son for a declaration that a mortgage of ancestral property executed by his father for an advance which was made at the time of the mortgage and which was not for any family necessity should not affect his rights.

Held, that the mortgage not being for an antecedent debt was not binding on the son, who was entitled to a decree that the mortgage *qua* mortgage should not affect his rights, but that the decree would not bar the mortgagee from enforcing any decree which he might obtain against the father for the amount of the loan against the ancestral property, including the property mortgaged.

Semble. A money decree obtained against a father can be realised against both the father's and son's shares of any ancestral property which may be attached, as the pious obligation of a son to pay his father's debts arises in such a case.

HINDU LAW—*contd.*

VIII.—JOINT FAMILY—*contd.*

Charanji Singh v. *Telu Mal* (152 *P. R* 1888), *Surja Prasad* v. *Gulab Chand* (*I. L. R XXVII Calc.* 762), *Sami Ayyangar* v. *Ponnan Mal* (*I. L. R. XXI Mad.* 28), *Kishen Lal* v. *Garuruddhwaji Prasad Singh* (*I. L. R. XXI All.* 238), *Badri Prasad* v. *Madan Lal* (*I. L. R. XV All.* 75), *Khalil-ul-Rahman* v. *Gobind Pershad* (*I. L. R. XX Calc.* 328) and *Ganga Prasad* v. *Ajudhia Pershad Singh* (*I. L. R. VIII Calc.* 131) followed. *Amar Singh* v. *Aziz Din* (33 *P. R.* 1892), and *Jaggan Nath* v. *Tulsi Das* (72 *P. R.* 1898) referred to. BAHADAR SINGH *v.* DESRAJ AND PARMANAND. **53 P R 1901**

37. *Hindu Law—Joint family—Property purchased by father in the name of his two sons—Suit by one son for his share of profit against the other.*

B., a Hindu with his two sons, constituted a joint Hindu family. He purchased a shop in the names of his sons during their minority. Subsequently one of the sons sued the other for half the accumulated rent recovered by the latter.

Held, that the defendant having assumed the office of a manager of a joint Hindu family, his position was that of a trustee in relation to the other members of the family and he was therefore liable to account for the accumulated rents and that the plaintiff was entitled to maintain his suit without necessarily asking for partition.

Pundit Bhawani Sahai v. *Ganesh Das* (65 *P. R.* 1884), distinguished.

Annammali Chetti v. *Murugasa Chetti* (*I. L. R. XXVI Mad.* 544, P. C.), referred to. RAM RATTAN *v.* PURAN CHAND. **24 P R 1904**

38. *Hindu Law—Joint Family—Right of a member over self-acquisitions—Burden of proof that other members of the family have a share in such acquisition.*

Held that a member of a joint Hindu family who goes into trade himself or into partnership with strangers on capital which was not part of the family property is alone entitled to the exclusive possession and use of the whole of his acquisitions resulting from such business.

The presumption of Hindu Law, that the property belonging to a member of an undivided family is joint does not arise in such a case, whereas the burden of proof that other members of the family have also an interest in it lies on those who make such assertions. RIJHU RAM *v.* MOHAN LAL. **25 P R 1906**

39. *Joint Hindu family—Suit against a member of—Death of defendant pending suit—Decree against son as legal representative—Right of son to question the legality of the debt covered by the decree in execution proceedings.*

Held, that the son of a member of a joint Hindu family who had on the death of his father been impleaded in a suit for the

recovery of a debt due from the deceased as his legal representative is entitled in execution proceedings to question the legality of the debt in respect of which the decree sought to be executed was passed. NATHU *v.* AMIR CHAND. **147 P R 1907**

40. *Joint Hindu family—Suit by managing member for debt due to the family—Objection as to non-joinder—Joinder of other members after period of Limitation—Civil Procedure Code*, 1882, *section* 27.

The managing member of a joint Hindu family in the name of their firm for a debt due to the ancestral business—On objection by defendant that all the members of the family had not been joined—the plaintiffs at once admitted their error,—and the omitted members applied at once to be joined as plaintiffs.

Held that all the members being comprised in the designation of the firm, the omission should have been regarded as due to a *bonâ fide* mistake and that under such circumstances the Court was bound to add, under section 27 of the Civil Procedure Code, 1882, the other members of the family as plaintiffs.

In cases where action is taken under section 27 the period of limitation counts from the date when the plaint is first presented in Court. BEHARI LAL *v.* RAM CHAND. **149 P R 1907**

41. *Joint family property—Liabiliy of, for debts incurred by father for liquor.*

Held, that the property of a joint family governed by the Daya Bhag is not liable in the hands of a son for debts incurred by his deceased father for liquor supplied to the latter, who died before suit. KHAGINDRANATH DAS *v.* NANAK CHAND. **24 P R 1909**

42. *Joint Hindu family—Separation.*

Held, that a suit by the uncle against his minor nephew, to establish the fact that a mortgage transaction effected by the minor's father was on behalf of the joint family, does not effect a separation. RAM KISHEN *v.* BELI RAM. **23 P R 1910**

43. *Hindu family—partnership, hereditary trading.*

Held, that where the allegations for the plaintiff, the widow of a deceased member of a Hindu family (though not a joint family) were, that her husband's father was the sole proprietor of a business and had gifted to each of his two (nephews the defendants) a share in the business and they had allowed the shares to remain in the business ever since, and it was not denied that they were all entitled to a share in the profits of the business to the extent of their respective shares, the relationship thus created is a partnership as defined in section 238, Indian Contract Act, and not an "hereditary trading partnership" under Hindu Law. MUSSAMMAT NEHAL DEVI *v.* KISHORE CHAND. **97 P R 1910**

JOINT FAMILY—*concld.*

44. *Hindu Law—Joint family—Suit by managing members for recovery of a debt, without impleading the other membes—Court-fee on appeal, where only question is to whom the amount, admittedly due, is payable—Court-fees Act, VII of* 1870, *schedule II, article* 17 *VI.*

Plaintiffs, 2 members of a joint Hindu family, sued defendant for recovery of Rs. 17,000 principal and Rs. 5,585 interest due on a bond in which the above plaintiffs alone were named as obligers—Defendant admitted execution of the bond and liability thereunder but pleaded that the money was due to all the members of the joint family and also that he paid the other members of the family Rs. 10,400 on account. The first Court held that the other members of the joint family were not necessary parties and payments made to them need not be accounted for by plaintiffs and decreed whole amount claimed—Defendant appealed to the Chief Court on a Rs. 10 Court-fees stamp alleging that the value for purposes of Court-fees could not be determined.

Held, that as regards the claim to have the decree of the first Court reduced by the payments amounting to Rs. 10,400, the appellant must pay *ad valorem* duty but as regards the claim for a declaration as to who was entitled to receive the balance due, *i.e.*, the plaintiffs only or all the members of the family, a Rs. 10 stamp was sufficient under article 17 VI, schedule II, Court-fees Act.

Held also, following *Kishen Parshad* v. *Har Narain Singh* [(1910-11) 15 Cal. W. N 321 P. C.] that the plaintiffs suing merely on behalf of the family as the alleged managing members of one of the family shops were entitled to bring the suit in their name without making the other members of the family parties to the suit.

Held also, on the same authority, that if a contract is made on behalf of a joint Hindu family by the managing members no other member of the family is competent to interfere in that contract or to give receipts in connection therewith.

Held, however, that as defendant in this case was under the impression that he had contracted with all the members of the family and had no notice or reason to believe otherwise, plaintiffs must give credit for the amounts paid to the other members of the family on account. SIRDAR KIRPAL SINGH *v.* SANT SINGH, &c. **71 P R 1911**

IX.—MAINTENANCE.

See HINDU LAW—WIDOW.

1. *Sister.*

A widow sister (Hindu), not otherwise provided for, is entitled to maintenance, while a married sister is considered as provided for; but where the latter is a discarded wife, and old and infirm, she is held to be in the same position as a widowed sister, not otherwise provided for and is en-

titled to be maintained by the heirs in possession. RUTTUN SINGH *v.* MUSSUMMAT CHUNDAN. **80 P R 1866**

2. According to Hindu law a son of full age and married, living separately from his father,is entitled to maintenance out of ancestral property in the hands of the latter where the son has no other means of subsistence. But if there be no adequate cause for the separation, the allowance to the son should be on the lowest possible scale, and scarcely exceed what is sufficient for his support. SIRDAR FUTTEH SINGH *v.* SHERE SINGH. **84 P R 1868**

3. *Son.*

A full grown able-bodied son of a Hindu is not entitled to maintenance. BUDAWA *v.* GURDIT SINGH. **65 P R 1870**

4. *Husband and wife.*

The wife sued the husband for arrears of sums due for maintenance, on the ground that he had left and discontinued to support her. The suit was brought 2 years and 11 months after the alleged desertion or separation The lower Court decreed to the wife Rs. 175, or five rupees per mensem for the time the defendant had failed to support her. *Held*, that plaintiff's suit did not lie for the past time. JEEWUN RAM *v.* MUSSUMMAT PUTTOO. **67 P R 1871**

5. *Charge on property.*

Defendant was mortgagee of a house belonging to A. R. who lived in the house with his wife and mother. Four years after the mortgage A. B. died; defendant obtained a decree for his debt against the widow of A. B. and proceeded to attach the house. This was objected to by A. R.'s mother.

Held, that whatever might be the claims of the female relatives of a deceased Hindu to maintenance as against ordinary creditors the house in question could not be charged with the claim so as to preclude the defendant from asserting all his rights as mortgagee. BANKI RAI *v.* MUSSUMMAT BILASO. **14 P R 1877**

6. Mitakshara—*Ancestral Estate.*

Held, that under the *Mitakshara*, a son is entitled to claim maintenance from his father who has succeeded to an ancestral estate, and such maintenance cannot be withheld from a son for simple disobedience. The amount of maintenance may be reduced to the lowest if there be no just ground for the son's removing from the family dwelling house. SIRDAR SARDUL SINGH *v.* PARTAB SINGH. **46 P R 1877**

7. *Maintenance of wife—Sale of house by husband for purposes not binding on family—Wife's right to retain possession against purchaser where it is necessary for her maintenance and residence.*

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HINDU LAW—*contd.*

IX.—MAINTENANCE—*concld.*

Held, that under Hindu Law, a wife is entitled to retain possession of a house against a purchaser from her husband, so far as may be necessary for her own maintenance and residence, there being no other property from which these can be provided, and the alienation not being for purposes binding upon the family; the purchaser in such case only taking the property subject to the wife's rights. FAKIR CHAND *v.* MUSSAMMAT CHIRANJI. **84 P R 1883**

8. *Hindu Law—Widow's right of residence in one of her husband's houses.*

Held, that under Hindu Law, before the widow of a Hindu husband can claim a right of residence in one of her husband's houses, attached in execution of a decree against his representatives. She must prove that none of the other houses are suitable for her accommodation. MUSSAMMAT RAJJI BAI *v.* JESA RAM. **102 P R 1910**

X.—MARRIAGE.

See CONJUGAL RIGHTS.

CUSTOM—IV. BETROTHAL, &c.

1. *Hindu Law—Marriage of minor—Minor given in marriage by person other than her guardian.*

See CUSTODY OF MINOR. **113 P R 1888**

See CUSTODY OF WIFE. **24 P R 1897**

2. The wife of an Independent Rajah is not amenable to the British Courts for breach of contract made in the Rajah's territory with one of his subjects. A Hindu wife is generally incapacitated from entering into a contract. A marriage under Act V of 1852, *held* lawful between a Christian and Hindu. MOOSTAK RAE *v.* LADY RUNDHEER SINGH. **54 P R 1870**

3. *Supersession of wife—Barrenness.*

By Hindu Law a husband may supersede his wife for barrenness; but the marriage is not thereby dissolved, and the superseded wife does not forfeit her right to inheritance. MUSSAMMAT KHEM KOUR *v.* MUSSAMMAT JAI KOUR. **16 P R 1875**

4. *Consummation.*

Consummation is not necessary under Hindu Law to validate a marriage. *Held*, therefore, where a marriage was solemnized between a man and a grown up girl aged 17 years and 9 months, that it was not open to her or her parents to repudiate such marriage. ARUR SINGH *v.* MANGAL SINGH. **85 P R 1877**

5. *Effect of betrothal.*

It is opposed to all the best authorities in Hindu Law to treat the betrothal as giving the intended husband any rights over the bride. Betrothal is no necessary part of the nuptial rite, being merely a promise to give a girl in marriage. DYAL *v.* NARAIN DAS. **64 P R 1884**

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HINDU LAW—*contd.*

X.—MARRIAGE—*contd.*

6. *Marriage of daughter by mother without father's consent—Disqualification of father by reason of leprosy—Father's power to delegate his authority—Guardians in marriage—Mother's right to select a husband with the advice of the kinsmen—Validity of marriage entered into without guardian's consent.*

In a suit by a father to set aside the marriage of his daughter, a girl about ten years old, as invalid, on the ground that it was made without his consent, though with the consent of the mother, the father was found to be a leper, though his leprosy was slight and not such as to make him helpless or imbecile, and the lower Appellate Court held that he was thereby disqualified from disposing of his daughter inmarriage. He considered, however, that the marriage by the mother, without the consent of the surviving relatives of the father, was invalid under the circumstances of the case.

Held that, assuming that the father's leprosy was of such a character as to incapacitate him from performing the religious ceremonies, he was not therefore necessarily unable to dispose of his daughter in marriage. Though a person afflicted with the virulent and aggravated kind of leprosy (which was not the plaintiff's case) is incapable of inheritance or of performing religious acts, he is not regarded as civilly dead. He does not cease to be the owner of property which has already vested in him; he may enter into contracts, be married and have a wife and children, and there appears to be no reason why he should be deprived of his paternal authority. It is not necessary that he should perform the religious ceremonies attending the marriage in person, the father's power to delegate his authority to others being recognized.

Held further, that though the mother is, next to the father, the natural guardian of her children for other purposes, she would not be entitled to dispose of her daughter in marriage, if the father were unable to do so, her right being postponed by the Hindu Law to that of the paternal relations, and though, their authority being less absolute than that of the father, the mother might, if they failed to make a suitable choice, be entitled, after consulting them, to select a suitable person as a husband for her daughter, she was not entitled to set them aside altogether, wholly ignoring their authority.

Held also, that the completion of the marriage ceremonies does not render a marriage made without the consent of a guardian, whose consent to the marriage was required by law, irrevocable. Though the want of the guardian's consent would not necessarily invalidate a marriage otherwise legally valid, the guardian may for any sufficient reason affecting the propriety of such marriage, obtain a declaration that it is void.

In the present case, the marriage having been celebrated by the mother in opposition

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HINDU LAW—*contd.*

X.—MARRIAGE—*contd.*

to her husband's authority and without his consent, and being found to be unnecessary and unsuitable, was held to have been rightly declared void by the lower Appellate Court. *Khushala* v. *Empress* (No. 27 P R 1880, Cr.) referred to. DYAL *v.* NARAIN DAS. **64 P R 1884**

7. *Hindu Law—Marriage—Marriage of a minor Hindu widow by* chadar andazi—*Consent of lawful guardian to such marriage necessary—Presumption of legality of marriage—Khatris of Lahore—Act XV of* 1856.

Held, that among high caste Hindus, residents of cities, where a Hindu widow remarries and the parties to such marriage (claiming to take advantage of the provisions of the law enunciated by Act XV of 1856), have gone through the form of marriage known as *chadar andazi* with the full intention of constituting their union into a full and complete legal marriage and do in fact thereafter live as husband and wife, no interpretation of Hindu Law or custom forbidding such remarriage can avail to prevent such persons from contracting a legal marriage or is relevant to show that such a marriage is invalid, but in this case where the widow was a minor when the marriage was alleged to have been contracted, and no proper consent by her legal guardians had been given, and she herself repudiated the alleged marriage, *held*, that the alleged marriage was not a legal and valid marriage binding her.

Although among high caste Hindus it is essential to the *factum* of a marriage that certain rites and ceremonies should be performed without which the relationship between the parties does not constitute a marriage valid, it is not necessary for the validity of a marriage by a Khatri widow that all the usual ceremonies which have to be performed in the case of a Khatri girl on her first marriage should be performed, and in such cases if the parties go through such ceremonies as they can reasonably arrange for, and clearly and unequivocally express their intention to enter into marrriage relation with each other, and as a fact thereafter live together as husband and wife, such a union is a valid marriage.

Bai Diwali v. *Moti Karson* (*I. L. R. XXII Bom.* 509), *Lachman Kaur* v. *Mardan Singh* (*I. L. R. VIII All.* 143), *Brindabun Chandra Karmokar* v. *Chundra Kurmokar* (*I. L. R. XII Calc.* 140), *Fakir Ganda* v. *Gangi* (*I. L. R. XXII Bom.* 277), *Chanda Singh* v. *Mela* (73 *P. R.* 1897), *Hamira* v. *Sundar* (13 *P. R.* 1898), *Lachu* v. *Dal Singh* (93 *P. R.* 1896), *Hakim* v. *Jagat Singh* (87 *P. R.* 1898), and *Pirthi Singh* v. *Bhola* (29 *P. R.* 1883), referred to. *Khushal Chand Lal Chand* v. *Bai Moni* (*I. L. R. XI Bom.* 247), *Mul Chand Kuher* v. *Bhudia* (*I. L. R. XXII Bom.* 812), *Dina* v. *Karm Chand* (52 *P. R.* 1899), *Bhaoni* v. *Maharaj Singh* (*I. L. R. III All.* 738), *Brindawana* v. *Radhamani* (*I. L. R. XII Mad.* 73), and *Narain Das* v. *Mussammat*

HINDU LAW—*contd.*

X.—MARRIAGE—*concld.*

Gur Devi (64 *P. R.* 1884), distinguished. LAL CHAND *v.* MUSSAMMAT THAKAR DEVI.
49 P R 1903

8. *Hindu Law—Marriage—Wife's conversion to Islam—Dissolution of marriage.*

Held, that apostacy of one of the parties does not in the case of Hindus *per se* dissolve their marriage, and a Hindu wife cannot therefore deprive her husband of the legal rights which accrued to him at marriage by simply renouncing Hinduism in favour of Islam. JAMNA DEVI *v.* MUL RAJ.
49 P R 1907

9. *Marriage—Validity of marriage between a Rajput and a Khatrani—Legitimacy of children of such marriage.*

Held that a marriage between a Vadhyar Rajput of the Kangra district and a Khatrani is valid and legal, and the offspring of such a marriage legitimate. HARIA *v.* KANHYA.
72 P R 1908

10. *Custom—Hindu Law—Evidence of* karewa *after long co-habitation—marriage between a Jhabra Rajput and a Tarkhan woman—validity of.*

Held, that when a woman has been living with her alleged husband for a period of nearly 40 years and until his death, marriage may be presumed without precise evidence of the actual *karewa*.

102 *P. R.* 1880, 48 *P. R.* 1890, 13 *P. R.* 1898, 50 *P. R.* 1900, and 51 *P. R.* 1900, referred to.

Held also, that a marriage between a Jhabra Rajput and a Tarkhan woman is valid and their offspring legitimate.

Lachman Kaur v. *Murdan Singh*, (1886) *I. L. R.* 8 *All.* 143, *Inderun Valungy Pooly* v. *Ramasawmy Pandia* (1869) 13 *M. I. A.* 141, 51 *P. R.* 1900, 72 *P. R.* 1908 and 57 *P. R.* 1909, referred to. **65 P R 1911**

XI.—MINOR.

See MINOR.

XII.—PARTITION.

See HINDU LAW—ALIENATION.
HINDU LAW—JOINT FAMILY.
HINDU LAW—WIDOW.

1. *Partition—Suit to obtain separate possession of admitted share in joint family property—Court-fee payable—**Court Fees Act**, 1870, section 7, clause (iv) (b)—Hindu Law—Suit on behalf of minor for partition of joint family property.*

Plaintiff, a minor, aged 17, at the date of institution of the suit, sued through his next friend for partition of his one-third share of the paternal estate. The plaint, which bore a Court-fee stamp of Rs. 10, alleged that all the parties were in joint possession of the entire property, the first defendant, however, having the sole control as manager of the joint family; and, for reasons specified in the plaint, the plaintiff prayed to be put in separate possession of his admitted one-third share of the estate, which he valued at Rs. 53,227-1-1.

Held, that the suit was liable to an *ad valorem* fee as being one "to enforce a right to share in any property on the ground

HINDU LAW—*contd.*

XII.—PARTITION—*concld.*

that it is joint family property" within the meaning of section 7, sub-section (*iv*), clause (*b*), of the Court Fees Act, 1870, and none the less such because plaintiff's share was admitted and merely his right to separate possession denied, the said clause having been so framed as to cover all cases within its general purview in which something more than a mere declaration of right is sought for, and consequential relief, whether it be in the form of joint possession, separate possession, an injunction or other appropriate relief is asked for.

Semble.—Even if the property did not fall under the category of joint family property, a suit for partition thereof would still be liable to an *ad valorem* fee under sub-section (*iii*) or sub-section (*v*) of section 7, according to the nature of the property.

Although no malversation on the part of defendant No. 1 had been proved, the Court, under the particular circumstances of the case, and with special reference to plaintiff's age at the date of institution of the suit, and to the fact that after attaining his majority he had elected to prosecute his claim, decided that at the date of suit it was sufficiently clear that it would be in plaintiff's best interest to order a partition instead of dismissing the suit. RAGHBHAR DIAL *v.* SALIG RAM. **104 P R 1895**

2. *Joint family—Disruption—Partition.*

Held, that where one co-partner in a joint family separates from the others, there is no presumption that the others remain joint. MUSSAMMAT NIHAL DEVI *v.* KISHEN CHAND.
97 P R 1910

XIII.—STRIDHAN.

1. On the death of a widow, her *peculium* falls to the son of another widow (the step-son of the former), in preference to the widow of a step-son. SOWAYA SINGH *v.* MUSSAMMAT SHIB KOUR. **37 P R 1866**

2. A house given to a wife after marriage by her father is her special property. AMEER SINGH *v.* KANH SINGH.
56 P R 1870

3. *Alienation.*

The husband of R. at his death bequeathed to her certain property. R. afterwards made a will disinheriting her son, and leaving all her property to her grandson. *Held*, that R. could not alienate the immoveable property left by her husband, whether that property consisted of land or houses. DYA SINGH *v.* RUGBIR SINGH. **38 P R 1873**

4. *Separate property of females.*

The land in suit belonged to S. S., upon whose death his widow took the estate upon the ordinary life tenure. She made a gift of the property to her daughter, Mussammat D., a married woman, and after the widow's death litigation (to which plaintiff was no party) ensued between Mussammat D. and some relatives of S. S., the result of which was that in 1854 Mussammat D. was declared owner of the land by virtue of the gift to her, and her husband was appointed manager. Upon the death of

HINDU LAW—*contd.*

XIII.—STRIDHAN—*concld.*

Mussammat D. in 1873, who left no children, plaintiff, a relative of S. S., claimed the land as against the husband of Mussammat D. *Held*, that by Hindu Law the land had become the separate property of Mussammat D. and her husband was entitled to it upon her death. PREM SINGH *v.* BODH SINGH. **24 P R 1876**

5. *Acquired property of females.*

The British Government granted a pension for life to Rani Rundhevi, the widow of Maharaja Sher Singh. Out of the proceeds of this pension the Rani advanced a sum of money to A. B. and took from him as security the mortgage of a house. Shortly before her death she made a will bequeathing the bulk of her property, including this mortgage interest, to her grandsons. The bequest of this mortgage interest was disputed by one who claimed to be the testatrix's adopted son, and by certain of his creditors who had attached the mortgage interest in execution of a decree obtained against him. The Lower Courts found the will proved, and that the adoption was by the Rani alone in her husband's life-time. *Held*, that the disputed bequest was valid under Hindu Law. MADDI MALL *v.* SHAHZADA KURM SINGH. **91 P R 1876**

6. *Benares school.*

According to the Benares school of Hindu Law, the term *stridhan* includes property of every description belonging to a woman and would include gifts to a wife at the time of her nuptials and those posterior to the marriage from the family of her husband, as well as gifts made to the wife by the husband himself.

Ornaments "worn constantly" by women during their husbands' lives are considered their peculiar property, for from the constant wearing a presumption is drawn that they were intended to be treated as the wife's *stridhan*. But where ornaments are merely given to a wife to be worn on festive occasions, it is held to be a conditional gift which establishes no right of property. MUSSAMMAT RUKMAN *v.* GANGA RAM.
31 P R 1880

7. *Inheritance of* stridhan—*Marriage in approved form.*

Held, that the *stridhan* of a Hindu wife dying childless, who has been married in one of the four approved forms of marriage, devolves upon the husband and not on her parents or their heirs. MUNNI *v.* UMRAO SINGH. **39 P R 1909**

XIV.—SURETYSHIP.

—*Liability of son after his father's death.*

It is a clear rule of Hindu Law, that when a father has become surety for payment of a debt, the son is liable after his death. BHAGWAN DAS *v.* SALIG RAM. **60 P R 1886**

XV.—WIDOW.

See HINDU LAW—ALIENATION.
HINDU LAW—MAINTENANCE.

1. *Remarriage of Hindu widow—Forfeiture of estate.*

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HINDU LAW—*contd.*

XV.—WIDOW—*contd.*

See Custom—XIV. Remarriage or Unchastity of Widow.

46 P R 1891

2. *Unchastity of widow—Forfeiture of Estate.*

See Custom—XIV. Remarriage or Unchastity of Widow.

107 P R 1888

3. *Widow.*

A widow by Hindu Law is entitled to maintenance only when there are sons; and this will apply to Muhammadans who by custom follow Hindu Law. Nadu *v.* Mussammat Hafizan. **20 P R 1867**

4. A childless Hindu widow is entitled to maintenance only where there are sons by another wife. Mussammat Kishen Devi *v.* Mussammat Gunga Devi. **22 P R 1867**

5. Where the widow's husband and his brother (Hindus) had been in joint possession of the property sued for by the widow, *held*, that the latter was entitled to maintenance only. Hemraj *v.* Mussammat Hemkour.

50 P R 1870

6. *Hindu Law—Widow's maintenance charge on property.*

A Hindu widow's maintenance is not a mere personal right against the heirs of the deceased husband, but a charge on the ancestral property; and it defeats the right of a mortgagee of such property, when there is no other ancestral property which can be charged with the maintenance. Hurdyal *v.* Mussammat Radhan.

7 P R 1871

7. There is a customary obligation for a Hindu to provide maintenance for his father's widow. Sukhdial *v.* Mussammat Ramditti. **31 P R 1874**

8. *Suit for arrears of maintenance without rate having been fixed, or demand made—Hindu widow—Practice.*

Held, by the Full Bench (Fitzpatrick, Plowden and Smyth, JJ.) that a suit by a Hindu widow for arrears of maintenance, in the nature of a suit for breach of an obligation to maintain, will lie notwithstanding that the rate of maintenance has not been fixed by agreement or by decree of Court.

Held, also, by the Full Bench (Fitzpatrick, Plowden and Smyth, JJ.) that where a maintenance allowance has been fixed no demand is required to be proved to sustain a suit for arrears of such allowance; but where no allowance has been fixed, and the suit is one for damages for breach of the obligation to maintain, it may, or may not, according to the circumstances of the case, be necessary to prove a demand in order to establish the breach of the obligation.

Held, by the Division Bench (Lindsay and Smyth, JJ.) that the amount allowed for the maintenance of a Hindu widow should be in proportion to her wants, that is, her own support and that of those dependent on her, regard being also had in fixing such amount to the means of the estate and the general circumstances of the particular case. Jiwana Mal *v.* Mussammat Saddan. **14 P R 1878**

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HINDU LAW—*contd.*

XV.—WIDOW—*contd.*

9. *Maintenance of widow—Widow's right of residence in the family dwelling house.*

The house in dispute—the sole property of the family of one S.—having been attached in execution of a debt decreed against S. alone, the sons and the mother of the said S. (the latter claiming also in the capacity of widow of S.'s father) contested the attachment on the ground that the debt being for immoral purposes, and for no legal necessity, the sons' shares in the estate ought to be reserved, and also a share for the widow's residence.

With regard to the widow's claim *held*, following *Fakir Chand* v. *Mussammat Chiranji* (No. 84 *P. R.* 1883), that while dismissing the claims of the sons and the whole claim to release any share of the property specifically, a declaration should be made that when the house was sold for S.'s debt, it must be sold subject to the widow's right of residence for her life, the Court executing the decree having to determine before sale what part of the premises should be declared subject to the widow's right of occupation for her life. Mussammat Imarti *v.* Buta Singh. **144 P R 1884**

10. *Will—Construction—Vested and contingent interests—Provision for maintenance of widow—Respective rights of succession of co-widow and son's widow.*

B. S. who died in 1859, leaving three widows and a son H. S. him surviving, made a will shortly before his death by which he left the property in dispute to one of his widows, Mussammat S. K. H. S. died in 1866, and on the death of Mussammat S. K. in 1886, the sole surviving widow of B. S. (the third widow having died in 1862) sued to recover the property left by Mussammat S. K. from Mussammat N. K. the widow of H. S. who left no children. The bequest to Mussammat S. K. was held, on the true construction of the will to be for maintenance only, and not to create an ordinary widow's estate.

Held, that under the above circumstances the property in question vested in H. S. on the death of his father; that the plaintiff had therefore no right to inherit as heir of her husband in preference to the defendant, the heir of H. S. and consequently any claim she made upon that basis must fail, as she had no *locus standi*. *Jusmaer Singh* v. *Mussammat Rur Kour* (No. 40 *P. R.* 1869), referred to. Sardarni Rattan Kaur *v.* Mussammat Nihal Kaur. **72 P R 1888**

11. *Alienation by sons of family residence for expenses of marriage of one of the sons—Eviction of widow by creditor with knowledge—Widow's right of residence.*

In a suit by a Khatri widow to establish her rights to residence in, and maintenance out of a house in the town of Rawalpindi, it appeared that the said house was the sole piece of property out of which maintenance could be had, and, that it had been mortgaged without any reservation or provision for the widow by her two sons for its full value, the object being to raise a sum of money for the marriage of one of the sons, and the mortgagee having full knowledge of the widow's claim.

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HINDU LAW—*contd.*

XV.—WIDOW—*contd.*

Held, that the debt incurred by the mortgagors was not of such a kind as to override and claim precedence of the widow's rights, and that the creditor had no right to eject the widow in satisfaction of his claim. Jowahir Singh *v.* Mussammat Ram Devi.

112 P R 1888

12. *Sale of dwelling-house—Self-acquired property—Right of widows of son and grandson of vendor to reside in the house sold without the consent of the vendee.*

In a suit for possession of a dwelling house, it appeared that the plaintiff was the purchaser of the house in suit, which was the self-acquired property of the vendor, who had died at time of suit. The defendants were the widows of a son and grandson of the vendor who had predeceased him.

Held, that by Hindu Law, the property sold being self-acquired and not ancestral, the defendants were not entitled to reside in the house in suit without the consent of the plaintiff. Mussammat Harkour *v.* Moti Ram.

10 P R 1889

13. *Maintenance of wife—Sale of land by husband—Wife's right to charge the property sold with her maintenance—Personal liability of husband to maintain wife—Property liable in case of his refusal and of its having been sold for immoral purposes—Onus probandi.*

Plaintiff's husband sold a plot of land to the defendant. Plaintiff sued to have the property sold charged with her maintenance. It was found that the plaintiff and her husband lived together and that the husband had not refused to maintain the plaintiff, and it was not shown that the land had been sold for immoral purposes.

Held, that the property was liable to be sold for her husband's debts unless incurred for immoral purposes, the burden of proving which lay on the wife, which in the present case she had failed to discharge, and that consequently the suit failed. Mussammat Gomti *v.* Chuttan Lal.

190 P R 1889

14. *Hindu Law—Hindu widow raising money by mortgage of husband's immoveable property—Burden of proof.*

P. M. sued to contest a mortgage of house property effected by his brother's widow, the said house forming part of the deceased husband's estate of which the widow was in possession.

Held, that it was sufficient to defeat an alienation of this nature that, upon the whole case, there was no proof of the mortgagees having fulfilled the legal obligation to inquire and satisfy themselves that the

HINDU LAW—*concld.*

XV.—WIDOW—*concld.*

widow, from whom they were taking a mortgage upon her husband's inheritance, had a proper justification for so mortgaging it.

I. L. R. XIV All., 420 (*P. C.*) referred to and followed. MUSSAMMAT BISHEN KOUR *v.* PHAGGU MAL. **137 P R 1892**

15. *Hindu Law—Custom—Primary rule of decision—Punjab Laws Act*, 1872, *section* 5—*Partition—Right of widow to share of her deceased husband's estate—Maintenance—Bhandari Khatris of Batala.*

Held, that by Hindu Law, though a widow is not competent of herself to institute partition proceedings in respect of her deceased husband's property, yet when such proceedings have been commenced by an heir entitled to demand partition and the paternal estate is divided by the sons after their father's death, the widow is entitled for her life to a share equal to that of a son, and it is immaterial whether she is allotted a share as a defendant or claims it as a plaintiff.

In questions relating to inheritance, partition, alienation and the like, where the parties are high caste Hindus of good position, residents of a town and, though holding land, non-agriculturists, depending for their livelihood on avocations other than cultivation of land, while the Court should see in the first instance whether there is any custom bearing on the question in issue, no presumption in favour of the existence of such a custom should be made and its existence should be left to be established by the evidence of the parties. MUSSAMMAT PAL DEVI *v.* FAKIR CHAND. **60 P R 1895**

XVI.—WILL.

See HINDU LAW—WIDOW. **72 P R 1888**

See WILL.

HINDU WIDOW.

—*Marriage by* chadar andazi *between a Khatri and a Khatrani widow—Legitimacy of children of such marriage—Act XV of* 1856.

See MARRIAGE. **4 P R 1905**

HINDU WILLS ACT, 1870.

See PROBATE AND ADMINISTRATION ACT, 1881, SECTION 2.

HOLIDAY.

Plaint may be received on a holiday.

See PLAINT. **43 P R 1870**

1. *Chief Court vacation—Civil petitions presented during—Limitation—Civil Procedure Code, section* 283.

The order of the Divisional Judge refusing a certificate for a further appeal under section 40 (1) (*d*), Punjab Courts Act, 1884, was made on 31st July 1889, and the time prescribed for an application for revision to the Chief Court under section 40 (2), *viz.*,

HOLIDAY—*concld.*

30 days, expired on 30th August 1889. The plaintiffs presented an application for revision to the Chief Court on 7th October 1889. The Chief Court was closed for Civil business from 15th August to 15th October, both days inclusive, by a Gazette Notification issued by the Local Government.

Held, that the plaintiff's application for revision was within time. Either section 5, Limitation Act, 1877, or section 7, General Clauses Act, 1887, operated to permit the application to be presented on the day when the Court re-opened, and it would have been in time if presented on 16th October. All Civil petitions filed during the vacation must, as regards limitation, be taken as filed upon the day when the Court re-opens. GANPAT RAI AND MOTI RAM *v.* HIRA SINGH AND KHUSHAL SINGH. **29 P R 1891**

2. *Punjab Courts Act*, 1884, *section* 67—*Hearing fixed for gazetted holiday—Obligation of party to appear on such day.*

Proceedings held in a Civil Court on a holiday are not necessarily a nullity on that account, but if the Court wishes to hear a case on a gazetted civil holiday, it must do so with the consent of the parties concerned, and cannot make them appear before itself without such consent, the exemption from attendance in Court on a gazetted holiday being a privilege conferred by law, of which no Court can of its own motion deprive the person concerned in the absence of any waiver of such privilege on the part of the latter. Nor in this respect is there any distinction between one class of gazetted holidays and another class. MUNICIPAL COMMITTEE, UMBALLA, *v.* BHAGWAN DAS. **55 P R 1898**

3.—*Hearing fixed for gazetted holiday—Obligation of party to attend on such day—Punjab Courts Act*, 1884, *section* 67.

Where a Judge at the request of the pleader of a party specially altered the date of hearing to suit his convenience from a working day to a close holiday, *held* that such party was bound to attend on the day so fixed and could not afterwards object to the jurisdiction of the Judge on account of his pleader's declining to appear at the last moment on the ground that the day was a holiday.

Municipal Committee, Ambala v. *Bhagwan Das* (55 *P. R.* 1898), and *Jawanda Mal* v. *Muhammad Ali* (82 *P. R.* 1901) referred to. BHAGWAN DAS *v.* HAR PERSHAD. **111 P R 1906**

HONORARY SECRETARY.

—*Unincorporated Club—Principal and agent—Honorary Secretary—Personal liability as Honorary Secretary and as a Member of Club.*

See CLUB—PERSONAL LIABILITY OF SECRETARY OF. **15 P R 1891** **11 P R 1892**

HOUSE RENT.

See LANDLORD AND TENANT. **33 P R 1898**

See SMALL CAUSE COURT ACT, 1887, SCHEDULE II, ARTICLE 7. **80 P R 1893**

HUNDI.

1. *Suit on a* Hundi *by a holder and indorsee against the drawer, acceptor and subsequent indorsers.*

See CIVIL PROCEDURE CODE, 1908, SECTION 20. **57 P R 1900**

2. Hundi *drawn at Jammu in foreign territory, but payable in British territory—Jurisdiction of Court.*

See JURISDICTION. **21 P R 1894**

3. *Suit on dishonoured—Suit on* Hundi *never presented for acceptance, but only for payment.*

See LIMITATION ACT, 1877, SECTION 14. **19 P R 1888.**

4. *Hundi—Siri Nishanee.*

See PRINCIPAL AND AGENT. **13 P R 1871**

5. *Suit on, dismissed as premature—Subsequent suit after presentation and refusal of payment.*

See RES JUDICATA. **72 P R 1885**

6. *Suit on, which has not been presented for payment.*

See RIGHT TO SUE. **148 P R 1883**

7. *Not duly stamped—Inadmissibility in evidence—Admissibility of evidence of original consideration.*

See STAMP. **4 P R 1881** **73 P R 1886**

8. *Promissory notes—Impressed sheets bearing the word* "Hundi."

See STAMP ACT, 1879, SECTION 34. **21 P R 1891**

9. *Suit by indorsee against indorser—Loss of* hundi—*Insolvency of drawer before loss brought to notice—Want of due diligence by plaintiff in ascertaining loss—Liability of defendant for amount of* hundi.

Plaintiffs sued the defendant to recover the amount, with interest, of a *hundi* which the said defendant had indorsed to the plaintiffs, drawn on a Delhi firm by a firm at Cawnpore in favour of another Cawnpore firm. It appeared that the bill was payable after 21 days, and during the currency of this term it was indorsed by the defendant to the plaintiffs, who forwarded it the next day to a correspondent at Bhawani in payment of an account. When eleven months had passed, their correspondent forwarded his accounts, and the plaintiffs then discovered that the bill had not been credited to them, and inferred that it had been lost in transit. When

HUNDI—*concld.*

nearly thirteen months had elapsed, plaintiffs called upon the defendant to get them a duplicate or to repay them the amount of the *hundi*. The defendant communicated with his immediate indorsers at Cawnpore, in order to procure a duplicate, who replied that they had communicated with the payees from whom they had received the *hundi*, but they replied that the term of the *hundi* was 21 days, and 14 months had elapsed, and no previous notice of loss or non-payment had been received, and the drawer of the bill had become brankrupt 4 months ago, and therefore no duplicate could now be obtained.

Held that, assuming the loss of the *hundi* to be proved, the defendant had done all that under the circumstances he was bound to do, and was not liable to the plaintiffs for the amount of the *hundi*, which could not now be recovered because the plaintiffs did not use due diligence in ascertaining that their correspondent had received it, and because the drawer became insolvent before the loss was brought to notice. HAIT RAM *v.* GANPAT. **159 P R 1882**

10. *Hundi silent as to interest—Separate oral agreement inadmissible—Evidences Act, 1872, section 92—Negotiable Instruments Act, 1881, section 80.*

Plaintiffs sued defendant for the recovery of the principal amounts due upon several *hundis*, together with interest due thereon at the rate of Re. 1-4-0 per cent. per mensem, alleging that, although the instruments were silent as to interest, the latter was recoverable under a separate *oral* agreement.

Held, that evidence as to the separate *oral* agreement was inadmissible under section 92 of the Evidence Act, proviso 2 to that section not being applicable to the case, and that interest could only be allowed at the rate of Rs. 6 per cent. *per annum* under section 80 of the Negotiable Instrutments Act, 1881. KISHOR CHAND, ETC., *v.* GURANDITTA MAL. **52 P R 1911**

HUSBAND AND WIFE.

See CUSTODY OF WIFE.
CUSTOM IV.—BETROTHAL, &C.
DIVORCE.
DIVORCE ACT, 1869.
DOWER.
HINDU LAW, WIDOW.
HINDU LAW, MARRIAGE.
MAINTENANCE.
MUHAMMEDAN LAW, DIVORCE.
MARRIAGE.
INHERITANCE.
RESTITUTION OF CONJUGAL RIGHTS. **82 P R 1908**
RIGHT TO SUE. **27 P R 1887**
WIFE.

1. *Suit by husband for dissolution of marriage—Death of respondent—Abatement of suit.*

See ABATEMENT OF SUIT. **60 P R 1906**

HUSBAND AND WIFE—*concld.*

2. *Separation deed between husband and wife—Allegations of misconduct on part of wife—question as to Burden of proof.*

See BURDEN OF PROOF. **41 P R 1898**

3. *Declaratory decree—Marriage—Suit for a declaration that the defendant is not the lawful wife of the plaintiff—Jurisdiction of Civil Court to entertain such a suit when an order for maintenance passed under section 488 of the Criminal Procedure Code is in force against the plaintiff—Specific Relief Act, section 42.*

Held, that a suit by a person against whom an order for maintenance in favour of defendant has been made by a Criminal Court under section 488, Criminal Procedure Code, lies in a Civil Court for a declaration that the defendant is not his wife.

Mussammat Baji v. *Nawab Khan* (21 *P. R.* 1894, Cr). *Subhudra* v. *Basdeo Dube* (*I. L. R. XVIII All*, 29), *Subad Domni* v. *Kateram Dome* (20 *W. R.* 58, Cr.) *Aunjona Dasi* v. *Problad Chandra Ghose* (6 *Beng. L R.* 243) and *Jagat Singh* v. *Jit Singh* (41 *P. R.* 1876), referred to. MUSSAMMAT BAKHAN *v.* ALA BAKHSH. **26 P R 1903**

4. *Presumption as to legitimacy of child born after marriage.*

Held, that on the birth of a child during marriage the presumption of legitimacy is conclusive, no matter how soon the birth occurs after the marriage. UMRA *v.* MUHAMMAD HAYAT. **79 P R 1907**

IDDAT. I.

See MOHAMMADAN LAW—MARRIAGE.

IDENTIFICATION OF LAND.

See ALLUVION AND DILUVION.

IDIOT.

Succession of—Right of stranger in possession to plead that widow was disqualified by mental defect from inheritance.

See HINDU LAW—INHERITANCE. **19 P R 1899**

IGNORANCE OF LAW.

See CIVIL PROCEDURE CODE, 1908, O. XXII, R. 4. **43 P R 1889**
See LIMITATION ACT, 1877, SECTION 5. **184 P R 1889 F B**
See REGISTRATION ACT, 1877, SECTION 17. **184 P R 1889 F B**

ILLEGITIMACY.

See CUSTOM I.-A. 3.—ALIENATION BY MALE PROPRIETORS—SALES, &C., IN FAVOUR OF STRANGERS **40 P R 1880**, **72 P R 1892**
CUSTOM IV.—BETROTHAL, DOWER, MARRIAGE AND DIVORCE. **84 P R 1889**, **48 P R 1890**, **49 P R 1890**, **72 P R 1892**, **57 P R 1893**, **73 P R 1897**, **13 P R 1899**, **52 P R 1899**, **50 P R 1900**, **51 P R 1900**, **54 P R 1900**
See DIVORCE. **77 P R 1911**

ILLEGITIMACY—*concld.*

Illegitimate children—Right to maintenance from natural father.

See EVIDENCE ACT, 1872, SECTION 112. **28 P R 1906**

ILLICIT SALE OF OPIUM.

See OPIUM ACT, 1878. **114 P R 1881**, **105 P R 1883**

IMAM.

See RELIGIOUS INSTITUTIONS.

IMMORAL CONTRACTS.

See CONTRACTS. **10 P R 1872**, **81 & 86 P R 1875**, **64 P R 1876**, **22 & 26 P R 1877**
See CONTRACT ACT, SECTION 23. **2 P R 1898**

IMMORAL DEBTS.

See HINDU LAW—ALIENATION.
See HINDU LAW—WIDOW. **190 P R 1899**

IMMOVABLE PROPERTY.

See REGISTRATION ACT, 1877, SECTION 17. **136 P R 1894**

1. *Purchases effected with profits of ancestral immovable property.*

See ANCESTRAL PROPERTY. **4 P R 1900**

2. *Order passed in execution of decree in small cause—Decree giving effect to compromise dealing with immovable property—Course of appeal.*

See APPEAL III.—COURSE OF APPEAL. **55 P R 1887**

3. *Value of suit for purposes of jurisdiction—Suit for possession of immovable property—Suit by mortgagee against third party in actual possession—Course of appeal.*

See APPEAL XI.—VALUATION OF. **1 P R 1896 F B**

4. *Suit for possession of immovable property situate in different districts—Joint suit by reversioners against person in wrongful possession.*

See CAUSE OF ACTION V.—MIS. JOINDER **91 P R 1898**

5. *Jurisdiction—Suit for determination of right to or interest in immovable property.*

See CIVIL PROCEDURE CODE, 1908, SECTION 16. **39 P R 1891**

6. *Suit for immovable property situate in different districts—Sanction*

See CIVIL PROCEDURE CODE, 1908, SECTION 17. **10 P R 1891**

7. *Forfeiture of deposit made by purchaser of immovoble property—Appeal.*

See CIVIL PROCEDURE CODE, 1908, O. XXI, R. 86. **120 P R 1891**

8. *Omission by auction purchaser to obtain delivery of immovable property under section 318, Civil Procedure Code—Right to sue.*

See CIVIL PROCEDURE CODE, 1908, O. XXI, R. 95. **14 P R 1893**

9. *Stay of sale of immovable property in execution of a decree against which an appeal is pending.*

See CIVIL PROCEDURE CODE, 1908, O. XLI, R. 6. **120 P R 1890**

IMMOVABLE PROPERTY—*contd.*

10. *Immovable property, definition of—Benefit to arise out of land—Jagir income,*
See GENERAL CLAUSES ACT, 1868, SECTION 2. **4 P R 1894**

11. *Pre-emption—Right to use water of perennial stream—Immovable property.*
See GENERAL CLAUSES ACT, 1868, SECTION 2.
11 P R 1898

12. *Oral gift of immovable property creating charitable trust—Indian Trust Act,* 1882.
See GIFT. **75 P R 1903**

13. *Jurisdiction of British Court to make decree affecting immovable property situate outside British India.*
See JURISDICTION.
CIVIL PROCEDURE CODE, 1908, O. VIII, R. 10. **59 P R 1892**

14. *Jurisdiction of Civil or Revenue Courts—Suit by lessee of Government parade ground for money due on account of grazing dues—Estate—Punjab Tenancy Act,* 1887, *section* 77, *clause (o) and Punjab Land Revenue Act,* 1887, *section* 3—*Jurisdiction of Small Cause Couri—Small Cause Court Act,* 1887, 2*nd Schedule* (13)—"*Interest in immovable property.*"
See JURISDICTION OF CIVIL OR REVENUE COURTS. **13 P R 1895**

15. *Suit by minor against guardian for an account and for possession of immovable property—Trustee—Parties to suit.*
See LIMITATION ACT, 1877, SECTION 7.
33 P R 1897

16. *General Clauses Act,* 1868, *section* 2—"*Immovable property* "—*Benefit to arise out of land—Jagir income.*
See LIMITATION ACT, SCHEDULE II, ARTICLE 75. **4 P R 1894**

17. *Suit for—Limitation.*
See LIMITATION ACT, (XV OF 1877), SCHEDULE II, ARTICLE 91.
155 P R 1883
See LIMITATION ACT, (XV OF 1877), SCHEDULE II, ARTICLE 120.
88 P R 1882
See LIMITATION ACT (XV OF 1877), SCHEDULE II, ARTICLE 144.
122 P R 1883
94 P R 1884
112 P R 1884

18. *Suit for possession of immovable property involving cancellation of a deed—Period of limitation applicable.*
See LIMITATION ACT, SCHEDULE II, ARTICLE 91. **75 P R 1896**

19. *Suit for possession of immovable property against an alleged adopted son—Suit instituted more than six years after alleged adoption, but within* 12 *years from date of estate falling into possession—Period of limitation applicable.*
See LIMITATION ACT, SCHEDULE II, ARTICLE 91. **55 P R 1897**

20. *Suit by a reversioner for possession of immovable property—Defendant in possession under an alleged gift—Time from which period begins to run.*
See LIMITATION ACT, SCHEDULE II, ARTICLE 91. **23 P R 1902**

IMMOVABLE PROPERTY—*contd.*

21. *Declaration that an alleged adoption is invalid or never in fact took place—Suit for possession of immovable property—Limitation.*
See LIMITATION ACT, 1877, SCHEDULE II, ARTICLE 118.
73 P R 1894 F B

22. *Suit by a reversioner for possession of immovable property—Defendant in possession under an alleged adoption—Limitation.*
See LIMITATION ACT, 1877, SCHEDULE II, ARTICLE 118, **20 P R 1902**

23. *Suit for possession of immovable property and for concellation of will—Limitation.*
See LIMITATION ACT, 1877, SCHEDULE II, ARTICLE 120. **56 P R 1894**

24. *Suit for money charged upon.*
See LIMITATION ACT (XV OF 1877), SCHEDULE II, ARTICLE 132.
90 P R 1881

25. *Application of Regulation XVII of* 1806 *to incorporeal rights connected with land—Immovable property.*
See MORTGAGE, FORECLOSURE.
88 P R 1888

26. *Instrument of exchange of immovable property—Document embodying previous oral contract.*
See REGISTRATION ACT, 1877, SECTION 17. **26 P R 1891**
120 P R 1894

27. *Deed of sale of right of pre-emption—Admissibility in evidence of unregistered deed—Right to or in immovable property.*
See REGISTRATION ACT, 1877, SECTION 17. **136 P R 1894**

28. *Instrument of operation to declare right to immovable property—Document addressed to Court embodying terms of contract and compromising suit—Admissibility of such document as evidence of oral contract.*
See REGISTRATION ACT, 1877, SECTION 17. **95 P R 1894**
97 P R 1895

29. *Is* masani *income* "*immovable property*" *within the definition of that term contained in section* 3, *Registration Act,* 1877.
See REGISTRATION ACT, 1877, SECTION 49. **83 P R 1891**

30. *Subordinate Judge on appeal in small cause refusing to decide question relating to immovable property.*
See SMALL CAUSE COURT—JURISDICTION OF. **78 P R 1887**

31. *Determination of question of title to by Small Cause Court.*
See SMALL CAUSE COURT, JURISDICTION OF.
5 P R 1886
5 P R 1882
38 P R 1882
8 P R 1885
8 P R 1885 Note.
4 P R 1883

32. *Government ferry—Immovable property—Suit by the lessee for recovery of tolls.*
See SMALL CAUSE COURT ACT, 1887, SCHEDULE II, ARTICLE 13.
80 P R 1898

IMMOVABLE PROPERTY—*concld.*

33. *Sub-mortgage of mortgage on immovable property,*
Held, that a mortgage-debt as long as it is charged on immovable property is itself immovable property. SANT SINGH *v.* JAWALA SINGH. **58 P R 1899**

34. Right to future fruit crops and fruit on trees is a right in immovable property under clause 25 of section 3 of the General Clauses Act X of 1897, though they are movable property for the purposes of the Registration Act. ASA RAM *v.* NUR DIN.
66 P R 1900

35. *Attachment—mortgage-debt—movable or immovable property.*
Held, that for the purposes of section 268 Civil Procedure Code 1882, [order XXI, rule 46, C. P. C., 1908,] a debt secured by a mortgage lien on land is not immovable but movable property. BANTU *v.* GANDA SINGH.
18 P R 1909

IMPRISONMENT.

1. *Order by execution Court for imprisonment of judgment-debtor—Appeal—Revision.*
See CIVIL PROCEDURE CODE, 1908, SECTION 55. **100 P R 1894**

2. *Arrest and imprisonment in execution of decree—Subsequent application stating judgment-debtor's intention to apply to be declared an insolvent—Rejection of application—Illegal confinement—Duress.*
See CIVIL PROCEDURE CODE, 1908, SECTION 55. **59 P R 1898**

IMPROVEMENTS.

See *under* ACQUIESCENCE.
JURISDICTION OF CIVIL OR REVENUE COURT.
MORTGAGE.
PRE-EMPTION.

1. *Suit for improvements by tenant.*
See CUSTOM I. F.—ALIENATION BY NON-PROPRIETOR. **75 P R 1897**
PUNJAB TENANCY ACT, 1868, SECTION 40. **2 P R 1887 Rev.**
PUNJAB TENANCY ACT, 1887, SECTIONS 65, 70, *Passim.*
JURISDICTION OF CIVIL OR REVENUE COURTS. **123 P R 1893**

2. *By mortgagee.*
See CUSTOM I. F.—ALIENATION BY NON-PROPRIETOR. **75 P R 1887**
INTEREST. **67 P R 1893**
MORTGAGE—REDEMPTION.
123 P R 1888
55 P R 1890
67 P R 1896
18 P R 1898

3. *Compensation for improvements—Erection of buildings by one man on the land of another.*
See PRE-EMPTION—COMPENSATION FOR IMPROVEMENTS. **38 P R 1899**

IMPROVEMENTS—*concld.*

4. *Pre-emption—Compensation for improvements made by original purchaser—Form of decree.*
See PRE-EMPTION—COMPENSATION FOR IMPROVEMENTS. **91 P R 1892**

5. *Compensation for improvements by non-proprietor.*

See COMMON LAND. **37 P R 1890**

CUSTOM I. F.—ALIENATION BY NON-PROPRIETOR. **75 P R 1897**

6. *Compensation for improvements by vendee.*
See PRE-EMPTION—COMPENSATION FOR IMPROVEMENTS.

INAMDARI.

—*Inamdari—Succession to inamdari—Heriditary claims—Rule No. 167 of the Rules, under Punjab Land Revenue Act,* 1887.

Held, that (1) the object of the words "regard shall not be had to any alleged hereditary claim" in rule No. 167 of the Rules under the Punjab Land Revenue Act, 1887, is to secure to the local officers great and very necessary freedom in making appointments of zaildars and inamdars; and (2) there is absolutely no obligation to appoint a relative; but (3) the rule is not to be so construed as to prevent, in evenly balanced cases, considerable weight being attached to the circumstance that one of the claimants is the son of the deceased office holder.

Attar Singh v. *Baghel Singh* (3 *P. R.* 1902, *Rev.*) and *Ralla Ram* v. *Amir Bakhsh* (*I. P. R.* 1900, *Rev.*) cited. SURAIN SINGH *v.* JAGAT SINGH. **5 P R 1902 Rev.**

INCONSISTENT PLEAS.
See CAUSE OF ACTION V.—MISJOINDER. **41 P R 1887**

PLAINT—AMENDMENT OF. **161 P R 1888**
106 P R 1893

PLAINT—FORM OF. **109 P R 1887**
1 P R 1892 Rev.

PLEADINGS.

INCORPORATED SOCIETY.
See CLUB. **15 P R 1891**
11 P R 1892

—*Right to sue—Gift to certain persons for purposes of a society not then in existence—Subsequent incorporation of such society under Act XXI of* 1860—*No formal written transfer of rights by original donees—Right of Managing Committee to sue in respect of such gift—Interpretation of deed.*

On the 2nd May 1885, one B. N. S. executed a deed of gift of certain property in

INCORPORATED SOCIETY—*concld.*

favour of fifteen persons, including himself, named in the deed, and called in it the Managing Committee of a certain school which it was the purpose of the grant to establish. The Committee was empowered to add to its numbers, and to frame rules, draw up schemes to manage the gifted property and generally to do all acts necessary to carry out the purposes of the grant. The said Managing Committee registered itself as a corporate body, under Act XXI of 1860, on the 3rd November 1885, but no formal written transfer of rights was made by the original donees in favour of such corporate body. On the 1st December 1890, the President and Secretary of the incorporated institution sued on its behalf to enforce the terms of the deed of gift as against the donor, but their suit was dismissed on the grounds that the gift was made to a body and to an institution not legally in existence at the time, that it was in favour of specific persons, that the registration of the Committee did not take place till some seven months after the gift, that the school was not yet in existence, and that in consequence the President and Secretary of the Committee were not entitled to bring the present suit to enforce the said gift.

Held, upon consideration of the terms of the deed of gift and the facts of the case, that the plaintiffs, as representatives of the Managing Committee, were entitled to enforce the rights of the persons who formed the original Managing Committee, and who were the donees under the said deed of gift, the suit not being one to enforce a contract with the previous Managing Committee, but to recover property said to have been granted to it.

Held also, that it was not absolutely essential under the circumstances of the case, that there should have been a formal written transfer in favour of plaintiffs by the members of the original Managing Committee of all their rights under the gift. RAI GAGAR MAL *v.* BAWA KASUR SINGH. **41 P R 1897**

INCORPOREAL RIGHTS.

Application of Regulation XVII of 1806 *to incorporeal rights connected with land—Immovable property.*
See MORTGAGE—FORECLOSURE. **88 P R 1888**

INCUMBRANCES.
See CONFISCATION OF PROPERTY. **19 P R 1866**

INDEMNITY (CONTRACT OF).

—*Made in Foreign State—application of law of British India.*

See PRINCIPAL AND SURETY. **7 P R 1882 P. C.**

INDEPENDENT PRINCE AND STATES.

INDIAN COMPANIES ACT.

See CONTRACTS. **21 P R 1872**
1 P R 1874 P. C.

JURISDICTION OF CIVIL COURT. **54 P R 1870**
93 P R 1875

INDIAN BRITISH SUBJECT.
Who has made and broken a contract in England is amenable to the jurisdiction of the High Court of Judicature in England, after he has been properly served with a notice.
See FOREIGN JUDGMENT. **75 P R 1909**

See COMPANY.

INDIAN CONTRACT ACT.

See CONTRACT ACT.

INDIAN DIVORCE ACT.

See DIVORCE.

INDIAN EVIDENCE ACT.

See EVIDENCE ACT.

INDIAN LIMITATION ACT.

See LIMITATION ACT, 1877.
LIMITATION ACT, 1908.

INDIAN OATHS ACT.

See OATHS ACT, 1873.

INDIAN RAILWAY ACT.

See PLATFORM TICKET. **36 P R 1911**

See RAILWAYS ACT.

INDIAN STAMP ACT.

See STAMP ACT.

INDORSEMENT.

See BILL OF EXCHANGE.
See HUNDI.
See NEGOTIABLE INSTRUMENTS ACT, 1881.

INFRINGEMENT OF PATENT.

See PATENT.

INHERITANCE.

See CUSTOM VIII—MAINTENANCE AND SUCCESSION.
HINDU LAW—INHERITANCE.
MUHAMMADAN LAW—INHERITANCE. SUCCESSION.

1. *Succession to Occupancy Rights.*
See OCCUPANCY RIGHTS. **76 P R 1907**
130 P R 1907
2 P R 1907 Rev.

INHERITANCE—*contd.*

1. *Power of a reversioner to alienate his right of succession.*

See CIVIL PROCEDURE CODE, 1908, SECTION 60, CLAUSE (M). **58 P R 1894**

CUSTOM 1—H—ALIENATION OF REVERSIONARY RIGHTS. **66 P R 1897**

SPECIFIC RELIEF ACT, 1877, SECTION 18. **13 P R 1889**

2. *Succession to houses held by non-proprietary residents on the village site.*

See COMMON LAND. **37 P R 1887**
76 P R 1888
71 P R 1889

3. *Forfeiture of, in former husband's property by reason of remarriage or unchastity.*

See CUSTOM VIII.—I. REMARRIAGE OR UNCHASTITY OF WIDOW.

4. *Succession of Idiot.*

See HINDU LAW—INHERITANCE. **19 P R 1899**

5. *Disqualification for Insanity.*

See MUHAMMADAN LAW—JOINT FAMILY. **91 P R 1887**

6. *Forfeiture of inheritance by a person who has murdered or been instrumental in murdering another to the latter's estate—Public policy.*

In 1891, plaintiff was convicted by the District Magistrate of Hazara of the abetment of the murder of his half-brother, Ahmad Khan, and sentenced to seven years' rigorous imprisonment and fine, &c. The defendant, the mother of the deceased, Ahmad Khan, succeeded to his property; the plaintiff on completion of his sentence instituted the present suit for possession of his half-brother's property, and based his claim on the ground of his being a customary heir to his murdered brother. The defendant contended that plaintiff was excluded from inheriting on the principle of Muhammadan law, which precludes the slayer inheriting from the person whom he has slain, and that she was as mother under the circumstances entitled to a life interest.

Held, that plaintiff was disentitled to succeed upon that principle of public policy and justice which demands that no criminal should benefit by the result of his crime, and that it is unnecessary to consider either the Muhammadan or Customary law on the point.

Held, further, that even if it could be shown (as admittedly it could not) that a custom expressly recognized the right of a person who had abetted the murder of his relation to inherit that relation's property, it would be *contra bonos mores* and therefore invalid. MUSSAMMAT SHAH KHANAM v. KALANDHAR KHAN. **74 P R 1900**

INHERITANCE—*concld.*

7. *Inheritance—Forfeiture of, by a murderer and his descendants where the sole object of the murder was to secure the property of the deceased—Public policy.*

Held, that when a person has been murdered with the sole object of securing his property, both the murderer and his descendants are excluded from inheriting the property of the deceased as their succession is opposed to public policy.

Mussammat Shah Khanam v. *Kalandar Khan* (74 *P. R.* 1900), and *Roda* v. *Harnam* (18 *P. R.* 1895, *F. B.*) cited and followed. MUHAMMAD KHAN v. SIS BANO. **41 P R 1906**

INITIALS.

—*Sufficiency of signature with—Judge's* parwana *under Regulation XVII of* 1806.

See MORTGAGE—FORECLOSURE. **16 P R 1888**
185 P R 1889 F B
51 P R 1892

INJUNCTION.

1. *Suit for damages for wrongful act—Previous suit for injunction restraining same wrongful Act.*

See CAUSE OF ACTION I.—DISTINCT CAUSE OF ACTION. **190 P R 1888**

2. *Temporary injunction—Effect of alienation in contravention of injunction.*

See CIVIL PROCEDURE CODE, 1908, O. XXXIX, R.I. **144 P R 1889**

3. *Contract with Independent Rajah—Cession of territory to British Government—Effect of upon right of contractee—Right to injunction to restrain further injurious act.*

See CONTRACTS. **1 P R 1874 P C**

4. *When to be granted—Discretion of Court—Damages.*

See COMMON LAND. **91 P R 1901**

5. *Specific Relief Act,* 1877, *section* 42—*Suit for half share of property alleged to be joint ancestral—Question of possession and enjoyment—Plaintiff when entitled to further relief—Decree for delivery of possession of undivided share—Injunction.*

See DECLARATORY DECREE. I.—DECLARATION OF TITLE **73 P R 1881**

6. *Specific Relief Act,* 1877, *section* 42—*Suit for declaratory decree dismissed in accordance with award of arbitrators—Appeal by plaintiffs on ground that first Court had no jurisdiction.*

See DECLARATORY DECREE. I.—DECLARATION OF TITLE **1 P R 183**

7. *Specific Relief Act,* 1877, *section* 42—*Declaratory Decree—Consequential relief.*

See DECLARATORY DECREE. 6.—MISCELLANEOUS. **125 P R 1886**

8 *Right of way—Defendants closing old and opening out new right of way over their fields—Actual damage—Allegation by plaintiff of probable prospective damage—Right to injunction.*

See EASEMENT. **22 P R 1888**

INJUNCTION—*contd.*

9. *Light and air—Obstruction—Injunction or damages.*

See EASEMENT. **2 P R 1893**

10. *Discharge of water and drainage—Removal of obstruction—Right of access for the purpose of supervision of the right to discharge water and drainage—Pecuniary compensation—Perpetual injunction.*

See EASEMENT. **49 P R 1900**

11. *Obstruction to private right of way.*

See EASEMENT. **64 P R 1901**

12. *Suit for damages for injury caused by wrongful injunction.*

See LIMITATION ACT, 1877, SCHEDULE II, ARTICLE 42. **40 P R 1881**

13. *Suit to remove obstruction to plaintiffs' widow—Valuation of suit.*

See JURISDICTION. **52 P R 1887**

14. *Injunction—Slaughter-house—Apprehended danger to health and interference with physical comfort and convenience—Diminution in value of property—Ground for relief—Statutory powers of Municipal Committee—Justification of nuisance—Infringement of private rights.*

See NUISANCE. **106 P R 1888**

15. *Nuisance—Public latrine—Injunction—Statutory authority of Municipal Committee.*

See NUISANCE. **103 P R 1892**

16. *Civil Court's jurisdiction to set aside Municipal Committee's orders—Municipal Committee's powers for recalling a sanction for the erection of a building once given—Perpetual injunction—Suit for.*

See PUNJAB MUNICIPAL ACT, 1890, SECTION 92. **52 P R 1900**

17. *Suit for declaratory decree—Declaration of right to build a wall—Subsequent obstruction by defendant—Right of plaintiff to maintain a fresh suit for an injunction.*

See RIGT TO SUE. **111 P R 1882**

18. *Temporary injunction to restrain partition proceedings in Revenue Court.*

See SPECIFIC RELIEF ACT, 1877, SECTION 54. **57 P R 1899**

19. *Valuation of suit for purposes of jurisdiction—Suit for perpetual injunction—Juridiction of Munsif, 3rd class.*

See SUITS VALUATION ACT, 1887, SECTION 11. JURISDICTION. **132 P R 1894**

20. Jajman *and* Acharaj—*Realization of* virt *from* Jajmans.

In a suit for a permanent injunction to restrain defendant from receiving *virt* from the *Jajmans* on the ground that except the family of plaintiff no one within a certain area had any right to recover the same.

Held, that the property in *virt* being of uncertain and indefinite character depending on the good will of the *Jajman*, the latter being at liberty to prefer another

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Acharaj, injunction to restrain other persons from acting as *Acharaj* would amount to trenching unduly on the rights of the *Jajmans* to employ whatever priest they chose.

Ram Rattan v. *Gori* (38 *P. R.* 1872), *Gobind* v. *Sada* (7 *P. R.* 1877), *Mathra* v. *Kanhya* (119 *P. R.* 1879), and *Raja and another* v. *Krishna Bhat* (*I. L. R. III Bom.* 232), referred to. GUR SAHAI *v.* KARAM CHAND. **8 P R 1901**

21. The Specific Relief Act contains no prohibition against a conditional injunction being granted. HARI SINGH *v.* THE MUNICIPAL COMMITTEE OF PINDIGHEB. **78 P R 1901**

22. *Injunction—Trade mark—Right to injunction to restrain use of similar label.*

The plaintiff, an inkseller, who had not taken out any patent for a speciality in ink sued for and obtained an injunction against defendant who was also dealing in the same trade from using a colourable imitation of his label, which he claimed to have had registered as his trade mark in the Trade Marks Branch of the Patent Office in London. The defendant's label had an almost identical appearance, but the name of the firm was different and the wording altered.

Held, that an injunction ought not to have been granted. The use of a similar label by a person under his own name does not show any design on his part to pass off his article as that of another unless fraud on his part is proved. The colour and size of a label cannot be regarded as a constituent part of a trade mark.

Badische Aniline and Soda Fabrik v. *Maneckji Shapurji Katrak* (*I. L. R. XVII Bom.* 584), *Ralli* v. *Fleming* (*I. L. R. III Calc.* 417), and *Thomas Arthur Taylor* v. *Virasami Chetti* (*I L. R* 6 *Mad.* 108), referred to. MUHAMMAD ISHAQ *v.* ALIF KHAN. **55 P R 1902**

INSANITY.

1. *Suit on bond—Plea of insanity of obliger—Burden of proving lucid interval where general condition is shown to be that of insanity.*

See BURDEN OF PROOF. **87 P R 1883**

2. *Suit on behalf of alleged lunatic by next friend.*

See CIVIL PROCEDURE CODE, 1908, O. XXXII, R. 15. **13 P R 1896**

3. *Application for leave to appeal in* forma pauperis *filed without schedule of pauper's property—Application filed by manager of idiot plaintiff's estate.*

See CIVIL PROCEDURE CODE, 1908, O. XXXIII, RR. 2 & 3. **19 P R 1899**

4. *Validity of marriage of a woman whose husband was alive though insane.*

See CUSTOM IV.—BETROTHAL, DOWER, MARRIAGE AND DIVORCE. **49 P R 1890**

INSANITY—*concld.*

5. *Exclusion from inheritance on ground of insanity.*

See HINDU LAW—INHERITANCE. **149 P R 1883**

6. *Disqualification for inheritance.*

See MUHAMMADAN LAW—JOINT FAMILY. **91 P R 1887**

INSOLVENCY.

1. *Appeal from order refusing application to be made insolvent.*

See APPEAL, II.—COMPETENCY OF. **124 P R 1882**

2. *Appeal from order reversing on review previous order granting appellant priority in distribution of assets.*

See APPEAL, III.—COURSE OF APPEAL. **66 P R 1883**

3. *Appeal from order passed in Insolvency proceedings under Act IV of* 1872.

See APPEAL, II.—COMPETENCY OF. **33 P R 1883** **62 P R 1886**

4. *Appeal from insolvency order.*

See APPELLATE COURT, POWERS AND DUTIES OF. **58 P R 1901**

5. *Application to be declared insolvent—Rejection of application—Value of subject-matter over Rs.* 5,000*—Appeal, Course of.*

See APPEAL. III.—COURSE OF. **98 P R 1908**

6. *Creditor attaching insolvent's property before judgment—Re-attachment after decree—Effect of such attachment and re-attachment—Priority—Release from attachment before order by insolvency Court for distribution of assets.*

See ATTACHMENT. **93 P R 1882**

7 *Execution of decree—Attachment of property—Judgment debtor adjudicated insolvent and property vested in official assignee—Objection to attachment by judgment-debtor in interest of official assignee—Letter from official assignee praying for release of property.*

See CIVIL PROCEDURE CODE, 1908, O. XXI, R. 24 **57 P R 1897**

8. *Liability of surety—Application by judgment debtor within one month to be declared insolvent—Application returned by Court as defective—Release of surety.*

See CIVIL PROCEDURE CODE, 1908, SECTION 55. **100 P R 1894**

9. *Arrest and imprisonment in execution of decree—Subsequent application stating judgment debtor's intention to apply to be declared an insolvent—Rejection of application—Illegal confinement—Duress.*

See CIVIL PROCEDURE CODE, 1908 SECTION 55. **59 P R 1898**

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10. *Of drawer of* hundi*—Suit by indorsee against indorser—Loss of Hundi—Want of due diligence by plaintiff in ascertaining loss—Liability of defendant.*

See HUNDI. **159 P R 1882**

11. *Proceedings in—Test of jurisdiction.*

See JURISDICTION. **62 P R 1886**

12. *Schedule of bankruptcy no admission of debt—Dividend in bankruptcy not a part payment to revive debt.*

See LIMITATION. **25 P R 1870**

13. *Limitation Act*, 1871, *section* 16*—Act IX, of* 1872, *section* 29*—Stay of proceedings by injunction—Proceedings in bankruptcy.*

See LIMITATION ACT, 1871, SECTION 16. **66 P R 1874**

14. *Application by registered creditor for balance of registered debt—Limitation.*

See LIMITATION ACT (XV OF 1877) SCHEDULE II, ARTICLE 178. **52 P R 1882**

15. *Partnership—Insolvency of firm—Indian Evidence Act,* 1872, *section* 109*—Contract Act,* 1872, *sections* 253, 254, 255*—Punjab Laws Act,* 1872, *section* 25*—Limitation Act,* 1877, *article* 106.

See PARTNERSHIP. **37 P R 1897**

16. *Proceedings under Punjab Laws Act no bar to subsequent proceedings under section* 344, *Civil Procedure Code.*

See RES JUDICATA. **145 P R 1884**

17. *Suit by Insolvency Court for declaration of right to unexecuted decree obtained by insolvent.*

See RIGHT TO SUE. **118 P R 1886**

18. *Regular suits.*

Held, under the former Bankruptcy Rule (Punjab Civil Code and Circular of 28th February 1859), that proof of debts beyond mere registration was necessary; and all creditors should be allowed to bring regular suits to entitle themselves to a dividend or share of the assets. JUSWUNT *v.* HURBHUJ RAI. **23 P R 1866**

19. *Punjab Civil Code.*

Held, that as to Bankruptcy the provisions of the Code had the force of law.

Held, also that when a large majority of the creditors were out of the province, the petition for adjudication should be at once dismissed. IN RE BICK. **64 P R 1867**

20. *Judgment-creditors—Priority.*

Under the former law (*i. e.* before Act IV of 1872 was in force), *held*, that in the

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distribution of a bankrupt's estate judgment-creditors had no priority of claims over others, unless the decree had been sued out (*i. e.* unless property had been attached and sold in execution ef the decree) before adjudication of bankruptcy; or unless the sale of property attached in execution had been postponed by order of Court, and the period required by law between attachment and sale had expired. In such cases judgment-creditors were entitled to the sale proceeds of such property in priority of other creditors. IN RE A REFERENCE FROM JUDGE, SMALL CAUSE COURT, LAHORE. **63 P R 1868**

21. As to the procedure to be followed in attaching and realizing a bankrupt's estate situated out of the jurisdiction of the Court by which the adjudication of bankruptcy is made, the Chief Court under the former law prescribed the following: When a person petitions to be adjudicated bankrupt, he generally places the whole of his property at the disposal of the Court for the benefit of his creditors. If the property is situated out of the jurisdiction of the Court, It may be dealt with in two ways—

(1) It may be removed into the Court's jurisdiction; or

(2) If this would be too expensive, or the property is immovable, it may be sold where it is situated, and this would generally be done by the Deputy Commissioner of the district within whose jurisdiction the property may be, on the application of the Court by which the owner of the property was adjudicated bankrupt; or the Court might depute some other person to dispose of the property.

If the second course is adopted, the Court should transmit a list of the property, and a copy of any order for attachment and sale of the property that may have been passed, to the Deputy Commissioner of the district in which the property is situated, and the Deputy Commissioner, unless, there be any sufficient reason to the contrary, should cause the property to be attached and sold, according to the rules in force for the attachment and sale of property in execution of decrees, and the sale proceeds remitted to the Court by which the attachment was ordered.

If the property consists of decrees which require to be executed out of the jurisdiction of the Court by which they were passed, the procedure laid down in section 284 *et seq.* of Act VIII of 1859 should be followed. IN RE A REFERENCE FROM JUDGE, SMALL CAUSE COURT, LAHORE. **65 P R 1868**

22. *Act VIII of* 1859, *sections* 236 *and* 265.—*Attachment of debts payable by instalments under bankruptcy proceedings.*

A was adjudicated bankrupt on condition that he paid his debts by monthly instalments. *B* subsequently obtained a money decree against *C* one of *A's* creditors. *Held*, that *B* was entitled to attach under sections 236 and 265 of Act VIII of 1859, as the right and interest of his judgment-debtor, the remainder of the instalments payable by *A* to *C* under the bankruptcy. SALIG RAM *v.* JALAL-UD-DEEN. **90 P R 1869**

23. *Pensions.*

Held, that pensions not included in Act VI of 1849, were liable to attachment under proceedings in bankruptcy. NIZAKUT-UL-NISSA *v.* RAM SAHAI. **100 P R 1869**

24. Sections 273 and 275, Civil Procedure Code, did not supersede the Bankruptcy Law as contained in the Punjab Civil Code. The Code gave jurisdiction in bankruptcy to the ordinary Courts with regard to the pecuniary amount involved. A petition in bankruptcy should be dismissed where an equal distribution of assets cannot be secured. RAM CHAND *v.* GUNGA BISHEN. **37 P R 1871**

25. *Jurisdiction—Act IV of* 1872—*Residence.*

A debtor at the time of preferring his petition to be adjudicated a bankrupt must reside within the specified local area of the Insolvent Estates Court to which he applies. IN RE GURU JOWAHIR SINGH. **12 P R 1873**

26. *Act IV of* 1872—*Registration of judgment debt—Decree obtained out of the Punjab—Non-joinder of official assignee.*

A was adjudicated an insolvent by the Lahore Insolvent Estates Court, under section 24, Act IV of 1872. Pending proceedings in that Court, B, a creditor whose debt the Court had refused to register on the application of the insolvent, sued the insolvent in the Court of Cawnpore, and obtained a decree for his debt. *B* then applied to the insolvent Estates' Court to register the judgment debt. The Court rejected the application on the grounds (1) that the official assignee was not a party to the suit in the Court of Cawnpore; and (2) that the debtor was under the protection of the Insolvency law at the time the decree was obtained.

Held, that the Insolvent Estates' Court was wrong in refusing to register the judgment debt for the reasons (1) that the officer termed the "official assignee" is merely a ministerial agent for the purposes of collecting and distributing the insolvent's assets, and does not represent the insolvent, no estate vesting in him as it vests in the official assignee under 11 and 12 Victoria, Chapter 21 the Indian Insolvent Act for the Presidency Towns); and (2) that the protection of an insolvent under Act IV of 1872 is confined to the Punjab. KUNHAYA LAL *v.* HARSUKH RAI. **46 P R 1874**

27. *Residence—Debt under Rs.* 500—*Act IV of* 1872—*Jurisdiction.*

A, dwelling at Delhi, was adjudicated insolvent by the Delhi Court. His debts amounted to Rs. 8,395, due to 12 creditors, of whom three resided in the Punjab, and of these three one only resided within the jurisdiction of the Delhi Court, and his debt was only Rs. 115. *Held*, that the Delhi Court had jurisdiction. KHETAR CHUNDER BOSE *v.* DE MONTE. **51 P R 1874**

28. *Protection order granted prior to Act IV of* 1872—*Cancellation of order by Ludhiana Insolvent Estates' Court in* 1873—*Effect of Government Notifications, No.* 2212, *of* 21*st June*, 1872, *and No.* 2648, *of* 7*th July* 1873—*Validity of Rule* 29 *of Chief Court Circular IV, dated* 5*th July*, 1872—*Limitation.*

Defendant who was in receipt of a pension and possessed other property, was adjudicated bankrupt by the Ludhiana Court in December 1864 and again in April 1869. On each occasion he received an order of protection and discharge in respect of registered claim, on certain conditions; in April 1869, one condition was that he should regularly pay into Court a portion of his pension for the benefit of his creditors. Upon the passing of the Pensions' Act (XXIII of 1871), he applied to the Court to be relieved from his agreement as to his pension under section 12 of the Act, and refused any longer to pay his pension into Court. The Court, upon being petitioned by plaintiff, who was a registered creditor upon a bond dated June 1862, revoked the bankrupt's certificates of December 1864 and April 1869, on the ground that he had broken the condition as to his pension. In February 1874, plaintiff sued for the balance of his bond-debt.

Held, that although the Ludhiana Court was not invested with Insolvency jurisdiction by Government Notification No. 2212 of 21st June 1872, that Court was empowered by Government Notification No. 2648 of 7th July 1873, to entertain the plaintiff's petition for cancellation of the bankrupt's certificates; and that the rule under which the Court cancelled the certificate (Rule 29 of Chief Court Book Circular No. IV of 1872) was not *ultra vires*, but conformable to the provisions of Act IV of 1872 relating to Insolvency.

Held, also, that with regard to the proceedings in the Bankruptcy Court plaintiff's claim was not barred by limitation. LALU MAL V. SULTAN SIKANDAR. **36 P R 1875**

29. *Composition deed—Trustee selling to himself for pre-existing debt—Several suits to establish right to attach property released under section* 246, *Act VIII of* 1859—*Splitting claims.*

A was adjudicated bankrupt, and a composition deed was entered into between him

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and the majority of his creditors (plaintiffs not assenting to the deed) under which the bankrupt's property was to be sold and the proceeds rateably distributed. Defendants, who were creditors of the bankrupt, were with others appointed trustees, and the deed was sanctioned by the Bankruptcy Court. The trustees appropriated a part of the property to themselves in consideration of their dividend, leaving the rest to be distributed amongst the other creditors. Objection being taken to this by some of the creditors and the composition (8 annas and 9 pies in the rupee) not having been paid according to the covenants in the deed the Bankruptcy Court set aside the arrangement or deed, and cancelled the bankrupt's certificate. Thereupon plaintiffs sued for their original debt, and obtaining a decree, attached some of the ex-bankrupt's property in Lahore which the defendants had appropriated to themselves as above-mentioned. The defendants objected to the attachment, on the ground that the property had passed to them under the deed and by their appropriation. The objection was allowed and plaintiffs brought a regular suit which the District Court of Lahore decided in their favour, holding that the appropriation of the property by the defendants was a void transfer. Plaintiffs afterwards, for the balance of their decree, attached property at Amritsar which had similarly been taken over by defendants. The same objection was put forward and allowed, and plaintiff's brought a suit in respect of that property.

Held, that the conduct of the trustees was a constructive fraud on the creditors generally, and the transfers or appropriations of the debtor's property to themselves were void; had they sold to themselves for cash to be distributed amongst the creditors, instead of in consideration of their pre-existing debts, the transfers might not have been objectionable. *Held* also, that plaintiffs' suit at Amritsar was not barred on the ground of splitting a claim; that they were not bound to sue once for all in respect of all the debtor's property, as each attachment when set aside gave in itself a cause of action, PERTAB SHAH *v.* FATTEH CHAND. **17 P R 1876**

30. *Fraudulent alienation by Insolvent—Want of consideration—Want of care in alienee.*

A, being in insolvent circumstances, made a gift of certain houses at Mooltan to a lady whom he afterwards married, but the gift was not made by way of a marriage settlement. Five months afterwards, he, while still unmarried, applied to a Bank for a loan of Rs. 8,000, which was granted on the following security: (1) *A's* pro. note, payable 12 months after date and bearing interest at 12 per cent; (2) a mortgage of the houses which had been gifted as above-mentioned, the lady, the donee, joining in the mortgage; (3) a fixed deposit at the Bank in the name of the

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same lady, bearing interest at 6 per cent., to be retained by the Bank until the loan of Rs. 8,000 was paid, and if the house did not cover the debt. The money so put in deposit was the money lent by the Bank to A. The Bank obtained a decree of Court for the loan, with a declaration of their lien on the houses. Shortly after this *A.* was adjudicated bankrupt, one of his creditors, Bates, having previously attached *A's.* property in execution of a decree, and included in the attachment the houses gifted and mortgaged as above-stated.

Bates applied to have the gift and mortgages declared invalid as against creditors; the gift, on the ground that it was a voluntary transfer made when the transferor was indebted to the extent of insolvency; and the mortgage, on the ground that it was a fraudulent or colourable transaction intended to place the property beyond the reach of the creditors. For the Bank it was replied that they acted *bona fide* in the matter and for valuable consideration. The Insolvent Estates Court, Lahore, set aside the deed of gift to the lady, but upheld the mortgage. On appeal by Bates to the Chief Court—

Held, that the mortgage must be set aside. A transfer by one on the verge of insolvency cannot be impeached on the ground of the transferor's fraudulent intent, if the transferee acted *bona fide* and for valuable consideration. There is a want of *bona fides* where the transferee has actual or constructive notice that the transfer is fraudulent, or acts without honesty or due caution: and under the peculiar circumstances of this case the Bank had not proceeded with proper care and caution, but should have made further enquiry as to A's object in mortgaging the houses. BATES V. BERTOLA. **1 P R 1877**

31. *Breach of agreement by Insolvent—Power of Execution Court to enter into question of—Revival of execution proceedings—Act IV of* 1872, *section* 29.

Held, that an execution Court cannot enter into and decide on the fact of a judgment-debtor having broken the conditions of his discharge, granted by an insolvent Court, under section 29, Act IV of 1872, with a view to revival of execution proceedings.

Semble. The agreement signed by the insolvent under section 29 of Act IV of 1872 must be viewed in the light of a new contract, and if he breaks its conditions, the remedy as against him is by a regular suit on a breach of contract. AMI CHAND v. WILLIAMS, **44 P R 1877**

32. *Insolvent Estates Court—Residence of Insolvent—Act IV of* 1872, *sections* 22 *and* 23.

P. in order to take advantage of the Insolvent Estates Court at Lahore, rented a house in Lahore and resided in it from time to time for the express purpose of bringing himself within the jurisdiction of

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the Lahore Court. His ordinary place of residence before he presented his petition was and continued to be Umballa, where his wife and children were, and he had never carried on business at Lahore. *Held*, that P's residence under the circumstances was not sufficient to give the Lahore Court jurisdiction. A debtor who does not reside or carry on business and who owes no debts within the local limits of the jurisdiction of the Insolvency Court to which he applies under section 23 Act IV of 1872, is not entitled so to apply, and does not become entitled by coming to reside temporarily within the jurisdiction with the sole and express object of making such application. PARKER v. THE SIMLA BANK. **34 P R 1878**

33. *Act IV of* 1872, *section* 26—*Bill of Sale—Fraudulent transfer—Assignment of future assets—Reputed ownership—Non-delivery of possession—Evidence of fraud.*

A transfer by way of Bill of Sale, made by a trader, who afterwards became insolvent of certain stock in trade goods and chattels, present and future, which were found to be not the whole of the debtor's property, but the whole with a substantial exception, the consideration for such transfer being a secured antecedent debt with a further advance, held, under all the circumstances of the case, not to be a fraudulent transfer within the meaning of section 26 of Act IV of 1872.

Held, further, that a Bill of Sale is not void merely on the ground that it purports to assign after-acquired property.

The English rule of Equity applied, that an assignment by sale or mortgage of future property for consideration is valid, and when the vendor or mortgagor becomes possessed of property answering the description in the contract, such contract transfers the beneficial interest to the vendee, or mortgagee, immediately on the property being acquired.

There is no provision in Act IV of 1872 by which property which is not the property of the Insolvent-debtor is liable to be sold and administered by the Court through being ostensibly the property of the debtor and in his possession.

Held also, that in an absolute grant or conveyance of personal chattles by a trader to a creditor, non-delivey of possession may be strong, but is not conclusive evidence of fraud: and the circumstance loses much of its weight as evidence when the retention of possession is consistent with the terms of the deed. THE OFFICIAL LIQUIDATOR PUNJAB BANK *v* RICHARDSON.

162 P R 1879

34. *Civil Procedure Code* (*Act X of* 1877), *sections* 344, 351—*Protection order—Burden of proving matters stated in section* 351—*Cancellation of protection order.*

In the case of an application under seccion 344 of the Code of Civil Procedure by a judgment-debtor to be declared an

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insolvent and protected from arrest, it lies upon the petitioner to bring himself within the provisions of section 351 of the Code by satisfying the Court in respect of the various matters referred to in clauses (*a*) to (*d*).

Where, therefore, the judgment-debtor produced no evidence whatever and his own statements failed to satisfy the Court, that his dealings, at a time when he knew himself to be unable to pay his debts in full, were not reckless, that he had not acted in bad faith, and that he had not more property than was mentioned in his application, the Chief Court set aside the order of the lower Court granting the protection sued for. MIAN ASDULLA *v.* JAFFER NUN. **58 P R 1881**

35. *Civil Procedure Code (Act X of* 1877), *sections* 344, 351—*Onus of proving matters contained in section* 351 *of the Code*—"*Unfair preference.*"

Held, that in a proceeding under Chapter XX of the Civil Procedure Code, it lies in the first instance on the applicant who desires to be declared an insolvent, to satisfy the Court that he has not excluded himself from the benefit of such a declaration by committing any of those acts of bad faith which are specified in clauses *a*, *b*, *c* and *d* of the section. When the applicant has rendered a full and satisfactory explanation upon all the points referred to in that section, the *onus* would then be shifted on to the objecting creditor, who alleges any specific act of bad faith which is denied by the applicant, to prove his allegation.

The meaning of the expression " unfair preference " as used in section 351 (c) of the Code discussed and explained.

The term " unfair preference " may be fairly taken to refer to what in the English Bankruptcy law is called a " fraudulent preference, " and to aim at suppressing voluntary conveyances or dispositions of property, whereby one creditor is favoured to the prejudice of others. But in order to constitute a fraudulent preference the act must be the spontaneous act of the debtor, not *bona fide* originating in a demand or some other step of a creditor. Unless the debtor acts spontaneously without pressure, a conveyance in favour of one creditor to the prejudice of others, even if made when the affairs of the debtor were in a desperate state, whould not be impeachable as a fraudulent preference under English law.

Where however the insolvent was proved to have fraudulently transferred his property to defeat his creditors after the institution of the suit in which the decree was passed in execution of which he was arrested, *held*, that he had committed an act of bad faith within the meaning of clause (*a*) of section 351 of the Code, which disentitled him to an order of discharge. SHEIKH ALLAHDIN *v.* FAIZULLA. **142 P R 1883**

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36. *Act X of* 1877, *sections* 356, 357—*Decree-holder omitting to register his claim—Right to take out execution against insolvent.*

Where a decreeholder, whose judgment-debtor was adjudicated an insolvent under Chapter XX of the Civil Procedure Code, omitted to register his claim in the insolvency proceedings, but subsequently applied for execution of his decree, *held*, that the said decree-holder was entitled to take out execution, as the fact of his omitting to register his claim, while it deprived him of the benefit of sharing in any *pro rata* distribution under section 356 of the Code did not deprive him of his remedies under the general provisions of the said Code as an execution-creditor. CHAIT RAM *v.* DAMODHAR. **150 P R 1882**

37. *Civil Procedure Code (Act XIV of* 1882), *section* 344—*Sale in execution of decree—Priority between decree-holder and other creditors.*

K. S obtained a decree against A. dated 16th March 1882, in execution of which house property was sold by auction on the 7th July 1882 for a sum sufficient to pay off K. S.'s decree. The sale was confirmed on the 24th July, but on the 14th July A. had given in a petition of insolvency under section 344, Civil Procedure Code, and eventually the Court on the 30th October 1882 declared A. to be a bankrupt, and ordered the amount of K. S.'s decree to be included in the schedule of debts.

On appeal from the last named order, *held*, that K. S. was entitled to receive payment of his decree from the proceeds of the sale. KESAR SINGH *v.* ALAJOWYA. **46 P R 1884**

38. *Civil Procedure Code (Act XIV of section* 358—*Parties entering into a composition arrangement outside the provisions of Chapter XX of the Code—Inapplicability of section* 358.

Held, that the provisions of section 358 of the Code of Civil Procedure cannot apply to Insolvency proceedings in which the parties, instead of pursuing the measures contemplated in Chapter XX of the Code, have substituted for them a new arrangement made *inter se* of payment by instalments or otherwise. RURA MAL *v.* SARDAR JALAL-UD-DIN. **30 P R 1885**

39. *Act IV of* 1872, *sections* 22, 25, 28, 31—*Rules under section* 31 *of the Act—Validity of Rule No.* 25—*Refusal to entertain application under section* 25 *on ground that no notice had been given—Jurisdiction—Duty of Court to make enquiry under section* 25 *on its own motion—Failure of Court to make such enquiry—Ground for revision.*

Where the Insolvency Court declined to deal with an application by a creditor for the imprisonment of the insolvent under section 25 of the Punjab Laws Act, on the ground that such application had not been filed at least 3 days before the day appointed for the meeting of the creditors, as required by No. 25 of the rules framed under

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section 31 of the said Act, *held*, per *Elsmie*, J. that the above rule was a valid and proper one under section 31 of the Act, the non-observance of which might well be a sufficient reason for refusal by an Insolvency Judge to take action on an objection to an insolvent's discharge preferred without notice by a creditor, though it did not follow that the omission to give the prescribed notice would take away from the Court jurisdiction to entertain an application of the kind.

Held, per *Barkley*, J. that the rule in question was not one falling under the power given by section 31 of the Act, the question whether the insolvent should receive his discharge or not, having no connection with the administration of his estate, though it did not follow that the Court would be bound to hear objections to an insolvent's discharge at any time. *Buldeo Dass* v. *Dial Singh* (No. 24 *P. R.* 1873, Criminal) referred to.

It being further contended that, even without an application from a creditor, an Insolvency Court is bound under the first part of section 25 of the Act to make full enquiry into the origin, nature, and circumstances of the debts and the conduct of the debtor, and that the procedure of the Judge had been defective in that such enquiry had not been made, *held* per *Elsmie*, J. (doubting the correctness of the above contention) that though in the present case there had been no formal enquiry under section 25, there seemed to have been full consideration of the insolvent's conduct prior to the sanction of a composition under section 28, and there had therefore been no such failure to exercise jurisdiction under section 25 of the Act, as called for the interference of the Court on the revision side.

Held, per *Barkley*, J. that by the fisrt clause of section 25 of the Punjab Laws Act, the Court was bound to make full enquiry into the origin, nature, and circumstances of the insolvent's debts, and his conduct in relation thereto, and if it disposed of the case without doing so, even though no creditor had given notice of opposition to the discharge of the insolvent, it must be held to have acted illegally in so doing. As therefore it appeared in the present case that no enquiry under section 25 had taken place when the Court refused to entertain the objections of the creditors to the insolvent's discharge, and, though the insolvent was examined on a subsequent date on matters falling within the scope of section 25 of the Act, there was nothing to show that the objecting creditors were informed that they would be allowed to give evidence on such matters, it was impossible to hold that the Court had made the full enquiry contemplated by section 25, and to this extent it had acted illegally.

But *held* also that, under all the circumstances of the case, Chief Court was not called upon to interfere under section 622 of the Civil Procedure Code. SIMLA BANK *v.* TAVENOR. **65 P R 1882**

INSOLVENCY—*contd.*

40. *Alleged debtor denying his liability—Stay of proceedings—Reference to civil suit.*

One L. M. petitioned the Insolvency Court, under Act IV of 1872, praying that two brothers might be adjudicated insolvent, alleging that the said brothers constituted a firm, and that the firm was indebted to him in a sum exceeding Rs. 500. The brothers having appeared, one of them denied upon solemn affirmation that he was a member of the firm, and therefore by necessary implication denied that the alleged debt was due from him to the creditor.

Held, that the proper course to pursue under the above circumstances was to stay proceedings in Insolveney against the alleged debtor who denied the debt, and to refer the petitioner to a civil suit to establish the alleged debtor's liability. MOHR SINGH *v.* LAUKRA MAL. **181 P R 1883**

41. *Discharge of Insolvent from liability.*

Held, that the proper construction to be put upon sections 357, 358 of the Civil Procedure Code when read together is that as soon as it appears that one-third of the aggregate of scheduled debts, including secured debts, has been discharged from the Insolvent's property, he is absolved from further liability. The sections cannot be read as entitling any creditor to take action through the Court under section 357, until the third of his individual debt shall be realized. HAKIM RAI *v.* MUSSAMMAT THAKRI. **14 P R 1887**

42. *Civil Procedure Code (Act XIV of 1892), sections 344, 360—Power of District Judge to delegate his authority to Sub-Judge not duly invested.*

It is not competent to a District Judge, on an application for a declaration of insolvency under section 344 of the Code, to delegate the whole of his authority over the petition to a Subordinate Judge who has not been invested with power to deal with it under section 360 of the Code, and then merely adopting his opinion to pass a final order on his proceedings without making any enquiry himself.

The Legislature evidently intended, in enacting section 344 and section 360 of the Code, that applications under section 344, which often involve difficult and intricate questions, should be disposed of judicially either by the District Judge, or by a judicial officer selected by the Local Government and invested with powers for that purpose. MUHAMMAD ALUM *v.* MOOLA SINGH. **45 P R 1887**

43. *Civil Procedure Code (Act XIV of 1882), section 344—Ground for refusing application.*

It is not of itself a reason for refusing an application for a declaration of insolvency under section 344 of the Civil Procedure Code that the assets as stated by the applicant in his petition exceed the liabilities to a considerable extent. HYDER *v.* RAM CHAND. **59 P R 1887**

44. *Applicability of Chapter XXXVII of the Civil Procedure Code to insolvency pro-*

INSOLVENCY—*contd.*

ceedings under Act IV of 1872, composition—Act IV of 1872, section 28—Jurisdiction of Judge in Bankruptcy to make a reference under section 617, Civil Procedure Code.

Held, that the provisions of Chapter XXXVII of the Civil Procedure Code are not applicable to a proceeding in insolvency under the provisions of the Punjab Laws Act, as between the creditors on one side, and the insolvent on the other.

If a majority of the creditors chose to say as between themselves and the insolvent that they will accept whatever arrangement or composition three arbitrators appointed by them may determine, and an arrangement is made by these means and brought into Court, this is no doubt an arrangement or composition, which may become binding on the whole body of creditors if sanctioned by the Court, but in such a case the arbitration proceedings are not taken under the Code or through the Court, and the Court must proceed under section 28 of the Punjab Laws Act to deal with the arrangement or composition on its merits, apart from the question of how the arrangement or composition has been arrived at.

Quære, whether it is competent to a Judge acting under the insolvency jurisdiction conferred by the Punjab Laws Act to refer a question to the Chief Court under section 617 (read with sectofn 647) of the Code of Civil Procedure. SIMLA BANK *v.* NARPAT RAI. **88 P R 1887**

45. *Civil Procedure Code (Act XIV of 1882), sections 344, 345, 351, 352, 353—Creditor residing out of British India—Right of such creditor to prove his claim.*

Where a creditor has a just claim, there is nothing in the circumstance that he is a foreigner and not resident in British territory to preclude him from coming into Court and proving his claim under sections 352 and 353 of the Civil Procedure Code, after a declaration of insolvency under section 351. An insolvent making an application under section 345 of the Code, who omitted from the list of pecuniary claims against him those of foreigners or others not residing in British India, would incur great risk of having his application rejected under section 351, as section 345, clause (*e*) requires him to set forth the amount and particulars of all pecuniary claims against him. MIAN GOMAN SINGH *v.* GANESHI LAL. **35 P R 1888**

46. *Civil Procedure Code (Act XIV of 1882), sections 344, 350, 351, 360, 368—Jurisdiction of Sub-Judge invested under section 360 acting without order from District Court—Neglect to examine insolvent debtor—Necessity for careful observance of procedure laid down in section 350 of the Code—Death of one respondent member of insolvent firm pending appeal by creditor—Partial abatement of appeal—Survival of "right to sue."*

Quære, whether, when a Court invested with powers under section 360, Civil Procedure Code, receives and entertains an

INSOLVENCY—*contd.*

application under section 344, Civil Procedure Code, without an order from the District Court from a person not arrested in execution of a decree of such Court, the proceedings are liable to be set aside in a Court of appeal, at the instance of a person who has not taken exception to the mode of institution.

Per *Plowden*, J.—A careful compliance with the express directions of section 350, Civil Procedure Code, as to the examination of the judgment-debtor in insolvency proceedings, is of the first importance both to the judgment-debtor, and to the creditors, especially those who oppose the judgment-debtor's discharge. When specific allegations are made against a judgment-debtor which, if true, would justify a refusal to declare a petitioner insolvent, the fullest opportunity of explanation should be given to the petitioner, and to each party, the petitioner and the creditors, to establish by evidence the irrespective allegations.

Held, by the Division Bench, that in a case where two partners have applied together under section 344, Civil Procedure Code, to be declared insolvent they must be deemed to have applied separately, and when both have been declared insolvent under section 351, and one appeal is presented against the order as to both, and one of the respondents dies, the appeal must be considered as being an appeal against each separately, and does not abate as against one partner by reason of the death of the other.

But *held*, further, that the appeal as against the latter respondent must of necessity abate on his death, inasmuch as the right to sue does not survive within the meaning of section 308, Civil Procedure Code, on the death of a respondent insolvent in an appeal by creditors against an order made under section 351, such an order being purely personal to petitioner.

The death of such insolvent does not, however, affect the authority of the receiver, as the property of the insolvent vests in the receiver under a duly published order and is not divested by the death of the insolvent. HARDHIAN SINGH *v.* SHAM SUNDAR. **69 P R 1888**

47. *Civil Procedure Code 1882, sections 353 and 588—Insolvent—Schedule.*

To entitle a creditor to appeal under sections 353 and 588, he must show that a schedule of the insolvent's creditors has been prepared under section 352—that his name is entered in it—that the names of his opponents are also entered in it, that he applied to the lower Court to alter the schedule as regards the amount, nature particulars of the debt of his opponents, and that the Court passed an order on his application adverse to his interests. In the present case no schedule having been prepared, *held*, that the appeal did not lie. RAM CHAND *v.* JOHRI MAL. **120 P R 1889**

INSOLVENCY—*contd.*

48. *Appeal in Civil Cases—Civil Procedure Code*, 1882, *sections*, 351, 352, 588, 589—*District Court—Punjab Government Notification No.* 940, *dated the* 24*th October* 1886.

The appeal from an order under section 351 passed by the District Court in an insolvency case lies to the Divisional Court under section 589, Civil Procedure Code, whatever the value of the claim may be under Punjab Government Notification No. 940, dated the 25th October 1886. KAHAN SINGH *v.* GHULAM MUHAMMAD.

85 P R 1890

49. *Insolvent Estates' Court—Attachment of insolvent's property—Property already under attachment by District Judge.*

Makhan Lal was declared an insolvent under the provisions of Act IV of 1872. The Insolvent Estates' Court issued a *robkar* to the District Judge, calling upon him to make over certain property of the insolvent which was then under attachment, or to withdraw the attachment. The District Judge declined to accede to his request.

Held, that the insolvent Estates' Court was not competent to issue such a *robkar*, and that the District Judge was not bound to recognise it. IN RE PETITION OF MAKHAN LAL.

61 P R 1891

50. *Civil Procedure Code*, 1882, *Chapter XX—Insolvency—Return of property in hands of Court after payment of one-third of schedule debts.*

C. was declared insolvent under the provisions of Chapter XX, Civil Procedure Code, 1882, and was discharged with an order of protection under sections 357 and 358 of the Code. C. then claimed to be entitled to a return of the property in the hands of the Receiver, on the ground that his schedule debt had been satisfied to the extent of one-third, and that he was absolved from further liability in respect of such debts.

Held, that this contention was not well founded. Property vested in the Receiver is an exception to the rule prescribed in sections 357, 358, of the Code regarding non-liability of the property to attachment. IN THE MATTER OF G. E. COATES, INSOLVENT.

91 P R 1891

51. *Insolvency—Chapter XX, Civil Procedure Code*, 1882, *section* 345—*Decree-holder whose name has been entered as creditor by a judgment-debtor executing his decree.*

Held, by the Full Bench (Roe.J. dissenting) that a decree-holder, whose name has been entered as a creditor by a judgment-debtor on an application to be declared an insolvent under section 345, Civil Procedure Code, 1882, but who has not come forward-to prove him claim under section 352, and whose name therefore does not appear in the schedule prepared under that section, is not debarred by the mere fact of his having held aloof from the proceedings under Chapter XX of the Code from executing his decree under the ther provisions of the Code

INSOLVENCY—*contd.*

Per ROE, J. *contra.*—The right to ignore proceedings under Chapter XX, and to bring a separate suit or to execute a decree separately stand on the same footing. This right which *primâ facie* exists, is taken away by the provisions of Chapter XX, which enable a judgment-debtor to bring his creditors before the Court and by the further provision that when their claims shall be determined in a certain manner.

No. 150 *P, R.* 1882, and *I. L. R. XVI Calc.* 592, referred to. KHUDA MAL *v.* SHIB DIAL.

96 P R 1891

52. *And section* 588—*Insolvency—Order discharging insolvent, appeal from—Agreement to satisfy debts—Property vested in Receiver—Future salary of insolvent.*

Held, that though an other discharging an insolvent from further liability under section 358 of the Civil Procedure Code is not appealable under section 588 of the Code as an "order," such order falls within the definition of a " decree" in section 2 of the Code and is appealable as such.

Held, further, that although an order of absolution from further liability contemplated by section 358 of the Code cannot affect property which has vested in the Receive under section 354 and is, or may hereafter become, liable for distribution under section 356, an insolvent's future salary which may or may not accrue due, is not " property " which under section 354 vests in the Receiver for an unknown and unlimited time the effect of the attaching order, in such case being to vest the salary in the Receiver as it accrues and not before.

I. L. R. V All. 258 *and No.* 91 *P. R.* 1891 referred to. HUKAM CHAND *v.* Robinson.

43 P R 1894

53. *Discharge of insolvent—Suit by scheduled creditor for amount of debt*—Rès-judicata.

Petitioner when applying to be declared an insolvent, mentioned respondent as one of his creditors, stating his claim at Rs. 300. Respondent thereupon became a scheduled creditor, and the Court afterwards discharged the petitioner, part of whose monthly pay was made over to the usual official for ratable distribution among the creditors. The respondent ignoring these proceedings sued for his debt in the Small Cause Court, and obtained a decree for the full amount and interest payable by monthly instalments.

Held, that the respondent's claim had become *res judicata* by the order passed by the Judge in Insolvency proceedings, and that consequently the decree of the Small Cause Court must be set aside. PENHEAROW *v.* PARTÁB SINGH.

76 1899

54. *Civil Procedure Code*, 1882, *Chapter XX—Insolvency proceedings—Irregularities in procedure—Adjudication of insolvency by consent of creditors—Acquiescence.*

INSOLVENCY—*contd.*

Appellant applied on the 2nd July 1894 to be adjudicated insolvent. In appeared that the Court to which application was made was one of competent jurisdiction, and that the conditions of cognizance under the provisions of the insolvency chapter of the Civil Procedure Code were also satisfied. The Court on the creditors consenting thereto, adjudicated the appellant an insolvent, but it omitted (*a*) to examine the insolvent with reference to the facts stated in his petition and itself find that they were substantially true, and that the other conditions specified in section 351 of the Code were fulfilled and declared him an insolvent on these findings; (*b*) to publish the fact of adjudication in the local *Gazette* as required by section 354 of the Code, and (*c*) to pass an order of discharge under section 351. Both parties accepted the order of the Court and acted on it, and acquiesced in the irregularities of the Court's procedure till March 1896, when the appellant petitioned under section 358 of the Code for his final discharge.

Held, by the Full Bench, that the omissions (*a*), (*b*) and (*c*) above referred to were mere errors of procedure, or omissions to follow the procedure prescribed by the Code, and were not such as to render the adjudication null and void.

Held, further, that the Court had erred in adjudicating the appellant insolvent simply on the creditor's consenting to such adjudication, there being no provision in the Code for a declaration of insolvency by agreement of the creditors or for giving effect to a composition between an insolvent and his creditors.

But, *held*, that inasmuch as the Court was one of competent jurisdiction and acted in the proper exercise of its functions, and as both the parties were instrumental in making the Court pass the order which it did pass and accepted and acted on it, and acquiesced in the irregularities or illegalities, the error was one of procedure only and not such as to render the adjudication null and void, and neither party could be allowed to challenge the validity of the Court's order.

The Court has to adjudicate on the question of insolvency with reference to the provisions of Chapter XX and section 351 of the Code, and as it cannot make a declaration of insolvency, by consent of the parties before it or in accordance with a composition between the debtor and his creditors, the mere recording of such an agreement and embodying it in the order of adjudication can have no legal effect in controlling the express words of a section of the Code. The language of section 358 of the Code admits of no exceptions in favour of such cases, and it must, according to the approved rules of construction, be given effect to in all cases covered by the words. GILLMORE *v.* BULAKI MAL.

19 P R 1900 F B

55. Res judicata—*Insolvency—Applicability of the rule of* res judicata *to insolvency*

INSOLVENCY—*contd.*

proceedings—Duty of Court to follow procedure laid down in section 336, *Civil Procedure Code, on the re-arrest of a judgment-debtor after failure of his application under Chapter XX, Civil Procedure Code,* 1882, *sections* 13, 336, 344

Held, by the Full Bench—

(*i*) that the rule of *res judicata* applies to insolvency proceedings under section 344, Civil Procedure Code, where successive applications are made on the same fact ; and

(*ii*) that when a judgment-debtor after failing in insolvency proceedings under the Civil Procedure Code is re-arrested, it is not the duty of the Court to inform him that he may apply under Chapter XX to be declared an insolvent or take the other steps indicated in section 336, Civil Procedure Code.

Bihari Lal v. *Majid Ali, All. W. N.* 1897, 29 ; and *Ram Kirpal* v. *Rup Kuari I. L. R. VI All*, 269 P. C. followed.

In re *Chiranji Mal* (145 P. R., 1884,) over-ruled. ARJAN SINGH *v.* GAMAN.
75 P R 1905 F B

56. *Insolvency—Omission to frame schedule—Creditor not debarred from instituting suit—Civil Procedure Code,* 1882, *sections* 351, 352.

Held, that where in an insolvency proceedings no schedule had been framed as contemplated by section 352 of the Code of Civil Procedure a creditor is not, by reason of his debt having been entered in the schedule filed by the insolvent with his application for insolvency, debarred from suing for his debt.

Arunahala v. *Ayyavu* (*I. L. R. VII Mad.* 318) followed.

Penhearow v. *Partab Singh* (76 *P. R.* 1899) considered and distinguished. HARYA *v.* MUL CHAND. **64 P R 1907**

57. *Insolvency—order under section* 25, *Punjab Laws Act IV of* 1872—*Appeal—Revision under section* 70 (1) (*b*) *Punjab Courts Act, XVIII of* 1884—*concealment of account books—order under section* 26, *Punjab Laws Act not open to revision.*

Held, that no appeal lies from an order by the Judge of the Insolvency Court under section 25, Punjab Laws Act.

65 *P. R.* 1882, 33 *P. R.* 1883 and 62 *P. R.* 1886, followed.

Held also, that no revision lies from such an order under section 70 (1) (*b*), Punjab Courts Act, inasmuch as it is not a decree.

70 *P. R.* 1904 and 65 *P. R.* 1905, followed.

Held, also, that section 25, Punjab Laws Act, is not limited to conduct in *contracting* debts but includes *inter alia* concealment of account books which is gross misconduct in *reference* to debts.

Held, further, that where a transfer has been annulled as fraudulent under section 26, Punjab Laws Act, the alleged transferee cannot apply to the Chief Court on the

INSOLVENCY—*concld.*

revision side instead of filing a suit. RAM CHAND *v.* BILLA MAL. **64 P R 1911**

58. *Insolvency—appeal from order under section* 25, *Punjab Laws Act IV of* 1872—*Proper time for order of discharge, section* 29 ibid.

Held, that no appeal lies from an order under section 25, Punjab Laws Act, unless the order amounts to a decree—62 *P. R.* 1886 followed.

Held, also, that no definite finding or order as to an insolvent's right to discharge should be made until the administration of the estate has been completed (*vide* section 29 *ibid*). MIR AMAN-ULLAH *v.* ABDUL GHAFUR.
85 P R1 191

INSOLVENCY ACT.

See PROVINCIAL INSOLVENCY ACT, 1907.

INSOLVENCY PROCEEDINGS.

—*Applicability of Provincial Insolvency Act,* 1907—*Proceedings commenced under Punjab Laws Act.*

See PROVINCIAL INSOLVENCY ACT, 1907.
11 P R 1910
12 P R 1910

INSOLVENT.

See ADMINISTRATION OF INSOLVENT'S ESTATE. **45 P R 1910 P C**

INSPECTION OF DOCUMENTS.

See CIVIL PROCEDURE CODE, 1908, O. VIII, R. 10. and O XI, RR. 14 and 21.

INSPECTION OF JUDICIAL RECORDS.

—*Rule II of Judicial Circular No. XCIII—Power of Court to make rule limiting period up to which record of pending case may be inspected*—Ultra vires.

Held, that there is nothing in the rules issued by the Chief Court in Judicial Circular No. XCIII, which precludes a Judge of a Court from making a rule in the exercise of his power of general control, that files of cases pending in his Court shall not be inspected by a legal practitioner engaged later than two days before the date fixed for hearing. IN RE SUTHERLAND. **103 P R 1882**

INSTALMENTS, BOND PAYABLE BY.

1. *Suit on mortgage bond—Instalments—Default, successive waivers.*

See LIMITATION ACT, 1877, SCHEDULE II, ARTICLES 63–75.
101 P R 1880

2. *Whole to fall due on default of instalment fixed—Limitation—Waiver.*

See LIMITATION ACT, 1877, SCHEDULE II, ARTICLE 75. **188 P R 1883**

INSTALMENTS—DECREES.

1. *Decree silent as to instalments fixed by judgment—Power of executing Court to go behind decree—Stay of proceedings to allow amendment of decree—Court ordering execution before any instalment had fallen due.*

See CIVIL PROCEDURE CODE, 1908, O. XX, R. 6. **61 P R 1887**

INSTALMENTS—DECREE—*concld.*

2. *Decree payable by.*

See CIVIL PROCEDURE CODE, 1908, O. XX, R. 11. **49 P R 1887**

3. *Execution of decree—Payment by instalments—Agreement to give time for satisfaction of judgment-debt.*

See CIVIL PROCEDURE CODE, 1908, O. XX, R. 11. **26 P R 1894**

4. *Application after decree for an order for payment by instalments—Contents of application.*

See CIVIL PROCEDURE CODE, 1908, O. XX, R. 11. **96 P R 1900**

5. *Execution of decree—Decree more than 12 years' old—Arrangement between parties in execution for payment of judgment debt by instalment—Validity of such arrangement.*

See CIVIL PROCEDURE CODE, 1908, SECTION 48. **200 P R 1889**

6. *Compensation for breach of contract to pay instalments.*

See CONTRACT ACT, 1872, SECTION 74.
106 P R 1887

7. *Decree payable by instalments—Default in payment of instalment—Execution of a decree—Limitation.*

See DECREE—CONSTRUCTION OF.
100 P R 1902

INSTITUTION OF SUIT.

1. *Unregistered corporation sued through its manager—Names of members not specified—Plaint returned for addition of such names—Date of institution of suit.*

See CORPORATION—UNREGISTERED.
29 P R 1896

2. *Unstamped plaint—Presentation by post—Institution of suit.*

See COURT FEES ACT, 1870, SECTION 28.
38 P R 1900

3. *Suit for pre-emption—Plaint filed within one year of the date of the sale impeached—Return of plaint to be presented again when a clue to defendants could be found—Effect of such irregular return of plaint.*

See LIMITATION ACT, 1877, SECTION 4.
22 P R 1887

4. *Insufficiently stamped plaint, when deemed to have been properly presented.*

See LIMITATION ACT, 1877, SECTION 4.
3 P R 1893

5. *Plaint presented to the proper officer within limitation and returned to plantiff by such officer with order endorsed thereon to present it to Subordinate Court deputed to try the suit—No subsequent presentation within time of limitation.*

See LIMITATION ACT, 1877, SECTION 4.
7 P R 1895

6. *Suit by pauper—Application for leave to sue* in formâ pauperis—*Subsequent payment of Court-fees after period of limitation—Date of institution of suit.*

See LIMITATION ACT, 1877, SECTION 4.
59 P R 1903

7. *Plaint insufficiently stamped—Payment of requisite Court-fee after the expiry of limitation allowed for the suit—Plaint when deemed to have been presented—Date of institution of suit—Civil Procedure Code,* 1882,

INSTITUTION OF SUIT—*concld.*

section 54—*Limitation Act*, 1877, *section* 4, *Explanation.*
See LIMITATION ACT, 1877, SECTION 4.
74 P R 1903

8. *Unstamped plaint—Conditional order admitting plaint—Plaint properly stamped after period of limitation—Limitation Act*, 1877, *section 4-explanation.*
See PLAINT—PRESENTATION OF.
7 P R 1896

9. *Date of—Not affected by a remand order directing re-trial* de novo.
See SMALL CAUSE COURTS ACT.
94 P R 1911

INTEREST.

1. *Suit on bond for interest only—Subsequent suit for principal and interest.*
See CAUSE OF ACTION VI.—SPLITTING CAUSE OF ACTION. **70 P R 1889**

2. *When interest agreed upon should not be looked upon as a penalty.*
See CAUSE OF ACTION V.—MISJOINDER.
32 P R 1890

3. *Interest on money taken out of Court in execution of decree—Separate suit.*
See CIVIL PROCEDURE CODE, 1908, SECTION 47. **82 P R 1896**

4. *Future interest—Sum named—Penalty—Equitable relief.*
See CONTRACT ACT, 1872, SECTION 74.
25 P R 1879
51 P R 1879
99 P R 1891

5. *Damages—Penalty.*
See DAMAGES. **150 P R 1883**
55 P R 1885

6. *Decree silent as to—Power to realize in execution.*
See EXECUTION OF DECREE.
13 P R 1886

7. *Limitation Act*, 1871, *section* 21—"*Single bond*"—*Interest in kind.*
See LIMITATION ACT, 1871, SECTION 21
6 P R 1874
74 P R 1874

8. *Right to treat interest due under mortgage as a charge upon the estate.*
See LIMITATION ACT, 1877, SCHEDULE II, ARTICLE 132. **57 P R 1888**

9. *Suit for redemption of mortgage—Interest treated as a charge on mortgaged estate—Limit to such charge.*
See LIMITATION ACT, 1877, SCHEDULE II, ARTICLE 132. **35 P R 1899**

10. *Suit for balance of account—Account stated—Interest.*
See LIMITATION ACT, 1877, SECTION 19.
68 P R 1904

11. *Stipulation in mortgage for fixed rate of, for period of mortgage—Implied agreement for continuance of same rate till payment of mortgage-debt.*
See MORTGAGE. **68 P R 1883**

12. *Construction of document—Provision mortgage-deed regarding interest.*
See MORTGAGE—CONSTRUCTION.
77 P R 1898

13. *Surety's right to recover on moneys paid for principal.*
See PRINCIPAL AND SURETY.
98 P R 1881

INTEREST—*contd.*

14. *Succession Act*, 1865 *section* 282—*Distribution of assets—Mortgage lien—Interest of claim secured by decree.*
See SUCCESSION ACT, 1865, SECTION 282.
11 P R 1878

15. A promise to pay interest in the course of execution of a decree cannot be enforced against the judgment-debtor, unless incorporated in the decree ; but it may afford a cause of action. THAKOOR DASS *v.* MAHOMED BAKSH. **15 P R 1866**

16. A debtor mortgaged his house as security, and agreed to pay interest monthly at a fixed rate. *Held*, that the creditor was entitled to sue for arrears of interest without suing for the principal. RUTTAN CHUND *v.* BHAN SINGH **16 P R 1866 Ref.**

17. The law does not imply a contract on the part of a debtor to pay interest on the sum he owes, although the debt may be of a fixed amount and may have been frequently demanded. SHADI RAM *v* HUR GOPAL. **51 P R 1866**

18. *Held*, that where a contract to pay interest on a mortgage had not been adhered to for many years, there had been a waiver ; and the Chief Court refused to allow any interest at all. SOOKRAM *v.* HOOLASSA.
64 P R 1866

19. When an agreement is for interest on money lent, and agreed to be repaid on a certain date, the lender cannot, without a further arrangement express or implied, after that date, recover interest at the rate fixed for the definite period. DEVA SINGH *v.* DHURM SINGH. **98 P R 1866**

20. Where there is no contract to pay interest, the Court should be guided by Act XXXII of 1839. RULLA *v.* SOONAM.
37 P R 1867

21. A Court cannot in execution of decree add to the decree by ordering interest when the decretal order does not provide for payment of interest. SHUFEE *v.* BRIJ RAJ.
81 P R 1868

22. *Held*, that though by section 11 of Act XXIII of 1861, questions regarding the amount of interest payable in respect of the subject matter of a suit can be determined by the Court executing the decree, and its order is open to appeal ; yet when the decree is silent as to interest, the Appellate Court cannot add to the decree by allowing interest. JUSSOO MULL *v.* AZIM JOO.
30 P R 1869

23. *Equitable rate—Agriculturists.*

Plaintiff sued defendant, an agriculturist, upon a bond, by the terms of which the latter bound himself to pay the former interest at the rate of Rs. 2-8-0 per cent. per mensem ; but the bond contained no stipulation as to interest being chargeable after the first year. Plaintiff claimed interest for several years at the rate of Rs. 2-8-0 per mensem, contending that upon the proper construction of the bond, interest at that rate accrued due so long as the defendant failed to meet his obligation. The Small Cause Court allowed plaintiff interest at the

INTEREST—*contd.*

rate of Rs. 2-8-0 per cent. per mensem for the first year, and for every subsequent year at the rate of one rupee per cent. per mensem. Upon a reference to the Chief Court, it was *held*, that the Judge of the Small Cause Court had equitably and rightly disposed of the case, regard being had to the circumstances of the agricultural classes. DOWLA MAL *v.* SAWAN. **42 P R 1372**

24. *Act XXVIII of* 1861, *sections* 10 *and* 11—*Execution—Interest on costs—Decree of Privy Council.*

Held, by the Privy Council that, in executing an order of Her Majesty in Council, a Court cannot award interest on costs decreed, where the order of Her Majesty in Council contains no direction for the payment of interest in respect of such costs. FORESTER *v.* THE SECRETARY OF STATE FOR INDIA IN COUNCIL. **1 P R 1877**

25. *Debtor and Creditor—Money-lender, and zemindar—Bond—Usurious rate of interest—Act IX of* 1872, *clause* (1), *section* 16, *and section* 19—*Undue influence—Act I of* 1872, *section* 114—*Presumption.*

Plaintiff, a village money-lender, sued defendant, a zemindar, for Rs. 700 principal and interest, due on a bond. Defendant admitted execution of the bond, but pleaded that the greater part of the claim consisted of interest at an usurious rate, and prayed for an examination of the accounts. It was found that the parties had had dealings as debtor and cereditor for a considerable time previous to the execution of the bond : and that of the amount claimed Rs. 145 only was principal, while the remaining Rs. 555 was charged for interest. The lower Court therefore decreed Rs. 145 and Rs. 197-1-3 interest, total Rs. 342-1-3.

Held, per Curiam, that the orders of the lower Courts should be upheld.

Per SMYTH, J.—Because, having regard to the fact that the bond was extortionate and unconscionable, and considering the relations between the parties, they were justified in the absence of rebutting proof from plaintiff in holding that the bond was executed under "undue influence" as defined in clause (1) section 16 of the Contract Act, and were therefore justified under section 19 of the same Act in treating the bond as void, and in decreeing to plaintiff only the amount equitably due.

Per PLOWDEN, J.—Because the bare facts, that the parties to a contract, the subject of litigation, are village money-lenders and a zemindar, may justify a Court in presuming (within the meaning of section 114 of the Evidence Act) that the zemindar did not give a free consent to the terms of the particular agreement, when such presumption is not inconsistent with the other facts disclosed, though there be no other evidence on the part of the zemindar to prove that he had been induced by the exercise of undue influence to consent to the terms of the particular agreement. RAMDHAN *v.* JIWAN KHAN.
110 P R 1879

INTEREST—*contd.*

26. *Debtor and Creditor—Registered bond—Agriculturists—Rate of interest Undue influence—Presumption.*

Where defendants, who were agriculturists, entered into a bond with plaintiffs whereby they agreed to pay interest on the principal sum at the rate of 24 per cent. per annum, which bond was duly registered before the Tahsildar of the locality, *held* (reversing the orders of the Lower Courts) that under the circumstances of the case and in the absence of evidence of the exercise of undue influence on the defendants, the lower Courts were not warranted in reducing the rate of interest agreed upon from 24 per cent. to 6 per cent. per annum. RADHA *v.* GOLAB SINGH.

145 P R 1879

27. *Agreement to pay at rate of Rs. 36 per cent.—Immoral agreement.*

Defendant borrowed Rs. 50 from plaintiff on a mortgage of his house, agreeing that rent should be equal to interest, and by a second deed of even date defendant took a lease of the house agreeing to pay Rs. 1-8 per month rent, that is to say, he virtually agreed to pay Rs. 36 per cent. per annum interest for his loan.

Held, that the agreemeut was not an immoral agreement, and bound the promisor, unless he could show that the circumstances under which he entered into the agreement rendered it void or voidable. BHORA MAL *v.* DEVI DIN **40 P R 1882**

28. *Cases in which it may be reduced*

Excessive interest may be reduced when either undue influence may be presumed, or when the relations of the parties are such that it is irresistible to conclude that one was misled or taken in, or did not understand what he was agreeing to. But if a person fairly intelligent, and presumably knowing what he is about, agrees to certain terms, he must be held bound to them. HEMRAJ *v.* MALIK SIRDAR KHAN. **135 P R 1889**

29. *Redemption—Interest—Damages by way of compensation for breach of contract—Charges on property mortgaged.*

On the 7th of August 1867, A. mortgaged certain immovable property to B. for Rs. 1,500. It was agreed that the principal money should be repaid in four months with interest at 2 per cent. per mensem, and that on failure of such payment, the mortgagee should be placed in possession. Payment was not made on the due date, nor was possession given to the mortgagee till he obtained it in execution of a decree in April 1891. The representative of the mortgagor having sued for redemption on payment of the principal only, the mortgagee claimed to retain the property until he received the principal and interest at 24 per cent. per annum to date of suit.

Held, that the plaintiff was bound to pay the interest for four months, constituting as it did a charge on the land under the agreement in the morgage deed. Had the mortgagee sued for possession at the expiration of four months he would have been entitled to hold possession of the land as security for the principal and four months' interest

INTEREST—*contd.*

and there did not seem to be any reason why he should be put in a worse position merely by reason of his delay in suing. The remainder of the defendant's claim did not, however, constitute a charge on the mortgaged property. It might be a personal claim against the mortgagor, not as interest recoverable under the agreement, but as compensation for breach of contract to deliver possession. Such a claim had long been barred by limitation, and could not be enforced.

I. L. R., 4 *All.*, 245, and *I. L. R.* 8 *All.* 142, followed. 57 *P. R.*, 88, referred to. GHASITA MAL *v.* ISHAR DAS **8 P R 1890**

30. *Punjab Laws Act*, 1872—*Pre-emption—Money paid into Court by successful pre-emptor and withdrawn by original purchaser—Reduction of price by Appellate Court—Interest on excess in hands of original purchaser.*

A pre-emptor paid into Court a sum of money in satisfaction of the decree passed in his favour which sum was withdrawn by the original purchaser.

On appeal, the pre-emptor obtained a reduction of the price to be paid for the land. The original purchaser withdrew from the Court the money allowed, knowing that the pre-emptor asserted that it was not due and that he had appealed, the original purchaser thus enjoying the use of the money for a long period.

Held, that under such circumstances there was no reason why the defendant (the original purchaser) should not be compelled to pay interest on the excess sum which he had enjoyed, which the Court allowed at 6 per cent. per annum.

L. R., 3 P. C., 465, and *I. L. R.*, *VII All.* 432, referred to. ABDUL WAHAB *v.* GHULAM RASUL SHAH. **111 P R 1892**

31. *Mortgage deed—Interest—Rights of mortgagee—Charge upon mortgaged property.*

Where there is a clear agreement that a mortgagor will pay interest year by year and that he will not be entitled to redeem without paying the whole amount of the principal and interest due by him, such principal and interest form a charge upon the mortgaged property to which effect must be given.

No. 57 *P. R.*, 1888, and *No.* 8 *P.*, *R.*, 1890, referred to and explained.

I. L. R., 19 *Calc.* 19, referred to. BADRI *v.* KUNDAN. **28 P R 1892**

32. *Interest on decree—Principal of calculation.*

Semble—The correct method of calculating interest on a decree is to take each payment made: calculate the amount of interest due on the decree up to the date of this payment: credit the payment of this interest: and carry the surplus of the payment to the credit of the principal and strike a fresh balance. BHAJAN LAL *v.* DELHI AND LONDON BANK, LD. **55 P P 1892**

33. *Mortgage—Absence of covenant to pay interest after due date—Allowance of, by way of damages—Charge.*

INTEREST—*contd.*

A deed of mortgage contained no covenant for payment of interest *post diem.*

Held, that interest could notwithstanding be allowed by way of damages—in so far as such damages were within limitation (six years)—and be declared a charge upon the mortgaged property. SHEO CHAND *v.* CHUNNA.

73 P R 1892

34. *Redemption of mortgage-money expended by mortgagee in possession on repairs and improvements to mortgaged property—Interest on such expenditure.*

The plaintiff sued for the redemption from mortgage of a house and some shops, alleging that, on a proper statement of the account, it would be found that the rents realized had extinguished the debt due for principal and interest, leaving a balance in the mortgagor's favour. The question for decision arising out of cross-appeals before the Chief Court was what sum, if any, was to be allowed to the defendants under the head of repairs and additions, and, if anything were allowed, should the sum carry interest or not.

Held, upon a consideration of all the circumstances that the defendants were entitled to the whole of the money spent by them upon permanent improvements to the mortgaged property, the value of which had increased at least to the extent of the sum expended.

Held, also, that interest on the sum spent on improvements should not be allowed, chiefly on the ground that such sum with interest superadded might considerably exceed the present value of the improvements and also create a risk of the mortgagor being improved out of his estate.

The English and Indian authorities referred to and followed. PRABH DIAL SINGH *v.* BHAI SAWAYA SINGH. **67 P R 1893**

35. *Mortgage by conditional sale—Application for foreclosure under Regulation XVII of* 1806—*Separate suit for recovery of interest brought after expiration of the year of grace.*

On 5th November 1889, the plaintiff applied under Regulation XVII of 1806 for foreclosure of a mortgage in his favour dated the 2nd June 1884, reciting that Rs. 10,000 were due thereon by the defendant as principal and a further sum as interest calculated up to the date of the application. Notice was served upon the mortgagor on 9th November 1889, and the year of grace expired without payment of the amount due by the mortgagor. On the 22nd January 1891, the plaintiff filed the present suit for recovery of interest due under the mortgage from 2nd June 1884—the date of the mortgage—to 2nd June 1891, alleging that interest, which was recoverable from the separate property of the mortgagor, had by mistake been included in the application for foreclosure.

Held, that the effect of the foreclosure proceedings under the Regulation was to discharge the whole debt secured by the

mortgage, principal and interest, and that the second suit for interest was not maintainable.

I. L. R. IX All. 20 (*P. C.*) : *S. C. L. R.* 13 *Ind. App.*, 113 ; *S. D. A. Resp.*, 1856, 388, and *I. L. R. XIV All.* 405, referred to. HARNAM DAS *v.* KANWAR SINGH.

103 P R 1893

36. *Interest—Implied agreement to pay interest—Act XXXII of* 1839 *and XXVIII of* 1855.

Held, that Act XXXII of 1839 does not, and Act XXVIII of 1855 does, apply to a contract to pay interest implied from the dealings of the parties. The provisions of the latter Act are not limited to interest payable on an express contract, and do not deal with the right to recover interest, but prescribe rules for determining the rate at which interest, when recoverable, shall be calculated.

The law as to interest considered historically. RUKUN DIN *v* RIKHI KESH.

36 P R 1894

37. *Bond payable be instalments—Interest payable on default from date of bond—"Penalty"—Compensation for breach of contract—Primary and Secondary obligations—Act XXVIII of* 1855, *section* 2, *and Indian Contract Act*, 1872, *sections* 73, 74.

Held, in the case of a bond payable by instalments that when a promisor engages to pay each instalment on a specified date without interest, and in the event of a breach of his engagement, with interest from the date of his bond, the primary obligation is to pay the instalment on the date specified, and the subject of the promise is the secondary obligation to make compensation for the breach of the primary obligation, the right of the promisee to compensation being regulated either by section 74 of the Contract Act when there is an agreement as to the compensation to be made, and it satisfies the requirements of the said section, or by section 73, when there is no agreement or it does not satisfy the terms of section 74.

When a contract in the above terms fails to indicate, either expressly or by implication, a date up to which the interest is to be calculated, and the period therefore remains indefinite, it cannot be said that a sum is named within the meaning of section 74 of the Contract Act.

Section 2 of Act XXVIII of 1855 was not intended to override the general law of contracts, and compel the Courts to enforce any and every agreement which might be made as to payment of interest, and there is nothing in the said section to restrict, or in any way affect the power of the Courts to adjudicate upon the right to recover the interest claimed, or the operation of sections 73 and 74 of the Contract Act in respect to the compensation to be made upon breach of a contract to pay money with interest. What is recoverable in a suit upon a breach of a contract to-pay mouey with interest is compensation in

money by way of damages and not interest *eo nomine*, though the stipulated rate of interest may be good evidence of the proper measure of the compensation.

I. L. R. IX Calc., 692 ; *I. L. R. XIX Calc.* 392 ; and *I. L. R. XV All.* 232. refered to. KANHAYA LAL *v.* NARAIN DAS.

99 P R 1894

38. *Mortgage—Suit for redemption—Mortgage of undivided share of joint property—Consent of co-sharers—Interest* post diem—*Limitation.*

Held, following *I. L. R. XIX Calc.* 401 that it is not open to an assignee of the equity of redemption to challenge the validity of a mortgage of an undivided share of joint property upon the ground that the mortgage was entered into by one only of the joint-owners without the consent of his co-owners.

Held, further, that the mortgagee's right to charge interest in answer to a suit for redemption, notwithstanding that the arrears would not be recoverable in a suit by reason of the law of limitation, cannot be extended to anything but interest which has accrued due under the terms of the mortgage-deed.

No. 8 *P. R.* 1890, 28 *P. R.* 1892, and 73 *P. R.* 1892, cited. HOSHNAK MAL *v.* SONHA MAL.

114 P R 1894

39. *Pre-emption—Mortgage by way of conditional sale—Completion of purchase—Amount claimable by vendee from pre-emptor—Principal and interest—Regulation XVII of* 1806, *sections* 7, 8.

Plaintiff sued for pre-emption on a mortgage by way of conditional sale on payment of the principal sum due on the mortgage. The vendee by conditional sale admitted plaintiff's right of pre-emption, but claimed to be entitled, in addition to the amount offered by plaintiff, to interest on the principal not only during the two years the land was under mortgage, but also during the five years subsequent to foreclosure of the mortgage. The first Court, holding that the vendee had by his own negligence deprived himself of interest during the latter period, decreed him interest only for the period during which the land was mortgaged, and this decree was confirmed, on appeal, by the Divisional Judge on the ground that the ordinary condition in deeds of the nature of that in suit is that the sale shall be for principal and interest up to date of sale, and that the special form of this particular deed seemed to exclude the interest that might be due from the price of the land. Defendant-vendee appealed to the Chief Court.

Held, that the stipulation in the mortgage deed that in default of payment of the principal sum the mortgaged land would be considered as sold in consideration thereof, was intended solely for the benefit of the mortgagee and not to relieve the mortgagor, if he wished to redeem, from the payment of interest as well of the principal.

Held, further, that the mortgagee was entitled in the absence of any contract to

the contrary, to treat the interest due under the mortgage as a charge upon the land, and that a person claiming a right of pre-emption in respect of a mortgage by conditional sale is bound to pay as the price of the property the entire amount due on such mortgage at the time it became absolute.

Held, also, following *I. L. R. VI All.* 344, that, on the expiration of the year of grace allowed by Regulation XVII of 1806 the ownership of mortgage property vests absolutely in the mortgagee, even though he may not have obtained a decree establishing or declaring his right, and that, therefore, the vendee in the present case was entitled to claim interest up to the date upon which the said year of grace expired and the purchase by him was complete.

10 *M. I. App.* 340 ; *I. L. R. VI All.* 344, and No. 57 *P. R.* 1888, referred to. BUR SINGH *v.* SOHEL SINGH.

121 P R 1894

40. *Foreclosure of mortgage—Notice—Regulation XVII of* 1806, *sections* 7, 8—*Limitation Act*, 1877, *2nd Schedule, articles* 135, 143, *and section* 23—*Failure to pay interest under mortgage-deed—Continuing breach of contract—Waiver.*

A mortgage-deed, which was executed on the 26th March 1878 for a period of six years provided that if interest for any year was not paid, the mortgagee might eject the mortgagor and take possession. Plaintiff contended that his suit, which was instituted on 4th December 1895, was within time under either article 135 or article 143 of the Limitation Act, 1877, on the ground that limitation ran from the *last* failure to pay interest in 1883 or 1884, and not from the date of the first default which was more than 15 years before suit.

Held, that the obligation to pay interest annually was of "a recurring kind," and that the failure to do so did not amount to a continuing breach of the contract within the meaning of section 23 of the Limitation Act, 1877.

Held, therefore, that plaintiff's cause of action arose on the date of the first default in paying interest, and that the suit was barred.

Held, further, following No. 123 *P. R.* 1894, that a notice of foreclosure which did not contain the words "in the manner provided for by section 7 of Regulation XVII of 1806," was not a valid notice of foreclosure within the terms of section 8 of the said Regulation. ACHHAR MAL *v.* HUKMAN.

28 P R 1897

41. *Mortgage—Alleged waiver of right to demand interest—Stipulation that on breach of contract interest should be payable from date of execution of mortgage-deed—Penalty.*

Held, following *I. L. R. II All.* 863, that the most cogent and conclusive proof must be demanded to establish that a party to a contract has abandoned a right accruing to him on breach and has entered into some fresh parol agreement condoning such breach

INTEREST—*contd.*

and creating new relations with the party in default.

Found, on the evidence, that the original mortgagee, since deceased, had waived his right to demand interest in respect of the first three instalments due under the mortgage-deed, but that there had been no such waiver on the part of his representatives in interest in respect of the fourth instalment.

Held, therefore, that the mortgagee was entitled to claim interest from the date of default in the payment of the fourth instalment.

Under the terms of the contract interest was to be payable on default from the date of the execution of the deed and not from that of the breach of the contract.

Held, that such a stipulation was in the nature of a penalty and should not be given effect to. *I. L. R. XIII Calc.* 164, followed. LAKHMI DAS *v.* SARUP SINGH. **39 P R 1899**

42. *Method of taking accounts—Interest.* The method of taking accounts between mortgagor and mortgagee should be in accordance with the principles laid down at page 550 (7th Edition) of Macpherson on "Mortgages." GANDA MAL *v.* THAKAR HARKISHEN. **3 P R 1900**

43. *Implied agreement to pay interest—No objection to notice on contract—Promise to pay.*

Held, that the fact that a customer signed order forms and received bills headed with the printed words "Terms one month's credit, interest at 12 per cent. charged on expiry," was not sufficient evidence of a promise to pay interest. EDULJI AND CO. *v.* MCDONALD. **55 P R 1901**

44. *Contract Act*, 1872, *sections* 16, 74—*Undue influence—Penalty—Unconscionable bargain—Interest.*

Held, that the mere fact that the rate of interest was high is insufficient to raise a presumption of undue influence such as is contemplated in section 16 of the Contract Act. When under the terms of a bond the interest chargeable cannot be regarded as a penalty, the term of the bond must be enforced. Indian Courts cannot interfere at discretion merely on the ground that a bargain is hard and unconscionable. BULAKI MAL *v.* ACRES. **96 P R 1901**

45. *Interest—Absence of express agreement to pay interest—Implied agreement—Suit for balance due at dissolution of partnership and the adjustment of partnership account—Acts XXXII of* 1839 *and XXVIII of* 1855.

In a case for the recovery of the amount due on account of balance struck by the defendants, where no express or implied agreement to pay interest was proved, and in the absence of evidence that by usage interest was chargeable and where the requirements of Act XXXII of 1839 had not been satisfied, *held*, that interest should not be awarded as damages.

INTEREST—*contd.*

Kalmalammal v. *Peeru Meera Levai Rowthen* (*I. L. R. XX Mad.* 481), cited. *Sheo Chand* v. *Chunna* (73 *P. R.* 1892) and *Rukun Din* v. *Rikhi Kesh* (36 *P. R.* 1894) distinguished. BURA AND ANOTHER *v.* MAILIA SHAH. **104 P R 1901**

46. *Mortgage—Interest*—Post diem *interest—Absence of covenant to pay interest after a certain date when the mortgage if not redeemed was to become a usufructuary one—Damages—Construction of document.*

On 16th June 1886 certain land was mortgaged to the plaintiff on the condition that the mortgagors will redeem in one year paying the principal debt and interest and in case of default the mortgagee will be competent to take possession of the land in lieu of the principal sum and interest. The mortgagors having failed to pay the amount due under the mortgage the plaintiff filed a suit in 1898 for possession of the land in lieu of principal and interest up to that date.

Held, that as the mortgage was to be a simple one for the period of one year and if not redeemed by that time was to be converted into a usufructuary one with possession, and that as there was no express indication in the deed that after the expiration of the year the mortgagee was to be at liberty to wait as long as he pleased before taking possession, the plaintiff was not entitled to any interest after due date.

Ghasita Mal v. *Ishar Das* (8 *P. R.* 1890), *Sheo Chand* v. *Chunna* (73 *P. R.* 1892), and *Mathura Das* v. *Raja Narindar Bahadur* (*I. L. R. XIX All.* 39), referred to. MOHAN LAL *v.* MUKIM AND OTHERS. **114 P R 1901**

47. *Mortgage—Suit for redemption—Interest*—Post diem *interest—Damages—Rights of mortgagee—Charge upon mortgaged property.*

In a suit for redemption on a deed of mortgage which did not specifically provide for *post diem* interest or make such interest a charge upon the property mortgaged.

Held, that as a mortgagor's right of redemption only arises on payment of the mortgage money which includes both principal and interest, a mortgage can only be redeemed on payment of the principal, and the interest specifically contracted for, that *post diem* interest by way of damages (accrued within six years of suit) may notwithstanding the absence of any covenant for the payment of *post diem* interest in the mortgage deed be allowed and that such interest is also a charge on the property mortgrged.

Radha Kishen v. *Muhamdu* (57 *P. R.* 1888), *Kamra* v. *Bishambar Das* (147 *P. R.* 1890), *Sheo Chand* v. *Chunna* (73 *P. R.* 1892), *Bur Singh* v. *Sohel Singh* (121 *P. R.* 1894), *Sardar Umrao Singh* v. *Sardar Thakar Singh* (77 *P. R.* 1898), *Muthura Das* v. *Raja Narindar Bahadur* (*I. L. R. XIX All.* 39, P. C.), *Moti Singh* v. *Ramohari Singh* (*I. L. R. XXIV Calc.* 699), and *Bikramji Tewari* v. *Durga Dyal Tewari* (*I. L. R. XXI Calc.* 274), referred to.

INTEREST—*contd.*

Gudri Koer v. *Bhubaneshwari Coomar Singh* (*I. L. R. XIX Calc.* 19), *Bhagwant Singh* v. *Daryao Singh* (*I. L. R. XI All.* 416), *Sri Niwas Ram Pande* v. *Udit Narain Misr* (*I. L. R. XIII All.* 330), *Ghasita Mal* v. *Ishwar Das* (8 *P. R.* 1890), and *Mohan Lal* v. *Mukim* (14 *P. R.* 1901), not followed. JAWAHIR MAJ *v.* RAJA SHAH. **95 P R 1902**

48. *Interest—Compound interest—Penalty—Contract Act*, 1872, *section* 74.

Held, that a stipulation in a bond for the payment of compound interest at the same rate as that payable on the principal is not necessarily a penalty within the meaning of section 74 of the Indian Contract Act.

Ganga Dayal v. *Rachchu Lal and another* (*I. L. R. XXV All.* 26), *Janki Das* v. *Ahmad Husain Khan* (*I. L. R. XXV All.* 161), and *Rameswar Prosad Singh* v. *Rai Sham Kishen* (*I. L. R. XXIX Calc.* 51), referred to and followed. MUL SINGH *v.* KISHAN GOPAL. **58 P R 1904**

49. *Contract—Power of Court to withhold interest simply because the debtor was a zemindar.*

A suit for possession of certain land on two mortgage-deeds was dismissed by the first Court on the grounds that the deeds had been executed under undue influence and that there was no consideration for them. The Divisional Judge on appeal reversed the findings of the first Court and gave plaintiff a decree to the effect that he should have possession unless the principal amount advanced was paid to him by a certain date, but he disallowed interest simply because the debtor was a zemindar. On further appeal being preferred by the plaintiff it appeared from the evidence taken on remand that not only was there no undue influence, but the terms regarding the interest and the rates agreed upon were by no means unfair or extortionate.

Held, that although transactions between *banias* and zemindars require to be strictly scrutinised, yet in cases where it is not shown that the zemindar had been over reached or that he had agreed to terms merely because the *bania* had been able to exercise undue influence over him or where the terms of the contract are neither inequitable nor oppressive, the Courts in India are not competent to decline to enforce the terms of the contract in its entirety on the sole ground that one of the party is a zamindar. HEM RAJ *v.* KHUDA BAKHSH. **13 P R 1905**

50. *Interest—Agreement for payment of interest up to the date of repayment of the mortgage debt—Rights of mortgagee to claim interest at the stipulated rate after due date.*

By a registered deed of mortgage it was agreed that the mortgage debt secured thereby would be repaid within a year, but that the mortgagor should be responsible to pay interest at the rate stated therein up to the date of the repayment of the mortgage money. Default having been made the mortgagee brought a suit some ten years

INTEREST—*contd.*

after the date fixed for redemption and claimed payment of the principal with interest at the rate stated in the deed for the entire period of non-payment. The lower Courts on the objection of the defence held that under his contract the mortgagee was only entitled to interest at the rate specified therein up to the date fixed for redemption and *post diem* interest by way of damages for a period of six years.

Held, that as the covenant with regard to interest was independent of the covenant for the repayment of the mortgage money, and as there was a rate fixed for interest, the mortgagee was entitled to claim it at the stipulated rate for the entire period the mortgage debt remained unliquidated.

Sardar Umrao Singh v. *Sardar Thakar Singh* (77 *P. R.* 1898), cited. RADHA KISHEN *v.* KARIM-ULLA. **92 P R 1905**

51. *Interest—Vendor and purchaser—Purchaser bound to pay interest on purchase-money withheld by him.*

Held, that a purchaser at a sale in insolvency proceedings of immovable property who is put into possession and fails to pay the purchase-money, is liable to pay interest to the vendor on the amount unpaid up to date of payment. SARAN AND COMPANY *v.* BASHESHAR NATH. **148 P R 1907**

52. *Interest—Express and implied agreement to pay interest—Promise to pay—Power of Court to interfere—Act XXVIII of* 1855, *section* 2.

Held that when a certain rate of interest is agreed upon by the parties either by express or implied agreement, the Courts have no power to interfere with such rate and are bound to allow the rate as agreed upon if the contract is not otherwise invalid.

Held further, that in a suit relating to balance of accounts where no express agreement to pay interest at a stipulated rate had been agreed upon and where from the facts it appeared that even the accounts were not made up yearly but only two balances had been struck during the course of six years and where all dealings between the parties after the last balance had been discontinued, there was no implication that the debtor contracted to pay interest at the same rate which had been charged to him when the previous balances were struck. RAGHU MAL *v.* BANDU. **110 P R 1908**

53. *Held*, that the English Statute as to judgments carrying interest does not apply to India, nor does such a case fall within the scope of Act XXXII of 1889, and a plaintiff suing on a foreign judgment cannot, therefore, recover more than appears on the face of the judgment. RAM CHAND *v.* BARTLETT. **75 P R 1909**

54. *Interest*—Hundis *silent as to interest—separate oral agreement inadmissible—Evidence Act, I of* 1872, *section* 92—*Negotiable Instruments Act, XXVI of* 1881, *section* 80.

INTEREST—*concld.*

Plaintiffs sued defendant for the recovery of the principal amounts due upon several *hoondees*, together with interest due thereon at the rate of Rs. 1-4-0 per cent. per mensem, alleging that, although the instruments were silent as to interest, the latter was recoverable under a separate *oral* agreement.

Held, that evidence as to the separate *oral* agreement was inadmissible under section 92 of the Evidence Act, proviso 2 to the section not being applicable to the case, and that interest could only be allowed at the rate of Rs. 6 per cent. *per annum* under section 80 of the Negotiable Instruments Act. KISHOR CHAND *v.* GURANDITTA MAL. **52 P R 1911**

INTERLOCUTORY ORDER.

1. *Interlocutory order—Revision.*
See ARBITRATION. **94 P R 1894**
REVISION IN CIVIL CASES. **51 P R 1899**

2. *Review of—Application made to Judges other than Judge who passed original order.*
See CIVIL PROCEDURE CODE, 1908, O. XLVII, R. 2. **7 P R 1894**

3. *Revision of interlocutory order when appeal lies from final decree—Punjab Courts Act*, 1884, *section* 70 (*a*).
See REVISION IN CIVIL CASES. **31 P R 1902**

4 *Revision of interlocutory order where an appeal lies from final decree—Punjab Courts Act*, 1884, *section* 70 (1) (*a*).
See REVISION IN CIVIL CASES. **64 P R 1905**

5. *Interlocutory decision of lower Court not reversed on appeal, how far binding on appellate Court on appeal from a final order in same proceeding.*

Held, that though a decision by a competent Court in an execution proceeding that an application for execution is not time-barred is, unless reversed on appeal conclusive between the parties in a subsequent proceeding for execution of the same decree, such decision is not binding upon an Appellate Court on an appeal from a final order *in the same proceeding*, merely because the interlocutory order was not appealed from immediately. *IV B. L. R.* (F. B.) p. 101; *I. L. R. VIII. Calc.* 51; and No. 200 *P. R.* 1889, referred to. SARDAR *v.* FATEH CHAND. **89 P R 1894**

INTERNATIONAL LAW.

1. *Suit for damages for malicious prosecution—Cause of action accruing in foreign State, but suit instituted in British India—Discharge of plaintiff in former proceedings.*
See CIVIL PROCEDURE CODE, 1908, O. XXII, R. 4. **4 P R 1897**

2. *Decree passed in* absentum *and* exparte *by Foreign Court.*
See FOREIGN JUDGMENT. **112 P R 1894**

3. Hundi *drawn at Jammu in foreign territory but payable in British territory—Act of State—Jurisdiction of British Courts to take cognizance of an act done by a*

INTERNATIONAL LAW—*concld.*

foreign State in the exercise of its sovereign powers and not professing to be justified by Municipal law.

Plaintiff sued upon a *hundi* drawn in his favour at Jummu, Kashmir territory, but payable at Sialkot, the defendant being the drawer and the suit being instituted in the Court of the Subordinate Judge, Sialkot, The claim having been decreed, the defendant appealed to the Chief Court and contended that he had already discharged his liability under the *hundi*, inasmuch as before the suit was brought he had been compelled by the Kashmir Government, which had in its executive capacity confiscated all properties belonging to the plaintiff within its territory to pay over to it the amount due on the said *hundi*.

Held, per *Rivaz*, J. that as the defendant had been compelled by the Government of a foreign State, of which he was a subject acting purely in its executive capacity to pay over to it the amount due on the *hundi*, such payment was conclusive as between the parties and discharged defendant's liability.

Held, further, per *Rivaz*, J. that the British Courts had no jurisdiction to question the legality of an act done by a foreign State in the exercise of its sovereign powers and not professing to be justified by Municipal law.

Per BENTON, *J.*—Though the debt was a liability to be discharged outside Kashmir territory, *viz.*, at Sialkot, the law applicable to it was the law of the Kashmir State, the *lex loci contractus*, and there was every reason to believe that the obligation was validly discharged according to the law and usage of that State in consequence of the order of the supreme authority in the State appropriating to itself the debt due from the defendant to the plaintiff.

No. 36 *P. R.* 1877 (reported on appeal to the Privy Council as No. 7 *P. R.* 1882), and *I. L. R. V Mad.* 273, cited and followed. GHOLU SHAH *v.* PANDIT KIRPA SHANKAR. **21 P R 1894**

INTERPRETATION OF DOCUMENTS.

See CONSTRUCTION OF DOCUMENTS.

IRREGULARITY.

1. *Immaterial.*
See CIVIL PROCEDURE CODE, 1908, S. 15, O. XXVI, R. 10. **184 P R 1888**

2. *Material.* **161 P R 1882**
See MATERIAL IRREGULARITY.
REVISION.

3. *In publishing or conducting execution—sale.*
See *under* EXECUTION OF DECREE.
See *also* SALE IN EXECUTION OF DECREE. **47 P R 1905**

IRRIGATION.

See CUSTOM XIII—WELLS.
NORTHERN INDIA CANAL AND DRAINAGE ACT, 1873.

1. *Share in well for irrigating agricultural land—Land suit—Course of appeal.*
See APPEAL III.—COURSE OF APPEAL. **62 P R 1891**

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IRRIGATION—*concld.*

2. *Right to use of water—Land suit—Appeal.*

See APPEAL II.—COMPETENCY OF.
1 P R 1892 F B

3. *Claim by one village to bring a Canal out across defendant's villages.*

See JURISDICTION OF CIVIL OR REVENUE COURT. **114 P R 1888**

4. *Right of occupancy tenant to sink well without his landlord's consent—Wajib-ul-arz—Custom.*

Plaintiffs, the proprietors, sued for a perpetual injunction against their occupancy tenants, the defendants, to the effect that they should not build a *pakka* well in their land without their consent. The clause in the agreement of occupancy rights was as follows:—"If any well is constructed at "our expense to irrigate the fields after "obtaining the consent of the owner of the "land, it will belong to us while the land "remains in our cultivation and possession, "but if we are ejected from the land for "any cause, we shall have no claim for the "cost of construction or for the well." It was not proved that any custom existed allowing tenants to sink wells without their landlords' consent.

Held, that the plaintiffs were entitled to a decree. The *Wajib-ul-arz* on its true construction did not contemplate that tenants could build wells without the landlords' consent, but the provision was intended to narrow to the smallest compass the rights of those tenants who build with consent, and it was unnecessary to provide for cases without consent which could not arise. C. A. No. 815 of 1869 (unpublished). C. A. No. 161 of 1874 (unpublished) and *Puran* v. *Beja* (No. 73 *P. R.* 1870, Civil) cited. WAJID ALI KHAN *v.* GOUNSA.
66 P R 1887

5. *Right to use of water—Natural stream.*

In the case of a natural stream flowing through several owners' lands, the persons through whose lands it passes are all entitled to a reasonable use of the water, and in the absence of evidence as to the exact shares enjoyed, the presumption is that they are equal. AHMAD ALI *v.* MALIK HASHU.
49 P R 1888

6. *Irrigation—Sinking wells by persons other than owners of land*—Mauza *Bhukkar*—tahsil *and district Shahpur—Claim by owners of the fabric of a well to share in its water.*

The plaintiffs in this case claimed a right to irrigate their lands from a certain well on the ground that they were assignees of certain sharers in the fabric of the well. Defendants denied their right to do so.

Held, that by the custom prevailing at *mauza* Bhukkar in the Shahpur District and the neighbourhood generally, persons other than the owners of the land irrigable by a well may contribute to the cost of sinking a well as a speculation on the understanding that they can let their share of the water to others who require it for lands irrigable by the well. TAHIR *v.* GHULAM.
168 P R 1889

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ISSUES.

1. *Divorce Act (IV of 1869), Sections 12, 14—Omission by Court to frame issues—Defective investigation—Countercharges—Duty of Court before pronouncing decree nisi.*

See DIVORCE. **130 P R 1879**

2. *Duty of Court to frame issues.*

Plaintiffs sued defendant, a surety, the principal debtor not having paid. Defendant in the original court pleaded that the debt was barred by limitation; to meet this plea, plaintiffs put in evidence several letters written by defendant, which, plaintiffs contended, admitted his liability. The letters throughout also showed that defendant had pressed plaintiffs to sue the principal debtor, and that he continued to point out to them, that by their forbearing to sue, they were allowing their remedy against him to become lost by his departure from India, &c. The original court framed an issue only as to whether the suit against the surety (defendant) was barred by limitation, and treating his letters as admissions of liability, decreed for the plaintiffs. This decree was affirmed on appeal by the Commissinner. On appeal to the Chief Court, *held*, that it was the duty of a Court under the Civil Procedure Code to frame issues representing all the points really in contest; and that it was a question in the case, as to which an issue should have been framed by the original Court, whether the plaintiffs by their acts or omissions with regard to the principal debtor, had not discharged the surety. Case remanded. MORICE *v.* THE SIMLA BANK.
44 P R 1876

3. *Case tried without proper issues being framed—Civil Procedure Code,* 1882, *Section* 147.

Held, that the omission to frame an issue is not fatal to the trial of a case, especially where the parties had gone to trial well knowing what the real question between them was and had produced evidence in respect thereof. HOTI LAL *v.* MUSSAMMAT RAM PIARI. **77 P R 1903**

ISTAMRARI ESTATE.

1. *See* JURISDICTION OF CIVIL OR REVENUE COURT. **1 P R 1876**

2. Istamrari *estate of Nawab of Karnal—Alienability of such estate—Interest of Istamrardar—Power to charge estate in hands of his successor—Such estate not assets by inheritance—Debtor and creditor—Father and son joining in charging* istamrari *estate for benefit of father—Consideration—Undue influence—Liablity of son—Free consent—Ratification.*

Held, by the Full Bench, that the interest of an Istamrardar belonging to the Mandal family of Karnal, is such that he cannot make a charge on the *Istamrari* estate to take effect beyond his own life, as each istamrardar taking an interest in the estate granted by two *Sanads* of 1806, takes it under the grant itself, as a member of a class for whose benefit the grants were made, namely the heirs of the original

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grantees and not from his immediate predecessor in title.

Held, further, by the Full Bench, that a charge specifically created by an istamrardar on the *istamrari* estate does not bind the estate after his death in the hands of his successor, nor is such estate in the hands of such successor assets by inheritance liable for the debts of the predecessor, though not specifically charged thereon, as each istamrardar takes the estate directly under the *Sanad* from the Government as grantee and not from the person whom he succeeds taking through that person but not from him.

Plaintiff, the present Nawab of Karnal, and son of the late Nawab, joined with his father in executing in 1878 an instrument in favour, of the defendant, a money-lender the amount secured by which was Rs. 13,400 bearing interest at 12 per cent. per annum, and which was assigned as security for payment of the revenue of the village of the part of the *istamrari* grant above alluded to, made to the plaintiff's ancestors, the annual revenue of which village was estimated at Rs. 1,960. Plaintiff claimed to be absolved from all liablity under this instrument on the ground of undue influence and other grounds. while the defendant denied that undue influence had been used, and alleged *(inter alia)* that plaintiff had ratified the instrument. It appeared that on the date when the plaintiff executed the instrument in suit, the sum of Rs. 13,400 was due to the defendant from the plaintiff's father, but not from the plaintiff, and that he was prior to be execution of the deed under no legal liability to pay any portion of that sum to the defendant. It further appeared that at the date of the execution of the said instrument, the plaintiff was a young man barely above the age of minority, and dependent on his father, after whose death, if he survived, he would succeed under a grant from Government to a life interest in the *istamrari* villages enjoyed by his father one of which was D., so that the plaintiff without any consideration either from the defendant or his father for his act, executed the instrument in question, in which he acknowledged Rs. 13,400 to be due from him and his father jointly, and assigned the revenue of village D. to liquidate the debt with interest at 12 per cent. per annum.

Held, by the Division Bench that plaintiff was entitled to obtain a declaration that the instrument in question was not binding upon him personally or against his interest in the village of D., the effect, if any, of the said instrument against him as the heir of his father not being affected as between him and the defendant by the foregoing declaration, unless it appeared that he had subsequently ratified and confirmed the instrument (which was found as a fact not to be established), as there was enough in the circumstance stated to warrant the inference that the plaintiff did not freely consent to the liabilities created

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by the instrument, and that his consent was due to undue influence of which the creditor had notice. PIARI LAL v. NAWAB MUHAMMAD AZIM ALI KHAN.

72 P R 1889 F. B.

J.

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See ISTAMRARI ESTATE. **72 P R 1889**

OCCUPANCY RIGHTS. **13 P R 1896 Rev** **1 P R 1897 Rev**

1. *Resumption of rent free land by the British Government in 1849—Jurisdiction of Civil Courts.*

See ACT OF STATE. **1 P R 1875 P C**

2. *Liability of* jagir *income to attachment.*

See CIVIL PROCEDURE CODE, 1908, SECTION 60, CLAUSE (*g.*) **133 P R 1888**

3. *Right of Mafidar to share in shamilat.*

See COMMON LAND. **45 P R 1867** **44 P R 1868**

4. *Occupancy rights in common land—Jagirdar*—Pattidari *village.*

See COMMON LAND. **1 P R 1899 Rev.**

5. "*Immovable property*" *definition of —Benefit to arise out of land*—Jagir *income —Limitation for a suit based on a bond hypothecating* Jagir *income.*

See GENERAL CLAUSES ACT, 1868, SECTION 2. **4 P R 1894**

6. *Settlement of mafi tenure—Jurisdiction*

See JURISDICTION OF CIVIL OR REVENUE COURTS. **25 P R 1872** **36 P R 1874**

7. *Grant of land revenue—Suit for.*

See JURISDICTION OF CIVIL OR REVENUE COURTS. **9 P R 1875**

8. *Grant of land revenue—Alluvial Deposits.*

See JURISDICTION OF CIVIL OR REVENUE COURTS. **10 P R 1875**

9. *Suit by a jagirdar of a village for a declaration that he was entitled during the continuance of the* jagir *to levy from the proprietors a share of the produce in lieu of revenue in cash as fixed at settlement.*

See JURISDICTION OF CIVIL OR REVENUE COURTS. **53 P R 1890**

10. *Succession to* jagir—*Mutation—Appeal.*

See PUNJAB LAND REVENUE ACT, 1887, SECTION 13. **12 P R 1891 Rev.**

11. *Suit for* jagir *income retained wrongfully by one of several shares—Course of appeal.*

See SMALL CAUSE COURT ACT, 1887, SCHEDULE II, ARTICLE 11. **2 P R 1900**

12. *Suit to recover arrears of jagir by grantee from Government—Periodically recurring rights—Limitation.*

See LIMITATION ACT, 1877, SCHEDULE II, ARTICLE 120. **83 P R 1906**

JAGIR—*contd.*

13. *Assignment of land revenue for benefit of shrine—Pension.*

See PENSIONS' ACT XXIII OF 1871. **27 P R 1878**

14. *Occupancy rights—Jagirdar—Mafidar.*

See TENANCY ACT XXVIII OF 1868. **12 P R 1878**

15. *Rent in Cash and Kind.*

In the absence of an order at time of settlement, the proprietors cannot insist upon paying revenue in cash to the jagirdar, when they have always before settlement paid in kind PUNDIT MOTEE LAL *v.* UTTRA. **7 P R 1867 Rev**

16. *Enhancement of revenue.*

Suit by a jagirdar for enhancement of revenue, owing to new land being rendered culturable by the drying up of a *jheel. Held*, that as the land in question was recorded as unculturable, and no provision was made for such a contingency at the last settlement, the jagirdar could not during its currency demand increased revenue. The alluvion rules of Financial Commissioner's Circular No. 42 of 1860 held not applicable. NAWAB MAHOMED ALI KHAN *v.* ISHK LALL. **1 P R 1868**

17. *Consent of proprietors.*

A jagirdar cannot enforce payment of his revenue in grain without the proprietor's consent. Orders as to payment of revenue held to be administrative and open to revision. MULLIK FUTTEH SHER KHAN *v.* MULLIK SHER BAHADOOR KHAN. **6 P R 1868 Rev.**

18. *Assignee of jagirdar—Consent of proprietors.*

Defendant derived his title as mafidar from the jagirdar of the whole village, who drew his revenue in cash. Defendant drew it in kind up to the settlement of 1857, when cash rates were recorded. *Held*, that without the consent of the proprietors, the defendant was bound, as the jagirdar would be, to draw the revenue in cash. BALRAM DASS *v.* GUNGA RAM.

1 P R 1869

19. Where it was agreed between the parties that the proprietary right in the land claimed should follow the limitations of the *mafi* grant;

Held, that a limitation of the right, for the life of the mafidar only, was not a true construction of the agreement. AMEER BUX *v.* SOOKHA RAM. **2 P R 1870 Rev.**

20. *Jagirdar and Zemindar—Reclamation of forest land—Wajib-ul-arz—Construction of.*

Within the area of plaintiff's jagir there was a tract of jungle which was not assessed. Defendants, the zemindars between whom and the jagirdar the settlement was made subsequently reclaimed and brought under cultivation a portion of the jungle. Plaintiff claimed a share of the value of the produce of this reclaimed land. The *wajib-ul-arz* provided that any one taking wood for sale from the jungle should pay tax to the jagirdar; that the residents of the village might graze their cattle in the jungle free of charge, and take dry wood there-

JAGIR—*contd.*

from for domestic purposes; that the zemindars had the right to cut down the forest and jungle for the purpose of bringing the land under cultivation without the consent of the jagirdar, in which case the proprietary rights in the land would vest entirely in the zemindars. *Held*, that in the absence of any custom to the contrary, the jagirdar, who was not a proprietor, could not claim a share of the produce of the land reclaimed from the jungle by the zemindars; that the zemindars were entitled to proprietary possession, and the jagirdar only entitled to the income from the jungle and forest tract so long as it existed. SIRDAR RUNJEET SINGH *v.* KHODA BUKSH.

53 P R 1870

21. Where a jagir was limited to A and "the heirs male of his body lawfully begotten," *held*, that sons made legitimate by acknowledgment under Muhammadan law, were included. MUSSAMMAT LALLI BEGUM *v.* NAWAB MAHOMED AZMAT ALI KHAN.

13 P R 1875

22. *Suit for land-revenue.*—Hak mahsul —*Cash assessment.*

Plaintiffs who were the jagirdars of *mauza* Mirzapore in the Mooltan District and also part owners (*adna maliks*) of the village, sued the defendants who were their kinsmen and the owners of the remainder of the estate for the sum alleged to be the land-revenue due for the year 1940 Sambat contending that they were entitled to take as the revenue the share of the *batai* known as "*hak mahsul*," which it appeared was the name in use for the portion of the crop which in Sikh days was taken by the State. It appeared from the assessment proceedings that a cash land revenue had been assessed on the village, which had been computed and arrived at in the same way that it would have been in a *khalsa mauza.*

Held, (upholding the orders of the lower Courts) that as between the jagirdars and the proprietors, the cash assessment, which was the true land-revenue of the village, was the measure of the plaintiffs' rights. NAWAB MUHAMMAD RABNAWAZ KHAN *v.* NAWAB HAFIZ ABDULLA KHAN. **28 P R 1888**

23. *Land Revenue Acts, XXXIII of 1871, sections* 16, 19, 30, *and XVII of 1887, sections* 37, 44, 61—*Jagirdars and landowners—Settlement with whom to be made —Presumption of correctness of entry in record as to who are the landowners—Power to alter entries in record—Correction of record and decision on claim of landowners to be settled with, not to be included in same proceeding.*

Under section 30 of the Land Revenue Act of 1871 when land revenue is assessed, the settlement should be offered to the landowners; but neither under the Land Revenue Act of 1871, nor under the Act of 1887, does any Revenue Officer, engaged in making an assessment, possess any authority to decide the issue who are the landowners, independently, and without reference to the record of rights, in districts where a record of right exists. Both by section 16

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of the Act of 1871 and section 44 of the Act of 1887, the Revenue Officer is bound to presume that those persons are the landowners who are entered as such in the record of rights.

Section 19 of the Land Revenue Act of 1871, and section 37 of the Act of 1887, which define the circumstances under which entries in the record of rights may be altered, do not give to the Revenue Officer authority to make an alteration converting a jagirdar into a landowner, and then refusing to allow the landowner, entered in the record of rights, to engage for the revenue, except with the consent of the parties, or pursuant to a decree, or in order to make the record agree with facts which have occurred since it was made.

The two operations of correcting an entry, in the record of rights or in the annual record and of deciding on the claim of a person as landowner to be liable for the revenue, cannot properly be included in the same proceeding; that person is liable for the land revenue (section 61, Act XVII of 1887; section 30, Act XXXIII of 1871) who is recorded in the records as landowner; if those records are to be altered, this must be done by a separate application and proceeding.

The rule laid down in section 61 of the Act of 1887 applies to all cases in which land revenue is assessed; equally to general re-assessments and to special assessments. MOUWAZ KHAN *v.* MAHANT GANESH DAS.

4 P R 1888 Rev.

24. *Punjab Tenancy Act*, 1877, *section* 5, *sub-section* (1) (*a*)—*Occupancy rights—Jagirdar under grant from Sikh—Government.*

Held, that the holder of a *jagir* granted in A. D. 1809 by an officer of the Sikh Government on behalf of that Government and resumed by the British Government at annexation was a "jagirdar" within the meaning of section 5, sub-section (1) (*d*), Punjab Tenancy Act, 1887, which confers, under the circumstances specified therein, rights of occupancy on persons who have been jagirdars of the lands occupied by them. NATHU AND LALJI *v.* ATMA RAM.

2 P R 1892 Rev.

25. *Punjab Land Revenue Act*, 1887, *section* 48, *sub-section* (2)—*Collection of land revenue in cash or in kind—Right of jagirdar when, and when not, an owner in the estate.*

The Punjab Land Revenue Act, XVII of 1887, contains a provision, *viz.*, section 48, sub-section (2), which did not form part of the old Revenue Law (Act XXXIII of 1871), to the effect that "land revenue may be assessed in cash or in kind, or partly in cash and partly in kind, as the Local Government may direct."

According to the instructions issued by the Local Government (*cf. P. R.* No. 2, 1889, Rev.) a Settlement Officer is bound to assess every estate to a cash assessment even when held in *jagir*, and to offer such settlement to the owners.

The only consideration which justifies the

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making of a settlement with a jagirdar is the fact of his being in some sense owner of the lands. The laxity which prevailed in the early days of Punjab administration in this respect is no longer permissible under the existing Revenue law, which provides that every estate is to be assessed and the settlement offered to the owners.

If the estate is held in *jagir* by a jagirdar who is not the owner, he is only entitled to the Government demand. If he has any rights of ownership, these rights are not affected by a re-assessment of the revenue. and under section 61 of the Land Revenue Act, 1887, the settlement may (subject to rule 208) be offered to him.

Collections of the Government revenue in kind are no longer permitted, but a jagirdar who is also proprietor, and who as jagirdar has permission (rule 226) to collect the revenue assigned to him, may without impropriety be permitted to continue collections in kind, where these have been customary.

A jagirdar who is not owner, even if permitted to collect his revenue, must collect it from the headman empowered to collect it from the landowners (rule 226) if such revenue is payable in cash.

Found, also upon the evidence, that the respondent (the jagirdar) had not established any title to be considered the owner of the estate. NANDU *v.* MALLA SINGH.

14 P R 1892 Rev.

26. *Suit by occupancy tenants for commutation of rent—"Rent"—Village held in* jagir—*Dues in kind paid by tenants partly to landlords partly to jagirdar.*

Previous to the recent settlement, plaintiffs, who were occupancy tenants in a village held in *jagir*, used to pay dues in kind on account of their tenancy partly to the landlords and partly (*viz.*, that portion representing the revenue demand) to the jagirdar direct. At the settlement which was made with the defendants, the proprietors, the jagirdar was declared entitled to a cash assessment. Subsequently plaintiffs sued to have it declared that they were entitled to pay rent in cash instead of in kind as heretofore The proprietors refused to agree to this arrangement; but the Commissioner, on appeal, held that as regards at least that portion which represented the revenue demand, plaintiffs were entitled to pay in cash instead of in kind.

Held, that the whole payment made previously to the settlement by plaintiffs to defendants and the jagirdar was "rent,"—the—jagirdar's portion of such rent being received by him direct from plaintiffs only as a matter of convenience to all parties,—and that, therefore, no portion of such rent could be commuted without the consent of the defendants MOKHA *v.* NUR DIN.

3 P R 1895 Rev.

27. *Punjab Tenancy Act*, 1887, *sections* 4 (15) *and* 5 (*i*), (*d*)—*Occupancy rights—Continuous occupation of twenty years—"Jagirdar" and "Mafidar."*

The definition of jagirdar in section 4 (15) of the Punjab Tenancy Act, 1887, in-

JAGIR—*contd.*

cludes a muafidar.

In a claim for occupancy rights the continuous occupation of twenty years, referred to in section 5 (*i*), (*d*), of the Punjab Tenancy Act, 1887, may be partly occupation by a jagirdar as such, and partly occupation by the same person or his representative as a tenant when he has ceased to be a *jagirdar*. JODH SINGH *v.* KISHEN SINGH.

8 P R 1896 Rev.

28. *Occupancy rights—Grant of* muafi *to ala-lambardar in virtue of his office—Ala-lambardar joint owner of such land—Punjab Tenancy Act*, 1887, *section* 4 (7), (13), (15), 5 (1) (*d*), 10, 11—"*Tenant*"—*Custom—Punjab Tenancy Act*, 1868, *section* 5 (4), 9—Pattidari *village—Impure* Pattidari *village.*

In 1864 a grant of part of the *shamilatdeh* was made by an officer of Government in favour of J. S., father of H. S., in remuneration for his services as ala-lambardar. On the death of J. S., in 1880, S. H. succeeded as ala-lambardar and muafidar, but in 1891 the proprietors applied for partition, which was effected and duly sanctioned in 1893, whereupon H. S. instituted the present suits to contest notices of ejectment issued by the different proprietors into whose possessions the said *muafis* had come. J. S., and after him H. S., were joint owners of the lands in dispute, and it was proved that H. S., by himself and by his father before him, had continuously occupied the same since 1865. It was contended that H. S. was not liable to ejectment, inasmuch as he had acquired occupancy rights both under the Punjab Tenancy Act, 1887, and under the Punjab Tenancy Act, 1868.

Held, that inasmuch as H. S. was a joint owner of land, he could not, under section 10 of the present Tenancy Act, acquire occupancy rights in the land in suit otherwise than by virtue of a special custom.

Found, that no such special custom had been proved in the present case.

Held, further, that as there was nothing in the Tenancy Act of 1868 corresponding to section 4 (7) of the present Act, which defines "tenant" as including the predecessor in interest of the present tenant, H. S., who had not by himself been separately in continuous possession of the land for twenty years had not acquired occupancy rights therein under the said Tenancy Act of 1868 at the time when the present Act came into force.

When a son succeeds his father in the ala-lambardarship, the *muafi* and in cultivating occupancy, the father is the predecessor in interest of the son within the meaning of section 4 (7) of the Tenancy Act, 1887.

When an *ala-lambardar*, to whom a grant of *muafi* had been made in remuneration of his services, continues, after resumption of such *muafi* to hold on as cultivator, he is a "tenant" holding under the proprietors, and is also a "village officer" within the meaning of section 4 (13), and a "jagirdar" within the meaning of section 4 (15) of the Tenancy Act, 1887, if the land revenue has been assigned to him in whole or in part by the Govern-

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JAGIR—*contd.*

ment or by an officer of the Government. And if such ala-lambardar has, at the date of suit, continuously occupied for twenty years the land so allotted to him not being himself a joint owner of such land, he is entitled to occupancy rights under section 5 (1) (*d*) of the said Act.

Section 9 of the Punjab Tenancy Act. 1898, must be strictly construed, and therefore does not apply to the case of a village which is *pattidari ghair mukamal.* LAHNA SINGH *v.* HIRA SINGH. **1 P R 1897 Rev.**

29. *Occupancy rights—Punjab Tenancy Act,* 1887, *sections* 4 (5), 5 (1) (*d*)—"*Jagirdar*"—"*Government*"—*Grant of* muafi *originally made by Moghal Emperors—Financial Commissioner's Circular No.* $\frac{13}{28}$ *of* 1865.

Plaintiffs claimed occupancy rights upon the allegations that they were jagirdars within the meaning of section 4 (15) of the Tenancy Act, 1887 of a certain *muafi* which they had held jointly with the descendants of one H., to whom the said *muafi* had been sanctioned in perpetuity by the British Government in 1887, and that they were therefore entitled, under section 5 (1) (*d*) of the Act, to rights of occupancy in certain other lands in the village which they had held continuously for not less than twenty years. It was proved that a share of the said *muafi* had originally been granted by the Moghal Emperors to plaintiffs' branch of the family, but at the settlement of 1889-90, when the question arose as to whether plaintiffs should be recorded as jagirdars or muafidars the Settlement Officer, acting upon the Financial Commissioner's Circular No. $\frac{13}{28}$ of 1865, refused to record to plaintiffs as such, on the ground that it was undesirable to increase the number of names in which *muafis* were shown. The lower Court having decreed plaintiff's occupancy rights as prayed for, defendants applied to the Financial Commissioner for revision of the said orders.

Held, that a share of the said *muafi* having been originally granted to plaintiffs' branch of the family by the Moghal Emperors who were predecessors of the British Government, plaintiffs were jagirdars within the meaning of section 4 (15) of the Tenancy Act, 1887.

Held, further, that it not being necessary that plaintiffs should be jagirdars of the particular land in the village in which the occupancy right was claimed, plaintiffs, as such jagirdars, were entitled to occupancy rights in the said land under section 5 (1) (*d*) of the Act, and could not be deprived of such rights by the said Circular, which was issued before the passing of even the first Tenancy Act. GANDU *v.* GANPAT RAI.

2 P R 1897 Rev

30. Jagir—*Succession—Grant of Government revenue for life to parties' family in specific shares—Death of one sharer—Suit by the surviving sharer against the son of the deceased for certain instalments wrongfully enjoyed by the latter—Limitation Act,*

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JAGIR—*concld.*

1877, *Schedule II, article* 131—*Construction of such grant—Pensions Act,* 1871, *section* 6.

A *jagir* was granted to the family of the parties for life without any express provisions for survivorship. The *jagir* was to be divided into ten shares in three separate groups, the defendant's father and the plaintiff being two out of five sharers in group No. 2. The former died in 1868 and his share was peaceably enjoyed by his son until 1898, when the plaintiff filed a suit against the defendant on the allegation that two annual instalments proportionate to the defendant's share had been wrongfully enjoyed by the defendant, who pleaded limitation, and argued that in his presence the plaintiff was not an heir to his father.

Held, that as no demand was made prior to those which immediately preceded this suit, the suit was within limitation under article 131 of the second Schedule of the Limitation Act.

Held, also, that the words *ta hin hayat* (for life) applied to each group collectively, and not to the members of the group individually, the effect being that the members of each group were entitled to take by survivorship on the death of any member of that group.

Gahna v. *Ikhlak Khan* (154 *P. R.* 1889) cited. MUSSAMMAT ZINAT *v.* MURTAZA KHAN.

108 P R 1901

JAGIRDAR.

See MAFIDAR.

1. *Customary right of widow of Jagirdar to obtain maintenance from* jagir *income.*

See CUSTOM VIII J.—MAINTENANCE.

19 P R 1880 Rev.

2. *Occupancy rights*—Ex-jagirdar—*Representative—Continuous possession—Period of* 20 *years how calculated—Occupation as tenant.*

See TENANCY ACT XXVIII OF 1868, SECTION 5. **83 P R 1882**

3. *Liability of* jagir *income to attachment.*

See EXECUTION OF DECREE.

57 P R 1884

JAINS.

By special custom among Jains of Delhi adoption is a purely secular transaction, and a sonless widow may adopt without any authorisation of her husband.

See CUSTOM III.—APPOINTMENT OF HEIR —G.—ADOPTION BY WIDOW

95 P R 1909

JAJMAN.

See INJUNCTION. **8 P R 1901**

See RELIGIOUS INSTITUTIONS.

JANJRARA.

1. *Validity of Janjrara form of marriage—Lalotra Brahmins of the Kangra District.*

See CUSTOM IV.—BETROTHAL, DOWER, MARRIAGE, DIVORCE.

113 P R 1885

1488

JANJRARA—*concld.*

2. *Validity of Janjrara form of marriage—Rajputs of Sartora clan of Kangra.*

See CUSTOM IV.—BETROTHAL, DOWER, MARRIAGE, DIVORCE.

98 P R 1890

JATS.

Adoption of daughter's son invalid—Custom—Adoption—Muhammadan Jats—Gharhshankar tahsil, *Hoshiarpur district—Adoption of daughter's son—presumption against its validity*—Riwaj-i-am—*consent of nearest collateral—Limitation in suit for possession—Indian Limitation Acts of* 1877 *and* 1908, *Schedule II, articles* 118 *and* 144.

Held, following the interpretation in 96 *P. R.* 1908 of the Privy Council Ruling reported in *Tirbhawan* v. *Rameshar,* (1906). I. L. R 28 All. 727 that a suit for possession, where an adoption is set up in defence, is governed by article 144 and not article 118 of the Limitation Acts of 1877 and 1908, and that the Full Bench Ruling in 86 *P. R.* 1905 must be held to have been overruled by the Privy Council.

Held also, following 50 *P. R.* 1893 (F. B.) that the general presumption among Jats of the Garhshankar *tahsil*, Hoshiarpur District, is that the adoption of a daughter's son is invalid, and that no special custom in favour of its validity had been proved, the mere entry in the *Riwaj-i am*, unsupported by instances being insufficient for the purpose.

Held further, that the consent of the brother of the adoptive father (a sonless man) did not bind the more distant collaterals, the plaintiffs.

44 P R 1911

JIRGA.

—*Resolution of—No restriction on jurisdiction of Civil Courts where the provisions of section* 10 *of the Punjab Frontier Crimes Regulation,* 1887, *are not acted upon.*

See JURISDICTION. **26 P R 1909**

JOINDER OF CAUSES OF ACTION.

See CAUSE OF ACTION—MISJOINDER.

1. *Plaintiff claiming two kinds of relief in alternative.*

See CAUSE OF ACTION V—MISJOINDER..

41 P R 1888

2. *Suit against two defendants which united two distinct causes of action in which both the defendants were not jointly interested.*

See CAUSE OF ACTION V.—MISJOINDER.

189 P R 1888

3. *Multifariousness—Misjoinder of causes of action.*

See CAUSE OF ACTION V.—MISJOINDER.

149 P R 1890

4. *Misjoinder—Trespass—Separate and independent acts of defendants.*

See CAUSE OF ACTION V.—MISJOINDER.

127 P R 1892

JOINDER OF CAUSES OF ACTION—*concld.*

5. *Suit for sum payable as "dhart" and for marriage dues—Claims based on two causes of action, one cognizable by Civil Court, the other cognizable by Revenue Court—Power of Chief Court to deal with part of decree.* BUTA *v.* FAUJA SINGH
See CAUSE OF ACTION No. 38.
28 P R 1894

6. *Suit for specific performance of contract to sell and for pre-emption on sale—Distinct subjects.*
See CAUSE OF ACTION No. 39.
96 P R 1895

7. *Suit to cancel bonds executed in favour of separate parties in respect of the same transaction.*
See CAUSE OF ACTION V.—MISJOINDER.
5 P R 1896

8. *Misjoinder of parties and causes of action.*
See CAUSE OF ACTION V.—MISJOINDER.
43 P R 1897

9. *Misjoinder of causes of action—Dissolution of partnership—Partners and representatives of deceased partners are necessary parties to the suit.*
See CAUSE OF ACTION V.—MISJOINDER.
62 P R 1897

10. *Joint suit by reversioners for possession of undivided property wrongfully withheld by the defendant.*
See CAUSE OF ACTION V.—MISJOINDER.
91 P R 1898

11. *Joint suit by reversioner on death of widow against various defendants who raised different defences—Suit based on allegation that on the death of the widow the right to possession vested in plaintiff, who was entitled to eject all defendants as trespassers—Misjoinder of causes of action.*
See CAUSE OF ACTION V.—MISJOINDER.
24 P R 1899

12. *Misjoinder of causes of action—Plaint returned for amendment—Appeal—Suit against several persons each interested in part of the property.*
See CAUSE OF ACTION V.—MISJOINDER.
79 P R 1899

JOINDER OF PARTIES.

See PARTIES.

1. *Appeal from order rejecting application to set aside execution sale—Omission to implead auction-purchaser as respondent—Effect of such omission.*
See APPEAL VI.—PROCEDURE IN,
188 P R 1882

2. *Misjoinder of parties and causes of action.*
See CAUSE OF ACTION V.—MISJOINDER.
43 P R 1897

JOINDER OF PARTIES—*contd.*

3. *Devolution of interest pending suit.*
See CIVIL PROCEDURE CODE, 1908, O. XXII. R. 10. **29 P R 1887**

4. *Joint suit by alleged partners in respect of leases made in the names of certain individual members of an alleged partnership—Omission in plaint to specify grounds entitling plaintiffs to sue jointly in respect of such leases.*
See CIVIL PROCEDURE CODE, 1908, SECTION 80. **67 P R 1894**

5. *Suit by one of several co-heirs for his share in an estate—Dismissal of such suit—Subsequent suit by all the heirs for the whole estate—Res-Judicata.*
See CO-HEIRS. **2 P R 1882**

6. *Joinder in suit of the full proprietary body—Rights to common land.*
See COMMON LAND. **39 P R 1866**
with 103 P R 1866
110 P R 1876
with 18 P R 1867

7. *Ejectment—Suit by one of several co-sharers.*
See COMMON LAND. **17 P R 1879**

8. *Suit by one proprietor to ejectment of common land—Joinder of proprietary body.*
See COMMON LAND. **99 P R 1883**

9. *Right of majority of village proprietors to restrain permanent alienation of* shamilat.
See COMMON LAND. **7 P R 1885**

10. *Right of minority of proprietors to maintain suit for ejectment from kothas erected on* shamilat.
See COMMON LAND. **54 P R 1886**

11. *Appropriation by one proprietor of houses built for common purpose—Suit for ouster of such proprietor—Joinder of proprietary body—Will of majority.*
See COMMON LAND. **74 P R 1888**

12. *Co-sharers—Exclusive possession of one—Dispossession—Suit for restoration of possession—Proper parties.*
See COMMON LAND. **103 P R 1889**

13. *Suit on mortgage-bond by one of three persons jointly entitled—Right to sue.*
See CONTRACTS. **175 P R 1882**

14. *Sale to three persons—Shares of vendors specified distinctly, but purchase money for all shares mentioned in lump—Joinder of parties—Indivisible contract.*
See CONRACTS. **66 P R 1896**

15. *Non-joinder as plaintiffs of co-promisees.*
See CONTRACT ACT, 1872, SECTION 45.
159 P R 1889

16. *Joinder of parties—After institution of suit—Limitation.*

JOINDER OF PARTNER—*contd.*

See LIMITATION ACT (XV OF 1877) SECTION 22. **58 P R 1882**
104 P R 1882
8 P R 1886

17. *Suit by one partner against another for sum alleged to be realized over his share in the outstandings—Omission to implead all the partners.*
See PARTNERSHIP. **65 P R 1884**

18. *Joinder of parties having no joint interest—Single decree against 200 separate tenants—Reversal in appeal as regards some only of the tenants—Effect of modifying the original decree as to all.*
See PUNJAB TENANCY ACT, 1887, SECTION 80. **1 P R 1890 Rev.**

19. *Suit by certificate-holders for half of sum due on a bond—Certificate confined to half of deceased's property—Heirs to other half refusing to join as co-plaintiffs.*
See SUCCESSION CERTIFICATE ACT, 1889, SECTION 16. **29 P R 1899**

20. In an action for a wrong independent of a contract joinder of all the wrong-doers is not essential. MUKDOOM ALLI *v.* ISMAIL. **72 P R 1867**

21. In a suit by a Hindu husband for a tort to himself and wife, *held*, that the non-joinder of the wife was an omission cured by section 350, Act VIII of 1859. MUSSAMMAT GOOJREE *v.* RUTTUN CHUND PUREE. **3 P R 1869**

22 Where the rights of another person as well as those of the plaintiff have been contested in the Lower Courts, though the rights of the two are different, the Chief Court will, when no prejudice can occur, join that other person as a party to the suit to prevent further litigation. HEERA SINGH V. SOBHA. **11 P R 1870**

23. *Civil Procedure Code (Act X of 1877), section 34—Objection to parties not taken at earliest opportunity—Waiver.*

In a suit on a written contract, purporting to be entered into by plaintiff as a principal and not as an agent, defendants objected (after issues had been drawn, and the plaintiff's evidence recorded) that the firm of which plaintiff was the agent should have brought the suit: and the lower Courts, allowing this objection, dismissed the suit, holding that plaintiff had in fact entered into the contract as an agent.

Held, reversing the orders of the lower Courts, that the objection as to parties, not having been made at the earliest opportunity, must be taken to have been waived under section 34 of the Civil Procedure Code. SAHIB RAM *v.* MUNSHI LAL. **64 P P 1881**

24. *Dispute about abadi of village—Principal of division.*

In a suit brought by one out of three tarafs of the village against the second taraf and one patti of the third taraf, the

JOINDER OF PARTIES—*contd.*

contention relating to the principle upon which the abadi of the village (which was *shamilat*) should be divided, *held*, that the proprietors of all the tarafs were necessary parties to the suit, and that the proprietors of the remaining pattis of the third taraf should have been included as defendants. DALLA SINGH *v.* ALA SINGH. **92 P R 1881**

25. *Civil Procedure Code (Act X of 1877), sections 32, 34—Objection on ground of misjoinder not taken at earliest opportunity—Power of Court to join necessary party on its own motion.*

Plaintiffs sued for pre-emption in respect of certain property purchased by one M. S. and his brother jointly, the suit being instituted in the first instance against M. S. personally and as representative of his brother who had died before the date on which the suit was brought, the vendor also being joined as a defendant. At a hearing subsequent to the first hearing of the suit, M. S. for the first time objected that his brother had left a widow who, as one of his heirs, was entitled to one-fourth of his estate and who accordingly should be joined as a defendant in the suit. The first Court, considering that the widow shoul be made a party, passed an order to that effect, but the lower appellate Court, considering the order of the first Court upon this point wrong, directed that the widow's name should be removed from the record. On a further appeal by M. S. and the widow to the Chief Court it was urged on this part of the case that the lower appellate Court was wrong in directing that the name of the widow should be removed from the record. For the respondent it was urged that the objection for want of parties had been made too late by the defendant M. S.

Held, that though the objection for want of parties could not be said to have been taken at the earliest possible opportunity as required by section 34 of the Civil Procedure Code, and the original defendants might therefore be held to have waived it, still it was competent to the Court at any time, under section 32 of the Code, either of its own motion or upon the application of either party, to order the name of any person who ought to have been joined as a party to be added, and this was a case in which it was clearly proper that the Court should order the widow to be made a defendant on the fact coming to its knowledge that M. S.'s brother had left a widow.

Per *Barkley*, J.—The widow having been duly put on the record and having defended the suit, was as much interested as her brother-in-law M. S. was in the decree of the first Court dismissing the suit, and the lower appellate Court had no authority, by the expedient of removing her name from the record without her consent, to deprive her of the benefit of that decree without deciding the questions raised by the appeal as between her and the plaintiff. KHAN MUHAMMAD SHAH *v.* MUHAMMAD JAN. **104 P R 1882**

JOINDER OF PARTIES—*contd.*

26. *Civil Procedure Code (Act X of 1877), sections 30, 53—Amendment of plaint—Addition of parties—Sufficient reason.*

In a suit to recover the amount due on a mortgage-bond, it appeared that the bond was in favour of three persons, of one of whom only the plaintiff claimed to be the representative. There was no allegation that the person whom the plaintiff represented was in fact solely entitled under the bond, nor did the plaintiff ask the permission of the Civil Procedure Code under section 30 of the Civil Procedure Code to sue on behalf of all the persons entitled on it, nor did the bond itself contain anything to indicate an intention that the right to claim performance by the mortgagor should not rest with the persons in whose favour the mortgage was made jointly.

Held, that there was no sufficient reason for allowing at the present stage an amendment of the plaint for the purpose of adding the other persons interested as parties to the suit, and so completing the plaintiff's cause of action which should have been fully disclosed in his plaint. JOWALA NATH *v.* RUPA. **175 P R 1882**

27. *Civil Procedure Code (Act X of 1877) sections 30, 34—Plea first raised in second appeal—Waiver.*

In a suit for cancellation of a sale made by a non-proprietor of his house on the village site, *held* that a plea that the plaintiff was not entitled to sue without joining all the proprietors of the village, was one which could not be allowed to be taken for the first time in second appeal, as under section 34 of the Civil Procedure Code the defendant must be taken to have waived it, not having taken it at the earliest possible opportunity. JIT SINGH *v.* IMAM BAKSH. **151 P R 1883**

28. *Rent suit—Defendant setting up title of third party.*

When a person sued for rent sets up the title of a third person, such third person ought not to be made a party to the case, so as to convert a simple suit for arrears of rent into a suit for the determination of a right to the land of which rent is claimed; nor has a person out of possession the right to come into Court and ask for a decree for rent with a view of bringing in a third party, and having tried under color of a rent suit a question of title between himself and that party. ALA HUSAIN *v.* ISMAIL. **66 P R 1886**

29. *Suit by 3 out of 4 joint lessors for rent—Joinder of 4th lessor as co-defendant—Right to maintain suit.*

Three out of four joint lossors sued a lessee for the whole rent due under his lease, praying that the fourth lessor might be made a co-plaintiff, or failing that a co-defendant. The Court overruling the fourth lessor's objection to be made a defendant, made him a co-defendant, but referred the

JOINDER OF PARTIES—*contd.*

question whether the three plaintiffs were competent to maintain the suit.

Held, that the plaintiffs were competent to maintain the suit in its present form with the fourth lessor as a co-defendant, though whether they were entitled to recover on the merits, and if so what amount, were independent questions not before the Court on the reference. *Jamun Shah* v. *Ahmed Shah* (No. 65 of 1879, Civil) referred to. ABDUL GHUFFAR *v.* SHAHABUDDIN, **87 P R 1886**

30. *Suit to restrain the proprietors of one patti from closing a pathway over the shamilat of the village—Necessity to implead the other proprietors of the village.*

In a suit by the plaintiff to restrain the defendants, who were the proprietors of one of the *pattis* in the village to which the parties belonged, from closing a pathway, it was contended for the defendants that the plaintiff's suit was bad for non-joinder of parties, as the land over which the pathway claimed by the plaintiff ran was *shamilat* of the village, and therefore the plaintiff should have impleaded all the proprietors of the village.

Held, that as the act complained of by the plaintiff was one of obstruction on the part of a certain section of the proprietary body, it was not necessary for him to implead any other persons except those who were concerned in that obstruction, with reference to the rule of pleading that "no one is liable to be sued for any injury of which he is not the cause." KARM SINGH *v.* SARUP SINGH. **41 P R 1888**

31. *Joinder of vendor as co-defendant—Legal necessity for such joinder—Effect of non-joinder of vendor.*

Held, that the joinder of the vendor in a suit for pre-emption (though such joinder is both usual and convenient) cannot be said to be in every case absolutely and strictly necessary in law, so that on account of the non-joinder of the said vendor the pre-emptor must lose all his rights in the suit. *Kahna* v. *Dewa Singh* (No. 62 *P. R.* 1879) and *Wazira* v. *Shadi Khan* (No. 67 P. R. 1881), referred to. SHIV CHARN SINGH *v.* SECRETARY OF STATE. **80 P R 1888**

32. Where there is no dispute as to the land being *shamilat*, it is not necessary to make all the co-sharers parties to the suit. WAZIR SINGH *v.* MEHTAB SINGH. **108 P R 1889**

33. All partners of a firm should be made parties to a suit on behalf of the firm. NAUBAT RAI *v.* SEWA RAM. **140 P R 1889**

34. *Non-joinder as plaintiffs of co-promisees—Contract Act, section 45.*

Held, by the Full Bench, that an objection by a defendant that one of several co-promisees cannot sue alone to enforce payment of a debt due to them jointly, is an objection falling within and governed by section 34, Civil Procedure Code.

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JOINDER OF PARTIES—*contd.*

Per PLOWDEN, J.—When a plaint discloses that the suit is on a promise made to the plaintiff, or plaintiffs named in the plaint, jointly with others, who are not made parties to the suit, the Court can and ought to consider and decide whether it should be returned for amendment under section 53, Civil Procedure Code, or whether it should be received, leaving the question of parties to be dealt with by defendant under section 34, or by the Court under section 32, Civil Procedure Code. If the objection is taken in time by the defendant under section 34, he is entitled to an order of the Court under section 32, that any person who ought to have been joined as plaintiff be made a plaintiff, if he consent, and otherwise be made defendant, if practicable. If the objection is not made in time, the defendant cannot afterwards, either before or after judgment, take an objection founded solely upon the non-joinder of the other co-promisees either in that form or in the form of an objection that the plaintiff or plaintiffs alleged a promise to himself or themselves alone, and that there is a variance between this allegation and a proof of promise to him or them and others jointly with him or them.

Per POWELL, J.—The objection that where several partners lend money to the defendant and jointly receive a promise of repayment from him, section 45 of the Contract Act is as a matter of substantive as distinguished from Procedure Law, a bar to the right of any one of the parties alone to claim repayment of the whole debt is not valid in law. The joinder or non-joinder of parties must always depend on some rule of substantive law, and the procedure rule does nothing more than provide that certain rules of substantive law, certain rights and obligations arising out of such law, can only be enforced or given effect to in a particular way or under particular limitation.

Kendall v. Hamilton, L. R 4 H. L. 504 ; *King* versus *Hoare*, 13, M. and W. 494 ; 8 *P. R.*, 1886, ; 175 *P. R.* 1882 ; *I. L. R. VI. C.* 815 ; *I. L. R. VII. C.* 242 and 594 ; *I. L. R. V. B.* 609 ; *I. L. R. I. A.* 453 ; *I. L. R. VIII A*, 264 *I. L. R. VIIB*, 257 ; *I. L. R. II C*, 26 ; *I. L. R. IIIM.* 235 ; *I. L. R. XB.* 32 ; *IVB I. R.* 118 ; *I. L. R. XIC.* 338 ; 87 *P. R.* 1880, 58 *P. R.* 1882,; 20 *P. R.* 1882, considered and discussed. KALA KHAN *v.* SEVA RAM.

156 P R 1889

35. *Adding parties—Discretion of Court—Refusal to amend plaint as directed—Rejection of plaint—Obligation to appeal from orders—Civil Procedure Code*, 1882, *sections* 32 *and* 591.

The District Judge considering necessary that a third person should be joined as a defendant returned the plaint for amendment. This order was not complied with and the plaint was consequently rejected under section 54, Civil Procedure Code. The plaintiffs appealed.

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JOINDER OF PARTIES—*contd.*

Held, that plaint had been rightly rejected. The discretion conferred on the Courts as to the joining of parties was very wide, and the party who refused to carry out the order of the Court did so at his own risk, and was not entitled to any relief.

It is not imperative on a party to appeal from every interlocutory order, from which an appeal is allowed under section 588. He may impugn it in an appeal from the decree under section 591. THAKAR DAS *v.* PRESIDENT, MUNICIPAL COMMITTEE, SIMLA.

36 P R 1890

36. *Necessary parties—Rules under the Judicature Act—Order XVI, Rule XI—Power of Appellate Court to add a party as co-Appelant—Civil Procedure Code*, 1882, *sections* 32, 582, *and* 559.

Property belonging to plaintiffs was sold to appellants in 1884—having been resisted in obtaining possession, the appellant sued the plaintiffs, among others, for recovery thereof. They obtained a decree in the Court of first instance and recovered possession in execution. Shortly afterwards they sold the property in dispute to K. and R., and placed them in possession. On plaintiffs' appeal the Chief Court reversed the decree of the first Court, and dismissed the claim. The plaintiffs having failed to obtain restitution in execution sued K. and R. for possession. The appellants were joined as defendants in the suit at their own request. On plaintiffs objection to their joinder—

Held, that they were not necessary parties to the suit as laid. To justify the addition of parties under section 32 they must be persons immediately affected by the demands of the plaintiffs in the action. *I. L. R. V* Mad.. 52, not followed. *I. L. R. V.* Cal. 882 ; *I. L. R.* IV Cal. 355 ; *I. L. R. II* All. 738 ; *I. L. R. IX* All. 447 referred to.

An appellate Court has no power either of its own motion, or on the application of the party concerned, to direct that a party to the suit, who has not appealed, be joined as an appellant in an appeal filed by another party to the original suit. *I. L. R. X* Bom., 227, followed. MADAN GOPAL *v.* SHAM SUNDAR.

118 P R 1890

37. One co-sharer in a house is not debarred from instituting a suit to enforce a right of pre-emption based on vicinage on the ground that the other co-sharers therein refuse to join in such suit. RAM ASRA *v.* GURDITTA.

42 P R 1891

38. *Cause of action—Joint promise to plaintiff and others—Right of plaintiff to sue alone.*

The plaintiff sued for a money decree on a promise to himself alone : the defendants denied the promise alleged by the plaintiff, and pleaded that the promise was one made to the plaintiff and two others

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JOINDER OF PARTIES—*contd.*

jointly. The plaintiff denied this allegation, and adhered to the claim as stated in the plaint.

Both the lower Courts found that the defendants' allegation was correct, and that the moneys claimed were due, if at all, to the plaintiff and two others. The lower Appellate Court further considered whether the plaintiff should be allowed to amend his plaint, and decided that it was useless to permit this, as the amended claim would be barred by limitation.

The plaintiff then preferred a further appeal to the Chief Court : he did not accept the finding as to the debt being due, if at all, to two other persons jointly with him, nor did he ask for permission to amend his plaint.

Held, by the Full Bench, that the Court, finding that the lower Courts had rightly held that the debt, if due, was not due to the plaintiff, but to the plaintiff and others jointly, the proper decree to make was one dismissing the appeal, thus confirming the decree dismissing the suit without going into the question whether the precise ground on which the lower Appellate Court refused to permit an amendment of the plaint was correct, or whether the plaintiff could be permitted to amend his plaint.

No. 156 *P. R.* 1889 (Full Bench), distinguished. BADRI DAS *v.* JAWALA PARSHAD.

86 P R 1891

39. *Civil Procedure Code, Chapter III—Misjoinder—Trespass—Separate and independent acts of defendants.*

Seventeen of the village proprietors sued thirty-six persons—co-sharers and non-proprietors—for a declaration that the defendants were not entitled to enclose certain lands of the village or to erect buildings thereon, and also praying for the demolition of the buildings so erected, and restoration of the land to its original condition.

The building by each defendant was his separate and independent act.

Held, on further appeal (the objection was taken in the Court of first instance), that the suit was bad for misjoinder.

[*Cf. I. L. R.* 14 *Calc.* 435]. MANGAL *v.* GIRDHARI.

127 P R 1892

40. *Pre-emption—Suit by two plaintiffs each entitled to claim, but not having joint right of pre-emption—Misjoinder—Withdrawal of one plaintiff, effect of.*

Held, that a suit by two individual plaintiffs, each entitled to claim pre-emption, but not having a joint right of pre-emption is bad for misjoinder, and that the Court should order the name of one of the plaintiffs to be struck out under section 32 of the Civii Procedure Code, 1882.

But *held*, further, that if one of such plaintiffs withdraws from the suit there is no legal impediment to the suit proceeding and a decision being arrived at on the respective rights of the remaining plaintiff and the purchaser.

JOINDER OF PARTIES—*contd.*

I. L. R. IV All. 259 and *I. L. R. V All.* 179, referred to. *No.* 10 *P. R.* 1884, distinguished. KHAWAS KHAN *v.* RASUL KHAN.
29 P R 1894

41. *Order adding name of any person as defendant—Civil Procedure Code,* 1882, *sections* 32, 588, 591—*Power of Chief Court to question order passed by lower Appellate Court under section* 588.

Held (*Stogdon J.* doubting as to this), that although an order under section 32, Civil Procedure Code, adding the name of any person as defendant when passed on appeal is, by section 588 of the Code, final as an order, it is capable under section 591 of being questioned as supporting a decree when the decree is appealed against, and that objections may be taken on appeal to all orders passed by Courts in the exercise of their original or appellate jurisdiction.

No. 156 *P. R.* 1883, and No. 36 *P. R.* 1890, referred to. HIRA NAND *v.* MAYA DAS.
83 P R 1894

42. *Custom—Pre-emption—Misjoinder of plaintiffs.*

Plaintiffs, who were the occupancy tenants of the village of Muhammadpur, sued for pre-emption on a sale of a village by one Mrs. Ingram by deed, dated 31st March 1891, in favour of the remaining defendants who were bankers of Panipat. It was objected *inter alia* that those of the plaintiffs who were occupancy tenants had joined with them as plaintiffs certain tenants-at-will who had no right to claim.

Held, that there is a material distinction between the case of pre-emption claimants joining strangers with them in a purchase which the Court is asked to set aside, and the case of such claimants allowing persons, who are not entitled, and who retire from the suit when the mistake is discovered, to join with them in suing. The mistake in the latter case can be corrected by the authority of the Court duly exercised, whereas when a purchase has been effected by pre-emptors and strangers combined the mischief can only be remedied by setting aside the sale. HIRA LAL *v.* IBRAHIM.
102 P R 1894

43. *Joint suit for pre-emption by numerous occupancy tenants.*

In a joint suit for pre-emption by several occupancy tenants and others it was objected on appeal that (1) the occupancy tenants had joined strangers in the plaint, (2) that plaintiffs were not the whole body of the occupancy tenants and (3) that as individual tenants they could not combine their claims in a single suit.

Held, that the said objections were unfounded. If the list of plaintiffs included any persons who were not occupancy tenants, the proper course was to take the objection at the first hearing and have their names struck out, which could be done without altering the plaint generally or affecting the right of the remaining plaintiffs to claim

JOINDER OF PARTIES—*concld.*

the whole property. Moreover, as it was not disputed that each occupancy tenant could sue separately for the whole property, or that the whole property would be divided equally among those tenants who succeeded in obaining a decree, there was no reason why the plaintiffs could not sue jointly, even upon the assumption that they did not represent the whole body of the tenants. RAM SUKH DAS *v.* FAZAL-UD-DIN.
19 P R 1898

44. *Joinder of parties—Suit by representative of deceased mortgagee, who has obtained certificate under Act VII of* 1889—*Necessity of impleading mortgagee's other heirs—Act VII of* 1889, *sections* 4, 16.

Plaintiff sued on the allegations that in 1883 defendant No. 1 mortgaged two houses to plaintiff's father for Rs. 2,000 and agreed to pay interest thereon at a specified rate, and the principal on demand; that plaintiff's father had died, and that plaintiff had obtained a certificate, under Act VII of 1889, for realisation of the debts due to the deceased, including the amount due on the said mortgage; that defendant No. 2 had purchased the said houses in execution sale with full knowledge of plaintiff's rights, and was now in possession thereof, and that defendant No. 1, despite demand, had failed to pay the principal money or any interest since *Sambat* 1945. Plaintiff therefore prayed for recovery of a sum of Rs. 3,192 and costs, with a lien on the property mortgaged and recoverable by auction sale, and that defendant No. 1 be made personally liable for the amount of the decree and future interest. For defendants it was contended that the suit must fail by reason of the non-Joinder as co-plaintiff of the deceased mortgagee's other son and co-heir, the latter being equally interested with plaintiff in the mortgage deed.

Held, that inasmuch as, according to the authorities, the relief sought in the present suit could not have been granted in its entirety, without a certificate under Act VII of 1889, the certificate-holder, who represented the estate *qua* the particular debt just as fully as an executor or administrator, was entitled to sue alone without impleading the other heirs of the deceased mortgagee. MEHR CHAND *v.* SYED MUHAMMAD LATIF.
99 P R 1898

JOINT ANCESTRAL PROPERTY.

See HINDU LAW—JOINT FAMILY.
JOINT PROPERTY.

JOINT CONTRACT.

See CONTRACT.

JOINT CONTRACTORS.

—*Suit by one of several—Addition of other plaintiffs after lapse of period of limitation.*
See LIMITATION ACT, 1877, SECTION 22.
8 P R 1886

JOINT FAMILY.

See ADVERSE POSSESSION.
49 P R 1870

See CIVIL PROCEDURE CODE, 1908, SECTION 80. **67 P R 1894**
HINDU FAMILY. **97 P R 1910**

See HINDU LAW—ALIENATION
6 P R 1894
103 P R 1894

See HINDU LAW—INHERITANCE
20 P R 1897

HINDU LAW—JOINT FAMILY, *Passim.*
MOHAMEDAN LAW—JOINT FAMILY, *Passim.*
PARTITION, *Passim.*
RELIGIOUS INSTITUTION.
4 P R 1870
38 P R 1872
119 P R 1879

SUCCESSION CERTIFICATE ACT, 1889, SECTION 4. **20 P R 1901**

JOINT LESSORS.

See JOINDER OF PARTIES.
87 P R 1886

JOINT MORTGAGE.

—*Joint Mortgage—Redemption of share of one of the mortgagors when admissible—Quære whether the mortgagor should first sue for partition.*

Where plaintiff as one of the *khewatdars* sued to redeem the whole land originally mortgaged by its sole owner Fazla, which in 1869 (after the death of Fazla without leaving heirs) became *shamilat-i-deh.*

Held that, though the mortgage was originally indivisible, it ceased to retain its indivisible character when, in 1869, the mortgagee as a *khewatdar* became part owner of the equity of redemption and accepted that position, and that consequently each co-sharer could redeem his share separately, but not the whole.

Held also, that it was not necessary for plaintiff to have the *shamilat* partitioned before he could redeem his share of the mortgage. SHANKAR DAS *v.* GOBIND RAM.
62 P R 1911

JOINT PROPERTY.

See COMMON LAND.
HINDU FAMILY.
PARTIES.
PARTITION.

1. *Joint proprietorship—Adverse possession.*

See ADVERSE POSSESSION.
61 P R 1870

2. *Joint owner—Erection of building by one, on common land—Absence of special damage to others.*

See COMMON LAND. **54 P R 1882**

JOINT PROPERTY—*contd.*

3. *Grant by Government—Joint and several interest—Survivorship.*
See CONSTRUCTION III.—OF DOCUMENT. **27 P R 1891**

4. *Joint property—Suit against proprietary body for share in such property—Confession of judgment by some of the defendants—Effect of such confession.*
See CO-SHARERS. **5 P R 1883 Rev.**

5. *Power of one co-sharer to materially alter joint property.*
See CO-SHARERS. **54 P R 1888**

6. *Right to sue—Suit by a sharer for possession of a portion only of the joint property—Right to maintain such suit.*
See CO-SHARER. **43 P R 1906**

7. *Suit to obtain separate possession of admitted share in joint family property.*
See COURT FEES ACT, 1870, SECTION 7 (IV (b). **104 P R 1895**

8. *Alienation by one co-sharer in joint holding.*
See CUSTOM I. A. 3.—ALIENATION BY MALE PROPRIETOR—SALES AND MORTGAGES IN FAVOUR OF STRANGERS. **167 P R 1888**

9. *Gift of undivided share of joint holding.*
See CUSTOM I.B. (a)—ALIENATION BY WIDOW—GIFT. **91 P R 1894**

10. *Party wall—Easement.*
See CUSTOM VII—EASEMENTS AND PROFITS. **82 P R 1888**

11. *Suit for half-share of property alleged to be joint ancestral—Declaratory decree.*
See DECLARATORY DECREE 1.—DECLARATION OF TITLE. **73 P R 1881**

12. *Mortgage by one joint owner—Suit by other joint owner that the mortgage does not bind him.*
See DECLARATORY DECREE 4.—ENFORCING OR REMOVING LIEN. **182 P R 1883**

13. *Hypothecation by father of ancestral property—Necessity—Rights of mortgagee.*
See HINDU LAW—ALIENATION. **166 P R 1882**

14. *Alienation by one co-parcener without consent of others—Voidable transaction—Ratification by co-parcener—Assent how established.*
See HINDU LAW—ALIENATION. **153 P R 1883**

15. *Power of member of joint Hindu family to dispose of his share in immovable property without consent of co-parcener.*
See HINDU LAW—ALIENATION. **103 P R 1894**

JOINT PROPERTY—*contd.*

16. *Mortgage of undivided share of joint property—Consent of co-sharer.*
See INTEREST. **114 P R 1894**

17. *Partition—Joint Estate—Mortgagee's claim to partition—Silence of* Wajib-ul-arz.
See JURISDICTION OF CIVIL OR REVENUE COURTS. **11 P R 1885 Rev.**

18. *Suit for winding up of partnership in land—Co-sharers in agricultural land.*
See JURISDICTION OF CIVIL OR REVENUE COURTS. **115 P R 1888**

19. *Suit for partition of joint family property—participation in profits.*
See LIMITATION ACT, 1859, SECTION 1. **142 P R 1890**

20. *Suit for share in joint family property—Limitation.*
See LIMITATION ACT, 1877, SCHEDULE II, ARTICLE 127. **18 P R 1886**
86 P R 1886

21. *Pre-emption—Suit by owner of a distinct share in joint property—Court granting decree in favour of plaintiff jointly with another owner of a distinct share in the same property who did not sue.*
See LIMITATION ACT, 1877, SCHEDULE II ARTICLE 120. **37 P R 1894**

22. *Devolution of estate upon several persons jointly—Entry of one on behalf of all.*
See LIMITATION ACT, 1877, ARTICLE 123. **97 P R 1890**

23. *Mortgage of part of joint property by some of the co-sharers.*
See MORTGAGE. **81 P R 1883**
149 P R 1884
78 P R 1885

24. *Lands specifically mortgaged allotted on partition to co-sharers of mortgagor—Liability to mortgage lien of lands allotted to mortgagor.*
See MORTGAGE—CONSTRUCTION. **101 P R 1894**

25. *Mortgage of share of joint holding—Part of mortgaged land already alienated at date of mortgage—Liability of mortgagor to make good deficit from remainder of holding to which he has subsequently succeeded.*
See MORTGAGE—CONSTRUCTION. **32 P R 1900**

26. *Mortgage of undivided property by a joint owner—Partition—Remedy of mortgagee.*
See MORTGAGE. **2 P R 1906**

27. *Pledge of joint family property by elder brothers, how far binding on minor brothers—Presumption.*
See MUHAMMADAN LAW—JOINT FAMILY. **66 P R 1899**

JOINT PROPERTY—*contd.*

28. *Suit by one of two joint-owners of a house—mode of effecting partition.*
See PARTITION. **29 P R 1882**

29. *Joint holding—Separate possession and enjoyment—Proof of partition.*
See PARTITION. **44 P R 1894**

30. *Partition of widow's share in joint holding—Right of reversioner to object to such partition being allowed.*
See PARTITION. **6 P R 1896 Rev.**

31. *Right of widow who has succeeded to her husband's interest in joint holding to claim partition—Grant of such prayer by Revenue officer—Jurisdiction of Civil Court to entertain subsequent suit by co-sharers objecting that widow is by custom not entitled to claim partition.*
See PARTITION. **82 P R 1898 F B**

32. *Partition—Suit to enforce a right to share in joint family property—Valuation for purposes of jurisdiction and Court-fee—Court Fees Act, 1870, section 7 (iv) (b)—Suits Valuation Act, 1870, section 8.*
See PARTITION. **28 P R 1903**

33. *Mortgagee's right to partition—Jurisdiction of Revenue Court—Procedure—Punjab Land Revenue Act,* 1887, *sections* 111, 115, 117.
See PARTITION. **4 P R 1903**

34. *Suit for partition of joint property by one co-sharer—Right of other co-sharers to obtain possession of shares alloted to them.*
See PARTITION. **23 P R 1905**

35. *Suit for possession of land and for damage by way of mesne profits—Joint holding—Amendment of plaint in the Chief Court into a suit for a declaratory decree only.*
See PLAINT, AMENDMENT OF. **106 P R 1893**

36. *Possession of one co-sharer—Adverse possession.*
See POSSESSION. **118 P R 1889**

37. *Suit for exclusive possession—Finding of joint ownership—Decree according to evidence.*
See POSSESSION. **17 P R 1893**

38. *Pre-emption—Right of co-sharers.*
See PRE-EMPTION, RIGHT OF, IN VILLAGES. **16 P R 1881**
54 P R 1882
56 P R 1882
107 P R 1882
6 P R 1883
See ib. WAJIB-UL-ARZ. **131 P R 1892**

39. *Suit for declaration of right to half share of joint undivided holding—Suit by co-sharer.*
See PUNJAB LAND REVENUE ACT, 1887, SECTION 158 (2) (XVII). **12 P R 1899**

JOINT PROPERTY—*contd.*

40. *Suit for partition of a portion only of the joint ancestral property.*
See RIGHT TO SUE. **77 P R 1887**

41. *Mortgage by co-sharer.*
Held, under the Punjab Civil Code, that a co-sharer in joint undivided property could mortgage his share without the knowledge or consent of his co-sharers. GOORDIT SINGH *v.* OOTUM SINGH. **31 P R 1870**

42. A co-sharer cannot make a gift of his share without the consent of the other co-sherers. JUGUT RAM *v.* LUCHMUN DASS. **48 P R 1870**

43. *Widow—Appointment of manager.*
The widow of a deceased shareholder in an undivided estate, cannot appoint a separate manager for herself; at all events, she cannot do so where there is a provision in the *wajib-ul-arz* disallowing such an appointment. SOHNE KHAN *v.* MUSSAMMAT BEGO. **7 P R 1872 Rev.**

44. *Suit by sharer in a joint* khata *for recovery of particular lands.*
Held, that a sharer in a joint *khata* cannot maintain a suit against his co-sharer for the recovery of particular lands unless he can show either that he has been forcibly dispossessed of those lands, or that he made them over to his co-sharer under a contract by virtue of which he is entitled to have them restored to him. JODH SINGH *v.* NATHA SINGH. **21 P R 1878**

45. *Landlord and Tenant—Ejectment—Suit by one of several co-sharers*
A suit by one of several co-shares in a plot of land to eject a tenant of such land will not lie. All the co-sharers must join in the action. ATTAR SINGH *v.* DEWA SINGH. **17 P R 1879**

46. *Liability to, acquisitions by members of undivided Muhammadan family—Onus of proving separate acquisition—Managing member possessed of a considerable separate income purchasing property—Question whether such property was separate or family property.*
In a suit for a share of certain family property (the parties to which were a Muhammadan family of the Gandapur tribe resident in the Kulachi *tahsil* of the Dera Ismail Khan district) it was contended that the plaintiffs had established a special family custom, under which, until partition, all property acquired by any member of the family, even without the aid of the family funds or the other members of the family, must be regarded as family property and liable to partition.
Held (by *Plowden* and *Burney*, JJ.), after a remand for further investigation of the question, that no such custom as above alleged had been proved to exist.
It appeared in the above case that the father of the parties to the suit left property

JOINT PROPERTY—*contd.*

which was not divided after his death, and which remained under the management of the defendant on behalf of the family, and that while this *nucleus* of family property was under the defendant's management, he had also a considerable separate income. On the question on whom the burden of proof rested as to whether property purchased by the defendant was purchased with family funds or from his own private means, *held* (per *Barkley* and *Burney*, JJ.), that it could not be presumed that all acquisitions were made by means of the family funds; that all that could fairly be held was that it was the defendant's duty, as manager of the family property, not to mix up the family income with his own so as to render it impossible to distinguish between them, and if he was unable to account satisfactorily for the income of the family property, and it appeared that he had made purchases with money in part derived from the family income and in part from his own private funds, it was for him to show how far such purchases had been made with his own funds, and so far as he was unable to do so, the property must be regarded as family property. It was for the defendant to prove that any property which he alleged was acquired by means of his private funds was so acquired (*vide* sections 102, 103 and 106 of the Evidence Act); and he might do so, either by proving that there was no surplus family income at all or by showing, if he could, how that income was applied, or in case he was by custom not liable to account for the expenditure of that income,* by direct proof that the price was paid from his private funds; or, if he could not show that any particular property was purchased wholly from his private funds, he might still show that it was in part so purchased, and so far as he was able to prove that this was the case, but no further, he would be entitled to be considered the owner of a corresponding share in the property.
Per *Plowden*, J.—That the manager of joint ancestral estate should be liable to account to his co-heirs for the property by him as manager, and for investments of the income and accumulation, is proper and just; but that the mere circumstance that he is a member of the same family with the co-heirs should make him liable to account for all sums earned by his individual and independant exertions, and the investments made of income and accumulations is not in accordance with general usage, and is on the face of it not in accordance with the generally received notions of natural justice. MUHAMMAD KALU KHAN *v.* SAIFULLA KHAN. **91 P R 1887**

47. *Possession—Lease by widow, out of possession, of part of her share in joint undivided* khata.

* No such custom was proved in the defendant's favor on the remand for further enquiry in the case.

JOINT PROPERTY—*concld.*

One Mussammat P. who was entitled to a widow's estate in a one-third share in a joint undivided *khata*, but was at the time out of possession, having on the 16th October 1889 leased part of her share to plaintiffs for 9 years, plaintiff sued her and other defendants for possession of the land, from which they alleged they had been ejected by defendants. The first Court dismissed the suit on the ground that Mussammat P. being out of possession at the time, was not justified in executing the lease, and the Divisional Court, on appeal confirmed the decision of the lower Court on the ground that as the *khata* was a joint undivided one, the lease was premature. Plaintiffs having appealed to the Chief Court:
Held, following *L. R. XI Ind. App.* 218, and *I. L. R. IX Bom.* 324, that the fact that Mussammat P. was out of possession at the time of the execution of the lease did not prevent plaintiffs, who had the same right of suit against her co-defendants as Mussammat P. would have had, but for the execution of the lease, from seeking to obtain possession of the land from defendants.
Held further, that the lease was not invalid on the ground that it disposed of a share in a joint undivided *khata*.
No. 148 *P. R.* 1882, cited. GANDU *v.* MUSSAMMAT PAREMI. **78 P R 1894**

JOINT PROMISEES.

1. *Non-joinder as plaintiffs of co-promisees.*
See CONTRACT ACT, 1872, SECTION 45. **159 P R 1889** **86 P R 1891**

2. *Joint promise to plaintiff and others—Right of plaintiff to sue alone.*
See JOINDER OF PARTIES. **86 P R 1891**

JOINT RIGHTS.

1. *Devolution of joint rights.*
See CONTRACT. **175 P R 1882**

2. *Joint rights of pre-emption.*
See PRE-EMPTION. **54 P R 1882** **17 P R 1884**

JOINT STOCK COMPANY.

See BANK.
PUBLIC COMPANY.

JOINT TENANT.

1. *Right of occupancy—Succession—Survivorship.*
See OCCUPANCY RIGHT
180 P R 1882
9 P R 1891 Rev.
109 P R 1894 F. B.

JOINT TENANT—*concld.*

2. *Management of a Hindu religious or charitable institution is not on the footing of a joint tenancy.*

See Religious Institution.

140 P R 1892

3. *Joint tenants—Gift by one joint tenant of his share to another joint tenant—Suit by reversioners—Custom.*

The plaintiffs, the sons of one brother, sued to set aside a gift made by a childless occupancy tenant of his occupancy rights in *khatas* A. and B. in favour of his nephews, the sons of another brother. It appeared that the occupancy rights in *khata* A. were held jointly by the defendants, whilst *khata* B. was held jointly by plaintiffs and defendants.

Held, that the plaintiffs' claim must be dismissed as regards both *khatas*.

As regards *khata* A., the defendants must be considered to represent a single tenant, each defendant having a right of survivorship, and the plaintiffs therefore were not the next reversioners and had no right to interfere.

Similarly as regards *khata* B., the defendants were also joint tenants with the donor, and there was nothing to show that one joint tenant could not gift his share to another joint tenant, or that such a gift was opposed to custom or to the provisions of the *Wajib-ul-arz*.

Gunda Singh v. *Ghulab Singh* (No. 159 *P. R.*, 1879), cited.—Ahmad Din *v.* Haji.

56 P R 1887

JOINT WRONG DOERS.

See Contribution. **32 P R 1866**
7 P R 1901

JUDGE.

See Disqualification of Judge.

—*Power of Judge to decide case on evidence taken down by his predecessor—Civil Procedure Code*, 1882, *sections* 191, 198.

Held, that a Judge who has not heard any part of the evidence and before whom no part of proceedings have taken place is not competent to proceed to judgment until he has given the parties an opportunity of appearing before him and stating their respective cases. Judgments recorded without observing these essential rules of procedure are illegal and must be set aside.

Jagram Das v. *Narain Lal* (*I. L. R. VII All.* 857) *Afzal-un-Nissa Begam* v. *Al Ali* (*I. L. R. VIII All.* 35), *Sirdar Mahtab Singh v. Mussammat Sobha Kour* (110 *P. R.* 1886), referred to. Sher Khan *v.* Bahadur Shah.

91 P R 1904

JUDGE OF THE ZILLA DIWANI ADALAT.

See Mortgage. **55 P R 1883**

JUDGMENT.

See Foreign Judgment.
Resjudicata.

1. *Suit on decree or judgment.*

See Cause of Action.—II. Fresh.

14 P R 1869
24 P R 1869
4 P R 1874
16 P R 1874
93 P R 1879

2. *Want of knowledge—Review of Judgment—Informalities in presenting application for review.*

See Cause of Action.—IV. Miscellaneous. **17 P R 1897**

3. *Judgment of Small Cause Courts—Contents of—Reasons for decision when question of law involved.*

See Civil Procedure Code, 1908, O. XX. R. 4 **78 P R 1895**
57 P R 1901

4. *Decree not in conformity with judgment—Application by decree-holder to amend decree rejected as time-barred.*

See Civil Procedure Code, 1908, section 152. **12 P R 1897**

5. *Decree not in conformity with judgment—Application by plaintiff to amend decree after it has been upheld by the Chief Court.*

See Civil Procedure Code, 1908, section 152. **59 P R 1900**

6. *Death of plaintiff after conclusion of case, but before delivery of judgment—Decree drawn up in favour of deceased plaintiff.*

See Civil Procedure Code, 1908, O. XXII, R. 3. **20 P R 1898**

7. *Judgments of Courts of final appeal.*

See Civil Procedure Code, 1908, O. XLI R. 31. **72 P R 1890**

8. *Judgment of a Collector in appeal.*

See Civil Procedure Code, 1908, O. XLI. R. 31 **2 P R 1893 Rev.**

9. *Review of judgment.*

See Civil Procedure Code, 1908, O. XLVII. R. 1. **158 P R 1889**

Civil Procedure Code, 1908, O. XLVII. R. 2. **57 P R 1892**
62 P R 1895

10. *Review of judgment—Application* in forma pauperis.

See Court Fees Act, 1870, 1st Schedule, article 4. **91 P R 1895**

11. *Review of judgment.*

See Review.

12. *Erroneous construction of a judgment is not material irregularity within the meaning of section* 622, *Civil Procedure Code.*

See Revision in Civil Cases.

60 P R 1891

JUDGMENT.—*concld.*

13. Judgments not *inter partes* are admissible in evidence when they relate to a question of *custom* which is a matter of a public nature within the meaning of section 42, Evidence Act. Bunyad Ali *v* Faiz Muhammad. **173 P R 1889**

14. In a suit for pre-emption after examining the witnesses and hearing arguments the Judge recorded on order that the case was closed and that the judgment would be delivered on a certain day. Subsequently the Judge wrote his judgment a week previous to the date fixed for its delivery and dated it on the day on which it was written. *Held*, that the Judge was bound to wait until the date fixed and not to announce judgment at an earlier date, and that in neglecting to take this course his action was in flagrant violation of the provisions of law, and that therefore the judgment was a a nullity, Paras Ram *v.* Joti Parshad. **61 P R 1904**

15. A judgment in a previous litigation which is not between the same parties and where there is no question as to the existence of a right or custom is not relevant either under section 13 or any other section of the Evidence Act. Sobha Singh *v.* Nand Singh.

56 P R 1906

JUDGMENT, ARREST BEFORE.

See Arrest.

JUDGMENT DEBT.

A judgment debt is joint and several and judgment-debtors are jointly and severally responsible. Kheta Mull *v.* Jowahir Mull.

4 P R 1874

JUDGMENT DEBTOR AND CREDITOR.

See Arrest.
Attachment.
Execution of Decree.
Insolvency. **75 P R 1905 F. B.**

JUDGMENT DEFECTIVE.

See Appellate Court, Powers and duties of.

6 P R 1870
49 P R 1873
45 P R 1875

JUDGMENT—FORM AND CONTENTS OF.

See Appeallate Court, Powers and duties of.

24 P R 1881
91 P R 1882
28 P R 1886

JUDGMENT IN ACCORDANCE WITH AWARD.

See APPEAL IV.—IN ARBTRATION CASES.
33 P R 1881
70 P R 1881
72 P R 1881
4 P R 1882
48 P R 1882
184 P R 1882
17 P R 1883
47 P R 1883
109 P R 1883
130 P R 1883
170 P R 1883

See ARBITRATION.
50 P R 1881
134 P R 1888
55 P R1889
58 P R 1889
167 P R 1889
26 P R 1890
74 P R 1894 F. B.
60 P R 1896
98 P R 1900

JUDGMENT IN OTHER CASES—ADMISSIBLITY OF, IN EVIDENCE.

See EVIDENCE ACT, 1872, SECTION 43. **32 P R 1874**
See JUDGMENT. **56 P R 1906**

JUDICIAL ASSISTANT.

1. *Jurisdiction of Judicial Assistant—Subordination to District Court.*

See CIVIL PROCEDURE CODE, 1908 SECTION 86. **51 P R 1886**
See MORTGAGE. **55 P R 1883**

2. *Small Cause Court Judges—General Notification investing Judicial Assistants with powers—Transfer.*

By a general notification the Judicial Assistant of Jullundur, Hoshiarpur, Ludhiana, Peshawar, and Simla were invested with the powers of Small Cause Court Judges. Subsequently a new officer was appointed Judicial Assistant of Jullundur. *Held*, that the terms of the notification were sufficient to invest such new officer with powers as a Small Cause Court Judge as soon as he became Judicial Assistant. HAZURI *v.* BUR SINGH. **52 P R 1877**

3. *Transfer without re-investment—Act XIV of* 1875, *section* 3—*Act XIX of* 1865, *section* 11—*Act XXVII of* 1860, *section* 3.

By Notification No 3532, dated 24th September 1875, Captain M. was appointed Judicial Assistant at Karnal, and invested "under "section 3 of Act XIV of 1875, with the "powers of a Deputy Commissioner" subsequently he was transferred in the same capacity to Delhi without being re-invested with powers as above. At Delhi as Judicial Assistant Captain M. heard and disposed of a case under Act XXVII of 1860.

Held, by a Full Bench, that before the passing of Act XIV of 1875 the Civil jurisdiction of a Deputy Commissioner in the Punjab was

JUDICIAL ASSISTANT—*concld.*

two-fold, *viz.*, that conferred on him by or under Act XIX of 1865, section 11, as Deputy Commissioner and that conferred on him by or under special Acts.

That as regards the Punjab, the Court of a Deputy Commissioner was the Court indicated in a special Act, whether such Court was described as *the* principal or *a* principal Civil Court of original jurisdiction.

That Act XIV of 1875 must be construed with reference to the system in force before it was enacted, and that therefore, the Local Government was competent to invest a Judicial Assistant, under section 3 of the Act, with power to exercise the jurisdiction conferred upon a Deputy Commissioner by or under special Acts at the date of the passing of that Act.

Held also, that as the Notification of 1875 contained no limitation indicating expressly that the power to exercise the special jurisdiction of a Deputy Commissioner's Court was not intended to be conferred it must be held that the Local Government intended by it to confer the power to exercise all such jurisdiction as a Deputy Commissioner could exercise as such or as a principal Civil Court of original jurisdiction and, therefore, that Captain M. had jurisdiction to entertain an application under Act XXVII of 1860.

Held, further, by the Full Bench, that as the Notification transferring Captain M. from Karnal to Delhi described him as judicial Assistant, that expression sufficiently indicated the intention of Government that he should exercise at Delhi the powers with which he had been previously invested under the first Notification and therefore, that he had jurisdiction to exercise such powers at Delhi without being re-invested. ABDUL RUHMAN *v.* MAHOMED ISMAIL. **54 P R 1877**

JUDICIAL DISCRETION.

See PRE-EMPTION. **178 P R 1882**

—*Under Act, XL of* 1858.
See CERTIFICATE UNDER ACT XL OF 1858. **25 P R 1881**

—*As to costs.*
See CIVIL PROCEDURE CODE, 1908, O. XX, R. 6. **21 P R 1883**

—*In admitting appeal after time.*
See LIMITATION ACT, 1877, SECTION 5. **106 P R 1885**
92 P R 1886

—*Under Act, IX of* 1861.
See MINOR. **42 P R 1882**
26 P R 1886

JUDICIAL OFFICERS, PROTECTION TO.

1. *Act XVIII of* 1850—*Protection to Judicial Officers.*

A obtained, on appeal, a decree with costs against *B*, for possession of a house, valued at Rs. 1,750. *A's* pleader applied to *C*, Assistant Commissioner, for execution of the decree as a money decree. *C* ordered the application to be tested; the record-keeper

JUDICIAL OFFICERS, PROTECTION TO—*concld.*

pointed out some mistakes in the items for costs. *C* replied to the record-keeper that his report was obscure; the record-keeper wrote in answer that *A's* decree was for Rs. 1,750 and added a memo. of costs, the whole amounting to Rs. 2,113-8-0. *C* considerred these figures, and corrected the memo. of costs, the altered total being Rs. 2,489. *C* issued an order to *D*, a banker, to remit to Court Rs. 2,489, which were in deposit with *D*, to the credit of *B*. Before issuing the order, *C*. read the order of the Appellate Court decreeing possession of the house. *D*. paid the amount. Afterwards *D* discovered that the decree was for possession of the house and not for its value, and pointed out the mistake to *C*, but the money had by this time been paid away. In a suit by *D* against *C*, to recover the amount so paid, held, that *C*. had acted *bonâ fide* within his jurisdiction in treating the decree of the Appellate Court as a money decree and his mistake was protected by section 1 of Act XVIII of 1850.

Per CUNNIGHAM, J.—The Act exempts Judicial Officers from legal liability in every instance, except when without reasonable excuse, they transcend the limits of their jurisdiction. BANK OF UPPER INDIA *v.* O'BRIEN. **57 P R 1870**

2. *Act XVIII of* 1850—*Protection of Judicial Officers.*

Held, *per* BOULNOIS, J. (LINDSAY, J., concurring), that if a Magistrate honestly, though mistakenly, believes that a case is presented to him which calls for a decision, and which he has jurisdiction to entertain, and does not act in mere abuse of his office, he is protected by Act XVIII of 1850. The grounds of his belief mav be inquired into; but if it is found that he in fact believed in his jurisdiction *bonâ fide*, irregularities and illegalities in the exercise of it will not deprive him of the protection of the Act. *Per* CAMPBELL, J.—If the Court in which a suit against a Magistrate is filed finds that the defendant in good faith (that is after proper care and consideration) believed he had jurisdiction to do the act complained of, the suit must be at once dismissed, and no further inquiry can be made as to whether the defendant's proceedings showed irregularity or want of judgment, &c. O'CONNOR *v.* PARSON. **58 P R 1871**

JUDICIAL SEPARATION.

—*Jurisdiction of Court over parties living abroad—Cruelty—Charge of unnatural offence by wife without corroboration—Divorce Act*, 1869, *sections* 3, 22.
See DIVORCE. **77 P R 1905**

JURISDICTION.

See APPELATE COURT—POWERS AND DUTIES OF.
See JURISDICTION OF CIVIL OR REVENUE COURTS.
See SMALL CAUSE COURT—JURISDICTION OF.

JURISDICTION—*contd.*

1. *Hostile seizure—Regulations III of 1793 and II of 1803—Jurisdiction.*
See ACT OF STATE. **6 P R 1867**

2. *Resumption of rent-free lands by the British Government—Jurisdiction of Civil Courts.*
See ACT OF STATE. **1 P R 1875 P C**

3. *Ferry rights—Jurisdiction.*
See ACT OF STATE. **56 P R 1876**

4. *Jurisdiction of British Courts to re-open executive orders of foreign state.*
See ACT OF STATE. **36 P R 1877**

5. *Jurisdiction of Civil Court to question act done in exercise of sovereign powers.*
See ACT OF STATE. **105 P R 1908**

6. *Appeal—Remand—Dismissal for default without notice to appellant—Jurisdiction.*
See APPELLATE COURT - POWERS AND DUTIES OF. **90 P R 1879**

7. *Appeal admitted from order of Lower Court—Review by Lower Court of order appealed from—Jurisdiction.*
See APPELLATE COURT—POWERS AND DUTIES OF. **6 P R 1870**

8. *Objection as to jurisdiction raised after remand for fresh decision on specific issues.*
See APPELLATE COURT—POWERS AND DUTIES OF. **54 P R 1883**

9. *Munsiff returning plaint on ground that case was cognizable by Small Cause Court—District Judge on appeal reversing Munsiff's order and directing him to try the suit—Munsiff refusing to proceed on ground that if the case was not a small cause the District Judge had no jurisdiction—Appealable order—Course of appeal—Revision.*
See APPELLATE COURT—POWERS AND DUTIES OF. **36 P R 1887**

10. *Small cause under Rs. 500 in value—Claim involving property exceeding Rs. 500 in value—Further appeal.*
See APPEAL—VIII. SECOND, **95 P R 1887**

11. *Share in well for irrigating agricultural land—Land suit.*
See APPEAL - III. COURSE OF APPEAL. **62 P R 1891**

12. *Suit for redemption of mortgage.*
See APPEAL—III. COURSE OF APPEAL. **63 P R 1891**

13. *Right to use of water—Land suit.*
See APPEAL—II. COMPETENCY OF. **1 P R 1892 F B**

14. *Claim for share in an orchard, i.e. of the fruit trees.*
See APPEAL—VIII. SECOND. **15 P R 1892 F B**

15. *Village graveyard—Land suit.*
See APPEAL—VIII. SECOND. **20 P R 1892**

16. *Claim for date trees—Land suit.*
See APPEAL—II. COMPETENCY OF. **46 P R 1893**

17. *Punjab Courts Act,* 1884, *section* (40) (2) *(a)—Pre-emption suit, further appeal.*
See APPEAL—VIII. SECOND. **3 P R 1896**

18. *Value of suit for purposes of Court-fee and of jurisdiction—Suits Valuation Act,* 1887, *section* 8—*Court Fees Act,* 1870, *section* 7 *(iv) (e)—Further appeal.*
See APPEAL XI. VALUATION OF. **50 P R 196**

JURISDICTION—*contd.*

19. *Failure to exercise jurisdiction vested by law—Revision.*
See APPEAL—II. COMPETENCY OF. **54 P R 1896**

20. *Value of suit—Course of appeal.*
See APPEAL—VI. PROCEDURE IN. **62 P R 1896**

21. *Unclassed suit of less than Rs.* 100 *in value—Appeal.*
See APPEAL—III. COURSE OF APPEAL. **86 P R 1896**

22. *Suit for damages for wrongful seizure of cattle—Jurisdiction of Civil Courts.*
See CATTLE TRESPASS ACT, 1871, SECTION 20. **92 P R 1877**

23. *Suit for possession of immovable property situate in different districts.*
See CAUSE OF ACTION—V. MISJOINDER. **91 P R 1898**

24. *What constitutes a "dwelling" by a defendant to give jurisdiction.*
See CIVIL PROCEDURE CODE, 1908, SECTION 16. **63 P R 1870** **17 P R 1871**

25. *Administration suit—Jurisdiction of Civil Court.*
See CIVIL PROCEDURE CODE, 1908, O. XX, R. 13. **68 P R 1881**

26. *Jurisdiction of Court to execute decree in excess of the limits of its pecuniary jurisdiction as an original Court.*
See CIVIL PROCEDURE CODE, 1908, SECTION 6. **9 P R 1901**

27. *Suit heard by Court other than the Court of the lowest grade competent to hear it—Irregularity—Reversal of decree.*
See CIVIL PROCEDURE CODE, 1908, SECTION 15. **184 P R 1888**

28. *Suit for determination of right to, or interest in, immovable property.*
See CIVIL PROCEDURE CODE, 1908, SECTION 16. **39 P R 1891**

29. *Suit for possession of land—Uncertainty as to the Court's jurisdiction.*
See CIVIL PROCEDURE CODE, 1908, SECTION 18. **1 P R 1901**

30. *Suits for debts and personal actions against military officers not residing within the jurisdiction of the Court where the cause of action arose.*
See CIVIL PROCEDURE CODE, 1908, SECTION 20. **93 P R 1900**

31. *Suit on a* hundi *by a holder and endorsee against the drawer, acceptor and subsequent endorsers.*
See CIVIL PROCEDURE CODE, 1908, SECTION 20. **57 P R 1900**

32. *Suit for immovable property situate in different districts—Sanction.*
See CIVIL PROCEDURE CODE, 1908, SECTION 17. **10 P R 1891**

33. *Suit instituted in Cantonment Small Cause Court for sum beyond the jurisdiction of the then incumbent of the Court—Transfer of case by District Judge to his own court—Finality of order of District Judge.*
See CIVIL PROCEDURE CODE, 1908, SECTION 24. **80 P R 1887**

JURISDICTION—*contd.*

34. *Jurisdiction of District Judge to re-open* ex parte *decree which was appealed against to the Chief Court by the plaintiff.*
See CIVIL PROCEDURE CODE, 1908, O. IX, R. 13. **4 P R 1901**

35. *Application by plaintiff to amend decree after it has been upheld by the Chief Court.*
See CIVIL PROCEDURE CODE, 1908, SECTION 152. **59 P R 1900**

36. *Civil Procedure Code,* 1882, *sections* 25, 223, 244—*Jurisdiction—Execution of decree—Sale of property outside jurisdiction of Court in execution of decree—Question relating to the execution of decree—Separate suit.*
See CIVIL PROCEDURE CODE, 1908, SECTIONS 38, 39, 41. **8 P R 1902**

37. *Power of Court to which decree has been transmitted to transmit to another Court for execution.*
See CIVIL PROCEDURE CODE, 1908, SECTION 42. **83 P R 1887**

38. *Jurisdiction of Court to execute decree in excess of the limits of its pecuniary jurisdiction as an original Court.*
See CIVIL PROCEDURE CODE, 1908, SECTION 47. **70 P R 1897**
N. B.—Overruling 31 *P. R.* 1887, *vide* UNDER C. P. CODE, SECTION 39.

39. *Rateable distribution among rival decree-holders—Priority.*
See CIVIL PROCEDURE CODE, 1908, SECTION 73. **60 P R 1892**

40. *Suit for damages for malicious prosecution—Cause of action accruing in foreign State but suit instituted in British India.*
See CIVIL PROCEDURE CODE, 1908, O. XXII, R. 4. **4 P R 1897**

41. *Suit against ruling chief—Institution of suit without obtaining the consent of Governor-General in Council—Waiver by defendant of objection of consent—Effect of such waiver.*
See CIVIL PROCEDURE CODE, 1908, SECTION 86. **40 P R 1903**

42. *Place of suing—Contract with commission agent for supply of goods—Contract made by latter—Place where contract completed.*
See CONTRACT ACT, 1872, SECTION 4. **76 P R 1896**

43. *Jurisdiction—Suit for possession of land—Value of subject-matter—Court Fees Act,* 1870, *section* 7, *clause* 10.
See CONTRACT ACT, SECTION 23. **37 P R 1901**

44. *Suit to wind up a partnership business—Jurisdiction.*
See CONTRACT ACT, 1872, SECTION 265. **35 P R 1878**

45. *Suit by mortgagee for possession of land—Foreclosure under Regulation XVII of* 1806—*Value of suit for purposes of jurisdiction.*
See COURT FEES ACT, 1870, SECTION 7 (v) **20 P R 1893**

46. *Suit for removal of* Mahant *for declaration of right to appoint a successor and*

JURISDICTION—*contd.*

to enforce the provisions of a will—Value of relief sought—Jurisdiction.

See COURT FEES ACT, 1870, SECTION 7 (*iv*) (*c*). **58 P R 1893**

47. *Court Fees Act,* 1870, *section* 7 (*iv*) (*d*)—*Valuation of suit for purposes of jurisdiction and Court fee—Suit for an injunction where no damages are claimed—Suits Valuation Act, sections* 8, 9.

See COURT FEES ACT, 1870, SECTION 7 (*iv*) (*d*). **63 P R 1902**

48. *Suit for custody of minor—Jurisdiction of Court other than District Court—Munsif of* 1st *class.*

See CUSTODY OF MINOR. **10 P R 1897**

49. *To interfere and avoid unconscionable bargains and transactions obtained by undue influence, fraud, or misrepresentation.*

See DEBTOR AND CREDITOR. **115 P R 1908**

50. *Libel—Publication—Document sent by post—Jurisdiction*

See DEFAMATION. **33 P R 1874**

51. *Jurisdiction of Courts in British India to hear suits for dissolution of marriage when the parties were married in England and have an English domicile.*

See DIVORCE. **64 P R 1900**

52. *Judicial Separation—Jurisdiction of Court over parties living abroad.*

See DIVORCE. **77 P R 1905**

53. *Decision of a Revenue Court without jurisdiction—Subsequent suit by plaintiff before a Civil Court—Competency to question the jurisdiction of the Revenue Court—Equitable estoppel.*

See ESTOPPEL. **126 P R 1906**

54. *Suit on foreign judgment—Decree passed in* absentum *and* ex parte *by foreign Court—Jurisdiction of Court.*

See FOREIGN JUDGMENT. **112 P R 1894 P C**

55. *Suit for a declaration that the defendant is not the lawful wife of the plaintiff—Jurisdiction of Civil Court to entertain such a suit when an order for maintenance passed under section* 448 *of the Criminal Procedure Code is in force against the plaintiff.*

See HUSBAND AND WIFE. **26 P R 1903**

56. *Act IV of* 1872, *section* 25—*Jurisdiction of Court—Residence.*

See INSOLVENCY. **42 P R 1873**
51 P R 1874

57. *Of Sub-judge invested under section* 360, *Civil Procedure Code, acting without order from District Court.*

See INSOLVENCY. **69 P R 1888**

58. *Place of suing.*

See JURISDICTION OF CIVIL OR REVENUE COURTS. **115 P R 1883**

59. *Under the Land Acquisition Act.*

See LAND ACQUISITION ACT, 1870. **140 P R 1888**

60. *Exclusion of time of proceeding* bona

JURISDICTION—*contd.*

fide *in Court without jurisdiction—Meaning of term jurisdiction.*

See LIMITATION ACT, 1877, SECTION 14. **45 P R 1893**

61. *Exclusion of time of proceeding* bona fide *in Court without jurisdiction—Cause of a like nature with want of jurisdiction.*

See LIMITATION ACT, 1877, SECTION 14. **19 P R 1888**

62. *Defect of jurisdiction or other like cause.*

See LIMITATION ACT, 1877, SECTION 14. **34 P R 1898**

63. *Where error in partition proceedings is alleged.*

See LIMITATION ACT, 1877, SCHEDULE II, ARTICLE 144. **116 P R 1900**

64. *Civil Procedure Code,* 1882, *section* 244—*Mesne profits—Application for recovery of mesne profits which accrued between the date of decree and of delivery of possession—Jurisdiction—Value of suit—Course of appeal—Punjab Courts Act,* 1884, *section* 39.

See MESNE PROFITS. **29 P R 1902**

65. *Suits against soldiers and military officers.*

See MUTINY ACT. **1 P R 1871**
58 P R 1872
83 P R 1875
33 P R 1879

66. *Partition—Suit to enforce a right to share in joint family property—Valuation for purposes of jurisdiction and Court-fee—Court Fees Act,* 1870, *section* 7 (*iv*) (*b*)—*Suits Valuation Act,* 1870, *section* 8.

See PARTITION. **28 P R 1903**

67. *Civil Courts' jurisdiction to entertain a suit which included a claim to* muafi *without a certificate required by section* 6 *of the Pensions Act,* 1871.

See PENSIONS ACT, 1871, SECTION 4. **25 P R 1900**

See JURISDICTION OF CIVIL OR REVENUE COURT. **11 P R 1887**
53 P R 1890
77 P R 1891

68. *Jurisdiction—Objection as to, taken after investigation on merits.*

See PLAINT. **126 P R 1881**

69. *Erroneous valuation of suit or appeal—Return of plaint—Practice.*

See PLAINT, RETURN OF. **63 P R 1897**

70. *Of Probate Court.*

See PROBATE AND ADMINISTRATION ACT.

71. *Application for probate—Contentious proceedings—Courts competent to try and dispose of proceeding.*

See PROBATE AND ADMINISTRATION ACT, 1881, SECTION 83. **44 P R 1893**

72. *Order for distribution of civil business within a district—Jurisdiction of Court directed to hear civil cases arising in a particular part of a district to hear other cases arising within the local limits of its jurisdiction.*

See PUNJAB COURTS ACT (XVIII OF 1884, SECTION 35). **71 P R 1885**

JURISDICTION—*contd.*

73. *Jurisdiction—Suit for pre-emption—Value of suit—Course of appeal*

See PUNJAB COURTS ACT, 1884, SECTION 39. **32 P R 1901**

74. *Business and functions of District Court—Power of District Judge to assign function of trying a case to additional District Court—Case in excess of pecuniary limits of latter Court's jurisdiction.*

See PUNJAB COURTS ACT, 1884, SECTION 75. **46 P R 1898**

75. *Refusal of Municipal Committee to sanction re-erection of a projection—Discretion of Committee—Jurisdiction of Civil Court.*

See PUNJAB MUNICIPAL ACT, 1891, SECTION 91. **9 P R 1898**

76. *Civil Court's jurisdiction to set aside Municipal Committee's order.*

See PUNJAB MUNICIPAL ACT, 1890, SECTION 92. **52 P R 1900**

77. *Jurisdiction of Hazara Civil Court over Upper Tanawal tract, effect of Regulation II of* 1900 *on suits pending at the time the Regulation came into force.*

See REGULATION II OF 1900. **73 P R 1904**

78. *Jurisdiction of Civil Court to go into the question of a* Mahant's *conduct after it has held that a* bhekh *has power to depose a* Mahant *for misconduct and had actually deposed him.*

See RELIGIOUS INSTITUTION **3 P R 1899**

79. *Suits with respect to religious endowment—Power of Court to remove manager from the management of endowed property.*

See RELIGIOUS INSTITUTION. **95 P R 1900**

80. Res judicata, *plea of—Competency of inferior Court to enquire the jurisdiction of superior Court which passed the former decree—Consent to jurisdiction.*

See RES JUDICATA. **37 P R 1903**

81. *Wrongful with holding of exercise of jurisdiction—Act XXIII of* 1861, *section* 35.

See REVISION. **36 P R 1872**

82. *Court acting illegally in exercise of jurisdiction.*

See REVISION. **64 P R 1885**

83. *Court exercising a jurisdiction not vested in it by law.*

See REVISION. **46 P R 1886**
70 P R 1886
111 P R 1886

84. *Power of Chief Court on revision to consider lower appellate Court's findings on facts relative to question of jurisdiction.*

See REVISION. **44 P R 1899**

85. *Jurisdiction over a soldier in active military employ in claims over thirty pounds.*

See SMALL CAUSE COURT—JURISDICTION OF. **125 P R 1881**

86. *Suit for share of offerings received for a specified period.*

See SMALL CAUSE COURT—JURISDICTION OF. **84 P R 1892**

See SMALL CAUSE COURT, ACT, 1865, SECTION 6. **188 P R 1888**

JURISDICTION—*contd.*

87. *Small cause of value exceeding Rs. 50 in value—Jurisdiction of presiding Judge limited to Rs. 50—Procedure.*

See SMALL CAUSE COURTS—JURISDICTION OF. **74 P R 1896**

88. *Test of jurisdiction—Suit for share of offerings at shrine.—Money had and received—Defendant's plea raising title.*

See SMALL CAUSE COURT ACT, 1865, SECTION 6. **188 P R 1888**

89. *Valuation of suit for purposes of jurisdiction—Suits Valuation Act, 1887, sections 8, 9—Court Fees Act, 1870, section 7, clause (iv).*

See VALUATION OF SUIT. **6 P R 1904**

90. *Value for purpose of jurisdiction—Suit to set aside a sale of land assessed to Government revenue.*

See SUIT, VALUE OF. **58 P R 1905**

91. *Suit for pre-emption of land—Value of relief sought—Finding of Court exceeding its pecuniary limits of jurisdiction—Effect of.*

See VALUATION OF SUIT. **16 P R 1908 F B**

92. *Suit to establish right to attached property—Claim against judgment-debtor for declaration of title—Value of subject-matter.*

See VALUATION OF SUIT. **94 P R 1908 F B**

93. *Judge trying a suit in which he has an interest.*

In a case in which exception was taken to the jurisdiction of the Judge, Small Cause Court, Lahore, on the ground that he was a share-holder in a club against which the suit was brought, *held*, that as his was the only Court which had jurisdiction to try the case, the maxim *Nemo debet esse judex in propriâ suâ causâ*, could not be applied. KIRPA RAM *v.* THE SECY. AND MANAGER OF THE PUNJAB CLUB. **12 P R 1866 Ref.**

94. *Alien.*

A transaction between aliens occurring in foreign territory, can be adjudicated upon by a British Court, when the parties happen to be for the time in British territory. If the *lex fori* clashes with the *lex loci contractus*, the former must prevail; if not, the latter is the rule of decision. SHAH GOOL *v.* IKRAM. **88 P R 1867**

95. *Rajah of Kapurthalla.*

Held, that the wife of the Rajah of Kapurthalla was not amenable to a British Court for breach of a contract made in the Rajah's territory with one of his subjects. In assuming her husband's status, the lady, who was a Christain and an English woman, must be regarded, not merely as a Hindu, but as the wife of the Rajah, whose complete political independence the British Government had recognized. Whatever that political independence might mean, it must be taken to imply exemption from the jurisdiction of the British Courts in respect of causes of action arising between the Rajah and his own subjects. MOOSTAK RAE *v.* LADY RUNDHEER SINGH. **54 P R 1870**

JURISDICTION—*contd.*

96. By the term "exceeding his jurisdiction" by a Judicial Officer, ought to be understood the officer assuming to do something which the Act under which he is proceeding could by no possibility justify (*per* CUNNINGHAM, J). BANK OF UPPER INDIA *v.* O'BRIEN. **57 P R 1870**

97. *Per* LINDSAY, J.—The word "jurisdiction" does not merely mean the power of exercising authority, the right to determine a suit. It also means the limit within which such power and such right may be exercised. If the judge in his decree goes beyond that limit, he passes an order without jurisdiction. GIRDHARI LALL *v.* IMRAT MUL. **39 P R 1873**

98. No Court of limited jurisdiction can give itself jurisdiction by a wrong decision on a point collateral to the merits of the case, upon which the limit to its jurisdiction depends. Matter of objection to the jurisdiction must be extrinsic to the adjudication impeached, and the objection cannot rest on the ground that the Court has erroneously determined issues or matters which it had generally jurisdiction to try. SURJAN SINGH *v.* NAJABAT KHAN. **83 P R 1874**

99. In a suit between master and servant, the latter having entered into a contract in London for services to be performed at Simla, *held*, that the contract must be governed by the law of the country where performance was to take place (*viz.*, India) and that by that law the period of notice would be one month. COX *v.* THE GOVERNORS OF BISHOP COTTON'S SCHOOL. **85 P R 1874**

100. Courts have jurisdiction to administer bad law and to fall into errors: in other words, it is not simply an error of law or of fact, apparent in the order of a subordinate Court, that will justify the Chief Court in cancelling the order as made without jurisdiction (*per* BOULNOIS, J). MUSTAFA *v.* SHIBBU. **51 P R 1875**

101. *Rajah of Nahun—Trading in Umballa—Jurisdiction of British Courts over Independent Native Princes.*

The Rajah of Nahun, the chief place of the protected Hill State known as Sirmoor, maintained an iron foundry at Nahun, and an agency (carried on by the plaintiff) at Umballa for the sale of things manufactured at Nahun. The plaintiff sued the Rajah in the Umballa Court for work and services, and money due on accounts. *Held*, that the Rajah was an independent or semi-sovereign prince, and not amenable to the jurisdiction of a British Court; and that he had not forfeited the privilege by his dealings at Umballa, at least as far as the plaintiff was concerned. There can only be a proceeding *in rem* against a sovereign; and there is no such proceeding under the law applicable to the Punjab. PHUMMAN LAL *v.* RAJAH SHAMSHER PARKASH. **93 P R 1875**

JURISDICTION—*contd.*

102. *Custody of children—Act IX of 1861.*

The principal Civil Court of original jurisdiction, referred to in section I of Act IX of 1861 (relating to Minors), is the Court of the Deputy Commissioner: from whose decision an appeal lies direct to the Chief Court, and not to the Commissioner. FIROZ *v.* RAM DITTA. **106 P R 1876**

103. *Public thoroughfare—Suit to remove obstruction—Special damage—Jurisdiction of Civil Court.*

No suit lies in a Civil Court to remove an obstruction to a public thoroughfare, unless it can be shown that the person suing suffers special or extraordinary damage. HOSEIN SHAH *v.* HABIBULLA SHAH. **73 P R 1877**

104. *Nuisance—Public thoroughfare—Street—Suit to close a drain.*

Plaintiff sued to compel defendant to close a drain through which the water from his mosque flowed on to the public street in front of plaintiff's premises. *Held*, that the suit was not maintainable without proof of special damage, differing not merely in degree but in kind from that sustained by the rest of the public. NUR ALI *v.* RAM GOPAL. **10 P R 1878**

105. *Valuation of pre-emption suit for purposes of jurisdiction.*

Held, by the Full Bench, that suits to enforce a right of pre-emption must as a rule be valued according to the market value of the property in respect of which the right is claimed, for the purpose of determining whether the suit falls within the pecuniary limits of jurisdiction of a particular Court.

Held, by the Division Bench, where the Tahsildar, having jurisdiction up to Rs. 300, entertained a suit for pre-emption in respect of property the market value of which was found to be at least Rs. 800, that the suit was beyond the jurisdiction of the Tahsildar. NANAK CHAND *v.* SAINDITTA. **54 P R 1878.**

RAM DITTA *v.* MAHOMED KHAN. **62 P R 1875**

106. *Limitation—Civil Procedure Code, section 622.*

Held, that the plea of limitation is not a question of jurisdiction within the meaning of section 622, Act X of 1877, MEHTAB RAI *v.* NANAK CHAND. **59 P R 1878**

But see GOPAL DASS *v.* RUTHER RAM. **92 P R 1867**

107. *Suit to eject occupancy tenant on payment of compensation—Valuation of suit for purpose of jurisdiction—Tenancy Act XXVIII of 1868), section 19.*

Held, that in a suit to eject an occupancy tenant on payment of compensation

JURISDICTION—*contd.*

under section 19, Act XXVIII of 1868, the subject matter of the suit for the purpose of jurisdiction is the value of the hereditary right of occupancy, *i.e*, the price which the tenure would fetch if put up to sale, not the sum which the landlord has to pay to buy the tenant out under section 19. BUTA SINGH *v.* PUNJAB SINGH.
28 P R 1879

108. *Hazara Settlement Rules, section* 60 *—Suit to correct entry in Settlement Record contrary to Settlement award.*

Where plaintiff sued for correction of the Settlement record of a village in the Hazara district on the allegation that the entry in the record was, as regards the land in suit, contrary to a Settlement award in respect of it, as contained in a judgment of the Superintendent of Settlement, *held*, reversing the orders of the Lower Courts, that the suit as brought was not barred by section 60 of the Hazara Settlement Rules. SHAM PERKASH *v.* ILAHI BAKSH KHAN.
3 P R 1880

109. *Suit by decree-holder to realize decree from debt due to judgment-debtor.*

Where a decree-holder attached by prohibitory order a debt alleged to be due to one A, his judgment-debtor, but took no further steps in the execution proceedings to bring the debt to sale, or to get a receiver appointed, *held*, that (assuming that there was a subsisting debt due to A.) the decree-holder was not entitled to maintain a suit against A's debtors for the purpose of realizing his decree. TRIBENI SAHAI *v.* RAMAN LAL.
11 P R 1880

110. *Suit against political prisoner—Alien —Act X of* 1877, *sections* 10, 17, *Clause* (*a*) *and Chapter XXVIII.*

In a suit against a Cabul political prisoner detained in Lahore, *held*, that there is nothing in the Code of Civil Procedure to exempt such defendant from the jurisdiction of the Civil Courts of British India when sued at the place where the cause of action arose. KARAM BAKHSH *v.* SIRDAR SALEH MUHAMMAD KHAN.
115 P R 1880

111. *Contract Act* (*IX of* 1872), *section* 265—*Partnership—Suit for accouunt and share of profits.*

Held, that a suit for an account between the plaintiff and defendant as partners in a completed venture by way of purchase and sale of grain, and for payment of the plaintiff's share of the profits alleged to have been received by the defendant, is cognizable by Courts inferior to the District Court up to the pecuniary limits of their jurisdiction, there being nothing in section 265 of the Contract Act to debar the inferior Civil Courts from taking cognizance of such a case. *Ragha* v. *Noranga* (No. 76 *P. R.* 1876) followed. NARAIN DAS *v.* BHOLI.
71 P R 1881

JURISDICTION—*contd.*

112. *Place of suing—Cause of action—Suit for damages for breach of contract—Place of performance of contract—Residence for purposes of jurisdiction—Act X of* 1877, *section* 17—*Return of plaint for presentation in proper Court.*

In a suit brought at Rawalpindi against the Secretary of State for India for damages for breach of a contract by defendant's agent, the Forest Officer at Hazara, to purchase certain wood for conversion into charcoal, it appeared from the plaint, that the place of the performance of the contract was in the Hazara district where the plaintiff was to obtain the wood he contracted for and convert it into charcoal, and where the defendant's agent finally committed the breach of contract for which plaintiff claimed damages by seizing the wood, and withholding permission to plaintiff to manufacture the wood into charcoal.

Held, that assuming the plaintiff's cause of actin arose *ex contractu*, he could not maintain that a cause of action arose within the jurisdiction of the Rawalpindi Court (where it was alleged at the hearing of the appeal that the contract was made), and further, that if the plaintiff was proceeding in tort, it was equally clear that the wrongful act of conversion of which he complained took place in the Hazara and not in the Rawalpindi district.

Held also, that the term "reside" in section 17 of Act X of 1877 contemplates a personal residence, and as the defendant in the present suit could not be said to have "actually resided" in the Rawalpindi district at the date of the commencement of the suit, the Rawalpindi Court had no jurisdiction to hear and determine such suit.

The plaint was therefore ordered to be returned for presentation to the proper Court.

Lorinda Mal v. *Sewa Singh* (No. 57 *P. R.* 1874) and *Shadi* v. *Mussammat Aishan* (No. 55 *P. R.* 1878), cited. GANESH DAS *v.* SECRETARY OF STATE.
118 P R 1881

113. *Pensions Act* (*XXIII of* 1871), *sections* 4, 6—*Crown grant—Certificate—Omission to obtain certificate before institution of suit.*

Where some part of the property in suit consisted of land which the Courts below assumed to be held under a grant from the Crown which brought it within the Pensions Act, 1871, and it appeared that no certificate as provided by section 6 of the Act was obtained before the commencement of the suit, but that before the case was finally disposed of, and the final decree passed, the certificate was obtained and delivered to the Court, *held*, by the Privy Council, that assuming that the Court was right in considering the grant as one within the Pensions Act, it came to a correct decision in holding that, when the certificate mentioned in the Act was obtained, the suit might proceed. NAWAB MUHAMMAD AZMAT ALI KHAN *v.* MUSSAMMAT LALLI BEGUM.
17 P R 1882

JURISDICTION—*contd.*

114. *Valuation of suit—Suit for redemption—Subject-matter.*

Held, that in suits for redemption of mortgage where the plaintiff seeks to be put in possession of the mortgaged property upon payment of the mortgage money or such part of it as may be found to remain due, the suit is essentially a suit for possession of property, and the subject-matter of the suit is the property itself and should be valued for purposes of jurisdiction according to the value of the property. *Nanak Chand* v. *Sain Ditta* (No 54 *P. R.* 1878) cited. *Budha* v. *Muhhmmad Khan* (No. 20 *P. R.* 1879) followed. MUSSAMMAT BAKHT BHARI *v.* RAHIM SHAH.
82 P R 1882

115 *Place of suing—Cause of action—Breach of betrothal contract.*

Held, following *Lorinda Mal* v. *Sewa Singh* (No. 57 *P. R.* 1874), that a suit for breach of betrothal contract should be brought in a Court which has jurisdiction at the place where the failure to perform the contract occurred, which would ordinarily be the place of residence of the girl's father. BUTA *v.* JAGGA.
147 P R 1882

116. *Valuation of suit—Suit by reversioner for cancellation of gift made by widow —Value of subject-matter of such suit.*

Held, that in a suit by a reversioner to cancel a deed of gift made by a Hindu widow, the subject-matter of the suit must for purposes of jurisdiction be taken to be the future right of the plaintiff to inherit the property on the donor's death, and the value of the subject-matter the present value of the plaintiff's chance of outliving the widow. MUSSAMMAT CHUNI *v.* LALMAN DASS.
198 P R 1882

117. *Place of suing—Cause of action—Act X of* 1877, *section* 17.

A suit based on three *hundis* which were drawn at Multan by one B. M. on himself and his father, the appealing defendant, both of whom resided at Amritsar, and which were payable at Amritsar, was instituted in the Multan district, where it was heard and decided in the plaintiff's favour. It was contended by the defendant in both the lower Courts, and again in his appeal to the Chief Court, that the Multan Court had no jurisdiction to hear the suit, as neither the cause of action arose, nor did the defendants reside, within the territorial jurisdiction of the Civil Courts of that district.

Held, that the words "cause of action," as used in section 17 of the Code of Civil Procedure, could not be held to be satisfied by mere proof that the contract upon which the suit was based was entered into within the jurisdiction of the Court: that a "cause of action" depending on contract could only be deemed to arise at the place where the contract was to be performed and where a breach of such stipulated performance occurred, and that as in the present case the *hundis* were payable at Amritsar and were drawn on a firm, of which it was alleged the

-drawer was a member, at Amritsar, and were dishonored at Amrisar and both the defendants were residents of Amritsar, the Multan Court had no jurisdiction.

The meaning of the words "cause of action" discussed and explained by *Rattigan*, J. *Assa Nund* v. *Indian Carrying Co.* (No. 10 *P. R.* 1866, Civil Ref.), *Hamilton* v. *Punjab Bank* (No. 104 *P. R.* 1866, Civil), *Collector of Boolund-shahur* v. *Nanuck Chand* (No. 29 *P. R.* 1867, Civil), *Mussammat Dayawuntee* v. *Bhai Nundgopal* (No. 2 *P. R.* 1868, Civil), *Sahi Ram v. Golab Singh* (No. 56 *P. R.* 1868, Civil), *Lorinda Mal* v. *Sewa Singh* (57 *P. R.* 1874, Civil), *Ganesh Das* v. *Secretary of State* (No. 118 *P. R.* 1881, Civil), and *Buta* v. *Jagga* (No. 147 *P. R.* 1882, Civil), cited. BANKA MAL *v.* CHUAH MALIK.

71 P R 1883

118. *Place of suing—Cause of action—Act X of 1877, section 17—Suit on dishonoured hundis—Omission to raise objection as to jurisdiction in lower Appellate Court—Necessity for Court to decide whether it had jurisdiction—Joinder of cause of action which Court had jurisdiction to hear with one over which Court was without jurisdiction—Return of plaint—Dismissal of suit.*

In a suit brought in the Ludhiana district, which was mainly based upon two *hundis*, but which also included an item of Rs. 27-0-9 for subsequent dealings, it appeared that the *hundis* had been written by the defendants' agent at Ludhiana upon a firm at Delhi, by whom they were dishonoured, and that the defendants were residents of Chandowsi in the district of Muradabad, in the North-Western Provinces.

Held, that so far as the claim rested on the *hundis* the Ludhiana Court had no jurisdiction to try it; that the true cause of action arose at Delhi. where the *hundis* were dishonoured; and the mere writing of the *hundis* by the defendants' agent at Ludhiana did not constitute a cause of action within the meaning of section 17 of the Civil Procedure Code. *Banka Mal* v. *Chuah Malik* (No. 71 *P. R.* 1883, Civil) followed.

It appeared that when the first appeal in the above case was heard, the lower Appellate Court remanded the case for fresh enquiry and decision remarking in the course of its judgment that the counsel for the defendants (respondents in that Court) stated that he had "no objection on the ground of jurisdiction." *Held*, that as the express consent of parties cannot confer jurisdiction on a Court which does not otherwise possess it, the omission or refusal on the part of defendants to raise the objection of want of jurisdiction could not relieve the Court, which was trying the suit, of the duty of determining whether it had or had not jurisdiction to hear it; and as in the present instance the lower Appellate Court which remanded the case did not decide the question of jurisdiction in any way, there was nothing to preclude the question being taken up by the first Court itself, and as there was no decision by the first Court upon it, it was competent for the lower Appellate Court, when the case was a second time before it in appeal, to have taken it and decided it, and it was undoubtedly open to the Chief Court to do so in the present appeal.

Held, further, that though the proper order to pass under the circumstances of the above case would ordinarily be to direct the plaint to be returned for presentation to the proper Court, yet inasmuch as the plaintiff had chosen to join a cause of action which did arise in the Ludhiana district (by claiming Rs. 27-0-9 for subsequent dealings as noted above) with one that did not, and as the Courts below had come to a final decision as regards that item, the Court was no longer in a position to adopt such a course, but the plaint must still remain on the file of the Ludhiana Court, as the foundation for the claim for Rs. 27-0-9 on a book account, in regard to which that Court had jurisdiction.

The Court, holding that the plaintiffs were not entitled to recover anything on this portion of their claim, ordered the suit to be dismissed so far as it related to the dealings subsequent to the date of the *hundis*, but with regard to the claim founded on the *hundis*, merely decided that the Ludhiana Court had no jurisdiction to hear it. NARAIN DAS *v.* KOTU MAL.

132 P R 1883

119. *Place of suing—Test of jurisdiction in insolvency proceedings.*

Held, following *Parker* v. *Simla Bank* (No. 34 *P. R.* 1878, Civil), that the test of jurisdiciion in insolvency proceedings is whether or no the insolvent, when the proceedings commenced, was residing or carrying on business within the local jurisdiction of the Court. RAM MAL *v.* LADHA SINGH.

62 P R 1883

120. *Valuation of suit—Suit to cancel an adoption—Valuation of subject-matter—Course of appeal—Book Circular No. I of 1885.*

In a suit for cancellation of an adoption, in which the value of the property involved was alleged to be over Rs. 5,000, and an appeal from the decree of the Court of first instance (the Subordinate Judge) was therefore instituted in the Chief Court, *held*, that under the rules contained in the Notification issued by the Chief Court and contained in Book Circular I of 1885, the appeal lay to the Divisional Court and not to the Chief Court, and that the fact that the case, which was pending in the Court of first instance when the Notification was issued was decided after the date of the Notification was no ground for holding that the Notification did not apply for the purpose of determining the course of appeal. BAZ *v.* FATTEH KHAN. **94 P R 1883**

See ALSO INDAR SEN *v.* GOBIND JAS.

94 P R 1883 Note.

121. *Valuation of suit—Suit by reversionary heir for declaratory decree—Value of subject-matter—Course of appeal—Punjab Courts Act (XVIII of 1884), section 39 (2).*

In a suit by a reversioner for a declaratory decree cancelling, so far as his reversionary interest was concerned, a sale of immovable property for Rs. 6,500, *held*, that as it did not appear that the value of the plaintiff's interest exceeded Rs. 5,000, the appeal lay to the Divisional Court, and, not to the Chief Court. *Mussammat Chuni* v. *Lalman Dass* (No. 198 *P. R.* 1882, Civil) cited. JIWAN SINGH *v.* SANTOK SINGH.

93 P R 1886

122. *Valuation of suit—Value of subject-matter—Punjab Courts Act (XVIII of 1884), section 3—Suit by second mortgagee for possession against mortgagor and prior mortgagee.*

In a suit by a second mortgagee whose mortgage was for Rs. 440, to redeem the first mortgagee whose mortgage was for Rs. 155 and to get possession of the mortgaged land, the mortgagor as well as the first mortgagee being the defendants in the suit, *held*, by the Full Bench, that as the redemption of the prior mortgage was included in the subject matter of the suit for possession as mortgagee under the mortgage to plaintiff for Rs. 440, part of the consideration for that mortgage being the sum to be paid to redeem the prior mortgage, the redemption of which was a condition precedent to the plaintiff's right to possession under the mortgage for Rs. 440, therefore the value of the suit for the purpose of jurisdiction under the Punjab Courts Act, 1884, was the value of the plaintiff's interests as mortgagee, which could not exceed the sum secured by the mortgage to him.

The value of a suit for the purpose of jurisdiction under the Punjab Courts Act, 1884, with reference to the definition of "value," contained in section 3 of that Act, is not necessarily identical with the value of the property to which the suit relates, when it relates to any property. *Butha* v. *Muhammad Khan* (No. 20 *P. R.* 1879), and *Mussammat Bakht Bhari* v. *Rahim Shah* (No. 82 *P. R.* 1882) referred to. HARNAM SINGH *v.* KIRPA RAM

1 P R 1887

123. *Valuation of suit—Subject-matter—Suit to close a doorway.*

Held, in a suit for the closing of a doorway to a house, that the value of the subject-matter for purposes of jurisdiction must be taken to be the difference in the selling price of the *plaintiff's* premises before and after the door was opened. MULA MAL *v.* GURDIAL. **5 P R 1887**

124. *Valuation of suit for partition—Value of subject-matter.*

In a suit to partition a house and award plaintiff his share therein *held* that the jurisdiction of the Court must be determined by the value of the entire property to be divided, and not by the value of the plaintiff's share. GULZARI MAL *v.* KANHAYA LAL.

8 P R 1887

JURISDICTION—*contd.*

125. *Valuation of suit—Punjab Courts Act (XVIII of 1884), section 40 (a) Question respecting property exceeding Rs. 500 in value.*

Plaintiff sued for the removal of a wall which he alleged that defendant had built on his land. Defendant pleaded (*inter alia*) that plaintiff had acquiesced in his (defendant's) erecting a three-storied building supported by the wall which plaintiff claimed to remove. This plea having been overruled, plaintiff eventually obtained from the Divisional Court a decree directing the removal of the wall. It appeared that the value of the land in suit and the wall taken together was under Rs. 500, but it was contended for the appellant in the Chief Court that a further appeal lay under section 40 (*a*) of the Punjab Courts Act, 1884, inasmuch as it being impossible to remove the wall without materially disturbing the three-storied building which was bounded by and partly supported by the wall, and further one of the questions for decision in the case being whether plaintiff had acquiesced in the building of these rooms, the value of the rest of the house which was not actually situate over the land claimed should be considered in calculating the value of the suit.

Held, over-ruling the above contention, that the decree sought to be appealed did not directly involve any claim to a question respecting property exceeding Rs. 500 in value within the meaning of the section of the Punjab Courts Act above quoted. DAYA SINGH *v.* RALIA RAM.

26 P R 1887

126. *Valuation of suit—Suit for injunction against defendant to remove obstruction to plaintiff's window.*

In a suit for an injunction against defendant to remove an obstruction built by defendant against a window from which plaintiff claimed to have an ancient right of light and air, *held* that the value of the suit for purposes of jurisdiction was the difference between the value of the plaintiff's room if the window was blocked up and the value if it was not blocked up. *Daya Singh* v. *Rulia Ram.* (No. 26 *P. R.* 1887) cited. AMIR SHAH *v.* PANDIT PYARI LAL.

52 P R 1887

127. *Appeal—Punjab Courts Act (XVIII of 1884), section 40 (a)—Decree involving directly a claim to or question respecting property exceeding Rs. 500 in value.*

Plaintiff, alleging himself to be a full proprietor and as such proprietor entitled to share in the offerings of a certain temple, sued the defendants for Rs. 43-1-0 as his share in the offerings for a specified year, and obtained a decree for Rs. 42-10-0, it being found that the plaintiff was a full proprietor in opposition to the plea of the defendants that he was only proprietor of his holding. *Held* that, assuming that the plaintiff's interest as a share-holder in the offerings of the temple was a property exceeding Rs. 500 in value, the decree which ordered the defendants to pay Rs. 42-10-0 to the plaintiff on account of his share in one year's offerings did not involve directly (and did at most only indirectly involve) a claim to or question respecting property exceeding Rs. 500 in value, within the meaning of clause (*a*), section 40 of the Punjab Courts Act, 1884. GOPAL SINGH *v.* TIRKHA RAM.

96 P R 1887

128. *Punjab Courts Act (XVIII of 1884), section 35 Civil Procedure Code (Act XIV of 1882), sections 223, 230, 263—Power of Court to execute decree in excess of the limits of its pecuniary jurisdiction as an original Court.*

Held, by the Full Bench that a Court to which a decree has been sent for execution under the powers conferred by section 35 of the Punjab Courts Act, can in execution pass orders in regard to property in excess of the limits of its pecuniary jurisdiction as a Court of original jurisdiction, as sections 223 and 230 of the Civil Procedure Code show that there is no limitation on the power of an original Court to execute decrees of any value, section 223 (*d*). clause 2, allowing a Court which has passed a decree to send it for execution to *any* Court subordinate to it. *Ram Lal* v. *Natha Singh.* (No. 45 *P. R.* 1882) cited. GANGA RAM *v.* GUR SARAN DAS.

31 P R 1887

But see CIVIL PROCEDURE CODE, 1908, SECTION 47, FOR 70 *P. R.* 1897.

129. *Valuation of suit—Suit for redemption of mortgage.*

Held, by the Full Bench, that in a suit in which the plaintiff sues as mortgagor to redeem immovable property in the possession of a mortgagee, the value of the subject-matter of the suit for the purpose of jurisdiction is the amount of the charge on the property and not the value of the property, *Harnam Singh* v. *Kirpa Ram.* No. 1 *P, R* 1887, F. B.) referred to. MUSSAMMAT RAJO *v.* DASU.

44 P R 1888

130. *Act XL of 1858, section 29—Principal Court of original jurisdiction—Sub-Judge invested with powers of a District Judge under section 42, Act XVIII of 1884.*

Held, that a Subordinate Judge who has been invested under section 42 of the Punjab Courts Act with the powers of a District Judge for the purpose of hearing Civil appeals, has no jurisdiction to dispose of cases under Act XL of 1858, as a principal Court of original jurisdiction within the meaning of section 29 of that Act. *Larsick* v. *Buta Mal* (No. 80 *P. R.* 1887) referred to. HAR NARAIN *v.* DORABJI.

47 P R 1888

131. *Contract Act (IX of 1872), section 265—Court of Sub-Judge of 1st class "not inferior to the Court of the District Judge" within the above section.*

Held, that the Court of the Subordinate Judge of the 1st Class in the Punjab is a Court not inferior to the Court of the District Judge for the purposes of section 265 of the Contract Act. AJUDHIA PERSHAD *v.* SURAT RAM.

55 P R 1888

132. *Suit for partition—Value of subject-matter.*

Held, by the Full Bench, that for the purposes of jurisdiction, the true test of the value of the "subject-matter" in a suit where one co-sharer sues for partition of his share of a joint estate, is the value of the share which is sought to be divided, and not of the entire estate. *Gulzari Mal* v. *Kanhaya Lal* (No. 8 *P. R.* 1887) overruled. BALLAH MAL *v.* BHUPA MAL.

110 P R 1888

133. *Suit for removal of dams—Value of subject-matter.*

In a suit for the removal of certain dams erected by the defendant, *held* that for the purposes of jurisdiction the "subject matter" of the suit was the right to have the ordinary flow of water, which plaintiffs contended used formerly to water their lands unrestricted by the erection of the dams in question, and that the "value of the subject-matter" for jurisdictional purposes was the depreciation caused to the plaintiffs' lands by the interference with their free right to such water. *Mula Mal* v. *Gurdial* (No. 5 *P. R.* 1887) cited. SHAHBAZ KHAN *v.* DOSA KHAN.

163 P R 1888

134. *Suit for redemption of mortgage on payment of Rs. 300—Defendant pleading that the mortgage debt was Rs. 3,000—Valuation of suit.*

Plaintiff sued for redemption of a mortgage of certain land, alleging the amount of the mortgage debt to be Rs. 300. Defendant pleaded that the mortgage debt was Rs. 3,000 and not Rs. 300. The first Court decided that the land was mortgaged for Rs. 300, and gave plaintiff a decree for redemption accordingly, which was upheld on appeal by the appellate Court, which also decided that the mortgage was for Rs. 300. Defendant then lodged a further appeal in the Chief Court, which he desired to maintain as of right, asserting that the value of the suit exceeded Rs. 500 by reason of his plea that the mortgage-debt was Rs. 3,000.

Held, that the value of the suit was not altered by the plea of the defendant, whether that plea were true or false; that the value of the suit was therefore only Rs. 300; that the decree for redemption on payment of that sum involved only indirectly, and not directly, a question respecting property exceeding Rs. 500 in value, and therefore no appeal lay as of right under clause (*a*) of section 40 of the Punjab Courts Act. *Mussammat Rajo* v. *Dasu* (No. 44 *P. R.* 1888) referred to. BHAG MAL *v.* MOHRA.

169 P R 1888

135. *Valuation of suit—Set-off—Civil Procedure Code, section 111.*

Held, that the value of the subject-matter of a suit, in which the defendant claims a set-off is for the purposes of jurisdiction

the value of the suit as instituted by the plaintiffs, and not such value *plus* the set-off and where both the suit and the set-off are within the powers of the Court hearing the case, it can, as provided by section 111, Civil Procedure Code, adjudicate upon both cases. JIT SINGH *v.* MUTU SHAH.

69 P R 1889

136. *Valuation of suit for redemption of mortgage—Plaintiff suing to redeem for Rs.* 2,300—*Defendants pleading that the mortgage money was over Rs.* 5,000—*Valuation of suit—Course of appeal.*

Plaintiff claimed redemption of a mortgage, offering to pay Rs. 2 300, the sum for which the land was originally mortgaged. Defendant pleaded that Rs. 5,850 was due on the mortgage, and the land could not be redeemed until that amount was paid. Plaintiff did not offer to pay more than Rs. 2,300; but the first Court held that Rs. 5,240 was due on the mortgage, and decreed that plaintiff might redeem on paying that amount. Plaintiff appealed against this order to the Divisional Judge, urging that he was entitled to redeem for Rs. 2,300, and the Divisional Judge held that the value of the suit exceeded Rs. 5,000, and that the appeal lay to the Chief Court.

Held, that for the purposes of jurisdiction the valuation of the suit by plaintiff must govern the case. It could not be said that he had valued the suit at any sum over Rs. 2,300, and the fact that defendant alleged that a sum of over Rs. 5,000 was due to him, and that the Court had found this in defendant's favour made no difference. RANJE KHAN *v.* BIRBAL.

91 P R 1889

137. *Judge of the Court of the District—Delegation—Acting without jurisdiction—Making inventory only ancillary to order declaring right to possession.*

The application contemplated by section 1 of Act XIX of 1841, should be made to the District Judge in the Punjab, and he alone has power to make the summary investigation and pass the final order under the Act. No authority is given to him either in Act XIX of 1841, or in the Punjab Courts Act to delegate this authority to a subordinate Court. He acts without jurisdiction, if he directs a subordinate Court to make the whole of the investigation and report the result to him for final orders. Directing an inventory to be taken is merely an *incidental* proceeding under the above Act, the principal order in the case should be for determining the right to possession. GANPAT *v.* MUSSAMMAT MANKOUR.

203 P R 1889

138. *Civil Procedure Code,* 1882, *section* 111—*Set-off—Jurisdiction of Court.*

To enable a Court to set-off the defendant's demand against that of the plaintiff, the amount claimed to be set-off—not merely the difference between the two claims—should be within the pecuniary limits of the Court's jurisdiction. THAKAR DAS *v.* NAND LAL.

17 P R 1890

139. *Suit to establish right to attach and sell property in execution of decree—Value of subject-matter—Punjab Courts Act, XVIII of* 1884, *section* 3.

In a suit for a declaration that a certain house of the value of Rs. 6,000 was liable to attachment and sale in execution of a decree for Rs. 429.

Held, that the value of the subject-matter for purposes of jurisdiction was the amount of the decree sought to be realized out of the property, and not the value of the property itself. *I. L. R. XVC alc.* 101, followed. BHAI HARNAM SINGH *v.* MUSSAMMAT BHAGWAN DEVI.

50 P R 1890

140. *Suit by a decree-holder to establish his right to attach certain property.*

For the purpose of jurisdiction, the value of a suit by a defeated decree-holder to establish his right to attach certain property released from attachment is the value of that right to the plaintiff. Where the value of the property exceeds the amount of the decree, the value to the plaintiff is limited to the amount of his decree, but where the amount of the decree exceeds the value of the property, the value to the plaintiff is the value of the property. MAYA MAL *v.* BELA SINGH.

121 P R 1890

141. *Pre-emption—Value of suit—Punjab Courts Act,* 1884, *sdction* 40 (1) *(a)*—" *If the " decree involves directly some claim to, or " question respecting property of the value of " one thousand rupees or upwards.*"

A, sued for pre-emption of certain property on payment of Rs. 400, the price stated in the deed of sale. The real value of the property sold was upwards of Rs. 2,000. The Courts below concurred in decreeing the claim. The defendant appealed and a preliminary objection was taken to the hearing of the appeal on the ground that the value of the suit was below Rs. 1,000, and therefore no further appeal lay to the Chief Court.

Held, that the appeal lay under section 40 (1) *(a)* of the Punjab Courts Act, 1884. as the decree involved directly a claim to property of the value of over Rs. 1,000. LACHMAN DAS *v.* HAKIM SINGH.

94 P R 1890

142. *Jurisdiction—Valuation of suit—Suit by mortgagee for possession against mortgagor and certain third persons alleged to be trespassers.*

The value of a suit by a mortgagee for possession of land mortgaged to him is the value of his interest therein as mortgagee, and not the value of the land.

The mere fact that the mortgagee joins certain persons as defendants, not upon the basis of the mortgage, but upon the allegation that they are in possession as trespassers, does not affect or modify this rule.

No. 1 *P. R.*, 1887, followed. DHERU MALL *v.* THAKAR DAS.

1 P R 1891

143. *Jurisdiction—Companies' Act—Fraud and misrepresentation—Repudiation.*

The plaintiff Bank was registered under the Indian Companies' Act, 1882, on 10th June 1884, as a limited liability company with a capital of five lakhs of rupees, divided into 2,500 shares of Rs. 200 each.

On 1st September 1884, a general meeting of the share-holders was held, at which six directors, including one C. were elected, and one P. was appointed manager. These proceedings were confirmed at a subsequent meeting on 3rd October 1884.

Informal lists appear to have been in circulation in which persons entered their names for the shares they would take; but on 8th October 1884 only 1,111 shares had been formally taken and 1,389 remained in the hands of the Bank undisposed of.

Between the 8th and 25th October 1884, C. visited Jodhpur with the express purpose of inducing the Princes of that State to take shares in the Bank. He succeeded in inducing them to take 975 shares, giving for them Promissory Notes at the rate of Rs. 125 per share, *viz.*, Rs. 100, the amount called up by the Bank, and Rs. 25 premium. In this way the present defendant-appellant, one of the Jodhpur Princes, took 400 shares and gave a Promissory Note for Rs. 50,000.

The remaining shares out of the 2,500 were disposed of by the end of December 1884, in the manner described in the judgment of the Chief Court, reported as No. 127 *P. R.* 1889 (pp. 438, 439), Upon a suit brought by the Bank to recover the amount due on the Promissory Note given by the defendant for Rs. 50,000, *held* that as decided in No. 127 *P. R.* 1889, the District Judge, Delhi, had jurisdiction to entertain the suit. MAHARAJA SIR PARTAB SINGH *v.* PROVINCIAL BANK OF DELHI, LIMITED.

72 P R 1891

144. *Suit by mortgagee for possession—Suits Valuation Act,* 1887—*Value for purposes of jurisdiction.*

A suit by a mortgagee seeking to recover possession of land under his mortgage is a suit falling within the rules made under the Suits Valuation Act, 1887, which provide that in suits for possession of land under clause 5, section 7, Court Fees Act, 1870, the value of the suit for purposes of Jurisdiction is thirty times the land revenue.

The ruling in No. 1 *P. R.* 1887, that in a suit by a mortgagee for possession, the subject-matter was not the land itself but the mortgagee's interest therein under the mortgage, must be deemed to be superseded by the passing of the Suits Valuation Act and the rules made thereunder. RAM KISHEN *v.* SAYAD BHAHIM SHAH.

56 P R 1892 F B

145. *Jurisdiction of Court of Political Agent, Bhopal—Jurisdiction of British Court to make decree affecting immovable property out of British India.*

In a suit for partition and possession of a one-third share of property, movable and immovable, including cash and choses in action, the Court of first instance (District Judge, Delhi) being of opinion that issues could not be properly settled until defendants

1, 2 and 3 produced their books, which the Political Agent of Bhopal reported could not be spared, directed defendant 1 to file a written statement setting forth in detail the entire joint property, movable and immovable, and in the case of trading firms, a balance sheet for each showing how they stood on the date of suit.

Held, that the Court of the Political Agent, Bhopal, whatever its jurisdiction may be, was not one of the nature referred to in section 12, Civil Procedure Code, not being established by the authority of the Governor-General in Council, and Bhopal not forming part of British India.

Quære.—Whether the District Judge, Delhi, had jurisdiction with regard to the immovable property situate and business conducted in foreign territory. HANS RAJ *v.* JHANDA MAL. **59 P R 1892**

146. *Suit for account—Value of relief sought—Jurisdiction—Course of appeal—Authority of Appellate Court disclaiming jurisdiction to order payment of additional Court-fee.*

The plaintiff sued the defendant for an account valuing the relief sought at Rs. 100, and expressing his willingness to pay the Court-fee due upon any sum decreed in excess of this amount in accordance with the provision of section 11, Court Fees Act, 1870.

After the defendant had produced the books containing the parties' accounts and a commission had examined the same, the plaintiff filed a petition stating that he appeared to be *prima facie* entitled to recover a sum over Rs. 12,000 and praying that the matter might be fully investigated. No amendment of the plaint was, however, either asked for or ordered, and the suit eventually resulted in a decree in the plaintiff's favour for Rs. 2,343.

The plaintiff then appealed for a further sum of Rs. 1,716; and the defendant, against the decree in the plaintiff's favour, for Rs. 2,343.

Both parties presented their appeals to the Divisional Judge, who held that the appeals lay to the Chief Court.

Held, that the appeals lay to the Divisional Judge: under section 7, clause (iv) of the Court Fees Act, the valuation of the original suit for purposes of Court-fee fixed at the amount at which the relief sought is valued in the plaint. This, in the present case, was Rs. 100 and the amount was never altered by any amendment of the plaint: and under section 8, Suits Valuation Act, 1887, the value of suit for an account as determinable for the computation of Court-fees and the value for purposes of jurisdiction, shall be the same.

The value of the suit for purposes of jurisdiction was Rs. 100 and the appeal lay to the Divisional Court under section 39, Punjab Courts Act (as amended).

Semble.—If an Appellate Court has no jurisdiction to hear an appeal, it is not competent to it to pass orders for the payment of any additional Court-fee which it considers should have been levied in the first Court.

[Cf. No. 40 *P. R.* 1892].—FATTEH MUHAMMAD KHAN *v.* MOHAN LAL. **86 P R 1892**

147. *Jurisdiction—Small Cause Court—Withdrawal of suit pending in and determined by District Judge—Objection as to jurisdiction.*

In a suit heard and determined by a competent Court the parties, having without objection joined issue and gone to trial upon the merits, cannot subsequently dispute the jurisdiction of the Court on the ground of irregularities in the initial proceedings, which, if objected to at the time, would have led to the dismissal of the suit.

Ledgard v. *Bull, I. L. R. IX All.* 191 (P. C.) referred to and followed—SETH RAM RATTAN AND RATHI RAM LAL *v.* SUNDER DAS **118 P R 1892**

148 Hundi *drawn at Jammu in foreign territory but payable in British territory—Jurisdiction of Court—Civil Procedure Code (Act XIV of 1882), section 17, Explanation iii—Act of State—Jurisdiction of British Courts to take cognizance of an act done by a foreign State in the exercise of its soverign powers and not professing to be justified by municipal law.*

Plaintiff sued upon a *hundi* drawn in his favour at Jammu, Kashmir territory, but payable at Sialkot, the defendant being the drawer and the suit being instituted in the Court of the Subordinate Judge, Sialkot.

The claim having been decreed, the defendant appealed to the Chief Court and contended (i) that the lower Court had no jurisdiction to entertain the claim; (ii) that no presentment of the *hundi* had been proved; and (iii) that he had already discharged his liability under the *hundi* inasmuch as before the suit was brought he had been compelled by the Kashmir Government, which had in its executive capacity confiscated all properties belonging to the plaintiff within its territory, to pay over to it the amount due on the said *hundi*.

Held, as to the *first* contention that, as the amount due on the *hundi* was payable at Sialkot, the lower Court has jurisdiction to entertain the suit; as to the *second* contention that there was sufficient evidence on the record that plaintiff had duly presented the *hundi* at Sialkot and that it had been dishonoured by non-acceptance; but as to the *third* contention *held* per *Rivaz, J.* that as the defendant had been compelled by the Government of a foreign State, of which he was a subject, acting purely in its executive capacity, to pay over to it the amount due on the *hundi*, such payment was conclusive as between the parties and discharged defendant's liability.

Held, further per *Rivaz, J.* that the British Courts had no jurisdiction to question the legality of an act done by a foreign State in the exercise of its sovereign powers and not professing to be justified by Municipal law.

Per *Benton, J.*—Though the debt was a liability to be discharged outside Kashmir territory, *viz.*, at Sialkot, the law applicable to it was the law of the Kashmir State, the *lex loci contractus*, and there was every reason to believe that the obligation was validly discharged according to the law and usage of that State in consequence of the order of the supreme authority in the State appropriating to itself the debt due from the defendant to the plaintiff.

No. 36 *P. R.* 1877 (reported on appeal to the Privy Council as No. 7 *P. R.* 1882), and *I. L. R. V Mad.* 273, cited and followed.

GHOLU SHAH *v.* PANDIT KIRPA SHANKER. **21 P R 1894**

149. *Valuation of suit for purposes of jurisdiction—Suit for perpetual injunction—Jurisdiction of Munsif, 3rd Class—Rules of the Chief Court Book Circular No. V of 1889—Suits Valuation Act (VII of 1887), section 11.*

Plaintiff sued in the Court of a Munsif of the 3rd Class, with powers up to Rs. 100 only, for a perpetual injunction and in his plaint valued the suit at Rs. 35.

Held, that inasmuch as the valuation of a suit for a perpetual injunction has, for the purposes of jurisdiction, been fixed by the rules of the Chief Court sanctioned by Government at a sum between Rs. 100 and Rs. 500, the Munsif had no jurisdiction to try the suit, and that the defect of jurisdiction was not cured by section 11 of the Suits Valuation Act, 1887, which is limited to cases of " over-valuation or under-valuation " in which the valuation depends on the discretion of the parties or the Court. GANGA SAHAI *v.* SHEO LAL. **132 P R 1894**

150. *Jurisdiction—Suit for redemption of mortgage—Course of appeal—Punjab Courts Act, 1884, section 39.*

Plaintiff sued for redemption of an $\frac{11}{16}$th share of a mortgage of certain lands and houses for a total sum of Rs. 10,500, alleging that Rs. 2,000, more or less, were due upon the said share, and prayed for a decree for redemption on payment of any sum which might be found to be due thereon after proper adjustment of the accounts. Defendants pleaded that about Rs. 10,000 were due upon the said share, and the first Court decreed redemption upon payment of Rs. 7,558. Plaintiff appealed to the Divisional Judge, who entertained the appeal, and, in modification of the decree of the first Court, allowed redemption upon payment of Rs. 3,850. The question referred to the Full Bench was whether the Divisional Judge had jurisdiction to hear the appeal.

Held, by the Full Bench, that the Divisional Judge had jurisdiction to hear the appeal, there being nothing upon the plaint to show that the value of the suit exceeded Rs. 5,000, and the question of jurisdiction having to be determined with reference to the claim made and not the decision upon the claim.

No. 44 *P. R.* 1888 (F. B.) No. 169 *P. R.* 1888, No. 91 *P. R.* 1889, and No. 63 *P. R.* 1891, cited.

JURISDICTION—*contd.*

No. 56 *P. R.* 1892 (F. B.) explained. MUHAMMAD KHAN *v.* ASHAK MUHAMMAD KHAN.
106 P R 1895 F B

151. *Value of suit for purposes of jurisdiction—Suit for possession of immovable property—Suit by mortgagee against third party in actual possession.*

Plaintiff, who was already in possession as mortgagee, sued a third party who was in actual possession but, whilst admitting that he was only a tenant, refused to recognize plaintiff's title.

Held, by the Full Bench, that the suit must be regarded as one for possession of immovable property by a person out of possession against a person in actual possession whom the plaintiff sought to eject, and that the value of the suit for the purposes of jurisdiction was the value of the immovable property itself. JALAL *v.* MUHAMMAD BAKHSH.
1 P R 1896 F B

152. *Course of appeal—Suit for pre-emption of a house valued by plaintiff at Rs. 804—Jurisdiction.*

The plaintiff instituted a suit for pre-emption of a house and valued it, both for the purposes of jurisdiction and of Court-fee at Rs. 804. The District Judge dismissed the suit on the merits, but found that Rs. 2,000, the amount entered in the deed of sale, was actually paid. The plaintiff appealed to the Divisional Court and again valued his suit at Rs. 804. The Divisional Judge directed the plaintiff to pay Court-fees on Rs. 2,000 in the first Court and on Rs. 1,500 in his Court, which order was complied with but the appeal was rejected on the merits. On a further appeal being filed in the Chief Court the value of the claim having been fixed at Rs. 1,500 the respondent objected that no further appeal lay, as plaintiff had originally valued his claim for Rs. 804 and had not obtained a certificate under section 40 (1) (*d*) of the Punjab Courts Act, 1884.—

Held, that the value for the purposes of jurisdiction must ordinarily and in the absence of any special circumstances suggestive of *mala fides* on the part of the plaintiff be determined with reference to the claim made and not to the decision upon that claim, and that in the present case no further appeal lay without a certificate under section 40 (1) (*d*) of the Punjab Courts Act, 1884.

Mahabir Singh v. *Behari Lal* (*I. L. R. XIII All.* 320), *Nilmony Singh* v. *Jagabandhu Singh* (*I. L. R. XXIII Calc.* 536), *Hazara Singh* v. *Lal Singh* (63 *P. R.* 1891), and *Muhammad Khan* v. *Ashak Muhammad Khan* (106 *P. R.* 1895), approved and followed. *Mrs. Parsick* v. *Mr. H. Parsick* (72 *P. R.* 1899), distinguished. IMAM DIN *v.* GHULAM MUHAMMAD. **101 P R 1900**

153. *Jurisdiction of a Civil Court to entertain a suit for a declaration that a partition effected by the Revenue authorities was not binding on the reversioners of one of*

JURISDICTION—*contd.*

the parties—Land Revenue Act, 1887, *section* 158 (2).

A proprietor holding jointly with a widow having applied to the Revenue authorities for the partition of his joint holding and partition having been effected and sanctioned, the reversioners of the husband of the widow filed a civil suit for a declaration that they should not be held bound by the partition after the widow's death, as such partition was improper, the most valuable portion of the land having been fraudulently apportioned to the petitioner with the connivance of the widow.

Held, that as the presence or absence of fraud did not affect the jurisdiction, and that the object of suit being to strike directly at the formal proceedings of the Revenue authorities and to impugn the correctness of their method of partition, the Civil Court had no jurisdiction to entertain the suit.

Buta v. *Mussammat Jiwani* (82 *P. R.* 1899), distinguished. GULAB SINGH AND OTHERS *v.* MUSSAMMAT SUKHAN AND OTHERS.
104 P R 1900

154. *Jurisdiction—Suit for declaration—Value of subject-matter—Suits Valuation Act,* 1887, *section* 11.

Held, that a suit for a declaration that certain land was *shamilat deh* and liable to partition can only be adjudicated upon by a Court of competent powers with reference to the value of the entire estate, and that section 11 of the Suits Valuation Act is not applicable where the valuation has been fixed by rules having the force of law. The value of the land in dispute at thirty times the *jama* being Rs. 7,212-14-6, the first Court, a Subordinate Judge of the 2nd class, was not competent to try the suit. A question of jurisdiction has to be noticed and decided if it is patent on the record although the ground was not urged in the lower Appellate Court nor raised in the memorandum of appeal in this Court.

Ganga Sahai v. *Sheo Lal* (132 *P. R.* 1894) followed; *Ballah Mal* v. *Bhupa Mal* (110 *P. R.* 1888), distinguished; *Dinesh Chandar Roy Chaudhury* v. *Sarnomoy Debi* (1 *Calc. W. N.* 136), *Gunamani Dasi* v. *Mahabharat Ghosh* (1 *Calc. W. N. XXIII*). *Krishnasami* v. *Kanakasabai* (*I. L. R. XIV Mad.* 183), and *Muthusami Mudaliar* v. *Nallakulantha Mudaliar* (*I. L. R. XVIII Mad.* 419), referred to. KHUDAYAR *v.* WAHAB DIN.
35 P R 1901

155. *Jurisdiction—Valuation of suit—Suits Valuation Act,* 1887, *section* 8—*Suit for the cancellation of an auction sale of a house sold in execution of a money decree not exceeding Rs.* 100—*Punjab Courts Act,* 1884, *section* 3.

The value, for purposes of jurisdiction, of a suit for the cancellation of an auction sale of a house sold in execution of a money decree is the value of the judgment-debtor's interest in the house in suit assessed by the auction sale, and not the value the plaintiff chose to assess it at.

JURISDICTION—*contd.*

Sheo Devi Ram v. *Tulsi Ram* (*I. L. R. XV All.* 378), *Bhai Harnam Singh* v. *Mussammat Bhagwan Devi* (50 *P. R.* 1890), *Harnam Singh* v *Kirpa Ram* (1. *P. R.* 1887, F. B.), *Modhusudun Koer* v. *Rakhal Chunder Roy* (*I. L. R. XV Calc.* 104) and *Sohan Lal* v. *Gulab Mal and others* (50 *P. R.* 1896) followed. RADHA RAM *v.* HIRA AND OTHERS.
42 P R 1901

156. *Letters of administration—Grant by District Judge—Jurisdiction of Chief Court to extend the original grant—Succession Act,* 1865, *section* 264.

Held, that the Chief Court has no jurisdiction to amend a grant of letters of administration granted by a District Judge so as to give it operation beyond the local limits of such District Judge's jurisdiction. IN THE GOODS OF ARTHUR JAMES GRANT.
1 P R 1902

157. *Jurisdiction—Appellate jurisdiction—Jurisdiction of Divisional Judge to decide an appeal which under section* 39 (*a*) *of the Punjab Courts Act lies to a District Judge—Consent to jurisdiction—Acquiescence—Revision—Chief Court's powers of revision—Discretion—Punjab Courts Act,* 1884, *section* 70.

Held by the Full Bench-

(*i*) that there is a defect of jurisdiction if a Divisional Judge entertains an appeal direct from a Court of first instance which, under the provisions of section 39 (*a*) of the Punjab Courts Act, lies to a District Judge. The consent and acquiescence of the parties to a suit cannot give jurisdiction to a Court of limited jurisdiction;

(*ii*) that under section 70 (*a*) of the Punjab Courts Act, 1884, the Chief Court is not bound to interfere on the revision side even when there is a defect of jurisdiction unless failure of justice has directly resulted from such defect.

Minakshi Naidu v. *Subramanya Sastri* (*I. L. R. XI Mad.* 26, *P. C.*), *Bibi Ladli Begam* v. *Bibi Reji Rabia* (*I. L. R. XIII Bom.* 650), *Ledgard* v. *Bull* (*I. L. R. IX All.* 191, *P. C.*), *Babaji* v. *Lakshmibai* (*I. L. R. IX Bom.* 266), and *Narain Das* v. *Kotu Mal* (132 *P. R.* 1883), cited. *Drabo Moye Dabee* v. *Biprin Mundul* (10 *W. R.* 6), *Teekum Lal Das* v. *Peter MacArthur* (1 *W. R.* 279), *Gopi Nath Chobey* v. *Bhagwat Parshad* (*I. L. R. X Calc.* 707), *Ooma Sunduree Dossee* v. *Bipin Beharee Roy* (13 *W. R.* 292), distinguished. HANSA *v.* RAN SINGH.
36 P R 1902 F B

158. *Civil Procedure Code,* 1882, *section* 17—*Place of suing—Contract with commission agent for sale of goods.*

Plaintiff who resided at Kasur, in the Lahore District, sent *bhusa* from the Ferozepore District to the defendant who was trading at Jhelum for sale as a commission agent. Disputes having arisen between the parties with reference to the *bhusa* transactions, plaintiff filed a suit at Kasur to recover the amount due to him.

Held, that as under the Contract Act there is no liability for a commission agent to render accounts to his principal at his place of business unless there is an ex-

press agreement to do so, no cause of action arose in Kasur and that the Munsif of Kasur had no jurisdiction to try the case. DEVI DYAL *v.* HARI CHAND.

79 P R 1902

159. *Jurisdiction—Place of suing—Suit to recover money paid in Delhi on* hundis *sent by defendants to Delhi and there accepted and paid by the plaintiff—Civil Procedure Code*, 1882, *section* 17.

The plaintiff, a banker in Delhi, remitted Rs. 5,000 from Delhi to Ajmere at defendants' request, and received from the defendants *hundis* drawn on their firm at Bombay in satisfaction of this loan which were subsequently dishonoured and yielded no return. The plaintiff thereupon filed a suit in Delhi and claimed to be reimbursed. The Delhi Court declined jurisdiction, holding that as the *hundis* were made payable at Bombay the Court there alone had jurisdiction to hear the suit.

Held, that under the provisions of section 17, Civil Procedure Code, the Delhi Court had jurisdiction to entertain the suit. As the plaintiff expended money on defendants' behalf at Delhi he might with reference to the ordinary application of section 49 of the Contract Act naturally expect to be reimbursed there, and the fact that the defendants gave him *hundis* on Bombay which had been accepted in Delhi made no real difference.

Shivji Ram v. *Hem Raj* (57 *P. R.* 1900 F. B.) and *Devi Dyal* v. *Hari Chand* (79 *P. R.* 1902) distinguished. *Muhammad Shaffi* v. *Karamat Ali* (76 *P. R.* 1896) referred to. MINA MAL *v.* KANAK MAL.

10 P R 1903

160. *Jurisdiction—Place of suing—Consent to jurisdiction—Waiver—Civil Procedure Code*, 1882, *sections* 17, 20.

Held, that where the cause of action in a suit had not arisen within the jurisdiction of the Court in which a suit was instituted and only one of several defendants resided within that jurisdiction and no permission for the institution had been obtained in accordance with the proviso to section 17 of the Code of Civil Procedure, the non-resident defendants, who objected to the jurisdiction in their written statements, could not be held to have acquiesced in that jurisdiction by reason of their failure to apply under section 20 of the Code.

Viraragava v. *Krishnasami* (*I. L. R. VI Mad.* 344) and *Ismail Peer Ambalam* v. *Neelamegam Servai* (8 *Mad. L. J.* 38) not followed. NAND LAL *v.* GOPAL SAHAI.

27 P R 1903

161. *Review of judgment—Appeal—Jurisdiction of Divisional Judge to review his judgment after it has been upheld on appeal by the Chief Court—Civil Procedure Code*, 1882, *section* 623.

A subordinate Court is competent to review his judgment on an application put in before an appeal has been preferred against his decree and is not prevented from proceeding upon it by the subsequent presentation of an appeal, but he cannot entertain or deal with any such petition after an appeal in the case has been decided by a superior Court although it might have been put in proper time and is still pending in his Court.

Bhurrut Chunder Mojoomdar v. *Ram Gunga Sein* (5 *W. R.* 59, F. B.), *Thacoor Prosad* v. *Baluck Ram* (12 *Calc. L. R.* 64), *Bunkoo Lal Singh* v. *Basoomunissa Bibee* (7 *W. R.* 166), *Mussammat Jowala Devi* v. *Kanwar Sen* (32 *P. R.* 1896), and *Abdul Kasim* v. *Piyare Lal* (59 *P. R.* 1900), referred to. JAGAN NATH *v.* DEVI DAS. **25 P R 1904**

162. *Review—Review by some only of several defendants—Power of Court to reverse decision as regards persons not parties to the review—Civil Procedure Code*, 1882, *sections* 544, 623.

One Phusa, a Jain Jat, died childless leaving immovable property which in default of heirs reverted to the proprietary body of the village. 'A,' also a Jain Jat of the same village, claimed to be a collateral of the deceased and brought a suit against all the khewatdars of the village for recovery of possession. The suit was decreed. Among the defendants four alone applied for a review of judgment on the ground that they have discovered the pedigree table of the Settlement of 1863, which conclusively proves that the plaintiff was not a collateral of the deceased proprietor. The other defendants were neither impleaded in the review proceedings nor did they take any steps to become parties to it. After enquiry the Court granted the review and reversed the decree as to the petitioners without disturbing decree as to those defendants who were not parties to the review proceedings. Thereupon the remainder of the khewatdars appealed to the Divisional Judge urging that the claim of the plaintiff should have been dismissed not only as regards the share of the four petitioners but as regards all the defendants. The Divisional Judge accepted this view and dismissed the whole claim.

Held, that the Divisional Judge had no jurisdiction to reverse the decree of the first Court against the appellants who being no party to the application for review, nor to the subsequent proceedings, had no *locus standi* to appeal to the Divisional Judge.

Section 544, Civil Procedure Code, has no application to applications for review; that section applies only to appeals and cannot be applied to reviews by analogy, for there is in effect no analogy between the two.

Poresh Nath Mundul v. *Khettri Monee Debia* (20 *W. R.* 284) and *Chinta Monee Paul* v. *Pearee Mohun Mookerjee* (15 *W. R.* 1, F. B.), distinguished. GULLA *v.* MOTA AND OTHERS. **47 P R 1904**

163. *Discretion of Municipality to take action under section* 92 *of the Punjab Municipal Act of* 1891—*Power of Civil Courts to interfere with such discretion.*

Held, that the Civil Courts have jurisdiction to set aside and restrain all such acts of a Municipal Committee which do not fall within the scope of the authority given them by the Municipal Act. ALI MARDAN *v.* THE MUNICIPAL COMMITTEE OF KOHAT

45 P R 1905

164. *Valuation of suit—Suit for settlement of accounts of an alleged partnership—Value of relief sought—Finding of Court exceeding its pecuniary limits of jurisdiction, effect of—Court Fees Act*, 1870, *sections* 7 (*v*) (*f*), 11—*Suits Valuation Act*, 1887, *section* 8.

Held, that the value of a suit for settlement of accounts of a partnership where the plaintiff fixes an arbitrary value and prays for a decree for such sums as he might be found entitled to against the defendant is the amount which the Court subsequently finds to be due to plaintiff, and if in any such case the actual value is found to exceed the pecuniary limit of the Court's jurisdiction it is not competent for it to pass a decree in the case but should return the plaint for presentation to a Court having jurisdiction.

Bhag Mal v. *Mohra* (169 *P. R.* 1888), *Maman Mal* v. *Abdul Aziz* (58 *P. R.* 1902), and *Gulab Khan* v. *Abdul Wahab Khan* (*I. L. R. XXI Calc.* 365) approved. *Rameswar Mahton* v. *Dilu Mahtom* (*I. L. R. XXI Calc.* 550), dissented from. MANNA LAL *v.* SAMANDU. **46 P R 1906**

165. *Valuation of suit—Suit to establish right to attached property—Value of subject-matter for purposes of jurisdiction.*

Held, that the value for purposes of jurisdiction of a suit to establish right to attached property is the value of the decree sought to be realised out of the property and not the value of the property itself

Gulzari Lal v. *Jadaun Rai* (*I. L. R. II All.* 799), followed. BISHNU *v.* LAL SINGH.

55 P R 1906

166. *Jurisdiction—Loss of jewellery sent through Post Office—Suit against bailee for damages for negligence—Place of suing—Performance of contract—Civil Procedure Code*, 1882, *section* 17.

Plaintiff, a jeweller of Lahore, sued there to recover from the defendant, a jeweller of Calcutta the value of certain jewellery sent by him to the latter for repairs and subsequently lost. It appeared that the parties' method of transacting business was that the plaintiff used to receive jewellery for repairs from customers and send it off by post uninsured to the defendant who after executing the necessary work returned the same uninsured, by V. P. P. the "value" being the sum due to defendant for the work. The plaintiff having sent defendant in the ordinary way a parcel of jewellery for repairs with a request for its return by

JURISDICTION—*contd.*

first post, the defendant returned the articles duly repaired according to the usual practice by V. P. P. uninsured, the sum to be recovered from plaintiff being the amount of his charges for the work done. The parcel was received in the Lahore Post Office and a postal peon took it to the plaintiff's shop, but as the latter did not find it convenient to pay then, he refused delivery and asked the peon to keep it for him till he should send for it. Two days after the plaintiff sent an employee for it but the parcel could not be found and in fact it was discovered to have been lost. The defence contended that the Lahore Court had no jurisdiction to entertain the suit.

Held, that as a part of the performance of the contract between the parties consisted in the payment by plaintiff of a sum of money to the Post Office at Lahore for the behoof of defendants, the Lahore Court had jurisdiction to entertain the suit. BOSECK & Co. *v.* MANDLESTON. **70 P R 1906**

167. *Valuation of suit—Suit to establish right to attached property—Value for purposes of jurisdiction.*

Held, that the value for purposes of jurisdiction of a suit to establish right to attached property is the amount of decree sought to be realized out of the property and not the value of the property itself. ZORAWAR SINGH *v.* DEVA. **142 P R 1906**

168. *Municipal Committee—Discretion of, to take action under section 120 E.—Suit by person aggrieved for injunction—Jurisdiction of Civil Court to restrain action of Municipality—Punjab Municipal Act, 1891, section 120 E.*

Although under the powers given by the Legislature a Local Body may act perfectly *bonâ fide* and *intra vires* in issuing a certain order, still if that order injuriously affects the rights of any person the latter can undoubtedly appeal to the Civil Courts for protection, and to that protection he will be entitled if he can prove that the order in question was made wantonly or without any reasonable justification. Therefore, where a Municipal Committee, at the instance of a discontented neighbour, issued a notice under section 120 E of Act XX of 1891, directing the plaintiff to close his old drain and to make a new one in its place along a different alignment, without any proper enquiry as to whether the existing drain was a menace to the health of the people surrounding it or the general public,

Held, that the Civil Court should under such circumstances interfere by injunction to restrain the Committee from carrying out its order which was inequitable and pretended to proceed on an alleged danger to health which was in no way proved. GHULAM MUHAMMAD *v.* JANGBAZ. **58 P R 1907**

169. *Jurisdiction of Civil Court—Suit for removal of watercourse constructed with*

JURISDICTION—*contd.*

the sanction of a Canal Officer—Northern India Canal and Drainage Act, 1873, sections 21, 22, 24, 25.

Held, that a Civil Court has no jurisdiction to restrain a party, to whom permission has been granted under the Northern India Canal and Drainage Act, 1873, to construct a watercourse through the land of another, from such construction. MOHKAM DIN *v.* MANSABDAR. **74 P R 1907**

170. *Place of suing—Contract for supply of goods—Place where performance was to be completed—Civil Procedure Code, 1882, section 17.*

A merchant at Lahore sent a certain sum of money as an advance to a firm in Cochin for certain goods, under a contract which provided that the firm would draw bills for the balance due to them under the contract upon the remitter's firm at Lahore and negotiate them with any banker, which bills the remitter undertook to pay and retire at maturity.

Held that a suit for the refund of the money advanced and damages due on the breach of the contract against the Cochin firm on account of the goods not being shipped lay at Lahore, where the payment of the balance was to be made, as that was the place where the performance of the contract was to be completed within the meaning of clause (*ii*) of Explanation 3 to section 17 of the Civil Procedure Code. PREMJI KHETSEY *v.* GHULAM SARWAR KHAN. **36 P R 1908**

171. *Sale of a house in foreign territory by a British Insolvency Court—Suit for the recovery of a share of the purchase-money on the ground of co-ownership—Suit for determination of an interest in immovable property.*

Held, that a suit to follow the purchase-money of a house in a foreign territory, which had been sold by the order of a British Insolvency Court, on the ground that it was not the sole property of the insolvent, and that a certain portion of it belonged to the plaintiff, is a suit "for the determination of any right to or interest in immovable property" within the meaning of section 16, clause (*d*) of the Code of Civil Procedure, and can only be instituted in a Court within the local limits of whose jurisdiction the house is situated. HARI RAM *v.* KANSHI RAM. **122 P R 1908**

172. *Suit against Ruling Chief with respect to property owned by him and situate in British India—Suit instituted without obtaining previous consent of Governor-General in Council—Maintainability of suit as against the co-defendants—Civil Procedure Code, 1882, section 433.*

Held, that the Raja of Poonch is a Ruling Chief within the meaning of section 433, Civil Procedure Code, and as such cannot be sued in Courts of British India in respect of immovable property acquired by

JURISDICTION—*contd.*

him in that country without the previous consent of the Governor-General in Council.

Held also, that a suit instituted by the reversionary heirs of a childless proprietor against a number of alienees holding separate and distinct portions of his estate under independent titles, in which a Ruling Chief is but one of several defendants, should not be dismissed against all the defendants merely because it fails against the Ruling Chief on the ground that previous consent of Government, as required by section 433, had not been obtained before the commencement of the suit, a defence peculiar to that defendant alone. DAYAL SINGH *v.* UTTAM KAUR. **21 P R 1909**

173. Jirga—*Resolution of—No restriction on jurisdiction of Civil Courts where the provisions of section 10 of the Punjab Frontier Crimes Regulation, 1887, are not acted upon—Punjab Frontier Crimes Regulation, 1887, sections 10, 12.*

Held, that the Civil Courts are not debarred from enforcing the provisions of the Pre-emption Act, 1905, merely because on a reference by the Deputy Commissioner a *Jirga* had passed a resolution amounting to an authoritative statement of a general custom to the effect that the members of one Biloch *tuman* in the Dera Ghazi Khan district, should not be allowed to acquire lands in the territory of another *tuman* when such reference had not originated in a definite dispute of a character mentioned in section 10 of the Punjab Frontier Crimes Regulation, 1887, and when the Deputy Commissioner had taken no action under any of the clauses of sub-section 3 of that section. ABDUL KHAN *v.* HAJI SHAH. **26 P R 1909**

174. *Suit on foreign judgment—Jurisdiction of High Court of Judicature in England over Indian British subjects residing in India under contract made and broken in England—Interest.*

Held, that according to English law it is the duty of the debtor to seek out his creditor and pay him wherever he may be, and therefore the fees of a solicitor residing in England for work done are payable in England, when no particular place of payment is named, and non-payment is a breach within the jurisdiction of the contract, which was to be performed in England.

Held also, that a defendant who has made and broken a contract in England, and who is a British subject, is amenable to the jurisdiction of the High Court of judicature in England, after he has been properly served with notice of action in accordance with the English rules of procedure, notwithstanding that he is a native of British India and residing there.

Held also, that judgment passed in England against a defendant in India who has been duly served with a writ of summons but who did not enter appearance or deliver a defence, when the proceedings have been strictly in accordance with the

JURISDICTION—*contd.*

existing rules, must be considered as one passed on the merits.

Held further, that the English Statute as to judgments carrying interest does not apply to India, nor does such a case fall within the scope of Act XXXII of 1839, and plaintiff suing on a foreign judgment cannot, therefore, recover more than appears on the face of the judgment. RAM CHAND *v.* MR. JOHN BARTLETT. **75 P R 1909**

175. *Revision under section* 70 (1) (*a*). *Punjab Courts Act—Power of Chief Court to revise orders although they might be attacked on appeal from the decree—Civil Procedure Code* (1882), *section* 588—*Jurisdiction of Court in suits for damages for torts—Meaning of words "actually and voluntarily resides"—Civil Procedure Code* (1882), *sections* 17 *and* 18.

The plaintiffs brought a suit to recover compensation in the District Court of the Gujrat district on the allegation that the defendants had murdered a near relative of plaintiffs in the Faridkot State, where they were convicted and sentenced to imprisonment for life. The District Court held that the cause of action having arisen in the Faridkot State, the plaintiffs should institute their suit in that State. This order was upheld by the Divisional Judge on appeal. The Chief Court on revision under section 70 (1) (*a*) of the Punjab Courts Act—

Held, following *Pandit Ram Kant* v. *Pandit Ray Deo* (*No.* 60 *P. R.* 1897, *F. B.* (and *Asa Ram* v. *Tara Chand* (*No.* 44 *P. R.* 1899), that revision lies to the Chief Court under section 70 (*a*) of the Punjab Courts Act from order appealable under section 588 of the Civil Procedure Code (1882), in spite of the clause (*a*) of that section to the effect that orders passed in appeals under the section shall be final.

Held also, that the defendants although in confinement in jail in the Faridkot State, were still for the purposes of section 17 of the Civil Procedure Code (1882) "actually" and "voluntarily residing" in the Gujrat district where their homes and land are and where their families reside, and that therefore the Gujrat Court had jurisdiction to try the case. RAM LABHAYA *v.* BISHEN DAS. **77 P R 1909**

176. Civil Courts have no jurisdiction to convert a mortgage by way of conditional sale into a mortgage prescribed by section 6 (1) (*a*) of the Punjab Alienation of Land Act.

See PUNJAB ALIENATION OF LAND ACT **88 P R 1909**

177. Power of Court to refuse to entertain pleas raised too late.

See CIVIL PROCEDURE CODE, 1908. O. I, R. 9. **93 P R 1909 P C**

178. *Punjab Court of Wards Act II of* 1903—*Sections* 26 *and* 31 (2)—*Non-production of certificate.*

Held, that it lies not within the province of a Civil Court to determine whether the Deputy

JURISDICTION—*concld.*

Commissioner should or should not grant a certificate in accordance with section 26 of the Punjab Court of Wards Act. KANDA RAM *v.* MUHAMMAD KHAN. **6 P R 1910**

179. *Held* that Civil Courts have no jurisdiction to deal with the terms offered to a mortgagee by the Deputy Commissioner under section 9 (2) of the Punjab Alienation of Land Act, 1900. DULA SINGH *v.* DIAL SINGH. **22 P R 1910**

180. *Jurisdiction—Court cannot decide other question till point of jurisdiction settled.*

Where in a suit before a Munsif, 1st class, it was objected that the suit was undervalued, and that the value for jurisdictional purposes was Rs. 2,000, but the Munsif, without deciding the question of jurisdiction dismissed the suit as barred by limitation—

Held, by the Chief Court, that the first question for decision is the jurisdiction of the Court in which the suit is filed. If the Court has not jurisdiction the proceedings are *coram non judice* and no question, either of fact or law, can be decided except that of jurisdiction. ABDUL HAQ *v.* NIAZ AHMAD. **83 P R 1910**

181. *Held*, that where the relation of landlord and tenant was settled by the Cantonments House Accommodation Act, the application of the general law was ousted, and consequently the Civil Courts had no jurisdiction to decide the question of necessity for repairs and their cost under section 70 of the Contract Act, 1872. DAVIES *v.* BROKE-SMITH. **103 P R 1910**

182. *Held*, that when a Divisional Judge refrained from passing a definite order on an application for revision made by the Deputy Commissioner under section 21 (A) (2) of the Punjab Alienation of Land Act he had full jurisdiction to pass another order upon a second application made by the Deputy Commissioner. ASA SINGH *v.* BUTA. **12 P R 1911**

JURISDICTION OF CHIEF COURT.

See CHIEF COURT—POWERS OF. **47 P R 1911 F B**
See DIVORCE. **47 P R 1911 F B**

JURISDICTION OF CIVIL OR REVENUE COURTS.

See JURISDICTION OF SETTLEMENT COURT.

1. *Suit for correction of Patwari's papers—Patwari making entries in annual papers inconsistent with Settlement Record.*

See ALLUVION AND DILUVION. **7 P R 1886 Rev.**

2. *Suit to set aside award of arbitrator appointed by Revenue Officer in partition proceedings—Allegation of fraud but no dispute as to title—Punjab Land Revenue Act,* 1887, *section* 158 (2).

See ARBITRATION. **52 P R 1898**

3. *Suit for sum payable as* dhart *and for marriage due—Claim based on two*

JURISDICTION OF CIVIL OR REVENUE COURTS—*contd.*

causes of action, one cognizable by Civil Court, the other cognizable by Revenue Court—Power of Chief Court to deal with part of decree.

See CAUSE OF ACTION—I. DISTINCT. No. 38. **28 P R 1894**

4. *Jurisdiction of Civil Court to adjudicate on the correctness of boundaries laid down by the Settlement authorities.*

See CIVIL PROCEDURE CODE, 1908, SECTION 18. **1 P R 1901**

5. *Decree for partition of estate—Partition referred to Collector—Power of Civil Courts to interfere.*

See CIVIL PROCEDURE CODE, 1908, SECTION 54. **73 P R 1889**

6. *Suit for* haq tora—*Rent of land—Customary dues.*

See CUSTOM—VI DUES. **18 P R 1892 Rev.**
See SMALL CAUSE COURT ACT, 1865, SECTION 6. **33 P R 1887 F B**

7. *Claim for partition—Jurisdiction.*

See JURISDICTION. **104 P R 1900**
See PARTITION. **12 P R 1885 Rev.**
3 P R 1886 Rev.

8. *Suit for possession by tenant who has been ejected—Suit instituted more than one year after ejectment—Punjab Tenancy Act,* 1887, *sections* 50, 77 (3) (9)—*Jurisdiction of Civil Court.*

See LANDLORD AND TENANT. **64 P R 1898**

9. *Right of widow who has succeeded to her husband's interest in joint holding to claim partition—Grant of such prayer by Revenue Officer—Jurisdiction of Civil Court to entertain subsequent suit by co-sharers objecting that widow is by custom not entitled to claim partition—"Question as to title"—"Owner" and "landowner"—Punjab Land Revenue Act,* 1887, *sections* 111, 115, 116, 158.

See PARTITION. **82 P R 1898 F B**

10. *Joint estate—Mortgagee's right to partition—Jurisdiction of Revenue Court—Procedure—Punjab Land Revenue Act,* 1887, *sections* 111, 115, 117.

See PARTITION. **4 P R 1903 Rev.**

11. *Suit by one lambardar against another for dues alleged to have been wrongly collected and retained by the defendant—Jurisdiction.*

See SMALL CAUSE COURTS—JURISDICTION OF. **2 P R 1887**

12. *Suit for rent of Revenue paying land.*

See SMALL CAUSE COURTS—JURISDICTION OF. **86 P R 1887**

13. *Suit for* "atrafi" *dues—Jurisdiction.*

See SMALL CAUSE COURTS—JURISDICTION OF. **108 P R 1887**

14. *Suit by co-sharer for share of produce in certain land.*

See SMALL CAUSE COURT, JURISDICTION OF. **34 P R 1888**

JURISDICTION OF CIVIL OR REVENUE COURTS—*contd.*

15. *Suit for value of trees illegally cut and appropriated.*

See SMALL CAUSE COURT ACT, 1865, SECTION 6. **13 P R 1888**

16. *Ejectment of tenant by landlord—Suit by tenant for refund of portion of rent paid in advance.*

See SMALL CAUSE COURT ACT, 1887, ARTICLE 44. **172 P R 1888**

17. *Suit to try correctness of Settlement Record.*

The suit *held* not cognizable by a Revenue Court. MEHR KHAN *v.* TORA KHAN. **11 P R 1867 Rev**

18. Plaintiff's suit for lambardari dues dismissed, as the appointment of lambardars rested with Government, and the question was whether plaintiff or defendant was entitled to hold the office. MAHOMED BUKSH *v.* HUSSA. **27 P R 1869**

19. A suit will not lie to enforce a contract made by a *Saddar Malguzar* appointed under clause 3, section 10, Regulation VII of 1822, for a share of his lambardari allowance; but the assignee may sue for breach of contract. HURREE SINGH *v.* MAHAN SINGH. **16 P R 1870**

20. *Settlement of mafi tenure.*

Upon the death of a mafidar, a mohunt, Government resumed the mafidar's tenure which he held, and settled it with the defendant. Plaintiff, who succeeded deceased as mohunt, sued for a declaratory decree of his right to have the settlement made with him. *Held*, that the Civil Court had no jurisdiction to entertain the suit. DYA RAM *v.* THAKAR DASS **25 P R 1872**

21. The assignment of *puchotra* cannot be enforced in a Civil Court; a suit brought by the assignee for the recovery of a specific amount of *puchotra* not paid to him, dismissed. MALUK SINGH *v.* NUTHA SINGH. **31 P R 1872**

22. "*Dharat.*"

Held, by the Financial Commissioner, that the right to collect *dharat* is one which is not cognizable by the Civil Courts, and that the cess being of the nature of a tax, the orders of the Executive Government are required to impose it. NAWAB JALLAL-UD-DIN KHAN *v.* MUKANDA. **8 P R 1872 Rev**

23. *Octroi dues—Act XV of* 1867, *section* 19—*Lessee.*

A lessee of octroi dues cannot sue in a Civil Court for the recovery of arrears. MUHAMMAD SULTAN *v.* KHAZAN SINGH. **60 P R 1873**

24. *Pensions Act (XXIII of* 1871), *section* 4—*Suit relating to grant of land revenue.*

Plaintiffs sued defendants for money received for the use of the former—*viz.*, a share in certain rents collected by the defendants in respect of a *jagir* in which plaintiffs alleged they and defendants had an interest. Defendants denied plaintiffs' interests in the *jagir* and their right to share in the collections. *Held*, that the suit related to a grant of land-revenue, and was not cognizable by the Civil Courts. ATMA SINGH *v.* JIT SINGH. **36 P R 1874**

25. *Grant of land revenue.*

Plaintiffs sued to establish a right to a certain share in a *jagir*, and to recover Rs. 1,500, value of produce: and one of the issues was whether they were entitled to two-thirds or one-half of the produce. The Original Court decreed Rs. 1,192; and the Appellate Court reduced this to Rs. 894, holding that plaintiffs were entitled to a half and not two-thirds. Plaintiffs appealed to the Chief Court in respect of the difference, *viz*, Rs. 298. *Held*, that the suit was barred by section 4, Act XXIII of 1871; and that plaintiff's course was to apply under section 5 in the Revenue Department for an order declaring their share, and then to sue in the Civil Court for the amount due accordingly. KHUSHAL SINGH *v.* BASSAWA SINGH. **9 P R 1875**

26. *Grant of land revenue—Alluvial deposits—Act XXXIII of* 1871, *section* 41.

Plaintiff was mafidar of certain lands which were swept away by the river up to 1870. In 1873 a small plot of land was reformed by the river on the site of the original land. Plaintiff claimed to revive his mafi rights. *Held*, that section 4 of Act XXIII of 1871 and Rule 33 under section 41 of Act XXXIII of 1871, barred the hearing of the suit in a Civil Court. AHMADYAR *v.* ALLA JOWAYA KHAN. **10 P R 1875**

27. Puchotra—*Act XXXIII of* 1871.

The Civil Courts have no jurisdiction to determine the amount of *puchotra* to be taken by lambardars. The claim is connected with land revenue; the share of each must be settled by the Revenue authorities; and an infringement of the order passed by such authorities may give a cause of action. NURA *v.* NURA. **27 P R 1875**

28. *Claim to partition—Act XXXIII of* 1871, *section* 65.

The land in suit was common land of the *patti* of which the parties were proprietors; and this land had been for some time in defendants' possession on behalf of the proprietary body. Plaintiffs sued for partition of their share, and for possession by ejectment of defendants. There was no dispute about the shares of the parties. *Held*, that the Civil Courts could not take cognizance of the suit, under section 65 Act XXXIII of 1871 WIRA *v.* DHARMA. **71 P R 1875**

29. *Suit to set aside adoption.*

A Revenue Court cannot entertain a suit to set aside an adoption, where a decree, if passed, might affect moveable property. Such Court can only decide upon the validity or otherwise of an adoption in so far as it relates to a claim for land, or the rent, revenue or produce of land. JAISUKH *v.* MUSSAMMAT INDRI. **2 P R 1875 Rev**

30. An *altumgah* grant to the Nawab of Karnal by the former Government and *istumrari* property, *held*, to be grants of land revenue and exempt from the jurisdiction of the Civil Courts. NAWAB AZMAT ALI KHAN *v.* MUSSAMMAT LALLI BEGAM. **1 P R 1876**

31. *Act XXXIII of* 1871, *section* 65, *clause* 2—*Partition*—Abadi.

By section 65, clause 2, Act XXXIII of 1871, a Civil Court cannot take cognizance of claims to partition by persons who do not contest the correctness of the Settlement record. *Held*, that this section barred a claim in a Civil Court for partition of the *abadi* there being no dispute as to shares. ALI BUKSH *v.* SHAME KHAN. **14 P R 1876**

32. Puchotra.

Plaintiff, lambardar, sued for his *puchotra*, the defendants (proprietors) having instead of paying their revenue through plaintiff paid it direct to the jagirdar. *Held*, that the Civil Court had jurisdiction to try the suit. Section 65, Clause 6, Act XXXIII of 1871, commented upon and explained. DEVI SINGH *v.* KALI RAM. **27 P R 1876**

33. *Patwari's pay.*

A suit for a patwari's pay is cognizable by a Civil Court; section 65, Clause 6, Act XXXIII of 1871, does not apply to such a claim. JAINTI DASS *v.* LEKH RAM. **28 P R 1876**

34. *Partition—Settlement Record.*

Plaintiffs sued for partition and possession of a portion of the common land, and for an amendment of an entry in the *wajib-ul-urz*, the meaning of which was contested by the parties,—defendants alleging that the entry meant that no partition should take place without the consent of the whole proprietary body, and plaintiffs disputing this construction, and alleging that if it were correct, then the entry itself was incorrect. *Held*, that the suit would lie for the purpose of declaring what the plaintiffs' rights were under the *wajib-ul-urz*, and of their right to obtain their share by partition. MAMRAJ *v.* JAS RAM. **40 P R 1876**

35. *Partition—Silence of* wajib-ul arz—*Land Revenue Act.*

Section 65, clause 2, of the Land Revenue Act proceeds upon the assumption that the shares of the parties, and the conditions and terms on which they are entitled to partition, are determined by the *wajib-ul-urz*; and where the record of rights is silent on the point, a literal construction is not to be put upon section 65, but it must be held that the Civil Court has jurisdiction

JURISDICTION OF CIVIL OR REVENUE COURTS—*contd.*

whenever there is a disputed question of right between the parties. The Civil Court cannot go to the length of giving detailed directions as to the mode in which partition is to be carried out. SYAD ULLA *v.* PIRA.

97 P R 1876

36. A Civil Court in the Punjab can give a decree in accordance with section 225, Civil Procedure Code, for division of an estate, or for separate possession of a share in an actually undivided estate, paying Revenue to Government, where the right to a share or the extent of the share is disputed; the execution of the decree is left to the Revenue Officers by the rules framed under section 67 of the Land Revenue Act. *Semble*—After the making of the decree, all disputes between the parties as to the mode of partition are cognizable by the Revenue Officers only, under section 65, Land Revenue Act, and not by the Civil Courts. MUTSADI MAL *v.* MUSSAMMAT DHAN KOUR.

100 P R 1876

37. *Marriage fees.*

A suit for *haq bakree* or marriage fees, does not lie in the Revenue Court. NUR KHAN *v.* HAYAT. **1 P R 1876 Rev**

38. *Act XXXIII of* 1871, *section* 65, *clause* 2—*Partition.*

There were two tarafs in the village, one, a *Gil* taraf, being divided into five pattis. The proprietors of three of these pattis were of the *Gil got*, the owners of the remaining pattis being Brahmins. M. S., a Jat of the *Gil got*, owned one of the five pattis, and dying without heirs in 1866, the question as to what should be done with his land was disposed of by the Tahsildar ordering it to be recorded as *shamilat* of the *Gil* taraf. Subsequently, in 1874, certain persons applied for partition of the *shamilat* of the *Gil* taraf, and D. S. and others of the *Gil got* objected to the land of M. S. being treated as *shamilat* of the whole *Gil* taraf, contending that the Brahmins had no right to it. The objection was disallowed, and the Revenue Officer divided the land: D. S. in 1875 sued the defendants (Brahmins) for a portion of the land of M. S. which had gone to the defendants in the above partition.

Held, that the Civil Court's jurisdiction to entertain the suit was not barred by section 65, clause 2, Act XXXIII of 1871. DHIAN SINGH *v.* GHAZI. **17 P R 1877**

39. *Punjab Land Revenue Act (XXXIII of* 1871), *section* 65—*Partition.*

The parties to this suit purchased land jointly and cultivated different portions. Plaintiff claimed to have as his share at partition the portion he had all along cultivated, and was referred to a regular suit. *Held*, that as there was no dispute as to the jointness of the ownership, no Civil Court could award partition. NATHU *v.* LAL CHAND.

48 P R 1877

JURISDICTION OF CIVIL OR REVENUE COURTS—*contd.*

40. *Act XXXIII of* 1871, *section* 65—*Partition.*

Plaintiffs admitting the land in dispute was *shamilat*, claimed, in the event of a partition, either to have it included in their share, or excluded altogether from partition. *Held*, that the suit was excluded from the cognizance of a Civil Court by section 65 of the Punjab Land Revenue Act, XXXIII of 1871. AMIN CHAND *v.* CHAILU.

69 P R 1877

41. In a suit by a widow for partition of her late husband's share in a joint khata, which was contested by the defendants, *held*, that as the right to partition was contested, the suit was not barred from the cognizance of the Civil Courts by clause 2, section 65, Act XXXIII of 1871. RANJHA *v.* MUSSAMMAT RAJJI. **22 P R 1878**

42. *Decree for partition—Act XXXIII of* 1871, *section* 65—*Civil Procedure Code (Act X of* 1877), *section* 244—*Execution—Suit by party dissatisfied with execution proceedings—Jurisdiction.*

Where a decree for partition has been made, and partition has been carried out in execution of decree, *held*, that a civil suit by a person concerned by the decree, who is dissatisfied with the proceedings taken in execution, will not lie, his remedy being by way of appeal under the provisions of section 65 of the Land Revenue Act (XXXIII of 1871).

Held, further, that such a suit is barred by the provisions of section 244, Act X of 1877. NIHAL SINGH *v.* MIHAN SINGH.

126 P R 1879

43. *Suit for land allotted at partition where delivery of possession has not taken place.*

Held, that a Civil Court has no jurisdiction to entertain a suit for possession of land allotted by the Revenue authorties in partition proceedings, when the partition has not been completed by delivery of possession through the authorities. ILAHIA *v.* BUTA.

134 P R 1879

44. *Suit for the right to a religious office—Custom—Kangra Bhojkis of Bhawan shrine—Right to officiate at temple.*

A suit by a family of priests for a decree prohibiting another branch of the family from conducting religious services in a shrine, *held*, to be cognizable by the Civil Court.

Found that by the custom of the Bhojkis of the Bhawan shrine at Kangra, only Bhojkis by wives who are the daughters of Kangra Bhojkis are entitled to officiate at the temple, and not sons of Kangra Bhojkis by daughters of Jowala Mukhi or Naina Devi Bhojkis. BHAG MAL *v.* SANT. **27 P R 1880**

45. *Act XXXIII of* 1871, *section* 65, *clause* 3—*Dispute at partition as to tenure of village.*

JURISDICTION OF CIVIL OR REVENUE COURTS—*contd.*

At partition of the village lands, plaintiff claimed proprietary rights in certain lands in his possession, on the ground that the tenure of the village was Bhayachara and not Zemindari, as asserted by the opposite side, and that therefore possession regulated the measure of right. *Held*, that a suit by plaintiff in the Civil Court, for a declaration of his right as above, was not barred by section 65, clause 3 of the Land Revenue Act of 1871. GHISA *v.* RANJIT.

121 P R 1880

46. *Revenue free grant—Intention of Government.*

Held, that the question in whose favor Government intended to make a revenue free grant, where sharers are mentioned in the recommendation but not in the order of Government, is not one which can be determined by a Civil Court. MUHAMMAD-SHAH *v.* FATTEH-ULLA-SHAH.

122 P R 1880

47. *Dispute about abadi of village—Principle of division—Rights of individual proprietors* inter se.

In a suit brought by one out of three tarafs of the village against the second taraf and one patti of the third taraf, the contention of the plaintiffs was that the interest of the tarafs in the abadi of the village (which was *shamilat*) was according to the khewat of each taraf, and their object was to have a partition of the abadi on that principle, so as to make up the deficiency of their share from land of the abadi in possession of the defendants or from other common land of the village. The defendants pleaded that the interests of the taraf in the abadi were according to possession.

Held (reversing the orders of the lower Courts) that the said Courts should only have determined the rights of the three tarafs *inter se* as to partition and should not have touched the possession of individual proprietors, the mode of giving effect to the rights of the tarafs *inter se* or of individual proprietors in any taraf being a matter reserved to the Revenue authorities. DALLA SINGH *v.* ALA SINGH.

92 P R 1881

48. *Land Revenue Act (XXXIII of* 1871), *section* 42, *rule* 3, *and section* 65, *clause* 6—*Suit by mortgagees of jagir revenue against lambardars for instalment of such revenue—Agreement by lambardars to pay plaintiffs and not jagirdars—Claim connected with collection of land revenue.*

Plaintiffs, who were mortgagees of the interest of the jagirdar of the village, gave notice of the mortgage to the defendants, the lambardars, and procured from them in 1877 a written agreement by which they bound themselves to pay the collected revenue year by year, not exceeding Rs. 3,000, to the plaintiffs and not to the jagirdar. It appeared that the sum claimed

in the present suit, which was the *jagir* revenue for the kharif harvest of Sambat 1936, had been collected by the defendants and by them paid into the treasury at the tahsil, from whence it had been paid out to the jagirdar. It further appeared that in 1878 the Collector had on the petition of the mortgagees passed orders that the revenue might be paid to them through the Tahsildar, but that subsequently in 1880, he passed further orders that the collection for the mortgagees must be stopped for the future. This order was not due to any act of the defendants, the lambardars.

Held, on the above facts that the plaintiffs' claim against the lambardars was barred by clause 6, section 65 of the Land Revenue Act, the said claim being not the less one connected with the collection of land revenue, because the act which gave rise to it was a violation of an agreement which itself related to the collection of land revenue.

Held further, that the claim was not saved by Rule 3 of the rules under section 42 of the same Act, as the lambardars were not defendants, *quoad* the jagirdar, within the meaning of that rule, nor, further, on the facts found could it be held that there had been any default at all on the part of the lambardars. MAKHAN MAL *v.* MAHA SINGH.

16 P R 1882

49. *Pensions Act (XXIII of* 1871), *sections* 4, 6—*Suit for property in rent-free land—Certificate—Land Revenue Act (XXXIII of* 1871), *section* 65—*Suit for partition where shares were not determined at Settlement and where parties are at issue as to principle of partition.*

In a suit by plaintiff in which he claimed to make up his share of certain land of which he and the defendants appeared to be joint proprietors, as the land was held revenue-free, the plaintiff obtained a certificate from the Deputy Commissioner under section 6 of the Pensions Act, 1871. The lower Appellate Court dismissed the plaintiff's suit holding that if the suit was one for partition, the jurisdiction of the Civil Court was barred by section 65 of the Punjab Land Revenue Act, 1871, and if it was for illegal ouster, it was barred by the Pensions Act, owing to the certificate not having been sanctioned by the Financial Commissioner.

Held, that as the dispute between the parties related to the property in the land, the revenue of which was released, no certificate was necessary under section 4 of the Pensions Act, and further that the Deputy Commissioner's certificate satisfied section 6 of the Act, if any certificate was necessary.

Held, also, that though the suit must be regarded as one for partition, unless the plaintiff was able to show that he had been dispossessed by the defendants of any particular portion of the land, the jurisdiction of the Civil Court was not barred by section 65, clause 2 of the Land Revenue Act, as

the shares of the parties were not determined at Settlement, and as they were at issue as to the principle on which the partition should be made. *Syad Ulla* v. *Pira* (No. 97 *P. R.* 1876) followed. BHAI BADAN SINGH *v.* PARTAP SINGH.

131 P R 1882

50. *Suit for land awarded at partition—Possession and subsequent ouster.*

Held, that a suit for possession of land awarded to the plaintiff in partition proceedings by the Revenue Courts will not lie in a Civil Court, unless the plaintiff can show that, subsequent to the partition, he obtained possession of the land, either through the agency of the Revenue authorities or otherwise by private arrangement. *Ilahia* v. *Buta* (No. 134 *P. R.* 1879) followed. UMRA *v.* JIWAN SINGH. **164 P R 1882**

51. *Land Revenue Act (XXXIII of* 1871), *section* 65, *clause* 6—*Claim arising out of, or connected with, the collection of land revenue.*

Plaintiff, a lambardar and a joint proprietor with the defendant of the village of K. sued to recover from the defendant a moiety of certain revenue which had been realized from him as lambardar by Government. It appeared that the revenue of K. had been assigned at a former Settlement to two jagirdars, and that one of these having died at the beginning of the new Settlement the fact of his death was suppressed, and the revenue which lapsed to Government remained unpaid for several years till Government realized the whole amount from the plaintiff who brought the present suit to recover a moiety of the amount thus realized.

Held, that the present suit was not excluded from the cognizance of the Civil Court by section 65, clause 6 of Act XXXIII of 1871, as it was not intended that that section should bar a suit like the present between two joint proprietors for contribution springing out of relations resembling those created by contract, nor could the present claim be properly said, to arise out of, or to be connected with, the collection of land revenue, or any process enforced on account of an arrear of land revenue, as, as soon as the plaintiff paid up the full sum due on account of revenue, there ceased to be an "arrear of land revenue" within the meaning of the Act, and the defendant's liability did not arise out of, nor was it connected with, the collection of land revenue, but out of a relation resembling that created by contract. *Devi Singh* v. *Kali Ram* (No. 27 *P. R.* 1876) cited and approved. MOHAR SINGH *v.* SHER SINGH.

42 P R 1883

52. *Land Revenue Act (XXXIII of* 1871), *section* 65, *clause* 6—*Suit by representative of deceased jagirdar to recover money collected by lambardar and paid over to a third party—Money had and received.*

The jagirdar of D. allotted during his lifetime to his younger son, the present plaintiff, the revenue of the village of D. subject to a payment to himself so long as he lived. Shortly before his death the said jagirdar started on a pilgrimage and authorised the lambardar, the present defendant, to pay over a certain sum to his eldest son from the kharif harvest of 1935, which sum the lambardar, having collected the revenue for the harvest in question, paid over to the deceased jagirdar's eldest son; whereupon the plaintiff brought this suit to recover the said sum from the lambardar on the grounds that the revenue when collected belonged to him, as his father had died before the harvest was either sown or reaped, that the payment to his eldest brother was made without his consent, and that the father's authority must be held to have terminated with his death.

Held, that the above claim could not be regarded as one of those which clause (6) of section 65 of the Land Revenue Act excludes from the cognizance of the Civil Courts; as, looking at the general tenor of the Act, that clause would appear to have been merely intended to exclude suits in which the action of the Revenue authorities in the matter of the amount of the Revenue to be collected or the mode of collection is at issue, and was never intended to exclude a suit like the present, founded on the non-payment to the plaintiff of a sum collected on his behalf by a lambardar, and wrongly, as alleged, paid over by him to a third party; such suit arising out of a relation resembling that of contract, and being analogous to those suits which in English practice are based on account for money had and received to the plaintiff's use. *Devi Singh* v. *Kali Ram* (No. 27 *P. R.* 1876), and *Mohar Singh* v. *Sher Singh* (No. 42 *P. R.* 1883,) followed. *Makhan Mal* v. *Maha Singh* (No. 16 *P. R.* 1882), distinguished. SIRDAR SUNDER SINGH *v.* SAIDA.

123 P R 1883

53. *Land Revenue Act (XXXIII of* 1871), *section* 65 (2)—*Suit for partition—Determination of plaintiffs' share and right to partition in accordance therewith.*

Held, that a suit for partition of common land will lie in the Civil Courts so far as it seeks a determination of the plaintiffs' shares and their right to a partition in accordance with such shares; but if the Civil Court goes further than this and gives detailed directions as to the mode in which the partition should be carried out, it exceeds its jurisdiction and intrudes on the province of the Revenue authorities. *Syad Ulla* v. *Pira* (No. 97 *P. R.* 1876) followed. *Ali Buksh* v. *Shame Khan* (No. 14 *P. R.* 1876,) and *Ilahia* v. *Buta* (No. 134 *P. R.* 1879), referred to. BHIKAM SEIN *v.* RAM NATH.

125 P R 1883

54. *Suit for lands allotted at partition by Revenue Court—Incomplete partition—*

JURISDICTION OF CIVIL OR REVENUE COURTS—*contd.*

Possession—Completion of partition-proceedings.

In a suit for possession of certain lands which the plaintiffs alleged had been allotted to them by the Revenue Court in partition-proceedings, it appeared that at the time of the said partition two lists were made out which purported to contain equal shares of the *shamilat* which had to be divided, and the parties having cast lots for their respective shares, the partition thus made was reported for sanction, and was sanctioned and ordered to be carried out, the Naib Tahsildar subsequently reporting that it had been carried out by entry in the annual papers.

After this the parties carried into effect the partition of certain of the lands divided, but as regards a portion of the lands, which included the land now in suit, and was then mainly waste, no action was taken in accordance with the order of partition, partly, as the plaintiffs alleged, because they were not anxious to cultivate the waste immediately, and partly because the portions of this land which had fallen to each party's share were never pointed out to them on the spot by the Patwari. The defendants gradually brought parts of this land under cultivation, and plaintiffs, seeing that they were thus appropriating all the lands, brought the present suit to recover their own share.

Held, by the Financial Commissioner, that as regards the land in dispute the partition had remained incomplete and inoperative, and could not form the basis of a decree in the Civil Court, though as the land was at the time of partition unappropriated waste, a suit would have been maintainable in the Civil Court, if it had appeared that the order for partition had been followed by any, even formal, taking of possession of their allotments by the plaintiffs.

Held, further, that under all the circumstances of the case, the partition-proceedings could be taken up again and completed by putting plaintiffs in possession of the fields allotted to them in the partition-proceedings by the drawing of lots. *Nidhan Singh* v. *Attur Singh* (No. 54 *P. R.* 1869), and *Ilahia* v. *Buta* (No. 134 *P. R.* 1879) cited. BAKSHA *v.* DASAUNDHI. **1 P R 1883 Rev**

55. *Land Revenue Act (XXXIII of 1871), section 65 (2)—Proprietor claiming under agreement in* Wajib-ul-arz *to recover his share of land gained by alluvion.*

Plaintiff, one of the proprietors of the village, sued the other proprietors for certain land which he alleged represented his share of land thrown up by the river and which he was entitled to recover in accordance with a condition in the *Wajib-ul-arz* to the effect that land gained by alluvion should be divided among the shares in accordance with ancestral shares. Defendants admitted that the clause in the *Wajib-ul-arz* correctly represented the agreement arrived at between the parties.

JURISDICTION OF CIVIL OR REVENUE COURTS—*contd.*

Held, that the jurisdiction of the Civil Courts to hear the suit was barred by clause (2), section 65 of the Land Revenue Act. MAKHE KHAN *v.* BADRUDDIN. **70 P R 1884**

56 *Suit by assignee of land revenue against defaulter—Land Revenue Act (XXXIII of 1871), section 42, Rule 3, and section 65, clause 6*—Ultra vires.

Held, that a suit by an assignee of land revenue against a defaulter will lie in accordance with the third rule framed under section 43 of the Land Revenue Act, such rule not being *ultra vires* under clause 6, section 65 of the same Act. *Devi Singh* v. *Kali Ram* (No. 27 *P. R.* 1876), *Makhan Mal* v. *Maha Singh* (No. 16 *P. R.* 1882), and *Sirdar Sunder Singh* v. *Saida* (No. 123 *P. R.* 1883), cited. NAWAB AZMAT ALI KHAN *v.* KALANDAR BAKHSH. **84 P R 1884**

57. *Claim by recorded mafidar for mafi dues—Defendant pleading that he is jointly entitled to the mafi—Pensions Act (XXIII of 1871), section 5.*

In a suit by plaintiff, the sole recorded mafidar, against the proprietors of the land for his mafi dues, the defendants alleged that they were jointly entitled to the mafi, and had shared in the profits.

Held, that it was not competent to the Civil Courts to declare defendants to be entitled to a share in the bounty, Government had bestowed on another, the defendants' remedy being to apply under section 5 of the Pensions Act to the Deputy Commissioner to have their names jointly recorded as mafidars or else to have a certificate given them to enable them to sue to establish their right in a Civil Court. JAFAR SHAH *v.* BAHADAR SHAH. **160 P R 1884**

58. *Land Revenue Act (XXXIII of 1871), section 65 (2)—Suit for partition—Dispute as to principle on which partition should take place.*

Plaintiffs' claim was to the following effect:— "There are 279 ghumaos of land in the "village, of which 59 ghumaos are *shamilat* "leaving 211 ghumaos *khewat* land. Of the "latter, defendants, who ought to have ¼th, "*viz.*, 52 ghumaos, have 65 ghumaos, or 12 "ghumaos 2 kanals, 6 marlas, in excess of "their proper share. Now that there is going "to be a partition of the 59 ghumaos of the "*shamilat*, defendants ought to have nothing "at all, because they have already got an "amount of *khewat* land in excess of their "share, which being of superior quality is "at least equal to the amount of the *shami-* "*lat* land which would otherwise have fallen "to their shares."

Held, that the above claim was not excluded from the cognizance of the Civil Court by section 65 (2) of the Land Revenue Act, there being a disputed question of right, *viz.*, the principle on which partition should take place, and whether the fact that defendants had more *khewat* land than was proper excluded them from a share in the *shamilat*. *Syad Ulla* v. *Pira* (No. 97 *P. R.*

JURISDICTION OF CIVIL OR REVENUE COURTS—*contd.*

1876) cited. DEWA SINGH *v.* KALA SINGH. **24 P R 1885**

59. *Land Revenue Act (XXXIII of 1871), section 65 (6)—Claim connected with the collection of land revenue.*

Plaintiffs sued to recover from defendant money which they alleged he had improperly collected from them on account of the land revenue due for land held by him. The Lower Courts held that the suit was barred by section 65 (6) of the Land Revenue Act.

Held, that as the suit did not relate to the action taken by the Revenue authorities for the recovery of arrears of land revenue, but to a sum alleged to have been collected by the defendant from the plaintiffs the Civil Courts had jurisdiction. *Devi Singh* v. *Kali Ram* (No. 27 *P. R.* 1876), *Mohar Singh* v. *Sher Singh* (No. 42 *P. R.* 1883), and *Sirdar Sunder Singh* v. *Saida* (No. 123 *P. R.* 1883), cited and followed. KAHAL SHAH *v.* BARKAT KHAN. **54 P R 1885**

60. *Partition—Joint estate—Mortgagee's claim to partition—Silence of* Wajib-ul-arz.

In a suit by a mortgagee for partition of half the share of several proprietors in a joint estate, *held*, by the Financial Commissioner, that as the *Wajib-ul-arz* of the estate made no provision for such cases, the mortgagee must first establish his right to claim such partition by suit in the Civil Court, before the Revenue Courts could separate off the share mortgaged to him. *Syad Ulla* v. *Pira* (No. 97 *P. R.* 1876), and *Ranja* v. *Mussammat Raji* (No. 22 *P. R.* 1878), cited. HARDIAL *v.* HAKIM. **11 P R 1885 Rev**

61. *Land Revenue Act (XXXIII of 1871), section 65 (6)—Suit for* pachotra—*Suit arising out of collection of land revenue.*

A suit by one lambardar under a clause in the *Wajib-ul-arz* to recover from another *pachotra*, which the latter had taken in excess of his own share, *held* not to be one arising out of the collection of land revenue, so as to be barred by section 65, Act XXXIII of 1871, as the alleged misfeasance of the defendant was not his collecting the money from the revenue payers, but his subsequent refusal to pay over his surplus percentage to the plaintiff. BAKKAN *v.* SAHIB SINGH. **50 P R 1886**

62. *Punjab Courts Act (XVIII of 1884), section 45, clause (i)—Suit by co-sharer for profits of estate after payment of land revenue and cesses.*

Plaintiffs sued for their share of the profits of a shrine on the allegation that, as proprietors of certain land in the village, paying a certain amount as land r evenue they had always obtained a share of the income of the shrine and shared in the profit and loss. It appeared that the income from offerings at the shrine in question was first devoted to the payment of the Government revenue, the balance being

divided among the co-sharers of the village in sums proportionate to their *khewat* holdings.

Held, that the suit was one by a co-sharer for his share of the profits of part of an estate after payment of land revenue and cesses within the meaning of section 45, clause (*i*) of the Punjab Courts Act, 1884. UDE RAM *v.* SANDA. **74 P R 1886**

63. *Suit for right to ply a boat at a public ferry—Northern India Ferries Act* (*XVII of* 1878), *section* 12—*Rules regulating the matter in dispute—Bar to jurisdiction of Civil Court.*

In a suit for a declaratory decree of plaintiffs' right to ply a boat at a public ferry, it appeared from the rules made under section 12 of the Northern India Ferries Act, 1878, for the regulation of public ferries in the Division in question, that the arrangements as to the number of boats, and the persons who had a right to ply boats at the ferry rested with the Magistrate of the District, subject to the approval of the Commissioner of the Division.

Held, that the suit as brought would not lie in the Civil Courts, which have no power absolutely to declare rights which the law leaves to be regulated by the Magistrate of the District with reference to the interests of the community at large. SARDAR *v.* IMAM BAKSH. **82 P R 1886**

64. *Pensions Act* (*XXIII of* 1871), *sections* 5, 6—*Duty of Deputy Commissioner to take cognizance of claims under section* 5 —*Jagirdar applying for the collection of the revenue due under his Sanad—Lower Courts refusing application and referring applicant to Civil Courts.*

The Deputy Commissioner (whose order was confirmed by the Commissioner on appeal) refused the appellants' application for the collection of the *jagir* revenue due under their Sanad (in which, in 1853, the Chief Commissioner granted to their predecessors a two-third share (*jagir*) of the *mauza* in suit), on the ground that their title as jagirdar was a matter for the decision of the Civil Courts.

Held, by the 2nd Financial Commissioner, that it was not for the Civil Courts to decide whether the grant was valid, at least until the matter had been referred to a Civil Court by a certificate duly issued under section 6 of the Pensions Act, 1871; that it is the duty of the Deputy Commissioner to take prompt cognizance of all disputes and claims of the nature described in section 5 of the Act, and that an enquiry under that section must now be made into the validity of appellants' claims. GOKAL CHAND *v.* WIRAM DAS. **12 P R 1886 Rev**

65. *Suit by recorded mafidar of one field for produce of another field—Pensions Act* (*XXIII of* 1871), *sections* 4, 9.

Plaintiff being the recorded mafidar of field A, sued for the produce of field B, of which plaintiff alleged and defendant denied that he was mafidar.

Held, that the decision of the question whether plaintiff was mafidar of B, was excluded from the cognizance of the Civil Court by section 4 of the Pensions Act (XXIII of 1871), and section 9 of the said Act did not apply, as plaintiff had not offered to prove that the Government now admitted his right to B. DIWAN *v.* KARM CHAND. **11 P R 1887**

66. *Act XVIII of* 1884, *section* 45 (*d*)—*Suit for ejectment of tenant.*

Plaintiff sued for possession of land, alleging that defendant was his tenant without occupancy rights; that defendant had paid him half the produce yearly, and that as defendant refused to pay any longer, he, plaintiff, sued for possession.

Held, that the suit as laid fell under section 45 (*d*) of the Punjab Courts Act, and was cognizable only by the Revenue Court. ALLADAD *v.* GAUHAR. **102 P R 1887**

67. *Punjab Courts Act* (*XVIII of* 1884), *section* 45 (*f*)—*Suit by owner of canal for a share of the produce of land watered therefrom—Customary dues.*

Plaintiff, a superior proprietor of the land cultivated by defendant as tenant of an inferior proprietor, and also owner of a canal from which distributaries were drawn which irrigated the land which defendant cultivated, claimed a certain share of the produce of the land so cultivated, which he alleged he was entitled to by way of repayment for the cost of clearing out and repairing the canal year by year, quite distinct from any "*abiana*" or water-rate.

Held that the suit was not a revenue suit as described in section 45 (*f*) of the Punjab Courts Act, the payment claimed not being rent payable by an occupant of land on account of the use or occupation thereof, nor a payment on account of pasturage rights, forest rights, fisheries or *the like*, within the meaning of the latter part of the same clause, nor could the scope of the said clause be widened so as to include the above suit by reading it with section 47 (*b*), which refers to "other payments to which there is a recurring claim."

Held, further, that the suit was not one of the nature cognizable by a Court of Small Causes as a suit on an agreement, it not being alleged that there was any covenant between the parties, but that it was rather a claim to enforce a special kind of customary payment in connection with a peculiar local system of canal irrigation, and as such was cognizable by the ordinary Civil Courts. SHAJAWAL *v.* GHULAM KADIR KHAN. **103 P R 1887**

68. *Punjab Courts Act* (*XVIII of* 1884), *section* 45 (*m*)—*Boundary suit.*

Held that a suit by one of two owners of contiguous agricultural land against the other, alleging that the defendant has encroached upon the land of the plaintiff, is in substance

a suit falling within clause (*m*) of section 45 of the Punjab Courts Act, as being a suit to determine a dispute regarding boundaries of land which have been fixed by a Revenue Officer, and therefore cognizable by the Revenue Court. SOHEL SINGH *v.* MUSSAMMAT KAHNO. **7 P R 1888**

Followed in FAIZ ALI *v.* NUR MUHAMMAD. **7 P R 1888 Note.**

69. *Punjab Courts Act* (*XVIII of* 1884), *section* 45 (*a*) *and* (*b*)—*Suit to establish claim to right of occupancy—Suit for ejectment of tenant.*

Held, by the Full Bench (*Plowden*, *Powell* and *Roe*, JJ.), that a suit in which the plaintiff asks to be placed in possession of land, on the ground that he is entitled to hold such land as a tenant with a right of occupancy, is not one "by a tenant to establish a claim to a right of occupancy," within the meaning of section 45 (*a*) of Act XVIII of 1884, and so cognizable by the Revenue Courts only, but is a suit the jurisdiction to hear which rests with the Civil Courts. Though it is essential to the obtaining of the relief asked for in such case that plaintiff should "establish his claim to a right of occupancy," this question of title is only raised incidentally, while the cause of action alleged by plaintiff is a being wrongfully deprived of, or kept out of the cultivating possession of certain lands, and the relief he asks for is a restoration to such possession, a relief which the Civil Courts alone can give him.

Held, also by the Division Bench (*Plowden* and *Powell*, JJ.), that where the allegation in the plaint is that the defendant took the land from the plaintiff for cultivation on payment of revenue, and paid the revenue to plaintiff, that is the hereditary tenant sublet part of his holding to the proprietor, and in respect of this portion the relation of landlord and tenant existed between them, and now the landlord, the hereditary tenant, asks to eject his tenant, the proprietor, in such case the suit falls within clause (*d*) of section 45 of the Punjab Courts Act, and is therefore cognizable by the Revenue and not by the Civil Court. NIHAL SINGH *v.* KAMAN. **9 P R 1888 F B**

70. *Claim by one village to bring a canal cut across defendants' villages—Act VIII of* 1873, *sections* 21, 23, 24.

Plaintiffs, who were the inhabitants of one village, brought a suit in the Civil Court to have their right decreed to bring a canal cut in a certain line across the lands of the defendants' villages.

Held, that the Civil Courts had no jurisdiction whatever over such a case, the right alleged being a creation of the Canal Act (VIII of 1873), which also provides the manner in which such right is to be acquired, *viz.* by application to the Divisional Canal Officer under section 21 of the Act. MEHTAB SINGH *v.* HAKIM. **114 P R 1888**

JURISDICTION OF CIVIL OR REVENUE COURTS—*contd.*

71. *Act XVIII of* 1884, *section* 45 (*i*)—*Suit for winding up of partnership in land—Co-sharers in agricultural land—Contract Act (IX of* 1872), *section* 265—*Place of suing—Suit brought in Delhi, where parties resided to dissolve partnership in land situated in Meerut.*

Plaintiff sued the defendants, the representatives of one B. D. deceased, under section 265 of the Contract Act for the winding up of a partnership entered into with B. D., who was lessee of certain land in the Meerut district and for an account. The parties resided in the Delhi district. The lower Appellate Court held, first, that the parties were not partners as contemplated in the Contract Act, but that they were really cosharers in agricultural land, so that the case should be heard by a Revenue Court under sectioh 45, clause (*i*) of Act XVIII of 1884; secondly, that as the land leased lay in the Meerut district, the suit was cognizable in that district only with reference to section 16, clause (*d*) of the Civil Procedure Code.

Held, that there was no reason that because the object of the association in question was to work land, the business should not be considered to be a partnership to which the provisions of section 265 of the Contract Act were applicable; that section 45 (*i*) of the Punjab Courts Act had no application to a case like the present, where two co-sharers in a plot of land were disputing about their shares in the produce, the scope of the section being confined to those cases in which a member of the proprietary body or co-parcener in a village, when the accounts of the whole village are made up, sues to recover from the lambardars or remainder of the proprietary body his share in certain sums which he says have not been properly credited to the joint fund; that the case was therefore triable by the Civil Court under section 265 of the Contract Act and was cognizable by the Delhi Court within whose jurisdiction both parties resided, although the land lay in the Meerut district. KARIM BAKHSH *v.* MUSSAMMAT AMAR DEVI.

115 P R 1888

72. *Suit for* "tambol "—*Right to maintain suit.*

Held, that a suit for *tambol* is not one which a Civil Court has jurisdiction to entertain, a claim to *tambol* being matter of social and moral, but not legal, obligation. LACHMAN DASS *v.* SOHAN LAL.

141 P R 1888

73. *Suit by mafidar for revenue—Act XVIII of* 1884, *section* 45 (*j*).

A suit by a mafidar claiming the share of produce to which he alleged he was entitled as mafidar, *held*, to be a suit for revenue and as such cognizable by the Revenue Court under section 45 (*j*) of Act XVIII of 1884. BAWA AMAR SINGH *v.* DARSHAN.

1 P R 1888 Rev

74. *Punjab Courts Act (XVIII of* 1884), *section* 45 (*a*)—*Suit by mukararidar to establish right.*

Held that a suit to establish his rights by a mukararidar tenant, who is in actual possession of the land in question is cognizable by the Revenue Court under section 45 (*a*) of the Punjab Courts Act, 1884. *Nihal Singh* v. *Kaman* (No. 9 *P. R.* 1888) referred to. BAISAKHI *v.* JABBAR KHAN.

11 P R 1888 Rev

75. *Punjab Courts Act (XVIII of* 1884), *section* 45 (*b*)—*Suit to disprove occupancy rights.*

A suit for a declaratory decree that the defendant who had been entered in a recent Settlement as an hereditary tenant under section 5, clause 2 of Act XXVIII of 1868, was not entitled to such rights, *held*, not to come within the category of any of the suits detailed in section 45 of the Punjab Courts Act, 1884, as cognizable by the Revenue Courts only, but to be one which should be heard by a Civil Court. HARNAM SINGH *v.* KAMAR-UD-DIN. **12 P R 1888 Rev**

76. *Tenancy Act (XVI of* 1887), *sections* 50, 51, 77 (3) (*g*)—*Suit for recovery of possession by occupancy tenant illegally dispossessed—Suit against person other than landlord.*

A suit to recover possession by a plaintiff, alleging that he is a tenant with a right of occupancy, and that he has been illegally dispossessed of his holding, by a person other than the person admitted to be, or recorded as, plaintiff's landlord, *held* not to be cognizable by the Revenue Court, as falling under section 77 (3) (*g*) of the Tenancy Act (XVI of 1887), inasmuch as that clause and sections 50 and 51 of the same Act refer only to suits between landlord and tenant; but to be cognizable by a Civil Court. MIAN SINGH *v.* FATHA.

3 P R 1889

77. *Land Revenue Act (XVII of* 1887), *sections* 45, 158 (2) (*vi*)—*Suit for correction of Settlement Record—Suit for declaration of right.*

Held, that the provision in clause (vi) of section 158 of the Land Revenue Act, 1887, excluding from the cognizance of the C vil Court matters touching the correction of an entry in a record of rights does not in any way affect the jurisdiction of a Civil Court to give a declaration in a suit properly instituted in the manner indicated by section 45 of the same Act by a person who consider himself aggrieved as to a right of which he is in possession by an entry in such record, touching the same. RAJA NUR KHAN *v.* MUSSAMMAT DARAB KHATUN.

25 P R 1889

78. *Section* 45 (*d*)—*Ejectment of tenant—Possession—Jurisdiction of Civil Court.*

In 1886, when Chapter V of Act XVIII of 1884, was in force, a landlord sued his

tenant for possession on the ground that after service of a notice of ejectment on the tenant he (the landlord) had been placed in possession of the land, but that subsequently the tenant had forcibly dispossessed him.

Held, assuming these allegations to be true, that the suit was cognisable by a Civil Court. JASSA SINGH *v.* LEHNA SINGH.

110 P R 1889

79. *Punjab Land Revenue Act (XVII of* 1887, *section* 158, *clase* 2 (17)—*Suit for recovery of possession of land allotted to plaintiff on partition — Ejectment.*

Plaintiff sued for recovery of possession on the ground that it had fallen to his share on partition but that shortly before suit defendant had ejected him. Defendant replied that the property in dispute had fallen to his share and that he had all along been in possession. The first Court found that the land fell to plaintiff at partition, but that defendant had been cultivating it since. The Divisional Judge held that the suit should have been instituted in a Revenue Court.

Held, that the suit as laid in the plaint was not excluded from the cognisance of the Civil Courts by section 158 of Act XVII of 1887. BHAGWAN SINGH *v.* DHIYAN SINGH. **31 P R 1890**

80. *Tenancy Act (XVI of* 1887), *section* 77—*Suit for damages or the money value of the share of the produce which the plaintiff, muafidar was entitled to receive from the defendant.*

Plaintiff stated that as muafidar of certain lands, he was entitled to take from defendants ¾ths of the produce in kind, that the defendant failed to cul tivate the land for certain harvests, and he consequently sued defendants for a certain sum as damages or the money value of the share of the produce which he should have received.

Held, that the suit as laid in the plaint was cognizable by a Revenue Court under section 77 (3), clauses *m*, *n*, or *p*. A mere change of nomenclature as to the relief claimed cannot alter the nature of the suit or the jurisdiction of the Court. PANCHU *v.* PANA. **52 P R 1890**

81. *Pensions Act (XXIII of* 1871), *section* 4—*Suit relating to land rev enue—Necessity of certificate—Punjab Land Revenue Act (XVII of* 1887), *section* 158, *clauses* 1 *and* 9.

The jagirdar of a village sued the proprietors for a declaration that he was entitled during the continuance of the *jagir* to levy from the latter a share of the produce in lieu of revenue in cash as fixed at settlement.

Held, that the suit was not cognizable by the Civil Court, (1) as it related to land revenue and no certificate had been obtained from the Collector, and (2) as Revenue

Officers had special and exclusive jurisdiction in the matter under section 158 (1) and (2) IX of Act XVII of 1887. MAHANT GANESH DAS *v.* MAWAZ KHAN.

53 P R 1890

82. *Small Cause—Punjab Tenancy Act (XVI of 1887), section 77 (i)—Suit for value of a tree—Suit arising out of the condition on which a tenancy is held.*

The defendants obtained a plot of land from the plaintiff with a view to planting trees therein, and promised that in case any tree or trees were cut, the price thereof would be divided half and half between the parties. Plaintiff sued defendant to recover Rs. 10 half the price of a *shisham* tree which the latter had cut and sold. *Held*, that the suit was cognizable by a Revenue Court, section 77 (i), Punjab Tenancy Act (XVI of 1887) as it arose out of a condition on which the tenancy was held. GAHNU *v.* SUNDAR. **65 P R 1890**

83. *Punjab Tenancy Act (XVI of 1887), section 77, clause (i), Suit between a landlord and tenant arising out of the conditions on which a tenancy is held.*

An occupancy tenant having mortgaged his holding, the landlord sued to set aside the mortgage and obtained possession by decree of Court. The mortgagees then relinquished their charge on the land and the occupancy tenant sued to recover possession on the ground that the reason for the forfeiture had ceased to exist.

Held, that the suit was cognizable by a Revenue Court under section 77 (i) of the Punjab Tenancy Act, 1887. It was in consequence of a breach of the conditions against mortgaging that the plaintiff was deprived of the possession which under altered circumstances he now sought to recover. Thus the suit arose indirectly, if not directly, out of the conditions on which the tenancy was held. BAHADAR ALI *v.* NIHALA. **104 P R 1890**

84. *Punjab Tenancy Act (XVI of 1887), section 77 (i)—Suit arising out of the conditions on which a tenancy is held.*

A tenant-at-will having cut certain trees, the proprietors sued him for the price thereof. They alleged that by custom the tenant was not entitled to cut timber.

Held, that the suit was cognizable by a Revenue Court under section 77 (i) of the Tenancy Act of 1887, as a suit arising out of the condition on which the tenancy was held. RODA *v.* KAHNA. **105 P R 1890**

85. *Suit by co-mortgagee for share of produce—Punjab Tenancy Act (XVII of 1887), section 77, clause (k)—Punjab Land Revenue Act (XVII of 1887), section 3 (2) and (3).*

A suit by a co-mortgagee of a holding to recover his share of the produce from another co-mortgagee is cognizable by a Revenue Court under section 77 (k) of the Punjab Tenancy Act, 1887. The expression *holding* in that section bears the same sense as in the Land Revenue Act, 1887, and by the latter Act, a landowner includes a mortgagee. Civil Judgment No. 34 *P. R.* 1888, distinguished, as being a ruling upon a provision of law in different terms, which has since been repealed. RAM CHAND *v.* UTTAM CHAND. **106 P R 1890**

86. *Date revenue in Dera Ghazi Khan.*

Date revenue as assessed in the Dera Ghazi Khan district is land revenue within the meaning of the Punjab Tenancy Act, XVI of 1887, and a suit for recovery of the amount due on account thereof is not cognizable by a Civil but by a Revenue Court, under section 77 (p), Tenancy Act. HAIDAR *v.* LUTF SHAH. **109 P R 1890**

87. *Punjab Tenancy Act (XVI of 1887), section 77 (i)—Suit by owner of trees against occupancy tenant of land on which they stand for value of fruit trees.*

A suit by the owner of trees against the occupancy tenants of the land on which they stand for value of the fruit thereof collected by the defendants in virtue of an alleged right inherent in themselves is a Civil and not a Revenue suit, the owner of the trees not being a landlord within the meaning of the Tenancy Act, 1887. DEWA *v.* HIRA SINGH. **119 P R 1890**

88. *Suit for partition—Question of title—Punjab Land Revenue Act (XVII of 1887), sections 116, 117.*

In a claim for partition of land, its liability to partition was denied on the ground of a private division. The plaintiff contended that the so-called division did not sever the joint title or convert the joint property, or any portion of it into severalty.

Held, that the suit was cognizable by a Civil Couat. A question of title had been raised within the meaning of section 116 of the Punjab Land Revenue Act, 1887, which could only be decided after a regular trial either by a Civil Court or a Revenue Court acting under section 117 as a Court, and not by a Revenue Officer as such.

The expression in section 116 of the Punjab Land Revenue Act, 1887, "question "of title" and "questions as to the pro-"perty to be divided" considered and explained. RADHU *v.* MUSSAMMAT NANDO.

150 P R 1890

89. *Punjab Tenancy Act (XVI of 1887), section 77 (e)—Suit to eject a tenant.*

In a case where the plaintiff sued to eject the defendants from land on the allegation that the land in suit had been given to defendants for cultivation on payment of certain rent, that they had refused to pay the same and had set up an adverse title and refused to vacate, *held* that the suit as laid was cognizable by a Revenue Court. The true description of the defendants according to the allegation in the plaint was that of tenants holding over after the expiration of an agricultural year. IBRAHIM *v.* AZIM. **162 P R 1890**

90. *Enhancement of rent—Decision as to proprietary right.*

In a suit for enhancement of rent defendant pleaded that he was proprietor and not tenant. The Commissioner decreed enhancement leaving the defendant to sue for declaration of proprietary right in the Civil Court. *Held*, that the Commissioner was bound to decide the question of title.

A Revenue Court has jurisdiction to decide all points necessary to the decision of the questions before it. MUNSHI *v.* KESAR.

2 P R 1890 Rev

91. *Cesses*—Hak-buha.

Held, that a suit for the recovery of *hak-buha* is cognizable by the Revenue and not by the Civil Courts, section 77(j), Tenancy Act, section 3 (10), Land Revenue Act. GOWHRA *v.* ALI GAUHAR.

11 P R 1890 Rev.

92. *Punjab Land Revenue Act (XVII of 1887), sections 117 and 118—Question of title—Procedure—Appeals from orders of Assistant Collectors under section 117 (1) lie to the Collector and not to the Commissioner.*

In a case of partition in which a question of title had been raised, *held*, that the Lower Courts acted *ultra vires* in deciding upon which party the *onus* of appealing to the Civil Courts lay, and in directing that the partition proceedings should continue in default of a party suing in the Civil Court within a specified time.

The proper procedure in such a case is for the Revenue Court either to proceed under section 117 (2) or to leave the parties to have the point at issue determined by a competent Court at their pleasure, and till then to decline to grant the application for partition. GUNGA *v.* JHANDA SINGH.

14 P R 1890 Rev

93. *Punjab Land Revenue Act (XVII of 1887), sections 117, 118—Question of title.*

In a case relating to partition the right of certain parties to a share in the *shamilat* was disputed.

The Assistant Collector being of opinion that the dispute affected the mode of partition only made a summary enquiry and passed an order under section 118 (1) of the Punjab Land Revenue Act. On appeal the Commissioner held that the proprietor of land in a *patti* was obviously entitled to a corresponding share in the *shamilat*.

Held, that the proceedings of the Courts below were void for want of jurisdiction. The question at issue was purely one of title and should have been disposed of under section 117 (1) or (2), questions as to the property to be divided or the mode of making the partition may be dealt with under section 118 only when they do not involve any

question as to title in the property of which partition is sought. CHANDA SINGH *v.* FATEH SINGH. **15 P R 1890 Rev**

94. *Possession of land without consent of landlord—Jurisdiction—Civil and Revenue Court.*

The plaintiff alleged that he was the mortgagee of certain land under a mortgage from the defendant 2: that he had possession: that the defendants 1, 2, and 4, forcibly dispossessed him and that he sued and recovered Rs. 100 as damages for the harvest of Sawan, Sambat 1945: that subsequently defendants 1 and 2, through defendant 3, and defendant 4 again forcibly cultivated the same land: and he claimed compensation to the amount of Rs. 200.

Held, that the suit fell under section 14 and section 77, sub-section (3) (*n*) of the Punjab Tenancy Act, 1887, and was therefore not cognizable by the Civil Courts.

The defendants were according to the allegations of the plaintiff, " in possession of land " occupied without the consent of the plaintiff " who was undoubtedly on his allegations " the landlord " within the meaning of section 14 of the Tenancy Act. BHOLA NATH *v.* DANA. **19 P R 1891**

95. *Jurisdiction—Civil or Revenue—Suit by co-sharer for a share of profits.*

The plaintiffs sued alleging that he was a joint owner with the defendants in certain specified land: that the land had been cultivated by the defendants and by tenants, the defendants taking all the profits: and plaintiff claimed his share, *viz.* one-sixth for three years, valued at Rs. 600.

Held, that the suit fell within section 77, sub-section (3) (*k*), Punjab Tenancy Act, 1887, as a suit by a co-sharer, in a holding for a share of the profits thereof and was cognizable by a Revenue Court. ISHAR SINGH *v.* JOWALA SINGH. **38 P R 1891**

96. *Jurisdiction—Civil or Revenue Courts—Suit by a person out of possession claiming possession on ground of succession as tenant—Punjab Tenancy, Act, 1887, section 77, sub-section (3), clauses (d) and (i).*

Held, by the Full Bench, that a suit by a person out of possession claiming the possession of land from the proprietor on the ground that he has a right of succession as a tenant, does not fall either under clause (*d*) or clause (*i*) of section 77, sub-section (3) of the Punjab Tenancy Act, 1887.

To establish the complete relation of landlord and tenant between two persons in respect of land within the meaning of the Tenancy Act, it is essential that two things shall concur, *viz.* (1) a right to enter upon and possess the land, and (2) an entry into possession. Upon entry and not before the person having the right becomes a " tenant " and " holds " the land under the person called the landlord.

The test, under the Tenancy Act, whether a person has or has not become a tenant (with or without a right of occupancy) is whether such peason having the right to enter upon and possess particular land, has or has not entered into possession, in pursuance of that right. If such person has entered, he is a tenant.

If such person has not entered, his suit for entry into possession, whether he claims a right of occupancy or not, is not cognizable by a Revenue Court but by a Civil Court only.

No. 9 *P. R.* 1888 and *No.* 105 *P. R.* 1890, Note referred to. JOTI *v.* MAYA. **44 P R 1891 F B**

97. *Jurisdiction—Civil or Revenue Courts—Suit by occupancy tenant to recover possession of land from the proprietor more than one year after dispossession—Punjab Tenancy Act, 1887, section 77, sub-sectisn (3) clause (i).*

Held, by the Full Bench, that a suit by a person who has been dispossessed more than one year before suit to recover possession of land from the proprietor thereof on the ground that he is the occupancy tenant of the land, is not a suit falling within section 77, sub-section (3), clause (*i*) of the Punjab Tenancy Act, 1887, and is therefore not cognizable by a Revenue Court.

A tenant who has been dispossessed can for the period of one year from the date of his dispossession claim to be still regarded as a tenant *quoad* his landlord, his suit for recovery of possession being (as expressly provided in section 50 and section 77, sub-section (3), clause (*g*) of the Act) cognizable by a Revenue Court.

If the tenant allows the period of one year to elapse without filing a suit he must be taken (subject to any recognized disability) to have relinquished his right to be still regarded as a tenant, and his remedy (if any) must be sought in the Civil and not in the Revenue Court.

No. 104 *P. R.* 1890 and No. 44 *P. R.* 1891, referred to. KESAR SINGH AND VIR SINGH *v.* NIHAL SINGH. **45 P R 1891 F B**

98. *Share of profits—Suit for jurisdiction—Punjab Tenancy Act, section 77, sub-section (3) (k).*

The plaint alleged:

(1). That defendant 1 mortgaged certain land to defendant 2 and plaintiff (who were brothers), and that plaintiff and defendant 2 sued jointly and obtained joint possession of the land:

(2). That defendants notwithstanding the decree, collusively take the whole profits and give the plaintiff nothing, refusing to give him a share.

The plaintiff therefore prayed for a decree for Rs. 120, his share of *mesne* profits for six harvests,

Held, that the suit fell within section 77, sub-section (3), clause (*k*), of the Punjab

Tenancy Act, 1887, so far as it was a suit between the plaintiff and defendant 2, and that the jurisdiction of the Revenue Court was not ousted by the addition of defendant 1 as co-defendant. UMAR BAKHSH *v.* IBRAHIM. **47 P R 1891**

99. Kamiana—*Non-agriculturist resident in village—Village-cess—Jurisdiction—Civil or Revenue Court.*

Held, that the *kamiana* leviable in the village under the terms of the *wajib-ul-arz* was a due customarily leviable from the *kamins* of the classes specified and not a payment for the use of private property or for personal service, nor imposed by any enactment, and that it was therefore "a village-cess" as defined in section 4, sub-section (12) of the Punjab Tenancy Act, 1887, and this suit being one for *kamiana* was cognizable by the Revenue Courts under section 77, sub-section (3) (*j*) of the said Act. It was in fact a due payable by non-agriculturist artizans in respect of the privilege of carrying on their trades in the village by the permission of the proprietary body.

No. 33 *P. R.* 1887, No. 108 *P. R.* 1887, and No. 81 *P. R.* 1888, referred to. FAZAL *v.* SAMANDAR KHAN. **49 P R 1891**

100. *Suit by mortgagee for value of profits of mortgaged land—Illegal ejectment of mortgagee by mortgagor—Jurisdiction—Civil and Revenue Courts.*

The plaintiff sued alleging that the defendant had mortgaged certain land* to A. R. whom the plaintiff represented, and had delivered possession that mutation had taken place in plaintiff's favour; and that defendant forcibly ejected him. The plaintiff accordingly claimed Rs. 500 for produce for the three years before suit.

Held, that the suit fell under section 14 and section 77, sub-section (3) (*n*), of the Punjab Tenancy Act, 1887, and was therefore not cognizable by the Civil Courts. No. 19 *P. R.* 1891, followed.

Observations upon the provisions of section 100, Tenancy Act, relative to the validating of proceedings had under a mistake as to jurisdiction. WAZIR KHAN *v.* RALLIA RAM. **68 P R 1891**

101. *Jurisdiction of Civil Courts—Declaration—Mode of assessment—Pensions Act, 1871—Jurisdiction of Revenue Courts—Punjab Land Revenue Act, 1887, section 158, sub-section (2), clauses (ix) and (xiv).*

The Civil Courts have no jurisdiction to declare what the Revenue authorities have decided as between the parties that the assessment of the land revenue is to be in the form of a cash payment or a payment in kind.

Per BENTON, J.—The suit was barred under section 4 of the Pensions Act, 1871, as no certificate had been obtained under section 6 of the Act. The suit was also barred under section 158, sub-section (2), clause (xiv), Land Revenue Act, 1887, the matter in dispute being the amount of land revenue to be paid on

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certain holdings under the Act as land revenue as defined in the Act. Nos. 28 *P. R.* 1888, and 53 *P. R.* 1890, referred to.

Per STOGDON, J.—The plaintiffs' claim to be entitled to discharge an obligation in a particular manner could hardly be called a claim to a right within the meaning of section 42 of the Specific Relief Act: but even if the claim did come within the purview of the section, a Civil Court would exercise wise discretion in refusing to make a declaration explaining its opinion regarding the meaning of orders passed by the Revenue authorities, and on this account the suit should have been dismissed. Further, the suit related to a grant of land revenue made by the British Government, and the jurisdiction of the Civil Courts was barred by section 4 of the Pensions Act, 1871. NAWAB MUHAMMAD RAB NAWAZ KHAN *v.* NAWAB HAFIZ ABDULLA KHAN.

77 P R 1891

102. *Landlord and tenant—Suit for damages—Jurisdiction of Civil Courts.*

A suit for damages for wrongful seizure of produce is cognizable by the Civil Courts, even though the plaintiff be a tenant and the defendant a landlord, when the suit is not one for the recovery of an over-payment of rent or land-revenue, or one arising out of the lease or conditions on which the tenancy is held (section 77, Punjab Tenancy Act, 1887). UDHAM SINGH *v.* MAHESHA. **80 P R 1891**

103. *Civil and Revenue Courts—Suit for land and mesne profits.*

The Court of first instance a Civil Court entertained and disposed of a suit in which the possession of land was claimed and also *mesne* profits. The Court decreed in the plaintiff's favour both for the land and the *mesne* profits.

Held, that the claim as laid was partly cognizable by the Civil and partly by the Revenue Court.

The first Court should have amended the plaint by striking out the claim for *mesne* profits, referring the plaintiffs to the Revenue Courts in respect to this portion of their claim, and deciding the suit as one for land only.

The appellate Court's duty was to remedy the error by, in any case, striking out of the decree the portion thereof awarding *mesne* profits, on the ground that the first Court had no jurisdiction over the matter and to hear and decide the appeal so far as it related to the land.

Observations as to the making of references to the Chief Court under section 617, Civil Procedure Code, in cases in which a further appeal will lie upon a Certificate granted by the Divisional Judge, or in which an application for revision can be preferred under section 622 of the Code. MUSSAMMAT KARMON *v.* JIWAN MAL.

19 P R 1892

104. *Civil Court—Suit for declaration that land was not subject to partition—Jurisdiction.*

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The plaintiff sued asking for (1) a declaration that a holding of 52 *ghumaos* 6 *kanals* and 19 *marlas* was not subject to partition; (2) any other relief that the Court might grant.

The lower Courts declined to entertain the suit on the ground that it called in question the order of a Revenue Officer, and that no qnestion of title had been referred to a Civil Court.

Held, that in the absence of an adjudication by the Revenue Officer himself under section 117, Punjab Land Revenue Act, 1887, the suit was cognizable by the Civil Court. DEWA SINGH *v.* MUSSAMMAT JAWALI. **39 P R 1892**

105. *Civil and Revenue Courts—Site of watermill—Purpose subservient to agriculture—Jurisdiction.*

The plaintiff sued for damages for the unlawful possession of a water-mill.

Held, that the suit was cognizable by the Civil and not by the Revenue Courts, the purpose for which the site of the mill was occupied, *viz.,* the grinding of corn, not being a purpose "subservient to agriculture" within the meaning of section 4 (1), Punjab Tenancy Act, 1887. MUTSADDI *v.* SAWAN. **41 P R 1892**

106. *Jurisdiction of Civil Court—Mortgage by occupancy tenant—Mortgagee to receive half net profits without possession—Punjab Tenancy Act,* 1887, *section* 77 *(k).*

The defendant, a tenant with rights of occupancy, mortgaged his land to the plaintiff on the understanding that the mortgagor should retain possession and the mortgagee receive half the net profits of the tenancy.

The defendant withheld from the plaintiff his share of the profits, hence the present suit.

Held, that the suit was cognizable by the Civil Court, the plaintiff and defendant not being co-sharers "in an estate or holding," and clause *(k),* sub-section (3), section 77, Punjab Tenancy Act, 1887, being therefore inapplicable. GANGU *v.* ASAD.

70 P R 1892

107. *Jurisdiction of Civil Court—Section* 158 (2) *(xvii), Land Revenue Act,* 1887—*Allegation of error in partition proceedings.*

The plaintiffs sued for a declaration that they were owners of certain land contained in three specified *khasra* numbers of which they alleged that they were in possession under a partition made by the Revenue authorities in 1884.

The final record of the partition showed that the land fell to the defendant's share, but this it was alleged was owing to an error in the preparation of the final papers

Held, thnt the suit distinctly raised a question connected with, or arising out of, proceedings for partition within the meaning of section 158, sub-section (2) *(xvii),* Punjab Land Revenue Act, 1887, and that

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the question was not one "as to title in any of the property of which partition is sought" within the same clause, and that the jurisdiction of the Civil Courts was ousted. AHMAD KHAN *v.* BAHADUR. **88 P R 1892**

108. *Punjab Tenancy Act,* 1887, *section* 77—*Landlord and tenant—Suit to recover possession from defendant on the basis that plaintiff is the proprietor—Jurisdiction of Civil Court.*

The plaintiff served the defendant with a notice of ejectment under the provisions of section 45, Punjab Tenancy Act, 1887, The defendant instituted a suit to contest his liability to be ejected and succeeded.

The plaintiff then sued the defendant to recover possession of the land from the defendant, alleging himself to be proprietor.

Held, that the suit was not excluded from the cognizance of the Civil Courts, the plaintiff making an allegation that the parties occupied the relation of landlord and tenant, but that he (the plaintiff) was proprietor and sought to recover possession from the defendant. GHULAM HUSSAIN *v.* PIR SHAH. **18 P R 1893**

109. *Punjab Tenancy Act,* 1887, *section* 77, *sub-section* (3) *(e)—Suit by landlord to eject tenant—Suit by mortgagee to recover possession on failure of mortgagor to pay rent—Jurisdiction of Civil or Revenue Courts.*

The plaintiffs sued alleging that—

(1) the defendant had mortgaged his land to them, with the condition that he was to retain possession and pay them a certain *malikana* or rent annually.

(2) with the further condition that in case of a failure by the defendant to pay rent, the plaintiffs were to be placed in possession.

The plaintiff's father alleged a breach by the defendant and sued for possession accordingly.

Held, that the suit fell within the purview of section 77, sub-section (3) *(e)* of the Punjab Tenancy Act, 1887,—suits by a landlord to eject a tenant—and was cognizable by the Revenue Courts only.

The defendant held for the term of the mortgage, subject to the condition of punctual payment of rent. The ground on which the plaintiffs sued for his ejectment was therefore that stated in section 40 (c) of the Tenancy Act, *viz.,* a failure to pay rent which would justify his ejectment under the contract. GURDITTA *v.* PANJU SHAH.

19 R P 1893

110. *Punjab Courts Act,* (1884 *as amended*)—*Suit for declaration of proprietary title to a share in a well—Land suit—Provisions of the law for obtaining a final decision as to whether a suit is cognizable by the Civil or Revenue Courts.*

S. K. a Nari Rajput, who had four sons and one daughter, married his daughter in the time of the Sikhs to Sale K., a Bhati Rajput, who came to reside with him.

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N. K., one of S. K.'s sons, died without male issue but leaving a daughter: the descendants of the other three sons of S. K. were defendants in the present suit.

Three sons were the issue of the marriage between Sale K. and S. K.'s daughter, of whom only two, Kesar and Sharfu, had male issue.

Kesar married the daughter of N. K. and the issue of this marriage were also defendants in the present suit.

Sharfu had three sons who were the plaintiffs in the suit.

The plaintiffs' case was that S. K. gave one-fourth share of a well and the land belonging to it to his son-in-law, Sale K. from whom it devolved on his two sons in equal shares; and plaintiffs asked for a declaration as sons of Sharfu, son of Sale K. of their proprietary title to a one-thirteenth share in the well on the ground of gift of a share by S. K. to Sale K.

Held, that this was a land and not an unclassed suit. No 62 *P. R.* 1891, followed.

Attention drawn to the provisions of the law for obtaining a final decision, in cases of doubt whether a suit is cognizable by the Civil or Revenue Courts, *viz.*:—

Section 99, Punjab Tenancy Act, 1887.
Section 44, Punjab Courts Act, 1884 (as amended by Act XIII of 1888)
Section 617, Civil Procedure Code, 1882. DHANI KHAN *v.* MAHTAB KHAN. **40 P R 1893**

111. *Punjab Tenancy Act*, 1887, *section* 77, *sub-section* (3), *clause* (*n*)—*Suit by mortgagee to recover sum due by mortgagor who had leased the mortgaged land—Jurisdiction of Civil or Revenue Court.*

The plaintiff sued in a Civil Court upon a written contract, which, after reciting a previous mortgage of one-third of a well to the plaintiff for Rs. 109, with profits to equal the interest, declared that the defendant (previous mortgagor) agreed to take the said one-third share on lease irom the plaintiff, and pay him Rs. 13-1-0 a year in addition to the revenue.

Held, that the effect of the contract was to make the defendant a tenant under the plaintiff (the mortgagee) and that the suit was one for rent, thus falling under section 77, sub-section (3), clause (*n*), Puhjab Tenancy Act, 1887, and was cognizable by a Revenue Court only. LACHMAN *v.* RAHMAN.

41 P R 1893

112. *Punjab Tenancy Act*, 1887, *section* 4, *sub-section* 12 *and section* 77, *sub-section* (3), *clause* (*j*)—*Suit for marriage dues—" Village-cess "—Jurisdiction of Civil or Revenue Court.*

Held, that a suit to recover *puch bakri*, or dues on marriages payable by non-proprietors was one which fell within the provisions of section 4, sub-section (12) and section 77, sub-section (3), clause (*j*), of the Punjab Tenancy Act, 1887, and was cognizable by a Revenue Court only. DILBAR *v.* ALI AKBAR. **42 P R 1893**

113. *Punjab Tenancy Act*, 1887, *section* 77, *sub-section* (3), *clause* (*e*)—*Jurisdiction of Civil or Revenue Court—Suit by landlord to eject tenant—Relationship of landlord and tenant.—Registration of decree in Court having jurisdiction under section* 100, *Tenancy Act*, 1887.

The plaintiff sued for possession of 13 *bighas* 7½ *biswas* of land, on the following allegations:—

(1) that the land was the *milkyat* of themselves and their ancestors;
(2) that the plaintiffs gave the land to the defendants for cultivation for the term of one year, at a date one year previous to the settlement, the arrangement being that the defendants were to pay the revenue only, but that on 6th January 1882, the defendants deceitfully got an entry made in the settlement papers that the land was their own;
(3) that the plaintiffs had constantly called upon the defendant to relinquish the land, but had been as often put off by excuses until fifteen days ago when the defendant absolutely refused to give up the land.

Held, that on the above allegations the suit was one by a landlord to eject a tenant, and fell within section 77, sub-section (3), clause (*e*) of the Punjab Tenancy Act, 1877, and was cognizable by a Revenue Court only.

Observations as to the discretion to be exercised by the Chief Court in ordering that a decree be registered in the Court which had jurisdiction under section 100 of the Tenancy Act, 1887, when the decree of the first Court has been reversed on appeal or otherwise.

No. 162 *P. R.* 1890, and No. 19 *P. R.* 1891. referred to. AFLATON *v.* JAI RAM. **53 P R 1893**

114. *Punjab Tenancy Act*, 1887, *sections* 4, (12) *and* 77, *sub-section* (3), *clause* (*j*)—*Village-cess—Marriage fees claimed from non-proprietary resident—Jurisdiction of Civil or Revenue Court.*

The plaintiff, the sole proprietor of the village, sued the defendant, a non-proprietary resident, for Rs. 11 on account of marriage fees alleged to be due according to custom, as recorded in the *Wajib-ul-arz*, on the marriage of the defendant's two daughters.

The suit was entertained and tried by the Civil Courts.

Held, that the suit was cognizable exclusively by the Revenue Courts under section 77, sub-section (3), clause (*j*), Punjab Tenancy Act, 1887. (Suits for sums payable on account of village-cesses or village-expenses). SHARIF-UD-DIN *v.* SHER KHAN. **55 P R 1893**

115. *Arbitration—Partition of agricultural and residential land and house property—Suit to enforce terms of award—Jurisdiction of Civil and Revenue Courts—Section* 158 (2) (*xvii*) *and section* 123, *Land Revenue Act*, 1887.

By written agreements the parties to the suit appointed K. L. their arbitrator to partition between them certain joint property, consisting of land and houses, to equalize and adjust the shares by transfer from one party to the other of land exclusively owned by either party and generally to settle between them all disputes whatsoever relating to their joint or exclusive property. An elaborate and comprehensive award was prepared, and the parties after having heard it read signed the document in token of their assent. The defendant, however, refused subsequently to carry out the terms of the award, and the plaintiff sued to enforce them.

For the defendant it was contended, (1) that the agreement did not authorise the arbitrator to declare that previous judicial decrees between the parties were to be deemed ineffectual; (2) that the arbitrator also exceeded his authority in adding a stipulation relating to the revenue of the land assigned rent-free to respondent as ala lambardar.

Held, that the powers expressly conferred upon the arbitrator were wide enough to embrace a decision upon both the matters referred to.

Held, also, that the claim was not excluded from the cognizance of the Civil Court by section 158, sub-section (2) (*xvii*), Land Revenue Act, 1887, as it was not one which asked the Court to effect a partition, but was for the enforcement of an award by which the partition had already been fully carried out.

Held, also, that the question, whether the liability of land to partition on the ground of a private division was a "queston of title" within the meaning of the Act, was concluded adversely to the contention for the defendant, by the decision reported as No. 150 *P. R.* 1890. SARDAR WASAWA SINGH *v.* SARDAR ARUR SINGH. **63 P R 1893**

116. *Punjab Tenancy Act*, 1887, *section* 77, *sub-section* (3) (*m*)—*Jurisdiction of Revenue Court—Suit for land alleged to have been granted to the plaintiff revenue-free, as ala lambardar.*

The plaintiff sued to recover certain land of which he had been dispossessed by the defendants and which he alleged had been given to him revenue-free as ala lambardar.

Held, that the suit as laid was one relating to the emoluments of a village officer within the terms of clause (*m*), sub-section (3), section 77 of the Punjab Tenancy Act, 1887, and therefore cognizable by the Revenue Court only. KESAR SINGH *v.* JHANDA SINGH. **66 P R 1893**

117. *Punjab Tenancg Act*, 1877, *section* 77, *sub-section* (3) (*d*)—*Suit by tenant to establish claim to a right of accupancy—Jurisdiction of Civil and Revenue Courts.*

The plaintiffs who had been ejected from the land in suit by order of a Revenue Court

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under the last clause of section 45, Punjab Tenancy Act, 1887, sued in the Civil Court, to be restored to possession on the ground that they had a right of occupancy in the land.

Held, following the Full Bench rulings Nos. 44 and 45 *P. R.* 1891, that the suit was cognizable by the Civil Court, and not by the Revenue Courts. KHARKU *v.* DITTU.
70 P R 1893

118. *Custom, Alienation—Gift of occupancy rights—Jurisdiction of Revenue Court.*

G., a Hindu Rajput and a sonless land owner of *tahsil* Unah in the Hoshiarpur District, shortly before his death made a gift of occupancy rights in his land to S. a collateral kinsman but not an heir. In a suit brought after G.'s death by the plaintiffs, collateral kinsmen and heirs of G. for possession of G.'s land, it was contended for the defendant that the Civil Court had not jurisdiction to hear the suit, and that the grant by G. of occupancy rights was valid.

Held, that as S. has not taken possession of the land as a tenant during the lifetime of G. the suit was properly brought in the Civil Court.

No. 100 *P. R.* 1886, referred to. SUBA *v.* MOHRA.
71 P R 1893

119. *Jurisdiction of Civil and Revenue Courts—Suit for declaration of plaintiff's right to a partition of the village common land without consent of defendant—Question of title—Sections* 115 *and* 117, *Punjab Land Revenue Act,* 1887.

An application for partition of the village common land having been refused by a Revenue Officer on the ground that by the terms of the *wajib-ul-arz* the consent of all the share-holders was necessary and had not been obtained, the present suit was instituted in order to establish the plaintiffs' title in a certain portion of the common land, and for a declaration of their right to partition the same without the assent of the other co-sharers. The Divisional Judge, being of opinion that the only question involved in the case was whether the land was or was not to be divided and that such a question could be decided by a Revenue Officer alone under section 115 of the Land Revenue Act, dismissed the suit on that ground.

Held, that the question to be determined in the case was, (1) a question as to title in the property of which partition was sought; and (2) not a question as to the property to be divided, or of the mode of making partition; and that the plaintiffs were accordingly entitled to an adjudication in appeal whether, so far as it was a matter of civil right, they were entitled to partition of their shares, notwithstanding the dissent of the defendants.

No. 15 *P. R.* 1890 Revenue, and No. 150 *P. R.* 1890 referred to. KHUBI *v.* AST KHAN.
82 P R 1893

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120. *Jurisdiction of Civil and Revenue Courts—Suit for declaration as to the amount of rent payable by one mortgagee, to another mortgagee both mootgagees cultivating and taking the produce according to their mortgage shares—section 77, sub-section (3) (k) and section 4 (5), (b), Punjab Tenancy Act,* 1887.

Held, in a suit by one of two mortgagees of a holding for a declaration as to the amount of produce which he was entitled to receive from the other mortgagee for land cultivated by the latter as a mortgagee, that the Civil Courts had jurisdiction to try the suit. MUHAMMAD KHAN *v.* ASHIQ MUHAMMAD KHAN.
112 P R 1893

121. *Grant of land to office of ala lambardar—Acquisition of occupancy rights in such land—Tenant—Jurisdiction of Civil and Revenue Courts—Section 5, sub-section (1), (d) and section 77, sub-section (3), (m) Punjab Tenancy Act,* 1887.

In a suit by the village proprietors to recover from the sons of one G. S. certain lands held by him as ala lambardar, the claim was resisted on the ground that G. S. had before his death acquired by long possession occupancy rights in the land, and that his sons therefore could not be dispossessed without payment of compensation for improvements.

Held, that as the plaintiffs did not seek to recover the lands on the ground that defendants, or any one of them, wrongly claimed to hold them as ala lambardar, nor did defendants resist the suit on such ground the claim did not fall under section 77 (3) (*m*) of Act XVI of 1887, so as to be excluded from the cognizance of the Civil Couris under the above clause.

Held, further, that the suit was not excluded from the cognizance of the Civil Courts as one for ejectment of tenant, as the history of the acquistion of the land in suit by G. S. negatived the proposition that he held the land under the plaintiff proprietors, and, this being so, his sons clearly could not claim either occupancy rights or compensation.

No. 105 *P. R.* 1879. and No. 15 *P. R.* 1892 (Revenue), referred to. SHAM SINGH *v.* GHULA SINGH.
123 P R 1893

122. *Purchaser of growing crop undertaking to clear land of it by stipulated time—Suit by owner of land for damages and value of crop—" Arrears of rent or money equivalent of rent"—Use or occupation of land"—Punjab Tenancy Act,* 1887, *section* 77 (3) (*n*) *—Breach of contract—Jurisdiction of Civil and Revenue Courts.*

Held, that a suit by an owner of land for damages from a person who has agreed to buy a growing crop and clear the land of such crop within a stipulated time, and who has failed to do so, is purely one for damages for breach of contract, and is cognizable by a Cfvil Court. SITAL PARSHAD *v.* RAI GOPI MAL.
14 P R 1894

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JURISDICTION OF CIVIL OR REVENUE COURTS—*contd.*

123. *Suit for recovery of land from trespasser—Jurisdiction of Civil and Revenue Courts.*

Held, that a suit by a landlord for recovery of certain lands, lately held by a tenant who died "*lawaris,*" from a person who is alleged to have taken possession thereof without any title, is cognizable by a Civil Court as a suit against a trespasser and is not a suit by a landlord to prove that a tenant has not a right of occupancy, notwithstanding that defendants in their answer claim such a right.

No. 44 *P. R.* 1891, distinguished. MEWA SINGH *v.* NATHU.
22 P R 1894

124. *Lease of* "tirni"*—Suit by lessee to enforce contribution from co-lessee towards sum paid into treasury—Jurisdiction of Civil and Revenue Courts—Punjab Tenancy Act,* 1887, *section* 77 (3) (*p*).

The plaintiffs alleged that the defendant was a co-lessee with them of the "*tirni*" or Government grazing tax' for two years, the defendant's interest being one-third, and that they had paid into the Government Treasury the full price of the lease. The plaintiffs, therefore, sued the defendant for his one-third share of the amount so paid in, and the Munsif, before whom the suit was instituted, granted them a decree for part of the sum claimed. The parties having appealed, the Additional District Judge referred the case to the Chief Court on the ground that the suit appeared to be a revenue suit under section 77 (3) (*p*) of the Punjab Tenancy Act, 1887, and cognizable only by a Revenue Court.

Held, that the suit was cognizable by a Civil Court, and not by a Revenue Court as being for a debt due by defendant to the plaintiffs for monies paid by the plaintiffs to the Government on his behalf. MEHRA *v.* MOGHLA.
33 P R 1894

125. *Punjab Tenancy Act,* 1887, *section* 77 (3) (*e*)*—Jurisdiction of Civil or Revenue Court—Ejectment suit—Trespasser—Construction of plaint.*

The plaint alleged that some seven years before suit defendant had entered on certain land as the tenant-at-will of plaintiffs' predecessors in title; that he had refused to vacate when called upon to do so, and that plaintiffs had sued in a Revenue Court for his ejectment and had been referred to a Civil Court on the ground that the relationship of landlord and tenant, which was denied by the defendant, did not exist between the parties.

Held, that such plaint might fairly be construed as alleging that the plaintiffs were suing to recover land from one who was in wrongful possession thereof and that, so construed, it had rightly been adjudicated upon by a Civil Court. KUSHAL SINGH *v.* ARJAN SINGH.
41 P R 1894

126. *Punjab Tenancy Act,* 1887, *section* 77, *sub-section* (3), *clause* (*e*)*—" Suit by land-*

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lord to eject a tenant"—Suit by mortgagee for possession under the terms of the mortgage —Jurisdiction of Civil or Revenue Courts.

In the first case, plaintiff, mortgagee, sued for possession of certain land mortgaged to him by a deed, dated 15th July 1881, under the terms of which the mortgage was to be with possession, but the plaint alleged that the mortgagee at sometime not stated gave the mortgagor the land to cultivate on payment of Rs. 5 per annum; that the mortgagor continued to pay this sum till his death, when his sons, the defendants, succeeded him and continued to pay the 5 rupees *malikana* until three years ago, since when they have paid nothing.

In the second case, the plaintiff, mortgagee, sued for possession of the mortgaged land under the terms of the mortgage deed which provided that—

(*i*) the mortgagee should pay the land revenue;

(*ii*) the mortgagor should retain possession of the land, paying one "*pand*" of sugarcane a year as *malikana*;

(*iii*) if default were made in this payment in any year, the mortgagee might take possession of the land, and, on his doing so, interest and *malikana* should be *barabar*.

In the third case, the plaint recited a mortgage with possession and a payment of *malikana* by the defendant, mortgagor, up to a stated date, and default in payment after that date, and plaintiff prayed for possession of the mortgaged land under the terms of the deed, which recited that possession had already been given to the mortgagee who would continue in possession as owner until redemption, pay the Government revenue and be proprietor of profit and loss. But the plaintiff. mortgagee, in his deposition contradicted the allegation in the plaint of any receipt of *malikana*, and admitted that he had never obtained actual possession as provided in the deed.

Held, by the Full Bench, *in the first and second cases*, that the relation of landlord and tenant existed between the mortgagee and the mortgagor, and both suits fell within the provisions of section 77, sub-section (3), clause (*e*) of the Punjab Tenancy Act, 1887, and were cognizable by a Revenue Court.

But, *held, in the third case*, that the relation of landlord and tenant did not exist between the mortgagee and the mortgagor, inasmuch as reading the plaint with the mortgage deed and the plaintiff's deposition, the allegation in the plaint that plaintiff had received *malikana* from the defendant up to a certain period was untrue, and the suit was, therefore, cognizable by a Civil Court.

In a suit by a mortgagee to obtain possession of the mortgaged land from the mortgagor, the question whether the suit is, or is not, a revenue suit depends upon whether the plaintiff's claim involves that the de-

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fendant, mortgagor, stands in regard to the plaintiff, mortgagee, in the relation of tenant to landlord. When there is a written instrument on which the claim is based, or to which the plaint refers, the instrument will need to be construed to discover the expressed intention of the parties as to their consequent mutual position in respect of the possession of the mortgaged land.

When a mortgagor derives a title to cultivating possession of the mortgaged land from a mortgagee to whom the right of proprietary possession has been transferred by the mortgagor, the mortgagor "holds the land under" the mortgagee.

When, by the terms of the mortgage, the right of proprietary possession is agreed to be transferred to the mortgagee, without cultivating possession being retained by the mortgagor, and possession of the land is notwithstanding his contract, retained by the mortgagor, so that the mortgagee is driven to a suit for entry, the mortgagor does not "hold the land under" the mortgagee. BUTA SHAH *v.* KALU.

46 P R 1894 F. B.

127. *Punjab Tenancy Act (XVI of 1887), section 77, clause (e)—Ejectment suit—Suit to establish proprietary right—Landlord and tenant—Jurisdiction of Civil and Revenue Courts.*

Plaintiffs having made an application to the Revenue authorites that the settlement of the land revenue in respect of certain land should be made with them, and the Collector's order thereon being to the effect that as C. through whom plaintiffs claimed, had long been out of possession, the plaintiffs' position as proprietors could not be recognized until it had been established in the Civil Courts, plaintiffs sued in a Civil Court on the allegations that C. was originally proprietor of certain land; that his heirs, who were made *pro forma* defendants, had assigned their rights to plaintiffs, and that the other defendants held the land under C. and his successors on a lease expiring with the settlement, subject to a payment of one *topah* per *maund*. The settlement having expired, plaintiffs claimed possession of the land in dispute from the defendants.

Held, that inasmuch as the Revenue Court had not decided on plaintiffs' original application that the relationship of landlord and tenant did not exist between plaintiffs and defendants, this was a suit for the ejectment of a tenant within the meaning of section 77, clause (*e*) of the Punjab Tanancy Act, 1887, and therefore, cognizable by a Revenue Court.

No. 18 *P. R.* 1893, distinguished. SHAHADAT *v.* GURDITTA MAL. **57 P R 1894**

128. *Punjab Land Revenue Act (XVII of 1887), sections 121, 122, 158, paras. (xvii) and (xviii)—Suit for possession of land allotted by instrument of partition—Jurisdiction of Civil or Revenue Courts.*

Partition proceedings for partition of certain *shamilat* land having been commenced in

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September 1886, the Patwari on the 2nd September 1888 prepared a tabular statement showing the land to be allotted to each proprietor, and, on the 12th September 1888, the Tahsildar made a report upon these proceedings and applied to the Collector for *manzuri*. On 18th September 1888, the Collector passed an order that, after the usual completion, the papers should be filed, and on the 1st November 1888, after a report had meanwhile been made that the Patwari had taken a copy of the Collector's order for giving effect to the partition, and that entry of sanction to the partition had been made in the *tahsil* register, the Collector passed an order that the file be sent to the record room. On the 4th of June 1892, the plaintiff, who was one of the proprietors, sued in a Civil Court for possession of the share allotted to him, and his claim was decreed by the first Court. On appeal by the defendant, the Divisional Judge dismissed the plaintiff's suit as being one not cognizable by the Civil Courts. Plaintiff appealed to the Chief Court.

Held, that, inasmuch as this was a suit by a person alleging himself to be sole owner of a plot of land for possession of the same as against the defendant instituted after more than three years had elapsed from November 1888, the latest date on which the partition could be viewed as taking effect, it was *prima facie* cognizable by a Civil Court and there was nothing in section 77 of the Punjab Tenancy Act, 1887, to give jurisdiction to a Revenue Court, or in sub-section (2), paras. (17) and (18) of section 158 of the Punjab Land Revenue Act, 1887, to bar the jurisdiction of the Civil Court.

Semble.—If the plaintiff had brought this suit within three years from November 1888, the jurisdiction of the Civil Court would have been barred by sub-section (1) of section 158 of the Punjab Land Revenue Act, 1887. GURDIT SINGH *v.* LABH SINGH.

63 P R 1894

129. *Punjab Tenancy Act, 1887, sections 4, 14, 77 (3) (h)—"Landlord"—Suit for compensation for occupation of land—Jurisdiction of Civil and Revenue Courts—Mortgage by alleged widow impeached by* prima facie *heirs of last holder.*

Plaintiffs sued in a Civil Court alleging that certain land, the property of one Mussammat H. K., the widow of the deceased proprietor S. S, was mortgaged by her to them with possession; that they had obtained *dakhil kharij*, and that the defendants in *Sambat* 1950 prevented the plaintiffs' servant from sowing the land and cultivated it themselves. Plaintiffs' claimed compensation based on the computation of what the crops would have been, had they cultivated the land personally, or, in the alternative, that they might cut the crops and compensate defendants for their seed.

Held, that upon these allegations the plaintiffs were "the landlord" as regards

the defendants, inasmuch as they were the persons immediately entitled to the use and occupation of the land of which the defendants were in possession without their consent; that section 14 and section 77, sub-section (3) (*n*) of the Punjab Tenancy Act, 1887, applied to the case, and that the fact that plaintiffs assessed compensation on a wrong principle did not oust the jurisdiction of the Revenue Courts.

It is not a correct interpretation of section 14 of the Punjab Tenancy Act, 1887, that it is not intended to apply to trespassers generally. The object of the section is to entitle "the landlord" of land occupied without his consent to recover payment on account of the use and occupation of such land from any person in possession of it, as though such person was for this purpose a tenant, and as though the money payable were for this purpose rent.

Nos. 19 and 68 *P. R.* 1891, approved. GHUNA MAL *v.* JHANDA SINGH. **82 P R 1894**

130. *Jurisdiction of Civil or Revenue Court—Suits for declaratory decree that land has reverted to landlord free of incumbrance —Suit by landlord to set aside transfer of right of occupancy—Punjab Tenancy Act,* 1887, *sections* 60, 77 (3) (*h*).

Plaintiff was landlord and one C. was occupancy tenant, under section 6 of the Punjab Tenancy Act, 1887, of the land in suit. C. during his lifetime mortgaged his rights in the land to the defendants and afterwards died, leaving no heirs, whereupon plaintiff entered into possession and sued for a declaratory decree that the said land had reverted to him free from any incumbrance

Held, that the suit was one "by a landlord to set aside a transfer made of a right of occupancy" within the meaning of clause (*h*) of section 77 (3) of the Punjab Tenancy Act, and was cognizable only by a Revenue Court.

Clause (*h*) of section 77 (3) of the Act covers all suits in which the landlord calls in question the validity of a transfer of a right of occupancy, whether the suit is in form merely declaratory or is to dispossess the transferee. GURDIAL *v.* FARIDA.

88 P R 1894

131. *Mortgage—Incomplete transaction, right of mortgagee under—Invalidity of transfer of occupancy rights by tenant—Practice of Civil Courts—Punjab Tenancy Act,* 1887, *sections* 53, 77, *clause* (3).

One Ishar, an occupancy tenant, holding under co-proprietors, of whom Ghanaya was one, on the 18th November 1875, mortgaged his holding to the said Ghanaya, who, on the 16th June 1878, obtained a decree for possession as mortgagee, and on the 9th July 1878 duly received possession in execution. On the 16th July 1878 Ishar made another mortgage of his land to one G. M. and on the 18th July 1878 paid money into Court for the purpose of redeeming the former mortgage to Ghanaya. Thereupon

Ghanaya objected that redemption could not then take place, and the objection being allowed, Ishar withdrew the money deposited in Court. On the 13th June 1879 another application was made by Ishar to the Court to be allowed to pay the money into Court, but was dismissed, and no further attempt was thereafter made to redeem from Ghanaya, and additional mortgages were executed by Ishar in favour of Ghanaya on the 7th October 1880 and the 22nd May 1890. Meantime G. M. sold his rights under the mortgage of 16th July 1878 to Basan Mal, who, on the 15th July 1890, brought a suit for possession as mortgagee. The first Court dismissed the suit on the ground that the mortgage to G. M. as well as the subsequent transfer of that mortgage by G. M. to plaintiff, was void as made without the consent of the landlord, but the Divisional Judge, on appeal, reversed this decision on the grounds that Ghanaya, as only one out of a body of landlords, could not object to the mortgage and the subsequent transfer being void, as made without the consent of the landlord, and that although the said mortgage was an incomplete transaction, and therefore not entitled to priority over the later mortgages of the 7th October 1880 and 22nd May 1890 Ghanaya could not deny the right of plaintiff to redeem because his right to do so was not denied by Ishar. Ghanaya appealed to the Chief Court, and it was argued on his behalf that plaintiff's suit should have been dismissed (*i*) because of the want of consent of the landlord to the transfers required by section 53 of the Punjab Tenancy Act, 1887, and (*ii*) because the mortgage of the 16th July 1878 was incomplete and full consideration had not passed.

Held, that inasmuch as clause (3) of section 77 of the Punjab Tenancy Act, 1887, debars a Civil Court from taking cognizance of any dispute with respect to which a suit might be instituted in a Revenue Court, the Court could not take cognizance of the objection that the transfer in favour of G. M. in July 1878, and the transfer in favour of plaintiff in June 1890, were invalid under the provisions of section 53 of the Act.

Held, further, that Ghanaya's appeal must be dismissed on the ground that the only person who was pecuniarily interested in resisting plaintiff's claim to redeem was Ishar, who had preferred no appeal against the order of the Divisional Judge allowing the claim.

No. 100 *P. R.* 1889, referred to. GHANAYA *v.* BASAN MAL. **96 P R 1894**

132. *Punjab Tenancy Act,* 1887, *section* 77, *clause* (*m*)—*Suit for possession of land alleged to have been assigned to plaintiff, "revenue free, as ala-lambardar"—"Emoluments of office of ala-lambardar"—Jurisdiction of Civil or Revenue Courts.*

The plaint alleged that plaintiff was ala-lambardar and, as such, entitled to possession of the land assigned at the previous Settlement for the support of the ala-lambardar,

and that the defendants, who were the village proprietors, wrongfully deprived him possession on certain dates specified. It appeared that under the previous Settlement the ala-lambardar was paid, partly by a percentage on the revenue, and partly by the enjoyment of the produce of a particular plot of land, which had originally formed part of the *shamilat*, but which at the last Settlement had been set aside by the villagers for the partial support of the ala-lambardar, and of which Government had, for the same purpose, remitted the revenue. It further appeared that the appointment and dismissal of the ala-lambardar rested solely with Government, and that it was the Government, and not the village proprietors, who gave him, as a consequence of his appointment, possession and enjoyment of the profits of the assigned land.

Held, that the right to beneficial enjoyment of the land held by the plaintiff by virtue of his office of ala-lambardar was an "emolument" of his office within the meaning of clause (*m*) of section 77 of the Punjab Tenancy Act, 1887, and that the present suit was therefore only cognizable by a Revenue Court. GAMMU *v.* KHUDAYAR.

104 P R 1894

133. *Punjab Tenancy Act,* 1887, *sections* 4 (5) 5, 77 (m)—*Land assigned to ala-lambardar in virtue of his office—"Emoluments of village officer"—Village officer holding land as such officer—Landlord and tenant—Holding land under" another—Jurisdiction of Civil and Revenue Courts.*

The village proprietors having set aside a portion of the village *shamilat* for an endowment of the office of ala-lambardar and Government having appointed one G. S. to the said office, the latter entered into possession of the assigned land. On the death of G. S. some 20 years subsequently, the plaintiffs, who were the village proprietors, sued to recover the assigned land from the defendants, who were the sons of G. S. The defendants pleaded that G. S. had, before his death, acquired, by 20 years' possession, occupancy rights in the land, and that, in any event, they could not be dispossessed without payment of compensation for improvements.

On appeal by the defendants from the order of the Divisional Judge decreeing plaintiff's claim, the appeal was admitted to a Bench by the learned Judge in Chambers, and the question was raised whether the suit was cognizable only by a Revenue Court as falling under section 77, clause (*m*) of the Punjab Tenancy Act, 1887.

Held, that, inasmuch as plaintiffs did not sue to recover the land on the ground that defendants or any one of them wrongly claimed to hold it as ala-lambardar, nor did defendants resist the suit on such grounds, the suit did not fall within clause (*m*), of section 77, of the Punjab Tenancy Act, 1887.

Held, further, that as defendants claimed occupancy rights under clause (*d*) of section 5 of the Punjab Tenancy Act, 1887, as being

the sons of a person who had occupied the land as jagirdar for 20 years it wus necessary for them to show that the said person was not only a jagirdar but also "a tenant" as defined by the Act, and that it could not be said that, under an arrangement whereby the village proprietors assign a portion of land to the endowment of the office of ala-lambardar, to which Government appoints a certain person, the person so appointed and in possession of the assigned land is "tenant" of the village proprietors in the sense of holding land "under" them.

No. 105 *P. R.* 1879, and No. 15 *P. R.* 1892, Revenue cited. SHAM SINGH *v.* GHULA SINGH.

105 P R 1894

134. *Suit for possession of land allotted by Revenue Officer on partition to defendants —Jurisdiction of Civil Court—Civil Procedure Code,* 1882, *section* 13—*Punjab Land Revenue Act,* 1887, *sections* 115, 116, 117, 122 *and* 158 (*xvii*) *and* (*xviii*).

On the 22nd December 1888, certain persons applied to the Revenue Office for partition of *shamilat* land as against certain persons, among whom were the present plaintiffs, alleging that of these defendants some were proprietors and others tenants; that each was in possession of more than his rateable share of the *shamilat*, and that, though there was a large quantity of such *shamilat* the whole of it was unculturable, with the exception of the area for partition of which they prayed. The usual proclamations having been issued, several persons objected to the partition, and on the 29th January 1889, plaintiffs presented a petition stating that they were in possession of part of the *shamilat* which they had brought under cultivation at their own expense, and of which they had obtained a lease at *barani* rates, and prayed that even if the *shamilat* were partitioned, the partition might be effected on condition of their being re-imbursed for their outlay in rendering the land culturable. They also joined with others in presenting a petition on the same date praying that partition might not be effected on the ground that the proprietors had, in 1875, agreed not to partition the *shamilat* and had ratified their agreement before the *tahsildar*. On the same date, the Revenue Officer passed an order to the effect, that such of the proprietors as had not joined in the agreement of 1875 were entitled to partition and directed the partition to be completed by the 1st March 1889. On the 22nd February 1889, plaintiffs and others presented a further petition praying for the stay of partition proceedings on the ground that they had, at great expense, reclaimed their rateable share of the *shamilat* and that it had been agreed that any plot reclaimed by a proprietor should be his (*usi ka hua*) and the other proprietors should have no concern with it. This petition, and an appeal to the Commissioner from the order of the 29th January 1889 having been rejected, the latter as being barred by limitation, partition proceedings went on for about two years,

and on their termination, plaintiffs, on the 30th March 1891, again objected to land which had been reclaimed by them being given to others. The partition, however, was finally sanctioned by the same Revenue Officer on the 5th July 1891, and an instrument of partition prepared on the 29th Januaary 1892. On the 14th December 1891, plaintiffs instituted a suit in the Civil Court for possession of certain land, alleging that they were proprietors thereof by reclamation, the sinking of a well and the planting of trees but that it had remained wrongly recorded as *shamilat* and had at a partition been allotted and made over to defendants. Defendants pleaded that the Civil Court had no jurisdiction to entertain the claim; and further, that the plaintiffs were not proprietors of the land by reason of having reclaimed it. The District Judge held that the Civil Court had jurisdiction, but that plaintiffs had not established their title, and the Divisional Judge, on appeal by plaintiffs, held that the suit was barred under section 13 of the Civil Procedure Code, 1882, plaintiffs appealed to the Chief Court on a certificate granted by the Divisional Judge.

Held that, inasmuch as the Revenue Officer had not tried the question of title involved either as a Civil or as a Revenue Court, but had merely decided the question as to the property to be divided, the suit was not barred under section 13 of the Civil Procedure Code; but *held*, further, that inasmuch as partition had already been carried into effect and was no longer "sought" when the suit was instituted, the Civil Courts had no jurisdiction under section 158 (2) (xvii) of the Punjab Land Revenue Act, 1887, to entertain the suit, despite the fact that there was a question of title in the property partitioned involved. AHMAD GUL *v.* BOSTAN.

118 P R 1894

135. *Suit for compensation of forcibly cutting and carrying away reeds—" Suit by a co-sharer in holding for a share of the profits thereof"—Jurisdiction of Civil and Revenue Courts—Punjab Tenancy Act, section* 77 (3), *clause* (*k*)—*Jurisdiction of Small Cause Court—Small Cause Court Act,* 1887, *2nd Schedule, articles* 11 *and* 31.

Plaintiff sued on the allegations that he and defeudants Nos. 4—8 were co-sharers in certain land; that defendante Nos. 1—3 in Sambat 1949 forcibly cut and carried away certain reeds which grew upon the said land, and of which the total value was Rs. 741-11-0; that plaintiffs' share was Rs. 296-10-9, and that as defendants Nos. 4—8 would not join plaintiff in the claim, they had been impleaded as defendants. The defendants Nos. 5—8 admitted the claim, but defendants Nos. 1—3 contested it. The Munsif having decreed the claim in part, defendant No. 2 appealed to the District Judge, and on his appeal being rejected, applied to the Chief Court on the Revision side, on the ground that the suit was either one cognizable only by a Revenue Court under clause (*k*) of section 77 (3) of the

Punjab Tenancy Act, 1887, or an unclaused suit over Rs. 100 in value, and, as such, excluded from the cognizance of the Small Cause Court by article (11) or article (31) of Act IX of 1887.

Held, that inasmuch as plaintiff's co-sharers were merely nominal defendants, and the real defendants were alleged to be trespassers, having no proprietary right in the land, the suit was not one " by a co-sharer in a holding for a share of the profits thereof " within the meaning of clause (*k*) of section 77 (3) of the Punjab Tenancy Act, 1887, and further, that the suit did not fall under clause (*n*) of the same section, as there was no allegation that defendants Nos. 1—3 occupied the land and cultivated it, but that they forcibly took from the lands certain portion of spontaneous growth and that the suit was cognizable by the Civil Courts.

Held, further, that the suit being for damages for the wrongful removal of the produce of immovable property, and not for the enforcement of any right to or interest in the immovable property, was not excluded from the cognizance of the Small Cause Court by article (11) of the 2nd Schedule of Act IX of 1887.

Held, also, that the suit was not excluded from the cognizance of the Small Cause Court as being a suit "for profits of im-" movable property belonging to the plaintiff " which had been wrongfully received by " the defendants" within the meaning of article (31) of the 2nd Schedule of Act IX of 1887.

The final clause of article (31) of the 2nd Schedule of Act IX of 1887 was intended to apply only to " suits for mesne profits of immovable property " in the strict and technical sense of the expression, and the test of the applicability of the article is not so much whether the defendant has received the profits "under some claim of title," as whether he has received them as a person in wrongful possession, it being immaterial whether he has any *bona fide* claim of title to the land or not.

I. L. R. XVII Calc. 541; *I. L. R. XVII Calc.* 707, *I. L. R. XVIII Calc.* 316, *I. L. R. XV Mad.* 298, *I. L. R. XVII Bom.* 42 cited. NAZAM *v.* JOTI MAL.

119 P R 1894

136. *Jurisdiction of Civil or Revenue Courts—Suit to contest liability to ejectment —Landlord and tenant—Punjab Tenancy Act,* 1887, *sections* 45, 77, (3) (*f*)—*Procedure.*

T. G. and others had notices of ejectment, under section 45 of the Punjab Tenancy Act, 1887, served upon B and J. who thereupon instituted suits in the Revenue Court in the terms of the notices to contest their liability to ejectment. The Collector, being of opinion that these suits could not be brought in the Revenue Court under section 77 (3) (*f*) of the Act, because the plaintiffs B. and J. did not hold themselves out as " tenants " but asserted that they were proprietors, referred the question to the Chief Court.

Held, that the word " the tenant " in section 45 of the Act means any such person

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to whom a notice of ejectment is issued, and that in accordance with the terms of the notice any such person must be allowed to come into the Revenue Court and contest it, whether he admits that he is a tenant or claims some other *status* the same meaning being assigned to the word "tenant" both in section 45 and in section 77 (3) (*f*). THAKAR GIR *v.* BAISAKHI. **3 P R 1895**

137. *Occupancy rights, transfer of, by tenant—Suit by transferee to enforce his rights—Objection raised by landlord by way of defence that transfer was voidable at his instance—Jurisdiction of Civil Court to entertain such objection—Punjab Tenancy Act (XVI of 1887), sections* 53, 60, 77.

Held, by the Full Bench, that a Civil Court is debarred by section 77 of the Punjab Tenancy Act, 1887, from taking cognizance of an objection raised by the landlord by way of defence to a suit brought by the transferee that a transfer of his occupancy rights by a tenant was voidable at the instance of such landlord under section 60 of the Act. ASH NAND *v.* KURA. **11 P R 1895 F. B.**

138. *Jurisdiction of Civil or Revenue Courts—Suit by lessee of Government parade ground for money due on account of grazing due.—"Estate"—Punjab Tenancy Act,* 1887, *section* 77, *clause* (*o*), *and Punjab Land Revenue Act,* 1887, *section 3—Jurisdiction of Small Cause Court—Small Cause Court Act,* 1887, *2nd Schedule* (13)—"*Interest in immovable property.*"

Plaintiff in his plaint alleged by implication that he held a lease, under Government, of the grazing rights over a certain parade ground and (apparently) that defendant entered into an agreeement with him under which he was allowed to graze cattle on the land and became liable to pay for so doing the sum of Rs. 7-13-0.

Held, that the parade ground, of which plaintiff held a lease not being an "estate" as defined in section 3 of the Punjab Land Revenue Act, 1877, the suit though one for money due on account of grazing dues, did not fall under clause (*o*) of section 77 of the Punjab Tenancy Act, 1887, and was cognizable by the Civil Court.

Held, further, that if plaintiff's allegation was merely that he held a lease of the parade ground, and that by virtue of such lease and apart from any agreement, he was entitled to demand certain dues from all persons grazing cattle on the land, the suit was one for dues payable to plaintiff "by reason of his interest in immovable property" within the meaning of article (13) of the 2nd Schedule of the Small Cause Court Act, 1887, and as such excepted from the jurisdiction of the Small Cause Court. Otherwise, if the claim was based on an express agreement by the defendant to pay certain rates. KHUDA BAKHSH *v.* DANA. **13 P R 1895**

139. *Jurisdiction of Civil or Revenue Courts—Suit to eject defendant from land held by him in virtue of his office of ala*

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lambardar—"Emoluments" of village officer—Plea by defendant that he has acquired rights of occupancy, Punjab Tenancy Act, 1887, *section* 77 (3), *clauses* (*d*), (*e*) *and* (*m*).

Plaintiff sued on the allegation that the subject of the claim was *shamilat* which had formerly been made over to defendant in remuneration of his services as ala lambardar, but that he was no longer entitled to hold the land as he was now remunerated by a cash allowance. Defendant, while admitting the last fact pleaded that he could not be ejected as he had acquired rights of occupancy in the land. The question was whether the suit was one cognizable by the Civil or the Revenue Court.

Held, that there being no question as to defendant's right to retain the land, in virtue of his office of ala-lambardar, and the only point being whether he had acquired a right of occupancy the suit was not excluded from the cognizance of the Civil Court by clause (*m*) of section 77 (3) of the Punjab Tenancy Act, 1887.

Held, further, that inasmuch as on the admitted facts connected with defendant's acquisition of the land he could not be said to have ever "held under" the plaintiff so as to create the relationship of tenant and landlord between them the suit was not excluded from the cognizance of the Civil Court by reason of the defendant's plea that he was an occupancy tenant, and the provision in the first clause of section 77 (3) of the Punjab Tenancy Act. SOHNA *v.* MOSAM. **23 P R 1895**

140. *Jurisdiction of Civil or Revenue Courts—Suit for sum recoverable for occupation of land without consent of landlord—Punjab Tenancy Act, XIV of* 1887, *sections* 14, 77 (3) (*n*).

Plaintiff sued on the allegations that the land in suit was owned by one S. S., that it was sub-mortgaged by S. S.'s mortgagee to H. S. who had again sub-mortgaged it to plaintiff; that plaintiff had obtained possession under his mortgage, but that when he had prepared the land and attempted to sow it defendants, among whom was the said H. S., prevented him by stopping his ploughs and had set up a fictitious lease of a portion of the land from Mussammat M. K., the widow of S. S., plaintiff therefore claimed Rs. 300 as damages.

Held, that the suit as above laid fell under section 14 of the Punjab Tenancy Act, 1887, and was excluded from the cognizance of the Civil Courts by clause (*n*) of section 77 (3) of the Act.

No. 82 *P. R.* 1894, referred to. NIHAL SINGH *v.* HARI SINGH. **26 P R 1895**

141. *Suit to recover land from person holding it in virtue of his office as ala lambardar—Plea that* muafi *has been resumed—Jurisdiction of Civil or Revenue Courts—Punjab Tenancy Act, XIV of* 1887), *section* 77 (*m*).

Plaintiff sued to recover possession of certain land as proprietor from the defendant who claimed to hold it, by virtue of his office of ala-lambardar.

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Held, that the only question being whether the *muafi* had been resumed or not, that is to say, whether the defendant was entitled to continue to enjoy the profits of the land as part of the emoluments of his office, the suit was cognizable only by the Revenue Courts under clause (*m*) of section 77 of the Punjab Tenancy Act, 1887. BULAKA SINGH *v.* NIHAL SINGH. **28 P R 1895**

142. *Jurisdiction of Civil or Revenue Courts—Suit to recover money claimed as due for the enjoyment of the right of pasturage over land—Punjab Tenancy Act,* 1897, *sections* 4 (9) 77 (3) (*o*) *and Punjab Land Revenue Act,* 1887, *section* 3 (1) *and* (2)—"*Landowner*" *and* "*estate,*" *meaning of*—Tirni *contractor.*

Plaintiff, who was the *tirni* contractor of the Montgomery district, sued the defendant for Rs. 1,200 on account of grazing dues in respect of certain camels belonging to third parties but employed by defendant, and alleged that defendant had undertaken to pay the tax on behalf of the owners of the said camels.

Held, that the suit was one by "a landowner "to recover moneys claimed as due for the "enjoyment of rights of pasturage over land" within the meaning of clause (*o*) of section 77 (3) of the Punjab Tenancy Act, 1887, and as such was cognizable only by a Revenue Court. MALIK WAZIR *v.* BARKAT KHAN. **30 P R 1895**

143. *Jurisdiction of Civil or Revenue Courts—Suit by occupancy tenant against co-sharer in the tenancy for share of produce—"Co-sharer in an estate or holding"—Punjab Tenancy Act,* 1887, *section* 77 (3) (*k*).

Held, by the Full Bench (*Roe*, S. J., dissenting) that a suit by an occupancy tenant against a co-sharer in the tenancy for a share of the produce is one cognizable by the Civil Courts and does not fall under clause (*k*) of section 77 (3) of the Punjab Tenancy Act, 1887, inasmuch as the plaintiff and defendant are not "co-sharers in an estate or holding" within the meaning of the said clause. RALLA *v.* RAM DITTA. **44 P R 1895 F. B.**

144. *Jurisdiction of Civil or Revenue Courts—Suit for declaratory decree by person aggrieved by entry in a recor of rights—Landlord and tenant—Punjab Land Revenue Act,* 1887, *section* 45, *and Punjab Tenancy Act,* 1887, *section* 77 (3) (*i*).

Held, that section 45 of the Punjab Land Revenue Act, 1887, must be read subject to section 77 of the Punjab Tenancy Act, 1887, and the other provisions of either Act relating to the jurisdiction of the Revenue Courts, and the cases falling within the former section will be cognizable either by the Civil or Revenue Courts according to the nature of the subject-matter of the suit and the rules for the exercise of jurisdiction by the Revenue Courts enacted in the relevant sections of the two Acts. BAHADUR KHAN *v.* SARDAR. **89 P R 1895**

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145. *Jurisdiction of Civil or Revenue Court—Punjab Tenancy Act*, 1887, *section* 77 (3) (p)—"*Suit for sum payable on account of land revenue.*

G. H., one of the village proprietors, being indebted for a certain sum by way of land revenue and mutation fees, gave plaintiff, who was a lambardar of the village, a written order or *ruka* for the amount on one K. who accepted liability thereon, but subsequently refused to pay. Plaintiff, thereupon, brought a suit in the Civil Court against K. and based his claim upon the said *ruka*. The District Judge, on appeal, thinking that the suit was not cognizable by the Civil Courts, submitted the case to the Chief Court for registration of the decree of the Munsif, who gave plaintiff a decree in a Revenue Court, under section 100 of the Tenancy Act.

Held, that the Civil Court had jurisdiction to entertain the suit. The suit would have been a revenue suit had G. H. been sued, or had money been due under section 77 (3) *p* of the Punjab Tenancy Act, 1887, by K.: but as it was not so due by K, whose liability was on the *ruka*, the suit was for money due on the *ruka* and not as land-revenue. AHMAD KHAN *v.* GHULAM HUSAIN.

9 P R 1896

146. *Jurisdiction—Punjab Land Revenue Act*, 1887, *sections* 116, 117, 158—*Partition proceedings—Question of title raised before Revenue Officer but not decided—Completion of partition—Jurisdiction of Civil Court to entertain subsequent suit in respect of the said question of title.*

In the course of a partition of village *shamilat* which was being effected under Act XVII of 1887, a plot of land was allotted as the proportion due on account of a holding of Mussammat K, the mother of the plaintiffs. Defendants alleged that the right to this allotment had passed to them under a sale. This allegation was denied by Mussammat K, who, however, filed a petition asking that the allotment might be left in the hands of defendants and that the partition might proceed, and she added that she intended to bring a suit in the Civil Court to establish her title. This was allowed by the Revenue Officer making the partition, and the proceedings were then continued and completed. Plaintiffs, who were the representatives of Mussammat K. subsequently instituted a suit in the Civil Courts to establish their title and recover the allotment from the defendants. For the latter, it was contended that the jurisdiction of the Civil Courts was barred under section 158 of the Punjab Land Revenue Act.

Held, by the Full Bench, that the Civil Courts had jurisdiction to entertain the suit. ATA MUHAMMAD KHAN *v.* ARJAN SINGH.

72 P R 1896 F. B.

147. *Civil Procedure Code*, 1882, *sections* 312–316, 320, 326, 327—*Sale by Collector at instance of Civil Court—Jurisdiction of Civil Court in execution of decree to confirm such sale—Punjab Land Revenue Act*, 1887, *section* 141—*Rule* 50 *of No. V of "Rules and Orders of the Chief Court.*

Where, in execution of the decree of a Civil Court, land belonging to the judgment-debtor has been sold, on the requisition of the Civil Court, by the Collector with the sanction of the Financial Commissioner, the Civil Court executing the decree has jurisdiction to confirm such sale and not the Collector. PARMA NAND *v.* SOHMA. **83 P R 1896**

148. *Jurisdiction of Civil or Revenue Court—Mortgagor and mortgagee - Construction of mortgage-deed—Landlord and tenant —Non-transfer of possession by mortgagor.*

Previously to the execution of the mortgage-deed in question, the mortgagor's land was cultivated partly by himself and partly by tenants some of whom were occupancy tenants and some tenants-at-will, who paid him one-third share of the produce and certain dues. The mortgage-deed provided that this arrangement should continue, but that the dues should go to the mortgagee, and that out of the one-third share of the produce of the whole land, the mortgagor should deduct two maunds for himself and the remainder should be divided into six shares, of which one share should be reserved to the mortgagor and the rest should go to the mortgagee, the payment of revenue being divided between them in the same proportions.

Held, that as neither proprietary nor cultivating possession was transferred to the mortgagee, the latter could not re-transfer the cultivating possession to the mortgagor; that the mortgagor did not, therefore, h the land " under " the mortgagee; that the said payments were not " rent " and that the relationship of landlord and tenant did not exist between the parties.

Held, therefore, that the Revenue Courts had no jurisdiction to entertain a suit by the mortgagee in respect of his claims under the said mortgage-deed. MEHR CHAND *v.* LAL,

5 P R 1897 Rev.

149. *Suit for partition—Revenue Officer referring question of title to Civil Court, but completing partition without awaiting such decision—Jurisdiction of Civil Court to entertain snbsequent suit regarding such question of title—Punjab Land Revenue Act*, 1887, *sections* 117 (i), 122, 158 (17).

In certain partition proceedings before a Revenue Officer an objection, raising a question of title, was preferred, and the objector was directed to bring a civil suit to establish his title within fifteen days. He failed to do so, whereupon the partition proceeded and was completed. After its completion the objector instituted the present suit in the Civil Court for the purpose of establishing his title. The question referred to the Full Bench was whether under such circumstances the jurisdiction of the Civil Courts was barred by section 158, Punjab Land Revenue Act, or any other law.

Held, by the Full Bench, that the jurisdiction of the Civil Courts to entertain the present suit was not barred.

When in partition proceedings before a Revenue Officer a question of title is raised, the Revenue Officer is bound, under section 117 of the Land Revenue Act, 1887, to refuse partition until such question is decided by the Civil Court or to decide it himself, and if such Officer completes the partition without the question of title raised before him being settled in one of the two ways provided in the said section, the mere fact that the partition has been completed cannot oust the jurisdiction of the Civil Courts to entertain a subsequent suit regarding such question of title.

No. 118 *P. R.* 1894, overruled *pro tanto.* BACHAN SINGH *v.* MADHAN SINGH.

61 P R 1897 F. B.

150. *Jurisdiction of Civil Court—Suit to set aside order made by Collector on a reference by a Canal Officer—Northern India Canal and Drainage Act*, 1873, *sections* 25, 27.

One S. N., defendant 2, having applied to the Canal Officer for the construction of a new water-course, a reference was made to the Collector, who after proceeding in accordance with law, recorded an order putting defendant in possession of certain land belonging to plaintiff. The latter thereupon instituted a suit in the Civil Court to set aside the said order and for recovery of the said land, or for such other relief as the Court might grant.

Held, following No. 71 *P. R.* 1888, that the order of the Collector, under section 25 of the Northern India Canals and Drainage Act, 1873, was final, and that the Civil Courts had no jurisdiction to interfere therewith. LAKH RAM *v.* SECRETARY OF STATE.

64 P R 1897

151. *Suit including claim to* muafi—*Sum granted as* muafi *unascertained because land never assessed to land revenue—Jurisdiction of Civil Courts—Procedure.*

The mere fact that the sum remitted or granted as a *muafi* is unascertained because the land had never been assessed to land revenue does not make such sum any the less "a grant of land revenue" or *ipso facto* take the case outside section 4 of the Pensions Act, 1871.

Where, therefore, a suit included a claim to a certain *muafi*, *held*, that the Civil Courts had no jurisdiction to entertain the suit *pro tanto* without the certificate required by section 6 of the Act, and none the less so merely because the land in question had never been assessed to land revenue.

In the present case, inasmuch as a large part of the claim was cognizable by the Civil Court, *held*, that the suit should not have been dismissed but that the plaint should

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have been returned for amendment, giving the plaintiff an opportunity to withdraw that part of the claim that was not cognizable by the Civil Court without a certificate or to apply for such certificate. GHULAM NABI *v.* BISHARAT ALI. **25 P R 1900**

152. *Suit by lessee.*

Plaintiff filed a suit for the whole income of certain villages less a specific amount alleging that the defendant's predecessors granted the whole income of the villages to his predecessors in consideration of services rendered, the subject to a fixed annual payment, the latter to take all risk of profit and loss.

Held, that the suit filed being for the whole profits less an annual charge did not come under section 77 (3) *(k)* of the Punjab Tenancy Act, and that it was a civil suit. KIRAT AND OTHERS *v.* RAJA JAI CHAND. **55 P R 1900**

153. *Suit for a share of produce and for a share of deceased father's chattels—Jurisdiction of Civil and Revenue Courts.*

The plaintiff and defendant were brothers, the former during the lifetime of his father received a separate portion of the estate for his maintenance, the defendant and the father continuing to cultivate the residue jointly. The father died in September 1897 Mutation in the joint names of plaintiff and defendant was effected on the 25th November 1897 and properly attested, the defendant continued to cultivate all the land he had previously held jointly with his father and took the entire produce. The plaintiff sued for a share of the produce and joined a claim for a share of the deceased father's chattels with it. The case was tried by a Munsif who found the plaintiff's claim as to the chattels unfounded, but gave him a decree of a share of the produce which the defendant had taken in excess of his rights. Both parties appealed to the District Judge, who submitted the case for opinion to the Chief Court, under section 100 of the Punjab Tenancy Act, with a note that the claim for the chattels had been properly adjudicated on, but the claim for the produce was clearly one by a co-sharer in a holding for a share of the profits thereof, and as such was only cognizable by a Revenue Court.

Held, that the parties being recorded as co-sharers in the holding after the death of their father, the plaintiff's claim for his share of the produce was clearly one by a co-sharer in a holding for a share of the profits thereof, and was only cognizable by the Revenue Courts. The District Judge was competent to entertain the appeal as regards the part of the claim which was cognizable by the Civil Court, and as to the other part his only course was to dismiss the claim as one not cognizable by the Munsif. ALAM KHAN *v.* SHER DIL. **78 P R 1900**

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154. In a suit for the recovery of Rs. 22 on account of rent where the plaintiffs and defendant having agreed to cultivate jointly the plaintiffs' land, on the conditions that the plaintiffs were to give three ploughings and the defendant one, and that the plaintiffs were to receive three-fourths and the defendant one-fourth of the produce, and that defendant was to pay the plaintiffs Rs. 22 as rent of his one-fourth share.

Held, that the agreements were clearly separate, and that the Civil Court could not take cognizance of the dispute about the Rs. 22 even if a suit was brought for damages for breach of the partnership agreement as that was cognizable by the Revenue Courts only. *Asa Nand* v. *Kura* (11 *P. R.* 1895) and *Ganaya* v. *Basau Mal* (96 *P. R.* 1884), followed. UDMI *v.* KIRPA RAM AND ANOTHER. **106 P R 1900**

155. *Jurisdiction—Partition proceedings by the Revenue authorities—Jurisdiction of Civil Court to entertain subsequent suit for a declaration that certain land was the plaintiff's exclusive property—Punjab Land Revenue Act*, 1887, *clauses* (1) *and* (2), *XVII of section* 158.

Held, that a suit for a declaration of right inconsistent with the allotment of land made by a Revenue Officer can be brought in a Civil Court after a partition has been formally completed, provided that the suit involves a question of title in any of the property affected by the partition proceedings and that Chapter IX of the Land Revenue Act does not bar the jurisdiction of the Civil Court where the point of joint ownership is disputed.

Ahmad Gul v. *Bostan* (118 *P. R.* 1894) referred to and *Bachan Singh* v. *Mudhan Singh* (61 *P. R.* 1897) followed. SARWAR *v.* SADULLA. **29 P R 1901**

156. *Marriage—Suit for a declaration that the defendant is not the lawful wife of the plaintiff—Jurisdiction of Civil Courts to entertain such a suit when an order for maintenance passed under section* 488 *of the Criminal Procedure Code is in force against the plaintiff.*

Held, that a Civil Court has jurisdiction to decide whether the defendant was or was not the lawful wife of the plaintiff at the time the suit was instituted. An order for maintenance passed by a Magistrate in favour of the defendant is no bar to such suit. WARYAM SINGH *v.* MUSSAMMAT PREMON. **50 P R 1901**

157. *Grant of a portion of the village common land to a person holding the office of ala-lambardar rent free—Suit for dispossession—Landlord and tenant—Punjab Tenancy Act*, 1887, *section* 4, *clause* 5.

Defendant having been appointed ala-lambardar by vitue of his office obtained a grant from Government with the consent of the village proprietary body of a portion of the village compmot land as *muafi*. The

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muafi was resumed in 1892, and plaintiffs the recorded proprietors of the land, sued for, possession on the allegation that they were the landlords and that the land had been held by defendant as ala-lambardar's *muafi*, and that on the resumption of the *muafi* the defendant was not entitled to retain possession. The question referred was whether the suit was one cognizable by the Civil or Revenue Court.

Held, by the Full Bench, that the suit was excluded from the cognizance of the Civil Court, as the arrangement made with the consent of the proprietary body was a transfer to the ala-lambardar of a rent-free cultivating right for a fixed term. and that the ala-lambardar held under the proprietary body, and was their tenant

Sham Singh and others v. *Ghula Singh and others* (105 *P. R.* 1894) and *Sohna* v. *Mosam* (23 *P. R.* 1895) overruled. *Jhanda Singh* v. *Dhana Singh* (1 *P. R.* 1896 Rev.), and *Lahna Singh and others* v. *Hira Singh* (1 *P. R.* 1897 Rev.) cited and approved. HIRA SINGH AND OTHERS *v.* GURMUKH SINGH. **101 P R 1901**

158. *Jurisdiction—Jurisdiction of Revenue Courts to re-open matters decided by a competent Civil Court.*

Held, that the Revenue Courts are not competent to go behind the decision of Civil Courts and re-open matters already decided by competent judicial authority, or where the claim is based on a Civil Court's decree to enter on enquiries which substantially involve the issue as to whether that decree has been rightly given or not. The Revenue Courts should always accept such a decree and act upon it. GURDAS AND ANOTHER *v.* HASSAN. **13 P R 1901 Rev**

159. *Civil Procedure Code*, 1882, *section* 13—Res judicata—*Jurisdiction of Civil or Revenue Court—Suit for recovery of land from trespasser—Plea by defendant that he has a right of occupancy—Tenancy Act*, 1877, *section* 77 (3) (*b*).

Plaintiffs sued in 1896, in the Court of the District Judge, for possession of land from the present defendants who claimed to be the occupancy tenants. The land was formerly held by one Hari Singh as an occupancy tenant, and on his death was inherited by his widow, who got her brother (defendant No. 1) entered as occupancy tenant of one-half, while the other half continued to be recorded in her own name and remained in her possession. On her death her half was mutated in plaintiff's names, but the defendant No. 1 continued in possession of the whole. The District Judge held that the case was triable by a Revenue and not by a Civil Court, and returned the plaint for presentation in the proper Court with the remark that the plaintiffs' proper course was to sue under section 77 (*d*) of the Punjab Tenancy Act. The plaintiffs acting on this suggestion sued in the Revenue Court for a declaration that the defendant was not,

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such a tenant under section 77 (3) (*d*) of the Tenancy Act and obtained a decree. The plaintiffs then brought the present suit for possession of the whole, defendant pleaded *inter alia* that the Civil Court had no jurisdiction, and the Subordinate Judge dismissed the suit on the ground of *res judicata* by reason of the previous order of the District Judge.

Held, by the Full Bench that as the matter of jurisdiction had not been put in issue and finally decided by the District Judge in 1886, the rule of *res judicata* had no application to the present case. The mere fact of a Civil Court declining to exercise jurisdiction either by returning the plaint or by dismissing the suit on the ground that the jurisdiction lay in the Revenue Court could not be treated as an adjudication on the point.

Held also, that as the mere fact of the defendants remaining in possession over the half of the land held by the widow after her death did not create the relationship of landlord and tenant between the parties, the suit connected with that part of the claim was therefore cognizable by a Civil Court.

Held further, as to the other half of the land per *Chatterji* and *Johnstone* JJ., *Rattigan* J., dissenting as to this, that—

(*i*) by reason of the form of the previous suit under section 77 (3) (*d*) plaintiff had conceded to defendant the status of tenant and his present remedy is therefore a revenue suit for ejectment under section 73 (3) (*e*) of the Punjab Tenancy Act;

(*ii*) whether defendant is a tenant or not, he is certainly a transferer under a void or voidable transfer, and therefore plaintiffs' remedy would be a suit in the Revenue Court under section 77 (3) (*h*), Tenancy Act; and

(*iii*) that thus in any case the Revenue Court and not the Civil Court had jurisdiction in the matter.

Per Rattigan J., that the suit, as a whole, was one cognizable by the Civil Courts. The question of jurisdiction has to be determined by reference to the plaint, supplemented if necessary by the statements of the plaintiff and judged by the criterion. The present suit as framed was one which the Civil Court was competent to entertain. The plaintiffs by their action in suing in the Revenue Courts for a declaration that the defendant was not *an occupancy tenant*, and that the entry to that effect in the revenue record was erroneous, should not be held to have thereby conceded that defendant was their tenant, a status which they had consistently denied that he possessed and the mere fact that in that action they might have obtained further relief from the Revenue Court was *per se* no ground for holding that they could not thereafter obtain that relief from the Civil Court, especially when the defendant

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has been conclusively declared by the proper authority not to be an occupancy tenant.

Joti v. *Maya* (44 *P. R.* 1891 *F. B.*), *Ram Singh* v. *Jowala Singh* (55 *P. R.* 1896), *Sultan Habibulla Khan* v. *Mohabat Khan* (68 *P. R.* 1901), *Zamorin of Calicut* v. *Narayanan Mussad* (*I. L. R. XXII Mad.* 323), *Nityananda Gantayet* v. *Gajabati Vosudeva Deru* (*I. L. R. XXIV Mad.* 681), *Ghela Ichha Ram* v. *Sankatchand Jetha* (*I. L R. XVIII Bom.* 597), *Chaman Lal* v. *Bapubhai* (*I. L. R. XXII Bom.* 669), *Mewa Singh* v. *Nathu* (22 *P. R.* 1894), *Sohna* v. *Mosam* (23 *P. R.* 1895), *Ishar Singh* v. *Lal Singh* (39 *P. R.* 1888), *Gurdial* v. *Farida* (88 *P. R.* 1894), *Thakar Gir* v. *Baisakhi* (3 *P. R.* 1895), *Asa Nand* v. *Kura* (11 *P. R.* 1895, *F. B.*), and *Ghanaya* v. *Basan Mal* (96 *P. R.* 1894), referred to and considered. MULA *v.* GANDU.

92 P R 1902 F B

160. *Compensation for improvements—Co-sharer—Suit by a co-sharer for compensation for improvements alleged to have been made during the absence of his co-sharer.*

An absentee co-sharer in a holding brought a Civil suit to establish his rights, and obtained an unconditional decree subsequently he applied for partition. No question of any claim for compensation was raised by the parties either in the Civil Court or in the partition proceedings, but on the suggestion of the Collector the plaintiff filed a suit for Rs 1,046 on account of compensation for improvements and got a decree for Rs. 90.

Held, that the suit for compensation as between co-sharers was not cognizable by the Revenue Court. The question was one of title, and should have been raised if at all in the Civil Court. DADU AND ANOTHER *v.* ILAHI AND OTHERS. **3 P R 1902 Rev**

161. *Jurisdiction of Civil or Revenue Court—Suit for recovery of possession from landlord claiming on ground of succession as tenant—Punjab Tenancy Act*, 1887, *sections* 50, 77 (3) (*g*).

A suit by the collateral heir of a deceased occupancy tenant to recover possession of his holding from the landlord on the ground that he had been forcibly dispossessed by the landlord after he had entered into possession is covered by sections 50 and 77 (3) (*g*) of the Punjab Tenancy Act and is cognizable by a Revenue Court only.

Joti and another v. *Maya and others* (44 *P. R.* 1891, F. B.), cited. *Wazira and others* v. *Harjalu and another* (160 *P. R.* 1890), referred to. NABI BAKHSH *v.* GANESH AND OTHERS. **40 P R 1904**

162. *Jurisdiction of Civil or Revenue Courts—Procedure for obtaining a final decision as to whether a suit is cognizable by the Civil or Revenue Courts—Punjab Tenancy Act*, 1887, *section* 99.

Where the presiding officer of a Civil or Revenue Court on presentation of a plaint which has already been returned by a Civil

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or Revenue Court, on the ground of want of jurisdiction, disagrees with the order and considers he is precluded from taking cognizance of the suit, he should at once refer the matter to the Chief Court, under section 99 of the Punjab Tenancy Act, in order to obtain a final decision and should not return it for presentation to the Court which had already declined jurisdiction. KURE AND OTHERS *v.* GHISA AND OTHERS.

63 P R 1904

163. *Jurisdiction of Civil or Revenue Court—Suit by landlord for possession of a water-mill—"Purpose subservient to agriculture"—Punjab Tenancy Act*, 1887, *section* 4 (1).

Held that a suit by a landlord for entry upon a water-mill against an occupancy tenant by cancellation of an irregular transfer is cognizable by the Civil and not by the Revenue Court, the purpose for which the site of the mill is occupied not being a purpose subservient to agriculture within the meaning of section 4 (1) of the Punjab Tenancy Act, the parties are altogether outside the scope of the Act and are not governed by it.

Mutsadi v. *Sawan* (41 *P. R.* 1892), followed. FARMAN ALI *v.* IMAM DIN.

77 P R 1904

164. *Jurisdiction of Civil or Revenue Court—Suit for share of profit—Partnership for cultivation of land—Suit by a co-sharer for share of profit, Punjab Tenancy Act*, 1887, *section* 77 (3) (*k*).

A suit by the plaintiff for his share in the produce of certain land owned by the defendant which he cultivated in partnership with the defendant under an agreement whereby he was to receive one-fourth of the produce, *held*, to be a suit by a co-sharer for a share in the profits of the holding within the meaning of section 77 (3) (*k*) of the Punjab Tenancy Act, 1887, and was cognizable by a Revenue Court. SUNDER SINGH *v.* KESAR SINGH. **80 P R 1904**

165. *Suit for mesne profits accrued between the date of decree and of delivery of possession—Suit based on two causes of action, one cognizable by Civil Court, the other cognizable by Revenue Court—Jurisdiction of Civil or Revenue Court—Punjab Tenancy Act*, 1887, *section* 77 (*k*).

Plaintiff sued for possession of certain land and obtained a decree against defendants 1—3. He applied for execution, but on the defendants' motion, who had preferred an appeal against the decree the execution was suspended on their furnishing the security of defendant 4 for the due performance of such decree as might be eventually passed in appeal. The case was taken up to the Privy Council, but the judgment-debtors lost it throughout. The plaintiff after obtaining possession of the property sued the defendant for the profits of the estate due to him by the latter by the period during

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which execution was stayed. The District Judge declined jurisdiction on the ground that the suit being one by a co-sharer in a holding for a share of the profits thereof was cognizable only by a Revenue Court.

Held, that the suit as laid was neither cognizable exclusively by a Civil nor by a Revenue Court.

The claim as regards defendants 1—3 was a claim by a co-sharer in a holding for a share of the profits thereof and was cognizable only by the Revenue Courts under clause (*k*) of section 77 of the Punjab Tenancy Act, while the claim as against defendant 4 (the surety), having been based on a contract was cognizable by a Civil Court.

Held, *further*, that where a plaintiff brings a suit which comprises two claims on different causes of action, one of which is cognizable by a Civil Court, while the other is cognizable by a Revenue Court, the proper procedure for the presiding Judge is to return the plaint to the plaintiff for amendment by striking out one of the causes of action and bringing his suit in the Civil or Revenue Court or snits in both, as he may think proper.

Mussammat Karmon v. *Jiwan Mal* (19 *P. R.* 1892), referred to. MUHAMMAD HASAN *v.* GHULAM JILANI. **81 P R 1904**

166. Kamiana—*Suit for a declaration that persons who are owners of their houses and cultivators in the village are not liable to pay the* kamiana *dues—Village cess—Jurisdiction of Civil or Revenue Court—Punjab Tenancy Act*, 1887, *section* 77 (3) (*j*).

Held, that a suit for declaration that *kamiana* dues are not recoverable from such residents of a village who are owners of their houses and cultivators does not come under clause (*j*) of section 77 of the Punjab Tenancy Act, and is cognizable by a Civil Court. SHEIKH MUHAMMAD *v.* HABIB KHAN. **67 P R 1905**

167 *Jurisdiction of Civil or Revenue Court—Suit for declaration as to principle of division—Question of title—Punjab Land Revenue Act*, 1887, *sections* 116, 117.

Held, that a suit for a declaration that the common land was the joint property of the parties and was liable to be partitioned according to revenue holdings and not according to ancestral shares was cognizable by a Civil and not by a Revenue Court. The question of the measure of right is clearly one of title within the meaning of sections 116, 117 of Punjab Land Revenue Act, 1887.

Ghisa v. *Ranjit* (120 *P. R.* 1880), *Dalla Singh* v. *Ala Singh* (92 *P. R.* 1881), *Bhai Badan Singh* v. *Partap Singh* (131 *P. R.* 1882), and *Radhu* v. *Mussammat Nando* (150 *P. R.* 1890), referred to. FAZALDAD KHAN *v.* ATA MUHAMMAD. **99 P R 1905**

168. *Jurisdiction of Civil or Revenue Court—Suit for mesne profits—Suit by a*

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mortgagee entitled to possession under his mortgage—Suit by a co-sharer for share of profits—Punjab Tenancy Act, 1887, *section* 77 (3) (*k*).

A suit by the plaintiff for mesne profits of certain land in possession of the defendants on the allegation that a share of the profits of the estate was due to him under the terms of his mortgage by which the proprietary possession had been agreed to be transferred to him, *held* to be a suit by a co-sharer for a share in the profits of the holding within the meaning of section 77 (3) (*k*) of the Punjab Tenancy Act, 1887, and cognizable by a Revenue Court. MAYA DAS *v.* JOWALA SAHAI. **9 P R 1905 Rev**

169. *Sale of occupancy rights to landlord—Suit by mortgagee for possession against the landlord—Jurisdiction of Civil or Revenue Court—Punjab Tenancy Act*, 1887, *section* 77.

In 1899 an occupancy holding was mortgaged with possession to the plaintiff. In 1901 the tenants transferred their rights to their landlords by a sale pretended to be in accordance with the provisions of section 53 of the Punjab Tenancy Act. The value was determined by mutual agreement, a portion of the amount so agreed on was applied in payment of another mortgage, a portion was paid to the tenants, balance being left in deposit with the landlord for payment to plaintiff The plaintiff thereupon instituted the present suit for possession as mortgagee. The defence contended that the suit was not cognizable by a Civil Court, *held*, that as the plaintiff was not a tenant under the landlord and as his suit was for the restoration of his possession as mortgagee against a trespasser it was cognizable by the Civil and not by the Revenue Court. BHAG MAL *v.* PIR BAKSH. **32 P R 1906**

170. *Punjab Tenancy Act*, 1887, *section* 77 (3) (*i*)—*Suit by mortgagee to recover money advanced to mortgagor to pay land revenue—Jurisdiction of Civil or Revenue Court.*

Held, that a suit by a mortgagee against his mortgagor to recover money advanced for payment of land revenue, where the primary relationship between the parties was that of mortgagor and mortgagee, and the relationship of landlord and tenant merely a subsidiary one, was cognizable by a Civil Court.

Section 77 (3) of the Punjab Tenancy Act, 1887, which ousts the jurisdiction of the Civil Courts, must be construed strictly. Clause (*i*) includes suits *ejusdem generis* with those which are mentioned above it, and must be confined to suits between parties *qua* landlord and tenant. It does not include a suit, the claim in which arises out of a contract of mortgage merely because between the mortgagee and mortgagor there subsists also the relationship of landlord and tenant. The claim in the suit must be directly referable to the lease on the conditions on

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JURISDICTION OF CIVIL OR REVENUE COURTS—*contd.*

which the tenancy is held. JAMIAT MAL *v.* KHAIR MUHAMMAD. **126 P R 1906**

171. *Occupancy rights—Suit by a tenant for a declaration that he is occupancy tenant by exchange with the original tenant—Jurisdiction of Civil or Revenue Court—Punjab Tenancy Act*, 1887, *section* 77 (3) (*d*).

Held, that a suit by an occupancy tenant for a declaration that he is occupancy tenant in respect of a certain occupancy holding for which he has exchanged his original occupancy holding is governed by section 77 (3) (*d*) of the Punjab Tenancy Act and is cognizable by a Revenue Court only. ATTAR SINGH *v.* RALA SINGH. **139 P R 1906**

172. *Jurisdiction of Civil or Revenue Court—Punjab Tenancy Act*, 1887, *section* 100 *and section* 77 (3) (*d*)—*Contents of plaint and of plaintiff's allegations.*

Plaintiff sued for Rs. 5, value of trees cut by defendants on land alleged to be plaintiff's, with which defendants had no concern whatever. Defendants pleaded that they were occupancy tenants and so entitled to the trees.

Held, that the suit was one for a Civil Court, the test being the contents of the plaint and of the allegations of the plaintiff.

Held, also, in view of the wording of section 77 (3), Punjab Tenancy Act, 1887, that the Civil Court could not take cognizance of the defendants' plea that they were occupancy tenants, but must ignore that plea, leaving defendants to any remedy that might be open to them by suit in the Revenue Court. FAKIRIA *v.* DHANI NATH. **24 P R 1907**

173. *Arrears of rent of land—Suit upon bond given for arrears of rent—Punjab Tenancy Act*, 1877, *section* 77 (3) (*n*).

Held, that a suit based upon a bond executed for arrears of rent of land, is one cognizable by the Civil Courts, and does not fall under clause (*n*) of section 77 (3) of the Punjab Tenancy Act, 1887. AMRIT LAL *v.* BHAGWANA. **41 P R 1907**

174. Kudhi kamini—*Suit for the recovery of—Village cess—Punjab Tenancy Act*, 1877, *section* 77 (3) (*j*).

Held, that *kudhi kamini* is a "village cess" within the meaning of section 77 (3) (*j*) of the Punjab Tenancy Act, and a suit therefore for its recovery is cognizable by the Revenue and not by the Civil Courts.

Fazal v. *Samandar Khan* (49 *P. R.* 1891), *Gowhra* v. *Ali Gauhar* (11 *P. R.* 1890 *Rev.*) and *Shahya* v. *Karam Khan* (95 *P. R.* 1907 *Note*), followed. RAJ SARUP *v.* HARDAWARI. **95 P R 1907**

175. *Common land—Partition—Suit for declaration that land was not subject to partition—Punjab Land Revenue Act*, 1887, *section* 158 (*XVII*)—*Punjab Tenancy Act*, 1887, *section* 77, (3) (*i*).

Held, that a suit by occupancy tenants against the whole of the individuals forming

the proprietary body to establish that they, in common with all the residents of the village, are entitled to graze their cattle over the village common land, and that therefore it should be exempted from partition is not barred from the cognizance of the Civil Courts either by clause XVII of section 158 of the Punjab Land Revenue Act, 1887, or by clause (*i*) of section 77 (3) of the Punjab Tenancy Act, 1887. SUNDAR *v.* WAZIRA.

144 P R 1907

176. *Partition—Question relating to enforcement of entry in* Wajib-ul-arz—"*Question of title*" *or* "*mode of making the partition*"—*Panjab Land Revenue Act,* 1887, *sections* 116, 117, 158.

Held, that on the partition of a joint holding the question whether a co-sharer who had planted an orchard on a part of the village *shamilat* by his own individual labour and at his own cost should or should not, according to the rule laid down in the village administration paper, be allotted that area as his share is not, "a question of title" within the meaning of section 116 (*a*) of the Punjab Land Revenue Act, but is one relating to "the mode of making the partition" within the purview of section 116 (*b*), and as such is excluded from the cognizance of a Civil Court by a clause XVIII of section 158. DEVI DIAL *v.* AHMAD KHAN.

4 P R 1908

177. Haq bua—*Suit for a declaration that occupancy tenants in the village are not liable to pay* haq bua *dues—Punjab Tenancy Act,* 1887, *section* 77 (3) (*j*).

Held by the Full Bench that a suit for a declaration that the occupancy tenants are not liable to pay *haq bua* dues is cognizable by the Revenue and not by the Civil Courts. GAMU *v.* KARIM KHAN. **33 P R 1908 F B**

178. Haq sep—*Suit for recovery of—Village cess—Punjab Tenancy Act,* 1887, *section* 77 (3) (*j*).

Held, that a suit for a sum due as *haq sep* at a rate fixed by the record-of-rights does not come under clause (*j*) of section 77 of the Punjab Tenancy Act, and is cognisable by a Civil Court. GUJAR *v.* DULA. **41 P R 1908**

179. *Suit for declaration of* mukarraridari *rights—Punjab Tenancy Act,* 1887, *section* 77 (3) (*d*).

Held, that a suit by a person for a declaration that he has *mukarraridari* rights in certain land does not fall under clause (*d*) of section 77 (3) of the Punjab Tenancy Act, 1887, and is cognizable by a Civil Court. NAWAB KHAN *v.* SEWA DAS. **42 P R 1908**

180. Kamiana—*Suit for a share of* kamiana *dues which the defendant ought to have recovered and paid to the plaintiff—Punjab Tenancy Act,* 1887, *section* 77 (3) (*j*).

Held, that a suit to recover a sum of money equal to his share of the *kamiana* dues if realised, which, according to plaintiff's

allegation, the defendant was entitled to collect but had wilfully neglected to do so, fell within the purview of clause (*j*) of section 77 of the Punjab Tenancy Act, 1887, and was cognizable by the Revenue and not by the Civil Courts. ABDUL RASUL *v.* FEROZ DIN. **128 P R 1908**

181. *Landlord and tenant—Suit by landlord to eject tenant—Suit by mortgagee to recover possession on failure of mortgagor to pay rent—Punjab Tenancy Act,* 1887, *section* 77 (3) (*e*).

Twelve years after the execution of a deed of mortgage the representatives of the mortgagee sued for possession of the mortgaged land under the terms of the mortgage-deed which provided that the mortgagor should retain possession under the mortgagee paying rent at the rate agreed on therein, and that in case of default of such payment he would be liable to pay interest, and in default of redemption in six years, the mortgaged property should be considered as sold. It appeared that neither interest nor rent had ever been paid nor had the mortgagee applied for mutation of names in his favour.

Held, that under the circumstances the relation of landlord and tenant did not exist between the mortgagor's heirs and the mortgagee's heirs, inasmuch as the mere execution of a document of this character not acted upon in any way and not even brought to the notice of the revenue authorities could not be held sufficient to alter the status of owner into that of tenant to the mortgagee, and that the plaintiffs were therefore not entitled to a decree for possession as landlords against the defendants as tenants. NIZAM *v.* BUDHAN.

1 P R 1908 Rev

182. *Jurisdiction—Civil or Revenue Court—Plea raised by defendant in Civil Court in respect of which a suit could be brought in Revenue Courts—Suit against person in possession of occupancy rights under decree of Civil Court—Punjab Tenancy Act (XVI of* 1887), *section* 77 (3) *and* (3) (*h*).

A, an occupancy tenant, mortgaged his occupancy rights in February 1905 to B, one of the landlords. Subsequently A sold his occupancy rights to another landlord C, and in June 1905 C sued B for possession by redemption. In this suit B pleaded that the sale to C was invalid under the provisions of the Tenancy Act, which plea, the Court held, it could not take cognizance of and decreed redemption on the 9th August, 1905. On the 4th August 1905 B brought a suit in the Revenue Court to have the sale set aside, and this was decreed on the 13th January 1906.

In June 1906 C applied for execution of his decree, and was in due course put in possession of the land, B's objection being overruled.

B now sues C for possession on the ground that as the sale to him had been set aside by competent authority (*i.e.*, the Revenue Court) he was not entitled to oust B, the plaintiff. The Divisional Judge was of opinion that the suit fell under section 77 (3) (*h*) of the Punjab Tenancy Act, 1887, and was cognisable by a Revenue Court only.

Held, by a Division Bench (Robertson and Rattigan, JJ.) that as the sale had been definitely set aside by the Revenue Court, and defendant was therefore unable to rely upon it, no question could arise as to the validity or otherwise of the transfer in favour of defendant, and the only point in issue was, whether one of two landlords could recover possession of land, *from* which the other landlord had ousted him, and the suit was therefore cognizable by a Civil Court.

Held by the Full Bench (Robertson, J. dissenting), following *Asa Nand* v. *Kura* (No. 11 *P. R.* 1895, F. B.) and *Fakiria* v. *Dhani Nath* (No. 24 *P. R.* 1907) that no plea raised by a defendant in reply to a civil claim, can be entertained or taken cognizance of by a Civil Court (even incidentally), if that plea relates to any matter in respect of which such defendant would be entitled to bring a suit in a Revenue Court (*vide* section 77 (3) of the Punjab Tenancy Act, 1887), and that such pleas must be entirely ignored by a Civil Court even if they go to the very root of the case. HAJI MUHAMMAD BAKHSH *v.* BHAGWAN DAS.

76 P R 1909 F B

183. *Held*, that Civil Courts have no jurisdiction to convert a mortgage by way of conditional sale into a mortgage prescribed by section 6 (1) (*a*) of the Punjab Alienation of Land Act. GOPAL DAS *v.* HARI SINGH. **88 P R 1909**

184. *Jurisdiction—Civil Court or Revenue Court—Suit by landlord for possession of land left by deceased occupancy tenant against a mortgagee of the occupancy rights.*

Held, that a suit by a landlord against the mortgagee for possession of the land left by an occupancy tenant on the ground, that the tenant having died without heirs, the occupancy rights to have been extinguished under section 59 (4) of the Punjab Tenancy Act, 1887, and the mortgagee's rights *ipso facto* come to an end, is cognizable by a Civil Court. KADU *v.* BULAND KHAN. **9 P R 1910**

185. *Held*, that where the facts found do not establish the relationship of landlord and tenant between the parties the Civil Courts have jurisdiction. BAHADAR SHAH *v.* RAM SINGH. **32 P R 1910**

186. *Punjab Tenancy Act, XVI of* 1887, *section* 77 (*k*)—*Suit against a co-sharer for share of sale-proceeds of certain trees in a joint holding.*

JURISDICTION OF CIVIL OR REVENUE COURTS—*contd.*

Held, following 119 *P. R.* 1894 (*Nazam* v. *Joti Mal*) that a suit against a co-sharer for a share in the sale-proceeds of certain trees growing in a joint holding, falls under clause (*k*) of section 77 (3) of the Punjab Tenancy Act, 1887, and that the Revenue Courts alone, therefore, have jurisdiction and that the fact that the defendants deny plaintiff's title as a co-sharer does not affect the question of jurisdiction. *Held* also, following 25 *P. R.* 1909 (*Ram Jas* v. *Ralla*) that as the Munsif who happened to be also an Assistant Collector, 2nd grade, had no jurisdiction to try such suits, the decree should be set aside and plaint be registered in the Court of Assistant Collector,—1st grade. SULTAN *v.* SHER MUHAMMAD.

52 P R 1910

187. *Jurisdiction—Suit by occupancy tenant for a declaration under section 45 of the Punjab Land Revenue Act, XVII of 1887—Re-enhancement of rent.*

The plaintiffs sued under section 45 of the Punjab Land Revenue Act, 1887, for a declaration that they, as occupancy tenants under section 5 of the Punjab Tenancy Act, 1887, were not bound to pay the enhanced rent laid down by a fresh entry in the record of rights, and that such entry was erroneous.

Held, following 25 *P. R.* 1889 (*Raja Nur Khan* v. *Darab Khatun*) and dissenting from 89 *P. R.* 1885 (*Bahadur Khan* v. *Sardar*) that the suit was exclusively cognizable by a Civil Court. RAHMUN *v.* HASHAM.

73 P R 1910

188. *Jurisdiction—Civil or Revenue Court—Suit for value of a tree—Punjab Tenancy Act, XVI of 1887, section 77 (3) (k).*

Held, that where the plaint and plaintiff's statement show that the plaintiff sues for the whole value of a tree *as its sole owner* the Civil Court has jurisdiction to try the suit, although the evidence produced by the parties may show that the tree stood on land which was the joint property of the parties—a suit of this description does not fall within section 77 (3) (*k*) of the Punjab Tenancy Act, XVI of 1887.

52 *P. R.* 1910, distinguished. KANWAL *v.* SRI.

10 P R 1911

189. *Jurisdiction—Civil or Revenue Court—Suit for declaration that plaintiffs* (Malikan Kabza) *are not liable to pay* Bakri *and* Thana patti *dues—There being no custom under which they are payable—Punjab Tenancy Act, XVI of 1887, section 77 (3) (j).*

Held, following 33 *P. R.* 1908 (*F.B.*) that a suit brought by *Malikan Kabza* and non-proprietary residents of a village and owners of the houses occupied by them for a declaration that they were not liable to pay *Bakri* and *Thana patti* dues, there being no custom as to the realization of such dues in their district or village, is not cognizable by a Civil Court.

67 *P. R.* 1905, distinguished. KARM ILAHI *v.* SULTAN ALAM.

79 P R 1911

JURISDICTION OF CIVIL OR REVENUE COURTS—*concld.*

190. *Alienation of occupancy tenancy set aside—Suit by tenant for possession.*

Held, that a suit by an occupancy tenant who has alienated his rights to recover his tenancy from the landlords after the latter have had the alienation declared void and obtained possession from the alienee is cognizable by the Civil and not the Revenue Courts. MAKHAN SINGH *v.* NANDA SINGH.

1 P R 1911 Rev.

JURISDICTION OF INSOLVENCY COURT.

1. *See* ADMINISTRATION OF INSOLVENT'S ESTATE. **45 P R 1910**
2. *See* INSOLVENCY.
3. *Insolvency Act III of 1907, sections 13 and 16 (2)—Power of Insolvency Court prior to adjudication.*

Held that an Insolvency Court has no jurisdiction prior to the orders of adjudication, to order the release of an applicant for insolvency who has, rightly or wrongly, been committed to prison by a Civil Court in execution of a decree. KISHEN CHAND *v.* SASSOON. **95 P R 1910**

JURISDICTION OF SETTLEMENT COURT.

1. Where a man died leaving an estate consisting partly of a jagir or inam, *held*, that the Settlement Court had no jurisdiction against any part of the estate, except perhaps the inam. MUSSAMMAT SIRDAR BANOO *v.* ALI MUDUT. **86 P R 1866**

2. The special jurisdiction conferred upon the Financial Commissioner under section 22 of Act XIX of 1865 to hear appeals, continues until the settlement of the district is sanctioned, or such special jurisdiction is taken away by the Local Government, under section 17 of Act XXXIII of 1871, upon completion of Settlement operations. RAJA *v.* SUZAWAR. **50 P R 1873**

3. *Settlement in progress—Jurisdiction of Financial Commissioner—Act XIX of 1865. Section 22—Act XXXIII of 1871, section 17.*

Parganna M. in the Ferozepore district, was put under re-settlement for both re-assessment of revenue and revision of the record of rights; and special jurisdiction was conferred upon the Financial Commissioner under section 22, Act XIX of 1865. The re-assessment was sanctioned by the Local Government in 1872. *Held*, that until the record of rights was also sanctioned, the Settlement was still "in progress," and the Chief Court's appellate jurisdiction was suspended, FATTA *v.* KALA.

39 P R 1874

4. *Act XIX of 1865, section 21—Kamiana dues.*

A suit for Kamiana dues is not a suit for the rent, revenue, or produce of land within the meaning of section 21 of Act

JURISDICTION OF SETTLEMENT COURT—*concld.*

XIX of 1865. *Held*, therefore, that such a suit is not cognizable by a Settlement Court. KHUDA BAKSH *v.* MUHAMMAD BAKSH.

4 P R 1877

5. *Hazara Settlement Rules—Suit to correct entry in Settlement Record.*

Held, that under the rules made for the Hazara Settlement, a suit is not maintainable in a Civil Court to set aside an entry in the Settlement Record.

The proper mode of correcting an entry (other than an entry made in accordance with a decree) would be either by suit in the Settlement Court, or by proceedings by way of appeal or application for revision. RAJA FEROZ KHAN *v.* RAJA MAHOMED KHAN.

111 P R 1879

6. *Suit for Kamiana—"Rent of land"—Customary right to levy the cess—Jhelum district.*

Held, that a suit for Kamiana is a suit for "rent of land" within the meaning of section 21 of Act XIX of 1865, and therefore within the jurisdiction of the Settlement Courts.

Held, further, that the tax was legally demandable by the plaintiffs (proprietors of the village of Tehi in the Jhelum district) from the defendants, who were weavers and residents of the same village. HAYAT *v.* NUR KHAN. **20 P R 1880**

JURISDICTION OF SMALL CAUSE COURT.

See SMALL CAUSE COURTS—JURISDICTION OF.

K.

KADIRI FAQIRS.

See CUSTOM VIII.—MAINTENANCE AND SUCCESSION—W. MISCELLANEOUS.

57 P R 1880

KAMBOH.

—Transfer of house in Khem Karan, Kasur Tahsil, *Lahore District—Right of non-proprietor to alienate without consent of Kamboh proprietors.*

See COMMON LAND. **38 P R 1895**

KAMIANA.

See ATRAFI.

See CUSTOM V.—CESSES AND DUES.

1. *Non-agriculturist resident in village—cess.*

See JURISDICTION OF CIVIL OR REVENUE COURT. **49 P R 1891**

SMALL CAUSE COURT—JURISDICTION OF. **108 P R 1887**

SMALL CAUSE COURTS ACT, 1865, SECTION 6.

33 P R 1887 F. B.

2. *Suit for a declaration that persons who are owners of their houses and cultivators in the village are not liable to pay the 'kamiana' dues—Jurisdiction.*

See JURISDICTION OF CIVIL OR REVENUE COURT. **67 P R 1905**

KAMIANA—*concld.*

3. *Suit for a share of 'kamiana' dues which the defendant ought to have recovered and paid to the plaintiff.*
See JURISDICTION OF CIVIL OR REVENUE COURT. **128 P R 1908**

KAMINS.
See CUSTOM I. F.—ALIENATION BY NON-PROPRIETOR.
—*User of common lands by kamins—Right to continue the user.*
See COMMON LAND. **3 P R 1877**
4 P R 1877
73 P R 1883
54 P R 1886

KANUNGO.
1. Under Regulation IV of 1808, *held*, that a Kanungo could not be removed from one parganah to another for misconduct; if he were unfit for the office, he should have been dismissed altogether. IN RE RCOLDOO MULL. **2 P R 1867 Rev.**
2. *Punishment—Transfer.*
Held, that the proper mode of punishing a Kanungo who misbehaves himself is by admonition, fine, suspension or dismissal, and not by transfer from one parganah to another. IN RE BIHARI LAL.
1 P R 1877 Rev.

KARABATI.
1. Wajib-ul-arz—Karabati—*Construction.*
See PRE-EMPTION—Wajib-ul-arz.
35 P R 1870
91 P R 1875
PUNJAB TENANCY ACT, 1868, SECTION 36. **47 P R 1877**
64 P R 1877
196 P R 1889
2. Karabati.
Karabati means not only a male collateral but a *near* male collateral. RANJHE KHAN *v.* MUSSAMMAT KAMAN. **179 P R 1889**
MUSSAMMAT JIWAN *v.* IBRAHIM.
196 P R 1889
3. Observations as to the persons falling within the category of "*Karabatis*" MUSSAMMAT JIWI *v.* GAHIYA. **98 P R 1891**

KAREWA.
See CUSTOM IV.—BETROTHAL, DOWER, MARRIAGE AND DIVORCE.
1. Karewa *marriage—Rajpoots—Exclusion of issue from inheritance.*
See CUSTOM VIII.—MAINTENANCE AND SUCCESSION. W.—MISCELLANEOUS.
2 P R 1872
22 R 1873
2. Karewa *marriage—Brahmins of Ferozepore District—Exclusion of issue from inheritance.*
See CUSTOM VIII.—MAINTENANCE AND SUCCESSION. W.—MISCELLANEOUS.
22 P R 1873
3. *Manhas Rajputs of* tahsil *Shakargarh, Gurdaspur—Co-widows—Right of* Karewa *widow to succeed equally with other widow.*
See CUSTOM VIII—H.—SUCCESSION OF WIDOW. **22 P R 1884**
4. Karewa *marriage—Absence of ceremonies—Hindu Jats.*
See CUSTOM IV.—BETROTHAL, DOWER, MARRIAGE AND DIVORCE.
26 P R 1880

KAREWA—*concld.*

5. *Validity of* Karewa *marriage during first husband's life-time.*
See CUSTOM IV.—BETROTHAL, DOWER, MARRIAGE AND DIVORCE.
36 P P 1881
78 P R 1884
6. *Brahman agriculturists of Rupar* tahsil—*Umballa District—Issue by a Rajput woman who occupied the portion of a* Karewa *wife—Legitamacy.*
See CUSTOM IV.—BETROTHAL, DOWER, MARRIAGE AND DIVORCE.
48 P R 1890
7. *Right of son by a* Karewa *marriage of Diawania Rajput with a Brahman woman.*
See CUSTOM IV.—BETROTHAL, DOWER, MARRIAGE AND DIVORCE.
57 P R 1893
8. *Re-marriage by* Karewa *of widow who continues to live in her husband's house—Absence of ceremony—Forfeiture of estate.*
See CUSTOM VIII.—MAINTENANCE AND SUCCESSION. I.—RE-MARRIAGE.
74 P R 1893
9. *Validity of* Karewa *marriage between a Khatri and a Khatrani widow.*
See MARRIAGE. **4 P R 1905**
61 P R 1905

KAZI.
—*Attestation of copy by a Kazi.*
See EVIDENCE ACT, SECTION 32.
49 P R 1882

KHANADAMAD.
See CUSTOM I. A.—ALIENATION BY MALE PROPRIETOR. (1) (e) GIFTS IN FAVOUR OF DAUGHTERS, &c
See CUSTOM VIII.—MAINTENANCE AND SUCCESSION. N.—SUCCESSION OF DAUGHTER'S HUSBAND.
Also under OCCUPANCY RIGHTS.
1. A sonless proprietor cannot nominate as *khanadamad* a man who has not married his daughter and come to live in his house up to the time of his death. HAYAT SHAH *v.* FAZAL BEGAM **70 P R 1908**
2. *Appointment of by will—Gujars of District Ludhiana.*
Held, that the appointment of a future possible husband of an infant daughter by will to be a *khanadamad* is invalid among Gujars of the Ludhiana district. NABIA *v.* MUSSAMMAT FATTO. **2 P R 1910**
3. *Will in fvour of daughter and son-in-law*—Khanadamad—*Gujars of Gujrat District.*
Held, that among Gujars of the Gujrat District wills in favour of daughters and their husbands are valid only if the latter is a duly appointed and regularly and continuously recognized *khanadamad*. MUHAMMAD *v.* LAKHAN. **25 P R 1910**
4. *Gift to daughter—Arains of Ferozepore District.*
Held, that among *Arains* of *mauza* Dholewala, *tahsil* Zira, district Ferozepore, a sonless proprietor has by custom the power to gift a portion of his ancestral land in favour of his daughter, whose husband is the donor's *khanadamad*. KARM DIN *v.* MUSSAMMAT JIO, ETC. **13 P R 1911**

KHANADAMAD—*concld.*

5. *Kalon Jats of Gurdaspur District—Oral gift to daughter's sons, validity of.*
Held, that an oral gift of ancestral land followed by mutation by a sonless proprietor in favour of his daughter's sons, whose father lived in the donor's house since the date of marriage is valid by custom among Kalon Jats of *tahsil* Shakargarh, District Gurdaspur. HARNAM SINGH *v.* LACHMAN SINGH.
16 P R 1911

KHANSHIP.
Khanship, Peshawar District—Property not specially attached to, governed by ordinary rules of succession.
Found upon the evidence, that the property in dispute was not permanently attached to a Khanship in the Peshawar District but was subject to the same rules of succession as the other landed property of the Khan. MUHAMMAD SHARIF KHAN *v.* ABBAS KHAN. **77 P R 1892**

KHATRIS.
1. *Presumably governed by Hindu Law.*
See HINDU LAW—II ALIENATION.
58 P R 1909
2. *Sodhi Khatris of* mauza *Hardo Jhanda,* tahsil *Batala, District Gurdaspur, and of* mauza *Bhamipura,* tahsil *Jagraon, District Ludhiana, are not governed by custom.*
See CUSTOM I.—ALIENATION. J.—RULE OF DECISION. **79 P R 1909**
FOLLOWED IN. **43 P R 1911**
28 P R 1911
3. *In matters of alienation Bunjahi Khatris of* mauza *Naro,* tahsil *Kahuta, district Rawalpindi, do not follow agricultura custom.*
See CUSTOM I.—ALIENATION. J.—RULE OF DECISION.
88 P R 1910
4. *Khatris who are residents of a town are presumably joint.*
See HINDU FAMILY. **97 P R 1910**

KHULA.
—*Agreement to divorce—Khula—Agreement opposed to public policy.*
See CUSTODY OF WIFE.
193 P R 1889

KISHTIBANNA.
1 *Custom—Kishtibanna—Alteration of Custom by Contract.*
See ALLUVION AND DILUVION.
56 P R 1869
2. *Kishtibanna custom found not to prevail*—Mauzahs *Machiwara and Gholam Hosseinwala.*
See ALLUVION AND DILUVION.
48 P R 1879
3. *Found to prevail in the Una* tahsil *of the Hoshiarpur District.*
See ALLUVION AND DILUVION.
164 P R 1883

KUCH HAKIAT.
See CUSTOM I. A.—ALIENATION BY MALE PROPRIETOR. (1) (e (i; GIFTS AND WILLS IN FAVOUR OF DAUGHTERS, &C.
133 P R 1890

KUL HAKIAT.
See CONSTRUCTION OF DOCUMENT.
42 P R 1897

KURESHIS.

Of Sialkot City—Alienations by, not controllable by reversionary heirs.

See CUSTOM I. A.—ALIENATION BY MALE PROPRIETOR. 3.—SALES, &c., IN FAVOUR OF STRANGERS. **63 P R 1911**

KURI KAMINI.

—Kuri Kamini dues—Delhi district

See CUSTOM X.—CESSES AND DUES. **74 P R 1879**

KUDHI KAMINI.

See SMALL CAUSE COURT—JURISDICTION OF. **108 P R 1887**

See SMALL CAUSE COURTS ACT, 1865, SECTION 6. **21 P R 1888**

33 P R 1887 F. B.

Kudhi kamini is a "village cess" within the meaning of section 77 (3) (*j*) of the Punjab Tenancy Act and a suit therefore for its recovery is cognizable by the Revenue and not by the Civil Court. RAJ SARUP *v.* HARDAWARI. **95 P R 1907**

L.

LAIK BETA.

See LAMBARDAR. **13 P R 1881 Rev.**

LAHORE CITY WALL.

See ADVERSE POSSESSION. **56 P R 1871**

LAMBARDAR.

1. *Disposal of common land by lambardar as lambardar.*

See COMMON LAND. **48 P R 1867**

2. *Suit by one lambardar against another for dues alleged to have been wrongly collected and retained by the defendant.*

See SMALL CAUSE COURT—JURISDICTION OF. **2 P R 1887**

3. *Appointment.*

The Settlement Officer in 1860 ordered that on the death of one and then a second of the three lambardars, (K. F. and D.) the place was not to be filled up, but that on the death of the last of the three, one of their descendants should be appointed lambardar. On the death of D, this order was not observed, and his son was appointed. F. then died, and his son, a minor, claimed to succeed. *Held*, that no lambardar was to be appointed in F's place. IN RE KADIR BUKSH. **10 P R 1867 Rev.**

4. Appellant possessed a two-thirds share of the village, and having had it divided off, applied to be appointed lambardar of his own portion of the village. This application having been refused on the ground that the *jama* of the village was small and there was no necessity to appoint another lambardar or to disturb existing arrangements—*ruled*, by the Financial Commissioner in appeal, that the application ought to be complied with, two separate *pattis* having been constituted in the village, of which applicant was sole owner of one, and there being no lands in common, so that the interests of the two parties were completely separate. TELOO MULL *v.* SOOBHAN. **9 P R 1868 Rev.**

5. *Re-appointment on redemption of his estate—Power of officer to provide for future appointments.*

Lambardar having once lost his office owing to his having mortgaged all his lands,

LAMBARDAR—*contd.*

has no right to be re-instated as a matter of course on his redeeming his estate. An officer has no power to bind his successors as to the appointment of lambardars. BUALI BAKHSH *v.* AMANAT ALI. **2 P R 1873 Rev.**

6. *Disqualification—Rules 2 and 4, Punjab Government Notification No. 883 of 25th June 1872.*

When a person is entitled to be appointed lambardar as heir of the preceding lambardar, under Rule 4, Punjab Government Notification No. 883, 25th June 1872, he is not disqualified under Rule 2 merely because he cannot read and write. SAYD ALI SHAH *v.* GULAM YASEEN. **3 P R 1873 Rev.**

7. *Mortgage—Rule 7, Punjab Government Notification No. 883 of 25th June, 1872.*

The fact that a lambardar has mortgaged his property does not justify his dismissal from office; but the mortgagee should act as agent in the Lambardari pending the redemption of the mortgage. GULAB SHAH *v* TIRKAN MULL. **4 P R 1873 Rev.**

8. *Disqualification—Conviction of an offence.*

A conviction under section 186 of the Penal Code is not sufficient to disqualify a lambardar from holding the post of chief lambardar. AMIRA *v* WAZIRA. **3 P R 1875 Rev.**

9. *Uncle and brother.*

A. was half-brother of the deceased lambardar and succeeded to his property; *B.*, the uncle of the deceased, was a man of far superior intelligence to *A.*, and had acted as lambardar in the lifetime of the deceased. *Held*, that *B.* had a better claim to the office than *A*, KAPUR SINGH *v.* KANHA. **5 P R 1876 Rev.**

10. *Disqualification.*

A younger son is not to be preferred to the elder, as successor to the lambardarship, merely because the latter is not so fit for the office as the former, and because the younger son officiated in the lifetime of his father. To exclude the elder son, his absolute disqualification must be shown. SHAM SINGH *v.* DUNNA SINGH. **7 P R 1876 Rev.**

11. *Succession—Transferee of land.*

The office of lambardar does not follow the gift of land; *held*, therefore, that a transferee from the ex-lambardar, his adoptive father, was not entitled to succeed. NAUNDA *v.* NATHAN. **2 P R 1877 Rev.**

12. *Dismissal of lambardar—Jurisdiction.*

Held, that the order of the Deputy Commissioner is necessary for the removal of a lambardar under No. 12 of the Rules made under sections 6 and 65 of the Punjab Land Revenue Act, 1871. UMRA *v.* MIRAN BAKSH. **5 P R 1880 Rev**

13. *Succession of widow of deceased lambardar.*

LAMBARDAR—*contd.*

Held, that there is no rule against the appointment of a widow as Lambardar in succession to her husband. ALLA BAKSH *v.* MUSSAMMAT JINDWADI. **7 P R 1880 Rev**

14. *Succession—Eldest grandson.*

Held, that the son of an eldest son who predeceased his father, if of full age and thoroughly fit, has a better claim to succeed to the lambardarship than the eldest surviving son. IMAMBAKSH *v.* KASU. **9 P R 1880.**

15. *Succession—Adopted son.*

Held, that the claim of the adopted son of a deceased lambardar is not so strong as to require that it should be respected if the appointment is opposed to custom or to the general feeling in the matter of the men of the village. HIRA SINGH *v.* JIWAN SINGH. **14 P R 1880 Rev.**

16. *Succession—Eldest grandson—Eldest surviving son—Custom.*

Where the claimants to succeed to the office of lambardar were the minor son of the eldest son of the deceased lambardar, (the eldest son having predeceased his father), and the second or eldest surviving son, *held*, by the Financial Commissioner, that, though the lower Courts might have appointed the second son if they had thought this advisable on administrative grounds, popular feeling and general custom were in favor of the claim of the son of the eldest son.

The appointment of the son of the eldest son upheld. KESAR SINGH *v.* ATRA. **1 P R 1881 Rev**

17. *Dismissal—Indebtedness—Procedure—Mortgage by lambardar of his lands—Release by writing bonds.*

A lambardar should not be dismissed by the Deputy Commissioner on a Tahsildar's report, until he has been called before the Deputy Commissioner, and his answer to the report has been taken in writing.

Where a lambardar, who had mortgaged all or almost all his lands, was dismissed by the Deputy Commissioner, whereupon he released the mortgaged lands by writing bonds for his creditors, the Financial Commissioner refused to re-instate him, holding him unfit for the post of lambardar from debt. GHASITA *v.* MUHAMMAD BAKSH. **2 P R 1881 Rev**

18. *Dismissal—Mortgage of estate.*

Held by the Financial Commissioner, that before a lambardar is dismissed because he has mortgaged his estate, he should have some warning and a period of grace within which to redeem. It does not always follow that the mere fact of such a mortgage renders a lambardar unfit to perform his duties, as, for instance, where the mortgage is usufructuary or *lekha mukhi*, and the mortgagor retains the cultivation. NANAK *v.* SAID LUTF ALI SHAH. **3 P R 1881 Rev.**

LAMBARDAR—*contd.*

19. *Succession—Act XXXIII of* 1871, *sections* 6, 65, *Rule* 4—*Son of former lambardar who failed to succeed his father through minority.*

The claimants to succeed to the office of lambardar were (1) the son of the deceased lambardar; (2) one D. who based his claim on the ground that his father was lambardar before the deceased, and that he had only failed to succeed his father, as he was a minor at the time of his father's death. He therefore claimed to succeed under the penultimate clause of No. 4 of the rules made under sections 6 and 65 of the Land Revenue Act. The Commissioner (reversing the order of the Deputy Commissioner) decided in favor of the latter claimant (whom he found to be in every way fit for the post) on the authority of the above rule.

The Financial Commissioner, on appeal, upheld this order. NASAR ALI *v.* DASOUNDHA.
5 P R 1881 Rev.

20. *Succession—Son of deceased lambardar—Son of elder brother of deceased whose father had been passed over.*

On the death of a lambardar his eldest son M. was passed over and his second son W. S. was appointed lambardar. On the death of W. S. *held*, by the Financial Commissioner, confirming the order of the Settlement Commissioner, that in the absence of any special custom, W. S.'s son was entitled to succeed in preference to the son of M. neither of the above candidates being in any way unfit, as the right of a branch of the family once passed over is not usually revived, but the last lambardar's son is appointed. HAMIRA *v.* RAM SINGH.
7 P R 1881 Rev.

21. *Succession—Unfitness of elder son—Act XXXIII of* 1871, *sections* 6, 65, *Rule* 2.

Held by the Financial Commissioner, that in cases of succession to the office of lambardar, before an elder son can be set aside as unfit in the sense of the last two lines of Rule No. 2 of the rules relating to lambardars, framed under the Land Revenue Act, 1871, it must be shown, not merely that the majority of the proprietary body much prefer his younger brother, but that the elder brother is really obnoxious to them from actual defects of character or temper or intellect. PHALLU *v.* KALU.
9 P R 1881 Rev.

22. *Succession—Preferential right of man of same patti as deceased.*

In a case of succession to the office of lambardar, it appeared that, though the village was a bhaiachara one, there were distinct tarafs and pattis in it based upon the pedigree tree, and that the lambardari arrangements were based on such division. In the taraf in question there were two pattis, in each of which was a lambardar, and the appellant belonged to the patti represented by the deceased lambardar, while respondent belonged to the other.

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Held by the Financial Commissioner, that in such a case votes should be taken in the patti only, and not in the whole village, and that by custom of the village a man of the patti had a preferential right to succeed.

The appointment of appellant ordered accordingly. KALA SINGH *v.* NIDHAN SINGH.
10 P R 1881 Rev.

23. *Succession—Rule of succession where there are no near relations of deceased lambardar.*

Held by the Financial Commissioner, that in cases of succession to the office of lambardar where there is no son or nephew of the deceased lambardar, it is not usual or necessary for the succession to be guided by mere nearness of relationship by the pedigree-table. In the absence of very near relations fit to succeed, it is usual to appoint by selection or election any member of the brotherhood who belongs to the same patti or sub-division of the village. RUSTAM KHAN *v.* NAJIB KHAN. **12 P R 1881 Rev.**

24. *Succession—Wajib-ul-arz—Laik beta,—Appointment of second son for life in preference to eldest grandson, reserving right of latter on death of former.*

The claimants to succeed to the office of lambardar were, first, W. S. the son of the eldest son of the deceased lambardar, and secondly, D. S. the second or eldest surviving son of the said deceased. The *Wajib-ul-arz* of the village contained a condition that the son who was fit (*laik*) should succeed.

Held by the Financial Commissioner, upholding the order of the Commissioner, that the above entry should be interpreted only as meaning that if the eldest son is much less fit than a younger son, the latter may be appointed, and not as meaning that seniority gave no preferential claim.

In the above case the Commissioner found that D. S., the second son, had been selected 17 years ago to be his father's *surburah*, since when he had virtually acted as lambardar, and that the objections to his appointment at that time had been overruled in all the Courts. He therefore considered that D. S.'s appointment should be confirmed, but ordered that on his death, W. S., if fit, should succeed in preference to D. S.'s son.

The Financial Commissioner upheld the above order. WARYAM SINGH *v.* DYAL SINGH.
13 P R 1881 Rev.

25. *Succession—Candidate disqualified by small size of his holding—Removal of disqualification by purchase of land.*

In a claim for the lambardarship, one of the candidates, the son of the deceased lambardar, on objection being taken to the small size of his holding, asked for time to remove this disqualification by the purchase of more land. This petition was not granted, and the Deputy Commissioner who heard the appeal from the order of the first Court, held that the disqualification had not been

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removed even if the appellant had fairly bought an additional 10 bighas of land without getting into debt.

Held by the Financial Commissioner, that appellant if not in debt except to a trifling extent, and the owner of 12 bighas, was not disqualified for the lambardarship and should not have been passed over merely because the respondent might be a somewhat richer man. KHUSHALI *v.* RAMRIKH.
14 P R 1881 Rev.

26. *Succession—Rule No. 4 under Land Revenue Act—Revival of lambardarship in favour of son of dismissed lambardar.*

Under No. 4 of the rules relating to lambardars framed under the Land Revenue Act, 1871, the claim of the son of a lambardar, who has been dismissed for misconduct, can be considered and revived when a vacancy occurs.

But *held* by the Financial Commissioner, that in the case of serious crimes against property, *e. g.* highway robbery, showing criminal tendencies in a family, it is generally right to exclude the son as well as the father. JAI RAM *v.* RUNJEET.
16 P R 1881 Rev.

27. *Succession—Election—Wajib-ul-arz—Rule A. I, 4 under the Land Revenue Act,* 1871.

In a case of succession to the lambardarship, where the degree of distance of relationship, between the claimants and the deceased was too small to be of weight, and the Administration-paper of the village provided for votes being taken, *held*, by the Financial Commissioner, that the case was a proper one for resorting to election, or at least for taking votes in order to ascertain the wishes of the brotherhood and the influence of the candidates.

Held further, that in accordance with the provision in the *Wajib-ul-arz* the election should go by the number of votes not by the jama of the votes—(see Rule A. I, 4, of the rules framed under the Land Revenue Act, 1871). MURATIB *v.* NAJIB KHAN.
2 P R 1882 Rev.

28. *Succession—Minority of son of deceased lambardar—Unfitness—Act XXXIII of* 1871, *Rules A. I* 4 *and* 20.

Held by the Financial Commissioner, that as a general rule the minority of the son of a deceased lambardar is not an unfitness which will justify his being passed over for the office of lambardar and the next heir being appointed, if he can produce a fit man to do the work as deputy. *Nasir Ali* v. *Dasoundha* (No. 5 P.R. 1881, Revenue), and *Hamira* v. *Ram Singh* (No. 7 P. R. 1881 Revenue) referred to. SALIG RAM *v.* JIA RAM.
3 P R 1882 Rev.

29. *Succession—Adopted son.*

Held by the Financial Commissioner, that when a Lambardar takes as adopted son a man of another *got*, the Courts are

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not compelled by the rules framed under the Land Revenue Act, 1871, to admit the claims of such adopted son to succeed to the lambardarship. *Hira Singh* v. *Jiwan Singh* (No. 14 *P. R.* 1880, Revenue) followed. NIHAL SINGH *v.* BHANA. **2 P R 1883 Rev.**

30. *Succession—Whole and half-blood.*

Held by the Financial Commissioner, that as between sons of the same father by different wives a full brother has not by custom or feeling of the country any better right than a half brother to succeed to an office like that of lambardar. JOT RAM *v.* AMIN LAL. **3 P R 1883 Rev.**

31. *Succession—Effect of provision in* Wajib-ul-arz *regulating succession.*

In a suit relating to the succession to a lambardarship, the appellant, who was a younger son of the deceased lambardar, relied upon an entry in the *Wajib-ul-arz* providing for the succession of a younger son in preference to the elder son.

Held by the officiating Financial Commissioner, that effect should not be given to such provision, which was quite out of place in a village administration-paper, which should only deal with such matters connected with the interior economy of villages, as the proprietary body had a right to regulate, the appointment to the post of lambardar not being one of such matters. DHIAN SINGH *v.* DAL SINGH. **4 P R 1883 Rev.**

32. *Transfer of lambardarship—Validity of such transfer.*

Where it appeared that one B. S., the lambardar of M. Dina in the Moga Tahsil, had transferred his lambardarship to his relative, G. S., on certain conditions, *viz.*, that G. S. should be lambardar for his life only, paying the allowances to B. S. and that after G. S.'s death the post should revert to B. S. or his sons, which transfer was sanctioned by the Deputy Commissioner.

Held by the Financial Commissioner, that the arrangement in the form in which it was made was not one which should have been recognized by the Deputy Commissioner, as it is against public policy to recognize a right to traffic in offices of this kind on the part of their holders, and therefore when it was found that conditions were attached to the transfer, the parties should have been told that it could not be ratified. BHAGWAN SINGH *v.* GURMUKH SINGH.

1 P R 1884 Rev.

33. *Succession—Son of elder brother who had been dismissed and succeeded by his younger brother—Land Revenue Act (XXXIII of* 1871), *Rule A. I* 4.

Respondent who was the son of a lambardar dismissed in 1871 for a criminal offence, and succeeded by his younger brother, claimed on the death of his uncle to succeed to the post in preference to the appellant, the son of the deceased lambardar.

Held by the Financial Commissioner, that respondent was entitled to succeed with

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reference to the last clause of No. 4 of the rules relating to lambardars, framed under the Land Revenue Act: and that as his father's offence was not a very serious one, it would not be right to permanently deprive the elder branch of the family because one member of it committed a criminal offence. MUTSADDI *v.* BADAMAN.

3 P R 1884 Rev.

34. *Succession of widow.*

Held by the Financial Commissioner, following the former rulings of the Court, that there is no prohibition against the appointment of a woman to the post of lambardar in succession to her husband. *Alla Baksh* v. *Mussammat Jindwaddi* (*No.* 7 *P. R.* 1880 Revenue) cited. MUSSAMMAT SUKHDEVI *v.* BHAI RAM DAS. **6 P R 1884 Rev.**

35. *Dismissal—Grounds for such dismissal.*

The appellant and his sons having been sent up by order of the Deputy Commissioner for trial as bad characters under section 118 of the Criminal Procedure Code, the case was tried by the Deputy Commissioner, who held that the appellant's two sons were bad characters and should furnish security, and as regards appellant that "his dismissal from his lambardarship, a necessary result of the conviction of his two sons," would be sufficient punishment for him, and appellant was accordingly discharged, but dismissed from his post of lambardar on the same day.

Held by the Financial Commissioner, that sufficient reason had not been shown for dismissing appellant from the lambardarship, as a lambardar may be a good character himself and yet be unable to control his sons who may be bad characters; that nothing short of actual misbehaviour or systematic neglect of his duties on the part of the appellant would have warranted his removal and nothing of this kind being established, he was entitled to be restored to his post, BAZ KHAN *v.* CROWN. **2 P R 1885 Rev.**

36. *Dismissal—Mortgage by lambardar of part of his holding—Procedure—Land Revenue Act (XXXIII of* 1871), *section* 65, *Rules A. I.* 7, 12.

The sole lambardar of the village was dismissed from his post because he had sold some of his land and mortgaged the rest, whereupon on the question of a successor coming up for decision, the Extra Assistant Commissioner appointed the brother of the dismissed lambardar to succeed him but on appeal the Deputy Commissioner appointed the mortgagee, and this order was upheld by the Commissioner.

Held by the Financial Commissioner, that the orders of the Revenue officers below were wrong throughout; that if the Deputy Commissioner acted under Rule A. I, 12 of the rules under the Land Revenue Act, he should have given the dismissed lambardar warning and a period of grace within which to redeem his mortgaged land; but that

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the proper procedure to adopt was that laid down in Rule 7 of the same set of rules, and that all that was necessary was to ascertain if possession of the mortgaged property had been given to the mortgagee, and in that event to have constituted him the agent of the lambardar, so long as he should remain in possession as mortgagee. *Nanak* v. *Said Lutf Ali Shah* (*No.* 3 *P. R.* 1881, Revenue) cited. JAGAT SINGH *v.* BAHADUR SINGH. **5 P R 1885 Rev.**

37. *Succession—Minority of son of deceased lambardar not an unfitness within the meaning of the rules relating to appointment of lambardars.*

Held by the Financial Commissioner, that the minority of the son of a deceased lambardar is not an unfitness which would justify his being passed over for the office of lambardar and the next heir being appointed, if the son can produce a fit man to do the work as deputy. *Salig Ram* v. *Jia Ram* (*No.* 3 *P. R.* 1882, Revenue) followed. AHMAD KHAN *v.* MUHAMMAD KHAN. **10 P R 1885 Rev.**

38. *Succession—Land Revenue Act (XXXIII of* 1871), *section* 6, *Rule* 5.—*Inability of local officers to reduce the number of headmen when there is a qualified heir—Right of heir to succeed to the post.*

The appellant, on the death without male issue of his younger brother, was recommended by the Tahsildar for appointment to the post of lambardar held by the deceased, but the Deputy Commissioner reduced the post on the ground that the appellant being lambardar in another village would be unable to perform the duties of headman in the deceased's village, and further, that the revenue of the village being only Rs. 600, the remaining lambardars (three in number) were sufficient. The Commissioner for the same reasons confirmed the Deputy Commissioner's order.

Held by the Financial Commissioner, that under Rule 5 of the rules framed under section 6 of the Land Revenue Act, the Deputy Commissioner had no authority, even with the consent of the co-sharers (which was not obtained in the present case), to reduce the post when there was an heir qualified to succeed. The post of lambardar being hereditary, the heir of a deceased lambard has a right to succeed, provided he is fitted to discharge the duties, and he cannot be deprived of his right on grounds such as those on which the local officers refused to appoint the appellant. MAULU *v.* CROWN. **14 P R 1885 Rev**

39. *Succession—Act XXXIII of* 1871, *section* 6, *Rule A I.* 5.

Held by the Financial Commissioner, that by the words "heir qualified to succeed" used in Rule 5 of the rules under the Land Revenue Act relating to lambardars, is meant some near relative of the deceased fitted for the post, and further, where the same rule speaks of "persuading the pro-"prietors to accept one of the existing

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"headmen as their representative," it clearly refers to the proprietors of the taraf or pattti which has been represented by the deceased lambardar. BHAG SINGH *v.* HEM SINGH.

2 P R 1886 Rev.

40. *Dismissal—Land Revenue Act (XXXIII of* 1871), *sections* 6 *and* 65, *Rule* 12—*Imprisonment.*

The respondent, a lambardar, was sentenced to 18 months' rigorous imprisonment on a charge of causing grievous hurt in an affray. While he was in jail his brother, the appellant, was appointed to act as his agent. On his release from jail, respondent resumed his duties and carried them on for more than a year without blame, when the substitute who had been acting for him brought to notice that having been in jail he should have forfeited his appointment under Rule 12 of the rules framed under sections 6 and 65 of the Land Revenue Act. Acting on this representation the Deputy Commissioner removed respondent from his post; but on appeal to the Commissioner the order of removal was reversed.

Held by the Financial Commissioner, that the offence for which the respondent was convicted was not one which would ordinarily disqualify a man for the office of lambardar. Under Rule 12 of the rules referred to, the respondent having been sentenced to 18 months' imprisonment, might have been removed, from his post: but as he was not so removed, the Deputy Commissioner should not have ordered his removal a year after he had reverted to his post. SANDHI *v.* AMIK SINGH. **5 P R 1886 Rev.**

41. *Dismissal—Security for bad livelihood—Unfitness.*

The appellant, on the 21st January 1884, was convicted by the Deputy Commissioner of Lahore of being one of the leaders of a gang of thieves who were for some time engaged in committing thefts from the railway, and was sentenced to one year's rigorous imprisonment. On appeal this conviction was reversed by the Sessions Judge; but in passing the order the Sessions Judge expressed a strong opinion to the effect that appellant had been mixed up as a principal in the gang robberies from the railways, and he directed that proceedings should be taken against him under section 110, Criminal Procedure Code. This was done, and appellant was ordered to furnish security for one year. During the course of these proceedings it transpired that he had once previously (in 1878) been placed on security. The Deputy Commissioner of Lahore therefore decided that appellant was not a fit person to perform the duties of lambardar and dismissed him from the post. The order of dismissal being upheld by the Commissioner on appeal, a second appeal was preferred to the Financial Commissioner when it was *held* that a man from whom security had been twice taken for bad livelihood was not fitted to exercise the

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police and fiscal duties which devolve upon a lambardar. SAWAN SINGH *v.* CROWN.

6 P R 1886 Rev.

42. *Succession—Claims of cousin of the whole blood and uncle of the half blood—Custom.*

In a case of succession to the office of lambardar in which the dispute was between the cousin of the whole blood and the uncle of the half blood of a deceased lambardar:

Held by the Financial Commissioner following *Jot Ram* v. *Amin Lal* (*No.* 3 *P. R.* 1883, Revenue), that as between sons of the same father by different wives a full brother has not by custom or feeling of the country any better right than a half brother to an office like that of lambardar, On the contrary, the feeling would be in favour of the brothers succeeding to the post in order of age without any distinction of full or half blood. KAMMA KHAN *v.* PAHLWAN KHAN.

8 P R 1886 Rev.

43. *Succession—Right of adopted son of a different 'got' to succeed to his adoptive father's office against the wishes of a large majority of the village proprietors, and in the presence of a near relative of the deceased lambardar.*

One G., a lambardar of two-thirds of taraf Jatan in *mauza* Jandoli in the Gurhshankar tahsil of the Hoshiarpur district, having died without male issue, the respondent, who was the son of G.'s wife by her former husband, and who was adopted by G. as a son, claimed to succeed to the office of lambardar by virtue of his adoption. The claim was opposed by the appellant who was G.'s own brother. On the votes of the proprietors of the taraf being taken, a large majority of them voted in favor of the brother of the deceased lambardar, who was accordingly appointed to the vacant office by the Settlement officer. On appeal the Commissioner held that as it was admitted that by the custom of the village a son must succeed (if otherwise fit) to his father's office before other relatives, and as the status of an adopted son is, to all intents and purposes, that of a son, the respondent, until his adoption was set aside, must be held entitled to succeed to his adoptive father's office as headman, notwithstanding the fact that a majority of proprietors would prefer to have the deceased's brother appointed.

Held, by the Financial Commissioner that as the legal effects of the appointment of an heir by an agriculturist in the Punjab often loosely styled an adoption, are very different from those of a regular adoption according to the rules of Hindu law, the fact that a lambardar chooses to appoint as his heir the son by a former marriage of a woman whom he has made his wife by the karewa form of marriage, does not as of right entitle such son to succeed to his adopted father's office against the wishes of a large majority of the village proprie-

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tors, who prefer to be represented by one of their own body who is also a near relative of the former lambardar. *Hira Singh* v. *Jiwan Singh* (No. 14 *P. R.* 1880, Revenue), and *Nihal Singh* v. *Bhana* (No. 2 *P. R.* 1883, Revenue) cited and followed. *Dad* v. *Bagh Singh* (No. 34 *P. R.* 1883, Civil) referred to. SHAM SINGH *v.* GONDA. **9 P R 1836 Rev.**

44. *Succession—Adopted son.*

Held by the 2nd Financial Commissioner, that the claim of an adopted son to the office of lambardar should be recognized in cases in which such claim is not opposed to custom, and in which the adopted son is by birth a near kinsman of his adoptive father. *Hira Singh* v. *Jiwan Singh* (No. 14 *P. R.* 1880, Revenue), and *Nihal Singh* v. *Bhana* (No. 2 *P. R.* 1883, Revenue) followed. MAULA DAD *v.* HAYAT. **14 P R 1886 Rev.**

45. *Dismissal.*

Though a lambardar is liable to dismissal if he fails in the discharge of his police duties, still before an order of dismissal is passed the fact of such failure must be proved by evidence, from which at least it may reasonably be inferred that the accused has been guilty of the alleged culpable neglect of duty. MAYA SUKH *v.* CROWN.

2 P R 1888 Rev.

46. *Succession—Right of heir to be appointed.*

Held, that both under the present and the former rules relating to the appointment of lambardars, the heir, if fit, cannot be passed over, but is entitled to be appointed, *Maulu* v. *Crown* (No. 14 *P. R.* 1885, Rev.) cited. SHERZAMAN KHAN *v.* KHAN BAHADAR. **6 P R 1888 Rev.**

47. *Succession—Right of heir to succeed—Minority no disqualification—Land Revenue Act,* 1887, *Rules under Part II, Nos.* 34 (*i*) *and* 42 (*ii*).

In a case of succession to a lambardarship, it appeared that the respondent X, had been dismissed from the lambardarship in 1854, when one B. was appointed; that on B.'s death in 1872, his son K. was appointed, X, having failed to obtain re-appointment; and that on the death of K. leaving a minor son, the appellant, the Deputy Commissioner appointed X. who had been dismissed in 1854, the reason being that he had recently done good service in bringing about the apprehension of a criminal, which appointment was upheld by the Commissioner, who justified it, by the remark that it avoided the alternative of the appointment of a minor.

Held, that under Rule 34 (*i*) of the rules relating to lambardars framed under the Land Revenue Act, 1887, the minor appellant, was entitled to be appointed in succession to his father, and that under Rule 42 (*ii*) a suitable substitute should be appointed to perform the duties during the appellant's minority. KURE *v.* BHOJA.

1 P R 1889 Rev.

LAMBARDAR—*contd.*

48. *Succession—Rule 34 (i) "Heir entitled to inherit according to the custom of the village"—Construction.*

Held, that Rule 34 (i) of Lambardari rules does not make it absolutely necessary that the heir of a lambardar *qua* his lambardarship should be the person who is entitled to succeed to his private property. It is quite possible that by the custom of the village another person may be his heir in the office of Lambardar. The word "lambardarship" should be read after "inherit" in Rule 34 (*i*). LEHNA SINGH *v.* MANGAL SINGH. **4 P R 1889 Rev.**

49. *Appeal—Duty of Appellate Court.*

The Deputy Commissioner dismissed the petitioner for neglect of duty. The Commissioner rejected the appeal stating that the Deputy Commissioner was the best Judge of such a matter.

Held, that the Commissioner should have come to an independent conclusion of his own, after considering the evidence and the circumstances of the case. RAM SINGH *v.* UTTAM SINGH. **3 P R 1890 Rev.**

50. *Rule 34—Succession—Disqualification.*

The claims of the heir of a lambardar should be passed over only in cases where his eligibility is affected by disqualification of his predecessor, or on grounds which would justify his dismissal. SAHIB SINGH *v.* HIRA SINGH. **4 P R 1890 Rev.**

51. *Succession—Right of heir to succeed—Minority no disqualification—Land Revenue Act XVII of 1887) Rule under Part II, No. 32 (3) (c) and (d) and 34 (c).*

Held, that the minority of the son of a deceased lambardar does not justify his being passed over for the office of a lambardar, but that under the rules he is *prima facie* entitled to be appointed in succession to his father, a suitable deputy being appointed to perform the duties during minority. BIRJ LAL *v.* GHARIB. **16 P R 1890 Rev.**

52. *Non-resident lambardar—Substitute—Interest of lambardar.*

In appointing a substitute for non-resident lambardar, the interests of Government should be consulted, but at the same time the substitute should, if possible, be a man who is a *persona grata* to the absent lambardar. SKINNER *v.* MOTI RAM AND GANGA RAM. **8 P R 1891 Rev.**

53. *Lambardar, neglect or absence of—Disqualification of son.*

Held, that neglect of duty or absence from his post of an old and effete lambardar is not *prima facie* a sufficient ground for disqualifying a son from succeeding to the lambardarship. RAMJI LAL *v.* KANWAR SINGH. **10 P R 1891 Rev.**

54. *Lambardar—Removal of, from office when required by the Criminal Courts to give security for good behaviour—Duty of Collector.*

LAMBARDAR—*contd.*

Lehna Singh, a lambardar in the Sialkot District of sixteen years' standing, was required by a competent Magistrate to give security for good behaviour for one year in a bond for Rs. 500. The Magistrate recorded evidence and held that Lehna Singh was the abettor of thieves and habitually received stolen property: he accordingly made an order against Lehna Singh under sections 110 and 118, Criminal Procedure Code.

Lehna Singh appealed to the District Magistrate, who dismissed the appeal.

Upon the same day, the Collector of the District took up the case on the Revenue side to consider whether Lehna Singh was a fit person to retain the office of lambardar: the Collector dismissed him on the ground that it had been proved that he was a habitual receiver of stolen property, and had been called upon to furnish security for one year.

Lehna Singh then appealed to the Commissioner, who reversed the Collector's order and directed that Lehna Singh be restored to his office on the ground that he had been "mechanically dismissed by the Collector, because the man had been put on security under section 110, Criminal Procedure Code, by a Magistrate."

Held, by the Financial Commissioner, that when a lambardar has been ordered by a Magistrate to give security for good behaviour under the provisions of the Criminal Procedure Code and has failed, as Lehna Singh had failed, to get the order set aside either by the District Magistrate on appeal or by the Chief Court in revision, the lambardar is *prima facie* liable to dismissal from his office.

This, however, is not to be taken to mean that the Revenue authorities have no option in the matter, and are absolutely bound to pass an order of dismissal; but those authorities would ordinarily fail in their duty if they retained such a lambardar in office unless he could show very strong reason why he should not be removed.

Ordinarily, such an order of dismissal should not be made immediately after the rejection of an appeal by the District Magistrate refusing to set aside an order requiring security; a lambardar should first be suspended and the question of his dismissal or otherwise postponed until after the lapse of a reasonable time—say six months—to enable him to contest the order requiring him to give security. IN THE MATTER OF LEHNA SINGH LAMBARDAR.

8 P R 1892 Rev.

55. *Lambardar—Claim to office of—Adopted son, being also a sister's son.*

The adopted son, who was also a sister's son of the deceased lambardar, claimed to succeed to the vacant office.

The Financial Commissioner, after a remand for inquiry on the question of custom, declined to interfere with the order of the

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Commissioner in which that officer refused to appoint as lambardar the adopted son such adopted son being the sister's son of the deceased and belonging to a different *got*.

No. 14 *P. R.* 1886, Rev., referred to

HIRA *v.* WAZIRA. **9 P R 1892 Rev.**

56. *Lambardar—Claim to office of—Adopted son, being also a daughter's son.*

The adopted son, who was also a daughter's son of the deceased lambardar, claimed to succeed to the vacant office.

The Financial Commissioner, after a remand for inquiry on the question of custom, declined to interfere with the order of the Commissioner in which that officer refused to appoint, as lambardar, the adopted son, such adopted son being the daughter's son of the deceased and belonging to a different *got*.

No. 9 *P. R.* 1892, Rev., referred to.

SHER SINGH *v.* SUBHA. **10 P R 1892 Rev.**

57. *Lambardar—Claim to office of—Adopted son, being also a sister's son.*

The adopted, son who was also a sister's son of the deceased lambardar, claimed to succeed to the vacant office.

The Financial Commissioner declined to interfere with the order of the Commissioner setting aside the appointment of the adopted son, such adopted son being the sister's son of the deceased and belonging to a different *got*.

Nos. 9 and 10 *P. R.* 1892, Rev., followed SUCHET SINGH *v.* BASANT SINGH.

11 P R 1892 Rev.

58. *Lambardar—Claim to office of—Adopted son, being also a brother's son.*

The adopted son, who was also a brother's son of the deceased lambardar, claimed to succeed to the vacant office in preference to the son of an elder brother of deceased.

Held, upholding the order of the Commissioner, that the adopted son, being otherwise fit and being by birth a nephew of his adoptive father, had a preferential claim.

No. 14 *P. R.* 1886, Rev., followed. SHAH MUHAMMAD *v.* DIWAN BAKHSH.

12 P R 1892 Rev.

59. *Lambardar—Claim to office of—Adopted son, being also a brother's son.*

The adopted son, who was also a brother's son of the deceased lambardar, claimed to succeed to the vacant office.

The Collector and Commissioner appointed the deceased's brother in preference to the adopted son.

The Financial Commissioner upon application for revision, reversed these orders and appointed the adopted son, he being a brother's son and therefore of the same *got* as the deceased lambardar. RAMJAS *v.* NIHALA. **13 P R 1892 Rev.**

60. *Lambardar, appointment of—Nearest heir—Effect of conviction of lambardar for bad livelihood upon claim of his heir—Property qualification of dismissed lambardar's son—Rules Nos.* 175 (*ii*), 177 (*ii*) (*c*) 179 *and* 179 (*b*) *of Rules relating to village officers made under Punjab Land Revenue Act,* 1887.

Held, that, inasmuch as under Rule No. 179 of the Rules relating to village officers made under the Punjab Land Revenue Act, 1887, on the appointment of a lambardar, the nearest heir, if fit, must succeed to the vacant appointment, the order of a Revenue Officer to the effect that, on the death of a lambardar, the rights of some claimant other than the nearest heir shall be considered, is *ultra vires.*

Held, further, that with reference to clause (*b*) of Rule No. 179, the conviction of a lambardar for bad livelihood does not necessarily affect the eligibility of an heir who is himself of good character.

Held, also, that though under Rule No. 175 (*ii*) a lambardar must be a landowner in the estate, and under rule 177 (*ii*) (*c*) a lambardar who ceases, to be a landowner must be dismissed, when the appointment of the son of a dismissed lambardar is unobjectionable or desirable, the difficulty regarding the non-possession of land by the son during the father's life-time may be treated in a liberal way. NARAIN SINGH *v.* JAIMAL SINGH. **2 P R 1894 Rev.**

61. *Lambardar, appointment of—Nearest heir—Claim of person who has been legally declared to have claim to be appointed at next vacancy—Rule No.* 4 *of Rules relating to village officers made under Punjab Land Revenue Act,* 1871, *and Rule No.* 179 *of Rules under Punjab Land Revenue Act,* 1887 *—Declaration made under former vacancy occurring under latter rules.*

By Rules No. 4 of the Rule applicable to village officers made under the Punjab Land Revenue Act, 1871, when on the appointment of a lambardar, the nearest heir was passed over on the ground of youth, he might have a claim to be appointed when the office next became vacant. This provision has not been repeated in the Rules made under the Punjab Land Revenue Act, 1887.

Held that in the case of a person who had been legally declared under the earlier rules to have a claim to be appointed on the next vacancy, the claim of such person must be taken into consideration together with the claim of the nearest heir on the appointment falling vacant, even though such vacancy occurred under the latter rules. Both claimants having equal claims, the choice should be made in regard to fitness, or on other ground applicable to appointments. AHMAD DIN *v.* MUHAMMAD ALI. **3 P R 1894 Rev.**

62 *Lambardar—Succession to post of lambardar—Primogeniture—Rules under Punjab Land Revenue Act,* 1887*—Rule No.* 179 (*i*).

Held, that in cases of succession to the post of lambardar, "the heir or nearest heir who, "according to the custom of the village, is "entitled to inherit," within the meaning of clause (*i*) of the Rule No. 179 of the Rules made under the Punjab Land Revenue Act, 1887, is in all cases the heir according to the rule of primogeniture, unless some other special custom be distinctly proved. YAKUB KHAN *v.* ALAF KHAN. **5 P R 1894 Rev.**

63. *Lambardar—Appointment of woman as Lambardar—Rules under Punjab Land Revenue Act,* 1887*—Rules Nos.* 176, 177, 179.

Held, that the appointment of a female lambardar is always objectionable on the ground of personal unfitness, and that a woman can only be appointed under such circumstances as would also justify the appointment of an unfit man. No. 6 *P. R.* 1884, *Rev.* disapproved. MUSSAMMAT SURAJAN *v.* AMIRULLA. **6 P R 1894 Rev.**

64. Lambardari, *succession to—Claim of nearest heir overlooked by mistake but asserted at earliest opportunity.*

One B. S. a lambardar, died in 1865, leaving him surviving two sons, J. S. and C. S. and a grandson, T. S. by a deceased eldest son. The Superintendent of Settlement in reporting on the case mistook T. S. for the said deceased eldest son I. S. whom he described as the *third* son of B. S. as still alive and as a minor aged 15. In consequence of this mistake, J. S. the *second* son of B. S. was appointed lambardar, and the claims of T. S. as the representative of the eldest branch of the family were overlooked. Immediately on the death of J. S. T. S. preferred his claim to succeed as lambardar, and was duly appointed as such by the Collector, whose order was upheld on appeal by the Commissioner. The eldest son of J. S. thereupon applied to the Financial Commissioner for revision of the said orders.

Held, that under Rule A I. 4 of the Rules under the Punjab Land Revenue Act of 1887 in cases where, in the appointment of a successor to a deceased lambardar, the nearest heir is passed over on the ground of youth, the absence of a note by the Revenue Officer to the effect that the claims of such heir are to be considered when the post falls vacant again is very material, but that in a case where the claim of the nearest heir has been overlooked by mistake and the claimant comes forward at the earliest opportunity to seek his remedy by appeal, or, when there was sufficient excuse for his not appealing, when the succession next opened out, his claims should be taken into consideration. WARYAM SINGH *v.* THARAJ SINGH. **7 P R 1896 Rev.**

65. Lambardari, *succession to—Rival claims of the deceased lambardar's nephew and his adopted son, who was his daughter's son, but also a distant agnate—Arains of Parji got of* mauza *Parjian Kalan.* *Nakodar* tahsil *—Rules under the Punjab Land Revenue Act,* 1887*—Rule No.* 179*—"Primogeniture."*

On the death of one S., a lambarda of *mauza* Parjian Kalan, Nakodar *tehsil,* in the Jullundur District, the vacant office was claimed by (1) the deceased's nephew, and (2) the deceased's adopted son. It appeared that the latter, though he was the deceased's daughter's son, was of the same *got* as the deceesed and his distant agnatic relation, and was preferred by the other lambardars of the village to Ilahi Bakhsh, the deceased's nephew.

The parties were Arains of the Parji *got.*

Held, that, under the circumstances of the case and in view of the facts that the adopted son had lived in the village since his birth, had been brought up by S. and treated by him for years as his son, and had also acted as S.'s *sarbarah,* the adopted son had a better claim to succeed to the vacant office than the deceased's nephew.

When the question arises whether an adopted son, being an agnatic kinsman of the deceased, but not a near agnatic kinsman, is entitled to exclude so near a collateral as a brother's son from succession to the office of lambardar, the whole circumstances of the particular case should be considered, it being impossible to lay down any hard-and-fast rule as to the degree of relationship which would support or bar the claim.

Held, further, that for the purposes of the rule of primogeniture as applied to the office of lambardar (Rule 179 of the Rule under the Punjab Land Revenue Act 1887), an adopted son may, in certain circumstances, be in the same position as a son of the body.

Revenue Judgments Nos. 14 *P. R.,* 1880 2 *P. R.* 1883, 14 *P. R.,* 1886. and 9, 10, 11, 12, and 13 *P. R.* 1892. referred to. BARKAT ALI *v.* ILAHI BAKHSH. **2 P R 1899 Rev.**

66. *Lambardar—Succession to post of lambardar—Rival claims of the deceased lambardar's paternal grandfather's descendants in the male line whose ancestors had never held the post—" Primogeniture "—Rules under Punjab Land Revenue Act,* 1887 *—Rule No.* 179 (*i*).

In a case where the claimants to succeed to the office of lambardar were the two descendants in the male line of the paternal grandfather of the last incumbent, the Collector appointed the petitioner as he belonged to the elder branch of the family but the Commissioner on appeal reversed the order of the Collector, on the ground that the rule of primogeniture was not applicable to the parties, and appointed the present respondent on the ground that he was the representative of the line which had never left the village, whereas the father of the petitioner was absent for more

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than twelve years. *Held*, that the petitioner should not be prejudiced by the temporary absence of his father from the village, and that in doubtful cases it is more expedient to favour the senior branch as it is more in accordance with the stress laid by the present rules on the rule of primogeniture. YADU *v.* DANI. **5 P R 1901 Rev.**

67. *Lambardar—Right of heir to succeed—Disqualification.*

Held, that the claim of the heir of a lambardar should not be passed over on the sole ground that his holding in the village is very insignificant, if he has property in another village sufficient to secure the revenue for which he would be responsible.

Under Land Revenue Rule No. 177 (*iii*) (*c*) absence from the village is not a disqualification unless the effect of the absence is that he is unable to discharge the duties of the office. CHAHAT *v.* MURAD ALI.

2 P R 1903 Rev.

68. *Lambardar—Dismissal—Removal of cause of disqualification - Right for re-appointment.*

Indebtedness is a sound reason for dismissing a lambardar, but where the dismissed person removes the cause of his disqualification before a fresh appointment is made there is no bar to his re-appointment if there may be some advantage in it as it is expedient to avoid changing lambardars.

Semble: Indebtedness of a lambardar does not justify his dismissal where there is sufficient security for the recovery of the revenue for which he is responsible, and the needful security may be provided by gifts of land to the lambardar even if unaccompanied by possession. FAKERIA *v.* MUNGA.

3 P R 1903 Rev.

69. *Lambardar—Disqualification of heir on account of poverty—Rules under the Punjab Land Revenue Act, 1887—Rules Nos. 177 (iii) (b), 179.*

Held, that the claim of the heir of a lambardar should not be entertained if his property is not of sufficient value to serve as security for the revenue for which he would be responsible as lambardar. JADA *v.* RAJADA. **7 P R 1904 Rev.**

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1. Muafi *land held by ala-lambardar by virtue of his office is not precluded from being brought into partition.*

See COMMON LAND. **15 P R 1892 Rev.**

2. *Suit for land alleged to have been granted to the plaintiff, revenue-free, as ala-lambardar.*

See JURISDICTION OF CIVIL OR REVENUE COURT **66 P R 1893**

3. *Grant of land to office of ala-lambardar—Acquisition of occupancy rights in such land.*

See JURISDICTION OF CIVIL OR REVENUE COURT. **123 P R 1893**

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4. *Suit for possession of land alleged to have been assigned to plaintiff revenue-free, as ala-lambardar—Emoluments of office of ala-lambardar.*

See JURISDICTION OF CIVIL OR REVENUE COURT. **104 P R 1894**
101 P R 1901

. *Land assigned to ala-lambardar in virtue of his office—Emoluments of village officer.*

See JURISDICTION OF CIVIL OR REVENUE COURT. **105 P R 1894**

6. *Suit to eject defendant from land held by him in virtue of his office of ala-lambardar—Emoluments of village officer.*

See JURISDICTION OF CIVIL OR REVENUE COURT. **23 P R 1895**
28 P R 1895

6. (*a*). *Occupancy Rights—Grant of* muafi *to ala-lambardar in virtue of his office as ala-lambar joint owner of such land.*

See OCCUPANCY RIGHTS.

1 P R 1897 Rev.

7. *Chief headman—Rule 3, Punjab Government Notification No. 883, 25th June 1872.*

Upon the death of the chief headman or ala lambardar, the candidates for the office were M. B. (the eldest son of the deceased), H. B. B. and M.—H. B. polled 645 votes; B. polled 562, and M. B. 548. The Deputy Commissioner confirmed the election of H. B. after which B and M. gave in their adhesion to M. B. *Held*, (reversing the orders of the Deputy Commissioner and Commissioner) that though the office of chief headman was not hereditary, it was desirable to appoint the son if he were not inferior to the other candidates; and that there was not such a preponderance of votes in favour of H. B. as warranted his being appointed over the head of M. B. MIRAN BAKSH *v.* HAYAT BAKSH. **5 P R 1873 Rev.**

8. *Chief Lambardar, office of—Grant at Settlement—Rights in land thus allotted.*

Plaintiff, the chief lambardar of the village, sued for the produce of certain land set apart at Settlement for his remuneration. The defendants in the suit were the tenants, who cultivated the land on condition of paying half the produce to plaintiff, and the proprietors of the land, to whom such produce had actually been paid, instead of to plaintiff. One of the pleas urged by the defendants was, that the rights of the proprietors were not affected by the grant made at Settlement, which only extended to the revenue assessed on the land.

Held, that the allotment of a plot of common land to a Chief Lambardar by way of remuneration for his services to the village was usually a matter of arrangement by the Settlement Officer in consultation with the village community and with their consent, and that while it was usual to make over

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the land to the Chief Lambardar and to allow him to cultivate it for his own benefit without payment of revenue or *malikana*, this was not necessarily always the case, and, therefore, the terms upon which any particular grant was made must be gathered from the circumstances of the particular case.

Held, further, that by the terms of the grant in this case, the Chief Lambardar was entitled to realize from the cultivator what the proprietors could have realized: *i.e.*, he was not merely the *mafidar* of the land, but also entitled to take the rent or the proprietor's share of the produce.

The office of Chief Lambardar, and the correspondence relating thereto, considered. GURBAKSH SINGH *v.* QUTBUDDIN.

105 P R 1879

9. *Chief Lambardarship—Succession.*

The real meaning of Revenue Judgment No. 5 of *Punjab Record* for 1873 is, that in cases of succession to the Chief Lambardarship where both candidates are equally fit and the votes nearly equal, the preference should be given to a son of the deceased Chief Lambardar.

Where the son of the deceased Chief Lambardar secured the most votes, but it appeared that the other candidate was the older Lambardar and otherwise fit, the Financial Commissioner (reversing the order of the Commissioner, and upholding that of the Deputy Commissioner) maintained the appointment of the latter candidate. JOWAHIR SINGH *v.* GURDIT SINGH. **6 P R 1880 Rev**

10. *Chief lambardarship—Procedure where lambardarship and sarpanchship are both vacant—Separate enquiries.*

Held by the Financial Commissioner, that the questions of the succession to the office of lambardar, and to that of sarpanch or chief headman, are two separate matters for which separate procedures are laid down in the rules, and which, therefore, should not be decided simultaneously. All vacant lambardarships should be separately filled up before a sarpanch is appointed, and there should be a separate file for the appointment of the sarpanch. PHALLU *v.* KALU

9 P R 1881 Rev.

11. *Chief lambardarship—Succession—Questions for consideration when votes are nearly equal.*

Held by the Financial Commissioner, that in cases of succession to the chief lambardarship, when the votes are nearly equal, the preference should be given to the son of the deceased chief lambardar, provided he is otherwise fit for the post.

The son of the last chief lambardar appointed, in a case where the difference in the number of votes obtained by the rival candidates was not great; where both the parties appeared equally fit, and where it appeared that the full proprietors of the villages 10 in number, all supported the claim of the son of the deceased, while the 14 persons

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who voted for the other claimant were merely proprietors of their own holdings. ABDULLA *v.* BUDHA. **4 P R 1884 Rev.**

See also MEHR DAD KHAN *v.* PIR MAHI. **4 P R 1884 Rev. Note.**

12. *Chief lambardarship—Mode of weighing value of the voting.*

Held by the Financial Commissioner, that in weighing the votes obtained by rival candidates for a chief lambardarship, regard should always be had to the stake the voters have in the village, and due allowance be made for this. SHER MUHAMMAD *v.* PIRAN-DITTA. **8 P R 1885 Rev.**

13. *Chief lambardarship—Succession—Right of claimant who has obtained substantial majority of votes.*

In a case relating to the succession to the office of chief lambardar, it appeared that the Commissioner had reversed the order of the Deputy Commissioner, under which the candidate, who obtained 22 votes, representing Rs. 254 of revenue, was appointed and had appointed the rival candidate who obtained 15 votes, representing Rs. 228 of revenue, holding that the difference was slight, and that as the respondent was the son of the late chief lambardar, he should be appointed.

Held, reversing the order of the Commissioner, that a majority of 7 votes over 15 votes was hardly a slight difference, and the difference of revenue was substantial, and that the appellant, who headed the poll by the above majority of votes, and who was described by the Deputy Commissioner as by far the most capable man in the village, and who was also strongly recommended for the post by the Tahsildar, should be appointed.

Jowahir Singh v. *Gurdit Singh* (No. 6 *P. R.* 1880, Rev.) and *Abdulla* v. *Budha* (No. 4 *P. R.* 1884, Rev.), cited. WADHAWA *v.* GUNDA. **8 P R 1888 Rev**

14. *Chief lambardar—Succession—Preference to be given to son of deceased where votes nearly equal.*

In cases of succession to the office of chief lambardar, when the votes are nearly equal, the preference should be given to the son of the deceased chief lambardar, provided he is otherwise fit for the post.

Miran Baksh v. *Hayat Baksh* (No. 5 *P. R.* 1873, Rev.), *Jowahir Singh* v. *Gurdit Singh*, (No. 6 *P. R.* 1880, Rev.), and *Abdulla* v. *Budha* (No. 4 *P. R.* 1884, Rev.), cited. ALI GAUHAR *v* JHANDA. **10 P R 1888 Rev**

15 *Ala-lambardars—Succession—Question for consideration.*

The Commissioner held, revising the order of the Deputy Commissioner, that *prima facie* the office of chief headman should go to the lambardar of longest standing.

Held that this view was untenable. The considerations to be followed in appointing a chief headman are those stated in Rule 31

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subject to this qualification that no special regard should be paid to hereditary claims (Rule 38). LABH SINGH *v.* JUALA SINGH. **10 P R 1890 Rev.**

16. *Chief lambardar—Minority.*

The duties of chief lambardar should be discharged in person and not by deputy, and therefore a minor should not ordinarily be appointed. No. 1 *P R.* 1886, Rev. followed. MEHR *v.* CHANNU. **7 P R 1891 Rev.**

17. *Grant of land to office of ala-lambardar—Suit for dispossession of such ala-lambardar by proprietors—Tenant.*

The Lower Courts having granted plaintiff a decree dispossessing defendant from certain land which had at the previous settlement been assigned to him rent free in virtue of his office of ala-lambardar, defendant applied to the Financial Commissioner's Court on the revision side on the ground that his possession of such land not being that of a "tenant" could not be disturbed by the proprietors of the land so long as he remained ala-lambardar.

Held, upholding the orders of the Lower Courts, that an arrangement whereby the village proprietors allow an ala-lambardar in virtue of his office to cultivate, free of rent, a piece of their common land, is one which the proprietors are at liberty to revoke at any time, should they insist on so doing either by taking back their land or demanding rent for it, and at most, could not be held to be binding on them beyond the term of the settlement current at the time.

Civil Judgment No. 123 *P. R.* 1893, dissented from. JHANDA SINGH *v.* DHANA SINGH. **1 P R 1896 Rev.**

18. *Ala-lambardar, appointment of absentee as—Rules under Punjab Land Revenue Act, 1887—Rule 187.*

Held, that an absentee lambardar is not eligible for appointment as a chief lambardar. MIT SINGH *v.* BAISAKHA SINGH. **2 P R 1896 Rev.**

LAND.

Held, that the word "land" as defined in section 2 (3) of the Punjab Alienation of Land Act, includes mortgage rights in land. ASA SINGH *v.* BUTA. **12 P R 1911**

LAND ACQUISITION ACT, 1870.

1. *Land Acquisition Act, 1870—Suit by reversioner for apportionment of compensation awarded to Hindu Widow under.*

See RIGHT TO SUE. **47 P R 1884**

See CAUSE OF ACTION—I.—DISTINCT. **47 P R 1884**

—"*Court*" *empowered to exercise jurisdiction under the Act—Notification No. 179,*

LAND ACQUISITION ACT, 1870—*contd.*

dated February 26th, 1885—Ouster of jurisdiction of District Judge—Act XVIII of 1884, section 23 (b).

The proceedings of a District Judge purporting to be held under Land Acquisition Act, 1870, set aside as null and void, and without jurisdiction, on the ground that they were subsequent to the Notification of the Punjab Government, No. 179, dated February 26th, 1885, issued under the provisions of section 23 (*b*) of the Punjab Courts Act (XVIII of 1884), declaring the Divisional Court to be the principal Court of original civil jurisdiction for the purposes of Act X of 1870. MUSSAMMAT IMAM-UN-NISSA *v.* SECRETARY OF STATE. **140 P R 1888**

Section 29.

—*Land Acquisition Act, 1870, section 29—Agreement of Judge and assessors as to compensation—Finality of decision.*

In case the Judge and one or both of the assessors agree as to the amount of compensation in a reference made to the Court under the provisions of Part III of the Land Acquisition Act, 1870, their decision thereon shall be final, and no appeal lies, even if they differ upon minor points not falling within the scope of their jurisdiction. IMAM BAKSH *v.* COLLECTOR OF MUZAFFARGARH. **36 P R 1892**

Section 35.

See SECTION 58.

Section 40.

See SMALL CAUSE COURT—JURISDICTION OF. **59 P R 1881**
8 P R 1883
5 P R 1886

Section 55.

—*Land Acquisition Act (X of 1870)—Obligation of Judge to take evidence—Section 55—"Building"—Serai.*

Where the Judge under section 30 of Act X of 1870 based his decision merely upon the conflicting opinions of the assessors and a local inspection made by himself, there having been no evidence tendered by either party, *held*, that the proceedings and award of the Judge were not open to objection; as it was not imperative upon him to call and examine witnesses unless moved so to do by one of the parties, or unless he was without reasonably sufficient material for a fair award. A serai is a building within section 55 of the Act. DEPUTY COMMISSIONER OF DELHI *v.* OONKUR LALL. **21 P R 1871**

Section 58.

—*Section 58—"Other proceeding"—Appeal—Notice.*

Held, that the words "or other proceeding" in the 2nd clause of section 58 of the Land Acquisition Act, 1870, were not intended to include appeals under section 35, so as to render the notice provided for in the

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LAND ACQUISITION ACT, 1870 —*contd.*

Section 58—*concld.*

former section necessary in the case of an appeal under the latter section. *President, Municipal Committee, Delhi*, v. *Harna Mall* (No. 10 *P. R.* 1877), cited. CHIRAGH DIN *v.* COLLECTOR, MUNICIPAL WATER WORKS, LAHORE.
53 P R 1883

LAND ACQUISITION ACT, 1894.

—*Proceedings under Land Acquisition Act —Finality.*

Held, that in a claim disposed of by the Collector in the course of land acquisition proceedings under the special procedure prescribed by Act I of 1894, the Collector's order or adjudication of the rights of the owners or claimants to the property for which compensation was assessed and awarded cannot be questioned otherwise than by a reference to Court under the provisions of the Act.

The Civil Courts are not competent to re-open and determine matters disposed of in accordance with the Act in a separate suit. SHER KHAN *v.* SHAMSHER KHAN.
37 P R 1905

Section 6.

—*And Sections* 7, 11, 12, 18—*Declaration of intended acquisition—Nature of enquiry—Award—Official signature—Officer directed to take order for the acquisition should make award under his hand.*

Held, that although an officer appointed by virtue of a Notification under sections 6 and 7 of the Land Acquisition Act, 1894, to take order for the acquisition of property needed for a public purpose is competent to make enquiry through his subordinates and to adopt their reports as his award, yet in such cases it is essential that he should, by unequivocal words, signify that such report has been accepted by him as his award and his full signature should be appended to this declaration.

The award of an officer specially appointed by the Local Government to perform the functions of a Collector under the Land Acquisition Act is not a valid and binding award for the purposes of sections 11, 12 and 18 of the Act, where the Notification issued under sections 6 and 7 directed a Deputy Commissioner to take order for the acquisition unless it is duly approved and signed by the latter with his full official designation.

Held also, that an award under the Act cannot be deemed to be "made" until it is announced and communicated to the person interested. MACDONALD *v.* THE SECRETARY OF STATE FOR INDIA.
123 P R 1908

Section 11.

—*And section* 12—*Award of Collector when to be final—Nature of proceedings before Collector—Competency of owner to question their validity or of Civil Court to determine its correctness.*

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LAND ACQUISITION ACT, 1894 —*contd.*

Held, following *Ezra* v. *Secretary of State* (*I. L. R., XXX Calc.*, 36; *I. L. R.. XXXII Calc.*, 605), that proceedings under the Land Acquisition Act, 1894, up to the making of an award are purely administrative and in no way judicial, and that therefore where a specially appointed Collector prepares under this Act a provisional award and refers it under his departmental instructions to the Collector of the District for approval, and the latter having been himself also empowered to make the acquisition, reduces the amount, the final award of the Collector within the meaning of sections 11 and 12 is the award so reduced, and neither the owner of the property nor the Civil Court is entitled to question this on the ground of irregularity in the proceedings of the said Collectors. FARMAN SHAH *v.* THE SECRETARY OF STATE FOR INDIA. **63 P R 1907**

Section 18.

1. *And section* 11—*Reference by Collector to Divisional Judge—Denial of claimant's title by Government—Competency of Judge to decline jurisdiction.*

Held, that, where a Collector under the Land Acquisition Act finds that certain persons have an assessable interest and makes an award in their favour under section 11 of the Act, and subsequently on the objection of those persons refers the matter under section 18 to the Divisional Judge for determination, the latter is not competent to refuse to entertain or determine such reference merely because the Government denies before him the objector's title to the property in dispute.

Imdad Ali Khan v. *The Collecter of Farakhabad* (*I. L. R. VII All.* 817), *The Crown Brewery* v. *The Collector of Dehra Dun* (*I. L. R. XIX All.* 339), *Ezra* v. *The Secretary of State* (*I. L. R. XXX Calc.* 36), considered and explained. AMOLAK SHAH *v.* COLLECTOR OF LAHORE. **115 P R 1906**

Section 18 (2).

2. *Limitation Act*, 1877, *section* 12—*Applicability of, to application under section* 18 (1) *of the Land Acquisition Act*, 1894—*Deduction of time requisite for obtaining copy of award.*

Held, that section 12 of the Limitation Act, 1877, does not apply to computing the periods of limitation prescribed for an application under sectiod 18 (1) of the Land Acquisition Act, 1894, and therefore the time requisite for obtaining a copy of the award cannot be deducted in computing the periods laid down by sub-section 2 of section 18 of that Act.

Nigahaya v. *Ballu Mal* (74 *P. R.* 1890), *Umia Shankar Lakhmiram* v. *Chhotala Vojeram* (*I. L. R. I Bom.* 19), *Lallubhai* v. *Naran* (*I. L. R. VI Bom.* 719), *Luchmee Bukhsh Roy* v. *Ranjeet Ram Panday* (20 *W. R.* 375), *Rangan* v. *Mahbub Chand* (55 *P. R.* 1897), and *Sadho Singh* v.

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LAND ACQUISITION ACT, 1894 —*concld.*

Section 18 (2)—*concld.*

Mussammat Kishnee (3 *All. H. C. R.* 318), referred to. BHAGWAN DAS *v.* THE COLLECTOR OF LAHORE. **79 P R 1904**

Section 23.

1. *Land Acquisition Act*, 1894, *section* 23—"*Person interested*"—*Lessee of land entitled to compensation—Matters to be considered in determining compensation.*

Held, that for the purposes of the Land Acquisition Act, a lessee with a fixed term to run is a "person interested" within the meaning of section 23 of that Act, and is entitled to compensation for damage sustained by him, and that the loss of profits for the unexpired term of his lease should be taken into consideration in awarding compensation.

Nuzeer-ud-din Ahmad v. *Railway Commissioners* (1 *Hay*, 157), and *Godadhar Das* v. *Dhanput Singh* (*I. L. R. VII Calc.* 585), cited. BASSA *v.* THE COLLECTOR OF LAHORE.
18 P R 1902

2. *Compensation—Principles of assessment—Market value of property—Compensation in respect of profits of trade.*

When property belonging to private persons is taken by Government for a public object under compulsory power, the Courts in assessing the amount of compensation to be allowed to the person interested therein, where there have been no previous sales out of the property acquired or examples of sales of similar property in the vicinity should ascertain the net annual income of the property and deduce its value by allowihg a certain number of years purchase of such income (after making a fair deduction for repairs and other necessary expenses, according to the nature of property, taking it as laid out in the most advantageous way in which the owner could dispose of it).

In assessing the market value of house property situated in a well frequented part of Anarkali outside the city of Lahore which was something like a bungalow and used as a business premises of a dentist and photographer, the Court allowed a capital value of twenty years' purchase on the rent assessed by the Municipal Commitee.

Under clause 4 of section 23 of the Land Acquisitioh Act, 1894, an owner, whose property had been acquired by Government under statutory powers, is entitled also to be compensated for the loss sustained by him, if any, in his earnings in consequence of such acquisition independent of the purchase money and compensation for the premises so acquired. The observations of Lord Truro in *East and West India Docks and Birmingham Railway Company* v. *Gattke*, as to the principle of construing Land Acquisition Acts, approved and followed.

Where a Collector fails under section 31 to tender the amount of compensation award-

LAND ACQUISITION ACT, 1894, —contd.

Section 23—*contd.*

ed by him to the person entitled thereto on or before taking possession of the property or to deposit the same in the Court to which a reference under section 18 would be submitted, the objector is entitled to interest under section 34 of the Act. A mere deposit in the Treasury is not enough to satisfy the requirements of the Land Acquisition Act.

Munji Khetsey's case (*I. L. R. XV Bom.* 279), *Prem Chand Burral* v. *Collector of Calcutta* (*I. L. R. 11 Calc.*, 103), *Collector of Poona* v. *Kashinath Khasgiwala* (*I. L. R. X Bom.* 585), and *East and West India Docks and Birmingham Railway Company* v. *Gattke* (3 *Mag. and G.* 155), referred to. PARMA NAND AND OTHERS *v.* SECRETARY OF STATE.
44 P R 1904

3. *Compensation—Principles on which compensation should be determined.*

Held, that where Government takes property from private persons, under statutory powers, the Courts in computing the amount of compensation to be awarded to the person interested therein should be guided by the principles that the owner is entitled to have the price of his land fixed in reference to the probable use which will give him the best return and not merely in accordance with its present use or disposition.

Prem Chand Burral v. *The Collector of Calcutta* (*I. L. R. 11 Calc*, 103), *Collector of Poona* v. *Kashi Nath Khasgiwala* (*I. L. R. X Bom.* 585), *Munji Khetsey* (*I. L. R. XV Bom.* 279), *Secretary of State for India* v. *Shanmugaraya Mudaliar* (*I. L. R. XVI Mad.* 369, P. C.) and *Perma Nand* v *Secretary of State for India* (44 *P. R.* 1904) cited HIRA NAND *v.* SECRETARY OF STATE FOR INDIA IN COUNCIL. **21 P R 1905**

4. *And section 24—Compensation—Principles of assessment—Prospective or contingent value.*

Held, that when property belonging to private persons is taken by Government for a public object under compulsory powers, the amount of compensation to the owner is to be assessed with reference to the probable use which will give him the best return at the time when the property was to be taken but not with reference to its prospective or contingent value in future in consequence of the property having been acquired by the State.

Perma Nand v. *Secretary of State* (44 *P. R.* 1904), *Hira Nand* v. *Secretary of State* (21 *P. R.* 1905), *and East and West India Docks and Birmingham Railway Company* v. *Gattke*, 3 *M. and G.* 155, referred to. ZULFIKAR KHAN v. COLLECTOR OF MIANWALI.
90 P R 1905

5. *Compensation—Principles on which compensation should be determined—Market value.*

Held, that in determining the amount of compensation to be awarded for the property

LAND ACQUISITION ACT, 1894 —concld.

Section 23—*concld.*

acquired under this Act the "market value" in clause I of section 23 means the value at date of notification which the property would have commanded at that date in the open market had Government never contemplated acquisition. It is not permissible to take into account speculative increase in prices due to the expectation that Government is about to make acquisitions, or even enhanced prices which owners may themselves have paid in excess of "market value" as defined above. FARMAN SHAH *v.* THE SECRETARY OF STATE FOR INDIA IN COUNCIL. **63 P R 1907**

Section 26.

—*And sections 30, 54—Award—An award under either sections 26, 30, or 54 is a decree capable of execution—Order directing refund of compensation money paid, how enforcible—Appeal—Appeal from order passed in execution of decree under Rs.* 5,000.

Held, that an adjudication made by a Court under either sections 26 or 30 of the Land Acquisition Act, 1894, or on appeal under section 54 by the Chief Court as to compensation or apportionment of compensation is tantamount to a decree within the meaning of section 2 of the Code of Civil Procedure and capable of execution, and that a party entitled to any benefit under a decree passed in an appeal under section 54, is entitled to recover the same by process of execution through the Court which passed the original decree or award.

Sheo Rattan Rai v. *Mohri* (*I. L. R. XXI All.* 354), *Mohammad Ali Amjad Khan* v. *Secretary of State for India* (*I. L. R. XXX Calc.* 501), and *Rajah Nilmoni Singh* v *Ram Bhundoo Roy* (*L. R.* 8 *I. A.* 90) referred to.

Held further, that in such cases an appeal lies exclusively to the Chief Court against any appealable order of a Court of whatever status passed either on the original side or in execution proceedings, the value of the claim involved being immaterial. ZEMINDARS OF DHAR *v.* RANA. **53 P R 1906**

Section 31.

—*Acquisition of mortgaged property for public purposes—Payment of compensation—Person interested.*

Held, that where the property acquired for a public purpose under the Land Acquisition Act forms part of an estate which has been mortgaged for an amount larger than the amount awarded as compensation for the acquisition the mortgagee is entitled to receive the whole of the money so awarded. TOPAN DAS *v.* JASO RAM. **17 P R 1907**

LAND REVENUE.

See JURISDICTION OF CIVIL OR REVENUE COURT.

1. *Suit for* "haq tora"—*Rent of land.*
See CUSTOM—V. CESSES AND DUES.
80 P R 1890
SMALL CAUSE COURT ACT, 1865, SECTION 6. **52 P R 1889**

2. *Canal water advantage rate.*

LAND REVENUE—concld.

See ENHANCEMENT.
3 P R 1900 Rev.

3. *Suit for* haq mahsal.
See JAGIR. **28 P R 1888**

LAND REVENUE ACTS.

See PUNJAB LAND REVENUE ACTS.

LAND REVENUE, ASSIGNMENT OF.

See PENSIONS ACT, SECTION 11.
27 P R 1878

LAND REVENUE, GRANT OF.

See JURISDICTION OF CIVIL OR REVENUE COURT. **36 P R 1874**
9 P R 1875
10 P R 1875

LAND SUIT.

See APPEAL, I CIVIL **40 P R 1893**
See APPEAL, II. COMPETENCY OF.
111 P R 1890
1 P R 1892 F B
46 P R 1893
12 P R 1900
See APPEAL, III. COURSE OF.
62 P R 1891
43 P R 1896
See APPEAL, VIII. SECOND.
15 P R 1892 F B
20 P R 1892
48 P R 1898
See FRUIT GARDEN. **111 P R 1890**
See JURISDICTION OF CIVIL OR REVENUE COURT. **40 P R 1893**
See REGISTRATION ACT, 1877, SECTION 77. **43 P R 1896**

1. A suit to establish title with reference to a mortgage-deed of land and to declare it not to be subject to attachment is a land suit. HIRA MAL *v.* BHAWANI RAM.
64 P P 1902

2. *Ghair-mumkin* land outside the *abadi* and attached to a well upon which *khurlies* are built and *bhusa* is stacked is a land suit as defined in section 4, sub-section (1) of the Punjab Tenancy Act, 1887. GANDU SINGH *v.* NATHU SINGH. **12 P R 1907**

3. *Suit for declaration that plaintiff is the sole owner of an orchard on a portion of the village* shamilat—*Punjab Courts Act*, 1884, *section* 3.

Plaintiff sued for a declaration that a certain orchard on a portion of the village *shamilat* was planted by him alone at his own expense and that he was in sole possession thereof. No claim was made with respect to the land occupied by the orchard or the *shamilat* as a whole.

Held that the suit was not a "land suit" within the meaning of section 3 of the Punjab Courts Act, 1884. DEVI DIAL *v.* AHMAD KHAN.
4 P R 1908

LANDHOLDER.

—*Explained.*
See LANDOWNER.
See PRE-EMPTION.—RIGHT OF, IN VILLAGES. **153 P R 1888**
103 P R 1889
169 P R 1889
96 P R 1898
7 P R 1896

LANDLORD AND TENANT.

See Acquiescence. **125 P R 1879**
Cantonments. **71 P R 1873**
38 P R 1877
Common Land. **3 P R 1877**
4 P R 1877
34 P R 1877
Custom I.—Alienation—F. By Non-Proprietor, *Passim*, and I.—Alienation, I.—Of Occupancy rights, *Passim*.
Decree—Form of.
6 P R 1891 Rev.
Ejectment. **62 P R 1899**
Jurisdiction of Civil or Revenue Court. **102 P R 1887**
9 P R 1888 F. B.
110 P R 1889
65 & 104 P R 1890
105 P R 1890
162 P R 1890
2 P R 1890 Rev.
19 P R 1891
45 P R 1891 F. B.
80 P R 1891
18 & 19 P R 1893
53 P R 1893
70 P R 1893
123 P R 1893
46 P R 1894
57 P R 1894
82 & 88 P R 1894
104 & 105 P R 1894
3 P R 1895
11 P R 1895 F.B.
23 & 28 P R 1895
89 P R 1895
5 P R 1897 Rev.

Limitation Act, 1877, Schedule II Art. 139, *Passim*.
Occupancy Rights, *Passim*.
Punjab Tenancy Act, 1868.
Punjab Tenancy Act, 1887.
Small Cause Courts Act, 1865, section 6. **13 P R 1888**

1. *Tenant's possession adverse to the landlord.*

See Adverse Possession.
65 P R 1901

2. *Mortgage of house in* mohalla *Ansarian, city of Jullundur, by a non-proprietary resident—Landlord and tenant—Death of mortgagor—Suit by landlord to eject mortgagee—Structure put up by tenant—Compensation.*

See Custom I. F.—Alienation by Non-Proprietor. **75 P R 1897**

3. *Sale of occupancy rights by widow—Acquiescence on part of landlord.*

See Custom I.—I. Alienation of Occupancy Rights.
2 P R 1900 Rev.

4. *Suit by proprietor for enhancement of rent—Entry in* Wajib-ul-arz *of previous settlement—Status of tenants, inquiry as to.*

See Enhancement. **5 P R 1895 Rev.**

5. *Suit for enhancement of rent—Plea that landlord had sold the land to defendants—Written agreement to sell, reciting payment of purchase money—Consideration only partly paid.*

LANDLORD AND TENANT—*contd.*

See Enhancement.
7 P R 1897 Rev.

6. *Suit by occupancy tenants for commutation of rent—Rent—Village held in* jagir *—Dues in kind paid by tenants partly to landlords, partly to jagirdar.*

See Jagir. **3 P R 1895 Rev.**

7. *Mortgagor and mortgagee—Construction of mortgage-deed—Landlord and tenant—Non-transfer of possession by mortgagor.*

See Jurisdiction of Civil or Revenue Court. **5 P R 1897 Rev.**

8. *Grant of a portion of the village common land to a person holding the office of alalambardar rent free—Suit for dispossession by the proprietors of the land—Landlord and tenant—Punjab Tenancy Act, 1887, section 4, clause 5.*

See Jurisdiction of Civil or Revenue Court. **101 P R 1901**

9. *Tenant who has involuntarily parted with proprietary right—Right of representative of such tenant—Accrual of right.*

See Occupancy Right.
6 P R 1895 Rev.

10. *Sale of rights of occupancy by tenant to landlord—*Locus standi *of reversioner—Punjab Tenancy Act,* 1887, *sections 53, 56.*

See Occupancy Rights
24 P R 1902 F. B.

11. *Suit for ejectment of tenant—Right of some of the landlords to maintain such suit—Proper parties.*

See Parties. **1 P R 1903 Rev.**

12. *Enhancement of rent—Suit by a majority of joint proprietors—Punjab Tenancy Act,* 1887, *section 24.*

See Parties. **3 P R 1905 Rev.**

13. *Rent for the time being payable—Extent of Landlord's lien upon produce of tenancy.*

See Punjab Tenancy Act, 1887, section 12. **54 P R 1895 F. B.**

14. *Suit for produce of land—Rival mortgagees alleging possession—Land occupied without the consent of the landlord.*

See Punjab Tenancy Act, section 14.
4 P R 1901 Rev.

15. *Punjab Tenancy Act,* 1887, *section 14—Status of mortgagee after obtaining formal possession through Civil Court against person in possession of such property—Right to receive payment for use and occupation.*

See Punjab Tenancy Act, 1887, section 14. **6 P R 1905 Rev.**

16. *Suit by tenant who has been served with a notice of ejectment—Suit instituted more than two months after the service of such notice.*

See Punjab Tenancy Act, 1887, section 45 (5).
2 P R 1902 Rev.

17. *Landlord and tenant—Right of landlord to claim rent from sub-lessee—Attornment by sub-lessee to stranger claiming title to property—Termination of tenancy.*

See Punjab Tenancy Act, 1887, section 58. **14 P R 1898**

18. *Admissibility of unregistered lease determinable at will of landlord but mentioning annual rate of rent in evidence.*

LANDLORD AND TENANT—*contd.*

See Registration Act, section 17.
70 P R 1895

19. *Repairs.*

A took a house on lease from *B* at a fixed monthly rent; and it was agreed that if *B*. neglected to execute necessary repairs, A was at liberty to do so, deducting the cost from the rent. A portion of the house falling in after *B* had been ineffectually called upon to repair, *A* sued *B* for damages. *Held*, on these facts, that the landlord was not bound to repair, but might leave it to his tenant to do so; and as the latter had the remedy in his own hands, no suit for damages would lie.

Held, further, that the landlord, without an express agreement that he should repair, was not bound to do so. Roopa *v.* Baness.
14 P R 1868

20. *Lease of house—Implied warranty of premises being safe and habitable—Damages—Remoteness.*

Plaintiff was lessee of a house belonging to defendant, for a term of six months; and paid Rs. 800 as rent. After four months occupation, the roof of one of the rooms fell in; plaintiff's furniture was injured, and his wife sustained a nervous shock. Plaintiff left the house, and hired another, which did not belong to defendant, for the rest of the term of six months, paying therefor Rs. 250. It was found as a fact that the roof which fell in was in an insecure state when plaintiff became lessee. The Court of first instance, in a suit for damages, decreed Rs. 352 for injury to the plaintiff's furniture, and Rs, 250 as general damages with reference to the shock occasioned to the plaintiff's wife. *Held*, that the defendant was liable, as there is an implied condition of law that a house, let as a dwelling house, is in a secure and habitable state at the time of the demise. *Per* Lindsay, J. The general damages (Rs. 250) were not too remote, regard being had to the inconvenience to the plaintiffs and the shock to the female plaintiff. *Per* Campbell, J. The fact that plaintiff hired another house for Rs. 250 might be considered with respect to the general damages, and be taken to support that part of the decree. Doyle *v.* Ross. **33 P R 1875**

21. *Building sites in Delhi city—Tenants occupying under proclamation of 19th September* 1858*—Power of assignee of Government to eject such tenants for non-payment of rent.*

Plaintiff, who became in 1860 an assignee of the rights of Government in certain building land in the city of Delhi, of which defendants were occupants under the terms of a proclamation issued on the 19th September 1858 by the Cantonment Joint Magistrate of Delhi, sued to eject defendants in consequence of default in payment of rent.

Held, that as plaintiff became the assignee of the rights of Government, subject to any rights created by Government in third parties prior to such assignment, and as Government could not under the terms of

the above proclamation, which reserved no right to eject the purchaser of a site in default of payment of the rent fixed, have ejected the defendants for such default, neither could the plaintiff do so, as no order passed by Government officials in assigning the Government rights to other persons could prejudice persons who had already entered upon possession of the site under the terms of the proclamation of 1858 before such orders were issued. *Karim Baksh* v. *Shahdi Ram* (C. A. *No.* 1279 *of* 1866), and *Karim Baksh* v. *Nainee Ram* (C. A. *No.* 1080 *of* 1868) referred to. RAI BALKISHEN *v.* JASRAM. **52 P R 1881**

22. *Defendant, a non-proprietor, building house on site given by plaintiff, the village proprietor—Landlord's power to eject—Presumption of defendant's right of permanent occupancy—Custom.*

In a suit by plaintiff to recover possession of a house from defendant, it appeared that the plaintiff had given the site occupied by the house to the defendant for the purpose of building a residence there, and that the house had been built by the defendant at his own cost and occupied by him as a tenant rendering service in lieu of rent.

Held, upon the above facts, that the presumption was strongly against the defendant being a tenant liable to ejectment at the will of the landlord, as when a village proprietor gives a vacant site to a non-proprietor in order that the latter may erect a residence thereon at his own cost, the presumption, in the absence of any express stipulation or local custom to the contrary, is that both parties intend that the person buildng the house shall have a permanent right of occupancy. MUHAMMAD ALAM *v.* AJAB. **34 P R 1882**

23. *Building sites in Delhi city—Suit to eject defendant occupying under proclamation of* 19*th September* 1858.

In a suit to eject as a mere tenant-at-will the defendant, who occupied certain land in the city of Delhi under the terms of the Cantonment Joint Magistrate's proclamation issued on the 19th September 1858, *held*, that the suit must be dismissed on the principle that former proprietors, whose title was derived by grants from Government subsequent to 1858, took only the same rights as were held by the Government, their assignor, and were bound by all intermediate acts of the Government in respect of the property assigned. *Rai Balkishen* v. *Jasram* (*No.* 52 *P. R.* 1881, *Civil*) followed. KARIM BAKHSH *v.* BALAK RAM. **112 P R 1886**

24. *Suit for ejectment of tenant—Defendant pleading right of occupancy—Compromise of suit in first Court by some of the plaintiffs only—Appeal by both sets of plaintiffs—Finding as regards the plaintiffs who were not parties to the* razinama, *that they were not bound thereby—Proper order to pass as regards the other plaintiffs—Remand of case for re-trial as regards all the plaintiffs.*

In a suit by seven plaintiffs to oust the defendant from a defined holding on the ground that he was a tenant-at-will, in which the defendant pleaded a right of occupancy it appeared that after issues were fixed and before evidence was taken, four plaintiffs presented a *razinama*, executed by them alone, two out of the said four plaintiffs undertaking to be responsible for the three plaintiffs who were not parties to the *razinama*, in accordance with which the first Court dismissed the suit, decreeing in terms of the *razinama* for defendant. The seven plaintiffs then appealed on different sets of grounds, the four plaintiffs, parties to the *razinama*, contending that it did not bind them, as it did not express their true intention, which point the lower Appellate Court found against them and dismissed the appeal so far as it related to them; the other three plaintiffs contending that the *razinama* was made without their authority and did not bind them, and the Appellate Court finding this to be so, accepted their appeal, and remanded the case for trial, giving directions that should the lower Court find for the plaintiffs, they would only be entitled to oust the defendant to the extent of their own shares in the land in dispute.

On further appeal by the four plaintiffs whose appeal had been dismissed in the Court below, *held*, following *Bhagwan Singh* v. *Alladad Khan* (*No.* 84 *P. R.* 1881) that the lower Court, in accepting the appeal of the three plaintiffs not parties to the *razinama*, should have remanded the case for re-trial as to all the plaintiffs, including the four plaintiffs, who were parties thereto, inasmuch as the seven plaintiffs formed collectively but one landlord as regards the defendant, whether he held the land in dispute as an occupancy tenant or a tenant-at-will, and he must be either one or the other as regards the whole of the holding. GHASITA *v.* KARM SHAH. **16 P R 1887**

25. *Monthly tenancy—Transfer of Property Act, section* 106*—Tenant holding over—Damages.*

Where a tenancy of certain shops was not for agricultural or manufacturing purposes, and the tenant failed to prove a contract for a lease from year to year, *held*, on the principle laid down in section 106 of the Transfer of Property Act, that the tenancy was monthly, and that a notice of 15 days, terminating with a month of the tenancy, was valid

Held, further, that the damages awardable by the Court against a monthly tenant who wilfully and contumaciously holds over, after notice, should be reasonable in amount. GANGA SINGH *v.* MUSSAMMAT SHIB DEVI. **33 P R 1898**

26. *Landlord and tenant—Suit by tenant who has been ejected for possession—Suit instituted more than one year after ejectment Punjab Tenancy Act*, 1887, *sections* 50, 77 (3) (*g*)*—Jurisdiction of Civil Court.*

Held, that section 50 of the Punjab Tenancy Act, 1887, does not restrict the period of limitation allowed to a dispossessed occupancy tenant when suing for possesion in the Civil Courts.

Where, therefore, plaintiffs who had been ejected from their occupancy holding in 1888, sued in the Civil Court long before the expiry of twelve years.

Held that plaintiffs' suit was not barred by section 50 of the said Act. IMAM DIN *v.* FEROZ KHAN. **64 P R 1898**

27. *Landlord and tenant—Share of—In* kankar *extracted from tenant's holding.*

Held, that in the case of *batai* paying land *kankar* dug out by an occupancy tenant should be shared between the landlord and tenant in the same proportion as the crop is shared. GHULAM HUSSAIN *v.* AZIZ BAKHSH. **9 P R 1901 Rev.**

28. *Landlord and tenant—Notice to quit or to pay higher rate of rent—Tenant holding over after tenancy—Landlord's right to demand enhanced rent—Tenant's obligation to observe fresh terms—Damages for use and occupation.*

When a tenant has no right of occupancy and no lease on special terms, he is liable to be ejected upon a reasonable notice to quit, and such notice cannot be held to be bad and insufficient merely because it holds out an offer to the tenant to remain on, on fresh terms, from a given date if the tenant prefers that alternative, but such notice must be clear and definite in its terms, and such as to terminate the current tenancy. In cases where such a notice has been given and the tenant has not vacated and upon the facts disclosed where the tenant is to be presumed to have accepted the terms offered, the rent should be decreed in accordance with such terms, but where no such consent can be presumed, or, owing to insufficient time granted or for other sufficient cause, the tenant has held over but not contumaciously, the Courts should award a reasonable sum for use and occupation, and should it be found that the tenant has held over wilfully and contumaciously the Courts in India would properly award reasonable damages, and the penalty laid down in England by Statute 4, George II, Chapter 28, section 1, of double the rent may sometimes be taken as a fitting standard.

Ganga Singh v. *Mussammat Shib Devi* (33 *P. R.* 1898), *Coomar Poresh Narain Roy* v. *Robert Watson & Co.* (*III Calc. L. R.* 543), *Prosunno Coomaree Debea* v. *Sheikh Rutton Bepary* (*I. L. R. III Calc.* 696), *Ranee Lalunmoonee* v. *Rajah Ajoodhya Ram Khan* (23 *W. R.* 61), *The Collector of Monghyr* v. *Hakim Madar Bukhsh* (25 *W. R.* 136), *Kylash Chunder Sircar* v. *Wcomanand Roy* (24 *W. R.* 412) and *Kikabhai Gandabhai* v. *Kalu Ghela* (*I. L. R. XXII Bom.* 241), referred to. PIRBU DIAL *v.* RAM CHAND. **5 P R 1904**

29. *Tenancy for immoral purpose—Rent—Suit, for rent of house let to prostitute—Immoral contract—Contract Act*, 1872, *section* 23.

Held, that a landlord cannot recover the rent of a house knowingly let to a prostitute to be used by her as a brothel.

Goureenath Mookerjee v. *Modhoomonee Peshakur* (18 *W. R.* 445), and *Mussammat Noor Bux* v. *Mussammat Shibratun* (10 *P. R.* 1872), cited,

Pirthi Mal v. *Mussammat Bhagan* (2 *P. R.* 1898), explained. BRINKMAN *v.* ABDUL GHAFUR. **65 P R 1904**

30. *Landlord and tenant—Ejectment—Liability to ejectment on the ground of the alteration of the holding from arable to building land—Relief against forfeiture—Punjab Tenancy Act, 1887, sections* 39, 48.

Although when the land of a tenancy has been diverted from its original purpose the tenant is liable to be ejected under section 39 (*a*) of the Punjab Tenancy Act, but in cases where the property by reason of its situation in the neighbourhood of large cities advancing in prosperity has been converted from its original purpose to land suitable for building purposes and where there is no immediate injury to the landlord, it is by no means necessary to eject the tenant if the rights of the landlord can be recognized in some other way as provided for by section 48 of the Act. In such cases the Revenue Courts should facilitate the process in the interest of the landlord and tenant and the general community.

Daswandhi v. *Ghulam* (122 *P. R.* 1888), referred to. KARAM BAKHSH *v.* GHULAM MUHAMMAD. **3 P R 1904 Rev.**

31. *Landlord and tenant—Ejectment—Liability to, on the ground of alteration of the holding from arable to building land—Relief against forfeiture.*

Held, following *Karam Bakhsh* v. *Ghulam Muhammad* (3 *P. R.* 1904, Rev.) that where land is let by an occupancy tenant for building purposes in the neighbourhood of a town ejectment is not the proper remedy. but in accordance with the provisions of section 48 of the Tenancy Act the landlord should be compensated in the form of enhanced rent, which should be assessed at the rate of one-third of that payable to the tenant so long as the building exists. DOGAR MAL *v.* SECRETARY OF STATE FOR INDIA IN COUNCIL. **4 P R 1904 Rev.**

32. *Landlord and tenant - Ejectment—Suit by tenant to contest liability to ejectment—Suit withdrawn without permission of Court—Subsequent suit for the same matter*—Res-judicata—*Punjab Tenancy Act, sections* 5, (1) (*c*) 110 (1).

In a suit by a tenant to contest his liability to be ejected on the ground that he was settled by the founder and otherwise fulfilled the conditions of section 5 (1) (*c*) of the Punjab Tenancy Act, it appeared that in 1899 the plaintiff had instituted a suit for a similar relief against his landlord which he subsequently withdrew.

Held, that the present suit was not maintainable, as the matter directly and substantially in issue in the suit withdrawn in 1889 was the same as in the present suit.

Section 110 (1) of the Punjab Tenancy Act does not supersede the doctrine of *res judicata* or the consequences of dismissals

in default. SUKH RAM *v.* MUL CHAND. **6 P R 1904 Rev.**

33. *Occupancy rights—Landlord and tenant—Right of landlord to cut trees on land held by tenant having rights of occupancy.*

Held, that a landlord is not entitled to cut down trees on a tenancy without the consent and contrary to the interests of his tenant.

Nikka v. *Lukha* (95 *P. R.* 1867), *Kalian Das* v. *Buta* (61 *P. R.* 1873), *Jani* v. *Gulam Farid Khan* (4 *P. R.* 1875), *Mussammat Gur Devi* v. *Sondha* (61 *P. R.* 1881), cited and followed. GANGA RAM *v.* MANHI. **9 P R 1904 Rev.**

34. *Landlord and tenant—Ejectment—Liability to, on the ground of non-payment of rent—Plea of absence of such condition—Punjab Tenancy Act,* 1887, *section* 41.

"B" mortgaged his land to "A." The cultivating possession was left with "B." who undertook in lieu thereof to pay "A" a fixed rent, with a proviso that in case of failure to pay the rent the mortgage would be foreclosed. Subsequently "B" mortgaged a portion of the land to "C." "A" suit to eject "B" and "C" on the ground of non-payment of rent. The first Court decreed the claim. On appeal the Collector maintained the decree with respect to "B," but as regards "C" held that he could not be treated as plaintiff's tenant, and that the claim as regards him was therefore not cognizable by a Revenue Court. On further appeal the Commissioner while finding that the relation of landlord and tenant did exist, dismissed the claim on the ground that in the deed of mortgage which secured cultivating possession to "B" there was no condition providing for his ejectment. The plaintiff thereupon applied for revision.

Held, that "C" being only a successor in interest of "B," the relation of landlord and tenant subsisted between A on the one hand, B and C on the other, and that the right to eject a tenant at will, being an inherent right of the tenure, it was not excluded by the special remedy which the deed of mortgage provided. RADHA MAL *v.* SHERU. **10 P R 1905 Rev.**

35. *Landlord and tenant—Renunciation of contract by tenant before time for performance—Action for damages for breach of such contract—Measure of damages.*

Held, that an action to recover damages for breach of a contract of tenancy to be performed at a future time is maintainable against a lessee upon a wrongful renunciation by him of the contract before the time fixed for its performance had arrived.

The measure of damages in such cases is the loss of rent suffered by the landlord from the non-performance of the contract at the appointed time after deducting such sum as he might by reasonable efforts recover from another tenant.

Frost v. *Knight* (*L. R.* 7, *Ex. III*). LACHMI NARAIN *v.* VERNON. **137 P R 1906**

36. *Landlord and Tenant—Suit by land-*

lord for rent—Denial by tenant of landlord's title—Estoppel of tenant—Evidence Act, 1872, *section* 116.

Held, that in a suit for rent it is not competent to the tenant to impeach the title of his landlord in whose favour he has executed a lease on the ground that his ostensible landlord was only a benamidar for a third party.

Jai Narain Bose v. *Kadimibani Dasi* (7 *B. L. R.* 723), followed. *Donzelle* v. *Kidar Nath* (7 *B. L. R.* 720) and *Mussammat Inderbuttee Koer* v. *Shaik Mahbub Ali* (24 *W. R.* 44), dissented from. BOGAR *v.* KARAM SINGH. **141 P R 1906**

37. *Effect of building over adjoining land—Forfeiture of tenancy—Forfeiture confined to covenants of the original lease.*

Held, that erection of new buildings by a lessee upon property adjoining to demised premises does not occasion a forfeiture of the original tenancy when the prohibition against erecting new buildings was not a condition for the lease, but one of its terms, and there was no provision for re-entry on breach of any such term.

A forfeiture can be incurred for the breach of such covenants only as are specified in the lease itself. MIRAN BAKHSH *v.* AZIZ BAKHSH. **53 P R 1908**

38. *Landlord and tenant—Suit by landlord to eject tenant—Suit by mortgagee to recover possession on failure of mortgagor to pay rent.—Jurisdiction of Civil or Revenue Court—Punjab Tenancy Act,* 1887, *section* 77 (3) (*e*).

Twelve years after the execution of a deed of mortgage the representatives of the mortgagee sued for possession of the mortgaged land under the terms of the mortgage-deed which provided that the mortgagor should retain possession under the mortgagee paying rent at the rate agreed on therein, and that in case of default of such payment he would be liable to pay interest, and in default of redemption in six years, the mortgaged property should be considered as sold. It appeared that neither interest nor rent had ever been paid nor had the mortagagee applied for mutation of names in his favour.

Held that under the circumstances the relation of landlord and tenant did not exist between the mortgagor's heirs and the mortgagee's heirs, inasmuch as the mere execution of a document of this character not acted upon in any way and not even brought to the notice of the revenue authorities could not be held sufficient to alter the status of owner into that of tenant to the mortgagee, and that the plaintiffs were therefore not entitled to a decree for possession as landlords against the defendants as tenants. NIZAM *v.* BUDHAN. **1 P R 1908 Rev**

39. *Landlord and tenant—Trees to be cut with consent of landlord—Competency of landlord to refuse consent*—Wajib-ul-arz.

Held, that a provision in a *Wajib-ul-arz* to the effect that tenants can, with the consent of, and after informing the landlords,

LANDLORD AND TENANT—*concld.*

cut trees situated in their courtyards and fields when required for agricultural implements and for the repair of dwelling houses, does not entitle a landlord to refuse his consent unless the exercise of this right by a tenant is unjustifiable or an abuse of such right. SUBHAN *v.* NIAMAT KHAN.
2 P R 1908 Rev.

40. *Landlord and tenant—Notice to quit.*

Where a tenant gave notice to his landlord that he would vacate on the 31st October 1908, but for some reason was unable to do so, though the landlord took partial possession on the 30th October and after the tenant had vacated re-entered the vacant tenement.

Held, that the landlord was entitled to a new notice or failing this to a month's rent. NIADAR MAL *v.* LEWAN.
94 P R 1910

41. *Landlord and tenant—Suit in ejectment—Notice to quit specified in lease—Denial of landlord's title by defendant before suit.*

Held, that in a suit by a landlord for ejectment of a tenant no notice of determination of tenancy is necessary, where the defendant has prior to the suit being brought denied the plaintiff's title as landlord and the validity of the lease, notwithstanding that the lease specifies such notice.

Haidri Begum v. *Nathu*, (1895) *I. L. R.* 17 *All.* 45, followed. ZIA-UD-DIN *v.* GOBIND RAM.
76 P R 1911

"LANDOWNER"

See PUNJAB LAND REVENUE ACT, 1887, SECTION 37. **4 P R 1888 Rev.**
"LANDHOLDER."

1. *Suit to recover moneys claimed, as due for the enjoyment of the right of pasturage overland—"Landowner," and "estate" meaning of—*Tirni *Contractor.*

See JURISDICTION OF CIVIL OR REVENUE COURT. **30 P R 1895**

2. *Right of widow who has succeeded to her husband's interests in joint holding to claim partition—Grant of such prayer by Revenue Officer—Jurisdiction of Civil Court to entertain subsequent suit by co-sharers objecting that widow is by custom not entitled to claim partition—Question as to title—"Owner" "landowner."*

See PARTITION. **82 P R 1898 F B**

3. *Punjab Laws Act*, 1872, *section* 12—*Meaning of "Landholder" or "landowner"—Purchase of small site in* abadi.

See PRE-EMPTION—RIGHT OF, IN VILLAGES. **153 P R 1888**

4. *Procedure for making record of rights—Punjab Land Revenue Act*, 1887, *section* 3 (2)—*Rule* 57 *of Rules under the Act, and* jamabandi *form, column* 4—*"Owner" and "Landowner."*

See PUNJAB LAND REVENUE ACT, 1887, SECTION 36. **7 P R 1895 Rev.**

5. *Suit for pre-emption—Punjab Laws Act*, 1872, *section* 12, (*e*)—*"Landowner"*—

"LANDOWNER"—*concld.*

Punjab Land Revenue Act, 1887, *section* 3 (2).

Held, that plaintiff as proprietor of certain waste land in the village, had under section 12 (*e*) of the Punjab Laws Act, 1872, a right of pre-emption against the vendee, who was an entire stranger without any interest whatever in the village, although the land of which plaintiff was proprietor was unfit for cultivation and was not assessed with revenue. JASMIR SINGH *v.* RAHMUTULLA. **7 P R 1896**

6. An owner of 1 *kanal* 1½ *marlas* of land *ghairmumkin chappar* is not "landowner" or "landholder" within the meaning of section 12 (*d*) of Act IV of 1872, so as to be entitled to a right of pre-emption equal to that of plaintiff. MAN SINGH *v.* DIP SINGH.
96 P R 1898

LAWALD.

The meaning of the term is "without male issue."—*Mussammat Hijjoo* v. *Meer Muhammad* (*No.* 54 *P R* 1867), Civil, AND MUSSAMMAT MEHR BIBI *v.* KALU. **41 P R 1874**

—"*Lawaris wa lawald*" means nothing more than "without son and heir" (*per* LINDSAY J.) but *held*, by BOULNOIS and MELVILL JJ., that *lawaris* meant without an heir of either sex. MUSSAMMAT MEHR BIBI *v.* KALU.
41 P R 1874

LAWS ACT.

See PUNJAB LAWS ACT, 1872.

LEASE.

See LANDLORD AND TENANT.

1. *Arrears of revenue—Lease of farm.*
See ADVERSE POSSESSION.
63 P R 1875

2. *Of house in cantonments—Validity of lease for period exceeding one month.*
See CANTONMENTS. **115 P R 1882**

3. *Of house in cantonments to prostitute—Agreement to pay rent at specified rate—Subsequent refusal to pay at higher rate than that fixed by cantonment committee when permitting landlord to build.*
See CANTONMENTS. **72 P R 1883**

4. *Of rights in common land, validity of.*
See COMMON LAND. **148 P R 1882**

5. *Lease of grazing tax—Limitation for suit for tax.*
See LIMITATION ACT, 1871, SCHEDULE II, ARTICLE 6. **3 P R 1875**

6. *Of shop to defendant by former of opium monopoly—Omission to grant license—Damages.*
See OPIUM ACT (I OF 1878).
114 P R 1881

7. *For one year certain with option of renewal—Registration.*
See REGISTRATION ACT (VIII OF 1871), SECTIONS 18, 19. **68 P R 1886**

8. *Failure of suit based on unregistered.*
See REGISTRATION ACT (III OF 1877), SECTION 49.
139 P R 1883

9. *Lease for the term of settlement.*
See SETTLEMENT. **41 P R 1870**
27 P R 1873
5 P R 1877

10. *Lease—Stamp—Rent reserved—Fine or premium.*
See STAMP. **102 P R 1882**

LEASE—*contd.*

11. *Held*, that when the 2 plaintiffs along with 9 other persons (impleaded as defendants) had jointly entered into a lease of certain lands with the defendants-lessors, and *held* for possession of the land leased, the other lessees having refused to join in the suit, they were not only entitled but obliged to sue for possession of the whole of the land leased. MUHAMMAD ALI *v.* MUHAMMAD SHAH. **57 P R 1911**

12. *Held*, that a suit for the ejectment of a tenant is maintainable without notice of determination of the tenancy where the tenant has denied the landlord's title. ZIA-UD-DIN *v.* GOBIND RAM. **76 P R 1911**

LEAVE TO APPEAL TO THE PRIVY COUNCIL.

See CIVIL PROCEDURE CODE, 1908, SECTIONS 109, 110.

LEGACY.

See MAHOMEDAN LAW.
—*Non-ademption of demonstrative legacy.*
See WILL. **109 P R 1908**

LEGAL CHARACTER.

See DECLARATORY DECREE—5. RELATIONSHIP. **148 P R 1884**

LEGAL PRACTITIONERS.

—*Back fee—Payment to be made contingent on success—Illegal and improper contract—Public policy—Contract Act*, 1872, *section* 23.

Held, by a majority (Chatterji and Lal Chand JJ. dissenting) that agreements between legal practitioners and their clients making the remuneration of the legal practitioner dependent to any extent whatever on the result of the case in which he is retained are illegal as being contrary to public policy and legal practitioners entering into such agreements are therefore guilty of professional misconduct and render themselves liable to the disciplinary action of the Court.

Per Lal Chand and Chatterji JJ. contra that the practice of receiving back fee is neither opposed to public policy nor improper as regards a legal practitioner other than members of the English bar, enrolled under the Legal Practitioners Act, 1879 GANGA RAM *v.* DEVI DAS. **61 P R 1907 F B**

LEGAL PRACTITIONERS ACT XVIII OF 1879.

Section 10.

—*Presentation of memo. of appeal by pleader's clerk—"Recognized agent"—Civil Procedure Code*, 1881, *sections* 36, 541.
See APPEAL, VI.—PROCEDURE IN—
6 P R 1896

Section 13.

1. *And section* 14—*Champertous agreement between legal practitioner and client—"Grossly improper conduct in discharge of professional duty."*

One A. M. a certificated mukhtar, entered into an agreement with certain clients wherein it was stipulated that A. M. should undertake all the expenses up to final appeal connected with a civil case, to be instituted on behalf of his client in consideration of receiv-

LEGAL PRACTITIONERS ACT XVII OF 1879—*contd.*

Section 13—*contd.*

ing half the *net* proceeds of the litigation. The lower courts holding that A. M. had thereby been guilty of "grossly improper "conduct in the discharge of his professional "duty," within the meaning of section 13 of the Legal Practitioners Act, 1879, suspended him from practice under section 14 of the Act.

The matter having been referred by the Divisional Judge to the Chief Court:

Held, that the mere existance of the relation of pleader and client is sufficient for the instant condemnation, as opposed to public policy, of any agreement for the supply of funds for litigation in consideration of a delivery of a share in the property in suit on recovery, and that a legal practitioner entering into such an illegal agreement is, for the same reasons as establish the contract to be opposed to public policy, guilty of "grossly improper conduct in the discharge of his professional duties." *In re* ALI MUHAMMAD. **111 P R 1894**

2. *Use of objectionable language—Professional misconduct—"Any other reasonable cause."*—Ejusdem generis.

Held, that the use of objectionable language by a Mukhtar retained to draft a letter addressed to the presiding officer of a Court with reference to the supervision of the Courts subordinate to him may constitute grossly improper conduct in the discharge of his professional duty within the terms of clause (*b*) of section 13 of the Legal Practitioners' Act, 1879, as amended. IN THE MATTER OF A MUKHTAR. **9 P R 1902**

3. *Professional misconduct.*

A Mukhtar advised his client whose witnesses had not reached the Court on the day fixed for the hearing to absent himself in order that the suit should be dismissed in default and not on the merits for lack of evidence.

Held, that the Mukhtar was guilty of grossly improper conduct in the discharge of his professional duty within the meaning of section 13 of the Legal Practitioners Act, as his intention was that a false reason for the absence of his client should be given. IN THE MATTER OF A MUKHTAR. **56 P R 1902**

4. *Pleader and client—Agreement with client to share in the result of litigation—Professional misconduct—Legal Practitioners Act*, 1879, *section* 13.

A, a pleader of the Chief Court of the Punjab entered into an agreement with his client to conduct certain cases for him as pleader on the condition of receiving a share in the result of litigation. *Held*, that such conduct on the part of the pleader in the discharge of his professional duties is grossly improper within the meaning of section 13 of the Legal Practitioners Act, and such as renders the offender liable to grave censure and disciplinary action.

In re *Ali Muhammad, Mukhtar* (111 *P. R.* 1894). *Moung Htoon Oung* (21 *W. R.* 297), *In the matter of an Advocate of the Calcutta High Court (IV Calc. W. N.* Civ.), and In re *Bhandara (III Bom. L. R.* 102, F. B). referred to and followed. IN THE MATTER OF A PLEADER OF THE CHIEF COURT OF THE PUNJAB. **63 P R 1904**

LEGAL PRACTITIONERS ACT XVIII OF 1879—*contd.*

Section 13—*concld.*

Section 28.

1. *Pleader and client—Agreement—Vakil of High Court practising as such in the Punjab—Vakil practising as pleader of Chief Court.*

Held, that if a vakil of a chartered High Court practises in the Punjab merely by reason of his being a vakil of such Court ordinarily practising therein, his personal privilege attends him in the Punjab, and agreements between him and his clients are not governed by section 28 of the Legal Practitioners Act.

But *held*, that if a person is practising in the Punjab by reason of his being a pleader admitted and enrolled in the Chief Court, then agreements made by him in the course of his practise as such pleader are agreements to which section 28 of the Act applies: and that section is not inapplicabte to them merely because such person is, in addition to being a pleader of the Chief Court, a vakil of some other Court, and entitled to certain privileges if he were to practise as a vakil. MADAN GOPAL *v.* SHEO SINGH RAI. **54 P R 1881**

2. *Pleader and client—Suit for fee—Contract Act (IX of* 1872), *section* 70.

Held, that though section 28 of the Legal Practitioners Act prohibits the recovery of any money under an agreement not recorded in a particular manner, and thus supersedes those provisions of the Contract Act under which agreements can be enforced generally, it does not touch section 70 of the last named Act, which has no relation to express agreements, but is intended especially to deal with cases where remuneration can be claimed in the absence of an agreement. KHAZAN CHAND *v.* GOBIND SINGH. **160 P R 1888**

3. *Legal Practitioners Act*, 1879, *section* 28—*Indian Contract Act*, 1872, *section* 70.

Held, that where, as in the present instance, a pleader sues upon an alleged oral contract for remuneration for services rendered to a client he cannot succeed, because the contract is not in writing; and because there is a contract, he cannot fall back upon section 70 of the Contract Act and claim reasonable remuneration.

If there is no agreement on the subject of remuneration amounting to a contract under the Contract Act, operating independently of section 28 of the Legal Practitioners Act, the pleader's right to remuneration is measured by section 70 of the Contract Act.

If there is an agreement which amounts to such a contract, the pleader cannot enforce it unless it is reduced to writing and filed in Court as required by section 28, Legal Practitioners Act. If these conditions are fulfilled, the contract can be enforced, subject to the special provisions of sections 29—31 of the Act. If they are not, the pleader is without a remedy.

I. L. R. XII All. 169; *I. L. R. IX Mad.* 375; and No. 160 *P. R.* 1888, dissented from. HAZARI LAL *v.* TILOK CHAND. **136 P R 1893**

LEGAL PRACTITIONERS ACT XVIII OF 1879—*concld.*

Section 28—*concld.*

4. *And section* 30.

See PLEADER AND CLIENT.

Held, that a pleader is not debarred by the provisions of the Legal Practitioners Act, 1879 from recovering a fee from his client which is actually allowed on taxation, sections 28—30 of the Act are applicable only to those cases in which agreements made between pleaders and their clients relate to the payment of remuneration in excess of, and apart from, the amount allowed in, the taxation. SARJU PARSHAD *v.* GIRDHARI LAL. **1 P R 1909**

Section 41.

—*Contempt of Court by Advocate and Barrister in his individual and private capacity as a suitor—Dismissal or suspension of such Advocate from practice.*

See ADVOCATE. **5 P R 1902**

LEGAL REPRESENTATIVE.

See CIVIL PROCEDURE CODE, 1908, O.—XXII. *P. R.* 3 AND 4.
LIMITATION ACT, 1877, SCHEDULE II, ARTICLES 171, 178.

—*Of deceased debtor, suit against—Proof of receipt of assets.*

See RIGHT TO SUE. **11 P R 1881**

LEGITIMACY.

See UNDER CUSTOM—IV.—BETROTHAL DOWER, MARRIAGE AND DIVORCE—MUHAMMADAN LAW.

1. *Children born after marriage—Legitimacy of.*

See EVIDENCE ACT, 1872, SECTION 112. **79 P R 1907**

2. *Marriage by* 'chadar andazi' *between a Khatri and a Khatrani widow—Legitimacy of children of such marriage.*

See MARRIAGE. **4 P R 1905**

3. *Held*, that a child born more than 280 days after the disolution of his mother's marriage, but less than 6 months after her second marriage was entitled to inherit the property of his mother's second husband as his legitimate son. NUR-UL-HASAN *v.* MUHAMMAD HASAN. **78 P R 1910**

LEGITIMATION BY ACKNOWLEDGMENT.

See UNDER MUHAMMADAN LAW.

LEKHA MUKHI MORTGAGE.

See UNEER MORTGAGE.

LETTERS OF ADMINISTRATION.

1. *Administration with copy annexed of authenticated copy of will proved abroad—*

LETTERS OF ADMINISTRATION—*concld.*

Grant to attorney of absent executor—Attorney residing outside the Jurisdiction of the Court to which application is made.

See ADMINISTRATION. **28 P R 1883**

2. *Grant by District Judge—Jurisdiction of Chief Court to extend the original grant—Just cause for revocation of grant.*

See SUCCESSION ACT, 1865, SECTION 234. **1 P R 1902**

LEX LOCI CONTRACTUS.

See UNDER JURISDICTION.

LIABILITY OF SONS FOR FATHER'S DEBTS.

See UNDER HINDU LAW—JOINT FAMILY.

LIBEL.

See DEFAMATION.

LICENSE.

1. *To sell or cultivate opium.*

See OPIUM ACT, 1878. **114 P R 1881**
105 P R 1883

2. *Permission to occupy site—Custom—ground of sites to village artizans for residence, &c.*

Case where an artizan had permitted others of his trade to work in his workshop along with him distinguished from cases where the village proprietors grant sites to artizans for houses and shops. The latter class of cases is governed by custom and the occupants have a permanent right. Possession in the former is based on mere license which is revocable at pleasure. HAR BHAGAT *v.* SHEO LAL. **144 P R 1890**

LIEN.

1. *Of arbitrator on award.*

See ARBITRATION. **22 P R 1897**

2. *Of bailee.*

See CONTRACT ACT, (IX OF 1872) SECTION 170. **60 P R 1885**

See CUSTOM IX.—MERCANTILE USAGES. **34 P R 1886**

3. *Of mortgagee to houses built on mortgaged land.*

See MORTGAGE. **94 P R 1881**

4. *Of partners on partnership property.*

See PARTNERSHIP. **53 P R 1898**

5. *Of vendor for unpaid purchase money.*

See VENDOR AND PURCHASER. **66 P R 1883**

6. *Lien on present and future property.*

Held, that in equity there could be a valid assignment of property to be subsequently acquired. THE NATIONAL BANK OF INDIA *v.* THE DELHI COTTON MILLS COMPANY, LIMITED. **57 P R 1902**

LIGHT AND AIR.

See EASEMENT.

LIMITATION.

1. *Suit by reversioner—Adverse possession—Successive female heirs—Possession adverse to the female adverse to the reversioners.*

See ABANDONMENT. **43 P R 1901**

2. *Abandonment of land—Limitation.*

See ABANDONMENT. **32 P R 1868**
37 P R 1875
25 P R 1877
114 P R 1880

LIMITATION—*contd.*

3. *Minority—Adverse possession—Limitation.*

See ADVERSE POSSESSION. **34 P R 1872**

4. *Banker and customer—Relationship as debtor and creditor—Limitation.*

See BANK. **17 P R 1869**

5. *Suit for redemption—Plea that suit was barred by limitation—Burden of proof.*

See BURDEN OF PROOF. **88 P R 1893**
71 P R 1900

6. *Recognised agent—Plaint filed by, without power of attorney—Acceptance of plaint—Limitation.*

See CIVIL PROCEDURE CODE, 1908, O. IV., R. 2. **9 P R 1878**

7. *Decree not in conformity with judgment—Application by decree-holder to amend decree rejected as time-barred—Duty of Court.*

See CIVIL PROCEDURE CODE, 1908, SECTION 152. **12 P R 1897**

8. *Twelve years' old decree—Section 230 of the Civil Procedure Code, 1882—Meaning of "granted" and "law in force" in above section.*

See CIVIL PROCEDURE CODE, 1908, SECTION 48. **54 P R 1887**

9. *Sale to three persons—Share of vendors specified distinctly but purchase-money for all shares mentioned in lump—Joinder of parties—Indivisible contract—Limitation.*

See CONTRACTS. **66 P R 1896**

10. *Divorce Act, 1869—Limitation.*

See DIVORCE. **58 P R 1870**

11. *Protection order granted prior to Act IV of 1872—Cancellation of order by Ludhiana Insolvent Estates' Court in 1873—Limitation.*

See INSOLVENCY. **36 P R 1875**

12. *Starting point of—Under article 2 of the Indian Limitation Act, 1877, where damages occurred.*

See LIMITATION ACT, 1877, SECTION 24. **72 P R 1909**

13. *For a suit by a reversioner for possession of immovable property in possession of defendant under an alleged adoption.*

See LIMITATION ACT, 1877, SCHEDULE II, ARTICLE 118. **116 P R 1901**

14. *No time limit for the foreclosure of a mortgage by conditional sale.*

See MORTGAGE. **57 P R 1908**

15. *Suit against a Municipal Committee—Limitation of.*

See MUNICIPAL COMMITTEE. **58 P R 1875**
10 P R 1877

16. *Hindu family—Right of Hindu widow to sue for husband's share of divided property—Partition—Limitation.*

See PARTITION **100 P R 1876**

17. *Limitation in pre-emption suits under Punjab Pre-emption Act.*

See PUNJAB PRE-EMPTION ACT, 1905. **74 P R 1909**

18. *Indian Railway Act, 1890, section 77—Loss, destruction, or deterioration of goods—Negligent mis-delivery of goods by Railway Company—Liability of common carriers in India.*

LIMITATION—*contd.*

See RAILWAY ACT. **6 P R 1897**

19. *Absence of one of several parties executing a document—Registration—Limitation.*

See REGISTRATION ACT, 1866, SECTION 36.

20. *Fraud.*

Held, before Act XIV of 1859 came into operation, that fraud prevented limitation from running; and if a party by fraud were kept from a knowledge of his right, time ran from the period when the right of action was discovered. KHAZANA *v.* MAIGHA SINGH. **67 P R 1866**

21. *Suit for breach of betrothal contract.*

Time runs from breach. JODHA *v.* HYAT **69 P R 1866**

22. *Plea of limitation when to be raised.*

Limitation is a matter of jurisdiction, and the defence of limitation may be taken at any time. But to establish this bar defendant cannot ordinarly bring forward in appeal new facts which are not already disclosed on the record. GOPAL DASS *v.* RUTHEE RAM. **92 P R 1867**

23. *Bonâ fide* prosecution of a claim (before the introduction of Act XIV of 1859), *held*, to prevent the operation of the law of limitation. BHAI KESRA SINGH *v.* BHAI CHIRUNJEET SINGH. **18 P R 1869**

24. *Admission of some liability—Plaintiff bound by tenor of defendant's admission.*

An absolute admissiom of *some* liability existing *held*, under Circular Order of 14th March, 1859, to be sufficient to take a debt out of the law of limitation; such admission could be coupled with evidence to prove the amount. The new promise of the defendant, and not the old debt, constituted plaintiff's right, and defendant was only liable according to the tenor of his new promise. FRAMJEE CURTSETJEE *v.* JAMASJEE. **26 P R 1869**

25. Mere ignorance of a right *held* not sufficient. MUSSAMMAT MAEEA DAVEE *v.* SUKH DYAL. **29 P R 1869**

26. *Sale for arrears of revenue—Minors—Act I of 1845.*

Held, that section 24 of Act I of 1845, which required suits to set aside sales for arrears of revenue to be brought within one year from the date of the sale becoming final and conclusive, as provided in section 19 of the Act, applied to minors when they were not sole owners. YOOSUF *v.* THE GOVERNMENT. **62 P R 1869**

27. *Admission of debt within section 1, para. 6, Part II, Punjab Civil Code—Schedule of bankrupt no such admission—Dividend in bankruptcy not a part payment to revive debt.*

LIMITATION—*contd.*

By section 1, para. 6, Part II, Punjab Civil Code, which was the law applicable to this suit, a debt barred by limitation was revived by an admission of the creditor's demand from the opposite party. *Held*, that such admission must be in terms so distinct and unqualified, that a promise to pay on request might reasonably be inferred therefrom, and that it must be made to the creditor or his agent.

A bankrupt's schedule of debts verified and filed in Court by him, was not such an admission as would give rise to a new period of limitation; nor was a dividend paid by order of Court under bankruptcy proceedings, such a part payment as would revive stale claims. SHAHZADAH GHOLAM MAHOMED *v.* BHEEM SEIN. **25 P R 1870**

28. *Execution.*

The period of six years allowed by Circular No. 11 of 1859, for the execution of decrees *held* to run from the date of the last order in execution, and not from date of decree. PRUB DIAL *v.* RAM CHAND. **46 P R 1870**

29. The plea of limitation can be considered at any stage of the proceedings of a suit. There cannot be a waiver of limitation, for if the plea be valid, the Court has no jurisdiction. (*Per* LINDSAY AND MELVILL, JJ). MYA SINGH *v.* GUNESH DASS. **32 P R 1872**

30. The objection of limitation may be taken at any time, either by way of defence at the first hearing, or in appeal, regular or special. SHAMA *v.* AZIM. **2 P R 1875**

31. *Per* SMYTH, J.—The plea of limitation is not a question of jurisdiction within section 622, Act X of 1877. MEHTAB RAI *v.* NANAK CHAND. **59 P R 1878**

32. *Act VIII of* 1859, *section* 246—*Suit to set aside order under—Omission to adjudicate upon objection.*

Held, that where a claim preferred by an objector in execution of decree has not been adjudicated upon by the Court executing the decree, nor any opportunity been given to the objector of producing evidence in support of his claim, the limitation of one year, prescribed for suit to set aside an order under section 246 of Act VIII of 1859, does not apply, the order passed, not being such an order as is contemplated by that section. MUSSAMMAT RAM KOUR *v.* RAI BHAG SINGH. **73 P R 1880**

33. *Mortgage—Suit for redemption—Conditional decree—Omission to execute—Cause of action—Judicial Commissioner's Book Circular No. XI of* 1859—*Period of limitation where definite date is fixed over which mortgage is to extend.*

In a suit for redemption of mortgage, it appeared that in 1851 the representative of the present plaintiffs sued the representatives of the present defendants to recover certain land; that arbitartors were appointed, who arranged a compromise, the terms of which were stated in an agreement filed

LIMITATION—*contd.*

by the then defendents to be that the plaintiff should get immediate possession of half the land, and that in case she paid the defendants Rs. 200 (or as the amount was stated in a supplementary petition, Rs. 210), she should be put in possession of all the land belonging to her: that the said agreement went on to state that as she had not paid the money, the defendants had retained half the land in their possession, giving her possession of half, and that they would give up the rest at once on her paying them the amount awarded by the arbitrators, or if she paid it in four specified instalments on four specified dates, they would give up one-fourth each time; and that a decree was passed giving the plaintiff the land claimed, but allowing the defendants to retain half such land (which was the land now in suit) until payment of Rs. 210, the plaintiff getting possession of the other half according to the arbitrators' award, It was contended that the present suit was barred by limitation, (1) because the transaction was not a mortgage, and the decree not having been executed the circumstance that it was conditional merely entitled the plaintiffs to fall back on the original cause of action, from the date of which limitation would begin to run, and (2) because even if the transaction amounted to a mortgage the limitation, under Judicial Commissioner's Book Circular No. XI of 1859, was twelve years from the end of the two years during which the instalments might be paid, a definite date having been fixed over which the mortgage was to extend.

Held, that unless the transaction could be regarded as a mortgage, the claim was barred, as the conditional decree did not in itself constitute a cause of action, and the decree not having been executed, as the condition was not fulfilled, the plaintiffs could only claim to fall back on the original cause of action. *Ram Singh* v. *Nodh Singh* (93 P. R. 1879, F. B.), cited.

Held, further, that if the transaction amounted to a mortgage, the terms of the mortgage were those embodied in the above mentioned agreement, and looking at those terms it did not appear that a definite date was fixed over which the mortgage was to extend, the only dates mentioned being those on which the plaintiff would be allowed to redeem portions of the land by payment of the instalments stipulated, and it not being provided that she must redeem within two years, nor that she could not redeem before the lapse of that period; that therefore the limitation of 12 years would not apply, and as the Judicial Commissioner's circular allowed an unlimited period for redemption, the limitation of 60 years under the present law would be applicable.

Held, also, that the before-mentioned agreement embodying the terms on which the defendants would give up the land described as the plaintiffs' property, which they retained in their possession, the consideration for which was the compromise

LIMITATION—*contd.*

of the suit, amounted to a mortgage of the land for Rs. 210, and that the plaintiffs were entitled to a decree for the land conditional on their paying to the defendants the said sum of Rs. 210. DEWA SINGH *v.* HARNAM SINGH. **57 P R 1883**

34. *Suit against Municipal Committee—Act IV of* 1873, *section* 19—*Act done, or purporting to be done, under the Act.*

In a suit brought against a Municipal Committee to recover the value of certain bricks alleged to have been wrongfully seized and appropriated by the Committee the lower Courts held on the authority of section 19, Act IV of 1873, that the suit was barred by limitation, in that it was not instituted until after the expiration of three months from the accrual of the right to sue.

Held, that whether the suit were regard ed as one founded on tort, as the plaintff alleged, or on contract, as the lower Court appeared to have regarded it, it was not barred by limitation under the above section, as it was not alleged, and there was no pretence for alleging, that the defendants took the plaintiff's bricks in the exercise of any powers given to them or to the Municipal Committee by the Municipal Act, or in the belief that they had power under the Act to take the bricks. *President Muncipal Committe, Delhi* v. *Harna Mal* (10 P. R. 1877, Civil) and *Ganesh Das* v. *Elliot* 160 *P. R.* 1883, Civil cited. HARBHAGWAN *v.* HASSAN. **79 P R 1884**

Compare *Haji Akbar Ali* v. *Haji Ida.* **79 P R 1884 Note (a)**

Lalu v. *President Muncipal Committee, Amritsar.* **79 P R 1884 Note (b)**

And *Sein Nahin Shah* v. *President, Municipal Committee, Ludhiana.* **79P R 1884 Note (c)**

35. *Limitation—Reference under section* 84 (3) *of the Tenancy Act,* 1887—*Plaintiff's estate under Court of Wards—Delay in making application—Want of leisure on account of plague—Revision—Material irregularity—Occupancy right—Mortgage of—Death of occupancy tenant without heirs—Right of mortgagee as against landlord.*

In a suit by the landlords who were minors under the Court of Wards to dispossess the mortgageee on the ground that the occupancy right had become extinguished by the death of the occupancy tenant (mortgagor) without heirs, the first Court (Assistant Collector) dismissed the case as time-barred, on the ground that the limitation began to run from the date of the transfer, which was more than six years before the date of suit. No appeal was preferred from that order Subsequently the Collector was asked to move the Financial Commissioner, under clause 3 of section 84 of the Tenancy Act, to revise the order of the Assistant Collector, and he submitted the case to the Financial Commissioner. The defendants objected that the Financial Commissioner ought not to inter-

LIMITATION—*contd.*

fere, as the plaintiffs had not availed themselves of the right of appeal, and that the reference was not made until nine months after the case had been decided by the first Court, and that there was no material irregularity.

Held, that the excuse of want of leisure on the part of a public officer (which could not be accepted in the case of a private person) administering the affairs of minors at a time when plague was prevalent in his district, should be accepted as a sufficient cause for the delay.

Held, also, that the application of a rule of limitation, which in fact does not apply to the case at all, amounts to a material irregularity.

Held, further, that the plaintiffs were entitled to a decree, as the interest of the mortgagee could be no greater or last longer than that of the mortgagor, and that the mortgagor's interest having come wholly to an end by reason of his death without heirs the mortgagee's interest ceased with it even if the mortgage was made with the landlord's knowledge. NARINDAR SINGH *v.* LEHNA SINGH. **6 P R 1901 Rev.**

36. *Limitation—Change in the law of limitation—Effect of new law on claims barred under the old law—Limitation Act, 1877, Schedule II, article 120—Punjab Limitation Act, 1900.*

In a suit filed in 1900 by a reversioner of a sonless proprietor to have an alienation of ancestral land made in 1889 by such sonless proprietor declared void, the first Court found the claim barred under Article 120, Schedule II of Act XV of 1877. The Divisional Judge on appeal held that the right to use, though barred under Act XV of 1877 at the date of the institution of the suit, was revived by the operation of the Punjab Limitation Act (I of 1900), which was in force at that date.

Held, that the right to sue barred under Act XV of 1877 before the Punjab Limitation Act (I of 1900) came into force was not revived by that Act. TEKA *v.* SOHNU. **39 P R 1901**

37. *Limitation—Conditional decree for possession on payment of a sum of money does not create a mortgage or new cause of action—Indian Limitation Act, XV of 1877, section 7 and articles 142 and 144—Minority.*

In 1899 plaintiffs sued for possession of the land in suit, which was sold by their mother during their minority in 1886 and obtained a decree setting aside the sale and decreeing possession of the land conditional on payment of Rs. 754—no period being fixed for such payment—plaintiffs did not execute their decree, but brought the present suit for possession in 1907, the youngest of them having attained his majority in 1901.

Held, that the conditional decree did not create a mortgage or "Judicial *hypothec*" and that it did not in itself constitute a cause of action, and that the decree-holder

LIMITATION—*contd.*

must fall back on his original cause of action, and as this arose in 1887, the year of dispossession and commencement of adverse possession, the suit is barred either under article 142 or article 144 of the Indian Limitation Act.

Held also, that the fact of the plaintiffs being minors at the date of alienation could only extend the period to three years from the date when the youngest of them attained his majority under section 7 of the Act. SHAMIR *v.* LADHA SINGH. **100 P R 1909**

38. *Limitation—Starting of, on pleadings—Grant of* shamilat *land by Government—Succession of, on death of grantee.*

By a *sanad*, dated 10th April 1862 of the Government of the Punjab in favour of K. S. certain land out of the *shamilat* of village T. was granted to the grantee rent-free for life, and it was stipulated that the proprietary right was to remain *in the family* of the grantee on his demise subject to assessment. No compensation was paid by Government to the proprietary body and the land continued to be entered in the revenue papers as *shamilat*, K. S. and his widow after his death being shown only in the cultivating column. The brothers of K. S. had not cultivated any of the land, nor did they form a joint family with K. S. in 1862. On the death of K. S. and his widow the plaintiffs, proprietors in the village, claimed the land as *shamilat* and the defendants, nephews and grandnephews, claimed it as members of the family of K. S. with whom the proprietary right was to remain after his demise.

Held, that under the circumstances of the case the word "family" as used in the *sanad*, must be taken to be employed in its restricted sense, *i. e.*, as meaning the wife and children and not all the blood relations of the grantee.

Held also, that as the plaintiffs in their plaint alleged that shortly before the suit they had asked the defendants, who are also members of the proprietary body, to retain possession of the land in suit which is *shamilat*, only to the extent of their own shares, but that they had refused to do so, and as the defendants did not in their pleas challenge the correctness of this allegation, the plaintiffs' cause of action really accrued, not on the death of K. S. or his widow, but when the defendants were asked to give up the area in excess of their shares in the land, and limitation only ran from that date and not from the death of K. S. or of his widow. JAIMAL SINGH *v.* GURMUKH SINGH. **20 P R 1910**

39. *Limitation—Punjab Limitation Act, I of 1900—Suit for possession by collaterals after the death of widow but more than 12 years after the alienation of it by the last male owner.*

Held, following 145 *P. R.* 1907 (*Miran Bakhsh* v. *Admad*) and distinguishing *Khiali Ram* v. *Gulab Khan* (70 *P. W. R.* 1908, F. B.) that a suit for possession of land,

LIMITATION—*contd.*

instituted in 1906 after the death of the widow of the last male owner, by reversioners who had previously obtained a declaratory decree in respect of the gift by her, was not governed by the provisions of the Punjab Limitation Act, I of 1900, and was not barred by efflux of time, mutation in favour of the defendants having taken place on the basis of the gift in 1883, and the last male owner having died in 1886. SOHNU *v.* LABHA. **62 P R 1910**

40. *Held*, that Courts should *suo motu* see that a suit is within time as a whole or in part, notwithstanding that defendant only pleads limitation in regard to part of the claim. MUSSAMMAT NEHAL DEVI *v.* KISHORE CHAND. **97 P R 1910**

41. *Limitation—Suit by reversioners for possession of land mortgaged by male owner more than 12 years before suit and subsequently sold by his widow—merger of mortgage in sale—Punjab Limitation Act, I of 1900, Indian Limitation Act, XV of 1877, article 141.*

On 2nd December 1886 R. K. mortgaged to T. 28 *bighas* of land by way of simple mortgage, the mortgagor retaining possession. R. K. died about 1887. On 7th November 1899 his widow sold the said land and some other land in addition to the said T. for Rs. 2,000 (part of which (Rs. 1,200) consisted of the sum due under the prior mortgage made by R. K.) and delivered possession. On 7th December 1899 T. sold the said land to R. K. R. K.'s widow died about the end of 1901, and on 2nd October 1903 the plaintiff, a reversioner of R. K., brought the present suit for possession against the vendee and his alienee.

Held, by the Full Bench, that inasmuch as the defendants' mortgage from R. K. gave them no right to possession and they had obtained possession solely by virtue of the sale in their favour by R. K.'s widow the suit was governed by the provisions of article 141 of the Second Schedule of the Indian Limitation Act, 1877, and not by the Punjab Limitation Act, 1900, and was consequently not barred by limitation.

Held also, that the mortgage by R. K. did not merge in the sale by the widow, and as a suit for a declaration that such mortgage was void except for the lifetime of R. K. would long since have been barred under article 1 of the Schedule to the Punjab Limitation Act, 1900, the plaintiff was also debarred from challenging it in this suit. KHIALI RAM *v.* GULAB KHAN. **33 P R 1911 F. B**

42. *Limitation—Suit for possession within 12 years from date of mutation, but more than 12 years from date defendant got possession—Punjab Limitation Act, I of 1900, article 2.*

On 9th March 1908 plaintiff, as heir of his deceased father, sued defendants for possession of certain land of his father's in their possession, defendants pleaded that the plaintiff's father had mortgaged the land by deed, dated 16th June 1893, and that the

LIMITATION—*concld.*

mortgagee had sold his rights to them on he 25th January 1898. There had been no mutation in respect of the mortgage except one after the sale, attested on the 18th August 1898, although the mortgagee and defendants had been in possession since 1893.

Held, that as there had been a mutation of names attested within 12 years of suit, the suit was not barred by article 2 of the Punjab Limitation Act, I of 1900, notwithstanding the long possession of the mortgagee. FAZLA *v.* BADAM SINGH. **48 P R 1911**

43. *Limitation—Suit for land, which fell to plaintiff's share on partition—adverse possession—Punjab Land Revenue Act, XVII of* 1887, *section* 122.

Held, that when partition of land takes place and a particular field allotted to B. remains in possession of A., the latter holds adverse possession from date of partition. B. can during the first 3 years apply to the Revenue Court under section 122, Punjab Land Revenue Act, to be put in possession and during the following 9 years sue for possession in a Civil Court. FATTEH DIN *v.* NIKKA. **81 P R 1911**

44. *Held*, following *Nabi Bukhsh* v. *Fakir* (25 *P. R.* 1903), that where, previous to the institution of a suit for pre-emption, the vendee has resold the land to another person and the latter is not made a party to the suit until after the expiration of the period of limitation the suit is barred.

Held also, where limitation has not been pleaded in the first Court nor taken in the grounds of appeal, but only in argument and the plea for its proper decision involved further inquiry into facts, the appellate Court was justified in refusing to entertain it. SHAH MUHAMMAD *v.* PIARA MAL. **84 P R 1911**

LIMITATION ACT (XIV OF 1859).

Section 1.

Filing suit in wrong Court—Date of institution.

Plaintiff filed his suit in the District Court of Hissar within the period of limitation, and his plaint was returned to him for presentation in the proper Court, the Hissar Court not having jurisdiction to entertain the suit. Eight months afterwards, and five months after the period of limitation had expired, plaintiff filed his plaint in the Court at Rohtak. *Held*, that the date of institution of his suit was not that on which he filed the plaint in the Hissar Court, and that accordingly his claim was barred by limitation. HEERA LALL *v.* SHEO BUKSH. **64 P R 1871**

Section 1, clause 1.

1. Before the extension of Act XIV of 1859, *held*, that the period for bringing a suit for pre-emption was to be computed from the date of the transaction—*i. e.* the contract of sale. MEHTAB SINGH *v.* MUL SINGH. **22 P R 1870**

2. After the extension of Act XIV of 1859, and before the operation of Act IX

LIMITATION ACT (XIV OF 1859) —*contd.*

Section 1, clause 1—*concld.*

of 1871, *held*, that the time for bringing a suit for pre-emption was one year from the date the purchaser took possession, notwithstanding section 3 of Act XIV of 1859. That section did not apply to cases where, by the general law of limitation formerly in force, a shorter period of limitation was fixed than that prescribed by the Act. GOORDIT SINGH *v.* MUSSAMMAT JUSSEE. **27 P R 1870**

3. *Pre-emption.*

M. sold N certain land in February 1868 and the latter enjoyed possession for a short time, when he was evicted by M., who disputed the sale. N. sued for possession upon the contract of sale, and obtained a decree, in execution of which, on the 15th July 1870, he obtained possession of the land. R instituted a suit against M. and N. for pre-emption in August following. *Held* that the suit was barred under section 1, clause 1, Act XIV of 1859, as the period of one year was to be computed from February 1868, and not from 15th July 1870. RAMSOOKH *v.* NANOO. **34 P R 1871**

Section 1, clause 6.

See LIMITATION ACT, 1871, SCHEDULE II, ARTICLE 44.

1. *Settlement award.*

In 1866, plaintiff brought a summary suit to be recorded proprietor of certain land thrown up by the river ; his claim was decreed, but he was directed to pay certain dues to the defendant, as provided in the Settlement record. On appeal this decree was affirmed, the Appellate Court referring the plaintiff to a regular suit to correct the Settlement record. More than three years from the date of this order on appeal the plaintiff instituted the regular suit.—*Held*, that whether the order of the Appellate Court was treated as a summary decision or an award in a contested case, the regular suit was barred by Act XIV of 1859. MUNSA SINGH *v.* SOOLTAN. **9 P R 1871**

2. *Settlement award.*

In a contested case during the Settlement of 1867, between the plaintiff and R. D., the father of the defendant, the Settlement Officer decided that R. D. should pay as rent to the plaintiff a sum equivalent to the Government revenue payable by him. More than 3 years after this decision, the plaintiff sued for the arrears of the rent so awarded, none of it having been paid.—*Held*, that the decision of the Settlement Officer was an award which the defendant or R. D. should have contested in a suit brought within three years ; and no such suit having been brought, the plaintiff was entitled to recover the arrears claimed. BUNDE KHAN *v.* LALL DASS. **68 P R 1871**

Section 1, clause 8

—*And clause* 15—*Agistment—Deposit.*

Plaintiff, five or six years before suit, made over some camels to the defendant to

LIMITATION ACT (XIV OF 1859) —*contd.*

Section 1, clause 8—*concld.*

graze. Defendant refusing to restore the camels, plaintiff sued for their value (rupees 400). The original Court dismissed the suit, holding that it ought to have been brought within three years from the date of plaintiff's making the camels over to defendant. The Commissioner on appeal affirmed this decision. On plaintiff's application for a review of judgment, the Commissioner submitted a statement of the case under section 28, Act XXIII of 1861, to the Chief Court for decision. *Held*, that if the limitation was three years, the suit would lie, unless there had been a demand and refusal more than three years before action brought : *Semble*, the defendant being an agister or depositary, the period for suing was 10 years (section 1, clause XV, Act XIV of 1859). GYAN CHUND *v.* MOHUMDA. **23 P R 1872**

1. *Clauses* 9, 10, 15, 16—*Act XV of* 1877, *Schedule II, article* 60—*Suit for cash deposit—Period from which limitation runs—Suit barred under Act XIV of* 1859.

Plaintiff sued on the 17th December 1880 for the amount of two cash deposits made with defendant's father about June 1855. The lower appellate Court held that the suit was within time, as under article 60 of Schedule II, Act XV of 1877, limitation began to run from the date of demand and that the rule was the same under Act IX of 1871, and Act XIV of 1859, section 1. clause 9.

Held, that the suit was barred by limitation : that clause 9 of section 1 of the Act of 1859 clearly has no applicability where there is a written engagement, and clause 15 only applies to suits for the recovery of specific property deposited and not to deposits of money. As therefore under Act XIV of 1859 limitation clearly began to run from the date of the deposit, whether the present claim was regarded as one for money lent (section 1, clause 10), or as one for which no express limitation was provided (section 1, clause 16), the limitation would not exceed 6 years from the date of the loan or deposit and the claim would have become barred while Act XIV of 1859 remained in force. GANESHI LAL *v.* CHUNNI LAL. **74 P R 1882**

Section 1, clause 10.

1. *Bond payable by instalments—Judicial Commissioner's Circular No.* 83 *of* 1859.

Where the amount of a bond was payable by instalments, but there was no condition that default in the payment of any instalment should entitle the plaintiff to sue for the whole amount, it was *held* (over-ruling the circular mentioned above), that plaintiff's cause of action accrued in respect of each instalment on the date on which each became due and not on the date of the bond. The said circular did not acquire the force of law under the Indian Councils' Act. RAM DASS *v.* MOHUR SINGH. **64 P R 1869**

LIMITATION ACT (XIV OF 1859) —*contd.*

Section 1, clause 10—*concld.*

2. *Debt—Collateral mortgage.*

Held, that a suit to recover a debt secured by an instrument, which also mortgaged immoveable property as collateral security, must be brought within the time mentioned in section 1, clause 10, Act XIV of 1859, if the plaint did not ask for a declaration of the creditor's lien on the mortgaged property. ABDOOL HAMID *v.* GHOLAM.
49 P R 1871

3. *Bond payable on demand.*

Limitation runs from date of demand, and not from execution of bond, when bond is payable on demand. JEEWUN SINGH *v.* ANWAR KHAN. **17 P R 1872**

4. The first and only demand made for payment, may be with the suit or the suit itself. JIWAN SINGH *v.* ANWAR KHAN.
26 P R 1873

5 Defendant executed a bond on the 29th April 1869, in favor of the plaintiff for Rs. 492, in consideration of plaintiff's releasing from arrest Mussammat S., against whom plaintiff held a decree. The bond was payable six months after date (on the 29th October 1869), provided that in the meantime Mussammat S. did not pay the amount of the decree, and plaintiff filed his suit against defendant on 5th May 1873. Plaintiff contended that as there was litigation between himself and Mussammat S. until 26th October 1871, in respect of the execution of the decree, the period for suing upon the bond should be taken to run oaly from that date. *Held*, that the suit should have been brought within three years from 29th October 1869. BHAI SAWAYA SINGH *v.* HIRA NAND. **58 P R 1874**

6. *Bond in English form.*

The limitation for a suit on a bond in English form, *held*, to be three years under Act XIV of 1859, and not twelve. *Simla Bank* v. *Garey* (72 *P R* 1873) *overruled.* SIMLA BANK *v.* DUDDY.
77 P R 1875

7. "*Payment to be made within one year.*"

Defendant, on the 15th March 1867, executed a bond by which he agreed to repay the loan to the plaintiff within the period of one year. The bond was registered. Plaintiff sued on the 14th March 1874. *Held*, that limitation ran from the end of the year, and not from the date of execution of the bond, and that the suit was within time. SHER JANG *v.* PARTAB SINGH. **79 P R 1875**

Section 1, clause 12.

—*Mortgage as collateral security—Decree for lien granted where defendant is personally discharged by limitation.*

Though a creditor be barred from obtaining a money decree, binding the defendant personally and his general property, after the lapse of three years, he is not also precluded from obtaining a decree for a lien upon

LIMITATION ACT (XIV OF 1859) —*contd.*

Section 1, clause 12—*concld.*

property mortagaged as security for the debt, if his plaint prays for such lien. SIMLA BANK *v.* DUDDY. **77 P R 1875**

Section 1, clause 13.

—*Suit for partition of joint family property —Participation in profits.*

In a suit for a share of joint family property, it was found that plaintiff had failed to prove any receipt of payment on account of or any actual possession or enjoyment of the property between 1859 and 1873.

Held, that the suit was barred by limitation under section 1, clause 13 of Act XIV of 1859 the right of suit not being revived by anything contained in Act IX of 1871, or Act XV of 1877. PALA MALL *v.* NEHAL SINGH. **142 P R 1890**

Section 1, clause 15.

See SECTION 1, CLAUSE 8, *supra*, *and ib*, CLAUSE 16, *infra*.

Section 1, clause 16.

1. *Moveable property—Ruins of a house.*

Defendant removed a portion (consisting of bricks) of the ruins of a house that had fallen during the rains. In a suit for the value of the materials removed, *held*, that the property must be treated as moveable with regard to the period of limitation applicable. SHAH NEWAZ *v.* GHULAM ALI.
99 P R 1868

2. *Suit for redemption of mortgage—Acknowledgment made after lapse of 60 years from date of mortgage—Effect of such acknowledgment—Suit barred under Act XIV of 1859 not revived under Act IX of 1871.*

In a suit for redemption of a mortgage executed about 1780-81 A. D., the plaintiffs relied on an acknowledgment made in 1846 A. D as bringing their suit within limitation.

Held, that the acknowledgment not having been made within 60 years from the date of the mortgage could not avail the plaintiffs, as the correct interpretation of the words "unless in the meantime" in clause 15 of the 1st section of Act XIV of 1859, is to require the acknowledgment to which effect is given to be one made within the period of 60 years ; that the plaintiffs' suit had therefore become barred under Act XIV of 1859 before Act IX of 1871 came into force, and therefore nothing contained in that Act could revive the right to sue which had already been extinguished. SHEODAN *v.* SURJIT.
109 P R 1884

Section 4.

1. *Admission.*

Held, before Act IX of 1871 was in operation, that an admission of a debt made after the debt was barred by limitation, did not entitle plaintiff to sue. CLARKE & Co. *v.* MACLEOD. **95 P R 1868**

2. *Held*, that an acknowledgment that a debt was due, within section 4 of Act XIV of 1859, sufficient to give rise to a new period

LIMITATION ACT (XIV OF 1859) —*contd*

Section 4—*concld.*

of limitation, should expressly appear; it was not to be inferred. Therefore, the mere acknowledgment of an account, or admission of its correctness, or the debtor's signing his name or attaching his mark to a balance struck, did not constitute an acknowledgment. The acknowledgment required was one that allowed the ordinary legal implication of a promise to pay. An acknowledgment of a debt under the above section gave a fresh period of three years, not six. NUGER MULL *v.* OSMAN.
45 P R 1870

3. *Acknowledgment—Sealing*

An acknowledgment of a debt sealed with a seal bearing the name of the debtor, held to be sufficient under section 4 of Act XIV of 1859. HARNAM SINGH *v.* MUSSAMMAT SHIBBI.
10 P R 1873

4. Acknowledgment obtained by duress is void. HAMILTON *v.* SHOWERS.
62 P R 1873

5. The following document *held* not to be a sufficiently unqualified acknowledgment or admission under section 4 of Act XIV of 1859 ; "Rs. 2,300, balance struck on 7th July 1869." "The scribe is A. and this has been written "as at the request of *B.*" (Sealed by *B*). RUTTUN RAM *v.* HAKIR. **79 P R 1873**

Section 13.

1. *Defendant in jail—N deduction from period allowed.*

Plaintiff's suit was dismissed under section 110 of Act VIII of 1859, both parties being absent. On application of plaintiff his suit was brought on the file again. In the meantime, defendant had been put in jail: and his father petitioned the Court, that proceed; ings might be stayed till his son's release. The Court ordered "a non-suit until defendant "came out of jail," the plaintiff offering no objection to this order. On defendant's release, plaintiff applied to have his case brought on again. *Held*, that his course was to bring a fresh suit unless precluded by the rules of limitation, and that no deduction could be made from the period of limitation on account of defendant's imprisonment, there being nothing to prevent a prisoner in jail from being served with a summons in a suit against him. JANEE *v.* WARIS.
39 P R 1869

2. *Act VIII of* 1859, *section* 62,—*Substituted service—Suit against Military Officer on furlough.*

Section 62 of Act VIII of 1859 doss not provide for the service of a summons on a Military Officer out of the British territories in India, by transmitting a copy of the summons to his Commanding Officer: and therefore the time during which such defendant was absent out of the said territories was excluded from the period of limitation under section 13 of Act XIV of 1859. HOME *v.* JAMSETJEE. **41 P R 1871**

Section 14.

—*Act VIII of* 1859, *section* 110 —*Deducting time during which suit was pending.*

LIMITATION ACT (XIV OF 1859) —*contd.*

Section 14—*concld.*

Plaintiff sued on an unregistered bond that fell due on the 18th September 1869. The suit was filed on the 12th August 1872, and on the 20th of the same month was dismissed under section 110 of Act VIII of 1859. On the 5th October 1872, plaintiff applied for a re-trial, and the defendant was re-summoned for the 18th October, on which date the suit was again dismissed for default of prosecution. On the 20th December 1872, plaintiff filed a fresh suit, the Court having refused to issue another summons on the old plaint. *Held*, that the suit instituted on 20th December was barred by time. LALLU MULL *v.* SHAHZADA MAHOMED. **17 P R 1873**

Section 20.

1. *Debt payable by instalments under decree.*

Where a debt was decreed to be payable by instalments, an application to enforce payment of an instalment held within time, under section 20 of Act XIV of 1859, if made before the lapse of three years from the date on which the instalment fell due, though made after the lapse of three years from the date of the decree. If the decree directed that in default of any one instalment, the whole amount should be immediately payable, the period of limitation (three years) must be computed from the first default. CHUNDOO LALL *v.* MUSSAMMAT SURFRAZ MEHAL BEGUM. **52 P R 1870**

2. *Proceeding to enforce decree.*

Where a plaintiff obtained a decree for land in two villages, and obtained possession of the land in one in execution, *held*, that this was a proceeding to enforce the original decree within section 20, Act XIV of 1859. KURM CHUND *v.* GOKUL CHUND. **53 P R 1871**

3. *Proceedings to keep decree in force—Second suit.*

Where plaintiff obtained a decree in 1867, and took no steps to execute it, but owing to the suggestion or order of the Court of first instance, dropped the proceedings and brought a second suit,—*held*, that though the second suit was barred by section 2 of Act VIII of 1859, it should, under the circumstances, be treated as a proceeding under the Limitation Act sufficient to keep the first decree in force. HANSRAJ *v.* HARBAKSH. **16 P R 1874**

4. *Execution of decree—Proceedings against one of several judgment-debtors—Release of judgment-debtor by act of decree-holder.*

When a decree is passed against several defendants, it is kept alive, as against the rest, by proceedings duly taken in execution against one or more of their number. A decree-holder may by abandoning proceedings in execution against one of several judgment-debtors,

LIMITATION ACT (XIV OF 1859) —*contd.*

Section 20—*concld.*

lose, under certain circumstances, the right to enforce the decree against the rest. *A* obtained a decree for Rs. 103-2-0 against *B* and *C*, in July 1870; and in July, 1871, sued out execution against *B* alone, who paid Rs. 32 on the understanding that *A* should look to *C* for payment of the balance. In consequence of this compromise, the case was struck off the file on the 7th July, 1871. On the 2nd August, 1873, *A* applied for execution against *C* in respect of the balance of the decree. *Held*, that the proceedings taken by *A* against *B* in July, 1871, kept the decree alive as against *C*, who was not released by the compromise then effected between *A* and *B*. SARJAN MAL *v.* MAMU. **38 P R 1874**

Sections 20, 21.

—*Execution of decree for money—Act VIII of* 1859, *section* 2.

A decree for money against the respondent having been obtained by the appellant on the 5th October 1866, the former made payments, on account up to October 1869, on the 22nd of which month the appellant made a *bonâ fide* application to execute the same in respect of the unpaid balance. An order to that effect was refused by the Court which made the decree, but the respondent nevertheless made further payments on account.

On the 4th May 1871, a fresh application for execution was made, which was eventually again refused, the Chief Court of the Punjab holding that the decree having been obtained before the introduction of Act XIV of 1859 into the Punjab, the case must be governed by the provisions of section 21 and not by section 20 of that Act.

Held, by the Privy Council, that the application of 22nd October 1869 was a proceeding to enforce the decree within the meaning of section 20, and having been taken within three years next preceding the application of 4th May 1871, this last application was not barred by section 21.

The prohibition laid down in section 20 does not on the true construction of section 21 apply to judgments in force at the time of passing the Act. THE DELHI AND LONDON BANK *v.* ORCHARD. **7 P R 1878**

Section 21.

1. *Keeping decree alive.*

Proceedings taken by a judgment-creditor to establish his right to certain attached property of the judgment-debtor, held to be proceedings sufficient to keep the decree alive under section 21 of Act XIV of 1859. RAM SINGH *v.* BADAN SINGH. **9 P R 1872**

2. Plaintiffs obtained a decree in 1866, and on 23rd February 1868 (the defendant having been adjudicated bankrupt) applied to the Bankruptcy Court to be registered as creditors. On the 24th August 1868 they petitioned the same Court for payment of a dividend. In February 1871 their debt being

LIMITATION ACT (XIV OF 1859) —*concld.*

Section 21—*concld.*

still unsatisfied, they applied for execution. *Held*, that the proceeding of the plaintiffs taken in the Bankruptcy Court in February and August 1868 kept the decree alive under section 21 of Act XIV of 1859. *Billings* v. *The Bank of Upper India* (*No.* 4 *P. R.* 1872), followed. SIRDAR JULLAL-UD-DEEN *v.* KALU MULL. **74 P R 1873**

MISCELLANEOUS.

—*Acts XV of* 1877, *IX of* 1871, *and XIV of* 1859—*Suit for redemption of mortgage—Acknowledgment by one of several mortgagees.*

In a suit for redemption of mortgage, it was found that the mortgage sought to be redeemed took place 69 years before suit, and that therefore the claim was barred by limitation, unless the mortgagors could avail themselves of an acknowledgment made by one of the mortgagees, B. S.

Held, that if the suit was governed by the law contained in Act XIV of 1859, or Act IX of 1871, the said acknowledgment could not avail the plaintiffs, as it was not signed by all the mortgagees in person or by those claiming under them, and it was wholly immaterial whether B. S. could be regarded as the agent of the other mortgagees, an acknowledgment by an agent being wholly inoperative to extend the period of limitation in a suit for redemption governed by either of the above Acts.

Held, further, that the present suit, though instituted after the 1st October 1877, was governed by the provisions of Act XIV of 1859, as the claim was extinct before Act IX of 1871 came into force, and *à fortiori* before Act XV of 1877 was passed. HAKIM DEVI DYAL *v.* PRAB DYAL. **85 P R 1880**

LIMITATION ACT (IX OF 1871).

Sections 1, 2, 4.

See LIMITATION ACT (XV OF 1877), SECTIONS, 1, 3. **23 P R 1883**

Section 5.

Dies non—Holidays.

In a suit for pre-emption brought before Act IX of 1871 came into force, plaintiff's cause of action accrued on the 2nd September 1871, and the plaint was filed on the 1st October 1872. The Civil Courts were closed for a holiday during the month of September 1872. *Held*, that the days in September could not be treated as *dies non*, and that the plaintiff's suit was barred by time, one year being the period for suing. BHAGGAT SINGH *v.* MUSSAMMAT RUPAN. **56 P R 1873**

Section 5 (*a*).

Act IV of 1872, *section* 23—*Pre-emption—Expiry of period fixed for payment on a holiday—Tender of payment to sheriff on a holiday.*

The last day fixed by a decree of Court for payment of pre-emption money fell on

LIMITATION ACT (IX OF 1871)—*contd.*

Section 5 (*a*)—*concld.*

a holiday. The pre-emptor tendered payment of the money on that day to the sheriff at his house who refused to receive it. On the following day the money was paid into Court.

Held (BOULNOIS, J., dissenting) that the payment was in time.

Per LINDSAY, J.—The provisions of section 5 (*a*) of Act IX of 1871 apply to decrees in pre-emption suits. Where therefore, the last day allowed for payment falls on a holiday, a payment by the pre-emptor on the following day when the Court re-opens is within time.

Per BOULNOIS, J.—*Contra.*

Per BOULNOIS AND LANSAY, JJ.—The sheriff rightly refused to receive the pre-emption money, tendered at his private residence on a holiday.

Per CAMPBELL., J.—THE sheriff might have received the pre-emption money when tendered, and the tender to him amounted to a payment into Court. SHAMS-UD-DIN *v.* PIR BAKSH. **31 P R 1877**

Section 13.

—*Bond—Excluding day on which right to sue accrued.*

Defendant on the 23rd December 1868 executed and registered a bond "payable at any time within one year." *Held*, that taking the latest day for payment to be 22nd December, 1869 plaintiff's right to sue accrued on the 23rd if the bond were not paid on the 22nd; and excluding the 23rd December 1869 (under section 13, Act IX of 1871) from the period, plaintiff's suit filed on the 23rd December 1875, was within time. DULLA MALL *v.* BOLAKI.

38 P R 1876

Section 15.

1. *Prosecuting a former suit in Court unable to try it.*

Plaintiff's mother filed a suit in 1864 in respect of the land now in suit; and in 1870, the Appellate Court of Amritsar dismissed the suit on the ground that the mother had no power of attorney from her sons entitling her to sue. She then obtained a power from her sons, who were absent on military service, and in 1871 filed the present suit. *Held*, that the period from 1864 to 1870 during which the former suit was going on, should be deducted under section 15, Act IX of 1871. SIRDAR BAKSHISH SINGH v. FUTTEH SINGH.

69 P R 1875

2. *Deducting time during which a former suit was pending.*

Plaintiff sued in the District Court on 25th August 1871, on a bond which fell due on 5th September 1868, the limitation applicable being three years. On 31st October, he obtained an *ex parte* decree. On 21st October 1874 (the defendant having in the meantime been in jail for a criminal

LIMITATION ACT (IX OF 1871)—*contd.*

Section 15—*concld.*

offence, and being during that time possessed of no property), plaintiff applied for execution. Defendant got the *ex parte* decree set aside, and at the new trial plaintiff made default and his suit was dismissed on 8th March 1875. Plaintiff took proceedings under section 119, Act VIII of 1859, and on the 30th November 1875 the Appellate Court set aside the judgment passed against him for default. On the 3rd January 1876, the District Court dismissed his suit for want of jurisdiction; and on the 14th January 1876, plaintiff filed his suit in the Small Cause Court. *Held*, that this suit was barred as the time during which he was prosecuting the former suit up to 3rd January 1876, could not be deducted. JYMAL SINGH *v.* BHAGWAN DASS. **35 P R 1876**

3. *And Schedule II, article 165—Award.*

The plaintiff filed an application under section 327, Act VIII of 1859, to enforce an award. The application was presented to the Commissioner on 24th November 1876, who kept it till the 5th December 1876, on which date he sent it to the District Court. The limitation prescribed by article 165, Schedule II of the Limitation Act (IX of 1871), expired between those dates.

Held, that the plaintiff was not entitled to deduct the period his application was pending in the Commissioner's Court, under section 15 of Act IX of 1871, the application not being a "suit" within the meaning of that section, and therefore, that the application was barred. ABDUL REHMAN KHAN *v.* GULAM KADIR KHAN. **79 P R 1877**

4. *Suit instituted in wrong Court—Proceedings before Revenue Officer.*

Plaintiff applied in 1875, in respect to the land in suit, to the Deputy Commissioner as Revenue Officer, to be settled with, on which proceedings were taken which remained pending some time. The present suit for possession was admittedly barred, unless the period during which those proceedings were pending could be excluded under section 15, Act IX of 1871, in computing the period of limitation.

Held, that the application of 1875 was not a suit founded upon the same right to sue as the present and in good faith instituted in a wrong Court, and, therefore, that the time during which the revenue proceedings were pending could not be excluded in computing the period of limitation. KHANA *v.* HOSSEIN KHAN. **52 P R 1878**

Section 16.

—*Act IV of 1872, section 29,—Stay of proceedings by injunction—Proceedings in bankruptcy.*

By section 16, Act IX of 1871, in computing the period of limitation for any suit, "the commencement of which has been stayed by injunction, the time of the continuation of the injunction shall be excluded."

LIMITATION ACT (IX OF 1871)—*contd.*

Section 16—*concld.*

Held, that the time occupied by proceedings in bankruptcy must be excluded under that section with regard to the claim of a registered creditor, as section 29 of Act IV of 1872 operates by way of an injunction. WAZIR MAHOMED KHAN *v.* MAHOMED IMAM KHAN.

66 P R 1874

Section 19.

1. *Fraud—Concealment by co-sharer.*

The village of J. was divided into three pattis, A, L and B. In 1859, the proprietors of A and L having effected a division of certain lands common to both pattis, proceeded, without consulting the proprietors of patti B, to take up a portion of the *shamilat-deh* of the village J, and divided it amongst themselves, giving no share to the proprietors of patti B, who were entitled to a fourth share of the entire *shamilat-deh*. The portion thus appropriated was known by the appropriators to belong to the *shamilat*, but the proprietors of patti B were then ignorant of that fact and only discovered it in the year 1874, when consulting the village records for another purpose. Plaintiff, a member of patti A, to whose share the portion of the common land in question had fallen, held possession from 1859 until defendants, the proprietors of patti B, in 1874 discovered that the land was *shamilat* and ejected plaintiff. *Held*, that plaintiff's possession had not been adverse; that the confidence existing between co-shares, cast upon pattis A and L the duty of acquainting patti B with the fact that the land was *shamilat*; and that, therefore, there was fraud, which, under section 19 of Act IX of 1871, precluded the operation of the law of limitation as against defendants. HAMIR SINGH *v.* ROPO. **55 P R 1874**

2. *Fraud—Pre-emption—Omission to give notice of sale to pre-emptor—Concealment of sale.*

N. and others, residents of Shah Ajmal, sold the well and land in suit in *mauzah* Faruka, which they did not personally cultivate.

In 1872 the entire property was under mortgage, half to K. S. and half to D. D.—D. D. was redeemed, and two-thirds of the well sold to K. S. and S. S. by deed executed on 23rd August and registered on 24th August 1872. The witness to the deed, two in number, were of strange villages (one of them J. K. being the mukhtar of the vendors), and were also witnesses to the registration. The remaining third share in the well was sold by deed in July 1874, and registered the same day, the witnesses both to the deed and registration being J. K. and a stranger from another village.

The yearly papers of 1872 showed as cultivators K. and A. and K. C. son of D. D., and for succeeding years K. and A.—K. C. lost possession in 1872, and K. and A. from that time paid rent to defendants, No visible

1681

LIMITATION ACT (IX OF 1871)—
—contd.

Section 19—*contd.*

change of possession took place, except that K. C. ceased to cultivate, if, indeed, he ever actually did cultivate himself.

Plaintiff did not become aware of either sale until *dakhil kharij* took place, in January 1876, whereupon he instituted the present suit.

Held, that on the above facts, it was not shown that the plaintiff was kept from knowledge of his right to sue by means of fraud within the meaning of section 19 of the Limitation Act, IX of 1871, and, therefore, that the suit was barred.

When a sale of land subject to the right of pre-emption is made without previous notice to the pre-emptor, if the vendor and vendee intentionally conceal the fact of sale, the pre-emptor is kept from the knowledge of his right to sue by a fraud, of which the vendor and vendee are alike guilty; but the mere omission by a vendor to give due notice to a pre-emptor of a proposed sale, is not a fraud, even if the omission is intentional. MURAD *v.* BHAG SINGH.

46 P R 1879

Section 20.

See SCHEDULE II, ARTICLE 62.

1. Where plaintiff sued one of the sureties of a bond, the cause of action on which accrued on 15th September 1868, and relied on a series of letters from defendant extending from June 14th 1870 to June 23rd 1872, as acknowledgments, (the claim against the principal debtor being barred at time of suit) *held*, that the said letters contained an "unqualified admission of defendant's liability" as still subsisting" within the meaning of section 20, Act IX of 1871, that one letter, dated 16th June 1871, being written within three years from the date on which the cause of action accrued, gave plaintiff a new period of limitation extending to June 16th 1874, whereas two letters of the 21st and 23rd June 1872, as acknowledgments, extended the period over three years more, *i.e.* to the latter half of June 1875, and therefore the suit having been instituted on 8th June 1875 was within time. MORICE *v.* THE SIMLA BANK.

2 P R 1878

2. *Acknowledgment—Entry in Settlement Record—Mortgage—Redemption—Signature.*

The mortgage sought to be redeemed took place in 1817. The suit was brought after the lapse of sixty years, but it was argued that limitation was saved by certain entries in the Settlement record prepared in 1875, *i.e.* within sixty years of the mortgage, which amounted to acknowledgments within the meaning of section 20, Act IX of 1871, the law in force when they were made.

The entries relied on were (*a*) in the *Muntakhib* or register of proprietors and holdings. In this the plaintiffs were described as mortgagors and the defendants as mortgagees of the plots in dispute, and the amount and conditions of the mortgage were

1682

LIMITATION ACT (IX OF 1871)—
—contd.

Section 20—*concld.*

given in detail. There was no special signature to this entry, but the *Wajib-ul-arz* which followed immediately and was very short, bore the signatures of the mortgagors and mortgagees, and was headed with a note that all the proprietors had thoroughly understood and attested the entries of rights; (*b*) in the pedigree-table. Here it was shown that the village consisted of 5 families; defendants constituting family No. 1, and plaintiffs family No. 11 Under the plaintiffs' holding, the entry of the *Muntakhib* regarding the mortgage was repeated There was no separate signing of the entries relating to each holding, but there was a general signing at the end, and a special attestation by the defendants that they were responsible for the correctness of the pedigree-table. Opposite plaintiffs' holding there was a note that both proprietors had attested it.

The Divisional Judge held that the signatures were not proved to be of defendants and they did not appear from their position to relate specially to the entries reciting the mortgage. *Held* on appeal to the Chief Court that—

(*i*) it was not very material whether the actual signatures were defendants' or not, for, if they were not, there could be no doubt that they were made by some official acting for the defendants with their full authority. Even if there were no signatures, the acknowledgment would be sufficient if it were shown that the entry was made by a person duly authorized by defendant; and.

(*ii*) that the signatures of defendants were intended as attestations of their proprietary rights in their own holdings as well as of their rights in plaintiffs' holdings in their capacity of mortgagees. They were in actual possession. They must have been present when the entries were made, and they could only have been made on their producing the mortgage-deeds. The defendants' family was most intimately connected with plaintiffs. There was the strongest probability that defendants would be perfectly acquainted with the entries relating to both holdings. It was not the case of a large village in the record of which a proprietor could not fairly be presumed to know anything beyond his own special entries, and, therefore, the case was distinguishable from No. 32 *P. R.* 1880, and 63 *P. R.* 1888. GUL MUHAMMAD *v.* AKBAR.

145 P R 1889

Section 21.

See LIMITATION ACT (XV OF 1877), SECTION 20.

1. *"Single bond"—Limitation—Interest in kind.*

An instrument, after setting forth the consideration, proceeded: "I hereby execute a "bond of Rs. 33 in favour of Haji, with "condition to give him half the produce of "the land situated &c., as long as the sum "of Rs. 40 is not paid." *Held*, that the

1683

LIMITATION ACT (IX OF 1871)—
contd.

Section 21—*concld.*

above instrument was a single bond within 2nd schedule, Act IX of 1871, clause 66, and that the receipt by payee or obligee of a portion of the produce of the land was equivalent to the receipt of interest within section 21 of Act IX of 1871. HAJI *v.* MUSSAMMAT HASAN.

6 P R 1874

2. *Held*, that receipt of the produce of mortgaged land is not equivalent to the receipt of interest within the meaning of section 21, Act IX of 1871, so as to keep the mortgage debt alive. RAM KISHEN *v.* NAWAB.

74 P R 1874

Section 23.

See SCHEDULE II, ARTICLES 41, 42.

Section 27.

—Easement—Right of way.

In a suit for an easement or right of way, the question for decision is whether the way has been openly and peaceably used and as of right without interruption for a period of 20 years ending within two years next before the institution of the suit. (Section 27, Act IX of 1871). Where it was found that the way was not used for more than ten years at most, *held* that the plaintiff's claim to a right of way failed. FATTEH *v.* HIMMAT.

25 P R 1878

Schedule II, article 6.

—Lease of grazing tax—Contract by owner of cattle trespassing to pay penalty—Limitation for suit for tax.

Plaintiffs as lessees of a chak were entitled to grazing fees (1 rupee for each male head of cattle and 1 rupee 8 annas for each female for the season) and to impound cattle found trespassing. The lease also provided that the plaintiffs should not impound cattle if three times the amount of the grazing fee were paid. Cattle belonging to defendants were caught trespassing in plaintiff's chak; and instead of impounding the cattle under their lease, the plaintiffs released them on the understanding or agreement that defendants would pay the grazing fee as if the cattle had been regularly grazing. Fourteen months afterwards plaintiffs sued for Rs. 141 under the agreement. *Held*, that the clause in plaintiffs' lease empowering the levy of an extra fee was a bye-law within the meaning of Schedule II, Article 6, of Act IX of 1871; but that in this case the bye-law had been superseded by a contract. *Held also*, that the contract was a penal contract, and that under it, according to section 74 of the Indian Contract Act, plaintiffs were entitled to reasonable compensation only, and not to the full amount agreed upon. Rs. 40 decreed accordingly. MERI LAL *v.* MUKHTA.

3 P R 1875

Schedule II, article 10.

—Pre-emption—Purchaser taking possession of different parts of the property at different times.

Limitation begins to run against a pre-emptor from the time that the purchaser takes possession; but where the purchaser

LIMITATION ACT (IX OF 1871)—*contd.*

Schedule II, article 10—*contd.*

takes possession of different portions of the land at different dates, limitation begins to run from the last date, when the purchaser is in possession of all the property. The claim of the pre-emptor is one and indivisible and he cannot be held barred as to one portion of the property and within time as to another; while to hold that the time began to run from the date when the first portion of the property was taken possession of, would lead to inconvenience and injustice. DEWA *v.* DIA RAM. **98 P R 1876**

2. *Actual possession—Pre-emption.*

On 3rd February 1876. B, R. purchased a shop from P. The shop was occupied by a tenant who accepted B. R. as his landlord on the same date, and agreed to pay the rent to him. No formal deed of sale was executed or registered till April 1876, owing to the vendor P being in jail in execution of a decree, but the shop was verbally sold on 3rd February 1876, and a mortgage deed relating to the shop made over to the vendee B. R. In March 1877, the plaintiff instituted his suit for pre-emption.

Held, that the sale was complete on 3rd February 1876, that B. R. took actual possession" on that date within the meaning of article 10, Schedule II, Act IX of 1871, and that accordingly, the claim was barred by limitation. RAM DYAL *v.* BELI RAM. **28 P R 1878**

3. *Pre-emption—Actual possession—Sale of share in zamindari village already mortgaged to purchaser.*

Where in a suit for pre-emption, the property sold was an undivided share of a zamindari village, which share was already mortgaged to the purchaser, *held*, that "actual possession," within the meaning of Art. 10, Schedule II, Act IX of 1871, was transferred by the vendor whose possession of the share was undisputed, on the delivery by him to the purchaser of a registered deed of sale which placed him (so far as the vendor could do so) in the same position as the vendor held at the time of the transfer of ownership, that is, in a position to demand in future the profits, which the vendor, but for the sale, would have been entitled to demand. HIMMA MUL *v.* RIKH LAL **160 P R 1879**

4. *Pre-emption—Sale of land in possession of lessee—"Actual possession" when taken by purchaser.*

In a suit for pre-emption instituted on the 1st December 1880, in respect of a sale dated the 3rd March 1875, the plaintiffs alleged that limitation did not begin to run against them until May 1880, when the purchasers obtained possession, as the land had been in the possession of a lessee up to that date. It was found that it was clearly intended to give such possession as

LIMITATION ACT (IX OF 1871)—*contd.*

Schedule II, article 10—*concld.*

the nature of the thing sold admitted of at the time the sale took place, and that the property was completely conveyed to and vested in the purchaser, and that he obtained such possession as before the sale was enjoyed by the seller.

Held, that "actual possession," within the meaning of art. 10, Schedule II of the Limitation Act of 1871, was given on the date of the deed of sale, and that the period of limitation prescribed by that article had expired before the 1st October 1877. *Ram Dyal* v. *Bali Ram* (No. 29 *P. R.* 1878, Civil) and *Himma Mul* v. *Rikh Lal* (No. 160 *P. R.* 1879, Civil) referred to. RAM SARN *v.* HIRDE. **65 P R 1883**

Schedule II, article 15.

1. *Act XX of* 1866, *section* 23—"*Proceeding other than a suit*".

Held, that proceedings taken under section 53 of Act XX of 1866 to enforce payment of a specially registered obligation, were not a suit; and where such proceedings were taken in 1869, a suit instituted more than a year after the date of the decree in the summary proceedings, was barred by article 15, Schedule II, Act IX of 1871. JAMNA DAS *v.* MAHOMED ALI KHAN. **23 P R 1874**

2. *Section* 246, *Act VIII of* 1859, *Regular suit.*

Plaintiff attached certain property in execution of a decree against K. B. (defendant 2). P. B. (defendant 1) objected under section 246, Civil Procedure Code. The case lasted several months, both sides being very dilatory, and at length the Court struck the case off the file and released the property from attachment on the 24th December 1872. This was done in the presence and with the consent of the decree-holder's vakil on the understanding that the decree-holder could subsequently take action on his decree, who afterwards again attached the property. P. B. again objected, and on the 18th June 1873 the house was released from attachment and the decree-holder was directed to bring a regular suit. The present suit was brought within one year from 18th June 1873.

Held, that the year allowed for the suit (15th Article, Schedule II, Act IX of 1871) began to run from the 18th June 1873, and not December 24th, 1872, and therefore plaintiff's suit was not barred. HYDER BAKSH *v.* PIR BAKSH. **43 P R 1875**

Schedule II, articles 41 and 42, and section 23.

Mahommedan Law—Husband and wife—Suit for restitution of conjugal rights, and for recovery against person detaining wife—Demand and refusal.

Held, by the Full Bench, that, in a suit between Mahomedans, when a husband claims as against his wife restitution of conjugal rights, and as against the person detaining her recovery of his wife, such suit being in-

LIMITATION ACT (IX OF 1871)—*contd.*

Schedule II, articles 41 and 42 and section 23—*concld.*

stituted more than two years after demand and refusal (*a*) of restitution of conjugal rights, and (*b*) of possession of his wife, the relation of husband and wife still subsisting, the suit is not barred (*a*) as against the wife under article 42, Schedule II, Act IX of 1871, by reason of section 23 of that Act, but is barred (*b*) against the other defendant under article 41.

In the case of the other defendant, however, it is open to the husband to make a fresh demand of possession of his wife, and if it be not complied with, to institute a fresh suit and enforce his right, notwithstanding the dismissal of the former suit. GHIZNI *v.* MUSSAMMAT MEHRAN. **60 P R 1879**

Schedule II, article 44,

And Articles 143 *and* 145—*Claim on ground of old proprietary right—Discontinuance of possession—Farm—Khana khali estate—Proprietary right granted to farmer under Notification No.* 4158 *of Govt., N. W. P., dated November 28th,* 1851, *and under Regulation VII of* 1822—*Award under Regulation VII of* 1822—*Limitation in suit to contest such award—Regulations XXXVI of* 1803, *VII of* 1822, *and IX of* 1825, *effect of—Malikana, right to—Effect of omission to fix malikana—Adverse possession by farmer.*

Plaintiffs' predecessors in title held the land in suit in the *qasba* of Rewari, then under the Government of the N. W. P., as a revenue-free tenure up to 1838. In that year regular Settlement proceedings commenced, and the said lands were resumed. Plaintiffs' predecessors assertee no proprietary rights though called upon to do so, and were recorded as hereditary tenants. No offer of Settlement, as far as appeared, was made to them, but Governmnt settled the land as a *khana khali* estate with a farmer, ignoring the title of the plaintiffs' predecessors. Subseqently in 1853 proprietary rights in the land were granted to the then farmer, the father of the present defendant, by the Collector acting under the provisions of Regulation VII of 1822 and Notification No. 4158 of the Government N. W. P., dated November 28th, 1851.

In a suit by plaintiffs to recover proprietary possession of the above land, *held*, that assuming plaintiffs' predecessors to have held proprietary possession up to 1838, from the time when the farmer was put into possession under his lease, they discontinued their proprietary possession, and Government was in possession through its leasee, and time began to run against the excluded proprietors within the meaning of Act IX of 1871, Schedule II, article 143, notwithstanding that plaintiffs and their predecessors may have retained the actual occupation of their land, such occupation not being a proprietary possession: and that as more than 12 years had elapsed since such discontinuance of possession, without any intermediate recognition of the plaintiffs' proprietary right, before the institution of the pre-

LIMITATION ACT (IX OF 1871)—*contd.*

Schedule II, article 44—*contd.*

sent suit, the suit was barred under the above article, no new cause of action arising under the circumstances of the case to plaintiffs on the expiryof the period of the farm.

When upon the occasion of a Settlement a proprietor is in proprietary possession of his estate, and asserts his proprietary title, and it is formally recognized, but, in consequence of his refusal to engage for the revenue, he is excluded from the enjoyment of his estate, which is therefore transferred by the Government to a farmer for a definite period, there is not such a discontinuance of possession or dispossession as would support a plea of limitation, under article 143 of Schedule II of Act IX of 1871, to a suit brought at the expiration of such period for recovery of proprietary possession.

But when a proprietor in possession of his estate at the time of Settlement omits to assert his proprietary title, and it is in consequence ignored, and when proprietary possession of his land is given to a stranger by the Government, even for a limited period, in consequence of his omission to claim the incidental right of engaging for the revenue assessed upon his land, in such a case there has been such a discontinuance of possession by the owner, accompanied by possession by the farmer, or such a dispossession of the owner as would bar a suit for the recovery of proprietary possession brought by the latter at the expiration of the period of farm.

In the former case no cause of action has accrued upon the exclusion of the owner; in the latter case there has. Although the law of limitation (Act IX of 1871) fixes the date from which the period of limitation is to run upon the assumption that there is a cause of action, that date is not in every class of case identical with the date of the cause of action upon which the particular relief sought became available, as was the case under Act XIV of 1859, section 1, clause 12. The terms of article 143, Schedule II, Act IX of 1871, only require that the plea should ever a dispossession or discontinuance of possesion 12 years before suit, and the plea is not answered by a replication that the plaintiff could not have recovered immediate possession by suit during the period of farm in a case where the discontinuance of possession or dispossession of the plaintiff afforded grounds for an action to protect his title.

When a Collector, acting in exercise of his powers under section 20 of Regulation VII of 1882 has adjudicated upon a claim to proprietary right of lands in a *khana khali* estate, such adjudication is as between the parties contesting between themselves before the Collector an award by the Collector within the meaning of Act XIII of 1848, or Act XIV of 1859, section 1, clause 6 (re-enacted in Act IX of 1871. Schedule II, article 44), and becomes conclusive between such parties, unless within the period of 3 years prescribed by the above enactments, a suit is instituted in the Civil Courts in order to contest the

LIMITATION ACT (IX OF 1871)—*contd.*

Schedule II, article 44—*contd.*

justice of such award or to recover any property comprised therein. But a declaration by the Collector *proprio motu* that a farmer is proprietor and an order that he be so registered, or an order declining to investigate a claim is not an award which, unless contested, becomes final.

The provisions of Regulations XXXVI of 1803, VII of 1822, and IX of 1825, so far as they bear upon the present case, discussed.

The brief result of these Regulations is that under them the proprietor of land, whose title is recognized, is primarily entitled to engage for the revenue irrespective of the nature of the grant under which he may have held the estate free of revenue; that in the event of his refusal to engage, he is entitled to *malikana*, at a percentage on the *jama*, but under certain circumstances, one of which is the cultivation or leasing of the land by himself while paying revenue to the farmer, he may loss his right to this allowance.

The mere omission to fix *malikana* is not necessarily conclusive against the owner's right to recover possession on the expiration of the period of farm. When malikana is fixed, it is a clear recognition of the owner's title, whether or not his title has been recognized in any other manner. When *malikana* has not been fixed, the omission is only part of the evidence that there was a discontinuance or a dispossession sufficient to answer the action. If there was otherwise a recognition of proprietary title, or if the omission is othervise explained, the mere omission to fix malikana is not fatal to the plaintiff's right to recover.

Per *Plowden*, J.—*Semble*—Under some circumstances the possession of a farmer may become adverse to the proprietor of the land held by him in farm, provided the proprietor has notice that the farmer claims a proprietary title.

Per *Barkely*, J.—Assuming that the land claimed were farmed in consequence of the proprietors' refusal to engage, the farm was terminated by the farmers' acceptance of a proprietary title in 1853, which was conferred upon him after an enquiry into the proprietary rights in Rewari, to which every publicity seems to have been given, and in which a number of claimants had come forward. This was an act adverse to the plaintiffs' title, of which it is not shown that they or their predecessors in title or any of them, had not notice, and the circumstance that they not having accepted the Settlement when offered them could not claim to be settled with as proprietors until the expiration of the term of Settlement is not enough to prevent limitation from beginning to run against them from 1853, as they would have been entitled to sue to have the grant of proprietary right declared to convey no title to the lands claimed by them. In this case their suit would have been barred in 1865, under Act XIV of 1859. *Phula* v. *Krishna* (No. 10 *P. R.* 1874, Civil); *Sarfaraz*

LIMITATION ACT (IX OF 1871)—*contd.*

Schedule II, article 44—*concld.*

Ali v. *Asid Ali* No. 63 *P R* 1875, Civil), *Rura* v, *Bhola* C. A. No 261 *of* 1874), *Sheo Singh* v. *Baj Nath Sahai* (C. A. No. 918 of 1876), *Ram Chand* v. *Khushwaqt Rai* (C. A. No 463 of 1877), and *Imdad Ali* v. *Amir Khan* (C. A. No. 1455 of 1878) referred to. LUTF ALI v. KHUSHWAKAT RAI. **41 P R 1881**

Schedule II, article 62.

1. *Accounts stated—Contract in writing—Limitation.*

Defendants were indebted to A. S. through whom plaintiffs claimed; and on the 11th June, 1864, A. S. being then dead and his widow in possession of his assets, a balance was struck amounting to Rs. 3,782-4-5, and an entry made in the book of the firm of A. S. by one of the defendants (but by which of them was not proved or alleged) as follows: Lekha Bhai "Kanhya Lall, Kothee Mal, Maya "Mal, *Baki, deoni kaddi Mithi Jeth Sudi* "*Ekkam Sumbat* 1921, Rs. 3,782-4-6" This account was reduced by payments made from time to time; down to 14th June 1870, amounting in all to about Rs. 2,480. These payments were entered in the book of A. S. by one of the defendants. For the balance, with interest, plaintiffs sued within three years from 14th June 1870, contending that the entry of 11th June 1864 was "a contract in writing," and that the payments down to 14th June 1870 kept the debt alive under section 21, Act IX of 1871, for three years from the last mentioned date.

Held, that the suit was barred as the entry of 11th June 1864 did not constitute a contract in writting, for the reasons that a contract could not be said to be reduced to writting if, in order to prove it, any oral evidence was required (in addition to that required to proved in hand-writting) and that the entry question required oral proof of the persons bound by it and the person entitled to receive payment. NARAIN DASS v. KANHYA LALL.

48 P R 1874

2. *Accounts stated—Implied promise to pay.*

A balance entered as struck in the books of a creditor, if really struck in the presence of the debtor, although not signed by the latter, is evidence of an account stated on which the law will imply a promise to pay; and the period for suing is three years from the date of striking the balance, under Schedule II, article 62, Act IX of 1871. SHEO DYAL MAL v. SHAMAS-UD-DIN. **61 P R 1874**

3. *Account stated.*

The admission by the defendant to a third party in regard to a debt secured by a mortgage, is not a statement of account constituting a cause of action under article 62, Schedule II, Act IX of 1871. RAM KISHEN v. NAWAB. **74 P R 1874**

4 *Account stated—Promise to pay.*

Held, by BOULNOIS and LINDSAY JJ. (MELVILL J., dissenting,) that the statement of

LIMITATION ACT (IX OF 1871)—*contd.*

Schedule I, article 62—*concld.*

an account gives a cause of action, to be brought within three years from the stating of the account, but only with regard to those items of account that are within three years prior to striking the balance.

Per MELVILL, J.—It is not open to the Court to go behind the statement of account in order to see whether the items constituting the balance struck were more than three years old when the account was stated; all the items are capable of being included in the stated account. SAWAI *v.* BADAN SINGH.
14 P R 1875

5. *Account stated—Items in account more than 3 years old.*

Striking a balance, or stating accounts brings with limitation items that were in themselves beyond limitation. SAWUN *v.* BALMOKUND. **6 P R 1877**

6. *Held*, that an account stated gives a fresh starting point for limitation under article 62, Schedule II of the Limitation Act, 1871, whether some of the items in that account are or are not more than three years old. ATMA RAM *v.* JUMMA KHAN. **41 P R 1877**

7. *Account stated.*

Held, by the full Bench, that a statement of account does not give a fresh starting point unless, 1st, it is in writing and satisfies the requirements of section 20, Act IX of 1871, or, 2nd, amounts to a new contract between the parties, in which case it furnishes a new cause of action. RATTA RAM *v.* MUSSAMMAT NANO. **3 P R 1878**

8. *Acknowledgment—Items barred by limitation.*

A Court of first instance admitted in evidence an acknowledgment of a debt, which embraced items more than 3 years old and consequently barred by limitation. *Held*, that the Appellate Court was bound to enquire and decide whether only items not then barred by limitation were comprised in the balance struck, which was acknowledged by defendants to be due.

A written acknowledgment is only effectual under section 20, Act IX of 1871, in giving a fresh period of limitation for a debt when it is signed before the expiration of the period prescribed for the debt. DYAL SINGH *v.* MANGAL MAL. **28 P R 1878**

Schedule II, article 66.

—Tamassuk—Money lent under agreement to repay on demand.

Plaintiff sued defendant upon an instrument worded as follows: "Whereas I [defendant] "have borrowed the sum of Rs. 10 at interest "of 2 rupees per cent per mensem from "Lalla Shadi Ram [plaintiff], for the purpose "of sowing melons, I do hereby make this "agreement that I will pay the above sum "with interest on demand without demur,"

LIMITATION ACT (IX OF 1871)—*contd.*

Schedule II, article 66—*concld.*

&c. *Held*, that the instrument was a single bond within Art, 66, Schedule II, Act IX of 1871, and that the period for suing upon it was three years from the date of execution of the bond. SHADI RAM *v.* ABDAL RAHMAN.
3 P R 1874

Schedule II, article 75.

—Instalment bond—Waiver.

Plaintiff sued upon a bond under which defendant was to pay Rs. 75 by monthly instalments of Re. 1 each, and in default of payment of one instalment, the whole amount was to become due. The bond was executed 4th January 1871, and defendant failed to pay the first three instalments as they fell due, but made the following payments:—On 11th April 1871 Rs. 4; on 16th September, 1871, Rs. 4; on 22nd October 1873, Rs. 13; on 23rd May 1874, Rs. 10; and on 28th November, 1874, Rs. 10. *Held*, that plaintiff had waived the benefit of the provision in the bond, under Art. 75, Schedule II, Act IX of 1871, and that limitation ran from 28th November 1874. MUSSAMMAT GOLAB DEVI *v.* MUSSAMMAT KISHEN DEVI.
52 P R 1876

Schedule II, article 92.

See PUNAB TENANCY ACT, SECTION 32.

Schedule II, article 95.

Suit to recover value of cattle wrongfully and fraudulently received by defendants.

Plaintiff sued to recover the value of cattle wrongfully and fraudulently received by defendants, representing themselves as agents of S. and appropriated by them to their own use. *Held*, that the suit was one coming under Art. 95, Schedule II, Act IX of 1871, and that limitation began to run from the time when the alleged fraud became known to the plaintiff. BUDHA SINGH *v.* HIRA
19 P R 1878

Schedule II, article 117.

1. *Contract in writing—Registration—Contract signed by one party only.*

Plaintiff and defendant made an agreement in October 1869, for the cutting and carting of wood by the former for the use of the latter. The agreement was reduced to writing and signed by the plaintiff only. It was then registered and delivered over to the defendant, who retained possession of it. In January, 1874, plaintiff sued defendant upon the agreement for certain breaches. It was held by the Lower Courts that the limitation for the suit was three years only, as *quoad* the defendant the contract was not one "in writing registered," he not having signed it. *Held*, by the Chief Court, that the contract was as to both parties to it, a "contract in writing registered," and that the limitation for the suit was six years, under Art. 117, Schedule II, Act IX of 1871, SHER MAHOMED *v.* BERTOLA. **6 P R 1875**

2. *Bond registered by some of the executants only.*

LIMITATION ACT (IX OF 1871)—*contd.*

Schedule II, article 117—*concld.*

Where a bond is registered by some of the executants but not by all, the period of limitation as against those who were parties to the registration is six years. PANDIT KASHI NATH *v.* PANJAB SINGH.
13 P R 1876

Schedule II, article 118.

—Suit for correction of Settlement Records—Government necessary party to suit.

Plaintiffs sued on the allegation that they were in possession, as proprietors, of certain lands, which were recorded, erroneously as they alleged, as the property of defendants, and they prayed that the Settlement record might be amended and their own names entered. The Settlement was concluded 15 or 16 years prior to the present suit.

Held, that the limitation for such a suit is, under Act IX of 1871, Schedule II, Art. 118, six years, to be reckoned from the date of the entry, or, having regard to section 20, Act XXXIII of 1871, from the date when the record of rights was sanctioned; and that in either view, the suit was out of time, and the right to the particular relief sought, barred.

Held, further, that Government was a necessary party to the suit as framed. FAZL DAD KHAN *v.* MEHNDI. **79 P R 1879**

Schedule II, article 132.

—Suit for money charged upon immovable property.

A suit "for money charged upon immovable property" (Art. 132, Schedule II, Act IX of 1871), means a suit directed to enforcing the charge and not merely a suit for money due under an instrument which also charges immovable property. The limitation for the former suit is 12 years; for the latter 3 if the instrument is not registered, and 6, if it is registered. SHANKAR DAS *v.* GHASITA. **73 P R 1876**

Schedule II, article 143.

See LIMITATION ACT (IX OF 1871), SCHEDULE II, ART. 44.
See TENANCY ACT, SECTION 25.

Schedule II, article 143.

1. *Ouster suit to recover possession.*

The law does not compel a tenant with right of occupancy who has been involuntarily dispossessed or ejected, to sue for recovery of possession within one year of the ouster; he has ordinarily twelve years within which to bring his suit, KHATIL *v.* SHER ZAMAN; ILAHI BUKSH *v.* AKBUR; *and* SAHIB RAI *v.* KHAIR SHAH.
80 P R 1876
46 P R 1873
19 P R 1876

2. *Abandonment of occupancy rights—Recovery of land from which tenant has been illegally ejected, Suit for—Delay in bringing suit*

Held, that there is no rule of law that a tenant with rights of occupancy, who has

LIMITATION ACT (IX OF 1871)— *contd.*

Schedule II, article 143—*concld.*

been illegally dispossessed by his landlord, is bound to sue forthwith for recovery of possession, and that, if he does not do so and his landlord makes arrangements for the cultivation, the tenant's right of occupancy is extinguished.

Held, further, following Civil Judgment No. 80, *Punjab Record*, 1876, that a tenant with rights of occupancy, who has been forcibly ejected, may sue within twelve years for recovery of possession of the land of which he has been dispossessed. JAMAL-UD-DIN *v.* SADULLA. **54 P R 1879**

Schedule II, article 148.

1. *Mortgage—Acknowledgment by one of several mortgagees.*

Certain property was mortgaged to A. A. M. who took possession under the mortgage. Subsequently, A. A. M's interest in the mortgage descended to M. B. and G. M. in different shares. Before the mortgagor's claim to redeem had become barred by limitation, G. M. gave the mortgagor an acknowledgment of his right to redeem in respect of the whole property. After the period of limitation reckoned from the date of the mortgage had run out, but within 60 years from the date of G. M's. acknowledgment, the mortgagor sued M. B. and G. M. for redemption of the whole property. *Held*, that the claim was barred by limitation.

Where there is but one single mortgage to a number of persons, an acknowledgment by one of such persons cannot, under article 148, Schedule II, Act IX of 1871, give a new period of limitation in respect to a portion or a share of the mortgaged property. It must be absolutely without effect or give a new period of limitation in respect of the whole property. *Held*, therefore, that the acknowledgment by G. M. was not sufficient to bring the claim within limitation. The words "by the mortgagee or some "person claiming under him" in Article 148, Schedule II, Act IX of 1871, mean some one of the persons or aggregate of persons who from time to time by purchase, inheritance or otherwise may have been in a position to claim under, *i.e.*, to represent the mortgagee.

Per FITZPATRICK, J.—*Semble.* Where a single mortgage is really a number of mortgages of different properties to different persons, executed in the same deed, the transaction will be treated as a number of different mortgages, for the purposes of article 148, Schedule II of Act IX of 1871, and an acknowledgment by one of the mortgagees in respect of the property mortgaged to him will enable the mortgagor to take advantage of the acknowledgment for the purposes of limitation as against such mortgagee. MUSSAMMAT MAH BIBI *v.* MOTAN MAL.

61 P R 1877

2 *Redemption of mortgage—Acknowledgment—Signature—Seal—Mark—Signature by*

LIMITATION ACT (IX OF 1871)— *contd.*

Schedule II, article 148—*contd.*

touching the top of a pen—Secondary evidence of acknowledgment.

Held, that secondary evidence is admissible to prove a written acknowledgment by a mortgagee under article 148, Schedule II of the limitation Act, 1871, when such written acknowledgment is lost.

Held, also, that signing does not include sealing, and therefore, that an acknowledgment which was only sealed by the mortgagee would not give a new starting point for limitation under Article 148, Schedule II, of the Limitation Act, 1871.

Held also, that an acknowledgment by a mark or a signature by touching the top of the pen would be a sufficient signature within the meaning of article 148, Schedule II of the Limitation Act, 1871. DEOTA *v* KESHO. **93 P R 1877**

3. *Acknowledgment of mortgage—Admission in deposition signed by mortgagee—Elder brother acting on behalf of younger brother.*

In a deposition in writing recorded in 1857 in a previous suit, and signed by the mortgagee K. M. he admitted the title of his mortgagor. To that suit, R. co-mortgagee was no party, but it was found that, in accordance with the practice in those days K. M. as head of the family was acting for R. his younger brother. In a suit instituted in 1877, for redemption of mortgage, *held*, that the admission in the deposition of 1857 signed by K. M. was a sufficient acknowledgment of the title of the mortgagor within the meaning of article 148, Schedule II of the Limitation Act, 1871, and that, as the admission of 1857 was made by K. M. on his own behalf, and as agent of his brother R. the claim was within limitation. KHAIR MUHAMMAD *v.* AHMUDIN.

78 P R 1878

4. *Acknowledgment of mortgage—Entry in Summary Settlement—Person "claiming under" the mortgagee—Sub-mortgagor.*

In a suit for redemption of part of the property mentioned in a deed of mortgage, instituted after the lapse of more than 60 years from the date of the mortgage, the plaintiffs relied upon two entries in two separate records of summary Settlements as acknowledgments within the meaning of Art, 148, Schedule II of Act IX of 1871. It appeared that at some date subsequent to the original mortgage a sub-mortgage had been made of the property in suit, which was afterwards redeemed. The first entry relied upon mentioned the property in question as under mortgage to the said sub-mortgagee and though the particular entry was not signed, among the signatures at the end of the Khewat was that of one of the representatives of one of the original mortgagees. With regard to this entry, it appeared from the Khewat that there were other entries in which the person signing as above was interested.

LIMITATION ACT (IX OF 1871)— *contd.*

Schedule II, article 148—*contd.*

Held, with regard to this entry, that it could not avail the plaintiffs, as the signature above alluded to at the end of the Khewat among a mass of other signatures could not be held to be a signature to the particular entry above described with which it was not apparently in any way connected, and which did not upon the face of it purport to affect the subscriber at all.

The second entry relied upon mentioned the mortgage and the sub-mortgage : the entry itself was not signed, but at the end of the Khewat appeared the signature of the sub-mortgagee.

Held, that this entry also was not an acknowledgment signed by the mortgagee, or a person claiming under him within the meaning of the Limitation Act, as assuming that the signature of the sub-mortgagee related to the entry, a sub-mortgagee could not be said to be " claiming under " the mortgagee, so that an acknowledgment of the original mortgagee's title in writing signed by him would bind the original mortgagee.

The words " or person claiming under " him " in Art. 148, Schedule II of Act IX of 1871, contemplate the extinction of the original mortgagee, and his representation by another person, to whom his rights as mortgagee have been transferred, and who is substituted for the original mortgagee *quoad* the mortgagor. LALA MAL *v.* GHULAM MAHOMED. **32 P R 1880**

5. *Suit for redemption of mortgage—Effect of acknowledgment by one of two mortgagees—Acknowledgment by agent.*

In a suit for redemption of mortgage, *held*, that an acknowledgment by an agent cannot be held to be the acknowledgment by the mortgagee required by Article 148, Schedule II of Act IX of 1871, or the corresponding section of Act XIV of 1859. *Hakim Devi Dyal* v. *Prab Dyal* (No. 85 *P. R.* 1880) followed. *Khair Muhammad* v. *Ahmudin* (No. 78 *P. R.* 1878) doubted.

Held, further, that an acknowledgment made by one of two mortgagees alone is of no effect to save limitation, even in respect of a portion of the mortgaged property, in cases where the mortgage is a single transaction.

Mussammat Mah Bibi v. *Motan Mal* (No. 61 *P. R.* 1877) followed. HAKIKAT RAI *v* GANGA DAS. **157 P R 1888**

6. *Suit for redemption of mortgage—Acknowledgment of the title of the mortgagor by a person claiming under the mortgagee.*

In a suit for the redemption of a mortgage made in 1824 by the ancestor of the plaintiff to the grandfather of the defendants Nos. 1 to 3, the plaintiff contended that the right of redemption was not barred as the father of the defendants Nos. 1 to 3 had acknowledged his right of redemp-

LIMITATION ACT (IX OF 1871)—*contd.*

Schedule II, article 148—*concld.*

tion both in the settlement records of 1854 and 1872, and also in a written statement filed by him in a Civil suit in 1873 The defendants urged that as under Hindu Law they had a vested interest at their birth in the mortgage and were co-parceners with their father, his admission was not sufficient to save the plaintiff's right being barred by limitation under Article 148 of Schedule II of Act IX of 1871.

Held, that the acknowledgment of the father was sufficient to save limitation under article 148 of Schedule II, as he was the sole heir to his father, the original mortgagee, and must therefore be regarded as a person claiming under the mortgagee, and none the less so because his own sons at their birth acquired as against him certain vested rights which, though partaking of a proprietary character, lacked the incident of dominion. BHAWANI DAS AND OTHERS v. MUHAMMAD YUSAF.

62 P R 1900

Schedule II, article 167.

1. *Schedule II, article* 167—*Execution of decree.*

A obtained a decree for money lent against *B* and *C* in March 1864. In July 1866, a certificate of non-execution of the decree was sent to Calcutta. In December 1868, a suit was brought by *A* against *B* and *C* on the unsatisfied decree of 1864; and on the 15th May, 1869, *B's* name was removed from the record as he had gone to England. In November 1869, an action was brought at Westminster against *B* upon the decree of 1864, but *A* did not go to trial, doubting *B's* means of paying. On the 15th May 1872, application was made in the Court in India to execute the decree of 1864, against *B*. The Lower Courts rejected the application as being barred by time. *Held*, by the Chief Court, that the proceedings taken by *A* kept the decree alive under Schedule II, Art. 167, Act IX of 1871. DELHI AND LONDON BANK v. PLOWDEN. **5 P R 1875**

2. *Alteration of decree by agreement.*

Plaintiff obtained a money decree in 1860, and in 1868 applied for execution. He and defendant then informed the Court that they had agreed that the decree should be paid by certain instalments: and the case was struck off on March 8th, 1869. In December 1872, plaintiff applied for execution alleging that the instalments had not been paid according to the agreement. This and several subsequent applications were struck off by reason of the plaintiff not pressing them. In December 1874, he again applied for execution. *Held*, that plaintiff had not taken any steps required by law to keep alive the decree as altered by agreement in 1869, and the application of December 1874 was barred by time. DWARKA DAS v. RAM SARN **46 P R 1876**

LIMITATION ACT (IX OF 1871)—*contd.*

Schedule II, article 167—*contd.*

3. *Application to enforce decree.*—

Per BOULNOIS and LINDSAY, JJ.—An application to the Court that passed the decree for a certificate of non-satisfaction and to transmit a copy of the decree to another Court, under section 285, Act VIII of 1859, is in itself a sufficient application to enforce or keep in force the decree within Art. 167, Schedule II, Act IX of 1871; it is not necessary to bring the process to the knowledge or notice of the judgment-debtor.

Per CAMPBELL, J. The object of the legislature was to bring to the notice of the judgment-debtor that proceedings were being taken against him; and therefore a mere application for a certificate of non-satisfaction does not keep the decree alive. SIMLA BANK v. TEAL.

51 P R 1876

4. Decree was obtained in 1863, and in 1864 the parties filed an agreement, which the Court recognized, that defendant should pay half-yearly instalments, and in default of payment of two consecutive instalments, the whole should be due; the first instalment to be paid on 25th July 1864. Instalments were paid for some time, but on 15th June 1872 plaintiff, applied for execution in respect of the instalment due January 1872; on July 3rd, notice was drawn up under section 216, Act VIII of 1859, on the 9th July, the notice was given to the peon for service; and on 12th July, the Nazir reported failure of service; on 15th July, the case was struck off. On July 12th, 1875, plaintiff applied for execution of the full balance then due, certifying to payments made up to August 1872. *Held*, that the last para. but one of Art. 167, Schedle II, Act IX of 1871, applied to the case, and that the application of July 12th, 1875, was barred by time. SULEKH CHAND v. AJUDHIA PRESHAD.

89 P R 1876

5. *Decree providing that execution shall be stayed for a certain period—Date from which limitation beg ins to run.*

On 4th November 1873, M. M. obtained a dercee against R., but the decree provided that execution should be stayed until a cross-suit, lodged by R., should be decided. The su it lodged by R. was finally decided on 7th March 1876, and M. M, on 4th April 1877 (within 3 years from the date of the final decision in the cross-suit, but after 3 years from the date of the decree obtained by M. M.,) applied for execution.

Held by LINDSAY AND PLOWDEN JJ. (SMYTH J. dissenting,) that when a decree is passed which by its terms is not to be executed till a future date, the date of the decree, and not the date when it becomes enforceable is to be taken in computing the period of limitation under Clause I, Article 167, Schedule II. Act IX of 1871, and therefore, that the application of 4th April 1877 was barred.

Per SMYTH, J. contra. In the case of a decree which by its terms is not to be executed till a future date, "the date of the decree," in the sense in which those words are used in Clause I, Article 167, should be taken to be the date on which the decree becomes enforceable, and not the date on which the decree was passed. ROBSON v. MAHOMED MAHSON. **43 P R 1878**

LIMITATION ACT (IX OF 1871)—*concld.*

Schedule II, article 167—*concld.*

LIMITATION ACT (XV OF 1877).

Sections 1, 3.

1. *Act IX of* 1871, *sections* 1, 2, 4—*Application for execution made after* 1*st October* 1877.

The judgment of the Privy Council in *Mangal Parshad Dichit* v. *Grija Kant Lahiri Chowdhry* (L. R. 8 I. A. 123, S. C. I. L. R. 8 Calc. 51) explained.

The principal on which the decision in the above case was based was "that an application "for execution of decree is an application in "the suit in which the decree was obtained." It was therefore held that section 1 of Act IX of 1871, which enacted that nothing contained in section 2 or in Part II should apply to suits instituted before the 1st April 1873, excluded the operation of sections 2 and 4 and of the 2nd Schedule. The word "suit" is, however, now interpreted in section 3 of Act XV of 1877 as not including an appeal or an application and section 1 declares that the Act shall come into force on the 1st day of October 1877, and does not exclude from the operation of any part of the Act applications arising out of suits instituted before that date. The limitation for applications made after 1st October 1877 is therefore, under the terms of section 4, that prescribed in the 2nd Schedule annexed to Act XV of 1877, and the decision of the Judicial Committee does not apply, as in the case before it the question was whether Act XIV of 1859 or Act IX of 1871 was applicable, and the effect of the subsequent alteration of the law by Act XV of 1877 was not considered. BANESS v. TURTON. **23 P R 1883**

2. *Execution proceedings—Order passed on objection by judgment-debtor—Plea of limitation raised during pendency of same proceedings—Limitation Acts, XIV of* 1859, *IX of* 1871, *and XV of* 1877—*Application for execution filed after* 1*st October* 1877 *governed by Act of* 1877.

Certain proceedings in execution of decree having been struck off on 21st February 1875 a fresh application was brought on 1st February 1878, which, together with a subsequent application, dated 10th March 1880, went off in default. Another application was filed in April 1881, and whilst this was still pending an order for attachment of a house was passed on 28th June 1881, and an objection by the judgment-debtor that he had paid in full was dismissed on the 27th October. While these same proceedings were still pending, the judgment-debtor for the first time filed an objection on 5th December 1881 to the effect that the application

LIMITATION ACT (XV OF 1877)—*contd.*

Sections 1, 3—*concld.*

of 1st February 1878 was barred as out of limitation.

Held, that as the first application barred by limitation was made in 1878, after Act XV of 1877 came into force, the definition of "suit" in section 3 of that Act, which excludes applications made it impossible to treat that application as a stage in a suit governed by Act XIV of 1859, and that in consequence of that definition, Act XV of 1877 was the law applicable to the proceedings in question. FATTAH MUHAMMAD *v.* LALJI MAL. **143 P R 1883**

Section 2.

See LIMITATION ACT (XV OF **1877**), SECTION 20. **62 P R 1881**

Section 3

—*And 2nd Schedule, articles* 140, 142, 144 —*Alienation by sonless proprietor—Starting point of limitation—Plaintiff—Right to sue.*

See SCHEDULE II, ARTICLE 144 *infra.* *Also* RIGHT TO SUE. **18 P R 1895**

Section 4.

1. *And Sections* 5 *and* 12.—*Civil Procedure Code (Act X of* 1877), *section* 541—*Appeal presented without required copies of orders—Appeal when instituted.*

B. S. presented to the Commissioner of Amritsar, within time, a petition of appeal accompanied by a translation of the judgment of the first Court, but without a copy of the decree or of the original judgment itself, and the appeal was returned to be presented again with the necessary copies required by section 541, Act X of 1877. It was again presented about 15 days out of time, and was rejected as barred by time.

Held, that the presentation of the memorandum of appeal unaccompanied by the requisite copies was not such a presentation as would bring the appeal within time. An appeal under the Civil Procedure Code is not presented within the meaning of section 5 of the Limitation Act, unless it be accompanied by the copies prescribed by the Code. BHAG SINGH *v.* JHANDA SINGH. **7 P R 1879**

2. *Appeal when presented.*

Held, per Plowden J. (following 7 P. R. 1879) that an appeal is not presented within the meaning of section 4 of the Limitation Act, 1877, unless the memorandum of appeal be accompanied by a copy of the decree and both be presented within the prescribed period. NIHAL SINGH *v.* ISHAR SINGH. **147 P R 1879**

3. *Suit for pre-emption—Plaint filed within one year of the date of the sale impeached —Return of plaint to be presented again when a clue to defendants could be found—Effect of such irregular return of plaint.*

In a suit for pre-emption in which limitation was pleated, it appeared that the plaint

LIMITATION ACT (XV OF 1877)—*contd.*

Section 4—*contd.*

was presented within one year from the date of the sale impeached, but was returned to plaintiff, after summonses had been issued and defendants could not be found with a direction to plaintiff to present it again when a clue to the defendants was found. It was again presented after more than a year had elapsed from the date of the sale

Held, that the suit was within time, the return of the plaint temporarily being an irregularity of the Court not warranted by law, which could not operate to the injury of the plaintiff, inasmuch as the law of limitation does not apply to that which the Legislature did not contemplate, *viz.*, a second presentation of a plaint which had once been received and was irregularly committed to the custody of the plaintiff, not being either rejected or returned for amendment. TORABAZ *v.* PIR BAKHSH. **22 P R 1887**

4. *Presentation of appeal unaccompanied by a copy of the decree.*

Held, that the presentation of a memorandum of appeal accompanied by a copy of the judgment, but not of the decree of the lower Court, is not a proper presentation of the appeal within the meaning of section 4 of the Limitation Act.

Nihal Singh v. *Isher Singh* (No. 147 *P. R.* 1879), followed. AKBAR ALI *v.* RAM CHAND. **53 P R 1887**

5. *Limitation—Plaint insufficiently stamped when deemed to have been presented—Civil Procedure Code*, 1882, *section* 54—*Limitation Act*, 1877, *section* 4.

A plaint filed within the prescribed period of limitation was admitted and registered. Subsequently, it was discovered, on objection by defendant, that the claim was undervalued, and that the plaint was not sufficiently stamped, but when this transpired the period of limitation prescribed for the suit had expired. The lower Court therefore dismissed the suit as time-barred.

Held, that this order could not be maintained as it was the duty of the Court, under the above circumstances, to require the plaintiff to correct the valuation of the relief sought within a fixed time in accordance with the provisions of section 54 (*a*) of the Civil Procedure Code, and that the case must be returned to the lower Court for that purpose.

Held, further, that if the plaintiff complied with such order, the suit would be within time, as the date of the institution of the suit for purposes of limitation must be taken to be the date of the first presentation of the plaint. JHANDA KHAN *v.* BAHADUR ALI. **3 P R 1893**

6. *Suit, institution of—"Plaint presented to the proper officer"—Plaint presented to proper officer within limitaiion and returned to plaintiff by such officer with order endors-*

LIMITATION ACT (XV OF 1877—*contd.*

Section 4—*contd.*

ed thereon to present it to Subordinate Court deputed to try the suit—No subsequent presentaiion within time of limitation—Limitation Act, 1887, *section* 4 "*Material irregularity.*"

Plaintiff on the 25th July 1892, filed his plaint, which was on that date admittedly within time, in the Court of the District Judge, Kangra, who endorsed an order thereon that "the case be made over to the Munsif of Kangra" and returned the plaint to the plaintiff that he might himself take it to the Munsif's Court. Plaintiff, however, did not present the plaint to the Munsif till the 11th November 1892, on which date limitation applicable to the suit had expired. The District Judge, on appeal from the Munsif's order decreeing plaintiff's claim, dismissed the suit on the ground that the claim was time-barred.

Held, that the plaint having been originally presented to the proper officer within limitation was not liable to dismissal Because, having been improperly given back to the plaintiff by that officer, it was not again presented to the Court deputed to try the case until the period of limitation had expired, and that the District Judge had committed "a material irregularity" in applying a rule of limitation not contained in any provision of the Limitation Act. SETH THANDI RAM *v.* MAHDIA. **7 P R 1895**

7. *Suit against minor—Appointment of guardian* ad litem—*Suit when instituted.*

Held, that a suit to recover money due on a bond in which two of the defendants were minors and the application for the appointment of a guardian *ad litem* to the minor defendants was presented two days after the suit was filed, must be deemed to have been instituted against them when the plaint was filed, and not when the application for the appointment of the guardian *ad litem* was made, as the Code of Civil Procedure does not require that the application should be made with the plaint and from part of it.

In re *Moti Ram v. Rupa Chand* (11 *Bom. H. C. R.* 21), and *Khem Karan* v. *Har Dayal* (*I. L. R. All.* 37), followed. IMAMI *v.* SADDAN AND OTHERS. **18 P R 1901**

8. *And Section* 5.—*Application for leave to appeal* in forma pauperis—*Rejection of application—Extension of time granted for payment of Court-fees—Payment of Court-fees after period of limitation—Sufficient cause for not filing appeal within time.*

An application for leave to appeal *in forma pauperis* was presented by the appellant within the prescribed period of limitation After inquiry as to the alleged pauperism the Judge rejected the petition, but grants. him two months time to pay the Court-feee The Court-fees was duly paid within the

LIMITATION ACT (XV OF 1877)—*contd.*

Section 4—*contd.*

period allowed by the Judge and the appeal was admitted. On the date of hearing the respondent pleaded limitation, as at the time the Court-fees was paid the appeal was beyond time.

Held, that the appeal was not barred by limitation. The prosecution of an application for leave to appeal as a pauper was sufficient cause within the meaning of section 5 of the Limitation Act for not presenting the appeal in time.

Mussammat Intizam Begam v. *Mussammat Waziran* (47 *P. R.* 1899), *Raja Ram* v. *Tilok Chand* (59 *P. R.* 1903), *Jamnabai* v. *Vissondas Rattan Chand* (*I. L. R. XXI Bom.* 576), and *Bai Ful* v. *Desai Manorbhai Bhavani Das* (*I. L. R. XXII Bom.* 849) cited and followed.

Bishnath Prasad v. *Jagarnath Prasad* (*I. L. R. XIII All.* 305), *Abbasi Begam* v. *Nanhi Begam* *I. L. R. XVIII All.* 206), *Keshow Ram Chandra Deshpande* v. *Krishnarao Vinkatish Inamdar* (*I. L. R XX Bom.* 508), and *Aubhoy Churn Dey Roy* v. *Bissesswari* (*I. L. R. XXIV Calc.* 889), not followed. BUTA *v.* PARMA NAND.

84 P R 1904

9. *Plaint—Presentation of a plaint insufficiently stamped through circumstances beyond control of the plaintiff—Payment of requisite Court-fees after expiration of Limitation—Date of institution of suit—Court Fees Act*, 1870, *sections* 6, 28.—*Limitation Act*, 1878, *section* 4.

A plaint insufficiently stamped was presented in the Court of the District Judge on the 14th April 1903, the last day allowed for it by the law of limitation. The reason given was that the treasurer had no stamp of the proper denomination and had informed the plaintiff that he must wait until the Treasury Officer should open the double locks. The District Judge received the plaint and recorded an order making over the case to the Sub-Judge, adding a direction that the deficiency should be made up.

Plaintiff on the same day procured the requisite stamps, but on taking it to the District Judge's Court found that officer had left his Court and was thus unable to file the full stamp duty until the 16th April. The defence pleaded limitation.

Held, by the Full Bench, that in the circumstances of the case the suit should be taken as instituted on the 14th April when the plaint was presented to the District Judge and that the claim was therefore not barred. *Lakha* v. *Munshi Ram* (38 *P. R.* 1900), distinguished. MEHTAB RAI *v.* GOPAL RAI.

104 P R 1905 F. B.

10. *Limitation—Application for leave to appeal* in forma pauperis—*Subsequent appeal in regular form —Payment of Court-fee on regular appeal no retrospective effect.*

The decree of the Divisional Judge now appealed against by plaintiff-appellant was

LIMITATION ACT (XV OF 1877)—*contd.*

Section 4—*concld.*

passed on 7th June 1902. The 90 days allowed for an appeal to the Chief Court would ordinarily have expired on 15th September 1902. From 12th August to 12th October 1902 this Court was closed for vacation. Seven days, from 4th to 10th September 1902, were taken up in procuring a copy of the decree appealed against. On 28th September 1902, appellant filed a petition for leave to appeal *in forma pauperis* with a memorandum of appeal. This petition was dismissed on 22nd October 1902 as barred by limitation. On 7th November 1902 the appellant filed the present appeal with an altered memorandum on a stamp of Rs. 10.

Held, that the appeal was barred by limitation.

Held, further that the payment of the Court-fee on 7th November 1902 could not relate back to the memorandum of appeal which accompanied the petition for leave to appeal *in forma pauperis*, the more so because that petition was itself out of time, and could not be regarded as *bona fide* application. GANESHA SINGH *v.* ARUR SINGH.

78 P R 1906

11. *Plaint—Presentation of insufficiently stamped plaint—Payment of deficiency after the expiry of limitation allowed for the suit —Date of institution of suit—Court Fees Act*, 1870, *sections* 6, 28—*Civil Procedure Code*, 1882, *section* 54 (*A*).

Where a plaint was presented within the prescribed period of limitation on an insufficient stamp, and on discovery of the mistake the requisite deficiency was made good within the time fixed by the Court, but after the expiration of the limitation allowed for the suit.

Held, that having regard to the provisions of the Explanation to section 4 of the Indian Limitation Act, 1877, and section 54 of the Civil Procedure Code and 28 of the Court-Fees Act, 1870, the suit should be regarded as having been instituted on the date when the plaint was first presented and that it was therefore in time. SAIF ALI KHAN *v.* FAZL MEHDI KHAN.

123 P R 1907

Section 4, Explanation.

See COURT-FEES ACT, 1870, SECTION 28

38 P R 1900

See PLAINT, PRESENTATION OF

130 P R 1890

1. *Suit by pauper—Application for leave to sue* in forma pauperis—*Subsequent payment of Court-fee after period of limitation —Date of limitation of suit.*

An application for leave to sue as a pauper to set aside an aucion sale in execution of a decree was presented within the prescribed period allowed by Article 12 of the second Schedule to the Limitation Act. The defendant disputed the alleged pauperism, and pending the enquiry on that question the plaintiff paid into Court the amount of stamp duty required for the suit.

LIMITATION ACT (XV OF 1877)—*contd.*

Section 4—Explanation—*concld.*

The defendant pleaded limitation, as at the time the Court-fees was paid the suit was beyond time.

Held, that the suit was not barred. It should be deemed to have been instituted from the date the plaintiff filed his application for leave to sue as a pauper and not when he paid in the necessary Court-fee.

Jonakdhari Sukul v. *Janki Kour* (*I. L. R. XXVIII Calc.* 427) and *Skinner* v. *Orde* (*I. L. R. II, All*, 241, *P. C.*) cited. RAJA RAM *v.* TELOK CHAND.

59 P R 1903

2. *Limitation Act*, 1877, *section* 4—*Explanation—Plaint insufficiently stamped—Payment of requisite Court-fee after the expiry of limitation allowed for the suit—Plaint when deemed, to have been presented —Date of institution of suit—Civil Procedure Code*, 1882, *section* 54.

A suit for pre-emption was filed within the prescribed period of limitation. Subsequently it was discovered that the plaint had been insufficiently stamped and in accordance with the provisions of section 54, Civil Procedure Code, the plaintiff was directed to supply the requisite Court-fee within a fixed time. This order was complied with by the plaintiff at a time when the period of limitation allowed for the suit had expired. The defence contended that the suit was barred by limitation as the deficiency in Court-fee payable on the plaint had not been paid up within the period of one year from the date on which the cause of action arose.

Held, that the suit was not barred. The date of the institution of the suit for purposes of limitation should be taken from the date of the presentation of the plaint and not from the date on which the requisite Court-fees were subsequently put in.

Jhanda Khan v. *Bahadur Ali* (3 *P. R.* 1893) *Moti Sahu* v. *Chattri Das* (*I. L. R. XIX Calc* 780), and *Skinner* v. *Orde* (*I. L. R. II, All.* 241 *P. C.* cited and followed,

Jainti Parshad v. *Bachhu Singh* (*I. L. R. XV All*, 65, F. B.) *Amjad Ali* v. *Muhammad Israil* (*I. L. R. XX All.* 11 F. B.) *Muhammad Ahmad* v. *Muhammed Siraj-ud-din* (*I. L. R. XXIII All.* 423), *Durga Singh* v. *Basheshar Dayal* (*I. L. R XXIV All*, 218) and *Venkatramayya* v. *Krishnaya* (*I. L. R. XX Mad.* 319), dissented from. TARA SINGH *v.* MUHAMMAD

74 P R 1903

Section 5.

See LIMITATION ACT, 1877, SCHEDULE II, ARTICLES 168 AND 169

Also PARTIES **113 P R 1907**

1. *Court-fees Act* 1870 *Schedule I, articles* 4, 5 —*Application for review presented after 89th day.*

Held, that the provisions of section 5 of the Limitation Act cannot be applied to extend the period fixed in Article 4, Schedule I of the Court-fees Act for filing an application for review of judgment on half stamp. RULDU MAL *v.* SODHA.

39 P R 1879

LIMITATION ACT (XV OF 1877)—*contd.*

Section 5—*contd*

2. *Application for leave to appeal as pauper—Deduction of time requisite for obtaining copies—Expiry of period while Court was closed.*

Where a person applying for leave to appeal as a Pauper had not applied for a copy of the judgment appealed against, until after 30 clear days from the date of such judgment.

Held, that "the period of limitation prescribed for an application for leave to appeal as a pauper" mentioned in section 12 of the Limitation Act, 1877, is the 30 days next following the date of the judgment appealed against, and that as no portion of such period had been accpined in obtaining a copy of such judgment, the time expended in obtaining such copy could not be excluded in computing such period under section 12. JIWAN SINGH *v.* NAGINA SINGH.

82 P R 1873

3. *And sections 2 and 14—Plaintiff whose plaint has been dismissed for want of jurisdiction, re-instituting his suit (after the expiry of the period of appeal) in the same district—Rejection of second plaint—Appeal to Commissioner from both orders of dismissal—Sufficient cause for delay in appealing.*

The plaintiff, whose suit was dismissed for want of jurisdiction, an order being subsequently passed directing the plaint to be returned for presentation in the proper Court, presented the same plaint again in the same district (after the period of appeal had expired) with a supplementary petition praying that another person should be added as a co-defendant, and the case re-heard. The plaint as above amended was again rejected on the ground that the question of jurisdiction having been already decided against plaintiff, his proper course was to appeal from that decision. An appeal was then preferred to the Commissioner, which professed to be from both the above orders of rejection, but which was treated by the Commissioner as an appeal from the first of those orders only. The Commissioner, holding the appeal to be in time under section 14 of the Limitation Act, and differing from the first Court on the point of jurisdiction, remanded the case for decision on the merits.

Held, reversing the order of the Commissioner, that section 14 of the Limitation Act had no application to the case, and, further, that, under the circumstances of the case, the plaintiff was not entitled to any extension of the period of appeal under section 5 of the Act, or any relaxation of the law in his favor. NARAIN SINGH *v.* MUHAMMAD AMIR KHAN.

115 P R 1881

4. *Computation of period for appeal—Deduction of period of pendency of review in lower Court—Sufficient cause.*

LIMITATION ACT (XV OF 1877)—*contd.*

Section 5—*contd.*

In computing the period allowed for an appeal, the time during which an application for review of judgment has been pending in the lower Court should be taken into account, as the fact of an application for review having been made is "sufficient cause" within the meaning of section 5 of the Limitation Act for execusing the delay in presenting an appeal, provided that the appeal is preferred as speedily as may be after the proceedings in review have ended. MUSSAMMAT GANGA *v.* MADHO.

89 P R 1882

5. *Appeal presented after time—Sufficient cause—Deputy of Court.*

Whenever an Appellate Court is asked to extend the ordinary period for filing an appeal, it should record its reasons for being satisfied that "sufficient cause" existed for the appellant not presenting the appeal within time. SARDARNI RAJ KOUR *v.* NEHAL SINGH. **4 P R 1883**

6. *Deduction of time occupied in obtaining copy of translation of judgment—Sufficient cause for extending period for appeal.*

Held, that section 12 of the Limitation Act was not intended to authorize the deduction of the time occupied in obtaining a copy of the translation of the judgment appealed against the judgment referred to by that section being the original judgment, but extreme delay in furnishing such translation might be ground for extending the time under section 5. MUSSAMMAT DYA KOUR *v.* MUSSAMMAT AMRAO KOUR. **145 P R 1883**

7. *Delay in appealing caused by application for review—"Sufficient cause."*

Held, that the proper rule to be applied in cases falling under Act XV of 1877 is that the fact of an application for review having been made is "sufficient cause" for excusing delay in appealing only when the appeal is preferred as speedily as may be after the application has been disposed of. *Mussammat Ganga* v. *Madho* (No. 89 P R. 1882 Civil), cited. SAHIBA *v.* HIRA.

166 P R 1883

8. *Presentation of appeal on last day allowed by section 5, clause 1, but after the hour fixed by the Court by rule for taking petitions—Dismissal of appeal as barred by limitation—Validity of such order of dismissal.*

There is nothing in section 5 of the Limitation Act to oblige a person entitled to the benefit of that section to present his appeal at any particular period in the day, and in the absence of any restriction in the above section, the day must be taken to include the whole of the day on which the Court re-opens, the said "day" including at least the whole of the period during which the Court is open.

Nor can "the day" thus understood be reduced to any shorter period, unless in the

LIMITATION ACT (XV OF 1877)—*contd.*

Section 5—*contd.*

exercise of some authority conferred by law. There being no provision in the law relating to Courts or procedure which empowers the Judge of a subordinate Civil Court to assign by rule certain hours of the working day to certain kinds of business, so as to deprive a suitor of any portion of the period within which he is by law entitled to do a particular act in the course of a legal proceeding, no rule of the above kind could be held to justify a refusal to receive a petition, otherwise duly presented, merely because it is presented after the hour fixed by the Judge. SHIVDIAL *v.* ALADIA.

140 P R 1884

9. *Appellate Court, jurisdiction of—Lower Court refusing to admit appeal after time—Interference with lower Court's discretion.*

Where the tower Court refused to admit an appeal filed 14 days after time, holding that no sufficient cause for the delay had been shown, the Chief Court declined to interfere on appeal from such order, approving the principle laid down by the Bombay High Court (*vide* I. L. R., 6 Bom. 304), that when the law leaves a matter within the discretion of a Court, and the Court after proper enquiry and due consideration has exercised the discretion in a sound and reasonable manner, the High Court will not interfere with the conclusion arrived at, even though it would itself have arrived at a different conclusion. JOTI PERSHAD *v.* CHUNI LAL. **106 P R 1885**

10. *Appeal presented after time—"Sufficient cause" for delay in appealing—Omission to appeal within time owing to mistaken advice of pleader.*

In an appeal filed 86 days out of time the explanation put forward for the delay was that an appeal had been filed against an order of remand in the case under section 562, Civil Procedure Code, which order had been carried out by the lower appellate Court, and resulted in the decree against which the present appeal was filed: that the appeal against the said order of remand had been admitted by a Judge in chambers, but was subsequently dismissed by the Court, on the ground that the order of remand had been carried out; and that no appeal was filed in the first instance from the decree, which was passed nine days before the appeal from the order of remand was instituted, owing to the appellant's pleader advising his client that the result of the appeal against the order would probably be favorable and so render an appeal against the decree unnecessary.

Held, that the mistake alleged in the present case could not be held to be sufficient cause for the delay in presenting the appeal; that it did not follow that, if the order remanding the case had been set aside on appeal, a decree passed while the appeal was pending, and which had neither been

LIMITATION ACT (XV OF 1877)—*contd.*

Section 5—*contd.*

set aside nor appealed against would *ipso facto* cease to be binding on the parties, but that whether this would be so or not, an appeal lay from the decree, and might have been instituted and proceeded with, while the appeal from the order was pending, and the fact of the appellant having been wrongly advised in the matter could not be regarded as sufficient cause for not preferring the appeal within the time prescribed. *Mussammat Dya Kaur* v. *Mussammat Amrao Kour* (No. 145 P. R. 1883), Civil referred to. BISHAN SINGH *v.* KISHAN SINGH.

30 P R 1886

11. *Sufficient cause—Discretion of Court admitting appeal after time—Principles on which superior Court will interfere with such discretion.*

Though a superior Court should interfere on only very special grounds with a conclusion which has satisfied the Court which had first to determine what was sufficient cause within the meaning of section 5 of the Limitation Act for admitting an appeal after time, yet when such subordinate Court has failed to exercise its discretion in a sound and reasonable way, and an appeal against the order based on facts is given from the subordinate to the superior Court, it is the duty of the superior Court to weigh the facts which formed the basis upon which the subordinate Court proceeded and to arrive at its own independent conclusion.

Where, therefore, the lower Appellate Court admitted an appeal after time, laying stress on the goodness of the appellant's case, and holding that in such a case an appeal could be admitted, " even if there were no special cause " for the delay of two days," and that such " elaborate calculations" are needed for computing the time for appealing, that a mistake in the number of days is excusable, and nothing appeared, apart from the above considerations, which could be deemed adequate cause for the delay in appealing, *held*, reversing the judgment of the lower Court, that the appeal to that Court must stand dismissed as out of time. GHARIB *v.* POHLO MAL.

92 P R 1886

12. *Appeal filed out of time—Sufficient cause.*

An appeal from a decree, dated 1st May 1883, was filed in the Chief Court on 1st June 1887, the appellant's explanation of the delay in appealing being that when the decree had been passed, he intended to bring a second suit for possession which he did bring afterwards, taking this, on the first Court's judgment, to be the proper course.

Held, that this was a sufficient cause for his not having appealed within the period prescribed by law, and further, that as he acted *bona fide* in bringing the second suit, and as he filed the present appeal on the second day after he discovered the error committed in bringing the second suit, the

LIMITATION ACT (XV OF 1877)—*contd.*

Section 5—*contd.*

appeal ought to be admitted. GHULAM HUSSAIN *v.* SHAHBAZ KHAN. **161 P R 1888**

13. *Sufficient cause for admission of appeal after time—Deduction of time during which review is pending—Reasonable diligence in presenting appeal—Discretion of Court.*

Held by the Full Bench, that when an appellant has instituted an application for review of judgment in a lower Court, within the period prescribed for appeal, and after such application has been disposed of, presents an appeal from the first judgment after the period prescribed for appeal, it is not by law necessary to the admission of the appeal that the appeal should be presented as speedily as may be after the proceedings in review had ended. The true guide for a Court in the exercise of its discretion in such case under section 5 of the Limitation Act, is whether the appellant has acted with reasonable diligence in presenting his appeal, and he ought ordinarily to be deemed to have acted with reasonable diligence when the whole period between the date of the decree appealed against and the date of presenting the appeal, does not, after excluding the time spent in prosecuting with due diligence a proper application for review of judgment, exceed the period prescribed by law for presenting the appeal.

Mussammat Ganga v. *Madho* (No. 89 *P. R.* 1882) and *Sahiba* v. *Hira* (No. 166 *P. R.* 1883), referred to. KARM BAKHSH *v.* DAULAT RAM. **183 P R 1888 F. B.**

14. *Admission of appeal beyond time—Sufficient cause—Appeal filed in wroug Court.*

The presentation of an appeal within the period of limitation prescribed therefor to a wrong Court in ignorance of the provisions of law may be a sufficient cause within the meaning of section 5 for admitting the same appeal in the proper Court after the period of limitation prescribed therefor has expired. SARDAR PARTAB SINGH *v.* LALA KARAM CHAND.

184 P R 1899

15. *And section 6—Special limitations under Local and Sepecial acts—Applicability of the general provisions of the Limitation Acts to such acts—Registration Act, III of 1877, section 77.*

Held, by the Full Bench that section 5 of the Limitation Act, XV of 1877 is applicable to a suit under section 77 of the Registration Act, III of 1877. NIGAHYA *v.* BALLU MAL.

74 P R 1890 F. B

16. *Appeal in Civil cases—Presentation—Practice—Deposit in a box—Sufficient cause.*

Where the practice of an Appellate Court as to the mode of receiving appeals had been altered and it did not appear that the change of practice was known to the appellant, and his appeal was presented within time according to the former practice, but not according to the new practice.

LIMITATION ACT (XV OF 1877)—*contd.*

Section 5—*contd.*

Held, that sufficient cause was shown for admitting the appeal after the period prescribed by law. SUKHDIAL *v.* JAY SINGH.

101 P R 1890

17. *Chief Court vacation—Civil petitions presented during—Limitation—Civil Procedure Code, section 213.*

The order of the Divisional Judge refusing a certificate for a further appeal under section 40 (1) (*d*), Punjab Courts Act, 1884, was made on 31st July 1898, and the time prescribed for an application for revision to the Chief Court under section 40 (2), *viz.* 30 days, expired on 30th August 1889. The plaintiffs presented an application for revision to the Chief Court on 7th October 1889. The Chief Court was closed for civil business from 15th August to 15th October, both days inclusive, by a Gazette Notification issued by the Local Government.

Held, that the plaintiffs' application for revision was within time. Either section 5, Limitation Act, 1877, or section 7, General Clauses Act, 1887, operated to permit the application to be presented on the day when the Court re-opened, and it would have been in time if presented on 16th October. All Civil petitions filed during the vacation must, as regards limitation, be taken as filed upon the day when the Court re-opens. GANPAT RAI AND MOTI RAM *v.* HIRA SINGH AND KHUSHAL SINGH.

29 P R 1891

18. *Appeal presented after period prescibed therefor—Sufficient cause.*

The plaintiff filed an appeal in the Divisional Court from the decree of the District Judge, and after notice to the respondents it was dismissed. An appeal was then presented to tha Chief Court, when it was discovered that the value of the suit exceeded Rs. 5,000, and that the Divisional Judge should not have entertained the appeal. The Divisional Judge's decree was set aside and the appeal returned to the appellant through the Divisional Court for presentation in the Chief Court which was accordingly done, but beyond the period allowed by law. The plaintiff-appellant was a *parda-nashin* woman.

Held, that the appellant had sufficient cause for not filing her appeal to the Chief Court within 90 days, and that she had acted with due diligence in presenting it within four days aftev she had received it back from the Divisional Judge.

No. 183 *P. R.* 1888 (F. B.), followed, MUSSAMMAT GOUHAR *v.* KHAN MUHAMMAD and MASU KHAN.

66 P R 1891

19. *Sufficient cause for not filing appeal within time—Prosecution of application for leave to appeal as a pauper.*

Held, that the prosecution of an application for leave to appeal as a pauper, which was

LIMITATION ACT (XV OF 1877)—*contd.*

Section 5—*contd.*

rejected, amounts to "sufficient cause," within the meaning of section 5 of the Limitation Act, 1877, for not presenting a regular appeal within time. MUSSAMMAT INTIZAM BEGUM *v.* MUSSAMMAT WAZIRAN. **47 P R 1899**

20. *Suit dismissed for default—Appeal from order of dismissal—Sufficient case for admitting appeals after time.*

Dismissal of an application for an order to set aside a dismissal by default does not affect an appeal from the original order dismissing the suit, such an order having the force of a decree.

Under section 5 of the Limitation Act delay in filing such an appeal can be excused and the period extended, if the Appellate Court is satisfied that the appellant had no notice of the date fixed for the hearing of the original case. SAHIB DITTA *v.* RODA.
83 P R 1902

21. When an appeal is filed after it is time-barred and the appellant desires to take the benefit of the provisions of section 5 or 5 (*a*) of the Limitation Act, the cause of the delay should be stated at the time the appeal is filed. C. *v.* C. AND B.
22 P R 1903

22. *Execution of decree—Death of decree-holder—Abatement of execution proceedings—Admission of application to set aside abatement after time—Sufficient cause Civil Procedure Code,* 1882, *sections* 365, 366, 371, 372 *A.*

In an execution proceeding the decree-holder having died in September 1898, the judgment-debtor, on the 18th October 1899, obtained an order from the executing Court for the removal of the attachment on the ground that no application in accordance with the provisions of section 365, Civil Procedure Code, had been made by the representatives of the deceased decree-holder within the prescribed period of limitation. The circumstances were that the decree-holder who was a Sikh Jat had died and left a will probate of which having been keenly contested by his heirs was not granted to the executors until April 1900. In May 1900 two out of the three executors filed an application for execution, but the judgment-debtor contended that by section 365 of the Civil Procedure Code the application was time-barred.

Held, that the word "suit" includes all proceeding in a suit including the proceedings in execution, and that the executors were bound to make and capable of making the application at the time of the death of the testator, but that, under the peculiar circumstances of the case, there was sufficient cause preventing them from continuing the execution proceedings originated by the testator within the meaning of section 371, Civil Procedure Code, and that therefore under the provisions of section 372 A, Civil Procedure Code, and of section 5 of the Limitation Act, they were

LIMITATION ACT (XV OF 1877)—*contd.*

Section 5—*contd.*

entitled to an extension of the time for making the application to set asaide the abatement order.

Moosa v. *Essa (I. L. R. VIII Bom.* 241), *Khan Bahadur Nawabzada Shamsher Ali Khan* v. *Mussammat Ahmad Alladdi Begam (*9 *P. R.* 1901), *Ram Kirpal* v. *Rup Kuari (I. L. R. VI All.* 269), and *J. C. Bose* v. *Rani Bhagwan Kaur* (63 *P. R*, 1900), referred to PRICE *v.* GOLAK NATH. **39 P R 1903**

23. *Appeal—Presentation of appeal beyond time—Sufficient cause for admitting appeals after time—Limitation Act,* 1877, *section* 5.

Plaintiffs, the daughters of defendant No. 2, instituted a suit for a declaration that defendant No. 1 was not and could not be validly adopted by defendant No. 2, and that certain alienations made by the latter in favour of the former would not affect their reversionary rights. The appellant being a minor was represented by his adoptive mother (defendant No. 2) as his guardian, but at the request of a relation of the minor the Nazir of the Court was subsequently appointed guardian who at the first hearing stated his inability to produce any evidence owing to the illness of the minor, and on the adjourned hearing on the ground that again the minor who possessed the necessary information had not been to see him. On 30th November 1900, the District Judge gave judgment for the plaintiff. On the 2nd January following the Nazir made an application under section 108, Civil Procedure Code, to have this decree set aside, giving as his reason for failure to produce evidence that the minor had been ill and unable to instruct him. After notice to the plaintiffs on 20th March 1901 this application was rejected on the ground that the decree not being an *ex parte* one the petitioner's remedy was either to apply for review of the judgment or appeal to the superior Court. The minor on the 17th June 1901 filed an appeal against the original decree to the Chief Court, and in explanation of the limitation having been allowed to expire contended that the period taken up in conducting the proceedings to set aside the *ex parte* decree should be deducted under section 5 of the Limitation Act. It was also submitted that he being a ward of the Court was engaged from 1st April to 17th May 1901 in getting an order from the District Judge declaring the termination of his adoptive mother's guardianship and that he was also imprisoned by a Criminal Court at the instance of his adoptive mother's agent and was only released on the 13th June and that therefore he was also entitled to a deduction of the time that had intervened between the date he applied to the District Judge for getting himself declared of age to enable him to act for himself and the date of his release from the prison.

LIMITATION ACT (XV OF 1877)—*contd.*

Section —*contd.*

Held, that the appellant had shown sufficient cause within the meaning of section 5 and was fully entitled to claim the benefit of that section, and that the appeal, though filed after the prescribed period, should be admitted to a hearing under the peculiar circumstances of the case. The time occupied in attempting to get the *ex parte* decree set aside and in conducting proceeding before the District Judge for getting himself declared of age and also the period during which he was imprisoned ought to be deducted in computing the time that had occurred between the date of the judgment and the date on which the appeal was filed.

Karam Bakhsh v. *Daulat Ram* (183 *P. R.* 1888) *Ranee Birjobuttee* v. *Partaub Singh* 8 Moo. *I. A.* 160), and *Cursandas Natha* v. *Ladkavahoo I. L. R XX Bom.* 104), cited. *Ardha Chandra Rai Chawdry* v. *Matangini Dassi (I. L. R. XXIII Calc.* 325), distinguished. MAHARAJ NARAIN *v.* MUSSAMMAT BANOJI AND OTHERS. **21 P R 1904**

24. *Review—Second applicatian for—Sufficient cause for delay.*

Held, that the Financial Commissioner is competent to receive and entertain a second application for review under the provisions of section 629, Civil Procedure Code, and section 88 of the Punjab Tenancy Act, even when presented long after the period of Limitation prescribed for such purposes, especially where the party seeking redress was prevented from filing his application not by any omission on his part but by the disagreement of the Civil and Revenue Courts. MAYA DAS *v.* JOWALA SAHAI,
9 P R 1905 Rev.

25. The provisions of this section and that of section 12 are not applicable to the computation of the period of limitation prescribed by section 169 of the Indian Companies Act, 1882. DAULAT RAM *v.* THE WOOLLEN MILLS COY. LD., DEDHI.
95 P R 1908

26. *Appeal—Appeal instituted in wrong Court—Sufficient cause—Carelessness or oversight of appellant or counsel—Limitation Act,* 1877, *section* 5.

Held under the circumstances of the case, that the presentation of the appeal which was of the jurisdictional value of over Rs. 5,000 to the Divisional Court was not a sufficient cause within the meaning of section 5 of the Limitation Act, 1877.

Mere carelessness or oversight of the appellant or his counsel in presenting an appeal in a wrong Court which, by the exercise of due diligence, could have been avoided cannot be recognized as sufficient reason for delay under this section. SANT SINGH *v.* QAIM. **118 P R 19**

27. *Indian Limitation Act, XV of* 1887, *section* 5—*Appeal—Time taken up with review — Sufficient cause.*

LIMITATION ACT (XV OF 1877)—*contd.*

Section 5—*concld.*

Held, that filing a petition for review is not a "sufficient cause" within the meaning of section 5 of the Indian Limitation Act, 1877, for not presenting an appeal within time, unless it is shown that there were reasonable grounds for asking for a review. MUSADI LAL *v.* BADHAWA. **100 P R 1910**

Section 6.

Punjab Courts Act, 1884, *section* 40 (2)—*Application filed more than* 30 *days after refusal of certificate—Minority of applicant.*

See SECTION 7 *infra*. **103 P R 1881**

Section 7.

1. *And Schedule II, article* 171—*Application by minor sons as legal representatives of deceased appellant—Period for such application.*

An application on behalf of the minor sons of a deceased appellant, praying that their names may be entered on the record in place of the deceased, *held* to be within time with reference to section 7 of the Limitation Act of 1877, though presented more than 60 days after the appellant's death, no final order having been at the date of such application passed on the appeal. MUSSAMMAT SARWAR JAN *v.* DINA.

103 P R 1881

2. *Suit by minor before period of disability has ceased.*

Under the provisions of section 7 of Act XV of 1877, a minor is allowed to sue within the same period after his disability has ceased as would otherwise have been allowed from the time prescribed for such suit in the third column of the 2nd schedule, provided that not more than three years from the cessation of disability shall be deemed to be allowed in any case in excess of the ordinary period. But there is no objection in law to a minor suing through his next friend, if a valid ground of action can be made out, and as in such an action the minor is the real plaintiff and the law exempts him from the operation of limitation during the *whole* period of his minority, it is impossible to hold such a suit barred by time simply because it is brought by a next friend more than three years after the date of the transaction sought to be impeached, but before the full period allowed by law in favor of the minor has expired. GANDA *v.* JAWAND SINGH. **112 P R 1881**

3. *Disability of minor—Application of above section in case of order fixing time for payment of pre-emption money.*

Held, that section 7 of the Limitation Act only applies to cases in which a period of limitation has been fixed by the law; and does not apply to the case of an order passed in a pre-emption suit that a certain sum of money shall be paid at a certain

LIMITATION ACT (XV OF 1877)—*contd.*

Section 7—*contd.*

time. PREMA *v.* JAWAHIR DASS.

31 P R 1884

4. *Application by guardian of minor during minor's infancy.*

Held by the Full Bench, that a guardian of a minor is competent, under the provisions of section 7 of the Limitation Act of 1877, to make an application that the minor be subtituted as an appellant in the room of his father who had died during the pendency of an appeal, but more than 60 days before the application. *Mussammat Sarwar Jan* v. *Dina* (No. 103 *P. R.*1881, Civil) approved of. RIHANA *v.* HARDITTA. **91 P R 1885**

5. *Disability of minor—Application for execution presented more than* 12 *years after date of decree—Civil Procedure Code*, 1882, *section* 230.

Held, that the enactment in section 230 of the Civil Procedure Code, 1882, limiting the period during which execution shall be granted of a decree once put in actual execution is one made for the benefit of the judgment-debtor to protect him from being subject, without limit in point of time, to execution proceedings, and as the said section is in absolute and unqualified terms as regards persons, a minor decree-holder is not exempted from its operation by section 7 of the Limitation Act, 1877. *I. L. R. XVI Bom.* 536, not followed. JHANDU *v.* MOHAN LAL. **128 P R 1894**

6. *Suit by minor against guardian for an account and for possession of immovable property—"Trustee"—Parties to suit—Limitation Act*, 1877, 2*nd Schedule, articles* 120, 132, 144 147, *and sections* 7, 22.

Plaintiff, who alleged that she attained the age of majority on the 4th July 1892, sued on the 22nd June 1895 for an account of the affairs of the estate of her father, W. who died in November 1880, and for possession of a certain *serai*. Plaintiff further prayed that any money found due might be realized from property hypothecated as security by one H. B. who had been appointed on the 3rd March 1881 manager of the estate of the said W. and had been granted a certificate to collect the debts due to the said estate. It appeared that on the 5th March 1881, the said H. B. had executed a bond in favour of the *Sarkar*, hypothecating property, including the *serai* now claimed by plaintiff, as part of W.'s estate as security for the due performance of his duties as manager. On the 29th July 1886, H. B. was dismissed from the management of the said estate.

The only defendants originally impleaded were the sons of B. R. and two persons to whom the said *serai* was alleged to have been sold, but on the 11th May 1896 the widow and two daughters of H. B. one H. to whom a second *serai* hypothecated by H. B. as security was alleged to have been transferred, and the widow of W. who was

LIMITATION ACT (XV OF 1877)—*contd.*

Section 7—*contd.*

alleged to be interested in the estate, were added as defendants, accounts being sought from the widow and daughters of H. B. as well as from H. B.'s said sons. Subsequently on the 5th June 1896, two other daughters of H. B. were impleaded as defendants.

The District Judge dismissed the suit as barred by limitation (*i*) as regards the accounts, because, applying Article 120 and section 7 of the Limitation Act, limitation ran till the 4th July 1895, on which date the necessary parties were not impleaded and the whole suit must fail under section 22 of the Act; (*ii*) as regards the *serai*, because, under Article 144, limitation would run from the date when H. B.'s possession became adverse—*i. e.*, as stated in the plaint from the date on which H. B. became manager, and that plaintiff's minority would not extend this period further than the 4th July 1895, on which date the necessary parties were not before the Court. Plaintiff appealed to the Chief Court.

Held, as to the claim for possession of the *serai*, that the cause of action having accrued during the minority of the plaintiff, plaintiff had three years from the date of attaining the age of majority wherein to sue those actually in possession thereof, and need not implead all the heirs of H. B.

Held, further, that a suit for recovery of money alleged to be due by a guardian out of property hypothecated by him for the due performance of his duties as guardian must be instituted, under Article 132 of the 2nd Schedule to the Limitation Act, within twelve years of the termination of his office as guardian.

The property hypothecated by H. B. being admittedly ample for the discharge of liability under the hypothecation deed, and being so charged as to make Article 132 of the Act applicable, the Court held that it was unnecessary, so far as that part of the claim was concerned, to consider how far a personal suit would lie against the sons of H. B. alone, and to ascertain the exact date of plaintiff's majority. MUSSAMMAT FAZLAN NISHAN *v.* MUHAMMADJI. **33 P R 1897**

7. *Punjab Courts Act*, 1884, *section* 40 (2)—*Application filed more than* 30 *days after refusal of certificate—Minor—Limitation Act*, 1877, *sections* 6, 7.

Held, that a minor is not, by reason of section 7 of the Limitation Act, entitled to have extended the period of 30 days prescribed in section 40 (2) of the Punjab Courts Act. JAN *v.* ALA BAKHSH.

69 P R 1897

8. A reversioner born subsequent to the date of an alienation which had been made in his father's life-time cannot avail himself of an extension of time under this section to enable him to contest the validity of such an alienation. UMRA *v.* GHULAM.

22 P R 1907

LIMITATION ACT (XV OF 1877)—*contd.*

Section 7—*concld.*

9. *Held*, that the fact of the plaintiffs being minors at the date of alienation does not prevent defendant from holding adversely and can only extend the period to three years from the date when the youngest of them attains his majority. SHAMIR *v.* LADHA SINGH. **100 P R 1909**

Section 8.

See LIMITATION ACT, 1877, SECTION 22.

Limitation Act, 1877, *section* 8—*Contract Act*, 1872, *sections* 37, 38 *and* 45—*Competency of an adult co-owner of a house to grant a valid discharge for rent payable to himself and to minor co-owners jointly, so as to bind the latter.*

Three plaintiffs, of whom one was a minor, sued to recover the rent for eleven years of two shops rented by the defendant. Exemption from the ordinary law of limitation was claimed on the ground that one of the plaintiffs had attained majority only about a year before suit, while another was still a minor, and that during their minority there was no one qualified to give a discharge without their concurrence. For the defendant, it was contended that Mussammat Shahzadi Khanam, one of the co-owners, could have given a discharge at any time during the period in question without the concurrence of the minors.

Held, by the Chief Court, that Mussammat Shahzadi Khanam could have received payment of the whole rent during the disability of the minor co-owners and given a valid discharge for the same without their concurrence; that time consequently ran against them all during the period of the said disability; and that three years' rent only was recoverable in the present suit. DAULAT RAM *v.* SAYAD ABDUL KASIM.

60 P R 1893

Section 9.

1. *And section* 13—*Absence of defendant from British India.*

See SECTION 13, *infra.*

2. This section does not apply to applications but to suits only. BIHARI LAL *v.* MRS. BANES. **109 P R 1889**

Section 10.

1. *Vested in trust—Suit for recovery of money misappropriated by* khazanchi *of Native State—Suit based on void judgment of foreign Court—Defect of jurisdiction or other like cause.*

See SECTION 14, *infra.*

34 P R 1898

2. *Suit by person interested in endowed property for dispossession of an assignee of last manager.*

See 2ND SCHEDULE, ARTICLE 120.

8 P R 1899

3. *And article* 120—*Trust and trustee—Suit by settler against trustee on failure of the object of a trust to recover trust funds for himself—Starting point of limitation.*

Held, that where the author of a trust on failure of its objects sues to recover trust property in the hands of a trustee for his own

LIMITATION ACT (XV OF 1877)—*contd.*

Section 10—*concld.*

use and not for the purposes of the trust, section 10 of the Indian Limitation Act is inapplicable.

Such a suit being a suit to recover trust property by the settler the limitation applicable is that prescribed in article 120 and will commence to run from the date of the failure of the object of the trust. GULZARI MAL *v.* KISHEN CHAND. **132 P R 1907**

Section 12.

1. *Time requisite for obtaining copies of judgment and decree—Question of act.*

Held that an appellant is entitled under section 12 of the Limitation Act, 1877, to a deduction of the time requisite to obtain copies of the judgment and of the decree, but what time is requisite for such purpose is a question of fact on the circumstances of the particular case. The Appellate Court having decided that in this case a double period was not necessary *held*, that, whether he was right or wrong, was not a question of law. THANA MAL *v.* MUSSAMMAT NIHALI.

6 P R 1894

2. *Application for leave to appeal* in forma pauperis—*Exclusion of time requisite for obtaining copy of judgment.*

A preliminary objection was taken to a pauper appeal being allowed to proceed upon the ground that the application for leave to appeal was not filed within the period allowed by law. It was conceded that the application was within time if the appellant was allowed the time spent in obtaining a copy of the *judgment* of the lower Court as well as of the decree: it was contended, however, that section 12 of the Limitation Act, 1877, only permitted the exclusion of the time requisite for obtaining a copy of the judgment in the case of appeals and applications for review of judgment, and not in the case of application for leave to appeal as a pauper.

Held, overruling the objection, that "a decree is appealed against" within the intention of clause (3) of section 12 of the Act as soon as an application for leave to appeal from that decree as a pauper has been preferred and that the provision in the said clause was clearly meant to apply to appeals and applications to appeals as a pauper as well as to applications for review of judgment. MUSSAMMAT MOTI BEGAM *v.* MUSSAMMAT SATARA BEGAM. **33 P R 1895**

3. *Applicability of, to application under section* 18 (1) *of the Land Acquisition Act,* 1894—*Deduction of time requisite for obtaining copy of award.*

Held, that section 12 of the Limitation Act, 1877, does not apply to computing the periods of limitation prescribed for an application under section 18 (1) of the Land Acquisition Act, 1894, and therefore the time requisite for obtaining a copy of the award cannot be deducted in computing the periods laid down by sub-section 2 of section 18 of that Act.

LIMITATION ACT (XV OF 1877)—*contd.*

Section 12—*concld.*

Nigahaya v. *Ballu Mal* (74 *P. R.* 1890), *Umia Shankar Lakhmiram* v. *Chhotala Vajeram* (*I. L. R. I Bom.* 19), *Lallubhai* v. *Naran* (*I. L. R. VI Bom.* 719), *Luchmee Bakhsh Roy* v. *Ranjeet Ram Panday* (20 *W. R.* 375), *Rangan* v. *Mahbub Chand* (55 *P. R.* 1897), and *Sadho Singh* v. *Mussammat Kishnee* (3 *All. H. C. R.* 318), referred to. BHAGWAN DASS *v.* THE COLLECTOR OF LAHORE.

79 P R 1904

4. This section does not apply in computing the periods of limitations prescribed for an application under section 70 (*b*) of the Punjab Courts Act, 1884, and therefore the time requisite for obtaining copies of the judgment and decree of the lower Appellate Court cannot be deducted in computing the periods laid down by clause (*i*) of section 70 (*b*) of that Act. KISHEN DIAL *v.* RAM DITTA

20 P R 1907

N.B.—But this case has since been overruled by No. 114 *P. R.*, 1907, noted below.

5. Section 12 applies to applications under section 70 (*b*) of the Punjab Courts Act, 1884, and that therefore the time requisite for obtaining copies of the judgment and decree of the lower Appellate Court is to be excluded in computing the period laid down by clause (*i*) of section 70 (*b*) of that Act.

Kishen Dial v. *Ram Ditta* (20 *P. R.* 1907), overruled. KIRPA RAM *v.* RAKHI.

114 P R 1907

Section 12 (a).

—*Attachment and sale of immovable property in execution of decree—Private alienation of property after attachment and sale but prior to confirmation—Confirmation of sale—Suit by the alienee to recover possession from the auction purchaser—Limitation.*

See CIVIL PROCEDURE CODE, 1908, SECTION 64. **11 P R 1906**

Section 13.

1. *And Schedule II, articles* 142, 144—*Alluvion and diluvion—Custom of Bias river—Land taken over by avulsion—Dispossession or discontinuance of possession—Exclusion of time of defendants' absence from British India.*

Plaintiffs, the proprietors of a village on the Amritsar side of the Bias, claimed certain land lying between their village and the present deep stream, alleging that the said land originally formed part of their village, but was transferred in *Sambat* 1923 to the Kapurthala side of the river, returning to the Amritsar side in *Sambat* 1927-28, but remained part of Kapurthala territory till *Sambat* 1937 or 1938. The transfer on each occasion was found to be by a sudden change in the course of the river, or what is generally called "avulsion," and it was found by the lower Courts (and the finding was accepted as correct by the Chief Court) that by the custom of the Bias, when land is transferred from one side of

LIMITATION ACT (XV OF 1877)—*contd.*

Section 13—*contd.*

the river to another by a sudden change, there is no disturbance of proprietary right; but the lower Courts considered that plaintiffs had lost their rights, because they had not been in possession of the land, or any part of it within twelve years before suit.

On the question of limitation, *held*, that the case was governed by article 142 of the 2nd Schedule of the Limitation Act, as plaintiff's were certainly dispossessed or discontinued possession in *Sambat* 1923 when the land went over to Kapurthala.

But *held*, further, that in reckoning limitation, plaintiffs were entitled to deduct the period from *Sambat* 1923 to *Sambat* 1937-38, during which the land remained part of the Kapurthala territory, under section 13 of the Limitation Act, as the defendants were certainly absent from British India during that period, and the fact that the subject-matter of the suit was also so absent was rather an additional than a less reason for holding that the section applied. GULAB KHAN *v.* PIRA. **34 P R 1889**

2. *Jurisdiction—Absent from British India—Companies Act—Fraud and misrepresentation—Repudiation.*

The plaintiff Bank was registered under the Indian Companies Act, 1882, on 10th June 1884, as a limited liability company with a capital of five lakhs of rupees, divided into 2,500 shares of Rs. 200 each.

On 1st September 1884, a general meeting of the shareholders was held, at which six directors including one C., were elected, and one P. was appointed manager. These proceedings were confirmed at a subsequent meeting on 3rd October 1884.

Informal lists appear to have been in circulation in which persons entered their names for the shares they would take; but on 8th October 1884 only 1,111 shares had been formally taken, and 1,389 remained in the hands of the Bank undisposed of.

Between the 8th and 25th October 1884, C. visited Jodhpur with the express purpose of inducing the Princes of that State to take shares in the Bank. He succeeded in inducing them to take 975 shares, giving for them Promissory Notes at the rate of Rs. 125 per share, *viz.*, Rs. 100 the amount called up by the Bank and Rs. 25 premium. In this way the present defendant-appellant, one of the Jodhpur Princes, took 400 shares and gave a Promissory Note for Rs. 50,000.

The remaining shares out of the 2,500 were disposed of by the end of December 1884, in the manner described in the judgment of the Chief Court reported as No. 127 *P. R.* 1889 (pp. 438, 439).

Upon a suit brought by the Bank to recover the amount due on the Promissory Note given by the defendant for Rs. 50,000.

Held, (1) that as decided in No. 127 *P. R.* 1889, the District Judge, Delhi, had jurisdiction to entertain the suit.

LIMITATION ACT (XV OF 1877)—*contd.*

Section 13—*concld.*

(2). That the suit was not barred by limitation. It was not disputed that it was barred unless the plaintiff was entitled under section 13 of the Indian Limitation Act, 1877, to deduct the period during which the defendant had been "absent from British India." The defendant was not and never had been a resident of British India.

Persons with respect to particular territories are exhaustively divided into two classes —(1) those who are present within, and (2) those who are absent from those territories; and unless it can be affirmed that a person is or has been "present," it must necessarily follow that he is or has been "absent." *I. L. R. XIV Calc.* 457, followed.

(3). That the defendant's application for shares in October 1884 was made under the influence of fraud and misrepresentation, for which the Bank was responsible, and that he was consequently at liberty to avoid the contract when the fraud and misrepresentation came to his knowledge.

(4). That there had been a proper allotment of shares to defendant. His letters left no doubt that he fully understood that he was both a shareholder in, and a director of, the Bank, and that he accepted the position. The mere fact that the script had not yet been delivered to defendant, or that it was apparently as yet not even ready for delivery did not in any way prove that the shares were not in fact allotted to the defendant. (*Buckley's Law and Practice under the Companies Acts*, 564).

(5). That although defendant was entitled to repudiate the contract on the fraud and misrepresentation becoming known to him, he was bound to exercise this right within a reasonable time; this he had not done, and, therefore, he must be held to be still the owner of the shares standing in his name and bound to meet the Promissory Note given by him to the Bank in payment for the shares, to the extent of the true price of the shares at the time the Note was given. MAHARAJA SIR PARTAB SINGH *v.* PROVINCIAL BANK OF INDIA, LIMITED. **72 P R 1891**

3. *Absence of defendant from British India.*

Under section 13 of the Limitation Act, a plaintiff is entitled to have excluded such time as the defendant is absent from British India, the fact that during such time the defendant has paid occasional visits to British India does not render the said section inapplicable.

In computing the period of limitation prescribed for a suit, the time during which the defendant has been absent from British India should be excluded, notwithstanding that time had begun to run against plaintiff previously to defendant leaving British India.

I. L. R. IV All. 530, and *I. L. R. VIII Bom.* 561, followed; *I. L. R. VI Bom.* 103, not followed. MUSSAMMAT JANKI *v.* MANOHAR LAL. **26 P R 1897**

LIMITATION ACT (XV OF 1877)—*contd.*

Section 14.

1. *Suit on an award—Previous proceeding to enforce the same award summarily—Exclusion of time occupied in such proceeding—Defect of jurisdiction or other cause of a like nature.*

In a suit based upon an award made by an arbitrator appointed by the parties, the plaintiffs in computing the limitation prescribed for the suit claimed to exclude the period during which they had been prosecuting against the same defendant a proceeding under section 525, Civil Procedure Code, the object of which was to procure the conversion of the same award into a decree. In the last named proceeding the first Court and lower Appellate Court assumed to grant the applicants the relief sought by them, but it was finally decided in the Chief Court that the award by reason of its indefiniteness was incapable of being converted into a decree in a summary proceeding under section 525 of the Code.

Held, that though the first Court had jurisdiction to entertain the application that the award should be filed, it was both within the letter and the spirit of section 14 of the Limitation Act to hold that the inability of the Court in a proceeding under section 525, Civil Procedure Code, to convert the award into a decree was an inability in that Court to entertain the proceeding from a cause of a like nature with a defect of jurisdiction in the Court, and that the fact that the plaintiff himself elected the summary remedy did not of itself debar him from claiming the benefit of section 14 of the Limitation Act. DHARM DAS *v.* ESHRI PERSHAD. **59 P R 1884**

2. *Suit dismissed for default—Civil Procedure Code (Act XIV of 1882), section 102—Application for re-admission—Applicant claiming to deduct time occupied in fresh suit eventually dismissed.*

Plaintiff's suit having been dismissed for default under section 102 of the Civil Procedure Code, he filed a fresh suit in which he got a decree, which was, however, set aside on appeal on the ground that the suit did not lie. Plaintiff then applied for re-admission of the suit dismissed for default, and in computing the period of limitation claimed to deduct under section 14 of the Limitation Act, the time occupied in conducting the subsequent suit.

Held, that section 14 of the Limitation Act did not apply, the third clause of that section not providing for the deduction of the time during which the plaintiff has been bringing a *suit* which the Court is not legally empowered to entertain, and the preceding clauses not applying, as the definition of "*suit*" in section 3 of the Act excludes applications. SHBOJI RAM *v.* SHEO CHAND RAI. **63 P R 1886**

3. *And Schedule II, articles* 69, 78, 80,—*Exclusion of time of proceeding*

LIMITATION ACT (XV OF 1877)—*contd.*

Section 14—*contd.*

bonâ fide *in Court without jurisdiction—Cause of a like nature with want of jurisdiction—Suit upon dishonored* hundis—*Suit on* hundis *never presented for acceptance but only for payment.*

In a suit based upon two *hundis*, which were drawn in favour of the plaintiffs by the defendants upon certain parties, who subsequently became insolvents, and which were not paid at maturity, it appeared that in a former suit the present plaintiffs had sued the same defendants upon the same *hundis*, alleging that they had not been paid at maturity, which suit was ultimately dismissed on the ground that as the plaint did not allege that the *hundis* had been presented for payment to the drawees and had been dishonoured by them, no cause of action was disclosed, and the suit in the form in which it was instituted was consequently unmaintainable. The plaintiffs supplied the defect which caused the dismissal of their former suit by presenting the *hundis* for payment, and on their being dishonoured instituted the present suit contending in answer to a plea of limitation set up by the defendants, (1) that article 78 of the 2nd Schedule of the Limitation Act (and not article 69 as the defendants contended) was applicable to the suit; (2) that even if article 69 was applicable, the plaintiffs were entitled, under section 14 of the Limitation Act, to deduct the period during which the first suit was pending, because that suit was dismissed upon a ground of a like nature to that of jurisdiction.

Held, that the last contention could not prevail, as the reason why the plaintiffs lost their first suit was, that they had not fulfilled those conditions which alone entitled them to come into Court, and the fault being entirely their own, they could not be held to have been *bonâ fide* prosecuting a cause with due diligence, when there was such a palpable flaw in their plaint that it had to be dismissed because it failed to disclose a cause of action. Moreover, the Court in which the suit was brought had a perfect right to *entertain* it, and it was not through "defect of jurisdiction or other cause of a like nature" that the suit ended as it did, but simply because, in the opinion of the Court, the plaintiffs were not then in a position to sue at all. *Dharm Das* v. *Eshri Pershad* (No. 59 *P. R.* 1884) distinguished.

Held, further, that neither of the articles respectively contended for by the parties applied to a suit based, like the present, on a dishonoured *hundi*, payable at a fixed time after date, *but which had never been presented for acceptance, but only for payment*, but that article 80 governed the case, and that plaintiffs' suit was therefore barred by time, having been instituted more than three years from the date when the *hundis* became payable. RAM CHAND *v.* SHADI RAM. **19 P R 1888**

LIMITATION ACT (XV OF 1877)—*contd.*

Section 14—*contd.*

4. *And Schedule II, articles* 113, 120—*Suit on award—Deduction of period spent in proceedings to enforce the same award summarily—Cause of action—Civil Procedure Code (Act XIV of* 1882), *section* 525.

In a suit on an award, it appeared that the plaintiff had originally applied to the Courts to enforce the same award summarily under section 525 of the Civil Procedure Code; that the lower Courts being of opinion that the award was too indefinite to be capable of execution had remitted it to the abitrators for reconsideration, and on receiving an amended award had ordered it to be filed and passed a decree in accordance with it. On appeal the Chief Court held that in a summary proceeding the lower Courts had no power to remit the award for reconsideration; and if they found the award too vague to be enforced, they should have refused the application to have it filed. The lower Court dismissed the regular suit subsequently brought upon the same award as barred by limitation under article 113 of the 2nd Schedule of the Limitation Act, holding that though plaintiff would be entitled to deduct under section 14 of the Limitation Act the time spent in the previous proceedings if the cause of action was same then as now, the cause of action was not the same as plaintiff then came into Court to enforce the original award, whereas he now sued on that award as amended by a subsequent award or explanation.

Held, that the cause of action was the same in both proceedings, the ground on which plaintiff came into Court in both cases being the alleged settlement of the disputes between him and the defendants by an award made by the arbitrators named in the plaint; the arbitrators and the substantive award being the same in both cases, and the latter award being merely a supplement thereto. NIADAR MAL *v.* SHANKAR DASS. **67 P R 1898**

5. *Exclusion of time of proceeding* bonâ fide *in Court without jurisdiction—Meaning of term jurisdiction.*

The plaintiff in the present suit claimed to be entitled to an allowance of time under section 14, Indian Limitation Act, 1877, under the following circumstances: defendant 1 in the present suit had sued defendants 2, 3 and 4 for pre-emption of certain land. The present plaintiff sought to be joined as a co-plaintiff in the prior suit alleging a superior right to the plaintiff (defendant 1 in the present suit), but the application was refused, the order being upheld on appeal.

The plaintiff then instituted the present suit against the same defendants, joining the plaintiff in the former suit (who obtained a decree therein) as an additional defendant. The plaintiff claimed, in computing the period of limitation, to exclude the time occupied in prosecuting his application in the first suit.

LIMITATION ACT (XV OF 1877)—*contd.*

Section 14—*contd.*

Held, that the plaintiff's contention failed The Court in the first suit was unable to entertain the application to be made a co-plaintiff, in the sense of acting upon it, not for any defect of jurisdiction in the Court or other cause of a like nature, but by reason of the application being one which could not be granted by any Court whatever.

Defect of jurisdiction within the meaning of section 14 means a defect of jurisdiction in the particular Court where the former proceeding is instituted and not an inability shared by that Court in common with all other Courts to entertain the proceeding. SULTAN *v.* ALA BAKHSH. **45 P R 1893**

6. *Limitation Act*, 1877, *sections* 10, 14—"*Vested in trust*"—*Suit for recovery of money misappropriated by* khazanchi *of Native State*—"*Defect of jurisdiction or other like cause*"—*Suit based on void judgment of foreign Court.*

Section 10 of the Limitatiou Act, 1877, has a limited application, and does not cover a suit brought against the *khazanchi* of a Native State to recover money said to have been misappropriated by him from the money in his charge, such money not being "vested in trust for any specific purpose," within the meaning of the said section.

Neglect or laches of the plaintiff either in stating his case or prosecuting his suit is not "a defect of jurisdiction or other cause of a "like nature," within the meaning of section 14 of the said Act, and the inability of the Court to entertain the suit must arise from either some unavoidable circumstance over which no one has any control, or something incidental to the Court itself, and unconnected with the acts of the parties.

Where, therefore, a plaintiff sued in a Court of competent jurisdiction, but based his suit on a foreign judgment which was a mere nullity, *held*, that he was not entitled to any deduction of time, under section 14 of the Act, by reason of such suit. RAJA OF FARIDKOTE *v.* SARDAR GURDYAL SINGH. **34 P R 1898**

7. "*Defect of jurisdiction or other cause of a like nature*"—*Not applicable to defect* "*in form of suit.*"

Held, that section 14 of the Indian Limitation Act, 1877, does not apply to a case in which a plaint was found to be bad by reason of misjoinder of causes of action and of parties and was returned for amendment. *And* that the words in section 14 "is presented in good faith in a Court which from the defect of jurisdiction or other cause of a like nature is unable to entertain it" cannot be extended to cases in which a Court can entertain a suit, but is unable to pass a decree by reason of defect in the form of a suit.

34 *P. R.* 1898 (*Raja of Faridkote* v. *Sirdar Gurdyal Singh*), *Narayanan Chetty* v. *Kannammai Achi*, (1905) *I. L. R.* 28 *Mad.* 338

LIMITATION ACT (XV OF 1877)—*contd.*

Section 14—*concld.*

and *India Publishers, Limited* v. *Aldridge*, (1908) *I. L. R.* 35 *Cal.* 728 (*F. B.*) followed. *Mathura Singh* v. *Bhawani Singh*, (1900) *I. L. R.* 22 *All.* 248 (*F. B.*) dissented from. ALLAN KHAN v. DOST MUHAMMAD KHAN.

8 P R 1911

Section 18.

1. *Suit for pre-emption—Fraud—Concealment of sale from pre-emptors.*

In a suit for pre-emption, where the plaintiff's claim was barred by limitation unless he could establish fraud within the meaning of section 18 of the Limitation Act (XV of 1877), *held*, that the fact that the sale was not notified was not sufficient to bring the claim within limitation, but it must be shown that there was an industrious and artful concealment of the fact of sale, and the facts must necessarily lead to the inference that there was a design to keep the pre-emptors in the dark. *Murad* v. *Bhag Singh* (No. 46 *P. R.* 1879,) followed. ARSALA v. YAR MUHAMMAD.

32 P R 1881

2. *Suit for pre-emption—Fraudulent concealment of sale by purchaser—Defective finding of Appellate Court—Allegation of fraud to be specific—Finding of fraud by Court to be precise.*

In a suit for pre-emption of 2 plots of land, which was admittedly barred by limitation as to the plot first sold, unless saved by the provisions of section 18 of the Limitation Act, the finding of the lower Appellate Court was to the effect that the evidence proved that the fact of the sale of the first plot had been kept secret from the plaintiff, that the purchaser was already in possession of the land as mortgagee, and up to the time of the sale of the second plot of land had represented himself as holding only as a mortgagee.

Held, that this finding was not sufficient to sustain the decision that the suit was brought within time, *first*, because it did not find that the representation of the defendant purchaser was made by him in order that the pre-emptor might be kept from the knowledge of his right of action, and that the plaintiff was kept from such knowledge by this representation; *secondly*, because it was necessary to find that the fraud was committed while the plaintiff still had a right to institute the suit, that is to say, within one year of the registration of the deed of sale, and also that the suit was brought within one year from the date of the discovery of the fraud.

In all cases where fraud is alleged, it ought to be set forth specifically in particular and in detail, so that the person against whom it is charged may have a fair opportunity of knowing what he has to meet. So also, as fraud is a conclusion of law, the particular acts and intents which a Court considers to constitute fraud should be clearly and specifically found in order that there may be no difficulty in the way of a Court which sub-

LIMITATION ACT (XV OF 1877)—*contd.*

Section 18—*contd.*

sequently has to deal with the same question, as a question of law. NIHAL CHAND v. FOUJDAR SINGH.

3 P R 1882

3. *Suit for pre-emption—Omission to give notice to pre-emptors—Fraudulent concealment.*

In a suit for pre-emption, it appeared that the proprietor of the land in suit gave the defendant, his tenant-at-will, a right of occupancy in the said land in consideration of a cash payment, by a lease registered on the 31st August 1878, and after the death of the said proprietor, the defendant produced the deed in mutation proceedings before the Tahsildar on 8th October 1879, whereupon on 9th February 1880 the plaintiffs, the heirs of the proprietor, sued for pre-emption. The lower Appellate Courts held *inter alia* that, as no notice of the sale was given to the pre-emptors, the defendant must be held to have fraudulently kept the sale from which their rights arose a secret, and that therefore, under section 18 of the Limitation Act, limitation only began to run from the 8th October 1879, when the fraud became known to them.

Held, that omission to give notice to the pre-emptors does not amount to keeping them from a knowledge of their rights by fraud, and therefore section 18 of the Limitation Act did not apply; that the deed, which was described as a lease, was duly registered, and nothing indicating a design to deceive the pre-emptors was alleged, either in the plaint or the appeal to the first Appellate Court, and therefore the claim was barred by limitation. *Ram Dyal* v. *Beli Ram* (No. 29 *P. R.* 1878), *Murad* v. *Bhag Singh* (No. 46 *P. R.* 1879), and *Arsala* v. *Yar Muhammad* (No. 32 *P. R.* 1881), followed. GHIBA v. HAYAT.

120 P R 1883

4. *Suit for pre-emption—Silence on part of vendor and vendee—Fraud.*

In a suit for pre-emption in which limitation was pleaded, *held* (citing the previous decisions of the Court) that mere silence on the part of the vendor and vendee is not a fraud. To prove fraud within the meaning of section 18 of the Limitation Act, there must be some distinct act done with the intention of deceiving the pre-emptor or concealing the fact of the sale from him. GAUHRI MAL v. JAINTI MAL.

73 P R 1885

5 *Act IV of 1872—Pre-emption—Fraud—Section 18, Limitation Act, 1877.*

In a suit for pre-emption, which was *primâ facie* time-barred, the plaintiff relied upon section 18 of the Limitation Act as operating to save the claim. The specific allegations of fraud made in the plaint were found not to be substantiated, but the lower Courts held that the plaintiff was entitled to the benefit of the section upon the grounds :—

(1). That the purchaser was already in possession as mortgagee.

LIMITATION ACT (XV OF 1877)—*contd.*

Section 18—*contd.*

(2). That the witnesses to the execution of the deed of sale were Hindus and were not taken before the Sub-Registrar.

(3). That the vendor now admits that he agreed with his purchaser to conceal the fact of the sale in order to defeat the right of pre-emptors.

(4). That the plaintiff had no knowledge of the sale.

(5). That great delay occurred in applying for mutation of names, the first intimation to the patwari being given in February 1889, and the proceedings even after that suspiciously hanging fire until August 1890.

Held, that as the plaintiff had failed to substantiate the specific acts relied upon in his plaint as constituting the fraud practised upon him, the Court could not feel satisfied upon the grounds stated that any active concealment of the sale had taken place and that the suit therefore failed.

No. 46 *P. R.* 1879, No. 3 *P. R.* 1882, and *I. L. R. XV Calc.* 533, referred to. ATMA RAM v. MEHARDIL KHAN.

91 P R 1893

6. *Pre-emption—Fraudulent concealment of sale—Limitation Act,* 1877, *section* 18, *knowledge of facts, presumption as to.*

In a suit for pre-emption it appeared that the deed of sale, which was described in two places in itself as a mortgage-deed, was dated 12th December 1876, and was registered on the same date at the *tahsil*, three or four miles from the village in which the land in suit was situate; that the marginal witnesses were residents of villages other than that in which the vendor and vendee resided, and where the land was situate; that from 1876 till 1895 the vendee continued to be recorded, as before, as tenant of the said land; that on the 19th September 1894, a measurement clerk reported that a sale had taken place, and that the vendee was in possession; that on the 1st October 1895 mutation of names was effected in the vendee's favour by order of the Tahsildar, and that the residents of the village in which the land was situate, as a body, were not aware of the sale. The plaint was filed in February 1896, concealment of the sale being therein alleged, and the pre-emptor, when examined before issues were framed, pleaded fraud by which he had been deceived. The first Court decreed the claim, finding that the fact of the sale became known to plaintiff on the 1st October 1895, and that there had been fraudulent concealment thereof, but the Divisional Judge, on appeal, dismissed the suit as barred by limitation, calculating either from the date of registration or from the 19th September 1894.

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LIMITATION ACT (XV OF 1877)—*contd.*

Section 18—*contd.*

Plaintiff appealed to the Chief Court, and in addition to the facts above mentioned, on which his allegation of fraudulent concealment was based, further urged in support of such allegation the fact that on the death of the vendor in 1881, his son was recorded as owner in his place.

Held, that though each of the facts above set forth, when taken alone, might be merely suspicious, yet when found to concur, they established fraudulent concealment within the meaning of section 18 of the Limitation Act.

Held, further, that fraudulent concealment having been established, respondent upon whom the *onus* rested, had not proved that the appellant had knowledge of the sale more than one year before suit, which was therefore within time. ABDUL RAHIM KHAN *v.* MUHAMMAD YAR. **12 P R 1898**

7. *Custom—Pre-emption—Limitation—Fraudulent concealment of sale.*

Held, that the fact that a sale deed of house property situate in Bhiwani, District Hissar, had been registered at Bombay, where the parties though resident of the former place, were carrying on business, and that for some time the vendees had not obtained physical possession of the property, as it did not admit of physical possession, it being at that time in possession of certain tenants, did not establish a fraudulent concealment within the meaning of section 18 of the Limitation Act, and that under clause 2 of article 10 of that Act limitation began to run from the date the instrument of sale was registered. PANNA LAL *v.* BHAGWAN DASS AND OTHERS. **16 P R 1902**

8. *Limitation Act, 1877, section 18—Suit for pre-emption—Fraudulent concealment of sale by purchaser—Fraud—Assignment of immovable property by husband to wife in lieu of dower—Sale.*

Held, that the expression " by means of fraud" as used in section 18 of the Limitation Act, means active deceit in defrauding or endeavouring to defraud a person of his rights by some artful device; therefore where the vendor and the vendee had by their acts of omission and commission in point of fact kept the pre-emptor from the knowledge of the sale, but were able to prove that neither of them had any intention to fraudulently conceal the sale from the pre-emptor, and were able to give a reasonable explanation of their conduct and the acts alleged to constitute fraud, *held* that the pre-emptor was not under the circumstance entitled to the benefit of the provisions of section 18 of the Limitation Act. The fraudulent act which kept from the plaintiff the knowledge of the transfer must in order to extend the period of limitation, be one which occurred, while the plaintiff had a right to institute the suit.

Semble: A transfer of immovable property by a husband to his wife in consideration of her dower must be regarded as a gift by the husband to the wife and not a sale subject to pre-emption.

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LIMITATION ACT (XV OF 1877)—*contd.*

Section 18—*concld.*

Nihal Chand v. *Foujdar Singh* (3 *P. R.* 1882), *Ram Dyal* v. *Beli Ram* (29 *P. R.* 1878), *Murad* v. *Bhag Singh* (46 *P. R.* 1879), *Arsala* v. *Yar Muhammad* (32 *P. R.* 1881), *Gauhri Mal* v. *Jainti Mal* (73 *P. R.* 1875), *Atma Ram* v. *Mehardil Khan* (91 *P. R.* 1893), and *Mir Zaman Khan* v. *Mussammat Ghulam Fatima* (88 *P. R.* 1901), cited.

Abdul Rahim v. *Muhammad Yar* (12 *P. R.* 1898), doubted. *Fida Ali* v. *Muzaffar Ali* (*I. L. R. V All.* 65), not followed. GHULAM RAZA *v.* SARDAR KHAN. **86 P R 1902**

9. *Pre-emption—Fraudulent concealment of sale—Burden of proving when fraud first became known to the plaintiff.*

Where an original transaction is tainted by fraud it lies on the party against whom fraud is found to prove the want of knowledge was not caused by fraud or that the plaintiff had a clear and definite knowledge of the fraud for more than the period of limitation allowed.

Abdul Rahim Khan v. *Muhammad Yar and others* (12 *P. R.* 1898), cited. GORDHAN DAS *v.* AHMAD. **34 P R 1904**

Section 19.

See LIMITATION ACT, 1877, SECTION 20. **37 P R 1883**

See LIMITATION ACT, 1877, SCHEDULE II, ARTICLE 179. **61 P R 1886**

1. *And Schedule II, article 64—Suit for balance of account—Account stated—Acknowledgment of subsisting liability—Promise to pay.*

In a suit for a balance of account, the plaintiff relied on a statement of account in his account book alleged to have been signed by the defendant within 3 years of the institution of the suit which was to the following effect: " Rs. 1,608-7-3 balance, details as follows— " Rs. 1,580 balance remains money to be receiv- " ed bearing interest Rs. 28-7-3 to be received " in the spring on Jeth budi 2, Sambat 1936."

Held, that the above entry amounted not only to an acknowledgment of a subsisting liability, but to a promise to pay the two items which constituted the total balance of Rs. 1,608-7-3 acknowledged to be due.

It is only a fair and reasonable construction that a memorandum signed by a debtor in the book of a creditor, which acknowledges that one specified sum is to be received by the creditor with interest, and another specified sum is to be received by him on a fixed date, contains a promise, though in an indirect form, that he will pay the sums specified. *Ratta Ram* v. *Mussammat Nano* (No. 3 *P. R.* 1878, *F. B.*) cited and followed. JYA RAM *v.* SADA RAM. **33 P R 1882**

2 *Signature by affixing seal.*

Held, that the affixing of a seal or stamp, on which the name of the signatory is impressed, is a sufficient signing within the meaning of section 19 of the Limitation Act of 1877. GUR SAHAI RAM *v.* SADIK MUHAMMAD. **185 P R 1883**

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LIMITATION ACT (XV OF 1877)—*contd.*

Section 19—*contd.*

3. *Acknowledgment of existing liability—Acknowledgment in letter written within limitation when connected with previous correspondence written out of limitation—Evidence Act I of* 1872, *section* 92 (6).

In a suit to recover from the defendant as surety the amount alleged to be due on a bond, together with the amount paid as premia on a policy of insurance which had been pledged by the defendant as security for the loan, the plaintiff relied upon a letter written by the defendant within three years of suit as an acknowledgment sufficient to save limitation under section 19 of the Limitation Act, contending that such letter amounted to a distinct acknowledgment of liability, if read in connection with former correspondence which was not itself within time as an acknowledgment.

Held, that though under the 6th proviso to section 92 of the Evidence Act, the previous correspondence could be referred to for the purpose of explaining any thing in the letter relied upon which required explanation, still this could not be done for the purpose of importing into it any acknowledgment which was not contained by implication at least in the terms of the letter itself, with any explanation which might be necessary to show how they were related to existing facts; and that as the letter in question, though it clearly implied an acknowledgment of the plaintiff's right to hold the policy as security for the debt, contained no acknowledgment of the personal liability for that debt which the plaintiff was now seeking to enforce, nor was there any acknowledgment of liability for premia already paid on the policy by the plaintiff, the plaintiff's plea failed. *Morice* v *Simla Bank* (No. 2 *P. R.* 1878,) cited. SIMLA BANK *v* BALL. **2 P R 1884**

4. *Suit for redemption of mortgage—Acknowledgment—Agreement to refer to arbitration.*

In a suit for redemption of a mortgage made in 1820, it appeared that in 1876, in a suit between the same parties, the present defendant signed an agreement to refer to arbitration a dispute as to the expenses incurred by him in the property now in suit. That document described the suit as one "to redeem a one-storied house," and in the body of the agreement mentioned the house as the " mortgaged house."

Held, that the above document contained a sufficient acknowledgment for the purpose of section 19 of the Limitation Act of 1877. RAM RAKHA *v.* KARAM CHAND. **97 P R 1884**

5. *Application for execution of decree—Application in respect of a "right"—Acknowledgment of decree-holder's right to execute.*

Held, following *Ramhit Rai* v. *Satgur Rai* (*I. L. R.* 3 Allahabad, 247), that an application for execution of a decree is an application in respect of a right within the meaning of section 19, Act XV of 1877.

LIMITATION ACT (XV OF 1877)—*contd.*

Section 19—*contd.*

A deed which acknowledged receipt of certain houses "in part of the money of a "decree which had been passed against him "(the vendor) which is now in course of "execution, on account of my father's debts," *held*, in subsequent proceedings for execution of the decree which answered to the above description, to contain an acknowledgment of liability in respect of the decree-holder's right to execute his decree within the meaning of the above section of the Limitation Act. BHAGAT RAM *v.* CHINT RAM. **28 P R 1885**

6. *Power of guardian to sign acknowledgment of liability—Duly authorised agent—Act XL of* 1858.

Held, that guardians appointed under Act XL of 1858 carrying on a family business must be held to be agents duly authorised to sign acknowledgments of liability, within the meaning of section 19 of the Limitation Act, which would bind the minors. BEHARI LAL *v.* CHATTAN LAL. **25 P R 1886**

7. *Acknowledgment of liability—Balance struck—Promise to pay—Act IX of* 1872, *section* 25.

A written balance of account, which merely showed that the accounts were balanced and found correct, but contained nothing either expressly or by reasonable and necessary implication binding the debtors to pay, no day being fixed for payment, nor any rate of interest being agreed upon, *held*, though an admission of liability sufficient to meet the requirements of section 19 of the Limitation Act, not to amount to a promise to pay within the meaning of section 25, clause 3 of the Contract Act, so as to bring within limitation items already barred when the balance was struck. *Ladhu Shah* v. *Fazl Dad* (No. 72 *P. R.* 1879) and *Jya Ram* v. *Sada Ram* (No. 33 *P. R.* 1882), distinguished PANDIT HARKISHEN DAS *v.* PIR BAKHSH. **36 P R 1886**

8. *Suit for redemption of mortgage—Acknowledgment of mortgagor's right to redeem.*

In a suit for redemption of a mortgage, it appeared that the plaintiff was the heir of a mortgagor who had previously obtained a decree for possession of the same property on payment of a specified sum, which decree the said mortgagor never executed, and as the period for execution had expired the plaintiff as his representative brought the present suit for possession on payment of the amount previously fixed. It was found that the mortgage was more than 60 years old when the suit was instituted, but to save limitation, plaintiff relied on an admission made by the mortgagees in answer to the previous suit as amounting to an acknowledgment of liability within the meaning of section 19 of the Limitation Act, XV of 1877. The acknowledgment relied upon was to the following effect: "About fifty years ago K., "the original mortgagor, owed our grand-"father T. Rs. 2,200, and the said K. had "no property except a dwelling house and the "land in dispute. So T. took the house "in mortgage for Rs. 700, and the land for "Rs. 1,500, and the said K. agreed that "whenever any representative of his should "pay Rs. 2,200, he would redeem."

Held, that the above extract from the defendants' written answer contained a distinct acknowledgment of the mortgage, and as it was made before the period of 60 years prescribed for a suit for redemption had expired, the present suit was within time, as a new period of limitation began to run from the date of the acknowledgment. BALMOKAND *v.* RAMJI LAL. **20 P R 1887**

9. *Acknowledgment of liability—Set-off.*

In a suit for the money alleged to be due under a contract for work done by the plaintiff for the defendants, to which article 56, Schedule II of the Limitation Act was held to apply, and which was *primâ facie* barred by time under that article, the plaintiff relied upon a letter written after he had sent in his account for work done, and signed by the defendants, as an acknowledgment of liability sufficient to give a new period of limitation under section 19 of the Limitation Act. The letter relied upon was to the following effect: "I find the account against you amounting "to Rs 1,743, and the credits you are entitled "to are Rs. 503, leaving a balance due to "the company (defendants) of Rs. 1,239. I "enclose details of each side of the account "and must request a very early settlement "of the same."

Held, that the above letter was not an acknowledgment of any amount due for work done by the plaintiff accompanied by, or coupled with, a refusal to pay or a set off; but was rather a demand for a sum of money accompanied by an admission of a set-off reducing the amount demanded, that is, not such a document as section 19 allows to save the expiry of the limitation period. MURREE BREWERY CO. *v.* HAZURA MAL. **60 P R 1887**

10. *Acknowledgment of mortgagor's right to redeem—Entry in Settlement Record.*

Certain entries in a village Settlement Record, *viz*, certain items in the *khewat*, read with a clause in the *Wajib-ul-arz*, *held* (under the circumstances of the case) not to amount to an acknowledgment in writing such as would, under section 19 of the Limitation Act, save the right of redemption to the representatives of the original owners.

Deota v. *Kesho* (No. 93 *P. R.* 1877), cited. *Lala Mal* v. *Gulam Mahomed* (No 32 *P. R.* 1880), and *Gugan* v. *Jawanna* (No. 1541 of 1883. unpublished) followed. MAKSUD ALI *v.* SALAR BAKHSH. **63 P R 1888**

11. *Acknowledgment—Signature by dictation—Balance struck.*

Certain debtors authorised a writer to write the following in the creditor's book of accounts: "Lakeha B. V. and R. (Debtors)," This was followed by what was sufficient as an acknowledgment. The debtors did not sign, seal, or mark the book.

Held, that the fact that the debtors dictated the above to the writer amounted to their signature and acknowledgment, the law not prescribing that the signature should be in any particular form or place. RAM DITTA *v.* IBRAHIM-UD-DIN. **122 P R 1889**

12. *And section 21—Acknowledgment by one partner—Liability of other partners.*

A firm stopped its business in 1882. In 1883, H., one of the partners, struck a balance in favour of the plaintiff. *Held*, that as at the time the business was not a going concern, but existed only for winding up its affairs, the balance struck by H. did not bind the other partners. It could not be said that H. was acting as a duly authorized agent of the firm. It was next contended that the acknowledgment by H. was binding on N., another partner, who instigated and advised H. to make the acknowledgment. N. pleaded that H. was authorized to make the acknowledgment by the firm, and that he was ready to pay what might be proved due along with the rest of the partners.

Held, that this admission should not be construed so as to give an effect to it which was never intended. The true effect of N.'s admission was that he would be liable in case the joint liability of the partnership were established as a condition precedent. This having failed, it was clear that H.'s signature was not on behalf of N., and therefore N. was not liable.

All the partners of a firm should be made parties to a suit. NAUBAT RAI *v.* SEVA RAM. **140 P R 1889**

13. *Acknowledgment—Duly authorised agent—Sale of goods to firm represented by minors—Appointment of two joint guardians by Court under Act XL of* 1858—*Power of one guardian to sign acknowledgment on his own behalf and on behalf of his co-guardian.*

Defendants (minors) carried on a family business through their guardians J. and D. appointed by the Court under Act XL of 1858. Plaintiffs sold goods to the firm and in due course called upon the guardians to settle accounts. J. who had been left to do the whole work of guardianship by D. signed a balance in favour of the plaintiffs. In a suit to recover the balance limitation was pleaded.

Held, that J. signed the balance as the duly authorized agent of D. The words "duly authorized in that behalf" do not mean specially or expressly authorized. They are merely the proper description of an agent acting within the scope of his powers, ordinary or special. JODH RAJ *v.* CHUTTAN LAL. **7 P R 1890**

14. *Acknowledgment in writing—Statement recorded by Court reader—Signature.*

In a suit for redemption of mortgage, it appeared that in a similar suit for redemption brought in 1860, one of the present defendants and the father of the other made one statement, in which they acknowledged that they held the land on mortgage. At the end of this statement was a mark of the pen under the words '*alald muzhir*,' and the names of the deponents were written at the head of the statement.

LIMITATION ACT (XV OF 1877)—*contd.*

Section 19—*contd.*

Held, that this was a sufficient acknowledgment in writing signed by the mortgagees within the meaning of section 19, Limitation Act, 1877.

Nos. 122 and 145 *P. R.* 1889 referred to. JEBA *v.* CHAMAN. **16 P R 1891**

15. *Suit for redemption—Entry of mortgagee in proprietor's column in Settlement Record—Signature at foot of administration paper—Acknowledgment.*

In the Settlement Records of 1852 and 1865 there was an entry of the defendants in the proprietor's column as mortgagees in possession of the mortgagor's (plaintiff's) land. There were no special signatures to these entries, and the only signature of defendants to the Records at all was that of J. S., a lambardar (presumably the defendant of that name), which appeared with that of four other lambardars at the foot of the *Wajib-ul-arz.* It did not appear that this signature had any special connection with the entry of the mortgage.

Held, that this was not a sufficient acknowledgment of the mortgage to satisfy the requirements of section 19 of the Limitation Act, 1877, and that the plaintiff's suit for redemption was barred by limitation. JAWALA SINGH *v.* SHER SINGH. **116 P R 1891**

16. *Suit for redemption—Plea that suit was barred by limitation—Burden of proof—Entries in Settlement Record—Acknowledgment by defendant—Act IX of* 1871, *2nd Schedule, article* 148, *and Act XV of* 1877, *section* 19.

Held, that in a suit for redemption of land, admittedly mortgaged some considerable time previously, where limitation is pleaded, the burden of proving that the right to redeem is still subsisting, lies in the first instance upon the plaintiff.

The plaintiff to succeed must prove affirmatively either that the suit is filed within 60 years of the date of the mortgage, or that it is within time by reason of some written acknowledgment legally sufficient to save the claim. A failure to prove even the approximate date of the original transaction may be fatal to the claim.

In the case of a mortgage made more than 60 years before the 1st October 1877, in which an acknowledgment on the part of the defendant of plaintiff's right of redemption is alleged, it is necessary to show that the acknowledgment in question was sufficient under article 148 of Act IX of 1871, so as to keep the claim alive until Act XV of 1877 became law, for in that case only could the provisions of section 19 of the later Act be relied upon. GHULAM HASSAN *v.* HAJI MUHAMMAD. **53 P R 1894**

17. *Acknowledgment of liability—Mortgage.*

Plaintiff instituted a suit on the 19th August 1895 for redemption of a mortgage which was effected in *Phagan Sambat* 1882. The suit was dismissed by the first Court as barred by limitation, but on appeal the Divisional Judge held that a statement made by certain

LIMITATION ACT (XV OF 1877)—*contd.*

Section 19—*contd.*

of the mortgagees in a mortgage deed executed by them on the 18th November 1862, to the effect that the land in suit was mortgaged to them, amounted to an acknowledgment of liability within the scope of section 19 of the Limitation Act, 1877. The said statement was as follows : *Jo minjanib Pir Bakhsh pas man mukiran rahn hai.* The Divisional Judge having remanded the suit under section 562, Civil Procedure Code, the mortgagees appealed to the Chief Court.

Held, upholding the order of the Divisional Judge, that the said statement amounted to an acknowledgment of liability within the scope of section 19 of the Limitation Act, 1877, and that, therefore, plaintiff's suit was not barred by limitation. JALLI *v.* MAHAR PIR BAKHSH. **9 P R 1897**

18. *And section 20—Guardian and ward—Acknowledgment of debt by Court of Wards as guardian of minor.*

Sardar K. S., father of defendant, died in 1881 largely indebted to plaintiffs, and on his death defendant was placed under the guardianship of the Court of Wards. On the 21st December 1881, a list of debts due from defendant's estate was prepared by the Court of Wards, and an item of Rs. 5,344 was placed on the said list as due to plaintiffs. On the 21st March 1882, the Deputy Commissioner, as President of the Court of Wards, informed the plaintiffs that payment of their debt must be deferred until certain mortgage debts upon defendant's estate were settled and accordingly plaintiffs waited for payment of their money, until 1888, when they made an application to the President of the Court of Wards to the effect that, as all the said mortgages had been paid off, the debt due to them should be settled. On the 2nd March 1889 an order was made that Rs. 200 should be paid to plaintiffs, who on the 11th October 1889 again applied for payment of their debt in full. Thereupon, the President called for a report from the General Manager of the Court of Wards, who reported to the effect that "Rs. 700 should "be paid for the present to applicants ; in a "little time the house of Sardarni D. K. will "be auctioned, and from this the debt will be "paid." The order of the President upon this report—was "*tajwiz manzur hai ; hasab report General Manager bilfel Rs.* 700 *diya jawe.*" This was initialled by the President and bore date 27th January 1890.

On the 27th January 1893 plaintiffs sued for the balance of the debt, and in answer to defendant's objections that the suit was barred by limitation, pleaded that in 1882 when the defendant's estate was taken charge of by the Court of Wards, there was a fresh contract between the Deputy Commissioner, as guardian of defendant, and plaintiffs, whereby the old contract was superseded ; that under the new contract limitation only began to run when the mortgage debts were paid off in 1888 ; that the payments of Rs. 200 in 1889 and Rs. 700 on the 27th January 1890 amounted to an acknowledgment, binding on the minor, that the debt existed, and that, consequently, the

LIMITATION ACT (XV OF 1877)—*contd.*

Section 19—*contd.*

suit was within limitation. The Divisional Judge, on appeal, held that the action of the Deputy Commissioner in 1882 amounted to a fresh contract as contended by plaintiffs, and that the payments of Rs. 200 and Rs. 700 were part payments of the debt within the meaning of section 20, Limitation Act. On appeal to the Chief Court, it was contended on behalf of defendant that the findings of the Divisional Judge were wrong, and further that the President of the Court of Wards could not, in any case, bind defendant by any acknowledgment of indebtedness.

Held, (*i*) that there was a fresh contract superseding the former contract, between the Deputy Commissioner, as defendant's guardian, and the plaintiffs in 1882 ; (*ii*) that the payments of Rs. 200 and Rs. 700 were not part payments within the meaning of section 20, Limitation Act, but that the order of the Deputy Commissioner, dated 27th January 1890, directing payment of Rs. 700 to plaintiffs, contained a sufficient acknowledgment of their rights within the meaning of section 19 of the said Act ; and (*iii*) that such acknowledgment was binding on the defendant and saved limitation, the suit having been brought within three years from the date thereof. SARDAR BACHATTAR SINGH *v.* JAGANNATH. **1 P R 1897**

19. *Limitation Act,* 1877, *section* 19—*Acknowledgment of mortgage—Entry in Settlement record—Redemption—Signature.*

The plaintiff sued to redeem certain agricultural land which they alleged had been mortgaged to the defendants fifty years before suit. The defendants pleaded that the land was mortgaged in 1823 A. D., and that the suit was therefore barred by limitation. The plaintiffs relied upon the following entry in the record of rights of 1872 Settlement as an acknowledgment sufficient to save limitation.

"*Aj malikan wa murtahinane asaltan hazir hokar mere samne zar khewat mai raqam sawai taidad-a-kita wa arazi wa zari rahn marhuna ko sunkar tasdik wa taslim kiya chunanche mutabik iske parcha diya gaya.*"

This document purported to have been drawn up and attested and signed by the Assistant Settlement Officer.

Held, that this was not a sufficient acknowledgment in writing signed by the mortgagees within the meaning of section 19 of the Indian Limitation Act. The Assistant Settlement Officer could not be presumed to be a duly authorised agent of the mortgagees so as to bring the acknowledgment within the purview of that section, and that, therefore, the entry signed by him could not prevent the operation of the Statute of Limitation. *Gul Muhammad* v. *Akbar* (145 *P. R.* 1889, and *Jowala Singh* v. *Sher Singh* (116 *P. R.* 1891) referred to. BAHADUR *v.* NANKA RAM. **53 P R 1905 F. B.**

20. *And articles* 64, 85—*Unsigned statement of account in defendant's books—Acknowledgment—Mutual account—Contract*—

LIMITATION ACT (XV OF 1877)—*contd.*

Section 19—*contd.*

Contract to pay a debt barred by Limitation Law—Contract Act, 1872, *section* 25 (*c*).

Held, that a bare statement of account in a defendant's books in the hand-writing of the plaintiff himself such as "*Daskhat* (plaintiff) *rupia* 53,526-5-9 *hisab semajki baqi nikali*" made up largely of a barred item transferred from another account which had not been signed by the defendant or his authorised agent in that behalf is useless for the purposes of limitation, and does not create a fresh starting point as it neither amounts to an acknowledgment within the provisions of section 19, nor to an account stated under article 64 of the Limitation Act or to a promise to pay within the meaning of section 25 (*c*) of the Indian Contract Act. In such a case the transfer of the barred item without observation of due formalities to a mutual open and current account even with defendant's consent cannot over-ride the Law of Limitation. GULZARI MAL *v.* KISHAN CHAND.

132 P R 1907

21. *Admission of liability contained in a* jawabdawa *of one of the debtors cannot bind the other debtors.*

Held, that an admission made by one of the judgment-debtors in a *jawabdawa* that a certain decree was a subsisting decree capable of execution does not amount to an acknowledgment of liability within the meaning of section 19 of the Limitation Act, so as to give a fresh starting point for execution of such decree. BHAGWAN SINGH *v.* MOHAN LAL. **54 P R 1908**

22. *Suit on balance of account—Acknowledgment of subsisting liability—Promise to pay a barred debt—Contract Act*, 1872, *section* 25 (*c*).

Plaintiff sued upon a balance of account, dated 7th May 1902, alleged to be attested by the defendant which was to the following effect :—

"*Baki rahe lene lekhe uparle de, akhrin* 3,760 -*Baisakh parvishta* 27, *Sambat* 1959, "*Tiket ek anna lagaya gia, zabani Bibi Jaso-*" *dan, bewa Hukam Chand, zat Khatri, sakin*" *Qasba Hajipur, Kanungo mablagh* 3,760—" *rupaya bazima Jasodan ke Shankar Das*" *Shah ke dene rahe, etc.*"

The defence having pleaded limitation, it was discovered that the account between the parties ended in 1878, since when nothing was paid or received, but with a view to keep the claim alive for the purposes of limitation eight balances were struck just within three years of one another, *i.e.*, in 1881, 1884, 1887, 1890, 1893, 1899 and 1902. Of these, the first two were signed by a brother of the defendant, and the third, fourth, fifth and sixth by persons alleged to be her agents, of which fact there was no proof at all on the record except the bare statement of the plaintiff himself, and the seventh and eighth were alleged to have been attested by the defendant herself.

LIMITATION ACT (XV OF 1877)—*contd.*

Section 19—*contd.*

Held, that the entry in suit, *i.e.*, of 1902, neitther amounted to a valid acknowledgment of debt, nor to such a promise to pay as would give a new period of limitation in the one case under section 19 of the Limitation Act, and in the other under section 25 (3) of the Contract Act. It did not amount to an acknowledgment, because the entries of 1887 to 1896 not having been signed by some one duly authorised in this behalf by the defendant the latter acknowledgments referred to a barred debt and were made after the expiration of the period prescribed for its recovery. Similarly, being a bare statement of account and containing none of the ingredients. required by clause 3 of section 25 of the Contract Act, it was not a promise to pay within the meaning of that section. SHANKAR DAS *v.* JASODHAN.

102 P R 1908

23. *And section* 14—*Acknowledgment—Acknowledgment in case of decree—New period—Exclusion of time of proceeding* bonâ fide.

A obtained a decree in 1900 against B with a lien on a tea garden. In 1901 C in execution of a money-decree, which he had obtained in 1893 against B, attached that garden. B wrote two letters to A in March 1901 and October 1903 telling him about the attachment and asking him to inform the executing Court of his lien and to apply for recovery of the amount of his decree out of the sale-proceeds. A accordingly applied twice in 1901 and 1902 and recovered the amount due to him under his decree, but on appeal by B the execution sale was in 1905 set aside on the ground of irregularity, and A was made to refund the amount he had received out of the sale-proceeds. Immediately after A applied for execution of his own decree, B pleaded that the application for execution not having been filed within three years from the date was barred by limitation.

Held, that the letters written by B to A in 1901 and 1903 amounted to an acknowledgment of A's right to execute and obtain satisfaction of the decree within the meaning of section 19 of the Indian Limitation Act, and saved A's application for execution from the bar of limitation.

Held also, that A was entitled under section 14 of the Act to exclude the period, which elapsed between the date of his first application made in 1901 and the date on which he was ordered to refund the amount received by him out of the sale-proceeds of the tea garden.

Query.—Whether the applications of 1901 and 1902 were not "steps in aid of execution" within the purview of article 179 (4) of the Act. PEACHEY *v.* PUNJAB BANKING COMPANY, LIMITED, LAHORE. **52 P R 1909**

24. *Indian Limitation Act, XV of* 1877, *section* 19—*Acknowledgment—Mortgage entry in settlement record—Signature of one of the mortgagees and of Settlement Officer.*

LIMITATION ACT (XV OF 1877)—*concld.*

Section 19—*concld.*

Held, that where a suit is brought to redeem a mortgage more than 60 years old, and the plaintiff relies upon an entry in a Settlement record (the signature of one of the two mortgagees being found at the end of the *muntakhib khewat* papers, in which the entry of mortgage occurs though not on the entry itself) as an acknowledgment within the meaning of section 19 of the Indian Limitation Act, it must be shewn—

(*a*) that the Settlement Officer, who signed the record, was an agent duly authorised by the two mortgagees to make the entry of the mortgage in the *muntakhib khewat* or

(*b*) that the signature (among a mass of other signatures) of *one* mortgagee at the end of that document, in which it is not denied that these mortgagees are shewn also as proprietors of other holdings in the village, can be properly referred to this mortgage entry.

Held also, that neither of these conditions obtained in the present case. (Question discussed whether section 19, Limitation Act, was intended to apply to cases of acknowledgment of the continued existence of a mortgage). GANGA RAM *v.* POKHAR DAS.

39 P R 1910

25. *And Schedule II, article* 56—*Acknowledgment by agent.*

Held, that a letter addressed to the principal by the agent within 3 years of the completion of the work by the plaintiff was a sufficient acknowledgment of liability in respect of the plaintiff's claim within the meaning of section 19, explanation I. ABDUL ALI *v.* GOLDSTEIN. **43 P R 1910**

26. *Held*, that under the provisions of section 19, of the Indian Limitation Act, 1877, an acknowledgment may be signed by an agent duly authorised and an agent who has authority to receive goods for his principal has also implied authority to sign an acknowledgment of balances due, and that such acknowledgment is good although the correction of the amount is not admitted and is conditional and subject to the principal's approval. SHERU MAL CHUIA MAL *v.* GOLDSTEIN. **55 P R 1910**

Section 20.

1. *Payment by agent after death of principal—Act IX of* 1872, *section* 201.

Held, that a payment made by an agent after the death of his principal cannot give a fresh starting point from which to calculate limitation with reference to section 20 of Act XV was still subsisting on the 1st October 1877, when Act XV of 1877 came into force; but that in any case the suit could not be said to have become barred under Act IX of 1871, as the plaintiff, by accepting subsequent instalments after default made had waived the benefit of the provision entitling him to demand payment of the entire debt, and had continued to waive that benefit till within 12 years of suit, as he could do, the law not limiting

LIMITATION ACT (XV OF 1877)—*contd.*

Section 20—*contd.*

the number of waivers, and the principal of article 75 of the 2nd Schedule of Act XV of 1877 being applicable by analogy to the case of a bond hypothecating immovable property.

Held, also that article 63 of the 2nd Schedule of Act XV of 1877, (or article 61, Schedule II, Act IX of 1871) was wholly inapplicable to the suit, as, under the terms of the bond, both interest and principal were chargeable upon the property hypothecated as security, and therefore the same law which applied to the latter applied to the former.

Held, further, per RATTIGAN, J., (BARKELY, J. dissenting as to this), that article 147 of the 2nd Schedule of Act XV of 1877 was applicable to the suit, as a suit for sale within the meaning of that articles includes a suit in which the mortgagee expressly prays to be allowed to realise his debt solely from the mortgaged property; but that, if article 147 were not applicable, article 132 would apply, and the claim for interest, which was for 11 years and 5 days, would still be within time.

Held, per BARKLEY, J. that article 132, and not article 147, was applicable to the suit, as the plaint was not in the form prescribed for a plaint for sale by section 644 of the Civil Procedure Code (4th Schedule, No. 109) and the prayer in the plaint could not be regarded as a prayer for the sale of the property and payment out of the proceeds, such as is provided for by the prescribed form but rather that the sum due should be ascertained and declared a charge on the property. RAM NATH *v.* MUSSAMMAT JIO. **101 P R 1880**

2. *And section* 2—*Act IX of* 1871, *section* 21—*Suit on balance of account—Effect of part payment of principal—Contract in writing—Claim barred under Act IX of* 1871 *not revived by Act XV of* 1877.

In a suit on a balance of account alleged to have been struk on the 8th January 1879, but which was not signed by the debtors, it appeared that there were no debit entries in the account for some ten years before suit, but it was urged for the plaintiffs that certain entries of part payments of the principal debt entered in the accounts in one of the defendant's hand-writting, were sufficient to bring the suit within limitation, under section 20 of Act XV of 1877.

Held, that as for more than three years before the 1st October 1877, the defendants had contracted no fresh items of debt, a suit for the balance them due would have been barred; as under the former Limitation Act (IX of 1871) in order that a part payment of a debt recorded in the hand-writting of the debtor should give a fresh starting point for limitation, it was the necessary that the debt should have arisen from a contract in writing which was not the case in the present suit: that therefore on the 1st October 1877, when Act XV of 1877 came into force, the plaintiffs claim upon the account was barred, and under

LIMITATION ACT (XV OF 1877)—*contd.*

Section 20—*contd.*

section 2 of that Act could not be revived by the provision contained in section 20 of the new Act. GOBIND RAI *v.* CHAJJU MAL. **62 P R 1881**

3. *And section* 19—*Effect of payment of produce by mortgagor to mortgagee—Extension of period for redemption.*

Section 20 of the Limitation Act is merely intended to extend the period of liability for a debt or legacy, and a plaintiff suing to enforce the debt secured by a mortgage might avail himself of the payment of produce to bring his suit within Limitation: but the section does not operate to protect the right of a mortgagor to redeem his property or to extend the ordinary period allowed by law for the assertion of that right. The only way that the period for the latter right can be extended is by an acknowledgment in writing fulfilling the requirements of section 19 of the Act. KHILANDA RAM *v.* JINDA. **37 P R 1883**

4. *Part payment of principal of debt—Indorsement of part payment not in the hand-writing of the payer but signed by him—Sufficiency of such indorsement to interrupt limitation.*

Held, that an indorsement on a bond of part payment of the principal not in the hand-writing of, but signed by, the payer is sufficient to interrupt limitation within the meaning of section 20 of the Limitation Act, as the words "the fact of the payment appears in the hand-writing of the person making the same are satisfied by the payer attaching his signature to a writing setting out the fact of the payment. NARSINGH DAS *v.* BACHATAR SINGH. **99 P R 1884**

5. *Part payment of decree—Payments not appearing in hand-writing of judgment-debtor.*

Certain payments made by a judgment-debtor out of Court and certified by the decree-holder in an application to the Court *held*, not to bring the application within time under section 20 of the Limitation Act, as assuming (without deciding) that sections 19 and 20 of the Limitation Act apply to proceedings in execution of decree, the facts of the present case were such as to exclude their operation, as part payment to take effect under section 20 of the Limitation Act must appear in the hand-writing of the person making the payment, which was not the fact in the present case. CHAJJU *v.* GULAB. **61 P R 1886**

6. *Part payment of principal—Endorsement by debtor.*

Held. following *I L R IX Mad.*, 271, that under section 20 of the Limitation Act, 1877, the fact which must appear in the hand-writing of the person making the payment is the fact that the payment is the part payment of the principal of a debt

LIMITATION ACT (XV OF 1877)—*contd.*

Section 20—*contd.*

and that the creditor is not entitled to prove *aliunde* that the payment of a sum of money by his debtor was made as part payment of the principal of the debt.

The main object of the proviso attached to section 20 of the Limitation Act, is that there shall be clear and unmistakable evidence in the hand-writing of the person making the payment of the fact that he made it in part payment of principal and thereby impliedly admitted that he was still liable for payment of the balance of principal.

I. L. R., VI Mad., 281, dissented from. DIWAN BUTA SINGH *v.* HUKAM CHAND.

124 P R 1894

7. *And section* 19—*Guardian and Ward—Acknowledgment of debt by Court of Wards as guardian of minor.*

See SECTION 19 *supra.*

1 P R 1897

8. An acknowledgment of a motgagor's title by a minor is inoperative and cannot give a new starting point for limitation for redemption. ANIS-UL-REHMAN KHAN AND OTHERS BENI RAM AND OTHERS.

59 P R 1901

9. *And article* 64—*Suit for balance of accoun—Account stated—Acknowledgment of liability—Promise to pay—Contract Act, section* 25 (c)—*Stamp Act*, 1899, *Schedule I—Article* 1.

The striking of a balance in account books may, according to the cases by the particular case, amount merely to an acknowledgment of liablity or of the correctness of the account so stated, or it may constitute a new cause of action. No general rule can be laid down and everything depends upon the facts of each case.

Plaintiff sued upon a statement of account in his account book alleged to have been signed by the defendant which was to the following effect:—

" *Lekha Ganpat Nanda Virwala da Sambat*
" 1957 *Mitti Katak* 23 *Rs.* 51-14-0 *baqi adhe*
" *Rs.* 51-14-0 *hathi Ganpat di Nanda di*
" *mawarikhi* 23 *Katik* 1957 *mabligh Rs.*
51-14-0 *rubaru Ibrahim.*"

This entry bore an anna stamp.

Held, that the above entry contained no promise to pay, nor was it a new contract in substitution of the original cause of action between the parties, but was a mere acknowledgment of liability of the debt then alleged to exist and was rightly stamped with a one anna stamp.

Held, also, that the plaintiff was entitled to prove that at the time of settlement the defendant had agreed by a separate oral contract to pay interest at a given rate on the amount settled by them to be due.

Ratta Ram v. *Mussammat Nano* (3 *P. R.* 1878, F. B.), *Manjunatha Kamti* v. *Devamma* (*I. L. R. XXVI Mad.* 186), *Ladhu Shah* v. *Fazal Dad* (72 *P. R.* 1879), *Jyu Ram* v

LIMITATION ACT (XV OF 1877)—*contd.*

Section 20—*contd.*

Sada Ram (33 *P. R.* 1882), and *Pandit Har Kishen Das* v. *Pir Bakhsh* (36 *P. R.* 1886), cited.

Shankar v. *Mukta* (*I. L. R. XXII Bom.* 513), *Jamun* v. *Nand Lal* (*I. L R. XV All.* 1), and *Ganga Prasad* v. *Ram Deyal* (*I. L. R. XXIII All.* 502), not approved. GANPAT *v* DAULAT RAM. **68 P R 1904**

10. *Payment of principal—Facts of such payment must appear in writing of person making the payment.*

To satisfy the conditions of section 20 of the Indian Limitation Act, it is not necessary that the writing evidencing the payment should contain an explicit statement in the handwriting of the person making the same that it is a payment made in part payment of the debt. It is sufficient if it is in fact a part payment.

Mandardhar Aith v. *Secretary of State for India in Council* (*VI Calc. W. N.* 218), *Diwan Buta Singh* v. *Hukam Chand* (124 *P. R.* 1894) cited and followed.

Sardar Bachittar Singh v. *Jagan Nath* (1 *P. R.* 1897), *Mukhi Haji Rahmattulla* v. *Coverji Bhuja* (*I. L. R. XXIII Calc.* 546, *Joshi Bhaishankar* v. *Bai Parvati* (*I. L R. XXVI Bom.* 246) *Mackenzie* v. *Tiruvengadathan* (*I. L. R. IX Mad.* 271), and *Jada Ankama* v. *Nadimpale Rama I. L. R. VI Mad.* 281), referred to. BUTA *v.* PARMA NAND. **84 P R 1904**

Section 21.

1. *Meaning of " only in section* 21, *Act XV of* 1877.

Held, that the meaning of the word " only " in section 21 of the Limitation Act, 1877, is that the partner signing the acknowledgment must also be shown to have had the express or implied authority of the other partners to do so, and that in a going mercantile concern such authority is to be presumed as an ordinary rule. BICHHA LAL *v.* JAI PARSHAD. **45 P R 1899**

Section 22.

1. *Suit by minor against guardian for an account and for possession of immorable property—Trustee.*

See SECTION 7, *supra*. **33 P R 1897**

2. *Pre-emption—Unregistered corporation sued through its manager—Names of members not specified—Plaint returned for addition of such names—Date of institution of suit.*

See CORPORATION. **29 P R 1896**

4. *And sections* 8, 9—*Suit for balance of account—Institution of suit by managing member of joint family—Waiver by defendant of objection for want of parties—Subsequent addition of other members of the family as co-plaintiffs—Effect of such addition—Suit barred as against added parties—Minors—Power of manager of joint family to give discharge binding on minor member—Power of Manager to sue on behalf of minors where defendant has waived plea of misjoinder—Authority of manager to sue for adult member—Ratification of Manager's acts.*

In a suit for a balance of account originally instituted by one B. M. alone, who it afterwards appeared was the managing member of a joint family, no objection for want of parties was taken by the defendent till a late stage of the case and after the suit had been tried as one between the defendant and B. M. alone. Plaintiff then admitted that he had a younger brother, one R. a minor, whose guardian he was, and that one S. S who had died before the suit leaving three sons, two of whom were minors, was a party to the account. On this N. the eldest son of S. S. presented a petition for himself and his minor brothers, to the effect that B. M. as manager of the joint family, was entitled to sue alone, and had instituted the suit with his consent. The first Court held that as B. M. had sued alone without obtaining the leave of the Court under section 30 of the Civil Procedure Code, he was only entitled to a decree for his own share, one-fourth of the amount claimed. After an appeal by B. M. to the Commissioner had been dismissed, the Chief Court remanded the case to the first Court that the proper parties might be joined as co-plaintiffs, and the question of the defendant's liability disposed of once for all. An amended plaint was then filed adding R. the brother of B. M. and N. T. and H. the sons of S. S. as plaintiffs, B. M. representing his brother R. who was a minor and N. representing his two minor brothers, T. and H. It was then contended among other pleas that the claims of all the newly-made plaintiffs were barred under section 22 of the Limitation Act. The 1st Court found that the business was a joint family business, but as the period of limitation for the suit had elapsed when the new plaintiffs were made parties, he dismissed the suit as barred by section 22 of the Limitation Act as against the new parties, and decreed one-fourth of the amount claimed in favour of B. M. as before. The plaintiffs appealed to the Commissioner who held that three of the new plaintiffs being minors no limitation ran against them, and as regards N. he held that the family being an undivided Hindu family, of which B. M. was the managing member, he must be considered to have instituted the suit as manager of the firm, and that therefore all the plaintiffs were entitled to a decree. A decree was accordingly given for the amount found to be due, the Commissioner holding that the account was an open mutual, and current account with reciprocal demands between the parties.

Held, that as regards N. his claim had certainly become barred when he was made a party under section 22 of the Limitation Act: that his minors brothers were in the same position by reason of section 9 of the Limitation Act as though they were minors their father had survived the striking of the balance sued upon, and limitation therefore began to run

in his lifetime; and that as regards R. the minor brother of B. M. as a discharge by a managing member of an undivided Hindu family to a debtor to an ancestral business belonging to that family would be valid without the concurrence of the minor, when a discharge under the same circumstances by an adult partner would bind a minor co-partner, therefore with reference to III. (1) to section 8 of the Limitation Act, R.'s claim was also barred when he was made a co-plaintiff.

But *held* also, that plaintiff, B. M. as managing member of the family, could maintain a suit in his own name on behalf of the minor members of the family, at least where, as in this case, the defendant had waived the objection of non-joinder, and that as regards N. the only other adult member of the family whether express or implied authority had been given to B. M. to sue for him or not, N. having ratified his act in instituting the suit against the defendant by the petition before alluded to, the effect of that suit was the same as if authority to sue for N. existed when it was instituted. B. M. was therefore entitled to a decree for the whole claim. *Lachman Das* v *Sunder Das* (No. 124 P. R. 1879, Civil) and *Kesar Singh* v. *Ganga Singh* (No. 2 P. R 1882, Civil) referred to. SADULLA KHAN *v.* BHANA MAL. **58 P R 1882**

5. *Suit for pre-emption—Suit barred as against one of the defendant purchasers—Dismissal of suit as regards remaining defendants.*

Plaintiffs sued for pre-emption in respect of certain property purchased by one M. S. and his brother jointly, the suit being instituted in the first instance against M. S. personally and as representative of his brother who had died before the date on which the suit was brought, the vendor also being joined as a defendant. On the first date on which the defendants were cited to appear for settlement of issues, M. S. took objection to the valuation of the suit, which led to an enquiry, and finally to fresh summonses being issued to the defendants to appear on a subsequent date for settlement of issues. At the last named hearing M. S. for the first time objected that his brother had left a widow who, as one of his heirs, was entitled to one fourth of his estate, and who accordingly should be joined as a defendant in the suit. The Court, considering that the widow should be made a party, passed an order to that effect, whereopon it was objected for the widow that the suit as against her was barred by limitation with reference to section 22 of the Limitation Act, and for M. S. that, as the suit was barred as regards the widow, it could not proceed against the other parties interested.

Held, that if it appeared that the case as against the widow was barred by limitation, the suit must be dismissed as against all the defendants, as the subject-matter of

1747

LIMITATION ACT (XV OF 1887)—*contd.*

Section 22—*contd.*

a pre-emption suit, when the property sold is one and subject to the same right of pre-emption being one and indivisible, and it being necessary that the suit should either be decreed as a whole or dismissed as a whole, it was not competent to the Court to decree a part of the claim as against some of the purchasers and dismiss the rest of the claim as against the other purchasers. KHAN MUHAMMAD SHAH *v.* MUHAMMAD JAN.

104 P R 1882

6. *Suit by one of several joint contractors - Addition of other plaintiffs after lapse of period of limitation.*

Plaintiff, one D. R. and the defendant, as gomashtas, having entered into a partnership with certain capitalists to carry on a shop, on the terms that, when the business was wound up, the profit or loss should be divided in specified shares, the present suit was originally instituted by the said D. R. on behalf of the firm against the defendant on a balance struck by the latter when he retired from the partnership. Defendant objected to D. R. suing alone, two of the other persons interested having also already petitioned to be made co-plaintiffs, whereupon the other plaintiffs were ordered to be joined. Defendant then raised the plea of limitation, as more than 3 years had elapsed from the date of the balance when the other plaintiffs were made parties.

Held, that the plaintiffs being joint contractors with the defendant, it was clear that when the objection was taken the suit could not go on without joining all the parties entitled, and the result of section 22 of the Limitation Act being that limitation continued to run against the added plaintiffs until they were joined in the suit, the suit became barred as regards them, and consequently as regards D. R. who could not sue without them. *Thakur Dass* v. *Golam Mohyuddin* (No. 20 P R. 1882, Civil) and *Sadulla Khan* v. *Bhana Mal* (No. 58 P. R. 1882, Civil) referred to. DALLU RAM *v.* NIBAHU MAL.

8 P R 1886

7. *Necessary parties—Effect of addition of new defendant.*

Held, that where on the objection of the defendant it was found that a necessary party had been omitted without whose presence on the record the suit could not be adjudicated upon, and such party was added after the period of limitation had expired, the suit was barred against all the defendants under section 22 of the Limitation Act. RAM CHAND *v.* SUBHAN BAKHSH AND ANOTHER.

69 P R 1902

8. Section 22 of the Limitation Act applies even where a Court of its own motion adds party to a suit. NABI BAKHSH *v.* FAKIR MUHAMMAD.

25 P R 1903

9. *Joint Hindu family—Suit by the managing member for debt due to the family—*

1748

LIMITATION ACT (XV OF 1877)—*contd.*

Section 22—*contd.*

Joinder of other members interested in the family as defendants after the period of limitation.

Held, by the Full Bench, that when one out of several persons jointly entitled, either as partners, members of a Joint Hindu faimly, or otherwise, to sue, brings a suit in his own name within the period of limitation and subsequently after the period of limitation has expired joins those who were entitled to sue with him as defendants, such joinder does not render his suit liable to dismissal by reason of section 22 of the Limitation Act as against the original of real defendants, as that section does not apply where there is no community of interest between the two sets of defendants and the fresh parties are merely joined for the purpose of safeguarding the original defendant.

Roydonath Roy v. *Grish Chunder Roy* (*I. L. R. III Cal.* 26), *Kale Khan* v. *Sera Ram* (156 *P. R.* 1889 F. B)- *Gururayya Gonda* v. *Dattatraya Anant* (*I. L. R. XXVIII Bom.* 11), approved.

Ram Chand v. *Subhan Bakhsh* (69 *P. R.* 1902), *Fakera Pasban* v. *Bibi Azimunnissa* (*I. L. R. XXVII Cal.* 540), distinguished.

Ramsebuk v. *Ram Lal Kundu* (*I. L. R. VI Cal.* 815), *Kalidas Kevaldas* v. *Nathir Bhagwan* (*I. L. R. VII Bom.* 217), *Alagappa Chetti* v. *Vellian Chetii* (*I. L. R. XVIII Mad.* 33), *Anjamuthu Pillai* v. *Kolandve'u Pillai* (*I. L. R. XXIII Mad.* 190), and *Sadulla Khan* v. *Bhana Mal* (58 *P. R.* 1882), referred to. LABHU RAM *v.* KANSHI RAM.

57 P R 1905

10. *Limitation Act,* 1877, *section* 22—*Suit for money against some of the representatives of a deceased debtor—Addition of other representatives after period of limitation.*

In a suit for the recovery of a debt due to him on a contract from A. and B. the plaintiff brought his action within the period of limitation prescribed by law against A. and the two sons of B. Upon objection being taken that a necessary party had been omitted, the Court ordered a third son of B. to be impleaded as a defendant after the period of limitation had expired. Thereupon the defence pleaded limitation.

Held, that the suit against the original defendants was not barred by limitation in consequence of the provisions of section 22 of the Limitation Act

The benefit of section 22 extends only to the particular parties who are added after institution of a suit, and a plaintiff's suit cannot fail merely because he may have lost his remedy against an added defendant unless where this is a necessary result from the nature of the subject-matter of the suit.

Rao Ghulam Muhammad Khan v. *Nahar Ali* (53 *P. R.*, 1896) referred to, JAWAHRI *v.* HARI SINGH.

81 P R 1905

11. *Parties—Suit by one of two brothers for money due to them jointly on book account*

1749

LIMITATION ACT (XV OF 1877)—*contd.*

Section 22—*contd.*

—*Addition of other brother as co-plaintiff after period of limitation—Limitation Act,* 1877, *section* 22.

A suit for the recovery of a debt due on a balance struck by the defendant was brought by one of two brothers jointly entitled to the amount due thereon. Upon objection being taken that a necessary party had been omitted the other brother was added as a co-plaintiff, but the claim at that time was barred by limitation.

Held, that as the original agreement or dealings were with both the brothers, they were both necessary parties to the suit, and that therefore, under section 22 of the Limitation Act, the suit was barred by limitation.

Rattan Chand v. *Ram Purshad* (69 *P. R.* 1906), followed. MOTAN MAL *v.* KIRPA MAL.

79 P R 1906

12. *Pre-emption—Suit for pre-emption—Assignment by vendee* pendente lite—*Addition of assignee as co-defendant after period of limitation—Limitation.*

The plaintiff brought an action to enforce a right of pre-emption within the period of limitation prescribed by law. The defendant-vendee assigned over his interest to a third party after the institution of the suit. On the application of the plaintiff, after the period of limitation had expired, the Court ordered the assignee to be impleaded as a co-defendant. Thereupon the defence pleaded limitation.

Held, that the suit was not barred by limitation in consequence of the joinder of the assignee. The provisions of section 22 of the Limitation Act do not apply when the original suit is continued against the added defendant who derives his title from the original defendant by an assignment pending the suit. FATTEH MUHAMMAD *v.* SAID AHMAD.

3 P R 1907

13. *Pre-emption—Sale to two persons—Shares of vendee and price specified—Divisible contract—Assignment by one of the vendees—Addition of assignee after period of limitation—Effect of such addition—Limitation Act,* 1877, *section* 22.

On 18th October 1900 B and C purchased certain land in proportion of two-thirds and one-third, the price paid by them was fully specified in the deed of sale. The plaintiff brought an action against both of the vendees to enforce a right of pre-emption in respect of the whole sale within the period of limitation prescribed by law. It having been proved that C had assigned over the interest to a third party long before the institution of the suit, the Court, on the application of the plaintiff after the period of limitation had expired, ordered the assignee to be impleaded as a co-defendant Thereupon the defence pleaded limitation The Court allowed the plea in favour of the assignee, but decreed the suit for two-thirds of the claim against B. The latter appealed on the ground that part of the

LIMITATION ACT (XV OF 1877)—*contd.*

Section 22—*concld.*

claim being dismissed as barred by limitation, the whole suit ought to have been dismissed as barred—*Held*, that the price and shares being distinctly specified the sale was divisible, and the plaintiff was consequently not debarred from claiming the two-thirds shares sold to B by reason of dismissal of his suit in respect to the one-third share sold to C.—BRIJ LAL *v.* MASSAN. **6 P R 1909.**

14. *Joint Hindu family—suit for recovery of a debt due to—Joinder of a co-parcener as defendant after the period of limitation.*

Held, that where in a suit for recovery of a debt due to a joint Hindu family an alleged co-parcener is on the objection of the defendant added as a co-defendant to the suit after the expiry of the period of limitation, no question of limitation arises and such joinder does not render the suit liable to dismissal by reason of section 22 of the Limitation Act as against the real defendant. GOHRU *v.* AMIRA.

20 P R 1909

Section 23.

1. *Continuing breach of contract.*

See FOREST ACT, 1878. **16 P R 1899**

2. *Suit for custody of wife—Third person harbouring wife—Continuing wrong.*

See ARTICLE 34, *infra.* **80 P R 1892**

3. *Suit by proprietors to compel occupancy tenants to reside in their village*—Wajib-ul-arz—*Lapse of more than 12 years from date when alleged forfeiture was incurred—Continuing breach of contract.*

Plaintiffs, who were proprietors in the village of M., sued the defendants, for the purpose of either ejecting them from their occupancy holding or compelling them to reside in the village of M., basing their claim upon a provision in the *Wajib-ul-arz* of the village, which was to the effect that "if a resident of this village shall "leave his residence and go to and settle "in another village, he shall not be entitled "to cultivation and possession." It appeared that the defendants' father, who was an occupancy tenant in M., left that village more than 12 years before suit and settled in another village, at a distance of some 6 kos, in which he had proprietary rights, arranging during his life-time for the cultivation of the land in M., which was similarly cultivated by the defendants after the death of their father, which occurred 9 years before suit.

Held, that there could not be said to be a continuing breach of contract in the present case so as to render section 23 of the Limitation Act applicable, as there was no real relation of contract between the plaintiffs or their predecessors in title on the one hand as proprietors, and the father of the defendants or the defendants on the other hand as hereditary cultivators of the land in suit, such agreement as there was between all the proprietors of the village on the one hand and all the tenants on the other, not being one of which it could be said that it was a contract capable of breach, and of continuing breach within the meaning of the above section. DHIAN SINGH *v.* MEHAN SINGH.

180 P R 1883

4. *Foreclosure of mortgage—Notice—Regulation XVII of* 1806, *sections* 6, 8—*Limitation Act,* 1877, *2nd Schedule, articles* 135, 143, *and section* 23—*Failure to pay interest under mortgage deed—Continuing breach of contract—Waiver.*

A motgage-deed, which was executed on the 26th March 1878 for a period of six years, provided that if interest for any year was not paid, the mortgagee might eject the mortgagor and take possession. Plaintiff contended that his suit, which was instituted on 4th December 1894, was within time under either article 135 or article 143 of the Limitation Act, 1877, on the ground that limitation ran from the *last* failure to pay interest in 1893 or 1884, and not from the date of the first default, which was more than 15 years before suit.

Held, that the obligation to pay interest annually was of "a recurring kind," and that the failure to do so did not amount to a continuing breach of the contract within the meaning of section 23 of the Limitation Act, 1877

Held, therefore, that plaintiff's cause of action arose on the date of the first default in paying interest, and that the suit was barred. ACHHAR MAL *v.* HUKMAN.

28 P R 1897

Section 24.

—*And Second Schedule, articles* 2 *and* 36, *Limitation—Suit for compensation against Municipal Corporation—starting point of limitation.*

Held, that the provisions of article 2 of the Indian Limitation Act, 1877, are not merely applicable to those cases in which the defendant at the time of doing the act informs the other party in so many words that he is acting under such and such a provision of law; it is sufficient for him to show that in doing the act he was at the time under the honest belief that his act was authorised by Statute.

Held also, that the omission by a Municipal Corporation to give the other party the Statutory notice prescribed by section 120 C of the Municipal Act does not take the case out of the operation of article 2.

Held, also, that if damage is caused to a person by an act alleged to be in pursuance of an enactment, article 2 of the Limitation Act is applicable, nowithstanding the damage resulted to plaintiff's property not immediately but after the lapse of some time, though it does postpone the accrual of the cause of action under section 24 until such time as the damage occurred, and limitation will

LIMITATION ACT (XV OF 1877—*contd.*

Section 24—*concld.*

Second Schedule, articles 2 and 36—*concld.*

run against him only from the date of such accrual.

Held therefore, that when a plaintiff seeks compensation for damages in respect, not of the original act done by a public body, who purport to have acted in pursuance of Statutory powers, but of the consequences of such act which has resulted in injury to himself, he must under article 2 of the Indian Limitation Act, 1877, sue within 90 days from the date when such injury occurred. RICHARD WATSON *v.* THE MUNICIPAL CORPORATION OF SIMLA. **72 P R 1909**

Section 26.

1. *Acquisition of easement—Use of water from natural stream.*

See EASEMENT. **35 P R 1895**

2. *User of road by public for less than* 20 *years—Presumption as to dedication.*

See EASEMENT. **62 P R 1898**

3. *Easement—Abandonment—Discontinuance of right.*

In a suit brought by plaintiff to close certain water-spouts belonging to the defendant, the facts found were that the defendant had formerly two water-spouts on the roof of his house, the rain-fall of which was thereby discharged on to land, which now belonged to the plaintiff; that about 40 years ago, the part of the roof from which the rain-fall was thus discharged fell in, and continued a ruin, until recently the defendant having restored it, set two new water-spouts (the subject of this suit) in the very position where the old ones existed. It further appeared that during the period the defendant's house remained unroofed, plaintiff made erections on his own land which would suffer by the defendant's restored spouts.

Held, that the question for decision on the above facts was, whether or no there had been an abandonment by defendant of the easement which once existed, and the point to be determined was whether the long period that the site remained in a dismantled condition was enough to show either that the defendant abandoned at a former time the intention to rebuild or gave the plaintiff reasonable cause for believing he had so done. *Churrut Singh* v. *Simboo* (No. 68 P. R. 1880, Civil) cited. GHULAM MUHAMMAD *v.* GULSHER MUHAMMAD KHAN.

38 P R 1886

4. *Easement—Obstruction—Meaning of "interruption."*

Held, that a suit to establish a claim to an easement brought more than two years after the claimant of the easement had discontinued the enjoyment of his rights by reason of the obstruction created by the defendant is barred by limitation under section 26 of the Indian Limitation Act, notwithstanding the plaintiff did not "acquiesce in" the obstruction. The word "interruption" used and explained in the section does not apply to the final period

1753

LIMITATION ACT (XV OF 1877)—
contd.

Section 26—*concld.*

of cessation of enjoyment of the easement lasting until the institution of the suit, but only to a period of cessation of enjoyment followed by a further period of enjoyment. AMIR HAIDAR SHAH *v.* FAJJA AND OTHERS.
73 P R 1905

Section 28.

1. *And articles* 142, 144—*absentee—Adverse possession.*
See ABANDONMENT. **29 P R 1910**

2. *Suit for recovery of possession of common waste land encroached upon by a trespasser—Limitation.*
See COMMON LAND. **105 P R 1901**

3. *Adverse possession—Widow in possession of life interest in her husband's property—Reversioners.*

A widow, while she herself retains possession of property in which she has a life interest, cannot by merely asserting an absolute proprietary title in course of time acquire such title by prescription against the reversionary heirs of her husband who are not entitled to receive possession till the widow's death. MUSSAMMAT ANAND KOUR *v.* SODI NARINDAN SINGH. **83 P R 1881**

4. *And Schedule II, articles* 91, 135, 147 —*Extinction of mortgagee's rights—Suit for foreclosure—Act X of* 1877, *Schedule IV, No.* 109—*Form of decree.*

Plaintiff sued to have it declared that two mortgages in favour of the defendant executed by the previous owner of land subsequently bought by the plaintiff were invalid against him. The suit was brought upwards of 12 years after the dates of the transactions relating to the land, the reason for suing being that the defendant had caused a notice of foreclosure to be served on the plaintiff. The sale did not purport to be of the equity of redemption but of the property, but it was admitted that the plaintiff purchased with notice of the mortgages.

Held, that though the mortgagee could no longer sue for possession under artcle 135 of the 2nd Schedule of the Limitation Act, and the only suit open to him was one for foreclosure under article 147, still as such a suit in the form provided by the 4th Schedule to the Code of Civil Procedure, No. 109, would include a prayer for possession, if the mortgage debt were not satisfied on some day to be named by the Court, this was sufficient to prevent the operation of section 28 of the Limitation Act to extinguish the rights of the mortgagee.

Held, also, that as the limitation for a suit to cancel the mortgage deeds was that prescribed by article 91, the plaintiff, if he could prove his case, would not be entitled to a decree cancelling the deeds, but only to a decree declaring that they did not bind the property in his hands, his title having been completed by 12 years' adverse possession. RALLIA RAM *v.* SUNDAR. **83 P R 1883**

1754

LIMITATION ACT (XV OF 1377)—
contd.

Section 28—*contd.*

5. *And Schedule II, article* 131—*Abstention for* 12 *years from right to graze—Extinction of right—Demand and refusal.*

Defendants, who had established by suit their right to graze their flocks in certain woods, after exercising such right for several years, abstained from doing so for 12 years.

Held, that the mere fact of such abstention was not sufficient to warrant the inference that the defendants had abandoned their right of grazing: nor was mere non-user for 12 years sufficient to extinguish their right; though if the defendants had claimed to exercise the right and been refused, then limitation would have begun to run against them, and under section 28, and article 131, Schedule II of the Limitation Act, their right would have been extinguished on the expiration of 12 years from the date of such refusal. DURGA *v.* BHONATU. **106 P R 1883**

Compare BILLU *v.* MAMON.
106 P R 1883 Note.

6. *Adverse possession—Title.*

The rule laid down by the Privy Council in *Gunga Gobind Mandal* v. *The Collector of the* 24 *Pargunnahs* (12 Moo. I. A. 345) decided in 1867, that as between private owners the law has established a limitation of 12 years after which time it declares not simply that the remedy is barred, but that the title is extinct in favour of the possessor, is consistent with the law as contained in the Limitation Act of 1877, and applies equally to cases where the possession still continues and where it has been terminated. DAYA RAM *v.* BADRI MAL. **16 P R 1886**

7. *Decree whose execution has become barred by limitation—Extinguishment of right—" Property"—Judgment-debt—Suit by mortgagee for possession of mortgaged property after allowing money-decree obtained on the same mortgage to become barred by time*

In a suit by a mortgagee for possession of the mortgaged property under the terms of the mortgage-deed, in which it was found that the plaintiff had been in constructive possession of the property within 12 years of the institution of the suit, it appeared that the said plaintiff had already sued for and obtained a simple money-decree on his mortgage, but had allowed the execution of such decree to become barred by lapse of time.

Held, that it could not on that account be rightly contended that the mortgage-debt was extinguished by operation of law and the mortgage-deed, there being no provision in the Limitation Act, that a decree whose execution is time-barred is therefore extinguished, the provision in section 28 of the Act not extending to the case of a debt, and much less to that of a judgment-debt; and that therefore although the decree could no longer be executed, the mortgage-debt, and consequently the plaintiff's right to take possession of the mortgaged property until the mortgage was paid off, survived. *Morice*

1755

LIMITATION ACT (XV OF 1877)—
contd.

Section 28—*concld.*

v. *Simla Bank* (No. 2 *P. R.* 1878), referred to. GANDA MAL *v.* NANAK CHAND.
3 P R 1887

8. *And article* 148—*Mortgage*—Birt—*Enjoyment of* birt *by one heir of mortgagee adversely to other heirs—Extinguishment of title of rival heirs.*

Held that inasmuch as a mortgage of *birt* rights is a mortgage of immovable property, its enjoyment adversely in his own right for more than twelve years by a representative of the original mortgagee extinguishes the title of the rival claimants to the subject matter of the mortgage and debars them from claiming any share of the sum payable on redemption. MOHAN LAL *v.* JANKI. **34 P R 1908**

Second Schedule, article 2.

See under SECTION 24, *supra.*
72 P R 1909

1. "*Act alleged to be in pursuance of any enactment*" *explained.*

Held, that the words "alleged to be in pursuance of any enactment" in article 2, Schedule II of the Limitation Act, must be reasonably construed, and that the person who seeks to take advantage of the shorter period of limitation must show that he had reasonable grounds for justifying his action under the particular enactment which he then relied upon, and not simply that he arbitrarily asserted or thought so. He must, in short, have assumed to act in the honest exercise of a supposed statutory power. GANESH DASS *v.* ELLIOTT. **124 P R 1881**

2. *Act alleged to be in pursuance of any enactment in force for the time being in British India.*

The meaning of the words "alleged to be "in pursuance of any enactment in force for "the time being in British India," which occur in article 2, Schedule II of the Limitation Act, discussed and explained.

Per SMYTH, J.—Where there is a provision of law limiting the time or regulating the procedure for bringing actions for things done in pursuance of an enactment, the defendant is entitled to the benefit of the protection of such provision if he honestly believed in the existence of a state of facts which, if it had existed, would have justified him under the enactment to do the thing complained of. The reasonableness of the belief is immaterial if the belief be honest, though it is an important element in determining the question of honesty. *Ganesh Dass* v. *Elliott* (*No.* 124 *P. R.* 1881), referred to. GANESH DASS v. ELLIOTT.
160 P R 1883

3. *Suit for refund of tools—Act XVII of* 1878—*Illegal levy ofto lls by lessee—Lessee honestly believing that he was acting in pursuance of the enactment—Suit for compensation.*

Plaintiffs sued to recover certain tolls which they alleged the defendant, who was the lessee and collector of tolls at a public ferry managed

LIMITATION ACT (XV OF 1877)— *contd.*

Second Schedule, article 2—*contd.*

under Act XVII of 1878, had taken from them 2½ years before suit under an incorrect construction which he put on his rights under his lease.

Held, that the suit was governed as regards limitation, by article 2, Schedule II of the Limitation Act, and was out of time.

To bring a suit for a refund under the above article, it is requisite for the defendant to show that he took the money in what he, acting with ordinary care and intelligence, believed, and honestly might believe, to be by an act in pursuance of an enactment for the time being in force in British India, and also that the relief sought falls under the term "compensation" as used in the schedule, both of which conditions had been fulfilled in the present case. *Umra* v. *Hira Nand* (*No.* 55 *P. R* 1876), and *Ganesh Dass* v. *Elliott* (*No.* 160 *P. R.* 1883), cited. NARPAT RAI *v.* SIRDAR KIRPAL SINGH. **65 P R 1886**

4. *Act alleged to be in pursuance of an enactment for the time being in force in British India.*

Held, that when a defendant, seeking the aid of article 2, Schedule II of the Limitation Act, pleads as a bar to an action that the acts complained of by the plaintiff were done in pursuance of an Act of the Legislature, the plea necessarily imports an averment that the Act was in force at the time and place when and where the acts complained of were done, and it is not enough for him to plead that the acts were done in pursuance of an Act which he honestly believed to be in force. JAI RAM *v.* GURMUKH SINGH. **105 P R 1886**

5. *And articles* 62, 96—*Suit for refund of ferry tolls levied in excess of powers given to lessee under Act XVII of* 1878—*Lessee acting under honest mistake as to the extent of his statutory power—Defendant entitled to the benefit of article* 2, *even though suit would also answer the description given in article* 62 *or* 96.

Defendant, who was a lessee of certain ferry tolls under Act XVII of 1878, levied tolls from the plaintiff between November 1881 and March 1882 to an amount exceeding that which, according to the true construction of his lease, he ought to have levied. Plaintiff sued in 1885 to recover this amount, alleging that, on demand for a refund, the defendant refused to refund. It was found as a fact that the excess levied by the defendant was levied under an honest mistake as to the extent of his statutory power.

Held, that the plaintiff's suit was barred by limitation under article 2, Schedule II, Act XV of 1877, and that for purposes of limitation the defendant was none the less entitled to rely upon the suit being in substance of the description given in article 2, and to insist upon the benefit of the provisions of that article, because the suit might in form also fall within the description given in article 62 or article 96 of the same schedule, and be in other respects

LIMITATION ACT (XV OF 1877)— *contd.*

Second Schedule, article 2—*concld.*

maintainable in either of these forms. *Narpat Rai* v. *Sirdar Kirpal Singh* (No. 65 *P. R.* 1886) followed. SETH KARIMJI *v.* SARDAR KIRPA SINGH. **123 P R 1886**

Second Schedule, article 10.

See PRE-EMPTION.

—*Pre-emption—Oral sale of joint share in an undivided holding—Physical possession.*

See ARTICLE 120, *infra.* **14 P R 1904**

—*Pre-emption suit—Limitation.*

See ARTICLE 120, *infra.*

25 P R 1899, 37 P R 1899

1. *Pre-emption—Sale of share of well and share of common land—Physical possession—Date of registration of instrument how determined.*

In a suit for pre-emption where the property sold was a ¼ share of a well, and an undivided share of the common land, *held*, that as the whole of the property did not admit of physical possession being taken, the period of limitation ran from the date when the instrument of sale was registered under Act XV of 1877, Schedule II, article 10.

The deed in question was presented for registration on the 9th July 1878, but was not copied into the book, nor was the certificate of registration endorsed, till the 16th July.

Held, that the instrument was not "registered" within the meaning of the Act till the latter date, and that therefore plaintiff's suit, which was filed on the 12th July 1879, was in time. KARM *v.* FAZL.

10 P R 1881

2. "*Physical Possession*"—*Sale of undivided share of holding—Pre-emption.*

In a suit for pre-emption, where it appeared from the deed of sale, that what was sold was one-sixth of an undivided holding, no fields being specified, *held*, that the sale was not one which admitted of physical possession, and that the period of limitation must accordingly be calculated, under article 10, Schedule II, of Act XV of 1877, from the date when the instrument of sale was registered. JOWALA SINGH *v.* TEK CHAND.

23 P R 1882

3. *Suit for pre-emption—Computation of limitation when the whole of the subject of the sale does not admit of physical possession.*

Held, that where the whole of the subject of the sale does not admit of physical possession, the period of limitation in a pre-emption suit must be reckoned from the date on which the instrument of sale was registered. *Karm* v. *Fazl* (No. 10 *P. R.* 1881), followed. UMAR BAKSH *v.* CHOGATTA.

156 P R 1882

4. *Sale of property in possession of tenant—Suit for pre-emption—Physical possession.*

Held, that where property sold is at the time of sale in the possession of a tenant under a lease from month to month or for an unexpired term, the purchaser cannot take physical possession under the sale in the sense contemplated by article 10, Schedule II,

LIMITATION ACT (XV OF 1877)— *contd.*

Second Schedule, article 10—*contd.*

of the Limitation Act, unless he takes such possession as will enable him to exercise complete physical control over the property. To constitute physical possession it is not sufficient that notice of the sale should be given to the tenant and that the tenant should accept the purchaser as his landlord and agree to pay him the rent, an agreement to hold as a tenant not being equivalent to a delivery of physical possession. *Kalan Khan* v. *Ram Sarn Das* (No. 97 *P. R.* 1880) cited. BISHEN SINGH *v.* SAMDU.

48 P R 1884

Followed in BAKHU *v.* RAMDIAL.

48 P R 1884 Note.

5. *Suit for pre-emption—Sale of share in undivided holding—Partition—Physical possession—Mortgagee in possession.*

In a suit for pre-emption, it was contended by the defendant that the plaintiff's case was barred by limitation, as it was not brought within one year from the registration of the instrument of sale, and the property being a share in an undivided holding and including rights in the common land, did not admit of physical possession. It was alleged in reply that the whole of the common land had already been divided, and that though the sale was nominally of ⅓rd share of the holding, the vendor's share had in fact been separated off and was in his exclusive possession before the sale, and that this was the subject of the sale.

Held, that if the above allegations were correct, the circumstance that the land was still recorded as an undivided holding would be no obstacle to the purchaser getting physical possession of the whole of the property sold.

It appeared, however, in the above case that the land sold was at the time of sale in the possession of a mortgagee, with a right to retain possession until redeemed, and moreover that the mortgage could not be redeemed at the date of sale, but only at the close of the agricultural year.

Held, that the purchaser could not be put in physical possession of the land at the date of sale: that his purchase made him owner merely of the equity of redemption—an incorporeal right which did not admit of physical possession, though it put him in a position to obtain physical possession of the land when the mortgage was redeemed; that limitation, therefore, began to run from the date of registering the deed of sale, and the plaintiff's claim was barred, as he did not sue till nearly 14 months after that date. *Kalan Khan* v. *Ram Sarn Das* (No. 97 *P. R.* 1880) cited. BHAWANI PERSHAD *v.* ATTAR SINGH. **68 P R 1884**

6. *Suit for pre-emption—*"*Physical possession*"—*Sale of definite share in a* khata *together with a share in the* shamilat *and other manorial rights.*

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LIMITATION ACT (XV OF 1877)—*contd.*

Second Schedule, article 10—*contd.*

In a suit for pre-emption in which limitation was pleaded, it appeared that the property sold consisted of an ascertained and definite share in a certain *khata* together with a share in the *shamilat* and other manorial rights.

Held, following the previous rulings of the Court, that the property sold was of such a nature that "physical possession" could not be taken of the whole of it, within the meaning of article 10 of the 2nd Schedule of the Limitation Act of 1877, and consequently limitation ran from the date of registration of the deed of sale. *Kalan Khan* v. *Ram Sarn Das* (No. 97 *P. R.* 1880), *Karm* v. *Fazl* (No. 10 *P. R.* 1881), *Jowala Singh* v. *Tek Chand* (No. 23 *P. R.* 1882), and *Umar Baksh* v. *Chogatta* (No. 156 *P. R.* 1882 cited. SOHAN *v.* HIMMAT.

61 P R 1885

7. *Pre-emption—Physical possession—Fraud.*

Where, in a suit for pre-emption, it appeared that the house which formed the subject of the sale was a shop in the sole possession of a third party as tenant, *held*, that the property was not capable of being taken into physical possession in the sense contemplated by the Limitation Act, nor did the giving notice of the sale to the tenant and the acceptance by him of the purchaser as his landlord constitute such physical possession, and therefore the period of limitation ran from the date of the registration of the deed of sale, and the suit having been instituted after the expiry of such period was barred, unless it could be proved that knowledge of the sale was withheld by "fraud" within the meaning of section 18 of the Limitation Act, and further that the fraud took place within one year from the date of limitation. *Kalan Khan* v. *Ram Sarn Das* (No. 97 *P. R* 1880), and *Bishan Singh* v. *Samdu* (No. 48 *P. R.* 1884), cited and followed.

Held further, that mere silence on the part of the vendor is not a fraud. To prove fraud within the meaning of the section quoted above there must be some distinct act done with the intention of deceiving the pre-emptor or concealing the fact of the sale. *Murad* v. *Bhag Singh* (No. 46 *P. R.* 1879), *Arsala* v. *Yar Muhammad* (No. 32 *P. R.* 1881), *Nihal Chand* v. *Foujdar Singh* (No. 3 *P. R.* 1882), and *Ghiba* v. *Hayat* (No. 120 *P. R.* 1883), cited.

GAURI MAL *v.* JAINTI MAL. **73 P R 1885**

8. *And article* 120—*Suit for pre-emption based on mortgage.*

Held, that a suit for pre-emption based upon a mortgage is governed by the limitation provided by article 120 of the 2nd Schedule of the Limitation Act, 1877, and not by article 10 of the same schedule. UTTAM SINGH *v.* FATEH SINGH.

103 P R 1885

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LIMITATION ACT (XV OF 1877)—*contd.*

Second Schedule, article 10—*contd.*

9. *And article* 120—*Pre-emption of house sold by unregistered deed and not capable of physical possession.*

In a suit for pre-emption of a house, it appeared that the property in suit was purchased by the defendants by two unregistered deeds for under Rs. 100 each, and that at the time of purchase the house was in the possession of certain mortgagees, from whom the purchasers, after a lengthy litigation lasting nearly three years, at length obtained possession in execution of decree, whereupon the present suit for pre-emption was instituted.

Held, that such suit was not barred by time: that all that the owners could sell at the time of sale was their equity of redemption, an incorporeal right which did not admit of physical possession at the time of the sale, though it put the purchaser in a position to obtain physical possession when the property was redeemed [*vide Bhawani Pershad* v. *Attar Singh* (No. 68 *P. R.* 1884), : that as the purchasers could not acquire physical possession at the time of sale and the deed was not registered, article 10 of the 2nd Schedule of the Limitation Act did not apply, but the suit was governed by article 120 of the same schedule, and having been brought within six years of the date when the right to sue accrued, (*i. e.*, when the house was sold), was within time. JAWALA SAHAI *v.* ALA DITTA. **90 P R 1886**

10. *Suit for pre-emption—Sale of separate holding with share of* shamilat—"*Physical possession.*"

In a suit for pre-emption, *held* (following the previous rulings of the Court) that where the sale in question includes a share in the *shamilat*, even though the greater part of the property sold may consist of a separate holding, the whole subject-matter of the sale is not capable of physical possession within the meaning of Schedule II, article 10 of the Limitation Act, and the period of limitation in such a case is one year from the date of registration of the deed of sale. MALUK SINGH *v* MUHAMMAD. **65 P R 1889**

11. *And article* 120—*Suit for pre-emption—Sale to mortgagee in possession.*

Where in a suit for pre-emption it appeared that the property desired to be pre-empted had been purchased by the mortgagee in possession by an unregistered deed of sale.

Held, that as regards limitation the article of the Limitation Act applicable to the suit was article 120, and not article 10. The purchase was merely of the equity of redemption—an incorporeal right which did not admit of physical possession, and as the deed of sale had not been registered, the period of limitation was six years from the date of the deed.

I. L. R. IX All. 234 approved. GAFFAR KHAN *v.* SATTAR.

160 P R 1889

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LIMITATION ACT (XV OF 1877)—*contd.*

Second Schedule, article 10—*contd.*

12. *And article* 120—*Mortgage by conditional sale—Foreclosure proceedings and suit for possession—Pre-emption.*

The limitation applicable to a suit for pre-emption of an undivided share in a joint holding which does not admit of physical possession being taken, and in which the purchaser acquires his title by foreclosure proceedings under Regulation XVII of 1806 and a subsequent suit for possession, is six years under article 120, Schedule II of the Limitation Act, 1887, article 10 having no application to such a state of facts. ALI GAUHAR *v.* JOWAHIR.

30 P R 1892

13. *And article* 120—*Suit for pre-emption between rival pre-emptors—Necessary parties to such a suit.*

On 11th June 1889, S. sold to Haku and others the land now in dispute.

On 10th June 1890, M. S. filed the present suit for pre-emption against the vendor and purchasers above named.

On 7th July 1890, Hamira and eight others instituted a similar suit.

Both suits came before the same Court for trial, and it ordered on 6th August 1890, that M. S. should be impleaded as a co-defendant in the suit brought by Hamira and his party; a similar order was made that Hamira and his party should be impleaded in M. S.'s suit.

On 16th October 1890, Hamira appeared in the suit in which he was plaintiff and stated that it had been settled by the original vendees (Haku and others) having re-sold to him and his co-plaintiffs the property in a suit and asking for permission to withdraw. The suit was accordingly dismissed on 20th October 1890.

On 23rd December 1890, M. S. obtained a decree for pre-emption against all the defendants.

Hamira and his party alone appealed against this decree to the Divisional Judge, the original vendor and vendees (S. and Haku and his party) not joining in the appeal.

The Divisional Judge decided that the suit as against Hamira and his party was barred by limitation by reason of section 22 and article 10, Schedule II, Limitation Act, 1877, and that the suit must therefore be dismissed as against the appealing defendants.

M. S. preferred a further appeal to the Chief Court.

Held per curiam, that as regards Hamira and others the suit must be deemed to have been instituted when Hamira was made a party (6th August 1890), but that the provision of the Limitation Act applicable was not article 10 but article 120 of the Second Schedule.

Per RIVAZ, J.—The suit against Hamira did not seek to enforce any right of pre-emption as against him, but merely to establish

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LIMITATION ACT (XV OF 1877)— *contd.*

Second Schedule, article 10—*contd.*

that he had no right of pre-emption superior to that of the plaintiff, and to bind him (Hamira) by the decree eventually to be passed in favour of the plaintiff, if he succeeded in establishing his right of pre-emption as against the other defendants, and further caused it to appear that Hamira had no superior right to which the Court could be asked to give effect.

Held, also, *per* RIVAZ, J.—That the true ground upon which Hamira was impleaded (and that rightly) in the suit brought by M. S. was not merely because Hamira was a rival claimant for pre-emption, but because he was a claimant who had himself filed a suit for pre-emption and thus asserted his claim.

It thus became necessary, while both suits were still alive, to adjudicate between the claims of the rival plaintiffs *inter se* as well as between their claims and those of the original vendees. MUTSADDA SINGH *v* HAMIRA. **11 P R 1893**

14. *And article* 120—*Punjab Laws Act,* 1872—*Pre-emption*—Benami *sale to escape pre-emption.*

In 1857 *mauza* Jamalpur in the Hissar District, which was then owned by Ranghars, was confiscated by Government owing to the misconduct of the proprietary body. All the proprietors lost their rights except five biswadars, A, B, C, D and E. Excluding their shares, the rest of the village was put up to auction and purchased by two *banias*, Rishak Lal and Ram Lal.

In 1883 a strenuous effort was made to restore the village lands to their original owners, Ram Lal being persuaded to part with his rights, but Rishak Lal (or his sons and successors) refusing to sell his share.

In February 1883, Ram Lal executed and registered a deed of sale of some 4,000 *bighas* for Rs. 9,700 in favour of A, B, C, D and E, who alone of the original proprieters retained their rights in the village. Soon after the sale Rishak Lal's sons, who are the plaintiffs in the present suit, brought a suit, for pre-emption, on the allegation that the sale by Ram Lal, though nominally to A, B, C, D and E, was in reality to outsiders, *viz.*, the ejected *biswadars*. This being denied by A and his companions the suit failed.

In or about 1888, A, B, C, D and E, instituted a series of mutation proceedings the object of which was to obtain a *dakhil kharij* of various plots of land in favour of a large number of the excluded *biswadars*, it being recited in each case that the real sale took place in 1883 and was followed immediately by proprietary possession, but that mutation had been deferred for reasons which were not given.

These mutation proceedings led to a long series of suits for pre-emption, the plaintiffs in all the cases being the sons or representatives of Rishak Lal; the vendor-defendants in each case being two or more

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LIMITATION ACT (XV OF 1877)— *contd.*

Second Schedule, article 10—*contd.*

of A, B, C, D and E, the vendees being one or other of the old *biswadars* whose rights had been confiscated for misconduct in the mutiny.

In the two particular cases now under consideration the mutation of names was granted in 1888, but the suits were not instituted until 1891.

The defendants pleaded limitation.

The Divisional Judge dismissed the two suits as barred not because the real sale took place in 1883, but because he held that assuming the lands to have been sold in 1888, the suits were barred under article 10, Schedule II of the Limitation Act, one year having elapsed from the date of mutation.

Held, that the suits were within time. The whole of the property sold did not admit of physical possession, a share of the *shamilat* being included, there was no registered deed of sale in 1888, and the period of limitation was therefore six years under article 120, Schedule II of the Limitation Act, commencing from the date of the accrual of the right to sue.

Held, also, that the plaintiffs had succeeded in proving a transaction of sale in 1888 which gave rise to a right of pre-emption, and that they were entitled to succeed, they being landowners in Jamalpur at the date of the sale, which the vendee-defendants were not. KALU *v.* BHUPA. **30 P R 1893**

15. *And article* 120—*Pre-emption*—*Conditional sale of undivided share in a village*—*Foreclosure*—*Regulation XVII of* 1806—*Limitation.*

The defendants, mortgagees, by way of conditional sale of a three *biswas* share in the village, foreclosed under Regulation XVII of 1806, and finally obtained joint possession of their share on 22nd August 1887. In a suit for pre-emption filed on 18th June 1889, it was contended for the defendants and held by the Courts below, that article 10 of the Limitation Act, 1877, was applicable to the suit, and that it was barred.

Held, by the Chief Court, that the subject of the sale being an undivided share of an estate did not admit of physical possession, and therefore article 120, Schedule II, Limitation Act, 1877, was the provision applicable and the suit was within time.

Semble.—Article 10 may apply to conditional sales, if the subject of sale admits of physical possession or the sale is by registered deed. KHUNDA *v.* CHUNI LAL. **87 P R 1893**

16. *Pre-emption*—*Construction of deed*—*colorable mortgage for purpose of evading law of pre-emption*—*Fraud*—"*Question of law involved*"—*Appeal.*

On the 6th August 1888, one B. R. executed and registered a deed, whereby he mortgaged a house with possession to one T. R. The terms of the said deed were to the follow-

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LIMITATION ACT (XV OF 1877)— *contd.*

Second Schedule, article 10—*contd.*

ing effect: the mortgage was for Rs. 550 and for a period of thirty years; interest on a sum of Rs. 150 was to be set-off against rent, the balance of the principal to carry interest at the rate of 8 annas; the mortgagee was to effect whatever improvements he liked and the costs thereof with interest at the same rate was to be paid by the mortgagor before redemption. At the time aforesaid the house was already mortgaged for five years to one J. R., from whom, it was alleged, T. R. redeemed it in July 1891. On the 16th August 1892, plaintiff sued B. R. and T. R. for pre-emption of the house on the ground that the so-called deed of mortgage was in reality a deed of sale which had been written in the form of a mortgage-deed in order to stave off pre-emptors. He further alleged that defendants had fraudulently concealed the sale from him, and that he had only recently come to know of it. The lower Courts held that the transaction was in reality a sale, that there had been fraud, and that the suit was within time and gave plaintiff a decree for pre-emption. T. R. appealed to the Chief Court.

Held, that whether the transaction of the 6th August 1888 was in reality a mortgage or a sale, plaintiff's suit must in either event be dismissed: if a mortgage, on the ground that the right of pre-emption did not exist in respect of mortgages; if a sale on the ground that, as the property when sold was in possession of a mortgagee (J. R.) whose mortgage could not be redeemed for three years, it was incapable of possession and the suit was therefore barred under article 10 of the 1st Schedule to the Limitation Act, 1877.

STOGDON, J.—It is no fraud on the part of either or both parties to a deed to resort to any legitimate means whereby to defeat the law of pre-emption, and it is not open to the Court in construing a deed which is in terms one of mortgage to attribute to such terms meanings other than those plain on the face of them, on the ground that the transaction, though certainly a mortgage, would probably eventually have the same effect as a sale.

ROE, S. J. *contra.*—It is open to the Court o judge of the nature of a transaction, that is, of the intention of the parties, not merely from the use of any particular word in the deed recording their contract, but from a fair and reasonable view of the nature of the terms agreed upon and to declare that if these terms show clearly that the transfer was intended to be permanent, the transaction was in reality a sale even though it was called a mortgage. TIKAYA RAM *v.* DHARM CHAND.

45 P R 1895

17. *And article* 120—*Mortgage by conditional sale*—*Foreclosure*—*Pre-emption.*

Held, that, as regards limitation, suits for pre-emption arising out of the conditional sales, which have been converted into

LIMITATION ACT (XV OF 1877)— *contd.*

Second Schedule, article 10—*contd.*

absolute sales, if the whole of the subject of the sale admits of physical possession, are governed by article 10 of the 2nd Schedule to the Limitation Act, 1877, the said article not being restricted in its operation to sales having immediate effect.

I. L. R. IV All. 218 referred to. GUNGA RAM *v.* BAHAL SINGH. **76 P R 1895**

18. *Pre-emption—Limitation—Sale without delivery of possession.*

On the 13th of September 1892, Jiwan and Hussain Bakhsh in consideration of Rs. 1,500 advanced for costs sold to one Mast, a ⅛th share of 2,853 *kanals*, 4 *marlas* of land for which they had sued (as heirs of Ram Chand), possession was to be given on obtaining a decree. On the 10th October 1895 Mast sold his right, under the deed of 13th September 1892, to Nabi Bakhsh, defendant. As Jiwan and Hussain Bakhsh did not deliver possession of the land on the 7th December 1895, the present defendants sued for possession. On 4th January 1896, a compromise was agreed to between the parties, and Jiwan and Hussain Bakhsh agreed to make over ⅛th of the land to the present defendants, a decree of the 31st January 1896 followed in terms of the compromise. On the 26th of January 1897 the present suit was instituted for pre-emption of the 745 *kanals* 5 *marlas* decreed as above-mentioned.

Held, that limitation began to run against the pre-emptor from the date of the original deed of the 13th September 1892, which was a sale out and out, delivery of possession being necessarily postponed until decree. That possession not being with the vendors at the time of sale did not prevent the sale being complete, and that the compromise of 1896 was not a new contract giving a fresh starting point for limitation.

Lachmi Narain and another v. *Manag Dat* (*I. L. R. VII All.* 291) and *Chief Court* R. A. No. 1140 of 1897 decided on 19th February 1900, approved and followed. MANSABDAR *v.* NABI BAKHSH AND OTHERS.

43 P R 1900

19. *And article 120—Mortgage by conditional sale—Foreclosure—Suit for pre-emption—Time from which period begins to run.*

Held, by the Full Bench, that right of pre-emption accrues and limitation begins to run against a pre-emptor in the case of foreclosure of a mortgage by conditional sale from the date of the expiration of the year of grace allowed to mortgagor under Regulation XVII of 1806.

Sher Singh v. *Imamulla* (82 *P. R.* 1880) dissented from. *Harnam Das* v. *Kanwar Singh* (103 *P. R.* 1893), *Bur Singh* v. *Sohel Singh* (121 *P. R.* 1894), *Ali Abbas* v. *Kalka Parsad* (*I. L. R. XIV All.* 405), and *Batul Begam* v. *Mansur Ali Khan* (*I. L. R. XX All.* 315, *F. B.*) approved. *Alu Prasad* v.

LIMITATION ACT (XV OF 1877)— *contd.*

Second Schedule, article 10—*contd.*

Sukhan (*I. L. R. III All.* 610), distinguished. *Jeora Khun Singh* v. *Hookum Singh* (4 *H. C. R*, *N. W. P.* 358), *Forbes* v. *Ameeroonissa* (5 *W. R.* 47 *P. C.*), *Ali Gauhar* v. *Jowahir* 30 *P. R.* 1892), and *Kunda* v. *Chuni Lal* (87 *P. R.* 1893), referred to. ATAR SINGH *v.* RALLA RAM. **103 P R 1901**

20. Where a plaintiff has to seek to enforce his right of pre-emption against the transferree of an original vendee the provision of the Limitation Act applicable is article 10 of the second Schedule to the Limitation Act. NABI BAKHSH *v.* FAKIR MUHAMMAD.

25 P R 1903

21. *Pre-emption—Sale of shop property in possession of tenant—Suit for pre-emption—Starting point of limitation.*

Held, that where property capable of physical possession in the occupation of a tenant is sold and possession is transferred to the purchaser merely by the tenants executing a lease in his favour, the limitation applicable is that prescribed in the first clause of article 10 of the second Schedule to the Limitation Act, and will not commence to run against the pre-emptor until the purchaser takes physical possession of the whole of the property purchased by him.

Batul Begam v. *Mansur Ali Khan* (5 *Calc. W. N.* 888, *P. C.*), *Kalan Khan* v. *Ram Saran Das* (97 *P. R.* 1880), *Bishen Singh* v. *Samdu* (48 *P. R.* 1884), and *Gauhri Mal* v. *Jamti Mal* (73 *P. R.* 1885), cited and followed. SHARIF HUSSAIN *v.* MUHAMMAD YOUSAF.

88 P R 1905

22. *Suit to enforce right of pre-emption—Date of registration of instrument of sale, meaning of—Time from which period begins to run—Registration Act,* 1877, *sections* 52, 58, 59, 60.

Held, that the limitation provided for a suit to enforce a right of a pre-emption depending on registration under this article begins to run from the date when the instrument of sale is registered within the meaning of section 60 of the Registration Act and not from the date of the presentation for registration.

Karm v. *Fazl* (10 *P. R.* 1881), followed. BHANJAN RAM *v.* GOPALA. **92 P R 1906**

23. *Pre-emption—Rival claimants with equal rights—Claimant suing subsequently cannot defeat the other by obtaining a consent decree during the pendency of the prior suit—Limitation for suits as between rival claimants—Limitation Act,* 1877, *Schedule II, articles* 10, 120.

Held that a rival claimant of the right of pre-emption, cannot by obtaining a consent decree in a subsequently instituted suit to which the first claimant was not a party, defeat another with equal rights who by first filing his suit has shown superior diligence in enforcing his right.

Held, also, that the period of limitation as between rival pre-emptors is that pre-

LIMITATION ACT (XV OF 1877)— *contd.*

Second Schedule, article 10—*concld*

scribed by article 120 of the Second Schedule to the Limitation Act and not that prescribed by Article 10, and that one pre-emptor can therefore be impleaded as a co-defendant in the suit of the other within the period prescribed by article 120. RAM PARSHAD *v.* GANGA DATT. **20 P R 1908**

24. *Pre-emption—Sale of property in possession of tenant—Suit for pre-emption—Starting p int of limitation.*

Held by the Full Bench that where property sold is at the time of sale in the possession of a tenant the limitation applicable to a suit for pre-emption of such a sale is that provided by clause 2 of article 10 of the Second Schedule to the Indian Limitation Act, 1877.

The term "physical possession" in article 10 of the Limitation Act means personal and immediate possession.

Sharif Hussian v. *Muhammad Yusaf* (88 *P. R.* 1905) overruled. GHULAM MUSTAFA *v.* SHAHAB-UD-DIN. **49 P R 1908 F B**

25. *Sale of immovable property in execution of decree—Registration of sale certificate under section* 89 *of the Registration Act—Suit for pre-emption—Limitation—Applicability of second part of article* 10 *of the Limitation Act,* 1877—*Civil Procedure Code,* 1882, *section* 316—*Registration Act,* 1887, *sections* 51, 89.

Held by the Full Bench (Robertson, J., dissenting), that a sale certificate granted by a Court under section 316 of the Code of Civil Procedure, of which a copy has been forwarded to the Registering Officer in accordance with section 89 of the Registration Act, 1877, and duly filed in register of non-testamentary documents relating to immovable property prescribed in section 51 of the Act by the Registering Officer is not a registered document within the meaning of article 10 of the Second Schedule of the Limitation Act. FATTEH SINGH *v.* DAROPADI.

142 P R 1908

Second Schedule, article 11.

See CIVIL PROCEDURE CODE, 1908, O. XXI, R. 60. **28 P R 1910**

1. *And article* 13—*Suit by decree-holder, against whom an order has been passed under section* 332, *Civil Procedure Code,* 1882, *to establish his right—Limitation.*

Plaintiff, in execution of a decree for possession as mortgagee against his mortgagor, obtained formal possession of certain land on the 11th August 1891, and on the 17th August 1891 P. and M. alleging that they were in actual possession of the said land as mortgagees and had been illegally dispossessed by plaintiff in execution, petitioned the Court to be restored to possession. The Court allowed their objection on the 3rd December 1891. More than a year thereafter plaintiff brought a regular suit to establish his right, but the Divisional Judge, on appeal, dismissed the suit as barred by limitation

Second Schedule, article 11—*contd.*

under article (11) of the 2nd Schedule of the Limitation Act, 1887.

Held, that the order of the Court allowing the objection of P. and M. was one under section 332, Civil Procedure Code, 1882, and that neither article (11) nor article (13) of the 2nd Schedule of Act XV of 1877 applied to suits brought by a person against whom an order had been passed under that section to establish his right, no special period of limitation being prescribed for such suits. NIHALA MAL *v.* KHAIRA. **125 P R 1894**

2. *And articles* 120, 125—*Mortgage—Mortgage by Hindu widow—Attachment in execution of decree obtained on the mortgage—Claim by collateral to attached property—Order passed against claimant—Suit by claimant to establish his title—Limitation—Civil Procedure Code*, 1882, *sections* 278—283.

In 1888 B., a Hindu widow, mortgaged certain property to the defendant. In 1900 the defendant obtained a decree on the mortgage, and in execution attached the property. Plaintiff, collateral, intervened under section 278, Civil Procedure Code. The Court overruled the objection on the ground that the objector had no present right to possession. Plaintiff instituted a suit, within one year of the date of the order disallowing his objections for a declaration that the attachment of the property would not affect his rights after the death of the mortgagor. This suit was dismissed by the Divisional Judge as barred by article 125 of the Limitation Act.

Held, that the plaintiff was entitled to object under section 278 of the Civil Procedure Code in spite of 12 years having expired since the execution of the mortgage, and his suit to establish his right to the property attached was within limitation under article 11 of the Indian Limitation Act.

A collateral may well be content to await the death of a female mortgagor before suing for possession, but where the mortgagee takes steps to oust the mortgagor in execution of a decree obtained on the mortgage and to effect the sale of the property mortgaged, the collateral has a cause of action distinct from that afforded by the mortgage.

Devi Ditta v. *Pareman* (71 *P. R.* 1898), referred to. SANT RAM *v.* GANGA RAM. **32 P R 1904**

3. *Civil Procedure Code*, 1882, *sections* 278, 283—*Attachment—Application by third party for removal of attachment—Default of claimant—Claim disallowed—Suit by claimant to establish right to attached property—Limitation—Limitation Act*, 1877, *Schedule II*—

In a suit brought by the plaintiff to recover possession of a dwelling house which had been sold at an auction sale in execution of a money decree against the plaintiff's brother more than a year before the institution of the suit, it appeared that in the course of the execution proceedings the plaintiff had

Second Schedule, article 11—*concld.*

intervened and applied to have the attachment removed on the ground that the property was his and not of his brother, but that owing to default of prosecution the plaintiff's claim was disallowed.

Held, that the order in the execution proceedings dismissing the plaintiff's objections to the attachment on account of default of prosecution was not a judicial investigation under section 281, Civil Procedure Code, and that therefore the suit was not barred under article" 11 of the Limitation Act.

An order cannot be held to be an order under section 281, Civil Procedure Code, unless it is passed after an investigation into the facts of the case and an opinion expressed and judgment given on the merits.

Kalu Mal v. *Brown* (*I. L. R. III All.* 504), *Munisami Reddi* v. *Arunachala Reddi* (*I. L. R. XVIII Mad.* 265), *Chandra Bhusan Gangopadhya* v *Ram Kanth Banerji* (*I. L. R. XII Calc.* 108), *Sardari Lal* v. *Ambika Pershad* (*I. L. R. XV Calc.* 521, *P. C.*), and *Kallar Singh* v. *Toril Mahton and another* (1 *Calc. W. N.* 24), cited and followed. SAJAN RAM *v.* RAM RATTAN. **87 P R 1904**

4. *Civil Procedure Code*, 1882, *sections* 278, 283—*Attachment—Application for removal of attachment—Omission of Judge to give decision with respect to a part of the property under attachment—Suit by claimant to establish right regarding the part so omitted—Limitation—Limitation Act*, 1877, *Schedule II, article* 11.

Held, that when an executing Court under some misapprehension has omitted in its order to express an opinion or to give judgment on the merits with respect to some of the properties mentioned in the claim preferred by a judgment-debtor under section 278 of the Code of Civil Procedure, the order cannot be treated regarding those properties as an order within the meaning of section 283 to which article 11 of the 2nd Schedule of the Indian Limitation Act would apply. BHAGWANTI *v.* GOMAN. **42 P R 1909**

Second Schedule, article 12.

Suit to set aside a sale—Applicability of article 12, *where sale is null and void—Civil Procedure Code*, 1882, *section* 43—*Splitting cause of action—Sections* 250, 251, 274, 287, 290, 311 *and* 312—*Material irregularities in publishing or conducting the sale—Fatal defects—Non-compliance with the provisions of the code as regards attachment.*

H. and D. obtained an *ex parte* decree against K. in the Court at Peshawar on the 17th December 1883. In May 1884 application was made and granted for transfer of this decree for execution to the Court at Rawalpindi. The latter Court fixed the 6th of October 1884 for sale of certain property (a house situate on revenue-paying land and the land attached thereto), belonging to the judgment-debtor. On the same date, however, the

Second Schedule, article 12—*contd.*

Court passed an order for stay of execution on an application made by K.'s mother as his guardian to the effect that K. was a minor and the decree void in consequence. This order did not reach the sheriff in time and the sale took place as advertised on the date fixed. On the 22nd December 1884 the sale was confirmed. On the 4th July 1885 the *ex parte* decree was set aside on appeal, but the auction purchaser was no party to this proceeding. On the 7th April 1887 K. instituted two suits simultaneously; the first for a declaration that the sale of the house was void and for possession thereof, and the second for recovery of certain revenue-paying lands of which it was alleged that the defendants had taken forcible possession.

The contentions raised on behalf of the plaintiff were—

(*i*) that the decree was void, having been passed against a minor without the appointment of a guardian *ad litem;*

(*ii*) that there was no lawful attachment, that no notices and warrants had been issued under sections 250 and 251, Civil Procedure Code; that no attachment was made at the spot by proclamation nor had any publication been made at the Court house or the Collector's office; that no boundaries had been specified; that no proclamation was issued under section 287; that no time for sale was notified as provided in section 290, Civil Procedure Code; and

(*iii*) that the sale was illegal, having taken place after the order to sell had been withdrawn.

The auction purchaser contended on the other hand that (*i*) section 43, Civil Procedure Code, barred the one or the other of the two suits, (*ii*) that both suits were barred by article 12, Schedule II of the Limitation Act, (*iii*) that the auction purchaser was under no obligation to go behind the decree and to inquire how it had been obtained or whether the sale had been rightly ordered, and (*iv*) that the suits were not maintainable, *vide* section 312, Civil Procedure Code.

Held, (*i*) that section 43 did not apply that even if there were no necessity or justification for bringing two suits, yet as both had been instituted simultaneously, one suit could not be said to have priority over the other in point of time, that there was no relinquishment and no question of a subsequent suit in respect of the portion relinquished.

I. L. R. I All. 650 and *W. N. All.* 1888 *p.* 147, followed in preference to the decision in *I. L. R. IX Mad.* 279;

(*ii*) that the *onus* of proving that the plaintiff was a minor at the date of the *ex parte* decree was on plaintiff, that he had failed to discharge it; and that consequently the decree must be held to be valid and binding;

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LIMITATION ACT (XV OF 1877)—*contd.*

Second Schedule, article 12—*concld.*

(*iii*) that the suits were maintainable. Their object was not to attack the sale on account of irregularities in publishing or conducting it, but for defects of such a nature as made the sale void *ab initio*, having been made without jurisdiction, and therefore a nullity;

(*iv*) that the formalities laid down in the code as preliminary to a valid sale had not been complied with and that the sale was therefore *de facto* void; and

(*v*) that article 12 of the Limitation Act did not apply as the suit was based on the allegation that the so-called sale was no sale at all.

I. L. R. XI Bom. 119 and 130 and *I. L. R. XII. Bom.* 18 followed. The observations in *I. L. R. XIV Cal.* 18 explained. LALA SEVA RAM *v.* KANSHI RAM. **76 P R 1890**

Second Schedule, article 13.

1. *Suit by decree-holder against whom an order has been passed under section* 332, *Civil Procedure Code*, 1882, *to establish his right—Limitation.*

See ARTICLE 11, *supra.* **125 P R 1894**

2. *Mortgage—Suit for refund of sale-proceeds paid in accordance with order for distribution under section* 295, *Civil Procedure Code*, 1882—*Suit by* puisne *mortgage to enforce his lien—Limitation Act*, 1877, *Schedule II, article* 13—*Doctrine of marshalling.*

Defendant was the first mortgagee of two houses under a deed, dated 28th September 1888, for Rs. 195, while plaintiff was the *puisne* mortgagee of one of the houses for Rs. 150. Plaintiff sued on his deed and obtained a decree for Rs. 155 and costs, to be recovered from the hypothecated house which he got attached in execution. The defendant had a simple money decree for Rs. 102 and had both houses sold—apparently free of his mortgage lien—by auction for Rs. 315 on the 7th January 1892. Plaintiff tried to assert his claim for part of the sale-proceeds on his mortgage, but failed, and on the 9th April 1892 defendant realized the whole amount, crediting Rs. 195 to the mortgage-money due to him, and the rest to his money decree. On the 17th April 1893 plaintiff sued to recover this balance on the ground that his second mortgage gave him a better title to it. Defendant pleaded *inter alia* that the claim was barred under article 13 of the Second Schedule to the Limitation Act, 1877, inasmuch as the original order of the execution Court rejecting plaintiff's claim to share in the sale-proceeds of the two houses was one under section 295, Civil Procedure Code, and that the present suit was filed more than one year after the date of that order.

Held, that the present suit was not one to set aside an order under section 195 of the Code, but to recover money on the strength of plaintiff's superior title, and that, therefore,

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LIMITATION ACT (XV OF 1877)—*contd*

Second Schedule, article 13—*concld.*

article 13 of the Limitation Act was not applicable.

Held, further, that plaintiff was entitled, in accordance with the rule of marshalling of mortgages, to insist that defendant should first realize the amount due to him on his own mortgage from the house not mortgaged to plaintiff,—and only the deficiency from that mortgaged to him, and that plaintiff's mortgage deed took precedence, as regards the balance, over defendant's simple money decree.

I. L. R. XV Bom. 438 and *W. N.* 1894 78, followed; *I. L. R. XIII Calc.* 159 not followed. SOHAN LAL *v.* BALDEO SAHAI. **65 P R 1895**

Second Schedule, article 14.

—*Northern India Canal and Drainage Act*, 1873, *section* 68—*Finality of order as to the use or distribution of water for any crop sown or growing at the time when such order is made—Setting aside order by civil suit—Limitation.*

The provisions of section 68, Northern India Canal and Drainage Act, 1873, can only mean that the order made thereunder is binding unless and until set aside by a decree of Court in a suit brought for the express purpose of challenging the validity of the order; and such suit must be instituted within one year of the date of the order under article 14, Schedule II, Indian Limitation Act, 1877.

Failing such suit the adjudication of the Canal Officer or Collector (as the case may be) will settle finally the matter in dispute between the parties which was dealt with under the section and will not be open to question directly or indirectly in a Civil Court.

[*Cf.* No. 71 *P. R.* 1888.] NAWAB GHOLAM MAHBUB SUBHANI *v.* PREM NARAIN. **25 P R 1893**

Second Schedule, article 29.

See LIMITATION ACT (XV OF 1877, SCHEDULE II, ARTICLE 42. **40 P R 1881**

Second Schedule, article 31.

—*Limitation—Suit against a carrier for compensation for non-delivery of goods—Limitation Act*, 1877, *Schedule II, article* 31.

Held, that a suit against a Railway Company for compensation for non-delivery of goods is governed by article 31 of Schedule II of the Limitation Act, 1867 (as amended by Act X of 1899).

British Indian Steam Navigation Company v. *Hajee Muhammad* (*I. L. R. III Mad.* 107), *Kalu Ram* v. *Madras Railway Company* (*I. L. R. III Mad.* 240), and *Danmul* v. *British India Steam Navigation Company* (*I. L. R. XII Calc.* 477), dissented from.

Great Indian Peninsula Railway Company v. *Raisett* (*I. L. R. XIX Bom.* 165), and *Haji Ajam Goolam Hossain* v. *Bombay and Persia Steam Navigation Company* (*I. L. R. XXVI*

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LIMITATION ACT (XV OF 1877)—*contd.*

Second Schedule, article 31—*concld.*

Bom. 562), followed. MOTI RAM *v.* EAST INDIAN RAILWAY COMPANY. **108 P R 1906 F B**

Second Schedule, article 34.

—*And article* 35—*Suit for custody of wife—Third person harbouring wife—Continuing wrong.*

A third person who harbours a runaway wife is guilty of a continuing wrong, and under the operation of section 23, Indian Limitation Act, 1877, a fresh period of limitation begins to run at every moment of time during which the wrong continues, the section being more comprehensive in this respect than the corresponding provision of the Act of 1871.

The limitation applicable to a suit by a husband for the custody of his wife is to be found in articles 34, 35, Schedule II, Limitation Act, 1877.

No. 60 *P. R.*, 1896 (F. B.), followed. KHAIR-UD-DIN *v.* MUSSAMMAT BUDHI. **80 P R 1892**

Second Schedule, article 35.

See ARTICLE 34, *supra.* **80 P R 1892**

Second Schedule, article 42.

—*And article* 29—*Damages for wrongful attachment—Injury caused by wrongful injunction.*

Plaintiffs sued to recover damages for injury caused to certain moveable property, while under attachment. After defendant had attached the property, plaintiffs, on the 3rd July 1878, obtained an order removing the attachment under section 230 of the Civil Procedure Code. Defendant then brought a suit under section 283 to maintain the attachment whereupon on the 26th July the Court issued an injunction maintaining the attachment till the civil suit was decided. That suit was decided against defendant on the 13th November 1878, and on the 25th August 1879, plaintiff brought the present suit.

Held, reversing the order of the lower Appellate Court, that article 42 of the 2nd Schedule of the Limitation Act (XV of 1877), and not article 29, applied to the suit, which was accordingly within limitation. HAJI PIR MUHAMMAD *v.* THAKUR DASS. **40 P R 1881**

Second Schedule, article 44.

1. *Suit for possession of land—Suit involving cancellation of document—Period of limitation applicable.*

See ARTICLE 91, *infra.* **76 P R 1890**

2. *And articles* 91 *and* 92—*Minor, suit by, after attaining majority to recover land sold by his guardian—Nature of purchaser's title—Limitation Act*, 1877, *Schedule II, articles* 44, 91 *and* 92.

The plaintiff was a minor: U. K. (his elder brother) who was his *surbarah* and actually managing his land, sold in 1874 to G. R

LIMITATION ACT (XV OF 1877)— *contd.*

Second Schedule article 44—*contd.*

the plaintiff's share of the joint property in addition to his own, and also the share of another brother.

The plaintiff now sued to recover possession, alleging that the sale of 1874 was inoperative as against him as not having been made for necessity. The lower Courts agreed that plaintiff's age exceeded 21 years when the suit was filed, and this finding was not further contested.

The lower Courts differed as to the limitation governing the suit, the District Judge applying article 44, Schedule II, Limitation Act, 1877, and dismissing the suit while the Divisional Judge regarded the suit as within time, because it was a suit for possession of immovable property and brought within 12 years of the commencement of the purchaser's (G. R.'s) possession.

Held, that the suit was governed either by article 44 or 91, and was barred. The principle applicable is that when a person sues for immovable property and is met by a defendant in possession founded upon a title which, as between him and that defendant, is null and void, the plaintiff may be at liberty to ignore the transaction and to get the benefit of 12 years' limitation; but if he is not at liberty to treat the title or the transaction in which it originated as a nullity, then one of the shorter periods of limitation is applicable, such as articles 44, 91, 92 and others, according to the circumstances of the particular case.

Quære.—Whether article 44 applies to a guardian *de facto*, as well as to a guardian *de facto* and *de jure*, *I. L. R. XII Calc.* 69, *I. L. R. XIII Calc.* (*P. C.*), 308, *I. L. R. XV Calc.* (*P. C.*), 58, followed. GHULAM RASUM *v.* AJAB GUL. **57 P R 1891**

3 *Guardian and ward—Suit by minor on attaining majority to set aside a sale by person purporting to act as guardian.*

Article 44, Schedule II, Limitation Act, 1877, held inapplicable to a suit by a minor after attaining his majority for possession of immovable property conveyed away during his minority by a person purporting to act as his guardian, where it appeared that such person was not really the minor's guardian, in fact or in law. CHANDU LAL *v.* ANANT RAM **135 P R 1892**

4. *Limitation—Suit by minor on attaining majority to set aside a sale by his guardian.*

Held, that the limitation governing a suit by a minor, after attaining his majority for the recovery of possession of immovable property conveyed away during his minority by his guardian is provided for by article 44 of the Second Schedule to the Limitation Act, 1877.

Where a special period of limitation for the removal of an obstacle to a plaintiff's possession is provided, he cannot ignore that provision and come in within twelve years

LIMITATION ACT (XV OF 1877)— *contd.*

Second Schedule, article 44—*concld.*

of the act complained of with a suit for possession.

Ghulam Rasul v. *Ajab Gul* (57 *P. R.* 1891), *Gujan Singh* v. *Puran* (71 *P. R.* 1901) and *Malkarjun* v. *Narhari* (*I. L. R. XXV Bom.* 337, *P. C.*), cited. *Umar Bakhsh* v. *Muhabbat Khan* (66 *P. R.* 1899) and *Chandu Lal* v. *Annant Ram* (135 *P. R.* 1892), distinguished. SAID SHAH *v.* ABDULLA SHAH AND OTHERS. **19 P R 1902**

5. *And articles* 91, 144—*Guardian and ward—Alienation by* de facto *guardian—Contract void—Suit by ward for recovery of property so alienated—Limitation for such suit.*

Held, that an alienation by a Muhammadan uncle as a *de facto* guardian of his nephew's property is void *ab initio*, and consequently a suit for the recovery of the property against the alienee in such a case is governed by article 144 and not by articles 44 and 91, as he is not bound to set aside the alienation or to sue under either of those articles.

Held also, that instances of acquiescence in transfers by uncles of their minor nephews' property do not prove a custom empowering an uncle to alienate his minor nephew's property. SARDAR SHAH *v.* HAJI. **28 P R 1909**

Second Schedule, article 46.

—"*Award*," *meaning of, in above article.*

The words "such award" used in article 46, Schedule II, of the Limitation Act, clearly indicate that the award referred to is one of the description mentioned in the preceding article, *viz.*, one passed under Reg. VII of 1822, or Reg. IX of 1825, or Reg. IX of 1833. An award passed in the course of a civil suit is clearly not of the description contemplated in article 45 or 46 of the above schedule. LACHMAN *v.* ATMA. **25 P R 1883**

Second Schedule, article 48.

—*And articles* 49 *and* 123—*Claim by widow against co-widow who had obtained succession certificate—Succession Certificate Act,* 1889—*Assets not realized at time of suit—Cause of action—Limitation Act,* 1877, *2nd Schedule, articles* 48, 49, 123—*Deed of gift—Registration—Admissibility of deed to prove collateral fact—Evidence of marriage.*

Upon the death of one A. A. on the 17th of January 1891, plaintiff and defendant, claiming to be his wives, applied separately for certificates under the Succession Certificate Act, 1889, and on the 22nd July 1891, the District Judge granted defendants a certificate subject to the condition that she should give security, with three sureties, equal to the amount of the debts and securities in respect of which the certificate was applied for. On the 22nd August 1893, one A. R. gave security to the extent of Rs.

LIMITATION ACT (XV OF 1877)— *contd.*

Second Schedule article 48—*concld.*

2,000, but according to plaintiff's allegation, the truth of which was not denied by defendant, the certificate was granted for the realization of sums aggregating Rs. 35,586 deposited by A. A. in certain Banks. On the 22nd May 1894, plaintiff sued Mussammat Satara Begam, the said Banks and A. R. in respect of the said sum of Rs. 35,586, her suit being founded on the allegations that she was the wife of A. A., and that he had gifted the whole of his property to her by deed, dated 6th January 1881. The suit was dismissed as against the Banks and A. R., but the District Judge gave plaintiff a decree for half the amount claimed against Mussammat Satara Begam, defendant No. 1, who thereupon, appealed to the Chief Court. For appellant it was contended (*i*) that at the date of institution of the suit no portion of the sums claimed had been realized by her, and as she was not in possession of the money, there was no cause of action against her; (*ii*) that the suit was barred under either article 48 or 49 of the Limitation Act, having been brought more than three years after the death of A. A.; (*iii*) that the deed of gift, being unregistered, was inadmissible in evidence; (*iv*) that plaintiff was not the wife of A. A., but only his mistress.

Held, as to the *first* contention, that as defendant was bound under the certificate to realize the said sum of Rs. 35,586 and to account to plaintiff for her share, plaintiff had a good cause of action against defendant in respect of such share which defendant could have realized prior to the suit, but wilfully failed to realize; as to the *second* contention that the suit was not barred by limitation; as to the *third* contention, that plaintiff had failed to prove that the deed of gift was ever acted upon, and, therefore, could not claim anything under it; and as to the *fourth* contention, that the lower Court had rightly held upon the evidence that plaintiff was the wife of A. A.

Marriage may be presumed presumptively by the statement of the parties, or their general conduct towards each other. MUSSAMMAT SATARA BEGAM *v.* MUSSAMMAT HUSAINI KHANAM. **16 P R 1897**

Second Schedule, article 49.

See ARTICLE 48, *supra*.

16 P R 1897

Second Schedule article 55.

See LIMITATION ACT (XV OF 1877) SCHEDULE II, ARTICLE 144.

112 P R 1884

Second Schedule, article 57.

—*And article* 120—*Act IX of* 1872, *section* 176—*Suit by pawnee for money lent, and for sale of property pawned—Suit barred as against defendant personally but in time as against the pawned property.*

Plaintiff, who was the pawnee of certain jewellery pledged by the defendant to secure a loan of money, sued to recover the principal and interest of the loan, and to obtain a decree

LIMITATION ACT (XV OF 1877)—*contd.*

Second Schedule, article 57—*concld.*

against the defendant for the debt, and an order for the sale of the jewels. The suit was brought more than three years, but less than six years, from the date when limitation began to run.

Held per *Smyth*, J., that the whole suit was governed, as to limitation, by article 120 of Schedule II of Act XV of 1877.

But *held* by a majority of the Full Court, (*Smyth* J., dissenting as to this), that the suit was barred as regards the claim against the defendant personally by article 57 of the same schedule, though not barred (by article 120) as to the claim against the ornaments pledged.

In a suit brought upon a personal obligation, and a security for the performance of that obligation, the suit may be barred as to the personal remedy and not barred as to the remedy against the property by the provisions of the law of limitation contained in Act XV of 1877. *Shankar Das* v. *Ghasita* (No. 73 *P.R.* 1876, Civil) cited. DOWLAT RAM *v.* JIWAN MAL. **116 P R 1881**

Second Schedule, articles 59, 60.

See LIMITATION ACT, 1877, SCHEDULE II, ARTICLE 116. **86 P R 1881**

1. *And section 2—Act IX of 1871, Schedule II, articles 58, 66—Bond—Tamassuk—Suit for which period prescribed by Act XV of 1877 is shorter than that prescribed by Act IX of 1871.*

Plaintiffs sued to recover Rs. 99-12 on a Punjabi bond or *tamassuk* executed by defendants on 22nd January 1875, and payable on demand. The suit was instituted on 25th April 1878, and plaintiffs sought, under section 2 of the Limitation Act, XV of 1877, to take the case out of the operation of article 59, Schedule II of that Act, on the ground that under article 58, Schedule II, of the Limitation Act, IX of 1871, a longer period of limitation was allowed for a suit like the present than that allowed by article 59 of the new Act—limitation in the one case running from the date of demand and in the other from the date of the loan; and therefore, under section 2 of the new Act, plaintiffs claimed to be entitled to avail themselves of the longer term prescribed by Act IX of 1871, until the expiry of two years from 1st October 1877, when the new Act came into operation.

Held by PLOWDEN AND ELSMIE, JJ.—(SMYTH, J., dissenting), that assuming that the suit fell under article 66, Schedule II, Act IX of 1871, it also fell under article 58 of the Schedule, and was within limitation under the saving clause of section 2, Act XV of 1877. *Shadi Ram* v. *Abdul Rahman*, No. 3 *P. R.* 1874, Civil, overruled

Per SMYTH, J.—That the suit fell under article 66 of the old Act, and that as under that Act if still in force, the suit would have been barred, section 2, Act XV of 1877, was not applicable. NATHU *v.* DARBARI. **77 P R 1879**

LIMITATION ACT (XV OF 1877)—*contd.*

Second Schedule, articles 59, 60—*concld.*

2. *Deposit repayable on demand—Banker and customer.*

From the case stated it appeared that one M. opened an account with the defendants on 9th October 1873. From that date to 29th May 1876 he drew out Rs 133-5-0 leaving a balance of Rs. 179-11-0 in his favour. From that date up to the 7th October 1877 M. paid to the defendants Rs 73-12-0 making the balance at his credit in defendants' hands Rs. 253-7-0. On M.'s death this balance was transferred in defendants' books on 28th June 1878 to the name of his brother L. Between the 19th October 1878 and the 1st June 1880 L. paid into defendants' hands sums aggregating Rs. 129, thus increasing the balance at his credit to Rs. 382-7-0. In the dealings between M. and the defendants, no interest appeared to have been paid or agreed to be paid by the defendants until the striking of the balance for Rs. 179-11 on the 29th May 1876. Interest was then entered as payable to M., and some payments on account of interest were subsequently credited to M. in defendants' books, but when the balance at M's credit was transferred on 28th June 1878 to the name of L no mention was made of any interest being payable, and no interest was paid or credited in the account to L. since the 1st June 1880. The present suit was instituted on the 6th February 1885 by the legal representatives of L. to recover the balance of Rs. 382-7 standing to L.'s credit in the defendants' books. The defence raised was, that the claim was barred by limitation under article 59, Schedule II of Act XV of 1877. For the plaintiff it was contended that article 60, and not article 59, governed the case.

Held, that the relationship existing between M. and L. and the defendants must be regarded as that of banker and customer; that the monies paid in by M. and L., though called "deposits," were in point of law "loans" made by them to the defendants, repayable on demand, and that article 59 of Act XV of 1877 applied, and the present suit was barred by time, as the last payment by L. to the credit of his account was made more than three years before the institution of the suit, and no payment of interest by the defendants was proved, which could operate under section 20 of the Act to give a fresh starting point. *Ganeshi Lal* v. *Chuni Lal* (No. 74 *P. R.* 1882, Civil) cited. CHANDU *v.* CHANDA MAL. **95 P R 1885**

Second Schedule, article 60.

See LIMITATION ACT, 1859, SECTION 1, CLAUSES 8 AND 15. **74 P R 1882**

Second Schedule, article 61.

—Reimbursement of person paying money due by another—Suit for money paid—Contract Act, 1872, sections 69, 70—Starting point of limitation.

The plaintiff alleged that in 1890 he was in the service of the defendant and gave a promis-

LIMITATION ACT (XV OF 1877)—*contd.*

Second Schedule, article 61—*concld.*

sory note to K to secure the repayment of moneys advanced to the defendant. In 1893 K sued the plaintiff and obtained a decree, in satisfaction of which the plaintiff executed a mortgage of his property in favour of the lender on the 10th November 1896. In 1899, within three years of the date, of the mortgage, the present suit was instituted to recover the money expressed in the mortgage-deed. The suit was defended on the ground that it was barred by limitation.

Held, that the suit was not barred by limitation, and was governed by article 61 of the second Schedule to the Limitation Act, 1877, the plaintiff's cause of action having arisen on the 10th November 1896 when the alleged transfer for the benefit of the defendant was effected.

An undertaking to pay is not actual payment and the cause of action for suits contemplated by sections 69 and 70 of the Contract Act does not arise until the money or its equivalent is actually paid.

Maxwell v. *Jameson* (2 *B. and A.* 51) *Taylor* v. *Higgins* (3 *East*, 169), *Power* v. *Butcher* (10 *B. and C.* 329), and *Torab Ali Khan* v. *Nilruttun Lal* (*I. L. R. XIII Calc* 155), cited and followed. *Sunkur Pershad* v. *Goury Pershad* (*I. L. R. V Calc.* 321), *Aghor Nath Mukhopadhya* v. *Grish Chunder Mukhopadhya* (*I. L. R. XX Calc.* 18) and *Ram Kristo Roy* v. *Muddun Gopal Roy* (12 *W. R.* 194), distingutshed. FITZGERALD *v.* MUSA. **31 P R 1904**

Second Schedule, article 62.

See LIMITATION ACT (XV OF 1877), SCHEDULE II, ARTICLE 2. **123 P R 1886**

1. *Money received by the defendants for the plaintiff's use.*

In a suit brought to recover advances made to the defendant on a grain contract of the kind known as *badni*, in which no deliveries were intended, and which was purely a gambling transaction, depending on the rise and fall of the market, *held*, that the limitation applicable was that provided by article 62 of the 2nd Schedule of the Limitation Act, and that as in the present case the money was advanced more than three years from the date of the suit the claim was barred by limitation. GANGA RAM *v.* BALDAWA. **194 P R 1882**

2. *And article 120—Suit against guardian for specific sums received during plaintiff's minority.*

Plaintiff sued his uncle, the defendant, for the proceeds of certain movable property sold by him, and for the amount of debts and rent, less expenses, incurred on the houses, collected by him on the plaintiff's account during his minority. It was contended that the suit being against a guardian for an account the limitation was six years under article 120 of the 2nd Schedule of the Limitation Act.

LIMITATION ACT (XV OF 1877)— *contd.*

Second Schedule, article 62— *concld.*

Held, that the suit as framed could not be held to be a suit for an account, as though the defendant was sued as having managed plaintiff's affairs during his minority, the suit was for specific sums received by him to the plaintiff's use, and fell under article 62. SURJAN SINGH *v.* CHARN DASS.

56 P R 1883

3. *And article* 120—*Suit against representative of deceased agent for account—Money received to plaintiff's use.*

Plaintiff sued on the allegation that one S M. who was his agent and as such agent had property of his (plainttff's) for which he was accountable, died on the 24th December 1880 without accounting; that the balance on that date in plaintiff's favour was estimated at Rs. 3,700; and that the defendant was the son, and in possession of the property of the deceased S. M. The plaintiff also desired that an account might be taken of the amount recoverable by him, and a decree be made for that amount in his favour.

As regards limitation, *held*, that the suit having been brought within three years from the date of the agent's death was within time, whether it was governed by article 62 of the 2nd Schedule of the Limitation Act, being a suit for money received by the defendant in the suit to the use of the plaintiff, the date of such receipt being certainly within three years of suit, as the money was not received by defendant till after the death of S. M.; or whether article 120 applied, in which case the suit was undoubtedly within time. SETH CHAND MAL *v.* KALIAN MAL.

96 P R 1886

Second Schedule, article 64.

See SECTION 19, *supra.*

P R 1882
132 P R 1907

SCHEDULE II, ARTICLE 115.

20 P R 1883
51 P R 1885

Second Schedule, article 66.

1. *And article* 67.

A second unregistered deed of hypothecation, dated 16th December 1880, after referring to a prior deed, dated March 3rd, 1869, provided that the amount secured by it will be paid when the mortgagors redeem the original mortgage. The mortgagee sued to recover money on both documents after the lapse of 3 years from the date of the latter.

Held, that the suit was barred under article 67. It was contended that the phrase "we will pay when we redeem" amounted to specifying a day for payment within the meaning of article 66.

Held, that this contention was not correct. BAHADUR LAL *v.* GAMAN.

139 P R 1889

2. *And articles* 67, 68 *and* 80—*Single bond—Bond with a condition—Period of limitation applicable.*

LIMITATION ACT (XV OF 1877)— *contd.*

Second Schedule, article 66—*concld.*

By a written instrument A. agreed to pay B. a certain sum with interest at a specified rate at the *kharif* harvest of *Sambat* 1943, and in default to pay interest at the specified rate up to the day of payment.

Held, (*i*) that the document was not a single bond within the meaning of articles 66 and 67; (*ii*) that the limitation applicable was that prescribed by articles 68, or 80 of the limitation Act, and that time commenced to run from the date when default was made in payment, *i.e.*, the end of the *kharif* harvest *Sambat* 1943, which, according to local usage, meant the end of *Magar*. SUNDUR SINGH *v.* BUR SINGH.

138 P R 1890

3. *And articles* 67, 68, *and* 80—*Single bond.*

The intention of the Limitation Act is to contrast a "single" or unconditional bond (articles 66, 67) with a bond "subject to a condition" (article 68).

A "single" bond means a simple bond without alternative conditions, or penalty attached, an absolute engagement in writing for the payment of money. No. 138 *P. R.* 1890 followed. GURDITTA MAL *v.* PAL SINGH.

26 P R 1892

Second Schedule, article .

See ARTICLE 66, *supra.*

Second Schedule, article 68.

See ARTICLE 66, *supra.*

Second Schedule, article 69.

See SECTION 14, *supra.*

19 P R 1888

Second Schedule article 74.

—*And article* 75—*Limitation—Suit on instalment bond.*

Held, that the limitation for a suit on an instalment bond is provided for by article 74 of the Second Schedule of the Limitation Act, 1877, unless it can be brought under article 75, the essential requisites of which are that (1) the penalty should be attached to a single default and (2) that the whole bond shonld then fall due, the absence of either of these conditions rendering that article inapplicable. SOBHA AND OTHERS *v.* RAM PARTAB AND ANOTHER.

74 P R 1901

Second Schedule, article 75.

1. *Suit on instalment bond—Provision that in case of default the creditor "should be at liberty" to recover the whole amount by suit—Forbearance to sue—Waiver—Acceptance after default by creditor of payments not corresponding with the instalments overdue.*

In a suit brought on the 20th January 1881 on a bond dated the 20th March 1877, it appeared that by the terms of the bond the defendant bound himself to pay the principal sum and interest at 2 per cent. per mensem within two years from the date of the bond in monthly instalments of Rs. 25 each, it being provided that in case of default the creditor should be at liberty (*akhtayar*

LIMITATION ACT (XV OF 1877)— *contd.*

Second Schedule, article 75— *contd.*

hai) to recover the whole amount in one sum by suit in Court. The debtor from the first made default in the payment of the instalments, but the creditor accepted payment of four sums of Rs. 20, Rs. 10, Rs. 20 and Rs. 10. subsequently to the date of default, *viz.*, in August and December 1877, and January and March 1878, respectively. It was contended that the debtor having made default in payment of the instalments more than three years before suit the claim was barred under article 75 of Schedule II of the Limitation Act.

Held, by the Full Bench that the true construction of the bond was that on default in payment of one instalment the whole sum should become due, and should be recoverable by suit in Court if the obligee chose to sue, the clause in the bond declaring the liberty to sue necessarily importing that the whole sum, which the obligee was to be at liberty to recover, was to become due in default, within the meanion of article 75, Schedule II of the Limitation Act.

Held also, by the Full Bench, that forbearance to sue could not under the above circumstances be regarded as a waiver of the benefit of the proviso within the meaning of the same article, as no stipulation between the parties reserving an option to the obligee as to bringing a suit for money due could exclude the operation of the provisions of the Limitation Act as to the time from which the limitation for a suit falling under article 75 was to be reckoned, and a mere forbearance to sue, or mere inaction on the part of the obligee, was not a waiver within the meaning of that article.

Held, further, by the Division Bench (*Smyth* and *Elsmie, JJ.*), that the creditor by accepting subsequently to the date of default the payments above specified, none of which corresponded with the amount of any instalment, could not be held to have accepted these sums in payment of any particular instalments, nor could any inference be drawn from such acceptance that he waived the right to sue for the whole amount which had accrued due to him on the occurrence of the first default. *Rambhaj* v. *Devia* (No. 123 *P.R* 1881,Civil), referred to. KHAIR-UD-DIN *v.* ATU MAL.

188 P R 1883

2. *Waiver.*

Held, that the acceptance of an overdue instalment in full and as such constitutes a waiver within the meaning of article 75, Schedule II of the Limitation Act, No. 188 *P. R.* 1883, distinguished. DHARAM DAS *v.* NIAMAT SINGH.

78 P R 1890

3. *And articles* 116 *and* 132—*General Clauses Act (I of* 1868), *section* 2—"*Immovable property*"—"*Benefit to arise out of land*"—Jagir *income.*

A suit was filed on the 4th January 1892, based on a bond, dated the 13th June 1883, hypothecating certain *jagir* income. The

1783

LIMITATION ACT (XV OF 1877)— *contd.*

Second Schedule, article 75— *concld.*

lower Courts dismissed the claim as barred by limitation, according to the first Court under article 75, and according to the Divisional Court, under article 116 of the 2nd Schedule to the Limitation Act.

Held, that looking at the definition of immovable property given in section 2 of the General Clauses Act, *jagir* income is a "benefit to arise out of land" within the meaning of that definition, and that, therefore, the suit was within time under article 132 of the 2nd Schedule to the Limitation Act. RAM PERSHAD *v.* KISHEN SINGH.

4 P R 1894

4. *And articles* 132, 147—*Construction of mortgage deed—Limitation—Suit after* 12 *years of the default in payment.*

The mortgage-deed in question provided as follows :—"The mortgagees shall pay the "mortgage-money by instalments of Rs. 60 "a year, together with interest at the rate "of 8 annas *per cent.* without raising any "objection or dispute. In case of default of "payment of an annual instalment, together "with interest at the aforesaid rate, the "mortgagors will put the mortgagee in "possession of the mortgaged share of the "house. If the mortgagors raise any "objection, the mortgagee will be at liberty "to at once get possession by bringing a "regular suit. Afterwards the mortgagors "will redeem and get released the mort-"gaged share on payment of the mortgage-"money, together with the fixed amount of "interest."

The deed was executed in 1881, and the first default in payment of the instalments took place in 1882. In 1897 the mortgagee sued for Rs. 797-6-0 principal and interest due on the mortgage, and prayed for attachment and sale of the mortgaged property.

Held, with reference to the language of the deed, that the intention of the parties, was to hypothecate the property in the first instance, giving the mortgagee the power of taking steps for assuming possession and so converting the mortgage into a purely usufructuary one, but, as the mortgagee failed to so convert it, the transaction remained no more than a promise to pay by the obligor who had hypothecated his property as a collateral security.

Held, therefore that, as the plaintiff had failed to enforce payment within twelve years of the first default in payment by taking possession and so carying out and developing the contract, the suit was barred under article 132 of the Limitation Act, 1877. MILKHI RAM *v.* ACHHRU MAL.

23 P R 1900

Second Schedule, article 78.

See SECTION 14. **19 P R 1888**

Second Schedule, article 80.

See SECTION 14. **19 P R 1888**

See ARTICLE 66, *supra.*

138 P R 1890

26 P R 1892

1784

LIMITATION ACT (XV OF 1877)— *contd.*

Second Schedule, article 80—*concld.*

—Bond fixing term of 3 *years after which payment might be enforced—Provision that in default of payment of interest plaintiff might demand payment at once—Period from which limitation would run in default of such demand—Waiver.*

In a suit brought in a Small Cause Court to enforce the defendant's personal liability on a bond for Rs. 200 which purported to mortgage certain house property for the debt, but which was unregistered, it appeared from the instrument that after setting forth the mortgage of the property for Rs. 200, it went on to provide that the debt should bear interest at 1 per cent. per month, that Rs. 2 should be paid monthly, the rent being deducted, that if the interest were not paid month by month, the obligor would pay the whole sum at once whenever the mortgagee demanded it, that the mortgagor would redeem the property at the end of three years by paying the principal, and that if on the lapse of this term the debt were not discharged the mortgagee should be at liberty to enforce payment of the debt in whatever manner he thought proper.

Held, that as by the terms of the instrument a term of 3 years was fixed after which the plaintiff could enforce payment in whatever way he thought proper, and as, though it was at his option to demand payment at an earlier date, on default in payment of interest, he did not avail himself of this option. and it could not be said that he was bound to do so, therefore, as he made no demand, the bond was not payable until the expiration of the 3 years, and the limitation provided by article 80 of the 2nd Schedule of the Limitation Act ran from that date.

Held also, that no question of waiver arose in the above case, both because the whole sum did not become due on default in payment of interest unless the plaintiff chose to demand it, and because the time from which the period began to run was regulated by article 80, which is silent as to waiver. *Rambhaj* v. *Devia* (*No.* 123 *P.R.* 1881, Civil) referred to. PREM SINGH *v.* MULA MAL.

10 P R 1883

Second Schedule, articles 81, 83.

—Suit by surety against principal debtor—Suit by co-surety to recover from principal debtor sum paid to a co-surety as contribution towards amount paid by him to the creditor.

Article 81 of the 2nd Schedule of the Limitation Act of 1877, which gives three years as the period for a suit by a surety against his principal debtor, running from the time when the surety pays the creditor, should be construed as restricted to sureties who have paid the creditor and not as extending to sureties who have not paid the creditor, but have been compelled to pay contribution to a co-surety, who has paid the creditor.

Article 83 would apply to the case of a co-surety, seeking to recover from the principal debtor a sum paid by the plaintiff to a co-surety as contribution towards the amount paid by him to the creditor. MADAR BAKSH *v.* AHMED ALI. **98 P R 1881**

1785

LIMITATION ACT (XV OF 1877)— *contd.*

Second Schedule, articles 81, 83 *—concld.*

Second Schedule, article 85.

See SECTION 19, *supra.* **132 P R 1907**

. *And section* 19—*Suit for balance of account—Debtor and creditor—Mutual, open, and current account—Acknowledgment.*

In a suit for a balance of account, the lower Court gave a decree for the amount found to be due, holding *inter alia* that the account was an open, mutual and current account with reciprocal demands between the parties, within the meaning of article 85 of the Limitation Act.

On appeal to the Chief Court, *held*, that the lower Court was clearly in error in calling the account a mutual, open, and current account with reciprocal demands between the parties, it being an ordinary debtor and creditor account in which defendant never had any demand against the plaintiff to whom he was indebted, but that this error did not affect the decision as the balance sued upon having been signed by the defendant amounted to an acknowledgment of liability within the meaning of section 19 of the Limitation Act, and it did not appear, nor had it been pleaded in the first Court, that any of the items included in the said balance were barred by limitation when the balance was struck SADULLA KHAN *v.* BHANA MAL.

58 P R 1882

2. *Mutual, open, and current account—Reciprocal demands.*

Article 85 of the 2nd Schedule of the Limitation Act, 1877, *held* to be applicable to a case of a banking transaction where the balance was sometimes on one side and sometimes on the other, the change not appearing to arise from a merely accidental and passing overpayment. *Sadulla Khan* v *Bhana Mal* (No. 58 *P.R.* 1882, Civil) cited. SEWA RAM *v.* MOHAN SINGH.

44 P R 1886

Second Schedule, article 89.

I. *Suti against representative of deceased agent for an account.*

Plaintiff sued the defendant as the son and representative of one S. M., deceased, who had been his agent, praying that an account might be taken of the amount recoverable by him, and a decree be made for that amount in his favour.

Held, that article 89 had no application to the suit, as it was not one against an agent for an account, nor against the defendant upon a cause of action, which arose against the agent, for an account, and the terms of that article show it to be inapplicable to a case where the agency is terminated by death. SETH CHAND MAL *v.* KALIAN MAL. **96 P R 1886**

LIMITATION ACT (XV OF 1877)— *contd.*

Second Schedule, article 89—*concld.*

2. *Principal and agent—Suit against agent for movable property received and not accounted for.*

The plaintiff was one of the partners of a firm of which defendant was manager with six-twentieths of the profits instead of salary. The plaintiff further alleged and proved that as between each partner and the manager, the latter was responsible for profit and loss.

In a suit by the plaintiff against the manager for:

(1) money borrowed from the firm by the manager (the defendant) for his personal expenses;

(2) the manager's (defendant's) share of the losses;

Held, that as regards both items the suit was governed by article 89, Schedule II of the Limitation Act, 1877, it being substantially a suit by a principal against his agent for movable property received by the latter and not accounted for, and that time began to run from the date when the agency terminated. GANESH DAS *v.* SHANKER DAS.

31 P R 1891

Second Schedule, article 91.

1. *See* LIMITATION ACT, 1877, SECTION 28. **83 P R 1883**

LIMITATION ACT, 1877, SCHEDULE II, ARTICLE 120. **19 P R 1883**

2. *Minor—Suit by—After attaining majority to recover land sold by his guardian—Nature of purchaser's title.*

See ARTICLE 44, *supra.* **57 P R 1891**
19 P R 1902
28 P R 1902

3. *And articles* 140, 144—*Cancellation of mortgage—Suit for possession of immovable property—Reversioner.*

Plaintiff claimed possession of a house and land on the ground that a mortgage effected by the late owner in 1875, under which the defendant claimed to hold, was without consideration and therefore not binding on him.

Held, that so far as the mortgage related to the house and land, the plaintiff's claim was not barred under article 91, Schedule II of the Limitation Act, being really a suit for possession, which would fail if the mortgage was found to be valid against him, but must otherwise succeed; that article 140 would apply, unless the term "remainder-man," "reversioner," and "devisee" therein used, are used as technical terms of English law, which is perhaps the true interpretation of the article; but anyhow article 144 would apply, and under that article the claim to possession of the immovable property would be in time. BALA *v.* JATI. **155 P R 1883**

4. *And article* 120—*Suit for conceilation of instrument—Suit for declaration that a transaction of sale (to which plaintiff is not a party) is void—Sale by occupancy tenant—Suit for declaratory decree not otherwise provided for.*

LIMITATION ACT (XV OF 1877)— *contd.*

Second Schedule, article 91—*contd.*

Plaintiffs sued in November 1884 to set aside sale on the allegation that defendants 1—3 who were occupancy tenants under section 6 of the Punjab Tenancy Act, 1868, had sold certain lands of their tenure to defendant 4 by registered deed, dated 17th May 1877: that defendant 4 had sued the vendors for possession, and got a decree in April 1884 but the vendors were still in possession; that the vendors were not competent to sell, as they had done, without the consent of the plaintiffs, the proprietors of the land, who therefore sued to have the sale set aside.

Held, that the suit was not one to cancel or set aside an instrument not otherwise provided for, to which article 91 of the 2nd Schedule of the Limitation Act was applicable, but a suit for declaration that the transaction of sale was void, as between the plaintiffs, who were not parties to it, and the defendants who were parties to it, and as between whom it was valid by a decree of Court; and that such a suit fell under article 120 of the above schedule as a suit for a declaratory decree, and that the limitation was six years from the time when the right to sue accrued which was when the deed was executed, subject to proof of such fraud as is provided for in section 18 of the Limitation Act. RAM CHAND *v.* MUHAMMAD KHAN. **135 P R 1888**

5. *And articles* 127, 144.—*Muhammadan Law—Gift to one heir to the prejudice of the other heirs—Death-bed gift—" Death-illness " —Limitation Act (XV of 1877), 2nd Schedule, articles* 91, 127, 144.

In a suit, the parties to which were Muhammedans, governed by the Muhammadan Law, plaintiff sued on the allegations, *inter alia* that one K. B, father of himself and defendants I, III and IV, and husband of defendant II, died in October 1875, leaving certain property, the greater portion of which was in the possession of defendant 1, that plaintiff was entitled to $\frac{11}{48}$ths of the said entire property, together with a proportionate share of mesne profits from the date of K. B.'s death to the date of suit and that plaintiff came of age only two years previously to the institution of the suit, and had been refused partition in spite of repeated demand's.

Defendants II, III and IV admitted plantiffs right and claimed for themselves specific shares in accordance with Muhammadan Law. Defendant I pleaded, *inter alia* that the greater part of the property referred to in lists filed by plaintiff was his own individual property, and that of the remainder certain immovable property had been gifted to him by a deed, executed by K. B. on the 5th September 1875, which gave him an additional and independent title; and that plaintiff was not competent to challenge the said deed, inasmuch as any right he might have had to do so was barred (1) by limitation, (2) by acquiescence and acceptance, and (3) by ratification by plaintiff himself on attaining his majority not less than four years before suit.

LIMITATION ACT (XV OF 1877)— *contd.*

Second Schedule, article 91—*contd.*

The evidence showed that at the time when the deed of gift was executed, K. B. was over seventy years of age; that he was suffering from venal colic and diabetes in consequence of which he was confined to his bed, and that he died about one month after the execution of the deed, and also that there was interval of seventeen days between the execution and the registration of the deed. The lower Court found that the claim was not barred by limitation; that the gift by K. B in favour of defeudant I was bad on the ground of undue influence and as having been made on a death bed, and that neither plaintiff's nor his guardian's conduct precluded him from suing to set it aside, and gave plaintiff a decree in respect of a proportionate share of the property in possession of defendants, together with mesne profits to be ascertained in execution, and dismissed the rest of the claim, Defendant I appealed to the Chief Court, raising substantially the same contentions as in the Court below, and it was argued, on his behalf, that no undue influence was in fact proved, and that the suit being in reality one to cancel an instrument, was barred under article 91 of the 2nd Schedule to the Limitation Act, 1875.

Held, with respect to the deed of gift, that the plea of undue influence was not proved.

But *held*, further (*i*) that inasmuch as the said deed was executed during a "death-illness," within the meaning of Muhammadan Law, and was made in favour of one heir to the prejudice of the other heirs, it could only be valid, as a will, to the extent of one-third if consented to by the other heirs; (*ii*) that treated as a will it had not been validated by the consent of plaintiff or of any one competent to bind him, and was, therefore, a mere nullity: (*iii*) that the deed being a nullity, plaintiff's suit could not be regarded as one "to cancel an instrument" so as to be barred under article 91 of the 2nd Schedule to the Limitation Act, 1877, and (*iv*) that plaintiff was not barred from suing by acceptance of, or acquiescence in the gift by his guardian, or by ratification of it by himself after attaining majority. HAFIZ KARIM BAKHSH *v.* MUSSAMMAT BEGAM JAN. **52 P R 1895**

6. *And articles* 44 *and* 144—*Suit for possession of land—Suit involving cancellation of a deed—Period of limitation applicable.*

Held, that where it is essential to set aside a document before any other relief can be granted, the plaintiff is barred unless he is in time to ask for the cancellation of such document.

I. L. R. XII Calc. 69; *No.* 57 *P. R.* 1891, and *No.* 52 *P. R.* 1895, followed; *I. L. R. XVI Bom.* 186; *I. L. R. XVI Mad.* 311, not followed. AMIR *v.* MUSSAMMAT ATTAR-UN-NISSA. **75 P R 1896**

7. *And articles* 118, 140—*Suit for possession of immovable property against an alleged adopted son—Suit instituted more*

LIMITATION ACT (XV OF 1877)—*contd.*

Second Schedule, article 91—*contd.*

than six years after alleged adoption but within 12 years from date of estate falling into possession—Period of limitation applicable.

On the 17th February 1885, one H. executed a deed of adoption in favour of defendant, a previous adoption in infancy being alleged and on the 18th December 1887, mutation of names was made in defendant's favour. H. died in 1890, and on the 5th February 1895 plaintiffs instituted the present suit against defendant for possession of H.'s estate. Both lower Courts found that the adoption had, in fact, taken place, and dismissed plaintiffs' suit as barred by limitation.

Held, that the suit having been brought within 12 years from the date of the estate falling into possession, was within time under article 140 of the 2nd Schedule to the Limitation Act, 1877, and was not barred under articles 91 or 118 by reason of plaintiffs' failure or omission to have the adoption set aside or declared invalid within the shorter period of limitation prescribed by those articles.

The principles of the law of limitation discussed and explained by *Chatterji J.* RANGAN *v.* MAHTAB CHAND. **55 P R 1897**

8. *Limitation—Suit by a reversioner for possession of immovable property—Defendant in possession under an alleged gift—Time from which period begins to run.*

One M., who in 1874 executed a deed of gift of his property under which possession was taken by the donees, died in 1880, leaving a widow who died in 1891. In 1898 the other collaterals of M. in equal degree with the donees sued them claiming a share in the donor's estate by right of inheritance.

Held, that the suit was barred under article 91 of the Limitation Act by reason of plaintiffs having failed to apply for cancellation of the gift within the shorter period of limitation prescribed for that article.

Gujar Singh v. *Puran* (71 *P. R.* 1901), *Malkarjun* v. *Narhari* (*V Calc. W. N.* 10; *I. L. R. XXV Bom.* 337), and *Ganesha Singh* v. *Nathu* (20 *P. R.* 1902), cited. *Rangan* v. *Mahbub Chand* (55 *P. R.* 1897), not followed. *Saidulla* v. *Mussammat Laila* (74 *P. R.* 1895), *Bhagwan Singh* v. *Khushala* (53 *P. R.* 1900) and *Budhe Khan* v. *Makhe Khan* (31 *P. R.* 1892), referred to. NANAK AND OTHERS *v.* DEVI DITTA AND OTHERS. **23 P R 1902**

9. *Suit by a reversioner for possession of immovable property—Defendant in possession under will made by testator without title—Reversioner not barred by reason of his having failed to contest the will within three years.*

Held, that a suit by a reversioner to recover possession of immovable property in the hands of a defendant under an alleged will cannot (where the testator had no power to dispose of the property by will) be barred by reason

LIMITATION ACT (XV OF 1877)—*contd.*

Second Schedule, article 91—*contd.*

of his (reversioner) having failed to contest the validity of such will within a period of three years. HAYAT MUHAMMAD *v.* ALA BAKHSH. **19 P R 1903**

10. A suit by reversioner of a childless male proprietor governed by Customary Law for a declaration of the invalidty of an alienation made by him as respects such reversioner's interest is not governed by article 91. DHERU *v.* SIDHU. **56 P R 1903 F. B.**

11. *Limitation—Minor—Suit by minor on attaining majority to recover land mortgaged by his guardian—Limitation Act, 1877, Schedule II, article 91.*

Held, that the limitation applicable to a suit by a minor after attaining his majority for the recovery of possesion of immovable property mortgaged during his minority by a *defacto* guardian is provided for by article 91 of the second Schedule to the Limitation Act, 1877.

Ghulam Rasul v. *Ajab Gul* (57 *P. R.* 1891), *Said Shah* v. *Abdulla* (19 *P. R.* 1892), and *Dheru* v. *Sidhu* (56 *P. R.* 1893), referred to. MOTI SINGH *v.* GASITA SINGH, &c. **23 P R 1904**

12. *And article 144—Gift of acquired immovable property to one son without consent of the other sons—Suit for possession by other sons—Suit involving cancellation of document—Period of limitation applicable.*

Although in suits where it is essential to set aside a document before any other relief can be granted, article 91 of the Indian Limitation Act applies even if cancellation of the document is not in express terms prayed for, yet where a plaintiff sued for possession of his share of the immovable acquired property left by his father on the ground that the gift made by him of his estate under which the defendant claimed to hold was invalid under the special custom of his tribe and therefore not binding on him.

Held, that he would not be precluded from the longer period of limitation prescribed by article 144 for the recovery of immovable property, provided he could show that the document which he neglected to challenge was null and void as against him.

Feroz Khan v. *Amir Muhammad Khan and others* (53 *P. R.* 1902), *Raghubardyal Sahu* v. *Bhikya Lal Misser* (*I. L. R. XII Calc.* 74), followed. *Ghulam Rasul* v. *Ajab Gul* (57 *P. R.* 1891), *Hafiz Karim Bakhsh* v. *Mussammat Begam Jan and others* (52 *P. R.* 1895), *Amir* v. *Mussammat Attar-un-nissa* (75 *P. R.* 1896), *Chunder Nath Bose and others* v. *Ram Nidh, Pall and another* (6 *Calc. W. N.* 863), *Bijoi, Gopal Mukerji* v. *Nil Ratan Mukerji* (*I. L. R. XXX Calc.* 990), *Hasan Ali and another* v. *Nazo and another* (*I. L. R. XI All.* 456) *Rodha* v. *Harnam* (18 *P. R.* 1895 F. B.) and *Dheru* v. *Sidhu* (56 *P. R.* 1903, F. B.) referred to. MURAD BAKHSH *v.* HUSAIN BAKHSH. **74 P R 1904**

LIMITATION ACT (XV OF 1877)—*contd.*

Second Schedule, article 91—*concld.*

13 *And article 144.—Suit by reversioner for possession of immovable property—Defendant in possession under an alleged gift or will—Reversioner not barred by reason othis having failed to contest such gift or will within three years—Period of limitation applicable.*

Held, that article 91, Schedule II of the Limitation Act, does not apply to a suit by a reversioner claiming a childless owner's ancestral immovable property in the hands of a defendant under an alleged gift or will, though it may be necessary for the plaintiff to prove the invalidity of such an instrument. The limitation applicable to such a suit is that provided by article 144 and the reversioner's cause of action accrues on the death of the alienor or of his widow. KARM KULLI *v.* KARMDAD. **79 P R 1905**

Second Schedule, article 92.

—*And articles 44, 91—Minor—Suit by, after attaining majority to recover land sold by his guardian— Limitation.*

See ARTICLE 44, *supra.* **57 P R 1891**
19 P R 1902
28 P R 1909

Second Schedule, article 93.

—*Suit for declaration that an alleged will was a forgery and that testator had no power to make such will—Custom—Succession of daughter.*

On the death in 1866 of one M. M. who left a widow and three daughters, mutation of names in respect of his property was effected in favour of the widow, who applied in 1877 to have mutation in respect of three-fourths of the said property effected in favour of the daughters, in virtue of a will purporting to have been executed in their favour by M. M. shortly before his death. This application was resisted by the present plaintiffs, collaterals of M. M., and rejected on the ground that the will was probably a forgery. In 1872 and 1887 the widow dealt with the property in suit as her own, and on the second occasion plaintiffs obtaining a decree declaring that her dealings with the property did not affect their reversionary rights. In 1894 the daughters sued the widow for possession of three-fourths of the said estate and obtained a decree on a confession of judgment. Plaintiffs, who were no parties to the said suit, in November 1894, instituted the present suit for a declaration that (*i*) the said will was a forgery; (*ii*) M. M. had no power to make such a will, and that, if genuine, it was never acted on and was inoperative; and (*iii*) that the decree in favour of the daughters was collusive and inoperative against their rights as reversioners. Defendants pleaded that plaintiffs' suit was barred by limitation; that the will was genuine; and that, in any event, the daughters were entitled to succeed in preference to male collaterals such as the plaintiffs.

LIMITATION ACT (XV OF 1877)—*contd.*

Second Schedule, article 93—*concld.*

Held, that the proceedings in 1894 gave rise to a fresh cause of action, and that the suit was within limitation. MUSSAMMAT GULAB KHATUN *v.* MIAN MUHAMMAD.

5 P R 1898

Second Schedule, article 95.

—*Suit for rectification of a deed on the ground of fraud.*

Held, that the limitation for a suit for rectification of a deed on the ground that the defendant induced the plaintiff to allow certain conditions to be entered in it by fraud, is provided for in article 95 of the Second Schedule of the Limitation Act.

The Advocate-General of Bombay v. *Bai Punjabai (I. L R. XVIII Bom. 551)* distinguished. GOPAL SHAH *v.* ARURA.

62 P R 1901

Second Schedule, article 96.

1. *See* LIMITATION ACT, 1877, SCHEDULE II, ARTICLE 2. **123 P R 1886**

2.—*Schedule II, article 96—Suit for declaration of proprietary title by correction of Settlement record.*

Held, that a suit which is in substance a suit for a declaration of the proprietary title to certain property, as well as for the correction of the Settlement record, is not governed by the limitation prescribed in article 96 of the 2nd Schedule of Act XV of 1877.

Held, further, that even if the right to demand a correction of the Settlement record is lost by lapse of time, a party may be entitled to a declaration of his proprietary title to the land claimed. TAJA *v.* GULAM.

35 P R 1880

Second Schedule, article 97.

1. *Suit for money paid upon an existing consideration which afterwards fails.*

Plaintiff sued on the 9th April 1887 to recover Rs. 764 due to him from the defendant, alleging that on October 29th, 1883, the defendant signed a balance for that amount, and on the same day executed a mortgage by which the plaintiff was to be put into possession of a certain house until the debt was paid. The deed however was not registered, and in December 1886 the debtor took advantage of the non-registration to turn the plaintiff out of possession of the property.

Held, that the plaintiff's suit was in time under article 97, Schedule II of the Limitation Act, as in effect one for money paid on an existing consideration, *viz.*, the creation of a possessory mortgage, which consideration subsequently failed by the possession being taken away by the defendant standing on his legal right of denying that any mortgage had been created. GURMUKH SINGH *v.* CHANDU SHAH. **193 P R 1888**

2. *And article 115—Suit to recover amount paid out of Court in execution of decree.*

LIMITATION ACT (XV OF 1877)—*contd.*

Second Schedule, article 97—*concld.*

The defendant K. L. obtained a decree against plaintiff for Rs. 2,347, and employed the other defendant, K. R., to execute the decree as his agent under a formal power of attorney.

The plaintiff in the present suit alleged a payment of Rs. 900 in cash to the agent on 3rd February 1885.

On 2nd November 1887, execution of the decree was sued out without credit being given for the Rs. 900, and on 28th February 1888 K. L. denied the receipt of the money through his agent and declined to give credit for the amount.

On 22nd April 1889, the plaintiff (in the present suit) sued to recover the Rs. 900 alleged to have been paid.

Held, that the suit would lie and was governed either by article 97 or 115, Schedule II of the Indian Limitation Act, 1877, and was within time. GANPAT *v.* KIRPA RAM

79 P R 1892

Second Schedule, article 103

—*Dower—Demand and refusal, nature of.*

The demand and refusal to pay dower must be made in clear and unambiguous language, otherwise article 103, Schedule II of the Limitation Act, 1877, will not come into operation *cf.* 15 B. L. R. 306. MUSSAMMAT HAJARA *v.* MEHR ALI BEG. **63 P R 1892**

Second Schedule, article 106.

1. *And article 126—Suit for dissolution of partnership and for rendition of account—Suit by adopted son of widow of deceased partner—Joint Hindu family—Hindu Law—Devolution of ancestral trade.*

See ARTICLE 126, *infra.* **20 P R 1897**

2. *Partnership—Insolvency of firm—Indian Evidence Act, 1872, section 109 Contract Act, 1872, sections 253, 254, 255—Punjab Laws Act, 1872, section 25—Limitation Act, 1877, article 106.*

A certain firm was declared insolvent on the 9th April 1890 by the Judge of the Small Cause Court, Amritsar, who thereupon proceeded to administer the estate. On the 25th March 1891, a composition deed was executed to the effect that the creditors had already been paid $\frac{5}{16}$ths of their claims, that the insolvents would pay $\frac{3}{16}$ths more through the Court within a month, and that after such payment their property should be released from attachment. On the 17th May 1892, the Court ordered that effect should be given to the composition, and, on the subsequent payment into Court of the $\frac{3}{16}$ths as agreed, directed that the insolvent's property should be released from attachment. The case was struck off the file on the 7th August 1891.

On the 8th July 1893 plaintiff, who was one of the partners in the said firm, sued for dissolution of partnership and for an account, but his suit was dismissed as barred under article 106, Limitation Act, on the ground, *according to the first Court*, that the partnership was dissolved by the very fact that the

LIMITATION ACT (XV OF 1877)—*contd.*

Second Schedule II, article 106—*concld.*

firm had been declared insolvent and its estate administered by the Insolvency Court, and *according to the Divisional Court* that the partnership was dissolved under section 255, Contract Act, inasmuch as attempts by the firm to trade after being declared insolvent and while the estate was being administered by the Insolvency Court would have amounted to misconduct punishable under section 25, Punjab Laws Act, and "therefore prohibited by law."

Held, that under section 109, Evidence Act, the *onus* of proving that the partners had ceased to stand to each other in the relationship of partners was upon defendants, and that it was not a sufficient discharge of such *onus* to merely prove that their firm had been declared insolvent.

Held, therefore, that the suit was not barred under article 106, Limitation Act.

Section 25 of the Punjab Laws Act applies only to misconduct committed by a person previously to his being adjudicated an insolvent, and bankruptcy of a firm does not necessarily involve the prohibition by law of its business. The partners themselves are thereby prevented from carrying on the business, but it does not necessarily follow that the business itself is prohibited by law. MAHARAJ MAL *v.* HIRA MAL. **37 P R 1897**

3. *Partnership—Suit for dissolution of partnership and for an account—Limitation Act, 1877, Schedule II, article 106.*

Held, that a partnership entered into for a fixed term where the business was not continued after such term had expired, should be considered as terminated on the date of the expiry of such term, and a suit by a partner for an accouut of such partnership business is governed by article 106 of the second Schedule of the Limitation Act, 1877. RAM CHAND *v.* SUBHAN BAKHSH AND ANOTHER.

69 P R 1902

4. *Partnership—Suit for contribution after dissolution of partnership—Limitation in respect of such suit—Limitation Act, 1877, Schedule II, article 106.*

Held, that a suit by a surviving partner against the representatives of a deceased partner for contribution in respect of losses of a dissolved partnership being virtually a suit for an account and payment of the sum found due is subject to the limitation prescribed by article 106 of Schedule II of the Limitation Act, 1877. AMIN CHAND *v.* GUJAR MAL. **73 P R 1906**

Held, article 106 governs suits substantially for an account of a dissolved partnership and for a share in the partnership property and assets, and if barred the suit is equally barred in regard to claims for a share in specific assets of the partnership acquired within 3 years of institution of suit. MUSSAMMAT NEHAL DEVI *v.* KISHORE CHAND.

97 P R 1910

LIMITATION ACT (XV OF 1877)—*contd.*

Second Schedule, article 110.
See LIMITATION ACT (XV OF 1877), SCHEDULE II, ARTICLE 115.
170 P R 1883

Second Schedule article 113.
See LIMITATION ACT (XV OF 1877), SCHEDULE II, ARTICLE 135,
134 P R 1883
AND ARTICLE 144 **18 P R 1911**

1. *Section 14 and article 120–Suit on award—Deduction of period spent in proceedings to enforce the same award summarily—Cause of action.*
See SECTION 14, *supra* **67 P R 1889**

2. *And article 135—Suit by mortgagee for possession on default of payment of mortgage money.*

A mortgage deed stipulated that the mortgage money would be repaid on the 14th May 1875, or in default the mortgagee should get possession. The mortgagee sued for possession on the 10th May 1887. His suit was dismissed as barred by limitation under article 113, Schedule II of the Limitation Act.

Held, that article 135 applied and that the suit was within time. KANHYA LAL *v.* MOHRU. **96 P R 1890**

Second Schedule, article 114.
See LIMITATION ACT, 1877, SCHEDULE II, ARTICLE 141. **141 P R 1882**

Second Schedule, article 115.

1. *And article 97—Suit to recover amount paid out of Court in execution of decree.*
See ARTICLE 97, *supra.* **79 P R 1892**

2. *Continuing breach of contract.*
See FOREST ACT, 1878. **16 P R 1899**

3. *And article 64—Accounts stated—Oral agreement—Consideration.*

In a suit for a sum of money alleged to be due on an oral agreement entered into by the parties after accounts had been stated, *held*, that if, as a matter of fact, after examination of accounts, the defendant did orally contract to pay to plaintiffs the balance found to be due, with interest thereon, and if there was consideration for the contract, plaintiff would be entitled to bring a suit for recovery of the amount agreed to be paid within three years from the date of the breach of the contract, under article 115, Schedule II of the Limitation Act. BALDEO SINGH *v.* SHEODAN. **20 P R 1883**
Cited in SIRDAR AMAR SINGH *v.* BASAWA MAL. **51 P R 1885**

4. *Suit for compensation for breach of contract to deliver kankar—Act IX of 1872, sections 73, 74.*

In a suit by plaintiff to recover the difference between the sums alleged to have been advanced on a written contract for the supply of kankar, and the value of the kankar alleged to have been delivered, in which the defendant pleaded that the suit was barred by limitation, *held*, that the claim fell under article 115, Schedule II of the Limitation Act, it being based on a breach of contract to deliver kankar, and such a claim, with reference to the provisions of sections 73 and 74 of the Indian Contract Act, being to all intents and purposes, a claim for compensation for loss or damage caused by the breach of contract. SETH EDULJEE BYRAMJI *v.* ARJAN DAS.
22 P R 1883

LIMITATION ACT (XV OF 1877)—*contd.*

Second Schedule II, article 115—*concld.*

5. *And article 110—Suit for hire of water—"Rent"—Compensation for breach of contract.*

Plaintiffs, who claimed to be proprietors of a certain canal, sued the defendant for water-rate, alleging that his lands were watered by the canal, and that he had agreed to pay them water-rate at a specified sum per acre. Defendant pleaded *inter alia* that the claim was party barred by limitation.

Held, that the suit could not be said to be one for "rent," that term, though not defined in the Limitation Act, being ordinarily taken to represent that which is paid by the occupier of immovable property for the use of it, and therefore not including the hire of water paid by the owner of land to the owner of the water; but that the suit being based on contract, the claim came under article 115 of Schedule II of the Limitation Act as one for compensation for breach of contract, and therefore all items claimed which were of longer standing than three years would be barred. *Baldeo Singh* v. *Sheodan* (No. 20 *P. R.* 1883, Civil) referred to. ALA *v.* SODHI INDAR SINGH.
171 P R 1883

Second Schedule, article 116.

1. *See* LIMITATION ACT, 1877, SCHEDULE II, ARTICLE 132. **90 P R 1881**
4 P R 1894

2.—"*Immovablo property*"—"*Benefit to arise out of land*"—Jagir *income.*
See ARTICLE 75, *supra.* **4 P R 1894**

1. *Schedule II, article 116–Suit on registered ond.*

Held, that a suit to enforce a registered bond is a suit for compensation for breach of a contract in writing registered within the meaning of article 116, Schedule II, Act XV of 1877. TIRKHA RAM *v.* PURAN.
51 P R 1880

2. *Schedule II, article 116—Suit on registered bond.*

Held, following the decision in *Tirkha Ram* v. *Puran*, (No. 51 *P. R.* 1880, Civil), that article 116 of the 2nd Schedule of the Limitation Act of 1877 is applicable to a suit for the principal and interest due on a registered bond, such suit being one for compensation for breach of the contract therein contained. RAMA MAL *v.* SAIDA.
110 P R 1880

3. *And article 59—Suit on a registered bond—Compensation for breach of contract.*

Plaintiff sued for the principal and interest due upon a written agreement to pay

LIMITATION ACT (XV OF 1877)—*contd.*

Second Schedule II, article 116—*concld*

Rs. 600 on demand, dated 8th February 1874, and registered. The plaint, which was filed on 3rd February 1880, alleged a demand and refusal to pay upon 1st January 1880.

Held, reversing the orders of the lower Courts, that the suit was one for compensation for breach of a contract in writing registered, and not a suit for performance of such contract; and therefore fell within articles 116 and 59 of Schedule II of Act XV of 1877, and was within time. *Tirkha Ram* v. *Puran* (No. 51 *P. R.* 1880, Civil) followed. RAM BAKSH *v.* MAGHAR SINGH.
86 P R 1881

4. *And Article 110—Suit to recover arrears of rent based on a registered lease—Limitation.*

In 1888 the respondent's father took from the petitioner's father some land on lease for seven years commencing from 11th August 1888, and executed a registered deed. The lessee died before the expiry of the lease and his son has remained in possession ever since. In 1898 the petitioner, his father, also then being dead, sued the respondent for arrears of rent for 1892, 1893, and 1894, on the basis of the registered lease. Both the lower Courts found that the claim being for arrears of rent the limitation was governed by article 110 of the Limitation Act, and that the suit was therefore barred by limitation.

Held, that article 110 of Schedule II of the Limitation Act was not applicable. A suit to recover arrears of rent upon a registered lease was governed by article 116 and therefore the suit was not barred by limitation. JESA RAM *v.* DAULAT SHAH.
4 P R 1902 Rev

Second Schedule, article 118.
See ARTICLE 144. **44 P R 1911**

1. *Suit far possession of immovable property against an alleged adopted son—Suit instituted more than six years atter alleged adoption but within 12 years from date of estate falling into possession—Period of limitation applicable.*
See ARTICLE 91, *supra.* **55 P R 1897**

2. *And article 125—Alienation by Muhammadan widow—Widow handing over property to her deceased husband's adopted son.*

The plaintiffs sued for a declaration, after cancellation of an adoption that an alienation made on the 2nd May 1883, by the widow of one K. who died fourteen years ago, leaving a widow and daughters, would not affect their (the daughters') rights after the widow's death.

The suit was purely a declaratory one, the widow being still alive and admittedly entitled to give possession during her lifetime to whom she pleased.

Held, that the suit must be taken to be in substance the one referred to in article 118

Second Schedule, article 118—*contd.*

Schedule II, Limitation Act, 1877, and not that contemplated by article 125, and was, therefore, barred by time.

There was, in fact, no alienation by the widow, in the true sense of the term, to which the plaintiffs could or need take exception. What the widow purported to do in 1883 was to hand over to K.'s rightful heir and adopted son, the property to which he should have been recorded the successor on K.'s death. MUSSAMMAT BEGAM *v.* MUSSAMMAT NUR BIBI. **45 P R 1892**

3. *Suit to declare an adoption invalid or as having never in fact taken place.*

Semble.—The "alleged adoption" memtioned in Schedule II, article 118, Limitation Act, 1877, must be a transaction by a person with some inherent right to adopt, and which is either denied as a fact by the plaintiff or challenged as being invalid upon some ground of law or custom, which does not go the length of asserting that the adoption, as an adoption, is wholly impossible. BHAGAT RAM *v.* TULSI RAM. **144 P R 1892**

4. *"Declaration that an alleged adoption is invalid or never in fact took place"—Suit for possession of immovable property.*

Held, by the Full Bench that a suit which would fall under article 118 of the 2nd Schedule of the Limitation Act, 1877, cannot be barred under that article when it is found on the evidence that the alleged adoption never in fact took place or that there is not *prima facie* evidence that it did take place.

Per PLOWDEN, S. J.—Inasmuch as there can be no adoption known to the law, whether the parties be governed by Hindu Law or by customary law, unless the adoptor has manifested an intention to exercise his power to adopt, and as there must be in every valid adoption some external and visible act, or series of acts done by the adoptor, or under express authority from him, which act or series of acts give effect to his intention, the mere fact that an allegation by the defendant that there had been an adoption had come to the knowledge of the plaintiff more than six years before suit is not sufficient to bar plaintiff's suit for possession of immovable property under article 118 of the 2nd Schedule of the Limitation Act, 1877. In such cases plaintiff's right to sue is based not on the mere fact that an assertion of adoption has been made, but on the implied denial of plaintiff's title as heir, whether lineal or collateral, and where the defendant does not contest this title, there is no right to sue remaining upon which the law of limitation can operate.

I. L. R. XIII. Calc. 308 (P. C.) and *I. L. R. XX Calc.* 487 (P C.) distinguished. SULTAN *v.* ILAHI BAKHSH.

73 P R 1894 F. B.

5. Article 118 of the Second Schedule of the Limitation Act of 1877 is not applicable

Second Schedule, article 118—*contd.*

to a suit to declare an adoption invalid, where the adoptor has no inherent power to adopt. MUHAMMAD DIN *v.* SADAR DIN.

67 P R 1901

6. *And article* 141—*Suit by a reversioner for possession of immovable roperty—Defendant in possession under an alleged adoption.*

A suit by a reversicner to recover possession of immovable property in the hands of a defendant under an alleged adoption, if not brought within the period prescribed in article 118 of the Limitation Act, held barred.

Shrinivas Murar v. *Hanwant Chaodo Deshapande and others* (*I. L. R. XXIV Bom.* 260), *Malkrajun Bin Shidramappa Pasare* v. *Narhari Bin Shivappa and another* (*V Calc. W. N.* 10), and *Jagadamba Chaodhrani* v. *Dakhina Mohun Roy Chaodhri* (*I. L. R. XIII Calc.* 308), followed. GUJAR SINGH AND ANOTHER *v.* PURAN. **71 P R 1901**

7. *Suit to obtain a declaration that an alleged adoption was invalid or had never taken place—Limitation from which period begins to run.*

On the 28th August 1884, one K. executed a deed of adoption in favor of his daughter's son. In 1894, after the death of K. his widow assented to mutation of names being effected in favor of the adopted son. In 1897 the plaintiffs, who are the male collaterals of K. instituted a suit to obtain a declaration that the alleged adoption was invalid, and that it never took place. The first Court found that the plaintiffs' claim was barred by limitation, that the defendant was adopted by K. and that the adoption was not invalid. The Divisional Judge reversed the decree of the first Court on the grounds that the suit was not barred, that the fact of the widow of K. allowing mutation in favour of the adopted son gave plaintiff a fresh cause of action.

Held, that as the title of the adopted son to the property was created by the adoption, and not by any subsequent admission on the part of the widow of the adoptive father that the title existed, such an admission did not give plaintiffs any fresh cause of action, and as the plaintiffs had knowledge of the adoption more than six years previous to the institution of the suit their claim was barred under article 118 of the Second Schedule to the Limitaiion Act of 1877. HEM RAJ AND ANOTHER *v.* SAHIBA AND OTHERS.

116 P R 1901

8. *Suit by a reversioner for possession of immovable property—Defendant in possession under an alleged adoption—Limitation—Limitation Act,* 1877, *Schedule II, article* 118.

Held, that whenever in a suit filed for whatever purpose the validity or invalidity of on adoption comes into question that point can only be raised within six years from the

Second Schedule, article 118—*contd.*

date when the alleged adoption became known to the plaintiff and that such period cannot be extended by the fact that a suit for possession or other relief with the annulment of the adoption is sought.

Mahammad Din v. *Sadar Din* (67 *P. R.* 1901, *Mastu* v. *Nand Lal* (78 *P. R.* 1890, *F. B.*) *Bhagat Ram* v. *Tulsi Ram* (144 *P. R.* 1892), *Fazal Ilahi* v. *Yakub Mirza* (192 *P. R.* 1889), *Anant Ram* v. *Nazir Hussain* (144 *P. R.* 1883), *Dharm Singh* v. *Syad Zahurul Hussain* (58 *P. R.* 1891), *Ismail* v. *Kishen Singh* (71 *P. R.* 1894), *Dad* v. *Golu Ram* (45 *P. R.* 1889), *and Natha Singh* v. *Sujan Singh* (34 *P. R.* 1899, referred to. *Gujar Singh* v. *Puran* (71 *P. R.* 1901), *Parwathi Ammal* v. *Saminatha Gurukal* (*I. L. R. XX Mad.* 40), *Shrinivas Murar* v. *Hanmant* (*I. L. R. XXIV Bom.* 260) *Barot Naran* v, *Barot Jesang* (*I. L. R. XXV Bom.* 26) and *Maikurjun* v. *Nahari* (*I. L. R. XXV Bom.* 337, *P. C.*) followed. GANESHA SINGH *v.* NATHU AND OTHERS. **20 P R 1902**

9. *Alienation by Jat proprietor—Gift in favour of sister's son—Suit by a reversioner to declare the gift invalid and not to be binding after the donor's death—Donee setting up his own adoption as a bar to the suit—Limitation Act,* 1877, *Schedule II, article* 118.

Held, that the term "adoption" in article 118 of Limitation Act includes a customary appointment of an heir and that the failure to sue within the period provided by that article for a declaration that an alleged adoption was invalid or had never taken place is fatal to a suit in which the validity of such adoption comes into question.

The knowledge of the factum of an adoption by the father or ancestors of the reversioner objecting to it, and his or their omission to sue within limitation, prevents the reversioners from again raising the question of its invalidity.

Jagan Nath Prasad Gupta v. *Ranjit Singh* (*I. L. R. XXV Calc* 354) and *Lali* v. *Murli Dhar* (*I. L. R. XXIV All.* 195) dissented from. *Shrinivas Murar* v. *Hanmant* (*I. L. R. XXIV Bom.* 260), *Paroathi Ammal* v. *Sami natha Gurukal* (*I. L. R. XX Mad.* 40), *Gujar Singh* v. *Puran* (79 *P. R.* 1901), *Hemraj* v. *Sahiba* (116 *P. R.* 1901), and *Ganesha Singh* v. *Nathu* (20 *P. R.* 1902), followed. *Roda* v. *Harnam* (18 *P. R.* 1895), *Valiappu Nayer* v. *Paru Nethiar* (*IX Mad. L. J. R.* 196), and *Dad* v. *Bagh Singh* (34 *P. R.* 1883, F. B.) distinguished.

Mussammat Lorindi v. *Mussammat Kishen Kour* (149 *P. R.* 1888), *Mussammat Fakirunnissa* v. *Malik Rahim Bakhsh* (23 *P. R.* 1897), and *Sodhi Kartar Singh* v. *Sher Singh* (50 *P. R.* 1895), referred to. BHUPA *v.* NAGAHIA. **68 P R 1903**

10. *Suit by a reversioner for possession of immovable property—Defendant's title based on an alleged adoption—Limitation—*

LIMITATION ACT (XV OF 1877)—
contd.

Second Schedule, article 118—
concld.

Limitation Act, 1877, *Schedule II, article* 118.

In a suit brought by the plaintiff to recover possession of certain immovable property as the nearest reversionary heir of a deceased sonless male proprietor, the defendant in possession set up his adoption by the widow of the deceased and contended that the suit was barred under article 118, Schedule II of the Limitation Act. It was found that the widow in making the appointment acted without any authority from her husband.

Held, by the Full Bench, that this was not a suit to which article 118, Schedule II of the Limitation Act, was applicable.

Article 118 applies only to those cases where the validity of an adoption is questioned and not to those where the adoptor has no inherent power to adopt. KARAM DAD *v.* NATHU. **86 P R 1905 Rev.**

11. Article 118 of the Indian Limitation Act applies to every case where the validity of an adoption is the substantial question whether it arises on plaint or on defendant's pleas, and the fact that it was alleged to be invalid or inherently invalid makes no difference in this matter.

Muhammad Din v. *Sadar Din* (67 *P. R.* 1901) not followed. MUHAMMAD NIAZ-UD-DIN KHAN *v* MUHAMMAD UMAR KHAN.

1 P R 1907

12. *Suit by a reversioner for possession of immovable property—Defendant in possession under an alleged adoption—Starting point of limitation.*

Held, that article 118 applies to every suit filed for whatever purpose where the validity or invalidity of an adoption comes into question, and the time begins to run from the date the alleged adoption became known to the plaintiff. ISHAR *v.* PARTAP SINGH.

38 P R 1907

13. *Applicability of, to cases where adoption is not allowed.*

Held that article 118 of the Indian Limitation Act is not applicable to those cases in which adoption is a thing unknown to the personal law of the adoptor. NIZAM *v.* BHANA. **71 P R 1908**

14. *Suit by a reversioner for possession of immovable property—Defendant in possession under an alleged adoption—Limitation.*

Held following *Tribhuwan Bahadur Singh* v. *Rameshar Bakhsh Singh* (*I. L. R. XXVIII All.* 727), that article 118 of the Second Schedule to the Indian Limitation Act, 1877, is not applicable to a suit by a reversioner to recover possession of immovable property in the hands of a defendant under an alleged adoption, and that the proper limitation for a suit of this nature is twelve years under article 144 of the Act. SUBJAN SINGH *v.* KHARAK SINGH. **96 P R 1908**

LIMITATION ACT (XV OF 1877)—
contd.

Second Schedule, article 119.

—*Suit by adopted son to contest alienation by Hindu widow—Possession of widow adverse to the adopted son—Suit by the adopted son more than six years after interference with his rights—Suit to obtain declaration of the validity of an adoption—Limitation Act*, 1877, *Schedule II, article* 119.

In 1900 the plaintiff, who claimed to have been adopted by A, in 1871, sued to obtain a declaration that certain alienations of immovable property made by the widow of his adopted father were invalid as against his interests. It was admitted that on A.'s death, which took place in 1879, his widow had contested and denied plaintiff's rights as an adopted son and had insisted on her own succession, and that she had ever since been allowed to retain undisturbed possession of the property. The plaintiff's contention was that her possession was not adverse, as it was the result of a family arrangement by which his possession was postponed by consent, and that she had admitted the plaintiff's adoption and was allowed to hold as a widow for life.

Held, on the facts that the plaintiff has failed to prove an arrangement by which his alleged adoption was recognized by the widow, and that she had been allowed to succeed to her husband's estate for life. Moreover, as the widow had no title to succeed as such in the presence of the plaintiff holding the character of an adopted son of her deceased husband, her possession was adverse to him to the fullest extent of ownership, which having continued for more than twelve years, the plaintiff had no right of succession to the property belonging to her.

Held, also, that the suit was barred under article 119 of the Limitation Act, as it involved the establishment of the validity of plaintiff's adoption as the basis of his title, the period of limitation having commenced to run from 1879, the date when his rights as an adopted son were interfered with.

Article 119 applies to every suit filed for whatever purpose where it is necessary for the plaintiff to prove the validity of an adoption and the time begins to run from the date when the rights of the adopted son are interfered with.

Jagadamba Chaodhrani and another v. *Dakhina Mohan Roy Chaodhri and others* (*I. L R. XIII Calc.* 308, *P. C.*) *Mohesh Narain Munshi* v. *Taruck Nath Moitra* (*I. L R. XX Calc.* 487, *P. C.*) *Gujar Singh* v. *Puran* (71 *P. R.* 1901), *Hem Raj* v. *Sahib* (116 *P. R.* 1901), *Gunesha Singh* v. *Nathu* (20 *P. R.* 1902), *Lachhman Kunwar and others* v. *Manorath Ram* (*I. L. R. XXII Calc.* 445, *P. C.*) and *Sham Koer* v. *Dah Koer* (*I. L. R. XXIX Calc.* 664, *P. C.*) cited and followed.

Mahadu Ganu v. *Bayaji Sidu* (*I. L. R. XIX Bom.* 239), distinguished.

Venkatasamy v. *Ramauna and another* (6 *Mad. L. J. R.* 188), not followed. RAM NARAIN V. MAHARAJ NARAIN. **3 P R 1904**

LIMITATION ACT (XV OF 1877)—
contd.

Second Schedule, article 120.

See LIMITATION. **39 P R 1901**
See SECTION 10, *supra*.
132 P R 1907
See SCHEDULE II, ARTICLE 10, *supra*.
90 P R 1886
103 P R 1895
See SCHEDULE II, ARTICLE 57, *supra*.
116 P R 1881
See SCHEDULE II, ARTICLE 62, *supra*.
56 P R 1883
96 P R 1886

1. *Suit by minor against guardian for an account and for possession of immovable property—"Trustee"—Parties to suit.*
See SECTION 7, *supra*. **33 P R 1897**

2. *Suit on award—Deduction of period spent in proceedings to enforce the same award summarily—Cause of action.*
See SECTION 14, *supra*. **67 P R 1889**

3. *Suit for pre-emption—Sale to mortgagee in possession.*
See ARTICLE 10, *supra*. **160 P R 1889**

4. *Mortgage by conditional sale—Foreclosure - Pre-emption.*
See ARTICLE 10, *supra*. **30 P R 1892**
76 P R 1895
103 P R 1901

5. *Suit for pre-emption between rival pre-emptors—Necessary parties to such a suit.*
See ARTICLE 10, *supra*. **11 P R 1893**

6. *Conditional sale of undivided share in a village—Foreclosure—Limitation.*
See ARTICLE 10, *supra*. **37 P R 1893**

7. *Benami sale to escape pre-emption—Limitation.*
See ARTICLE 10, *supra*. **30 P R 1893**

8. *Limitation for suits as between rival claimants.*
See ARTICLE 10, *supra*.
20 P R 1908

9. *Suit for dissolution of partnership and for rendition of accounts—Suit by adopted son of deceased partner's widow—Joint Hindu family.*
See ARTICLE 126, *infra*. **20 P R 1897**

10. *Suit for declaration of title—Adverse entry in Revenue Papers.*
See CAUSE OF ACTION, IV.—MISCELLANEOUS. **20 P R 1900**

11. *Suit for correction of Settlement record—Defendant challenging plaintiff's title—Declaration of right.*

In a suit for correction of the Settlement record, where the plaint alleged that plaintiff was in proprietary possession of the land claimed, but disclosed a cause of action in the defendant's challenging plaintiff's title to the land, *held* that, though the suit was barred by time so far as it prayed for a correction of the Settlement record, the Courts should have tried and decided the question of plaintiff's proprietary title, and have given him a decree declaratory of such title if it were proved. NATHU *v.* BUTA

27 P R 1881

12. *Suit by party in possession for declaration of title to immovable property—Accrual of right to sue.*

1804

LIMITATION ACT (XV OF 1877)—*contd.*

Second Shcedule, article 120—*contd.*

Plaintiff alleged that he had been put in actual possession of a share of certain property which he had purchased, and sued for a decree declaring his title to the land, as the defendant had been recorded as owner, and disputed his title.

Held, that the limitation applicable to the suit was that provided by article 120 of the 2nd Schedule of the Limitation Act, and only began to run when the right to sue accrued that is, if the plaintiff had been in possession as proprietor, when the defendant did the first act prejudicial to his title. FUTTEH SINGH *v.* KHARAK SINGH. **88 P R 1882**

13. *And article* 91—*Suit by reversioner for declaratory decree that an alienation will not bind his interests.*

A suit brought by a nephew to have it declared that a certain deed of sale executed by his sonless uncle will not bind his reversionary interests on the uncle's death, *held* to be a suit not governed by article 91 of the 2nd Schedule of the Limitation Act, but one to which the limitation applicable is that provided for in article 120, as there is no other article which expressly provides for a suit brought during the lifetime of a male proprietor in possession by the presumptive heir to obtain such a declaration as that above stated. MANGAL *v.* BUTA. **19 P R 1883**

14. *Suit for declaratory decree—Accrual of right to sue.*

Plaintiff, the reversionary heir of one B. sued for a declaration that a mortgage effected by B. on his land in 1873 would not bind the estate against the reversioners.

Held, that the limitation applicable to the suit was that provided by article 120 of the 2nd Schedule of the Limitation Act, and as the right on which the suit was based must be held to have accrued in 1873, when the mortgage was effected, the suit was barred by limitation under the above article. *Futteh Singh* v. *Kharak Singh* (*No.* 88 *P. R.* 1882), and *Mangal* v. *Buta* (*No.* 19 *P. R.* 1883), cited. CHAITH SINGH *v.* JIWAN. **111 P R 1834**

15. *And articles* 14, 36, 49, 62—*Suit for money awarded by Magistrate to Government by order under Criminal Procedure Code—Suit not otherwise provided for.*

Plaintiff sued to recover a sum of money from Government alleging that he had received the amount claimed in May 1881, from one B. in payment of a debt, but made it over in June to a Police Sergeant, on the latter's representation that it was a part of money alleged in a criminal case then pending to have been stolen from a Government treasury over which a son of B, one of the accused in that case, had been on guard as sentry, and that the said money had been eventually awarded by the Magistrate by an order under the Criminal

1805

LIMITATION ACT (XV OF 1877)—*contd.*

Second Schedule, article 120—*contd.*

Procedure Code to the Government, the complainant in the criminal case, as part of the stolen property. The lower Court dismissed the plaintiff's suit, which was instituted in 1884, or within 3 years from either taking of the money by the constable or its award to Government by the Magistrate, as barred by limitation under article 36, Schedule II of the Limitation Act.

Held, that the suit was not barred either by article 36, or by article 14 (as further contended for the defendant), and as it did not appear that any article with less than a three years' limitation could be applied to the suit, it was not necessary to decide whether article 49 or 62 governed the suit, it being for the defendant to show (which he had failed to do) what article other than article 120 was applicable. KASHI RAM *v.* SECRETARY OF STATE. **59 P R 1888**

16. *Guardian and ward—Suit by ward after attaining majority for account.*

The limitation governing a suit by a ward, after he has attained majority to call his guardian to account for the profits made by him while he was guardian and the plaintiff was a minor, is six years under article 120, Schedule II, Indian Limitation Act, 1877.

No. 56 *P. R.* 1883 referred to. SHER ALI KHAN *v.* KHAWAJA MUHAMMAD KHAN. **84 P R 1891**

17. *And article* 10—*Pre-emption—Suit by owner of a distinct share in joint property—Court granting decree in favour of plaintiff jointly with another owner of a distinct share in the same property who did not sue.*

On the 22nd March 1878 one G. A. mortgaged half his shares in the village of Himmatpura in favour of one B. the mortgagee to be placed in possession and the mortgage to be redeemed in three years or to become a sale. On the 31st May 1878 G. A. mortgaged the remaining half of his shares to the same mortgagee, the mortgage in this case being without possession and if not redeemed within five years to become a sale. B. obtained a decree for foreclosure on the first mortgage in July 1885, and on the second in July 1888. On the 4th August 1888 plaintiff instituted both his present suits for pre-emption and obtained a decree in December 1888, but some six days previously to such decree being obtained B. executed deeds of sale of the property in suit in favour of G. M. This transaction was not brought to the notice of the first Court, but on the appeal coming before the Divisional Judge he held that G. M should be impleaded as a defendant and remanded the case under section 562, Civil Procedure Code, for that purpose. Thereupon the first Court held that G. M. had a joint right of pre-emption with plaintiff and that consequently plaintiff

1806

LIMITATION ACT (XV OF 1877)—*contd.*

Second Shcedule, article 120—*contd.*

was entitled to a decree for half the land only. The Divisional Judge, on appeal, having concurred with the lower Court, the plaintiff appealed to the Chief Court on the ground that G. M. had no such joint right of pre-emption, and, that, even if he had, it could not be decreed to him without his suing to enforce it in the regular way. For the respondents it was urged that the claim as regards the first mortgage was barred by limitation.

Held, that the claim was not barred because the suit fell under article 120 of the 2nd Schedule of the Limitation Act, 1877, and not under article 10.

Held, further, that although G. M. and plaintiff both held shares in a joint property, such shares were distinct, and that there was no presumption that plaintiff, in claiming pre-emption, did so on behalf of any other sharer than himself and that as G. M. had not claimed pre-emption independently, the transfer to him by B. could not affect plaintiff's right. KAMAR-UD-DIN *v.* BAKHTAWAR. **37 P R 1894**

18. *And articles* 134 *and* 144—*Limitation—Will, suit for cancellation of—Immovable property, suit for possession of—Period of Limitation applicable.*

Plaintiff sued for certain house properties which he alleged that one G. S., his father, who was *Mahant* of a certain shrine in Lahore and who had died in 1883, had left by will, dated 1st November 1879, to defendants who were now in possession. Plaintiff based his claim on the ground that G. S. had no right to dispose of the property in question by will, inasmuch as it formed part of the endowment of the shrine of which plaintiff was the head. He further prayed for a declaration of the invalidity of the will.

The first Court having declared the will null and void in respect of the property devised to defendants Nos. I and III, the Divisional Judge on appeal dismissed plaintiff's suit on the ground that it had from the first been treated as one to have the will declared void, and, inasmuch as plaintiff had allowed the said will to be acted on for seven years, he was barred from questioning its validity now, under article 120 of the 2nd Schedule of the Limitation Act. Plaintiff appealed to the Chief Court.

Held, following the Full Bench ruling reported as No. 116 *P. R.* 1890, that plaintiff's omission to sue, within the period allowed under article 120 either for cancellation of the will or for a declaration that it was null and void, was no bar to his suit for possession of the immovable property comprised in the said will, the suit having been instituted within the period allowed under article 144 of the 2nd Schedule of the Limitation Act.

L. R. VI Ind. App. 160, *I. L. R. XII Calc.* 69, *I. L. R. XIII Calc.* 308, *I. L. R. XIX*

1807

LIMITATION ACT (XV OF 1877)—*contd.*

Second Schedule, article 120—*contd.*

Calc. 629, *I. L. R. XX Calc.* 487, *I. L. R. XI Mad.* 26, *I. L. R. XVI Bom.*, 186, *I. L. R. XI All.* 456, Nos. 116 *P. R.* 1890, 54 *P.R.* 1891, and 57 *P. R.* 1891, cited. BHAI ASA RAM *v.* ATTAR SINGH. **56 P R 1894**

19. *And section* 10—*Suit by person interested in endowed property for dispossession of an assign of last manager—Limitation Act,* 1877, *section* 10, *and 2nd Schedule, articles* 120, 142, 144.

Held, that a suit for dispossession of an assign of a third person in favour of the third person is not a suit for possession within the meaning of article 142 or article 144 of the Limitation Act, but is a suit for the declaration of the right of the third person, and, not being provided for by any article of the Limitation Act other than article 120, is governed by that article, and that the applicability of article 120 is not affected by the fact that the plaintiff is interested in endowed property which is the subject of the suit. NARAIN SINGH *v.* ISHAR SINGH. **8 P R 1899**

20. *Suit for pre-emption on sale—Decree for possession—Subsequent suit by rival pre-emptor against original vendee and former plaintiff—Cause of action—Limitation.*

On the 29th June 1891 the *patwari* recorded in his register an oral transfer of the property in dispute by the owners to one Wiru in whose favour mutation was effected on the 8th February 1892. On the 23rd June 1897, Ganga Ram sued Wiru for possession by pre-emption and obtained a decree on the 21st August 1897. On the 2nd November 1897, Ganga Ram obtained possession in execution and on the 10th December 1897, he was sued by the present plaintiff (Waryam) for possession by pre-emption, Wiru, the original vendee, being impleaded as a co-defendant.

Held, that plaintiff's cause of action arose on the date of the sale to Wiru, *viz* in June 1891, and that his suit instituted in December 1897 was barred under article 120 of the Second Schedule of the Limitation Act, 1877. GANGA RAM *v.* WARYAM. **25 P R 1899**

21. It is not necessary for the reversioner of a holder of ancestral agricultural land to sue during his lifetime for declaration of the invalidity of an alienation made by him as respects such reversioner's interest, and in the event of his failing to do so such reversioner is not precluded from suing for possession on the death of the alienor after the lapse of the period prescribed for such declaratory suits.

The proper limitation for a declaratory suit of this nature is six years under article 120 of the Limitation Act. DHERU *v.* SIDHU. **56 P R 1903 F B**

22. *Public Company—Suit by liquidator for money due to the Company in respect of unpaid calls on shares—Limitation—Limitation Act,* 1877, *Schedule II, article* 120.

1808

LIMITATION ACT (XV OF 1877)—*contd.*

Second Schedule, article 120—*contd.*

Held, thal the period of limitation applicable to a suit brought by liquidator of a Public Company to recover the unpaid amount of calls from a share-holder is six years from the date of default under article 120 of the 2nd Schedule to the Limitation Act,

The Parell Spinning and Weaving Company v. *Manek Haji* (*I. L. R. X Bom.* 483) cited. In re *Duckworths* (*L. R.* 2 *Ch.* 578), In re *Stockens* (*L. R.* 3 *Ch.* 412), *Waterhouse* v. *Jamieson* (*L. R.* 2 *H. L.* (*Sc.*) 29), In re *Whitehouse & Co.* (*L. R.* 9 *Ch. D.* 595), In re *National Funds Assurance Co.* (*L. R.* 10 *Ch. D.* 118), *Sukho Bibi* v. *Ram Sukh Das* (*I. L. R. V All.* 263), *Raghubar Dial* v. *Modan Mohan Lal* (*I. L. R. XVI All.* 3), *Sorabji Jamsetji* v. *Ishwar Das Jugjiwan Das* (*I. L. R. XX Bom.* 654), In re *Ram Sunkar Bhadoori* (3 *Calc. L. R.* 440), *Manekji Framji* v. *Rustomji Naserwanji Mistry* (*I L. R. XIV Bom.* 269). and *Parashram Jethmal* v. *Rakhma* (*I. L. R. XV Bom.* 299), referred to. HARCHAND RAI *v.* RANG LAL. **70 P R 1903**

23. *Religious institution—Suit by person interested in endowed property for dispossession of an assignee of the last manager—Limitation.*

In 1899 plaintiff brought a suit as a worshipper to contest an alienation made in 1899 by the last manager of the endowed property and asked for the dispossession of the assignee in favour of the endowment, *held*, that the limitation applicable to such suit was that prescribed by article 120 of the second Schedule to the Limitation Act, and that time began to run for the purposes of limitation from the date of the alienation.

Narain Singh v. *Ishar Singh* (8 *P. R.* 1899), *Behari Lal* v. *Muhummad Muttaki* (*I. L R. XX All.* 482), and *Chukkun Lal* v. *Lalit Mohan Roy* (*I. L. R. XX Calc.* 906), referred to. ASA RAM *v.* PARAS RAM. **9 P R 1904**

24. *And article* 10—*Pre-emption—Oral sale of joint share in an undivided holding—Physical possession.*

Held, that the limitation applicable to a suit brought to declare a right of pre-emption in respect of a sale not by registered instrument, of an undivided share in a joint holding which does not admit of physical possession being taken, is six years under article 120, Schedule II of the Limitation Act.

Batul Begam v. *Mansur Ali Khan* (*I. L. R. XXIV All.* 17, *P. C.*) *Ali Gauhar* v. *Jowahir* (30 *P. R.* 1892), *Kalu* v. *Bhupa* (30 *P. R.* 1893), *Unkar Das* v. *Narain* (*I. L. R. IV All.* 24, *F. B.*), *Bholi* v. *Imam Ali* (*I. L. R. IV All.* 179), *Batul Begam* v. *Mansur Ali Khan* (*I. L. R. XX All.* 315, *F. B.*) and *Ganga Ram* v. *Bahal Singh* (76 *P. R.* 1895), referred to. KISHEN CHAND AND OTHERS *v.* KEHR SINGH. **14 P R 1904**

1809

LIMITATION ACT (XV OF 1877)—*contd.*

Second Schedule, article 120—*contd.*

25. *Limitation—Suit by reversioner for declaration—Defendant's title based on an alleged adoption—Invalidity of adoption.*

Held, that a suit by a reversioner for a declaratory decree where the defendant's title was based on an adoption the *factum* of which was established is governed by article 120 of the second Schedule to the Limitation Act, and such a suit cannot be excluded from the operation of the article merely by reason of the validity of the adoption being called in question.

Malkarjun v. *Narhari* (*I. L. R. XXV Bom.* 337, *P. C.*) *Shrinivas Murar* v. *Hanmant Chavdo Deshapande* (*I. L. R. XXIV Bom.* 260, *F. B.*) *Ganesha Singh* v. *Natu and others* (20 *P. R.* 1902), *Bhupa and another* v. *Nagahi and others* (68 *P. R.* 1903), and *Dehru and others* v. *Sidhu and others* (56 *P. R.* 1903, *F. B.*) referred to. PIR MUHAMMAD *v.* FAUJA. **35 P R 1904**

26. *Limitation—Irregular transfer of right of occupancy—Suit by landlord for possession after cancellation of sale—Punjab Tenancy Act,* 1887, *section* 60.

Held, that the period of limitation applicable to a suit under section 60 of the Punjab Tenancy Act for the cancelment of a voidable transfer of a right of occupancy is six years under article 120 of the second Schedule to the Limitation Act, 1877. KURIA *v.* NANAK. **7 P R 1905 Rev.**

27. *Custom—Alienation—Alienation of ancestral property by Jat proprietor—Suit by after born son of the alienor to contest such alienation—Limitation—Limitation Act,* 1877, *Schedule II, article* 120.

In 1904, plaintiff, who was born in 1900 brought a suit for declaration that an alienation of ancestral land made by his father in 1893 would not affect his reversionary interests.

Held that the claim was barred by limitation under article 120 of the second Schedule to the Limitation Act. The cause of action giving the right to sue commenced from the date of the alienation, and limitation had finally expired before the plaintiff's birth and was not revived in favour of plaintiff on his birth in 1900.

Harwans Singh v. *Harnam Singh* (84 *P. R.* 1898 *F B.*) and *Jowala* v. *Hira Singh* (55 *P. R.* 1903 *F. B.*), referred to. GANPAT *v.* DHANI RAM. **73 P R 1906**

23. *And article* 131—Jagir—*Suit to recover arrears of* jagir *by grants from Government—Periodically recurring rights—Limitation Act,* 1877, *Schedule II, articles ation* —120, 131.

Held, that the period of limitation applicable to a suit to recover arrears of *jagir* which was payable by Government annually from the defendant who claimed to receive it under a decree obtained by him against a former grantee was that prescribed by article 120 of the second Schedule to the

LIMITATION ACT (XV OF 1877)—*contd.*

Second Schedule, article 120—*contd.*

Limitation Act and not that prescribed by article 131 which applies to a suit where the plaintiff seeks only to establish his periodically recurring right.

Alubi v. *Kanhi Bai* (*I. L. R. X Mad.* 115) dissented from.

Kamman v. *Budh Singh* (146 *P. R.* 1882), *Gahna* v. *Ikhlas Khan* (154 *P. R.* 1889), and *Mussammat Zinat* v. *Murtaza Khan* (108 *P. R.* 1901), distinguished. DOST MUHAMMAD KHAN *v.* SOHAN SINGH. **83 P R 1906**

29. *Suit for pre-emption arising out of mortgage by conditional sale—Starting point of limitation.*

Held, that the limitation applicable to a suit to enforce a right of pre-emption in respect of a conditional sale of share in a joint *khata* is that contained in article 120 of the second Schedule to the Limitation Act, and it begins to run against a pre-emptor from the date of the expiration of the year of grace allowed under Regulation XVII of 1806. SHEOJI SINGH *v.* SHEOJI SINGH. **129 P R 1906**

30. *Declaration decree—Suit by a person in possession for a declaration of title in immoveable property—Cause of action against defendant—Adverse entry in revenue papers.*

Held, that a suit for a declaration of his title to immovable property by a person in possession as proprietor is not barred if brought within six years from the time when the defendant attempts to oust him from the land although a right to sue the defendant who had been recorded as owner of the property in the settlement record had already accrued and become barred. HAKIM SINGH *v.* WARYAMAN. **140 P R 1907**

31. *Limitation—Suit for a declaration of title to, and possession in, immovable property by a vendee in actual possession—Starting point of Limitation.*

Held that a suit by a vendee, in possession of the property purchased, for a declaration of title as such, is governed by article 120 of the Second Schedule to the Indian Limitation Act, 1877, and that the period of limitation begins to run from the date on which the vendor denies the plaintiff's title. MUNSHI RAM *v.* HAMMI. **61 P R 1908**

32. *Religious Institution—Suit for removal of a Mutwalli and Imam by reason of a change in his religious views—Limitation for such suit—Starting point of limitation—Limitation Act, 1877, Schedule II, article* 120.

Held, that the limitation applicable to a suit for a declaration, that the Mutwalli and Imam of a certain mosque by reason of a change in his religious views at variance with the beliefs of the founders of the institution, is liable to be dismissed from his office, is that contained in article 120 of the Second Schedule to the Indian Limitation Act, and the period begins to run from the date when such change takes place. YAD ALI *v.* MUBARAK ALI. **53 P R 1909**

LIMITATION ACT (XV OF 1877)—*contd.*

Second Schedule, article 120—*concld.*

33. *And section 28—Limitation—Declaratory suit contesting alienation—Punjab Limitation Act, I of* 1900, *article* 1—*Indian Limitation Act, XV of* 1877, *article* 120 *and section* 28.

Held, that the provisions of section 28, Indian Limitation Act of 1877, being expressly limited to suits for possession do not apply to suits for declarations, and that a person in possession has no vested right to the benefit of any specific period of limitation, not in force when the suit was instituted.

Held therefore, that a suit instituted in January 1907 for a declaration, that a sale-deed executed in January 1897 did not affect the reversionary rights of the plaintiffs, was within limitation being governed by article 1 of the Schedule to the Punjab Limitation Act of 1900 and not by article 120, Schedule II, of the Indian Limitation Act of 1877. ARURA MAL *v.* KESAR SINGH. **69 P R 1909**

Second Schedule, article 123.

1. *And articles* 48, 49—*Claim by widow against co-widows who had obtained succession certificate—Assets not realized at time of suit—Cause of action.*

See ARTICLE 48. **16 P R 1897**

2. *And articles* 127, 144 *and* 142—*Devolution of estate upon several persons jointly—Entry of one on behalf of all.*

C, the common ancestor of the parties died between 20 and 14 years before the institution of the suit. Plaintiff sued defendant for his share of the estates of C. on the allegation that he had obtained possession on the death of C. and had subsequently entrusted it to defendant, who refused to restore it on demand. It was found that the plaintiff had never had actual possession, and that there was no trust.

Held, that the suit was barred under article 144, Limitation Act. Under the circumstances of the case it could not properly be held that the entry of the defendant on the death of C. was an entry which vested the possession in the plaintiff. LACHMAN SINGH *v.* SOHAN SINGH. **97 P R 1890**

Second Schedule, article 125.

1. *Alienation by Muhammadan widow—Widow handing over property to her deceased husband's adopted son.*

See ARTICLE 118. **45 P R 1892**

2. *Sale of land by female entitled thereto for her life—Subsequent alienation by vendee more than twelve years after previous sale—*

LIMITATION ACT (XV OF 1877)—*contd.*

Second Schedule, article 125—*contd.*

Suit for declaratory decree by reversioners of the female in respect of the second alienation—Limitation Act, 1877, *article* 125—*Estoppel Misjoinder.*

Plaintiffs sued on the allegations that certain lands, which were originally the property of their grandfather, Sirdar Deva Singh, deceased, were on the Sirdar's death given to his grand, daughter, Mussammat T. D. by his widow, for her maintenance; that on the 19th August 1874, Mussammat T. D., without lawful necessity, sold the said land to one P. S. defendant 2, under a fictitious deed of sale, plaintiffs being entitled to reversionary rights therein; that on 18th April 1895, P. S. by a registered deed, gave part of the said land to defendants 3, 4 and 5, who claimed to be collaterals of the said Sirdar and reversionary heirs of Mussammat T. D., and part to his own grandson; that defendants 3, 4 and 5 were not such reversionary heirs in the presence of plaintiffs; that the sale by Mussammat T. D. to P. S. was invalid as made without necessity and that as defendants, donees of P. S. contemplated a sale of the said lands by auction which would prejudicially affect plaintiffs' rights, and would put plaintiffs to great difficulty in recovering the said lands when their rights accrued, plaintiffs prayed that a declaratory decree might be passed in their favour to the effect that after Mussammat T. D.'s death, they were the reversionary heirs entitled to the said property. In this suit plaintiffs impleaded Mussammat T. D. as co-defendant together with P. S. and the donees of P. S.

In the Chief Court it was admitted by plaintiffs that their right to sue in respect of the sale by Mussammat T. D. to P. S. was barred by limitation, but it was contended that inasmuch as P. S. had, by the deed of 18th April 1895, set up other reversioners to Mussammat T. D. and thus denied plaintiffs' rights as such by implication, plaintiffs had a new cause of action to ask for the declaration prayed for.

Held, that such contention was untenable. The suit which plaintiffs might have brought under section 42 of the Specific Relief Act, 1877, at any time within twelve years from the date of the sale by Mussammat T. D. to P. S. to have the said sale declared void after Mussammat T. D.'s death, would have been maintainable only on the assumption that plaintiffs were the reversionary heirs of Mussammat T. D. as respects the land sold, and that their rights had been denied, actually or by implication, such as by the act of alienation itself. Plaintiffs' right to sue on that cause of action having been lost under article 125 of the Limitation Act, 1877, the subsequent reiteration of the denial of their rights gave the plaintiffs no fresh right to sue for a declaration in respect of the property included in the alienation.

Held, further, that plaintiffs' previous failure to sue for a declaration in respect of the sale by Mussammat T. D. to P. S. precluded

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LIMITATION ACT (XV OF 1877)—*contd.*

Second Schedule, article 125—*concld.*

them from challenging it during the lifetime of Mussammat T. D.

Held, also, that Mussammat T. D. having admittedly done nothing since the sale in 1874, to prejudice the plaintiffs' rights, had been improperly impleaded as co-defendant in the present suit. MUSSAMMAT THAKAR DEVI *v.* PARTAB SINGH. **26 P R 1896**

Second Schedule, article 126.

1. *And articles* 106, 120, 127—*Suit for dissolution of partnership and for rendition of accounts—Suit by adopted son of widow of deceased partner—Joint Hindu Family—Limitation Act of* 1877, *2nd Schedule, articles* 106, 120.

The parties were Jain Saraogis of the Karnal District, and plaintiff, who alleged that he was adopted to one M. L. by the widow of the said M. L. sued for rendition of accounts, dissolution of partnership existing between himself and the late M. L. and defendants, and for a decree for half the total assets of the said firm. The lower Court having decreed the claim, defendants appealed to the Chief Court, and contended, that the suit was barred by limitation; that on the death of M. L. his estate devolved on the surviving members of the firm, and could not be diverted by the alleged subsequent adoption: and that, in any event, plaintiff's adoption gave him no right to the ancestral property of the deceased M. L.

Held, that inasmuch as by Hindu Law an ancestral trade may descend, like other inheritable property, upon the members of a Hindu undivided family, the partnership was not dissolved by the death of M. L.

Held, further that a valid adoption by a widow to her husband has the effect of placing the adopted son in the position which he would have occupied had he been adopted by that husband or been a posthumous child of that husband; and that the adopted son must be received to the joint family partnership on adoption, and is entitled to all the rights of an ordinary member of that partnership, which has continued to exist in spite of the death of the deceased partner.

Held, therefore, that plaintiff's suit, which was instituted within six years of the date of adoption was within time under article 126 or 127, Limitation Act, the partnership not having been dissolved by the death of M. L., and no dissolution subsequent to his death and before adoption having been proved.

Held, further, that the adoption by the widow, if valid, divested any estate which was not superior to that of the adopted son, and that plaintiff on adoption become *ipso facto* a member of the family partnership.

Found upon the evidence, without laying down a general rule, that the adoption was valid and had the effect of vesting in the adopted son the share of the deceased in the

1814

LIMITATION ACT (XV OF 1877)—*contd.*

Second Schedule, article 126—*concld.*

joint family property of every description. KAPUR CHAND *v.* NARINJAN LAL. **20 P R 1897**

Second Schedule, article 127.

See ARTICLE 126, *supra.*

1. *Muhammedan Law—Gift to one heir to the prejudice of other heirs—Death-bed gift. Limitation.*

See ARTICLE 91, *supra.* **52 P R 1895**

2. *Devolution of estate upon several persons jointly—Entry of one on behalf of all.*

See ARTICLE 123. **97 P R 1890**

3. *Exclusion from joint family property.*

The garden in dispute was recorded in 1861 as the property jointly of the plaintiff and defendants, who formed a joint Hindu family. In 1861, plaintiff mortgaged to a third party some house property belonging to the family, and entered in the deed a clause to the effect that if the defendants were to redeem it, he, plaintiff, would have no further claim to it. In the same year plaintiff left the village and went into foreign territory, where he married and settled, taking no further interest in the property or its management for 21 years, when hearing that at the new Settlement the defendants had recorded their own names as owners and excluded his, he returned and brought the present suit for possession of the garden.

Held, that as regards limitation the case fell under article 127, Schedule II, of the Limitation Act, and that it could not be said that plaintiff was excluded from possession of the joint family property till the recent entry was made in the Settlement papers. MEHR CHAND *v.* DUNI CHAND. **18 P R 1886**

4. *And article* 144—*Exclusion from joint family property—Adverse possession—Exclusion need not be from the whole family property.*

An exclusion from *all* ancestral property is not necessary to give rise to a bar by limitation. So long as the property continues to be held as undivided family property, limitation will not run against a member who has not been excluded from his share, but when the question is whether the property was in fact so held, there is no reason why limitation should not begin to run from the earliest date when the property can be shown to have been actually held by the person in possession adversely to the other members of the family. The circumstance that they may hold other property which, if they claim a partition, they must allow to be brought into the partition, would not be material, what has to be considered being the property out of the plaintiff's possession in which he claims a share. BUDHA MAL *v.* BHAGWAN DAS. **86 P R 1886**

1815

LIMITATION ACT (XV OF 1877)—*contd.*

Second Schedule, article 127—*concld.*

5. *Sucession of daughters—Muhammadan law—Limitation Act XV of* 1877, *Schedule II articles* 127, 144—*Joint Family—Adverse possession—Minority.*

Held, in a case, in which two daughters were claiming their shares under Muhammadan Law that there being no joint family proved to exist, and each sharer therefore being entitled to claim on the death of the owner whose estate was in dispute, and whose death occurred more than 12 years prior to suit, limitation ran against each plaintiff from the date of such owner's death, and though the youngest daughter, having claimed within 3 years of attaining her majority, was entitled to her whole share, the other plaintiff was barred by 12 years' adverse possession, save as to her share in a small portion of the estate, the claim to which was within time. NASIR-UD-DIN SHAH *v.* MUSSAMMAT LAL BIBI. **89 P R 1888**

Second Schedule, article 131.

See ARTICLE 120, *supra.* **83 P R 1903**

See LIMITATION ACT (XV OF 1877), SECTION 28. **106 P R 1883**

1. *Suit for* kamiana—*Time from which period begins to run.*

Held, per *Smyth*, J., that in a suit for *kamiana*, where the right to levy such dues formerly existed, limitation would not begin to run against the plaintiffs simply from their refraining to exercise the right, but from the time when they were first refused enjoyment of the right (Article 131, Schedule II, Act XV of 1877). KAMMAN *v.* BUDH SINGH. **146 P R 1882**

2. *Non-user*—Talukdari *dues.*

In 1849, the defendants obtained a decree establishing their right to levy *talukdari* dues from the plaintiffs. The plaintiffs now sued for a declaration that they were not liable to pay the said dues, no payment having been made since the date of the decree, and the defendants having lost their right by non-user.

Held, that assuming that defendant had not collected the dues from plaintiffs as alleged, this right fell under article 131, Schedule II, Limitation Act, and to defeat a claim to enforce it, plaintiffs must prove not merely non-user but a demand and refusal 12 years before suit. GAHNA *v.* IKHLAS KHAN. **154 P R 1889**

3. Jagir—*Succession—Grant of Government revenue for life to parties' family in specific shares—Death of one sharer—Suit by the surviving sharer against the son of the deceased for certain instalments wrongfully enjoyed by the latter—Limitation.*

A *jagir* was granted to the family of the parties for life without any express provisions for survivorship. The *jagir* was to

Second Schedule, article 131—*concld.*

be divided into ten shares in three separate groups, the defendant's father and the plaintiff being two out of five sharers in group No. 2. The former died in 1868 and his share was peaceably enjoyed by his son until 1898, when the plaintiff filed a suit against the defendant on the allegation that two annual instalments proportionate to the defendant's share had been wrongfully enjoyed by the defendant, who pleaded limitation, and argued that in his presence the plaintiff was not an heir to his father. *Held*, that as no demand was made prior to those which immediately preceded this suit the suit was within limitation under article 131 of the 2nd Schedule of the Limitation Act. *Gahna* v. *Ikylas Khan* (154 *P R.* 1889) cited. MUSSAMMAT ZINAT *v.* MURTAZA KHAN. **108 P R 1901**

Second Schedule, article 132.

1. *Suit by minor against guardian for an account and for possession of immovable property—" Trustee "—Limitation.*

See SECTION 7, *supra.* **33 R P 1897**

2. *" Immovable property "—" Benefit to arise out of land* jagir *income.*

See ARTICLE 75, *supra.* **4 P R 1894**

2 (*a*). *And article* 147—*Suit for foreclosure or Sale—Mortgage—Charge.*

See ARTICLE 147. **151 P R 1888**

3. *Schedule II, article* 132—*Suit on Mortgage bond—Declaration of lien on immovable property.*

Where a plaintiff seeks to realize money due on a bond by obtaining a declaration of his lien on immovable property mortgaged by the bond, *held*, that the suit is not barred by limitation because it is brought later than three years from the time when the money became repayable, such suit being governed by the limitation provided for in article 132, Schedule II of Act XV of 1877, *viz.*, 12 years. KALA SHAH *v.* FAZL. **69 P R 1880**

4. *And article* 116—*Suit on mortgage barred as regards defendant's personal liability, but maintainable as against mortgaged property.*

Held, per *Brandreth*, J. in a suit to recover the sum alleged to be due on a mortgage, which prayed also for the said amount to be decreed against the mortgaged property, that the suit, so far as it prayed for a decree against the debtor personally, was barred by limitation, more than six years having elapsed since payments were refused, and the two parts of the claim being separable; though the suit was in time so far as it was one to enforce a charge against immovable property, the period of limitation being 12 years for this part of the suit. *Shankar Das* v. *Ghasita* (No. 73 of 1876, Civil) cited and

Second Schedule, article 132—*contd.*

followed. GAHI MAL *v.* SHERA. **90 P R 1881**

5. *Suit to enforce payment of money charged upon immovable property—Suit by mortgagee to obtain a mere money decree*

Held by a majority of the Full Bench, *Smith*, J. dissenting, that the limitation of 12 years provided by article 132, Schedule II of the Limitation Act (XV of 1877) for suits to enforce payment of money charged upon immovable property, is not applicable to a suit by a mortgagee ot obtain a decree merely for the mortgage-money against the motgagor. *Abdul Hamid* v. *Gholam* (No. 49 of 1871 Civil), *Shankar Das* v. *Ghasita* (No. 73 of 1876 Civil) and *Dowlat Ram* v. *Jiwan Mal* (No. 116 of 1881, Civil) approved of. *Kishen Singh* v. *Shah Partab Shah* (No. 55 of 1884, Civil, Note) overruled. DEVI DAS *v.* ISHAR DAS. **55 P R 1884**

6. *And article* 63—*Suit for redemption of mortgage—Defendant's right to interest due under the mortgage—Right to treat such interest as a charge on the estate.*

In a suit for redemption of a mortgage of certain land, it appeared that the mortgage was originally by way of collateral security, but that it was stipulated that if interest, which was payable year by year at a specified rate per mensem, were not paid in any one year as agreed upon, the mortgagee was to be placed in possession of the land; and that in consequence of a default having occurred in the payment of interest, the mortgagee had on a former occasion, sued to enforce the condition of deed as to the transfer of possession, and had obtained a decree to that effect since when he had continued in possession of the mortgaged land. The defendant, while admitting the plaintiff's right to redeem, claimed to receive interest under the terms of the deed from the date of execution of the instrument until the date of his decree for possession, but the lower Appellate Court refused to award such interest, holding that the claim thereto had become barred under arlicle 63 of the 2nd Schedule of the Limitation Act.

Held, that (in the absence of any contract to the contrary) the mortgagee was entitled, in a settlement of his account with his mortgagor, to treat the interest due under the mortgage as a charge on the estate; that article 132 of the Limitation Act therefore applied, and the mortgagee was entitled to all interest due under the mortgage within twelve years from the date of suit. *Ram Nath* v. *Mussammat Jio.* (No. 101 *P. R.* 1880). RADHA KISHEN *v.* MUHAMDU. **57 P R 1883**

7. *And article* 147—*Suit on a mortgage bond—English mortgage.*

Held, by the Full Bench (Benton J. dissent-

Second Schedule, article 132—*contd.*

ing) that a suit to recover the principal and interest due upon a deed of single mortgage by sale of the mortgaged property is governed as regards limitation by article 132, and not by article 147 of the 2nd Schedule of the Limitation Act of 1877.

I. L. R. XIV Calc. 730 followed. 151 *P. R.* 1888 overruled. RAM SARAN DAS *v.* MEHTAB. **112 P R 1890, F. B.**

8. *Suit for redemption of mortgage—Interest treated as a charge on mortgaged estate—Limit to such charge.*

In a suit for redemption of a mortgage in which the principal and interest are made a charge upon the mortgaged land, and interest is due for a period exceeding twelve years, the mortgagor cannot avail himself of the provisions of article 132 of the Limitation Act so as to obtain redemption on payment of the principal and so much of the interest only as has accrued during the twelve years immediately before the suit.

57 *P. R.* 1888, overruled. 8 *P. R.* 1890, approved. KAMRA *v.* BISHAMBAR DAS. **147 P R 1890 F. B.**

9. *Limitation Act (XV of* 1877), *2nd Schedule, articles* 75, 116 *and* 132—*General Clauses Act, (I of* 1868), *section* 2—*" Immovable property "—" Benefit to arise out of land."*—Jagir *income.*

A suit was filed on the 4th January 1892, based on a bond, dated the 13th June 1883, hypothecating certain *jagir* income. The lower Courts dismissed the claim as barred by limitation, according to the first Court under article 75, and according to the Divisional Court, under article 116, of the 2nd Schedule to the Limitation Act.

Held, that looking at the definition of immovable property given in section 2 of the General Clauses Act, *jagir* income is a "benefit to arise out of land" within the meaning of that definition and that, therefore, the suit was within time under article 132 of the 2nd Schedule to the Limitation Act. RAM PARSHAD *v.* KISHEN SINGH. **4 P R 1894**

10. *Construction of mortgage-deed—Limitation Act,* 1877, *2nd Schedule, articles* 75, 132, 147.

The mortgage-deed in question provided as follows:—" The mortgagees shall pay the " mortgage-money by instalments of Rs. 60 " a year, together with interest at the rate of " 8 annas *per cent.* without raising any ob- " jection or dispute. In case of default of " payment of an annual instalment, together " with interest at the aforesaid rate, the " mortgagors will put the mortgagee in posses- " sion of the mortgaged share of the house. " If the mortgagors raise any objection, the " mortgagee will be at liberty to at once get " possession by bringing a regular suit. " Afterwards the mortgagors will redeem

1819

LIMITATION ACT (XV OF 1877)—*contd.*

Second Schedule, article 132—*concld.*

"and get released the mortgaged share on "payment of the mortgage-money together "with the fixed amount of interest."

The deed was executed in 1881, and the first default in payment of the instalments took place in 1892. In 1897 the mortgagee sued for Rs. 797-6-0 principal and interest due on the mortgage, and prayed for attachment and sale of the mortgaged property.

Held, with reference to the language of the deed, that the intention of the parties was to hypothecate the property in the first instance, giving the mortgagee the power of taking steps for assuming possession and so converting the mortgage into a purely usufructuary one, but, as the mortgagee failed to so convert it, the transaction remain- no more than a promise to pay by the obligor who had hypothecated his property as a collateral security.

Held, therefore, that as the plaintiff had failed to enforce payment within twelve years of the first default in payment by taking possession and so carrying out and developing the contract the suit was barred under article 132 of the Limitation Act, 1877. MILKHI RAM *v.* ACHHRU MAL. **23 P R 1900**

11. *Builder's lien—Charges created by act of parties—Limitation applicable—Limitation Act*, 1877, *articles* 52, 56, 120, 132.

Held, that a claim for the balance of money due to a builder who undertook the erection of a building on an express understanding that all the sums due to him where to be a charge upon the buildings until paid is a claim for money charged upon immovable property and the period of limitation to enforce such charge is twelve years under article 132 of Schedule II of the Limitation Act. DAULAT RAM *v.* THE WOOLEN MILLS CO., LD., DELHI.

95 P R 1908

12. Benami *transaction*—Benami *mortgage—Assignment by* Benamidar—*Right of beneficiary against the property and the* benamidar—*Limitation.*

Held, that a person who takes a mortgage of immovable property in the name of another, loses his lien on the security, if a *bonâ fide* transferee acquires it for value from the *benamidar*, but has a remedy against the latter for the money wrongfully received and retained by him, and it being charged on immovable property, the limitation for such a claim is that which is provided by article 132 of the Second Schedule to the Indian Limitation Act, 1877. SHAM LAL *v.* JOHRI MAL.

37 P R 1909

Second Schedule, article 134.

1. *Will, suit for cancellation of—Immovable property, suit for possession of—Period of limitation applicable.*

1820

LIMITATION ACT (XV OF 1877)—*contd.*

Second Schedule, article 134—*contd.*

See ARTICLE 120.

56 P R 1894

2. *And article* 148—*Redemption of mortgage—Party not really interested in equity of redemption redeeming from mortgagee in possession—Subsequent possession by such person for more than* 12 *years—Adverse possession—Right of party so redeeming to defeat suit for redemption by representative of mortgagor by plea of* 12 *years adverse possession.*

The facts found by the lower Courts, and accepted in second appeal by the Chief Court, with regard to the plot of land which was the subject of the appeal, were that the land was part of the estate of one I. B. when he died about 30 years ago; that it was then, or shortly afterwards, by his widow, mortgaged to one L. for Rs. 20: that it was redeemed more than 12 years ago by the defendant, and that the plaintiff was I. B.'s heir, and entitled as such to redeem unless he was barred by the law of limitation. The defendant-appellant relied on article 134 of the 2nd Schedule of the Limitation Act in support of his plea that plaintiff's suit was barred.

Held, per *Rattigan* and *Barkley*, *JJ.* (*Elsmie, J.* dissenting), that as the defendant knew that the land had been mortgaged by I. B. or his widow, and obtained possession by redeeming the mortgage, he was in the same position as an assignee of the mortgage, and was not a "purchaser for valuable consideration" within the meaning of article 134 of the 2nd Schedule of the Limitation Act, and could not take advantage of the provisions of that article to abridge the period within which the plaintiff as the legal representative of the original mortgagor was entitled to claim redemption under article 148; and further that it was immaterial whether or no the defendant at the time of redeeming the mortgage claimed to be himself the owner of the property.

Per *Elsmie, J.*—That the position taken by the defendant being that he claimed and took the land in his own right, and not as heir of the original mortgagor, that is, took it by assertion of a right adverse to the heir of the original mortgagor, paying off a charge which had been created by the life-tenant; and as, if he did so, whatever defects there might have been in his title originally would have been cured by long adverse possession, the case should be remanded for re-decision after a finding as to whether defendant took possession of the land as heir of I. B. or in his own right as heir of the original owner. AZIM *v.* MAHMUD.

124 P R 1883

3. *And article* 144—*Religious Institution—Mortgage of property attached to religious institution—Suit by* mahant *to set aside*

1821

LIMITATION ACT (XV OF 1877)—*contd.*

Second Schedule, article 134—*concld.*

various mortgages made by his predecessor in office to several persons—Limitation for such suit—Starting point of Limitation.

Held by the Full Bench that the limitation applicable to a suit by a *mahant* to set aside a mortgage of *waqaf* property attached to a religious institution by his predecessor in office on the ground that the alienor had no power to alienate such property is that prescribed by article 144 of the Second Schedule to the Limitation Act and not that prescribed by article 134, and that it begins to run from the date of the plaintiff's appointment as *mahant*, *i. e.*, the date on which he becomes entitled to possession by virtue of his appointment. BASHESHAR LAL *v.* NATHA SINGH. **30 P R 1908, F B**

4. *Religious Institution—Sale by* mahant *of immovable property belonging to his shrine — Suit by his successor to recover property—Limitation for such suit—Starting point of limitation—Limitation Act*, 1877, *Schedule II, article* 134.

Held by the Full Bench that where immovable property conveyed, in trust to a *mahant* of a religious institution for the time being for the benefit of the institution is sold by his successor in office to recover the property so alienated is governed by article 134 of the Indian Limitation Act, and is barred if the purchaser has been in possession of such property for more than twelve years from the date of his purchase. HAR GIAN DEO *v.* BALDEO DAS. **127 P R 1908, F B**

Second Schedule, article 135.

1. *Foreclosure of mortgages—Notice—Failure to pay interest under mortgage-deed —Continuing breach of contract—Waiver.*

See SECTION 23, *supra.*
See SECTION 28, *supra.*

2. *Suit by mortgagee for possession on default of payment of mortgage-money.*

See ARTICLE 113, *supra.*

3. *And article* 113—*Suit for possession of property mortgaged—Specific performance.*

Plaintiff sued in 1881 to obtain possession of certain land mortgaged to him in 1876 by a registered deed, by the terms of which he was to a hold possession of and cultivate the land, paying the Government revenue. It was recited in the deed that possession had been given to the mortgagee from the date of the deed, but in point of fact possession was not given. The lower Appellate Court held that the suit was barred by limitation on the ground that it was one for specific performance of a contract of mortgage, and more than three years had elapsed since the date of execution of the deed.

Held, that the suit was not barred; that it was not a suit brought by the plaintiff to compel the owner of the land to convey a

Second Schedule, article 135—*contd.*

right of possession, as that had already been done, but to obtain possession of the land the right to which was conveyed by the deed of 1876, and the period of limitation for such a suit was twelve years from the date of execution of the deed under article 135, Schedule II, Act XV of 1877. RAM CHAND *v.* GYAN CHAND. **134 P R 1883**

4. *And article 144—Mortgage—Mortgagor and mortgagee—Landlord and tenant—Adverse possession.*

S. mortgaged a house to G. in 1815. The mortgage was with possession with right to the mortgagee to live in the house himself or to let it to tenants, but as a matter of fact the mortgagors and his descendants continued in possession till the commencement of the present litigation. The period of limitation for redemption expired in 1875. In 1881 the mortgagee obtained a decree for rent against the mortgagors. In 1882 the mortgagors sued for a declaration that they were proprietors by adverse possession or in default, for redemption. It was found that they had paid rent and that there had been no adverse possession. The claim for redemption was found to be time-barred. In 1888 the legal heir of the mortgagee sold the house to plaintiff, who sued defendants as tenants for ejectment. Defendants pleaded that the suit was barred by articles 135 and 144 of the 2nd Schedule of the Limitation Act (XV of 1877), and that they had been in adverse possession for more than 12 years.

Held, (*i*) that the suit was not barred. Article 135 applies only to cases where the mortgagee is not in actual or constructive possession of the property. The present suit was not by a mortgagee out of possession to recover possession from a mortgagor in possession, but was based on the allegation that the mortgagor continued in possession as tenant of the mortgagee;

(*ii*) that there had been no adverse possession. The judgment of 1882 was a clear authority for holding that the mortgagors had paid rent, and it was *res judicata* as to the character of possession till then. Since 1882, sufficient time had not elapsed to entitle them to claim ownership by adverse possession. Adverse possession not having been proved, the defendants must be *held* to be still tenants and liable to ejectment. GANPAT RAI *v.* JEWAN LALL. **114 P R 1890**

5. *And article 144—Suit for possession by mortgagee who has foreclosed.*

Plaintiff sued on the allegations that on 27th January 1877 defendant executed in his favour a mortgage, by the terms of which plaintiff was to be placed in immediate possession of certain land as mortgagee and receive the produce in lieu of interest, and defendant was to redeem in three years, in *Jeth*, and, if he failed to do so, the mortgage was to become a sale.

Second Schedule, article 135—*contd.*

Plaintiff never received possession as mortgagee; but on the 1st June 1889, he got notice of foreclosure served under the Regulation, and in January 1892 he instituted a suit for proprietary possession of the land. Defendant pleaded, *inter alia*, that the suit was barred by limitation under article 135 of the 2nd Schedule to the Limitation Act, 1877.

Held, by the Full Bench, that the suit was within time—(1) that though plaintiff's right to sue for physical cultivating possession as mortgagee probably determined in 1889, the omission to sue for such possession did not amount to a waiver of his right to foreclose; (2) that plaintiff's right to foreclose first accrued in 1880, and that he had at least twelve years from that date within which to foreclose the mortgage; (3) that plaintiff, having foreclosed in 1889-90, had twelve years within which to institute his suit for proprietary possession, running from the date of the expiry of the year of grace, when the mortgagor's right to possession of the character sought for in the suit first determined.

The authorities considered and discussed by *Rivaz*, J. BHANDARI *v.* MUSSAMMAT JASODHAN. **90 P R 1895 F B**

6. *Mortgage by way of conditional sale—Foreclosure proceedings instituted more than 12 years after determination of mortgagor's right to possession—Suit for possession—Limitation—Limitation Act, 1877, 2nd Schedule, articles 135, 144, 147—Regulation XVII of 1806.*

Plaintiffs sued for possession of certain land on the allegation that defendants' father had executed a mortgage thereof by way of conditional sale on the 24th March 1871, the condition being that, if not redeemed within seven years, the land was to become the mortgagee's property by sale; that a foreclosure notice was issued to the defendants, and served on them on the 10th April 1895 and 12th May 1895, and that the year of grace had expired without the defendants paying off the mortgage, and that plaintiffs had consequently become owners of the mortgaged property.

Held, that the suit not having been instituted within 12 years of the date fixed in the mortgage-deed for repayment of the mortgage-money, was barred by limitation, either under article 135 or article 144 of the Limitation Act. MOMAN *v.* ISHRI PERSHAD. **35 P R 1899**

7. *And article 144—Mortgage—Conditional sale—Suit for possession by mortgagee after foreclosure—Cause of action—Starting point of limitation—Limitation Act, 1877, articles 135, 144*

On 16th August 1904 plaintiff instituted a suit for possession as absolute owner under a mortgage, dated 26th July 1889, which stipulated redemption within two years. It appeared that on default having been made

Second Schedule, article 135—*concld.*

the mortgagee in 1897 foreclosed the mortgage under Regulation XVII of 1806, the year of grace expiring on 17th July 1898. Both the lower Courts found the suit barred by limitation on the ground that the period of twelve years began to run from the date of the cause of action, *i.e.*, in 1891, and that the foreclosure proceedings taken in 1897 could not extend the time.

Held, that the suit was not barred as the right to possession did not accrue until after the expiry of the year of grace.

Bhandari v. *Jasodhan* (90 *P. R.* 1895 *F. B.*) cited and followed

Moman v. *Ishri Pershad* (35 *P. R.* 1899) distinguished. TEK CHAND *v.* SOHEL SINGH. **65 P R 1903**

8. *Mortgage—Suit by mortgagee for possession on default of payment of mortgage money.*

Held that a suit by a mortgagee for possession on failure by the mortgagors to pay instalments contracted for in the mortgage deed must be filed under article 135 of the Limitation Act, within 12 years of date of failure which terminates the mortgagor's right to possession. BISHAN LAL *v.* KHUSHALI. **91 P R 1908**

Second Schedule, article 136.

Suit for possession of immovable property by a purchaser of equity of redemption—Starting point of limitation.

Held, that article 136 of the second Schedule to the Limitation Act governs a suit by a purchaser of the equity of redemption for possession of immovable property purchased, and that the period begins to run from the date of redemption, *i.e.*, the date on which the purchaser becomes entitled to possession. BADRI MAL *v.* GOPAL. **130 P R 1903**

Second Schedule, article 139.

See ARTICLE 144, *infra*. **90 P R 1903**

1. *Adverse possession—Landlord and tenant—Non-payment of rent—Repudiation of landlord's title—Acquiescence by landlord.*

Held, that where, in a suit for immovable property, the defendant is found to have originally obtained permissive possession of such property, and to have agreed to pay the plaintiff certain dues in recognition of his right as the proprietor, the relation of landlord and tenant, which would arise from such an agreement, would not be necessarily determined by the mere non-payment of the dues, nor even by a mere repudiation of the title of the landlord, unless under circumstances which showed that the landlord had acquiesced in his act of repudiation. In the latter case it would be the acquiescence of the landlord and not the mere denial of his title by the tenant which would put an end to the original relation of the parties. TOTA *v.* SAKOTIA. **18 P R 1888**

LIMITATION ACT (XV OF 1877)—*contd.*

Second Schedule, article 139—*concld.*

2. *Landlord and tenant—Adverse possession—Acquiescence—Agreement.*

The possession of a tenant cultivating under a landlord is presumed to continue in the same character, and in the absence of any agreement between the tenant and the landlord, or of some unequivocal act of acquiescence on the part of the latter in any adverse title asserted by the former, to be clothed with the same incidents of tenure as previously existed. It is not open to the tenant by any unilateral act on his part to alter the character of his original title as tenant, in opposition to the well-known rule of law *nemo sibi causam possessionis mutare potest.*

Tota v. *Sakotia* (No. 18 *P. R.* 1888,) cited. TULSI RAM *v.* JHANDU.

186 P R 1888

Second Schedule, article 140.

1. *Alienation by sonless proprietor—Starting point for Limitation.*

See ARTICLE 142, *infra.* **10 P R 1890**

ARTICLE 144, *infra.*

18 P R 1895, F. B.

2. *Suit for possession of immovable property against an alleged adopted son—Suit instituted more than six years after alleged adoption, but within 12 years from date of estate falling into possession—Period of limitation applicable.*

See ARTICLE 91, *supra.* **55 P R 1897**

Second Schedule, article 141.

And article 142—Abandonment of land—Extinguishment of proprietary rights—Limitation—Reversioners, suit by—Adverse possession—Successive female heirs—Possession adverse to the female adverse to the reversioners.

See ABANDONMENT OF LAND.

See ARTICLE 144, *infra.*

90 P R 1906

1. *Plaintiff claiming as heir after death of widow—Defendant setting up title by purchase from widow effected 18 years ago—Accrual of plaintiff's right to sue.*

In a suit for possession of immovable property by plaintiff claiming as heir after the death of the widow of his collateral relative, who died less than 12 years before suit, the defendant set up a title derived by purchase from the widow over 12 years before suit, and followed by possession up to the date of suit.

Held, reversing the order of the lower Appellate Court, that plaintiff's suit was not barred by limitation, as his title to possession accrued on the widow's death, and time began to run against him from that date only, as between him and the defendant, who derived his title from the widow. JAWAHIR SINGH *v.* GUSAIN LAL. **15 P R 1882**

2. *And article 114—Suit to succeed to occupancy tenure on death of the widow, the last occupant—Defendant setting up title by purchase from the widow—Rescission of contract.*

LIMITATION ACT (XV OF 1877)—*contd.*

Second Schedule, article 141—*contd.*

In a suit to recover possession of a plot of land on an occupancy tenure to which the plaintiff claimed to succeed as the nearest collateral heir of the husband of one Mussammat P., the last occupant, who was alleged to have died 7 or 8 years ago, the defendant pleaded that the said Mussammat P., who was his mother-in-law, had sold the tenure to him ten years ago, and that the suit was barred under article 114 of the 2nd Schedule of the Limitation Act.

Held that, that article had no application to the suit, which was not brought with the object of rescinding a contract, but for the recovery of an occupancy tenure to which the plaintiff contended he was entitled to succeed on the widow's death; and that the proper limitation was that laid down in article 141 of the Act, and the suit was within time. BUDDA *v.* KHAN.

141 P R 1882

3. *Suit by Hindu or Muhammadan entitled to the possession of immovable property on death of a female.*

A. K. on 14th April 1877, executed and registered a deed of gift of his immovable property to his sister's son, possession being given.

A. K. died in 1882.

A. K. left a widow surviving him, who died in 1888 without having, apparently, ever obtained possession of her husband's property.

In May 1890, the collaterals of A. K. sued for possession of his immovable property.

Held, by the Full Bench, that the suit was within limitation, being governed by article 141, Schedule II, Limitation Act, 1877.

Whatever may be the exact scope of this article, it is clearly applicable to the case of a plaintiff claiming a childless owner's estate on the death of his widow in spite of an alienation made by the male owner, at least where twelve years have not elapsed between the said alienation and the owner's death or that of his widow.

[*Cf.* Nos. 10 and 116, *P. R.* 1890]. BUDHE KHAN *v.* MAKHE KHAN. **31 P R 1892, F. B.**

4. *And article 144—Suit by reversioner to contest alienation by Hindu widow, made when in possession of her deceased husband's property.*

When a Hindu widow has been in possession of her deceased husband's immovable property on the usual widow's estate, the article governing a suit by a reversioner suing after the widow's death to contest an alienation made by her as being without necessity, is article 141 and not article 144, Schedule II, Limitation Act, 1877. HAR KISHEN DAS *v.* ALLAH BAKHSH.

110 P R 1892

5. *Possession adverse to widow—Suit by reversioners on death of widow, but more than twelve years after commencement of such adverse possession—Limitation Act, IX of 1871 and XIV of 1859.*

LIMITATION (ACT XV OF 1877)—*contd.*

Second Schedule, article 141—*contd.*

On the death of one A. his three widows, Mussammat J., Mussammat N. J. and Mussammat S. held his estate in equal shares until the death of Mussammat J. whose share fell to Mussammat N. J. Thereafter, some twenty-two years ago, Mussammat S. remarried, whereupon her share was taken possession of by her daughter, Mussammat L. married to one N., a collateral of A. and admittedly heir to one-eighth of A.'s estate. Mussammat L. retained possession of Mussammat S.'s share, but on the death of Mussammat N. J. the reversionary heirs of A. sued to recover the whole of the estate, with the exception of the one-eighth to which N. was entitled. The lower Courts held that the plaintiffs were entitled to recover the whole of the land sued for, with the exception of that portion which was in the possession of Mussammat L. as regards which their claim was time-barred, on the ground that Mussammat L. had been in adverse possession thereof for more than twelve years previous to Mussammat N. J.'s death.

Held, that Mussammat L.'s possession should (in the absence of evidence to the contrary) be taken to be derived from the widow, rather than hostile to her and against her wishes, and that, therefore, plaintiffs' claim to it, on the death of the said widow, was not time-barred.

The scope of article 141, 2nd Schedule, Limitation Act, 1877, and the question whether it is open to the reversionary heirs to sue on the death of a widow, for possession of land belonging to her deceased husband, which had never come into her possession, and had for more than twelve years previous to her death been held adversely to her, discussed by *Rivaz*, J. SAIDULLA *v.* MUSSAMMAT LAILA. **74 P R 1895**

6. *Mortgage by widow—Decree of foreclosure against widow—Suit by reversioner for recovery of land after death of widow.*

Held, that as against a person in possession of land under a title created by a widow, or in virtue of a decree for possession obtained against a widow the reversioners have, under article 141 of the Limitation Act, twelve years from the date of the widow's death within which they can sue for recovery of the land. HIRA SINGH *v.* SHER SINGH.

29 P R 1898

7. *And article 142—Adverse possession—Suit by reversioners on death of widow.*

In a case in which it was proved that adverse possession had begun against a certain widow, in 1882, that the said widow died in 1883, and that her reversioners sued in 1895 for possession.

Held, that the reversioner's cause of action accrued on the death of the said widow, and that their suit, instituted within twelve years of that event, was within time.

Vundravandas v. *Carsondas, I. L. R. XXI Bom.* 646, approved. CHIRAGHA *v.* MAHTABA.

79 P R 1898

LIMITATION ACT (XV OF 1877)—*contd.*

Second Schedule, article 141—*contd.*

8. *Custom—Alienation by widow—Subsequent surrender of her life estate by widow in favour of reversioner—Right of reversioner to oust alienee—Limitation Act, 1877, 2nd Schedule, article* 141.

Held, that a transferree from a widow, who would ordinarily retain possession till the death of the widow, cannot be ousted before her death by a reversioner in whose favour she has surrendered her life estate, and that, therefore, the reversioner's cause of action for a suit for possession does not arise until the death of the widow. MOHAN LAL *v.* DEVI DAS. **43 P R 1899**

9. *Possession adverse to widow—Suit by reversioner on death of widow, but more than twelve years after the death of widow's husband.*

Wazir Singh died in 1865, leaving a widow, Mussammat Kesran, who died in 1895. On the death of Wazir Singh, his land was mutated in favour of Wadhawa Singh, the brother of Mussammat Kesran, as an adopted son of Wazir Singh. Wadhawa Singh and his son have been in possession since the death of Wazir Singh.

Held, that Wadhawa Singh being the widow's own brother, there was a strong unrebutted presumption that the possession was permissive on her part, and as it was not adverse to the widow, the plaintiff's claim was not barred by limitation.

Saidula and others v. *Mussammat Laila* (No. 74 *P. R.* 1895), approved and followed. BHAGWAN SINGH *v.* KHUSHALA. **53 P R 1900**

10. *And article* 91—*Suit by reversioner for possession of immovable property held by a female—Suit instituted more than three years after an alleged mortgage executed by such female but within twelve years from date of her death.*

Held, that where a reversioner sues after the death of a widow of an agriculturist governed by the Punjab Customary Law for possession of immovable property lately held by her on the ordinary life tenure of a widow, and is confronted with a deed of mortgage said to have been executed by such widow the period of limitation for the suit is twelve years from the date of the widow's death as provided by article 141 of the Limitation Act.

Article 91 does not apply to such a case as such an instrument is presumptively in valid, though the presumption may be rebutted, and the reversioners of the executant's husband are justified in regarding it as in no way affecting their reversionary rights.

Ghulam Rasul v. *Ajab Gul* (57 *P. R.* 1891) *Amir* v. *Mussammat Attar-un-nissa* (75 *P. R.* 1896), *Gujar Singh* v. *Puran* (71 *P. R.* 1901). *Nanak* v. *Devi Ditta* (23 *P. R.* 1902), *Shriniwas Murar* v. *Hanmant Chaodo Deshapande* (*I. L. R. XXIV Bom.* 260) *Malkraju* v. *Narhari* (*I. L. R. XXV Bom.* 337), *Raghu-*

LIMITATION ACT (XV OF 1877)—*concld.*

Second Schedule, article 141—*concld.*

ber Dial Sahu v. *Bhikya Lal Missar* (*I. L. R. XII Calc.* 69), *Janki Kumoar* v. *Ajit Singh* (*I. L. R. XV Calc.* 58 *P. C.*), *Mohesh Narain Munshi* v. *Taruck Nath Moitra* (*I. L. R. XX Calc.* 487), *Ganesh Singh* v. *Nathu* (20 *P. R.* 1902), *Rallia Ram* v. *Sundar* (83 *P. R.* 1883) *Sultan* v. *Ilahi Bakhsh* (73 *P. R.* 1894), *Hafiz Karim Bakhsh* v. *Mussammat Begam Jan* (52 *P. R.* 1895), *Rangan* v. *Mahbub Chand* (55 *P. R.* 1897), *Abdul Rahim* v. *Kirpa Ram Daji* (*I. L. R. XVI Bom.* 186), *Nuni* v. *Kemchi Amma* (*I. L. R. XIV Mad.* 26), *Sunda Ram* v *Sithammal* (*I. L. R. XVI Mad.* 311), and *Din Dial* v. *Harnarain* (*I. L. R. XVI All.* 73), referred to. ATAR KAUR *v.* SOHAN SINGH **84 P R 1902**

11. *And articles* 142, 144—*Limitation—Suit by reversioner on death of widow—Possession adverse to the female adverse to the reversioner.*

Held, that in the Punjab adverse possession of a widow's estate by a trespasser during her life, no matter whatever the circumstances may be by which the adverse possession was obtained and continued, cannot be adverse against a reversioner or an effectual bar to his claim, and that limitation will begin to run against such reversioner only from the death of the female under article 141 of Act XV of 1877, and not from the date of the commencement of such adverse possession.

Chiragha v. *Mahtaba* (79 *P. R.* 1898), *Baz Khan* v. *Sultan Malik* (43 *P. R* 1901), *Tika Ram* v. *Shama Charan* (*I. L R. XX All.* 42), *Vundavandas Purshotamdas* v. *Cursondas Govindji* (*I L. R. XXI Bom.* 646), *and Runchordas Vundravandas* v. *Parratibai* (*I. L. R. XXIII Bom.* 725 P. C.) cited. *Hanuman Prasad Singh* v. *Bhagwanti Prashad* (*I. L. R. XIX All.* 357), *Srinath Kur* v. *Prosunno Kumar* (*I. L. R. IX Calc.* 934), *Azam Bhuyan* v. *Faiz ud-din Ahmad* (*I. L. R. XII Calc.* 594,) *Koolappa Naik* v. *Koolappa Naik* (*I. L. R. XVII Mad.* 34), *Lachhan Kunwar* v. *Manorath Ram* (*I. L. R. XXII, Calc.* 445), referred to. *Saidulla* v. *Mussammat Laila.* (74 *P. R.* 1895) dissented from. RULIA *v.* RULIA. **41 P R 1903**

12. *Limitation—Suit by a reversioner of a male proprietor entitled to possession of ancestral land on the death of the widow of such proprietor.—Punjab Limitation Act,* 1900, *article* 2.

Held, that a suit on the death of the widow of the last male proprietor by a reversioner for possession of ancestral land alienated by the husband of the widow is governed by article 141 of the Indian Limitation Act, 1877, and not by article 2 of the Punjab Limitation Act, 1900. MIRAN BAKHSH *v* AHMAD, **145 P R 1907**

13. *Held*, that a suit by reversioners for possession of land mortgaged by male owner more than 12 years before suit and subsequently sold by his widow, is governed by article 141. KHIALI RAM *v.* GULAB KHAN. **33 P R 1911, F. B.**

LIMITATION ACT (XV OF 1877)—*contd.*

Second Schedule, article 142.

1. *Alluvion and diluvion—Land taken over by avulsion—Dispossession or discontinuance of possession—Exclusion of time of defendant's absence from British India.*

See SECTION 13, *supra.* **34 P R 1889**

2. *Suit by person interested in endowed property for dispossession of an assign of last manager.*

See ARTICLE 120, *supra.* **9 P R 1904**

3. *Devolution of estate upon several persons jointly*—Entry *of one on behalf of all.*

See ARTICLE 123, *supra.* **97 P R 1890**

4. *Adverse possession—Suit by reversioners on death of widow.*

See ARTICLE 141, *supra.* **79 P R 1898**

5. *Alienation by sonless proprietor—Starting point of limitation.*

See ARTICLE 144, *infra.* **18 P R 1895 F B**

5(*a*). *Adverse possession—Joint owners, landlord and tenant—Non-payment of rent—Burden of proof.*

See ADVERSE POSSESSION. **65 P R 1901**

5(*b*). *Absentee—Adverse possession in joint holdings.*

See ADVERSE POSSESSION. **86 P R 1909**

6. *Document, construction of—Partnership or co-ownership - Abandonment.*

See REGISTRATION ACT, SECTION 17. **51 P R 1898**

7. *And article* 144—*Dispossession and discontinuance of possession—Adverse possession—Waste land—Burden of proof.*

Plaintiff sued on the 8th December 1881 for possession of certain land said to have been purchased from one Mussammat B. on the 12th November 1881, it being alleged that the land had lain waste until two years before, when the defendant had wrongfully taken possession. Defendant pleaded a purchase by himself from Mussammat B. 18 years ago. The lower appellate Court held that the land had lain waste, that the evidence did not establish adverse possession for even 12 years before suit, and that as the defendant had admitted the title of Mussammat B. in 1862, it was for him to show when he took adverse possession of the ground,

Held, that the mere fact that Mussammat B. had allowed the land to lie waste, as she was living with her husband elsewhere would not amount to discontinuance of possession within the meaning of article 142, Schedule II of the Limitation Act.

Held, further, that if the land as found by the lower appellate Court was allowed to lie waste after Mussammat B.'s title to it was admitted in 1862, there could scarcely be aid to have been any act of dispossession, and the case would fall rather under article 144 than under article 142 of

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LIMITATION ACT (XV OF 1877)—*contd.*

Second Schedule, article 142—*contd.*

the 2nd Schedule of the Limitation Act, and that the plaintiff was not therefore obliged to prove his vendor's possession within 12 years before suit, but only that it was brought within 12 years from the time when the possession of the defendant or of some person under whom he claimed became adverse, and that the finding that the land lay waste was sufficient to shift the burden of proof as to when possession became adverse on to the defendant. MUHAMMAD YAR v. GHULAM. **49 P R 1884**

8. *And article 144—Suit for possession—Dispossession of plaintiffs while land was in farm—Plaintiffs possession that of tenants—Adverse possession.*

In a suit for possession of certain lands, it appeared that at the time when the plaintiff was dispossessed or gave up possession of the land, the proprietary rights in the village were in abeyance, it having been farmed to one S. which farm came to an end less than 12 years before suit. The lower Court dismissed the suit as barred by limitation under articles 142, 144 of the 2nd Schedule of the Limitation Act.

Held, that, assuming that the farm was in existence when plaintiff was dispossessed or discontinued possession, the possession which the plaintiff then gave up or was deprived of was not as owner but as a tenant holding under the farmer, and it was in the same capacity that the defendant got possession; that even if the farmer's right had been transferred to the defendant which was not alleged), the plaintiff could not have claimed proprietary possession until the farm came to an end, and he would have been entitled to assert his title then: that the case could not therefore be brought under article 142, but was governed by article 144 of the 2nd Schedule of the Limitation Act, and the defendant's possession could not be regarded as having become adverse to the plaintiff, within the meaning of that article, until the farm came to an end. *Phula* v. *Krishna* (No. 10 *P. R* 1874), and *Lutf Ali* v. *Khushwakt Rai* (No. 41 *P. R.* 1881), cited. SHEOJI v. DHAN SINGH. **36 P R 1885**

9. *Cause of action—Alienation by a sonless proprietor—Starting point of limitation.*

A sonless proprietor alienated his land with possession to the defendant in 1870, the plaintiffs, heirs of A. having full knowledge of the sale. Six months after the death of A. in 1888 the plaintiffs sued defendant for possession of the land sold by A.

Held, that the suit was barred by limitation, no new cause of action accruing to the plaintiffs on the death of A.

Jagadamba Chaudhrian v. *Dakhin Mohun Roy Choudhri* (*I. L. R. XIII Calc.* 308, cited. BAGGU v. DULLA. **10 P R 1890**

OVERRULED BY. **18 P R 1895**

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LIMITATION ACT (XV OF 1877)—*contd.*

Second Schedule, article 142—*contd.*

10. *Suit for recovery of land—Dispossession—Discontinuance of possession—Refusal by proprietors to engage—Settlement with others—Effect to lapse of time.*

If upon the occasion of a settlement a claimant's proprietary title to an estate is formally recognized, but he is excluded from possession on account of his refusal to engage for payment of the revenue and he after the expiration of the term of settlement sues to recover possession, the period of limitation begins to run from the date of such refusal or discontinuance of possession. NAWAB MUHAMMAD AMANULLA KHAN v. BADAR SINGH. **23 P R 1890 P. C.**

11. *Limitation—Sonless proprietor—Suit for possession of land of.*

A, a sonless proprietor, conveyed certain land by deed, dated 30th April 1880, to the defendants, who took possession. A died about 1884. In November 1888, that is more than 6 years after the sale, but less than 12 years after delivery of possession, the plaintiffs, claiming to be co-heirs with defendants, sued for possession of their share of the land sold by him.

Held, that the suit was not barred by limitation.

No. 116 *P. R.* 1890, followed. RANGA v. MAKHI KHAN. **54 P R 1891**

12. *Abandonment of land—Extinguishment of proprietary rights.*

Held, by the Full Bench, that an owner of land who has abandoned it within twelve years previously to the institution by him of a suit for possession thereof, does not by such mere act of abandonment lose his proprietary rights. His title will prevail, provided that it has not been extinguished by the operation of the law of limitation. SAIN DITTA v. GHULAMAN. **85 P R 1892 F. B.**

13. *Suit for possession of land—Previous dispossession.—Abandonment.*

The plaintiff sued on 6th November 1890 for possession of certain land in Palwal in the Gurgaon District, alleging it to be the ancestral property of his father, who had left Palwal some time before the year 1854, and died in 1880, in a village in the *ilaka* of Jhansi without having returned to Palwal.

Held, that the suit was barred by limitation. The article of the Limitation Act, 1877, applicable was article 142 under which the deceased owner, or any one claiming under him, had twelve years within which to sue for possession to be reckoned from the date upon which the said owner discontinued possession. He had discontinued possession in 1844 and left Palwal for good.

The Privy Council decision reported as *I. L. R. XVII. Calc.* 137 [s. c. No. 23 *P. R.* 1890] referred to and followed. ILAHI BAKHSH v. SHAMAS-UD-DIN. **109 P R 1892**

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LIMITATION ACT (XV OF 1877)—*contd.*

Second Schedule, article 142—*contd.*

14. *Mortgage—Mortgagee in possession—Farm of land by Collector for non-payment of revenue—Suit by assignee of mortgagee for possession, on expiry of term of farm.*

A mortgagee of two-thirds of certain lands obtained possession under his mortgage.

The proprietors having made default in payment of the land revenue on the other share of the land, and the mortgagee also refusing to pay the said revenue, the land was farmed by the Collector under the revenue law to H. S. for a term of ten years. The farm continued from 1875 to 1885 when the representative of the mortgagors obtained possession.

On 17th August 1889 the assignee of the mortgagee sued for possession under the mortgage.

Held, that the plaintiff's suit was barred by limitation under article 142, Schedule II, Limitation Act, 1877, and that H. S. was not in possession on behalf of the mortgagee but on his own account. NARAIN DAS v KHAIR SHAH. **121 P R 1892**

15. *Alienation by deceased sonless proprietor—Discontinuance of possession—Date on which cause of action arises.*

In a suit brought in 1890 by the plaintiffs for their share by inheritance in the estate of K., a childless proprietor, who died $2\frac{1}{2}$ years before suit, it appeared that in 1874, K., had transferred his rights in the disputed land to defendant's father, and given him possession, which had continued with defendants and their father up to the time of suit.

Held, that the claim was barred by limitation under article 142 of the 2nd Schedule of the Limitation Act, as K. from whom plaintiffs derived their right to sue, had discontinued possession in 1874, and more than twelve years had elapsed between that date and the filing of the present suit.

No. 48 *P. R.* 1885, and Nos 10 and 116 *P. R.* 1890, referred to. DINA v. DANA. **141 P R 1892**

OVERRULED BY **18 P R 1895**

16. *And articles 144 and 118—Suit for possession of land—Adoption—Limitation—Act IX of 1871, Schedule II, article 129—Jaj Jats of Garhshankar tahsil, Hoshiarpur District—Sonless proprietor—Factum of adoption.*

The plaintiffs sued as heirs to recover from the defendants possession of the estate of K. who had died about a year before suit. It was pleaded as an answer to the suit that the third defendant, N. S. had been adopted by K. in June 1877, and that no suit having been brought to set aside such adoption, the present suit was barred by article 118 of the Second Schedule of the Limitation Act, 1877.

Held, that the plaintiffs were not bound in a suit for possession to seek any direct relief by way of cancellation of the adop-

LIMITATION ACT (XV OF 1877)—*contd.*

Second Schedule, article 142—*contd.*

tion; that the limitation applicable to the suit was provided for under article 142 or article 144, Schedule II, Act XV of 1877, and that the suit was within limitation.

Held, also, on the evidence, that no genuine adoption of N. S. had been proved to have taken place, the real transaction, viewed as a whole, being the appointment of three persons as heirs which was not permitted by custom.

No. 116 P. R. 1890 (F. B.), referred to and distinguished. WAZIRA *v.* FATHU.

96 P R 1893

17. *Uncultivated village lands farmed by Government to a stranger for term of Settlement—" Discontinuance of possession."*

About 1858, the land in suit, which had been left uncultivated by the proprietors, was farmed to K., the lambardar of a neighhouring village, to cultivate and hold for the period of settlement.

On the 20th April 1859, reciprocal agreements were executed by K. and the proprietors, whereby the latter agreed to relinquish and the former to accept the land and be responsible for the revenue assessed thereon during the term of settlement; and entries to the above effect were made in the Revenue Records. In 1861, and again in 1864, attempts were made by some of the proprietors to regain possession of their shares of the land, but their applications were disallowed on the ground that the term of settlement had not then expired. Other proceedings with reference to the land took place at the revision of settlement in 1868-69, but during both the first regular and also the revised settlements the original proprietors continued to be recorded as *maliks*.

The old settlement having expired and a new settlement being in progress, the old proprietors applied to be restored to their ancient rights. The plaintiffs, representatives of K. and his associates in the farm, now sued for a declaration that they (the plaintiffs) are entitled to retain proprietary possession of the land on the ground that the defendants had lost their rights by a "discontinuance of possession" within the meaning of article 142 of the Second Schedule of the Limitation Act, 1877, such discontinuance of possession having lasted over twelve years.

Held, that the terms "dispossession" or "discontinuance of possession" did not apply to the case of a permissive occupation by another, or an occupation which recognized the proprietary right of another, such occupation being made with the view of holding in lieu of that other for a stated period, on the expiry of which it was contemplated that possession shall be restored to the original owner.

Held, also, that the plaintiffs had failed to prove such discontinuance of possession

LIMITATION ACT (XV OF 1877)—*contd.*

Second Schedule, article 142—*concld.*

by the defendants for over twelve years as was contemplated by article 142 of the Second Schedule of the Limitation Act, and that their suit had been rightly dismissed by the lower Courts.

No. 41 *P. R.* 1881, and *I. L. R. XVII Calc.* 137 (P. C.) distinguished. SUNDAR *v.* MUSSAMMAT ROHONSU. **104 P R 1893**

18. *Cause of action—Alienation by sonless proprietor—Starting point of limitation—Limitation Act (XV of 1877), section 3, and 2nd Schedule, articles 140, 142 and 144—Plaintiff—" Right to sue."*

Plaintiffs, who were the collateral heirs of a sonless proprietor whose power of disposition of ancestral land was liable to be controlled by his heirs in accordance with the customary law of the Province, sued, within twelve years of the death of the said proprietor, for possession of his ancestral land which had been in the possession of strangers for more than twelve years before suit under a gift created by the said deceased proprietor. The question referred to the Full Bench was whether the suit was within limitation.

Held, overruling No. 10 *P. R.* 1890, and No. 141 *P. R.* 1892, that the suit was governed by article 144 of the 2nd Schedule of the Limitation Act, 1877, and was within time, inasmuch as it was brought within twelve years of the date when the defendants' possession became adverse to the plaintiff, such date being the date of the death of the donor and no earlier. RODA *v.* HARNAM. **18 P R 1895 F. B.**

19. *" Date of the dispossession or discontinuance."*

Held, that under article 142 of the second Schedule to the Limitation Act, 1877, where a person discontinues his possession on one date, and on a subsequent date another person enters into possession, the date from which limitation begins to run against the *quondam* possessor is the former, and not the latter event. If, therefore, at the time when the suit is instituted, the period of twelve years has elapsed from the date when the plaintiff (or those from whom he derives a right to sue) discontinued possession, the suit must fail irrespective of the period that has elapsed since the entry of the defendant. RAM LAL *v.* KHUDA BAKHSH.

6 P R 1896

Second Schedule, article 143.

—Foreclosure of mortgage—Notice—Failure to pay interest under mortgage deed—Continuing breach of contract—Waiver.

See SECTION 23, *supra.* **28 P R 1897**

*—Suit by proprietors to compel occupancy tenants to reside in their village—*Wajib-ul-arz*—Forefeiture or breach of condition.*

LIMITATION ACT (XV OF 1877)—*contd.*

Second Schedule, article 143—*concld.*

Plaintiffs, who were proprietors in the village of M., sued the defendants for the purpose of either ejecting them from their occupancy holding or compelling them to reside in the village of M. basing their claim upon a provision in the *Wajib-ul-arz* of the village, which was to the effect that "if a resident of this village shall leave his residence, and go to and settle in another village, he shall not be entitled to cultivation and possession." It appeared that the defendants' father, who was an occupancy tenant in M. left that village more than 12 years before suit and settled in another village at a distance of some six kos in which he had proprietary rights, arranging during his lifetime for the cultivation of the land in M. which was similarly cultivated by the defendants after the death of their father, which occurred 9 years before suit.

Held that, assuming that the provision in the *Wajib-ul-arz* entitled the proprietors to resume possession of the land of a hereditary tenant who ceased to reside in the village and settled in another village, the suit was barred by limitation under article 143 of the 2nd Schedule of the Limitation Act, more than 12 years having elapsed since the forfeiture was incurred or the condition broken, *viz.*, when defendant's father left the village. DHIAN SINGH *v.* MAHAN SINGH. **180 P R 1883**

Second Schedule, article 144.

See LIMITATION ACT, 1877, ARTICLES 91, 118, 120, 127, 142.

1. *Suit by minor against guardian for an account and for possession of immovable property—Trustee—Limitation.*

See SECTION 7, *supra.* **33 P R 1897**

2. *Alluvion and diluvion—Land taken over by avulsion—Dispossession or discontinuance of possession—Exclusion of time of defendant's absence from British India.*

See SECTION 13, *supra.* **34 P R 1889**

3. *Muhammadan Law—Gift to one heir to the prejudice of other heir—Death-bed gift.*

See ARTICLE 91, *supra.* **52 P R 1895**

4. *Suit for possession of land—Suit involving cancellation of a deed—Period of limitation applicable.*

See ARTICLE 91, *supra.* **74 P R 1904**

5. *Will, suit for cancellation of—Immovable property, suit for possession of—Period of limitation applicable.*

See ARTICLE 120, *supra.* **56 P R 1894**

6. *Suit by person interested in endowed property for dispossession of an assign of last manager.*

See ARTICLE 120, *supra.* **8 P R 1899**

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LIMITATION ACT (XV OF 1877)— *contd.*

Second Schedule, article 144—*contd.*

7. *Devolution of estate upon several persons jointly—Entry of one on behalf of all.*
See ARTICLE 123, *supra*.
97 P R 1890

8. *Mortgage—Mortgagor and mortgagee—Landlord and tenant—Adverse possession.*
See ARTICLE 135, *supra*.
114 P R 1890

9. *Suit for possession by mortgagee who has foreclosed.*
See ARTICLE 135, *supra*.
65 P R 1906

10. *Mortgage by way of conditional sale——Foreclosure proceedings instituted more than 12 years after determination of mortgagors right to possession—Suit for possession Limitation.*
See ARTICLE 135, *supra*.
35 P R 1899

11. *Suit by reversioner to contest alienation by Hindu widow, made when in possession of her deceased husband's property.*
See ARTICLE 141, *supra*.
110 P R 1892

12. *Suit for possession of land*—Factum *of adoption—Limitation.*
See ARTICLE 142, *supra*.
96 P R 1893

12 (*a*) *Possession of a widow in lieu of maintenance cannot be adverse possession.*
See POSSESSION.
102 P R 1907

13. *Construction of document—Partnership or co-ownership—Abandonment—Estoppel.*
See REGISTRATION ACT, 1877, SECTION 17.
51 P R 1898

14. *Suit for possession—Necessity for finding when defendants' possession became adverse.*

In a suit for possession of a house, the lower appellate Court dismissed the plaintiff's suit, holding that the widow of the last owner, whose heir the plaintiff was, died in 1867, that the house in suit had become a ruin before she died, that the plaintiff had been indisputably out of possession for four or five years before suit, and that it was not proved that he had at any period within 12 years before suit reduced this part of the inheritance into possession, so as to be able now to recover it by suit.

Held, that the case must be remanded for a fresh decision after a finding when the defendants' possession became adverse to the plaintiff, as, under article 144 of the 2nd Schedule of the Limitation Act of 1877, this was the question to be considered, the said article allowing a suit like the present to be brought within 12 years from the time when the possession of the defendant or some person under whom he claims became adverse to the plaintiff. BUTA SHAH *v.* SOBHA SINGH.
122 P R 1883

1838

LIMITATION ACT (XV OF 1877)— *contd.*

Second Schedule article 144—*contd.*

15. *Adverse possession—Onus of proving time when possession originally permissive became adverse.*

In a suit for possession of certain land, it appeared that the plaintiff, who was a minor at the time of Settlement, had been then recorded as owner of the land in dispute, but as having gone to reside with his parents in another village, and that certain collateral relations of his (now represented by the present defendants) held the land as his *Sarbarahs*. It was also found that since the plaintiff left the village he had not been in possession of the land, though he ceased to be a minor about 17 years before suit. The lower appellate Court dismissed the suit as barred by limitation.

Held, that the *onus* was on the defendants to show that their possession had become adverse: that the possession having commenced with the plaintiff's consent, and being therefore permissive, it would continue to be of that character until something occurred to make it adverse; and as the defendants contended that it was not now permissive, it was for them to show how and when it ceased to be permissive, which duty they had failed to discharge, as the mere fact that the plaintiff attained his majority some 17 years before suit, was not sufficient of itself to convert the defendants' previously permissive into adverse possession. BELA SINGH *v.* BUTA.
94 P R 1884

16. *And article 55—Suit for possession of a tree—Immovable property—Act I of 1868, section 5.*

In a suit for possession of a tree which the defendant was alleged to have prevented the plaintiffs from felling, it was contended that the claim was barred by article 55 of the 2nd Schedule of the Limitation Act.

Held, that as the plaintiffs were not suing for the price of the tree, but for possession, that article was clearly inapplicable; that the tree being attached to the earth was, until cut, "immovable property," within the definition in Act I of 1868, there being nothing in the Limitation Act repugnant to that definition, and the suit therefore fell under article 144 of the 2nd Schedule of the Limitation Act. JAIMAL SINGH *v.* LADHA.
112 P R 1884

17. *Suit for possession of land by collaterals of a sonless proprietor—Period of limitation applicable.*

R. S., a childless proprietor, sold his land by a deed, dated August 12th, 1880, and gave possession to the vendees. On August 8th, 1884, he died, and on October 6th, 1887, the plaintiffs, collateral heirs of Ram Singh, sued the vendees for possession.

Held, that the suit was not barred by limitation and that it was not necessary to the maintenance of the suit to ask for

1839

LIMITATION ACT (XV OF 1877)— *contd.*

Second Schedule, article 144—*contd.*

a declaration that the deed of sale did not bind the heirs.

No. 10 *P. R.* 1890, distinguished. IDAHIYA *v.* GANDA SINGH
116 P R 1890 F B.

18. *And articles 140 and 142—Cause of action—Alienation by sonless proprietor—Starting point of limitation—Plaintiff—"Right to sue."*

Plaintiffs, who were the collateral heirs of a sonless proprietor whose power of disposition of ancestral land was liable to be controlled by his heirs in accordance with the customary law of the Province, sued within twelve years of the death of the said proprietor, for possession of his ancestral land, which had been in the possession of strangers for more than twelve years before suit under a gift created by the said deceased proprietor. The question referred to the Full Bench was whether the suit was within limitation.

Held, overruling No. 10 *P. R.* 1890, and No. 141 *P. R.* 1892, that the suit was governed by article 144 of the 2nd Schedule of the Limitation Act, 1877, and was within time, inasmuch as it was brought within twelve years of the date when the defendants' possession became adverse to the plaintiff, such date being the date of the death of the donor and no earlier. RODA *v.* HARNAM.
18 P R 1895 F. B.

19. *Suit for declaration of ownership—Co-sharers—Adverse possession—Burden of proof—Allegation of error in partition proceedings—Jurisdiction of Civil Court.*

Plaintiffs and defendants were declared co-sharers in certain land in a revenue suit at the time of settlement in 1874, and their shares were defined. In 1887 a partition took place in which plaintiffs were allotted certain *khasra numbers* to make up the total amount of land which was their share, but, owing to some clerical mistakes in the papers, these numbers were not mutated in their names like those of other co-sharers. An instrument of partition was ordered to be drawn up, but was not prepared. In November 1895 plaintiffs having been refused mutation and referred to the Civil Court brought the present suit for a declaration of their title to the fields allotted to them at partition of which they were in possession. The defendants pleaded *inter alia* that they had held adverse possession beyond limitation, and that plaintiffs were never allotted the lands claimed. The first Court dismissed the claim and plaintiffs appealed to the Chief Court in which the defendants raised another plea in their reply, *viz.*, that the want of an instrument of partition rendered the partition void and was fatal to the claim.

Held, that the parties having been co-sharers in 1874, it was for the defendants to establish their adverse possession, which they had failed to do. That the parti-

Second Schedule, article 144—*contd.*

tion, having been fully carried into effect and sanctioned by the proper Revenue authority the want of a formal instrument of partition was not fatal to it nor ousted the jurisdiction of the Civil Court to give plaintiffs the declaration of title to their lands which they sought.

Ahmad Khan and others v. *Bahadur and others* (No. 88 *P. R.* 1892), *Arjan Singh* v. *Sochet Singh and others* (No. 52 *P. R.* 1898) distinguished. *Gurdit Singh* v. *Labh Singh* (No. 63 *P. R.*1894) followed. KHUIDAD AND OTHERS *v.* ALAMGIR AND OTHERS.

116 P R 1900

20. *Adverse possession.*

By a mortgage entered into between the plaintiff's ancestors and defendant, Kaka, in 1879, it was agreed that the whole amount should be repaid by instalments, and in default of payment of any instalments, the possession of the mortgaged property was to be taken by the mortgagee. In 1885 the mortgagor sold a certain portion of the mortgaged property to defendants Nos. 1 and 2, and in 1886, the mortgagee sued the morgagor for possession without making the first two defendants parties to that suit and obtained a decree in 1886 for possession, but never got actual possession. Subsequent to the decree the mortgagor sold the remainder of the mortgaged property to the other defendants In 1895, the mortgagee's heirs filed the present suit for possession of the land. *Held*, that as the period for plaintiff's claim as regards the first two defendants could only be reckoned from the date of the original default in payment of instalment under the mortgage-deed of 1879, which could not have been later than 1882, and they having been in possession at the time of the prior suit to which they were not made parties and were therefore not bound by that decree and as with respect to that portion of the land, the mortgagor had no right, title or interest left in it subsequent to their sale in 1895, the suit was barred by limitation. But as regards those defendants who acquired their title subsequent to the decree of 1886 against the mortgagor that decree stands against them and they can claim no title by adverse possession, the suit having been instituted within twelve years from their obtaining possession. KESAR SINGH AND OTHERS *v.* THAKAR DAS.

10 P R 1901

21. *Limitation—Article 144—Suit for possession of immovable property—Adverse possession—Burden of proof.*

A plaintiff who had sued for possession of his share of certain immovable property left by his paternal grandfather having no right of inheritance under his personal law (his father having predeceased his grandfather) relied on a testamentary document under which his title, together with the defendants, originated some twenty-eight years before suit, but was unable to prove any possession of the property in dispute, either actual or constructive, *held*, that the *onus* of proof that his claim was within time being on him, and he having failed to prove jointness of possession, the suit must be held barred under article 144 of the Limitation Act.

Khuidad v. *Alamgir* (116 *P. R.* 1900) and *Lachman Singh* v. *Sohan Singh* (97 *P. R.* 1890), referred to. DIN MUHAMMAD *v.* MEHR BAKHSH AND OTHERS.

30 P R 1902

22. *And articles* 91, 120, 140, 142—*Limitation—Alienation of ancestral immovable property by sonless proprietor—Suit for possession by collaterals—Period of limitation applicable—Starting point of limitation.*

Held, by the Full Bench—

(1). It is not necessary for the reversioner of a holder of ancestral agricultural land to sue during his lifetime for a declaration of the invalidity of an alienation made by him as respects such reversioner's interest, and, in the event of his failing to do so, such reversioner is not precluded from suing for possession on the death of the alienor after the lapse of the period prescribed for such declaratory suits.

(2). The proper limitation for a declaratory suit of this nature is six years under article 120 of the Limitation Act.

(3). In the case of a gift of ancestral agricultural land by a sonless proprietor to which the Punjab Limitation Act does not apply a suit by the heirs for possession is maintainable at any time within twelve years after the death of the donor.

Nanak v. *Devi Ditta* (23 *P. R.* 1902), *overruled*. *Roda* v. *Harnam* (18 *P. R* 1895, F. B.) and *Ilahiya* v. *Ganda Singh* (116 *P. R.* 1890) followed. DHERU *v.* SIDHU.

56 P R 1903 F. B.

23. *Limitation—Suit by reversioner on death of widow against her tenant—Adverse possession—Starting point of limitation—Limitation Act,* 1877, *Schedule II, articles* 139, 141, 144.

Held, that the possession of a tenant-at-will holding over the estate of a widow after her death is not adverse to her reversioners until the expiration of his tenancy and that in such cases time begins to run against the reversioners from the date when an adverse title is set up by the tenant. GHUDU SINGH *v.* KHUSHAL SINGH.

90 P R 1906

24. *Adverse possession—Possession adverse to reversioner—Suit by more remote reversioners on death of such reversioner—Cause of action—Starting point of limitation.*

Held, that a person who has held possession of agricultural land adversely against the next reversioner of a deceased proprietor is competent in a suit for possession to set up such adverse possession against the more remote reversioners: the cause of action in such a case accrues on the death of the deceased proprietor and not on the death of the next reversioner.

Roda v. *Harnam* (18 *P. R.* 1895, *F. B.*) distinguished. KAKA *v.* LABH CHAND.

106 P R 1906

25. *Held*, that in a suit against the vendor and vendee of a right of occupancy for dispossession of the vendee, article 144 of the Indian Limitation Act, 1877, applies. HAR LAL *v.* MUSSAMMAT GOHR.

3 P R 1910 Rev.

26. *And article* 113.

Held, that a suit for possession of part of land, purchased by plaintiff from defendant, but not delivered when the rest of the land purchased was delivered, is not governed by article 113 of the Limitation Act, 1877, but by article 144 of the Act. BHANJAN RAM *v.* SOHAURA.

18 P R 1911

27. *And article* 118.

Held, that suits for possession in which adoption is set up in defence, are governed by article 144 of Limitation Act, 1877, and not by article 118 of the Act. NATHU *v.* RAHMAN.

44 P R 1911

Second Schedule, article 145.

Banker and customer—Deposit.

Held, that article 145 of Schedule II of the Limitation Act of 1877 does not apply to a deposit by a customer of money with a banker to be placed to the customer's credit in account current. PARTAB SHAH *v.* MUSSAMMAT JUALADIN.

74 P R 1882 Note

Second Schedule, article 147

1. *Suit by minor against guardian for an account and for possession of immovable property—"Trustee"—Parties to suit.*

See SECTION 7, *supra*. **33 P R 1897**

1 (*a*). *Extinction of mortgagee's rights—Suit for foreclosure—Form of decree.*—

See LIMITATION ACT (XV OF 1877), SECTION 28. **83 P R 1883**

2. *Suit on a mortgage bond—English mortgage.*

See ARTICLE 132, *supra*.

112 P R 1890 F. B.

3. *And article* 132—*Suit to recover money due on mortgage from mortgaged property—Suit for sale.*

A suit for the money due under a mortgage deed which was one of simple mortgage with delivery of possession to the mortgagee, in which the plaintiff sought enforcement of the deed against the mortgaged property, *held* to be in effect a suit by a mortgagee for sale, notwithstanding

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LIMITATION ACT (XV OF 1877)—*contd.*

Second Schedule, article 147—*concld.*

that the plaint did not in so many words ask for sale, and as such governed by the limitation provided in article 147 of the 2nd Schedule of the Limitation Act of 1877, and not by article 132. *Ram Nath* v. *Mussammat Jio* (No. 101 P. R. of 1880,) and *Devi Das* v. *Ishar Das* (No. 55 P. R. 1884, F. B.) cited. GUJAR MALL *v.* ILAICHI RAM. **19 P R 1885**

4. *And article 132—Suit for foreclosure or sale—Mortgage—Charge.*

Held by the Full Bench, that the question whether a particular suit is governed by article 132 or article 147 of Schedule II of the Limitation Act, 1877, depends in general upon whether the transaction upon which the suit is founded, and by which the charge sought to be enforced was created, is a transaction amounting to a mortgage, or is not. Both articles apply to the enforcement of charges upon immovable property by proceedings against the property, but article 147 applies only to the enforcement of such charges by foreclosure or sale when created by a transaction which is s mortgage, that is. to suits by a mortgagee suing as such and article 132 to the enforcement of such charges when created by a transaction not amounting to a mortgage, that is, to suits by a creditor not suing as a mortgagee for foreclosure of or sale under a mortgage.

Ram Nath v. *Mussammat Jio* (No. 101 *P. R.* 1880) and *Gujar Mall* v. *Ilaichi Ram* (No. 19 *P. R.* 1885, cited. SURKHRU *v.* RAM SINGH. **151 P R 1888 F. B.**

5. *Mortgage by way of conditional sale—Foreclosure proceedings instituted moro than 12 years after determination of mortgagor's right to possession—Suit for possession—Limitation.*

See ARTICLE 135, *supra.* **35 P R 1899**

6. *Hypothecation of immovable property as a collateral security—Limitation to enforce payment after 12 years.*

See ARTICLE 132. **23 P R 1900**

Second Schedule, article 148.

See LIMITATION ACT (XV OF 1877) SCHEDULE II, ARTICLE 134.

—Mortgagee in possession denying mortgagor's title—Adverse possession.

Held, that when a mortgage is proved, the mortgagee cannot, by merely denying the plaintiff's title, oblige him to come into Court to prove it within 12 years, as under article 148 of Schedule II of the Limitation Act the mortgagee has 60 years in which to sue to redeem or recover possession, and in the case of a usufructuary mortgage he can only recover possession upon payment of the mortgage-debt TEJU MAL *v.* ZULFIKAR SHAH, **49 P R 1882**

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LIMITATION ACT (XV OF 1877)—*contd.*

Second Schedule, article 158.

—Objection to award—Fraud.

Held, per BRANDRETH, J. that if the parties to an award accept such award and do not file any objection within the period allowed (see Act XV of 1877, Schedule II, article 158), an objection even on the ground of fraud cannot legally be heard afterwards. METHA KASHI RAM *v.* DADABHOY. **124 P R 1880**

Second Schedule, article 163.

1. The Courts have no power to extend the time prescribed by the above article. MAHI *v.* JIWAN. **141 P R 1879**

2. *Suit dismissed by default—Application for review made more than 30 days after date of dismissal—Civil Procedure Code, 1882, section 103—Limitation Act, 1877, Second Schedule, article 163.*

In a suit instituted by petitioner the defendant was summoned for and duly appeared on the 11th May 1894, but petitioner himself did not appear. As the claim was denied, petitioner's suit was dismissed by default, and on the 2nd July 1894, petitioner applied for review of judgment, without, however, being able to show that the order attacked was other than the only order which the Court could have passed under the circumstances.

Held, that article 163 of the Second Schedule to the Limitation Act, 1877, applied, and that the application was barred thereunder. NUR MUHAMMAD *v.* DINA. **15 P R 1897**

3 *Suit dismissed for default—Application for an order to set aside a dismissal by default.*

By article 163 an application under section 103 of the Civil Procedure Code must be made within thirty days of the date of the order dismissing the suit, and the Courts have no alternative to dismissing the application if not presented within that period, as they have no power to extend the period allowed by this article. SAHIB DITTA *v.* RODA. **83 P R 1902**

Second Schedule, article 164.

1. *Limitation Act,* 1877, *2nd Schedule, article* 164—*Application by respondent for rehearing of appeal decided* ex-parte—*Civil Procedure Code*, 1882, *Sections* 274, 560.

The lower Appellate Court accepted an appeal by the decree-holder, in execution of decree, in the absence of the judgment debtor on whom notice of the appeal had been served by affixing it on the outer door of his house. The case was fixed for the 24th July 1895, but was postponed to the 30th without a fresh summons being issued to the judgment debtor and was decided on the date last mentioned. On the 2nd January 1896, while the

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LIMITATION ACT (XV OF 1877)—*contd.*

Second Schedule, article 164—*concld.*

judgment-deblor was still absent, his land was attached by proclaiming the order in the village by beat of drum and by affixing a copy of it on the outer door of his house, a copy being also affixed at the Court-house. On the 1st May 1895 the judgment-debtor applied under section 560, Civil Procedure Code, 1882, to have the *ex-parte* decree of the lower Appellate Court set aside, but his application was rejected as barred under article 164 of the Limitation Act, having been filed more than thirty days after process for enforcing the judgment had been executed.

Held, that the order rejecting the application as barred by limitation was wrong, and must be reversed.

The stringent provisions of article 164 of the Limitation Act must be strictly construed, and before they can be applied to an application to set aside an *ex-parte* judgment, it must be clearly found that there was a proper and valid attachment of the applicant's land in conformity with section 274, Civil Procedure Code, the omission in the present Case to put up a copy of the order of attachment at a conspicuous part of the land to be attached being a fatal defect and vitiating the attachment.

No. 32 *P. R.* 1878, followed: *IX Calc. L. Rep.* 114, cited. ISHRA SINGH *v.* JHANDA. **5 P R 1897**

2. Article 164, Limitation Act, held inapplicable where the process for enforcing judgment issued under section 268, Civil Procedure Code, was found to be materially defective. SADHA RAM *v.* KARAM CHAND. **118 P R 1906**

Second Schedule, article 166.

See EXECUTION OF DECREE. **40 P R 1910**

Second Schedule, article 168.

1. *And section* 5—*Act X of* 1877, *sections* 556, 558—*Application made after expiry of thirty days for re-admission of appeal dismissed for default—Invalidity of all proceedings subsequent to such re-admission.*

The plaintiff-appellant, whose appeal had been dismissed by the Judicial Assistant for want of prosecution, made an application for re-admission under section 558 of the Code, which was granted and the appeal re-heard and decided in plaintiff's favour. The Commissioner, on defendants appealing, accepted the appeal on the merits and without reference to the order re-admitting the appeal dismissed for default. Plantiff appealed to the Chief Court, where it appeared that the application made for re-admission of the appeal was made after 30 days from the date of the order dismissing the appeal for default.

Held, that the defendant was entitled to contend in the Chief Court that all the proceedings of the Judicial Assistant upon the application for re-admission must be set aside as invalid, as at the end of 30 days from

LIMITATION ACT (XV OF 1877)— *contd.*

Second Schedule, article 168— *concld.*

the date of the dismissal of plantiff's appeal for default, no application having been presented by him for its re-admission, the order of dismissal became absolutely final. KABIR v. KHAWAJA MUHAMMAD KHAN.

44 P R 1882

2. *Civil Procedure Code (Act X of 1877), sections 551, 556—Dismissal for default—Application for re-admission.*

Held, by the Full Bench, that the limitation of 30 days prescribed by article 168 of the 2nd Schedule of the Limitation Act, which is applicable to appeals dismissed under section 556 of the Civil Procedure Code, is not applicable to a petition by an appellant whose appeal has been dismissed in consequence of his absence on the date fixed for hearing him under section 551. BUTA v. RATTAN SINGH. **76 P R 1882**

Second Schedule, article 169.

—And section 5—Application for re-hearing of appeal heard ex-parte*—Power to extend prescribed period.*

Held, that a Court has no discretion to extend the period of 30 days prescribed by article 169, Schedule II of the Limitation Act for an application or re-hearing of an appeal heard *ex-parte* in the absence of the respondent. SHER v. MOHAN SINGH.

66 P R 1885

Second Schedule, article 171.

See LIMITATION ACT, 1877, SECTION 7

—And 178. Application by legal representative of deceased appellant.

Held, by a majority of the Full Bench (LINDSAY J. dissenting) that the limitation of 60 days provided by article 171, Schedule II of Act XV of 1877, does not apply to an application made in an appellate Court by a person who claims to be the legal representative of a deceased plaintiff who is appellant but that the period of limitation for such an application is three years under the general provisions of article 178. *Per Lindsay* J. *contra.*—NETH RAM v. HET RAM.

154 P R 1879

Second Schedule, article 171 B.

See ABATEMENT OF APPEAL.

1. *And article 178—Application to have representative of deceased respondent made a respondent.*

Where, during the pendency of an appeal in the Chief Court, the defendant-respondent died and the appellant, after the lapse of over a year, applied to have the representative of the said deceased substituted for him on the record, *held*, that such application was barred by limitation, as the words of article 171 B. of the 2nd Schedule of the Limitation Act were in themselves sufficient to cover the present case,

LIMITATION ACT XV OF 1877— *contd.*

Second Schedule, article 171 B— *contd.*

the application being to have the representative of a deceased defendant made the defendant in place of his father, deceased, and the application being made under section 368 of the Civil Procedure Code, which is made applicable to appeals by section 582.

But *held* further, that there is no article in the Limitation Act expressly providing for an application to have the representative of a deceased respondent, who is a plaintiff, placed on the record, and that therefore in such a case the application would come under the general provision of article 178, which provides a limitation of 3 years. *Neth Ram* v. *Het Ram* (154 P. R. 1879,) and *Sheo Gopal* v. *Bishen Singh* (No. 30 P. R. 1880,) cited. LORINDA MAL v. INAYAT.

113 P R 1882

See also MUSSAMMAT MEWAN v. FAKIRIA.

113 P R 1882 Note

2. *And article 178—Application to substitute heirs of deceased plaintiff-respondent.*

Held, that as the Limitation Act has not distinctly provided for the case of an application to substitute the heirs of a deceased plaintiff-respondent, such an application is consequently governed by article 178 of the 2nd Schedule of the Act, which provides a limitation of 3 years for all applications for which no period of limitation is elsewhere provided in the same schedule. *Neth Ram* v. *Het Ram* (No. 154 P. R. 1879,) and *Sheo Gopal* v. *Bishen Singh* (No. 30 P. R. 1880,) cited. GOPAL SINGH v. NAURANG SINGH. **165 P R 1882**

3. *Death of respondent during pendency of appeal—Limitation for application to place legal representative on record—Abatement of appeal—Civil Procedure Code (Act XIV of 1882), sections 368, 582.*

Held, that since the passing of the Civil Procedure Coder of 1882, article 171 B. of the 2nd Schedule of the Limitation Act must be held to govern all applications to have the representative of a deceased respondent made a respondent, as the force of section 582 of the Code of 1882 read with section 368 is to cause the word "defendant" in the last named section to comprise a respondent as well as a defendant, and the reference in article 171 B. of the 2nd Schedule of the Limitation Act to a deceased defendant in the said section 368 of the Code must be understood to mean "defendant" as the word is defined in the Code at the time being, and therefore in cases governed by the Code of 1882 to comprise a respondent as well as a defendant proper. *Sheo Gopal* v. *Bishen Singh* (No. 30 *P. R.* 1880,) and *Gopal Singh* v. *Naurang Singh* (No. 165 *P. R.* 1882), referred to. HAFIZ GHULAM MUHAMMAD KHAN v. MOHAN LAL. **133 P R 1884**

LIMITATION ACT (XV OF 1877)— *contd.*

Second Schedule, article 171 B— *concld.*

4. *Application to place representative of deceased respondent upon the record.*

Held, that, in the case of appeals instituted after Act XIV of 1882 came into force, the limitation provided by article 171 B. of the 2nd Schedule of the Limitation Act is applichble to an application to have the representative of a deceased respondent made a respondent, even though the deceased was plaintiff in the orginal suit. *Hafiz Ghulam Muhammad Khan* v. *Mohan Lal* (No. 133 P R. 1884, Civil) followed. *Jafar* v. *Jowaya* (No. 76 P. R. 1884.) and *Alladitta* v. *Ziadat* (No. 39 P. R. 1885,) referred to. GHULAM SHAH v. MALLIK MUZAFFAR KHAN. **81 P R 1886**

5. *Application to have the representative of a deceased respondent made a respondent.*

Held, that article 171 B. of Schedule II of the Limitation Act applies to an application made during the pendency of an appeal to have the representative of a deceased plaintiff-respondent made a respondent. *Hafiz Ghulam Muhammad Khan* v. *Mohan Lal* (No. 133 P. R. 1884), followed. DASOUNDHA SINGH v. KANHYA LAL.

103 P R 1886

6. *Application to place legal representative of deceased defendant-respondent on the record—Sufficient cause for not applying within prescribed period—Civil Procedure Code (Act XIV of 1882, section 368.*

Held, that the period for applying in the case of a deceased defendant-respondent to place his legal representative upon the record is 60 days under article 171 B of the 2nd Schedule of the Limitation Act, *Hafiiz Ghulam Muhammad Khan* v. *Mohan Lal* (No. 133 *P. R.* 1884, and *Dasoundha Singh* v. *Kanhya Lal* (No. 133 *P. R.* 1886) followed.

Held, further, that ignorance by an appellant of the fact of a reapondent's death may be a sufficient excuse for not applying within 60 days' within the meaning of the last clause of section 368 of the Civil Procedure Code. GAMAN v. BAKSHA.

42 P R 1887

Second Schedule, article 175,

—Execution of decree—Payment by instalments—Agreement to give time for satisfaction of judgment debt.

See ARTICLE 179, *infra.* **61 P R 1886**

Second Schedule, article 178.

1. *Execution of decree—Payment by instalments—Agreement to give time for satisfaction of judgment debt.*

See ARTICLE 179, *infra.* **61 P R 1886**

2. *Execution of decree—Attachment and sale—Sale subsequently set aside for irregu-*

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LIMITATION ACT (XV OF 1877)—*contd.*

Second Schedule, article 178—*contd.*

larity—Resale without fresh attachment—Limitation—Application for execution of decree or for revival of suspended proceedings.

See ARTICLE 179, *infra*. **103 P R 1894**

See ABATEMENT OF APPEAL.
See LIMITATION ACT (XV OF 1877), SCHEDULE II, ARTICLE 171 B.

3. *And article 179 (4)—Execution of decree—Application for attachment of house-property—Release of property from attachment on summary objection—Decree-holder bringing regular suit to declare the property liable to attachment—Dismissal of such suit—Fresh application for attachment of movables afterlapse of more than 3 years—Application to revive or continue the former application.*

In a case of an application for execution of decree, it appeared that a previous application had been presented by the decree-holder on the 28th February 1876, praying for realization of the amount decreed by attachment and sale of the judgment-debtor's property. In accordance with the order passed on this application, certain house property was attached, but was subsequently, on the 15th May 1876, released on a summary objection made by the judgment-debtor's mother. The decree-holder then brought a regular suit to declare the property liable to attachment, which was finally dismissed by the Chief Court on the 9th November 1877. No further steps were taken by the decree-holder till the 9th November 1880, when the decree-holder presented the present application praying for attachment and sale of the debtor's moveable property.

Held, per *Curiam*, that the application in question was barred by limitation under clause 4 of article 179 of the 2nd Schedule of Act XV of 1877.

Per Elsmie, J.—The present application could not be regarded as one in continuance of or to revive the previous application, as, on the face of it, it had no reference to the previous proceedings; though, *semble*, had the decree-holder been successful in his claim for right of attachment and had he preferred a fresh application for the sale of the house-property within three years of his obtaining a declaratory decree, he would have been within time.

Per Smyth, J.—The property which the decree-holder had caused to be attached was at once released from attachment by summary proceeding. There was thus nothing to prevent him from proceeding against other property of the judgment-debtor's, either by way of fresh application or by revival of the former application, or for applying for execution in some other mode; and if, instead of doing so, he chose

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Second Schedule, article 178—*contd.*

to persevere in his efforts to execute his decree against the mortgaged house and to institute proceedings for that purpose in another Court, he did so at his own risk. As the result of these proceedings was to show that the house did not belong to the debtors, and was not liable to be taken in execution of the decree against them, the decree-holder was not entitled to have the period of limitation prescribed for the execution of his decree extended by the time during which his abortive proceedings lasted. Whether therefore the application of 9th November 1880 were regarded as one to revive the former proceedings which were struck off on 15th May 1876 or as a fresh application for execution, it was barred. GANPAT RAI *v.* MEHRA.

30 P R 1882

4. *Insolvency—Application by registered creditor for balance of registered debt.*

The petitioner, registered creditor of the bankrupt defendants, applied in March 1880 to enforce payment of the balance of his registeted debt. It appeared that the insolvents had agreed to pay yearly instalments, but that since 1874 nothing had been paid by them.

Held, that as the applicant had a right to apply in 1875 on the failure to pay the instalment due in that year, but made no application till March 1880, his application was barred under article 178, Schedule II of the Limitation Act of 1877. MUHAMMAD ASHRAF *v.* LACHU. **52 P R 1882**

5. *And article 179—Execution of decree—Application by transferee of decree—Act X of 1877, section 232—Application to revive former application.*

A decree-holder, who had obtained a decree in August 1872, put his decree in execution on the 1st August 1873, and asked for the attachment and sale of certain houses and shops. These were attached, and in November 1873 three objectors came forward, but their objections were struck off on the 22nd December 1873. Meanwhile on the 11th December the decree-holder had brought a regular suit against one of these objectors and the judgment-debtors to obtain possession of the shops, and finally obtained a decree which declared his right to attach and sell the shops in execution of his decree. Meanwhile one of the shops attached on the original application of August 1873 had been sold and the sale proceeds placed with the Nazir of the Court. Subsequently the Court, after remarking that as the decree-holder, though informed, had ommitted to take the money out of Court, directed the Nazir to lodge the money in the Treasury and to report that he had done so, in order that the execution-proceedings might be struck off the file On the 8th October 1874 the Nazir reported that he had de-

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Second Schedule, article 178—*contd.*

posited the money in the Treesury, and though no order was passed on this report, the case was treated as struck off the file and was lodged in the record room. On the 23rd November 1878 one G. M. applied to be substituted on the record for the original decree-holder alleging that the decree had been transferred to him on 2nd November 1874, but that the transfer had not hitherto been notified to the Court, and this being confirmed by the original decree-holder the Court ordered the substitution of G. M.'s name.

Held, that G. M.'s application of the 23rd November 1878 was barred by limitation. It was barred if considered as an application under section 232 of the Civil Procedure Code because it was made more than 3 years after the decree had been transferred to him in November 1874 (article 178, Schedule II of the Limitation Act); it was also barred if considered as a fresh application for execution of decree, because more than 3 years had elapsed from the date of the former application in August 1873, and it could not be regarded as an application to revive or keep in force the application of August 1873, because that application must be considered to have been struck off the file in October 1874. MUSSAMMAT AZIZ BIBI *v.* GANDA MAL.

151 P R 1882

6. *And article 179—Execution of decree—Application to revive suspended prooceedings—Application to bring attached property to sale—Postponement of sale—Period when right to apply accrues.*

A decree-holder, after obtaining partial satisfaction of his decree, finally obtained the attachment of some lands belonging to his debtor, which called forth an objection from a third party who claimed the lands as his. The objection was disallowed, and the objector referred to a civil suit to establish his right, which was eventually dimissed on the 19th October 1877. Pending the decision of this suit the sale of the lands was suspended by an order dated 14th August 1875, and on the 18th March 1876 the decree-holder again applied for attachment and sale of the lands in question, alleging that the suit brought by the objector had been thrown out. This application was rejected, but on appeal to the Commissioner that officer set aside the order of the lower Court, and recognized the decree-holder's right to bring the lands to sale. The lands were then re-attached, and on the 7th July 1877 the executing Court, after reciting that the case had been postponed till the decision of the suit brought by the objector, ordered that the papers connected with the execution of the decree were to be consigned to the office, as the result of the decision of the suit relating to the land had not been reported to the Court, directing further that the attach-

LIMITATION ACT (XV OF 1877)—*contd.*

Second Schedule, article 178—*contd.*

ments of the lands should continue to subsist. Finally the decree-holder filed an application on the 24th July 1880, praying that the attached lands should be sold, which was resisted by the judgment-debtor on the ground that the decree had become extinct by expiry of time.

Held, that the attachment must under the above circumstances be considered to have all along continued in force, and that therefore the application of the 24th July 1880 was properly worded as an application to revive suspended proceedings, and could not be regarded as a new application to which the provisions of article 179 of Act XV of 1877 were applicable : the mere fact that the execution case was struck off the file would not by itself put an end to the previons attachment, more especially when the order striking off the case expressly directed that the attachment should continue to subsist, nor would the re-attachment necessarily involve an abandonment of the former attachment.

Held, further, that if it was correct to hold that article 178 was applicable to the application of the 24th July 1880, that application would still be within time, as the sale of the attached property having been postponed till after the decision of the suit instituted by the objector and that suit not having been finally disposed of till the 19th October 1877, it was then that the decree-holder acquired a right to apply for the sale of the property, and his application having been made within 3 years of that date was within time.

But *held*, *semble*, that an application to bring attached property to sale is not governed by article 178 of the Limitation Act, as it is not necessary to make any formal application for that purpose, and if such application be made it should be regarded as analagous to that made in a pending suit, the right to make which would accrue from day to day. PHIRAYA MAL *v.* ADU RAM.
179 P R 1882

7. *And article 179—Application for execution of decree—Application to revive application upon which passing of orders has been suspended.*

On November 15th 1878, a decree-holder applied for execution of his decree, and, the judgment-debtor having appeared and represented that the decree was *ex parte*, and that he was applying for a new trial, the hearing of the case was adjourned, and on January 23rd, 1879 it was ordered that the case should remain postponed until decision of the case pending between the same parties ; and finally, on May 3rd, 1879, the Court directed the decree-holder's application to be filed, mentioning that when the regular suit had been decided the decree-holder would be at liberty again to execute. No order granting or refusing the application of November 15th, 1878 was passed

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Second Schedule, article 178—*contd.*

before the decree-holder made an application to the same effect on the 3rd January 1882.

Held, that the last named application was not one falling under article 179 of Schedule II of the Limitation Act, but was in substance one made, in pursuance of the Court's order of the 3rd May 1879, to revive the application made in November 1878, upon which the passing of orders had been indefinitely suspended ; that the limitation applicable was that prescribed by article 178 of the same schedule, and the period would be three years from the date when the right to apply accrued, that is, from the date when the proceedings instituted by the judgment-debtor to set aside the *ex parte* decree came to an end. MUSSAMMET ESHAR KOUR *v.* GHASITA.
168 P R 1883

8. *And article 179.—Postponement of execution proceedings for one year—Application to re-open proceedings after lapse of more than 3 years—New application barred.*

Where during execution proceedings the parties agreed before the Court that payment should be postponed for one year from the 23rd May 1879, whereupon on that date the Court ordered that the proceedings should be filed for the present, and subsequently on the 15th May 1883 an application was made to re-open the execution-proceedings, *held*, that the last named application could not be held to be one under article 178, Schedule II of the Limitation Act, for which no period of limitation was elsewhere prescribed, but it was a new application under article 179 for execution of the decree, and accordingly the three years' limitation ran from the date of issuing a notice under section 248 (*a*) of the Civil Procedure Code, which was the latest step taken in the former proceedings to further execution of the decree, and the application was barred. *Mussammat Eshar Kour* v. *Ghasta* (No. 168 *P. R.* 1883), distinguished. KURTA RAM *v.* KAITHLI MAL.
77 P R 1884

9. *And article 179—Decree providing that execution shall take place after expiry of a certain period—Date from which limitation begins to run.*

The decree in the present case was passed on the 6th August 1883, in favour of certain mortgagees, for possession of certain land mortgaged to them on the expiry of a lease under which it was held from the mortgagor, and for costs. Execution for costs was applied for in 1886, and subsequently to the expiry of the lease on 18th December 1895, application was made by the decree-holders for execution by delivery of possession of the land. The question referred to the Full Court was, whether an application for execution of a decree, which could not under its very terms be executed within three years from the date of the decree, was barred by limitation under article 179 of the Limitation

LIMITATION ACT (XV OF 1877)—*contd.*

Second Schedule, article 178—*contd.*

Act, on the ground that it had not been made within three years from such date.

Held, by the Full Court, that the application for execution of the said decree was not barred.

No. 126 *P. R.* 1892, overruled. HANWANTA *v.* BHAGIRATH.
65 P R 1897 F. B.

—*And article 179—Decree in suit for partition—Civil Procedure Code, 1882, section 396—Application for effecting partition—Execution of decree—Competency of judgment-debtor on a subsequent application for execution to raise objection on ground that a preceding application was barred*—Res judicata.

See PARTITION.
47 P R 1906

Second Schedule, article 179.

See CIVIL PROCEDURE CODE, 1908, SECTION 48.
109 P R 1889
159 P R 1889
40 P R 1898.

1. *Decree providing that execution shall take place after expiry of a certain period—Date from which limitation begins to run.*

See ARTICLE 178, *supra*.
65 P R 1897 F B

2. *Money paid into Court—*Ex parte *decree upheld—Application by decree-holder for payment of deposit—Execution of decree—Limitation.*

See CIVIL PROCEDURE CODE, 1908, O. IX, R. 13.
8 P R 1898

3. *Execution of decree—Payment by instalments—Agreement to give time for satisfaction of judgment-debt—Limitation.*

See CIVIL PROCEDURE CODE, 1908, O. XX, R. 11.
26 P R 1894

4. *Execution of decree—Steps in aid of execution—Limitation.*

See CIVIL PROCEDURE CODE, 1908, SECTION 48.
40 P R 1898

5. *Application for execution of decree in accordance with law—Absence of certificate under the Succession Certificate Act, 1889.*

See SUCCESSION CERTIFICATE ACT, 1889, SECTION 4.
54 P R 1893

—*Decree payable by instalments—Default in payment of instalments—Execution of Decree—Limitation.*

See DECREE—CONSTRUCTION OF.
100 P R 1902

6. *Application to enforce decree or take a step in aid of execution—Application for payment to decree-holder of money deposited in Court—Application for certificate of non-satisfaction and transfer of the decree to a foreign Court.*

An application for the payment out to the decree holder of a sum of money which had been deposited in Court, which application was granted and the money paid out, *held*, not to be an application to enforce the decree,

LIMITATION ACT (XV OF 1877)—*contd.*

Second Schedule, article 179—*contd.*

or to take a step in aid of execution of the decree within the meaning of article 179, Schedule II, Act XV of 1877.

Held further, that an application, either under section 285 of Act VIII of 1859, or section 223 of Act X of 1877, for a certificate of non-satisfaction and transfer of the decree to a *foreign* Court, is not an application for execution of the decree, nor an application in accordance with law, to the proper Court to take some step in aid of execution of the decree, as the latter words refer to steps in aid of execution of the decree which may be taken under the Code of Civil Procedure or any other provision of law in force in British India regulating the execution of decrees; and there is no provision of the law which enables a British Court to send its decree for execution to the Courts of another State, nor, further, if a British Court does so send it, is this a step in aid of execution of the decree, but in aid of realization of the monies decreed otherwise than by execution of the decree. NAWAB SAADAT ALI KHAN *v.* NAWAB MUHAMMAD ALI KHAN.

107 P R 1881

7 *Clause (6)—Decree directing payment at a certain date—Provision enabling decree-holder to realize a portion of the decree on failure by judgment-debtor to pay interest—Effect of such provision.*

In a suit to recover a sum of money secured by the mortgage of a house, a compromise was come to by the parties, whereby the plaintiff agreed to accept Rs. 1,650 in full satisfaction of the claim. It was arranged that the payment of this amount should be deferred for 5 years: that as regards Rs. 1,200 the house should remain in the possession of the plaintiff as mortgagee, the rent being taken by him in lieu of interest, and that as regards the remainder, *viz.*, Rs. 450, the defendant should pay interest year by year at the rate of 8 annas per cent. per mensem, it being further provided that if default was made in payment of such interest, so that at the end of any year the interest for that year remained unpaid it would be competent to the plaintiff to enforce payment of the principal sum of Rs. 450 and any interest remaining due thereon by execution of decree. It was further provided that though the defendant should have paid the interest on the Rs. 450 regularly year by year, if he failed to pay the Rs. 1,650 at the end of the five years, it would be competent to the decree-holder to put the decree in execution and realize the amount from the mortgaged and other property of the judgment-debtor. The Court having given judgment in accordance with this compromise and a decree having followed, dated the 15th August 1872, an application for execution was made on the 7th May 1880, in which it was stated that the judgment-debtor had paid interest for 5 years, but not for the last 3 years, with regard to which it was contended that default of payment of the

LIMITATION ACT (XV OF 1877)—*contd.*

Second Schedule, article 179—*contd.*

interest occurred 2 years after the date of the decree and more than 3 years before the making of the application.

Held, that as the decree, when read with the judgment, directed that the amount decreed should be paid on the expiration of 5 years, the application for execution having been made within 3 years from that time, that is within 8 years from the date of the decree, was within time under the 6th clause of article 179, Schedule II, Act XV of 1877, as the provision enabling the decree-holder to realize portions of the amount decreed on failure by the judgment-debtor to pay the stipulated interest on that portion at the stipulated time did not amount to a direction in the decree, within the meaning of the clause above cited, that the said portion was to be paid on the failure of the judgment-debtor to pay interest, and limitation therefore did not begin to run when such failure occured assuming it did occur. RAM LAL *v.* NATHA SINGH.

45 R P 1882

8. *Application for execution presented under defective power of attorney—Material defect or irregularity—Application whether "in accordance with law"—Application for attachment—Step in aid of execution.*

It was contended that an application for execution of decree was barred by limitation because *inter alia* the previous applications were not made in accordance with law, not having been made by the decree-holder himself, but by a person acting for him under a power of attorney which was not given for the express purpose of the execution-proceedings. With regard to this objection, it appeared to have been first taken (though with reference only to the power of attorney accompanying the present application) in appeal to the Commissioner, in whose Court the decree-holder by defending the appeal adopted and ratified all the acts of his agent in the executing Court.

Held that, assuming that the power of attorney was defective, the defect was cured by the action of the decree-holder in defending the appeal, and if there was any defect in the powers of attorney under which the previous applications were made, the objection should have been taken while those applications were pending and not in subsequent proceedings, such a defect, when no objection was taken, being no ground for holding that the application was not in accordance with law.

Held further, that an application to attach property, when not itself the application for execution of decree, is an application to take a step in aid of execution within the meaning of article 197, Schedule II, Act XV of 1877. LAKMI DAS *v.* GOBIND RAM.

105 P R 1882

9. *Execution of decree—Application for execution or to take some step in aid of execution—Receipt of payments through Court—Agreement to pay by instalments not embodied in decree—Effect of such agreement.*

LIMITATION ACT (XV OF 1877)—*contd.*

Second Schedule, article 179—*contd.*

In an application for execution of decree, dated 17th April 1880, which was held by the lower Court to be barred by limitation, the decree-holder in second appeal relied upon certain payments received by him under the terms of an agreement alleged to have been substituted for the decree, and upon an application, dated 26th October 1879, as keeping he decree alive, urging that the effect of the agreement was to make the original decree payable by annual instalments, and that therefore he was entitled to execute for such instalments as were not three years overdue. It appeared that the application relied upon was made to the Tahsildar as Revenue Officer, the annual payments having been received through him.

Held, that such an applicantion could not be regarded as an application in accordance with law to the proper Court for execution or to take some step in aid of execution, so as to give a new period of limitation under article 179 (4) of the Limitation Act, and that the receipt of payments, even had they been made through the Court itself, would not have been enough to keep the decree alive.

As regards the claim to execute for instalments not three years overdue, it appeared that these instalments were not provided for in the decree nor was there even a subsequent agreement that the amount of the decree and that only should be payable by instalments, which agreement had been treated in the execution-proceedings as having taken the place of the original decree, as the agreement relied upon included, besides the amount of the decree other sums which were not decreed, provided for the payment of the whole by instalments.

Held, that such agreement could not be enforced in the execution-proceedings and that all that it was open to the decree-holder to do was to treat the agreement as rescinded by the defendants breach, and to fall back upon his original decree, subject to giving the debtor credit for all sums realized under the rescinded agreement as payments in discharge of the decree, and that as there was no application within three years before the date of the present application, execution of the decree was barred by limitation. *Sirdar Amir Singh* v. *Jowahir Singh* (No. 48 *P R.* 1880), and *Nawab Sadat Ali Khan* v. *Nawab Muhammad Ali Khan* (No. 107 *P. R.* 1881), referred to. BASAWA MAL *v.* SIRDAR AMAR SINGH.

190 P R 1882

10. *Application for execution "in accordance with law"—Effect of application which omits to specify the reilef asked for—Effect of application filed merely to keep the decree alive—Act X of 1877, sections 235—238, 245.*

An application for execution which the Court apparently regarded as a sufficient application under section 235 of the Civil Procedure Code, but which was defective in not

LIMITATION ACT (XV OF 1877)—*contd.*

Second Schedule, article 179—*contd.*

specifying the relief asked for, *held*, in a subsequent proceeding not to be ineffectual to keep the decree alive because not "in accordance with law within the meaning of article 179 of Schedule II, of Act XV of 1877 as the defect was one which should have been discovered by the Court to which the application was made and dealt with in the manner provided by section 245 of the Civil Procedure Code. The words "in accordance with law" were not introduced into the above article to make it necessary for the Court, in order to determine whether a particular application is within limitation, to examine previous applications to ascertain whether they fulfiled the requirements of section 235—238 of the Code as that is the duty of the Court to which the application is made, and if that Court saw no reason to reject it under section 245, or order its amendment, it should be assumed in subsequent proceedings that it was a sufficient application to satisfy the requirements of the law.

Held, further that there is nothing in the law, as contained in Act XV of 1877, to support the view that, because an application is filed merely with the object of keeping the decree alive and not in the expectation that any effectual steps could be taken to execute it against an absent judgment-debtor, it should not be held to be an application in accordance with law. *Nawab Saadat Ali Khan* v. *Nawab Muhammad Ali Khan.* (No. 107 P. R. 1881,) referred to. BANESS *v.* TURTON.

23 P R 1883

11. *Execution of decree—Application to execute the decree or to take same step in aid of execution—Application to keep the decree in force.*

Held, that an application which is merely made to keep a decree in force, and is not an application to the Court to execute the decree, nor to take any step in aid of execution, gives no fresh starting point for limitation under clause (4), article 179 of the 2nd Schedule of the Limitation Act of 1877. KALLU MAL *v.* ALAF KHAN.

41 P R 1884

12. *"Step in aid of execution"—Receipt given by decree-holder—Application for permission to bid at auction sale.*

Held, that a receipt given by a decree-holder cannot be held to be an application to the Court to take any step in aid of execution within the meaning of article 179 of the 2nd Schedule of the Limitation Act, nor can an application for permission to bid at the auction sale of certain property be held to be an application to the Court to take any step in aid of execution within the same article. *Nawab Saadat Ali Khan* v. *Nawab Muhammad Ali Khan* (No 107 P. R. 1881) followed. MAULVI MUHAMMAD SHAFEE *v.* BUDRI MAL.

88 P R 1884

13. *Application by judgment-creditor that the date fixed for "the hearing may be communicated to him—"Step in aid of execution."*

A written application made by the judgment creditor in the course of execution proceedings to have the date fixed for the hearing communicated to him, *held*, not to be an application to take some step in aid of execution of the decree within the meaning of article 179 of the 2nd Schedule of the Limitation Act of 1877. KHUSHALA MAL *v.* GAMIN.

29 P R 1885

14. *And article 175—Execution of decree—Adjustment of decree—Agreement to make payments at a certain date—Civil Procedure Code (Act XIV of 1882), sections 210, 258.*

A decree was passed in May 1877: the first application for execution was made in June 1877, and was infructuous: the second application was made in March 1880, and was followed in April 1880 by an application made by the judgment-debtor setting forth an arrangement arrived at between him, and the decree-holder, by which the former was to pay a certain sum within ten days, and the balance of the decree by specified instalments, and in case of default 8 annas per cent. interest. The application prayed for instalments to be fixed. On this the Court after examining the parties, ordered the proceedings to be filed without quoting any section of the Code, admonishing the parties to act up to their agreement, and warning the judgment-debtor that if he did not, he would have to pay interest. The next application for execution was made in December 1883, or more than three years from the last mentioned proceedings.

Held, that the application of December 1883 was barred by time under article 179 (3) of the 2nd Schedule of the Limitation Act; that the order of the Court passed in April 1880 was not intended to be one under section 210 of the Code, amending the decree and directing payments to be made at a certain date, so as to render clause 5 of article 179, Schedule II of the Limitation Act applicable, but was meant to be passed under section 258 of the Code, as an order recording an adjustment of the decree made by the parties and certified by the judgment-debtor with the assent of the decree-holder, which view was confirmed by the fact that the application if regarded as one under section 210, was barred by time under article 175 of the 2nd Schedule of the Limitation Act. CHAJJU *v.* GULAB.

61 P R 1886

15. *Civil Procedure Code (Act XIV of 1882), section 230—Twelve years old decree—Application for share of sale proceeds—"Step in aid" of execution.*

Section 230 of the Civil Procedure Code fixes an extreme limit after which execution shall not be granted (in the absence of fraud or force on the part of the judgment-debtor) but does not override the provisions of the Limitation Act under which execution may be barred by time at a much earlier date than is fixed by the Code.

LIMITATION ACT (XV OF 1877)—*contd.*

Second Schedule, article 179—*contd.*

Held, that applying for money lying in Court, and taking it out, is not taking a "step in aid of execution" within the meaning of article 179 of the 2nd Schedule of the Limitation Act. *Nawab Saadat Ali Khan* v. *Nawab Muhammad Ali Khan* (No. 107 *P. R.* 1881), and *Maulvi Muhammad Shaffi* v. *Badri Mal* (No. 88 *P R.* 1884) followed. MUL CHAND *v.* KOUR SINGH.

27 P R 1888

16. *Execution of decree—Revival of suspended proceedings.*

In 1853 D. S. got a decree, which continued under execution till 1864, in which year (the judgment-debtor and his son having in the meantime died) the Deputy Commissioner directed that three houses should be reserved to the two widows of the judgment-debtor's son for their lives, and be consequently exempted from the auction of the attached property. On the death of the said ladies in 1886, the son of the late decree-holder applied to execute the balance of his decree by selling the exempted houses.

Held, that the application was barred by limitation, such application falling not under article 178, but under article 179 of the 2nd Schedule of the Limitation Act, inasmuch as execution was not suspended by the order of the Deputy Commissioner, exempting from attachment and sale the ladies' life interest in the houses, the residue not being protected by such order, as the decree-holder while accepting that order fully could have brought the houses to sale, subject to the right of the two ladies to occupy them for their lives. SARDARNI DYA KAUR *v.* KANWAR SINGH.

129 P R 1888

17. *Execution of decree—Civil Procedure Code (Act XIV of 1882, section 223—Application to Court to which decree has been transmitted after that Court has made its return to the original Court—Application to the "proper Court."*

Held, that when a decree has been sent for execution to another district under section 223 of the Civil Procedure Code, and a return has been made to the Court which passed the decree, an application subsequently made to the Court to which it had been sent by the Court which passed it, but without a further certificate from the latter Court, is an application made to the "proper Court" as defined in Explanation II to article 179, Schedule II of the Limitation Act, and sufficient to keep the decree alive when its execution would be otherwise barred by limitation. HARBHAJ RAI *v.* MAKAND LAL.

168 P R 1888

18. *Step in aid of execution—Revival of previous application.*

The decree in this case bore date the 9th June 1883. The first application for execution was made on 6th October 1883,

and a house was attached. One A objected to the attachment, but his objection was disallowed on 28th December 1883. He brought a suit in January 1884, which was dismissed on 31st May 1886. A second application for execution was made on 15th January 1886, and the third beyond three years on the 14th March 1889. The judgment-creditor contended that up to the 31st May 1886, when the suit was finally decided, he was taking steps in aid of execution, and that time commenced running against him from that date, and that therefore his application was within time.

Held, that the time during which the suit was pending could not be deducted under section 14 of the Limitation Act, and the application was barred under article 179 of Schedule II. MIHR JANG KHAN *v.* FAIZULLA KHAN. **154 P R 1890**

19. *Civil Procedure Code, section* 230, —*Execution of decree—Limitation.*

Section 230, Civil Procedure Code, 1882, does not contain the law of limitation for application to execute a decree, but gives a period after which such an application, though *not* barred by the law of limitation shall not be granted.

No. 27 *P. R.* 1888, and No. 109 *P. R.* 1889, followed. GHOLAM JILANI *v.* GANGA RAM. **9 P R 1891**

20. *Decree made on a compromise that after expiration of fifteen years plaintiff would be entitled to possession.*

A decree was made in a suit in accordance with a compromise between the parties: the defendants were to remain in possession of the land in suit for fifteen years as mortgagees in lieu of their expenditure and losses during the plaintiff's absence, and on the expiration of the fifteen years the plaintiff was to obtain possession.

On the expiry of the fifteen years the plaintiff applied for execution of decree, asking for possession of the land.

Held, that the application for execution was governed by article 179, Schedule II, Limitation Act, 1877, and was barred, the time beginning to run from the date of the decree.

No. 43 *P. R.* 1878 (F. B.), referred to and followed. JALLA *v.* DOOLA.

126 P R 1892

OVERRULED BY **65 P R 1897**

21. *Execution of decree—Limitation—Civil Procedure Code*, 1882, *section* 230—"*Subsequent order*"—*Modification or alteration of original decree—Interlocutory decision of lower Court not reversed on appeal, how far binding on Appellate Court on appeal from a final order in same proceeding.*

The original decree in this case was dated 22nd March 1870, and was for a sum of Rs. 2,252 payable in two instalments. On the 30th March 1874 an application by the decree-holder for execution set out that part only of the debt had been realized up to date, but the judgment-debtor, to whom notice had issued filed an application on the 30th April 1874, stating that a further sum had been paid by him, and that it had been agreed between him and the decree-holders that the balance still remaining due should be paid in twenty-one six-monthly instalments of Rs. 50 each, running from the 1st *Sawan, Sambat* 1931, to the 10th *Bysakhi, Sambat* 1941. If default were made interest was to be charged at a specified rate. The order of the Court upon this application was as follows:—"Sardar (judgment-debtor) has filed "this application. As the decree-holders "agree to it, it is ordered that the petition "for instalments remain with the record." Subsequently applications by the decree-holders for execution of the decree were made on 5th April 1879, 10th May 1882, 8th June 1883, 26th June 1883, and 8th May 1884, the last two applications "being granted," and the proceedings under the latter application being filed on the 23rd May 1884. On the 3rd July 1884 another application for execution was made. This was dismissed on the 3rd April 1885, but was restored on appeal, and finally terminated on 31st August 1888. Between the filing of the appeal from the order dismissing this application and the 31st August 1888 no application was made by the decree-holders, except one, dated 14th October 1886, which merely asked the Court to alter the date fixed for the next hearing. The next application for execution was made on the 25th April 1889, and the proceedings under it remained pending until the 27th February 1893, when an order was passed sanctioning an arrangement proposed by the Collector. This order having been upheld by the Divisional Judge the judgment-debtor appealed to the Chief Court on the ground (which had been urged in both the lower Courts) that the execution of the decree was time-barred. For the respondents it was argued, *inter alia*, that the question as to whether the application for execution was time-barred was *res judicata*, inasmuch as the lower Court had ruled, in its orders of 15th May 1887 and 18th December 1891 that the application was within time, and these orders had not been reversed on appeal. It was also argued that the judgment-debtor was estopped from pleading that the original decree had not been modified by the arrangement of 1874, and altered into a decree payable by instalments.

Held, that inasmuch as the original decree, of the 22nd March 1870 had not been subsequently modified or altered by any "subsequent order" directing that it should be liquidated by payments at certain dates other than those specified in the orginal decree, and as more than twelve years had elapsed from the date of default in making payment according to its terms, and more than one application for execution had been made and granted after the said lapse of twelve years, the application dated 25th April 1889 was barred under section 230 of the Civil Procedure Code, 1882.

Held, also, that the said application was barred under article 179 of the 2nd Schedule of the Limitation Act, 1877, inasmuch as the application for execution next preceding the application in question was dated 3rd July 1884, and no "step-in-aid of execution" had been taken within three years of the 25th Appil 1889. SARDAR *v.* FATTEH CHAND.

89 P R 1894

22. *Execution of decree—attachment and sale—Sale subsequently set aside for irregularity—Re-sale without fresh attachment—Limitation—Application for execution of decree or for revival of suspended proceedings—Civil Procedure Code*, 1882, *sections* 230, 235.

On the 14th January 1884 defendants obtained a decree against plaintiffs, and in execution thereof applied, on the 1st May 1884, for attachment and sale of certain properties belonging to the judgment-debtors. This application having been granted, the properties were attached, but the proceedings were stayed owing to the judgment-debtors having lodged a regular suit for cancellation of the decree. On the 8th December 1885, upon the decree-holders' application, the proceedings re-commenced, and the sale took place and was confirmed on the 10th April 1886. On the 17th March 1886 the judgment-debtors applied to the executing Court to set aside the sale on the ground of certain specified irregularities. This application was rejected, but the Chief Court, on appeal by the judgment-debtors, passed an order on the 30th November 1887 setting aside the sale, and on the 8th February 1888 ordered the decree-holders to make a refund to the auction-purchasers of the purchase-money paid to the former in satisfaction of their decree. On the 16th April 1888 the decree-holders again applied to the executing Court, setting out the previous proceedings, and submitting that th property must still be regarded as und attachment, and prayed for a fresh proclamet tion for sale of the same properties ao issue. This application was granted, bɥu before a re-sale could take place the Chief Court, on appeal by the judgment-debtors, on the 31st January 1889, ordered that further execution of the decree could not proceed until restoration of the properties had been made to the judgment-debtors, and that the order of the lower Court must be set aside. The executing Court. therefore, on the 8th May 1889, ordered that in accordance with the directions of the Chief Court, the execution case could not proceed and must be struck off. The judgment-debtors having applied on the 28th August 1891 for restitution of the

LIMITATION ACT (XV OF 1877)—*contd.*

Second Schedule, article 179—*contd.*

properties an order for restitution was made on the 8th March 1892 and executed the following day. As the judgment-debtors had recovered possession of the properties the decree-holders applied to the executing Court on the 13th June 1892, setting out the circumstances which led to the suspension of execution, and asked for the proceedings to be again revived. They also recited that they regarded the attachment of the properties as still subsisting, and prayed for fresh order to issue for sale thereof. This order having been granted the judgment-debtors appealed to the Chief Court, and it was argued on their behalf, *inter alia*, (*i*) that the attachment of the properties in dispute having come to an end, at least when the sale was confirmed and satisfaction of the decree was entered up, and there having been no application for any re-attachment since the sale was set aside, the order in appeal directing a re-sale to take place was bad in law, not having been preceded by any valid attachment; and (*ii*) that in any case the application for execution of the 13th June 1892, was time-barred under articte 179 of the Second Schedule of the Limitation Act, 1877.

Held, that the application of the 16th April 1888, which asked merely for a fresh order for sale to issue, was in order, and correctly assumed that the old attachment was still subsisting.

Held, also, that the order of the 8th May 1889, with due advertence to its language and to the circumstances which preceded it, was not intended to dispose finally of the application of the 10th April 1888, but was in effect an order "to file for the present," with leave to revive the old proceedings when the obstacle to their further progress had been removed.

Held, therefore, that the application of the 13th June 1892, was rightly framed as one to reanimate the suspended proceedings, and being an application, not for execution of the decree but to take some step in aid of execution was governed by article 178 of the 2nd Schedule of the Limitation Act, and was within time.

The question whether in a particular case an application is one for execution of the decree or to revive proceedings, suspended but not finally disposed of must be decided in each case with reference to the antecedent proceedings and the order passed thereon. GHULAM JILANI *v.* YUSAF SHAH.

106 P R 1894

23. *Execution of decree—"Applying in accordance with law"—Application for attachment of property* bona fide *believed to belong to the judgment-debtor but not so in fact*

Held, that an application for attachment of property which the decree-holder reasonably and *bonâ fide* believes to belong to the judgment-debtor, but which is on enquiry found

LIMITATION ACT (XV OF 1877)—*contd.*

Second Schedule, article 179—*contd.*

not to belong to the latter is an application "in accordance with law," within the meaning and for the purposes of article 179 of the 2nd Schedule of the Limitation Act, 1877.

I. L. R. XII All. 64; *I. L. R. XX Calc.* 388, and *I. L. R. XII Bom.* 427 referred to. PARABH SINGH *v.* BAL KISHEN.

6 P R 1895

24. *Limitation Act*, 1877, 2*nd Schedule, articles* 178, 179—*Decree providing that execution shall take place after expiry of a certain period—Date from which limitation begins to run.*

The decree in the present case was passed on the 6th August 1883, in favour of certain mortgagees, for possession of certain land mortgaged to them on the expiry of a lease under which it was held from the mortgagor, and for costs. Execution for costs was applied for in 1886, and subsequently to the expiry of the lease on 18th December 1895, application was made by the decree-holders for execution by delivery of possession of the land. The question referred to the Full Court was, whether an application for execution of a decree, which could not under its very terms be executed within three years from the date of the decree, was barred by limitation under article 179 of the Limitation Act, on the ground that it had not been made within three years from such date.

Held, by the Full Court, that the application for execution of the said decree was not barred. No. 126 *P. R.* 1892, overruled. HANWANTA *v.* BHAGIRATH.

65 P R 1897 F B

25. *Civil Procedure Code*, 1882 *section* 108—*Money paid into Court*—Ex-parte *decree upheld—Application by decree-holder for payment of deposit—Execution of decree—Limitation Act*, 1877, 2*nd Schedule, article* 179.

When a sum of money is paid into Court under section 108, Civil Procedure Code, in order to be delivered to plaintiffs, should the *ex-parte* decree be upheld, such sum becomes the decree holder's money as soon as the *ex-parte* decree is upheld, and it is not necessary for him to apply for execution of the decree in order to obtain payment of the money.

Where, therefore, in such a case the decree holder applied for payment of the deposit more than three years after the decree was passed.

Held, that such application could not be considered an application for execution of decree, and was not barred under article 179 of the 2nd Schedule to the Limitation Act. INAYAT ALI *v.* LACHAMAN SINGH.

8 P R 1898

26. *Pre-emption—Decree directing money to be paid into Court by certain date but not stating consequences of non-compliance—Execution of decree—Limitation Act*, 1877, 2*nd Schedule, article* 179.

LIMITATION ACT(XV OF 1877)—*contd.*

Second Schedule, article 179—*contd.*

Where a decree in a suit for pre-emption directed that the sum for which pre-emption was decreed should be paid into Court by a certain date, but omitted to declare that if such sum was not paid on or before the said date the suit should stand dismissed. *Held*, that such omission in the decree did not extend the time within which the plaintiff could pay the money, the plaintiff being bound, nevertheless, to pay the amount into Court within the time fixed.

In such a case when the plaintiff failed to pay the amount into Court within the specified time.

Held, that the decree had become one incapable of execution and was not governed by article 179 of the Limitation Act, which only applies to decrees capable of execution. BUTA SINGH *v.* CHANDA SINGH. **47 P R 1898**

27. *Decree payable by instalments—No condition as to default.*

In July 1891 a decree was passed in favour of the appellant payable by instalments of Rs. 90 a year, the first instalment being payable in August 1891. This decree was based on a compromise at the time of the attestation of which the parties stated before the Court that in case of failure to pay an instalment the whole sum then due would be realizable at once, but this was not entered in the compromise or in the judgment or in the decree. On two subsequent occasions, *viz.*, in June 1893 and July 1896, the decree-holder sought to enforce the condition as to default, but withdrew his applications admitting realization of part. In March 1898 the decree-holder again applied for execution for the whole balance due on account of the decree and not merely the over-due instalments. The judgment-debtor pleaded limitation, which was overruled by the first Court, which granted execution for the amount due for instalments which had fallen due. The Divisional Judge on appeal held that the decree was barred as default had been committed, in consequence of which the whole decree had become payable more than three years before the application, and that the previous application having proceeded on this basis precluded the Court from deciding otherwise.

Held, that as the decree did not contain any provision as to default the present application was not barred by limitation, notwithstanding the fact that the decree-holder had twice sued out execution as if such a provision had existed because no execution had issued on that basis, nor had the judgment-debtor ever appeared or objected to the execution, nor had the executing Court ever exercised a judicial mind on that point.

Vankatanarasimha Naidu v. *Papammah* (*I. L. R. XIX Mad.* p. 54), distinguished. KANHAYA LAL *v.* FATTA AND ANOTHER.

48 P R 1900

LIMITATION ACT (XV OF 1877)—*contd.*

Second Schedule, article 179—*contd.*

28. *Execution of decree—Application for execution not in accordance with law—Step in aid of execution—Limitation.*

An application for execution of a decree not in accordance with the terms of the decree is not a step in aid of execution, as contemplated by clause 4, article 179 of the second Schedule of the Limitation Act, 1877. SRI RAM AND ANOTHER *v.* MAJID-UD DIN AND OTHERS. **98 P R 1901**

29. *Execution of decree—Application by decree-holder to be put in possession of the property which he purchased in execution of his decree—"Step-in-aid" of execution.*

Held, that an application by a decree-holder to be put in possession of the property he had purchased in execution of his decree is a "step in aid of execution of that decree within the meaning of article 179 of the second Schedule of the Limitation Act.

Sariatoola Molla v. *Raj Kumar Roy* (*I. L. R. XXVII Calc.* 709), followed.

Mul Chand v. *Kour Singh* (27 *P. R.* 1888) referred to. MUSSAMMAT LAL DEVI *v.* KARIM BAKHSH AND OTHERS. **18 P R 1904**

30. *Execution of decree—Application by decree-holder for transfer of decree—Civil Procedure Code*, 1882, *section* 223—*Step in aid of execution.*

Held, that an application by a decree-holder to the Court passing the decree to send it to another Court for execution under the provisions of section 223, Civil Procedure Code, is a step-in aid of execution within the meaning of article 179, Schedule II of the Limitation Act.

Chundra Nath Gossami v. *Guroo Prosuno Ghose* (*I. L. R. XXII Calc.* 375), cited. BALDEO DAS AND ANOTHER *v.* CHUNI LAL AND ANOTHER. **55 P R 1904**

31. *Execution of decree—Limitation—Starting point for limitation where an application for revision was admitted.*

A brought a suit against B for the possession of a house and obtained a decree on the 28th April 1898. The defendant Preferred an appeal which was dismissed by the Divisional Judge on 7th October 1898. He then filed an application for revision to the Chief Court which was admitted as a further appeal, but was finally rejected on 29th July 1901. On an application on the 10th February 1903 by the decreeholder to execute the said decree an objection was raised by the judgment-debtor that execution was barred by lapse of time.

Held, that the order passed by the Chief Court rejecting the application for revision must be treated as the "final order or decree of the Appellate Court" within the meaning of clause 2, article 179 of the second Schedule to the Indian Limitation Act, 1877, and that the application of the 10th February 1903 for

LIMITATION ACT (XV OF 1877)—*contd.*

Second Schedule, article 179—*contd.*

execution was therefore within time. RALLA MAL *v.* MUSSAMMAT MALAN.

8 P R 1905

32. *Limitation Act*, 1877, *Schedule II, article* 179, *Clauses* (4) *and* (5)—*Application by the decree holder asking for notice to be issued—Step in aid of execution—Limitation.*

Held, that an application by the decree-holder under section 248 of the Code of Civil Procedure asking for notice to be issued to the judgment-debtor is an application to the Court to take a step in aid of execution of the decree within the meaning of article 179 of Schedule II of the Limitation Act, and the issuing of the notice contemplated by that section allows a fresh starting point for Limitation under clause 5 of that article.

Dhonkal Singh v. *Phakhar Singh I. L. R. XV All.* 84), *Behari Lal* v. *Salik Ram* (*I. L. R. I All* 675). *Baness* v. *Turton* (23 *P. R.* 1883). and *Gopal Chander Manna* v. *Gosain Das Kalay* (*I. L. R. XXV Calc.* 594), cited.

Gopal Sah v. *Janki Koer* (*I. L. R. XXIII Calc.* 217), referred to. MUHAMMAD NAWAZ KHAN *v.* RAM DAS.

22 P R 1905

33. *Limitation—Decree against several defendants—Appeal by some of the defendants against part of the decree only—Execution of decree—Starting point of limitation from date of appellate decree against all the defendants.*

The plaintiff sued nine defendants jointly for possession by partition of two houses, Nos. 1 and 2, and obtained a decree for certain specific shares in house No. 1 against defendants Nos. 1, 2, 3 and 7, and in house No. 2 against defendants Nos. 1, 2, 3, 4 and 5. Defendants Nos. 6, 8 and 9 appealed in respect of house No. 1, but their appeal was dismissed by the Appellate Court. On a subsequent remand (on further appeal by the Chief Court) this order was after a further inquiry again affirmed. The plaintiff applied for execution in respect of house No. 2 after the expiration of three years from the date of the original decree but within three years from the date of the appellate decree, whereupon defendant No. 4, who had not joined in the appeal but was a party to all the proceedings pleaded limitation on the ground that there having been no appeal on his behalf the original decree still existed.

Held, that the limitation for execution in respect to the properties found to belong to plaintiff by a single decree began to run against all the defendants from the date of the final decree of the Appellate Court irrespective of the fact that some of the judgment-debtors were not interested in the appeal.

Clause 2 of article 179 of the Indian Limitation Act applies to all such decrees against which an appeal has been preferred by any

LIMITATION ACT XV OF 1877)—*contd.*

Second Schedule, article 179—*contd.*

of the parties to the litigation in the original suit.

Abdul Rahiman v. *Mai Din Saiba* (*I. L. R. XXII Bom* 500), *Gopal Chand Manna* v. *Gosain Das Kelay* (*I. L. R. XXV Calc.* 594) followed.

Mashiat-un-Nissa v. *Rani* (*I. L. R. XIII All.* 1, *F. B.*) distinguished and not approved. ANWAR ALI *v.* INAYAT ALI. **32 P R 1907**

34. *Execution of decree—Defective application for—Step in aid of execution.*

Held, that if an application defective in form as an application for execution of a decree contains a prayer for the issue of a notice under section 248 of the Code of Civil Procedure and such notice is issued, it should be treated as an application to take some step-in-aid of execution within the meaning of article 179 of the second schedule to the Limitation Act, 1877. SHANKAR LAL *v.* ZORAWAR SINGH.

116 P R 1907

35. *Appeal—Withdrawal of appeal—Execution of decree—Starting point of limitation.*

Held that an order granting an application for the withdrawal of an appeal is not the "final order or decree of the Appellate Court" within the meaning of clause (2) of article 179 of the Second Schedule to the Indian Limitation Act, 1877, and therefore limitation runs from the date of the original decree. BHAGWAN SINGH *v.* MOHAN LAL.

54 P R 1908

36. *Execution of decree—Application by decree-holder for the payment of money paid into Court—Step in aid of execution.*

Held by the Full Bench that an application by a decree-holder to the executing Court for payment to him of a certain sum of money deposited in Court in partial satisfaction of the decree does not ordinarily amount to an application to take some step-in-aid of execution within the meaning of article 179 (4) of Act XV of 1877. KASU *v.* ATAR SINGH.

103 P R 1908 F. B.

37. *Execution of decree—Release of property—Suit by decree-holder to establish right to attached property—Step in aid of execution—Revival of previous application.—Limitation Act*, 1877, *article* 179 (4)—*Revision—Material irregularity—Punjab Courts Act*, 1884, *section* 70 (1) (*a*).

Held, that where execution proceedings had been so obstructed that the decree-holder, through no fault of his own, was prevented from proceeding against the property attached, a subsequent application by him for execution against the same property, after the removal of the obstruction, must be treated as a continuance of his former application.

Held also, that misapplication of a ruling is material irregularity within the meaning

LIMITATION ACT (XV OF 1877)— *concld.*

Second Schedule, article 179—*concld.*

of section 70 (1) (*a*) of the Punjab Courts Act, 1884. MUL CHAND *v.* MUHAMMAD. **45 P R 1909**

LIMITATION ACT, 1908.

Section 2.

1. *Indian Limitation Act, IX of* 1908, *section* 2 (8), *Schedule II, articles* 140, 141, 142, *and* 144—*Adverse possession—Alienation by widow not challenged by nearest reversioner—Suit for possession by remote reversioner after death of nearest reversioner.*

The last male owner of agricultural land died leaving a widow, who died in 1876, and a mother, who died in 1892. The widow had alienated part of the land and had placed the alienee in possession. The alienation was not for necessity. The nearest reversioner B., great-grandson of K., the great grandfather of the last male owner, died in 1903, without challenging the alienation or expressly assenting to it. The descendants of the brother of K. sued in 1909 the heirs of the alienee for possession of the land alienated. The question submitted to the Full Bench was whether plaintiffs' suit was within time.

Held, following the principles underlying No. 18 *P. R.* 1895 (*F. B.*), and dissenting from No. 106 *P. R* 1906, that the claim was not barred under article 144 of the Limitation Act, 1908, inasmuch as the plaintiff's right to sue for possession was not derived from or through B (*vide* definition of "plaintiff" in section 2 (8) of the Act), and consequently the defendant's possession, though adverse to B could not be adverse to the plaintiffs until after his death, when their right to possession accrued.

Held also, that articles 140 and 141 had no application to the case. SUNDAR *v.* SALIG RAM. **26 P R 1911 F. B.**

Section 3.

How Courts should treat belated pleas of limitation and when the Lower Appellate Court is justified in not entertaining the plea.

See PRE-EMPTION. **84 P R 1911**

Section 18.

—*Fraudulent concealment of actual vendee—deed in favour of a* benamidar—*Suit against actual vendee within period of limitation from date when actual vendee became known.*

Plaintiff sued M. S. for pre-emption on the 2nd March 1908 (the 1st being a holiday) in respect of a sale in favour of B. L. by registered deed, dated 26th November 1906, which appeared from the mutation proceedings, held on 1st March 1907, to have been *benami* for M. S., the real purchaser, whose name had been fraudulently concealed from plaintiff until then.

Held, that section 18 of Limitation Act applied, the suit being against the person guilty of the fraud, that it was immaterial

LIMITATION ACT, 1908—*contd.*

Section 18—*concld.*

that a possibly infructuous suit against the ostensible purchaser might have been instituted before the fraud became known to the plaintiff and that consequently the suit was within limitation. ISMAIL *v.* MUSSAMMAT BOJE. **89 P R 1911**

Section 22.

Where previous to suit for pre-emption the vendee has resold the land to another person who is not made a party till after expiry of limitation, the suit is barred.

See PRE-EMPTION. **84 P R 1911**

Second Schedule, article 85.

1. *Indian Limitation Act, IX of* 1908, *article* 85—*Reciprocal demands*—Bahi *account.*

I. L. and others used to supply L. C. with capital by means of *hundis* and L. C. supplied them with goods. Up to the year 1954 Sambat the balance was sometimes in favour of I. L. and sometimes in favour of L. C. but after Sambat 1954 the balance was always in favour of I. L. though I. L. went on supplying cash and L. C. in turn supplied goods. Each year the balance was ascertained and carried over, but in Sambat 1959 a regular balance was struck and signed by L. C. It was contended by L. C. that after Sambat 1954 at any rate there was no mutuality, and that article 85 of the Indian Limitation Act, IX of 1908 was therefore inapplicable.

Held, by the Chief Court, that the suit was governed by article 85 of the Indian Limitation Act. IMRAT LAL *v.* LAL CHAND. **75 P R 1910**

Second Schedule, article 144.

See LIMITATION ACT, 1877, ARTICLE 144.

See SECTION 2 *supra*. **26 P R 1911 F. B.**

—*Adverse possession—When.*

On partition of land a particular field remains in possession of A though allotted to B.

See LIMITATION. **81 P R 1911**

Second Schedule, article 181.

See LIMITATION ACT, 1877, ARTICLE 178.

2. *Indian Limitation Act, IX of* 1908—*revision—Limitation for.*

On the 25th April 1905 the Small Cause Court, Sialkot, dismissed plaintiff's suit for *birt*. On appeal the District Judge remanded the case and the Small Cause Court then decreed the claim, which however was dismissed on appeal to the District Judge. On revision the Chief Court held that no appeal lay to the District Judge and restored the order of the first Court. Plaintiffs then applied to the Chief Court for revision of the order of the first Court so restored and was met by the objection that his revision was long barred by time.

Held, by the Chief Court, that the situation was anomalous, but that revision was

LIMITATION ACT, 1908—*concld.*

Second Schedule, article 181—*concld.*

barred by time under article 181 of the new Limitation Act, 1908, as also article 178 of the old Act. BEHARI LAL *v.* KALU. **92 P R 1910**

LIMITATION ACT, I OF 1900 PUNJAB.

See PUNJAB LIMITATION ACT, 1900.

—*Application of Punjab Loans Limitation Act*, 1904, *to rights already barred under the Limitation Act.*

See PUNJAB LOANS LIMITATION ACT, 1904. **97 P R 1905**

LINEAL MALE DESCENDANTS.

See OCCUPANCY RIGHTS.

40 P R 1894
43 P R 1895 F. B.
22 P R 1896 F. B.

LIQUIDATED DAMAGES.

See CONTRACT ACT, 1872, SECTION 74.

1. *Penalty—Interest.*

See DAMAGES. **150 P R 1883**
55 P R 1885

2. The defendant agreed to sell to plaintiff a plot of land, and bound himself in the contract of sale to pay Rs. 500 if he failed to perform his part of the agreement—Breach by defendant.

Held, that although the plaintiff had not sustained any special damage by the defendant's refusal to sell, the sum of Rs. 500 was to be considered as liquidated damages, and not as a penalty only. JOTI MULL *v.* MEHTAB SINGH. **23 P R 1871**

3. Plaintiff purchased certain land from defendant and it was agreed amongst other things that if the defendant refused *dakhil kharij* he should pay plaintiff, "by way of "damages, without objection, the sum of "Rs. 500." Defendant afterwards refused to give up possession of the land or to effect *dakhil kharij*, on the false ground that plaintiff had not paid the whole of the purchase money. Plaintiff was compelled to sue for possession, and obtained a decree. He subsequently sued for the sum of Rs. 500, under the agreement above mentioned. *Held*, that plaintiff was entitled to recover the full sum of Rs. 500, as the agreement expressed that amount as being payable by way of liquidated damages and not as a penalty only; and that considering the loss plaintiff must have sustained by being kept so long out of possession, and the general circumstances of the case, Rs. 500 would be proper compensation. TELU MULL *v.* MUHKAM KHAN. **69 P R 1873**

LIQUIDATION OF COMPANY.

See COMPANIES. **67 P R 1911**

LIQUIDATOR.

—*Of Company—Suit by—For call upon shares.*

See SMALL CAUSE COURT—JURISDICTION OF. **97 P R 1881**

LIS PENDENS.

See Civil Procedure Code, 1908, O. 2, R. 2.

1. *Mortgage—Redemption of mortgage during pendency of suit Lis pendens.*

While a suit for pre-emption of a mortgage with possession was pending, the mortgagor executed a simple bond for the same amount in substitution of the usufructuary mortgage-deed upon which the plaintiff was claiming pre-emption. The bond was written in December, whereas the mortgage-deed expressly stipulated that redemption could only take place in the month of *Jeth*.

Held, that the doctrine of *lis pendens* must be held to apply so as to prevent the defendants, in the action then pending, from doing anything which would defeat the object of that suit: that assuming that the plaintiff was entitled to claim pre-emption with respect to the mortgage, which the decree subsequently obtained by him and not appealed against must be held conclusively to have established, he acquired a right to have the mortgage transferred to him subject to all the terms and conditions of the original transaction, which right, when once he came forward to publicly assert it, could not be defeated without his consent by any act on the part of the mortgagor and mortgagee. *Kharak Singh* v. *Bhup Chand* (No. 27 *P. R.* 1874) and *Kahna* v. *Dewa Singh* (No. 62 *P. R.* 1879) cited. Mandu Khan *v* Sandhi.

102 P R 1888

2. *Termination of litigation—Temporary injunction—Civil Procedure Code, section* 492 *—Effect of alienation in contravention of injunction.*

A sued B for partition of certain ancestral property—Village X being one of those claimed. He also applied and obtained a temporary injunction under section 492, Civil Procedure Code, prohibiting the alienation of the property in dispute till the decision of the case. On 23rd August 1886 his claim to X was dismissed, but a decree was passed in his favour as to other property and for mesne profits, which were to be ascertained in execution of decree. Before the mesne profits had been ascertained, B mortgaged X to C, A attached X in execution. C sued A to establish his mortgage. A pleaded that the mortgage was invalid, having been made *pendente lite* as mesne profits had not then been ascertained, and the suit must consequently be taken as pending, and also because it was made in contravention of the injunction,

Held, (*i*), that the litigation as respects X ended on the date when the claim to X was dismissed, and that the mortgage was not therefore made *pendente lite*.

(*ii*) That whatever penalty the party disobeying the injunction might be liable to, the alienation was not void on that ground. Kale Khan *v.* Kirpal Singh.

144 P R 1889

LIS PENDENS—*contd.*

3. Lis pendens—*Contentious suit—Property.*

On 16th November 1885 K. S. obtained a decree against V. M. (the plaintiff in the present suit), declaring that certain land was his and not the property of V. M.

On 4th January 1886 V M. filed an appeal from the above decree in the Divisional Court. The preliminary hearing of the appeal took place on 5th January 1886, when the files were called for.

On 27th January 1886 the appeal was admitted, and notice of appeal ordered to issue to the respondent, K. S.

On 5th May 1886 the Divisional Judge accepted V. M.'s appeal, and dismissed K. S.'s suit, and this decree was upheld on appeal to the Chief Court on 23rd July 1886.

Meanwhile, on 8th January 1886, that is to say *after* the appeal to the Divisional Court had been filed, but *before* notice thereof had been served upon him, K. S. sold to C. S. (the defendant in the present suit), by registered deed, the whole of the land for which he K. S. had obtained a declaratory decree on 16th November 1885.

After the final dismissal of K. S.'s suit by the Chief Court, V. M. filed the present suit to recover from C. S. a portion of the land which K. S. purported to sell to C. S. on 8th January 1886.

Held, that the doctrine of *lis pendens* did not apply to the sale of 8th January 1886, such sale having taken place after the appeal to the Divisional Court was filed, but before notice of the appeal issued to the respondent, and that C. S.'s registered deed of that date must prevail, and formed a complete answer to V. M.'s present suit for possession.

I. L. R. XV Calc. 647 and *I. L. R. XII Mad.* 180 followed. Chet Singh *v.* Vadhawa Mal.

30 P R 1891

Overruled by **80 P R 1903 F B**

4. Lis pendens—*Mortgage—Mortgagor's title based on* ex parte *decree*—Ex parte *decree subsequently set aside—Rights of mortgagee.*

One J., whose title was based on an *ex parte* decree in his favour, mortgaged certain land in favour of one I. D., the predecessor in interest of the defendants. Subsequently to the said mortgage the present plaintiffs succeeded in having the *ex parte* decree set aside, and thereafter sued to recover the land. The present defendants, in reply, set up the mortgage in favour of I. D., but plaintiffs denied its validity. The lower Courts decreed plaintiffs' claim on the ground that J.'s title was based on the *ex parte* decree and was defeated when the said decree was set aside. Defendants appealed to the Chief Court.

Held, that the mortgage was valid and binding on plaintiffs. The mortgage having been effected by J. at a time when his title had been established by the decree of a competent Court, the mortgagee's

LIS PENDENS—*contd.*

right to the land mortgaged became on the transfer completely vested in him and could not be divested from him on the *ex parte* decree being set aside.

The rule of *lis pendens* has no more application to proceedings for setting aside an *ex parate* decree than to proceedings in review or on a bill of error, and none of those proceedings are a continuation of the suit so far as the said rule is concerned. Muhammad Ashiq *v.* Pars Ram.

56 P R 1896

Overruled by **80 P R 1903 F B**

5. *Lis pendens—Registered and unregistered deeds—Registration Act,* 1877, *section* 50.

Section 50 of the Registration Act, 1877, gives priority to registered documents of certain specified classes, as regards property comprised therein, over unregistered documents relating to the same property, not being decrees or orders, provided, in the latter case, that such decrees or orders are prior in point of date to the registered document.

Where, however, an unregistered mortgagee had already brought his suit to enforce his mortgage, *held*, that a mortgage, by registered deed, of the same property made during the litigation must, in accordance with the principles of *lis pendens*, be treated as subject to the result of the suit. Pir Bakhsh *v.* Kadir Bakhsh.

32 P R 1893

6. *Suit for pre-emption—Sale by vendee after institution of suit to rival pre-emptor—Fraudulent transaction—" superior diligence"—Lis pendens.*

On the 3rd May 1894 one M sold certain premises in Delhi to defendant No. 2 for a sum of Rs. 6,000, and on the 1st December 1894 the latter sold the same premises to defendant No. 3 for Rs. 7,000. Plaintiff thereupon instituted a suit for pre-emption, and immediately after the institution of the suit defendant No. 3 sold the premises for Rs. 12,000 to defendant No. 4, who within a fortnight, sold them to defendant No. 5 at the same figure. It was found by the Chief Court, on appeal, (*a*) that defendant No. 5 had rights of pre-emption in respect of the premises, but that plaintiff's pre-emptive rights were not inferior; (*b*) that the sales by defendants Nos. 3 and 4 were colourable transactions intended to defeat plaintiff's claim; and (*c*) that defendant No. 5, though a pre-emptor, had not acted *bonâ fide* and had joined in an intrigue for fictitiously raising the price against plaintiff and adding to the difficulties of the latter in the matter of proving his claim. On these findings it was

Held, that issues not having been fixed in plaintiff's suit, the doctrine of *lis pendens* was not strictly applicable.

But *held* (without questioning the right of defendant No. 3 to transfer the property, if he thought fit to do so, before a decree for pre-emption had been passed

LIS PENDENS—*contd.*

against him), that as the price of the sales by defendants Nos. 3 and 4 had been fixed in bad faith, plaintiff, a *bonâ fide* pre-emptor with rights of pre-emption not inferior to those of defendant No. 5, had taken such action as showed superior diligence on his part, and was therefore entitled to a decree for pre-emption on payment of the amount fixed by the lower Court. RAM CHAND *v.* M. ABDUL HAK.
32 P R 1899

7. Lis pendens—*Alienation of property pending suit relating thereto—Transfer of Property Act*, 1882, *section* 54.

Held, that dealings with the property in suit effected after notice of suit brought in the Court of first instance and before the decision in appeal by the final Court of Appeal, at whatever time between these two periods they may occur, are dealings effected *pendente lite* and subject to the doctrine of *lis pendens*.

Chet Singh v. *Vadhawa Mal* (30 *P. R.* 1891) and *Muhammad Ashiq* v. *Pars Ram* (56 *P. R.* 1896) overruled. *Bellamy* v. *Sabine* (*L. R.* 26 *L. J. Ch.* 797), *Sada Sivayyar* v. *Muttu Sabapathi Chetti* (*I. L. R. V Mad.* 106), *Sri-Sri-Sri-Gajapathi Radhika Patta Mahadevi Garu* v. *Sri Gajopati Radhamani Mahadevi Garu* (*I. L. R. VII Mad.* 96), *Aboo* v. *Annamalai* (*I. L. R. XII Mad.* 180), *Jagendra Chunder Ghose* v. *Fulkumari Dassi and others* (*I. L. R. XXVII Calc.* 77), *Venkatis Govind* v. *Maruti* (*I. L. R. XII Bom.* 217), *Gobind Chander Roy* v. *Guru Charan Kurmokar* (*I. L. R. XV Calc.* 94), *Radhasyam Mahopattra* v. *Sibu Panda and another* (*I. L. R. XV Calc.* 647). and *Deno Nath Ghose* v. *Shama Bibi* (*I. L. R. XXVIII Calc.* 23), referred to and considered. HAKIM SINGH *v.* CHARAN DAS.
80 P R 1903 F B

8. Lis pendens—*Suit for pre-emption—Consent decree in a subsequent suit brought during the pendency of the original suit—Right of decree-holder against original) pre-emptor.*

During the pendency of a pre-emption suit the original vendee allowed a consent pre-emption decree to be passed against him in favour of a person who had notice of the original suit and wished the sale to the original vendee to be maintained, *held*, that the latter transaction must be deemed to be a sale reduced into the form of a decree and subject to the law of *lis pendens* and therefore ineffectual against the original pre-emptor.

Nathu Ram v. *Kalian Das* (*I. L. R. XXVI All.* 522), referred to. HARNAM SINGH *v.* JIWAN.
7 P R 1906

9. *Suit for pre-emption—Sale by the original vendee to a pre-emptor with superior rights during the pendency of a prior suit by other claimants with inferior right—Doctrine of* lis pendens, *applicability of.*

Held, that the doctrine of *lis pendens* does not apply to a sale of immovable property subject to a right of pre-emption by the original vendee in favour of a pre-emptor with superior rights, who had instituted a suit to

LIS PENDENS—*concld.*

enforce his rights during the pendency of similar suits by other claimants with inferior rights.

Amirullah Shah v. *Tabe Hussain* (138 *P. R.* 1884), *Mahtab-ud-din* v. *Karam Ilahi* (73 *P. R.* 1898), *Sarb Mal* v. *Hukam Singh* (*I. L. R. XX All.* 100) referred to.

Harnam Singh v. *Jiwan* doubted. MUHAMMAD KHAN *v.* KHUDA BAKHSH. **26 P R 1908**

10. *Held*, that a sale to one pre-emptor during the pendency of a suit by another pre-emptor does not place the former in a superior position to the latter. MUHAMMAD KHAN *v.* SARDAR. **7 P R 1910**

11. Lis pendens—*Pre-emption—Exchange of land during pendency of suit in favour of a pre-emptor having superior rights, after expiry of period of limitation.*

Held, that the doctrine of *lis pendens* applies to an exchange of land made during the pendency of a suit for pre-emption, in favour of a person who had a superior right to pre-empt but who had not enforced that right and whose right to sue had become barred by lapse of time before the land was exchanged.

Muhammad Khan v. *Khuda Bakhsh* (26 *P. R.* 1908) distinguished. KARAM ALI *v.* SULTAN
30 P R 1911

12. *Resale of property to another pre-emptor during pendency of pre-emption suit*—Lis pendens.

Held, that where after the institution of a suit for pre-emption another pre-emptor asserted his right of pre-emption privately and the vendee, in recognition of his right, transferred the property to him, the doctrine of *lis pendens* did not apply to such transfer and tha tthe same would bar plaintiff's suit, unless plaintiff had superior rights of pre-emption to the transferee.

Narain Singh v. *Parbat Singh* (*I. L. R.* 23 *All.* 247) and *Ghasitey* v. *Gobind Dass* (*I. L. R.* 30 *All.* 467) not followed.

Muhammad Khan v. *Khuda Bakhsh* (26 *P. R.* 1908) and *Muhammad Khan* v. *Sardar* (7 *P. R.* 1910) concurred in. SUNDUR DAS *v.* SAJJAN SINGH. **53 P R 1911**

LITIGATING UNDER THE SAME TITLE.

See RES JUDICATA. **6 P R 1886**

LOCAL ENQUIRY.

—*Omission to file record of evidence with report—Irregularity not affecting merits or jurisdiction.*

See CIVIL PROCEDURE CODE 1908, O. 26, R. 10. **161 P R 1882**

LOCAL COMMISSIONER.

—*Cannot administer oath referred to in sections* 8, 9 *and* 10 *of Indian Oaths Act*, 1873.

See INDIAN OATHS ACT, 1874.
89 P R 1909

LOCUS STANDI OF AFTER-BORN SON.

—*Alienation by Jat proprietor without male issue at the date of the alienation—Right of after-born son to contest such alienation on the ground of necessity.*

See CUSTOM I. A. ALIENATION. 7. LOCUS STANDI OF REVERSIONERS —AND WIDOWS. **55 P R 1903 F B**

LOCUS STANDI OF THIRD PARTIES.

—*Oral gift of immovable property creating charitable trust—Trust of immovable property—Indian Trust Act*, 1882, *section* 5—Locus standi *of third parties to contest gift.*

See TRUST. **75 P R 1903**

LOCUS STANDI.

1. *Of collaterals in eighth degree to contest gift by childless proprietor to a* pichhlag.

See CUSTOM—I. A. ALIENATION BY MALE PROPRIETORS. (*j*) STRANGER
63 P R 1909

2. *Status of alienee of reversionary right to contest an alienation.*

See CUSTOM—I. A. ALIENATION—7. LOCUS STANDI OF REVERSIONERS AND WIDOWS. **67 P R 1909**

3. *Reversioners of son-in-law, to whom land was gifted for benefit of daughter and her issue, have no* locus standi *to contest alienation of it.*

See CUSTOM—I. A. ALIENATION—7. LOCUS STANDI OF REVERSIONERS AND WIDOWS. **102 P R 1909**

4. *Of collaterals to contest gift made by a widow in favour of her daughter—Sayyad of Chuena, District Gurgaon.*

See CUSTOM—I. ALIENATION—B. ALIENATION BY WIDOW. (*a*) GIFTS.
58 P R 1910

5. *Of sister of last male owner to contest gift by widow.*

See CUSTOM—I. ALIENATION. B. ALIENATION BY WIDOWS. (*b*) SALES AND MORTGAGES. **60 P R 1910**

6. *Of collateral residing in another village to contest an alienation by mother and widow.*

See CUSTOM—I. ALIENATION. B. ALIENATION BY WIDOW. (*b*) SALES AND MORTGAGES. **71 P R 1910**

LOCUS STANDI OF REVERSIONER.

1. *To contest adoption.*

See CUSTOM—III APPOINTMENT OF HEIR—ADOPTION—LOCUS STANDI OF REVERSIONER AND OTHERS TO CONTEST ADOPTION.

2. *To contest alienation by a male proprietor.*

See CUSTOM—I. A. ALIENATION BY MALE PROPRIETOR—LOCUS STANDI OF REVERSIONER AND WIDOW.

3. *To contest alienation by widow.*

See CUSTOM—B. ALIENATION BY WIDOW.

4. *To contest alienation of occupancy rights.*

See CUSTOM—I. ALIENATION OF OCCUPANCY RIGHTS.

LUGGAGE.

—*Luggage in charge of passenger—Liability of Railway for the loss thereof.*

See RAILWAY ACT, 1890.
56 P R 1897

LUNACY ACT, 1858.
Section 3.

Held, that the term "relative" in section 3 of the Lunacy Act, XXXV of 1858, does not

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LUNACY ACT, 1858—*contd.*

Section 3—*concld.*

include a person who is merely a member of the alleged lunatic's tribe. Such person is therefore incapable of making an application for an inquiry into the matter of lunacy under that Act. MUHAMMAD YAR *v.* ILAHI BAKHSH. **94 P R 1906**

Section 22.

Held, that an appeal from an order passed by a District Judge under the Lunacy Act, XXXV of 1858, where the property involved exceeds Rs. 5,000 in value, lies to the Chief Court. MUHAMMAD YAR *v.* ILAHI BAKHSH. **94 P R 1906**

LUNATIC.

—*Suit by next friend of*—

See CIVIL PROCEDURE CODE, 1908, O. XXXII. R. 15. **13 P R 1896**

IDIOT.

—*Inquiry as to lunacy on application by a relative—Appeal, course of.*

See LUNACY ACT, 1858, SECTIONS 3, 22. **94 P R 1906**

—*Civil Procedure Code,* 1882, *section* 463 —*Suit on behalf of alleged lunatic not so adjudged—Appointment by Court of guardian* ad litem—*Practice—Act XXXV of* 1858.

Held, that where a person is alleged to be of unsound mind, although he has not been adjudged to be so under Act XXXV of 1858 or by any other law for the time in force, he should be allowed, after ascertaining that he is in fact of unsound mind, to sue through his next friend. The Civil Courts are competent to order an enquiry and to appoint next friends or guardians *ad litem* in the case of lunatic plaintiffs and defendants.

Nabu Khan v. *Sita* (*I. L. R. XX All.* 2), *Pran Sukhram* v. *Bhai Ladkor* (*I. L. R. XXIII Bom.* 653 , *Kadala Reddi* v. *Narisi* (*I. L. R. XXIV Mad.* 504 , *Cohen ex parte L. R.* 10 *Ch. Dn.* 183 , and *Uma Sundri Dasi* v. *Ramji Holdar* (*I. L. R. VII Calc.* 242), cited and followed.

Kanwal Ram v. *Bhawani Ram* (13 *P. R.* 1896 dissented from. *Muhammad Kalu Khan* v. *Saifulla Khan* (91 *P. R.* 1887), referred to JANBA *v.* JOGA. **31 P R 1905**

LUTHBUND.

See TENANCY ACT, SECTION 8.

M.

MAFIDAR.

1. *Land Revenue Act* (*XXXIII of* 1871), *sections* 30, 41—*Settlement of mafi plots—Respective rights of mafidar and proprietor to be settled with.*

Held by the Financial Commissioner, that section 30 of the Land Revenue Act, 1871, applies to the Settlement of estates made in ordinary course when a district is under Settlement, but does not compel the Officer in charge of the Settlement to offer the assessment he puts upon mafi plots to the recorded proprietors. The assessments of mafi plots, which under departmental rules it is the duty of the Officer in charge of a

1880

MAFIDAR—*contd.*

Settlement to make in order to determine the nominal *jama* or land revenue demand upon which local rates and cesses will be payable, are made separately for each mafi plot in a summary way, and are separate processes from the assessment of the village or estate : they are not final, and are often set aside when a mafi is resumed and revenue has actually to be paid, and such assessments should not be brought into force in supersession of existing arrangements between mafidars and cultivators of mafi plots.

Where a proprietor petitions the Settlement Officer to make the Settlement of a mafi plot with him and to determine what he is to pay to the mafidar, the Settlement Officer should, in deciding the case, be guided by the principles of the rules for the Settlement of mafi lands and other isolated portions of land made by the Local Government under section 41 of the Land Revenue Act. The intention of that section and of the rules made under it is to maintain in respect to the Settlement of mafi plots the principles which have all along prevailed in the Punjab, whereby at resumption the late mafidar or his heirs are under certain circumstances considered to have a better right to get the Settlement than the proprietors. BABA DHERA *v.* SHERA. **17 P R 1881 Rev**

2. *Suit by ex-mafidar with whom Settlement has been made to eject proprietors from land in their occupation—Right of mafidar to control cultivation merely by virtue of Settlement having been made with him—Mafidar's interest in the land during and after period of the mafi the real point for determination.*

In a suit to eject the defendants from certain land in their occupation, it appeared that the plaintiff was the representative of certain persons formerly recorded as *milki* mafidars of certain land, including the land in suit, which was recorded as "*shamilat deh*" owned by all the proprietors, including the defendants, and which was under the cultivation of the defendants. In the recent Settlement, the Settlement for the land formerly mafi of the *milki* mafidars, was made with plaintiff, and mainly on this ground the lower Court decided that plaintiff was entitled to a decree, holding that plaintiff as the person responsible to Government for the revenue was entitled to treat defendants as his tenants, and to oust them unless they could show themselves entitled to occupancy rights against their landlord.

Held, that the question for decision really was, "Had the ex-mafidar any, and if so what interest in the land, which would entitle him to eject the defendants, and did that interest continue to exist after the land was assessed, and that no inference whatever could be drawn from the circumstance that the Settlement had been made with the ex-mafidar as to his rights prior to such Settlement, nor did such Settlement confer on the ex-mafidar any new rights over the management of the land." RAMJAS *v.* SANGAN LAL. **184 P R 1883**

1881

MAFIDAR—*contd.*

3. *Settlement of resumed mafi—Right of heirs of ex-mafidar—Cancellation of tenure created in favour of such heirs.*

Held by the Financial Commissioner, that a sub-Settlement of a resumed mafi, made with the heirs of the ex mafidar, should ordinarily be taken to enure, not only for the term of Settlement, but for the lives of the persons settled with : and therefore when a district is put under Settlement, the Settlement Officer in dealing with such holdings should not ordinarily re-open the question which was decided at the resumption of the mafi, but it should be assumed that the heirs of the mafidar have the *status* of sub-proprietors, or of mukarraridars (as described in para. 134 of Barkley's Directions to Settlement Officers), and a sub-Settlement of the plot should be made with them as before. *Baba Dhera* v. *Shera* (No. 17 *P. R.* 1881, Rev.) referred to. SURJAN SINGH *v.* GOPAL SINGH. **2 P R 1884 Rev**

4. *Land Revenue Act (XXXIII of* 1871), *section* 30—*Settlement of mafi plots—Assessment—Commutation of payments in kind into cash.*

Baba Dhera v. *Shera* (No. 17 of 1881, Rev.) cited and followed by the Financial Commissioner.

A Settlement Officer is not bound to make a cash Settlement of a mafi plot between the recorded proprietors and the mafidar, nor is it just or fair to do so, where the actual cultivators are not parties to the case, and the mafidar has for two or three generations been taking his dues by "batai." *Pundit Motee Lall* v. *Uttra* (No. 7 *P. R.* 1867, Rev.) referred to. BABA TEJ NATH *v.* MUL RAJ. **1 P R 1885 Rev**

5. *Sub-Settlement—Land Revenue Act* (*XXXIII of* 1871), *Rule D-1-3, I—Cash and grain rates.*

Held by the 2nd Financial Commissioner, that a sub-Settlement cannot be given to a mafidar or to a mafidar's heir unless his previous connection with the land has been of a proprietary character (as explained in Land Revenue Act, Rule D, I, 3, I,) nor can such a sub-Settlement be given if the owner is in cultivating possession or has otherwise had full proprietary control of the land. If the claim of the mafidar or his heir to a sub-Settlement cannot be established, the owner is entitled to an assessment at the rates sanctioned under the Land Revenue Act ; and no assignee of Government revenue is, as such, entitled to levy revenue in the form of a share of the produce. In short, the right of a mafidar to exclude an owner who desires to engage for assessment of land turns on the question whether the mafidar has enjoyed the proprietary management of the land to the exclusion of the owner. The mere receipt by the mafidar of a share of the produce is not sufficient to decide this issue in favour of the mafidar, because that share has been levied merely as revenue. If, over and above the receipt of that share, a consider-

MAFIDAR—*contd.*

able portion of the privileges of an owner as defined in Land Revenue Act, Rule D, I, 3, have been enjoyed by the mafidar, his claim to be continued in those privileges should be supported. If, on the other hand, he has not had any possession of the above nature, then the persons in proprietary possession are entitled, as of right, to a cash assesssment at the rates, and on the conditions, sanctioned by Government for each district, and the claim of the owner to such an assessment cannot be resisted merely on the ground that by agreement or custom a share of the produce has hitherto been received by the mafidar. *Mullik Futteh Sher Khan* v. *Mullik SherBahadoor Khan* (No. 6 *P. R.* 1868, Rev.), *Balram Dass* v. *Gunga Ram* (No. 1 *P. R.* 1869, Rev.), *Baba Dhera* v. *Shera* (No. 17 *P. R.* 1881, Rev.), and *Baba Tej Nath* v. *Mul Raj* (No. 1 *P. R.* 1885 Rev.) cited. SAIN HASHIM ALI *v.* FATTEH HAIDAR SHAH. **10 P R 1886 Rev.**

6. *Commutation of payment in kind into payment in cash.*

In a claim by the proprietors of the village against the mafidar for commutation of the payment of their mafi dues in kind into payment in cash, it appeared that the mafidars did not own the *tarafs* to which the dispute related, and that the owners cultivated the said *tarafs*, partly themselves, and partly by tenants holding under them, and paying them half produce, the *mafidars* having nothing to do with the management of the land of the *tarafs*.

Held, by the second Financial Commissioner that under the above circumstances the mafidars could not compel the owners of the said *taraf* to continue to pay to them *batai* for the term of the new Settlement as they did under the expired Settlement. JAWAHIR SINGH *v.* TORRA. **4 P R 1887 Rev.**

7. *Death of mafidar—Resumption of mafi—Settlement made with heir or mafidar—Right of heir to retain possession against the owners*

In a reference under section 617, Civil Procedure Code, the Divisional Judge stated the point referred (with a full explanation) as follows:—"When a mafidar not being an owner of land, has during the continuance of his mafi grant a right (otherwise than as tenant) to retain possession of the mafi land against the owners and such mafidar has died and the mafi has been resumed but the settlement has been made with an heir of the mafidar, has such heir the right (otherwise than tenant) to retain possession against the owners?"

Held, that the answer to the question, whether the heir is entitled to retain possession against the (original) owners after he has been settled with, depends entirely on the terms of the original grant to him by the owners, and is unaffected by Settlement operations SANTA SINGH *v.* MUSSAMMAT BUDHWANTI

108 P R 1892

MAFIDAR—*concld.*

1. *Suit by—Jurisdiction.*

See JURISDICTION OF CIVIL COURT.

16 P R 1882
131 P R 1882
123 P R 1883
84 P R 1884
160 P R 1884
12 P R 1886 Rev.

2. *Suit by recorded mafidar of one field for produce of another field in which his right as mafidar was denied.*

Plaintiff being the recorded mafidar of field A, sued for the produce of field B, of which the plaintiff alleged and defendant denied that he was mafidar.

Held, that the decision of the question whether plaintiff was mafidar of B. was excluded from the cognizance of the Civil Court by section 4 of the Pensions Act (XXIII of 1871) and section 9 of the said Act did not apply, as plaintiff had not offered to prove that the Government now admitted his right to B. DIWAN *v.* KARM CHAND. **11 P R 1887**

3. *Suit for revenue by.*

See JURISDICTION OF CIVIL OR REVENUE COURT. **1 P R 1888**

4. *Suit including claim to mafi—Sum granted as mafi was unascertained because land never assessed to land revenue—Procedure.*

See JURISDICTION OF CIVIL OR REVENUE COURT. **25 P R 1900**

5. *Resumption of mafi—Settlement made with heir of mafidar—Rights of heir—Acquisition of occupancy rights by tenants who were some of the joint owners of the holding as against such heir.*

See OCCUPANCY RIGHTS.

3 P R 1908 Rev.

6. *Claim to occupancy rights—Ex-mafidar.*

See PUNJAB TENANCY ACT, 1868, SECTION 5. **73 P R 1887**
110 P R 1887

MAHANT.

See APPEAL, CIVIL. **56 P R 1895**
See RELIGIOUS INSTITUTION.

1. *Suit for removal of* mahant *and declaration of right to appoint a successor, and to enforce the provisions of a will.*

See COURT FEES ACT, 1870, SECTION 7 (*iv*) *c.* **58 P R 1893**

2. *Right of* sewaks *or worshippers to remove a* mahant *for alleged misconduct.*

See RELIGIOUS INSTITUTION.

122 P R 1890

3. *Nirmla* Sadhs—Mahant—*Nomination of* chela *by, as his successor—Consent of* gurbhai.

See RELIGIOUS INSTITUTION.

37 P R 1891

4. *Appointment or deposition of* mahant *—Powers of* Bhekh—*Chitta Akhara, Amritsar City.*

See RELIGIOUS INSTITUTION.

3 P R 1899

5. *Power of, to alienate immovable property belonging to a shrine.*

See RELIGIOUS INSTITUTION.

3 P R 1902

MAHANT.—*concld.*

6. *Liability of Religious Institution for debts incurred by* Mahant—*Duty of lender when advancing money to heads of Religious Institutions—Necessity*

See RELIGIOUS INSTITUTION.

45 P R 1903

7. *Right of supporters or worshippers of a Religious Institution to remove a* mahant *for immorality.*

In a suit by a person claiming as the lawful *mahant* of a *dera* for recovery of possession thereof and of the lands attached thereto where it appeared that the plaintiff enticed away a young widow from the village and had gone off with such property belonging to the *dera* as he was able to seize, and deserted the *dera* which had been entirely supported by the villagers, and in the arrangements for which they had always taken a predominant part, and had after the plaintiff's desertion installed another *mahant* in his place, and to which appointment the *bhekh* had taken no exception, either as to the rejection of plaintiff or as to the appointment of the substitute in his place.

Held, that the plaintiff's conduct being unworthy of his office, the worshippers of the *dera* were fully justified in removing and competent to remove him and to appoint his successor.

Bawa Sukhram Das v. *Barhampuri* (122 *P. R.* 1890) and *Giyan Parkash* v. *Hazura Singh* (3 *P. R.* 1899), referred to. ASA RAM *v.* HARI SINGH AND OTHERS. **53 P R 1904**

MAHAZ

—*Rule of.*

See ALLUVION AND DILUVION.

45 P R 1888

MUHOMMADAN LAW.

1. ACKNOWLEDGMENT.
2. ADOPTION.
3. ALIENATION OTHER THAN GIFT.
4. DIVORCE.
5. DOWER.
6. GIFT.
7. GUARDIAN.
8. IDDAT.
9. INHERITANCE.
10. JOINT FAMILY.
11. LEGITIMACY.
12. MARRIAGE.
13. MINORITY.
14. WAKF.
15. WIDOW.
16. WILL.
17. RULE OF MUHAMMADAN LAW WHEN SUPERSEDED.

See ADULTERY.
CONJUGAL RIGHTS.
CUSTOM—VIII. MAINTENANCE AND SUCCESSION.
" —III. APPOINTMENT OF HEIR—(o). RULE OF DECISION.
" I—ALIENATION—J. RULE OF DECISION.

1. ACKNOWLEDGMENT.

1. *Inheritance—Son of Hindu by Muhammadan—Apostacy of father.*

MUHAMMADAN LAW—*contd.*

1. ACKNOWLEDGMENT—*contd.*

G. S., a Hindu, cohabited with a Muhammadan woman by whom he had a son, the defendant. After defendant's birth, G. S. turned Muhammadan and married defendant's mother. G. S. always acknowledged defendant as his son. *Held*, that defendant was entitled to inherit G. S.'s property. GURMUKH SINGH *v.* MALLA. **12 P R 1872**

2. *Legitimacy—Presumption of marriage—Custom of Mandal family—Rights of widow—Jagir.*

Per BOULNOIS, J.—The acknowledgment of a son renders that person the legitimate son of the acknowledger under Muhammadan Law, although the person acknowledged was born out of wedlock. The acknowledgment of a son raises a presumption of marriage between the acknowledger and mother of the person acknowledged; but the presumption is one of fact only, and may be rebutted, the burden of proof lying on those who allege that there was no marriage. *Per* LINDSAY, J.—The acknowledgment of a boy as a son, coupled with continued co-habitation with the boy's mother, raises by Muhammadan Law a presumption of marriage when such marriage is not illegal and not absolutely impossible. The boy acknowledged is the son and heir of the acknowledger. The burden of proving that a custom prevails overriding the law, is on those who desire to have the case decided according to such custom. *Found*, that in the Mandal Family there was no custom contrary to the Muhammadan Law of legitimation by acknowledgment, and that in that family sons acknowledged share equally with sons born in wedlock. *Found*, that in the Mandal Family a widow was excluded by custom from inheriting any portion of her husband's estate. Where a jagir was limited to *A* and "the heirs male of his body lawfully begotten," *held*, that sons made legitimate by acknowledgment were included in the words of limitation. MUSSAMMAT LALLI BEGAM *v.* NAWAB MUHAMMAD AZMAT ALI KHAN. **13 P R 1875**

3. *Presumption of marriage.*

Plaintiff, alleging herself to be the lawful widow of Hyder Ali, deceased, sued for her share in his property. In a former suit her son, Azim Ali, was declared the legitimate son by acknowledgment of Hyder Ali deceased. The court of first instance held that the acknowledgment by Hyder Ali of Azim Ali as his son, raised a legal presumption of the plaintiff having been married to Hyder Ali, rebuttable only on the ground of legal impossibility, which impossibility was not shown to exist. It accordingly held plaintiff to have been the lawful wife of Hyder Ali, and gave plaintiff a decree.

The additional Commissioner on appeal disagreed with the first Court, holding the presumption to be only one of fact, and not of law, and went into independent evidence on the point as to whether plaintiff was or was not acknowledged as wife by Hyder Ali. Finding plaintiff had been so acknowledged, the Additional Commissioner maintained the first Court's decree.

MUHAMMADAN LAW—*contd.*

1. ACKNOWLEDGMENT—*concld.*

Held, that by Muhammadan Law, the acknowledgment by Hyder Ali of Azim Ali as his son, entitled plaintiff, the mother of Azim Ali, to claim the status of a wife. MUSSAMMAT JANI BEGAM *v.* MUSSAMMAT MUNNI. **71 P R 1877**

4. *Acknowledgment of son—Legitimation—Legal obstacle to marriage.*

D., an undivorced woman, left her husband K., who was still living, and went and lived continuously with one J. by whom she had three children.

Held, assuming there was a marriage between J. and D. that D. being undivorced the marriage could not legally have taken place and that, therefore, the offspring of the connection, even if the paternity was acknowledged by J., was incapable of being legitimated according to Muhammadan Law. *Mussammat Lali Begam* v. *Nawab Mahomed Azmat Ali Khan* (No. 13 *P. R.* 1875), distinguished. MUSSAMMAT DHAMMI *v.* MEHTAB KHAN. **71 P R 1878**

5. *Muhammadan Law—Acknowledgment—Child born more than 280 days after the dissolution of his mother's marriage, but less than 6 months after second marriage—Legitimacy of—Indian Evidence Act, I of 1872, section 112.*

One Mussammat R. was divorced by her first husband on the 1st October 1895. She married G. N. on the 4th February 1896 and bore a child on the 17th July 1896, the child was thus born more than 280 days after the dissolution of his mother's marriage with her first husband but less than 6 months after her marriage with G. N. The plaintiff contended that under Muhammadan Law no acknowledgment of paternity by G. N. could legitimise the child, and it was found that the *iddat* of repudiation had terminated before the marriage with G. N. although the child must have been procreated before the termination of that *iddat* G. N. acknowledged the child and treated it as his own.

Held, that the marriage of Mussammat R, with G. N. though irregular, was not void, that when the child was born a marriage between his mother and G. N. subsisted; that section 112 of the Indian Evidence Act, 1872, was applicable to the case and the child was entitled to inherit to G. N. as his legitimate son. NUR-UL-HASAN *v.* MUHAMMAD HASAN. **78 P R 1910**

2. ADOPTION.

See CUSTOM III.—APPOINTMENT OF HEIR

An adopted son under Muhammadan Law, has only such rights as the adoptive father may expressly confer on him. ELHYA *v.* KANHA. **12 P R 1871**

3. ALIENATION (OTHER THAN GIFT)

See CUSTOM I.—ALIENATION.

1 In matters of alienation the Koreshis of *mauza* Kareli, Pind Dadan Khan *tahsil* in the Jhelum District, notwithstanding the fact that they were notified as an agricultural tribe for the purposes of the Punjab Alienation of Land Act, 1900, were found to be governed by the principles of their personal law. JOWAHIR SINGH *v.* YAQUB SHAH. **5 P R 1906**

MUHAMMADAN LAW—*contd.*

3. ALIENATION (OTHER THAN GIFT)—*concld.*

But the Sayads of *mauza* Khanpur in the Hoshiarpur District who were not so notified under section 4 of that Act were held to be governed by the general custom prevailing amongst agricutural tribes of the Province. FAQIR MUHAMMAD *v.* FAZAL MUHAMMAD. **16 P R 1906**

2. Lohars of Kotli Loharan, Sialkot District, who are generally a manufacturing class, were held in matters of Alienation to be governed by Muhammaadan Law. UMAR DIN *v.* JANTO. **101 P R 1906**

4. DIVORCE.

See CUSTOM IV.—BETROTHAL—DOWER—MARRIAGE—DIVORCE.
CONTRACT ACT, SECTION 23.
DISSOLUTION OF MARRIAGE.
DIVORCE.

1. *Divorce—Act XXI of* 1850.

By Muhamamdan Law, apostacy from Islam by one of a married pair, cancels the marriage *ipso facto* without a judicial decree. Penitence or returning to the faith does not restore the marriage tie: nothing short of a re-marriage can effect that. Reviling or speaking blasphemously of the prophet Muhammad is an act of apostacy, Act XXI of 1850 has not altered or affected the Muhammadan Law in respect of cancellation of marriage by apostacy (LINDSAY J. dissenting as to this) NOWROZ ALI *v.* MUSSAMMAT AZIZ BIBI. **124 P R 1876**

2. *Conversion to Christianity—Apostacy from Islam—Dissolution of marriage.*

Held, that according to Muhammadan Law when one of the parties to a Muhammadan marriage adopts *bonâ fide* the Christian religion that party renounces. Islam, and such renunciation *ipso facto* terminates the relation of husband and wife. *Nowroz Ali* v. *Mussammat Aziz Bibi* (No. 124 *P. R* 1876, F. B.) referred to. MUSSAMMAT KHAN BIBI *v.* PIR SHAH. **132 P R 1884**

3. *Custody of wife—Agreement to divorce—Khula—Agreement opposed to public policy.*

A., a Muhammadan husband, took unto himself a second wife C. whereupon his first wife, B., left him. A. followed her and in order to induce her to return to him executed an agreement by which he agreed to divorce C. in four months, and promised that in default he should have no claim on B., who might then marry any one she liked. B. on her part executed a deed agreeing to renounce all claim to her dower in case A. did not divorce C. On the expiration of four months, A did not divorce C. B. continued to live in the same house with A. for some time, after which she left. A. then sued for custody of B. B. pleaded that she had been irrevocably divorced by Khula.

MUHAMMADAN LAW—*contd.*

4. DIVORCE—*concld.*

Held, that there had been no "Khula." Neither party wished for a divorce *absolute.* B. only wished for one in case A. did not divorce C. within four months. There was only an agreement to divorce, no actual repudiation, but a suspension of repudiation on acceptance by B. which acceptance had to be notified by her on the termination of four months. As B did not signify her acceptance at the proper time, there was no divorce.

Held, also, that the agreement was void, its object and consideration being unlawful and opposed to public policy. MUHAMMAD BAKHSH *v.* MUSSAMMAT SAHIB JAN. **193 P R 1889**

4. *Muhammadan Law—Husband and wife—Divorce—Apostacy.*

The parties were husband and wife and subject to Muhammadan Law. The husband in a fit of anger uttered disrespectful language regarding the law and the prophet, but there was nothing toshow that he intended thereby it was to be understood that he had no belief in Muhammad with respect to all that came down to him from Almighty God, or that there was any intention on his part to apostatise.

Held, that the marriage between the parties was not dissolved.

No. 124 *P. R.* 1876, and *I. L. R. II All.* 71, referred to. MUSSAMMAT NANI JAN *v.* HUSSAIN BAKHSH. **106 P R 1891**

5. *Dissolution of marriage by reason of wife's apostacy.*

Held, that under Muhammadan Law, the deliberate repudiation of the Muhammadan religion by one of the parties to a marriage effects a dissolution of such marriage. ALLAH BAKHSH *v.* MUSSAMMAT AMIR BEGAM.

61 P R 1899

6. *Muhammadan Law—Marriage—Wife's conversion to Christianity—Dissolution of marriage.*

Held, that according to Muhammadan Law, a wife's conversion from Islam to Christianity effects a complete dissolution of her existing marriage with her Muhammadan husband.

Mussammat Khan Bibi v. *Pir Shah* (134 *P. R.* 1884), *Allah Bakhsh* v. *Mussammat Amir Begam* (61 *P. R.* 1899), *Zuburdast Khan In re* (2 *N.-W. P.* 370), and *Nowroz Ali* v. *Mussammat Aziz Bibi* (124 *P. R.* 1876, *F. B.* cited and followed. IMAM DIN *v.* HASAN BIBI.

85 P R 1906

7. *Husband and wife—Divorce—Remarriage of divorced couple—Illegality of such marriage.*

Held, that among Muhammadans of the Hanafi sect a husband cannot contract a valid marriage with his divorced wife, unless and until the latter has been married to another man and separated from him either by death or divorce. BARKAT BIBI *v.* JALAL DIN.

97 P R 1903

MUHAMMADAN LAW—*contd.*

5.—DOWER.

See DOWER,
See CUSTODY OF WIFE.

1. By Muhammadan Law, a husband cannot maintain a suit for restitution of conjugal rights until he pays the prompt dower fixed at the time of marriage. MUSSAMMAT ZEBO *v.* JEWAN KHAN. **35 P R 1873**

2. *Charge on estate—Heir's power of alienation—Liability for debts of deceased.*

In a suit by a Muhammadan widow to obtain a declaration of her lien for dower on a house, the property of the deceased husband, mortgaged by the sons of the deceased to the defendants and attached by them in execution of a decree for the mortgage debt, it not being shown that the house was held by the plaintiff on account of her dower, *held*, that the widow's claim to dower could not be regarded as constituting a lien upon the property or upon any particular portion of it, though if the husband's estate was divided through the agency of the Courts, it would be necessary to provide for dower and other debts before setting apart the the shares of the several heirs.

Held, further, that it is not correct to say that no right by inheritance accrued till all the deceased's debts were paid, as the heirs took the estate subject to the liability for all debts payable out of it, and the dower in the present case, not being a charge, but merely a debt payable out of the deceased's estate, was no obstacle to a mortgage or other alienation of part of the estate. MUSSAMMAT MAKHT BIBI *v.* GULAM MUHAMMAD. **96 P R 1880**

3. *Custom—Muajjal and Muwajjal.*

Plaintiff sued her husband, the defendant, for Rs. 100 as prompt dower, producing a deed of settlement in which a dower of Rs. 300 was recorded, out of which plaintiff made defendant a present of Rs. 100. One of defendant's pleas was that the Rs. 200 was only due to plaintiff if he divorced her, *i. e.*, that the whole sum was deferred dower. No custom was proved under which the whole of the dower in such cases would be regarded as deferred when no part of it had been expressly made prompt.

Held, with reference to the above plea, reversing the orders of the lower Courts, that plaintiff was entitled to recover ⅓rd of Rs. 200, as prompt dower.

Case remanded to dispose of defendant's plea of payment. MUSSAMMAT KARIM BIBI *v.* VILAYAT ALI SHAH. **109 P R 1880**

4. *Reduction of amount fixed—Custom—Intention of parties to contract—"Proper dower."*

In a suit by a Muhammadan lady for Rs. 50,000 as dower, *held*, that the Court has no jurisdiction to reduce the amount of dower fixed to what it considers a reasonable amount, except on proof of custom allowing such reduction, or unless it finds that the amount fixed was merely nominal,

MUHAMMADAN LAW—*contd.*

5. DOWER—*concld.*

and that neither of the parties intended that *Kabin-ama* should be acted upon. In the latter case the woman would be entitled to her "proper dower" to be determined according to the principles laid down by the Muhammadan Law. MUSSAMMAT SAHIBZADI BEGAM *v.* MUSSAMMAT SAID-UL-NISSA BEGAM. **123 P R 1880**

5. *Reduction of dower—Reasonable amount.*

In a suit for dower plaintiff claimed Rs. 4,000 from the heirs of her deceased husband out of a fixed dower of Rs. 7,000. The lower appellate Court gave plaintiff a decree for Rs. 3,045 and costs, out of which. Rs. 1,045 was allowed on account of the penalty plaintiff had to pay as the deed of dower was unstamped considering that a net sum of Rs. 2,000 was a reasonable amount for plaintiff to recover.

Held, by the Chief Court on defendants' appeal, that this amount was not unreasonable or improper under the circumstances of the case. MUHAMMAD WAZIR BEG *v.* MUSSAMMAT FATIMA BEGUM. **7 P R 1881**

6. *Capacity of minor to contract to pay dower.*

Quære, whether a Muhammadan minor can validly contract to pay dower. KHUDA BAKSH *v.* MUSSAMMAT ABADI. **155 P R 1884**

6. GIFT.

See CUSTOM I.—ALIENATION.

1. *Death-bed gift*—Hiba-bil-iwaz.
See CONTRACT ACT, SECTION 25.
61 P R 1893
LIMITATION ACT, 1877, ARTICLE 91.
52 P R 1895
DEATH-BED GIFT. **15 P R 1895**

2. *Gift of undivided share of joint holding*—Mushaa—*Gift with condition attached—Voidability of gift.*

See CUSTOM I. ALIENATION B.—ALIENATION BY WIDOW (*a*) GIFTS.
91 P R 1894

3 A Muhammadan can in his lifetime give away the whole of his property if there be no custom to the contrary. HAJEE *v.* GHAZEE (No. 102 *P. R.* 1866), ; *and* KURM *v.* JOOMA. **16 P R 1867 Rev.**

4. A gift to a lunatic is, by Muhammadan law, valid. Delivery to a son or lunatic niece, is not necessary to complete a gift.—MIRZA MAHOMED BEG *v.* MUSSAMMAT HOOSAINEE KHANUM. **74 P R 1867**

5. *Possession.*

By Muhammadan Law, possession is generally necessary to complete a gift. B, a short time before his death, executed and registered a deed of gift of his land to F, and assembling the tenants, declared F, proprietor in place of himself. After B's death his son A, disputed the validity of the gift. *Held*, that as the donor remained in possession and managed the estate and acted as proprietor up to the date of his death, the gift failed, not having been followed by possession. FUTTEH KHAN *v.* ALLAYAR KHAN. **107 P R 1868**

MUHAMMADAN LAW—*contd.*

6. GIFT—*contd.*

6. By Muhammadan Law, a gift made *inter vivos* by a father to his married daughter, followed by possession, is valid, provided it be not made in a death-disease. A death-disease is not necessarily a disease of which a man dies, but a disease which is generally looked upon as fatal, or from which he is in daily expectation of death. MEERAN BUKSH *v.* PEEROO. **29 P R 1868**

7. A Shiah wife, living separately from her husband and supporting herself, is at liberty during her lifetime to gift away the whole of her property. MUSSAMMAT MEHROOL-NISSA *v.* WAZEER ALI. **75 P R 1868**

8. Property in the possession of a mortgagee cannot, under Muhammadan Law, be made the subject of a gift to any one but the mortgagee, as actual possession is essential to the validity of a gift. But where the heirs of the donor acknowledged a gift of a share in mortgaged property by allowing the donee to join with them in suing for redemption, *held*, that the donee was entitled to the share which the donor intended to pass under the gift. NUJEEB ALI *v.* HYDER ALI. **61 P R 1871**

9. *Death-bed gift and legacy—Consent of some of the heirs—Revocation.*

A death-bed gift or a legacy, under Muhammamdan Law, does not require the consent of all the heirs : if some consent and the rest dissent, the gift or legacy is valid *quoad* the shares of the former. Such consent cannot be revoked, if given after the donor's or testator's death. FUZL AHMED *v.* ROSHUN DIN. **37 P R 1872**

10 "*Mooshâ.*"

Mussammat M and another were possessed of a house and piece of land which they held in undivided shares. Mussammat M. gave her half share to defendant. Plaintiffs her heirs, after death sued to set aside the gift. The parties were Muhammadans. *Held*, that if the house and land admitted of partition consistently with the preservation of all the uses which might be made of it before partition, the gift was invalid. MUHAMMAD KHAN *v.* MUHAMMAD IBRAHIM. **53 P R 1873**

11 In 1860, H. a Muhammadan, who had then five sons, of whom plaintiff was the eldest and the defendant the fifth, executed a deed purporting to give a small portion of his property to each of his four elder sons and the remainder to the defendant. The plaintiff and his father were on bad terms at the time ; the defendant was a minor The property wa not divided off according to the terms of the deed, and H. remained in possession till his death in 1873, the defendant acting as his manager. H. left eight sons in 1873. *Held*, that though under certain circumstances the non-delivery of possession to a donee does not invalidate a gift under the Muhammdan Law, yet in the present case the circumstances generally showed an incomplete gift a deed executed rather by way of a threat to one of the executant's sons than as an instrument intended to pass property by way of a gift. NIZAM-UD-DIN *v.* MAHOMED NUR. **76 P R 1875**

12. *Delivery of possession—Minor—* Mushaa.

One H., a childless Muhammadan Jat proprietor, took the defendant, his daughter's son and a minor, to live with him, and executed a deed of gift of his land in the boy's favour, which was followed by mutation of names in the donor's lifetime. In a suit brought by the nephews of H. after H.'s death, to eject the defendant, the lower Courts held the gift to the defendant invalid, (1) because it was not followed by the exclusive possession of the donee, and (2) because it was of a portion of a joint holding, and therefore the Muhammadan law of *mushaa* applied.

Held, by the Chief Court (1) that the gift was not incomplete because exclusive possession was not given to the donee, and, further, that the possession of the donor on behalf of the minor donee was under the Muhammadan law equivalent to the possession of the donee.

Held (2), that as the donor's share in the estate was definite and capable of being dealt with as separate property, a gift of that share was not a gift of an undivided part of a thing and therefore was not subject to the Muhammadan law relating to *mushaa*, even if the application of that law to the holdings of agriculturists was not excluded by village custom.

Held further, that even if the gift were invalid under the *mushaa* rule, the defect was cured in the present case by the donor having done all that was possible to render his own possession that of the minor donee. *Mirza Mahomed Beg* v. *Mussammat Hoosainee Khanum* (No. 74 *P. R.* 1867), cited. HYAT MUHAMMAD *v.* DINA. **19 P R 1881**

13. *Death-bed gift, validity of—Custom —Mode of enjoyment by widow of her husband's property among Moghals—Widow's right to separate possession.*

A gift found to have been made on his death-bed by a Muhammadan proprietor of all his property to his nephew to the exclusion of the widow, *held* to be valid to the extent of ⅓rd of the property only under the rule of Muhammadan law, no custom having been established rendering the gift thus made operative to the full extent of the donor's property.

Held further, there being no special custom established among the parties (Moghals of the Rawalpindi district) as to the mode of enjoyment by the widow of her husband's property, that she was entitled in the present case to a declaration of her right to the estate jointly with the nephew, their respective shares being ⅔rds and ⅓rd, and the widow being entitled to separate possession of ⅔rds of the estate for her life, the specific lands to be enjoyed by her being ascertained as usual by the Revenue authorities. *Nupa Singh* v. *Mussammat Sobrai* (No. 116 *P. R.* 1879), and *Mussammat Hussan Bibi* v. *Fatteh Mahomed* (No. 156 *P. R* 1879), cited. MUSSAMMAT BAKHT BEGUM *v.* FAJA KHAN. **104 P R 1881**

14. *Gift made to two donees, without defining their shares—Possession—Validity of gift.*

According to Muhammadan law, though there is a difference of opinion between the Doctors as to the validity of a gift to two persons or more of property that admits of partition such a gift is not void, and possession cures the defect arising from the shares of the donees not being defined. TARA *v.* JODHA. **57 P R 1882**

15. *Gift to minor by father or guardian—Possession—Intention.*

Where the validity of a gift under Muhammadan law is impugned, and it appears that the donees were at the time of the gift minors, and that the donor was their father and guardian, the point which has to be considered is whether there was on the part of the father and guardian a real and *bonâ fide* intention to make a gift, for if that is made out the law will be satisfied without change of possession, and will presume the subsequent holding of the property to be on behalf of the minors. GULAM MUHAMMAD *v.* MUHAMMAD AMIN. **86 P R 1882**

16. *Gift in lieu of dower*—Hibah-bil-iwaz—*Validity of gift—Possession*—Mushaa

Where it appeared that a Muhammadan husband shortly before his death made a gift of certain land to his wife in lieu of the dower fixed at the time of her marriage with him, *held* that the gift being of the kind known as *hibah-bil-iwaz*, and gifts of that kind being really of the nature of sales the validity of such gift was not affected by the fact that the donee did not take immediate possession under the gift, or by the fact that the gift apeared to have been of an undivided share in property which was capable of division. NAWAB MUHAMMAD ALI KHAN *v* WAZIR KHAN. **87 P R 1882**

17. *Gift to donee with reversion to donee's son—Gift with condition—Gift valid though condition void—Possession.*

Where a deed of gift purported to give certain property to F. K. for his life and on his death to his son H. K. *held*, that the above limitation of the gift was, in the sense in which the word is used in the Muhammadan law, a condition, which must therefore fail, though it did not affect the validity of the gift.

It is not merely reservations in favour of the donor which are treated by the Muhammadan law as void conditions : reservations in favour of a third party, or anything which restricts the right of the donee over

6. GIFT—*contd.*

the property given, though the donor has absolutely parted with the dominion over it, are equally regarded as void conditions.

Held, further, that the gift of the reversionary interest to H. K. on F. K.'s death could convey no rights in the property to H. K., as such a gift could not be completed by delivery of possession to the donee. MUHAMMAD AKBAR KHAN *v.* HUSAIN KHAN. **120 P R 1882**

18. *Gift*—Hiba-bil-iwaz—*Gift made in consideration of services rendered—Revocation by decree of* Kazi—*Function and powers of Judge.*

A. executed a deed of gift of land in favour of B. in consideration of past services. The donee was already in possession as a cultivator. Two years after the gift the donor sued to cancel it and to recover possession. The donee pleaded that the gift was in the nature of a *hiba-bil-iwaz*, made in consideration for, and in exchange of, services rendered and was therefore irrevocable.

Held, following *I. L. R. XI Allahabad*, 1, that *Hiba-bil-iwaz* did not include the case of a gift in consideration of services rendered.

Held, further, that on a proper construction of the rule of Muhammadan Law which required the decree of a Judge to validate a revocation of gift by the donee, the Judge in exercising his functions was not a mere mandatory of the donor simply to register his fiat, but was empowered to adjudicate on the right of revocation according to the merits of each case.

Held, also, that considering the equities of this case the revocation of the gift by the defendant could not be permitted. SAMAND KHAN *v.* MUNAWAR KHAN. **188 P R 1889**

19. *Gift—Muhammadan Law—Gift of undivided share of joint holding*—Mushaa—*Gift with condition attached—Voidability of gift—Consideration—Custom.*

Plaintiff, a widow in possession of her deceased husband's estate which consisted of a seven sixty-fourth share of certain land, admitted in her plaint that, in December 1889, she made a gift of a one-eighth share of the property to the defendant on condition that the defendant would thereafter render her service, but sued for possession of the gifted share and also to have the said gift declared null and void, on the grounds (1) that there had been no division of the joint holding when the gift was made, and (2) that the gift was conditional on the rendering of service by the defendant and was therefore revocable. The defendant replied that the gift being for consideration—*viz.*, the marriage of defendant with plaintiff's daughter, and the rendering of service both in the past and for the future,—and being followed by possession could not be cancelled. The defendant, therefore, pleaded that the gift was not conditional, and was not void

6. GIFT—*contd.*

either by Muhammadan Law or by custom and could not be set aside. The first Court finding that the gift was a *hiba-ba-shart-i-iwaz* and revocable; that it did not even include the whole of the donor's share in an undivided holding and was, therefore, bad in accordance with the principle of *mushaa*; that its invalidity could not be cured by delivery of possession, and finally, that it was a conditional gift, void *ab initio* and revocable at pleasure, decreed plaintiff's claim. On appeal by the defendant and after a remand for the purpose of ascertaining whether the donee had obtained possession the Divisional Judge reversed the decision of the first Court on the grounds that the principle of *mushaa* was not applicable to the case; that it was possible to make a gift of an undivided share of a joint holding, and that the gift was not revocable. The plaintiff appealed to the Chief Court, and the appeal was argued on her behalf, in accordance with Muhammadan Law.

Held, in accordance with the ruling of the Privy Council in *I. L. R. XI All.*, 460, that inasmuch as the doctrine of Muhammadan Law as to the invalidity of gifts of *mushaa* has no application when possession of an undivided share has been obtained by the donee, the present gift, having been followed by possession, was good and valid, and could not be cancelled on the ground of invalidity.

Held, further, that the gift in question being for consideration—*viz.*, for services rendered and to be rendered—could not in accordance with the doctrines of the *Hanafi* School of Muhammadan Law, be revoked except upon an adjudication by a Judge or *Kazi* upon the merits of the case.

It appeared, however, to the Court, that the law applicable to the case was more probably agricultural custom than Muhammadan law, but that there was nothing to show that a gift once completed and delivered was defeasible at the discretion of the donor.

I. L. R., XI All., 1, and No. 188 *P. R.*, 1889, cited. MUSSAMMAT MURAD KHATUN *v.* AHMAD ALI. **91 P R 1894**

20. *Gift by sonless proprietor to daughter's son—Gift not completed by possession—Muhammadan Awans of* mauza *Pachnand, Talagang* tahsil, *Jhelum District—Gift made in contemplation of death—Muhammadan Law.*

One S., a sonless Muhammadan Awan of *mauza* Pachnand in the Talagang *tahsil* of the Jhelum District, executed and registered on the 19th December 1891 a deed of gift of the whole of his ancestral property in favour of his daughter's minor son. The deed was executed at a time when the donor was seriously ill, and was not followed by possession during his lifetime, he dying ten days after its execution. Plaintiffs, who were the donor's nephews, sued for a declaration that the said deed of gift should not affect their

6. GIFT—*contd.*

reversionary rights after the death of the donor's widow.

Held, that it being an essential element to the validity of the gift, both according to the *Riwaj-i-am* and the decided cases, that it should be completed by a delivery of possession during the donor's lifetime, the validity of the gift in the present case was rightly impeached upon the ground that no possession followed during the lifetime of S.

Held, further, that even if viewed as a will (which it did not purport to be) the deed was equally inoperative, even to the extent of one-third of the property, as it was obviously made in contemplation of death within the meaning of the Muhammadan Law relating to death-bed dispositions, by which, according to the *Riwaj-i-am*, the parties were to be governed as regards wills.

Nos. 59 *P. R.* 1881, 53 *P. R.*, 1884, 93 *P. R.*, 1885, 132 *P. R.*, 1890, 7 and 108 *P. R.*, 1891, 22 *P. R.*, 1892, 107 and 108 *P. R.*, 1893, and 81 *P. R.*, 1894 referred to. FATTA *v.* BAKHRA. **15 P R 1895**

21. *Muhammadan Law—Gift made in contemplation of death—Death illness.*

Held, that a gift made by a sick person aged eighty-three days before his death must be regarded as made in contemplation of death within the meaning of Muhammadan Law relating to death-bed dispositions and is therefore inoperative as such. AHMED BAKHSH *v.* HUSSAIN BIBI. **135 P R 1907**

22. *Mortgage by conditional sale—Gift of equity of redemption prior to the expiry of mortgage term—Validity of such gift under Muhammadan Law—Notice of foreclosure to original mortgagor—Necessity of notice to donee.*

The plaintiffs instituted the present suit against the defendant for possession of certain land as absolute owners, alleging that the land was mortgaged by the father of defendants with condition of foreclosure if the entire land or a part thereof was not redeemed within six years. The land was not redeemed and the plaintiffs on 7th December 1898 served defendant's father with a notice of foreclosure. The year of grace expired on 16th December 1899, and plaintiffs became absolute owners. The defence was that the original mortgagor on whom the notice was served had no right of ownership at the time, as the land in dispute was gifted by him to defendants on 30th January 1897 by a registered deed of gift which was witnessed by J. S., one of the mortgagees, and therefore the proceedings in connection with the notice of foreclosure were ineffective and void, as it should have been issued to the donees. In reply plaintiffs contested the gift alleging that the gift was not completed by delivery of possession. Both Courts below found in favour of defendants and dismissed the suit. On appeal the Chief Court—

6. GIFT—contd.

Held, dissenting from *Muhi-ud din* v. *Manohar Shah*, (1882) I. L. R. 6 Bom. 650 and *Ismail* v. *Ramji*, 1889) I. L. R. 23 Bom. 682, that under Muhammadan Law a gift by a mortgagor of immovable property of the equity of redemption was valid, placed the donee in the shoes of the donor and necessitated notice to the donee of foreclosure although the donor was still alive. HARNAM SINGH *v.* SAJAWAL. **26 P R 1910**

7. GUARDIAN.

See MINOR.
CUSTOM I.—ALIENATION.
WITHDRAWAL OF SUIT.
3 P R 1905

Under Muhammaden Law the father of a girl who has not attained the age of puberty is not her lawful guardian in the presence of her maternal grandmother, and is not entitled to appoint a guardian by his will in supersession of the grandmother.

See GUARDIAN AND WARDS ACT, 1890.
48 P R 1910

8. IDDAT.

—*Marriage contracted before expiry of period of* iddat—*Legality of such marriage.*
See BIGAMY. **43 P R 1882 Cr.**

1. *Iddat.*

Where a Muhammadan woman was divorced, and remarried without observing an *iddat*, the Court declared her second marriage null and void, and consequently dismissed a suit instituted by her second husband for restitution of conjugal rights. MUSSAMMAT SHURF BIBI *v.* BAHADUR. **31 P R 1871**

2. *Period of* "iddat."

The ordinary period of *iddat* for a widow under the Muhammadan Law applicable to Sunis is four months and ten days ; the ordinary period for a divorced wife who is under obligation to observe *iddat* being three lunar months. NATHU *v.* MUSSAMMAT BIBO. **38 P R 1887**

3. *Marriage of widow during her* iddat—*Legality of such marriage.*

Held, that a marriage contracted by a widow before the expiry of the period of her *iddat* is unlawful and void, and the mere fact that prior to the expiry of her *iddat* she has been delivered of the child, with which she was pregnant at the date of her late husband's death, cannot validate a marriage illegally solemnised before that period had elapsed. ILAHIA *v.* IMAM DIN. **29 P R 1909**

9. INHERITANCE.

See CUSTOM VIII.—MAINTENANCE AND SUCCESSION.

1. *Kanchans of Delhi—Brothers and sisters.*

See CUSTOM VIII.—INHERITANCE—PROSTITUTES. **166 P R 1883**
52 P R 1893 P. C.

2. *Married and unmarried daughters—Kanjars of Lahore.*

See CUSTOM VIII.—MAINTENANCE AND SUCCESSION V.—SUCCESSION AMONG PROSTITUTES. **148 P R 1889**

3. *Prostitutes of Lahore.*

See CUSTOM VIII.—MAINTENANCE AND

9. INHERITANCE—contd.

SUCCESSION V.—SUCCESSION AMONG PROSTITUTES. **62 P R 1892**

4. *Succession to unpaid dower of a deceased female.*

See CUSTOM VIII.—MAINTENANCE AND SUCCESSION. **43 P R 1908**

5. *Custom governing particular cases.*

See CUSTOM VIII.—MAINTENANCE AND SUCCESSION. **45 P R 1908**

47 P R 1908

6. In a suit between Muhammadans, *A.* died leaving a son *B.*, a widow *C.*, a brother *D.*, and *E.*, the son of a deceased brother. His estate was distributable thus :—seven-eighths to *B*, and one-eighth to *C.* Subsequently *B*, died an infant: whereon one-third of his share passed to *C*, and two-thirds to *D.* Thus of *A's* original estate *C.*, took five-twelfths and *D.*, seven-twelfths ; *E.*, was excluded, there being no right of representation. SHAHAMUD *v.* MUSSAMMAT DOWLUT. **105 P R 1866**

7. *Held*, that Muhammadan daughters succeed in the absence of near male heirs. WUZEERA *v.* HAKOO. **31 P R 1867**

8. With regard to Muhammadans, it was *held*, that unless there was a well-established custom to the contrary, the estate of a person deceased devolved on a full uterine brother in preference to a half-brother by the same father ; nor could the half-brother take any share in the presence of the former. KUMALA *v.* JUMALA. **63 P R 1867**

9. *Muhammadan's right to his wife's estate.*

In a suit by a Shiah to inherit a share of the estate of his deceased wife (who had been on bad terms with him, and had lived separately and supported herself for many years before her death)—*held*, that both according to Shiah law and to usage, (1) the husband was entitled to inherit half the estate left by his wife ; and (2) the wife was at liberty during her life-time to alienate the whole of her property. MUSSAMMAT MEHROOLNISSA *v.* WAZEER ALI. **75 P R 1868**

10. *Children—Punjab Civil Code.*

Held, that the Punjab Civil Code, section IV, paragraph 9, which excluded brothers and sisters when there were children, did not differ from the Muhammadan Law ; and that "children" meant male descendants only. MUSSAMMAT HAFIZAN *v.* MUSSAMMAT MENDHOO. **7 P R 1869**

11. G. S., a Hindu, cohabited with a Muhammadan woman, by whom he had a son (the defendant). After defendant's birth, G. S. turned Muhammadan and married defendant's mother. G. S. always acknowledged defendant as his son. *Held*, that defendant was entitled to inherit G. S.'s property. GURMUKH SINGH *v.* MALLA. **12 P R 1872**

12. *Distant kindred—Propinquity to ancestor.*

By Muhammadan Law, the succession of distant kindred (among whom the parties ranked) is regulated by nearness of degree. Where

9. INHERITANCE—contd.

plaintiff, son of a father's sister, and defendants, grandsons of a father's other sister, claimed the land of S., deceased, plaintiff being one step nearer S. than the defendants, *held*, that plaintiff was entitled to succeed S. to the exclusion of the defendants FATEH *v.* AZIMA. **80 P R 1874**

13. *Sister's son—Collaterals.*

Held, that, by Muhammadan Law, collaterals descended in the male line from a male ancestor common to them and the deceased are entitled to succeed to the property of the said deceased in preference to a sister's son. GHULAM *v.* UMRA **18 P R 1881**

14. *Survivorship.*

In a suit for pre-emption of certain property purchased by one M. S. and his brother jointly, it was contended *inter alia* that on the brother's death his right in the property passed to M. S. by survivorship, to the exclusion of the widow of the deceased.

Held, that the parties being Muhammadans and governed by Muhammadan Law, and there being no provision of Muhammadan Law under which M. S. would take by survivorship the share of his deceased brother in the land which they had purchased jointly, the widow was entitled to succeed as heir to one-fourth of that share KHAN MUHAMMAD SHAH *v.* MUHAMMAD JAN. **104 P R 1882**

15. *Residuaries and distant kindred.*

The plaintiff claimed redemption of a house mortgaged to the defendant by her half brother, Muhamdi. The Courts gave her a decree, holding that, according to Muhammadan Law she was heir to the greater part of the property. Muhamdi (the mortgagor) his son Ghasita, and his son's daughter Mussammat Jhundo having died since the mortgage, it was contended by the defendant that the plaintiff was not the heir either to Ghasita, or Mussammat Jhundo.

Held, the question being as to the succession to Ghasita and Mussammat Jhundo, that as on the death of Ghasita his widow and daughter became entitled to their legal shares, the residue going to the nearest residuaries and similarly, on Mussummat Jhundo's death, her mother was entitled to her legal share, and the residue fell to the residuaries and as the plaintiff who was paternal aunt of Ghasita, was merely one of the distant kindred, and therefore not one of the heirs, she was not entitled to redeem. JOWAYA *v.* MUSSAMMAT RAHMAN BIBI. **87 P R 1885**

16. *Exclusion of unchaste wife from inheritance in absence of divorce or proved custom.*

By Muhammadan Law the wife is one of those heirs who are not liable to exclusion under any circumstances ; the facility of divorce which is permitted by that law gives the husband a complete remedy against an unfaithful wife which a Hindu does not possess : but if the husband chooses not to avail himself of that power, the marriage relationship continues, and the wife cannot be de-

MAHAMMADAN LAW—*contd.*

9. INHERITANCE—*contd.*

prived after her husband's death (in the absence of a proved custom of exclusion) of the share which the law allows her by right of inheritance *Karam Dad* v. *Mussummat Begam (No.* 118 *P. R.* 1884), referred to. MUHAMMAD BAKHSH *v.* HAYAT KHAN.

37 P R 1888

17. *Gilani Syads of Mooltan—Succession of daughters—Muhammadan Law—Limitation Act (XV of* 1877), *Schedule II, articles* 127, 144—*Joint family—Adverse possessisn—Minority.*

Found that among the Gilani Syads of Mooltan there is no definite customary rule regarding the succession of daughters modifying the Muhammadan Law, and that therefore in cases of dispute the said Muhammadan Law must be followed. *Mussammat Sardar Bibi* v. *Sayad Ali Shah* (No. 4 *P. R.* 1888) cited.

But *held* on the facts of the present case in which two daughters were claiming their shares under Muhammadan Law, that there being no joint family proved to exist and each sharer therefore being entitled to claim on the death of the owner whose estate was in dispute, and whose death occurred more than 12 years prior to suit, limitation ran against each plaintiff from the date of such owner's death, and though the youngest daughter having claimed within 3 years of attaining her majority was entitled to her whole share, the other plaintiff was barred by 12 years' adverse possession save as to her share in a small portion of the estate, the claim to which was within time. NASIR-UD-DIN SHAH *v.* MUSSAMMAT LAL BIBI.

89 P R 1888

18. *Sayads of Kharar, Umballa District—Non-agriculturists owning land—Custom—Succession.*

In a suit the parties to which were Sayads of Kharar in the Umballa District, not agriculturists in the strict sense of the term though owning land but not cultivating themselves, *found*, that though by custom sons exclude daughters, there was no well-established custom by virtue of which collaterals can claim to exclude them. The rules of Muhammadan Law therefore applied. No. 4 *P. R.* 1888, referred to. KASIM ALI *v.* MUSSAMMAT ZINAT-UN-NISSA.

35 P R 1891

19. *Muhammadan Law—Custom—Inheritance—Granddaughters whose father predeceased his father.*

In a suit the parties to which were Muhammadans of *mauza* Bindi, *tahsil* Sanghar in the Dera Ghazi Khan District, *found* that no custom was proved by which grand-daughters inherited when their father had predeceased his father, and that in the absence of such custom the Muhammadan Law must prevail according to which, in the absence of sons, daughters and son's sons, son's daughters being two or more in number, are sharers in the grandfather's estate, the shares being two-thirds. The grand-daughter suing, therefore, showed a title by Muhammadan Law, and the Settlement Record, which must be presumed to be correct, showed the extent of her share as one-half MUSSAMMAT GOWHAR *v.* KHAN MUHAMMAD AND MASSU KHAN.

66 P R 1891

20. *Succession—Sons and daughters—Custom—Muhammadan Law—Punjabi Arains of Sabzi Mandi, Delhi—Non-agriculturists—*Onus probandi—*Punjab Laws Act,* 1872, *section* 5, *clause (a)—Two suits tried together by consent of parties—No appeal from decree in one suit*—Res judicata.

One Malik Karim Baksh of Sabzi Mandi, a suburb of Delhi, died on the 5th March 1890, leaving a large property in land house and moveables, and the following descendants (*i*) by his first wife, three sons, and two daughters and *(ii)* by his second wife one son and four daughters. After his death one of his sons by the first wife brought a suit for partition and possession of a one-fourth share in the deceased's property, first, in terms of an award made by one A. D. to which all the descendants were alleged to have agreed, and failing that under a custom by which daughters were, excluded from inheritance, and lastly, if no such custom was proved, for two out of fourteen shares under Muhammadan Law. The present plaintiff, who was one of the daughters by the second wife, was made a party in order to have all the questions relating to succession to the deceased's property finally decided, though it was admitted in the plaint that the entire property in dispute was in the possession of the four sons. Shortly after the institution of the above suit, the present plaintiff also instituted a suit in the same Court claiming to be entitled to one-fourteenth share of the said property under Muhammadan Law. By consent of all the parties the suits were tried together and a full judgment disposing of all the issues was written in the first case, and a short one in the second, deciding it in accordance therewith. Present plaintiff appealed from the decree in her suit, but there was no appeal from the decree in the first suit, which, therefore, had become final at the date of hearing of plaintiff's appeal. A preliminary objection having been taken by respondents to the effect that, there having been no appeal in the first suit, the questions involved in plaintiff's appeal were *res judicata*, and could not be adjudicated on by the Chief Court.

Held, following *I. L. R. XVI Calc*, 233, that on the facts of the present litigation, plaintiff's appeal was barred neither under Section 13 of the Civil Procedure Code, nor on the general principles of *res judicata*, and that respondent's objection must be overruled.

In a case where the parties, though originally of Punjabi Arain descent, had, for many generations lived amongst, and given themselves out as, Muhummadan Sheikhs of Sabzi Mandi, a suburb of Delhi, and though owning land did so rather as market-gardeners and capitalists than as true agriculturists, *held* that the *onus* of proving that in matters of succession they were governed by a family custom whereby sons excluded daughters and not by their personal law—in the present case Muhammadan Law—was upon defendants who asserted it; and *found* upon the evidence and the facts of the case, that defendants had failed to establish the existence of any such family custom, or to prove that the parties were not governed by Muhammadan Law

Section 5 of the Punjab Laws Act, 1872, does not require it to be *presumed* that in matters therein specified a custom governs the parties to the exclusion of their personal law, but merely *prescribes* that it shall govern them in such matters in the first instance. All that the said section lays down is that an inquiry should first be directed to ascertain whether there is any custom applicable to the parties in respect of those matters, and if one is established, that it shall furnish the rule of decision to the supersession of their personal law. When, therefore, a person alleges a custom contrary to some precept of his personal law he is *primâ facie* bound to prove that custom. MUSSAMMAT FAKHAR-UN-NISSA *v.* MALIK RAHIM BAKHSH.

23 P R 1897

21. *Custom—Inheritance—Jatoi Biloch of the Muzaffargarh District—Right of sister in presence of daughter Muhammadan Law.*

In a case in which the parties were Jatoi Biloch of the Muzaffargarh District *held* that the parties were governed by Muhammadan Law, and not by custom, and that a sister of a sonless proprietor was entitled to inherit half of the property as a residuary, the other half going to the daughter as a sharer. MUSSAMMAT BAKHT WADI *v.* SAYAD KHAN.

66 P R 1902

22. *Custom—Inheritance—*Shia *Sayads of Umballa City—Punjab Laws Act,* 1872, *section* 5—*Muhammadan Law.*

In a suit the parties to which were non-agriculturist Shia Sayads residing in the Kazi *mohalla* of Umballa City and owning little land outside, *held*, that the plaintiffs had failed to estabish that they were governed by agricultural custom under which collaterals related in the fifth degree have a right to succeed to non-ancestral house property situated in the Umballa City or cantonment to the exclusion of a grandmother succeeding her grandson, or a married daughter succeeding her mother.

Held, further, that in matters of succession under dispute the parties were governed by the Muhammadan Law and being Shia Sayads by the Imamia Code.

As the Punjab Laws Act gives equal protection to those governed by their personal law as well as to those governed by custom there can be no legal pesumption in any case coming before a Court in the Punjab that it is to be governed by custom rather than the personal Law of the parties. But in every case where a custom is set up, it is the duty of the person alleging it to prove where it is not

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MAHAMMADAN LAW—*contd.*

9. INHERITANCE—*concld.*

admitted that it exists and is applicable to the points in issue. MUHAMMAD HUSSAIN *v.* SULTAN ALI.

54 P R 1903

23. *Muhammadan Law—Inheritance—Distant kindred—Right of distant relation to succeed in preference to stranger.*

A distant relation, however remote is, by Muhammadan Law, entitled to succeed as a "distant kindred" in preference to a stranger. The enumeration of "distant kindred" given in the text-books on Muhammadan Law is not exhaustive and the term includes all relations who are related to the deceased through them.

Abdul Serang v. *Putte Bibi* (*I. L. R. XXIX Calc.* 738), followed.

Dhuni and others v. *Khara and others* (54 *P. R.* 1890) dissented from. UMAR DIN *v.* MUHAMMAD BAKHSH. **27 P R 1904**

24 Muhammadan Kashmiris of the city of Lahore who were engaged in trade and manufacture were held to be governed by Muhammadan Law. MAULA BAKHSH *v.* MUHAMMAD BAKHSH. **54 P R 1906**

10. JOINT FAMILY.

See MUHAMMADAN LAW—INHERITANCE. **89 P R 1888**

1. *Insanity—Disqualification—Civil Procedure Code* (*Act XIV of* 1882) *sections* 27, 32, 463—*Plaintiff suing in his own name in his father's lifetime on ground of father's insanity—Power to substitute or add name of true plaintiff—Guardian ad litem of person of unsound mind—Act XXXV of* 1858—*Custom of Gandapur family—Acquisitions by members of undivided Muhammadan family—Liability of property so acquired to partition—Onus of proving separate acquistions—Managing member possessed of a considerable separate income purchasing property—Question whether such property was separate or family property.*

In a suit for a share of certain family property (the parties to which were a Muhammadan family of the Gandapur tribe, resident in the Kulachi *tahsil* of the Dera Ismail Khan District), an objection was taken in an appeal to the Chief Court by the defendant, that one of the plaintiffs was not entitled to sue in his own name in his father's life-time. This objection was overruled by the Court below on the ground that the father of the said plaintiff was not of sound mind.

Held (by *Barkley* and *Burney*, JJ.), that as under Muhammadan Law insanity is no impediment to inheritance, the suit should have been brought in the name of the father and on his behalf, and, further, that the name of the father could not at the then stage of the proceedings be put upon the record, either in substitution for that of his son under section 27, Civil Procedure Code, inasmuch as there was nothing to show that he authorized the suit, so that its being brought in his son's name and not in his own could be regarded as a *bonâ fide* mistake such as could be corrected under section 27: nor could his name be added as plaintiff under section 32 of the Code without his own consent, and if he were insane and therefore could not consent, section 463 of the Code did not apply until he had been adjudicated a lunatic according to law.

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Subsequently and after the case had been remanded to the lower Court for a further enquiry, the said father having been duly declared of unsound mind under Act XXXV of 1858, his son was permitted to sue for him as next friend, and the Chief Court (*Plowden* and *Burney*,) JJ. at the further hearing of the appeal refused to interfere with such permission.

It was also contended in the above case that the plaintiffs had established a special family custom under which, until partition, all property acquired by any member of the family even without the aid of the family funds or the other members of the family, must be regarded as family property and liable to partition.

Held (by *Plowden* and *Burney*, JJ.) after a remand for further investigation of the question, that no such custom as above alleged had been proved to exist.

It appeared in the above case that the father of the parties to the suit left property which was not divided after his death and which remained under the management of the defendant on behalf of the family, and that while this *nucleus* of family property was under the defendant's management, he had also a considerable separate income. On the question on whom the burden of proof rested as to whether property purchased by the defendant was purchased with family funds or from his own private means, *held* (per *Barkley* and *Burney*, JJ.) that it could not be presumed that all acquisitions were made by means of the family funds; that all that could fairly be held was that it was the defendant's duty, as manager of the family property, not to mix up the family income with his own so as to render it impossible to distinguish between them, and if he was unable to account satisfactorily for the income of the family property, and it appeared that he had made purchases with money in part derived from the family income and in part from his own private funds, it was for him to show how far such purchases had been made with his own funds, and so far as he was unable to do so, the property must be regarded as family property. It was for the defendant to prove that any property which he alleged was acquired by means of his private funds was so acquired (*vide* sections 102, 103 and 106 of the Evidence Act); and he might do so, either by proving that there was no surplus family income at all, or by showing, if he could, how that income was applied, or in case he was by custom not liable to account for the expenditure of that income, by direct proof that the price was paid from his private funds; or, if he could not shew that any particular property was purchased wholly from his private funds, he might still show that it was in part so purchased and so far as he was able to prove that this was the case, but no further, he would be entitled to be considered the owner of a corresponding share in the property.

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MAHAMMADAN LAW—*contd.*

10. JOINT FAMILY—*concld.*

Per *Plowden*, J.—That the manager of joint ancestral estate should be liabl to account to his co-heirs for the property received by him as manager, and for investments of the income and accumulations, is proper and just; but that the mere circumstance that he is a member of the same family with the co-heirs should make him liable to account for all sums earned by his individual and independent exertions and the investments made of income and accumulations is not in accordance with general usage, and is on the face of it not in accordance with the generally received notions of natural justice. MUHAMMAD KALU KHAN *v.* SAIFULLA KHAN. **91 P R 1887**

2. *Pledge of joint family property by elder brothers, how far binding on minor brothers—Presumption.*

Held, that in the case of a Muhammadan family living even in commensality, there is no presumption that alienation of joint family property by some members are made for the benefit of the family jointly so as to be binding on the other members.

Held, upon the facts of the present case, that the plaintiff had failed to prove that the elder brothers of a joint Muhammadan family were justified, either as managing members of the family business or as *de facto* guardians of their minor brothers, in pledging certain of the family property as they had done, and that consequently the said pledge was not binding on the minors. UMAR BAKHSH *v.* MUHABBAT KHAN.

66 P R 1899

11. LEGITIMACY.

See CUSTOM VIII.—MAINTENANCE AND SUCCESSION. **17 P R 1882**

—*Maximum period of gestation—Presumption of legitimacy of child born within 2 years of the alleged father's death—Evidence Act* (*I of* 1872), *sections* 2, 112—*Act IV of* 1872, *section* 5—"*Rule of evidence.*"

Under the Muhammadan law of the Hanifiya school, two years is fixed as the maximum period of gestation, and when there is no presumption that another man is the father, as in the case of a second marriage, or when the mother has declared the expiration of her *iddat* more than six months before, the Muhammadan law, as expounded by that school, would lean very strongly to supporting the legitimacy of a child born within that period.

But the above rule *held* to be a "rule of "evidence" within the meaning of those words in section 2 of the Evidence Act, though also a part of the substantive Muhammadan law, so that the effect of that section, when read with section 5 of the Punjab

MAHAMMADAN LAW—*contd.*

11. LEGITIMACY—*concld.*

Laws Act, is that the Courts are not bound by the said rule under the last named Act.

Held further, that section 112 of the Evidence Act does not lay down a maximum period of gestation, and therefore does not bar the proof of the legitimacy of a child born more than 280 days after dissolution of marriage the effect of the section being merely that no presumption in favour of legitimacy is raised, and the question must be decided simply upon the evidence for and against legitimacy. RAHMAT ALI *v.* MUSSAMMAT ALLAHDI. **1 P R 1884**

12. MARRIAGE.

See CUSTODY OF WIFE.

CUSTOM IV.—BETROTHAL, DOWER, MARRIAGE, DIVORCE.

See MARRIAGE.

1. *Custody of wife—Agreement to Divorce—Khula—Agreement opposed to public policy.*

See CUSTODY OF WIFE.

193 P R 1889

2. *Validity of marriage—Consent of adult female necessary.*

See MARRIAGE. **73 P R 1909**

3. *Contract of Marriage—Guardian.*

In the absence of the father, the mother is by Mahomedan Law, the guardian *ad litem* of a married daughter who is under age and has not joined her husband. By Mahomedan Law, a contract of marriage made on behalf of an infant by a father or grandfather, is binding, and cannot be annulled by the infant on obtaining majority, but if the contract be made by any other guardian, the infant may refuse to be bound by it on coming of age. Where there is no paternal guardian, the maternal kindred may dispose of an infant in marriage. MUSSAMMAT SULTAN BIBI *v.* NIHALA. **53 P R 1875**

4. *Marriage of infant—Near and distant guardians—Acquiescence by infant on attaining majority—Duty of Court.*

According to the Muhammadan Law a valid marriage cannot be contracted by infants without discretion, as the latter are incapable of giving consent to the contract. A contract of marriage entered into by a father or grandfather on behalf of an infant is valid and binding, and the infant has not the option of annulling it on attaining maturity; if the contract is made by a more distant guardian while nearer is present and competent to the guardianship, the contract is dependent on the sanction of the nearer. If the contract is entered into by a guardian other than the father or grandfather, the infant so contracted may dissolve the marriage on coming of age provided that such delay does not take place as may be construed into acquiescence. Acquiescence is presumed in the case of a virgin from silence on the first suitable occasion when repudiation is practicable.

A question of expediency or policy must not be allowed to interfere with the strict administration of the law by which the parties o a suit are governed. KULLAN *v.* MUSSAMMAT PIARI. **157 P R 1879**

MAHAMMADAN LAW—*contd.*

12. MARRIAGE—*concld.*

5. *Guardians for marriage—Marriage contracted by mother in life-time of father—Effect of delegation of his right by nearer to more remote guardian—Power of minor female whose marriage has been contracted by guardian other than father to repudiate the marriage on attaining puberty—Ratification.*

In a suit by a Muhammadan for the custody of the defendant as his wife, it appeared that the father of the defendant having turned *faqir* some 8 or 9 years ago, divorced his wife, the mother of the defendant, making the defendant over to her mother in lieu of dower, and relinquishing all claim to her as her father. The girl thereafter lived with her mother, and was married by her about a year before suit to the plaintiff, with whom she apparently lived as a wife till a few months before the present suit, when she was taken away by her father and married to the second defendant.

Held that, under the above circumstances, the plaintiff's marriage was a valid marriage according to Muhammadan Law, which in the absence of custom must be held to govern the parties : that the conduct of the father in turning *faqir* and making over the child to the mother, showed clearly that he intended to commit the guardianship of the child to the mother, and that this delegation of his right empowered the mother to contract a valid marriage on behalf of her daughter and that, though by Muhammadan Law a minor female, whose marriage has been contracted by any guardian other than the father or grandfather, has the option on arriving at puberty of either ratifying the contract entered into during her minority, or of cancelling it, such option must be exercised immediately upon attaining puberty, and if the marriage is not then repudiated it will be deemed to be ratified.

Such ratification was found as a fact in the above case. BAKSHA *v.* MIRBAZ.

51 P R 1888

6. *Muhammadan Law—Marriage with a fifth woman—Legality of such marriage—Legitimacy of children of an invalid marriage.*

Held that according to Muhammadan Law the marriage with a fifth wife in presence of four living wives is invalid but not void and consequently the children of such marriage are legitimate and entitled to succeed as the lawful heirs to their father. KHURSHAID JAN *v.* ABDUL HAMID KHAN. **6 P R 1908**

13. MINORITY.

1. By Muhammadan Law, the period when minority ceases is the conclusion of the 16th year, both for males and females. CHOWGUTTA *v.* RANJHU. **54 P R 1873**

2. The judgment in *Chowgutta* v. *Ranjhu* (No. 54 *P. R.* 1873) explained. The observation of the learned Judges in that case that "by Muhammadan Law persons of both "sexes are minors until the expiration of "the 16th year," was not necessary to the decision of that case, and is *obiter dictum.* KHUDA BAKHSH *v.* MUSSAMMAT ABADI.

155 P R 1884

MAHAMMADAN LAW—*contd.*

14. WAKF.

See RELIGIOUS INSTITUTION.

1. *Will.*

Held, that according to the Muhammadan Law a valid endowment for religious or charitable purposes can be created by a testamentary instrument.

Where an appropriation by an instrument in writing makes an immediate dedication of immoveable property to religious purposes the dedication takes effect at once as to the whole property, but if the dedication is not to take effect till after the death of the donor, the instrument operates as a will, and takes effect only to the extent of one-third of the testator's property. MAHOMED YAKUB *v.* MUSSAMMAT SHAMS-UL-NISSA BEGUM.

2 P R 1880

2. *Muhammadan Law*—Wakf—*Settlement in perpetuity for aggrandisement of settler's family—Shiah Law.*

By deed of settlement, dated 11th May 1871, one Mussammat U. B. settled a house in Delhi and two villages on her four sons and their issue in perpetuity with the object of obviating disputes, providing for the sons, protecting future rights, and preserving the property. She appointed one Sirdar M. trustee, or *mutawali*, with directions to divide the net income into five equal shares between herself and the four beneficiaries, and, after her death, into four shares among the beneficiaries and their heirs in accordance with Muhammadan Law. The said deed further defined the powers of the *matawali*, provided for the appointment of a successor on the death of the said Sirdar M. and prohibited and declared invalid alienations of any kind which might be made by the beneficiaries. The parties were governed by the Shiah system of Muhammadan Law.

Held, upon the principle laid down by the Privy Council in *I. L. R XXII Calc.* 619, that the said settlement, being a purely family one in perpetuity, was as invalid under the Shiah system as it would have been under the Hanafi system of law. SAIYAD SULTAN MIRZA *v.* MADAN MOHAN.

84 P R 1896

15. WIDOW.

See PARTITION.

—By Muhammadan Law, a widow succeeds to her husband's property absolutely, and not on a life tenure. MUSSAMMAT RANEE *v.* GHOLAM GHOUS. **3 P R 1867**

16. WILL.

See WILL

1.—Bequest "*bama sarif indulla.*"

See CIVIL PROCEDURE CODE, 1908, SECTIONS 92, 93. **50 P R 1882**

2.—*Will in favor of one heir.*

See CUSTOM I.—ALIENATION.

121 P R 1886

3.—*Wasiyatnamah—Trust for benefit of family—Effect of introduction of a stranger—Transfer under mistake of fact.*

Mahomed Tuckee, by *wasiyatnamah*, appointed his eldest son, Mahomed Shuffee, executor and trustee for the benefit of the whole family; and directed that Mahomed Shuffee "shall not alienate any of my

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MAHAMMADAN LAW—*contd.*

16. WILL—*contd.*

"moveable or immoveable property. Should "my said agent attempt to effect a sale, he "shall in no wise be competent to do so; "and in that case I appoint Mahomed "Ruffee, my younger son, in his place as "possessor and agent of all my above men- "tioned property, and he will act as pre- "scribed above," *i. e.*, as Mahomed Shuffee was directed to act. "And if any of the "aforesaid heirs," *i. e.*, Mahomed Tuckee's wife, two sons, and daughter, "should wish "to have his share separated, then the "aforesaid manager should make the following "distribution: To a son, Rs. 40,000; to "my daughter, Rs. 20,000; to my wife "Rs. 12,000. Having made these distribu- "tions, he should take a deed of acquittance "from each of the heirs, to the effect that "they have obtained the whole of their "share of my estate." Mahomed Shuffee was appointed by this instrument to act as trustee or agent during Mahomed Tuckee's lifetime, paying a fixed allowance to each member of the family, and conducting Mahomed Tuckee's business. During Mahomed Tuckee's lifetime, Mahomed Ruffee, distrusting Mahomed Shuffee, caused Rs. 46,000 in notes out of the property to be lodged with K. in Mahomed Ruffee's behalf, and Mahomed Ruffee signed an agreement acknowledging the transfer "in respect of his share of the inheritance." During the mutiny, these notes were stolen, but were afterwards recovered, less Rs. 3,000 worth, and given to Mahomed Shuffee. An account was opened between Mahomed Ruffee and Mahomed Shuffee relating to a hide business between the two, and the notes were deposited as security for advances made by Mahomed Shuffee to Mahomed Ruffee, and were marked ف, as belonging to Mahomed Ruffee. In 1864, after Mahomed Tuckee's death, Mahomed Shuffee was convicted, under section 121 of the Indian Penal Code, and his property was sentenced to be confiscated to Government. Mahomed Ruffee at that time claimed the notes marked ف, and notes to the value of Rs. 51,300 so marked, were made over to him by Government. The rest of the property was seized by Government under Mahomed Shuffee's sentence of forfeiture.

In a suit by Mahomed Ruffee to be declared trustee in place of Mahomed Shuffee, and for other rights under the *wasiyatnamah*, it was *held*, that by the alienation of the family property by Mahomed Shuffee to Government, the trust created by the *wasiyatnamah* came to an end: that it was not in the contemplation of the instrument that when by operation of law the interest of one of the family passed to a third person, the business should be carried on for the benefit of the remaining members of the family in union with the stranger; and that, as the trust was of a personal nature, and could not be taken up strictly

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MAHAMMADAN LAW—*contd.*

16. WILL—*concld.*

under the instrument, it was not incumbent on the Court to provide for its continuance. *Held*, also, as regards Mahomed Ruffee's claim to the office of trustee, that the involuntary nature of the alienation by Mahomed Shuffee to Government would not have prevented the operation of the instrument in Mahomed Ruffee's favour; *sed quære*—Did Mahomed Tuckee intend that the trust management should be carried on after the succession of any one of the family by the seceding member? *Held*, also, that Mahomed Ruffee had elected to take his share (Rs. 40,000) under the will; and that he had no further claim under Muhammadan Law, upon a subsequent distribution of the property amongst those members who had not taken their shares under the will. *Held*, also, that the wife and daughter of Mahomed Tuckee, having made transfers of their shares to Mahomed Ruffee under a mistake of fact, that Government had seized their interests in the property, the transferors were entitled to relief from the effect of the instruments of transfer. SHEIKH MAHOMED RUFFEE *v.* SECY. OF STATE.

6 P R 1869

17. RULE OF MUHAMMADAN LAW WHEN SUPERSEDED.

1. *Muhammadan Law—Legitimacy—Period of gestation—Evidence.*

The rule of Muhammadan Law which fixes two years as the period of gestation is a "rule of evidence" within the meaning of section 2, Indian Evidence Act, 1872: the effect of the section, when read with section 5 of the Punjab Laws Act, 1872, is that, under the latter Act the Courts are not bound by the rule of Muhammadan Law.

No. 1 *P. R.* 1884 followed. WARAS MUHAMMAD *v.* ALI BAKHSH. **76 P R 1891**

2. *Presumption of death—Rule of Muhammadan Law superseded by Evidence Act.*

The rule of Muhammadan Law which refuses to presume a person dead until ninety years from the date of his birth, is a rule of evidence, and not of substantive law, and is superseded in all cases in which the question of the presumption whether a man is alive or dead arises under section 108, Indian Evidence Act (*cf.* also section 2 of the Act). IMDAD ALI *v.* GHULAM JILANI. **42 P R 1892**

3. *Pre-emption—Death of claimant pendente lite—Abatement of suit—Muhammadan Law—Punjab Laws Act*, 1872, *section* 5.

The plaintiff in a suit for pre-emption died *pendente lite*, whereupon his sons were brought on the record and obtained a decree. On appeal the Divisional Judge *proprio motu* dismissed the suit on the ground that by Muhammadan Law, which was the personal law of the parties, the death of a person who claimed pre-emption caused the abatement of the suit.

Held, that under section 5 of the Punjab Laws Act, 1872, Muhammadan Law, even

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MAHAMMADAN LAW—*concld.*

17. RULE OF MUHAMMADAN LAW WHEN SUPERSEDED—*concld.*

though the parties were Muhammadans, was inapplicable to a claim for pre-emption in respect of agricultural land, and that a suit for pre-emption brought by a landowner respecting village lands should not be regarded as a merely personal action which must terminate on the death of the original plaintiff, and does not survive to his representatives. FATEH KHAN *v.* MUHAMMAD.

98 P R 1898

MAINTENANCE.

1. *Widows, right to.*

See CUSTOM I—ALIENATION—A. ALIENATION BY MALE PROPRIETOR—LOCUS STANDI OF REVERSIONER AND WIDOW.

CUSTOM I.—ALIENATION—B. ALIENATION BY WIDOW—GIFTS.

CUSTOM VIII.—MAINTENANCE AND SUCCESSION.

11 P R 1882
89 P R 1886
107 P R 1886
30 P R 1905

CUSTOM VIII.—I. REMARRIAGE OR UNCHASTITY OF WIDOW.

HINDU LAW, WIDOW.

SMALL CAUSE COURT ACT, 1887 SCHEDULE II, ARTICLE 38.

123 P R 1889

2. *Of wife.*

See HINDU LAW, MAINTENANCE.

84 P R 1883

3. *Of widow.*

See HINDU LAW, MAINTENANCE.

144 P R 1884

4. *Arrears of—Punjab Laws Act*, 1872, *sections* 5 *and* 6—*Muhammadan Law—Justice, equity, and good conscience.*

Held, (*i*) that the maintenance of a wife is a question relating to marriage and governed by the personal law of the parties as laid down in section 5, Punjab Laws Act; (*ii*) that the Muhammadan Law by which the parties were governed does not permit of a claim being made for arrears of maintenance unless the same has been previously determined or agreed to by the parties. MIRZA SURAYA JAH *v.* MUSSAMMAT HAJRA SULTAN ZAMANI BEGAM. **57 P R 1890**

5. *Custom—Unmarried daughter—Maintenance out of or succession to deceased father's estate—Hindu Jats, Ludhiana District.*

Found, that among Hindu Jats of the Ludhiana District, custom recognises the right of the unmarried daughters to be maintained out of the estate of the deceased father, and even in some cases a right to possession of the estate until marriage. MUSSAMMATS KISHNO AND PARTAPA *v.* RAMAN.

50 P R 1892

6. *Custom—Awans of Doudzai* tahsil, *Peshawar District.—Right of daughter to inherit in presence of near male collaterals.*

By custom prevailing among the Awans of Doaba Daudzai *tahsil* of the Peshawar

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MAINTENANCE—*concld.*

District a daughter, in the presence of near male collaterals, is only entitled to maintenance and not to possession of her father's land, provided that the collaterals are willing to maintain and marry her. MUSSAMMAT MIRJAN *v.* RAHMAT. **31 P R 1893**

7. *Right of illegitimate children to maintenance from natural father.*

The presumption that children born of a married woman during the lifetime of her husband are the legitimate offsprings of that woman and her husband is not conclusive proof of their legitimacy and must be regarded as fully rebutted where the woman admittedly lived for years with another person and they both asserted such children to be the offsprings of their union. In such a case the children thus begotten though illegitimate are entitled to receive maintenance from their natural father. BAHADAR SINGH *v.* WIRU. **23 P R 1906**

8. Under the *Riwaj-i-am* of Rawalpindi District a barren widow is entitled to a definite portion of her husband's estate for life by way of maintenance in presence of her step-son.

See CUSTOM VIII.—MAINTENANCE AND SUCCESSION. **49 P R 1910**

MAJORITY ACT, 1875.

Section 3.

—De facto *guardian obtaining letters of administration—Declaration of guardianship—Age of majority—Guardian and Wards Act,* 1890, *sections* 7 (1), 52.

Where a *de facto* guardian of a minor applied for and obtained letters of administration under section 13 of the Probate and Administration Act, 1881, to an estate to which that minor was heir, and described himself as *wali* of the minor, held that the order thereupon of the Court granting the letters was not a declaration of guardianship within the meaning of section 7 (1) of the Guardian and Wards Act, 1890, and was not sufficient to make the minor subject to section 3 of the Majority Act of 1875. GANESHI LAL *v.* SURAJ MAL. **89 P R 1906**

MALE LINEAL DESCENDANTS

See LINEAL MALE DESCENDANT.

OCCUPANCY RIGHTS.

40 P R 1894
43 P R 1895
22 P R 1896

See PUNJAB TENANCY ACT, 1887, SECTION 59.

10 P R 1893

MALICIOUS PROSECUTION.

See JURISDICTION OF SMALL CAUSE COURT.

1. In an action for damages for malicious prosecution, plaintiff must show either express malice or absence of reasonable and probable cause for the charge brought; and the fact

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MALICIOUS PROSECUTION—*contd.*

that plaintiff was acquitted is not even *primâ facie* evidence that the charge was unreasonable and false. NUND KISHORE *v.* KISHEN DYAL. **4 P R 1868**

2. *Suit for damages—Reasonable and probable cause—Malice when to be inferred.*

In a suit for damages for malicious prosecution, *held*, that it would be dangerous in this country to hold that a man acts without reasonable or probable cause who launches a criminal prosecution without having obtained good advice as to whether the facts amount to the offence charged. When he has stated the facts accurately, without any attempt to mislead the Court, there is no reason for presuming that he has acted without reasonable or probable cause, because the facts do not support the charge laid.

With regard to malice, *held* that the law will not imply malice when no malice existed, but when facts are proved which give rise to a presumption that malice existed, the Courts may infer that there was malice, that is, that the defendant acted from some other motive than an honest desire to bring a man whom he believed to have offended against the criminal law to justice.

In the present case the absence of any intention on the part of the defendant to do a wrongful act being clearly proved, *held*, that malice could not be inferred. MAYA MAL *v.* MADHO MAL. **40 P R 1884**

3. *Suit for damages for—Cause of action accruing in Foreign State, but suit instituted in British India—Discharge of plaintiff in former proceedings—Death of defendant pending appeal—Abatement of appeal—Reasonable and probable cause.*

See CIVIL PROCEDURE CODE, 1908, O. XXII, R. 4. **4 P R 1897**

4. *Suit for damages for.*

See JURISDICTION OF SMALL CAUSE COURT. **11 P R 1886**

5. *Suit for damages for malicious prosecution.*

See SMALL CAUSE COURT ACT, 1887, ARTICLE 35 (c). **30 P R 1889**

6. *Suit for malicious prosecution—Reasonable and probable cause—Malice—Conviction of plaintiff by two Courts—Damages—Measure and assessment of damages.*

Where the charge was brought by a defendant upon untrue facts which were entirely within his own knowledge and the plaintiff was convicted by two Courts upon what was held by the Chief Court (while holding the plaintiff's action also to have been actuated solely by malice) to be a wrong view of the law as applied to the facts found.

Held, that the defendant had no reasonable and probable cause for the charge, which was malicious in the legal sense, and that the plaintiff's action having been also actuated solely by malice, the measure of damages awarded should be under such circumstances of the smallest possible dimensions.

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MALICIOUS PROSECUTION—*concld.*

Bhagwant Singh v. *Pandit Joti Sarup* (4 *P. R.* 1897), *Hira Chand Bannerji* v. *Banee Madhub Chatterji* (6 *W. R.* 29), *Ganga Parshad* v. *Ramphul Sahoo* (20 *W. R.* 177), and *Johnstone* v. *Sutton* (1 *R. R.* 269), cited. *Hal* v. *Venkata Krishna* (*I. L. R. XIII Mad.* 394), distinguished. BADRI DAS *v.* NATHU MAL. **112 P R 1901**

7. *Malicious prosecution—Suit for damages for malicious prosecution—Reasonable and probable cause—Malice—Burden of proof.*

In an action for malicious prosecution it does not invariably rest entirely on the defendant to rebut the *primâ facie* evidence arising from the finding of a Criminal Court in favour of accused by showing that he had reasonable and probable cause, but it is for the plaintiff to prove express malice as well as the want of probable cause and its non-existence—therefore where a stamp collector sent through the post under a registered cover certain stamps, and on being informed that they had not safely reached their destination reported the matter to the Police and related all the circumstances within his knowledge, wherein no specific charge was made against the plaintiff and the Police, after searching another man named by the defendant, also searched the plaintiff, who was the Registration Clerk of the Post Office in which the packet had been registered, and arrested and sent him up for trial. *Held*, that there was reasonable and probable cause for such action as was taken by defendant, and that no malice in law had been shown on the part of the defendant to entitle plaintiff to a decree. FEROZSHAH DOSSABHOY DARRAH *v.* WAUTERSZ. **60 P R 1902**

MALIK KHUDKASHT.

See MALIK QABZA.

MALIK QABZA.

See COMMON LAND.

1. *Sale of residence.*

A proprietor in an imperfect pattidar village who possesses a residence in it, has full right of property in that dwelling house, although some of the village lands and the unoccupied parts of the *abadi* and the portion of the *abadi* in which cultivators reside remain joint. There is no distinction between such a proprietor and a "*Malik qabza*," whose dwelling house follows the tenure of his land. KIRPAL SINGH *v.* KESREE. **67 P R 1869**

2. *Occupation of site without payment of malikana—Chowkidari dues—Suit for, by proprietor other than lambardar.*

The defendant, a Malik Qabza, 18 years ago built a house on the common land of the village (*shamilat deh*) and resided in it ever since without being called upon to pay *malikana* for it. Eight years ago the common land was divided, and the portion on which defendant's house stood fell to the share of plaintiff. Plaintiff having recently discovered this, brought a suit to

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MALIK QABZA—*concld.*

recover from defendant *hakbua* or *malikana*, *tirni* or grazing dues and *chowkidari* dues.

Held that, under the circumstances, the defendant was not liable to pay *malikana* for the site on which his house stood, and that the interest acquired in the land by plaintiff on partition was subject to the defendant's right to continue in occupation of it without payment of *malikana*.

Held, further, that the plaintiff, not being lambardar of the village, could not maintain a suit for *chowkidari* dues leviable from the defendant. MUHAMMAD KHAN *v.* NUR KHAN.
11 P R 1879

3. *Right of* Malik Qabza *to share of common lands—*Onus *of proof.*

The status of *Malik Khudkasht* or *Malik Qabza* does not ordinarily confer a right to share in the common lands of a village. Where, therefore, plaintiffs occupying that status sued for a declaration of their right to such share, *held*, that the burden of proving that they were entitled to it lay upon them.

The fact that a *Malik Khudkasht or Malik Qabza* has been allowed to break up and cultivate portions of the common lands, without being called upon to pay anything more than the revenue and cesses assessed n such land, is not ordinarily sufficient to show that he holds the land as of right in virtue of his status as such *Malik Khudkasht or Malik Qabza*. SEWA SINGH *v.* GANESHA.
53 P R 1879

See ROOSTUM KHAN *v.* AZEEMOOLLAH.
5 P R 1867 Rev

4. *Claim to pre-emption by.* 34.
See ALLUVION AND DILUVION.
14 P R 1882
13 P R 1885

MALIKANA.

1. *Construction of term, as used in mortgage deed.*
See MORTGAGE. **68 P R 1883**

2. *Suit for enhancement—Rent.*
See ENHANCEMENT.
JURISDICTION OF CIVIL OR REVENUE COURTS. **62 P R 1890 Rev.**
See PUNJAB TENANCY ACT, 1868, SECTION 2. **110 P R 1887**
73 P R 1887
9 P R 1888 Rev.
3 P R 1889 Rev.
See PUNJAB TENANCY ACT, 1868, SECTION 11. **9 P R 1887 Rev.**
10 P R 1887 Rev.
11 P R 1887 Rev
24 P R 888

MANAGER.

See CIVIL PROCEDURE CODE, 1908, O. XXI, R. R. 12, 29.

JOINT FAMILY AND JOINT PROPERTY.

MANAGER OF RELIGIOUS INSTITUTIONS.

—*Alienation by.*
See RELIGIOUS INSTITUTIONS.

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MANAGING MEMBER OF JOINT HINDU FAMILY.

See HINDU LAW—JOINT FAMILY.
33 P R 1892
53 P R 1893
45 P R 1899

Power to give discharge binding on minor.
See HINDU LAW—JOINT FAMILY.
58 P R 1882
63 P R 1883

Power to sue on behalf of other members.
See HINDU LAW—JOINT FAMILY.
58 P R 1882

MARK, SIGNATURE BY AFFIXING.

See LIMITATION ACT (XIV OF 1859), SECTION 4.
LIMITATION ACT (IX OF 1871) SCHEDULE II, ARTICLE 148.

MARKET OVERT.

See CONTRACT ACT, 1872, SECTION 108.
STOLEN PROPERTY.

MARKET-VALUE

See PRE-EMPTION. **69 P R 1882**
See PRE-EMPTION—PURCHASE MONEY.

MARRIAGE.

1. *Children of* dharel *mother.*
See CUSTOM IV. **21 P R 1882**

2. *Of Bajju Rajput and Brahmin woman.*
See CUSTOM IV. **29 P R 1883**

3. "*Jhanjrara*" *marriage.*
See CUSTOM IV. **113 P R 1885**

4. *Of Saiyad and Panja Shahi.*
See CUSTOM IV. **101 P R 1886**

5. *Remarriage of widow—Forfeiture of estate.*
See CUSTOM IV. **137 P R 1883**
123 P R 1884
80 P R 1885
81 P R 1885

6 *By* Karewa *during lifetime of first husband.*
See CUSTOM, IV. **36 P R 1881**
78 P R 1884

7. *Breach of promise—Suit for damages.*
See BETROTHAL. **43 P R 1887**

See SMALL CAUSE COURT, JURISDICTION OF.
SMALL CAUSE COURT ACT, 1887, 2ND SCHEDULE, ARTICLE 35 (*g*).

8. *Guardian for marriage—Delegation of powers—Repudiation by minor female on attaining puberty—Ratification.*
See MUHAMMADAN LAW—MARRIAGE.
51 P R 1888

9. *Of minor—Right to custody of girl.*
See CUSTODY OF MINOR.
113 P R 1888
163 P R 1889

10. *Dissolution of—*
See CONTRACT ACT, 1872, SECTION 23.
CUSTODY OF WIFE.
193 P R 1889

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MARRIAGE—*contd.*

11. *Essentials of—*
See CUSTOM I.—ALIENATION—ALIENATION BY MALE PROPRIETOR—GIFTS AND WILLS IN FAVOUR OF SISTER AND THEIR SONS. **69 P R 1890**
CUSTOM IV.—BETROTHAL, DOWER, MARRIAGE AND DIVORCE.

12. *Essentials of marriage—What does not amount to marriage.*

Held, that a statement made by a Muhammadan father in his will that he had accepted a certain person as husband for his daughter is not equivalent to marriage. MUSSAMMAT GHULAM FATMA *v.* MUSSAMMAT MAKSUDAN. **69 P R 1890**

13. *Between Muhammadan woman and Sikh Guru—Validity of.*
See ANCESTRAL PROPERTY.
50 P R 1895

14. *Evidence of—Statement of parties.*

Marriage may be presumed presumptively by the statement of the parties, or their general conduct towards each other. MUSSAMMAT SATARA BEGAM *v.* MUSSAMMAT HUSAINI KHANAM. **16 P R 1897**

15. *Minor given in marriage by person other than her guardians—Suit by guardians for custody of minor.*
See CUSTODY OF WIFE.
24 P R 1897

16. *Marriage of minor without consent of paternal relations—Respective rights of minor's husband and paternal uncle.*
See CUSTODY OF MINOR.
26 P R 1898

17. *Suit for a declaration that the defendant is not the lawful wife of the plaintiff—Jurisdiction of Civil Court to entertain such a suit when an order for maintenance passed under section 488 of the Criminal Procedure Code is in force against the plaintiff.*
See HUSBAND AND WIFE.
26 P R 1903
See JURISDICTION OF CIVIL COURT.
50 P R 1901

18. *Betrothal—Barter of one girl in marriage for another—Breach of promise of marriage—Void agreement—Public policy—Measure of damages.*
See CONTRACT ACT, 1872, SECTION 23.
50 P R 1903

19. *Suit to establish right to betrothal and marriage of minor—Suit by collaterals against the natural guardian—Guardian and Wards Act, 1890.*

Held, that the provisions of the Guardian and Wards Act, 1890, do not bar a suit against the natural or appointed guardian for the establishment of the right to betroth or give in marriage a minor by the person who claims that right. There is nothing in that Act which deprives collaterals of their rights in these matters under Hindu Law, and the Act does not provide that these rights can be established only by proceedings under it.

Brohmomoyee and another v. *Kashi Chunder Sen (I. L. R. VIII Calc. 266), Sham Kuar* v. *Mohanunda Sahoy (I. L. R. XIX Calc.*

MARRIAGE—*contd.*

301), *Harendra Nath Chowdhury* v. *Brinda Rani Dassi* (2 *Calc. W. N.* 521), *Jairam Luxmon* (*I. L. R. XVI Bom.* 634), *Ghasita* v. *Wazira* (10 *P. R.* 1897), and *Khushal Chand Lal Chand* v. *Bai Mani* (*I. L. R. XI Bom.* 247), referred to. MUSSAMMAT UTTAM DEVI AND OTHERS *v.* MAYA RAM AND ANOTHER. **10 P R 1904**

20. *Marriage—Marriage by* chadar andazi *between a Khatri and a Khatrani widow—Legitimacy of children of such marriage—Act XV of* 1856.

Held, that a marriage by the *chadar andazi* form between a Khatri and a Khatrani widow is valid and legal under the provisions of Act XV of 1856 as a form of marriage giving the status to the woman of a lawful wife and making the offspring legitimate and entitled to inherit.

Lal Chand v. *Thakar Devi* (49 *P. R.* 1903) cited and followed. NATHU *v.* RAM DAS.
4 P R 1905

21. *Marriage—Validity of* karewa *marriage between a Khatri and a Khatrani widow—Legitimacy of children of such marriage—Act XV of* 1856.

Held, that a *karewa* marriage between a Khatri and a Khatrani widow is lawful and valid under the provisions of Act XV of 1856, and the offspring of such marriage is legitimate and capable of inheriting property.

Lal Chand v. *Thakar Devi* (49 *P. R.* 1903) and *Nathu* v. *Ram Das* (4 *P. R.* 1905), cited and followed.

Mussammat Dakho v. *Mussammat Gaus* (22 *P. R* 1889), *Mussammat Devi* v. *Lehna Singh* (46 *P. R.* 1891, F. B.), and *Dina* v. *Karam Chand* (52 *P. R.* 1899), referred to. NARAIN DAS V. GUJAR MAL.
61 P R 1905

22. *Suit for dissolution of—Death of respondent* pendente lite—*Abatement of suit.*

See ABATEMENT OF SUIT.
69 P R 1906

23. A wife's conversion from Islam to Christianity effects a complete dissolution of her existing marriage with her Muhammadan husband. IMAM DIN *v*, HASAN BIBI.
85 P R 1906

24. *Hindu Law—Marriage—Wife's conversion to Islam—Dissolution of marriage.*

Held, that apostacy of one of the parties does not in the case of Hindus *per se* dissolve their marriage, and a Hindu wife cannot therefore deprive her husband of the legal rights which accrued to him at marriage by simply renouncing Hinduism in favour of Islam. JAMNA DEVI *v.* MUL RAJ.
49 P R 1907

25. *Husband and wife—Legitimacy of children—Presumption as to legitimacy of*

MARRIAGE—*contd.*

child born after marriage—Evidence Act, 1872, *section* 112.

Held, that on the birth of a child during marriage the presumption of legitimacy is conclusive, no matter how soon the birth occurs after the marriage. UMRA *v.* MUHAMMAD HAYAT. **79 P R 1907**

26. *Legality of a marriage with a fifth wife under Muhammadan Law.*

See MUHAMMADAN LAW—MARRIAGE.
6 P R 1908

27. *Marriage—Repudiation by a Jat husband—Revocation—Declaratory decree—Suit by a wife for a declaration that by reason of certain acts her husband had lost his conjugal rights against her.*

Plaintiff sued for a declaration that neither her husband, defendant No. 1, nor the defendant No. 2, to whom he had sold her, have conjugal rights against her. Defendant No. 1 pleaded that he had arranged to divorce her in favour of defendant No. 2, but as a fact the divorce was not completed and that an action like this did not lie. It appeared that the plaintiff was married to defendant No. 1. Some time after she left the house of her husband who instituted a complaint under section 498, Indian Penal Code, which was dismissed in consequence of his failure to trace her whereabouts. Immediately after, he executed a deed of repudiation by which he gave her to defendant No. 2, but which on cooler consideration he subsequently tore up.

Held, that the suit did lie, and the plaintiff was entitled to a decree as prayed against defendant No. 2, but that the so-called repudiation being neither clear nor public, and having been given hastily in the excitement of the moment and subsequently revoked, it was not effective, and consequently the marriage between plaintiff and the defendant No. 1 was not dissolved. ISHRI *v.* WADHAWA. **31 P R 1903**

28. *Marriage—Validity of marriage between a Rajput and a Khatrani—Legitimacy of children of such marriage.*

Held, that a marriage between a Vadhyar Rajput of the Kangra District and a Khatrani is valid and legal, and the offspring of such a marriage legitimate. HARIA *v.* KANHYA. **72 P R 1908**

29. *Remarriage of divorced couple—Illegality of such marriage.*

See MUHAMMADAN LAW—DIVORCE.
97 P R 1908

30. *Marriage of widow during her* iddat *—Legality of such marriage.*

See MUHAMMADAN LAW, IDDAT.
29 P R 1909

31. *Marriage*—Chadar-andazi *marriage between Minhas Rajput and a Mahajan woman.*

See CUSTOM IV.—BETROTHAL, DOWER, MARRIAGE AND DIVORCE.
57 P R 1909

32. *Muhammadan Law—Marriage—Necessity of free consent by adult female—Acquiescence.*

MARRIAGE—*concld.*

Held, that among Muhammadans marriage is a civil contract and that as is the case with other contracts freedom of consent in the contracting parties is one of the essential conditions of its validity.

Held also, that when a Muhammadan female attains the age of puberty she becomes *sui juris* in the eyes of her personal law, and a contract of marriage, to which she does not thereafter consent of her own free will, will not be binding upon her.

Held, further, that mere silence on the part of the plaintiff for two years after the marriage unaccompanied by any overt act such as would involve an unequivocal recognition by her of the subsistence of the matrimonial alliance did not under the circumstances of the case amount to acquiescence, so as to debar her form obtaining relief in the shape of a declaration of invalidity of marriage. BINDU *v.* MUSSAMMAT BUGLI. **73 P R 1909**

33. *Period of* iddat.

See MUHAMMADAN LAW—IDDAT.
33 P R 1887

34. *Dissolution of, by conversion to Christianity.*

See MUHAMMADAN LAW—DIVORCE.

35. *Remarriage of widow.*

See CUSTOM IV.—BETROTHAL, DOWER, MARRIAGE AND DIVORCE.
CUSTOM VIII.—MAINTENANCE AND SUCCESSION.—I.—REMARRIAGE OR UNCHASTITY OF WIDOW.
DISSOLUTION OF MARRIAGE
MUHAMMADAN LAW—DIVORCE.

36. *Right of offspring of permanent union to succeed as legitimate—No formal marriage.*

See CUSTOM IV.—BETROTHAL, DOWER, MARRIAGE AND DIVORCE.

37. *Of daughter by mother without father's consent.*

See HINDU LAW, MARRIAGE.
64 P R 1884

38. *Marriage of a minor Hindu widow by* chadar andazi—*Consent of lawful guardian to such marriage necessary—Presumption of legality of marriage—Khatris of Lahore—Act XV of* 1856.

See HINDU LAW, MARRIAGE.
49 P R 1903

39. *Validity of Karewa marriage between a Jat and Koli woman.*

See CUSTOM IV.—BETROTHAL, DOWER, MARRIAGE AND DIVORCE.
79 P R 1910

MARRIAGE BROCAGE CONTRACTS.

See BETROTHAL.

—*Marriage brocage contract.*

See CONTRACT ACT, 1872, SECTION 23.
128 P R 1889
112 P R 1892

MARRIAGE, EFFECT OF INFORMAL, AMONG JATS.

See CUSTOM VIII. MAINTENANCE AND SUCCESSION.

MARRIAGE DUES.

See JURISDICTION OF CIVIL OR REVENUE COURT. **31 P R 1887**
52 P R 1887

See SMALL CASUE COURT ACT, 1865, SECTION 6. **33 P R 1887**
125 P R 1888

1. *Right of lambardar to levy*—Wajib-ul-arz.
See CUSTOM V.—CESSES AND DUES.

30 P R 1888

2. *Suit for.*
See JURISDICTION OF CIVIL OR REVENUE COURT. **42 P R 1893**
55 P R 1893

SMALL CAUSE COURT ACT, 1865. SECTION 6. **125 P R 1888**
33 P R 1887 F. B.

3. *Suit for sum payable as* " dhart" *and for marriage dues—Jurisdiction of Civil and Revenue Courts—Claim based on two causes of action, one cognizable by Civil Court, the other cognizable by Revenue Court,—Power of Chief Court to deal with part of decree—Punjab Tenancy Act,* 1887, *section* 77 (3) (*j*) *and section* 100.

See CAUSE OF ACTION. **28 P R 1894**

MARRIAGE FEES.

See CUSTOM, CESSES. **140 P R 1883**
7 P R 1884
20 P R 1884
31 P R 1885

See JURISDICTION OF SMALL CAUSE COURT. **166 P R 1883**
75 P R 1885

MARRIED WOMAN'S PROPERTY ACT (III OF 1874).

—*Married woman having no separate property—Contract entered into by—Suit instituted against married woman.*

Plaintiff sued to recover from defendant, a married woman living apart from her husband, wages due for 6 months. It did not appear that the defendant had separate property. *Held*, therefore, that the case was not one coming within the provisions of Act III of 1874, and that being so, that the defendant was not liable upon the contract which she purported to make with the plaintiff. RAMDHAN *v.* CULBARD. **35 P R 1879**

MARRIED WOMAN.

—*Competency of, to represent a minor in an Appellate Court.*

See GUARDIAN. **8 P R 1908**

MATRIMONIAL JURISDICTION (Chief Court).

—*Matrimonial jurisdiction—Appeal from order of single Judge of Chief Court sitting on original side—Divorce Act (IV of* 1869), *section* 55—*Punjab Courts Act XVIII of* 1884), *section* 9 (*a*)—*Civil Procedure Code, section* 2.

Held, that an order by a single Judge of the Chief Court sitting on the original side refusing to strike off the record the name of a person impleaded as a co-respondent to a petition for dissolution of marriage and damages, is not appealable. T. *v.* B.

98 P R 1909

"MARSHALLING."

—*Doctrine of.*

See MORTGAGE—MARSHALLING.

MASANI.

—*Quære*—Whether *masani* income is "immovable property" within the definition of that term contained in Section 3, Registration Act, 1877. RAM SINGH *v.* HAR GOBIND.

83 P R 1891

MASTER AND SERVANT.

See CONTRACTS.
EXCISE.

1. A master can summarily dismiss a servant for gross misconduct, although there is a written agreement of employment for a specified term. BRASSEY *v.* MUTT.

22 P R 1868

2. *Master and Servant—Dismissal.*
Defendant engaged plaintiff as editor of a newspaper for a period of 12 months on a stipulated monthly salary; three months afterwards, defendants dismissed plaintiff without just cause. Plaintiff claimed to sue defendants month by month for his stipulated salary during the remaining nine months as each month's salary fell due. *Held*, that the suit was one for damages for breach of contract that plaintiff need not wait until the expration of the 12 months for which the contract was to run, but might sue at once—but that he could not divide the sum claimable by way of damages into periodical claims. FENWICK *v.* HURSOOKH RAI.

36 P R 1868

3. *Complaint by master on behalf of servant.*

Held, that a master could not, under Act XXV of 1861, lodge a criminal complaint for an assault upon his servant. CORBYN *v.* AMEER KHAN. **24 P R 1869 Cr.**

MASTER AND SERVANT—*concld.*

4. —*Wrongful dismissal—Damages.*
To justify the summary dismissal of servant his misconduct must be of a marked character rendering it impossible that the relation of master and servant should continue; for instance, disobedience of lawful order, or grossly improper conduct. A skilled servant (*e g.* a professional bandmaster serving with a regiment) employed in India without any fixed term of service, but on the understanding that his engagement would be for a long period *Held*, under the circumstances of his case, entitled to six months wages in lieu of notice. RODOLPHSEN *v.* ROWLANDS.

43 P R 1886

5. —*Master and servant—Injury to master's property—Liability of servant.*
A servant broke a lamp belonging to his master. There was no special contract between the master and servant as to liabily for breakages.
Held, that the servant was not liable. A servant, in the performance of his duties, is bound to exercise reasonable care and diligence (such as an ordinarily careful person would use in the management of his own affairs) and when loss happens from mere accident, such as will occur at any time in ordinary life as was found in the present case, he (the servant) is not liable to make it good. STEIBERT *v.* KAMMA.

3 P R 1891

6. *Master and servant—Monthly service—Consequence of leaving employment without giving sufficient notice—Right to wages.*
Monthly servants are expected to give a month's notice of their intention to leave their service, therefore where a servant who was employed on a monthly engagement, and left after giving a written notice that he would leave in seven days, and would not work after the expiry of his notice. *Held*, that the servant was not entitled to any pay for the portion of the month during which he left his service.
Ramji Manor v. *Little* (10 *Bom. H. C. R.* 57) and *Dhamee Behara* v. *Sevenoaks I. L. R. XIII Calc.* 80), cited. KENNELLY *v.* ABDUL HAQ. **118 P R 1901**

MATERIAL IRREGULARITY.

See APPEAL, CIVIL. **54 P R 1896**
See ARBITRATION. **58 P R 1889**
See BURDEN OF PROOF.
89 P R 1893
41 P R 1898
66 P R 1898
See CAUSE OF ACTION
189 P R 1888

1. *In publishing or conducting sale in execution of decree*
See CAUSE OF ACTION.

76 P R 1890

MATERIAL IRREGULARITY—*concld.*

See CIVIL PROCEDURE CODE, 1908.
104 P R 1888
105 P R 1889
65 P R 1891
92 P R 1893
130 P R 1894
37 P R 1895
20 P R 1898

See OCCUPANCY RIGHTS.
3 P R 1898

See REVISION. 27 P R 1908
106 P R 1908
45 P R 1909

2. *Lower Appellate Court taking wholly erroneous view of the frame of case and of plaintiff's real claim.*
See REVISION. **13 P R 1910**

MATTER IN ISSUE.

1. *Matter which might and ought to have been made ground of attack in former suit.*
See RES JUDICATA 96 P R 1881
24 P R 1882
59 P R 1882
108 P R 1882
142 P R 1884
6 P R 1886

2. *Decision in former suit of matter necessary for decision of that suit—Same matter again in issue in subsequent suit.*
See RES JUDICATA. **118 P R 1882**

3. *Dismissal of previous suit for same relief as* res judicata.
See RES JUDICATA. **95 P R 1883**

4. *Decision of matter not essential to decision of case.*
See RES JUDICATA. **29 P R 1884**

5. *Decision in former suit of question of plaintiff's* locus standi *as reversioner—Same question raised in subsequent suit.*
See RES JUDICATA. **95 P R 1885**

MEASURE OF DAMAGES.

See CONTRACT ACT, SECTION 73, DAMAGES. **20 P R 1889**
See PATENT. **115 P R 1889**

MEDICAL FEES.

See FEES FOR MEDICAL ATTENDANCE.

MEMORANDUM OF APPEAL.

—Presentation by Pleader's Clerk.
See APPEAL, CIVIL. **6 P R 1896**

MENIALS.

See CUSTOM XII.—VILLAGE MENIALS.

MERCANTILE USAGE.

See CUSTOM IX.—MERCANTILE USAGE.
34 P R 1886
79 P R 1895

MERGER.

1. *Of mortgage in previous money decree.*
See ESTOPPEL. **32 P R 1910**

2. *Of mortgage in sale.*
See EVIDENCE. **30 P R 1884**

3. *Of decree in subsequent arrangement—Arrangement enforceable by suit and not by execution.*
See EXECUTION OF DECREE.
51 P R 1885

4. *Of prior in subsequent mortgage.*
See MORTGAGE. **173 P R 1882**

5. *Of mortgage in sale.*
See MORTGAGE—MERGER.

6. *Of old liability in new contract.*
See REGISTRATION ACT, 1877, SECTION 49. **17 P R 1881**

7. *Of tort in felony.*
See RIGHT TO SUE. **26 P R 1883**

8. *Held*, that when a mortgagee purchases the equity of redemption in respect of the land mortgaged the mortgagee rights merge in the rights of ownership.
See SRI RAM *v.* RAMJI DASS.
59 P R 1909

MESNE PROFITS.

1. *Second suit for mesne profits when they were not claimed in first suit.*

Unless the decree declares mesne profits to be payable, the Court acting in the execution of the decree cannot decide the amount of mesne profits ; and neither mesne profits before nor after the institution of the suit nor after date of decree, can be given by such Court. But where the decree is silent on the subject, mesne profits may be recovered by separate action, section 196 of Act VIII of 1859 does not bar a separate suit where mesne profits have not been asked for in the plaint ; and section 11 of Act XXIII of 1861, while forbidding a suit for that which is declarable in a miscellaneous order, does not prohibit a distinct suit, which a suit for mesne profits is expressly declared to be by section 10 of Act VIII of 1859 NAWAB MAHOMED KOOTUB-OOD-DEEN *v.* MAHOMED NIJABUT ALI KHAN. **44 P R 1869**

2. *Second suit for mesne profits from date of decree in first suit to recovery of possession.*

Plaintiff obtained a decree for possession of land and mesne profits to date of decree. He afterwards sued for mesne profits from that date up to the time of obtaining possession. *Held*, that the suit would not lie, but that the question of mesne profits up to time of plaintiff's obtaining possession should have been disposed of by the Court executing the decree in the first suit, under section 11, Act XXIII of 1861. SADID-UD-DIN *v.* SALIM-UD-DIN. **72 P R 1875**

3. *Suit for possession—Previous suit for mesne profits.*
See SPLITTING CAUSE OF ACTION.
138 P R 1882

4. *Suit for profits of land alleged to be due from defendant as agent—Subsequent suit for possession.*
See SPLITTING CAUSE OF ACTION.
59 P R 1883

MESNE PROFITS—*contd.*

5. *Dismissal of suit for, on ground of non-accrual of right till redemption of land—Subsequent suit after redemption.*
See RES JUDICATA. **69 P R 1883**

6. *Suit for recovery of mesne profits which accrued between date of obtaining possession under first decree and payment under final decree.*
See CIVIL PROCEDURE CODE, 1908, SECTION 47. **60 P R 1890**

7. *Suit for mesne profits against co-sharer—Jurisdiction of Civil or Revenue Court.*
See JURISDICTION OF CIVIL OR REVENUE COURT. **47 P R 1891**

8. *Suit for land and mesne profits.*
See JURISDICTION OF CIVIL OR REVENUE COURT. **19 P R 1892**

9. *Suit for mesne profits realised by a receiver—Value of suit—Course of appeal.*
See APPEAL, CIVIL. **40 P R 1892**

10. *Suit for possession of land and for damages by way of mesne profits—Joint holding—Amendment of plaint in the Chief Court into a suit for a declaratory decree only.*
See PLAINT—AMENDMENT OF.
103 P R 1893

11. *Suit for compensation for forcibly cutting and carrying away reeds—Suit by a co-sharer in holding for a share of the profits thereof.*
See JURISDICTION OF CIVIL OR REVENUE COURT. **119 P R 1894**

12. *Execution of decree—Appellate Court—Restoration of land to party dispossessed—Award of mesne profits for period of dispossession.*
See CIVIL PROCEDURE CODE, 1908, SECTION 141 (1). **23 P R 1896**

13. *Civil Procedure Code, 1882, section 244—Application for recovery of mesne profits which accrued between the date of decree and of delivery of possession—Jurisdiction—Value of suit—Course of appeal—Punjab Courts Act, 1884, section 39.*

Held, that section 244 (c) of the Code of Civil Procedure does not empower an executing Court to determine the amount of mesne profits due to a decree-holder in a case in which the decree does not mention mesne profits.

Held, also, that when an appeal from the decree in the original suit lay to the Divisional Court, the appeal from an order in execution of that decree lay to the same Court, and the fact that the decree-holder wrongfully claimed in execution proceedings mesne profits in excess of the appellate jurisdiction of that Court does not oust that Court's jurisdiction.

Jamayat Singh v *Nihal Chand* (60 *P. R.* 1890). *Ram Ghulam* v. *Dyarka Rai* (*I. L. R. VII All.* 170), *Man Mohan* v. *The Secretary of State for India* (*I. L. R. XVII Calc.* 968), *Kalka Singh* v *Paras Ram* (*I. L. R. XXII Calc.* 434, *P. C.*), *Tola Ram* v. *Daviditta* (55 *P. R.* 1887), and *Sardar Kirpal Singh* v. *Nawab Khan* (40 *P. R.* 1892), cited. KHAZAN SINGH AND OTHERS *v.* KHUSHAL SINGH AND OTHERS. **29 P R 1902**

MESNE PROFITS—*concld.*

14. *Course of appeal in a suit for mesne profits where the value of the subject matter in dispute is less than Rs.* 500—*Provincial Small Cause Court Act,* 1877, *Schedule II, article* 31.

See APPEAL, CIVIL. **35 P R 1902**

MILITARY LAW.

—*Persons subject to—Jurisdiction over.*

See SMALL CAUSE COURT, JURISDICTION OF. **21 P R 1887**
111 P R 1887 F. B.
110 P R 1890
1 P R 1893 F. B.
48 P R 1893

MILITARY OFFICER.

1. *Suit for debts and personal actions against, when not residing within the jurisdiction of Court where the cause of action arose.*

See CIVIL PROCEDURE CODE, 1908, SECTION 20. **93 P R 1900**

2. *Suit against—Jurisdiction—Court of Requests.*

See SMALL CAUSE COURT, JURISDICTION OF. **21 P R 1887**
111 P R 1887 F. B.
110 P R 1890
1 P R 1893 F. B.
48 P R 1893

MISREPRESENTATION.

See BANK CONTRACT. **41 P R 1886**
ESTOPPEL—FRAUD. **150 P R 1908**
JURISDICTION. **72 P R 1891**

—*Of age by minor—Vendee acting in good faith—Refund of purchase money.*

See SPECIFIC RELIEF ACT. **76 P R 1910**

MUNSIFF, SUBORDINATION OF TO DEPUTY COMMISSIONER.

See SANCTION FOR PROSECUTION.

—*Power to revise order of Divisional Judge relating to.*

See PUNJAB COURTS ACT, 1884, SECTION 13. **42 P R 1888**

MINOR.

1. *Succession of son of former lambardar, who failed to succeed his father through minority.*

See LAMBARDARS. **5 P R 1881**

2. *Donee, gift to.*

See CUSTOM, ALIENATION. **101 P R 1881**
177 P R 1883
106 P R 1886

See MUHAMMADAN LAW, GIFT. **19 P R 1881**
86 P R 1882

3.—*Disability of—Limitation.*

See LIMITATION ACT, 1877, SECTION 7. **103 P R 1881**
31 P R 1884
91 P R 1885
128 P R 1894

4. *Suit by minor through his mother to contest alienation assented to by the mother—Inability of guardian to repudiate her own acts—Remedy of minor.*

MINOR—*contd.*

In a suit brought on behalf of a minor by his mother, as his natural guardian, to recover possesssion of a plot of land, which the defendant pleaded had been mortgaged to him with the mother's free consent by the minor's uncle who described himself as the "sarbarah" or manager of the minor's estate, *held*, that it is a well recognized principle of law that no one should be permitted to avoid his own deliberate act unless upon some special and equitable ground, as, for instance, that fraud or deception was practised upon him, and that the same principle should be equally applied to debar a minor's guardian from repudiating his own acts, though it would be open to the minor to challenge such acts on attaining his majority, and it would also be open to any person having an interest in the minor to sue as his next friend while he was still a minor, where the nearest relation happened to be the person who either withheld the right claimed, or, as in the present case, where he had debarred himself from contesting the particular transaction which was deemed injurious. GANDA *v.* JAWAND SINGH. **112 P R 1881**

5. *Minority of son of deceased lambardar —Unfitness.*

See LAMBARDAR. **3 P R 1882**
10 P R 1885

6. *Custody of minor—Act IX of* 1861, *sections* 3, 4—*Rival claimants for guardianship—Question of fitness of guardian—Muhammadan law—Reference to arbitration —Power of Court to delegate the exercise of its discretion.*

In a suit for custody of a minor brought by the grandfather of the boy (his father being dead) against the mother, in which each of the claimants objected to the other as an unfit person, the Court drew an issue as to which party was under Muhammadan law entitled to the custody of the boy's person, and having allowed the parties to appoint an arbitrator to determine this question, decreed according to the award in favor of the grandfather.

Held, that as the suit was one of the nature described in section 1 of Act IX of 1861, and therefore under section 3 the Court was not bound to decide according to Muhammadan law, it was bound to consider the fitness of the claimants, and to appoint no one who was not in its judgment a fit person to take charge of the minor. If, according to its judgment, both were equally fit, it might then be proper to consider which would be the guardian under Muhammadan law.

Held further, that section 4 of Act IX of 1861 did not render the provisions of the Civil Procedure Code as to arbitration applicable to the present case, as the person really interested in the result was the minor on whose behalf, and not for any interest of their own, both parties professed to claim; and further, that as the appointment of a fit persen was a matter resting

MINOR—*contd.*

in the discretion of the Court, it was not entitled to delegate the exercise of its discretion to an arbitrator. MUSSAMMAT FAZLAN *v.* MURAD. **42 P R 1882**

7. *Member of undivided family—Power of manager to sue on behalf of.*

See LIMITATION ACT (XV OF 1877), SECTION 22. **58 P R 1882**

8. *Defendant—Omission to appoint guardian* ad litem.

—*Application for review on behalf of—Guardian* ad litem *must institute.*

See CIVIL PROCEDURE CODE, 1908, O. XXXII, R. 3. **100 P R 1882**

9. *Suing by next friend—Removal of next friend for misconduct—Omission to appoint another guardian.*

See CIVIL PROCEDURE CODE, 1908, O. XXXII, R. 1. **125 P R 1882**

10. *Liability of guardian of, for breach of betrothal contract.*

See BETROTHAL. **197 P R 1882**

11. *Suit against guardian for specified sums received during plaintiff's minority—Limitation.*

See LIMITATION ACT, 1877, SECOND SCHEDULE, ART. 62, **56 P R 1883**

12. *Member of undivided family—Power of manager to give discharge binding on.*

See HINDU LAW VIII.—JOINT FAMILY. **63 P R 1883**

13. *Members of undivided family—Suit for debt against elder brother alone—Absence of proof that elder brother was sued in representative capacity—Power to go behind decree.*

See HINDU LAW VIII.—JOINT FAMILY. **70 P R 1883**

14. *Alienation by guardian—Punjab Laws Act, section* 5—*Muhammadan law—Custom—Validity of mortgage—Near guardian—Minor benefitting by invalid acts of guardian —Compensation.*

In a suit for possession of certain land mortgaged to the plaintiff by the step-mother of the infant son of the deceased owner, it was urged in the appeal to the Chief Court that the lower appellate Court was wrong in holding that the case was governed by Muhammadan law, as under section 5 of the Punjab Laws Act the Muhammadan law is only made applicable where the parties are Muhammadans, while the plaintiff in the present case was a Hindu; and further, that before the Muhammadan law was applied it was necessary to ascertain whether there was any custom applicable, which should be the rule of decision under the said section, and which either modified the Muhammadan law or excluded its operation

Held, that the plaintiff, though a party to the suit, was only so far concerned that he was suing to enforce the alienation, and as he could only take what the person who made the alienation had the power to convey, the question what her powers were could only be determined by the personal

MINOR—*contd.*

law applicable to the guardianship of a Muhammadan minor.

Held further, that no custom either modifying or excluding the Muhammadan law having been pleaded, and there being nothing to show that there was the remotest probability of any such custom being proved if the case were remanded for the purpose, the Court would not be justified in ordering a remand for enquiry whether any such custom existed, especially as it was not alleged that the plaintiff would be able to prove that there was such a custom.

It appeared that the consideration for the mortgage in the above case was the principal and interest due on a prior mortgage by way of collateral security executed by the minor defendant's father, the mortgage sued on being one with possession, not carrying interest, the mortgagee being entitled to take the income of the land in lieu of interest, the transaction therefore not being on the face of it disadvantageous to the minor's estate, and, so far as appeared, entered into in good faith for the benefit of the minor : but it was admitted that the persons who effected the mortgage were neither *near* guardians, as defined by Muhammadan law, nor testamentary guardians, and had therefore no right to the management of the minor's property, and did not possess even the restricted power of alienation of immovable property given by that law to *near* guardians.

Held, therefore, that the mortgage sued upon must be held to be invalid.

It was further contended that, though the plaintiff could not enforce the mortgage, the Court had an equitable power of obliging the defendant who had benefited by it to restore or make compensation for the advantage he had received, by paying to the plaintiff the principal and interest due on his father's mortgage.

Held, that though where a plaintiff has had to come into Court to get the acts of his guardian during his minority set aside, and is found to have benefited from those acts to some extent, such a condition has been attached to the decree in his favor, there was no authority for holding that a person, suing to enforce a mortgage made by a person who had no authority to mortgage the property, was entitled to a decree against the owner of the property, who resisted his claim, for compensation for any advantage the owner might have derived from the transaction. *Alla Ditta* v. *Himmat* (No. 52 *P. R.* 1872, Civil), *Devi Sahai* v. *Mangal Sein* (No. 81 *P. R.*, 1874, Civil, F. B.) *Mussammat Lalli Begam* v. *Nawab Mahomed Azmat Ali Khan* (No. 13 *P. R.*, 1875, Civil), and *Nawab Mahammad Azmat Ali Khan* v. *Mussammat Lalli Begam* (No. 17 *P. R.*, 1882, Civil P. C.) cited. ANANT RAM *v.* NAZIR HUSSAIN. **144 P R 1883**

15. *Contract Act (IX of 1872), sections 2, 11, 68—Contract made by minor—Void agreement—Advance to minor for benefit of his estate—" Necessaries suited to his condition in life"—Reimbursement.*

MINOR—*contd.*

A minor being, with reference to section 11 of the Contract Act, absolutely incompetent to enter into a contract, a mortgage by a minor *held* to be not merely a " voidable contract " but a " void agreement " within the definition in section 2 of the Act.

But, it having been found that the loan in question was given to save a valuable estate belonging to the minor from sale in execution of decree, *held*, that the said loan must be taken to have been supplied for " necessaries suited to the minor's condition in life " within the meaning of section 68 of the Contract Act, and that, therefore, though the mortgage was void the mortgagee might fairly be held to have a lien on the property of which he was put in possession as consideration for the advance of the money, which was required for the benefit of the minor's estate.

Held, therefore, that though the plaintiff was not bound by the mortgage, his claim, which was one to recover possession of the property mortgaged, must be dismissed, on the ground that he had not offered to make compensation for the benefit that he had received, and that, until he did so, he was not entitled to recover possession from the defendant. KIDAR NATH *v.* AJUDHIA PERSHAD. **165 P R 1883**

16. *—Capacity of, to contract to pay dower.*
See MUHAMMADAN LAW—DOWER.
155 P R 1884

17. *—Abandonment of occupancy tenure by.*
156 P R 1884

18. *—Power of next friend of, to refer to arbitration.*
See ARBITRATION **92 P R 1885**

19. *Acknowledgment by guardian of—Duly authorised agent.*
See LIMITATION ACT, 1877, SECTION 19.
25 P R 1886

20. *Sale of goods to firm represented by—Liability of assets of business for such debt—Act XL of 1858.*

Plaintiffs sued to recover the value of certain goods sold to a firm after the death of its owner leaving two minor sons (the business being in the meanwhile continued by gomashtas), and before the appointment of guardians of the minors and managers of their property had been made under Act XL of 1858.

Held, that all the assets of the business were liable for such debts, but any property of the minors inherited from their father and not belonging to the business could not be held liable ; nor were the persons of the minors liable to arrest for the business debts. BEHARI LAL *v.* CHATTAN LAL.
25 P R 1886

21. *Act IX of 1861, section 3—Custody of minor—Discretion of Court.*

Under section 3 of Act IX of 1861, the Court has a very wide discretion in cases relating to the custody of minors, but such discretion should be exercised with reference to what appears to be the arrangement most likely to be for the minor's benefit. NIZAM *v.* ALAYAR. **26 P R 1886**

MINOR—*contd.*

22. *Guardianship of minor—Application by mother who had previously entrusted her children to a third party under an agreement not to take them back during their minority without repaying the outlay incurred—Mother's right to an unconditional order notwithstanding such agreement.*
See CUSTODY OF MINOR.
15 P R 1887

23. *Custody of minor—Division of guardianship between two guardians.*
See CUSTODY OF MINOR.
44 P R 1887

24. *Sale made by minor—Void contract—Benefit of section 65 not claimable where contract is void* ab initio.
See CONTRACT ACT, 1872, SECTION 11.
23 P R 1888

25. *Suit by ward after attaining majority for accounts—Limitation.*
See LIMITATION ACT, 1877, 2ND SCHEDULE, ARTICLE 120.
59 P R 1888

26. *Bond excuted by defendant after attaining majority for money advanced to him by plaintiff during his minority—Agreement—Consideration.*
See CONTRACT ACT, SECTION 25.
86 P R 1888

27. *Contract with minor—Mortgage—Suit for possession—Mortgagee aware of mortgagor's minority—Mortgage not beneficial to minor's interests—Agreement discovered to be void—Obligation of person who has received advantage—Restoration to possession conditional on repayment of consideration applied to benefit of estate.*
See CONTRACT ACT, SECTION 11.
96 P R 1888

28. *Application by father for custody of minor girl—Defendant setting up marriage with the girl performed in absence of father by authority of her mother—Defendant's right to inquiry as to validity of marriage set up by him—Summary proceeding—Separate suit—Custom of Kapur Khatris of Amritsar—Right to custody of girl.*
See CUSTODY OF MINOR.
113 P R 1888

29. *Power to appoint two managers of property of minor.*
See GUARDIAN. **181 P R 1888**

30. *Certificate—Specification of property of minor.*
See GUARDIAN. **15 P R 1889**

31. *Next friend of a minor offering to be bound by the oath of his adversary—Agreement without leave of Court not binding on minor—Inquiry into minor's benefit.*
See CIVIL PROCEDURE CODE, 1908, O. XXXII R. 7 **18 P R 1889**

32. *Mode of appointment of a guardian of a minor.*
See GUARDIAN. **105 P R 1889**

33. *Compromise by guardian* ad litem *without the sanction of the Court in which the suit was pending.*
See CIVIL PROCEDURE CODE, 1908, O. XXIII, R. 3. **105 P R 1889**

34. *Revocation of certificate granted to guardian—Making over the property to*

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MINOR—*contd.*

successor—Accounting for money received and disbursed.
See GUARDIAN. **117 P R 1889**

35. *Guardianship of landholder minor.*
See GUARDIAN. **124 P R 1889**

36. *Guardianship of minor for purposes of marriage—Discretion of Court under Act IX of 1861—Principles on which such discretion should be exercised.*
See CUSTODY OF MINOR. **163 P R 1889**

37. *Suit by next friend of minor—Absence of certificate—Omission to record a formal order granting permission to sue—Irregularity.*
See CIVIL PROCEDURE CODE, 1908, O. XXXII, R. R. 1, 4 (2). **166 P R 1889**

38. *Next friend of a minor offering to be bound by the oath of his adversary—Agreement without leave of Court not binding on minor—Inquiry into minor's benefit—Necessity of express sanction.*
See CIVIL PROCRDURE CODE, 1908, O. XXXII, R. 7. **186 P R 1889**

39. *Guardianship of minor's property.*
See GUARDIAN. **202 P R 1889**

40. *Acknowledgment—Duly authorized agent—Sale of goods to firm represented by minors—Appointment of two joint guardians by Court under Act XL of 1858—Power of one guardian to sign acknowledgment on his own behalf and on behalf of his co-guardian.*
See LIMITATION ACT, 1877, SECTION 19. **7 P R 1890**

41. *Sale of minor's property by a certificated guardian with sanction of Court.*
See GUARDIAN. **56 P R 1890**

42. *Suit by minor on attaining majority to set aside a sale by persons purporting to act as guardian.*
See LIMITATION ACT, 1877, SCHEDULE II, ARTICLE 44. **51 P R 1891**

43. *Lease of ward's property to guardian—Introduction of outsider into management of ancestral holding.*
See GUARDIAN. **78 P R 1892**

44. *Regulation XVII of 1806—Application to foreclose—Minor—Notice how to be served.*

Held, that the presentation of a written petition under section 8, Regulation XVII of 1806, by a person acting under a general power of attorney from the holder of a deed of mortgage, was a valid one.

Held, further, that the copy of the application and *parwana* referred to in the section in question were sufficiently served on a minor mortgagee, for whom no guardian had been appointed under the Act, by service on his brother with whom he lived.

2 *N. W. P. Reps.*, 444, followed. LAL SINGH *v.* GOPAL DAS. **94 P R 1892**

45. *Suit by minor on attaining majority to set aside a sale by persons purporting to act as guardian.*
See LIMITATION ACT, 1877, SCHEDULE II, ARTICLE 44. **135 P R 1892**

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MINOR—*contd.*

46. *Setting aside decree passed on a compromise—Minor—Guardian* ad litem—*Fraud in equity—Knowledge.*
See CIVIL PROCEDURE CODE, 1908, O. XXIII, R. 3. **24 P R 1893**

47. *Disability of minor—Application for execution presented more than 12 years after date of decree—Minor not exempted from operation of law of limitation.*
See LIMITATION ACT, 1877, SECTION 7. **128 P R 1894**

48. *Conduct of natural guardian—Application by father who had changed his religion for the guardianship of his minor sons.*
See GUARDIAN. **84 P R 1894**

49. *Suit for custody of wife—Minors—Reference to arbitrators—Sanction of Court.*
See CIVIL PROCEDURE CODE, 1908, O. XXXII, R. 7. **37 P R 1895**

50. *Suit on behalf of minor for partition of joint family property.*
See HINDU LAW—PARTITION. **104 P R 1895**

51. *Acknowledgment of debt by Court of Wards as guardian of minor.*
See LIMITATION ACT, 1877, SECTION 19. **1 P R 1897**

52. *Application by guardian for custody of minor—Appeal—Revision.*
See REVISION IN CIVIL CASES. **13 P R 1897**

53. *Suit by minor against guardian for an account and for possession of immovable property.*
See LIMITATION ACT, 1877, SECTION 7. **33 P R 1897**

54. *Suit against minor—No formal order appointing guardian* ad litem—*Informal sanction of Court.*
See CIVIL PROCEDURE CODE, 1908, O. XXXII, R. R. 3 (1), 4 (2). **67 P R 1897**

55. *Disability of minor—Application for execution presented more than 12 years after date of decree—Minor not exempted from operation of law of limitation.*
See LIMITATION ACT, 1877, SECTION 7. **69 P R 1897**

56 *A minor should not be made a ward of his heir—but there is no objection to the appointment of such a person as guardian of the minor's property as distinct from the minor's person.*
See GUARDIAN. **137 P R 1893**
54 P R 1898

57. *Suit by minor to set aside decree—*Bona fides *of previous guardian* ad litem.
See RIGHT TO SUE. **85 P R 1898**

58. *Creditor—Liability of minor on balance struck by* de facto *guardian.*

Held, that a balance struck by a *de facto* guardian on behalf of a minor should be strictly examined. The minor will not be bound unless great care and caution are shown by the guardian and the transaction is proved to be for the minor's benefit. HIRA SINGH *v.* CHETU. **97 P R 1898**

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MINOR—*contd.*

59. *Minor—Compromise of suit—Sanction of Court—Statement of minor at mutation proceedings—Estoppel.*
See CIVIL PROCEDURE CODE, 1908, O. XXXII, R. 7 **17 P R 1899**

60. *Preliminary issue as to whether defendant was a minor at time of suit—Issue decided against defendant by first Court, but suit dismissed on the merits—Finding by lower Appellate Court that defendant was a minor—Case remanded for trial after appointment of guardian* ad litem—*Procedure.*
See CIVIL PROCEDURE CODE, 1908, O. XLI, R. 23. **23 P R 1899**

61. *Period of minority where guardian has once been appointed but appointment considered improper by Appellate Court—Indian Majority Act (IX of 1875), section 3—Guardian and Wards Act (VIII of 1890), section 52.*

The District Judge, on 11th July 1898, appointed one Jowahir Lal guardian of the property and person of the present respondent, that appointment was set aside by the Chief Court on 14th February 1899, the case being remanded to the original Court with a direction that some other reliable person should be appointed. After the remand the respondent alleged that as he had attained his age of 18 on the 25th March 1899, he was no longer a minor, the lower Court finding that statement correct, refused to appoint a guardian. On appeal to the Chief Court on the ground, among others, that when once a guardian had been appointed by Court of Justice the age of majority is extended to 21 years.

Held, per Anderson and Robertson, JJ, that the respondent's allegation as to his attaining the age of 18 on 25th March 1899 was substantially true.

Held, per Clark, C. J., and Robertson J., (Anderson, J. dissenting), that no guardian for the minor can be said to have been appointed or declared when the appointment itself was set aside on appeal as improper, and that the order of appointment of a guardian under those circumstances did not extend period of minority from 18 to 21 years.

Gordhandas Jadowji v. *Harivalubhdas Bhaidas (I. L. R. XXI Bom.* 281), distinguished. MUSSAMMAT CHUNDAN *v.* MINA MAL. **45 P R 1900 F. B.**

62. *Suit against minor—Appointment of guardian* ad litem *Suit when instituted.*
See LIMITATION ACT, 1877, SECTION 4. **18 P R 1901**

63. *Suit by minor on attaining majority to set aside a sale by his guardian—Limitation.*
See LIMITATION ACT, 1877, SCHEDULE II, ARTICLE 44. **19 P R 1902**

64. *Suit to recover money spent in connection with the guardianship of a minor—Suit relating to a trust- Jurisdiction of Small Cause Court.*
See SMALL CAUSE COURT, JURISDICTION, OF. **58 P R 1903**

MINOR—*contd.*

65. *Minor—Suit to establish right to betrothal and marriage of minor—Suit by collaterals against the natural guardian—Guardian and Wards Act*, 1890.

Held, that the provisions of the Guardian and Wards Act, 1890, do not bar a suit against the natural or appointed guardian for the establishment of the right to betroth or give in marriage a minor by the person who claims that right. There is nothing in that Act, which deprives collaterals of their rights in these matters under Hindu Law and the Act does not provide that these rights can be established only by proceedings under it.

Brohmomoyee and another v. *Kashi Chunder Sen* (*I. L. R. VIII Calc.* 266), *Sham Kuar* v. *Mohanunda Sahoy* (*I. L. R. XIX Calc.* 301), *Harendra Nath Chowdhury* v. *Brinda Rani Dassi* (2 *Calc. W. N.* 521), *Jairam Luxmon* (*I. L. R. XVI Bom.* 634), *Ghasita* v. *Wazira* (10 *P.R.* 1897), and *Khushal Chand Lal Chand* v. *Bai Mani* (*I. L. R. XI Bom.* 247), referred to. MUSSAMMAT UTTAM DEVI AND OTHERS *v.* MAYA RAM AND ANOTHER. **10 P R 1904**

66. *Limitation—Minor—Suit by minor on attaining majority to recover land mortgaged by his guardian—Limitation Act, Schedule II, article* 91.

See LIMITATION ACT, 1877, 2ND SCHEDULE, ARTICLE 91 **23 P R 1904**

67. *Minor—Sale of minor's property by next friend—Validity of sale—Necessity—Sale not beneficial to minor's interest—Refund of purchase money paid to minor with knowledge of minority—Liability of minor in equity—Contract Act*, 1872, *sections* 11, 65—*Specific Relief Act*, 1877, *sections* 39, 41.

Held, that a sale of minor's property by a brother who was neither a guardian legally constituted nor a natural guardian under the minor's personal law is void *ab initio* and cannot be upheld except on the ground of its being justified by the necessities of the minor or of his estate or beneficial to his interests.

When a person deals with a minor with full knowledge of his minority he is not entitled to claim from him equity when compelled to restore matters to the *status quo*. It is not just to compel a person to pay any money in respect of a transaction which against him is void

Mohori Bibee v. *Dharmodas Ghose* (*I. L. R. XXX Calc.* 539, P. C), and *Thurston* v. *Nottingham Permanent Benefit Building Society* (*L. R.* 1. *Ch.* 1902, 1). INDER SINGH *v.* NARINDAR SINGH. **33 P R 1904**

68. *Minor—Mortgage of minor's property by* de facto *guardian—Validity of mortgage—Necessity—Mortgage beneficial to minor's interests—Liability of minor in equity—Specific Relief Act*, 1877, *sections* 38, 41.

The mother and *de facto* guardian of a Muhammadan minor mortgaged the property of her minor son in order to discharge ordinary debts incurred mostly by his father for the support of the family. After attaining majority the minor filed a suit to avoid the mortgage on the ground that the contract being void *ab initio* he was entitled to be

MINOR—*contd.*

put in possession without recognizing the defendant at all.

Held, that although the plaintiff's mother was not legally authorised to act as his guardian, the money advanced must be taken to have been borrowed for necessaries and the alienation beneficial to his interest, and that therefore under sections 38 and 41 of the Specific Relief Act, a Court administering equitable principles is justified in exercising its discretion to compel the plaintiff to restore matters to the *status quo*, which should not have been interfered with by the Appellate Court without giving reason.

Mohori Bibee v. *Dharmodas Ghose* (*I. L. R. XXX Calc.* 539 P. C.) and *Thurston* v. *Nottingham Permanent Benefit Building Society* (*L. R.* 1 *Ch.* (1902) 1), explained and distinguished.

Dharm Singh v. *Sayad Zohur-ul-Hussain* (53 *P. R.* 1891), *Mastu* v. *Nand Lal* (73 *P R.* 1890 F. B.), *Jowhir* v. *Mussammat Chandi* (90 *P. R.* 1899), and *Devi Ditta* v. *Soudagar Singh* (65 *P. R.* 1900, F. B.) referred to. ALLAH DAD *v.* BUDHA. **52 P R 1904**

69. *Minor—Settlement on behalf of a Muhammadan minor by his brothers—Competency of minor to repudiate through a next friend such settlement without restoring other party to position he occupied at time of arrangement—Maintainability of suit.*

Held, that no suit can be maintained on behalf of a minor to set aside a settlement which has been made on his behalf by his brother during his minority and had been acted upon by the other party thereto, even on the ground that under Muhammadan Law the brothers had no power to contract on behalf of their minor brother, without first restoring that party to the position which he occupied at the time the settlement was made. NUR MUHAMMAD *v.* AIMNA.

91 P R 1907

70. *Competency of a married woman to represent a minor in an Appellate Court.*

See GUARDIAN.

8 P R 1908

71. *Competency of, to sue for breach of his betrothal made by his father.*

See RIGHT OF SUIT.

3 P R 1909
83 P R 1909

72. Minority at the date of alienation can only extend the period of limitation to three years from the date when the youngest of the plaintiffs attains his majority.

See LIMITATION.

100 P R 1909

73. *Age of majority among Muhammadans.*

See MUHAMMADAN LAW—AGE OF MAJORITY.

74. *Marriage of a minor Hindu widow by* chadar andazi—*Consent of lawful guardian to such marriage necessary—Presumption of*

MINOR—*contd.*

legality of marriage—Khatris of Lahore—Act XV of 1856.

See HINDU LAW, MARRIAGE.

75. *Pledge of joint family property by elder brothers, how far binding on minor brothers—Muhammadan Law.*

See MUHAMMADAN LAW—JOINT FAMILY.

76. *Marriage of minor contracted by mother in lifetime of father—Effect of delegation of his right by nearer to more remote guardian—Power of minor female whose marriage has been contracted by guardian other than father to repudiate on attaining puberty—Ratification.*

See MUHAMMADAN LAW—MARRIAGE.

77. *Lease of a portion of the property by guardian—Inability of minor to claim pre-emption—Estoppel.*

See ESTOPPEL. **2 P R 1903**

78. *Minor—appearance by—Guardian* ad litem—*Effect of decree against minor.*

Where in the Lower Appellate Court one of the respondents, a girl who was a minor was described merely as being plaintiff's wife and not as a minor, and the appeal was decided without any guardian *ad litem* having been appointed to her.

Held, that the girl, not having been represented by a guardian, could not be treated as having appeared, though actually present in Court, and that the decree could not be treated merely as an *ex parte* decree, and must be set aside. MUSSAMMAT IDO *v.* RULIA.

35 P R 1910

79. *Sale by minor—Misrepresentation—Vendee acting in good faith—Refund of purchase money.*

See SPECIFIC RELIEF ACT.

76 P R 1910

80. *Alienation by guardion—Muhammadan Law.*

See CUSTOM—ALIENATION.

81. The occupancy rights of minors are not lost, if they fail to manage the cultivation, their minority being a sufficient cause for their failure to cultivate.

See OCCUPANCY RIGHTS.

3 P R 1910

82. *Minor and guardian—Appointment of guardian of person of a minor—Joint Hindu family—jointness—separation.*

Held, following *Gharibullah* v. *Khalak Singh* (1903) I. L. R. 25 All. 407 that the fact that a Hindu minor and his uncle are joint in property as members of a joint Hindu family, does not bar the appointment of a third person as guardian of the minor's person, but does bar the appointment of such person as guardian of the minor's property.

Held, also, that the fact that a Hindu minor is under the care of a person not interested as

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an heir does not of itself terminate the relations of the minor and his uncle *inter se* as members of a joint Hindu family—and that a suit by the uncle against the minor, to establish the fact that a mortgage transaction effected by the minor's father was on behalf of the joint family, does not effect a separation.

Held, further, that there is no inconsistency in a guardian of the minor's person being appointed without any appointment of a guardian of the joint property, of which he is a co-parcener. RAM KISHEN *v.* BELI RAM.

23 P R 1910

83. *Minor—Mortgage by—after attaining majority, for consideration received during minority—Validity of—Indian Contract Act, IX of* 1872, *section* 25 (2)—*Rule laid down in* 59 *P. R.* 1907 (F.B.), *as to necessity of full consideration for a mortgage, explained.*

Held, that it is not open to a mortgagor who had to his own knowledge received the whole of the money which is the actual consideration for the contract and had to receive nothing more, to plead subsequently that the mortgage was incomplete and void simply because the deed of mortgage recited more consideration than was actually paid. The rule laid down in No. 59 *P. R.* 1907 (F. B). (*Gokal Chand* v. *Rahman*), is not applicable to such a case, the consideration for the mortgage relating not to a future payment, but to an alleged payment in the past.

Held also, that although it was now settled law that a promise by an infant is a mere nullity and void, yet an agreement made by a person of full age to compensate wholly or in part a promisor who had already voluntarily done something for the promisor even at a time when the promisor was a minor, did fall within the terms of section 25, clause (2) of the Indian Contract Act, 1872, and consequently a mortgage made for this purpose was binding on the representatives in interest of the mortgagor, but merely to the extent of compensating the mortgagee for moneys and articles actually supplied to the mortgagor during his minority as well as after he came of age.

Indram Ramaswami v. *Authappa*—(1906) 16 Mad. L. J. 422, differed from.

31 P R 1911

MISCONDUCT OF ARBITRATORS.

See APPEAL, CIVIL. **72 P R 1881**
184 P R 1882
17 P R 1883

See ARBITRATION.

MISCONDUCT OF PLEADER.

See LEGAL PRACTITIONERS ACT (XVIII OF 1879).

24 P R 1881

MISJOINDER.

See CAUSE OF ACTION.
JOINDER OF PARTIES.

MISJOINDER—*concld.*

1. *Hindu Law—Custom—Succession of adopted son to share of* birt—*Panjzati Brahmins of Amritsar city—Suit for declaratory decree and for a sum of money—Specific Relief Act (I of* 1877), *section* 42, *proviso.*

Plaintiff, one of the sons of R. K. sued the other descendants of R. K. and of D. for a declaration that he was the adopted son of N. C., a brother of R. K. and D., and as such was entitled to succeed to N. C.'s one-third share of the family *birt*, and also for a money decree for one-third of the *birt* alleged to be in the hands of defendants at the time of the institution of the suit. The parties were Panjzati Brahmins of Amritsar city. The first Court found that plaintiff was in fact the adopted son of N. C. and gave him the declaratory decree prayed for and also a money decree for part of the amount claimed. On appeal by one of the defendants, the plaintiff was informed by the Divisional Judge that he could not in the same suit ask for a declaratory decree and for a money decree for *birt*. Plaintiff thereupon elected to proceed with his claim for a money decree for a *birt* only, and the Divisional Judge confirmed the decree of the first Court as a whole. On appeal to the Chief Court, it was contended on behalf of the appellant that the suit having been reduced in the lower Appellate Court to one for a money decree for *birt* only became a small cause, and that neither of the lower Courts had jurisdiction to try it.

Held, that having regard to the proviso to section 42 of the Specific Relief Act, 1877, the plaintiff was entitled to institute the suit as laid, and, as laid, both Courts had jurisdiction to try it.

Held, further, that plaintiff's election to proceed for the suit for a money decree only having been forced on him by a ruling or expression of opinion by the Court, plaintiff was not bound thereby. BHAGAT RAM *v.* SHIV DATT. **141 P R 1894**

2. *Joinder of plaintiffs—Persons jointly interested in a suit—Claims not antagonistic—Civil Procedure Code,* 1882, *sections* 26, 27, 31.

See PARTIES. **38 P R 1903**

3. *Of causes of action—where plaintiffs as reversioners sue for a declaration in one suit in regard to several alienations.*

See CIVIL PROCEDURE CODE, 1908.

93 P R 1909 P. C.

MISJOINDER OF CAUSES OF ACTION.

See MULTIFARIOUSNESS.

MISREPRESENTATION.

See BANK.
JURISDICTION.

MISTAKE.

1. *Money paid under mistake—Act IX of* 1872, *section* 72.

A. obtained a decree against plaintiff in the Meerut Court; defendants (Delhi Bank)

MISTAKE—*concld.*

obtained a decree against A. in the Delhi Court Under an order of the Delhi Court, plaintiff paid defendants the amount of their decree against A. Execution was then taken out in the Meerut Court by A. against plaintiff, who pleaded that he had paid the amount to the Delhi Bank. The Court over-ruled the objection, holding that it could not recognize the payment at Delhi; whereupon plaintiff paid A. the amount of his decree. Plaintiff sued defendants to recover back the money paid by him at Delhi in satisfaction of the defendants' decree against A. *Held*, that plaintiff was entitled to recover the money from the defendants under section 72 of Act IX of 1872; the payment having been made under a mistake. THE DELHI and LONDON BANK *v.* SKINNER. **11 P R 1873**

2. *Money paid—Knowledge of facts.*

Money paid voluntarily and with a full knowledge of all the facts, to satisfy a claim which the plaintiff could have successfully resisted, cannot be afterwards recovered; but there must be actual knowledge, and not merely the means of acquiring a knowledge of the facts. A man who pays money under a mistake of fact after a superficial examination, may, on making a more thorough examination and discovering his mistake, maintain an action to recover his money. PERTAB SINGH *v.* THE SECRETARY OF STATE.

94 P R 1876

3. *Mistake of law or fact—Voluntary payment—Suit to recover—Construction of document.*

Where A. misconstruing the terms of a lease, made payments or granted remissions of money to B. and subsequently sued B. to recover back the money on the ground that it had been paid or remitted by mistake. *Held*, that such mistake was one of law, or ignorance of a particular right, and not a mistake of fact, and, therefore, that A. was not entitled to recover. KHAZAN SINGH *v.* THE SECRETARY OF STATE. **33 P R 1878**

4. *Liability of person to whom money is paid under mistake of fact.*

A. was a tenant holding under B. On B.'s death he was induced to take a lease of the same property from B.'s widow to whom he regularly paid rent. Subsequently the executors of B. sued A. and obtained a decree for the full amount of the rent due from him since B.'s death.

Held, that as the parties entered into the agreement under a mistake of fact, A. was entitled under the provisions of section 72 of the Indian Contract Act to recover back the whole amount he paid as rent to B.'s widow.

Cooper v. *Phipps* (*L. R.* 2 *H. L.* 149), and *Ragnath Sahai* v. *Mam Raj* (80 *P. R.* 1895), followed. RAM KISHEN *v.* RANI BHAGWAN KAUR. **131 P R 1906**

MONEY PAID OUT OF COURT IN SATISFACTION OF DECREE, AND NOT CERTIFIED.

1. *Suit to recover.*

See RIGHT TO SUE. **47 P R 1881**
182 P R 1882
11 P R 1883
83 P R 1884

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MONEY PAID OUT OF COURT IN SATISFACTION OF DECREE AND NOT CERTIFIED—*concld.*

2. *Suit for—Limitation.*
See LIMITATION ACT (XV OF 1877), SCHEDULE II, ARTICLE 132.
90 P R 1881
55 P R 1884

MONEY

1. *Had and received to plaintiff's use.*
See JURISDICTION OF CIVIL COURTS
123 P R 1883

See LIMITATION ACT (XV OF 1877).
194 P R 1882
56 P R 1883
96 P R 1886

See SMALL CAUSE COURT—JURISDICTION OF.
51 P R 1882
50 P R 1887
51 P R 1887

2. *Suit for money paid in consideration of illegal contract.*
See CONTRACT ACT, 1872, SECTION 23.
46 P R 1887

3 *Paid under unlawful agreement, recovery of.*
See CONTRACT ACT, 1872, SECTION 65.
66 P R 1895

4. *Paid to agent for unlawful purpose—Recovery of.*
See CONTRACT ACT, SECTION 23.
63 P R 1898

MONEY CHARGED UPON IMMOVABLE PROPERTY.

See LIMITATION ACT (IX OF 1871), SCHEDULE II, ARTICLE 132.

MONEY IMPROPERLY ATTACHED IN EXECUTION.

See EXECUTION OF DECREE.

MONEY DECREE.

See MORTGAGE.

MONTHLY TENANT HOLDING OVER.

See LANDLORD AND TENANT.
1 P R 1896

MOTHER.

—*Alienation by.*
See CUSTOM I.—ALIENATION—D.—ALIENATION BY MOTHER.

—*Gift to.*
See HINDU LAW, GIFT.
153 P R 1883
135 P R 1884

—*Succession of.*
See CUSTOM VIII.—MAINTENANCE AND SUCCESSION—V.—SUCCESSION OF MOTHER.

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MOVEABLE PROPERTY.

See EXECUTION OF DECREE.
JURISDICTION OF SMALL CAUSE COURT.
28 P R 1881
167 P R 1882
4 P R 1883
97 P R 1883
35 P R 1886
91 P R 1886

See LIMITATION ACT (XIV OF 1859), SECTION 1, CLAUSE 16.

—" *Fruit upon trees.*
See REGISTRATION ACT (III OF 1877), SECTION 17.
72 P R 1884

MUHTARFA.

See CUSTOM V.—CESSES AND DUES.
53 P R 1881

MUKHTAR.

1. *Use of objectionable language—Professional misconduct—" Any other reasonable cause "*—Ejusdem generis.
See LEGAL PRACTITIONERS' ACT, SECTION 13.
9 P R 1902

2. *Advising false reason to a client—Professional misconduct.*
See LEGAL PRACTITIONERS' ACT, 1879, SECTION 13.
56 P R 1902

See COSTS.
PLEADER AND CLIENT.

MUKARRARIDAR.

1 The status of a mukarraridar is no higher than that of a tenant with rights of occupancy under the Tenancy Act. LATEEF KHAN *v.* MUSSAMMAT GOOLZADEE. **5 P R 1873**

2. *Mukarraridar holding land in Rawalpindi District—Enhancement of rent.*

A mukarraridar in the Rawalpindi District belongs to a class of tenants holding at fixed and immutable rates for the term of settlement. *Held*, therefore that defendants being mukarraridars were liable only for the rents heretofore payable by them which were fixed at Settlement, and were not liable to enhancement till the expiry of the term of Settlement. KALA *v.* NAWAB KHAN.
47 P R 1879

3. *Suit by to establish right.*
See JURISDICTION OF CIVIL OR REVENUE COURT. **11 P R 1888**

4. *Rawalpindi District*—Status.

A mukarraridar in the Rawalpindi District held to be a tenant with occupancy rights holding at certain rates and not an inferior proprietor MALIK AULYA KHAN *v.* BELI RAM.
67 P R 1890

5. *Application by ex-revenue assignee to have settlement of village made with him—Mukarraridari—Recorded proprietors—Revenue Circular No. 37.*

The predecessor in interest of appellants obtained in Sikh times an assignment of a village, which had been founded by the predecessors in interest of the respondents, who were the present recorded owners, and finding it in a very unprosperous condition, he

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MUKARRARIDAR—*concld.*

made arrangements for extending the cultivation in it and effecting improvements. His successors in interest continued to make improvements and arrange for cultivation, and realized their dues in kind until the assignment to them of the revenue of the estate was recently resumed. They applied to the Settlement Collector to have the settlement of the village made with them, but their application was rejected and it was ordered that settlement be made with the recorded proprietors. On appeal the Commissioner reversed the order of the Collector and ordered settlement to be made with the plaintiffs in respect of part of the land on the ground that they as ex-assignees had fully established their rights to be accorded the *status* of mukarraridari. Plaintiffs appealed to the Financial Commissioner with respect to the rest of the land.

Held, that inasmuch as the *status* of mukarraridar is not acquirable where a whole village is held in assignment and the assignee in exercising any rights beyond those of revenue receiver, exercises them in subordinating the village proprietary body to himself and not himself to the village proprietary body, the plaintiffs in the present case had acquired the rights, not of mukarraridari, but of (if anything) talukadari, and were not entitled as such to have settlement made with them instead of the inferior landowners. MAHANT SHANKAR DAS *v.* NAWAB.
1 P R 1894 Rev.

6. *Succession to childless mukarraridar in Pindigheb* tahsil, *Rawalpindi District—Claim by collaterals whose common ancestor never held the lands—Customary right of succession*—Status *of mukarraridar in the said district.*
See CUSTOM VIII.—MAINTENANCE AND SUCCESSION—A.—RULE OF DECISION. **10 P R 1896 Rev.**

7. *Sale of, to landlord—Suit by cosharer in holding—Preferential right.*
See PRE-EMPTION. **16 P R 1905**

MUKARRARIDARI RIGHTS.

1. *Suit for declaration of—Jurisdiction of Civil or Revenue Court.*
See JURISDICTION OF CIVIL OR REVENUE COURT. **42 P R 1908**

2. *Creation of mukarraridari rights amounts to a permanent alienation.*
See CUSTOM I.—ALIENATION—B.—ALIENATION BY WIDOW—(*b*). SALES AND MORTGAGES. **85 P R 1910**

MULTIFARIOUSNESS.

See CAUSE OF ACTION.
JOINDER OF PARTIES.

1 *Alienation by a widow—Suit for declaration by reversioner against the widow and various alienees claiming under distinct titles—Misjoinder of causes of action—Civil Procedure Code,* 1882, *sections* 28, 45.

The plaintiffs as next reversioners brought a suit against a Hindu widow and a number of alienees to whom she had alienated separate and distinct portions of a certain property at different times, to obtain a declaration that

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all the alienations were void and inoperative as against their interests after the death of the alienor.

Held, that the suit as framed was bad for misjoinder of causes of action. The joinder of all the alienees in a claim for a declaration by a reversioner when each alienation was independent and separate is not permissible under the provisions of Section 45 of the Code of Civil Procedure. MUSSAMMAT GOPAL DEVI *v.* JAI NARAIN. **1 P R 1905**

2. *Suit by* mahant *of a religious institution to set aside various mortgages made by his predecessor in office to several persons—Misjoinder of causes of action and parties—Civil Procedure Code*, 1882, *sections* 28, 45.

Held, by the Full Bench, that a suit by the *mahant* of a religious institution for possession of *waqaf* property alienated by his predecessor in office and also for a sum of money realized by the alienees as rent from persons to whom the said property had been leased, is not bad for misjoinder of causes of action. BASHESHAR LAL *v.* NATHA SINGH. **30 P R 1908 F. B.**

MUNICIPAL ACT.

See PUNJAB MUNICIPAL ACT, 1891.

MUNICIPAL COMMITTEE.

1. *Octroi—Breach of contract.*

The farmer sued Government for damages for not being permitted to collect the tax before the goods passed into the city (Amritsar). The practice before plaintiff bought the farm was, instead of levying the tax by the stoppage of all carts laden with taxable goods at the gates of the town, or prohibiting the entrance of goods until the tax had been secured, to levy the tax within the town, the goods not being stopped outside, but only watched into the town and to the place where the collections took place. In some cases by arrangement with the importers, valuable goods went straight to their destination. The plaintiff's lease did not clearly show that the tax was to be taken before the goods were brought into the town. For three months, he took a house inside the city for the collection, and raised no objection; he then resigned, and sued for damages on the ground that defendant permitted traders to take their goods into the city without first paying the tax. Suit dismissed. SECUNDER KHAN *v.* THE GOVERNMENT. **10 P R 1867**

2. *Articles liable to taxation.*

Held, that the *Choongee* tax could only be levied upon articles brought into or manufactured for sale or consumption in a town; it could not be levied upon goods manufactured in the town for sale or consumption elsewhere, or upon goods merely in transit through a town. GAMAN *v.* SULUKHUN MULL. **49 P R 1868**

3. *Act XXVI of* 1850.

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MUNICIPAL COMMITTEE—*contd.*

A rule of a Municipal Committee that land not built upon within two years should be forfeited, was not within the powers conferred by Act XXVI of 1850, that Act relating to improvements of towns and limiting the penalty for breach of municipal rules to Rs. 50. POWELL *v.* JEHANGEER. **36 P R 1869**

4. *Act XXVI of* 1850—*Rule for removal of buildings which obstruct or encroach.*

Section 6, Act XXVI of 1850, empowered Commissioners to "prepare rules for more "effectually accomplishing the purposes for "which they are appointed"; and section 7 provided for the "imposition of reason-"able penalties for breach of any rule, not "exceeding fifty rupees." *Held*, that a rule which ordered the removal of certain houses and buildings as being encroachments or obstructions, and which provided for their demolition by the Commissioners, was not *ultra vires* under section 7, but came within the scope of section 6. BEHAREE LALL *v.* THE MUNICIPAL COMMITTEE, DELHI. **39 P R 1870**

5. *Financial Commissioner's Circular No.* 10 *of* 1868—*Legality of partnership between octroi lessee and another.*

By Financial Commissioner's Circular No. 10 of 27th January 1868, the holder of an octroi lease could not sub-let the lease or any part thereof without the written consent of the Municipal Committee *Held*, that this Circular did not prevent the lessee from entering into a partnership agreement in respect of the octroi lease. NARAIN DASS *v.* SUNT LALL. **79 P R 1870**

6. *Limitation.*

To enable a plaintiff to maintain a suit for breach of contract, against a Municipal Committee appointed under Act XV of 1867, it was necessary that he should give one month's notice in writing to the Committee that he intended to file a suit, and the suit must be brought within three months from the accrual of the cause of action. CHAND MULL *v.* PRESIDENT, AMRITSAR MUNICIPAL COMMITTEE. **59 P R 1872**

7. *Act IV of* 1873—*Bye law—Nuisance*

Plaintiff sued for a declaration of her right to maintain a *chujja*, which the Municipal Committee (Delhi) had ordered her to demolish. Under the bye-laws of the Committee, the erection of a *chujja* without the sanction of the Committee, was declared to be a nuisance. *Held*, that the Civil Courts were bound to take the bye-law as conclusive that the *chujja* was a nuisance. MUSSAMMAT SUBHANI *v.* PRESIDENT, MUNICIPAL COMMITTEE, DELHI. **8 P R 1875**

8. *Limitation.*

A suit against a Municipal Committee, whether based upon a wrong or contract, for any thing done or purporting to be done under Act IV of 1873, must be brought within three months after the accrual of the right to sue. TIKKU SUDH *v.* PRESIDENT, MUNICIPAL COMMITTEE, SIMLA. **58 P R 1875**

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MUNICIPAL COMMITTEE—*contd.*

9. *Goods in transit—Bonded ware-house—Sanction of Government.*

Plaintiff sued for the refund of money illegally caused to be levied from him for octroi, alleging that the goods were in transit and not subject to duty The defence was that duty was leviable on goods in transit, unless they were deposited in a bonded warehouse, and that plaintiff had not deposited the goods in question as required by the Municipal rule. By Government Resolution No, 74 of December 20th, 1870, no octroi was to be levied on goods in transit "unless "it could be certified that adequate arrange-"ments were made by means of bonded "ware-houses or otherwise for exempting "from duty articles declared to be in transit "through a town or which the owners had "no immediate intention of selling for local "consumption. This was followed by a Municipal rule that "no duty should be "levied on articles in transit unless it had "been certified to the satisfaction of the "Local Government" that adequate arrangements had been made by means of bonded ware-houses, &c. for exempting from duty articles declared to be in transit, &c. The defendant failing to show that the bonded ware-house system at Peshawar had been certified to, and expressly sanctioned by, the local Government, *held*, that plaintiff was entitled to a decree for the refund claimed. *Semble*, had the sanction of Government been obtained, the duty would have been leviable, though recoverable by the owner of the goods on proof that they were actually through goods and actually re-exported. AHMED BUKSH *v.* PRESIDENT, MUNICIPAL COMMITTEE, PESHAWAR. **31 P R 1876**

10. *Suit by lessee—articles made in a town and sold elsewhere.*

A lessee or farmer of octroi can sue in a Civil Court for unpaid dues. Octroi cannot be levied on articles or goods made within the boundary of a municipality, but sold outside. UMRA *v.* HIRA NAND. **55 P R 1876**

11. *Suit against Municipal Committee.—Title to land—Limitation.*

A suit founded upon title, and brought to question an alleged proprietary right in a Municipal Committee, does not fall within section 19, Act IV of 1873, which gives three months' limitation for a suit. PRESIDENT, MUNICIPAL COMMITTEE, DELHI *v.* HARNA MALL. **10 P R 1877**

12. *Octroi—Rules regarding levy of Octroi on Government stores—Government of India No.* 2-99, *dated* 22*nd December* 1875—*Failure of importer to comply with rules—Refund.*

Where plaintiff, a contractor to the Military Works department, sued defendants, who were the farmers of the cantonment octroi duties, for the refund of a sum of money paid as duty on certain articles imported for the use of Government, and it appeared that the terms of Rule II regarding the levy of octroi on Government stores passing

MUNICIPAL COMMITTEE—*contd.*

a municipal barrier (contained in Government of India No. 2-99, dated 22nd December 1875) had not been complied with, as no declaration was made by the importer, when the said stores were imported, that they were intended for the use of Government, *held*, that in the absence of a special agreement between the plaintiff and the octroi contractors, the plaintiff could not claim the refund sought, nor did the practice observed in previous years by other octroi contractors bind the defendants. CHUHAR SINGH *v.* GOKAL CHAND.

97 P R 1882

13. *Suit against—Limitation.*
See LIMITATION. **79 P R 1884**

14. *Responsibility of, for negligence of contractor.*
See NEGLIGENCE.

15. *Statutory powers.*
See NUISANCE. **106 P R 1888**
103 P R 1892

16. *Statutory powers.*
See PUNJAB MUNICIPAL ACT.
103 P R 1892

17. *Building a house without receiving any order from the Municipal Committee after six weeks of the receipt of a valid notice under sub-section 1) of section 92 of the Punjab Municipal Act.*
See PUNJAB MUNICIPAL ACT, 1891, SECTION 92. **9 P R 1901**

18. *Sanction to build—Punjab Municipal Act,* 1891, *sections* 92 *and* 95—*Conditional sanction.*

Held that the Municipal Committee, while acknowledging that there was no objection to the erection of a building, was not empowered to compel the applicant to do something quite foreign to the object of the application and to the purpose and object for which the power of sanction was given. DAMODAR DAS *v.* MUNICIPAL COMMITTEE, DELHI. **27 P R 1901**

19. *Competency of, to protect its private rights when dealing with public matters.*
See PUNJAB MUNICIPAL ACT, 1891, SECTION 92. **45 P R 1905**

20. *Discretion of, to take action under section* 92, *Punjab Municipal Act,* 1891—*Power of Civil Courts to interfere with such discretion.*
See JURISDICTION OF CIVIL COURT.
45 P R 1905

21. *Suit against, for damages for malicious prosecution*

Held, that a suit for damages for malicious prosecution will lie against a Municipal Committee. AMAR NATH *v.* MUNICIPAL COMMITTEE, KARTARPUR. **86 P R 1906**

22. *Municipal Committee—Discretion of, to take action under section* 120 *E—Suit by person aggrieved for injunction—Jurisdiction of Civil Court to restrain action of Municipality—Punjab Municipal Act,* 1891, *section* 120 *E.*

MUNICIPAL COMMITTEE—*concld.*

Although under the powers given by the Legislature a Local Body may act perfectly *bona fide* and *intra vires* in issuing a certain order, still, if that order injuriously affects the rights of any person, the latter can undoubtedly appeal to the Civil Courts for protection, and to that protection he will be entitled if he can prove that the order in question was made wantonly or without any reasonable justification. Therefore, where a Municipal Committee, at the instance of a discontented neighbour, issued a notice under section 120 E of Act XX of 1891, directing the plaintiff to close his old drain and to make a new one in its place along a different alignment. without any proper enquiry as to whether the existing drain was a menace to the health of the people surrounding it or the general public.

Held, that the Civil Court should under such circnmstances interfere by injunction to restrain the Committee from carrying out its order which was inequitable and pretended to proceed on an alleged danger to health which was in no way proved. GHULAM MUHAMMAD *v.* JANGBAZ.

58 P R 1907

MUNICIPAL LIMITS.

See JURISDICTION OF SMALL CAUSE COURT. **125 P R 1881**

MUNICIPAL REGISTER OF DEATHS.

In a case where the question of age of a person at a certain time was disputed the Municipal Register of Deaths was held relevant under section 35 of the Evidence Act and being a public document within the meaning of clause (iii) (1) of section 74 of that Act and produced from proper custody presumed to be genuine. ANIS-UL-REHMAN KHAN AND OTHERS *v.* BENI RAM AND OTHERS. **59 P R 1901**

MUSHA A.

See MUHAMMADAN LAW. **19 P R 1881**
87 P R 1882
See MUHAMMADAN LAW—GIFT.
91 P R 1894

MUTATION.

—*Mutation of names—Punjab Land Revenue Acts of* 1871 *and* 1887—*Scope of mutation under the Act of* 1887.

The ancient tradition of the revenue system of North-Western India, that mutation of names (*dakhil kharij*) is simply the registration of actual existing possession and in no way an adjudication as to rights, is not departed from by the Punjab Land Revenue Act, 1887. MIAN KHAN *v.* ALAM KHAN AND MEHAR KHAN. **1 P R 1891 Rev.**
See PUNJAB LAND REVENUE ACT, 1887, SECTION 37. **1 P R 1901**
11 P R 1901
14 P R 1901
See DAKHIL KHARIJ.

MUTWALI.

1. *Of mosque, right of, to exercise right of pre-emption.*
See PRE-EMPTION. **153 P R 1884**

MUTWALI—*concld.*

2. —*Suit by.*
See RELIGIOUS INSTITUTION.
28 P R 1900

MUTINY ACT.

1. *Suits under Rs.* 300—*Protection from arrest.*

Defendant was a Sergeant in the Royal Artillery, quartered at the Kasauli Depot, and was sued in the Small Cause Court of Simla, for a debt under Rs. 300. He was also called upon under sections 74 and 75, Act VIII of 1859, to show cause why he should not give security or bail. *Held*, that a suit for an amount under Rs. 300 will lie against a soldier or non-commissioned officer, under section 40 of the Mutiny Act, provided the plaintiff shall have given notice in writing of the cause of action to such soldier or non-commissioned officer, or have left it at his last quarters. Execution, however, of the decree cannot be had against the body of the soldier or non-commissioned officer, nor can he be committed to custody in default of giving security under section 78 of Act VIII of 1859. SUTTAROO *v.* CARTER.

94 P R 1868

2. *Suits up to Rs.* 400.

The District Court of Sialkote passed a money decree for Rs. 53-9-6 against an officer in one of Her Majesty's Regiments, who at the time of the institution of the suit was serving with his regiment at Peshawar: *Held*, that the Court at Peshawar to which the decree had been transferred for execution, properly refused to execute the decree under section 288, Civil Procedure Code, as having been made without jurisdiction. Suits to the value of Rs. 400 against persons amenable to the Mutiny Act are cognizable only by Courts of Requests; but the jurisdiction of such Courts is barred in places where there are Courts of Small Causes empowered to try suits amounting to Rs. 400 or upwards. JAMSETJEE *v.* NELSON.

1 P R 1871

3. *Jurisdiction.*

No Civil Court (except a Court of Small Causes where there is one) has jurisdiction to entertain a suit for an amount less than Rs. 400 against a Military officer residing in a cantonment. INDUR JEET *v.* MORGAN.

58 P R 1872

4. *Section* 99—*Court to award stoppage of defendant's pay is the Court passing the decree.*

Held, by BOULNOIS and LINDSAY, JJ., (CAMPBELL, J. dissenting), that the only Court which has power to make an order stopping a defendant's pay under section 99 of the Mutiny Act, is the Court which passes the decree. *Semble*, the order stopping the pay must be made at the time of passing the decree and form part of the decree. BANESS *v.* TURTON. **83 P R 1875**

5. *Small Cause Court—Civil Procedure Code (Act X of* 1877) *section* 17—*Mutiny Act, section* 99—*Suit against Military Officer.*

The defendant, a Military Officer doing duty at Dehra Dun, was sued for Rs. 148-3-0

in the Mian Mir Cantonment Small Cause Court upon a promissory note executed at Mian Mir where the cause of action arose. *Held*, that the Mian Mir Small Cause Court had no jurisdiction to entertain the suit.

The provisions of the Mutiny Act, section 99, are in no way affected by the Civil Procedure Code, section 17. A Small Cause Court therefore continues only to have jurisdiction over a Military officer, when such officer resides within the local jurisdiction of the Court. JAMSETJI'S SONS *v.* MACTURK.
33 P R 1879

MUTUAL, OPEN AND CURRENT ACCOUNT.

See LIMITATION ACT (XV OF 1877), SCHEDULE II, ARTICLE 85.
58 P R 1882
44 P R 1886

MUTUAL ACCOUNTS.

See LIMITATION ACT, 1877, SECTION 19.
132 P R 1907

MORTGAGE.

I.—CONSTRUCTION.
II.—POSSESSION UNDER.
III. BY DE FACTO GUARDIAN.
IV.—BY SONLESS PROPRIETOR.
V.—BY SONLESS ADNA MALIK.
VI.—BY WIDOW.
VII.—BY DAUGHTERS.
VIII.—BY MOTHER
IX.—BY HEADS OF RELIGIOUS INSTITUTIONS.
X.—BY NON-PROPRIETORS.
XI.—OF OCCUPANCY RIGHTS.
XII.—MERGER.
XIII.—MARSHALLING.
XIV.—TACKING.
XV.—REDEMPTION.
XVI.—FORECLOSURE.
XVII.—INTEREST.
XVIII.—NON-PAYMENT OF CONSIDERATION ACCORDING TO AGREEMENT.
XIX.—COMPENSATION FOR IMPROVEMENTS OR REPAIRS.
XX.—ACCOUNTS.
XXI.—LIMITATION.
XXII.—EFFECT OF ALIENATION OF LAND ACT.
XXIII.—PRE-EMPTION.
XIV.—MORTGAGES IN JOINT ESTATES.
XXV.—MISCELLANEOUS.

I.—CONSTRUCTION.

1 *Property must be specified.*

An instrument purporting to be a mortgage deed, but referring only generally to the debtor's property without specifying what property is intended to be incumbered by the instrument, is void as a mortgage deed. MULLICK KURREEM BUKSH *v.* UMMEE (*No.* 17 *P. R.* 1866 *and* RAM NARAIN *v.* PURTAL.
20 P R 1866

2. *Objection to sale of attached property.*

Certain land having been attached in execution of decree, D., who held a mortgage on the land urged his prior claim and objected to the sale, under section 246, Civil Procedure Code. *Held*, that (the mortgage having been established) the proper course was to sell the lands subject to the mortgagee's lien. DEVA *v.* HUR NARAIN. **76 P R 1 68**

3. *Usufructuary mortgage—Deed—Construction—Whether the usufruct was meant for interest only.*

In the case of a pure usufructuary mortgage, the deed of mortgage gave the mortgagee the right of holding and enjoying the property till the debt should be paid off. *Held* that the proper construction of the deed did not restrict the appropriation of the usufruct to the satisfaction of the interest only. RAMJEE DASS *v.* BABA KAKA NAND.
81 P R 1870

4. *Power of sale.*

When there is a mortgage deed in English form with a power of sale, the parties acting according to English law, the mortgagee can sell without the consent of the mortgagor and such sale is not void under section 240, Act VIII of 1859, though effected after attachment of the property by a third party, a judgment-creditor of the mortgagor. BYRNE *v.* BAIN. **68 P R 1875**

5. *Mortgage as collateral security—Money decree only obtained by mortgagee—Sale of mortgaged property to third party—Rights of mortgagee and purchaser.*

Where a creditor holding a mortgage by way of collateral security, obtains a money decree only, and the property sold to a *bona fide* purchaser for value the creditor cannot follow the property except by regular suit against the party in possession ; he cannot attach the property and bring it to sale in execution of his decree. KHUSHALI MALL *v.* GOPAL MALL. **82 P R 1875**

6. *Usufructuary mortgage—Proprietary rights distinct from cultivating rights.*

Held, by BOULNOIS and THORNTON, JJ. (MELVILL, J., dissenting) that when a proprietor effects a usufructuary mortgage of his *khudkasht* lands he is not to be presumed, in the absence of an express stipulation to the contrary, to have reserved to himself the right of cultivating the land. NARAIN SINGH *v.* DYA RAM. **44 P R 1874**

Followed in. SHEOJI SINGH *v.* TARA.
29 P R 1876

7. *General hypothecation—Bond.*

A bond which does not specify the property alleged to be hypothecated, but merely engages that the debt may be realized from the movable and immovable property of the debtor, *held*, not to operate as a mortgage. MAHAMADJU *v.* JAI RAM.
74 P R 1878

8 *Conditional Sale—Suit by mortgagee for declaration of absolute title—Duties of mortgagee before instituting such suit—Want of jurisdiction in Court passing order under Regulation XVII of 1806—Dismissal of plaintiff's suit on ground of such irregularity.*

In order that a mortgagee under a mortgage by way of conditional sale may maintain a suit to have the sale declared absolute, he must prove that all legal formalities have been complied with, and amongst other things, that notice was issued from the proper Court, and this must be done whether or no the defendant pleads irregularity or other defect; where, therefore, it was clear that the Court who had passed the order under Regulation XVII of 1806 had no jurisdiction to pass such order, the Chief Court dismissed plaintiff's suit holding that the year of grace had never begun to run.

No. 21 *P. R.* 1870, approved. JAMITA *v.* SHADA. **91 P R 1880**

9. Lekha mukhi *mortgage—Suit to recover mortgage-debt—Remedy of mortgagee.*

Plaintiff brought the present suit to recover the sum alleged to be due under a mortgage of certain land, the plaint also containing a prayer that the amount found to be due should be decreed against the mortgaged property.

Held, that the suit was not maintainable (*inter alia*) because the mortgage was a usufructuary one of the kind known as *lekha mukhi*, the land being made over to the mortgagee, and he having to look to its produce for the payment of the mortgage-debt, the mortgagors undertaking no personal liability, and there being no provision in the deed entitling the mortgagee to sue for the debt. GAHI MAL *v.* SHERA. **90 P R 1881**

10. *Purchase of mortgagor's interest in mortgaged land—Purchaser building houses on mortgaged land—Extension of mortgagee's lien to such houses.*

Where a purchaser of the mortgagor's interest in mortgaged land takes possession of the land under his purchase, and there being nothing in the original agreement between the mortgagor and mortgagee to prevent him, builds houses upon the land, the mortgagee's lien cannot be held to extend to such houses, especially where the mortgagee, though he knew that the houses were being built on the mortgaged land, offered no objection at the time. *Faiz Muhammad Jan* v. *Kazi Muhammad Amir Jan* (No. 10 P R. 1879), referred to. MUHAMMAD NAWAZ *v.* UTTAM SINGH.
94 P R 1881

11. *Conditional sale—Usufructuary mortgage where mortgagor undertakes no personal liability—Right of mortgagee to sue for principal debt.*

In a suit by the mortgagee to recover the principal and interest due upon a deed of mortgage, it appeared from the terms of the deed that in consideration of the receipt of a certain sum by the defendant from the plaintiff, the defendant mortgaged certain land to the plaintiff, agreeing to cultivate the land, pay the Government revenue, and be responsible for profit and loss It was further agreed that the mortgagee should take the produce of the land in lieu of interest, and it was added that the mortgagor

MORTGAGE—*contd.*

I.—CONSTRUCTION—*contd.*

should be at liberty to redeem whenever he paid the principal and interest in full.

Held, that the mortgage being essentially an usufructuary one, the mortgagor undertaking no personal liability for the money, and there being no stipulation that the mortgagee might sue for the principal whenever he chose, while there was a stipulation securing to the mortgagor the right to redeem at pleasure, the plaintiff's suit for the principal did not lie, his proper remedy being to sue for the produce of the land. *Soman Mull* v. *Kanh Chand* (No. 15 *P. R.* 1870), and *Gulam Hosein* v. *Mehtab* (No. 57 *P. R.* 1873), cited and followed. GIAN SINGH *v.* MAHAN SINGH. **127 P R 1881**

12. *Third party paying off original mortgagee Equitable mortgage—Presumption.*

Plaintiff sued to recover a sum alleged to be due for interest on a mortgage originally entered into by the defendant with one S., the benefit of which was alleged to have been transferred by defendant to her brother-in-law, the present plaintiff, in consideration of his having paid to S. the principal sum secured by the mortgage. It was found as a fact that plaintiff had paid the mortgage-money out of his own funds to S., and it was therefore contended that he held the position of an equitable mortgagee and succeeded to all the rights possessed by S. under his mortgage.

Held that, as plaintiff paid the amount due under the mortgage to S. there was a very strong presumption that it was the intention of the parties that he was to hold the same position as that held by S. as mortgagee, and that this presumption was strengthened by the fact that the mortgage-deed was transferred to the plaintiff, and was allowed to remain in his possession; that it was extremely improbable that he made the payment simply for the benefit of the defendant and as a matter of pure benevolence to her; and therefore, the defendant having failed to produce any evidence to rebut the strong presumption which arose upon the facts stated in favor of plaintiff, the plaintiff must be held to have acquired S.'s rights under the mortgage and to be entitled to the interest claimed on the principal sum secured by the mortgage. SHEIKH MEHR ALI *v.* MUSSAMMAT AZIM BIBI. **59 P R 1882**

13. *Conditional sale—Foreclosure—Regulation XVII of 1806—Construction of Regulation Defects in notice issued under section 8—Result of such defects.*

In order to entitle a mortgagee to avail himself of foreclosure proceedings so as to defeat the mortgagor's right of redemption, it is necessary for him to show that the requirements of the law have been strictly complied with.

Where, therefore, a notice issued under section 8 of Regulation XVII of 1806 did not bear the seal or signature of the District Judge, but only his initials, and merely notified to the mortgagor the principal sum due n the mortgage without any mention of the

MORTGAGE—*contd.*

I.—CONSTRUCTION—*contd.*

interest also due thereon, *held*, that there were such defects in the validity of the notice as to vitiate the foreclosure proceedings, and to prevent the mortgagee from maintaining a suit based upon such proceedings. *Saindass* v. *Jehangeer* (No. 21 *P. R.* 1870, cited, *Fatteh* v. *Sainditta* (No. 76 *P. R.* 1877), distinguished. MEHRO *v.* SUJA. **84 P R 1882**

14. *Conditional sale—Foreclosure—Regulation XVII of 1806, section 8—Validity of notice—Notice to purchaser of mortgagor's rights.*

Where a mortgagor by way of conditional sale has sold his equity of redemption before an application for foreclosure has been made, such application is not effectual unless the purchaser is served with it: and the same principle applies where only part of the mortgaged property has been sold. *Mahmud Khan* v. *Bhai Balkishen* (No. 76 *P. R.* 1878, Civil) referred to. MULRAJ *v.* SOBHA RAM. **31 P R 1883**

15. *Stipulation to pay fixed rate of interest for period of mortgage—Agreement by mortgagor to pay on demand principal and interest if he did not redeem atend of stipulated period—Implied agreement for continuance of same rate of interest till payment—Construction of stipulation that "malikana" of land should be credited to mortgagor.*

In a suit for redemption of land mortgaged by plaintiff to defendant by two separate deeds of mortgage, it appeared that the deeds stipulated that possession should be given to the mortgagee; that interest at the rate of 2 per cent. *per mensem* should be paid by the mortgagor, and that "malikana" realized by the mortgagee should be credited to the mortgagor. It was further stipulated that the mortgagor might redeem at the end of 7 years, after which if he did not redeem he undertook to pay the mortgagee on demand the principal and interest due.

Held, that the last mentioned stipulation might fairly be construed to amount to a contract for the continuance of the same rate of interest until payment. *Ram Nath* v. *Mussammat Jio* (No. 101 *P. R.* 1880), distinguished.

Held, further, that the term "malikana" was intended to include all net proprietary income from the land received by the mortgagee, and not to signify a fixed annual payment, no such payment being made in respect of the mortgaged land to which the term would be applicable. BHAG SINGH *v.* GHASITA. **68 P R 1883**

16. *Subsequent mortgage of same land to another party—First mortgagee's right to possession—Failure to pay consideration—Remedy of mortgagor.*

The first defendant having executed and registered a deed of mortgage in plaintiff's favor in consideration of a sum of Rs. 3,500, ten days afterwards (as Rs. 100 only of the consideration money had been paid, and the money secured by the mortgage was urgently

MORTGAGE—*contd.*

I.—CONSTRUCTION—*contd.*

needed) executed and registered a second deed of mortgage of the same land for a like sum in favor of defendant II.

In a suit by plaintiff for possession of the mortgaged land under the terms of the mortgage, in which he tendered with his plaint payment of Rs. 3,400, the balance of the mortgage-money, *held*, that the plaintiff was entitled to succeed in his suit; that the mortgagor was not entitled to treat the first mortgage as null and void owing to the plaintiff's default in prompt payment of the balance of the mortgage-money, as in the absence of any contract between the plaintiff and the mortgagor, that in the event of the plaintiff not paying to the mortgagor the whole balance due within a specified or a reaosnable time the mortgage should be void, the only consequence of non-payment by the plaintiff would be that the mortgagor would have a right to sue for damages for breach of the agreement to pay such balance, but the mortgage would still subsist. *Ala Baksh* v. *Shama* (No. 153 *P. R.*, 1882, Civil) distinguished. GOMESS *v.* MELA RAM. **16 P R 1884**

17. *Share in undivided holding—Validity of mortgage—Necessity.*

In a suit to recover the amount due on a mortgage of land, *held*, that the circumstance that the land was part of an undivided holding, the mortgagor's interest being ascertained and not like that of a member of an undivided family, did not render the mortgage invalid. The mortgage in the above case, being found to be for valuable consideration and for necessity, was upheld. TEHLA RAM *v.* ATAR SINGH. **P149 R 1884**

18. *Redemption—Condition in deed that mortgagee should continue in possesson after redemption.*

In a suit for redemption of a mortgage of a house, the defendants, while admitting the mortgage, pleaded *inter alia*, that plaintiff was not entitled to possession, because by the terms of the mortgage.deed defendants were even after redemption entitled to continue in possession on payment of a specified yearly rent.

Held, that the above condition, if it meant any thing of a definite nature, amounted to an obligation to accept the mortgagee as a perpetual tenant of the property, and was one which ought not to be enforced. RAMZAN *v.* NUR ALI. **32 P R 1886**

19. *Mortgage or Sale.*

See PRE-EMPTION—

20. *Construction of instrument—Personal liability of mortgagor.*

The question for decision was whether under the terms of the mortgage-deed upon which the suit was based, the plaintiffs were entitled to enforce a personal liability against the defendants, the mortgagors. It appeared from the terms of the instrument that there was in the first place a stipulation for payment within a year and also a stipulation for

payment of interest at a given rate, for the endorsement of all payment on the back of the instrument and against alienation of the property until payment of the debt the concluding clause of the instrument being to the following effect : "Should it happen that "I am unable to effect redemption within the "period above specified, then in that event "I will renew the document held by the mort- "gagees without any objection."

Held, that on the true interpretation of the above instrument the personal liability of the mortgagors was not excluded.

Sayad Muhammad Khan v. *Jaisukh* (No. 88 *P. R.* 1880), *Jaisukh* v. *Sayad Muhammad Khan* (No. 89 *ibid)*, and *Khuddu Mal* v. *Kunj Lal* (No. 80 *P. R.* 1881), referred to. RAM PERSHAD *v.* CHATAR. **20 P R 1888**

21. *Validity of condition in mortgage-deed that mortgagee will not mortgage his interest.*

A clause in a deed of mortgage prohibiting the mortgagee from doing any act by which the mortgaged land should be mortgaged to any other person, *held* not to be void, whether it be regarded as a condition or as a contract.

Chuni Lal v. *Bodar Mal* (*No.* 2 *P. R.* 1886), distinguished. SULTAN KHAN *v.* JAWALA DAS. **131 P R 1888**

22. *Mortgage—Cash credit—Consideration.*

The instrument of mortgage stated that the mortgagors had mortgaged two houses to the plaintiffs for the sum of Rs. 800 and that credit had been taken for the mortgage-money "*babat hisab bahi khata*," page 42.

The mortgagees were to have possession, interest was to be charged at 12 annas per cent. per mensem, the rent was to be credited to the mortgagors in the account of interest and they were to pay the balance month by month.

The account at page 42 showed that up to the date of the mortgage there was due to the mortgagees Rs. 343-2-0, and there was no entry in the account of a credit of Rs. 800.

Held, that the mortgage was a valid transaction for consideration. The true construction of the instrument was that the houses should be a security for the amount due on the account for the time being up to Rs. 800, the mortgagors being entitled to credit up to that amount. It was immaterial that no actual entry of Rs. 800 was made at the time in the account book—equity regards that as done which ought to have been done. SHEO LAL AND BADAN CHAND *v.* RAM RATTAN AND BASHI RAM. **28 P R 1891**

23. *Mortgage—Construction of mortgage-deed—Satisfaction of judgment-debt—Uncertified adjustment of decree —Civil Procedure Code*, 1882, *sections* 257 *A*, 258.

Plaintiff sued upon two mortgage-deeds executed on the 19th January 1890 and the 5th March 1890, respectively.

In the case of the second mortgage of the consideration money of Rs. 1,300, Rs 1,000 were on account of principal and Rs. 144 on account of interest on two decrees passed in favour of plaintiff against defendant, and the Divisional Judge, finding that interest was not allowed on one of the said decrees, which was for Rs. 738, and that no sanction of the issuing Court had been given, held that the agreement in the mortgage-deed to pay interest was invalid under section 257 A of the Civil Procedure Code.

Held, that the section applicable to the case was section 258, and not section 257 A of the Code, inasmuch as the judgment-debt had been adjusted in whole to the satisfaction of the decree-holder, and that though such adjustment had not been certified to the Court whose duty it was to execute the decree, it could be recognized as an adjustment by a Civil Court except in execution. Rulings regarding the scope of section 257 A, Civil Procedure Code, referred to. KALU RAM *v.* KHUDA BAKHSH. **54 P R 1894**

24. *Mortgage—Lands specifically mortgaged allotted on partition to co-sharers of mortgagor—Liability to mortgage lien of lands allotted to mortgagor.*

Certain specified lands, out of a joint holding, were mortgaged to plaintiffs by defendant, but, on a partition taking place between defendant and the other co-sharers in the holding, most of the specific lands mortgaged to plaintiffs fell to the shares of the co-sharers other than the defendant. Plaintiffs thereupon sued defendant for possession of an area out of the lands allotted to her at partition equivalent to that which she had conveyed to them by the mortgage-deed. The lower Courts having decreed plaintiffs' possession merely of such *khasra* numbers as were both conveyed to them specifically by the mortgage-deed and had fallen to defendant's share at partition, and having dismissed the claim as to other lands, plaintiffs appealed the Chief Court.

Held, following the ruling of the Privy Council reported as *L. R. Ind. App. p.* 106 of Vol. I, that though plaintiffs could not proceed against the mortgaged property, which had been allotted on partition to the other co-sharers, they should be allowed, in lieu thereof, to proceed against those lands, which had been allotted in substitution to the defendant-mortgagor.

I. L. R. XX Calc. 533 referred to. BELI RAM v. MUSSAMMAT SHAHZADA BEGUM. **101 P R 1894**

25. *Document, construction of—Mortgage or sale—Conditions restricting equity of redemption.*

The successors of one G. R. sued to redeem certain premises alleged to have been mortgaged by a deed of conditional sale, the terms of which were to the following effect, *viz.*, that the mortgagee should be at liberty to demolish the premises entirely and rebuild them as he thought fit ; that redemption could only be effected within 2 years and with the mortgagor's own means ; that after the lapse of 2 years the transaction was to become a sale without the year of grace allowed for redemption ; that the collaterals and other heirs of the mortgagor should be debarred from redeeming, and that the mortgagee should be entitled, on redemption taking place in accordance with the document, to recover his principal and expenditure on rebuilding. The deed, which was executed at a time when G. R. was hard pressed to pay a judgment-debt, was attested by G. R.'s relations, the present plaintiffs, who were also present when the deed was registered. For the defendant it was argued (*inter alia*) that the transaction entered into was in reality a sale with a condition for re-purchase and not a mortgage, and that the plaintiffs were debarred from suing for redemption either by the terms of the deed, or, if such terms were not binding, by their conduct in countenancing the transaction.

Held, as to the first contention, that the transaction, which was admittedly in its inception a mortgage and had so continued for 2 years, if not for the mortgagor's lifetime, was a mortgage and not a sale with a condition for re-purchase on certain terms, and, as to the second contention, that the conditions with regard to redemption were of an inequitable and onerous character and could not be enforced against either the mortgagor or his successors in title.

I. L. R. X Calc. 30, *I. L. R. XIV Mad.* 170, *I. L. R. II Bom.* 113 and 231, distinguished; *I. L. R. III All.* 359, *I. L. R. VII Mad.* 395, *I. L. R. IX Bom.* 524, referred to. SUKH DIAL *v.* ANANT RAM. **131 P R 1894**

26. *Mortgage—Mortgage mortgaging his rights to third party—Right of such third party to receive payment of mortgage-money from original mortgagor—Payment by mortgagor to original mortgagee.*

R. and others mortgaged certain lands to G. S. and others, who subsequently executed a registered deed sub-mortgaging their rights as mortgagees in favour of plaintiffs. Plaintiffs sued for possession of the lands by virtue of their sub-mortgage, although the mortgagors had paid off the original mortgagees.

Held, that as the original mortgagees had not made a complete assignment of their rights, but had merely mortgaged those rights, to plaintiffs, the mutual rights and liabilities of the original mortgagors and mortgagees continued to exist, and that the payment of the mortgage-money by the former to the latter operated to redeem the mortgaged lands notwithstanding the existence of the previous sub-mortgage in favour of plaintiffs. RAMAN *v.* DEWA SINGH. **12 P R 1895**

27. *Jurisdiction of Civil or Revenue Court—Mortgagor and mortgagee—Construction of mortgage-deed—Landlord and tenant—Non-transfer of possession by mortgagor.*

Previously to the execution of the mortgage-deed in question, the mortgagor's land was partly cultivated by himself, and partly by tenants, some of whom were occupancy

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MORTGAGE—*contd.*

I.—CONSTRUCTION—*contd.*

tenants and some tenants-at-will who paid him one-third share of the produce and certain dues. The mortgage-deed provided that this arrangement should continue, but that the dues should go to the mortgagee, and that out of the one-third share of the produce of the whole land, the mortgagor should deduct two maunds for himself and the remainder should be divided into six shares, of which one share should be reserved to the mortgagor and the rest should go to the mortgagee, the payment of revenue being divided between them in the same proportions.

Held, that as neither proprietary nor cultivating possession was transferred to the mortgagee, the latter could not re-transfer the cultivating possession to the mortgagor; that the mortgagor did not, therefore, hold the land "under" the mortgagee; that the said payments were not "rent," and that the relationship of landlord and tenant did not exist between the parties.

Held, therefore, that Revenue Courts had no jurisdiction to entertain a suit by the mortgagee in respect of his claims under the said mortgage-deed. MEHR CHAND *v.* LAL. **5 P R 1897 Rev.**

28 *Construction of document—Provision in mortgage-deed regarding interest.*

In the case of a mortgage-deed in which there is a rate of interest fixed, without any specific condition that its payment shall cease on a certain contingency, and a clause specifying a date of redemption and conditional sale, it is generally to be held on a consideration of all the terms of the deed taken together, in the absence of clear intention to the contrary, that the contract does not contemplate the cessation of interest from the date when the payment of the capital sum becomes due.

When, therefore, a mortgage-deed provided that the mortgagor was to remain in possession, paying interest on the mortgage-money at 6 per cent. per annum half-yearly; that on default of payment of interest compound interest was to be charged; that on default of payment of interest for four successive half years, possession was to be given to the mortgagee and the produce of the land was to be taken in lieu of interest; that the mortgaged property was to be redeemed, within six years, and if not then redeemed, the mortgage was to become *ipso facto* a sale; and it appeared that there had been no breach of the condition regarding the failure to pay interest for four successive half years previous to the end of the six years allowed for redemption, but that subsequently to the expiry of the said period, there had been a failure to pay interest for four successive half years.

Held, that as there was no condition that interest should cease to run on the terms stated after the expiry of six years, defendant's failure to pay interest for four successive half years after the expiry of the six years allowed for redemption was a clear breach of the terms of the contract, and entitled plaintiff to obtain possession of the land as mortgagee, and that he was not bound to resort to the other relief, which he might have claimed of foreclosure. SARDAR UMRAO SINGH *v.* SARDAR THAKAR SINGH.

77 P R 1898

29. *Mortgage of share of joint holding—Part of mortgaged land already alienated at date of mortgage—Liability of mortgagor to make good deficit from remainder of holding to which he has subsequently succeeded.*

Held, that a co-sharer in a joint holding who has mortgaged his own share thereof, a portion of which had been already alienated by him previously to the mortgage, is not bound to make good the amount of the deficiency out of the other share in the holding to which he has subsequently succeeded and which was in no way mortgaged by the deed or transaction in question, merely because at the time of the mortgage the latter share happened to be held jointly with the former.

In a joint holding each sharer has a right to a share in each and every plot and parcel of land, and can only transfer such rights in regard to specific numbers as he himself possesses if the other co-sharer acquiesces in the alienation of specific plots, in which case such acquiescence would bind the latter at partition to the extent of the alienor's share. If at partition the particular numbers do not fall to the mortgagor, the mortgagor would be bound to compensate the mortgagee by substituting other land which did fall to his share. BABU RAI *v.* NATHU. **32 P R 1900**

30 *Mortgage or sale—Oral evidence to prove that an apparent sale was a mortgage—Admissibility of parol evidence to vary a written contract.*

See EVIDENCE ACT, 1872, SECTION 92.

72 P R 1901

31. Inequitable conditions affixed to a mortgage should not be enforced by Courts against the mortgagor or his successors in title. SHER MUHAMMAD *v.* FATTEH DIN.

6 P R 1902

32. *Power to revise mortgage made in form not permitted by the Alienation of Land Act, 1900.*

See PUNJAB ALIENATION OF LAND ACT, 1900, SECTION 9. **7 P R 1903**

33. *Suit for possession under the terms of a registered mortgage-deed, wherein in addition to that condition other clauses intended to operate by way of conditional sale existed—Application of section 9 (3) of Punjab Alienation of Land Act to such cases—Duty of Appellate Court—Procedure.*

See PUNJAB ALIENATION OF LAND ACT, 1900, SECTION 9. **20 P R 1903**

34. *Mortgage—Payment of mortgage-debt—Unregistered receipt—Extinction of mortgage—Oral evidence*

See REGISTRATION ACT, 1877, SECTION 17

39 P R 1904

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35. *Punjab Tenancy Act, 1887, sections 9, 57—Mortgage of occupancy rights—Right of mortgagee after death of mortgagor—Right of occupancy cannot be acquired by mere lapse of time.*

See OCCUPANCY RIGHTS.

8 P R 1905 Rev.

36. *Mortgage—Failure of mortgagee to fulfil his part of the agreement—Incomplete transaction—Mortgage incapable of enforcement.*

A. mortgaged his property, a portion of which was already encumbered to B. who undertook to redeem it from the prior mortgagees and retained a sufficient portion of the consideration for that purpose. B. did not pay the money so retained to the prior mortgagees and failed to redeem. The former mortgagees sued A. on his mortgages and obtained decrees against him. Thereupon A. redeemed both the former encumbrances himself. On a suit instituted by B. for the possession of the property under the terms of his mortgage-deed.

Held, that owing to B.'s failure to fulfil his part of the agreement to the mortgage contract, as agreed to was never completed and as such was incapable of enforcement.

Ala Bakhsh v. *Shama* (153 *P. R.* 1882) followed. SAUDAGAR SINGH *v.* SANT RAM.

103 P R 1906

37. *Civil Procedure Code, 1882, section 43—Mortgage—Separate covenants for the payment of principal and interest—Distinct causes of action—Competency of mortgagee to institute separate suits for principal and interest when both have fallen due. All claims on same cause to be included.*

Held, that when under a mortgage bond both principal and interest have become due, the mortgagee must sue for both together; otherwise he will be debarred under section 43 of the Code of Civil Procedure from claiming in a subsequent suit what was not claimed in the prior suit.

The principle of section 43 is that where several breaches of covenants made under one contract have occurred the cause of action of the various breaches merges into one and renders it obligatory upon a plaintiff to include all claims to which he is entitled under his contract in one action. GANGA RAM *v.* ABDUL RAHMAN. **28 P R 1907**

38. *Mortgage—Conditional sale—Agreement by instalments or in default the mortgage would become a sale—Applicability of Regulation XVII of 1806 to such agreements—Regulation XVII of 1806—Stipulated period.*

Held, that a deed of mortgage whereby money was borrowed on the security of landed property upon a stipulation that the sum borrowed would be repaid by annual instalments and in case of default as to any instalment the mortgage would become a sale for the balance due at the time of default could not be treated as a mortgage by conditional sale subject to the provisions of Regulation

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MORTGAGE—*contd.*

I.—CONSTRUCTION—*concld.*

XVII of 1806 and is not liable to the conditions and incidents applicable under the Regulation to such sales.

Bagh Singh v *Baswa Singh* (50 *P. R.* 1906) followed.

Held, also, that the term "stipulated period" in section 8 of the Regulation means the full term on the expiry of which the mortgage money is payable notwithstanding that under its terms the mortgagee might, on a default being made, be entitled to foreclose at an earlier period.

Kishori Mohan Roy v. *Ganga Balm Debi* (*I. L. R. XXIII Calc.* 228, *P. C.*) *followed.* HAR GOPAL *v.* BHAGWAN SAHAI. **70 P R 1907**

39. *Execution of mortgage in liquidation of a money decree while under arrest in the execution—Undue influence—Contract Act,* 1872, *section* 16

Held, that the mere fact that a mortgage bond was executed by the defendant in liquidation of a money decree while under arrest would not alone avoid the transaction on the ground of undue influence.

Banda Ali v. *Banspat Singh* (*I. L. R. IV All* 352). doubted. MUL CHAND *v.* IMAM BAKHSH. **51 P R 1908**

40. *A mortgage debt secured by a lien on land is not immoveable but moveable property for the purposes of section* 268 *of the Code of Civil Procedure.* BANTU *v.* GANDA SINGH. **18 P R 1909**

41. *A conditional decree for possession on payment of certain sum of money does not create a mortgage or judicial* hypothec.

See LIMITATION (3). **100 P R 1909**

II.—POSSESSION UNDER.

1. *Ejectment of tenants put in by mortgagee.*

Where *A* mortgaged his house to *B*, who admitted certain tenants as tenants-at-will or on sufferance, and the owner, *A*, afterwards sold the house to *C*, and redeemed the property from mortgage by paying his debt to *B*, *held*, that *C*, could at once eject the tenants put in by *B*. BULDEO *v.* MOHUR SINGH. **18 P R 1866**

2 *Usufructuary mortgage—Right of mortgagee to sue for debt.*

In the case of a pure usufructuary mortgage, the mortgagee cannot sue for payment of his debt; he is only entitled to remain in possession of the mortgaged property till the principal and interest of the mortgage debt are defrayed according to the terms of the agreement. SOMAN MULL *v.* KANH CHAND. **15 P R 1870**

3. *Agreement to mortgage—Suit for possession.*

Plaintiff sued for possession of land as mortgagee, under an agreement whereby defendant promised on his father's death to mortgage the land falling to his share. *Held*, that a suit for possession under the terms of the agreement would lie, the defendant having refused to execute the mortgage. JAMEYAT RAI *v.* SULTANA. **59 P R 1873**

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MORTGAGE—*contd.*

II.—POSSESSION UNDER—*contd.*

4. *Mortgage of personal property not followed by possession—Subsequent pledge with possession—Act IX of* 1872, *section* 178.

A, as security for a debt, mortgaged by deed a horse and cart to *B*, *A* retaining possession. Subsequently *A* pledged the horse and cart to *C*, for a loan, and gave possession to *C*, who was ignorant of the prior mortgage. *A* failed to pay either *B* or *C*. *Held*, that under section 178 of Act IX of 1872, *C* was entitled to the horse and cart in satisfaction of the debt, in preference to *B*. CHUMMAN KHAN *v.* MODY. **70 P R 1874**

5. *Possession—Unregistered agreement for further charge—Subsequent registered sale—Suit for possesssion by bonâ fide purchaser on payment of original mortgage-debt.*

One P. mortgaged his land with possession to the defendant (mortgagee) by a registered deed. Afterwards an unregistered agreement was executed, creating a further charge on the mortgaged property. Subsequently P. sold by registered deed of sale his remaining interest in the property to the present plaintiff.

Held, in a suit by the vendee to recover possession of the land from the defendant (mortgagee) on payment of the sum mentioned in the registered mortgage deed, that plaintiff was entitled to succeed, as the defendant (mortgagee) could derive no benefit from the fact of his possession under a registered mortgage deed, when he sought to enforce a further charge, on the strength of an unregistered subsequent agreement (which was inadmissible in evidence for want of registration) against a *bonâ fide* purchaser, whose title was perfected by a registered deed of sale.

Chowgatta v. *Chatar Singh*, (No. 18 *P. R.* 1878, Civil), cited and followed. RALLA RAM *v.* HARJI MAL. **70 P R 1880**

6. *Suit against mortgagee for possession by heir of deceased mortgagor—Failure by mortgagee to prove consideration for mortgage—Plaintiff's title to recover.*

Plaintiff claimed the land in suit as heir of the deceased owner. Defendant pleaded possession under a mortgage in his favour from the deceased by virtue of which he claimed a lien upon the estae for Rs. 920. It was found as a fact by the Court that no consideration for the mtrtgage passed, but as it was also found thao by the custom applicable to the parties at childless proprietor could alienate his landed property without control on the part of his male collaterals, it was contended for the defendant, that he was entitled to retain possession of the land, since plaintiff as heir of the deceased could not derogate from the acts of the person through whom he claimed.

Held, (distinguishing *Kanhya Singh* v. *Dewa Singh*, No. 27 *P. R.* 1879, Civil), that this contention could not prevail in the present case, as defendant having merely set up the limited interest possessed by a mortgagee, was therefore compelled to admit the right of the mortgagor's heirs to redeem the land upon payment of such sum as might be

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MORTGAGE—*contd.*

II.—POSSESSION UNDER—*contd.*

proved by the mortgagee in possession (on whom the *onus* lay) to be fairly due to him, and that, in the present case, no such charge being proved the defendant had no valid title to retain possession as against the heir, the plaintiff. LAL SINGH *v.* ALA SINGH. **86 P R 1880**

7. *Mortgagee in possession denying mortgagor's title—Adverse possession.*

See LIMITATION ACT (XV OF 1877), SCHEDULE II, ARTICLE 148. **49 P R 1882**

8. *Mortgage of land of absentee owner by person in possession for his own benefit—Mortgage setting up his mortgagee as a bar to a suit for possession by the owner—Plaintiff's right to recover his land without redeeming the mortgage.*

In a suit by plaintiff to recover possession of certain land, in which the defendants set up a mortgage as a bar, it appeared that one G. who had held possession of plaintiff's land during his absence, had mortgaged it to the defendants with possession but that at the time of *dakhil kharij* it was pointed out to the mortgagees that the land mortgaged was land of an absentee, and could not be mortgaged; whereupon the mortgagees agreed to stand in the shoes of G. as regards the land, and to recover the mortgage-money from him. It also appeared that the mortgage-debt was not raised for the benefit of the land, but that G. merely made use of the land to raise money for his own benefit.

Held, that the plaintiff was in no way bound to ratify G.'s act, nor was he bound by it, and could recover possession of his land without redeeming the mortgage. HIRA SINGH *v.* JOWALA SINGH. **187 P R 1888**

9. *Suit by mortgagee for possesssion on default of payment of mortgage-money.*

See LIMITATION ACT, 1877, SCHEDULE II, ARTICLE 113. **46 P R 1890**

10. *Mortgage—Mortgagor and mortgagee—Landlord and tenant—Adverse poesession.*

See LIMITATION ACT, 1877, SCHEDULE II, ARTICLE 135. **114 P R 1890**

11. *Jurisdiction—Valuation of suit—Suit by mortgagee for possession against mortgagor and certain third persons alleged to be trespasers.*

The value of a suit by a mortgagee for possession of land mortgaged to him is the value of his interest therein as mortgagee, and not the value of the land.

The mere fact that the mortgagee joins certain persons as defendants, not upon the basis of the mortgage, but upon the allegation that they are in possession as trespassers, does not affect or modify this rule.

No. 1 *P R.* 1887 followed. DHERU MALL *v.* THAKAR DAS. **1 P R 1891**

12. *Execution of decree—Attachment of mortgaged property—Suit by mortgagee under section* 283, *Civil Procedure Code—Subsequent suit for possession.*

MORTGAGE—*contd.*

II—POSSESSION UNDER—*contd.*

Certain mortgaged property was attached in execution of a decree against mortgagor, he being at the time in possession. The mortgagee intervened unsuccessfully, and then instituted a suit under section 283, Civil Procedure Code. *Held*, that he was not bound in that suit to ask for possession, and that a subsequent suit for possession was not barred under section 43 of the Code. GANPAT RAI *v.* HIRA SINGH. **29 P R 1891**

13. *Suit by landlord to eject tenant—Suit by mortgagee to recover possession on failure of mortgagor to pay rent.*

See JURISDICTION OF CIVIL OR REVENUE COURT. **19 P R 1893**

14. *Suit by mortgagee for possession of land—Value of suit for purposes of jurisdiction.*

See COURT-FEES ACT, 1870, SECTION 7. **20 P R 1893**

15. *Suit by mortgagee for possession under the terms of the mortgage—Landlord and tenant.*

See JURISDICTION OF CIVIL OR REVENUE COURT. **46 P R 1894**

16. *Suit by reversioner for declaration that deed of mortgage should not affect his rights—Mortgagor and mortgagees co-defendants—Reversioners claim decreed—Subsequent suit by mortgagees against mortgagor for possession.*

See RES JUDICATA. **77 P R 1894**

17. *Suit for possession by mortgagee who has foreclosed.*

See LIMITATION ACT, 1877, SCHEDULE II, ARTICLE 135. **90 P R 1895**

18. *Mortgage and sub-mortgage—Right of sub-mortgagee to retain possession against original mortgagor until payment of amount due under sub-mortgage—Privity of contract.*

Held, by the Full Bench that the purchasers of a sub-mortgage of property are entitled to retain possession of it against the original mortgagors's representatives until the amount due under the sub-mortgage is paid off, and are not obliged to seek their remedy against their own transferer, *i. e.*, the original mortgagee.

The principles of law relating to sub-mortgages discussed by Chatterji, J. CHELA RAM *v.* WALIDAD. **31 P R 1900 F. B.**

19. *Mortgage—Authority of mortgagor to impose any easement on the property mortgaged whereby the security is rendered insufficient Validity of such act—Burden of proof.*

Held, that a mortgagor in possession has no authority without the consent of the mortgagee to do an act which is likely to prove destructive or permanently injurious to the property mortgaged. The *onus* of proving the validity of such act, and that the security was not thereby rendered insufficient, rests on the mortgagor or his representative in interest. BHAGWAN DEVI *v.* BUNYADI KHANUM. **85 P R 1902**

20. *Suit for possession under the terms of a mortgage deed containing clauses intended*

MORTGAGE—*contd.*

II.—POSSESSION UNDER—*contd.*

to operate by way of conditional sale—Duty of Civil Court under section 9 (3) of the Alienation of Land Act.

See PUNJAB ALIENATION OF LAND ACT, 1900, SECTION 9. **91 P R 1908**

21. *Suit by mortgagee for possession on default of payment of mortgage-money—Limitation.*

See LIMITATION ACT, 1877, ARTICLE 135. **91 P R 1908**

22. *Mortgage—Simple usufructuary—Sale of mortgaged property in execution of decree for instalments due—validity of—Transfer of Property Act, IV of 1882, sections 67 and 99.*

Where a mortgage deed of a house for Rs. 600 contained no condition for right of entry in default of payment and no undertaking to repay the principal, the sole conditions being for payment by the mortgagor of Rs. 45 per annum as rent for the occupation of the house and in default of payment of rent for one year for payment of interest at 2 per cent. per mensem on the rent due and for recovery by the mortgagees of interest from year to year from the mortgaged property and from the other property of the mortgagor and the mortgagee in 1897 sued and obtained a compromise decree for Rs. 200, recoverable first from the mortgaged property and then from the other property of the mortgagor and in 1898 the mortgagees applied for execution of their decree by sale of the mortgaged property and, on obtaining permission to bid at the sale, purchased the property in 1899, and received possession in 1903 by a certificate signed by the mortgagor who remained in possession as tenant, and on refusal to vacate, the present suit for possession was filed by the mortgagees in 1909 and dismissed by both the Courts on the ground that the sale was void under section 99 of the Transfer of Property Act, 1882.

Held, by the Chief Court on further appeal—

(1) that the mortgage was a simple mortgage usufructuary as defined in Macpherson on Mortgages, Ed. IV, p. 14.

(2) that the suit of 1897 was of the nature described in section 67 of the Transfer of Property Act as a suit for an order that the property mortgaged be sold, (the remedy prescribed for a simple mortgage) and clause (*a*) of the section was not applicable and did not bar the suit for sale,

(3) that the rule contained in section 99 of the Act was inapplicable, the compromise decree having specifically provided for recovery of the amount due by sale.

(4) that moreover section 99 of the Act had not been extended to the Punjab, and had been disapproved of as a legislative mistake by the Select Committee appointed to consider the amendment of the Code of Civil Procedure, and

(5) that the purchase by the mortgagees was consequently valid and conveyed a good title to them, entitling them to a decree for

MORTGAGE—*contd.*

II.—POSSESSION UNDER—*concld.*

possession on the mortgagor declining to vacate and denying their title. **15 P R 1911**

23. *Mortgage—only in part for necessity—Mortgagee not entitled to possession of fraction of mortgaged property.*

The mortgagees of one Mussammat Akki sued the defendant-reversioner of this widow for possession of the mortgaged land. It was found that Rs. 228 out of Rs. 1,000 mortgage-money was not for necessity.

Held, that a reversioner against whom part only of the mortagage-consideration is binding is in the position of a mortgagor to whom part only of the consideration has passed and he can resist, on the ground of partial absence of consideration, the mortgagee's suit for possession.

Held, therefore, that the mortgagees in this suit were not entitled to possession of a fraction of the property mortgaged, in proportion to the amount of mortgage-money found to have been for necessity. **49 P R 1911.**

III.—BY DE FACTO GUARDIAN

Minor—Mortgage of minor's property by de facto guardian—Validity of mortgage—Necessity—Mortgage beneficial to minor's interests—Liability of minor in equity—Specific Relief Act, 1877, *sections* 38, 41.

The mother and *de facto* guardian of a Muhammadan minor mortgaged the property of her minor son in order to discharge ordinary debts incurred mostly by his father for the support of the family. After attaining majority the minor filed a suit to avoid the mortgage on the ground that the contract being void *ab initio* he was entitled to be put in possession without recognizing the defendant at all

Held, that although the plaintiff's mother was not legally authorised to act as his guardian the money advanced must be taken to have been borrowed for necessaries and the alienation beneficial to his interest, and that therefore under sections 38 and 41 of the Specific Relief Act a Court administering equitable principles is justified in exrecising its discretion to compel the plaintiff to restore matters to the *status quo*, which should not have been interfered with by the Appellate Court without giving reasons.

Mohori Bibee v. *Dharmodhas Ghose* (*I. L. R. XXX Calc.* 539, P. C.) and *Thurston* v. *Nottingham Permanent Benefit Building Society* (*R.* 1 *Ch.* 1902, 1) explained and distinguished.

Dharm Singh v. *Sayad Zohur-ul-Hassan* (58 *P. R* 1891), *Mastu* v *Nand Lal* (73 *P. R.* 1890, F. B.), *Jowahir* v. *Mussammat Chandi* (90 *P. R.* 1890), *Sardari Mal* v. *Khan Bahadur Khan* (11 *P. R.* 1899), and *Deri Ditta* v. *Soudagar Singh* (65 *P. R.* 1900, F. B.), referred to ALLAH DAD *v.* BUDHA. **52 P R 1904**

IV.—BY SONLESS PROPRIETOR.

1. *Of ancestral property*

See HINDU LAW, ALIENATION OF ANCESTRAL PROPERTY. **166 P R 1882**

MORTGAGE—*contd.*

IV.—BY SONLESS PROPRIETOR—*concld.*

2. *By sonless proprietor.*

See CUSTOM I.—ALIENATION.

16 P R 1883
3 P R 1884
163 P R 1884
53 P R 1885
120 P R 1886

3. *To one son to the prejudice of the other sons.*

See CUSTOM I.—ALIENATION.

26 P R 1885

V.—BY SONLESS ADNA MALIK.

—*"Ala and adna malik"—Mortgage by sonless "adna malik"—Such charge not binding on "ala malik" after death of mortgagor without heirs.*

Held, that a charge created by mortgage by a sonless "adna malik" on the land comprising the "adna milkiat" is not binding on the "ala malik" after the death of the "adna malik" without heirs, and after the holding has therefore passed, relieved from its encumbrance, to the "ala malik" all that could be pledged to the mortgagee being the "adna milkiat, so that when that ceased to exist the mortgage itself necessarily came to an end also.

Sher Khan v. *Pir Bakhsh* (*No.* 79 *P. R.* 1878) approved. SURJAN *v.* LALU.

175 P R 1888

VI.—BY WIDOW.

1. Where a Hindu widow with authority mortgaged her widow's estate, *held* that the incumbrance was binding on the heirs of her deceased husband, but that they did not *contract* to pay the mortgage debt. SHER SINGH *v.* SHIB SINGH.

69 P R 1874

2. *Alienation by widow of her rights as mortgagee.*

See DECLARATORY DECREE.

144 P R 1882

3. *Mortgage by Hindu widow—Attachment in execution of decree obtained on the mortgage—Claim by collateral to attached property—Order passed against claimant—Suit by claimant to establish his title—Limitation.*

See LIMITATION ACT, 1877, ARTICLE 11.

32 P R 1904

VII.—BY DAUGHTERS.

See CUSTOM I.—ALIENATION.

VIII.—BY MOTHER.

—*By mother as guardian of minor son—Suit by mortgagee against mother for money-decree—Subsequent suit against son, the latter having attained his majority, to enforce lien.*

See SPLITTING CAUSE OF ACTION.

41 P R 1883

See CUSTOM I.—ALIENATION BY MOTHER. **71 P R 1894**

See CUSTOM I.—ALIENATION.

192 P R 1889
58 P R 1891

IX.—BY HEADS OF RELIGIOUS INSTITUTIONS.

1. *Of property attached to religious institution—Suit by* Mahant *to set aside various*

MORTGAGE—*contd.*

IX.—BY HEADS OF RELIGIOUS INSTITUTIONS—*concld.*

mortgages made by his predecessor in office to several persons—Limitation for such suit—Starting point of Limitation.

See LIMITATION ACT, 1877, ARTICLE 134.

30 P R 1908 F. B.

2. *Suit on—Omission by defendant to plead that the mortgaged property was* waqf—*Subsequent suit to release mortgaged property from attachment as* waqf.

See RES JUDICATA. **89 P R 1881**

X.—BY NON-PROPRIETORS.

See CUSTOM I.—ALIENATION—ALIENATION BY NON-PROPRIETOR.

102 P R 1891
75 P R 1897

See COMMON LAND.

102 P R 1891

XI.—OF OCCUPANCY RIGHTS.

1. *By occupancy tenant.*

See TENANCY ACT (XXVIII OF 1868), SECTION 34. **82 P R 1881**

. *By occupancy tenant.*

See TENANCY ACT (XXVIII OF 1868), SECTION 34. **35 P R 1883**

3. *By occupancy tenant.*

See TENANCY ACT (XXVIII OF 1868), SECTION 34. **138 P R 1883**

See MORTGAGE, NON-PAYMENT OF CONSIDERATION ACCORDING TO AGREEMENT. **96 P R 1894**

See CUSTOM I.—ALIENATION.

3 P R 1897 Rev.
4 P R 1900 Rev.

See OCCUPANCY RIGHTS.

8 P R 1905 Rev.

XII.—MERGER.

1. *Covenant not to alienate.*

Plaintiff advanced money to Ghasee Ram upon a mortgage, with a condition not to alienate, and a short time after the loan Ghasee Ram sold the property to defendants (appellants). In a suit by plaintiff against appellants to cancel the sale the appellants pleaded a mortgage of the same property, with a condition, not to alienate, of a prior date to that of plaintiff's mortgage. *Held*, that the mortgage to the appellants, if proved, rendered the subsequent mortgage to the plaintiff invalid. SHUNKER DASS *v.* PRIBHU DIYAL. **35 P R 1869**

2. *Subsequent mortgage of same property—Merger—Intention—Registered and unregistered mortgage.*

The question whether a subsequent mortgage of the same property for the same debt merges a prior mortgage is one of intention.

A subsequent mortgage which expressly included a prior registered mortgage for Rs. 350 with another debt, and increased the annual payments to the mortgagee, but was itself inadmissible for want of registration under section 49 of the Registration

MORTGAGE—*contd.*

XII.—MERGER—*contd.*

Act, *held* (it further appearing that the later mortgage did not declare the former one to be at an end, and moreover that the first mortgage was retained by the mortgagee, which tended to show that he did not intend to surrender the security given by it), not to merge the former mortgage, which, so far as it constituted a charge of Rs. 350 upon the property, was held to remain in force. KHUSHAL MAL *v.* MUL CHAND. **173 P R 1882**

3. *Suit by second mortgagee for possession against mortgagor and prior mortgagee.*

See JURISDICTION. **1 P R 1887**

4. *Mortgage—Effect of payment of prior mortgage by subsequent incumbrancer as against intermediate Charge—Cause of action—Limitation.*

G., an occupancy tenant of a one-eighth share of land, on the 19th January 1869, mortgaged five-sixths of his share to one G. R. In June 1871 default having been made in the payment of interest by the mortgagor, G. R. under the terms of his mortgage sued for, and obtained possession of, the mortgaged land both as against G. and one S. R., who claimed to be in possession of the whole one-eighth share of the holding under a mortgage, dated the 1st June 1870. S. R. was left in possession of the remaining one-sixth of the said share. On the 10th June 1882 G.'s son—G. himself being dead—mortgaged the same five-sixths of the share to one Gh., the previous mortgage to G. R. being recited, and it being stipulated that Gh. should pay the consideration money to G. R., and take possession from the latter after redemption. The sons of S. R.—S. R. having died meanwhile—sued in March 1891, both G.'s son and Gh., and claimed, by virtue of the intermediate mortgage to S. R., to recover from Gh., possession of the land mortgaged, first to G. R. in 1869, and subsequently to Gh., in 1882. The defendants pleaded, *inter alia*, that the suit was barred by limitation, and that, in any event, Gh. had, by redeeming G. R.'s mortgage, acquired all the rights of G. R. in the land.

The first Court dismissed the suit as barred by limitation, but the Divisional Judge, on appeal, held that the suit was within time, and, further, that G. R.'s mortgage having been extinguished by the payment in 1882, was of no avail to Gh., and decreed plaintiffs' claim. Gh. appealed to the Chief Court.

Held, in accordance with the ruling of the Privy Council reported in *I. L. R I All.* 325, that inasmuch as limitation did not begin to run against the plaintiffs until the redemption of G. R.'s mortgage in 1882, the suit, being filed in 1891, was within time.

But *held*, in accordance with the ruling of the Privy Council reported in *I. L. R. X Calc.* 1035, that as Gh. had a right to extinguish the prior mortgage to G. R. or to keep it alive, the presumption, in the

MORTGAGE—*contd.*

XII.—MERGER—*contd.*

absence of evidence to the contrary, was that he intended, when paying off G. R.'s mortgage, to keep the prior charge alive for his own benefit, and that, standing in the place of G. R., he could successfully set up G. R.'s mortgage as a defence to plaintiff's claim for unconditional possession of the land.

I. L. R. IX Calc., 961, distinguished. GHANAYA *v.* PANDIT CHAJJU RAM.

38 P R 1894

5. *Suit to contest validity of sale—Right of plaintiffs to attack mortgage made in favour of vendee more than* 12 *years before suit—Merger of mortgage in sale—Limitation Act,* 1877.

In a suit in which plaintiff prayed for a declaration that a certain sale of land would not affect his reversionary rights, and it appeared that the said land had been mortgaged to the subsequent vendee more than 12 years before suit.

Held, that there was nothing in the provisions of the Indian Limitation Act of 1877, which prevented the plaintiff in such suit from attacking the said previous mortgage, and that it could not be held in a suit regarding the subsequent sale, that the title of the mortgagee had acquired validity by prescription.

But *held*, that there was a presumption, which had not been rebutted, that the mortgagee intended to keep alive the charge created by the previous mortgage-deed, and that it was not merged in the subsequent sale.

Held, therefore, that plaintiff was entitled to a declaration that the sale would not affect his reversionary rights, but that such declaration could not affect the rights of the mortgagee under the previous mortgage. DEVI DITTA *v.* PARIMAN. **71 P R 1898**

6. *Purchase of mortgaged land—Right to keep alive prior mortgage redeemed by purchaser—Pre-emptor's rights.*

The half of certain land the whole of which was at the time under mortgage to Z., was purchased by A., who redeemed a prior mortgage over the said half in favour of X. Subsequently B. obtained a decree for pre-emption against A. Z. having sued for possession as mortgagee, without, however, offering to redeem the prior mortgage in favour of X.

Held, that in the absence of evidence to the contrary, A., when he redeemed the prior mortgage, must be presumed to have intended to keep it alive for his benefit, and that B., as pre-emptor from A., was entitled to all the rights of the original purchaser.

Held, therefore, that B. was entitled to use the said prior mortgage as a shield against the mortgage in favour of Z. JHABAR *v.* SINGH RAM. **67 P R 1899**

7. *Mortgage—Mortgage of* niawadari *rights—Redemption of—Physical possession.*

Held, that according to the custom of he Gundapur tract of the Dera Ismail Khan District a *niawadari* mortgagee may

MORTGAGE—*contd.*

XII.—MERGER—*contd.*

acquire rights in the land held by him as mortgagee, independently of and over and above his rights as mortgagee; and that such rights would not necessarily be extinguished by the redemption of the *niawadari* mortgage.

Moosa Khan v. *Muhammad Naurang Khan* (24 *P. R.* 1871) followed. MUHAMMAD HASSAN KHAN *v.* MUHAMMAD GUL KHAN.

40 P R 1901

8. *Pre-emptor's liability—Payment of purchase-money into Court—Withdrawal by vendee—Suit by incumbrancer for a declaration that the property which had been mortgaged to him by the vendee was subject to his mortgage.*

See PRE-EMPTION. **93 P R 1902**

9 *Mortgage—Merger—Effect of payment of prior mortgage by subsequent incumbrancer as against intermediate charge—Presumption that person paying off a mortgage intends to keep the security alive.*

Where property is subject to a succession of mortgages and the owner of an ulterior interest paid off an earlier mortgage and where from the circumstances of the case it was clear that at the time of advancing the money the person paying of the prior charge intended to enjoy rights of the prior mortgage *held*, that he was entitled to priority in regard to that earlier mortgage as against all the intermediate charges and was entitled to enjoy all the rights of the first mortgagee until payment of the amount paid by him to the first mortgagee.

Gokaldas Gopaldas v. *Puran Mal Premsukhdas* (*I. L. R. X Calc.* 1035 P. C.), *Jhabar* v. *Singh Ram* (67 *P. R.* 1899), and *Ghanaya* v. *Pandit Chajju Ram* (38 *P. R.* 1894), cited.

Bagga Mal v. *Moti Ram* (32 *P. R.* 1903), distinguished. RADHA RAM *v.* RALA RAM.

30 P R 1904

10. *Sale of equity of redemption to mortgagee—Suit for pre-emption against vendee—Right of vendee to plead his own mortgage—Merger of mortgage into sale—Prevention of merger—Proof of.*

See PRE-EMPTION. **98 P R 1906**

11. *Mortgage—Sales of mortgaged property in execution of money decree—Effect of sale—Right to set it aside.*

"A" hypothecated his property to "B." Subsequently "C." in execution of a money decree obtained by him against "A.," attached and sold the right, title and interest of the judgment-debtor in the hypothecated property. "B.," who had applied to have this attachment removed but failed in his application, sued "A," "C." and "D" (auction-purchaser) to establish his lien and for cancellation of the sale in favour of "D" with a further relief that the house should be resold and the sale-proceeds to the extent of his lien be awarded to him.

Held, that as a purchaser at an execution sale takes only that which the judgment-debtor could honestly dispose of, B.'s interest

MORTGAGE—*contd.*

XII.—MERGER—*concld.*

in the property was not affected by the sale in question, and consequently he had no cause of action to set it aside but was entitled to follow the property into the hands of "D.", who must be regarded to have purchased it, subject to the lien which was in existence at the time of the sale. RUP CHAND *v.* SETH KASTUR CHAND.

62 P R 1908

12. *Held*, that when a mortgagee purchases the equity of redemption in respect of the land mortgaged the mortgagee rights merge in the rights of ownership.

SRI RAM *v.* RAMJI DAS. **59 P R 1909**

13. *Merger in previous money decree.*

See ESTOPPEL. **32 P R 1910**

14. Suit for possession of land mortgaged by male owner more than 12 years before suit and subsequently sold by his widow—merger of mortgage in sale.

33 P R 1911 F. B.

XIII.—MARSHALLING.

1. The property descended to B., L. and N. from a common ancestor, but B. was in sole possession and sold part to a *bonâ fide* purchaser, for valuable consideration. The delay on the part of the co-proprietors in objecting to the sale was held to entitle the purchaser to be maintained in possession of his purchase. Another part of the land had been mortgaged. N., the plaintiff, was held entitled to recover his full share in the estate out of this portion, after payment of the mortgage-money by B., and a decree was passed against B. for the amount of the mortgage. BUKSHAN *v.* NOOR MOHAMED.

96 P R 1866

2. *Money decree—Rights of prior and subsequent mortgagees—Sale of mortgaged property in execution of decree—Title acquired by purchaser.*

A. mortgaged certain immovable property to *B.* for money payable on demand, and subsequently transferred his equity of redemption to *C.*—*B.* sued for and obtained a money decree only against *A.*, and in execution thereof the property mortgaged was sold by auction. *Held*, that as *C.* had not been made a party to any suit in which *B.'s* lien had been declared, the purchaser acquired no absolute title, but bought subject to *C.'s* right to redeem.

It is only by a sale in execution of a decree made in presence of all the persons interested in the property against which the first mortgagee seeks to enforce his charge, that an absolute title passes to the purchaser free from all dispositions made by the mortgagor subsequent to the first mortgage. FAIZ MUHAMMAD JAN *v.* KAZI MUHAMMAD AMIR JAN. **10 P R 1879**

3. *Mortgage—Subsequent sale by mortgagor to third person*—Bonâ fide *purchaser—Priority—Notice.*

On 20th December 1883, K. mortgaged certain property to plaintiff for Rs. 5,000, the mortgage-deed being registered. Under

the terms of the deed, the mortgagee was to obtain possession, but by a written lease bearing the same date as the mortgage-deed the mortgagee leased the property to the mortgagor for one year, and as a fact the mortgagee never obtained physical possession.

On 6th December 1886, K. executed and registered a deed of sale of the same property to the defendant for Rs. 5,000. No mention was made in the deed of sale of the previous mortgage to the plaintiff, and it did not appear that the defendant (the vendee) had actual notice of that mortgage.

Held, in a suit by the mortgagee to enforce his mortgage, that the latter was entitled to priority. Both on principle and on authority a prior *bonâ fide* mortgagee will not be postponed to a subsequent purchaser for value without notice, save under exceptional circumstances, the burden of proving which will lie upon the purchaser.

The purchaser's contentions in the above case :—

(1) that the mortgagee never took possession under his mortgage, and

(2) that the mortgagee left the title deed with the mortgagor, who actually delivered them over to the purchaser at the time of the sale.

Held, insufficient to establish the priority of the subsequent sale over the previous mortgage. NARSINGH DAS *v.* THAKAR DAS.

23 P R 1891

4. *Mortgage—Suit for refund of sale-proceeds paid in accordance with order for distribution under section* 295, *Civil Procedure Code*, 1882—*Suit by puisne mortgagee to enforce his lien—Limitation Act*, 1887, *Schedule II, article* 13—*Doctrine of marshalling.*

Defendant was the first mortgagee of two houses under a deed dated 28th September 1888, for Rs. 195, while plaintiff was the puisne mortgagee of one of the houses for Rs. 150. Plaintiff sued on his deed and obtained a decree for Rs. 155 and costs to be recovered from the hypothecated house which he got attached in execution. The defendant had a simple money decree for Rs. 102 and had both houses sold—apparently free of his mortgage lien—by auction for Rs. 315 on the 7th January 1892. Plaintiff tried to assert his claim for part of the sale-proceeds on his mortgage, but failed, and on the 9th April 1892 defendant realized the whole amount crediting Rs. 195 to the mortgage-money due to him, and the rest to his money-decree. On the 17th April 1893 plaintiff sued to recover this balance on the ground that his second mortgage gave him a better title to it. Defendant pleaded, *inter alia*, that the claim was barred under article 13 of the 2nd Schedule to the Limitation Act, 1877, inasmuch as the original order of the execution Court rejecting plaintiff's claim to share in the sale-proceeds of the two houses was one under section 295, Civil Procedure Code, and that the present suit was filed more than one year after the date of that order.

Held, that the present suit was not one to set aside an order under section 295 of the Code but to recover money on the strength of plaintiff's superior title, and that, therefore, article 13 of the Limitation Act was not applicable.

Held, further, that plaintiff was entitled, in accordance with the rule to marshalling of mortgages, to insist that defendant should first realize the amount due to him on his own mortgage from the house not mortgaged to plaintiff, and only the deficiency from that mortgaged to him, and that plaintiff's mortgage-deed took precedence, as regards the balance over defendant's simple money-decree.

I. L. R. XV Bom. 438 and *W. N.* 1894 78, followed; *I. L. R., XIII Cal.* 159, not followed. SOHAN LAL *v.* BALDEO SAHAI.

65 P R 1895

5. *Mortgage—Apportionment of mortgage-debt—Contribution—Transfer of Property Act*, 1882, *section* 82.

Plaintiff as assignee of the original mortgage, brought a suit for possession of certain mortgaged property consisting of land and houses, or for recovery of the mortgage-debt, Rs. 12,000, together with profits, against the heir of the mortgagor and nine other persons who had acquired interests by purchase in, and were in actual possession of, various portions of the said property. The suit was dismissed on the merits as against defendants Nos. 8, 9 and 10, and plaintiff compromised his claim against defendants Nos. 3, 4, 5 and 7 by accepting from them Rs. 4,750 in full discharge of their share of the principal debt. The balance of Rs. 7,250 was eventually decreed against the property in the hands of defendants Nos. 1, 2 and 6, whereupon defendant No. 2 appealed to the Chief Court on the ground that the decree should have distributed the whole of the mortgage-debt Rs. 12,000, rateably over the properties in the hands of all the defendants, and having found out proportionate liability of each property, should have decreed against each property the sum thus found due.

Held, that though defendant No. 2, if compelled in execution of plaintiff's decree to discharge the mortgage-debt to an amount in excess of the proportionate value of the property in her hands, could claim by a suit for contribution to be reimbursed by the other holders of the mortgaged property, there was no rule of law whereby plaintiff-mortgagee could be restrained by the decree from proceeding at his discretion against all or any of the parcels which made up the whole mortgaged property. MUSSAMMAT BISHEN KOUR *v.* MUNSHI AZIZ-UD-DIN.

75 P R 1895

6. *Mortgage—Mortgage for valuable consideration—Intent to defeat and delay a particular creditor—Fraud.*

On 17th June 1897 plaintiff sued the sons of L. M. for an unsecured debt, and on the same day applied for and obtained an order for attachment of property prior to judgment. On 18th the order on the defendant's objection was withdrawn, but a fresh one was again granted on the 19th. On 17th the defendants executed a mortgage-deed of all their property, movable and immovable, including outstanding debts, in favour of the appellant. The plaintiff on getting his decree in the first Court immediately attached certain houses, which were sold by auction, the appellant objected as mortgagee, and the houses were ordered to be sold subject to his mortgage.

The plaintiff then brought the present suit to set aside the above order, on the ground that the mortgage was fraudulent and made in order to defeat his claim, and was also subsequent to the issue of the prohibitory order. The Courts below decreed the claim, holding that the mortgage was not *bonâ fide*, and was affected with full knowledge of the plaintiff's suit and the issue of the prohibitory order, and was practically intended to deprive him of his right to realize his debt from L. M.'s estate, and although a good deal of the consideration-money was devoted to paying off other creditors of the deceasod it was void. On further appeal to the Chief Court,

Held, that though the appellant intended to pay the consideration entered in the deed in full and it was to be paid to creditors and not to the debtors, yet as he entered in his deed property over which he did not really mean to claim a lien, and which he allowed to remain in the mortgagors' hands for their benefit, and joined with the mortgagors in getting the deed executed in order to defeat and delay the plaintiff's realization of his debt, upon the authorities and under the rule of equity and good conscience it was void against the plaintiff

Twyne's Case (I Smith's *Leading Cases*, 9th Edition, 1), *Cadogan* v. *Kennett* (*Cowp.* 434), *Worsley* v. *DeMattos* (1 *Burr.*, 474), *Holmes* v. *Penney* (26 *L. J. Ch.* 179), *Harman* v. *Richards* (22 *L. J. Ch.* 1066), *Bott* v. *Smith* (21 *Beav.* 511) followed; *Abdul Hye* v. *Mir Muhammad Mosaffar Hussain* (*I. L. R. X Calc.* 616), *Copis* v. *Middleton* (2 *Mad.* 410), *Golden* v. *Gillam* (*L. R.* 20 *Ch. Dn.* 389), *Joshua* v. *The Alliance Bank of Simla* (*I. L. R. XXII Calc.* 185), *Mussammat Chand Kour* v. *Mussammat Fajjo* (113 *P. R.* 1880), referred to; *Wood* v. *Dixie* (7 *Q. B.* 892), *Darvill* v. *Terry* (30 *L. J. Ex.* 355), *Rangilbhai Kalyandas* v. *Vinayak Vishnu* (*I. L. R. XI Bom.* 666), *Moti Lal Ravichand* v. *Utam Jagjivandas* (*I. L. R. XIII Bom.* 431), *Nana* v. *Coutmal* (*I. L. R. XXII Bom.* 255), *Ishan Chander Das Sirkar* v. *Vishn Sirdar* (*I. L. R. XXIV Calc.* 825), *Naryana Pattar* v. *Viraragaawan Pattar*

MORTGAGE—*contd.*

XIII.—MARSHALLING—*concld.*

(*I. L. R. XXIII Mad.* 184), *Lakha Mal* v. *Mula* (21 *P. R.* 1875), *Ram Burun Singh* v. *Jankee Sahoo* (22 *W. R.* 473) and *Seth Kastur Chand* v. *Mangal Sen* (68 *P. R.* 1895), distinguished. LAKHMI NARAIN v. TARA SINGH. **6 P R 1901**

XIV.—TACKING.

—*Redemption—Tacking.*

The mortgagor of a plot of land obtained a fresh advance from the mortgagee and executed in his favour a bond proving that payment of the amount secured by the latter should take precedence of redemption of the mortgage.

Held, that the parties intended to bind the land, and that therefore the mortgagor could not redeem by payment of the mortgage-money only.

I. L. R. IV All. 85, followed. PARABH DIAL v. KHARKU. **2 P R 1890**

XV.—REDEMPTION.

1. *Joint-mortgage.*

A. and *B.* mortgaged their respective houses to *C.*, who afterwards obtained a decree against them for the mortgage-debt. In execution, *C.* proceeded against *A.'s* houses, who offered to redeem them by paying half of the judgment-debt. *Held* that *C.* was at liberty to proceed against *A.'s* houses, and that the latter could not redeem them by paying half the judgment-debt; that paragraph 12 of section XVII, Punjab Civil Code (by which when property was jointly mortgaged, any one of the parties could redeem his portion of the property by paying off his share of the obligation), referred to contracts but not to decrees. MUTHRA DAS v. SHEODIAL SINGH. **28 P R 1867**

2. Under paragraph 12, section XVII, Punjab Civil Code, the law in the Punjab differed as to redemption of joint-mortgages from the law in the Regulation Provinces. By the Punjab Civil Code, paragraph 12, section XVII (as explained by paragraph 10 section XVII, commentary) one of several joint-mortgagors in the Punjab had the right to redeem only his own share of the mortgaged property, in addition to the right, which existed in the Punjab as elsewhere, to redeem the whole property and to hold the shares of his co-mortgagors until recouped by them. RULLIA RAM v. ENAYAT SHAH. **95 P R 1869**

3. *Conditional sale—Suit to redeem must be brought within the year of grace—Procedure to be adopted by mortgagee after year of grace—Application to Settlement Court by mortgagee held to be proper reference in the year* 1865.

Plaintiffs mortgaged certain property to defendants by way of conditional sale, for the term of four years. Twelve years after the mortgage was executed, the mortgagees applied to the Settlement Court to have their names recorded as absolute owners, the mortgage-debt not having been paid; and on September 28th, 1865, the Court passed an order that plaintiffs should redeem within one

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year or be foreclosed. This order was confirmed on appeal. On the 16th October 1867 plaintiffs sued to redeem the property, the mortgagees having, in the meantime, obtained possession. *Held*, that plaintiffs' suit would not lie, not having been brought within the year of grace which expired on 28th September 1866, but that defendants, to complete their title, should, being in possession, bring a suit for declaration of their absolute title as owners, in which suit it would be open to plaintiffs to contest the validity of the conditional sale, or the regularity of the proceedings taken by defendants to make the sale absolute. *Held*, also that the application by defendants to the Settlement Court in 1865 was a referenee to the Court within paragraph 3, section XIV, Punjab Civil Code. SAINDASS v. JEHANGEER **21 P R 1870**

4. *Redemption in part—Suit by one sharer.*

Held, that a suit will not lie to redeem a share of property mortgaged. MAHMUD KHAN v. BHAI BALKISHEN. **76 P R 1878**

5. *Conditional sale—Suit for redemption—Foreclosure—Regulation XVII of* 1806—*Procedure prior to Regulation.*

See MORTGAGE XVI.—FORECLOSURE. **1 P R 1881**

6. *Conditional sale.*

See TENANCY ACT (XXVIII OF 1868), SECTION 5. **6 P R 1881**

7. *Redemption, decree for—Subsequent suit for redemption of same mortgage.*

See RES JUDICATA. **14 P R 1881**

8. *Redemption—Effect on limitation of payment of produce by mortgagor to mortgagee.*

See LIMITATION ACT (XV OF 1877), SECTION 20. **37 P R 1883**

9. *Redemption—Conditional decree—Omission to execute—Judicial Commissioner's Book Circular No. XI of* 1859—*Limitation.*

See LIMITATION. **57 P R 1883**

10. *Redemption—Party not interested in equity of redemption redeeming from mortgagee in possession—Subsequent possession by such person for over* 12 *years—Adverse possession.*

See LIMITATION ACT (XV OF 1877), SCHEDULE II, ARTICLE 134. **124 P R 1883**

11. *Redemption—Acknowledgment.*

See LIMITATION ACT (XV OF 1877), SECTION 19. **97 P R 1884**

12. *Redemption—Limitation.*

See LIMITATION ACT (XIV OF 1859), SECTION 1, CLAUSE 16. **109 P R 1884**

13. *Redemption—Condition in deed that mortgagee should continue in possession after redemption.*

See CONSTRUCTION. **32 P R 1886**

14. *Suit for redemption—Previous unexecuted decree for redemption of same mortgage—Right to maintain second suit.*

See RES JUDICATA. **20 P R 1881**

15. *Acknowledgment of mortgagor's right to redeem.*

See LIMITATION ACT, 1877, SECTION 19. **20 P R 1887**

MORTGAGE—*contd.*

XV.—REDEMPTION—*contd.*

16. *Acknowledgment of mortgagor's right to redeem.*

See LIMITATION ACT, 1877, SECTION 19. **60 P R 1887**

17. *Mortgage resulting from decree of Court—Suit for redemption of such mortgage—Plea of Limitation—Adverse possession—Right to redeem.*

In a suit for possession of certain land it appeared that the plaintiff was the nephew of the former proprietor of the land, upon whose death he sued to recover possession of the land from the widow of the said proprietor, who he then contended was only entitled to maintenance, which suit was terminated by a decree being passed, the effect of which was to declare the widow entitled to the usual widow's estate in her husband's property for her life, and further that the present defendant, who appeared to have managed the land and to have supported the widow, were to be recorded as trustees (*mafawazdar*), and that although the plaintiff would be entitled to recover possession of the land on the widow's death, this was conditional on his setting profit and loss, resulting from the management of the land, with the defendants. The widow having died in 1870, the plaintiff sued, after the lapse of more than 12 years from the widow's death, to recover possession of the land. The lower appellate Court being of opinion that the plaintiff's cause of action arose on the widow's death, held that the suit was barred by limitation and accordingly dismissed it.

Held (reversing the above order), that the effect of the decree above set out was to transfer an interest in the land then in suit to the present defendants as trustees for the purpose of securing the payment of expenses incurred by them in managing the land, and that this interest establish the relationship of mortgagor and mortgagee between the plaintiff and the defendants from the time of the widow's death; that the present suit was therefore not barred by reason of adverse possession, reckoning such possession to have commenced when the widow died, and plaintiff's reversionary rights fell into possession, but that the plaintiff's right to redeem the land still subsisted, and he was therefore entitled to a decree for redemption of the land upon payment of such sum as might be found due to the defendants for expenses incurred in managing the land, after deducting the income derived therefrom.

Ram Singh v. *Nodh Singh* (No. 93 *P. R.* 1879), and *Dewa Singh* v. *Harnam Singh* (No. 57 *P. R.* 1883 cited. BUTA SINGH v. JHAGRA. **10 P R 1888**

18. *Suit for redemption of mortgage on payment of a certain sum or such other sum as the Court might determine.*

See JURISDICTION. **44 P R 1888**

19. *Pre-emption of a mortgage—Redemption during pendency of suit.*

See LIS PENDENS. **102 P R 1888**

20. *Conditional sale—Redemption—Regulation XVII of* 1806—*Mortgagor not bound*

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to redeem within "reasonable time" when mortgagee takes no steps under the Regulation —Mortgagee's right to value of improvements —Right of person making improvements under bona fide *belief of ownership.*

In a case of a mortgage, to which the provisions of Regulation XVII of 1806 are applicable, but where the mortgagee has taken no steps under the Regulation, there is no provisiom of law compelling the mortgagor to sue for redemption within a reasonable time or otherwise than within the period of 60 years provided by the law of limitation.

Though under the ordinary law a mortgagee cannot claim payment for improvements effected without the consent of the mortgagor, the case is different where the mortgagee is in the position of a person who for 30 years has *bona fide* believed himself to be proprietor, under the impression that it was not necessary to take any proceedings to convert his mortgage by conditional sale into an absolute sale, and who for the said period of 30 years has dealt with the property as owner, and has been allowed to do so without objection by his mortgagor who resided close by. Under such circumstances a mortgagee may be entitled to compensation for all reasonable improvements. LADHA MAL *v.* JAGGANNATH. **123 P R 1888**

21. *Acknowledgment of mortgagor's right to redeem.*

See LIMITATION ACT, 1871, SCHEDULE II, ARTICLE 148. **157 P R 1888**

22. *Valuation of suit for redemption of mortgage—Plaintiff suing to redeem for Rs. 2,300—Defendant pleading that the mortgage-money was over Rs. 5,000—Valuation of suit—Course of appeal.*

See JURISDICTION. **169 P R 1888**

23. *Valuation of suit for redemption of mortgage—Plaintiff suing to redeem for Rs. 2,300—Defendant pleading that the mortgage-money was over Rs. 5,000—Valuation of suit—Course of appeal.*

See JURISDICTION. **69 P R 1889**

24. *Valuation of suit for redemption of mortgage—Plaintiff suing to redeem for Rs. 2,300—Defendant pleading that the mortgage-money was over Rs. 5,000—Valuation of suit—Course of appeal.*

See APPEAL XI.—VALUATION OF. **91 P R 1889**

25. *Redemption—Adverse possession of third party for more than twelve years—Limitation.*

In a suit brought by a mortgagor against a mortgagee for redemption, it appeared that actual possession was with a third party who, on being impleaded as a defendant, set up a title in no way derived from the mortgagee but from a third person whom he alleged to be the real owner perfected by possession for over 12 years adverse to both the mortgagor and the mortgagee. *Held* that the latter was entitled to succeed on proof of 12 years' adverse possession.

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I. L. R. 2 M. 226 approved; 124 *P. R.* 1883, referred to. NIHAL SINGH *v.* MUTSADDI. **161 P R 1889**

26. *Redemption before expiration of term —Clear expression of intention necessary to take away mortgagor's right to redeem before expiration of the term—Construction.*

A mortgage-deed, dated 18th May 1881, stipulated that the mortgagor would pay the principal in ten years (*ba-miad das sal ke*). The heir and representative of the mortgagor sued to redeem before the expiration of the term fixed.

Held, upon a proper construction of the mortgage-deed, that the fixation of the term was for the convenience of the mortgagor, and that there was nothing in the terms of the document which precluded the mortgagor from paying off the debt earlier.

I. L. R. 5 *B.* 22; *I. L. R.* 8 *All.* 95, not followed.

I. L. R. II Mad. 314; *I. L. R. III Mad.* 230; *I. L. R. X All.* 602, followed. MAULA *v.* KURBA. **201 P R 1889**

27. *Redemption—Mortgagee's charges—Compensation for proper and necessary repairs—Liability of mortgagor to pay such compensation before redemption.*

A mortgagee in possession of mortgaged property is bound to keep it in necessary repair. Where portions of the mortgaged property twice fell down and the mortgagee rebuilt them, it was *held*, that the mortgagor was not entitled to redeem unless upon payment of the sum so expended by the mortgagee.

Ghose on Mortgages, 2nd Edition, page 300, referred to. BHAG *v.* GHASITA MAL. **55 P R 1890**

28. *Jurisdiction—Suit for redemption of mortgage on payment of a certain sum or such other sum as the Court might determine —Course of appeal—Punjab Courts Act, section 39.*

The plaintiffs instituted a suit for redemption of certain property from mortgage, fixing the mortgage-debt at Rs. 43-12-0.

While the suit was pending in the Court of a Munsif, 2nd class, the plaintiffs amended their plaint to one for redemption on payment of Rs. 43-12-0, or such other sum as the Court might determine.

The defendants pleaded that Rs. 681 was the amount of the mortgage-debt.

The Munsif decreed redemption on payment of Rs. 63-14-0.

Held, that the appeal from the Munsif's decree lay to the Divisional Court, and not to the District Judge.

The jurisdiction is to be determined with reference to the claim made and not to the decision upon the claim, and when once the appeal had been properly instituted in the Divisional Court, it was immaterial that that Court found less than Rs. 100 to be due, and such finding did not oust its jurisdiction.

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The value of the suit was not altered by the plea of the defendants (No. 169 *P. R.* 1888). HAZARA SINGH *v.* LAL SINGH. **63 P R 1891**

29. *Mortgage—Subsequent sale of land to third person—Right to redeem—Pleadings.*

M. S. owned 34 *ghumaos* of land.

He mortgaged to the defendant 20 *ghumaos* for Rs. 490 for a term which had expired; and 14 *ghumaos* for Rs. 220 for a term which had not expired.

After these mortgages, M. S. sold the whole 34 *ghumaos* to the plaintiff for Rs. 3,000 by a deed of sale, as to which it was admitted that M. S. had executed the instrument and received Rs. 366 in cash before the Sub-Registrar. The deed acknowledged receipt of the Rs. 3,000 thus—two deeds of mortgage to defendants for Rs. 710 (above specified), other bond debts, and cash Rs. 366.

The plaintiff then sued to redeem the mortgage of 20 *ghumaos* for Rs. 490. He relied upon the deed of sale as showing his title to redeem

The first Court found that there was no fraud or undue influence as pleaded by the defendant, that Rs. 366 had been paid, as admitted, but that there was no necessity for the sale, and dismissed the suit on this latter ground.

The Divisional Judge decreed the plaintiff's claim, as the plaintiff had paid Rs. 366, and the mortgages for Rs. 700 were assigned to him, leaving it open to the defendants to contest the sale in all other respects in a separate suit.

Held, by Plowden, J. (Frizelle, J., dissenting), that the decree of the lower Appellate Court was correct and should be maintained.

The plaintiff had proved an assignment to him of the mortgage in suit, and a consideration for the assignment. That was enough to enable the plaintiff to maintain the suit, and to dispose of the plea that the transaction of sale was wholly fictitious and void.

The proper way of raising the question whether the sale was good, or was only valid as a charge for Rs. 366, was by bringing a cross-suit in which the defendants, as plaintiffs, could only have succeeded upon paying whatever was a valid charge upon the land, in the event of the sale being set aside and a charge being established. BUTA AND TABA *v.* KHUSHAL SINGH. **101 P R 1891**

30. *Acknowledgment of mortgagor's right to redeem.*

See LIMITATION ACT, 1877, SECTION 19. **116 P R 1891**

31. *Redemption of mortgage—Indivisible transaction—One co-sharer cannot redeem his share.*

In the absence of a special contract to the contrary, a mortgage is one indivisible transaction, and must be redeemed as a

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MORTGAGE—*contd.*

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whole or not at all. A co-sharer cannot sue to redeem his own share only. IMDAD ALI *v.* GHULAM JILANI. **42 P R 1892**

32. *Redemption.*

See INTEREST. **111 P R 1892**

33. *Suit for redemption—Plea that suit was barred by limitation—Burden of proof—Onus.*

The plaintiffs sued to redeem a shop which they alleged their father R. C. had mortgaged to the defendant's grandfather D. for Rs. 400 fifty years before suit.

The defendant pleaded that the shop was mortgaged to D. by the plaintiff's grandfather B. S. in Sambat 1870 (1813 A. D.) or more than sixty years before suit; and that the suit was therefore barred by limitation.

Held, that the *onus* lay in the first instance upon the plaintiffs to make out at least a *primâ facie* cause of a subsisting title before the defendant could be called upon to substantiate his defence.

I. L. R. XI All. 438, referred to. RALLIA RAM *v.* RADHA RAM. **88 P R 1893**

34. *Redemption.*

See INTEREST. **67 P R 1893**

35. *Acknowledgment of mortgagor's right to redeem.*

See LIMITATION ACT, 1877, SECTION 19. **53 P R 1894**

36. *Suit for redemption—Mortgage of undivided share of joint property—Consent of co-sharers—Interest post diem.*

See INTEREST. **114 P R 1894**

37. *Suit for redemption of mortgage on payment of a certain sum or such other sum as the Court might determine.*

See APPEAL III.—COURSE OF APPEAL. **106 P R 1895**

38. *Suit for redemption of mortgage on payment of a certain sum or such other sum as the Court might determine.*

See APPEAL XI.—VALUATION OF. **1 P R 1896**

39. *Suit for redemption of mortgage—Decree—" Material irregularity."*

Held, that, it being one of the material points in a suit for redemption of a mortgage to decide for what sum the person suing for redemption should be allowed to redeem it, if he is allowed to redeem it the sum should be stated in the decree, and should not be left to be decided in execution thereof.

Held, further, that the decree of an Appellate Court which did not state what relief it gave to the plaintiff, but merely declared that the appeal was accepted and the order of the lower Court reversed, was materially irregular, and must be set aside. HASHIM KHAN *v.* SARDAR. **34 P R 1896**

40. *Suit for redemption of mortgaged land—Improvements by mortgagee while in possession—Compensation for such improvements.*

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MORTGAGE—*contd.*

XV.—REDEMPTION—*contd.*

By a deed of mortgagee, dated 26th June 1879, certain agricultural land was mortgaged to defendants upon the terms that the mortgagees should hold undisturbed possession for thirteen years, and that interests and profits of the land should be equal. Upon the expiry of the said term, the mortgagor sued for possession by redemption of the land and the mortgagees claimed to be entitled to compensation for certain alleged improvements which they had made on the land and which consisted in their having planted and reared up plantain trees on a portion of the said land. Defendants alleged that the said trees brought in an annual income of Rs. 250, and a local commissioner, appointed by the first Court to inquire into the matter, reported that the mortgagees should receive Rs. 400, by way of compensation therefor. The mortgagor had in no way authorised or assented to the making of the alleged improvements.

Held, that upon the facts proved, the mortgagees were not entitled to claim compensation for the alleged improvements which, though they might bring in a profit, had unnecessarily diverted the land from its original uses without the consent of the mortgagor and for the benefit of the mortgagees while in possession. No. 67 *P. R.* 1893 cited. SHER SINGH *v.* NIHALU. **67 P R 1896**

41. *Acknowledgment of mortgagor's right to redeem.*

See LIMITATION ACT, 1877, SECTION 19. **9 P R 1897**

42 *Mortgagor and mortgagee—Compensation for improvements by mortgagee, Regulation XVII of* 1806.

In 1872 plaintiff's father mortgaged a certain house to defendant's father and made over possession thereof to the latter. The mortgage-deed provided that the property should be redeemed within one year on payment of Rs. 900, principal and Rs. 7 on account of costs of a suit the decree in which, in favour of defendant's father, formed the consideration for the mortgage. In default it was provided that the mortgage should become a sale. The deed made no provision as regards the mortgagee's right to make repairs or improvements. The evidence established that the house at the time of mortgage was a *kacha* one, and that some seventeen years before suit it actually fell down owing to this cause, and was rebuilt by the mortgagee, without any objection on the part of plaintiff who was living in the neighbourhood in a more substantial condition. Plaintiff having sued for redemption, defendants pleaded that the mortgage had, under the terms of the deed, become a sale and that in any event plaintiff could not redeem the property without paying for the improvements effected thereto. The lower Court decided against defendants on both points and they appealed to the Divisional Court, but only on the ground that they were entitled to compensation. The Divisional Judge found that de-

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MORTGAGE—*contd.*

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fendants were entitled to Rs. 429-10-0 as compensation out of Rs. 1,200 claimed by them. On appeal to the Chief Court it was

Held, that the mortgagee had a right to rebuild the house in order to keep up his security, and in rebuilding it was authorised to make it more substantial, provided the work was done providently and without any unnecessary expense, and that the mortgagee was, therefore, entitled to be recouped for the outlay, which was under the circumstances a reasonable one, to the extent that the mortgagor would derive benefit therefrom.

Found, on the evidence that the amount decreased by the Divisional Judge as compensation was proper and reasonable. BELI RAM *v.* CHUHA RAM. **18 P R 1898**

43. *Consolidation of mortgages—Right of redemption—Apportionment of charges—Mortgagee allowing interest and rent to accumulate.*

On the 14th September 1872 plaintiff executed in favour of defendant's father (*i*) a deed of mortgage of land situate in *mauza* Khizri for Rs. 99; (*ii*) a deed of mortgage of land situate in *mauza* Kishenpura for Rs. 150; and (*iii*) a *chakota nama*, or lease, whereby it was provided that plaintiff should pay Rs. 62-8-0 per annum as rent for the above areas which he was to hold as tenant for 10 years, that arrears of rent should be a charge on the land, and that until such arrears were paid off plaintiff should not be at liberty to redeem either area. Subsequently plaintiffs executed two further deeds of additional charge on the land, covered by the two deeds first mentioned, *viz.* (*iv*) mortgage-deed for Rs. 250, (*v*) a mortgage-deed for Rs. 400. This amount of Rs. 650 was to bear interest at Rs. 2 per mensem, and in both the two latter deeds there was condition that plaintiff should not be at liberty to redeem the area in either village until he had paid off the principal and interest due on each deed, such principal and interest being thus made an additional first charge on the two areas. Plaintiff having sued to redeem the land in *mauza* Khizri alone on payment of Rs. 99 (deed No. 1), defendant pleaded that plaintiff could only redeem on payment of the total amount, principal and interest, due under all the deeds.

Held, that though the two original transactions were distinct, separate areas being mortgaged by separate deeds, the practical effect of the three subsequent deeds was to consolidate these separate mortgages, at least as regards the charges created by the latter, and that therefore plaintiff could not claim to have the amounts due on the subsequent charges split up and apportioned on the two areas according to the consideration stated in each of the original deeds.

Accordingly, *held* that plaintiff was not entitled to redeem the area sued for until he had paid all that was due under deeds Nos. (1), (3), (4) and (5), the consideration of the deed (No 2) being excluded, as it had not been made a charge on the land in suit.

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Held, further, that as arrears of *chakota* were expressly made by the terms of the agreement (deed No. 3) a charge on the land, no question could arise as to the claim for *chakota* being not cognizable by a Civil Court or barred by limitation.

Held, also, that there was nothing in the relations between the parties or in the circumstances of the case to justify the reduction of the rate of interest or the amount of the *chakota* to be paid annually, the mere fact that defendant had allowed the interest and rent to accumulate not being sufficient to justify reduction of the amount under either head. BANNU MAL *v.* RAMJUS. **33 P R 1899**

44. Lekha Mukhi *mortgage—Suit by mortgagor for possession on ground that mortgage debt was satisfied —Nature and value of suit.*

Where plaintiff sued for possession of his land, which was held by defendants in mortgage in *lekha mukhi* form, on the allegation that the mortgage-debt had been extinguished by the profit from the land, and that, therefore, there was now no mortgage charge on the land.

Held, that notwithstanding the assertion that the mortgage debt had been discharged the suit was one for redemption, and that the value thereof for the purpose of jurisdiction was the amount of the charge on the property and not the value of the land. ABDUR RAHIM *v.* SEVA RAM. **73 P R 1899**

45. Res judicata—*Civil Procedure Code,* 1882, *section* 2—*Foreclosure proceedings—Suit by mortgagor for redemption after expiry of year of grace.*

In a suit for redemption of mortgage by one of four sons of the original morgagor, it appeared that some time previously another of the said sons had sued for redemption of the mortgage in question; that on the defendant's objection that the plaintiff could not sue alone, the latter endeavoured to make out that he was suing on behalf of his brothers and as regards the present plaintiff, undertook to either produce him in person or to procure a power-of-attorney from him, and that he failed to do either. There was, moreover, nothing to show that the present plaintiff who was at the time absent in Jhang knew of, or participated in, his brother's suit except the mere statement of the latter made in his own interest.

Held, under the circumstances, that the present suit was not *res judicata* by reason of the decision in the previous suit.

Held, further that inasmuch as foreclosure proceedings are merely ministerial and carry no final judicial sanction it is open to a mortgagor to bring a suit for redemption after the expiry of the year of grace, and that such mortgagor would be entitled to a decree if he proved his claim on the merits, and that the foreclosure proceedings were for any reason not good or conclusive as against him or for other sufficient cause.

A mortgagor is not bound to take any notice of foreclosure proceedings which he knows to be defective, or to wait till the mortgagee sues to complete his title, to plead irregularity in the said proceedings. In such a case he may sue for redemption even after expiry of the year of grace. GURDITTA MAL *v.* SANDHI KHAN. **27 P R 1900**

46. *Acknowledgment of mortgagor's right to redeem.*

See LIMITATION ACT, 1871, SCHEDULE II, ARTICLE 148. **62 P R 1900**

47. *Suit for redemption of mortgage—Possession—Burden of proof—Evidence Act, section* 110.

The plaintiff sued to redeem a certain shop alleging that it had been mortgaged by his father to the defendant in 1882. The defendant denied the mortgage and alleged that the shop was formerely in the possession of his father, and that he himself had obtained possession of it when he separated from his father some thirty years ago. Both the lower Courts rejected the plantiffs' claim on the ground that the mortgage was not proved, and that for the last forty years the defendant had had proprietary possession of the shop in dispute.

Held, it was not necessary to enquire at all when the defendant's possession became adverse but the plaintiff had to prove that he had a subsisting title as owner and mortgagor at the date of suit. The *onus* of proof of these facts was entirely on him which he had failed to discharge. RAM CHAND AND OTHERS *v.* BHANA MAL. **71 P R 1900**

48. *Mortgage—Mortgage of* niwadari *rights—Redemption of physical possession.*

See MORTGAGE XII.—MERGER. **40 P R 1901**

49. *Mortgage—Equity of redemption—Agreement by purchaser of equity of redemption to pay mortgage—Personal liability of purchaser—Trust.*

On 9th July 1879 the father of defendants Nos. 1 and 2 mortgaged certain property to plaintiff's father for Rs. 2,000. The mortgage was with possession and was redeemable by instalments at stated periods within fifteen years. On 29th September 1896 defendant No. 3 purchased the mortgagor's rights from defendants Nos. 1 and 2, and stipulated to pay Rs. 2,400 due to the plaintiffs, Rs. 400 being fixed as a lump sum at defendant's risk for expenses of repairs, etc. undergone by the plaintiffs. The covenant in the deed of slae was:

"*Waste dene Muhammad Sadiq, waghaira, pisrán Muhammad Bakhsh, murtahin mushtari mazkur ke pas amanat rakha gia*"—.

Plaintiffs were no parties to this agreement. The defendant No. 3 did not pay Rs. 2,400 to the plaintiffs, and they brought the present suit to recover the amount from him personally, and also asked for a declaration of lien over the mortgaged property. The first Court granted them decree as asked for, but the Divisional Judge cancelled the first part of the decree, holding the property alone liable for the mortgage money. Plaintiffs appealed to the Chief Cou t to make the purchaser personally liable.

Held, that an agreement by a purchaser of an equity of redemption with his vendor to pay the mortgage (to which the mortgagee was no party) does not create a personal liability on the part of the purchaser, so as to entitle the mortgagee to obtain a personal decree against the purchaser, nor does such an agreement establish an express trust in favour of the mortgagee.

Chandu v. *Chanda Mal* (95 *P. R.* 1885) *The Earl of Oxford* v. *Lady Rodney* (14 *Ves.* 417), *Butler* v. *Butler* (5 *Ves* 534), *Waring* v. *Ward* (7 *Ves.* 332), In re *Errington* ex-parte *Mason* (*L. R.* 1894, 1. *Q. B.* 11), and *Siddheswar* v. *Ram Chandra* (*I. L. R. VI Bom.* 463), referred to. MUHAMMAD SADIQ AND ANOTHER *v.* MUSSAMMAT SAHIB BIBI. **54 P R 1902**

50. *Mortgage—Mortgage of common land—Redemption—Right of one of several joint mortgagors to redeem the whole estate.*

The plaintiff having purchased 36 shares out of a total of 180 shares in the common land of their village, which had been previously mortgaged by certain of the sharers to the defendants, claimed to redeem the whole of the mortgaged land on payment of the whole of the mortgage-money, and joined the other mortgagors as co-defendants with the mortgagees. The mortgagees resisted the claim on the ground that the plaintiffs were not entitled to redeem the whole, and that their only right was to redeem a share equal to that purchased by them.

Held, that a part owner of the equity of redemption could not insist on redeeming his own share only, the right of redemption being a right to redeem the whole property mortgaged, the plaintiffs were entitled to the decree asked for subject to the equities between them and their co-owners.

Naro Hari Bhave v. *Vithalbhat* (*I. L. R. X Bom.* 648), *Hall* v. *Heward* (*L. R.* 32 *Ch. Dn.* 430), *Pearce* v. *Morris* (*L. R.* 5 *Ch. Dn.* 237). and *Charter* v. *Watson* (*L. R.* 1 *Ch. Dn.* 175) cited and followed.

Marakar Akath Kondarakayil Mamo v. *Punjapatath Kuthi* (*I. L. R. VI Mad.* 61) distinguished.

Thillai Chetti v. *Ramanatha Ayyan* (*I. L. R. XX Mad.* 295), not followed. BAHRAM KHAN *v.* SAAIDAL KHAN. **2 P R 1904**

51. *Mortgage—Redemption by co-mortgagor—Suit by other mortgagors against redeeming mortgagor for redemption of their shares—Civil Procedure Code,* 1859, *section* 115—*Civil Procedure Code,* 1882, *section* 103.

Where a suit for redemption by one heir of a mortgagor had been dismissed under section 114, Act VIII of 1859, corresponding to sections 102, 103, Act XIV of 1882, *held*, that another heir might redeem the whole mortgaged property in his own right and could avail himself against the co-heir of all the defences which the mortgagee could have set up, including the proibition against a fresh suit contained in the second clause of

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the section. being in no way a trustee for the co-heir in spite of the fact that he had joined the latter as co-plaintiff in the second suit for redemption.

Shankar Bakhsh v. *Daya Shankar* (*I. L. R. XV Calc.* 422 *P. C.*), *Nura Bibi* v. *Jagat Narain* (*I. L. R. VIII All.* 295, and *Ashfaq Ahmad* v. *Wazir Ali* (*I. L. R. XI All.* 423, F.B. cited and followed.

Ram Singh v. *Nodh Singh* (93 *P. R.* 1879), referred to. IMDAD ALI *v.* HURMAT ALI.

32 P R 1905

52. *Mortgage—Redemption—Further charges created by co-sharer in favour of mortgagee—Right of other part owner to redeem his part on payment of proportionate share of the original debt.*

A mortgage was made by two persons jointly, but the mortgagee subsequently allowed one of the mortgagors to create a further charge on his part of the security in his own favour. The co-mortgagor brought a suit to redeem his part of the property on payment of proportionate share of the original debt. The mortgagee pleaded indivisibility of the transaction and contended that it should be redeemed as a whole on payment of the original mortgage money and the further charge.

Held, that by the mortgagee's own action the mortgage security was broken up and that the plaintiff was entitled to redeem his share of the equity on payment of a proportionate part of the original mortgage debt. SARN DAS *v.* ATTAR BIBI. **91 P R 1905**

53. *Mortgage—Redemption—Right of redemption of puisne mortgagee claiming through a successor of the original owner—Competency of prior mortgagee to dispute puisne mortgagee's title on the ground of incompetency of the latter's principal.*

In a suit instituted by a puisne mortgagee who had derived his title from the sister of the original owner of the estate to redeem a prior mortgage made by the original owner in favour of the prior mortgagee, where the sister had succeeded to the rights of the original mortgagor on the usual tenure for life or until marriage, *held*, that the defendant was not competent to dispute the title of the sister on the geound that she had no power of alienation and that the puisne mortgagee was entitled to the relief asked for. NADIR KHAN *v.* MOMIN KHAN.

98 P R 1905

54. *Form of decree in cases for redemption of mortgage—Decree for redemption should not be conditioned on payment within fixed time.*

See DECREE, 8. FORM OF.

100 P R 1905

55. *Mortgage—Conditional sale—Absence of stipulated period for redemption—Agreement to pay interest annually or in default of payment for six years the mortgage would become a sale—Applicability of Regulation XVII of 1806 to such agreements.*

The defendant under the terms of a deed of mortgage executed by him wherein no

MORTGAGE—*contd.*

XV.—REDEMPTION—*contd.*

stipulated period for redemption was mentioned agreed that on his failure for six years to pay the interest due on the mortgage the plaintiff would be entitled to foreclose and the mortgage would become a sale for the amount of principal and the unpaid interest.

Held, that such an agreement does not come within the purview of Regulation XVII of 1806 and is not liable to the incidents applicable under the Regulation to such sales.

To all agreements of mortgage wherein no stipulated term for redemption is mentioned, the full period of sixty years allowed by the Limitation Act applies, and the limitation applicable to them is not effected by a covenant accelerating for other purposes the time at which the principal may become due.

Bakhtawar Singh v. *Harnam Das* (*Civ. App. No.* 1087 *of* 1898), and *Bura Mal* v. *Jawaya* (*Civ. App.* 827 *of* 1901), dissented from.

Kishori Mohan Roy v. *Ganga Bahu Debi* (*I. L. R. XXIII Calc.* 228, *P. C.*), cited and followed.

Held, further, that a mortgagee cannot acquire the status of an owner with respect to property mortgaged to him merely on the breach of the terms of the contract binding the borrower to repay at short notice.

Gobardhan Das v. *Gokal Das* (*I. L. R. II All.* 633), not followed. *Malikarjunudu* v. *Mallikarjunudu* (*I. L. R. VIII Mad.* 185), distinguished. BHAG SINGH *v.* BASAWA SINGH.

50 P R 1906

56. *Mortgage—Mortgagee obtaining money decree against his mortgagor not allowed to purchase equity of redemption in the property mortgaged to him—Effect of prohibited purchase.*

Held that a mortgagee under a conditional sale cannot, by purchasing the equity of redemption in execution of a money decree obtained by him against his mortgagor, acquire a complete title as of a purchaser in the property mortgaged to him so as to deprive the mortgagor of his legal privileges regarding the equity of redemption.

Such purchases being absolutely unlawful do not confer an irredeemable title on a mortgagee without his having recourse to the proper procedure prescribed for that purpose and without giving the mortgagor an opportunity to redeem. JAGAN NATH *v.* BUDHWA.

2 P R 1907

57. *Mortgage—Mortgage for a fixed period—Representative of the mortgagor not allowed to redeem before the expiry of the term—Long term alone does not amount to clogging the equity of redemption.*

Held, that a period fixed for redemption by the parties in a mortgage bond cannot be regarded as one fixed without legal necessity and as such inequitable and unenforceable on the mere ground of its being unusually long and the representative of the mortgagor cannot be allowed to redeem before the term fixed on that behalf, especially where it is

MORTGAGE—*contd.*

XV.—REDEMPTION—*concld.*

shown to have been fixed by the mortgagor in good faith and with due regard to his best interests. PURAN SINGH *v.* KESAR SINGH.

39 P R 1907

58. *Mortgage—Redemption—Suit by mortgagor for redemption—Dismissal of suit for default—Subsequent suit for the same object.*

Held, that a dismissal under section 102 of the Code of Civil Procedure of a suit by a mortgagor for redemption of mortgaged property precludes the plaintiff under section 103 from bringing a fresh suit for the redemption of the same property. GURDITTA *v.* NARAIN DAS. **43 P R 1907**

59. *Redemption, suit for, by mortgagor's representative, mortgage of* birt*—Enjoyment of by one heir of mortgagee adversely to other heirs—Extinguishment of title of other heirs.*

See LIMITATION ACT, 1877, SECTION 28.

34 P R 1908

60. *Mortgage—Conditonal sale—Void decree in foreclosure suit—Effect of, on parties' rights—Adverse possession.*

Held, that a mortgagee by conditional sale cannot, by obtaining a decree in an illegal foreclosure proceedings or by asserting himself to be the proprietor and thereby obtaining mutation to that effect in his favour, alter the character of his original title nor can he rely on a possession adverse to the mortgagor to deprive him of his right to redeem the property. INDAR *v.* ASA SINGH.

65 P R 1908

61. *Decree for redemption—Omission to execute—Second suit to redeem the same mortgage—Maintainability of such suit.*

See RES-JUDICATA.

93 P R 1908 F. B.

62. *Mortgage by conditional sale—Gift of equity of redemption prior to the expiry of mortgage term—Validity of such gift under Muhammadan Law—Notice of fore closure to original mortgagor—Necessity of notice to donee.*

See MUHAMMADAN LAW 6. GIFT.

86 P R 1910

63. *Mortgage made jointly by several mortgagors—Losing its indivisible character on mortgagee becoming part owner of equity of redemption thus enabling each mortgagor to redeem his share separately—Previous partition not necessary.*

See JOINT MORTGAGE.

62 P R 1911

XVI.—FORECLOSURE.

1. *Conditional sale—Suit to redeem must be brought within the year of grace—Application to Settlement Court by mortgagee held to be proper reference in the year* 1865.

See MORTGAGE XV.—REDEMPTION.

21 P R 1870

2. *Conditional sale—Year of grace runs from date of order of first Court, not of Appellate Court.*

Where a mortgage was by way of conditional sale, and the mortgagee obtained an order of Court that the mortgagor should redeem in one year upon payment

MORTGAGE—*contd.*

XVI.—FORECLOSURE—*contd.*

of a certain sum or be foreclosed, which order was modified on appeal by reduction of the amount to be paid: *Held*, that the mortgagor's year of grace ran from the date of the order of the first Court and not from that of the Appellate Court. JEHANGEER *v.* SAINDASS. **42 P R 1870**

3. Plaintiff sued on a mortgage-deed for the principal sum; the deed provided that he should receive the income and other benefits accruing from the mortgaged house, and that foreclosure of the mortgage should depend on the will of the defendant, the mortgagor. *Held*, that the plaintiff's suit would not lie. GULAM HOSEIN *v.* MEHTAB. **57 P R 1873**

4. *Conditional sale—Limitation—Regulation XVII of* 1806.

Defendants in 1856 mortgaged certain property to the plaintiffs by way of conditional sale for a term of five years. There was also a clause in the mortgage-deed that if the mortgagors failed to pay to the mortgagees the revenue, the sale should become absolute. In 1857, the mortgagors failed to pay the revenue, but the mortgagees took no steps till March 1873, when they caused the mortgagors to be served with notice of redemption or foreclosure under section 8, Regulation XVII of 1806. In October 1873, the mortgagors having failed to redeem, the mortgagees sued for foreclosure. *Held*, that the mortgagees' right to possession was not complete until performance of the ministerial act of serving the notice under the Regulation, and therefore plaintiff's suit was not barred by time. HURDWARI MAL *v.* GAMDIN. **75 P R 1874**

5 *Conditional sale—Proprietary and cultivating rights—Regulation XVII of* 1806—*Procedure.*

Plaintiff mortgaged his land to defendant by way of conditional sale for three years. Four and a half years afterwards, in 1873, defendant sued for possession and obtained a decree that if the amount due were not paid within one year, the title would pass absolutely to him as vendee. About two years after decree, defendant applied for possession; notice was issued to plaintiff, who did not contest the conditional sale, but sued to have reserved to himself his occupancy rights. *Held*, following *Narain Singh* v. *Dya Ram* (No. 44 *P. R.* 1874), that plaintiff had mortgaged both his proprietary and cultivating rights and the latter could not be reserved to him. *Held* by BOULNOIS and LINDSAY, JJ., that the procedure required by Regulation XVII of 1806, section 8 not having been followed it was still incumbent on defendant to bring a regular suit as absolute proprietor if not in possession or a suit for a declaration of his title as absolute owner in possession; his suit in 1873, which was irregular and the decree in which was illegal, being treated as the notice to the mortgagor required by

MORTGAGE—*contd.*

XVI.—FORECLOSURE—*contd.*

the Regulation. *Held*, by CAMPBELL, J., that though the Regulation had not been strictly followed, practically the object aimed at by the Regulation (the giving notice and a year's grace to the mortgagor) had been effected, and the defendant had become absolutely the vendee. SHEOJI SINGH *v.* TARA. **29 P R 1876**

6. *Regulation XVII of* 1806, *section* 8—*Irregularities in foreclosure proceedings—Waiver.*

Defendant mortgaged certain land to plaintiff by a deed of conditional sale, dated 21st February 1870, securing payment of a loan of Rs. 200 in four years. On 15th June 1874, plaintiff applied to the Deputy Commissioner for notice to issue to defendant, under section 8 of Regulation XVII of 1806. On 15th July 1874 an acknowledgment of service of notice and copy of plaintiff's application, purporting to be signed by the defendant, was filed with the proceedings.

On 4th October 1875 plaintiff filed a suit for possession before the Assistant Commissioner. On 11th October 1875, the Deputy Commissioner, on the defendant's petitioning him, granted six months' further grace for payment of the money. This order was passed *ex parte*. On 26th November 1875 the Assistant Commissioner, with reference to the Deputy Commissioner's order, dismissed the plaintiff's suit as premature. On 31st May 1876 plaintiff applied to have his case restored to the file, as the further time allowed by the Deputy Commissioner had expired. This was done and he obtained a decree.

Held, that the issue of a second notice under Regulation XVII of 1806 was not necessary, the order of the Deputy Commissioner dated 11th October 1875 having been passed without any legal authority.

Held, further, that the omission to demand payment from the mortgagor prior to application under section 8, and the omission to serve a copy of the application, were irregularities capable of waiver, and that the defendant in the first Court and in the lower Appellate Court not having taken exception to the foreclosure proceedings had waived any defence open to him on these grounds, and was not entitled on special appeal to insist on a re-opening of the case. FATTEH *v.* SAINDITTA. **76 P R 1877**

7. *Conditional sale—Suit for redemption—Foreclosure—Regulation XVII of* 1806—*Procedure prior to Regulation.*

In a suit for redemption of a mortgage by conditional sale, where it appeared that the term expressed in the deed had expired before Regulation XVII of 1806 acquired the force of law in the Punjab by the enactment of Act IV of 1872, *held*, that under the rules which applied to such cases in the Punjab prior to the passing of the above Act, the conditional sale did not become absolute owing merely to the

MORTGAGE—*contd.*

XVI.—FORECLOSURE—*contd.*

expiration of the stipulated period. GURMUKH SINGH *v.* MALLA. **1 P R 1881**

8. *Foreclosure—Pre-emption.*
See PRE-EMPTION—8. NOTICE. **35 P R 1881**

9. *Conditional sale—Foreclosure—Regulation XVII of* 1806—*Construction of Regulation—Defects in notice issued under section* 8—*Result of such defects.*

In order to entitle a mortgagee to avail himself of foreclosure proceedings so as to defeat the mortgagor's right of redemption, it is necessary for him to show that the requirements of the law have been strictly complied with.

Where, therefore, a notice issued under section 8 of Regulation XVII of 1806 did not bear the seal or signature of the District Judge, but only his initials, and merely notified to the mortgagor the principal sum due on the mortgage without any mention of the interest also due thereon, *held*, that there were such defects in the validity of the notice as to vitiate the foreclosure proceedings, and to prevent the mortgagee from maintaining a suit based upon such proceedings. *Saindass* v. *Jehangeer* (No. 21 *P. R.* 1870) cited. *Fatteh* v. *Sainditta* (No. 76 *P. R.* 1877) distinguished. MEHRO *v.* SUJA. **84 P R 1882**

10. *Conditional sale—Foreclosure—Onus of proving due service of notice—Delivery to mortgagor of copy of petition for foreclosure.*

In a suit for possession of land mortgaged by way of conditional sale to the plaintiff by the defendant's father, in which the plaintiff alleged and the defendant denied due service of the notice of foreclosure, *held*, that the lower Appellate Court was in error in presuming due service of the notice, as the burden of proving this rested upon the mortgagee, and further that it was essential for the plaintiff to prove that a copy of the petition for foreclosure had been delivered to the mortgagor. GUGAN *v.* RUP RAM. **139 P R 1882**

11. *Foreclosure—Omission of mortgagee to take preliminary proceedings under section* 8 *of Regulation XVII of* 1806—*Acquiescence by mortgagor in such omission—Right of mortgagee who had obtained decree for foreclosure to plead that such decree was illegal and gave rise to no right of pre-emption.*

See ESTOPPEL. **155 P R 1882**

12. *Conditional sale—Foreclosure—Procedure prior to passing of Act IV of* 1872—*Jurisdiction—Regulation XVII of* 1806, *section* 8—*Punjab Civil Code, Pt.* 2, *section* 6, *paras.* 6, 7—*Proceedings commenced before Act IV of* 1872 *not affected by passing of that Act—Act I of* 1868, *section* 6—*Defendant setting up complete title as purchaser under old procedure.*

MORTGAGE—*contd.*

XVI.—FORECLOSURE—*contd.*

In a suit for possession of a house which had been mortgaged to defendant by way of conditional sale, defendant pleaded that the mortgage had been declared to be foreclosed by an order of the Tahsildar, passed on the 29th March 1873 in a suit for foreclosure, and that his title to the property was complete. The lower Appellate Court, assuming that the law applicable when the petition ('A') for foreclosure was presented was that contained in section 8 of Regulatinn XVII of 1806, rejected the defendant's plea on the ground that the Tahsildar who tried the case was without jurisdiction, and that the procedure also was not that prescribed by the Regulation.

Held, that as it appeared that the foreclosure suit was instituted on the 3rd January 1872, before the passing of Act IV of 1872, which declared section 8 of Regulation XVII of 1806 in force in the Punjab, and there was then nothing in the law of the Punjab to require a foreclosure suit to be instituted in a particular Court or to make necessary a preliminary application to the Judge of the district (the procedure then in force being that contained in the Punjab Civil Code, Part II, section 6, paras. 6 and 7), and as the proceedings which commenced on 3rd January 1872 were not affected by the passing of Act IV of 1872 (see section 6, Act I of 1868), the defendant was entitled to plead that his title as purchaser was completed by the order of 28th March 1873, and that there was no longer any mortgage in existence. *Sheoji Singh* v. *Tara* (No. 29 *P. R.* 1876), F. B.) distinguished. *Gurmukh Singh* v. *Malla* (No. 1 *P. R.* 1881), referred to. GANPAT *v.* FATTEH SINGH. **171 P R 1882**

13. *Conditional sale—Foreclosure—Regulation XVII of* 1806, *section* 8—*Validity of notice—Notice to purchaser of mortgagor's rights.*

Where a mortgagor by way of conditional sale has sold his equity of redemption before an application for foreclosure has been made, such application is not effectual unless the purchaser is served with it: and the same principle applies where only part of the mortgaged property has been sold. *Mahmud Khan* v. *Bhai Balkishen* (No. 76 *P. R.* 1878), referred to. MULRAJ *v.* SOBHA RAM.

31 P R 1883

14. *Conditional sale—Foreclosure—Regulation XVII of* 1806, *section* 8—*Failure to deliver to mortgagor Judge's* parwana *with the copy of the application—Insufficient notice.*

Held, that a notice of foreclosure under section 8, Regulation XVII of 1806, is not duly served in accordance with the Regulation by delivery of a copy of the application to the representative of the mortgagor, where the *parwana* under the seal and official signature of the Judge is not delivered, though its purport may be communicated by the process-server to the said representative. POHLU MAL *v.* RUKNA.

32 P R 1883

MORTGAGE—*contd.*

XVI.—FORECLOSURE—*contd.*

15. *Conditional sale—Foreclosure—Regulation XVII of* 1806, *section* 8—" *Judge of the Zilla Diwani Adalat* "—*Jurisdiction of Judicial Assistant not invested generally with powers of Deputy Commissioner—Act XVII of* 1877, *sections* 32 (a) *and* 37.

The officer in the Punjab who corresponds to the "Judge of the Zilla Diwani Adalat" mentioned in Regulation XVII of 1806, is the Deputy Commissioner of the District.

Where in a suit for foreclosure it appeared that the proceedings under the above Regulation were taken in the Court of the Judicial Assistant Commissioner, whose powers were by the Notification which conferred them expressed to be the powers of a Deputy Commissioner as defined in section 32, clause (*a*), and section 37 of Act XVII of 1877, *held* that as a proceeding under section 8 of Regulation XVII of 1806 was not in the nature of a civil suit and as the Judicial Assistant Commissioner in question had not been invested generally with the powers of a Deputy Commissioner, his Court could not be regarded as that of the "Judge of the Zilla Court" for the purposes of the Regulation. *Abdul Rahman* v. *Mahomed Ismail* (No. 54 *P. R.* 1877, F. B.) distinguished. PERTAB SINGH *v.* SIRDAR HARSA SINGH. **55 P R 1883**

16. *Conditional sale—Foreclosure—Regulations I of* 1798 *and XVII of* 1806—*Mortgagee in possession omitting to sue after expiry of year of grace—Mortgagor's rights to sue for recovery of land on allegation that mortgage debt was liquidated before expiry of year.*

Held, that in the case of a mortgage by conditional sale, if the mortgagee in possession does not sue for a declaration of his absolute title after the lapse of the year of grace, and the mortgagor can prove that the mortgage-debt was liquidated before the year expired, the right of redemption still exists, and the mortgagor may sue to recover the land. It is no longer open to him to ask to be allowed to redeem by making a further payment, and if it is found that the mortgage-debt was not in fact paid off within the year of grace, the suit must be dismissed: but if it has been satisfied within the year of grace, the plaintiff will be entitled to a decree. *Saindas* v. *Jehangeer* (No. 21 *P. R.* 1870) and *Mehro* v. *Suja* (No. 84 *P. R.* 1882), referred to. MANA SINGH *v.* KAHAN SINGH.

75 P R 1883

17. *Suit by purchaser of mortgaged property to establish that mortgage is not binding on him—Notice—*Bonâ fides—*Burden of proof.*

Plaintiff sued to have it declared that two mortgages in favor of the defendant executed by the previous owner of land subsequently bought by the plaintiff were invalid against him. The suit was brought upwards of 12 years after the dates of the transactions relating to the land, the reason for suing being that the defendant had caused a notice of foreclosure to be served on the plaintiff. The sale did not purport to be of the equity of redemption but of the property, but it was admitted that the plaintiff purchased with notice of the mortgages.

MORTGAGE—*contd.*

XVI.—FORECLOSURE—*contd.*

Held, that the question for decision was whether, at the time of the purchase, plaintiff had reason to believe, acting with due care and attention, that the mortgages were void, or had been put an end to, and the burden of proof on this point was on him, as being aware of the mortgages when he purchased, he was bound to show the facts entitling him to treat them as non-existent. RALLIA RAM *v.* SUNDAR.

83 P R 1883

18. *Conditional sale—Regulation XVII of* 1806, *section* 8—*Failure to make a demand of payment from mortgagor before suing.*

Held, following the decisions in *I. L. R.* 5 *All.* 9 and in *I. L. R. 11 Calc.* 111, that section 8 of Regulation XVII of 1806 contemplates a previous demand of payment of the mortgage-money before the mortgagee has the right of applying for foreclosure, and the omission to make such a demand vitiates the foreclosure proceedings altogether, the provisions of the said section being not merely directory but imperative, and prescribing conditions precedent to the right of the mortgagee to enforce forfeiture of the estate of the mortgagor, which procedure must be strictly followed. PREMAN *v.* SARBANDI

114 P R 1885

19. *Conditional sale—Regulation XVII of* 1806, *section* 8—*Applicability of the provisions of the Regulation to house property.*

Held, that the provisions of Regulation XVII of 1806 apply to a mortgage by way of conditional sale of houses so as to prevent the sale from becoming absolute until foreclosure proceedings have been taken under section 8 of that Regulation, as the words "landed property" and "land" admit of being understood in a sense wide enough to include the houses built on the land, and there is nothing in the contest to render it necessary to give them a narrower sense. *Ganpat* v. *Fatteh Singh* (No. 171 *P. R.* 1882) referred to. RANJIT *v.* TIRKHA.

117 P R 1885

20. *Foreclosure—Regulation XVII of* 1806, *section* 8—*Suit for possession—Absence of proof of previous demand before issue of notice of foreclosure—Fatal defect—Dismissal of suit—Judge's* " parwana " *signed with his initials only—Sufficiency of such signature* —" *Official signature* "—*Presumption of due observance of all necessary formalities under the Regulation—Duty of plaintiff to prove affirmatively due performance of all such formalities.*

In a suit to recover proprietary possession of certain land, after proceedings for foreclosure had been taken upon a mortgage by way of conditional sale with respect to it, it

appeared (on a further appeal by plaintiff) that there was no proof on the record of, nor any allusion in the petition for foreclosure to, a previous demand having been made before the issue of the notice under section 8 of Regulation XVII of 1806.

Held, that it was competent to the defendant to rely upon the above defect in defending the appeal: that considering the long period for which the suit had been pending, the plaintiff was not entitled to a remand at the present stage to enable him to supply evidence which he ought to have produced in the first court upwards of three years ago; that the defect relied upon was a fatal defect, and in itself sufficient to justify a dismissal of the plaintiff's appeal. *Preman* v. *Sarbandi* (No. 114 *P. R.* 1885) cited.

It appeared further in the above case that the notice required to be issued by the District Judge under section 8 of the Regulation was signed with his initials only. *Held*, per *Rattigan*, J. (*Roe* J. doubting as to this), that the decision of the Privy Council in *I. L. R. XI Calc.* 111, is conclusive on the question that the mere affixing of his initials to the *parwana* is not equivalent to the "official signature" of the Judge which the law requires.

A Court will not presume in a suit of the above nature that all formalities have been duly observed in issuing the notices and *parwana* under Regulation XVII of 1806. A District Judge who acts under that Regulation does not do so in a judicial but in a ministerial capacity, and inasmuch as he derives his power to issue the notice under a special enactment, every circumstance required by the enactment to give that power or to regulate its exercise, must appear on the face of the proceedings or by reasonable intendment, and it is for the plaintiff to prove affirmatively the due performance of every condition necessary to be established before the foreclosure can attach upon the estate. MUSSAMMAT LACHMI *v.* TOTA. **16 P R 1888**

21. *Foreclosure—Regulation XVII of 1806—Application of Regulation to incorporeal rights connected with land—Immovable property.*

Defendant who held a usufructuary mortgage with possession of certain land belonging to certain Rajputs, which was redeemable at any time on payment of the mortgage-money, assigned his rights under the said mortgage to the plaintiff by a conditional assignment, the terms of which were in form like a "*baibil wafa*," it being covenanted that if the loan in question was not repaid by a specified date, the assignment of the Rajputs' mortgage would become absolute, and the effect would be that the plaintiff would become mortgagee instead of the defendant. Default having been made, the plaintiff sued to be put in possession of the Rajputs' land in the place and with the rights of the defendant, the assignment being alleged to have become absolute on failure of defendant to pay, and was met with the plea that the mortgage

was subject to Regulation XVII of 1806, and therefore foreclosure could not be had without all the previous formalities of the Regulation.

Held, that the above contention could not prevail, as the meaning of the Regulation could not be extended so as to include incorporeal rights connected with or involving interests in land, although such property had to be classed as "immovable," because it was not of the restricted nature of movable property.

Ranjit v. *Tirkha* (No. 117 *P. R.* 1885), cited. MELA MAL *v.* MELA MAL. **83 P R 1888**

22. *Suit for foreclosure or sale.*

See LIMITATION ACT, 1877, SCHEDULE II, ARTICLE 147. **151 P R 1888**

23. *Conditional sale—Regulation XVII of 1806—Strict performance of conditions—Previous demand.*

A vendee by conditional sale sued for possession on the ground that the necessary proceedings had been taken under Regulation XVII of 1806, and that the year of grace had elapsed without redemption. In his plaint he did not state that he had made a demand of payment of principal and interest before issue of notice, nor was any such allegation made in the lower Courts. On appeal to the Chief Court, he offered to prove this by evidence. *Held*, that he could not be allowed such an opportunity as he was bound to prove affirmatively that everything necessary to be done under the Regulation to complete his title had been duly done; and had not attempted to prove this in the lower Courts. KIRPA RAM *v.* BHAGWANA. **106 P R 1889**

24. *Conditional sale—Foreclosure—Regulation XVII of 1806—Strict compliance with conditions—Official signature—Illegible initals—Sufficiency of such signature.*

In a suit for possession after foreclosure of a mortgage by conditional sale under Regulation XVII of 1806, it appeared that the *parwana* or notice issued under the Regulation bore the seal of the District Judge and not his signature, but only some *illegible* initials without any official designation.

Held by the Full Bench that the *parwana* did not comply with the requirements of section 8, Regulation XVII of 1806, not bearing the *official signature* of the Judge.

Held by the Division Bench that the *parwana* not complying with the requirements of the Regulation, the suit failed and should be dismissed. SHAM SINGH *v.* KARAM. **185 P R 1889 F. B.**

25. *Regulation XVII of 1806, section 8—Notice—Official signature.*

A notice under Regulation XVII of 1806 bore the signature of the Judge unaccompanied with his official designation.

Held, that the notice was invalid. RAM CHAND *v.* GHULAM MUHAMMAD. **84 P R 1890**

26. *Mortgage by conditional sale—Foreclosure proceedings and suit for possession—Pre-emption.*

See LIMITATION ACT, 1877, SECOND SCHEDULE, ARTICLE 10. **30 P R 1892**

27. *Regulation XVII of 1806—Service of notice—Service on each mortgagor.*

To establish a sufficient compliance with the provisions of Regulation XVII of 1806, it is necessary that, if there be more than one mortgagor, each mortgagor should be served with a copy of the mortgagee's petition to foreclose, service upon one of the mortgagors alone being inadequate. MAYA SHAH *v.* FEROZDIN. **51 P R 1892**

28. *Regulation XVII of 1806—Application to foreclose—Minor—Notice how to be served.*

Held, that the presentation of a written petition under section 8, Regulation XVII of 1806, by a person acting under a general power of attorney from the holder of a deed of mortgage, was a valid one.

Held, further, that the copy of the application and *parwana* referred to in the section in question were sufficiently served on a minor mortgagee, for whom no guardian had been appointed under the Act, by service on his brother with whom he lived.

2 *N. W. P. Reps.* 444 followed. LAL SINGH *v.* GOPAL DAS. **94 P R 1892**

29. *Jurisdiction—Revision—Refusal of District Judge to issue a notice under Regulation XVII of 1806.*

The District Judge refused to issue a notice under Regulation XVII of 1806, holding that the mortgage-deed propounded was not a mortgage by conditional sale and therefore not within the scope of the Regulation.

The plaintiff applied for revision.

Held, overruling the District Judge as to the nature and construction of the document, that his order was under the circumstances open to revision.

I. L. R. III All. 576 referred to and followed. GULAB SINGH *v.* KARAM. **119 P R 1892**

30. *Mortgage by conditional sale—Regution XVII of 1806—Notice under section 8.*

A notice by a mortgagee by conditional sale under section 8, Regulation XVII of 1806, is defective if it does not state that the mortgage-debt is to be repaid within one year from the date of the notification.

The date when the year of grace allowed to the mortgagor will expire is most material and should be ascertainable on the face of the notice; and would be so ascertainable by compliance with the terms of the section. JEWAN MAL *v.* RAM SINGH. **36 P R 1893**

31. *Conditional sale of undivided share in a village—Foreclosure—Regulation XVII of 1806—Limitation.*

See LIMITATION ACT, 1877, SECOND SCHEDULE, ARTICLE 10. **87 P R 1893**

MORTGAGE—*contd.*

XVI.—FORECLOSURE—*contd.*

32. *Mortgage by conditional sale—Suit for foreclosure—Notice of foreclosure, validity of Regulation XVII of* 1806, *sections* 7, 8.

Plaintiff sued for foreclosure of a mortgage by way of conditional sale; and defendants contended that the notice of foreclosure was invalid for the following reasons: —(*i*) that it was stated in the notice that redemption must be made within one year from the date of the notice being served; (*ii*) that the words "District Judge" under the signature of the officer signing the notice had been impressed by a seal upside down; and (*iii*) that the notice merely warned the mortgagor that if he did not redeem the property within one year, the mortgage would be finally foreclosed. The Divisional Judge having held that the error referred to in defendant's second objection vitiated the notice altogether and dismissed plaintiff's claim; plaintiff appealed to the Chief Court.

Held, following the Privy Council Ruling in *I. L. R. III Calc.* 397, that the one year allowed for redemption must be reckoned from the date of the service of notice, and that the notice was therefore, *pro tanto*, valid.

Held, further, that the mistake in impressing the seal was not fatal to the validity of the notice.

But *held* that it was essential to the validity of the notice that it should, under section 8 of Regulation XVII of 1806, have informed the mortgagor that he must within the year redeem the property mortgaged "*in the manner provided for by the foregoging section*" of the Regulation, and a mere notice that the mortgagor must redeem the property mortgaged within one year is not equivalent to a notice that he must redeem the property mortgaged in the manner provided for by that section and is invalid.

I. L. R. III Calc. 397 followed; No. 57 *P. R.*1888 and 36 *P. R.* 1893, referred to. MULRAJ *v.* HARSA SINGH. **123 P R 1894**

33. *Mortgage—Foreclosure—Defective notice—Regulation XVII of* 1806—*Signature and designation of officer issuing notice.*

The notice of foreclosure, dated 6th January 1889, was headed: "In the Court of Mr. J. C. Brown, District Judge and Deputy Commissioner"; bore the seal, "the Court of the District Judge"; contained all the particulars required by the regulation, but was signed "J. C. Brown, Deputy Commissioner." The Divisional Judge held that the notice was defective on the ground that the designation "Deputy Commissioner," instead of "District Judge," followed the signature of the officer issuing the notice.

Held, distinguishing No. 185 *P. R.* 1889 (F. B.), that, as the notice itself showed that the officer issuing it was both Deputy Commissioner and District Judge, the addition of the words "Deputy Commissioner" after the said officer's signature could not possibly lead to the supposition that the notice was not issued by the District Judge and was a mere surplusage which did not affect the validity of the notice. HIRA NAND *v.* CHATRU. **133 P R 1894**

MORTGAGE—*contd.*

XVI.—FORECLOSURE—*contd.*

34. *Regulation XVII of* 1806—*Validity of notice of foreclosure of mortgage.*

Held, that it is essential to the validity of a notice, under section 8 of Regulation XVII of 1806, that it shall inform the mortgagor that he must within the year redeem the property "*in the manner provided for by the foregoing section*" of the Regulation, and that the omission to comply with the provisions of the Regulation in this respect, is a fatal defect which vitiates the whole notice. WASAWA SINGH *v.* RURA. **24 P R 1895**

35. *Mortgage by conditional sale—Foreclosure.*

See LIMITATION ACT, 1877, SECOND SCHEDULE, ARTICLE, 10. **76 P R 1895**

36. *Limitation—Suit for possession by mortgagee who has foreclosed—Limitation Act,* 1877, *2nd Schedule, articles* 135, 144.

Plaintiff sued on the allegations that on 27th January 1877 defendant executed in his favour a mortgage, by the terms of which plaintiff was to be placed in immediate possession of certain land as mortgagee and receive the produce in lieu of interest, and defendant was to redeem in three years, in Jeth, and, if he failed to do so, the mortgage was to become a sale.

Plaintiff never received possession as mortgagee; but on the 1st June 1889 he got notice of foreclosure served under the Regulation, and in January 1892 he instituted a suit for proprietary possession of the land. Defendant pleaded, *inter alia*, that the suit was barred by limitation under article 135 of the 2nd Schedule to the Limitation Act, 1877.

Held, by the Full Bench, that the suit was within time—(1) that though plaintiff's right to sue for physical cultivating possession as mortgagee probably determined in 1889, the omission to sue for such possession did not amount to a waiver of his right to foreclose; (2) that plaintiff's right to foreclose first accrued in 1880, and that he had at least twelve years from that date within which to foreclose the mortgage; (3) that plaintiff, having foreclosed in 1889-90, had twelve years within which to institute his suit for proprietary possession, running from the date of the expiry of the year of grace, when the mortgagor's right to possession of the character sought for in the suit first determined.

The authorities considered and discussed by *Rivaz* J. BHANDARI *v.* MUSSAMMAT JASODHAN. **90 P R 1895**

37. *Foreclosure of mortgage—Notice—Regulation XVII of* 1806, *sections* 7, 8—*Limitation Act,* 1877, *2nd Schedule, articles* 135, 143, *and section* 23—*Failure to pay interest under mortgage-deed—Continuing breach of contract—Waiver.*

A mortgage-deed, which was executed on the 26th March 1878 for a period of six years, provided that if interest for any year was not paid, the mortgagee might eject the mortgagor and take possession. Plaintiff contended that his suit, which was

MORTGAGE—*contd.*

XVI.—FORECLOSURE—*contd.*

instituted on 4th December 1894, was within time under either article 135 or article 143 of the Limitation Act, 1877, on the ground that limitation ran from the *last* failure to pay interest in 1883 or 1884, and not from the date of the first default, which was more than 15 years before suit.

Held, that the obligation to pay interest annually was of "a recurring kind," and that the failure to do so did not amount to a continuing breach of the contract within the meaning of section 23 of the Limitation Act, 1877.

Held, therefore, that plaintiff's cause of action arose on the date of the first default in paying interest, and that the suit was barred.

Held, further, following No. 123 *P. R.* 1894, that a notice of foreclosure which did not contain the words "in the manner provided for by section 7 of Regulation XVII of 1806," was not a valid notice of foreclosure within the terms of section 8 of the said Regulation. ACHHAR MAL *v.* HUKMAN. **28 P R 1897**

38. *Mortgage by widow—Decree of foreclosure against widow—Regulation XVII of* 1806—*Regularity of proceedings, presumption as to.*

Where certain mortgagees had, during the widow's lifetime, obtained a decree of foreclosure against her under Regulation XVII of 1806, *held*, that as against the reversioners, who sued for recovery of the land after the death of the widow, the *onus* of proving that the said foreclosure proceedings were in due form, and that the right of redemption was extinct, was on the mortgagees, there being no presumption in favour of the regularity and propriety of such proceedings.

A plea of estoppel by conduct, *held*, not established. HIRA SINGH *v.* SHER SINGH. **29 P R 1898**

39. *Mortgage by way of conditional sale—Foreclosure proceedings instituted more than* 12 *years after determination of mortgagor's right to possession—Suit for possession—Limitation—Limitation Act,* 1877, *2nd Schedule, articles* 135, 144, 147, *Regulation XVII of* 1806.

Plaintiffs sued for possession of certain land on the allegation that defendants' father had executed a mortgage thereof by way of conditional sale on the 24th March 1871, the condition being that if not redeemed within seven years the land was to become the mortgagee's property by sale; that a foreclosure notice was issued to the defendants, and served on them on the 10th April 1895 and 12th May 1895, and that the year of grace had expired without the defendants paying off the mortgage, and that plaintiffs had consequently become owners of the mortgaged property.

Held, that the suit not having been instituted within 12 years of the date fixed in the mortgage-deed for repayment of the mortgage-money, was barred by limitation,

XVI.—FORECLOSURE—*contd.*

either under article 135 or article 144 of the Limitation Act. MOMAN *v.* ISHRI PERSHAD **35 P R 1899**

40. Resjudicata—*Civil Procedure Code* 1882, *section 2—Foreclosure proceedings—Suit by mortgagor for redemption after expiry of year of grace.*

In a suit for redemption of mortgage by one of four sons of the original mortgagor, it appeared that some time previously another of the said sons had sued for redemption of the mortgage in question; that on the defendant's objection that the plaintiff could not sue alone, the latter endeavoured to make out that he was suing on behalf of his brothers, and as regards the present plaintiff, undertook to either produce him in person or to procure a power-of-attorney from him, and that he failed to do either. There was, moreover, nothing to show that the present plaintiff who was at the time absent in Jhang knew of, or participated in, in his brother's suit except the mere statement of the latter made in his own interest.

Held, under the circumstances, that the present suit was not *res judicata* by reason of the decision in the previous suit.

Held, further, that inasmuch as foreclosure proceedings are merely ministerial and carry no final judicial sanction it is open to a martgagor to bring a suit for redemption after the expiry of the year of grace, and that such mortgagor would be entitled to a decree if he proved his claim on the merits, and that the foreclosure proceedings were for any reason not good or conclusive as against him or for other sufficient cause.

A mortgagor is not bound to take any notice of foreclosure proceedings which he knows to be defective, or to wait till the mortgagee sues to complete his title, to plead irregularity in the said proceedings. In such a case he may sue for redemption even after expiry of the year of grace. GURDITTA MAL *v.* SANDHI KHAN.

27 P R 1900

41. *Mortgage—Conditional sale—Foreclosure—Regulation XVII of* 1806—*Strict compliance with conditions—Demand for payment of the specific amount—Mistake in the heading of the notice—Official designation not in the handwriting of the Judge—Wrong description of the property mortgaged.*

In a suit for possession after foreclosure of a mortgage by conditional sale under Regulation XVII of 1806, it was contended by the mortgagor (i) that no demand for payment of the specific amount due under the mortgage previous to the issue of the notice had been proved; (ii) that the notice issued was defective and invalid, inasmuch as the heading was wrong and incorrectly described the Regulation under which it was issued; (iii) that the official designation of the officer was not in his own handwriting; (iv) that the property mortgaged was wrongly described; and (v) that a copy of the application and the notice were not duly served upon him. *Held* that under section 8 of the Regulation a demand for payment is a condition precedent to the validity, of the notice to be thereafter issued, and that an omission to make it would vitiate the foreclosure proceedings, but it was not essential that the exact amount due should be distinctly specified in it; and that there was sufficient evidence to prove that a demand had been made before the notice was issued, and that copies of application and notice had been duly served. That the heading of the notice, *i.e.*, *notice ba illat dafa* 8, *Regulation Satarah*, 1880, though undoubtedly wrong, as it incorrectly described the Regulation under which it was issued, was immaterial and surplusage, as the section makes no provision for a heading in any particular form. That a notice signed in his own name by the Judge was not defective merely because the official designation was impressed with a rubber stamp, and that as the Regulation does not require any specified description of the property to be entered in the notice, the mistake was innocuous.

Wasawa Singh v. *Rura* (24 *P. R.*. 1895), followed; *Ram Chand* v. *Ghulam Muhammad* (84 *R. R*, 1890), explained; *Karan Singh* v. *Mohan Lal* (*I. L., V All.*, 9). *Forbes* v. *Amir-un-Nissa* (5 *W. R. P. C.* 47) and *Sham Singh* v. *Karam* (185 *P. R.* 1889) referred to. WALI MUHAMMAD *v.* RAMJI LAL. **5 P R 1901**

42. *Mortgage—Conditional sale—Foreclosure Regulation XVII of* 1806—*Defects in notice issued under section* 8—*Preservation of right of redemption on deposit of principal and interest within the year of grace—Regulation I of* 1798, *section* 2.

In a suit for possession of a house by redemption filed by the plaintiff a few days before the expiry of the year of grace, who has after the service of a notice of foreclosure admitted only Rs. 45 to be due and had deposited Rs. 63 as the amount of the balance of principal and interest due in the Court which had issued the notice, alleging that his father had paid an item of Rs. 395 out of the mortgage money, which payment he was unable to prove, *held*, that in a notice under section 8 of Regulation XVII of 1806, where the mortgagor was specially referred to section 7 of egulation, which lays down the steps which must be taken in order to redeem the property within the year of grace, the mere omission to specify the exact or uncertain amount of interest due or even to mention the interest at all or the fact that the words "District Judge" on the notice was impressed and not written, were not defects sufficient to vitiate the foreclosure proceedings. *Held further*, that the plaintiff was not entitled to a decree for redemption on any terms, his right to redeem having expired at the end of the year of grace as he had not complied with the requirements of section 2 of Regulations of 1798, he not having deposited even the total amount of the principal due, nor taken either of the alternative courses open to him under section 7 of Regulation XVII of 1806 within the year of grace.

Mehro v. *Saja* (84 *P. R.* 1882), *Fatteh* v. *Sain Ditta* (76 *P. R.* 1877), referred to. *Forbes* v. *Ameeroonissa Begum* (5 *W. R P. C.* 47) followed and *Wasawa Singh* v. *Rura* (24 *P. R.* 1895) approved. FAKIRA. *v.* PIYARE LAL. **21 P R 1901**

43. *Mortgage—Conditional sale—Foreclosure—Regulation XVII of* 1806—*Validity of notice of foreclosure of mortgage.*

Held, that it is not essential to the validity of a notice under section 8 of Regulation XVII of 1806, that the actual wording of the Regulation should be reproduced in it *verbatim*. MUSSAMMAT SARDARI *v.* CHIRANJI LAL. **28 P R 1901**

44. *Mortgage—Conditional sale—Foreclosure—Regulation XVII of* 1806—*Validity of notice of foreclosure of mortgage.*

Held, that in a case where the foreclosure proceedings are otherwise correct and regular mere clerical slips or misprints in a notice under section 8 of Regulation XVII of 1806, such as "Act" and "Resolution" or "Zarlution" for "Regulation" when the rest of it was properly worded in all particulars cannot be held to render it void. JIWAN RAM *v.* AMIR BEG.

38 P R 1901

45. *Mortgage by conditional sale—Foreclosure—Suit for pre-emption—Limiation—Time from which period begins to run.*

See LIMITATION ACT, 1877, SCHEDULE II, ARTICLE 10. **103 P R 1901**

46. *Mortgage by conditional sale—Suit for foreclosure—Validity of notice for foreclosure—Regulation XVII of* 1806, *section* 8.

Held, that although a notice served on a mortgagor under section 8 of Regulation XVII of 1806 need not contain any specification of the property in respect of which foreclosure is sought, the words "the property mortgaged" being a sufficient description when the property mortgaged consisted of 4 *ghumaos* 3 *kanals* 19 *marlas* together with *shamilat* land in proportion to that area, which extended to nearly 12 *ghumaos* and the notice which had been served on the mortgagor only described the property as the area above-mentioned and made no specific mention of the *shamilat*, the notice was defective, inasmuch as it must have led the mortgagors to think that they were in danger of only losing 4 *ghumaos* and not 16 *ghumaos* by non-compliance with its terms.

Bura v. *Jhanda* (113 *P. R* 1900) and *Wali Muhammad* v. *Ramji Lal* (5 *P. R.* 1901), distinguished; *Baju Shah* v. *Hukmal* (42 *P. R.* 1897), *Fakira* v. *Piyare Lal* (24 *P. R.* 1901), and *Jiwan Ram* v. *Amir*

MORTGAGE—*contd.*

XVI.—FORECLOSURE—*contd.*

Beg (38 *P. R.* 1901), referred to. WAZIR CHAND *v.* MAKHAN AND OTHERS.

109 P R 1901

47. *Mortgage—Conditional sale—Foreclosure—Regulation XVII of 1806—Strict compliance with conditions—Demand for payment—Service of notice.*

In an action brought for a declaration that a conditional sale had become absolute, it is essential to prove that a demand for payment had been made before the petition for foreclosure was presented, and that the mortgagor or mortgagors had been furnished with a copy of the petition refered to in section 8 of Regulation XVII of 1806, therefore in a suit where there were several mortgagors and the transaction indivisable, and it was proved that registered letters demanding payment were despatched to the address of the mortgagors by post, and that every mortgagor was served with a copy of the petition required by section 8 except one, on whom substituted service was allowed.

Held, (*i*) that the presumption that the letters reached their destinations having been duly posted and not returned through the Dead Letter Office though neither obligatory nor conclusive, being unrebutted, established sufficient demand within the requirements of the Regulation ;

(*ii*) that as it was necessary in order to obtain foreclosure of the whole mortgage that every mortgagor should have been served with a notice required by section 8, and that as the stringent requirements of the Regulation would not in the absence of strict proof of the evasion of service be complied with by substituted service, which fact had not been established by independent evidence, there was a fatal defect, which vitiated the whole notice.

Norender Narain Singh v. *Dwarka Lal Mundar* (*I. L. R. III Calc.* 397), *Madho Singh* v. *Mahtab Singh* (3 *N-W P. H. C. R.* 325), *Syyad Eusaf Ali Khan* v. *Mussammat Asumtoonissa* (*W. R.* 1864, 49) *Madhopersad.* v. *Gajudar* (*I. L. R XI Calc.* 111), *Ajaib Nath* v. *Mathura Prasad* (*I. L. R. XI All.* 164) and *Gugan* v. *Rup Ram* (139 *P. R.* 1882), cited. *Soorjo Kant Banerjee* v. *Kishore Kristo Poddar* (14 *W. R.* 423), *Lal Singh* v. *Gopal Das* (94 *P. R.* 1892), *Meer Abbas Ali* v. *Nund Coomar Ghose* (7 *W. R.* 123), *Ram Chunder Dutt* v. *Jughesh Chunder Dutt* (19 *W. R.* 353), referred to. FAZAL ILAHI *v.* HAZARI SINGH AND OTHERS. **48 P R 1902**

48. *Mortgage—Conditional sale—Foreclosure—Regulation XVII of 1806, section 7—Validity of notice of foreclosure.*

It is essential to the validity of a notice of foreclosure under section 8, of Regulation XVII of 1806, that it shall inform the mortgagor that he must within the year redeem the property in the manner provided for by section 7 of the Regulation, in a case where the notice issued was headed "*application for issue of a notice of foreclosure under section 7 and 8 of Regulation XVII of* 1806," and notified "*that if you shall not redeem the said property in the manner provided for in the foreging section of the said Regulation,*" *held*, that the omission to specify section 7 was a fatal defect to the validity of the notice, as there was no notice which of the two sections mentioned in the heading was referred to.

Mul Raj v. *Harsa Singh* (123 *P. R.* 1894), *Wasawa Singh* v. *Rura* (24 *P. R.* 1895), and *Achhar Mal* v. *Hukaman* (28 *P. R.* 1897), cited. *Wali Muhammad* v. *Ramji Das* (5 *P. R.* 1901), *Mussammat Sardari* v. *Chrianji Lal* (28 *P. R.* 1901), and *Jiwan Ram* v. *Amir Beg* (38 *P. R.* 1901), referred to. RAM CHAND *v.* SANDAL KHAN. **21 P R 1903**

49. *Mortgage—Effect of payment of prior mortgage by subsequent incumbrancer as against intermediate charge.*

K. N. and G. were joint owners of certain land, K.'s share being half and the share of N. and G. being half. In 1887 they mortgaged half of their holding to M. In 1889 K. created a further charge in favour of M. on his own quarter share already under mortgage. In 1900 M. obtained a decree against K. N. and G. for possession of the land mortgaged on the condition that the land would be released on payment of Rs. 650. K. mortgaged a portion of his property for Rs. 700 to B. who deposited Rs. 650 in the executing Court to the credit of M. who took the money out of Court without prejudice to his right under the second mortgage. Subsequently K having failed to meet his liabilities under the second mortgage of 1899, M. instituted the present suit for possession and impleaded B. as a co-defendant and claimed priority over B's mortgage which was of a subsequent date. B. pleaded that as he had paid off the first mortgage he could now use it as a shield against all the subsequent incumbrances.

Held, that, as B had notice of the existence of the prior and mesne mortgages before the execution of his mortgage, no equities arose in his favour, and the result of the redemption of the prior mortgage being that his mortgage was subject only to the mesne mortgage, he was not entitled to use the prior mortgage as shield against the mesne mortgage.

Gokal Das-Gopal Das v. *Puranmal* (*I. L. R. XX Calc.* 1035, P. C.) *Sheikh Mehr Al.* v. *Mussammat Azim Bibi* (59 *P. R.* 1882), *Ghanaya* v. *Pandit Chhajju Ram* (38 *P. R.* 1894), *Jhalar* v. *Singh Ram* (67 *P. R.* 1899), *Mohesh Lal* v. *Mahant Bawan Das* (*I. L. R. IX Calc.* 961. P. C.) In re *Harris* (*I. L. R.* 19 *Ex.* 253), and In re *Wrexham, &c., Railway* (*L. R.* 1 *Ch.* (1899), 440), referred to. BAGGGA MAL *v.* MOTI RAM.

32 P R 1903

50. *Mortgage—Conditional sale—Regulation XVII of 1806—Suit for possession—Duty of plaintiff to prove strict compliance with condition—Absence of proof of previous demand before issue of notice of foreclosure.*

In a suit for possession after foreclosure of a mortgage by conditional sale under Regulation XVII of 1806, it appeared that there was no mention in his plaint by the plaintiff, nor any proof on the record that he had made a demand for payment before issue of the notice, but in the application for the issue of notice itself, it had been stated that several demands had been made. The defendant having taken no objection in the lower Courts, no issue was framed on the point. On the claim being decreed by the lower Courts, the defendant applied for revision under section 70 (*b*) of the Punjab Courts Act, and objected to the decree on other grounds. The objection as to demand was not entered in the written application, but taken before the Judge in Chambers who permitted it to be raised.

Held, that as a demand prior to notice was essential to its validity, and required to be clearly established, the defendant was competent to rely upon it, even at that stage, but that the failure of the plaintiff to prove demand was excusable, and under the special circumstances it would not be just to decide that the notice was invalid on that ground without giving plaintiff an opportunity to rectify his omission.

Mussammat Lachmi v. *Tota* (16 *P. R.* 1888) and *Madho Pershad* v. *Gajudhar* (*I. L. R. XI Calc.* 111, P. C.) referred to. MALLA *v.* RALLIA RAM. **71 P R 1903**

51. *Mortgage by conditional sale—Suit for foreclosure—Validity of notice for foreclosure—Regulation XVII of 1806, section 8.*

In a suit for possession of immovable property under a deed of conditional sale alleged to have been foreclosed under Regulation XVII of 1806, it appeared that the notice of foreclosure which had been served on the mortgagor in compliance with the provisions of section 8 of the Regulation contained a clause that the mortgagor must redeem within one year from the date of the notice.

Held, that the notice was defective and void. The notification referred to in section 8 of the Regulation is the time when the mortgagor is informed that he has a year to redeem, and that it does not refer to the date of the *parwana* which orders him to be so informed. GOKAL CHAND *v.* MUHAMMAD MUNIR KHAN. **46 P R 1904**

52. *Mortgage—Foreclosure—Competency of mortgagee to demand payment or apply for foreclosure before stipulated period—Regulation XVII of 1806, section 8.*

Held, that no legal effect attaches to a demand in respect of foreclosure by a mortgagee under a conditional sale before the expiry of the stipulated period for redemption or to a notice of foreclosure issued before such expiry.

Previous demand of payment of the mortgage money as contemplated by section 8 of the Regulation and the application to foreclose such a mortgage, with a view to making the conditional sale absolute must be effected

MORTGAGE—*contd.*

XVI.—FORECLOSURE—*contd.*

after the period stipulated in the proviso for redemption has expired.

Kishori Mohun Roy v. *Ganga Bahu Devi* (*I. L. R. XXIII Calc.* 228 *P. C.*), referred to. SANT SINGH *v.* JIWAN MAL.
119 P R 1906

53. *Mortgage by conditional sale—Foreclosure—Regulation XVII of* 1806—*Notice under section* 8—*Non-existence of such notice on foreclosure file—Presumption as to its regularity.*

In a case for redemption the defendant pleaded that the alleged mortgage had been foreclosed so far back as 1881. The plaintiff denied this allegation and urged that no prescribed notice had ever been issued or served on him. The file of the foreclosure proceedings having been brought up, it was discovered that *nathi* B, including the notice in question had been destroyed, but from the documents in *nathi* A, it appeared that a notice had been ordered to be issued to the mortgagor and that the latter had attended the District Court, when the Judge passed the following order :—

"Parties, present, defendant (present plaintiff) has been thoroughly warned that "within one year he should have the land "redeemed, thereafter no excuse will be "listended to."

Held that the non-existence of the notice was a fatal defect to the validity of the foreclosure proceedings as it could not be presumed on the strengh of the above order of the District Judge that the notice issued to the mortgagor had been served upon him or that it complied with all the requirements of procedure as laid down in section 8 of the Regulation. SOCHET SINGH *v.* DIAL SINGH.
46 P R 1907

54. *Mortgage—Conditional sale—Foreclosure—Regulation XVII of* 1806—*Validity of notice of foreclosure—Objection taken for first time on appeal.*

In a suit for possession of immovable property under a deed conditional sale said to have been foreclosed under Regulation XVII of 1806 the defendants practically admitted the validity of the notice issued under the Regulation, their main contention being that no demand previous to the issue of the notice had been made. The Court having found this point against the defence decreed the claim. On appeal the mortgagors challenged the validity of the notice on the grounds, amongst others, that neither *khasra* and *khewat* numbers nor the principal and interest were specified in it, and that it did not bear the proper official signature of the Judge inasmuch as his official designation was in print instead of being in the Judge's own hand.

Held, that it is not essential to the validity of a notice that it should contain the *khasra* and *khewat* numbers or the precise amount due on account of principal and interest (especially where a gross amount due is stated in addition to the expression " or the balance due ") or the official designation of the Judge in his own handwriting under his

MORTGAGE—*contd.*

XVI.—FORECLOSURE—*contd.*

signature when it already existed in print at the place required.

Held, per Johnstone, J. (Rattigan, J. doubting as to this) that in the above circumstances an appellant should not be permitted to plead the aforesaid defects in the notice for the first time in appeal. BHAGIRATH *v.* NATH MAL.
105 P R 1907

55 *Foreclosure—Defective notice—Estoppel—Regulation XVII of* 1806.

Held, that a mortgagor's offer to pay on receipt of an otherwise defective notice of foreclosure issued under the provisions of Regulation XVII of 1806, does not amount to waiver of right to take advantage of its legal defects in a subsequent suit for the redemption of the mortgage or estop him from questioning its validity. BALWANT SINGH *v.* RAM DAS.
28 P R 1908

56. *Mortgage—Conditional sale—Application for foreclosure of mortgage—Period of limitation applicable—Regulation XVII of* 1806.

Held, that there is no time limit for the foreclosure of a mortgage by conditional sale, and a mortgaee in possession is entitled to take out such groceedings at any time during the subsistence of his mortgage. NAGAR *v.* SAUDAGAR.
57 P R 1908

57. *Mortgage by conditional Sale—Gift of equity of redemptlon prior to the expiry of mortgage term—Vaildity of such gift under Muhammadan Law—Notice of foreclosure to original mortgagor—Necessity of notice to donee*

The plaintiffs instituted the present suit against the defendant for possession of certain land as absolute owners, alleging that the land was mortgaged by the father of defendants with condition of foreclosure if the entire land or a part thereof was not redeemed within six years. The land was not redeemed and the plaintiffs on 7th December 1898 served defendant's father with a notice of foreclosure. The year of grace expired on 16th December 1899, and plaintiffs became absolute owners. The defence was that the original mortgagor on whom the notice was served had no right of ownership at the time, as the land in dispute was gifted by him to defendants on 30th January 1899 by a registered deed of gift which was witnessed by J. S., one of the mortgagees, and therefore the proceedings in connection with the notice of foreclosure were ineffective and void, as it should have been issued to the donees. In reply plaintiffs contested the gift alleging that the gift was not completed by delivery of possession. Both Courts below found in favour of defendants and dismissed the suit. On appeal the Chief Court—

Held, dissenting from *Muhi-ud-din* v. *Manohor Shah*, (1882) I. L. R. 6 Bom. 650 and *Ismail* v. *Ramji*, (1889) I. L. R. 23 Bom. 682, that under Muhammadan Law a gift by a mortgagor of immovable property of the equity of redemption was valid, placed the donee in the shoes of the donor and necessitated notice to the donee of foreclosure

MORTGAGE—*contd.*

XVI.—FORECLOSURE.—*concld.*

although the donor was still alive. HARNAM SINGH *v.* SAJAWAL.
86 P R 1910

XVII.—INTEREST

1. *Sale subsequent to mortgage—Liability of purchaser for covenants of mortgagor.*

A. mortgaged a part of his land to plaintiff for a loan, agreeing to deliver 175 maunds of grain per annum as interest. Subsequently, *A*. sold the mortgaged land to defendants. Plaintiffs demanded the grain from defendant who refused to deliver it, expressing their inability to do so as the tenants, who were in occupation at the time of the sale, always paid their rent in cash. Plaintiff sued the defendant for the value of the grain. *Held*, by BOULNOIS and LINDSAY, JJ. (CAMPBELL, J., dissenting) that the promise made by *A*. to pay interest in kind did not run with the land, but was a personal promise between *A*. and plantiff ; but that plaintiff had his right of action against the mortgagor for the principal debt and interest and against the vendee at the same time, but in a different suit to enforce his lien on the land,—it being open to the vendee to show that he was a *bonâ fide* purchaser without notice. SUNDRA *v.* CHAINO.
66 P R 1876

2. *Suit for interest up to date—Subsequent suit for entire debt with interest.*

See CAUSE OF ACTION—I. DISTINCT CANSES OF ACTION.
123 P R 1881

3. *And article* 63—*Suit for redemftion of mortgage—Defendant's right to interest due under the mortgage—Right to treat such interest on a charge as the estate.*

LIMITATION ACT, 1877, SCHEDULE II, ARTICLE 132.
57 P R 1888

4. *Mortgage—Interest—*Post diem *interest—Absence of covenant to pay interest after a certain date when the mortgage if not redeemed was to become a usufructuary one—Damages—Construction of document.*

See INTEREST. **114 P R 1901**

5. *Suit for redemption—*Post diem *interest—Damages—Rights of mortgagee—Charge upon mortgaged property.*

See INTEREST. **95 P R 1902**

6. *Agreement for payment of interest up to the date of repayment of the mortgage debt—Rights of mortgagee to claim interest at the stipulated rate after due date.*

See INTEREST. **92 P R 1905**

7. *Mortgage—Conditional sale—Absence of stipulated period for redemption—Agreement to pay interest annually or in default of payment for six years the mortgage would became a sale—Applicability of Regulation XVII of* 1806 *to such agreements.*

See MORTGAGE—XV. REDEMPTION
50 P R 1906

8 *Civil Procedure Code,* 1882—*Section* 43—*Mortgage—Separate covenants for the payment of principal and interest—Distinct causes of action—Competency of mortgagee to institute separate suit for principal and interest when both have fallen due—All claims on same cause to be included.*

See MORTGAGEI.—CONSTRUCTION.
28P R 1907

MORTGAGE—*contd.*

XVIII.—NON-PAYMENT OF CONSIDERATION ACCORDING TO AGREEMENT.

1. *Payment of consideration money.*

The recital of the payment of the consideration-money in a mortgage-deed is not conclusive. Where the whole of the consideration-money mentioned had not been paid, the Court withheld execution of a decree for possession until payment was made. MUSSAMMAT SUTBHURAI *v.* THAKOOR DASS.

41 P R 1868

2. *Suit by mortgagee for produce of mortgaged land—Defendant pleading non-receipt of consideration money—Validity of such plea—Mortgage when complete.*

In a suit by plaintiff as mortgagee for the recovery of the produce of certain land which he alleged had been mortgaged to him by the defendants, the latter, while admitting the execution of the deed of mortgage, pleaded that they had received no consideration upon it.

Held, reversing the orders of the lower Courts, that until the consideration was paid there was no mortgage upon the basis of which the plaintiff could maintain an action like the present, and therefore it was a perfectly valid defence for the defendants to set up that the mortgage was not complete, because the consideration which was to give it vitality had never passed to them. *Kahna* v. *Dewa Singh* (No. 62 *P. R.* 1879), *Dasondhi* v. *Sirdar Khan* (No. 114 *P. R.* 1879), and *Abbas Ali Shah* v. *Pir Bahsh* (No. 132 *P. R.* 1879) cited. ALA BAKHSH v. SHAMA.

153 P R 1882

Followed in CHANDAN LALL *v.* NIHAL.

153 P R 1882 Note.

3 *Suit for possession of mortgaged property—Dismissal of suit on ground that full consideration had not passed.*

In a suit for possession of mortgaged property the lower Courts held that the plaintiff was not entitled to a decree for possession as the full consideration had never been paid. In second appeal it was contended that it did not matter whether the consideration had been paid or not, in the absence of an agreement that possession was not to be given until consideration was paid in full. It appeared that in the Courts below the plaintiff had never asked that if anything was found to be due he might be required to pay it and a conditional decree of possession be given, but contended simply that full consideration had passed.

Held, that the Courts were justified in holding on the facts found by them that the plaintiff's title to possession wss still incomplete, though their decrees could not be regarded as putting an end to the mortgaged *Gomess* v. *Mela Ram* (No. 16 *P. R.* 1884) distinguished. *Ala Bakhsh* v. *Shama* (No. 153 *P. R.* 1882), cited. MANGAL SINGH *v.* JINDAN.

27 P R 1886

4. *Non-payment of consideration according to agreement—Part payment—Incomplete transaction—Apportionment—Lien.*

A. hypothecated certain immovable property to B. in 1880 for Rs. 5,000. The mortgage-deed was duly registered, but at regis-

MORTGAGE—*contd.*

XVIII.—NON-PAYMENT OF CONSIDERATION ACCORDING TO AGREEMENT—*contd.*

tration the receipt of Rs. 2,363 only was admitted. Subsequently the mortgagor offered to repay this amount with interest, but the mortgagee declined. In 1887, the mortgagee sued the heir of the mortgagor and certain subsequent alienees of a portion of property for the recovery of the whole consideration and iuterest by enforcement of lien against the mortgaged property.

Held, that there never was a completed mortgage, that the transaction fell through from the first, and the plaintiff had no right to enforce any lien on the property in respect to Rs. 2,363 because the contract was for Rs. 5,000 and not for any less sum. The mortgage was solely a lien which was to exist as for the whole debt. If there was no debt there was no lien.

16 *P. R.* 1884, distinguished, 153 *P. R.* 1882, and 27 *P. R.* 1886, referred to. GOPAL SAHAI *v.* MUSSAMMAT HUSSAIN BIBI.

100 P R 1889

5. *Mortgage—Incomplete transaction, right of mortgagee under—Invalidity of transfer of occupancy rights by tenant—Practice of Civil Courts—Punjab Tenancy Act, 1887, sections* 53, 77, *clause* (3).

One Ishar, an occupancy tenant, holding under co-proprietors, of whom Ghanaya was one, on the 18th November 1875, mortgaged his holding to the said Ghanaya, who, on the 16th June 1878, obtained a decree for possession as mortgagee, and on the 9th July 1878 duly received possession in execution. On the 16th July 1878, Ishar made another mortgage of his land to one G. M., and on the 18th July 1878 paid money into Court for the purpose of redeeming the former mortgage to Ghanaya. Thereupon Ghanaya objected that redemption could not then take place, and the objection being allowed, Ishar withdrew the money deposited in Court. On the 13th June 1879 another application was made by Ishar to the Court to be allowed to pay the money into Court but was dismissed and no further attempt was thereafter made to redeem from Ghanaya, and additional mortgages were executed by Ishar in favour of Ghanaya, on the 7th October 1880 and the 22nd May 1890. Meantime G. M. sold his rights under the mortgage of 16th July 1878 to Basan Mal, who, on the 15th July 1890, brought a suit for possession as mortgagee. The first Court dismissed the suit on the ground that the mortgage to G. M., as well as the subsequent transfer of that mortgage by G. M. to plaintiff, was void as made without the consent of the landlord, but the Divisional Juddge, on appeal, reversed this decision on the grounds that Ghanaya, as only one out of a body of landlords, could not object to the mortgage and the subsequent transfer being void as made without the consent of the landlord, and that although the said mortgages of the 7th October 1880 and 22nd May 1890, Ghanaya could not deny the right of plaintiff

MORTGAGE—*concld.*

XVIII.—NON-PAYMENT OF CONSIDERATION ACCORDING TO AGREEMENT—*concld.*

to redeem because his right to do so was not denied by Ishar. Ghanaya appealed to the Chief Court, and it was argued on his behalf that plaintiff's suit should have been dismissed (*i*) because of the want of consent of the landlord to the transfers required by section 53 of the Punjab Tenancy Act, 1887, and (*ii*) because the mortgage of the 16th July 1878 was incomplete and full consideration had not passed.

Held, that inasmuch as clause (3) of section 77 of the Punjab Tenancy Act, 1887, debars a Civil Court from taking cognizance of any dispute with respect to which a suit might be instituted in a Revenue Court, the Court could not take cognizance of the objection that the transfer in favour of G. M. in July in 1878 and the transfer in favour of plaintiff in June 1890 were invalid under the provisions of section 53 of the Act.

Held, further, that Ghanaya's appeal must be dismissed on the ground that the only person who was pecuniarily interested in resisting plaintiff's claim to redeem was Ishar who had preferred no appeal against the order of the Divisional Judge allowing the claim.

No. 100 *P. R.* 1889, referred to GHANAYA *v.* BASAN MAL.

96 P. R. 1894

6. *Mortgage—Non-payment of consideration according to agreement—Incomplete transaction—Lien.*

Held by the Full Bench that in the absence of a specific contract postponing payment, failure to pay full consideration as agreed upon, whether to the mortgagor, or to a prior incumbrancer after such payment has been demanded by the mortgagor avoids the mortgage and destroys the mortgagee's lien and right to possession even on subsequent tender of the unpaid consideration, it being immaterial whether the non-payment has or has not caused inconvenience or loss to the mortgagor.

Ala Bakhsh v. *Shama* (153 *P. R.* 1882), *Chandan Lal* v. *Nihal* 153 *P. R.* (1882, *Note*), *Mangal Singh* v. *Judan* (27 *P. R.* 1886), *Gopal Sahai* v. *Mussammat Hussain Bibi* (100 *P. R.* 1889), *Saudagur Singh* v. *Sant Ram* (103 *P. R.* 1906) referred to.

Gomess v. *Mela Ram* (16 *P. R.* 1884,) dissented from. GOKALCHAND *v.* RAHMAN.

59 P R 1907 F. B.

XIX.—COMPENSATION FOR IMPROVEMENTS OR REPAIRS.

1. *Improvements by mortgagee—Compensation.*

Plaintiff mortgaged certain land to the defendant, upon which the latter builte a house no objection to his doing so being made by, the plaintiff, who, however gave no actual consent. *Held* that plaintiff was entitled to redeem, but must pay the defendant a fair and reasonable sum for the house. GANSHAM *v.* BUDHA.

119 P R 1876

MORTGAGE—*contd.*

XIX.—COMPENSATION FOR IMPROVEMENT OF REPAIR—*concld.*

2. *Suit for redemption—Compensation for improvements by mortgagee—Material issue—Jurisdiction—Compensation claimed and found to be in excess of power of Court—Dismissal of suit.*

Plaintiffs sued to redeem certain land from mortgage and for possession thereof. Defendant pleaded that he obtained the land in mortgage, and that subsequently it was sold to him by the lambardars of the village; that he had planted a garden on it, sunk a masonry well, and effected other improvements at a large expense. Plaintiffs rejoined that the lambardars had no power to sell, and that the sale was invalid. It was found that the expenditure incurred in improvements by defendant amounted to Rs. 658-4-0, but the Tahsildar before whom the case was tried, refused to consider the defendant's plea as to improvements, and decreed redemption on payment of Rs. 82-8-0.

Held, that the question of compensation was a material issue in the suit, and that the Tahsildar was bound to decide the question before decreeing the eviction of the defendant.

Held, further the subject matter of the suit being land alleged to be mortgaged for Rs. 82-8-0, and on which as found by the Tahsildar improvements to the amount of Rs. 658-4-0 had been made, that the value of the land in suit being clearly in excess of Rs. 300, the Tahsildar had no jurisdiction to try the suit.

Held, further, that as it only appeared in the course of the trial that the Tahsildar had no jurisdiction, the proper order for him to pass was to dismiss the suit, leaving plaintiffs to bring a fresh suit in the proper Court. BUDHA *v.* MUHAMMAD KHAN. **20 P R 1879**

3. *Redemption of mortgage—money expended by mortgagee in possession on repairs and improvements to mortgaged property—Interest on such expenditure.*

See INTEREST. **67 P R 1893**

See CUSTOM I. F.—ALIENATION BY NON-PROPRIETOR. **75 P R 1897**

XX.—ACCOUNTS.

1. "Lekha Mukhi" *mortgage—Mortgagee in possession as trustee bound to account—Everything presumed against him on default.*

When the mortgage was of the kind known as *Lekha Mukhi*, the mortgagee being put into possession, and charging the interest of his debt against the mortgagor, and crediting him with the proceeds of the land: *Held*, that the mortgagee as trustee was bound to account for his management of the property, and on his failing to do so the Court was bound to place the income at the highest possible figure, and to presume everything against him. RANJA *v.* MUSSAMMAT PIAREE. **99 P R 1869**

2. Lekha Mukhi *mortgage—Suit to recover mortgage-debt—Remedy of mortgagee.*

Plaintiff brought the present suit to rocover the sum alleged to be due under a mortgage

MORTGAGE—*contd.*

XX.—ACCOUNTS—*concld.*

of certain land, the plaint also containing a prayer that the amount found to be due, should be decreed against the mortgaged property.

Held, that the suit was not maintainable *nter ali* because the mortgage was a usufructuary one of the kind known as *Lekha Mukhi*, and he having to look to its produce for the payment of the mortgage debt, the mortgagor undertaking no personal liability and there being no provision in the deed entitling the mortgagee to sue for the debt. **90 P R 1881**

XXI.—LIMITATION.

See INTEREST.

1. *Conditional sale—Limitation -Regulation XVII of* 1806.

See MORTGAGE—XVI. FORECLOSURE. **75 P R 1874**

2. *Limitation to suit for money decree on.*

See LIMITATION ACT (XV OF 1877), SCHEDULE II, ARTICLE 132. **90 P R 1881**

3. *Conditional sale—Mortgage created by decree of Court—Proviso that right of redemption must be exercised within* 12 *years—Effect of such provision—Applicability of Regulation XVII of* 1806 *to mortgages not created by deed between the perties.*

In a suit for redemption of mortgage, it appeared that in a previous decision between the same parties given by the Settlement Superintendent in 1859, the Court, while declaring the relation of mortgagor and mortgagee to subsist between the plaintiff and defendant, attempted to abridge the right of redemption by declaring that failure to redeem within twelve years would extinguish the rights of the owner.

Held, that this decision could not have greater force than a contract of mortgage by way of conditional sale voluntarily entered into by the parties themselves would have had; that had it been agreed by them that on the expiry of three years without redemption of the mortgage the land should pass in full proprietary right to the mortgage, it would not have been open to the mortgagee to enforce this condition against the wishes of the mortgagor without taking steps to foreclose under the law in force: that no such steps had been taken to foreclose the present mortgage, either under Regulation XVII of 1806, which is now in force in the Punjab, or under the general law based on the spirit of that Regulation which was formerly in force, and that therefore, notwithstanding the decree of 1859, plaintiff had not lost his right to redeem.

Held, further, that there was no ground for holding that section 8 of Regulation XVII of 1806 was in applicable to a mortgage by way of conditional sale which had been created by a decree of a Civil Court and not by deed between the pnrties. *Shibbu Mal* v. *Paira Singh* (No. 86 *P. R.* 1877) and *Gurmukh Singh* v. *Malla* (No. 1 *P. R.* 1881), cited. AHMED KHAN *v.* MAHLA KHAN. **132 P R 1882**

4. *Redemption—Conditional decree—Omission to execute—Judicial Commissioner's book circular No. XI of* 1859*—Limitation.*

See LIMITATION. **57 P R 1883**

MORTGAGE—*contd.*

XXI.—LIMITATION—*concld.*

5. *Redemption—Party not interested in equity of redemption redeeming from mortgagee in possession—Subsequent possession by such person for over* 12 *years—Adverse possession*

See LIMITATION ACT, (XV of 1877) SCHEDULE II, ARTICLE 134. **124 P R 1883**

6 *Suit for possession of mortgaged property—Limitation.*

See LIMITATION ACT (XV OF 1877), SCHEDULE II, ARTICLE 135. **134 P R 1883**

7. *Limitation to suit for money decree on*

See LIMITATION ACT, (XV OF 1877) SCHEDULE II, ARTICLE 132. **55 P R 1884**

8. *Redemption—Limitation.*

See LIMITATION ACT, (XIV OF 1859) SECTION 1, CLAUSE 16. **109 P R 1884**

9. *Suit to recover money due on, from mortgaged property—Suit for sale.*

See LIMITATION ACT (XV OF 1877) SCHEDULE II, ARTICLE 147. **19 P R 1885**

10. *Suit by mortgagee for possession of mortgaged property after allowing money decree obtained on the same mortgage to become barred by time.*

See LIMITATION ACT, 1877, SECTION 28, **3 P R 1887**

11. *Pre-emption of a mortgage—Redemption during pendency of suit.*

See LIS PENDENS. **102 P R 1888**

12. *Suit for foreclosure or sale.*

See LIMITATION ACT, 1877, SCHEDULE II, ARTICLE 147. **151 P R 1888**

13 *Mortgage by way of conditional sale—Foreclosure proceedings instituted more than* 12 *years after determination of mortgagor's right to possession—Suit for possession—Limitation.*

See LIMITATION ACT, 1877, SCHEDULE II, ARTICLE 135. **35 P R 1899**

14. *Conditional sale—Suit for possession by mortgagee after foreclosure—Cause of action—Starting point of limitation.*

See LIMITATION ACT, 1877, ARTICLE 135 **65 P R 1906**

15. *Mortgage entry in Settlement record—Signature of one of the mortgagees and of Settlement Officer—Acknowledgment.*

See INDIAN LIMITATION ACT, 1877, SECTION 19. **39 P R 1910**

XXII.—EFFECT OF ALIENATION OF LAND ACT.

1. *Effect of section* 9 (3) *of Punjab Alienation of Land Act,* 1900, *on suit for declaring conditional sales absolute with or without a prayer for possession pending at the time the Act came into force and on appeals in such suits.*

See PUNJAB ALIENATION OF LAND ACT, 1900, SECTION 9. **26 P R 1902**

2. *Mortgage—Conditional sale—Effect of Punjab Alienation of Land Act on suits for possession after foreclosure of mortgage.*

MORTGAGE—*contd.*

XXII.—EFFECT OF ALIENATION OF LAND ACT—*contd.*

See PUNJAB ALIENATION OF LAND ACT, 1900, SECTION 9. **38 P R 1904**

3. *Mortgage—Conditional sale—Suit for possession after foreclosure of mortgage—Effect of Punjab Alienation of Land Act on such suits.*

See PUNJAB ALIENATION OF LAND ACT, 1900, SECTION 9. **38 P R 1905**

4. *Suit on a mortgage by way of conditional sale effected by a person other than a member of an agricultural tribe—Application of section 9 (3) of Punjab Alienation of Land Act to such suits.*

See PUNJAB ALIENATION OF LAND ACT, 1900, SECTION 9 (3). **64 P R 1906**

5. *Duty of Court to refer mortgage by deed of conditional sale to Deputy Commissioner if made by a member of an agricultural tribe—Punjab Alienation of Land Act,* 1900, *section* 9—*Refusal of Court to recognize a party as a member of such tribe who failed to prove his assertion no ground for revision—Punjab Courts Act,* 1884, *section* 70 (1) (*a*).

Although it is the duty of a Court to refer a mortgage of land by way of conditional sale to the Deputy Commissioner under section 9 of the Punjab Alienation of Land Act if it was made by a member of an agricultural tribe, but it is for the party desiring to obtain benefit of that enactment to allege and prove that he is a member of an agricultural tribe. The mere assertion by a party that he is so and the refusal of the Court to recognize him as such does not amount to material irregularity and is not open to revision by the Chief Court under section 70 (1) (*a*) of the Punjab Courts Act, 1884. UDA *v.* MUL CHAND. **4 P R 1907**

6. *Mortgage—Conditional sale—Reference by Civil Court under sub-section 3 of section 9 of Punjab Alienation of Land Act,* 1900—*Refusal of Deputy Commissioner to take action after the non-acceptance of his proposal by the mortgagor—Procedure for mortgagee—Regulation XVII of* 1806—*Punjab Alienation of Land Act,* 1900.

A mortgage made before the commencement of the Punjab Alienation of Land Act by an agriculturist of his land in which there was a condition intended to operate by way of conditional sale and still current was brought by the District Judge, who was moved to issue a notice of foreclosure under Regulation XVII of 1806 after the Act had come into force, to the notice of the Deputy Commissioner. The mortgagee accepted the new mortgage as proposed by the Deputy Commissioner in lieu of the original one but the mortgagor refused. The Deputy Commissioner thereupon decided that nothing further could be done and returned the reference to the District Judge. Notice of foreclosure was then issued and after the expiration of the year of grace the mortgagee instituted a suit for possession as owner.

MORTGAGE—*contd.*

XXII.—EFFECT OF ALIENATION OF LAND ACT—*concld.*

Held, that in these circumstances the foreclosure proceedings under Regulation XVII of 1806 were not barred by the provisions of the Punjab Alienation for the Land Act, and that it was not necessary for the Civil Court upon the institution of the suit for possession to refer the matter again to the Deputy Commissioner under sub-section 3 of section 9 as the mortgage had then ceased to exist and the mortgagee had become *ipso facto* owner of the property by purchase.

The interpretation of the provisions of the Punjab Alienation of Land Act applicable to the subject discussed by Johnstone, J. BICHEA LAL *v.* GUMANI. **93 P R 1907**

7. *By way of conditional sale—Reference to Collector futile after expiry of year of grace.*

See PUNJAB ALIENATION OF LAND ACT **88 P R 1909**

8. *Civil Courts have no jurisdiction to convert a mortgage by way of conditional sale into one prescribed by section* 6 (1) (*a*) *of the Punjab Alienation of Land Act.*

See PUNJAB ALIENATION OF LAND ACT **88 P R 1909**

9. *Mortgage by conditional sale—Remedy of mortgagee since passing of Punjab Alienation of Land Act, XIII of* 1900, vide *section* 9 (2).

Under the terms of a mortgage deed by way of conditional sale the sole remedy of the mortgagee for the enforcement of his right thereunder was to foreclose under Regulation XVII of 1806. Default having taken place, the mortgagee took proceedings under the Regulation, but infructuously, in 1897, and did nothing further till 1907 when he applied to the Deputy Commissioner for relief under section 9 (2) of the Punjab Alienation of Land Act, XIII of 1900. The Deputy Commissioner thereon offered him a farm of the mortgaged land for eight years, which the mortgagee refused, and then brought a suit for a money decree against the mortgaged land on the mortgagor personally.

Held, that the mortgagee was not entitled in law to a money-decree, inasmuch as the effect of the Punjab Alienation of Land Act was, that the particular remedy, given to the mortgagee under the terms of his contract, has been extinguished and another remedy substituted in lieu thereof, and that this relief was in the circumstances the only one open to the mortgagee.

Held, also, that the Civil Courts had no jurisdiction to deal with the terms offered to the mortgagee by the Deputy Commissioner DULA SINGH *v.* DIAL SINGH. **22 P R 1910**

XXIII.—PRE-EMPTION.

. *Foreclosure—Pre-emption.*

See PRE-EMPTION. **35 P R 1881**
155 P R 1882

2. *Suit for pre-emption, based on mortgage.*

See LIMITATION ACT, (XV OF 1877) SCHEDULE II, ARTICLE 10.

See PRE-EMPTION. **20 P R 1885**
33 P R 1885
103 P R 1885
11 P R 1901

MORTGAGE—*contd.*

XXIII.—PRE-EMPTION—*concld.*

3. *Pre-emption arising out of mortgage.*

See PRE-EMPTION—RIGHT OF, ON MORTGAGES.

4. *Mortgage-deed relating to immovable property—Deed compulsorily registrable, but registered in wrong Registry office—Admissibility of deed in evidence.*

See REGISTRATION ACT, 1877, SECTION 49, **44 P R 1898**

5. *Right of pre-emption on mortgages.*

See PRE-EMPTION. **46 P R 1903**

6. *Sale of equity of redemption to mortgagee—Suit for pre-emption against vendee—Right of vendee to plead his own mortgage—Merger of mortgage into sale—Prevention of Merger—Proof of.*

See PRE-EMPTION. **98 P R 1906**

XXIV.—MORTGAGES IN JOINT ESTATES.

1. *Mortgage of part of joint estate by two out of three sharers—Subsequent partition—Suit by sharer who did not join in mortgage to recover from mortgagee possession of land allotted to him at partition—Fraud and collusion.*

Two out of three co-sharers in a joint estate mortgaged portions of their shares, amounting to one-half of the entire estate by a deed under the terms of which the mortgagee eventually obtained possession of half the estate. Subsequently, in partition proceedings to which the mortgagee was not a party, a portion of the land in the mortgagee's possession fell to the share of the third co-sharer who had not been a party to the mortgage, whereupon he sued the mortgagee, for possession of the said land. No fraud was shown to have been committed by the mortgagors in collusion with the plaintiff, in effecting the partition.

Held, that the plaintiff was entitled to succeed in his claim. SIKANDAR *v.* NUR MAHI. **81 P R 1883**

2. *Mortgage of portion of joint estate by one out of four brothers—Suit against mortgagor alone—Absence of proof that he was sued in a representative character—Execution of decree against mortgaged property—Suit by second mortgagee on a decree against all four brothers jointly, for release of interest of the three brothers who did not join in the first mortgage.*

On 23rd January 1878 A. (defendant No. 2) who was one of four brothers, mortgaged to defendant No. 1 four fields out of a joint holding. On 1st March 1883 defendant No. 1 obtained in a suit against A. alone a money decree on the mortgage with execution against the mortgaged property. The plaintiff who obtained a decree against all four brothers jointly for the same fields, on a mortgage of 17th December 1878, thereupon sued for the release of the interest in them of the three brothers other than A. His suit was dismissed because it was found as a fact by the lower Courts that the mortgage of 23rd January 1878 was executed by A. as manager of the joint estate and representative of all four brothers.

MORTGAGE - *contd.*
XXIV.—MORTGAGES IN JOINT ESTATES—*contd.*

Held, following *Jissu* v. *Hamir Chand* (No. 70 *P. R.*, 1883,) that where there is nothing in the decree or proceedings themselves to show that a sharer in a joint holding was being sued in a representative character (as in the decree of 1st March 1883 against defendant No. 2), the decree must be held to be binding against him alone, and that the Court cannot go behind the decree and enquire into the circumstances of the debt which led to the decree. MANIA SHAH *v.* MOHNA SHAH.
78 P R 1885

3. *Suit for Redemption—Mortgage of undivided share of joint property—Consent of co-sharers—Interest post diem.*
See INTEREST. **114 P R 1894**

4. *Mortgage—Mortgage of undivided property by a joint owner—Partition—Remedy of mortgagee.*

Held, that when one of two or more joint owners mortgages a part of the joint undivided property, the mortgagee is entitled to recover his debt from the share of the property which may eventually fall to the mortgagor on partition notwithstanding the fact that it may have been subsequently sold by the mortgagor to a third party

Byjnath Lal v. *Ramoodeen Chowdry* (*L. R.* 1, *I. A.* 106; 21 *W. R.* 233 *P. C.*) cited and followed. ALLA BAKHSH *v.* GOBIND RAM.
2 P R 1906

5. *Mortgage by co-sharer.*

Held, under the Punjab Civil Code (section XIII, para. 11), that a co-sharer in joint-undivided property could mortgage his share without the knowledge or consent of his co-sharers. GOORDIT SINGH *v.* OOTAM SINGH. **31 P R 1870**

6. *Mortgage- Mortgage of undivided property by a joint owner—Subsequent mortgage by the other co-sharer—Partition—Allotment of property to the subsequent mortgagor with an express lien of prior mortgage—Sale of property in execution of a money decree against the co-sharer to whom it was allotted with notice of prior mortgage only—Right of puisne mortgagee to enforce his lien against the property in hands of purchaser for value without notice.*

'N,' a member of an undivided Hindu family, mortgaged one of the joint houses in his own name to 'R.' Subsequently 'S.' the other co-sharer, mortgaged the whole of the joint property held by him and 'N' to 'A' as a collateral security. On partition by a Civil Court between the brothers 'N' and 'S,' the equity of redemption of the house in dispute subject to the charge in favour of 'R' was apportioned to 'S.' Thereafter one 'M' obtained a money decree against 'S' and in its execution attached the house which was sold subject to the incumbrance in favour of 'R.' The auction purchaser discharged the amount due on the prior mortgage in favour of 'R,' paid the decree-holder in full and the balance to 'S,' the judgment-debtor.

MORTGAGE—*contd.*
XXIV.—MORTGAGES IN JOINT ESTATES—*concld.*

'A' being fully cognizant of these proceedings stood by, made no objections and gave no warning to any of the parties concerned. Subsequently 'A' brought a suit against 'N' and 'S' on his mortgage and obtained a decree against the property of 'S' which had come to him at the partition and had the house in question attached in execution thereof.

In these execution proceedings the auction purchaser intervened and his objections were allowed. 'A' then brought the present suit for a declaration that the house was attachable and was subject to sale in execution of his decree against 'S.'.

Held, that under the circumstances 'A' had lost his lien over the house in dispute. Although he was at the outset entitled as a pusine mortgagee to the right, title and interest of 'S,' yet by his subsequent silence and conduct at the execution sale he was estopped on equitable grounds from enforcing his lien against the auction purchaser for a valuable consideration and without notice. AZIZ BEGAM *v.* MOHAN LAL.
33 P R 1906

7. *Mortgage made jointly by several mortgagors—losing its indivisible character on mortgagee becoming part owner of equity of redemption thus enabling each mortgagor to redeem his share separately—previous partition not necessary.*
See JOINT MORTGAGE. **62 P R 9111**

XXV.—MISCELLANEOUS.

1 *Confiscation of mortgagee's estate by Government.*

Defendant mortgaged a parcel of land for 10 years to plaintiff, who was put in possession; 3 years afterwards plaintiff, in 1857, turned rebel and absconded, whereupon Government took possession and realizing part of the money due by the mortgagors remitted the rest. Plaintiff sued to be put in possession for the remaining 7 years of the term for which the property was mortgaged to him. *Held*, that as plaintiff turned rebel and abandoned his lien for six years, and Government had confiscated his property and had received part of the mortgage money from defendants and remitted the rest, plaintiff had no further claim against defendants. GOVINDA *v.* RAM SAHAYE **8 P R 1867 Rev.**

2. *Purchaser without notice of prior mortgage— Right of mortgagee.*

A. mortgaged certain property to *B.* and subsequently sold it to *C.* without notice of the mortgage. *C.* took possession under the deed of sale. In a suit by *B.* against *A.* and *C.* for the mortgage debt or for sale of the property in satisfaction of the debt, the Commissioner decreed the plaintiff's claim against both defendants. *Held*, by the Chief Court, that the decree was correct. DWARKADASS *v.* RAMJI DASS **76 P R 1870**

3. *Debt—Collateral mortgage.*

A Court may make a decree declaring a lien on property situated out of its jurisdiction, when the defendant is within the

MORTGAGE—*contd.*
XXV.—MISCELLANEOUS—*contd.*

jurisdiction. SIMLA BANK *v.* DUDY.
77 P R 1875

4. *Right of mortgagee to sue separately for money decree and lien—Suit for money decree and lien, but decree only for former—Right to bring second suit for lien—Act VIII of* 1859, *sections* 2 *and* 7.

A. mortgaged his land to *B.* afterwards to *C.*, and then to *D.* It was alleged that there was an agreement (*C.* being a party to the arrangement and assenting to the mortgage to *D.*) that *D.* out of the money which he was to advance on the security of the mortgage, should pay off the prior mortgages to *B.* and *C*; *D.* satisfied *B*'s mortgage, but not *C.*'s, and *C.* sued *A.* for a money-decree and also for a lien on the land. The Court gave *C.* a money-decree, but omitted to pass a decision as to the lien prayed for. There was no appeal from this decision or application for its review. Subsequently, *C.* brought a second suit against *A.* (in which he impleaded *D.*) to establish his lien on the land. *Held*, that *C.*'s second suit was not barred; as (1) a mortgagee is not bound by section 7, Act VIII of 1859, to claim in the same suit a money-decree and a lien on the land; the claims are distinct causes of action, and the mortgagee may sue first for a money-decree, and afterwards for a declaration of his lien; and (2) where the mortgagee sues both for a money-decree and a declaration of his lien, and the Court grants the former but does not adjudicate as to the latter section 2 of Act VIII of 1859, does not bar a second suit in respect of the matter or cause of action left undetermined, *viz.*, the mortgagee's lien. Case remanded for further investigation as to the alleged arrangement by which *C.*'s claim was to be paid and satisfied by *D.* DOONA *v.* KASHMIRI MAL. **69 P R 1876**

5. *Unregistered—Admissibility in evidence for collateral purposes.*
See REGISTRATION ACT (III OF 1877) SECTION 49. **7 P R 1881**

6. *Unregistered—Admissibility in evidence for collateral purposes.*
See REGISTRATION ACT (III OF 1877), SECTION 49. **80 P R 1881**

7. *Suit for possession—Subsequent suit for mortgage-debt.*
See SPLITTING CAUSE OF ACTION.
90 P R 1881

8. *Registered and unregistered—Priority—Notice.*
See REGISTRATION ACT (III OF 1877), SECTION 50. **37 P R 1882**

9, *Redemption—Valuation of suit.*
See JURISDICTION. **82 P R 1882**

10. *Assignment of money-decree obtained on specially registered deed—Suit by assignee to establish lien on property subsequently sold.*
See SPLITTING CAUSE OF ACTION.
142 P R 1882

11. *Unregistered—Admissibility in evidence for collateral purposes.*
See REGISTRATION ACT, (III OF 1877, SECTION 49. **10 P R 1883**

MORTGAGE—*contd.*

XXV.—MISCELLANEOUS—*contd.*

12 *Memorandum of, made in account book—Instrument chargeable with stamp duty.* See STAMP. **31 P R 1883**

13. *Unregistered—Admission of amount due by defendant.* See REGISTRATION ACT, (III OF 1877), SECTION 49. **52 P R 1883**

14. *Unregistered—Admissibility in evide ce for collateral purposes.* See REGISTRATION ACT, (III OF 1877) SECTION 49. **74 P R 1883**

15. *Unregistered—Admission of amount due by defendant.* See REGISTRATION ACT (III OF 1877), SECTION 49. **131 P R 1883**

16. *Suit for cancellation of.* See LIMITATION ACT (XV OF 1877), SCHEDULE II, ARTICLE 91. **155 P R 1883**

17. *Of joint property.* See DECLARATORY DECREE. **182 P R 1883**

18. *Of undivided share in* shamilat. See COMMON LAND. **37 P R 1884**

19. *Unregistered and registered sale—Priority.* See REGISTRATION ACT (III OF 1877), SECTION 50. **126 P R 1884**

20. *Of joint property.* See JURISDICTION OF CIVIL COURT. **11 P R 1885**

21. *Unregistered and registered sale—Priority.* See REGISTRATION ACT, (III of 1877), SECTION 50. **14 P R 1885**

22. *Unregistered and registered sale—Priority.* See REGISTRATION ACT, (III OF 1877), SECTION 50. **90 P R 1885**

23. *Suit for cancellation of.* See COURT FEES. **2 P R 1886**

24. *Suit for cancellation of.* See RIGHT TO SUE. **2 P R 1886**

25. *By proprietor in presence of adult sons.* See CUSTOM, ALIENATION. **17 P R 1886**

26. *Suit for cancellation of—Subsequent suit for possession of mortgaged property.* See SPLITTING CAUSE OF ACTION. **47 P R 1886**

27. *Suit for possession—Previous suit for interest due under mortgage—Mortgage providing for possession to be given in default of payment of interest* See SPLITTING CAUSE OF ATION. **79 P R 1886**

28. *Contract with minor - Mortgage— Suit possession—Mortgagee aware of mortgaor's minority.* See CONTRACT ACT, 1872, SECTION 11. **96 P R 1888**

29. *By heads of Religious Institution.* See RELIGIOUS INSTITUTION. **136 P R 1889**

30. *Suit by mortgagee for possession against mortgagor and certain third persons alleged to be trespassers.* See JURISDICTION. **1 P R 1891**

MORTGAGE—*contd.*

XXV.—MISCELLANEOUS—*contd.*

31 *By Heads of Religious Institution.* See RELIGIOUS INSTITUTION. **112 P R 1891**

32. *Suit by mortgagee for possession—Valuation.* See JURISDICTION. **56 P R 1892**

33. *By Heads of Religious Institution.* See RELIGIOUS INSTITUTION. **66 P R 1892**

34. *By Heads of Religious Institution.* See RELIGIOUS INSTITUTION. **166 P R 1892**

35. *Suit by mortgagee to recover sum due by mortgagor who had leased the mortgaged land.* See JURISDICTION OF CIVIL OR REVENUE COURT. **41 P R 1893**

36. *Suit for declaration as to the amount of rent payable by one mortgagee to another mortgagee, both mortgogees cultivating and taking the produce according to their mortgage shares.* See JURISDICTION OF CIVIL OR REVENUE COURT. **112 P R 1893**

37. *Suit by mortgagee for possession against mortgagor and certain third persons alleged to be trespassers.* See JURISDICTION. **1 P R 1896**

38. *Decree directing registration of mortgage deed—Further appeal—Land suit.* See APPEAL, CIVIL. **43 P R 1896**

39. *Mortgage—Mortgagor's title based on* ex-parte *decree*—Ex-parte *decree subsequently set aside—Rights of mortgagee.* See LIS PENDENS. **56 P R 1896**

40. *Suit by representative of deceased mortgagee who has obtained certificate under Act VII of* 1889*—Necessity of impleading mortgagee's other heirs.* See JOINDER OF PARTIES. **99 P R 1898**

41. *Suit for pre-emption based on mortgage.* See PRE-EMPTION. **11 P R 1901**

42. *Acknowledgment of a mortgagor's title by a minor.* See LIMITATION ACT, 1877, SECTION 19. **59 P R 1901**

43. *Suit for sale of property comprised in a mortgage—Necessary parties—Non-joinder of—Effect of decree where all necessary parties were not before Court—Transfer of Property Act,* 1882, *section* 85. See PARTIES. **64 P R 1908**

44. *Hindu Law—Mitakshara—Alienation of ancestral property—Suit by son against his father and a mortgagee for declaration that the mortgage entered into by his father should not affect his right—Present payment—Legal necessity—Liability of son for father's debts.* See HINDU LAW—JOINT FAMILY.

45. *Mortgage of ancestral property—Liability of son's interest.* See HINDU LAW—ALIENATION.

46. *Mortgage of land acquired by a female, subject to Punjab Custom, is not ancestral land.* See CUSTOM—(ALIENATION) **29 P R 1911**

MORTGAGE—*concld.*

XXV.—MISCELLANEOUS—*concld.*

47. *By minor, after attaining majority, for consideration received during minority—Validity of.* See MINOR. **31 P R 1911**

48 . *Mortgage Rights.*

Held, that where a sale of mortgage rights in execution of a decree contravenes provisions of section 16 of the Punjab Alienation of Land Act. the mere fact that the right of receiving the mortgage money from the mortgagor personally was also included in the terms of the mortgage deed will not validate the sale which must stand or fall as a whole. See PUNJAB ALIENATION OF LAND ACT. **12 P R 1911**

N.

NATIVE CHRISTIANS.

—*Rule of succession.* See CONVERTS. **36 P R 1909**

NATIVE CONVERTS.

—*Dissolution of marriage—Native Converts Act,* 1866, *section* 3, *Jurisdiction.* See DIVORCE. **44 P R 1871**

NAQSHA MUDAKHILAT.

—*Statements of landlord and tenant in—Agreement.* See TENANCY ACT, 1868, SECTION 2. TENANCY ACT, 1868, SECTION 6.

NAZIR.

See SHERIFF.

NAZUL LAND.

1. Plaintiff purchased a plot of *nazul* land for the purpose of building shops, and on a portion he so built; five years afterwards the Government resumed the unimproved portion because he had not improved the premises, and had left a trench likely to become a nuisance; *held,* that in the absence of any definite condition, this was not sufficient to entitle the Government to resume. PIAR SINGH *v.* THE GOVERNMENT. **6 P R 1868**

2. *Incomplete contract.*

Plaintiff bought certain *nazul* premises at public auction and paid the price, Rs. 2,220. By the conditions of sale, the sanction of Government was necessary to complete the transaction; and before that sanction was obtained or applied for plaintiff was convicted of criminal breach of trust. The Magistrate convicting him was the Deputy Commissioner who held the purchase money (Rs. 2,220), and to cover certain losses sustained through the plaintiffs offence of breach of trust, the Deputy Commissioner appropriated the sum of Rs. 2,220, declined to give possession of the premises, and resold the property, which was bought by the defendants. Plaintiff having undergone his term of imprisonment sued the defendants for possession. *Held,* that the sale to the plaintiff not having been sanctioned by the Government, he had no title to the premises. SALIG RAM *v.* GOKAL SINGH. **47 P R 1874**

NECESSARIES.

—*Suited to minor's condition in life.* See MINOR. **165 P R 1883**

NECESSITY.

See Custom—Alienation.
See Hindu Law—Alienation.

1. *For alienation by male Proprietor.*
See Custom. 3 P R 1884
52 P R 1884
101 P R 1884
106 P R 1884
108 P R 1884
137 P R 1884
53 P R 1885
107 P R 1885
17 P R 1886

2. *For alienation by childless proprietor.*
See Custom—Alienation by Male Proprietor—Necessity.
65 P R 1910

3. *For alienation of minor's property by guardian.*
See Custom—Alienation by *de facto* Guardian.
Guardian.

4. *For alienation by widow.*
See Custom—Alienation by Widow—Necessity.
2 P R 1911

5. *Custom—Alienation—Suit by reversioner to enforce his right in respect to land on the ground that the alienation had been made without necessity, which alienation had already been challenged by his ancester on the ground of pre-emption only*—Locus standi—*Waiver—Necessity.*
See Custom—Alienation.
15 P R 1903

6. *Custom—Alienation—Alienation by Jat proprietor without male issue at the date of the alienation—Right of after-born son to contest such alienation on the ground of necessity.*
See Custom—Alienation.
55 P R 1903 F. B.

7. *Custom—Alienation—Alienation by daughter for necessity.*
See Custom—Alienation.
90 P R 1903

8. *Gift to* khanadamad—*Right of donee to alienate property so acquired without necessity.*
See Custom—Alienation.
20 P R 1904

9. *Religious purposes as—*
See Custom—Alienation.
40 P R 1907

10. *Expenses of speculative suits.*
See Custom—Alienation.
65 P R 1907

11. *Sale by limited owner—Failure to prove necessity with respect to a fraction of the consideration—Competency to convert sale into mortgage.*
See Custom—Alienation.
8 P R 1908

12. *Sale of ancestral immovable property by a limited owner to pay debts.*
See Custom—Alienation.
55 P R 1908

13. *Sale of minor's property by next friend—Validity of sale—Necessity—Sale not beneficial to minor's interest—Refund of purchase money paid to minor with knowledge

NECESSITY—*concld.*

of minority—Liability of minor in equity—Specific Relief Act, 1877, *sections* 38, 41—*Contract Act, sections* 11, 65.
See Minor. 33 P R 1904
52 P R 1904

14. *Mortgage only in part for necessity—Suit for possession by mortgagee against reversioner.*
See Mortgage. 49 P R 1911

15. *For Alienations by heads of religious institution.*
See Religious Institution.

16. *Easement of necessity.*
See Easement. 76 P R 1900

NEGLIGENCE.

See Bailments.
Compensation.
Principal and Agent.

1. *Death caused by actionable wrong—Contributory negligence.*
See Cause of Action.
85 P R 1894

2. *On part of common carrier.*
See Railway Act, 1890.

3. *On part of guardian.*
See Res Judicata. 35 P R 1898

4. *Employer and contractor—Responsibility of employer for negligenee of contractor—Municipal Committee.*

The Municipal Committee of Lahore having resolved to repair a certain public road within the limits of the Municipality, employed a contractor to perform the work. Though in order to avoid danger to persons driving along the road at night, it was necessary that the road should be lighted the contractor negligently ommitted to light the road at night while under repair, and in consequence of his ommission the plaintiff, while driving along the road, sustained damage.

Held, that the Municipal Committee was liable for the negligence of the contractor, and was bound to make good to the plantiff the damage he had substained. Keough *v* President, Municipal Committee, Lahore.
108 P R 1883

NEGOTIABLE INSTRUMENTS ACT 1881.

See Bill of Exchange.

Section 4.

And section 13—*Transfer of instrument not negotiable by endorsement—Competency of holder to maintain action against maker.*
See Promissory Note.
144 P R 1906

Section 5.

—Promissory Note—Bill of Exchange—Original consideration—Stamp—Construction of instrument.

A document construed by the lower Courts as a promissory note, but which appeared to be rather in the nature of an unconditional order directing a certain person (*viz.*, the plaintiff) to pay a certain sum of money to a certain person, *held* to fall within the definition of a " bill of exchange, " in section 5, Act XXVI of 1881, notwithstanding the concluding clause of the instrument which con-

NEGOTIABLE INSTRUMENT ACT, 1881—*contd.*

Seetion 5.—*concld.*

tained a promise (conditional on his meeting the bill) to repay the plaintiff on a specified date. The latter clause was *held* not to control the operative part of the instrument as an " unconditional order for the payment of money to a certain person," but merely to contain an assurance for the satisfaction and information of the drawee. Sheo Das *v.* Kanhaya Lal. 61 P R 1888

Sections 5, 7, 33 and 88.

—Bill of exchange—Drawee—Negotiable Instruments Act (*XXVI of* 1881), *sections* 5, 7, 33, *and* 88 *Estoppel by conduct—Contract Act* (*IX of* 1872), *section* 231—*Rights of undisclosed principal.*

Where A. drew four drafts on B., and B. without the knowledge or authority of A., substituted C. as the drawee in his place, and C. after that accepted the four drafts.—*Held*, that notwithstanding the provisions of section 88 of the Negotiable Instruments Act, 1881, A. the drawer, is not entitled to hold C., the so, called acceptor, liable on the bills—C. not being the drawee cannot bind himself under section 33 of the Act by his acceptance.

Held, also, that the fact that C. retired one of the four drafts and obtained possession of the four cases of merchandise covered by that draft, did not stop him from denying his liablity on the other drafts, he having almost immediately repudiated his act and at once declined to retire the other drafts, and no third person having been adversely affected by his conduct.

Held, also that under section 231 of the Indian Contract Act, 1872, A., as an undisclosed principal, could take advantage of any contract made by B., his agent, with C. subject to any rights which C. might have as against B., and that allegations of fraud and misrepresentation by B. to C. should be enquired into.

Held, further that assuming that there was a valid contract, A. could sue for the whole amount which C. agreed to pay and was not bound to sell the undelivered merchandise and sue only for the balance, if any, due to him upon the contract. Jagan Nath *v.* The Heap & Co. 71 P R 1909

Section 8.

1. *And section* 54—*Promissory Note endorsement in blank and delivery to an agent for the benefit of the principal—Right of such principal to sue the maker.*
See Promissory Note.
9 P R 1906

2. *Forged indorsement—Liability of indorsee—Holder in due course—Act XXVI of* 1881, *sections* 8, 9, 15, 16.

One M. D. purchased a bill of exchange payable to the order of G. from one N. who had stolen it, and who representing himself as G., indorsed the bill in G.'s name to M. D., who acted in good faith, believing N.'s representations to be true, and giving value for the bill. M D. then negotiated the bill

NEGOTIABLE INSTRUMENTS ACT, 1881—*contd.*

Section 8—*concld.*

and a person deriving title from him received paymen of the sum payable to G.

Held, that there being no indorsement by G., who was the "holder" as defined in section 8 of the Negotiable Instruments Act, and it being impossible to regard N.'s forgery of G.'s name as an indorsment, N. having no power to indorse, M. D. was not the "indorsee" of the bill and could not be held to be its "holder" in due course, and was therefore liable to G. for the value of the bill, GOBINDA *v.* MAYA DAS. **28 P R 1884**

Section 64.

Promissory Note—Suit on, not presented for payment—Cause of action—Negotiable Instruments Act, 1881, *section* 64.

Held, that under the provisions of the exception to section 64 of the Negotiable Instruments Act, where a Promissory Note is payable on demand, and not on demand at sight, no presentment is necessary in order to charge the maker or his legal representative.

Malori Mal v. *Buta Mal* (148 *P. R.* 1883) distinguished. HARI SINGH *v.* NARAIN SINGH. **60 P R 1903**

Section 80.

*—Interest—*Hundis *silent as to interest.*

Held, that interest was payable on a *Hundi* which was silent as to interest at the rate of Rs. 6 per cent. per annum under section 80 of the Negotiable Instruments Act. KISHOR CHAND *v.* GURRAN DITTA MAL. **52 P R 1911**

Section 83.

Held, that section 83 of the Negotiable Instruments Act, 1881, applies only to bills of exchange in which acceptance by the drawer is obligatory, *i.e.*, a bill of exchange after sight as defined in section 21 of the Act, and does not apply to the ordinary *hundi* of the country payable after a certain number of days, which comes under the class of bills requiring presentation for payment only and not for acceptance. KHAN CHAND *v.* GOLAB RAM. **39 P R 1911**

Section 118.

—Presumption—Proof of consideration—Undue influence—Contract Act, 1872, *section* 16.

Where a money-lender admittedly lent money to a dissolute young man while he was still a minor, and again within a few days of his attaining his majority supplied him with large quantities of jewellery in presence only of his (plaintiff) touts, relations and dependents, and then obviously gave a false colour to the transaction in his claim, *held*, that such circumstances are facts from which undue influence is to be presumed, and are sufficient to shift the ordinary presumption laid down in section 118 of the Negotiable Instruments Act, 1881, that until the contrary is proved the presumption should be made that every negotiable instrument was made for consideration, and that the

NEGOTIABLE INSTRUMENTS ACT, 1881—*concld.*

Section 118—*concld.*

onus therefore of proving the actual amount of the advances must be laid on the plaintiff. MIRAN BAKHSH *v.* MUHAMMAD HUSSAIN. **2 P R 1902**

NEPHEW.

1. *Succession of.*
See CUSTOM—MAINTENANCE AND SUCCESSION.

2. *Gift to.*
See CUSTOM—ALIENATION.
12 P R 1904
92 P R 1904
33 P R 1905
96 P R 1907

NEW TRIAL.

See PLAINT.
REVIEW OF JUDGMENT.
REVISION.
SMALL CAUSE COURT.

NXET FRIEND.

1. *Power of, to refer to arbitration on behalf of minor plaintiffs.*
See ARBITRATION. **92 P P 1885**

2. *Removal of, for misconduct—Omission by court to appoint another guardian.*
See CIVIL PROCEDURE CODE 1908, O. XXXII, R.R. 1—4 (2) **125 P R 1882**

NIAWADARI RIGHTS.

—Mortgage of—Redemption—Physical possession.
See MORTGAGE. **40 P R 1901**

NIECE.

Succession of.
See CUSTOM—MAINTENANCE AND SUCCESSION.

N ON-AGRICULTURISTS.

—Inheritance—Presumption in favour of the existence of a custom under section 5 (a) *of the Punjab Laws Act*, 1872.
See CUSTOM—INHERITANCE.
41 P R 1901
92 P R 1901
117 P R 1901

NON-APPEARANCE.

—Effect of.
See CIVIL PROCEDURE CODE 1908, O. IX. R. 9. **46 P R 1905**

NON-JOINDER.

See PARTIES.

NON-PROPRIETARY RESIDENT.

—Sale of houses by.
See CUSTOM-ALIENATION.

NON-PROPRIETOR.

1. *Right of, to alienate.*
See CUSTOM- ALIENATION BY NON-PROPRIETORS.
See COMMON LAND.
8 P R 1881
48 P R 1881
9 P R 1882
85 P R 1882
193 P R 1882
151 P R 1883
6 P R 1884
42 P R 1884
73 P R 1884
87 P R 1884
119 P R 1884
7 P R 1885
40 P R 1886

NON-PROPRIETOR—*concld.*

2. *Inheritance of.*
See COMMON LAND. **37 P R 1887**
76 P R 1888
71 P R 1889
See CUSTOM—INHERITANCE.
NON-PROPRIETORS.

3. *Ejectment of.*
See COMMON LAND. **50 P R 1888**
88 P R 1889
37 P R 1890
EJECTMENT. **62 P R 1899**
See LANDLORD AND TENANT.
34 P R 1882

4. *Erection of* Kotha *on* Gora-deh *by non-proprietary resident with the permission of a proprietor in possession—Absence of special damage.*
See COMMON LAND. **33 P R 1901**

NON-SUIT.

1. Where plaintiff fails to make out a *primâ facie* case, he should not be non-suited—the suit should be dismissed. MULAWA *v* LUCHMEEDHUR. **28 P R 1866**

NORTHERN INDIA CANAL AND DRAINAGE ACT, 1873.

A Civil Court has no jurisdiction to restrain a party to whom permission has been granted under this Act to construct a water-course through the land of another from such construction. MOHKAM DIN *v.* MANSABDAR. **74 P R 1907**

Section 20.

1. *And section* 68—*Finality of order under section* 20—*Necessity for strict compliance with provisions of the section.*

Held, that an order passed by a Divisional Canal Officer under section 20 of Act VIII of 1873, which fully complies with all the requirements of that section is, when confirmed by the Superintending Canal Officer, binding in the sense that it is not liable to be called in question in a Civil Court.

An exact compliance with all the essential provisions of the section is, however, absolutely necessary to give such finality to the order passed under the section, Act VIII of 1873 being an enabling Act, which is introductive of a new law, directing a thing to be done in a certain way, and the rule of construction applicable, therefore, is that the provisions describing the mode in which the thing is to be done are absolute and mandatory and not merely directory. KADIR BAKHSH *v.* BHAGAT RAM. **71 P R 1888**

2. *Construction of Act—Defective notice.*

Held, that a proceeding purporting to be under section 20 of Act VIII of 1873 is materially defective if the notice contemplated by that section does not allow of the lapse of a clear 14 days between the *receipt* of the notice by the person entitled thereto and the enquiry, and not merely between the *issue* of the notice and the hearing.

No. 71 *P. R.*, 1888, referred to. BHAMBU RAM *v.* CHHATTA MAL. **144 P R 1894**

NORTHERN INDIA CANAL AND DRAINAGE ACT, 1873—*contd.*

Section 21.

--And sections 23 and 24—Claim by one village to bring a canal cut across defendants' villages.

See JURISDICTION OF CIVIL OR REVENUE COURT. **114 P R 1888**

Section 25.

—And section 27—Jurisdiction of Civil Court—Suit to set aside order made by Collector on a reference by a Canal Officer.

One S. N., defendant No. 2, having applied to the Canal Officer for the construction of a new water-course, a reference was made to the Collector, who, after proceeding in accordance with law, recorded an order putting defendant in possession of certain land belonging to plaintiff. The latter thereupon instituted a suit in the Civil Court to set aside the said order and for recovery of the said land, or for such other relief as the Court might grant.

Held, following No. 71 *P. R*, 1888, that the order of the Collector, under section 25 of the Northern India Canals and Drainage Act, 1873, was final, and that the Civil Courts had no jurisdiction to interfere therewith. LAKH RAM *v.* SECRETARY OF STATE.

64 P R 1897

Section 37.

—Sections 37, 40, 41 *and* 42*—Owner's rate.*

The question for decision was whether a proprietor who had paid owner's rate, as defined in section 37 of the Northern India Canal and Drainage Act, for canal irrigated lands held by his tenant having occupancy rights in the land for which the rent was paid, could recover the sum so paid from the tenant, on the ground that the tenant was liable to pay the owner's rate under section 40 of the Act, notwithstanding the fact that the land was irrigated from the canal when the rent payable by the tenant was fixed.

Held that, while section 40 of the Act provides that in certain cases the tenants shall pay the "owner's rate," the object of section 42 clearly is to provide—1st, that in other cases the tenant shall not be liable to pay, and 2nd, that the tenant shall also not be liable to pay "if, when the amount of rent was fixed, "the land was irrigated from the canal," and therefore the owner in the present case could not recover the rate from his tenant. AHMAD SHAFFI *v.* DANI.

83 P R 1885

Section 68.

—Finality of order as to the use or distribution of water for any crop sown or growing at the time when such order is made —Setting aside order by civil suit—Limitation.

The provisions of section 68, Northern India Canal and Drainage Act, 1873, can only mean that the order made thereunder is binding unless and until set aside by

NORTHERN INDIA CANAL AND DRAINAGE ACT—*concld.*

Section 68—*concld.*

a decree of Court in a suit brought for the express purpose of challenging the validity of the order; and such suit must be instituted within one year of the date of the order under article 14, Schedule II, Indian Limitation Act, 1877.

Failing such suit the adjudication of the Canal Officer or Collector (as the case may be) will settle finally the matter in dispute between the parties which was dealt with under the section and will not be open to question directly or indirectly in a Civil Court.

[*Cf.*, No. 71 *P. R.*, 1888]. NAWAB GHULAM MAHBUB SUBHANI *v.* PAREM NARAIN.

25 P R 1893

NORTHERN INDIA FERRIES ACT (XVII OF 1878).

See LIMITATION ACT (XV OF 1877), SCHEDULE II, ARTICLE 2, 3, 5.

65 P R 1886
123 P R 1886

—SECTION 12.

See JURISDICTION OF CIVIL COURT.

82 P R 1886

NOTICE.

1. *Of assignment of chose in action.*
   See ASSIGNMENT OF CHOSE IN ACTION.
2. *To parties before deciding case on evidence recorded by another Judge.*
   See CIVIL PROCEDURE CODE 1908, SECTION 191, O. XVIII, R. 15.
3. *Previous to suing—Secretary of State in Council or Public Officer.*
   See CIVIL PROCEDURE CODE. 1908, SECTION 80.
4. *Suit against ward of Court, Public Officer—Notice.*
   See CIVIL PROCEDURE CODE, 1908, SECTION 80. **24 P R 1889**
5. *Objection to sufficiency of notice after issue had been framed on the merits by consent of parties—Admissibility of such objection.*
   See CIVIL PROCEDURE CODE, 1908, SECTION 80. **155 P R1 890**
6. *Construction of the words "delivered to or left at"—Notice of suit.*
   See CIVIL PROCEDURE CODE, 1908, SECTION 80. **71 P R 1891**
7. *Variance between notice of action and suit brought in pursuance thereof.*
   See CIVIL PROCEDURE CODE, 1908, SECTION 80 **67 P R 1894**
8. *Of objection by respondent.*
   See CIVIL PROCEDURE CODE, 1908, O. XLI, R. 22.
9. *Right of respondent to support decree upon ground decided against him in lower Court—Written notice of objection, when necessary.*
   See CIVIL PROCEDUTE CODE, 1908, O. XLI, R. 22. **127 P R 1888**
10. *Of assignment of debt.*
    See EQUITABLE ASSIGNMENT.

NOTICE—*concld.*

11. *Of appeal under Land Acquisition Act.*
    See LAND ACQUISITION ACT, 1870, SECTION 35.
12. *To quit.*
    See LANDLORD AND TENANT. **94 P R 1910**
13. *Application to foreclose—Minor—Notice how to be served.*
    See MINOR. **94 P R 1892**
14. *Of foreclosure.*
    See MORTGAGE—FORECLOSURE.
15. *Of foreclosure.*
    See MORTGAGE.
16. *Survice of.*
    See MORTGAGE.
17. *Defective notice—Canal and Drainage Act*, 1873, *section* 20.
    See NORTHERN INDIA CANAL AND DRAINAGE ACT, 1873, SECTION 20. **144 P R 1894**
18. *Notice of appeal to respondent—Procedure of Revenue Court.*
    See PUNJAB TENANCY ACT, 1887, SECTION 88. **10 P R 1895 Rev.**
19. *To pre-emptors.*
    See PRE-EMPTION.
20. *Of prior unregistered deed.*
    See REGISTRATION ACT 1877, SECTION 50.

NOTICE OF EJECTMENT.

See COURT-FEES. **111 P R 1883**

See OCCUPANCY RIGHTS.

See TENANCY ACT (XXVIII OF 1168), SECTION 20. **19 P R 1886**

See TENANCY ACT (XXVIII OF 1868), SECTION 25. **91 P R 1881**
96 P R 1881
18 P R 1883
39 P R 1883
1 1 P R 1883

See TENANCY ACT (XXVIII OF 1868), SECTION 37. **136 P R 1883**
12 P R 1885

—Suit to contest—Omission by plaintiff to contest his liability to ejectment on ground of non-payment of compensation—Subsequent suit for compensation.

See RES JUDICATA. **96 P R 1881**

—Suit for proprietary rights—Subsequent suit for occupancy rights.

See SPLITTIHG CAUSE OF ACTION.

5 P R 1884 Rev.

NOVATION.

See CONTRACT ACT, 1872, SECTION 62.

NUISANCE.

1. *Injunction—Slaughter-house—Apprehended danger to health and interference with physical comfort and convenience—Specific Relief Act (I of 1877), sections 54, 56 (g)—Diminution in value of property—Ground for relief—Municipal Committee—Statutory powers—Justification of nuisance—Infringement of private rights—Act XIII of 1884, sections 68, 92—Approval of Deputy Commissioner.*

In a suit for an injunction to prevent, on the ground of nuisance, the user of certain

premises of the defendants as a slaughter-house, it was alleged that if so used the consequences would be to endanger the health and materially interfere with the physical comfort and convenience of the occupants of plaintiffs' houses.

Held, that assuming such user would have these consequences such user would be a nuisance, but that the injunction sought could not be granted, unless it were reasonably clear that the user of the said premises as a slaughter-house would have these consequences; but that if this was reasonably clear, an injunction might be granted at the discretion of the Court.

Held, on the issue of fact as to whether it was reasonably clear upon the evidence that the user of the defendants' premises as a slaughter-house would endanger the health, or materially interfere with the physical comfort and convenience of the inmates of the plaintiffs' houses, that the finding must be adverse to the plaintiffs, with the result that the plaintiffs had failed to establish a title to the relief claimed upon the above grounds.

There is no authority for holding that the exercise of a lawful business, if it be not on other grounds a nuisance, amounts to a nuisance merely because it diminishes the value of property in the neighbourhood; diminution of the value of one man's property caused without injury to the property itself, or to its enjoyment, by the legitimate use of his own property by a neighbour, amounting only to "*damnum absque injuria.*"

Held further, that a Municipal Committee in the Punjab is not entitled to justify by statutory authority every nuisance committed in the fair and reasonable exercise of the powers conferred under the Municipal Act. There is a material distinction between the case of statutory powers given by the legislature, when the legislature directs that a thing shall at all events be done, and the case of similar powers when the exercise of the powers at all and the time and place of exercise are discretionary. When a company or public body can construct its works without injury to private rights, it is in general bound to do so. Further, as a rule of construction of statutes, those who seek to establish that the legislature intended to take away the rights of private individuals, lie under the burden of showing that such intention appears by express words or necessary implication.

Although, therefore, a Municipal Committee is empowered to erect a slaughter-house, subject to the approval required by section 92 of the Punjab Municipal Act, by the authority in section 68 of the same Act to apply the Municipal Fund for the construction, establishment, and maintenance of works of public utility, there is nothing in the Act which requires a Committee to exercise this power, but it has an absolute discretion whether it shall exercise the power and as to the time of its exercise: as to place also it has a discretion, not absolute

but limited, the approval of the Deputy Commissioner being necessary. There is however, nothing in the Act to indicate that a Committee is authorized to set up an institution of the above kind to the infringement of the private rights of other persons.

With regard to the approval of the Deputy Commissioner required by section 92 of the Punjab Municipal Act, *held*, that the word "place" employed in that section is wide enough to include a site with its buildings, as well as a site unoccupied by buildings, and must be construed to mean one or the other according to the circumstances of the particular case. If a person wanted to have an unoccupied site fixed as a place for slaughter he would need the consent of the Committee and the approval of the Deputy Commissioner to the use of that site: as to the buildings to be erected on the site, the applicant might be subject to the orders of the Committee, under section 88. On the other hand, if the place which the applicant desired to use were a site and the buildings already upon it, the approval both of the Committee and of the Deputy Commissioner to the "place" constituted by site and buildings would be necessary. RATTIGAN *v.* MUNICIPAL COMMITTEE OF LAHORE.

106 P R 1888

2. *Nuisance—Public latrine—Injunction—Act XIII of 1884, section 68 (2) (a)—Statutory authority of Municipal Committee—Powers ahd duties of Committee.*

In answer to a suit brought against the Municipal Committee of Delhi for an injunction to prevent, on the ground of nuisance, the use of a public latrine recently erected by the Committee, it was pleaded that the defendants were acting under statutory authority and that the alleged nuisance (if any) being a necessary consequence of the use of the powers and duties imposed on the Committee by the Legislature, could not be restrained by injunction.

Held, that the power claimed by the Committee under section 68, sub-section (2) (*a*) of the Punjab Municipal Act, 1884, did not exist: that, that enactment contained no express authorization to the defendant to construct pnblic latrines. The section merely rendered it lawful for the Committee to apply their funds towards payment, *inter alia*, of the charges and expenses incidental to the constructien, maintenance, improvement, cleansing and repair of latrines; it implied a discretionary power to construct public necessaries, but it conferred no compulsory power to acquire land for the purpose of erecting such buildings thereon in any specific locality or at any place which might be deemed suitable by the Committee.

No. 106 *P. R.* 1888 (Lahore slaughter-house case) referred to and followed. MUNICIPAL COMMITTEE, DELHI, *v.* HARPARSHAD.

103 P R 1892

3. *Nuisance—Suit for removal of obstruction in public street—"Special damage."*

Plaintiffs, twenty-five in number, whose houses were at the head of a blind lane in

the town of Jandiala, sued to remove an obstruction, a *thara* or platform, built by defendants at a short distance down the lane from plaintiffs' premises. The lower Courts found that the lane in question was a "public street" within the meaning of section 3 of the Punjab Municipal Act, 1891, and was the property of the Municipal Committee of Jandiala; that the *thara* was built by defendants, not more than six years before the institution of the suit, without the permission of the Municipal Commtttee; that plaintiffs suffered "special damage" by reason of the obstruction, inasmuch as they could not carry out their dead without an unreasonable amount of inconvenience. Defendants appealed to the Chief Court, and it was

Held, that the appeal must be allowed. In order to sustain an action for the removal of an obstruction in a public street, it is necessary for the plaintiffs to show not merely that the damage he suffers is greater in degree or frequency than that suffered by the rest of the public, but that it is different in kind.

No. 10 *P. R.* 1878, followed. CHAJJU MAL *v.* GANDA MAL.

4 P R 1895

4. *Nuisance—Municipal Committee's power to carry water into a publice drain—Municipal Act, 1890, section 123—Injunction—Conditional injunction—Specific Reliet Act, 1877, section, 56 (g).*

The Municipal Committee of Pindigheb had diverted the flow of the waste water of a *dharmsala* by conveying it through a new masonry drain which emptied itself into a *katcha* drain in the public street, on which two suits were filed against the Municipal Committee, one by the owners of the houses whose houses abut in the public street for a perpetual injunction restraining the Municipal Committee from discharging the water of the *dharmsala* through the drain in the street, and the other by the person in charge of the *dharmsala* for a similar injunction to restrain the defendants from interfering with the discharge of water through certain properties and diverting its flow to the drain in the street above-mentiond. The Court of first instance whilst holding that the Municipal Committee was within its rights in constructing the new drain, found that if the old drain remained *katcha* the increased quantity of water discharged into it might during the rainy season cause some damage to the plaintiffs' houses, granted the injunction until the Municpal Committee converted the *katcha* drain into a *pacca* masonry one, but dismissed the second suit on the ground that the plaintiff has no *status* to maintain it, which orders were confirmed by the Divisional Judge. The plaintiffs in both cases appealed to the Chief Court on the grounds amongst others that the Committee had no power to alter the direction of the flow of water from private drains, or the direction of the drains, and that no conditional injunction should have been granted.

NUISANCE—*concld.*

Held, that the plaintiffs in the first case had no right whatever in preventing the Committee from allowing the water to flow into their drain, and could only object if their rights are interfered with by the diversion, and only to that extent.

The Specific Relief Act contains no prohibition against a conditional injunction being granted, but that the form adopted was not correct, as it amounted to a temporary injunction of indefinite duration and not a perpetual one, the proper order would be to grant a perpetual injunction conditional upon defendant not removing the cause of prospective damage to the satisfaction of the Court within a fixed period.

Held, also, that public bodies like Municipal Committees should act in accordance with the procedure provided by the Statute governing their acts, but where with the tacit consent and acquiescence of the persons interested in a property they have acquired a footing with respect to the discharge of its waste water and do an act which has caused no damage but improved its conditions, interference by a Court of Justice would not be equitable.

Akilandammal and another v. *Venkutachela Mudalai* (*VI Mad. H. C. R.* 112), *Attorney-General* v. *The Corporation of Halifax* (39 *L. J. Ch.* 129), and *Attorney-General* v. *Birmingham Drainage Board* (*L. R.* 17 *Ch. Dn.* 685) followed. HARI SINGH AND OTHERS *v.* THE MUNICIPAL COMMITTEE OF PINDIGHEB.
78 P R 1901

NUNCUPATIVE WILL.

See GUARDIAN. **54 P R 1898**
WILL. **15 P R 1890**
55 P R 1891
54 P R 1898

O.

OATHS.

1. Formerly (before Act VI 1872) the decision of a case was not allowed to turn upon the wager of oath. HURBUNS SINGH *v.* JHUNDOO LALL. **51 P R 1868**

2. *Act VI of* 1872.

By section 4, a party or witness might give evidence on oath in any form common amongst persons of the race or persuasion to which he belonged, and not repugnant to justice or decency, and not purporting to affect any third person ; and a party to the suit might offer to be bound by such oath ; the evidence so given being conclusive proof of the matter stated. *Held*, that the defendant's oath on his son's head was not allowed by that section. RULDU MUL *v.* BHUPA. **36 P R 1873**

OATHS ACT, 1873.

Section 8.

1. *Agent's authority to bind client by oath of opposite party—Power of principal to withdraw after other party has agreed to take the oath.*

See PRINCIPAL AND AGENT.
85 P R 1903

OATHS ACT, 1873—*contd.*

Section 8—*contd.*

2. *Parties to a suit agreeing to be bound by the oath of a witness—Refusal of witness to take the oath—Effect of such refusal—Adjustment of suit—Decision on merits—Civil Procedure Code (Act XIV of* 1882), *section* 375.

In the course of a suit plaintiff offered to be bound by the oath of a certain witness, and defendant agreed to be bound in like manner, adding that, if the oath were not taken by the witness, the plaintiff's claim might be considered correct. The witness at first agreed to take the required oath, but subsequently refused to do so, whereupon the first Court decreed the plaintiff's claim holding the defendant bound by his agreement to acknowledge the claim, if the witness refused to take the oath.

Held, that this decision could not be supported either under the special provisions of the Oaths Act, or apart from that Act.

A mere agreement to be bound by the oath of a party or witness when given is not in itself an adjustment of the dispute ; nor can the agreement be deemed to be so, even if it goes on to provide, as in the present case, that in the event of the witness referred to refusing to take the agreed oath, a decree shall pass in favour of the other party ; for in either case the result of the agreement depends upon the performance or non-performance of a certain act subsequent to the agreement. Therefore whether or no section 375 of the Civil Procedure Code permits anything short of an act perfected by acknowledgment in Court, and the Court's sanction and adoption of it, to deprive a party of his right to demand judgment on the merits, even when the act is otherwise complete (a point upon which the authorities are not agreed), the adjustment under that section must at least be capable of being embodied in the decree, and the agreement in the present case was not so capable.

Nor could the decision of the lower Court be supported under the special provisions of Act X of 1873. All that that Act does is to make the evidence given on the agreed oath conclusive proof of the matter stated, and the decree which would follow upon such an oath would not be in accordance with any adjustment agreed to by the parties, but a decree upon evidence which the party against whom it was given, could not be heard to deny. Where, however, the party has eventually declined to take the oath, all that the Act provides for such a contingency is, that the fact of the agreement to take the oath, and any reason which may be assigned for the subsequent refusal, shall be recorded by the Court as part of the proceedings ; from which it may be inferred that the legislature intended that the Court having to deal with the suit might take the refusal into consideration, and in a case like the present, draw a presumption adverse to the party

OATHS ACT, 1873—*contd.*

Section 8—*concld.*

who offered to be bound by the refusal. But such a presumption is open to rebuttal, and its strength or weakness would largely depend on whether the Court was satisfied that the reason alleged by the party or witness for his refusal to take the oath was *bona fide*, and the result not of a conviction that he could not honestly give the evidence required of him, but rather of an honest and conscientious scruple to take an oath in the form suggested. It would in any case have to be weighed with the other facts and circumstances and could not exclude available evidence. BAWA SUCHET SINGH *v.* RATNA **31 P R 1888**

3. *Oaths Act,* 1873—*Offer to be bound by oath of other party—Minor—Power of next friend to bind.*

The next friend of a minor plaintiff is competent to bind the minor by an offer, under the provisions of the Indian Oaths Act, 1873, that the oath or solemn affirmation by the other party to, or by any witness in, such proceeding shall, as against the minor, be conclusive proof of the matter stated.

The leave of the Court, under section 462, Civil Procedure Code, is not required. No. 186 *P. R.* 1889, and *I. L. R., XII Mad.*, 483, referred to. MALAK SORAB *v.* ANOKH RAI.
18 P R 1891 F. B.

4. *Form of oath need not be specified to be binding.*

It is not necessary that the form of oath should be specified before it can be held to be binding on the person who agrees to be bound by it under sections 8 and 9 of the Oaths Act (X of 1873) ; all that is necessary being that the oath administered is in a form common amongst or held binding by the class to which the person taking the oath belongs. AHMAD ALI SHAH *v.* HANUMAN. **23 P R 1887**

5. *Indian Oaths Act, X of* 1873, *section* 8 *—Form of oath—Affecting third person—Consent to abide by statement on oath—Competency of Court to administer such oath.*

Where the oath administered to the defendant was in these terms " If I lie in saying that I did not strike the balance and had " paid the debt, may my wife be considered to have been divorced from me."

Held, following 36 *P. R.* 1873 (*Ruldu Mal* v *Bhupa*) and dissenting from *Ram Narain Singh* v. *Babu Singh*, (1896) *I. L. R* 18 *All.* 46 that the oath was repugnant to decency, purported to affect a third person and was in contravention of section 8 of the Indian Oaths Act, 1873, and that the fact that the defendant accepted and took the oath did not validate it or create a bar to any objection by the plaintiff, inasmuch as the Court was not competent to tender the oath to the defendant and was consequently barred from accepting the evidence so sworn. NABI BAKHSH *v.* RAM JAWAYA. **66 P R 1910**

OATHS ACT, 1873—*contd.*

Sections 8, 9, 10 and 11.

1. *Sections* **8, 9, 10** *and* **11** *re-enacted section* 4 *of Act VI of* 1872.

Held, that where a *mukhtarnama* empowered a mukhtar (*inter alia*) "to file any proofs, written or "verbal," this empowered the mukhtar to bind his client by an oath under sections 9, 11, Act X of 1873. MUSSAMMAT GHARIB *v.* KARIM BAKHSH.

72 P R 1874

Sections 8, 9, 10.

2. *Local Commissioner—Powers of, to administer oath—"Court."*

Held, that it is not competent to a person who has been appointed a local commissioner for the purpose of recording evidence in a case to administer an oath to one of the parties in the circumstances referred to in sections 8, 9 and 10 of the Indian Oaths Act, 1873, he not being a "Court" within the meaning of those sections. PURAN CHAND *v.* CHUHAR, etc. **89 P R 1909**

Section 9.

3. *Pleader's authority to bind client under Oaths Act—Civil Procedure Code, section* 36.

A pleader has no power to consent to the settlement of the case by an oath being taken by the opposite party under section 9 of the Indian Oaths Act, nor does section 36 of the Civil Procedure Code give him such authority.

Sadashiv Rayaji v. *Maruti Sithal and others* (*I. L. R. XIV Bom.*; p. 455) approved and followed, *Malak Sarab* v. *Anokh Rai and others* (18 *P. R.* 1891 (F. B.), *Sheo Nath Saran* v. *Sukh Lal Singh and others* (*I. L. R. XXVII Calc.* p. 229; and *Mussammat Gharib and others* v. *Karim Bakhsh* (72 *P. R.* 1894), distinguished. MUSSAMMAT PERAG DEVI AND OTHERS *v.* RAM CHAND. **75 P R 1900**

4 *Sections 9—12—Party agreeing to be bound by oath of other party—Power to withdraw after other party has agreed to take the oath.*

Held, that a party to a suit who agrees to be bound by the oath of the other party, is not entitled to withdraw after the other party has expressed his willingness to take the oath required. MUSSAMMAT AZIMA BEGUM *v.* MUHAMMAD BAKHSH. **63 P R 1881**

Section 11.

—*Evidence given by person on oath, effect of, as regards person offering to be bound thereby—Civil Procedure Code*, 1882, *section* 562.

Under section 11 of the Oaths Act, 1873, the evidence given by a person on oath is, as regards the party who offered to be bound thereby, conclusive proof merely of the matter stated and of nothing further.

Where, therefore in a suit by plaintiff for Rs. 550 profits lost by plaintiff through the default of N. C. and another, defendants, to deliver gram during one month at contract rate, and for Rs. 80 earnest-money paid to N. C., it appeared that one D. D., defendant

OATHS ACT, 1873—*concld.*

Section 11—*concld.*

who made the contract as a broker and was alleged to have been a surety for its due performance, challenged N. C. to the oath, saying that if N. C. would swear that he (N. C.) had not received the earnest-money, he himself would be responsible for the plaintiff's claim, and the said N. C. thereupon swore that he had not received the said earnest money, *held*, that such statement, on oath, merely concluded the question whether N. C. had or had not received such earnest-money

Held, therefore, that the first Court had erred in regarding the oath so taken as *per se* sufficient ground for decreeing the suit as against D. D. and dismissing it as against the other defendants.

Held, further, that inasmuch as the first Court had decreed the suit merely on the oath taken, and had not decided any of the five issues which it had framed, the lower Appellate Court had rightly remanded the case under section 562 of the Civil Procedure Code. SAWAN MAL *v.* DEVI DIAL.

45 R R 1898

Section 12.

—*Party agreeing to be bound by oath of other party—Power to withdraw after other party has agreed to take the oath—Effect of such withdrawal—Decision on merits.*

Although a party to a suit who agrees to be bound by the oath of the other party is not entitled to withdraw after the other party has expressed his willingness to take the oath, required, all that the Oaths Act of 1873 prescribes for the contingency of the party agreeing eventually withdrawing and preventing the other party from taking the proposed oath, is that the fact of the agreement to be bound by the oath and any reason which may be assigned for the subsequent withdrawal should be recorded by the Court as part of the proceedings, and the suit should be decided on the merits, allowing due weight to the presumption arising from that refusal after considering the reasons assigned.

Mussammat Azima Begam v. *Muhammad Bakhsh* (63 *P. R.* 1881), *Bawa Suchet Singh* v. *Ratna* (31 *P. R.* 1888), *Ram Narain Singh* v. *Babu Singh* (*I. L. R. XVIII All.* 46) and *Sawan Mal* v. *Devi Dial* (45 *P. R.* 1898) referred to. AMIR CHAND *v.* GOBIND SAHAI.

5 P R 1903

OBJECTION BY RESPONDENT.

—*Respondent raising plea of* res judicata *decided against him in lower Court—Notice.*

See CIVIL PROCEDURE CODE, 1908
O. XLI, R 22, SECTION 561.
59 P R 1886

OBJECTION NOT RAISED IN COURT BELOW.

1. *As to admissibility in evidence of documents not filed with plaint.*
See APPEAL, CIVIL. **74 P R 1882**

2. *As to legality of next friend suing on behalf of minor without certificate.*
See APPEAL, CIVIL. **62 P R 1883**

OBJECTION NOT RAISED IN COURT BELOW—*concld.*

3. *Jurisdiction.*
See JURISDICTION. **132 P R 1883**
See REVIEW OF JUDGMENT.
94 P R 1882

4. *Jurisdiction—Objection raised after remand for fresh decision on specific issues.*
See APPEAL, CIVIL. **54 P R 1883**

5. *Court of its own motion raising objection that agreement sued upon is void.*
See APPELLATE COURT, POWER OF.
63 P R 1884

6. *Of minority.*
See ARBITRATION. **92 P R 1885**

7. *That Court passed judgment in terms of award in absence of parties.*
See ARBITRATION **50 P R 1881**

8. *That local Commissioners omitted to file record of evidence with their report.*
See CIVIL PROCEDURE CODE, 1908,
O. XXVI, R. 10.
161 P R 1882

9. *To omission by Court, on removal of next friend for misconduct, to appoint another guardian.*
See CIVIL PROCEDURE CODE, 1908,
O. XXXII, RULES 1 AND 4.
125 P R 1882

10. *As to non-joinder of parties.*
See JOINDER OF PARTIES.
151 P R 1883

11. *That defendant has split his cause of action.*
See SPLITTING CAUSE OF ACTION.
90 P R 1881

OBJECTION NOT RAISED IN MEMORANDUM OF APPEAL.
See PRE-EMPTION. **117 P R 1882**

OBSTRUCTION TO EXECUTION OF DECREE.

—*Execution of decree—Decree for possession of immovable property—Obstruction by person other than the judgment-debtor—Procedure—Civil Procedure Code*, 1882, *section* 331.

Held, that where in execution of a decree for possession of immovable property a person other than the judgment-debtor causes obstruction to the delivery of possession of the property, claiming in good faith to be in possession thereof on his own account, the Court executing the decree cannot decline to investigate such claim even if subsequent to the objection the objector happens to be temporarily out of actual possession. The Court is bound to investigate the claim under section 331 of the Code of Civil Procedure. SUNDAR DAS *v.* RAJA BALDEO SINGH. **118 P R 1907**

OBSTRUCTION TO PUBLIC ROAD.

—*Suit to remove—Special damage.*
See RIGHT TO SUE **134 P R 1882**

OCCUPANCY HOLDING.
See OCCUPANCY RIGHT.

OCCUPANCY RIGHTS.
See PUNJAB TENANCY ACT, 1868.
See PUNJAB TENANCY ACT, 1887.

OCCUPANCY RIGHTS—*contd.*

1. *Occupancy rights in alluvial lands—Jhelum River.*
See ALLUVION AND DILUVION. **89 P R 1877**

2. *Rights of occupancy tenant in submerged lands on re appearance—Custom.*
See ALLUVION AND DILUVION. **127 P R 1879** **152 P R 1883**

3. *Suit for—Previous suit for proprietary rights—Cause of action.*
See SPLITTING CAUSE OF ACTION. **5 P R 1884 Rev.**

4. *Grazing rights of occupancy tenant on the common land.*
See COMMON LAND. **119 P R 1889**

5. *Occupancy rights in common land.*
See COMMON LAND. **8 P R 1867** **25 P R 1868** **84 P R 1869** **152 P R 1882** **65 P R 1885** **1 P R 1899 Rev.**

6. *Alienation of occupancy rights.*
See CUSTOM—ALIENATION OF OCCUPANCY RIGHTS.

7. *Transfer of rights by occupancy tenant—Acquiescence on part of landlord, effect of—Facts constituting acquiescence.*
See CUSTOM—ALIENATION OF OCCUPANCY RIGHTS. **1 P R 1898 Rev.**

8. *Exchange of rights of occupancy without consent of landlord—Transfer—Right of landlord who has acquiesced in such transfer to subsequently sue to avoid it—Acquiescence what constitutes.*
See CUSTOM—ALIENATION OF OCCUPANCY RIGHTS. **2 P R 1898 Rev.**

9. *Suit by proprietor for enhancement of rent—Inquiry as to status of tenant.*
See ENHANCEMENT. **5 P R 1895 Rev.**

10. *Sale of, without landlord's consent—Landlord by his conduct affirming the transfer—Subsequent suit by landlord for pre-emption.*
See ESTOPPEL. **161 P R 1883**

11. *Right of occupancy tenant to sink wells without his landlord's consent.*
See IRRIGATION. **66 P R 1887**

12. *Occupancy rights—Jagirdar under grant from Sikh Government.*
See JAGIR. **2 P R 1892 Rev.**

13. *Suit by occupancy tenant for commutation of rent.*
See JAGIR. **3 P R 1895 Rev.**

14. *Continuous occupation of twenty years—Punjab Tenancy Act, 1887, section 5 (i) (d).*
See JAGIR. **8 P R 1896 Rev.**

15. *Occupancy rights—Grant of* muafi *to ala lambardar in virtue of his office.*
See JAGIR. **1 P R 1897 Rev.**

16. *Occupancy rights—Grant of* muafi *originally made by Moghal Emperors.*
See JAGIR. **2 P R 1897 Rev**

OCCUPANCY RIGHTS—*contd.*

17. *Suits relating to occupancy rights—Jurisdiction of Courts.*
See JURISDICTION OF CIVIL OR REVENUE COURT. **102 P R 1887** **12 P R 1888 Rev.** **9 P R 1888 F. B.** **3 P R 1889** **104 P R 1890** **45 P R 1891 F. B.** **70 P R 1892** **70 P R 1893** **71 P R 1893** **96 P R 1894** **11 P R 1895 F. B.** **23 P R 1895** **44 P R 1895 F. B.**

18. *Suit to establish.*
See JURISDICTION OF CIVIL OR REVENUE COURT. **11 P R 1888 Rev.** **9 P R 1888 F. B.** **70 P R 1893**

19. *Suit to disprove.*
See JURISDICTION OF CIVIL OR REVENUE COURT. **12 P R 1888 Rev.**

20. *Suit for recovery of possession by occupancy tenant illegally dispossessed.*
See JURISDICTION OF CIVIL OR REVENUE COURT. **3 P R 1889** **44 P R 1891 F. B.** **45 P R 1891 F. B.**

21. *Suit by owner of trees against occupancy tenant of land on which they stand for value of fruit trees.*
See JURISDICTION OF CIVIL OR REVENUE COURT. **119 P R 1890**

22. *Grant of land to ala lambardar—Acquisition of occupancy rights in such land.*
See JURISDICTION OF CIVIL OR REVENUE COURT. **123 P R 1893**

23. *Suit for declaratory decree that land has reverted to landlord free of incumbrance—Suit by landlord to set aside transfer of right of occupancy.*
See JURISDICTION OF CIVIL OR REVENUE COURT. **88 P R 1894**

24. *Transfer of occupancy right by tenant—Suit by transferee to enforce his rights—Objection raised by landlord by way of defence that transfer was voidable at his instance.*
See JURISDICTION OF CIVIL OR REVENUE COURT. **11 P R 1895 F. B.**

25. *Suit by occupancy tenant against co-sharer in the tenancy for share of produce.*
See JURISDICTION OF CIVIL OR REVENUE COURT. **44 P R 1895 F B.**

26 *Suit by a tenant for a declaration that he is occupancy tenant by exchange with the original tenant—Jurisdiction of Civil or Revenue Court.*
See JURISDICTION OF CIVIL OR REVENUE COURT. **139 P R 1906**

27. *Suit by proprietors to compel occupancy tenants to reside in their village—Limitation.*
See LIMITATION ACT (XV OF 1877), 2ND SCHEDULE ARTICLE 143. **80 P R 1883**

OCCUPANCY RIGHTS—*contd.*

28. *Sale of—Transferable right—Pre-emption.*
See PRE-EMPTION. **106 P R 1882** **196 P R 1882** **120 P R 1883**

29. *Transferable rights of occupancy—Punjab Laws Act 1872, section 10—Right created by statute or contract—Perpetual lease, whether tantamount to sale.*
See PRE-EMPTION. **43 P R 1892**

30. *Sale of occupancy and mukarraridari rights to landlord—Suit by co-sharer in holding—Preferential right.*
See PRE-EMPTION. **16 P R 1905**

31. *Succession of occupancy tenant—Common ancestor occupying land—Character of such occupation immaterial.*
See PUNJAB TENANCY ACT, 1868, SECTION 36. **47 P R 1889**

32. *Abandonment of.*
See PUNJAB TENANCY ACT, 1887, SECTION 38. **2 P R 1901 Rev.**

33. *Transfer of right of occupancy under section 5 (1) (c)—Measure of fixing value by the Revenue Officer.*
See PUNJAB TENANCY ACT, 1887, SECTION 53, AND SECTIONS 60 AND 77 (3) (*b*). **12 P R 1901 Rev.** **3 P R 1910 Rev.**

34. *Suit by proprietor against occupancy tenant for possession on ground of invalid mortgage—Subsequent suit by tenant to be restored to possession.*
See RES JUDICATA. **54 P R 1884**

35. *Alienation of occupancy rights by a widow—Suit for declaration by reversioners.*
See SPECIFIC RELIEF ACT, 1877, SECTION 42. **205 P R 1889**

36. *Succession.*
Held, before the Tenancy Act came into operation, that the rule was that next of kin of an hereditary cultivator were not allowed to succeed, unless they were descendants in the direct male line of the person who originally obtained the cultivation. VEROO *v.* SAHIB SINGH **43 P R 1866**

37. But where the brothers and widow of the cultivator, on the death of the latter were permitted by the proprietor to be recorded for nine years, ROBERTS, J., dismissed the proprietor's suit for ejectment and refused to disturb the tenure. MEHTAB SINGH *v.* MUSSAMMAT TABEE **75 P R 1866**

38. *Tenants claiming to be proprietors.*
Plaintiff, who was recorded hereditary tenant claimed to have the record altered and to be recorded as proprietor. The Lower Court rejected his claim on the ground that when others in 1855 and 1863 claimed proprietary rights, plaintiff did not come forward. Two of the proprietors, new comers, resisted plaintiff's claim, and five (sons of the founders of the village) admitted it. It was proved that plaintiff had been long in possession, and had broken up *bunjur*. *Held*, that plaintiff was proprietor. RAJA SINGH *v.* VEER SINGH. **95 P R 1866**

OCCUPANCY RIGHTS—*contd.*

39. *Succession.*

A. was joint hereditary cultivator with his deceased brother. *Held*, that the brother's death did not deprive *A*. of the hereditary right which he held in the whole of the land. WUZEERA *v.* KESSUR SINGH.

2 P R 1867

40. *Succession.*

Though the succession to hereditary cultivation did not, in general, descend to collaterals, or to descendants not in the direct male line of the person who originally obtained the cultivation, it might be claimed where there was relationship and also family dependency, or the succession was provided for by the *wajib-ul-arz*. TANNEE v. NUBBEE BUKSH (*No.* 19 *P. R.* 1867); and *See* ALSO MAYDA *v.* HURJUS.

96 P R 1867

41. *Continuous occupation.*

A hereditary cultivator who abandoned his land for one agricultural year forfeited his status, but he might maintain a constructive occupancy by leaving a friend or relative in charge, remaining responsible for the tillage and rent. PREMA *v.* SAHIB SINGH.

46 P R 1867

42. A hereditary tenant who, ceasing to cultivate his holding himself, keeps his name on the Patwari's books and leaves his son in possession is not held to have abandoned his rights. SAHIBOO *v.* NOURANG.

58 P R 1867

43. *Cash and kind.*

A hereditary cultivator, who brings fallow land in his holding under cultivation, is liable to pay rent for such land to the proprietor, though no rent was fixed at Settlement; but the proprietor cannot demand such rent in kind when the tenant pays the rest of his rent in cash, nor at a higher rate than is paid for other cultivated land in the same holding. KHYRUN SHAH *v.* MULIK SAHIB RAE

90 P R 1867

44. *Length of occupancy.*

Although long possession confers of itself no right of hereditary occupation there may be circumstances combined with such long possession which may afford good and sufficient ground for the right; and due regard being had to the imperfect character of proprietary right in the Punjab prior to annexation, there may be cases in which a cultivator who has previously claimed proprietary rights on different and insufficient grounds without any idea of fraud, but only with a wrong conception of his position, may be entitled to establish hereditary right. *Pursotum Dass v. Rymull* (*No.* 81 *P. R.* 1867); and NUNDA *v.* FUTTAH.

91 P R 1867

45. *Alienation.*

The rights of hereditary cultivation held not to be transferable; and if the party entitled to succeed relinquished his claim in favour of another, the proprietor had

OCCUPANCY RIGHTS—*contd.*

a right to object to the admission of the latter. MAYDA *v.* HURJUS

96 P R 1867

46. *Enhancement.*

There being nothing in the *wajib-ul-urz* to the contrary, *held* that the rent of an hereditary cultivator could not be enhanced beyond the rate fixed at Settlement, during the currency of that Settlement. LALL *v.* HAKIM.

102 P R 1867

47. *Rights of occupancy acquired under* wajib-ul-urz.

Plaintiffs, who were tenants of defendants, re-constructed a well with the consent of defendants, who at the same time executed an agreement to the effect that when the sum expended on the well was repaid, they (defendants) would have a right to the land. The money not having been repaid for several years, plaintiffs sued to be recorded as proprietors. *Held*, that the utmost that plaintiffs were entitled to was to hold the land free of payment of *malikana* until such time as the money expended on the well was repaid. DEVEEDHUR *v* FAZLA

3 P R 1867 Rev.

48. *Cash and kind.*

Where cash rents have been fixed at Settlement, a proprietor cannot compel his tenant to pay rent in kind, though the latter may have paid in kind before Settlement. GHOLAM RASOOL *v.* EEDA.

6 P R 1867 Rev.

49. *Rent.*

Held, that the hereditary cultivators were entitled to have their rents fixed at fair rates, that is, at rates payable by the same class of ryots for land of a similar description and with similar advantages in the places adjacent. BULDBO *v.* CHYNSOOKH

9 P R 1867 Rev.

50. *Cash and kind.*

Where grain rates are fixed at Settlement but the proprietor has for a long series of years since realized in cash, he cannot at pleasure revert to grain payments. MULLIK SHER MAHOMED KHAN *v.* ILUM KHAN.

15 P R 1867 Rev.

51. *Enhancement of rent.*

A revision of the Settlement record having taken place by which the rent of certain objecting tenants was enhanced—*held*, that if the landowners brought a regular suit to try the question of rent, the tenants would be at liberty to dispute the enhanced rates. *Query.*—Whether in the event of the landowner giving due notice of enhanced rent, which the tenant did not dispute by a regular suit, the former would be entitled to a decree without further enquiry. SOUDAGUR *v.* SAPOORUN.

18 P R 1867 Rev.

52. *Succession.*

Held, that the tenure of a hereditary cultivator descended to direct male heirs—or in their absence to collaterals in the male line—provided the latter could trace

OCCUPANCY RIGHTS—*contd.*

their descent to a common ancestor who held the land, and resided in the same village as that in which the land was situated. GOPAL SINGH *v.* JOWAHIR SINGH

1 P R 1868

53. *Succession.*

In a suit by a proprietor for a parcel of land in possession for defendant formerly in the cultivating possession of a deceased hereditary tenant, it was found that defendant was nephew and adopted son of the deceased cultivator, who moreover transferred the holding by deed of gift followed by possession. *Held*, that the transfer was valid, as defendant was a member of the family of deceased, and dependent upon the land. NUTHOO KHAN *v.* SULTAN.

18 P R 1868

54. *Length of occupancy.*

In a suit brought for ejectment of tenants recorded at Settlement 21 years before as tenants-at-will, and resisted on the ground that defendants having been so long in possession, and never having taken out leases, nor paid more than the Government revenue on the land, had acquired occupancy rights, *held*, that if defendants were rightly recorded at Settlement as tenants-at-will, no period of subsequent occupancy could improve their *status*, nor did it signify that they took out no leases from, and paid no rent to, the proprietors. HURRIA *v.* BIKHAREE.

23 P R 1868

55. *Status, how ascertained.*

A decree was given by the Lower Court protecting one of the parties in his cultivation for life, and his heir for 13 years after the death of the former. *Held*, an erroneous decree, as a tenure so limited was unknown to the law. Such a tenure could only rest on custom or contract. RAHMUT KHAN *v.* JEEWA

26 P R 1868

56. *Status to be ascertained by law and custom.*

The rights of an hereditary tenant held to be regulated by the law and custom for the time being applicable to the tenure; and not open to alteration by the Courts on supposed equitable grounds. CHUJJOO *v.* MUTWALLEE.

33 P R 1868

57. *Length of occupancy.*

Plaintiff sued for declaration of right of hereditary cultivation in a parcel of land. It was found that plaintiff had cultivated half the land in question for 40 or 50 years, and that he had succeeded a deceased relative five degrees removed in the cultivation of the other half 20 years ago. *Held*, that whatever defect there might have been in plaintiff's original title to succeed to so distant a relation it had been cured by the length of time which had elapsed since he obtained that title. NUTHA *v.* PREM SINGH

40 P R 1868

58. Although no mere length of occupancy confers, *per se*, a higher *status* on a cultivator correctly recorded at Settlement as a tenant-

OCCUPANCY RIGHTS—*contd.*

at-will; yet length of occupancy should be considered as a matter of evidence, affording a presumption of what the *status* of a cultivator has been from the commencement, and of what it was in fact at time of Settlement. HET RAM *v.* TOORTEE. **42 P R 1868**

59 *Tenants claiming to be proprietors.*
Plaintiffs claimed to be proprietors of certain land. The Court of first instance gave a decree declaring them to be hereditary cultivators only. This order was reversed on appeal on the ground that plaintiffs had sued for proprietary right which they had failed to establish, and that they might bring a separate suit to establish their rights of occupancy. But *held* by the Chief Court, that the question of the status of plaintiffs was before the Court, and failing to prove that they were proprietors they might lawfully fall back on their rights as hereditary cultivators. SHADEE *v.* ARJUN. **55 P R 1868**

60 *Succession.*
The rights of a hereditary tenant who cultivated his holding in common with others descended from the same common ancestor who occupied the holding, *held* to pass on his death, without lineal male heirs, to those who held the land jointly with him. BULUNDA *v.* SOONDUR. **57 P R 1868**

61. *Enhancement of rent.*
If the rent of a hereditary cultivator fixed at Settlement were found as a fact to be erroneous, the Courts had power to correct the error; but if there were no error, the Courts could not, on equitable grounds, decree an enhancement of the rent during the currency of the Settlement. RAM RUTTUN *v.* MOOKH RAM. **60 P R 1868**

62. *Tenants claiming to be proprietors—Status how ascertained.*
(*a*) Plaintiffs, who were recorded at Settlement as hereditary cultivators, sued to be declared proprietors of a portion of land; defendants set up a title as proprietors. Plaintiffs were, during a protracted litigation, successively declared (1) protected cultivators for 10 years, for the latter half of which they were to hold only half the land; (2) proprietors of three-fourths of the land in dispute; (3) cultivators without payment of rent, protected for five years; (4) mortgagors of the land, of which defendants had equity of redemption, plaintiff's occupancy being conterminous with the mortgage. *Held*, by the Chief Court, that as plaintiffs started with the record in favor of their being hereditary cultivators (which record defendants had not contravened) it was not open to the Courts to assign to them a lower status and particularly a right of cultivating occupancy for a term of years not recognised by law or custom.

(*b*) A right of cultivating occupancy for a term of years *held* not to be recognized by law or custom. RAMZANEE *v.* UZEEZ. **102 P R 1868**

OCCUPANCY RIGHTS—*contd.*

63. *Enhancement of rent.*
No tenant is liable to pay higher rent to his landlord for his holding than the rent payable by him in the previous year unless he has consented in writing to pay an increased rent, or a decree for the enhancement of his rent has been obtained against him. GOPAL *v.* PURMESHUREE DASS. **110 P R 1868**

64. *Length of occupancy—plea of.*
In a suit by proprietors to eject certain of their tenants (recorded at last Settlement as tenants-at-will), the latter pleaded long occupancy: the Chief Court, finding that there was nothing to show that defendants had knowledge of the entry in the Settlement record, that they had held the land for many generations without paying any rent, and that they were of the same caste and extraction as plaintiffs—declared them to be entitled by law to a right of hereditary occupancy of their land, and dismissed the suit. LAB SINGH *v.* WUZEERA. **114 P R 1868**

65. *Enhancement of rent—Length of occupancy.*
In a case before the passing of the Tenancy Act, *held*, that the right to enhance rent was not necessarily disposed of by a decision upon the right to evict; the claims were in their nature distinct, and not triable together in the same suit.

Held also, that although by lapse of years a tenant-at-will cannot grow into an hereditary cultivator, the fact of such lapse is most weighty in his favor upon the question whether or not his ancestor was an hereditary cultivator. BULDEO *v.* HAFIZ ALI. **15 P R 1869**

66. *Notice of change of rent in middle of agricultural year.*

Plaintiffs and defendants agreed that the latter should pay a fixed rent in cash for nine years, there being an agreement recorded at Settlement that *batai* should be paid. For the harvest next after the end of the nine years, plaintiffs took the money rates, but for the succeeding harvest sued for *batai.*

Held that, under the circumstances, and without notice of a change of system, though that change might be authorized by law, before the commencement of the agricultural year, the plaintiffs could not claim for the latter half of the agricultural year rents calculated on a different system to that of the previous year. RAM SINGH *v.* SADOOLA. **28 P R 1869**

67. *Length of occupancy.*
Plaintiffs came to the village with the proprietary body; they reclaimed the land from the waste, and occupied it uninterruptedly for several generations: for a long time they paid at only revenue rates, and afterwards, when the proprietors raised the

OCCUPANCY RIGHTS—*contd.*

cultivator's rates, plaintiffs' lands were assessed at a considerably less rate than the land of the non-hereditary cultivators; one of the lambardars accepted a mortgage of 2 bigahs 10 biswas of plaintiffs' land Plaintiffs were *lohars* by caste, and ranked as Kamins, but were Kamins of another village. *Held* that plaintiffs were hereditary cultivators. SOOKHEERAM *v.* URJUN. **58 P R 1869**

68. Plaintiffs sued to oust defendants, on the ground that the latter were tenants-at-will. Defendants were erroneously, as they said, recorded at the Settlement in 1842 as non-hereditary cultivators, but had been in cultivating possession for twenty-five years before that date, and paid at revenue rates. The defendants also alleged that they had reclaimed the land from the waste, but on this point the evidence was not satisfactory either way. The Chief Court, dismissing the plaintiffs' suit, *held* that, when there is an allegation that an entry in the Settlement record is wrong, in trying that question nothing can be argued from the existence of the entry; that the issue as to possession should not be determined by the entry in the Settlement record, but the fact of possession should be first enquired into, from which the correctness or otherwise of the record may be arrived at; that where there has been lengthened possession after the Settlement, and payment at revenue rates, a presumption may arise and give effect to a possession anterior to the Settlement; and that the defendants' *status* at the Settlement of 1842 was to be determined on a consideration of the length and character of their possession both before and after the Settlement. SAWUNT *v.* AMAR SINGH. **70 P R 1869**

69. *Status, how ascertained.*

Where the tenure was shown to be that of an hereditary cultivator, *held*, that the tenant's rights must be ascertained by the law and custom applicable to that tenure: the Courts had no power to create a *status* unknown to the law. KHUZANA *v.* RUTNA. **3 P R 1870 Rev.**

70. *Continuous possession—Tenancy Act, section 6.*

Actual continuous possession is not required under section 6 of the Tenancy Act in order to raise a presumption of a right of occupancy:—if the tenant temporarily absents himself, but arranges for cultivation or harvests during his absence, he may still be deemed to be in occupation of the land. KANH SINGH *v.* WUZEERA. **20 P R 1871**

71. *Admission—Evidence.*
Where the lower Courts decided upon the entry in the Settlement record and an admission made by the father of the plaintiff, that the plaintiff was a non-hereditary cultivator, the Chief Court remanded the case for decision under section 351, Civil Proce-

dure Code, holding that the entry and the admission were not conclusive evidence of plaintiff's status. AZIM *v.* MANE KHAN.
25 P R 1871

72. *Continuous possession—Tenancy Act, section* 6.
Defendant (hereditary cultivator) relinquished his land for one year. On his return, the proprietor sued to eject him. The lower Court dismissed the suit on the ground that under Act XIV of 1859 defendant had the right of re-entry for the term of twelve years from the date of relinquishment. The Chief Court decreed plaintiff's claim, holding that continuous occupation was, under the Tenancy Act, one of the essential ingredients of a right of occupancy. ALI MAHOMED *v.* GAMOO. **38 P R 1871**

73. *Continuous possession.*
A tenant with rights of occupancy is presumed to lose them if he gives the right of cultivation to the proprietor. JHANDA *v.* KHUDAYAR. **1 P R 1871 Rev.**

74. *Continuous possession.*
Held, that cultivating rights are not preserved when unexercised for a series of years by reason of the minority of the son of the deceased proprietor. RUTTUN SINGH *v.* EASHER SINGH. **5 P R 1872**

75. *Continuous occupation—Presumption from, long.*
The first Settlement of 1847 showed the uncle of the plaintiffs recorded as hereditary cultivator, and that he had then been in possession fifteen years. From that time till plaintiffs were dispossessed by defendants (Sambat 1927), those whom plaintiffs represented had been in possession and paid only the Government demand. There was nothing to show how the occupancy of plaintiff's uncle commenced. *Held*, that the plaintiffs were entitled to rights of occupancy under the Tenancy Act. LAKH RAM *v.* SUDDA RAM. **13 P R 1872**

76. *Continuous possession.*
Held, by the Financial Commissioner, that to constitute occupancy rights continuous possession was necessary. HAKIM SINGH *v.* KARIM BUKSH. **4 P R 1872 Rev.**

77. *Revival of right.*
The right of occupancy cannot be revived after being given up for a certain consideration in a case before a Civil Court. SAID MUHAMMAD *v.* SAHIBZADA.
5 P R 1872 Rev.

78. *Continuous occupation.*
One year's absence does not bar the claim of a hereditary cultivator to a share in the holding, which does not intermediately lapse to the proprietor. The one year rule refers only to the relation between proprietor and tenant, and not to the case of a tenant suing his co-tenant for the share of the former. In such case, dispossession or absence for 12

years is required to bar the tenant's claim. ZULFI *v.* MILKI. **9 P R 1872 Rev**

79. *Continuous possession—Tenancy Act, section* 6.
Plaintiff was recorded a tenant with right of occupancy at the first Settlement of the Lahore district, but at the revised Settlement being recorded tenant-at-will, he relinquished possession of his land in 1867. In 1869, under the operation of the Punjab Tenancy Act, the records of the second Settlement came under revision, and plaintiff was restored to his original status of hereditary cultivator; he accordingly, in 1872, brought the present suit for possession. *Held*, that the plaintiff had not voluntarily abandoned his occupancy rights in 1867, and that the suit might be brought within 12 years from the date of his relinquishing possession. ILAHI BUKSH *v.* AKBUR. **46 P R 1873**

80. *Mortgage of proprietary rights as distinct from cultivating rights.*
Held, by BOULNOIS and THORNTON, JJ. (MELVILL, J., dissenting) that when a proprietor effects a usufructuary mortgage of his *khudkasht* lands, he is not to be presumed, in the absence of an express stipulation to the contrary, to have reserved to himself the right of cultivating the land. NARAIN SINGH *v.* DYA RAM. **44 P R 1874**

81. *Rights of occupancy acquired under* wajib-ul-urz—*Alteration of* wajib-ul-urz *at subsequent settlement—Effect of, on cultivator's rights.*
B. S. in Sambat 1904 obtained from plaintiff the right of hereditary cultivation in certain land. Upon the death of B. S. in Sambat 1916, his widow occupied; upon her death, in 1872, defendants (nephews of B. S.) took possession. Plaintiffs sued to eject defendants, who relied upon the *wajib-ul-urz* of a previous Settlement. Plaintiffs admitted that the terms of that *wajib-ul-urz* would admit the defendants to succeed to B. S., but contended that at the last Settlement a fresh *wajib-ul-urz* had been prepared which differed from the former one, and gave nephews no such right as that claimed. *Held*, that the second *wajib-ul-urz* did not take away rights acquired under the first. HARRI SINGH *v.* RANJIT SINGH. **56 P R 1874**

82. *Contract—Right of occupancy created by contract—Implied condition that occupant should reside in village—Non-performance of condition.*
Defendant, in 1862, by instrument in writing conferred upon plaintiff and his brother rights of occupancy. The instrument commenced thus: "We, tenants, live in "mouzah Man Singwala, and have been "located there by Sodhi Man Singh, who "brought us from other *ilaquas*. Now, by "consent," &c. and provided, *inter alia*, that "if in the house of a tenant inhabiting the "village there be solemnized a marriage "of a daughter, a fee is to be paid to the

proprietor," and that "on the occasion of "a marriage of a son or daughter in the "house of a proprietor, the inhabitants are "to give marriage presents." *Held*, that the contract impliedly bound both the plaintiff and his brother to reside in the village, and did not permit them, or either of them, to reside elsewhere, even though the cultivation were provided for: and that upon failure of either of them to reside in the village, they lost their rights of occupancy. SODHI MAN SINGH *v.* RURA. **78 P R 1874**

83. *Presumption from long occupation.*
When occupation is traced a long way back, the presumption is that the then occupant got the land from his father, unless it is shown by the opposite side that he got it in some other way. It is the most natural way of getting the occupation of land; and the presumption is not that the last holder of whom living witnesses can speak was the first of his line. BALLHU *v.* CHARAT SINGH.
18 P R 1876

84. *Continuous occupation.*
An hereditary tenant is not entitled to remain out of occupation for twelve years and then claim his occupancy rights. If once occupation ceases or the proprietor is let into possession, the breach operates against the tenant, whether the tenant's discontinuance of occupation be for less than a year or more; but if the tenant does not occupy, but the cultivation is provided for without interruption, his rights are not affected. SHIAN SINGH *v.* KHUSHIA. **22 P R 1876**

85. *Relinquishment.*
At the first Settlement S. D. was recorded hereditary cultivator of 23 ghumaos; he held the land continuously until the second Settlement, when he was recorded as a tenant protected for 3 years. At the end of 3 years the proprietors took possession. In 1870, when the entries were revised, it was recorded that S. D. was dead and that only 3 ghumaos of the land remained in the cultivation of his sons (of whom plaintiff was one). The sons of S. D. then accepted and from that time occupied the ghumaos, and the proprietors remained in possession of 20 ghumaos. In 1875, plaintiff sued to establish his right of occupancy in the remaining 20 ghumaos. *Held*, that plaintiff had relinquished his claim to the land sued for by taking possession of 3 ghumaos only, and not making an earlier claim to the remainder. PREMA *v.* DASUNDHI.
58 P R 1876

86. *Continuous occupation.*
Any voluntary abandonment of cultivation by a tenant with rights of occupancy, which entails on the proprietor the necessity of making new arrangements and leads to the introduction of other cultivators, destroys the right of occupation. ABDULLAH *v.* CHIRAGH.
78 P R 1876

87. *Ouster.*
The Law does not compel a tenant with right of occupancy who has been involun-

tarily dispossessed or ejected, to sue for possession within one year of the ouster: he has ordinarily 12 years within which to bring his suit. KHATIL *v.* SHER ZAMAN.

80 P R 1876

88. *Relinquishment.*

The plaintiffs, who were in possession as tenants with occupancy rights, left the land in the year 1866; in 1865 they were recorded tenants-at-will; in 1874 they sued for occupancy rights. The lower Appellate Court, considering that plaintiffs had left their land thinking it would be useless to contend against the proprietors, who had also in 1866 mortgaged the land to an outsider, held that plaintiffs had not voluntarily abandoned their rights, and gave them a decree. *Held*, by BOULNOIS and LINDSAY, JJ. (CAMPBELL, J. dissenting) that plaintiffs had not voluntarily relinquished their land, and were entitled to the rights sued for. CHOGATHA *v.* JIWAN SINGH.

103 P R 1876

89. *Tenancy Act (XXVIII of 1868), section 5—Admission made by tenant at a Settlement prior to Act—Effect of, as against descendant of such tenant.*

An admission made and recorded at a Settlement prior in date to the Tenancy Act, that a person was a tenant-at will is not necessarily a bar to a suit brought by a descendant of the person making the admission in order to establish a right of occupancy under section 5 of the Act. NIHALU *v.* MEHTAB KHAN. **2 P R 1879**

90. *Relinquishment—Minors.*

Two brothers, P. and A., cultivated a holding of 16 bighas 5 biswas of land as hereditary cultivators jointly. A died leaving a widow, who was recorded joint hereditary cultivator with P. In 1276 Fasli P. died, leaving two sons, I. and F., who were at the time minors, and who by reason of their inability to carry on the cultivation voluntarily relinquished to the proprietors all but 4 bighas 9 biswas of land. In a suit by I. and F. to recover a portion of the land so relinquished, *held*, that they were not entitled to recover, as on relinquishmeut of the land their occupancy rights ceased to exist.

The rule laid down in *Said Muhammed* v. *Sahib Zada* (No. 5 *P. R.* 1872,) that a right of occupancy is not preserved when unexercised for a series of years by reason of the minority of the hereditary cultivator, followed. IDU *v.* NIHAL SINGH. **12 P R 1879**

91. *Abandonment—Recovery of land from which tenant has been illegally ejected, suit for—Limitation—Delay in bringing suit.*

Held, that there is no rule of law that a tenant with rights of occupancy, who has been illegally dispossessed by his landlord, is bound to sue forthwith for recovery of possession, and that if he does not do so and his landlord makes arrangements for the cultivation, the tenant's right of occupancy is extinguished.

Held, further, following *Khatil* v. *Sher Zaman* (No. 80 *P. R.* 1876), that a tenant with rights of occupancy, who has been forcibly ejected, may sue within twelve years for recovery of possession of the land of which he has been dispossessed.

A tenant with rights of occupancy may by his own free will extinguish his right; and abandonment of the land even for one year would be evidence from which an intention to give up his right might be inferred. But mere delay in suing to recover land from which a tenant has been unlawfully ejected does not necessarily lead to the inference that he has relinquished his right of occupancy. JAMAL-UD-DIN *v.* SADULLA. **54 P R 1879**

92. *Joint holding—Survivorship.*

Where the *mourusi* holding in dispute was found to have been acquired jointly by S. and K. two out of the four sons of one D. who remained associated in the cultivation for their lifetime and were succeeded by their sons, U., the sou of S., and the present defendants, the sons of K., who contiuued to cultivate jointly; *Held*, in a suit brought on the death of U., by the sons of the two disassociated brothers to establish their right to participate in U.'s share of the holding that the plaintiffs' suit must be dismissed as the interest of U. passed on his death by survivorship to the sons of K. (the defendant), and that plaintiffs had no claim to succeed to such interest.

Held, further, that in reality the hereditary tenant of the disputed holding was not dead, so as to open out a succession; as of the body of persons constituting the tenant only one was dead, and the tenant survived in his remaining three (the defendants). PREM SINGH *v.* BHAGWANA. **4 P R 1880**

93. *Right of proprietors to share in produce of garden planted in mourusi holding—Custom.*

Found, that there is no established custom in Mauza Buterla in the Umballa district, by which an hereditary tenant, paying rent in cash, who plants a garden in his holding, becomes liable, in the absence of an agreement to that effect, to share the produce with the proprietors. MASSANIA *v.* NABI BUKHSH.

14 P R 1880

94. *Compromise at Settlement—Agreement—Extinction of right.*

Plaintiff sued to eject the defendants as tenants-at-will of certain land situated in Mauza Rure-Asal, Tahsil Taran Taran, in Amritsar district. At the first Settlement defendants had been recorded occupancy tenant, but at the revised Settlement in 1865, it was recorded that the tenants had agreed to give up their land on receiving compensation for the same. The evidence failed to show that the defendants ever actually gave up their land, or accepted the alleged compensation.

Held, that no agreement or compromise was proved sufficient to extinguish defendants' right. KIRPA SINGH *v.* KAHN SINGH.

67 P R 1880

95. *Circular No. 17 of 1856 N. W. P. Sadr Board of Revenue—Twelve years' rule—Construction of Circular—Act X of 1859.*

In a suit for ejectment of the defendants, as non-hereditary tenants, the lower Courts, finding that, when the land in suit (which was situated in the Delhi District) was transferred from the N. W. P. to the Punjab in 1857, the defendants had been holding for over 12 years, considered that they had therefore acquired occupancy rights under Circular No. 17 of 1856 of the Sadr Board of Revenue (N. W. P.), and therefore could not be ejected.

Held that, on the proper construction of the above circular, an uninterrupted occupancy of 12 years carried with it no permanent right of occupancy. The circular, which was an exposition of the order of the Government of the N. W. P. in Notification No. 1678 A. of September 17th, 1856, which immediately preceded it, merely protected a cultivator who had had possession for 12 years continuously from summary ejectment by the order of a Revenue Court, but left the question of his title to a permanent right of occupancy to be determined by the ordinary Civil Courts in accordance with local custom, until the enactment of Act X of 1859. That Act, though it gave fixity of tenure for some classes of cases to cultivators who had had 12 years' possession, was never in force in the Delhi district, being enacted after the transfer of that district to the Punjab. *Balli Ram* v. *Pal Ram* (C. A. No. 290 of 1877) cited. JAIMAL *v.* KHUBI. **39 P R 1881**

96. *Landlord and tenant—Right of proprietor to cut trees on land of tenant—Custom.*

A proprietor *held* not to be entitled, in the absence of reliable evidence as to his right either by custom or otherwise, to enter upon the land in the occupancy of a hereditary tenant, and cut and sell the trees growing thereon without the said tenant's consent. *Nikka* v. *Lakha* (No. 95 *P. R.* 1867), *Kalian Das* v. *Buta* (No. 61 *P. R.* 1873), and *Jani* v. *Ghulam Farid Khan* (No. 4 *P. R.* 1875), cited and followed. MUSSAMMAT GUR DEVI *v.* SONDHA. **61 P R 1881**

97. *Tenancy Act (XXVIII of 1868), sections 5, 6—Suit to establish occupancy rights under section 5—Confession of judgment by some of the defendants—Plaintiff's right to a decree against the confessing defendants.*

Where some of the defendants admitted the truth of the facts upon which the plaintiff relied, as establishing his title to be declared an occupancy tenant under section 5, clause 3 of the Tenancy Act, in place of being recorded under section 6, whereupon it was contended that plaintiff, who had failed to establish that his prodecessors in title settled in the village with the founders, was entitled to the declaration he sought at least as against the defendant proprietors who had confessed judgment, *held*, that this contention could not be admitted, as the right of the plantiff in his holding was one and indivisible

and he could not be an occupancy tenant under section 5 *quoad* some of the proprietors, and a tenant under section 6 *quoad* the others. BHAGWAN SINGH *v.* ALLADAD KHAN.

84 P R 1881

98. *Right of hereditary tenants to take grass from preserve enclosed by proprietors*—Wajib-ul-arz—*Right of tenants to graze their cattle and take grass in the* ban banjar—*Right to share with proprietors in produce of the preserve when sufficient grazing land remained in the unenclosed portions of the* ban banjar.

In a suit by a portion of the proprietary body of the village, disputing the right of the hereditary cultivators to cut grass from a plot of land formed into a grass preserve by the proprietors out of the *ban banjar* of the village, and for damages for loss of profits they would otherwise have made from it, it appeared from the Administration paper that the whole *ban banjar* was owned as *shamilat deh* by the proprietors, but that the cattle owners of the village were entitled to graze their cattle thereon without distinction of proprietors and non-proprietors, the proprietary tenants also being entitled to take grass, straw, and wood in the *ban banjar* but not to share in the fees paid by outsiders who casually grazed on these lands. It was found as a fact that there was sufficient grazing for both proprietors and non-proprietary tenants in the portion of the *ban banjar* which was not enclosed and preserved.

Held, that the plaintiffs were entitled to succeed in their suit, the defendants having failed to show that when certain land, part of what was potentially common grazing ground, had in fact been excluded from the actual common grazing ground, leaving a residue sufficient for grazing all the village cattle, and when the produce of the reserved tract had been sold for profit, they, as hereditary tenants, were by custom entitled to share in the profit, which *primâ facie* would belong to the proprietors by reason of their proprietary right. NAGINA *v.* BAGGU. **100 P R 1881**

99 *Presumption from long occupation—Tenancy Act* (*XXVIII of* 1868), *section* 5, *clause* 1, *and section* 6.

In a suit for enhancement of rent, the defendant, who was recorded as holding occupancy rights under section 6 of the Tenancy Act, pleaded that he was really entitled to occupancy rights under section 5, clause 1. As he could not say when his grandfather died, it being apparently long before his memory, though he was 50 years of age, the lower Appellate Court held that, though he and his father appeared to have held rights of occupancy, paying only the land revenue and cesses, the nature of his grandfather's tenure could not be ascertained, and as the plaintiffs denied that defendant's grandfather had possession of the land, the claim to occupancy rights under section 5, clause 1, must fail.

Held, that the lower Appellate Court had not properly disposed of the appeal to his Court on the above question, as if the defendant's father was recorded as occupancy tenant in 1842, and there was no evidence forthcoming from which it might fairly be concluded that he was the first tenant, there might be a presumption that he succeeded his father in the holding, and that his father, unless the contrary could be shown, held the land on similar terms, and if the defendant's grandfather died before living memory, and his father held the land as long as aged residents of the village could remember, the above presumption would be very strong. If, again, it might fairly be inferred from the evidence that the defendant's ancestor settled with the founders of the village, he might be entitled to occupancy rights under another clause of section 5. *Ballhu* v. *Charat Singh* (No. 18 *P. R.* 1876) followed. PALTU *v.* MUHAMMAD HUSAIN. **62 P R 1882**

Cited in MATTAN *v.* LAKHA.

90 P R 1883

100. *Custom—Mauza Kukri Kalan, Firozpur district—Rights of tenants paying at owners' rates and in possession before Settlement.*

Plaintiffs, washermen by caste, and residents of Mauza Kukri Kalan in the Moga tahsil of the Firozpur district, sued the village owners to have it declared that they had been recorded as tenants without rights of occupancy at Settlement by mistake, and to have their rights of occupancy declared for the future. It appeared that the plaintiffs had been in possession for four years before the Settlement and had always paid at the same rates as the proprietors.

Held, that it did not appear that, under the rule acted upon at Settlement in Kukri Kalan and its vicinity, tenants in the plaintiffs' position would have been held to be entitled to be recorded as having a right of occupancy, or that any mistake was made in recording the plaintiffs, like others in a similar position, as tenants-at-will. LAL SINGH *v.* SOBHA SINGH **92 P R 1882**

101. *Joint tenants—Survivorship.*

Held, following the previous rulings of the Chief Court, that on the death of a joint occupancy tenant, his share of the occupancy tenure passes by survivorship to the surviving joint-tenant, and that the fact of the name of the widow of the deceased tenant being associated with that of the surviving joint-tenant when mutation was effected on the death of the said deceased tenant, would not entitle the proprietor to come in and claim a resumption of the deceased's share. *Bulunda* v. *Soondur* (No. 57 *P. R.* 1868), *Veer Singh* v. *Mukkun* (No. 36 *P. R.* 1870), and *Prem Singh* v. *Bhagwana* (No. 4 *P. R.* 1880), cited. IMAM DIN *v.* MUSSAMMAT MAHABO **180 P R 1882**

102. Onus probandi—*Presumption of hereditary acquisition arising from long possession for two generations.*

In a suit for occupancy rights by the nephews of one A. who claimed to succeed on the ground that the land in suit was acquired by their grandfather, the common ancestor of A. and the plaintiff's father, M., it appeared from the entries in the Settlement papers that the said land had been in A.'s family for 60 years at the date of his widow's death in 1878, and had been occupied successively by A., his son, and lastly, by his widow, that is to say, for two generations excluding the widow. It further appeared that A.'s father was alive when the land was first acquired.

Held, under the above circumstances, that as the facts connected with the acquisition of the land had passed beyond living memory, a fair presumption arose that the person, A., who was recorded as in possession for 40 years in 1859, acquired it from his father, and that the *onus* was therefore on the defendant to rebut the presumption arising in plaintiff's favour from the facts above mentioned. *Ballhu* v. *Charat Singh* (No. 18 *P. R.* 1876,) followed. HYAT KHAN *v.* KARM **187 P R 1882**

103. *Procedure—Suit for proprietary rights—Evidence disclosing title to occupancy right—Duty of Court to adjudicate on question of occupancy rights.*

Held, by the Financial Commissioner, that in suits to establish proprietary rights in immoveable property, the Courts should always consider that the claim to proprietary title is a claim to a permanent title or *status* of some kind in the land, and includes a claim to occupancy rights : and if the evidence shows that the plaintiff may have a good title to occupancy rights, though not to the proprietary right, the Courts should go into the question and decide it. NIHAL *v.* HUSHIARA.

4 P R 1882 Rev.

104. *Hereditary tenant's right to trees growing on his land—Burden of proof.*

It cannot be affirmed that as a general rule trees growing on land occupied by a hereditary tenant belong absolutely to the tenant : *primâ facie* the rule is the other way, *viz.*, that the trees belong to the person who is the proprietor of the land on which the trees grow, and the burden of proving that the trees belong to the tenant, or that the tenant has an interest in the trees, rests on the tenant. *Mussammat Gurdevi* v. *Sondha* (No. 61 *P. R.* 1881) cited. SHERU *v.* CHARTA.

112 P R 1883

105. *Presumption from long occupation—Tenancy Act* (*XXVIII of* 1868), *section* 5, *clause* 1 *and section* 6.

Held, that though in a suit to establish occupancy rights under section 5, clause 1 of the Tenancy Act, where the plaintiff is a very old man, and has been recorded *maurusi*, and his possession has extended beyond the memory of living man, a presumption may arise that the plaintiff acquired the land from his father, still it would not be correct to carry the pre-

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sumption farther back, and hold that the father got the land from the grandfather. *Ballhu* v. *Charat Singh* (No. 18 *P. R.* 1876), and *Paltu* v. *Muhammad Husain* (No. 62 *P. R.* 1882), cited. GIRDHARI *v.* PIRTHI SINGH **154 P R 1883**

106. *Tenancy Act (XXVIII of 1868), section 8—Grounds for decreeing occupancy rights.*

In a suit for occupancy rights, the plaintiffs must be taken to admit that they are tenants of the defendants and have to show that they have acquired a right of occupancy. Such right cannot be decreed merely because the Court thinks that the plaintiffs' true position is that of proprietors. MANSUKH *v.* HAR PARSHAD. **56 P R 1884**

107. *Suit to contest notice of ejectment—Claim to proprietary right—Power to decide question of occupancy right.*

In a suit to contest a notice of ejectment, the plaintiff, while laying claim to the *status* of proprietor, prayed that his cultivating possession might not be disturbed.

Held, that there was no reason why the claim should not be treated as one both for ownership and occupancy rights, and that the plaintiff was entitled to a decision on both questions. *Shadee* v. *Arjun* (No. 55 *P. R.* 1868) and *Abbhe* v. *Muhammad* (No. 90 *P. R.* 1882), referred to. SRI RAM *v.* RAMBHAJ. **105 P R 1884**

108. *Abandonment by occupancy tenant without arranging for cultivation—Forfeiture of rights—Abandonment by minor.*

Plaintiffs, the son and brothers of one A. and the recorded occupancy tenants of the disputed land, of which the defendant was proprietor, sued to recover their occupancy tenure. The lower Courts found that 14 years ago A. went away taking his two brothers, who were then minors, with him, without providing for the cultivation and for the continuance of the occupancy right.

Held, that A.'s rights were lost, as an occupancy tenure absolutely determines, if the tenant voluntarily abandons it for a single harvest without making arrangements for the cultivation.

Held further, that A. had destroyed his brothers' rights as well as his own, as when an occupancy holding devolves on a minor, the minor's rights will be absolutely destroyed, even while he is still a minor, unless a *de jure* or *de facto* guardian comes forward and cultivates for him or arranges for the cultivation. JUMNA *v.* AHMAD ALI KHAN **156 P R 1884**

109. *N. W. P. Board of Revenue's Circular No. 17 of 1856—Notification No. 1678 of September 1856—Protection of cultivator who had had continuous possession for 12 years—Summary ejectment.*

In a suit to contest a notice of ejectment, it was contended (on appeal to the Chief Court) on behalf of the plaintiff that as the land in dispute was in the

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Delhi District, the plaintiff was entitled to occupancy rights under the provisions of the N. W. P. Board of Revenue's Circular No. 17 of 1856, by reason of his occupation for 12 years.

Held, that this contention could not prevail, as the effect of Notification No. 1678 of September 1856, which was explained in the circular quoted, was merely to protect a cultivator who had had possession for 12 years continuously from summary ejectment by order of the Revenue Court. *Jaimal* v. *Khabi* (No. 39 *P R.* 1881), followed. HANS RAIN *v.* HAR CHAND. **18 P R 1885**

110. *Custom—Firozpur District—Right of* khana-damad *to succeed to his father-in-law's occupancy rights.*

In a suit the parties to which were residents of *Mauza* Dodha in the Moga *tahsil* of the Firozpur District, *held*, that no custom was proved to have been in force before the introduction of the Tenancy Act, whereby a resident son-in-law was entitled to succeed to the occupancy rights of his father-in-law. *Ranjha* v. *Chuhar* (No. 47 *P. R.* 1877), *Jowahir Singh* v. *Asa* (No. 64 *P. R.* 1877), and *Dad* v. *Bagh Singh* (No. 34 *P. R.* 1883, F. B.), referred to. BISHEN SINGH *v.* GULABA. **44 P R 1885**

111. *Adhlapidar—Agreement—Custom.*

In a suit to establish occupancy rights in half a well, it appeared that the well in suit was sunk under the *adhlapi* custom, by which the sinker becomes owner of half the well and cultivator of the other half, the proprietary right in which belongs to the original owner of the land. The plaintiff's claim related to the latter or proprietor's half, of which it appeared he had held possession for 50 years, during which period he had cleared the waste, and otherwise incurred charges for the improvement of the land.

Held, that the lower Courts had rightly awarded the plaintiff rights of occupancy.

Per ROE, J.—Because in the absence of all evidence of a special agreement, plaintiff could not be ousted from the proprietor's half of the well, unless the proprietor required it for his own use, which was not even alleged in the present case.

Per SMYTH, J.—Because there was sufficient evidence to support the finding of the lower Appellate Court, that by custom an *adhlapidar* who incurs charges for improvements similar to those effected by the plaintiff is entitled to occupancy rights. SHER BAKHSH *v.* KHUDA BAKHSH. **110 P R 1885**

112. *Custom of Delhi District—Twelve years' continuous occupation.*

Found that no well recognized and established custom existed in the northern part of the Delhi District when it was annexed to the Punjab, by which a twelve

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years' continuous cultivation *ipso facto* created an occupancy right. *Jaimal* v. *Khubi* (No. 39 *P. R.* 1881) referred to. NAHIR ALI KHAN *v.* KALU. **12 P R 1886**

113. *Suit to disprove defendant's right of occupancy in part of his holding—Variance between areas recorded at old and new Settlement—Presumption to be drawn from such discrepancy—Proper method of dealing with cases based on such discrepancy in the recorded areas.*

In a suit by plaintiff, as proprietor, to obtain a decree declaring that defendant's right of occupancy extended only to 10 out of 19 *kanals*, his present actual holding, it appeared that at the Regular Settlement defendant was recorded as hereditary tenant of certain stated fields, the area of which by the measurements then made was reckoned to be 10 *kanals* and was so recorded, but by the measurements of the revised Settlement, the area of the defendant's holding was found to be 19 *kanals*. Neither the plaint nor any documents attached to it defined the particular land, area 9 *kanals*, in respect of which the suit was brought. The first Court, after inspecting the land and carefully comparing the boundaries as shown in the former and new measurement papers, came to the conclusion that of the whole holding (area 19 *kanals*) described in the plaint, certain specified portions aggregating by the new measurements $14\frac{5}{20}$ *kanals* constituted the holding of which at the Regular Settlement defendant was recorded as hereditary cultivator, and that certain other pieces of land aggregating by the new measurements $4\frac{15}{20}$ *kanals* were not included in defendant's holding at the time of Settlement, but had been subsequently reclaimed from waste, and decreed accordingly. Both parties appealed to the Commissioner, who decided that defendant was at the Regular Settlement maintained in the hereditary occupancy of 10 *kanals* only, that he could not claim any benefit on the ground of erroneous measurement, and that any excess now found in his possession could only be deemed to be held by him as tenant-at-will.

Held, by the 2nd Financial Commissioner, that the decree of the Commissioner, must be reversed, and that of the first Court, whose method of dealing with the case was the proper one, be restored.

The entry in the record of the Regular Settlement in defendant's favour must be understood primarily as evidencing his right to hold certain distinct fields, the further information shown in the record, stating the area of those fields, being merely a descriptive addition to this primary and substantive entry. In cases in which the previous measurement record is known to be perfect and accurate, the fact that a defendant entitled under that record is found to hold a larger area than that shown against his name in the record

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may, when taken in connection with other facts, be held to support a contention that a plaintiff or defendant has since the date of the record encroached on adjacent land. But where the measurements made long ago are known to have been often rough and inaccurate, a comparison of the areas given by the original measurements with those ascertained by later and more accurate surveys is an unsafe basis on which to found either a claim or a decision. BAHADUR *v.* SHER. **5 P R 1887 Rev.**

114. *Landlord and tenant—Landlord alleging encroachment by tenant—Variance between area entered in Settlement Record and area actually possessed—Effect of entry in Settlement Record.*

In a suit by plaintiff based on the allegation that defendants had made encroachments and thus added to the land which they originally held as hereditary tenants, the defendants replied that they had made no encroachments, that they held the very same fields as before, that the Settlement measurements were wrong and that the fields really measured 7 *ghomaos* 6 *kanals* 9 *marlas*, and not 5 *ghomaos* 4 *kanals* as entered in the Settlement Record.

Held, that the case must be decided in accordance with the principle laid down in *Bahadur* v. *Sher* (No. 5 *P. R.* 1887 Rev.): that defendants were entitled to the fields or land which they actually held at the time when the Settlement entry was made, and that if the extent of those fields was erroneously entered in the Settlement Record the misdescription would not deprive the defendants of their rights. DULLA *v.* MUSSAMMAT GHULAM BIBI.

5 P R 1888 Rev.

115. *Tenants' right to erect buildings on arable land without landlord's consent—Injury to landlord.*

A suit by a landlord claiming the removal of a walled enclosure and a shed for cattle erected by certain occupancy tenants on the arable land in their possession, dismissed on the ground that the tenants could not be said by reason of such erection to have altered the nature of their holding from arable to building land, the buildings in question being closely connected with the purposes of agriculture and therefore not constituting an appropriation of the land, which rendered it unfit for the purposes for which it was presumably made over to agriculturist tenants; nor could it be said (at least in a case like the present, where the tenants paid in cash and not in kind) that the landlord would suffer any appreciable injury from the act of the tenants. DASWANDHI *v.* GHULAM. **122 P R 1888**

116. *Suit by landlord to enforce clause in* Wajib-ul-arz *providing for forfeiture of occupancy tenure by reason of alienation by tenant—Power to enforce such provision—Delay in suing—Long acquiescence in mutual disregard of the provision.*

OCCUPANCY RIGHTS—*contd.*

Plaintiffs sued to have it declared that the defendants had forfeited their rights as occupancy tenants by reason of their having leased the land appertaining to their holding to a third party for the manufacture of saltpetre for nine years, and by allowing him to retain possession of the land for over two years which, under the terms of the *Wajib-ul-arz*, caused a forfeiture of the defendant's estate. It appeared that the said lease was executed in 1877, and that the present suit was instituted in 1882. It further appeared that the defendants were Brahmin Pandits by profession whose position in the village was very different to that of the rest of the occupancy tenants, the latter all paying a varying rate of rent in kind, whereas the defendants paid a fixed cash rate. It also appeared that with respect to the defendants and their immediate predecessors in title the conditions of the *Wajib-ul-arz*, now sought to be strictly enforced, had been uniformly treated during a long course of years, both prior to and subsequent to the regular Settlement as a dead letter, as despite the clause against alienation the defendants and their predecessors in title had never tilled the land in person, and had not only employed agricultural labour for that purpose, but at least on two occasions had allowed the land to remain with their sub-lessees for three or four years, respectively, without the landlords attempting to assert that this cond t on their part was unauthorized, or that 'caused a forfeiture of their estate.

Held, that under the above circumstances, having regard both to the fact that the clause which the plaintiffs sought to enforce had been treated by the parties as a dead letter, so far as the defendants were concerned and to the great delay which the plaintiffs had allowed to occur before bringing their suit, the latter could not claim to enforce a forfeiture of the *status* of occupancy tenants enjoyed by the defendants. SUKHDEO *v.* ABDUL RAHMAN.

6 P R 1889

117. *Tenancy Act, XXVIII of* 1868, *section* 8—*Long possession—Mortgage by tenant—Acquiescence by landlord.*

The lower Courts decreed the claim to occupancy rights under section 8, on the ground of long occupation and of a mortgage of his holding by the tenant which was not objected to by the landlord. *Held*, that these grounds were insufficient to confer occupancy rights under section 8. UDDAM SINGH *v.* NABIA. **96 P R 1889**

118. *Occupancy tenants—Continuous cultivation—Discontinuance by one—Lapse.*

The principle, that for the continued existence of an occupancy right, it is essential that the land be continuously occupied by the tenant or his agent, and that if it is not, the right becomes extinct, applies only between landlord and tenant.

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When a joint tenant sues for possession of his share of the holding and is met by the plea that he had lost his right by reason of discontinuance of cultivation, the entire holding being cultivated meanwhile by the defendant, *held*, that as the occupancy right had been maintained as against the landlord, the plea did not bar the claim which was by one joint owner against another for enjoyment of joint right.

No. 156 *P. R.* 1884, No. 12 *P. R.* 1879, No. 5 *P. R.* 1872, distinguished. KARM DIN *v.* JIWA. **111 P R 1889**

119. *Tenancy Act (XXVIII of* 1868)—*Occupancy rights in* shamilat—*Proprietor—Agreement.*

Though a proprietor cannot acquire occupancy right in *shamilat* land under the provisions of the Tenancy Act, there is nothing to prevent his acquiring such rights by agreement entered at Settlement which will on his death pass to his heirs. VIR SINGH *v.* HIRA SINGH **155 P R 1889**

120. *Succession to occupancy right—* Wajib-ul-arz—*Construction—Act XXVIII of* 1868, *sections* 2, 36.

In a case where the *Wajib-ul-arz* provided that when an occupancy tenant dies leaving no sons, his holding reverts to the proprietors.

Held, that, in the absence of clear words of exclusion, the document could not be construed as excluding male collaterals descended from the same ancestor who was himself possession of the land. CHANGA *v.* NABI BAKHSH. **145 P R 1890**

121. *Succession to occupancy rights—Custom—*Wajib-ul-arz—*Abrogation by provision in latter Settlement Record—Punjab Tenancy Act,* 1887, *section* 50.

A suit by the collateral heirs of a deceased occupancy tenant to recover possession of his holding from the landlord on the ground of inheritance is quite distinct from a suit based on wrongful dispossession or ejectment such as is covered by section 50 of the Tenancy Act, and is cognizable by a Civil Court.

Where the *Wajib-ul-arz* of the old Settlement provided for succession of collaterals to an occupancy tenant, while that for the new Settlement made no similar provision, but merely declared that occupancy tenants will be dealt with according to law. *Held*, that a suit brought after the new *Wajib-ul-arz* had come into force must be decided according to it, and not according to the superseded document. WAZIRA *v.* HARJALU.

160 P R 1890

122. *Occupancy rights—Change in law—Punjab Tenancy Act,* 1887, *section* 5 (1) (*c*).

The new Tenancy Act confers the *status* of an occupancy tenant upon the persons (as also upon his representative) who was settled by the founder of the village as a cultivator therein. The old Tenancy Act conferred su *status* on the representative only. NUR-UL-LA *v.* SHARIF MIAN. **7 P R 1890 Re**

OCCUPANCY RIGHTS—*contd.*

123. *Suit for declaration of occupancy rights—Determination of compensation—Punjab Tenancy Act,* 1887, *sections* 45, 70.

Held, that the question of compensation should not be determined in a suit to establish occupancy rights brought under section 77 (3) (*a*) independently of section 45 of the Tenancy Act, no notice of ejectment having previously been served. FATTU *v.* MAHANT SHANKAR GIR. **9 P R 1890 Rev.**

124. *Occupancy rights—Administrative proceeding*—Res judica.

By an administrative proceeding in 1863, the object of which was to determine whether the tenants of the village should be recorded as having rights of occupancy, the Settlement Officer decided that the plaintiff had no such rights.

Held, in a suit instituted in 1890, to contest a notice of ejectment, that if the tenant be found to possess the qualifications required by section 5, sub-section (1) (*c*) of the Punjab Tenancy Act, 1887, he would be entitled to a decree for occupancy rights (No. 7 *P. R.* 1890, Rev. followed). Since 1863 two Tenancy Acts have been passed, and they have conferred rights of occupancy on many tenants who, prior to the passing of these laws, might have failed to prove themselves to be occupancy tenants. It was no answer to the plaintiff in the present suit, who claimed to be entitled to occupancy rights under section 5, sub-section (1) (*c*) of the Act of 1887, to say that, in a Settlement proceeding in 1863, or even for the matter of that in a judicial proceeding, they were found to be tenants-at-will. SURTA *v.* IMAM-UD-DIN. **2 P R 1891 Rev.**

125. *Right of occupancy in part of land—Punjab Tenancy Act,* 1887, *section* 5 (1) (*a*).

The plaintiff, a tenant, sued to contest a notice of ejectment. The Collector, on appeal, found that the plaintiff had fulfilled the conditions of section 5, sub-section (1) (*a*) of the Tenancy Act, 1887, in respect of a part of the land in suit, although not in respect of the whole, and gave him a decree for occupancy rights in such part. The Commissioner, on further appeal, dismissed the plaintiff's suit *in toto*, upon the ground that in order to succeed under sub-section (1) (*a*), a tenant must show a continuous possession of his holding and not of a fraction thereof merely.

Held, by the Financial Commissioner that if the landlord had permitted the tenant to fulfill the conditions of the sub-section in respect of a part of the land this should have been decreed to him. HIRDE *v.* DARBARI.

5 P R 1891 Rev.

126. *Occupancy rights—Decree—Specification of land—Burden of proof.*

In making a decree for ejectment, the decree must specify the precise lands from which a tenant is to be ejected. Similarly, a decree declaring occupancy rights under section 5 (1) (*c*), Tenancy Act, 1887, should specify the precise lands of which the tenant was in possession on the 21st October 1868 and on which he is found to have acquired occupancy rights.

The burden of proof in such cases is upon the tenant to show the precise land held by him in 1868. MUSSAMMAT ALA DI BEGAM *v.* TILOKA. **6 P R 1891 Rev.**

127. *Right of occupancy—Joint Tenancy—Survivorship.*

Held, following the rulings of the Chief Court that in a case where two widows were joint tenants of an undivided holding and one dies, the survivor is entitled to occupancy rights in the whole.

Nos. 36 *P. R.* 1870, 4 *P. R.* 1880, 180 *P. R* 1882, followed. MAN SINGH *v.* MUSSAMMAT ZEHRO. **9 P R 1891 Rev.**

128. *Tenancy Act,* 1887*—Unauthorised alienation by occupancy-tenant—Tenant's right to recover possession from landlord.*

When an occupancy tenant has made an unauthorized alienation of his holding, including the giving of possession to the alienee, and the landlord has sued successfully to have the alienation declared void, and to recover possession from the alienee, it is not a good answer to a suit by the alienor against the landlord to obtain re-entry on his holding that the plaintiff is not able to show that he is no longer bound by the contract either because the alienee has taken back his money, or because the contract has been put an end to in some other way.

No. 74 *P. R.* 1884, decided with reference to the provisions of the Tenancy Act, 1868, not followed. KHUDA BAKHSH *v.* FAZIL DIN.

17 P R 1892 F. B.

129. *Pre-emption—Transferable rights of occupancy—Section* 10, *Punjab Laws Act—Right created by Statute or Contract—Perpetual lease whether tantamount to sale.*

The provision of section 10, Punjab Laws Act, 1872 (as amended), that the right of pre-emption shall *primâ facie* be presumed to exist in all village communities and to extend to all transferable rights of occupancy affecting such lands, applies not only to sales *by occupancy tenants*, but is also applicable to transactions under which proprietors create a right of occupancy in another for a consideration.

A right of occupancy may be transferable within the meaning of section 10, Punjab Laws Act, 1872 (as amended), either because a power to transfer is given by the Tenancy Act, or because there is an agreement between the landlordand tenant excluding the operation of such of the provisions of the Act as would otherwise prevent alienation. In the present case the right of occupancy being created by contract would, ordinarily, and in the absence of express agreement, be non-transferable ; but in conferring the right the landlord had expressly granted full power of alienation, and had thus created or sold a transferable right.

Semble.—A perpetual lease does not give rise to a right of pre-emption merely on the ground that it is tantamount to a sale. (*I.L.R.* XV *Calc.* 184, referred to). NIHAL CHAND *v.* RAI SINGH AND NAURANGA. **43 P R 1892**

130. *Jurisdiction of Civil Court—Mortgage by occupancy tenant—Mortgagee to receive half net profits without possession—Punjab Tenancy Act,* 1887, *section* 77 (*k*).

The defendant, a tenant with rights of occupancy, mortgaged his land to the plaintiff, on the understanding that the mortgagor should retain possession and the mortgagee receive half the net profits of the tenancy.

The defendant withheld from the plaintiff his share of the profits, hence the present suit.

Held, that the suit was cognizable by the Civil Court, the plaintiff and defendant not being co-sharers " in an estate or holding," and clause (*k*), sub-section (3), section 77, Punjab Tenancy Act, 1887, being, therefore, inapplicable. GANGU *v.* ASAD

70 P R 1892

131. *Occupancy tenants*—Status—Res judicata.

In a suit for enhancement of rent, the Settlement Collector declared the tenants to come under section 6 of the Tenancy Act, 1887, and enhanced their rent accordingly. The tenants had not expressly claimed any particular *status*, and the question of their *status* was not expressly put in issue.

Held, in a subsequent suit by the tenants to establish a right of occupancy under section 5, sub-section (1) (*a*) of the Tenancy Act, that the lower Courts had rightly held that the question of *status* had already been decided.

The tenants should have raised the point in their answer to the first suit : this they omitted to do, and the provisions of section 13, Explanation II, operated to make the question *res judicata*. NIHAL SINGH *v.* HIRA SINGH.

5 P R 1892 Rev.

132. *Material irregularity—Revision—Section* 622, *Civil Procedure Code.*

The lower Courts refused to consider the defendants' claim to an occupancy *status* under section 5, Punjab Tenancy Act, 1887, their predecessor in interest having been recorded in 1879 as a tenant under section 6 of the Act of 1868, and having taken no steps to claim a higher *status*.

Held, that this constituted a material irregularity, the facts found being no bar to the defendants acquiring the *status* they claimed under section 5, if they could prove that the present conditions of their tenancy were such as to fulfil the requirements of the Tenancy Act of 1887 in respect of the acquisition of such a *status*. BAHADUR *v.* DUL CHAND. **3 P R 1893 Rev.**

133. *Punjab Tenancy Act,* 1887, *section* 5, *sub-section* (1) (*c*) *—Enhancement of rent—Desirability of recording a finding as to* status *of tenant in view of possibility of future litigation for enhancement.—Section* 20*—Enhancement of produce rents of occupancy tenant—Inquiry.*

The lower Courts in an enhancement suit omitted to determine the *status* of all the tenants on the ground that the enhancement which they decreed being at a rate within the maximum fixed for tenants under section 5, sub-section (1) (*c*) an adjudication as to *status* was unnecessary.

Held, that with a view to the contingency of future litigation for further enhancement, a finding as to the *status* of all the tenants was necessary.

Held, also, that in dealing with the enhancement of produce rents of occupancy tenants regard must be had to the points specified in section 20 of the Act. JAMAL-UD-DIN *v.* ALA. **5 P R 1893 Rev.**

134. *Succession to right of occupancy—Punjab Tenancy Act*, 1868, *section* 36, *and Punjab Tenancy Act*, 1887, *sections* 5, 59—*"Lineal male descendant"—Daughter's son—Adopted son.*

Held, that the daughter's son of a Brahman was not as such entitled to inherit a right of occupancy under section 59 of the Punjab Tenancy Act, 1887.

Quære.—Whether an adopted son can claim the benefit of section 59 of the said Act.

No. 1 *P. R.* 1874 Rev. distinguished. WIR BHAN *v.* SUBA. **40 P R 1894**

135. *Rights of occupancy alienation—Punjab Tenancy* Act (*XVI of* 1887) *sections* 53 (10), 60—*"Landlord," meaning of.*

Held, that the rights secured to landlords under section 53 of the Punjab Tenancy Act, 1887, are by force of clause 10 of the said section not merely joint rights belonging to all the landlords in a body, but are secured for each landlord severally if there be no assertion of their rights by the whole body of landlords.

Held, further, that reading section 60 with section 53 of the Act the words "the landlord" in the former section may mean all or some or only one of the owners according to circumstances, and with due regard to equitable considerations.

Per SHOGDON, J.—Although clause (10) was probably inserted in section 53 in order to make it clear that one of a body of landlords might purchase an occupancy right from a tenant notwithstanding the willingness, either express or implied, of his co-landlords to permit the tenant to alienate it to an outsider it does not necessarily follow that because it has been declared for the purposes of section 53 that one of several landlords of a tenancy may be the landlord, for the purposes of other sections of the Act, in which no such declaration is made, the landlord in the case of several co-landlords, means the whole body of such co-landlords, conjunctively as opposed to the units making up the body disjunctively.

No. 92 *P. R.* 1887 distinguished. BUDH SINGH *v.* MIHAN SINGH. **65 P R 1894**

136. *Succession—Joint tenants of occupancy holding—Survivorship—Punjab Tenancy Act*, 1887, *section* 59.

Held, by the Full Bench, that the principle of survivorship among joint tenants of an occupancy holding, while excluding the operation of section 59 of the Punjab Tenancy Act, 1887, in favour of the landlord and any rights of a collateral relation whose claim would not be recognised by that section (in the absence of an agreement to the contrary), cannot be extended to the case of an heir, either lineal or collateral claiming a share in an ancestral holding which has fallen in on the death of one of the tenants, even though the deceased was joint in cultivation with some of the family other than the claimant who was separate, and that in such cases the rights of the parties must be decided with reference to section 59 of the Act.

No. 56 *P. R.* 1887 overruled ; No. 2 *P. R.* 1867, No. 57 *P. R.* 1868, No. 36 *P. R.* 1870, No. 159 *P. R.* 1879, No. 4 *P. R.* 1880, No. 180 *P. R.* 1882, and No. 9 *P. R.* 1891 (Rev.), cited. MOHRU *v.* MUTSADDI. **109 P R 1894 F. B.**

137. *Punjab Tenancy Act* (*XVI of* 1887), *section* 59—*Appointment of heir by occupancy tenant—Customary adoption—"Male lineal descendant"—Hindu and Muhammadan agriculturists.*

Held, by the Full Bench, that a mere customary adoption, whether among Hindus or Muhammadans, gives no right of succession under section 59 of the Punjab Tenancy Act, 1887. FATTEH MUHAMMAD *v.* MUSSAMMAT JIWAN. **43 P R 1895 F. B.**

138. *Application by majority of joint owners for partition—Objections by remaining joint owners and occupancy tenants—Discretion of Revenue Officer—Punjab Land Revenue Act*, 1887, *section* 112 (3).

The majority of certain joint owners sued for enhancement of rent, but their suit was dismissed, on appeal, by the Commissioner, on the ground that (as ruled by the Chief Court in No. 77 *P. R.* 1883) to secure enhancement of rent paid by tenants all the landlords sharing in a joint holding must sue. The landlords desiring enhancement of rent thereafter applied for partition of the joint holding, but their application was disallowed on the ground that the occupancy tenants did not agree to a partition being made of the land in their occupation.

Held, on revision, that the partition of land held by occupancy tenants is not prohibited in every case in which the tenants themselves, or even some of the proprietors object, and that under section 112, clause 3, of the Punjab Land Revenue Act, 1887, the Revenue Officer has a discretion to act upon the objection of the tenants, or to permit partition. SUBE KHAN *v.* RAHMAT ALI. **1 P R 1895 Rev.**

139. *Punjab Tenancy Act* (*XVI of* 1887), *section* 11—*Award under Act XVI of* 1887, *of higher status to tenant who held rights under section* 6 *of Act XXVIII of* 1868.

One S. who was recorded at the Settlement of 1879 as a tenant under section 6 of the

Punjab Tenancy Act, 1868, was awarded by the Collector *status* as occupancy tenant under section 5 (1) (*a*) of the Punjab Tenancy Act, 1887, on the ground that in consequence of his father having died between 1879 and the date on which the latter Act came into force, S. had fulfilled the conditions of holding for three generations, and paying no rent beyond the revenue and cesses at the commencement of the Act, and so had acquired the higher *status*. On appeal the Commissioner reversed this finding, holding that section 11 of the present Act bars a tenant from acquiring a *status* higher than that held by him under the former Act.

Held, that the meaning of section 11 is that a tenant who has obtained an occupancy *status* under the former Act was to be held to have acquired a corresponding *status* under the present Act when it came into force, and not that any such tenant should be debarred from benefiting by the provisions of the present Act if he could show that they have placed him in a more favourable position than he had previously held. NAND KISHOUR *v.* NATHU. **4 P R 1895 Rev.**

140. *Punjab Tenancy At* (*XVI of* 1887), *section* 5 (1) (*b*)—*"Tenant"—Tenant who has involuntarily parted with proprietary right—Right of representative of such tenant—Accrual of right.*

Held, that, inasmuch as the definition of "tenant" in Act XVI of 1887 expressly includes predecessors in title, section 5 (1) (*b*) of the Act cannot be construed as limiting the right of occupancy therein contemplated merely to the person who involuntarily parted with his ownership, and that, therefore, it is open to a representative of such person to assert a claim which the latter had failed to put forward.

No. 148 *P. R.* 1888 distinguished.

With reference to an objection that unless some one of the predecessors in interest of the claimant was alive when the former Tenancy Act (XXVIII of 1868) came into force, the claimant lost his occupancy right by the operation of that Act, and it could not be revived by the present Act, *held*, that the question of the claimant's rights in the land not having been raised while the former Act of 1868 was in force, he was entitled to the benefit of the provisions of the present Act. RAM CHAND *v.* UMRAO SINGH **6 P R 1895 Rev.**

141. *Occupancy rights, claim to—Entry in record of Summary Settlement—Sanction of Local Government—Punjab Tenancy Act* (*XVI of* 1887), *sections* 5 (1) (*a*) *and* 6—*Material irregularity.*

In a suit in which plaintiffs claimed occupancy rights under section 5 (1) (*a*) or (*c*) of the Punjab Tenancy Act, 1887, the Assistant Collector framed an issue as to whether they had acquired an occupancy *status* under any section of the Act, and took some evidence. In his judgment, however, he omitted any reference to the claim

under section 5 (*i*) (*a*) or (*c*), but held that plaintiffs were entitled to an occupancy *status* under section 6, because their predecessor in interest was recorded as an occupancy tenant at the Summary Settlement before the passing of the Punjab Tenancy Act, 1868. This finding was upheld by the Collector on appeal.

Held, that, in the absence of proof that the record of the Summary Settlement had received the sanction of the Local Government, the entry in question was not sufficient to confer upon plaintiffs an occupancy *status* under section 6 of Act XVI of 1887.

But, *held*, further, that the omission on the part of the first Court to consider plaintiffs' claim under section 5 (1) (*a*) or (*c*) amounted to a material irregularity, and that the case must, therefore, be remanded for further enquiry and fresh decision thereupon. SANTA SINGH *v.* HAZARA SINGH. **8 P R 1895 Rev.**

142. *Occupancy rights, succession to—Entry in Settlement Record, effect of—Agreement—Punjab Tenancy Act*, 1887, *sections* 111, 112—*Custom.*

In a dispute as to the succession to occupancy rights as between the landlord, plaintiff and the defendants, who were the collaterals, and claimed to be the heirs of the last occupancy tenant, the latter relied upon an entry made in the Settlement Record, 1865, and attested by the proper officer, as an agreement establishing their right. The said entry was to the following effect: "if a tenant die, then his descendants (*aulad*)" or, "if he die sonless, his collaterals (*karabatian*)" will be entitled to cultivate the land on the above-mentioned conditions, that is, as occupancy tenants. The Divisional Judge overruled defendants' contention based upon the above entry, and held that it was not proved that the landlords ever assented to such agreement, and that if they did it was no more than a *nudum pactum;* that section 2 of Act XXVIII of 1868 did not recognize as subject for agreement the question of succession to occupancy tenancies and that the entry might be some evidence of a custom as to the succession to occupancy rights, but that no such custom had been sufficiently established *aliunde*. Defendants appealed to the Chief Court.

Held, reversing the order of the Divisional Judge (*i*), that the question for decision was governed, not by Act XXVIII of 1868, which has been replaced, but by Act XVI of 1887, which has replaced the earlier Act, but that the provisions of the former did no less than do the provisions of the latter, distinctly recognize questions relating to succession to occupancy rights as a subject with regard to which a properly attested entry in the Settlement Record would be deemed to be an agreement; (*ii*) that the rule as to succession to occupancy rights laid down in either Act can be modified by agreement, but not by custom; and (*iii*) that under the plain

language of both Acts, an entry like the present was to be deemed to be an agreement (at least till the contrary was shown) and was not to be deemed to be a *nudum pactum* or void for want of proper consent by either party. PHINA SINGH *v.* MAHTAB KHAN. **20 P R 1896**

143. *Occupancy right, succession to—"Male lineal descendant"—Chela—Punjab Tenancy Act*, 1887, *section* 59.

The question referred to the Full Bench was as to the right of a *chela* of a deceased *Bairagi faqir* to succeed, under section 59 of the Punjab Tenancy Act, to the occupancy rights of the deceased against the wishes of the proprietors.

Held, by the Full Bench, that the said *chela* was not a "male lineal descendant in the male line of descent" of this deceased *faqir* within the true meaning of the above section. PUNJAB SINGH *v.* SANT RAM. **22 P R 1896 F. B.**

144. *Punjab Tenancy Act*, 1887, *Chapter V—Alienation of right of occupancy—Sale by tenant to landlord*—Locus standi *of reversioners to object to sale.*

One B., an occupancy tenant, having sold his rights as such to his landlords, plaintiffs, who were the collaterals of B., sued for a declaration that the sale would not affect their rights of reversion, as it was effected without necessity. The Divisional Judge, on appeal, dismissed plaintiffs' suit on the ground that it was not maintainable under the provisions of the Punjab Tenancy Act of 1887. Plaintiffs appealed to the Chief Court, and it was contended, on their behalf, that the said provisions being intended solely to settle the tenant's powers of alienation *qua* the landlord and in no wise affecting them *qua* his reversioners, it was open to such reversioners to prove that by custom they could restrict his powers of alienation whether the alienations were in favour of the landlord or a stranger

Held, by the Full Bench, that plaintiffs' suit had been rightly dismissed as not maintainable under the provisions of the Punjab Tenancy Act.

RIVAZ, J.—Inasmuch as section 53 of the Act declares that a tenant, having a right of occupancy, may transfer his right, subject only to certain conditions, if he does transfer his rights after fulfilling those conditions, the transferee (if he is not the landlord) acquires, under the express provision in section 57 of the Act, a right that is not open to challenge by third parties upon any ground based upon natural relationship or customary rights. Similarly, if, after the offer contemplated by section 53 had been made to, and accepted by, the landlord, the purchase becomes complete under clause (5) of the same section, the landlord's position is unassailable by third parties, the right of occupancy having become extinct under clause (6). DIDARU *v.* BANNA. **31 P R 1896 F. B.**

145. *Occupancy rights, acquisition of—Punjab Tenancy Act*, 1868, *section* 6 (2) *and Punjab Tenancy Act*, 1887, *sections* 5, 6, 111 —*Tenant recorded with consent of proprietors as occupancy tenant—Subsequent admission by tenant made previous to* 1887, *that he was merely tenant-at-will.*

In the *Tarmim Khewat* papers of 1855, one M., the father of plaintiff, was recorded as a *maurusi* tenant of certain land, and a note was added to the effect that all the proprietors recognised him as a tenant with rights of occupancy. The said entry was found not to have been made in a record of rights which had received the sanction of the Local Government, and, though M., and his sons had continuously occupied the said land since 1855, it was proved that they had for some time past been paying rent therefor, and also that in 1859, in a suit between the proprietor of the land and a third party, M., who was examined as a witness, had practically admitted that he was merely a tenant-at-will of the land in question. The final order in the said suit was that M. should be considered a tenant-at-will of the land. The village in which the land in dispute was situate was founded some 300 years ago.

Held, that inasmuch as M. had not settled along with, or been settled by, the founder of the village, and as he and his sons had been paying rent for the land, plaintiff, who was his successor in title, could not claim occupancy rights under section 5 of the Punjab Tenancy Act, 1887.

Held, further, that the entry in the papers of the *Tarmim Khewat* of 1855 not having been made in a record of rights sanctioned by the Local Government before the 21st October 1868, plaintiff could not claim such rights under section 6 of the Act.

But *held*, that the said entry was an agreement recorded in a record of rights and *primâ facie* operated to confer occupancy rights upon M., as provided in section 111 of the Act, which does not require that the record of rights to which it refers shall have been sanctioned by the Local Government.

Held, also that, there being no provision in the Punjab Tenancy Act, 1887, corresponding with section 6 (2) of the Punjab Tenancy Act, 1868, whereby the voluntary admission of M. that he had not a right of occupancy would have barred his claim thereto, the defendant could not, after the 1st November 1887, dispossess plaintiff by proving the said admission of M., in a case in which the latter was not a party, in 1859.

There is nothing contradictory in sections 6 and 111 of the Punjab Tenancy Act, 1887, and a tenant who fails to prove his claim under section 6 may nevertheless have the benefit of section 111 if he can prove the relevant facts. CHIRAGH *v.* MIRZA. **4 P R 1896 Rev.**

146. *Occupancy rights, acquisition of—Punjab Tenancy Act*, 1887, *section* 5 (1) (*a*) *and* (2)—*Thirty years' occupation—Presump-*

tion, nature of—Suit by landlord to eject tenant—Notice of ejectment—Punjab Tenancy Act, 1887, *sections* 43, 45, 77 (3) (*e*)—"*Tenant*"—*Partition of land previously in joint occupation of family.*

In a suit by the landlords for the ejectment of certain tenants, it was proved that the latter were in occupation of the lands in dispute on the 1st November 1887 (the date on which the present Punjab Tenancy Act came into force) and had paid no rent for the lands beyond the amount of the land revenue thereof and the rates and cesses for the time being chargeable thereon. None of them, however, could prove that they had held the lands for more than two generations in the male line of descent through a grandfather or granduncle, and they were, therefore, unable to succeed in establishing occupancy rights merely by virtue of section 5, sub-section (1), clause (*a*), of the Punjab Tenancy Act, 1887. They claimed, however, to succeed by virtue of the presumption raised by sub-section (2) of the said section inasmuch they were in occupation on the 1st November 1887 and had, *at the date of suit*, been in continuous occupation for more than thirty years. The lower Court held that in orde rto get the benefit of sub-section (2) of section 5 of the Act, the tenant must prove thirty years' continuous occupation at the date of the commencement of the Act, and not from the date of suit, and finding that in the present case the tenants had failed to prove that they have been in continuous occupancy for more than twenty-two years previous to the 1st November 1887, it decreed plaintiffs' suit for ejectment. Defendants applied to the Financial Commissioner for revision of the said order, and contended not only that the lower Court had erred as to the date from which the said period of thirty years was to be computed, but also that plaintiffs' suit should have been dismissed because the landlords had failed to issue a notice of ejectment as required by sections 43 and 45 of the Act.

Held, that the latter contention must fail. A landlord who wishes to eject a tenant can either proceed by notice under section 43, or he can, as in the present case, institute a suit for ejectment, without previous notice under section 77, sub-section (3), clause (*e*).

But *held*, that the period of thirty years mentioned in sub-section (2) of section 5 must be computed from the date of the institution of the suit, and not from the date of the commencement of the Act.

Held, therefore, that the defendants having been in occupation of the lands on the date when the Act came into force, and having at the date of suit been in continuous occupation thereof for a period of thirty years without paying rent beyond the amount of land revenue, rate and cesses chargeable thereon, must be presumed, in the absence of rebutting evidence, to have acquired occupancy rights therein within the meaning of section 5 of the Act.

Before a tenant can claim the benefit of the presumption which may be raised under sub-section (2) of section 5 of the Act, he must show that he was in occupation of the land to which his claim relates, on the 1st November 1887, and his occupancy rights, if any, must have been acquired by that date, the effect of the said sub-section being to give him, in certain circumstances, the benefit of a presumption in proving them. On the other hand, when a tenant has at date of suit been in continuous occupation at revenue rates for thirty years, the landlord may prove that on the 1st November 1887, (1) the tenant had not held for more than two generations in the male line of descent through a grandfather or granduncle, *or* (2) that the tenant had then held for a period of less than twenty years, *or* (3) that before that date the tenant had paid rent beyond the amount of land revenue, rates and cesses chargeable on the land. If the landlord fails to prove any one of these points, and the tenant proves that he was occupying the land in suit on the 1st November 1887 and has continuously occupied it at revenue rates for thirty years and no further evidence is given on either side, a Court is justified in awarding occupancy rights to the tenant under section 5 (1) (*a*) in virtue of the presumption arising under section 5 (2) of the Act.

Held, further, that inasmuch as the term "tenant" in section 5 (2) of the Act includes the predecessors in interest of the tenant, if the latter can prove that the lands in suit were held jointly by members of his own family in the male line of descent before the 1st November 1887, he will have given sufficient proof of continuous occupation during the period of their tenure, the members of a family in joint occupation being predecessors in interest of the tenant, and it being unnecessary to enquire how the shares of the different branches and members of the family were adjusted at partition. MAULA *v.* JIWAN BAKHSH. **5 P R 1896 Rev.**

147. *Punjab Tenancy Act,* 1887, *section* 8—*Similar tenancies held by single family in joint possession of long standing—Erroneous entries in Settlement papers—Occupancy rights granted to some members of such family, but not to others.*

In a case where exactly similar tenancies have been held by a single family in joint possession of very old standing, but certain members only of such family had been recorded in the Settlement papers as occupancy tenants, the rest being erroneously recorded as tenants-at-will, despite an admission by one of the proprietors at the Settlement of 1880 that the whole family were entitled to occupancy rights, and the order of the Superintendent of Settlement that they should be so recorded in respect of such proprietors' share : *held*, that the Court has power under section 8 of the Punjab Tenancy Act, 1887, in awarding occupancy rights under section 6 of the Act to those members who are entitled thereto, in virtue of an entry in the Settlement record, to correct the entries as regards the other members of such family, and to award occupancy rights to the latter also. MUHAMMAD *v.* YAR MUHAMMAD KHAN. **9 P R 1896 Rev.**

148. *Punjab Tenancy Act,* 1887, *sections* 5 (1) (*a*), 11, 22 (2)—*Tenants with rights of occupancy—Continuance of rights existing previous to enactment of Punjab Tenancy Act,* 1868.

At the Settlement of 1856 the predecessors in interest of defendants were recorded as *maurusi* tenants of 55 years' standing, paying at the same rate as the proprietors, and at the Settlement of 1868, when the rights of tenants were inquired into, defendants' said predecessors stated that they had held for 125 years and seven generations without paying rent. Plaintiff at the time acknowledged that these statements were correct. The tenants were, thereupon, recorded as *maurasi ba razamandi*, and the rent was fixed at one anna per rupee of revenue for five years, the order settling these matters being dated 27th July 1867, *i. e.*, before the passing of the Tenancy Act, 1868. In the papers of the present Settlement the tenants were recorded as *maurusis*, but the section of the present Act under which they held was not specified.

Held, that upon the above facts the predecessors in interest of defendants were, at the time of the passing of the Tenancy Act, 1868, tenants under section 5 (1) of that Act, and that as nothing had since happened to deprive them of that *status*, defendants were tenants under section 5 (1) (*a*) of the present Tenancy Act. AHMAD YAR *v.* MUHAMMAD BAKHSH. **12 P R 1896 Rev.**

149. *Occupancy rights—Punjab Tenancy Act,* 1887, *sections* 5 (1) (*d*), 111—*Civil Procedure Code,* 1882, *section* 43—*Rights claimed in* muafi *partly resumed and partly not resumed—Alleged waiver of right by claimant's predecessor in title in* 1858.

Plaintiff claimed occupancy rights in a plot of land which was originally *muafi* in favour of his predecessor in interest. Half of the *muafi* was resumed in 1889, where upon defendants sued in the Civil Courts for possession thereof as proprietors and obtained a decree, and subsequently to the institution of the present suit, they obtained possession of the said half, though it did not appear that plaintiff's possession as tenant had been interrupted. The lower Courts dismisssd plaintiff's suit with reference both to section 43 of the Civil Procedure Code, and to section 111 of the Punjab Tenancy Act, 1887, on the grounds apparently, that plaintiff's predecessor in interest had relinquished his claims to occupancy rights in certain proceedings before the Superintendent of Settlement in 1858, and that an agreement between the parties on that occasion was inconsistent with the present claim.

Held. that in respect of the unresumed moiety of the *muafi* the present suit was

premature and must be dismissed, but not so as to debar plaintiff from suing for occupancy rights in such moiety, should his *quasi*-proprietary possession be disturbed or his title thereto be challenged in course of law.

Held, further, that in respect of the resumed moiety of the *muafi* plaintiff was entitled to occupancy rights under section 5 (*i*) (*d*) of the Punjab Tenancy Act, 1887, and that there was nothing in the facts of the case or the previous litigation to bar his claim. MAHANT SADHU RAM *v.* LAL KHAN. **13 P R 1896 Rev.**

150. *Occupancy rights—Grant of* muafi *to ala-lambardar in virtue of his office—Ala-lambardar joint owner of such land—Punjab Tenancy Act,* 1887, *sections* 4 (7), (13), (15), 5 (1) (*d*), 10, 11—"*Tenant*"—*Custom—Punjab Tenancy Act,* 1868, *sections* 5 (4), 9—Pattidari *village—Impure* pattidari *village.*

In 1864, a grant of part of the *shamilat deh* was made by an officer of Government in favour of J. S., father of H. S., in remuneration of his services as *ala-lambardar.* On the death of J. S., in 1880, H. S. succeeded as ala-lambardar and muafidar, but in 1891 the proprietors applied for partition which was effected and duly sanctioned in 1893, whereupon H. S. instituted the present suits to contest notices of ejectment issued by the different proprietors into whose possession the said *muafis* had come, J. S., and after him H. S., were joint owners of the lands in dispute, and it was proved that H. S., by himself, aud by his father before him had continuously occupied the same since 1865. It was contended that H. S., was not liable to ejectment, inasmuch as he had acquired occupancy rights both under the Punjab Tenancy Act, 1887, and under the Punjab Tenancy Act, 1868.

Held, that inasmuch as H. S. was a joint owner of land, he could not under section 10 of the present Tenancy Act acquire occupancy rights in the land in suit otherwise than by virtue of a special custom.

Found, that no such special custom had been proved in the present case.

Held, further, that as there was nothing in the Tenancy Act of 1868 corresponding to section 4 (7) of the present Act, which defines "tenant" as including the predecessor in interest of the present tenant. H. S., who had not by himself been separately in continuous possession of the land for twenty years, had not acquired occupancy rights therein under the said Tenancy Act of 1868 at the time when the present Act came into force.

When a son succeeds his father in the ala-lambardarship, the *muafi* and in cultivating occupancy, the father is the predecessor in interest of the son within the meaning of section 4 (7) of the Tenancy Act, 1887.

When an ala-lambardar, to whom a grant of *muafi*, had been made in remuneration of his services, continues, after resumption of such *muafi* to hold on as cultivator, he is a "tenant" holding under the proprietors, and is also a "village officer" within the meaning of section 4 (13) and a "jagirdar" within the meaning of section 4 (15) of the Tenancy Act, 1887, if the land revenue has been assigned to him in whole or in part by the Government or by an officer of the Government. And if such ala-lambardar has, at the date of suit, continuously occupied for twenty years the land so allotted to him, not being himself a joint owner of such land, he is entitled to occupancy rights under section 5 (1) (*d*) of the said Act.

Section 9 of the Punjab Tenancy Act, 1868, must be strictly construed, and therefore does not apply to the case of a village which is *pattidari ghair mukammal.* LAHNA SINGH *v.* HIRA SINGH, **1 P R 1897 Rev.**

151. *Occupancy rights—Punjab Tenancy Act,* 1887, *section* 5 (2)—*Presumption, nature of.*

The land, in which plaintiff claimed occupancy rights, formerly belonged to his father, who gave it on the 4th April 1866 to the father of defendants. Plaintiff's suit was instituted on 11th February 1896, at which date thirty years had not elapsed since the origin of the tenancy.

Held, that inasmuch as the thirty years mentioned in section 5 (2) of the Tenancy Act, 1887, must be computed from the date of the institution of the suit, plaintiff was not entitled to the benefit of the presumption in that sub-section, and that, even if he were entitled to such presumption, it would be rebutted by the fact set forth by himself that there had been only one succession, *viz.*, from father to son. PIRBHU *v.* MOHAR SINGH. **4 P R 1897 Rev.**

152. *Occupancy rights, succession to—Adopted son—Punjab Tenancy Act,* 1887, *sections* 5, 59—*Plea raised in Appellate Court for the first time.*

Held, that a daughter's son, who has been adopted, is not entitled, by virtue of clause (3) of section 5 of the Punjab Tenancy Act, to succeed to the occupancy rights of his adoptive father, who was a tenant under the said section, and that the objection to such succession can be taken by the male collaterals of the tenant as well as by the landlord.

The proviso in clause (3) of section 5 of the Act refers only to the original acquisition of the right.

An Appellate Court is entitled to take notice of a question of law which clearly arises in the case, even though the question may have been overlooked both by the parties to the case and by the Courts which have dealt with it. JOWALA SINGH *v.* KALA SINGH. **22 P R 1898**

153. *Punjab Tenancy Act,* 1887, *sections* 5, 6, 8—*Suit for declaration of occupancy* status *of highest class—Duty of Court to consider whether plaintiff entitled to inferior right than that claimed—Civil Procedure Code,* 1882, *section* 53—*Material irregularity—Collector deciding appeal in absence of record which had been lost.*

Plaintiff's suit for a declaration of occupancy *status* under section 5 (*i*) (*a*) of the Punjab Tenancy Act, 1887, was dismissed by the lower Courts on the ground that as he and his ancestors had always paid half *batai*, he was not entitled to the *status* claimed. It appeared, however, that plaintiff and his ancestors had held the land for over forty years before 1870 and had planted fruit trees and erected buildings thereon, but the lower Courts had dismissed the suit without considering whether such occupation entitled the plaintiff to occupancy rights under section 8 of the Act. It further appeared that the record of the case in the first Court was lost before the Collector heard the appeal.

Held, that the lower Courts had committed a material irregularity in dismissing the suit without considering whether, with reference to the facts of the case and the district practice, plaintiff was not entitled to occupancy rights of a class inferior to that specifically claimed in the plaint, it being the duty of the Court, in a case such as the present, either to return the plaint for amendment or to amend it itself under section 53, Civil Procedure Code, *proviso*, and to thereafter frame an issue which should cover the other clauses of section 5 and sections 6 and 8 as well.

Held, further, that the fact that the Collector had had to decide the appeal without being able to examine the record would alone have been a sufficient cause for a remand. CHINGA *v.* MANGAT RAM. **3 P R 1893 Rev.**

154. *Punjab Tenancy Act (XVI of* 1887), *sections* 5 (1) (*c*) *and* 8—*Tenant not living within the estate or village where the land is situate—Under what circumstances occupancy rights can be granted under section* 8.

Held, that a claim for occupancy rights under section 5 (1) (*c*) cannot be sustained unless the tenant has his abode within the limits of the village or estate and that section 8 cannot be used to bolster up a claim which has failed under section 5, otherwise the words "on any other ground than the grounds specified" in sections 5 to 7 of the Act would have no significance. The question under what circumstances occupancy rights under section 8 can be granted to a tenant, discussed. KHAIRATI *v.* MANNU KHAN. **6 P R 1900 Rev.**

155. *Occupancy rights, sale of, by widow—Subsequent birth of a son of the deceased occupancy tenant—Right of landlord to avoid the sale and for possession—Punjab Tenancy Act,* 1887, *sections* 59 *and* 60.

In a suit by a landlord to cancel a sale of occupancy rights by a widow who was pregnant at the time of the said sale, and who had given birth to a posthumous

son, 7 months after her husband's death, *held*, that when a posthumous son is born to a deceased occupancy tenant his male lineal descendants fail temporarily only, and the widow's right endures only so long as that failure occurs, and that a son of the deceased occupancy tenant being now in existence, the landlord was not entitled to possession. HANWANTA *v.* CHOUTH MAL. **3 P R 1901 Rev.**

156. *Mortgage of—Death of occupancy tenant without heirs—Right of mortgagee as against landlord.*

Held, that as the interest of the mortgagee could be no greater or last longer than that of the mortgagor, and that the mortgagor's interest having come wholly to an end by reason of his death without heirs, the mortgagee's interest ceased with it even if the mortgage was made with the landlord's knowledge. NARINDAR SINGH *v.* LEHNA SINGH. **6 P R 1901 Rev.**

157. *Occupancy rights—Unauthorised alienation—Acquiescence—Punjab Tenancy Act*, 1887, *sections* 53 *and* 56.

The Full Bench ruling of the Chief Court in *Shankar Das and others* v. *Sher Zaman* (56 *P. R.* 1900), alters the law laid down by the same authority in *Lehna* v. *Ganpat and Kaka* (115 *P. R.* 1890), so that a registered mortgage-deed does not now necessarily have priority over an unregistered mortgage-deed relating to the same property. Decisions passed under the law before this alteration was made must be construed according to the law in force at the time. The mortgagee of an occupancy tenant who had gained priority over other mortgagees of the same tenant in the former state of the law having sold his right to the other mortgagees, it was *held* that though the landlords were entitled to have the sale declared void, the property acquired by the vendor was acquired as against the tenant and the other mortgagees only, and did not give the landlords any right which they would not otherwise have had. As they had acquiesced in the mortgagees, they were not entitled to possession. IBRAHIM *v.* NATHU.

7 P R 1901 Rev.

158. *Occupancy rights—Alluvion and diluvion—Rights of occupancy tenant in submerged land on re-appearance—Custom.*

Held, that the general rule in the Punjab is that an occupancy tenant does not lose his right by reason of the land of his holding being submerged. A custom to the contrary may be proved but such a custom being plainly inequitable very strict proof of its existence should be required before it is acted upon.

Sahib Rai v. *Khair Shah* (19 *P. R.* 1876), *Bakhtawar* v. *Sultan Ahmad* (83 *P. R.* 1876), *Rutta* v. *Mal Singh* (122 *P. R.* 1876), *Sultan Khan* v. *Syad Muhammad Shah* (59 *P. R.* 1877), *Lal Shah* v. *Karim Bakhsh* (96 *P. R.* 1879), *Murid* v. *Mussammat Ram Devi* (127 *P. R.* 1879), and *Raja and another* v. *Sarfraz and another* (152 *P. R.* 1883) followed. ROSHAN *v.* POHLO. **8 P R 1901 Rev.**

159. *Occupancy Right—Punjab Tenancy Act*, 1868, *section* 6, *and Punjab Tenancy Act*, 1887, *sections* 6 *and* 111—*Admission by tenant made previous to* 1887 *that he was merely tenant-at-will.*

In a case to contest a notice of ejectment it was proved that at the Regular Settlement, 1858, the ancestors of the tenants were recorded as having occupancy rights in the land now in dispute, but that during the Revised Settlement in 1880 the tenants entered into an agreement with the landlords admitting that they were meer tenants-at-will. *Held*, that before the passing of the present Tenancy Act (XVI of 1887) it was lawful for tenants to surrender their occupancy rights to the landlord and that the tenants had done so by agreement and that they were thus undoubtedly tenants-at-will at the date of the passing of the present Tenancy Act, section 6 of which did not confer on them a *status* which they had so surrendered.—*Held*, also that a mere voluntary admission by a tenant does not operate to deprive him of his right. Revenue Courts, therefore, before refusing to recognise an occupancy right on the ground that the tenant has voluntarily admitted himself to be tenant-at-will should satisfy themselves that there has been an actual and valid agreement to relinquish the right. No. 4 *P. R.* 1896 Rev. considered and affirmed. RAHIM BAKHSH *v.* RAHIM BAKHSH.

10 P R 1901 Rev.

160. *Occupancy rights—Alienation of rights of occupancy—Sale by tenant to landlord—*Locus standi *of reversioners—Punjab Tenancy Act*, 1887, *sections* 53, 56.

Held, that a reversioner of an occupancy tenant cannot impugn a sale of occupancy rights entered into by a tenant in favour of one of his landlords.

Didaru v. *Bawa* (31 *P. R.* 1896, *F. B.*), *Karam Din* v. *Sharaf Din* (89 *P. R.* 1898, *F. B.*), *Nihala* v. *Ishar Singh* (68 *P. R.* 1894), and *Puran Chand* v. *Mohesha* (68 *P. R* 1900), referred to. NIHAL SINGH *v.* KHAZAN SINGH AND ANOTHER. **24 P R 1902 F. B.**

161. *Occupancy rights—Punjab Tenancy Act*, 1887, *section* 5 (1) (*c*) *as amended by Regulation XIII of* 1887—*Finality of entry in the record of rights of the Hazara District —Rule* 60 *of the Hazara Settlement Rules —Conflicting enactments—Procedure.*

The plaintiff sued to establish rights of occupancy in certain land situated within the Hazara District. The first Court found that although the plaintiff was entered as a tenant-at-will in the record of rights of the Hazara District, he or his father had settled with the founder of the village, and therefore declared him to be an occupancy tenant under section 5 (1) (*a*) of the Punjab Tenancy Act, 1887, as amended by Regulation XIII of 1887. On appeal the Commissioner held that Rule 60 of the Hazara Settlement Rules, by reason of the finality which that rule gives to the Hazara Settlement Record, barred the plaintiff's claim. On revision the Financial Commissioner found that there was a con-

flict between Rule 60 and Regulation XIII of 1887; that the Rule expressly giving finality to entries affecting the *status* of tenants was repealed in 1873; and that the Regulation of 1887 made no alteration, as it merely adopted the Hazara Tenancy Law to the Provisions of the new Tenancy Act. He, therefore, *held*, that where two enactments conflict the latter must prevail, and that the Revenue Courts in Hazara, when determining questions relating to the *status* of tenants in that district, must be guided by the provisions of Regulation XIII of 1887, and must give to entries in the Hazara Settlement Record no more weight than attaches under section 44 of the Land Revenue Act, to entries in a record of rights or an annual record in other districts of the Province. INAYAT-ULLAH *v.* ANWAR SHAH.

1 P R 1902 Rev.

162. *Occupancy rights—Succession—Joint tenancy—Survivorship—Punjab Tenancy Act*, 1887, *section* 59.

Held, that as section 59 of the Tenancy Act deals only with the question of succession and does not affect the ordinary rule of survivorship between joint tenants, the right of landlord to claim the extinction of an occupancy right where there are joint tenants does not arise on the death of one of them, as they collectively constitute a single tenant and the right continues to exist in the survivor or survivors. But where the tenancy, though at one time joint, had been partitioned, and the tenants were in fact holding separately when the death occurred, the doctrine of survivorship is inapplicable, and the rules laid down in section 59 of the Tenancy Act must be followed.

Bulunda v. *Soondur* (57 *P. R.* 1868), *Veer Singh* v. *Mukkun* (36 *P. R.*1870), *Ganda Singh* v. *Gulab Singh* (159 *P. R.* 1879). *Prem Singh* v. *Bhagwana* (4 *P. R.* 1880), *Imam Din* v. *Mussammat Mahabho* (180 *P. R.* 1882), *Bhorta* v. *Bhoru* (86 *P. R.* 1883), *Man Singh* v. *Mussammat Zahro* (9 *P. R.* 1891 Rev.) and *Mohru* v. *Mutsadi* (109 *P. R.* 1884, F. B.), cited. AGAR SINGH *v.* DHANA. **6 P R 1902 Rev.**

163. *Occupancy rights—Sale of right of occupancy under section* 6 *of the Punjab Tenancy Act by landlord in execution of a money decree against the tenant—Punjab Tenancy Act*, 1887, *sections* 6, 56.

Held, that by section 56 of the Punjab Tenancy Act, rights of occupancy under any other section than section 5 are absolutely protected from attachment and sale in execution of decree, not only against third parties but equally against the tenant's landlord. GANGA RAM *v.* KARAM DIN. **82 P R 1903**

164. *Occupancy rights—Mortgage of occupancy rights by way of conditional sale—Effect of Punjab Alienation of Land Act, on suits for declaring such conditional sales absolute—Duty of Civil Court under section* 9 (3) *of the Act—Punjab Alienation of Land Act*, 1900, *sections* 2 (3) *and* 9.

OCCUPANCY RIGHTS—*contd*

Held, that the Punjab Alienation of Land Act, 1900, applies to *bai-bil-wafa* transactions regarding occupancy rights. The word "land" as defined in section 2 (3) of the Act includes occupancy rights in land, and therefore in suits for declaring conditional sales of such right absolute brought after that Act came into force, the Civil Courts are bound to refer such cases to the Deputy Commissioner under the provisions of sub-section 3 of section 9 of the Punjab Alienation of Land Act. GAHNA *v.* SOHAN LAL AND ANOTHER

11 P R 1904

165. *Gift of occupancy rights by childless occupancy tenant to nephews in presence of brother—Burden of proof—Brahmans of Aurangabad*, tahsil *Kharian, Gujrat District.*

Found in a suit the parties to which were Brahmans of Aurangabad, *tahsil* Kharian, Gujrat District, that a gift by a childless proprietor in favour of a nephew in the presence of his own brother was not authorized by custom.

Where a general agricultural custom is found to prevail as regards alienation of proprietary rights the presumption is, unlees the contrary can be shown, that such a custom is also applicable to the occupancy rights. The *onus* of proving a special custom antagonistic to such a rule rests on the party asserting the existence of such a custom.

Karam Din v. *Sharaf Din* (89 *P. R.* 1898, F. B.) *Muhammad* v. *Sharaf-ud-din* (8 *P. R.* 1891), *Taju* v. *Baru* (35 *P. R.* 1892), *Hayat Muhammad* v. *Fazl Ahmad* (52 *P. R.* 1892), *Asa Singh* v. *Hari Singh* (61 *P. R.* 1892), *Mussammat Jowai* v. *Jiwan* (79 *P. R.* 1893), *Sukha* v. *Amira* (81 *P. R.* 1893), and *Bir Singh* v. *Chamila* (90 *P. R* 1893), referred to.

Kesar Singh v. *Sundar Singh* (59 *P. R.* 1889), not followed, and *Sahib Din* v. *Amira* (16 *P. R.* 1889), distinguished. HARI CHAND AND ANOTHER *v.* DHERU AND OTHERS.

12 P R 1904

166. *Occupancy rights, acquisition of—Continuous occupation—Punjab Tenancy Act,* 1868, *section* 6 *and Punjab Tenancy Act,* 1887, *section* 5—Res judicata.

Held, that the Tenancy Act of 1887 does not confer the status of an occupancy tenant upon a person who was under the old Tenancy Act only a tenant-at-will and had been allowed to continue in possession on a lease (executed before the present Tenancy Act came into force) containing a condition that after the expiry of the period fixed thereby he might be ejected without compensation, notwithstanding the fact that he had been settled by the founders of the village as a cultivator therein and had continuously occupied the land since that date.

Held, also, that the rule of *res-judicata* does not necessarily apply to claims for occupancy rights where successive suits are brought under the two successive Tenancy Acts.

OCCUPANCY RIGHTS—*contd.*

Surta v. *Imin-ud-din* (2 *P. R.* 1891, Rev.) *Rahim Bakhsh* v. *Rahim Bakhsh* (10 *P. R.* 1901, Rev.) *Roshan Jahan* v. *Enaet Hussain* (*W. R.* 1864, 83), and *Solomon* v. *Abdul Azeez* (*I. L R VI Calc.* 687), referred to. RAM DITTA *v.* BHOLA SINGH.

1 P R 1904 Rev.

167. *Occupancy right—Transfer of right of occupancy under section 5—Measure of fixing value by the Revenue Officer—Punjab Tenancy Act*, 1887, *section* 53.

As the political reasons for keeping certain tribes in possession do not apply in cases between a landlord and a tenant, the method of fixing the value of an occupancy tenant holding under clause (3) of section 53 of the Tenancy Act is not necessarily the same as that of fixing the value of agricultural land in cases of pre-emption. The value to be fixed under section 53 must be the *bona fide* value of the holding to the tenant at the time when, under clause (2) of the section, he ought to have given notice of his intention to transfer to his landlord.

If the consideration for the transfer is made up of interest which has accumulated in accordance with the terms of a mortgage-deed, this is not of itself a reason for reducing the value to the advantage of the landlord but if the tenant or his transferee has done anything to prejudice the landlord's position, the Revenue Courts may be justified in taking the market price as the measure of value. *Sohna and others* v. *Muhammad Bakhsh* (12 *P. R.* 1901 Rev.), cited and followed. SALIG RAM *v.* RATTAN DAS. **2 P R 1904 Rev.**

168. *Occupancy Rights—Acquisition of occupancy rights in joint holding—Continuous occupation of* 20 *years—Jagirdar—Partition of joint holding by Revenue Court—Punjab Land Revenue Act*, 1817, *section* 111—*Landlord and tenant—Ejectment—Liability to, on the ground of alteration of the holding from arable to building land—Relief against forfeiture—Punjab Tenancy Act*, 1887, *sections* 5 (*d*), 39, 48.

In a suit by a successor in interest of an original Jagirdar who had a joint interest in the *muafi* with others to contest a notice of ejectment and establishment of his occupancy rights, it was proved that the tenant was a jagirdar within the meaning of section 4 (5) of the Punjab Tenancy Act, 1887, and that the joint occupation of the land by him and his family has been continuous for a period exceeding 20 years, *held*, that the plaintiff was entitled to occupancy rights in the land equal to his share in the joint holding under section 5 (1) (*d*) of the Act. In such cases it is within the competence of a Revenue Court to dispense with an application from a joint tenant under section 111 of the Land Revenue Act and to direct by its decree that a partition shall be effected and that the share of the tenant in which he has been found to have acquired occupancy rights should be marked off and that he should be ejected from the residue. *Held, also*, following

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Karm Bakhsh v. Ghulam Muhammad (3 *P. R.* 1904, Rev.), that where land is let by an occupancy tenant for building purposes in the neighbourhood of a town ejectment is not the proper remedy, but in accordance with the provisions of section 48 of the Tenancy Act the landlord should be compensated in the form of enhanced rent, which should be assessed at the rate of one-third of that payable to the tenant so long as the building exists. DOGAR MAL *v.* SECRETARY OF STATE FOR INDIA IN COUNCIL.

4 P R 1904 Rev.

169. *Occupancy right—Sale of, without consent of landlord—Acquiescence—Right of tenant under section* 5 *not less than that of one under section* 6—*Punjab Tenancy Act*, 1887, *sections* 5, 53, 55, 60.

In a suit instituted in 1903 by a landlord to set aside a sale made by occupancy tenants holding under section 5 of the Punjab Tenancy Act, on the ground that it had been effected without his previous consent and was therefore void, it appeared that the sale deed was registered on 27th February 1899 and mutation effected in the following April, and that the rents were paid by the alienee after that and accepted by the plaintiff.

Held, that the landlord's conduct and acts amounted to acquiescence and he was estopped from contesting the sale.

Jiwan Singh v. *Maharaja Jaggat Singh* (1 *P. R.* 1898, Rev.) and *Bakhsk* v. *Fateh Muhammad* (2 *P. R.* 1898, Rev.) referred to. BHAGA *v.* KRISHAN DEO. **8 P R 1904 Rev.**

170. *Occupancy rights—Landlord and tenant—Right of landlord to cut trees on land held by tenant having rights of occupancy.*

Held, that a landlord is not entitled to cut down trees on a tenancy without the consent and contrary to the interests of his tenant.

Nikka v. *Lukha* (95 *P. R.* 1867), *Kalian Das* v. *Buta* (61 *P. R* 1873), *Jani* v. *Gulam Farid Khan* (4 *P. R.* 1875), *Mussammat Gur Devi* v. *Sondha* (61 *P. R.* 1881), cited and followed. GANGA RAM *v.* MAHNI.

9 P R 1904 Rev.

171. *Occupancy rights—Rights of occupancy tenant in submerged land on re-appearance—Custom*—Mauza *Pakhiwan, Gurdaspur District.*

Found, that by custom of the village Pakhiwan in the Gurdaspur District an occupancy tenant does not lose his right by reason of the land of his holding being submerged and is entitled to claim his rights on the land being again thrown up by the action of the river. DEWA SINGH *v.* BISHAMBAR DAS. **80 P R 1905**

172. *Limitation—Irregular transfer of occupancy—Suit by landlord for possession of sale—Limitation Act*, 1877, *Schedule II, article* 120—*Transfer to one of several landlords*—Locus standi *of other landlord.*

to contest such alienation—Punjab Tenancy Act, 1887, *section* 60.

Held, that the period of limitation applicable to a suit under section 60 of the Punjab Tenancy Act for the canceiment of a voidable transfer of a right of occupancy is six years under Article 120 of the second Schedule to the Limitation Act, 1877.

Held, also, that an alienation of a right of occupancy by a tenant to one of several landlords does not bind the other landlords whose consent is not obtained. They are entitled to contest such alienation as being invalid by reason of its having been effected without their previous consent. KURIA *v.* NANAK **7 P R 1905 Rev.**

173. *Punjab Tenancy Act*, 1887, *sections* 9, 57—*Mortgage of occupancy rights—Right of mortgagee after death of mortgagor—Right of occupancy cannot be acquired by mere lapse of time.*

Held, that the interest of a mortgagee in posssession of occupancy rights ceases with the interest of a mortgagor and that his subsequent occupation, however long it may be, could only be regarded as that of a tenant-at-will.

Mere length of time does not create an occupancy right, as such a right can only be acquired in one of the ways described in the Tenancy Act. SHIB SAHAI *v.* HIS HIGHNESS MAHARAJA BALBIR SINGH OF FARIDKOT **8 P R 1905 Rev.**

174. *Grant of, by landowner in ancestral land—Competency of such landowner's heirs to contest his action.*

Held, that it is open to a landowner to create occupancy rights in his ancestral land, and that as a general rule it is not open to such landowner's heirs to challenge his action, unless it is shown that the transaction was in reality a sale of the land itself or of the proprietary rights therein. FAQIR MUHAMMAD *v.* FAZAL MUHAMMAD. **16 P R 1906**

175. *Sale of occupancy rights to landlord—Suit by mortgagee for possession against the landlord—Legality of sale alleged to have been effected under section 53 of the Tenancy Act, but adjusted out of Court—Jurisdiction of Civil or Revenue Court—Punjab Tenancy Act*, 1887, *sections* 53, 77.

In 1899 an occupancy holding was mortgaged with possession to the plaintiff. In 1901 the tenants caused a notice to be served under clause (2) of section 53 of the Tenancy Act on the landlords intimating their intention of selling their rights.

Thereupon one of the landlords applied to the Revenue Officer under clause (3) of that section to have the value of the land fixed. Subsequently the parties determined the value by mutual agreement, applied a portion of the amount so agreed on in payment of another mortgage, paid a portion to the tenants, balance being left in deposit with the landlord for payment to plaintiff. On being informed of the above arrangement

the Revenue Officer passed an order as if under clause (6) of that section.

The plaintiff then instituted the present suit for possession of the land on the allegation that section 53 did not authorise an adjustment out of Court. The defence contended that the suit was not cognizable by a Civil Court and that the provisions of section 53 had been fully complied with.

Held, that as the plaintiff was not a tenant under the landlord and as his suit was for the restoration of his possession as mortgagee against a trespasser, it was cognizable by the Civil and not by the Revenue Court.

Held, further, that the provisions of section 53 had been ignored, inasmuch as the Revenue Officer did not fix the price himself, nor make the landlord deposit it with him, nor act under clause (6) of the section, and, therefore, the right of occupancy was not extinct and the plaintiff was entitled to the relief claimed. BHAG MAL *v.* PIR BAKHSH. **32 P R 1906**

176. *Occupancy rights—Right of a sister of a deceased tenant subject to Muhammadan Law to succeed to a share—Punjab Tenancy Act*, 1887, *section* 59.

In a suit where the question before the Chief Court was whether the plaintiff (a sister of the deceased proprietor) was entitled under Muhammadan Law to succeed, as against the deceased's widow, to a share in certain trees growing in garden land in which the deceased possessed occupancy rights, *held*, that the right of the deceased in the trees was inseparable from the right he possessed in the land in which the trees were growing, and that the succession to the former must go with the succession to the latter.

Held, therefore, that under section 59 of Act XVI of 1887, the deceased's widow was alone entitled in the absence of male lineal descendants of the deceased, to succeed not only to the land but also to the trees growing therein. WALI MUHAMMAD *v.* MARIAM BI. **52 P R 1906**

177. *Occupancy rights—Succession to—Presumption from previous joint occupation—Punjab Tenancy Act*, 1887, *section* 59—*Judgment—Admissibility of*, not interpartes —*Evidence Act*, 1872, *section* 13.

In a dispute as to the succession to occupancy rights between the proprietary body and the collateral heirs of the last occupancy tenant, the plaintiff's contention was that the land had been acquired by the tenant himself and not inherited by him from a common ancestor, and relied on the judgment of a case between the widow of the last tenant and the present defendants. It appeared that at the summary settlement the deceased tenant was entered as an owner jointly with his brothers, but at the time of the first regular settlement he was alone recorded as an occupancy tenant.

Held, that under the circumstances there was a strong presumption that the land in dispute held by the tenant at the time of regular settlement and of which he was

recorded a *maurusi* was inherited by him from his father and that therefore the defendants, who were his collateral heirs, had a better claim than the plaintiffs.

Held, also, that the judgment in the former litigation in which the present plaintiffs were not parties was not relevant either under section 13 or any other section of the Evidence Act, as there was no question as to the existence of a right or custom, but a simple question of fact as to whether the property was held by the father of the last tenant.

Paltu v. *Muhammad Hussain* (62 *P. R.* 1882 *Neamat Ali* v. *Gooroo Das* (22 *W. R.* 365) and *Gajoo Lal* v. *Fateh Lal* (*I. L. R. VI Calc.* 171) referred to. SOBHA SINGH *v.* NAND SINGH. **56 P R 1906**

178. *Occupancy rights—Succession to—An associate of a sonless adopted son has no right in preference to a male collateral relative—Punjab Tenancy Act*, 1887, *section* 59.

In a dispute to the succession to occupancy rights between the brothers of an adopted son who were formally associated by the latter with him in the tenancy and the collateral heirs of the adoptive father descended from the original holder of the land, it appeared that by virtue of the custom of the tribe applicable as regards succession to proprietary rights the plaintiffs alone were entitled to succeed.

Held that the mere formal association by the adopted son who died sonless gives no right of succession under section 59 of the Punjab Tenancy Act, 1887, to the brother of the adopted son in presence of the near male agnates of the deceased's adoptive father, and that therefore the latter alone were entitled to succeed to the land inherited from the adopting father. SAIDA *v.* ISMAIL. **76 P R 1907**

179. *Custom—Alienation—Alienation of occupancy rights—Right of reversioner to restrain such alienation—Burden of proof—Punjab Tenancy Act*, 1887, *section* 59.

Held, by the Full Bench that, where, in a suit by a collateral of an occupancy tenant to obtain a declaration that a certain alienation by an occupancy tenant of his occupancy rights would not bind his reversionary interests, it is proved that the plaintiff was entitled to succeed to occupancy rights on the death of the alienor and that had the subject-matter in question been a proprietary right instead of a right of occupancy he could have maintained the suit, the *onus* of proving a special custom that the plaintiff was not competent to maintain his suit will lie on the person asserting the existence of such a custom. ABDULLA *v.* ALLAH DAD. **93 P R 1907 F. B.**

180. *Occupancy rights—Succession to—Common ancestor not occupying land—Entry in* Wajib-ul-arz *overriding provisions of law—Agreement—Punjab Tenancy Act*, 1887, *sections* 111, 112.

Held that under sections 111 and 112 of the Punjab Tenancy Act, 1887, an entry in

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a record-of-rights prior to 1871 providing rules overriding the provisions of law with respect to succession to land in which a right of occupancy subsist should be deemed to be an agreement and enforced as such notwithstanding the restrictions contained in proviso to section 59. PURAN *v.* MAMUN.

130 P R 1907

181. *Occupancy rights—Acquisition of, by the representative of one founder against another—Punjab Tenancy Act*, 1887, *sections* 5 (1) (c) 10.

Held that the representatives of a member of the original proprietary body who was one of the founders of the village, cannot acquire occupancy rights under clause (*c*) of section 5 of the Punjab Tenancy Act, 1887, against another founder. HIRA *v.* BUDHA. **1 P R 1907 Rev.**

182. *Occupancy rights—Succession to—Right of a head of a religious institution to succeed in his representative capacity—Punjab Tenancy Act*, 1887, *section* 59.

Held that where occupancy rights belong to a religious institution the *chela* of the last incumbent who has become *mahant* of the institution is entitled to succeed to them in his representative capacity as head of such institution. SHER SINGH *v.* SAYA RAM DAS. **2 P R 1907 Rev.**

183. *Occupancy rights—Sale of, without consent of landlord—Acquiescence—Punjab Tenancy Act*, 1887, *sections* 53, 60

Held that acquiescence on the part of a landlord in an alienation of occupancy rights made in contravention of the provisions of the Tenancy Act cannot be inferred from the mere fact that the landlord omitted to sue for the cancelment of such transfer for fifteen months after the mutation was effected. MOHAR SINGH *v.* JHANDA SINGH.

3 P R 1907 Rev.

184. *Occupancy rights—Succession to, acquired under the Government Tenants Act.* (*Punjab*), 1893—*Applicability of Punjab Tenancy, Act*, 1887, *to such rights.*

Held that in matters of succession special tenancies created by Act III of 1893 are governed by the provisions of the Punjab Tenancy Act, 1887. SAHIB ZADA *v.* JAWAYA.

14 P R 1908

185. *Occupancy rights—Resumption of—Suit by landlord for, on the death of the widow of a deceased tenant—Competency of person holding under widow to plead adverse possession.*

Held that in a suit to resume land held on an occupancy tenure, instituted immediately after the death of the widow of the tenant, it is not competent for the person holding under the widow as her successor to set up adverse possession, based on mutation of names effected in his favour during the widow's lifetime, which had been unsuccessfully objected to by the predecessors in title of the plaintiffs, or subsequent long

OCCUPANCY RIGHTS—*contd.*

and uninterrupted enjoyment of the tenure. The landlords were not bound to sue until after the widow's death as her occupancy rights could have been successfully pleaded against a suit for possession, and mere lapse of time does not *ipso facto* create a right of adverse possession. GANDA SINGH *v.* KAIM KHAN. **60 P R 1908**

186. *Occupancy rights—Succession to occupancy rights on the death of a tenant in common—Survivorship—" Occupied the land" —Punjab Tenancy Act*, 1887, *section* 59.

Held that where by a mortgage deed effected in favour of several persons, the shares of such mortgagees are definitely and separately specified the mortgagees do not take as joint tenants but as tenants in common.

Semble : The expression "occupied the land" as used in section 59 of Act XVI of 1887 means actually occupied the land. The mere constructive possession of a joint tenant would not amount to such occupation. KAHN SINGH *v.* HARDIT SINGH. **100 P R 1908**

187. *Occupancy rights—Succession to—Presumptiion from long occupation—Punjab Tenancy Act*, 1887, *section* 59.

Held that in a case of succession to right of occupancy by the collateral heirs of the last occupancy tenant where it is shown that the father of the deceased tenant who was regarded in the annual papers as a hereditary cultivator had been in possession of the holding for fifty years, the presumption might be drawn that it had descended to the father from the grandfather. SIPADAR KHAN *v.* KADHERU. **101 P R 1908**

188. Mafi—*Resumption of* mafi—*Settlement made with heir of* Mafidar—*Rights of heir—Occupancy rights—Acquisition of occupancy rights by tenants who were some of the joint owners of the holding as against such heir—Punjab Tenancy Act*, 1887, *section* 5 (1) (*b*).

Held that when *mafi* land is on resumption settled with an heir of the *mafidar*, he is entitled to receive the landlord's profits in the land and to eject the tenants unless they can prove that they have acquired a right of occupancy, and the mere fact that the land is a portion of the village common land and that the tenants are some of the members of the proprietary body does not give them rights of occupancy under section 5 (1) (*b*) of the Punjab Tenancy Act, 1887. KARTAR SINGH *v.* PURAN.

3 P R 1908 Rev.

189. *Occupancy rights—Alienation of occupancy rights—Right of reversioner to contest alienation even after it had been successfully contested by the landlord—Custom—Alienation—Gift of occupancy rights to daughter in presence of near male collaterals—Chimas of* mauza *Bhama Kalan in the Lahore District—Burden of proof.*

OCCUPANCY RIGHTS—*contd.*

Held, that a reversioner is not debarred from suing to protect his reversionary interest against an alienation of occupancy rights, merely because such alienation has also been challenged by the landlord as an invalid alienation. The latter, even if successful, cannot on the death of the alienor step in and claim the holding, if there is a reversioner entitled to succeed under section 59 of the Act.

Held also, that in matters relating to alienation of ancestral landed property the Chimas of *mauza* Bhama Kalan, who have for generations past followed agriculture and are solely dependent on land are governed by the general rules of agricultural custom, and the *onus* of proving the validity of a gift of a share of an occupancy holding by a sonless male proprietor in favour of his daughter rests on the party asserting the existence of such a custom.

Found, that the defendant had failed to prove that the gift was valid by the custom of the parties. BHAG SINGH *v.* SHARAM SINGH.

38 P R 1909

190. *Occupancy rights—Effect of non-cultivation by a minor—Punjab Tenancy Act*, 1887, *section* 38.

Held, following 9, *P. R.* 1910 Rev. (*Lakha* v. *Thakar Dial*) that under section 38 of the Punjab Tenancy Act, 1887, the occupancy rights of minors are not lost if they fail to manage the cultivation, their minority being a sufficient cause for their failure to cultivate. JIWAN *v.* DIWAN SINGH. **3 P R 1910**

191. *Occupancy-holding—Succession—Punjab Tenancy Act, XVI of* 1887, *section* 59 (*c*)—*Entry in* Wajib-ul-arz *regarding succession of* bhaiya karabati—*meaning of—Custom*—Onus probandi.

Held, that where in the Wajib-ul-arz the occupancy tenants are recorded as stating, that if one of them should die without sons succession should go to *bhaiya karabati*. Such entry if viewed (1) as a record of custom, cannot be used to override or extend the scope of section 59 (*c*) of the Punjab Tenancy Act, XVI of 1887, and if viewed (2) as an agreement, should be interpreted in a reasonable way and it is reasonable to suppose that the landlords, if they agreed at all, agreed to the succession of such brothers and *karabati* only as might be entitled under Tenancy law and custom, and the idea of a right accruing only to descendants of a person who once held the land, is a fundamental idea in the minds of the peasantry.

Held also, that the burden of proof is on the persons claiming occupancy rights, and they must prove that their ancestor once occupied the land. ALLAH DITTA *v.* ACHHRU MAL. **38 P R 1910**

192. *Occupancy rights—Mortgage of—In favour of landlord*—locus standi *of reversioner to impugn the mortgage—Punjab Tenancy Act, XVI of* 1887, *sections* 53 *and* 58.

OCCUPANCY RIGHTS—*concld.*

Held, that the principles laid down in 24 *P. R.* 1902 (*F. B.*) apply also to mortgages and that a reversioner of an occupancy tenant cannot, therefore, impugn a mortgage of the occupancy rights made by the tenant in favour of his landlord.

31 *P. R.* 1896 (*F. B.*) 89 *P. R.* 1888 (*F. B.*), 65 *P. R* 1900 (*F. B.*), and 24 *P. R.* 1902 (*F. B.*), referred to. KARAM ILAHI *v.* SULTAN ALAM. **73 P R 1911**

193. *Occupancy tenancy—Alienated—Tenant suing proprietors for possession after latter have had alienation set aside—Jurisdiction of Civil or Revenue Courts—Punjab Tenancy Act, XVI of* 1887, *sections* 50 *and* 77 (3) (i)—*Exercise of revisional powers by Financial Commissioner.*

Held, that an occupancy tenant who has alienated his rights may recover his tenancy from the landlords after the latter have had the alienation declared void and obtained possession from the alienee, and it is no good answer to such a suit that the plaintiff is not able to show that he is no longer bound by the contract of alienation.

Held also, that such a suit by a tenant is one for the Civil Courts and not the Revenue Courts to decide.

Held further, that the Financial Commissioner will not exercise his discretionary powers of revision to correc a defect of jurisdiction unless it resulted in injustice or failure of justice. MAKHAN SINGH *v.* NANDA SINGH. **1 P R 1911 Rev.**

OCCUPATION OF LAND.

—*By Person without title.*
See ACQUIESCENCE. **53 P R 1878**

OCTROI.

1. *Breach of contract.*
See MUNICIPAL COMMITTEE. **10 P R 1867**

2. *Article liable to taxation.*
See MUNICIPAL COMMITTEE. **49 P R 1868**

3. *Goods in transit—Bonded warehouse.*
See MUNICIPAL COMMITTEE. **31 P R 1876**

4. *Legality of partnership between octroi lessee and another—Financial Commissioner's Circular No.* 10 *of* 1868.
See MUNICIPAL COMMITTEE. **79 P R 1870**

5. *Suit far recovery of arrear of octroi by lessee*
See MUNICIPAL COMMITTEE. **60 P R 1873** **55 P R 1876**

6. *Rules regarding levy of octroi on government stores—Refund.*
See MUNICIPAL COMMITTEE. **97 P R 1882**

OFFERINGS.

1. *Suit for share of offerings at shrine*
See SMALL CAUSE COURT—JURISDICTION OF. **71 P R 1876** **84 P R 1892**
See SMALL CAUSE COURTS ACT, 1865, SECTION 6. **188 P R 1888**

OFFERINGS—*concld.*

2. *Offerings at shrine—Question of title incidentally raised.*
See SMALL CAUSE COURT—JURISDICTION OF. **73 P R 1877**

OFFICIAL ASSIGNEE.
See INSOLVENCY. **46 P R 1874**
See RIGHT TO SUE. **118 P R 1886**

OFFICIAL LIQUIDATOR.
See COMPANIES ACT, 1866, SECTION 128. **38 P R 1881**

OMISSION OR REFUSAL TO DECIDE PARTICULAR ISSUE.
See RES JUDICATA. **168 P R 1882** **104 P R 1883** **137 P R 1883**

ONLY SON

—*Adoption of.*
See CUSTOM III.—APPOINTMENT OF HEIR.
A.—ADOPTION OF COLLATERAL. **43 P R 1886**
C.—ADOPTION OF DAUGHTER'S SON OR GRANDSON **162 P R 1883** **57 P R 1886**
D.—ADOPTION OF SISTER'S SON OR GRANDSON. **57 P R 1881**

ONUS PROBANDI.
See BURDEN OF PROOF.

OPIUM ACT (I OF 1878).

1. *Lease of shop to defendant by farmer of opium monopoly for retail vend of opium, &c.—Omission by farmer to grant a license to defendant—Suit by farmer for damages caused by defendant abandoning shop leased to him.*

In a suit by the farmer of the monopoly of opium for the city of Amritsar and of *charas* for the district, the plaintiff, who had leased to the defendant a shop in Amritsar, which the defendant gave up after 12 days' possession, claimed damages as stipulated in his written agreement for the loss occasioned to him by the re-lease of the shop. It appeared that the object of the agreement sued upon was the retail vend by the defendant of opium and intoxicating drugs (within the meaning of Act I of 1878) and of charas. This trade could not lawfully be carried on by the defendant except under license from the farmer, a form of which is prescribed in the rules framed by the Government under the Act: the power to grant such license rested with the farmer himself, but it was found as a fact that he never granted a license in the prescribed form.

Held, that as the farmer by his own default omitted to grant the defendant a license authorising him to carry on the trade of retailing opium, and the carrying on of such trade by the defendant without such license was unlawful, he could not recover damages from the defendant for having discontinued carrying on an unlawful trade. GOBIND RAM *v.* RAHMAN NAIK. **114 P R 1881**

2. *Farmer of monopoly of sale of drugs appointing agent to sell drugs for him—Validity of agreement made with such agent—License.*

OPIUM ACT (I OF 1878)—*concld.*

An agreement made by the plaintiff, who was the farmer of the monopoly of the sale of drugs, with the defendant as his servant or agent, under which the latter was to sell drugs for the farmer at a particular shop, and be remunerated by a percentage on the proceeds of the sale, the shop still remaining the shop of the farmer who supplied the drugs to the agent for sale there, *held*, not to be illegal under Act I of 1878 or the rules framed thereunder, as under the above circumstances the defendant required no license from the plaintiff authorising him to sell the drugs, and he could legally receive, and retain possession of, and sell the drugs without such license, his possession and his acts being those of his master or principal. *Gobind Ram* v. *Rahman Naik* (No. 114 P. R. 1881), distinguished. GOBIND RAM *v* KIRPA RAM. **105 P R 1883**

ORAL AGREEMENT.

—*Substitution of, for Contract in writing.*
See EVIDENCE.

ORDER.
See DECREE OR ORDER.

ORDER OF REFERENCE.
See ARBITRATION.

OWNER'S RATE.
See NORTHERN INDIA CANAL AND DRAINAGE ACT, 1873. **88 P R 1885**

P.

PACHOTRA.
See under CUSTOM V.—CESSES AND DUES.
—*Suit for.*
See JURISDICTION OF CIVIL OR REVENUE COURT. **50 P R 1886**

PAGVAND.

—*Succession by rule of.*
See CUSTOM VIII.—MAINTENANCE AND SUCCESSION—B. PAGWAND AND CHUNDAWAND, *Passim.*

PAHI-KASHT TENANT.
See TENANCY ACT, SECTION 9.

"PALAK."
See CUSTOM III.—APPOINTMENT OF HEIR—E. ADOPTION OF STRANGERS. **109 P R 1885**

PUNJAB CIVIL CODE.

1. *Its force of law.*

With regard to proceedings in bankruptcy, the Code acquired the force of law, and nothing relating to bankruptcy that was not found in the Code, had the authority of law: the rules of the Judicial Commissioner of February 1863 had the force of law so far as they were consistent with the Code. IN RE BICK. **64 P R 1867**
And RAM CHAND *v.* GUNGA BISHEN. **37 P R 1871**

2. A reference to the recognized authorities to explain the Code in a case of doubt, was intended by the Code. MUSSAMMAT HAFIZAN *v.* MUSSAMMAT MENDHOO. **7 P R 1869**

PUNJAB CIVIL CODE—*concld.*

3. *Held*, that, whether the Code altered the law or not, it was a sufficient authority for the purpose of granting a certificate under Act XXVII of 1860, although the *Mitakshara* and other authorities were opposed to the Code in the particular case. SIRDAR ATMA SINGH *v.* MUSSAMMAT ATAR KOUR. **69 P R 1869**

4. *Held*, by CAMPBELL, J., that the Code was merely an authorized guide to the law, and had not acquired the force of law. MUSSAMMAT UTTUR KOUR *v.* ATMA SINGH. **47 P R 1870**

PARDA-NASHIN WOMEN.

See ESTOPPEL. **169 P R 1882**

See ONUS PROBANDI. **149 P R 1882**

1. *Undue influence*—Pardanashin *woman —Execution of deed by* pardanashin *in favour of a person who is in relation of active confidence—Burden of proof—Presumption of a recital in a registered deed as to receipt of consideration—Contract Act,* 1872, *section* 16 *—Evidence Act,* 1872, *section* 111*—Suit on bond not legally enforceable—Right to revert to original consideration.*

Plaintiff sued upon a registered bond purporting to have been executed by the defendant, a married *pardanashin* lady of Delhi. The defendant admitted execution, but pleaded that the bond was without consideration and fictitious for fear of her husband who was addicted to extravagance and waste. It was proved that the defendant was the daughter of plaintiff's maternal uncle, and had been brought up in plaintiff's house and married from there, and that in fact, the plaintiff was the only relation she had on her father's side, that the plaintiff held a position of active confidence with reference to her, as her husband being an unbusiness-like man, she had to call in plaintiff's aid in order to save the family property from being wasted which had been gifted to her by her husband in full ownership. The bond sued upon was executed in plaintiff's house at Hathras, and all the witnesses and persons present at the execution were his servants, defendants, or friends. There was no one to help the defendant with advice or other assistance, her husband with whom she had all along continued to live not being even present

Held, that such circumstances were sufficient to modify the ordinary presumption arising out of a recital in a registered bond, " that when a bond is registered " and its execution is admitted by the de- " fendant the *onus* of proof of want of " consideration and of free consent not having " been given would lie on the party seeking " to get out of its effect," and that the *onus* of proving good faith, fair dealing, and full and free consent must be laid on the party interested in upholding the transaction, and in the absence of such proof the deed must be declared as not binding on the executant.

PARDA NASHIN WOMEN—*concld.*

Plaintiff's prayer for an inquiry into the accounts which formed the alleged consideration of the bond and decree thereupon refused under the circumstances. HOTI LAL *v.* MUSSAMMAT RAM PIARI. **77 P R 1903**

2. *Maintenance of wife*—Pardanashin *lady—Personal attendance in Court—Discretion.*

Held, that a Magistrate has discretion in the case of an application under section 488, Criminal Procedure Code, to dispense with the personal attendance of the complainant when she is a *pardanashin* lady. There is nothing in the section which requires the personal attendance of the person in whose favour the order for the maintenance is to be made.

Bishen Das v. *Mussammat Nanki* (3 *P. R.* 1893, Cr.), *Hildephonsus* v. *Malone* (13 *P. R.* 1885, Cr.), *In the matter of the petition of Faridun-nissa* (*I. L. R. V All.* 92), *In the matter of the petition of Basant Bibi* (*I. L. R. XII All,* 69), *In the matter of the petition of Din Sarini Debi* (*I. L. R. XV Calc.* 775), *Basumoti Adhikarini* v. *Budram Kalita* (*I. L. R. XXI Calc.* 588), and *Nur Mohamed* v. *Bismulla Jan* (*I. L. R. XVI Calc* 781) referred to. MUSSAMMAT GHULAM RAKIYA *v.* NIAZ ALI. **19 P R 1803 Cr.**

PAROHIT AND JUJMAN.

See under RELIGIOUS INSTITUTIONS.

PARTIES.

See JOINDER OF PARTIES *Passim.*

See PRE-EMPTION—LOSS OR WAIVER OF RIGHT. **80 P R 1888**
134 and 141 P R 1889
29 and 102 P R 1894

See MUHAMMADAN LAW—JOINT FAMILY **91 P R 1887**

1. *Parties to suit—Representative—Right to sue.*

See CIVIL PROCEDURE CODE, 1908, SECTION 47. **12 P R 1887**
47 P R 1887
87 P R 1887
97 P R 1887
99 P R 1887
9 P R 1889
63 P R 1889
151 P 1890

2. *Person who becomes surety for the performance of an orignal decree after the decree has been made is not a party to the suit.*

See CIVIL PROCEDURE CODE, 1908, SECTION 47. **99 P R 1887**

3. *Suit for land awarded at partition of whole culturable land of village—Parties—Duty of Appellate Court.*

See CIVIL PROCEDURE CODE, 1908, ORDER I, RULE 9. **5 P R 1892**

4. *Execution of decree—Application for attachment and sale of property—Property duly attached and deposited with care taker—Disappearance of attached property—*

PARTIES—*contd.*

Right of decree-holder to proceed against person of judgment-debtor.

See CIVIL PROCEDURE CODE, 1908 ORDER XXI, RULE 11. **21 P R 1899**

5. *Suit by widow with life interest to recover from collaterals property of her deceased husband—Legal representative of such widow for the purpose of continuing the suit or appeal on death of widow.*

See CIVIL PROCEDURE CODE, 1908, ORDER XXII, RULE 3. **97 P R 1893**

6. *Practice procedure—Parties—Death of respondent pending appeal—Application by appellant to have certain person brought on record as deceased's legal representative —Similar application by third party who alleges himself to be deceased's legal representative—Duty of Court.*

See CIVIL PROCEDURE CODE, 1908, ORDER XXII, RULE 4. **66 P R 1894**

7. *Offer to be bound by oath of other party—Power of next friend to bind.*

See CIVIL PROCEDURE CODE, 1908, ORDER XXXII, RULE 7. **186 P R 1889**
18 P R 1891

8. *Joinder of respondents on appeal.*

See CIVIL PROCEDURE CODE, 1908, ORDER XLI, RULE 20. **23 P R 1901**

9. *Non-appearance of, on the day fixed for delivery of judgment*

See DISMISSAL OF SUIT. **82 P R 1901**

10. *Parties to suit agreeing to be bound by the oath of a witness—Refusal of witness to take the oath, effect of—Adjustment of suit —Decision on merits.*

See OATHS ACT, 1873, SECTION 8. **31 P R 1888**

11. *Suit for pre-emption between rival pre-emptors—Necessary parties to such suit.*

See PRE-EMPTION—LOSS OR WAIVER OF RIGHT. **29 P R 1894**
139 P R 1894
73 P R 1898

JOINDER OF PARTIES. **80 P R 1888**

12. *Pre-emption—Two persons suing jointly, one alone of whom has the right of pre-emption—Effect of such error on substantive right—Procedure.*

See PRE-EMPTION—LOSS OR WAIVER OF RIGHT. **83 P R 1893**

13. *Common land—Co-sharers.*

Where there is no dispute as to the land being shamilat, it is not necessary to make all the co-sharers parties to the suit. WAZIR SINGH *v.* MEHTAB SINGH. **108 P R 1889**

14. All partners of a firm should be made parties to a suit on behalf of the firm. NAUBAT RAI, *v.* SEWA RAM. **140 P R 1889**

15. *Parties—Adding parties as plaintiffs—Joint promise to plaintiff and others—Right of plaintiff to sue alone—Cause of action—Non-joinder—Procedure—Civil Procedure Code*, 1882, *section* 54 (c).

Held, that, on objection taken by the defendant on the ground of non-joinder of a party as plaintiff, at the first hearing, the plaint may be rejected under section 54 (c) without being returned for amendment, if the plaintiff insists on adhering to the allegation that the contract sued on was entered into with him alone ; and that the Appellate Court may dismiss his appeal against the order of rejection without giving him an opportunity to amend his plaint by adding the party who should originally have been added.

Ramsebuk v. *Ram Lal Koondoo* (*I. L. R. VI Calc.* 815 and *Badri Das* v. *Jawala Pershad* (86 *P. R.* 1891, *F. B.*), followed ; *Kala Khan* v. *Sewa Ram* (156 *P. R.* 1889, F. B.), referred to. PHOLU SHAH *v.* DITTA SINGH. **56 P R 1901**

16. *Suit by some of the several co-sharers against the trespasser affecting common land—Effect of non-joinder of other co-sharers—Civil Procedure Code*, 1882, *section* 30—*Decree, form of.*

Held, that one or several of many co-sharers can sue to prevent invasion of their common property by a mere trespasser, and that in such a case a decree for sole possession or for possession on behalf of other co-sharers should not generally be given, the proper form of decree should be for the restoration of the property to its condition prior to the trespasser's invasion and so preserve the invaded rights which the plaintiff and other co-sharers possessed in the property. RAMZAN ALI *v.* BASHARAT ALI AND OTHERS.

105 P R 1901

17. *Landlord and tenant—Suit for ejectment of tenant—Right of some of the landlords to maintain such suit—Proper parties.*

Although for the purposes of ejectment of a tenant from a joint holding the general rule is that all the co-sharers must either act jointly or must obtain partition, yet in a case where the Court is satisfied that the co-sharers who do not sue are for some reasonable cause not in a position to do so, and that the co-sharers who do sue are acting *bona-fide* in the interests of the absentees as well as in their own, and that the tenants will not be prejudiced, on the merits of the case by the decision of the suit in the absence of some of the landlords, *held*, that in such a case the general rule need not be applied, especially if it would cause a miscarriage of justice. CHUHAR SINGH v. JHANDA SINGH.

1 P R 1902 Rev.

18. *Parties—Non-joinder—Mortgage in name of two members of joint Hindu family—Right of such members to sue alone—Non-joinder of other members.*

Held, also, that where a contract is in favour of an individual member of a joint Hindu family, and is taken by the parties to the contract to be such, that member is competent to sue alone, where the contract is not shown to be on behalf of, or for the benefit of, the joint family. SOHNA SHAH AND OTHERS v. DIPA SHAH AND OTHERS. **15 P R 1902**

19. *Contract by a artner on behalf of the partnership—Right of promisee to sue any or all of the joint promisors—Contract Act*, 1872, *sections* 42, 43, 266.

Held, that in a suit upon a contract made by a partner on behalf of the partnership the promisee can compel all or any one of such partners to perform the whole of the promise, and that non-joinder of a co-promisor is no ground of defence to such a suit. JAE LAL *v.* SHIB LAL. **37 P R 1902**

20. *Necessary Parties—Effect of addition of new defendant—Limitation Act*, 1877, *section* 22.

Held, that whereon the objection of the defendant it was found that a necessary party had been omitted without whose presence on the record the suit could not be adjudicated upon, and such party was added after the period of limitation had expired, the suit was barred against all the defendants under section 22 the Limitation Act.

Boydonath Bag v. *Garish Chandar Roy* (*I. L. R. III Calc.* 26), *Sadulla Khan* v. *Bhana Mal* (58 *P. R.* 1882), distinguished. *Khan Muhammad Shah* v. *Muhammad Jan* (104 *P. R* 1882), *Ram Chand* v. *Rana* (149 *P. R.* 1889), and *Kesar Singh* v. *Ganga Singh* (2 *P. R.* 1882), referred to. *Ramsebuck* v. *Ram Lal Koondoo* (*I. L. R. VI Calc.* 815), *Dallu Ram* v. *Nibahu Mal* (8 *P. R.* 1886), *Pandit Bhawani Sai* v. *Ganesh Das* (65 *P. R.* 1884), *Kasar Singh* v. *Punjab Singh* (66 *P. R.* 1896), *Ramdoyal* v. *Jum-nenjoy I. L. R. XIV Calc.* 791), and *Harak Chand* v *Bhagbut Prosad Singh* (*I. L. R. XXV Calc.* 409), cited. RAM CHAND *v.* SOBHAN BAKHSH AND ANOTHER. **69 P R 1902**

21. *Effect of adding a new defendant to suit.*

Section 22 of the Limitation Act applies even where a Court of its own motion adds a party to a suit. NABI BAKHSH *v.* FAKIR MUHAMMAD. **25 P R 1903**

22. *Misjoinder—Parties—Joinder of plaintiffs—Persons jointly interested in a suit—Claims not antagonistic—Civil Procedure Code*, 1882, *sections* 26, 27, 31.

Certain Jats sued for a declaration that the land in suit was their property alleging that at Settlement the defendants had been wrongly entered as proprietors thereof. Subsequently certain butchers stating themselves to be proprietors of part of the land applied to be made co-plaintiffs. Finally a joint application to the same effect was made by the Jat plaintiffs and the butchers in which it was stated that they owned specified portions of the land. The defence pleaded misjoinder. The objection being overruled, the butchers were added as co-

plaintiffs. The plaint was not amended, but fresh pleas were taken and issues framed. After enquiry into the merits the first Court gave a joint decree in plaintiff's favour. On appeal the Divisional Judge considering that the impleading of the butchers as plaintiffs was wholly illegal and improper, and had been effected at the wish and with the consent of the Jat plaintiffs, dismissed the suit.

Held, that, as the rights of Jats and the butchers were not antagonistic and their causes of action were not distinct within the meaning of section 31, Civil Procedure Code, but were common to all of the plaintiffs, and as no inconvenience had been caused to defendants by their joinder which had not in any way prejudiced the defence, the suit was not bad for misjoinder

Semble : Where two sets of plaintiffs having distinct causes of action sue together such action is impliedly forbidden by the second paragraph of section 31 of the Code of Civil Procedure, and the suit is bad for misjoinder, but even in such case it is not just for a Court to dismiss the suit on that ground, the proper course being for the plaint to be returned for amendment so that the plaintiffs might elect which set of plaintiffs should proceed with the suit.

—*Fakirapa* v. *Rudrapa* (*I. L. R. XVI Bom.* 119), *Haramoni Dassi* v. *Hari Charn Chowdari* (*I. L. R. XXII Calc.* 833), *Ram Sewak Singh* v. *Nakched Singh* (*I. L. R. IV All.* 261), *Asa Singh* v *Indar Singh* (91 *P. R.* 1898), and *Read* v. *Brown* (*L. R.* 22 *Q. B. D.* 128), cited. *Joy Gobind Dass* v. *Gouree-proshad Shaha* (7 *W. R.* 202 , *Kalian Rai* v. *Rattan Ram* (*I. L. R. XVIII All* 306), *Mohima Chandra Roy Chowdhri* v. *Atul Chandra Chakravarti Chowdhri* (*I. L. R. XXIV Calc.* 540), and *Lingammal* v. *Chinna Venkatammal* (*I. L. R. VI Mad.* 239) distinguished. *Salima Bibi* v. *Sheikh Muhammad* (*I. L. R. XVIII All.* 131), dissented from. ALAH BAKHSH *v.* SADIQ ALI.

38 P R 1903

23 *Non-joinder of parties—Effect of objection as to non-joinder not taken in time—Civil Procedure Code*, 1882, *section* 34.

Held, that objection in respect of non-joinder of parties not raised at the earliest possible opportunity must be deemed to have been waived by the defendant.

Kalu Khan v. *Sewa Ram* (156 *P. R.* 1889, F. B.), cited. ANDERSON *v.* DELHI COTTON MILLS COMPANY, LIMITED. **69 P R 1903**

24. *Dismissal of suit for default in appearance—Parties to be informed of the place of hearing as well as the date.*

Held, that, Courts of Justice when on tour should not dismiss any suit for default in appearance unless they are satisfied that due notice of the exact date and place of hearing was given to the parties. It is essential for every Judicial Officer to acquaint the parties either by an order in Court given in his presence or by notice con-

PARTIES—*contd.*

taining the date and place of hearing. To post a general notice and programme of the tour at head-quarters is not a sufficient notice within the requirements of the Civil Procedure Code.

Bahala v. *Mamraj and others* (7 *P. R.* 1892, *Rev.*), and *Ambya* v. *Umra and Hassan* (45 *P. R.* 1875), cited. NAND LAL *v.* DIT RAJ AND OTHERS. **37 P R 1904**

25. *Review—Review by some only of several defendants—Power of Court to reverse decision as regards persons not parties to the review—Civil Procedure Code,* 1882, *sections* 544, 623.

One Phusa, a Jain Jat, died childless leaving immovable property which in default of heirs reverted to the proprietary body of the village. A., also a Jain Jat of the same village, claimed to be a collateral of the deceased and brought a suit against all the khewatdars of the village for recovery of possession. The suit was decreed. Among the defendants four alone applied for a review of judgment on the ground that they have discovered the pedigree-table of the Settlement of 1863, which conclusively proves that the plaintiff was not a collateral of the deceased proprietor. The other defendants were neither impleaded in the review proceedings nor did they take any steps to become parties to it. After enquiry the Court granted the review and reversed the decree as to the petitioners without disturbing decree as to those defendants who were not parties to the review proceedings. Thereupon the remainder of the khewatdars appealed to the Divisional Judge urging that the claim of the plaintiff should have been dismissed not only as regards the share of the four petitioners but as regards all the defendants. The Divisional Judge accepted this view and dismissed the whole claim.

Held, that the Divisional Judge had no jurisdiction to reverse the decree of the first Court against the appellants, who being no party to the application for review, nor the subsequent proceedings, had no *locus standi* to appeal to the Divisional Judge.

Section 544, Civil Procedure Code, has no application to applications for reviews; that section applies only to appeals and cannot be applied to reviews by analogy, for there is in effect no analogy between the two.

Poresh Nath Mundul v. *Khettri Monee-Debia* (20 *W. R.* 284) and *Chinta Monee Paul* v. *Pearee Mohun Mookerjee* (15 *W. R.* 1, F. B.), distinguished. GULLA *v.* MOTA AND OTHERS. **47 P R 1904**

26. *Joinder of parties—Partnership debt—Representative of a deceased partner.*

Held, that the representative of a deceased co-partner is a necessary party to an action for the recovery of a partnership debt.

Ram Narain Nursing Dass v. *Ram Chunder Jankee Lal* (*I. L. R XVIII Calc.* 86), relied on.

PARTIES—*contd.*

Gobind Prasad v. *Chand Sekhar* (*I. L. R. IX All.* 486), and *Whidanatha Ayyar* v. *Channasami Naik* (*I. L. R. XVII Mad.* 108). dissented from. KISHORE CHAND *v.* MUSSAMMAT NIHAL DEVI. **70 P R 1904**

27. *Landlord and tenant—Enhancement of rent—Suit by a majority of joint propretors—Punjab Tenancy Act,* 1877, *section* 24.

Held, that a suit against an occupancy tenant for enhancement of rent brought by the majority of joint proprietors as presenting the proprietary body is maintainable, especially where the minority is indifferent or has not shown any interest in the matter.

As a general rule it is not essential that all the co-sharers must join in such an action

Sharifulla v. *Jamal Khan* (77 *P. R.* 1883) and *Sube Khan* v. *Rahmat Ali* (1 *P. R.* 1895, *Rev.*) referred to. GURDIT SINGH *v.* GANPAT. **3 P R 1905 Rev.**

28. *Parties—Suit for account on death of principal—Right of some of several representatives to sue alone—Refusal to join other representatives in the suit—Non-joinder of necessary party, effect of.*

A representative of a deceased Hindu widow cannot maintain a suit for rendition of accounts from her agent without making the other legal representatives of the deceased parties to the suit, and in such a case where on objection being taken in time the plaintiff wilfully and deliberately refused to add the other representatives whose non-joinder has been objected to, *held*, that the suit should be dismissed. RAM SARUP *v.* MUSSAMMAT RAKHI. **12 P R 1905**

29. *Parties to contract—Right of third party to sue.*

Held, that under the law of contract in India as enunciated by the Indian Contract Act a person, for whose benefit a promise has been made by another person upon a joint consideration moving both from the plaintiff and a third party, is competent to maintain an action against the promisee, especially where the plaintiff appears, from the term of the agreement, to be the person for whose benefit the contract was made.

Tweddle v. *Atkinson* (30 *L. J. Q. B.* 265), *Re Rotherham Alum Chemical Company* (*L. R.* 25 *Ch. D. III*), and *Price* v. *Easton* (4 *B. and A* 433), not followed.

Muhammad Sadiq v. *Mussammat Sahib Bibi* (54 *P. R.* 1902), *Gandy* v. *Gandy* (*L. R.* 30 *Ch. Dn.* 57), *Touche* v. *Metropolitan Railway Ware-housing Company* (*L. R.* 6 *Ch.* 671). *In re Empress Engineering Company* (*L. R.* 16 *Ch. Dn.* 125), *Lilly* v. *Hays* (5 *A. and E.* 548), *Venkata Chinnaya Rau Garu* v. *Venkata Ramaya Garu* (*I. L. R. IV Mad.* 137), and *Duttan* v. *Poole* (2 *Lev.* 210), referred to.

Gregory v. *Williams* (1 *Mer.* 582), *Page* v. *Cox* (10 *Ha.* 163), and *Murray* v. *Flavell* (*L. R.* 25 *Ch. Dn.* 89), followed. DAROPTI *v.* JASPAT RAI. **49 P R 1905**

PARTIES—*contd.*

30. *Cause of action—Joint Hindu family—Suit by the managing member for debt due to the family—Joinder of other members interested in the family as defendants after the period of limitation—Limitation Act,* 1877, *section* 22—*Maintainability of suit.*

Held, by the Full Bench that when one out of several persons jointly entitled, either as partners, members of a joint Hindu family or otherwise, to sue, bring a suit in his own name within the period of limitation and subsequently after the period of limitation has expired joins those who were entitled to sue with him as defendants, such joinder does not render his suit liable to dismissal by reason of section 22 of the Limitation Act as against the original or real defendants, as that section does not apply where there is no community of interest between the two sets of defendants and the fresh parties are merely joined for the purpose of safeguarding the original defendant.

Roydonath Bag v. *Grish Chunder Roy* (*I. L. R. III Cal.* 26), *Kale Khan* v. *Sewa Ram* (156 *P. R.* 1889, *F. B.*), *Guruvayya Gonda* v. *Dattatraya Anant* (*I. L. R. XXVIII Bom.* 11), approved.

Ram Chand v. *Subhan Bakhsh* (69 *P. R.* 1902), *Fakera Pasban* v. *Bibi Azimmunnissa* (*I. L. R. XXVII Cal.* 540), distinguished.

Ramsebuk v. *Ram Lal Kundu* (*I. L. R. VI Cal.* 815), *Kalidas Kevaldas* v. *Nathir Bhagwan*, (*I. L. R. VII Bom.* 217), *Alagappa Chetti* v. *Vellian Chetti* (*I. L. R. XVIII Mad.* 33), *Anjamuthu Pillai* v. *Kolandavelu Pillai.* (*I. L. R. XXIII Mad.* 190), and *Sadulla Khan.* v. *Bhana Mal* (58 *P. R* 1882), referred to. LABHU RAM *v.* KANSHI RAM. **57 P R 1905**

31. *Striking out names of parties—Power of Court to strike out the name of one of two plaintiffs of its own motion—Civil Procedure Code,* 1882, *sections* 26, 31, 32.

Where two plaintiffs sued on a promissory note, and the right to sue was vested in one, but it was doubtful in which of them, and the defendant applied under section 32 of the Civil Procedure Code to have the name of one of such plaintiffs struck out as having no cause of action against him.

Held, it was not open to the Court under that section of its own motion to strike out the name of the other plaintiff; under such circumstances the proper course would be to keep both plaintiffs on the record, the decree, if any, being passed in favour of both or either as the Court might ultimately determine. NANAK CHAND *v.* DURANT **9 P R 1905**

32. *Suit for partnership debt—Representatives of a partner who died pending the suit not necessary parties—Contract Act,* 1872, *section* 45.

Held, that the representatives of a deceased partner are not necessary parties to a suit for the recovery of a debt which accrued due to the partnership in the lifetime of the deceased partner.

PARTIES—*contd.*

Gobind Prasad v. *Chandar Sekhar I. L. R. IX All.* 486, *Moti Lal* v. *Ghella Bhai* (*I. L. R. XVII Bom.* 6), *Vaidyanatha Ayyar* v. *Chunasami Naike* (*I. L. R. XVII Mad.* 108), and *Devi Das* v. *Nirpat* (*I. L. R. XX All* 365), cited and followed.

Ram Narain v. *Ram Chandar* (*I. L. R. XVIII Calc.* 86), dissented from. MULK RAJ GEORGE KNIGHT. **10 P R 1906**

32. *Joint Hindu family--Suit by the managing member for debt due to the family—Non-joinder of other members—Procedure.*

Held, that in a joint Hindu family the father, though he is the managing member of the family, cannot maintain a suit in his own name alone for a debt due to the family, and in such a case where on objection being taken in time the plaintiff refuses to join the other members of the family whose non-joinder has been objected to the suit must be dismissed. RATTAN CHAND *v.* RAM PARSHAD. **69 P R 1906**

33. *Parties—Suit by one of two brothers for money due to them jointly on book account—Addition of other brother as co-plaintiff after period of limitation—Limitation Act,* 1877, *section* 22.

A suit for the recovery of a debt due on a balance struck by the defendant was brought by one of two brothers jointly entitled to the amount due thereon. Upon objection being taken that a necessary party had been omitted the other brother was added as a co-plaintiff, but the claim at the time was barred by limitation.

Held, that as the original agreement or dealings were with both the brothers, they were both necessary parties to the suit and that therefore, under Section 22 of the Limitation Act, the suit was barred by limitation.

Rattan Chand v. *Ram Parshad* (69 *P. R.* 1906) followed. MOTAN MAL *v.* KIRPA MAL. **79 P R 1906**

34. *Parties—Suit for partnership debt—Suit on a contract entered into with one partner—Right of such partner to sue alone—Contract Act,* 1872, *sections* 44, 45

Held, that a partner with whom personally a contract has been made is competent to maintain a suit upon that contract in his own name without joining his co-partners as plaintiffs. MEHR SINGH *v.* CHELA RAM. **127 P R 1906**

35. *Pre-emption—Suit for pre-emption—Assignment by vendee* pendente lite—*Addition of assignees as co-defendant after period of limitation—Limitation.*

The plaintiff brought an action to enforce a right of pre-emption within the period of limitation prescribed by law. The defendant-vendee assigned over his interest to a third party after the institution of the suit. On the application of the plaintiff, after the period of limitation had expired, the Court ordered the assignee to be impleaded as a co-defendant. Thereupon the defence pleaded limitation.

PARTIES—*contd.*

Held that the suit was not barred by limitation in consequence sf the joinder of the assignee. The provisions of Section 22 of the Limitation Act do not apply when the original suit is continued against the added defendant who derives his title from the original defendant by an assignment pending the suit. FATTEH MUHAMMAD *v.* SAID AHMED. **3 P R 1907**

36. *Striking out name of parties—Power of Court to strike out the name of a co-defendant after the first hearing—Civil Procedure Code,* 1882, *section* 32.

Held, that it is not open to a Court, under section 32 of the Civil Procedure Code, 1882, to strike out in any case the name of a co-defendant after the first hearing of the suit.

Damodar Das v. Gokal Chand (*I. L. R. VII All.* 72, *F. B.* followed). FATEH ALI *v.* NIZAM DIN. **71 P R 1907**

37. *Pre-emption—Assignment of property by vendee—Suit by pre-emptor against vendee alone subsequent to the said assignment—Parties—Pre-emptor bound to implead transferee or to institute fresh suit against him—Limitation for such action—Limitation Act,* 1877, *Schedule II, article* 10.

Held that where the subject matter of a pre-emption suit has been assigned by the original vendee before the pre-emptor had instituted his suit the latter is not entitled to recover the property from the transferee on the strength of a decree he obtains against the vendee alone. In order to obtain the property from the transferee he is bound either to implead the latter as a party to his original pre-emption suit or to institute a fresh suit within the period of limitation prescribed in article 10 of the Second Schedule of the Limitation Act, 1877. RAUSHAN *v.* MAKHAN. **106 P R 1907**

38. *Civil Procedure Code,* 1882, *section* 368—*Death of one of several defendants—Application for substituiion—Sufficient cause for not applying within prescribed period—Limitation Act,* 1877, *section* 5.

Held, that ignorance of defendant's death is sometimes sufficient cause for not applying for legal representatives to be brought on the record in the place of the deceased within the period prescribed therefor and a plaintiff can successfully plead his ignorance of the fact as a justification for such delay where defendants are numerous and live in a different village from plaintiff. DADU *v* KADU. **113 P R 1907**

39. *Parties—Joint Hindu family—Suit by the Managing member for debt due to the family—Objection as to non-joinder—Joinder of other members after period of limitation—Civil Procedure Code,* 1882, *section* 27.

A suit was brought by the managing members of a joint Hindu family in the name of their firm for a debt due to the ancestral business. Objection being taken on the ground of non-joinder of other members of

PARTIES—*concld.*

the family several of whom were minors, the plaintiffs at once admitted their mistake and the members so omitted applied at once to be joined as plaintiffs.

Held that all the members being comprised in the designation of the firm, the omission should have been regarded as due to a *bona fide* mistake and that under such circumstances the Court was bound to add, under section 27 of the Civil Procedure Code the other members of the family as plaintiffs.

In cases where action is taken under section 27 the period of limitation counts from the date when the plaint is first presented to the Court. BEHARI LAL *v.* RAM CHAND. **149 P R 1907**

40 *Mortgage—Suit for sale of property copmrised in a mortgage—Necessary parties—Non-joinder of—Effect of decree when all necessary parties were not before Court—Transfer of Property Act,* 1882, *section* 85.

Held that in an action by a prior incumbrancer for sale of property comprised in a mortgage all subsequent incumbrancers are necessary parties provided that the plaintiff had notice of their interest in the security and the non-joinder of a subsequent incumbrancer in possession of the subject-matter is fatal and renders the decree thus obtained against the mortgagor void as against both the property and the *puisne* mortgagee. HUKAM CHAND *v.* KARAM CHAND. **64 P R 1908**

41. *Suit for recovery of a debt due to a Joint Hindu Family—Joinder of a co-parcener as defendant after the period of limitation.*

See INDIAN LIMITATION ACT, 1877 (4), SECTION 22. **20 P R 1909**

42. *To suit for damages for breach of betrothal—Contract made for benefit of minor.*

See BETROTHAL—CONTRACT. **83 P R 1909**

43. *Transfer of occupancy rights by widow—Suit by landlord against the vendor and vendee for dispossession of the vendee—Reversioners of the widow's deceased husband cannot be added as plantiffs.*

See PUNJAB TENANCY ACT, 1887 (3). **3 P R 1910 Rev.**

PARTIES TO SUIT.

See JOINDER OF PARTIES.

PARTITION.

See HINDU LAW, PARTITION.

1. *Son's right to enforce.*
See CUSTOM VIII—MAINTENANCE AND SUCCESSION (c) SUCCESSION OF SONS AND GRANDSONS. **113 P R 1886**

2. *Widow's right to separate possession.*
See CUSTOM VIII—MAINTENANCE AND SUCCESSION.—H. SUCCESSION OF WIDOWS. **65 P R 1881**
104 P R 1881

3. *Separation of interests—Evidence of partition*
See HINDU LAW, UNDIVIDED FAMILY. **136 P R 1882**
13 P R 1883

PARTITION—*contd.*

4 *Presumption—Partial disruption.*
See HINDU LAW, UNDIVIDED FAMILY.
143 P R 1882
86 P R 1886

—*Suit for—Jurisdiction.*
See JURISDICTION OF CIVIL COURT.
92 P R 1881
16 P R 1882
131 P R 1882
125 P R 1883
70 P R 1884
24 P R 1885
11 P R 1885
1 P R 1883 Rev.

5. *Provision for, in* Wajib-ul-arz *by mutual consent of proprietors or by order of competent authority* (ba hukm Sirkar—*Suit for cancellation of such condition.*
See RIGHT TO SUE. **100 P R 1884**

6. *Suit by joint owner for partition of immovable property in one district—Subsequent suit for partition of property in second district.*
See SPLITTING CAUSE OF ACTION.
162 P R 1884

7. *Suit to set aside award of arbitrators appointed by Revenue Officer in partition proceedings—Allegation of fraud, but no dispute as to title.*
See ARBITRATION **25 P R 1898**

8. *Date of cause of action in suit for partition—Suit against several persons each interested in part of the property.*
See CAUSE OF ACTION. **79 P R 1899**

9. *Decree for partition of estate—Partition referred to Collector—Power of Civil Courts to interfere.*
See CIVIL PROCEDURE CODE, 1908, SECTION 54. **73 P R 1889**

10. *Decree for—Omission to specify particular properties decreed—Power of executing Court to determine such qrestion.*
See CIVIL PROCEDURE CODE, 1908, ORDER XXVI, RULE 13.
31 P R 1887

11. *Commission to make partition after disposal of the suit—Irregularity in procedure--Estoppel of party acquiescing.*
See CIVIL PROCEDURE CODE, 1908, ORDER XXVI, RULE 13.
124 P R 1893

12. *Order fixing plaintiff's share in suit for partition and directing partition—"Decree."*
See CIVIL PROCEDURE CODE, 1908, ORDER XXVI, RULE 19.
37 P R 1896

13. Muafi *land held by ala-lambardar by virtue of his office is not precluded from being brought into partition.*
See COMMON LAND.
15 P R 1892 Rev.

14. *Son's right to enforce in father's life-time.*
See CUSTOM VIII—MAINTENANCE AND SUCCESSION. C.—SUCCESSION OF SONS AND GRANDSONS.
79 P R 1891

15. *By proprietor of two villages between his sons and grandsons—Right of the branch of the family settled in village A. to succeed*

PARTITION—*contd.*

jointly with those settled in village B. to land of one son dying without heirs in village B.
See CUSTOM VIII.—MAINTENANCE AND SUCCESSION. C.—SUCCESSION OF SONS AND GRANDSONS.
143 P R 1888

16. *Proof of partition of joint ancestral property.*
See HINDU LAW—ALIENATION.
103 P R 1894

17. *Principles governing question whether a partition of joint undivided Hindu family has taken place.*
See HINDU LAW—JOINT FAMILY.
2 P R 1892

18. *Suit on behalf of minor for partition of joint family property.*
See HINDU LAW—PARTITION.
104 P R 1895

19. *Right of widow to share of her deceased husband's estate—Competency to institute partition proceedings.*
See HINDU LAW—WIDOW.
60 P R 1895

20. *Valuation of suit for.*
See JURISDICTION. **110 P R 1888**
104 P R 1900

21. *Suit for declaration that land was not subject to partition—Jurisdiction.*
See JURISDICTION OF CIVIL OR REVENUE COURT. **39 P R 1892**

22. *Allegation of error in partition proceedings—Jurisdiction of Civil Court.*
See JURISDICTION OF CIVIL OR REVENUE COURT. **88 P R 1892**

23. *Partition of agricultural and residential land and house property--Arbitration—Suit to enforce award—Jurisdiction.*
See JURISDICTION OF CIVIL OR REVENUE COURT. **63 P R 1893**

24. *Suit for declaration of plaintiff's right to a partition of the village common land without consent of defendants—Question of title—Jurisdiction.*
See JURISDICTION OF CIVIL OR REVENUE COURT. **82 P R 1893**

25. *Suit for possession of land allotted by instrument of partition—Jurisdiction.*
See JURISDICTION OF CIVIL OR REVENUE COURT. **63 P R 1894**

26. *Suit for possession of land allotted by Revenue Officer on partition to defendants—Jurisdiction.*
See JURISDICTION OF CIVIL OR REVENUE COURT. **118 P R 1894**

27. *Partition proceedings—Question of title raised before Revenue Officer but not decided--Completion of partition—Jurisdiction of Civil Court to entertain subsequent suit in respect of the said question of title.*
See JURISDICTION OF CIVIL OR REVENUE COURT. **72 P R 1896 F. B.**

28. *Suit for partition—Revenue Officer referring question of title to Civil Court, but completing partition without awaiting such decision—Jurisdiction of Civil Court to entertain subsequent suit regarding such question of title.*
See JURISDICTION OF CIVIL OR REVENUE COURT. **61 P R 1897 F. B.**

PARTITION—*contd.*

29. *Suit for partition of joint family property--Participation in profits.*
See LIMITATION ACT, 1859, SECTION 1.
142 P R 1890

30. *Lands specifically mortgaged allotted on partition to co-sharers of mortgagor—Liability to mortgage lien of lands allotted to mortgagor.*
See MORTGAGE—CONSTRUCTION.
101 P R 1894

31. *Liability to partition of acquisitions by members of undivided Muhammadan family.*
See MUHAMMADAN LAW,—JOINT FAMILY.
91 P R 1887

32. *Application by majority of joint owners for partition—Objections by remaining joint owners and occupancy tenants—Discretion of Revenue Officer.*
See OCCUPANCY RIGHTS.
1 P R 1895 Rev.

33. *Suit for partition of a portion only of joint ancestral property.*
See RIGHT TO SUE. **77 P R 1887**

34 *Temporary injunction to restrain partition proceedings in Revenue Court.*
See SPECIFIC RELIEF ACT, SECTION 54.
57 P R 1899

35. *Order declaring the right of parties and the property to be partitioned in a partition suit—Omission to appeal from such order—Effect of, as regards appeal from final decree—Civil Procedure Code, 1882, section 396.*
See APPEAL, CIVIL. **49 P R 1902**

36. *Partition of* shamilat-deh *including the land which had been assigned to an ala lambardar in virtue of his office—Compensation for disturbance or improvements—Punjab Tenancy Act, 1887, sections 69, 72.*
See COMMON LAND.
9 P R 1902 Rev.

37. *Suit for declaration as to principle of division—Question of title—Punjab Land. Revenue Act, 1887, sections 116, 117.*
See JURISDICTION OF CIVIL OR REVENUE COURT. **99 P R 1905**

38. *Mortgage of undivided property by a joint owner—Partition—Remedy of mortgagee.*
See MORTGAGE. **2 P R 1906**

39. *To establish exemption from partition of village common land on the ground that all the residents are entitled to graze their cattle over it.*
See JURISDICTION OF CIVIL OR REVENUE COURT. **144 P R 1907**

40. *Question relating to enforcement of entry in* Wajib-ul-arz—*" Question of title" or " mode of making the partition "—Punjab Land Revenue Act,* 1887, *sections* 116, 117, 158.
See JURISDICTION OF CIVIL OR REVENUE COURT. **4 P R 1908**

41. *Suit for partition of portion of common Land.*
See COMMON LAND. **32 P R 1908**

42. *Suit for—Preliminary order under section* 215 *A, Civil Procedure Code,* 1882—*Appeal—Court-fees on.*
See COURT-FEES ACT, 1870, SECTION 7 (iv) (b). **150 P R 1908**

PARTITION—*contd.*

43. *Joint Hindu Family.*

Where one co-partner separates from the others, there is no presumption that the others remain joint.

See HINDU FAMILY. **97 P R 1910**

44. Where partition had been effected in 1853, but not according to the prescribed rules, and was at the time objected to by defendant, the Chief Court refused to accept it as final. SURFURAZ KHAN *v.* EEDDOO KHAN. **53 P R 1866**

45. In a suit between Muhammadans, *held*, that a son could not force his father to a partition on the gronnd that the latter was effecting an alienation contrary to custom; a suit for partition was not the legitimate way to contest the alienation. PHULLEE KHAN *v.* FUZL KHAN.

1 P R 1867

46. Partition of the common land of a village may be made with the consent of the majority of *khewatdars* notwithstanding that the *wajib-ul-arz* stipulates for a general consent before partition. But if the extent of the shares be disputed, this point must be decided in a regular suit, before the partition can take place. SULLIMAN *v.* BULLUNDA. **17 P R 1867**

47. *Common land—Division.*

The majority of proprietors of a village, in terms of the Settlement paper, applied for division of the common land; the minority resisted the division on the ground that they had reclaimed and planted out a large portion of the common, and should not now be disturbed.

Held, that the majority had a right to the division of the common, that the objectors had no right to plant trees in it, and that the utmost they could expect was to be maintained, in the division, as far as possible in the occupancy of the land they had planted out. NUTHOOA *v.* SOBHA. **8 P R 1868 Rev**

48. *Proprietors and tenants—Length of possession by defendant—Non-payment of revenue through plaintiff.*

In a suit for revenue, defendants having been for many years in possession without any recognition of plaintiffs' ownership or any complaint of encroachment on the part of the latter; and the evidence of the land having been appropriated to the plaintiffs' *pana* who relied upon informal *butwara* proceedings, being imperfect; and it being admitted that for many years the revenue was distributed by a general rate on the *shamilat* as undivided, and that the amount so assessed was not paid by defendants through plaintiffs; *Held*, that there was insufficient proof that the land fell to the plaintiffs' *pana* under the *butwara*, and that the relationship of proprietors and tenants between the parties was not established. SOOLUKHA *v.* TOTA. **20 P R 1869**

49. *Shamilat—Private partition.*

PARTITION—*contd.*

A private partition of the *shamilat* made by the mutual consent of all concerned has the same effect as the ordinary imperfect partition conducted by the Revenue authorities; and there cannot be a subsequent partition in the absence of any agreement between the parties to that effect, altering the distribution of land previously divided among the proprietors by complete private partition. The main distinction between private and imperfect partitions and a regular *butwara* under Regulation XIX of 1814 or Act XIX of 1863, where this Regulation or Act is in vogue, consists in the maintenance of the joint responsibility of the whole village for the Government revenue by the former, while it is put an end to by the latter. WALI *v.* GAMAN. **66 P R 1869**

50. *Hindu Law—Widow's claim to partition in her own right and as representative of deceased son.*

The plaintiff, a widow of Futteh Sing, sued the son and grandson of Futteh Sing by another wife, for a third of the deceased's estate, averring that the defendants separated from Futteh Singh in his lifetime and obtained two-thirds of his land, that Futteh retained for himself the remaining one-third, and afterwards bestowed it on plaintiff's son, who disappeared two years before suit, and was believed to be dead. When the action was brought, it was found as a fact that the family was joint and the land undivided. *Held*, that the plaintiff could not sue for a partition either as the representative of her missing son or in her own right. ATTUR SINGH *v.* MUSSAMMAT PURTAPEE. **93 P R 1869**

51. *Widow's claim to partition in joint estate.*

A widow holding a share of joint undivided land for life, whether by law or custom, cannot enforce partition; this can only be claimed by proprietors with absolute rights. TALEWUND KHAN *v.* MUSSAMMAT KHANZADEE (No. 5 *P.* R. 1868),; *and* KAHN SING *v.* MUSSAMMAT PREM KOUR.

28 P R 1870

52. *Division—Imperfect puttidari tenure—Reserving a portion of the land from division.*

In a suit for partition of the shamilat waste land of an imperfect *puttidari* village, —*held*, that the division should be allowed, as there would remain other land incapable of being divided and the tenure of the village would not be altered; but that if there were no such other land, partition should still be allowed, a portion only being reserved from division and left in common. MIN *v.* BELA.

1 P R 1873 Rev

53. *Hindu Family—Evidence—Right of Hindu widow to sue for husband's share of divided property—Limitation—Jurisdiction of Civil Courts to make decree for partition*

PARTITION—*contd.*

—Execution—Act VIII of 1859, *section* 225 *—Land Revenue Act.*

There may be a division of a joint property without a regular partition by metes and bounds; the question whether there has been a division or not depends upon the intention of the parties (when there is no actual partition by metes and bounds), to be inferred from the instruments (if any) executed by the members of the family and the acts they have done. The conduct of the parties after as well as before the alleged division must be considered in order to arrive at their intention; the conduct of one party may be consistent with jointness, but the conduct of the other party may be wholly inconsistent with a continuance of the previously existing family arrangement. A Hindu widow whose husband might, in consequence of a division, have obtained separate possession of his share in the family property, may sue for the share which vested in her husband in his life-time. To bar the widow's claim, under such circumstances, by limitation, there must be proved 12 years' possession from the time when she asserted her claim and was refused her share, or possession shown to have been adverse to the widow for 12 years. A Civil Court in the Punjab can give a decree in accordance with section 225, Act VIII of 1859, for division of an estate, or for separate possession of a share in an actually undivided estate, paying revenue to Government, when the right to a share or the extent of the share is disputed; the execution of the decree is left to the Revenue Officers by the rules framed under sec. 67 of the Land Revenue Act. *Semble;* After the making of the decree, all disputes between the parties as to the mode of partition are cognizable by the Revenue Officers only under section 65, Land Revenue Act, and not by the Civil Court.—MUTSADI MAL *v.* MUSSAMMAT DHAN KOUR.

100 P R 1876

54. *Suit by village occupant against village proprietor for division of a courtyard.*

The plaintiff, an occupant of the village, sued the defendant, one of the village proprietors, for division of a courtyard in which were two houses, one inhabited by the plaintiff, the other by the defendant. *Held*, that as plaintiff was not a proprietor of the village, the suit would not lie, and all that he was entitled to was a decree of his right of way and user so long as he occupied the house.—BUTA SINGH *v.* CHANDAN.

120 P R 1876

55. *Partition of a share in joint immovable property owned by Hindus, purchased by a Muhammadan.*

R. obtained a decree against one M., a Hindu, in execution of which M.'s eighth share in a haveli was sold by public auction, and purchased by B. K., a Muhammadan. In a suit instituted by B. K. for partition, which was resisted by the

PARTITION—*contd.*

remaining sharers in the haveli, who were Hindus, *held* that B. K. was entitled to partition and possession of the share purchased by him. BAJA KHAN *v.* BIRJU.

15 P R 1878

56. *Right of widow to partition in a joint estate—Jurisdiction—Civil Court—Act XXXIII of* 1871, *section* 65, *Clause* 2.

Plaintiff, a widow, on the death of B., her husband's father, in 1872, was recorded as owner of a fifth share in the khata owned by B. and since then had received from defendants, the widow and sons of B., who were recorded as owners of the remaining four shares, a fifth share of the produce of the khata. Defendants having ceased to give plaintiff her fifth share of the produce, she instituted a suit for partition, which was contested by the defendants.

Held, that, as the right to partition was contested, the suit was not barred from the cognizance of the Civil Courts by Clause 2, section 65, of Act XXXIII of 1871.

Held, further, that plaintiff was entitled to partition.

Per FITZPATRICK, J.—Because there had been a separation in interest and right between the parties, notwithstanding that there had been no actual division, and the joint family relationship between them had thus been put an end to.

Per PLOWDEN, J.—Because the plaintiff was equitably entitled to such relief, as being best calculated to secure to her rights which the defendants omitted to recognize in practice. RANJHA *v.* MUSSAMMAT RAJJI.

22 P R 1878

57. *Sale of mango grove by majority of proprietors—Dissent of minority—Suit by purchasers to compel partition of trees.*

Where a majority of the proprietary body sold to the plaintiffs the trees standing in a mango grove, which was joint undivided property of all the proprietors, whereupon the plaintiffs brought a suit to compel the dissentient proprietors to partition off their share in the trees.

Held, that the sale passed no interest whatever in the trees of the grove: that the plaintiffs could stand in no better position as against the defendants (the dissentient proprietors) who were no parties to the sale, than their own vendors. That these vendors could not before partition claim any particular trees as their own; and could not have claimed partition of the trees as distinct from the soil on which they stood; and that therefore plaintiffs' suit failed. *Anderson* v. *Taylor* (No. 70 *P. R.* 1866), cited and followed. GUJAR *v.* SAHAB SINGH.

109 P R 1879

58. *Hindu widow—Separate possession of deceased husband's share in joint khata—Partition—Custom.*

Plaintiff, a Hindu widow, claimed separate possession of her deceased husband's share in a khata held jointly by him and defendant. It was found that before the death of plaintiff's

PARTITION—*contd.*

husband the brothers ceased to be a joint undivided family, and also that no local custom prevailed adverse to the widow's claim.

Held, upholding the orders of the Lower Courts, that plaintiff was entitled to a decree for separate possession, as there is no general custom prevailing in the Punjab by which the widow of a separate brother is precluded from obtaining separate possession of her husband's share in a joint khata from her husband's brother. NUPA SINGH *v.* MUSSAMMAT SUBRAI.

116 P R 1879

59. *Mahomedan widow—Joint khata—Separate possession—Custom.*

Plaintiff, a Muhammadan widow, of the Varayaj tribe, who had inherited the share of her husband (who was one of three brothers in a joint khata with an interest similar to that of a Hindu widow) claimed partition of her share. It was found that the three brothers were separate in cultivation before the husband's death, and it was, moreover, found that there was no local custom which excluded a Mahomedan widow from separate possession of her husband's share in a joint khata.

Held, that plaintiff was entitled to a decree for separate possession of one-third of the land comprised in the joint khata, the khata remaining joint as before, and the widow holding the said lands with a life-interest according to custom.

Nupa Singh v. *Mussammat Sobrai* (*No.* 116 *P. R.* 1879), cited and followed. MUSSAMMAT HUSSAN BIBI *v.* FATTEH MAHOMMED.

156 P R 1879

60. *Common land—Shareholders breaking up waste—Confirmation in possession of such lands—Custom—Partition effected by arbitrators—Power of Court to modify arbitrators' proposals—Act XXXIII of* 1871, *section* 56, *Rule* 15, *and section* 23, *Rule* 13.

Held, by the Financial Commissioner, that in hilly broken country in the Punjab it is the general custom that shareholders who have broken up common waste land retain at partition such cultivated land as their share of culturable waste, if other culturable waste, naturally of equal quality is available to make good the share of shareholders who have not broken up land.

Where a partition, made in accordance with the rules framed under section 65 of the Land Revenue Act, has been effected by arbitrators (see Rule E. II, 15,) the Court has full power to modify the arbitrators' proposals (see Rule C. II, 15 under section 23), SHARFU *v* MALIK SULTAN MAHOMED.

11 P R 1881 Rev.

61. *Trees grown in* shamilat—*Shareholders—Principle of division.*

Held, by the Financial Commissioner, that in a division of *shamilat* land, land containing trees grown in the *shamilat* by a shareholder can be awarded to such shareholder though such a principal of division should not be generally followed. WARIS *v.* DARA.

15 P R 1881 Rev.

PARTITION—*contd.*

62. *Suit by one of two joint-owners of a house—Plea of injury to arise from such partition—Mode of effecting partition.*

Where in a suit by one of two joint-owners for partition of a shop and for separate possession by plaintiff of his share, the defendant urged that the plaintiff could not enforce partition of the shop to his injury and the shop was not capable of partition, *held* that as it was practicable to make a partition of the shop and the plaintiff was legally entitled to have a partition effected, therefore no injury in the legal sense would be caused to the defendant by the partition.

The proper mode of effecting such partition pointed out. *Baja Khan* v. *Birju* (*No.* 15 *P. R.* 1878), cited. GOBIND *v* NARAIN DAS.

29 P R 1882

63. *Land Revenue Act* (*XXXIII of* 1871), *section* 19—*Power to revise entry as to* shamilat *in old Settlement—New settlement.*

Plaintiffs applied for the partition of certain *shamilat* land in equal shares according to the old Settlement record, alleging that the land had been rightly recorded *shamilat-deh* at the last Settlement, but that in the new Settlement the Superintendent had altered the entry, and had ordered the several pieces of the land in dispute to be entered as owned by the patti in the boundaries of which they lay, the result being to give to plantiffs' patti considerably less land than that which fell to defendants' patti. It appeared that no judicial order existed giving the Superintendent authority to make such alteration and that the facts relating to the land were the same as at the last Settlement.

Held, by the Financial Commissioner, that the plaintiffs were entitled to succeed in their claim, as under section 19 of the Land Revenue Act Settlement authorities have no authority to declare lands, which had been recorded as common to the whole village common to either one or the other of the patties into which the village is divided. BHOLA *v.* KHUSHAL SINGH.

7 P R 1883

64 *Possession—Wajib-ul-arz—Mode of carrying out partition.*

In a suit for partition, plaintiffs claimed to disturb defendant's possession in and share equally with defendant in three wells sunk by defendant in waste land, and in the land attached to them, which was not cultivated before the wells were sunk, and only became culturable in consequence of the sinking of the said wells. They relied upon para. 11 of the *Wajib-ul-arz*, which provided that in dividing a holding between the joint sharers thereof, the wells and roads should be kept out of the partition and remain joint, and that with this exception such holdings could be divided without regard to former possession.

Held by the 2nd Financial Commissioner, that the above provision, while it expressly authorised the Revenue authorities to make a partition which should disturb previous

PARTITION—*contd.*

possession, did not lay down any rigid rule by virtue of which plaintiffs could claim to be awarded a half share in all the land improved by defendant, or in the wells sunk at defendant's cost and risk ; and that the proper principle to apply in making the partition was to make every allowance for the labour spent by defendant in bringing the wells into cultivation, and to respect his possession as far as possible, allowing him to keep possession of the land improved by him, unless it appeared that land equal in original value could not be awarded to plaintiffs from the rest of the joint holding. RAM JOWAYA *v.* AMRIT RAM. **9 P R 1885 Rev.**

65. *Partition of village common land on application of sharers—Discretionary power of Revenue Courts to order partation.*

Where, on the application of the majority of sharers, partition of the village common was ordered by the local authorities and the minority of sharers objected, *held* by the Financial Commissioner, that the rules relating to partition, issued under the Land Revenue Act, gave a discretionary power to the Revenue Courts to order partition whenever it might be in their opinion advisable to do so, even in cases where a minority only desire partition. SUBA *v.* DAULAT.

12 P R 1885 Rev.

66. *Application by sharer in joint holding for—Jurisdiction of Revenue Court—Rule E. II, 4 of the rules under the Land Revenue Act.*

Plaintiffs, as the recorded owners of one-ninth of a joint holding, claimed partition of their share. The Settlement officer disallowed the claim for partition on the ground that the circumstances of the case afforded good grounds for an inference that there was an agreement between the parties that the land jointly owned by them should not be divided. It appeared that defendant had improved the land by sinking wells, &c., and that plaintiffs did not share in the improvement, nor had they any part in the management of, or share in, the mafi, and they received only a part of their share of the produce. On appeal the Settlement Commissioner held that the Settlement officer's order decided matters which should only be decided by a Civil Court, and that before the defendant could successfully oppose the application for partition he must establish, by a suit in the Civil Court, (1) that by agreement or prescription he was entitled to exclusive possession of the jointly owned land, and (2) that by the sinking of wells and other improvements effected by him he was entitled to compensation before partition could take place.

Held, by the Financial Commissioner, that there was no ground on which the defendant could be referred to a suit in the Civil Court. The only grounds on which a Revenue Court can stay proceedings to allow of a civil suit being brought are those set forth in Rule E. II. 4 of the rules under the Land Revenue Act, *viz.*, that the objections put forward

PARTITION—*contd.*

by the defendant question the correctness of the entry in the record of rights upon which the shares to be assigned to the parties, or the mode of division to be adopted, may depend. All other objections must, under Rule 6 of the set of rules quoted above, be decided by the Revenue authorities ; and as in this case no objections of the kind described in Rule 4 were preferred, the Settlement officer's order proceeding as it did under Rule 6 was so far in strict conformity with law.

But *held* further, that the existence of the alleged agreement was not satisfactorily established, and that the plaintiffs were entitled to partition, provided that they first paid to the defendant fair compensation for their share in the outlay incurred by defendant and his father in sinking wells and making other improvements to the joint holding, such compensation to be fixed after enquiry by arbitrators named by the parties. SALIG RAM *v* BADHAWA MAL. **3 P R 1886 Rev.**

67. *Land Revenue Act (XXXIII) of* 1871 *section* 65, *Rule* 6—*Refusal of partition.*

In a claim. for partition of a common holding the Settlement Officer (affirming the order of the Settlement Superintendent) directed that partition should take place under certain conditions. On appeal by the defendants, who made no general objection to. partition but attacked the principles and mode of partition as fixed by the Settlement Officer, the Commissioner on the ground of the factious spirit prevailing in the village and the unadvisability of giving "such an opportunity for endless feud and quarrel to the proprietors by accepting any proposition to partition such a small area as 167 acres of culturable land and 162 acres unculturable waste and land under a village site, unless the proprietors were, as they never would be here, agreed as to the mode of partition," and relying on Rule 6 of the partition rules made under section 65 of the Land Revenue Act, disallowed partition altogether.

Held, that the rule relied upon did not contemplate such action as that taken by the Commissioner, the said rule evidently relating to objections taken *in limine* by some of the parties to the proceedings, and that it was not open to the Commissioner at the then stage of the case to raise of his own motion a general objection of the kind raised by him. JAHANGIR KHAN *v.* AKBAR KHAN. **8 P R 1887 Rev.**

68. *Joint holding—Separate possession and enjoyment—Proof of partition.*

Held, that the mere fact that each co-sharer in a joint *khata* has dealt with specific portions thereof is proof that portions of the *khata* have been separately possessed and enjoyed, but does not amount to proof that the *khata* has been divided, nor does a purchaser of specific land in such *khata* become thereby a co-sharer in it. MATU *v.* HIRDE.

44 P R 1894

69 *Village site*—Abadi—*Suit for partition of village site*—Bhayachara *village divided into* pattis *and* dheris.

PARTITION—*contd.*

Plaintiffs, alleging themselves to be owners of a one-third share in the village Phadana, Lahore District, sued for partition of the whole of the village site according to a particular scheme, and based their claim solely on an entry in the Settlement record that "the *abadi-deh* is *shamilat* and is divisible *hasb rasad khewat.*" The defendants pleaded that the entry was incorrect ; that the tenure of the village was *bhayachara*, and that there was no *shamilat* in the *abadi* which was divisible. The District Judge, having found that there was no divisible common land of the village in the *abadi*, gave plaintiffs a decree, in accordance with defendants' admission, for partition solely of any common land within their *patti* that might be found unoccupied. Plaintiffs appealed to the Divisional Judge who reversed the decree of the lower Court and granted plaintiffs a decree for separation of their share in the *shamilat abadi-deh*, but did not specify the exact land assigned thereby to plaintiffs. Defendants appealed to the Chief Court, and it was

Held that the *onus* of proving that there was *shamilat* in the *abadi* which could be partitioned and that partition thereof was feasible rested upon the plaintiffs, and that they had failed to rebut the statement in the earlier Settlement record that the village site was not liable to partition.

The nature of an ordinary village site as a subject of partition discussed by *Benton*, J. ISHWAR SINGH *v.* ATMA SINGH.

117 P R 1894

70. *Application for partition—Condition precedent to right to apply—Punjab Land Revenue Act*, 1887, *section* 111.

Held, that no one even though he may be a "landowner" as defined in clause (2) of section 3 of the Land Revenue Act (XVII of 1887) is entitled to claim partition unless he fulfils one or other of the three conditions (*a*), (*b*) or (*c*) of section 111 of the Act. SHER SINGH *v.* MULLA SINGH.

9 P R 1895 Rev.

71. *Partition—Suit by widow—Discretion of Court—Punjab Land Revenue Act*, 1887, *sections* 3 (2) 111, 115.

A widow with a life-tenure of a share in a joint holding is entitled under sections 3 (2) and 111 of the Punjab Land Revenue Act, 1887, to apply for partition of her share, but, under section 115, the Revenue Officer has a wide discretion to refuse the application if he is of opinion that there is good and sufficient cause why partition should be disallowed.

Such partition is *prima facie* undesirable, and should only be allowed when private partition of the shares has been effected during the husband's lifetime, or when the co-sharers are not acting up to their obligations in respect to the widow, so that the due enjoyment by her of her life-interest in her share of the joint holding cannot otherwise be secured. DAN SINGH *v.* MUSSAMMAT SUKHAN

11 P R 1895 Rev.

PARTITION—*contd.*

72. *Custom—Partition of ancestral property, power of sons to compel—Hindu Rajputs of Naraingarh* tahsil, *Umballa District.*

Found, in a suit the parties to which were Hindu Rajput agriculturists of Naraingarh *tahsil*, Umballa District, that plaintiff had failed to prove a custom whereby sons can compel a partition of ancestral estate against the will of their father. RAJA RAM *v.* HANSARI. **105 P R 1895**

73. *Punjab Land Revenue Act*, 1887, *sections* 113, 115—*Partition of widow's share in joint holding—Right of reversioner to object to such partition being allowed.*

When a widow alleges that a private partition of a joint occupancy holding has been effected by her late husband in his lifetime, and applies to the Revenue authorities to have such partition recorded in the mutation register, a reversioner who objects to such partition is entitled to have his objections duly considered before the application is granted.

In such cases, if the widow wishes the alleged partition to be recognized, she must apply for its affirmation under section 123, Punjab Land Revenue Act, and if such application is made, the reversioner must be given an opportunity of making good his objection that the partition in question was not made by the husband during his lifetime. No. 11 *P. R.* 1895 Rev. approved. GHULAMI *v.* MUSSAMMAT BANNON.

6 P R 1896 Rev.

74. *Punjab Land Revenue Act*, 1887, *sections* 115, 116 *(a)*, 158 (2) *(xvii)*—*Partition proceedings*—" *Question of title involved* "—*Entry in* Wajib-ul-arz *prohibiting partition—Reference to Civil Court.*

The question whether a provision in the *Wajib-ul-arz* can operate as a permanent prohibition against land of the description of that in suit being partitioned among the proprietors, is not a question of title within the meaning of section 116 *(a)* of the Punjab Land Revenue Act, but a matter to be determined by the Revenue Officer, who, if he thinks there is good and sufficient cause for disallowing partition, should proceed under section 115 of the Act. TAJA *v.* TARA CHAND.

11 P R 1896 Rev.

75. *Punjab Land Revenue Act*, 1887, *sections* 13, 112, 116, 118—*Application for partition—Plea that holding had been already partitioned privately—Course of appeal—Question* " *as to property to be divided* " *or* " *as to title in the property of which partition is sought* "—*Entries in Settlement Records.*

Plaintiff applied to the Assistant Collector for partition of certain land recorded as jointly held by him and defendants. The latter resisted partition on the ground that the land had already been privately partitioned, though effect to such private partition had not been given in the annual papers. The Assistant Collector prepared a mode of

PARTITION—*contd.*

partition for part of the land but refused the application in regard to the balance whereupon plaintiff appealed to the Collector for partition of the rest of the holding. The Collector returned the appeal, and directed it to be presented to the Commissioner, as the dispute concerned " the property to be divided " within the meaning of section 118 (1) and (2) of the Punjab Land Revenue Act, 1887. The Commissioner held that the order of the Collector was wrong, and referred the question of jurisdiction to the Financial Commissioner.

Held, that the appeal lay to the Collector and not to the Commissioner, the objection that certain land had already been partitioned, though still recorded as jointly held, disputing the correctness of an entry in a record presumed to be true and consequently raising " a question of title " within the meaning of section 116 of the Punjab Land Revenue Act, 1887.

The principles which should guide the Courts in such cases explained. MALANG *v.* MUSSAMMAT NAMITTI. **4 P R 1898 Rev.**

76. *Civil Procedure Code*, 1882, *section* 43—*Application to Revenue Officer for partition of land—Question of title decided by said officer—Subsequent suit for possession of house—Title to land and house identical—Punjab Land Revenue Act*, 1887, *section* 117.

In previous partition proceedings relating to certain land and between the parties to the present suit the Revenue Officer, before whom the proceedings were instituted, passed an order under section 117 of the Land Revenue Act, to the effect that he would himself inquire into and determine the question of title that had been raised. Subsequently the present plaintiffs filed an application, upon which they paid the full stamp necessary for a civil suit, but which was not in the form of, or verified as a plaint, and contained no statement of claim beyond a reference to the said order, and a statement that a separate suit would be brought for possession of a house connected with the land. The application was, however, registered in the register of civil suits, the order that it should be so registered and the summons issued being signed by the said officer, who was an Extra Assistant Commissioner, as " Munsif, 1st class." The officer then proceeded under section 117 (2) *(b)* of the Land Revenue Act, and gave plaintiff a decree in respect of the land, the judgment being signed by him as " Assistant Collector," and the decree as " Munsif, 1st class." Plaintiffs having subsequently sued for possession of the house mentioned in their said application, defendants pleaded that the suit was barred under section 43 of the Civil Procedure Code on the ground that the decree in the partition proceedings had been passed by the Extra Assistant Commissioner, purely in the exercise of his civil powers as a Munsif, 1st class, and that therefore the claim to the house could have been made before him and determined in those proceedings. It was admitted that plaintiffs' title to the land and to the house was the same.

PARTITION—*contd.*

Held, that the Extra Assistant Commissioner had clearly intended in the partition proceedings to act under section 117 (2) *(b)* of the Land Revenue Act as a Revenue Officer, and that his jurisdiction was confined to the question of title to the land which alone was the subject of those proceedings.

Held, therefore, that inasmuch as no claim to the house could have been included in the former proceedings, the present suit was not barred under section 43 of the Civil Procedure Code. HAKIM *v.* NADIM GUL.

30 P R 1898

77. *Partition—Right of widow who has succeeded to her husband's interest in joint holding to claim partition—Grant of such prayer by Revenue Officer—Jurisdiction of Civil Court to entertain subsequent suit by co-sharers objecting that widow is by custom not entitled to claim partition—Question as to title* "—" *Owner* " *and* " *Landowner* "—*Punjab Land Revenue Act*, 1887, *sections* 111, 115, 116, 158,

Held, by the Full Bench, that though a widow who succeeds to her husband's interest in a joint holding on a life tenure and is recorded as a joint owner in the Revenue papers, is entitled, as being " an owner" within the meaning of section 111 of the Punjab Land Revenue Act, 1887, to apply for partition before a Revenue Officer who has a discretion to either grant or refuse her prayer, it is open to the co-sharers, in the event of her prayer being so granted, to seek relief in the Civil Court on the ground that the widow was by custom not entitled to claim partition, such objection on their part raising a question of title in the land sought to be partitioned and therefore giving the Civil Court jurisdiction to entertain the suit. BUTA *v.* MUSSAMMAT JIWANI. **82 P R 1898 F. B.**

78. *Pre-emption—Cause of action—Claim by a co-sharer—Partition of joint holding after sale but before suit, effect of—Punjab Laws Act*, 1872, *section* 12 *(a)*.

The pre-emptive right of a co-sharer of land in joint holding does not subsist after partition at the application of the vendee. KHAN *v.* MAHANDA AND OTHERS. **32 P R 1902**

79. *Partition—Joint estate—Mortgagee's right to partition—Jurisdiction of Revenue Court—Procedure—Punjab Land Revenue Act*, 1887, *sections* 111, 115, 117.

Held, that a mortgagee of agricultural land is not as such entitled to claim partition.

Revenue Courts when entertaining application for partition of a mortgagee of agricultural land ought to examine the mortgage-deed, if any, or the record of the oral transaction in the revenue papers, and where the mortgagee alleges custom, the *Wajib-ul-arz*. If asked to do so by the mortgagee they may also examine the *Riwaj-i-am* ; but they need not go further than this in inquiring as to whether there is such a custom, and if not satisfied that the mortgagee can claim partition either by the express terms

PARTITION—*contd.*

of his mortgage or by custom they should simply reject the claim under section 115 of the Act.

In such cases it is not the proper procedure to stay proceedings and refer the applicant to a Civil Court under section 117 (1). It is for the mortgagee to prove his claim in a Civil Court, and if he obtains a decree from that Court it is the duty of the Revenue Courts to give effect to such a decree.

Har Dial v. *Hakim* (11 *P. R.* 1885 Rev.) followed. *Mangli Prasad* v. *Ishri Prasad* (*I. L. R. XVIII All.* 476), and *Ranjha* v. *Mussammat Rajji* (22 *P. R.* 1878), referred to. HIRA SINGH *v.* DEVI DITTA.
4 P R 1903 Rev.

80. *Partition—Suit to enforce a right to share in joint family property—Valuation for purposes of jurisdiction and Court-fee—Court Fees Act,* 1870, *section* 7 (*iv*) (*b*)—*Suits Valuation Act,* 1870, *section* 8.

Held, that for purposes of Court-fees in a suit to enforce a right to share in joint family property by partition and for the delivery of the possession to the plaintiff of his share, the value of the suit is the amount at which the plaintiff values his share. In such cases the value as determinable for the computation of Court fees and the value for purposes of jurisdiction are identical.

Boidya Nath Adya v. *Makhan Lal Adya* (*I. L. R. XVII Calc.* 680), *Balwant Ganesh* v. *Nana Chintamon* (*I. L. R. XVIII Bom.* 209), and *Raghbar Dial* v. *Salig Ram* (104 *P. R.* 1895), referred to. *Bawa Mangal Das* v. *Mahant Narinjan Das* (56 *P. R.* 1895) and *Guruvajamma* v. *Vankatakrishnama Chetti* (*I. L. R. XXIV Mad.* 34) distinguished. HARI CHAND *v.* JIWAN MAL. **28 P R 1903**

81. *Partition of joint holding by Revenue Court—Punjab Land Revenue Act,* 1887, *section* 111.

In a suit by a successor in interest of an original jagirdar who had a joint interest in the *muafi* with others to contest a notice of ejectment and establishment of his occupancy rights it was proved that the tenant was a jagirdar within the meaning of section 4 (5) of the Punjab Tenancy Act, 1887, and that the joint occupation of the land by him and his family had been continuous for a period exceeding 20 years, and that under the circumstances of the case the plaintiff was entitled to occupancy rights in the land equal to his share in the joint holding under section 5 (1) (*d*) of the Act. *Held*, that in such cases it is within the competence of a Revenue Court to dispense with an application from a joint tenant under section 111 of the Land Revenue Act and to direct by its decree that a partition shall be effected and that the share of the tenant in which he has been found to have acquired occupancy rights should be marked off and that he should be ejected from the residue. DOGAR MAL *v.* THE SECRETARY OF STATE FOR INDIA IN COUNCIL.
4 P R 1904 Rev.

82. *Partition—Suit for partition of joint property by one co-sharer—Right of other co-sharers to obtain possession of shares allotted to them.*

Held, that as a decree for partition is a joint declaration of the rights of all the co-sharers interested in the property of which partition is sought, each co-sharer is entitled to obtain possession of the share allotted to him under the decree, whether he may be the plaintiff or a defendant.

Sheikh Khoorshed Hossein v. *Nubbee Fatima* (*I. L. R. III Calc.* 551), and *Dost Muhammad Khan* v. *Said Begam* (*I. L. R. XX All.* 81), cited.

Hikmat Ali v. *Wali-un-Nissa* (*I. L. R. XII All.* 506), and *Murarrao* v. *Sita Ram* (*I. L. R. XXIII Bom.* 184), referred to. WASDEO *v.* RUP CHAND. **23 P R 1905**

83. *Partition—decree in suit for partition—Civil Procedure Code,* 1882, *section* 396 —*Application for effecting partition—Execution of decree—Competency of judgment-debtor on a subsequent application for execution to raise objection on ground that a preceding application was barred*—Res judicata—*Limitation Act,* 1877, *Schedule II, articles* 178, 179.

In a suit for possession by partition of an undivided three-sixteenths share of a house the Court ordered that the defendants should deliver possession of that share to the plaintiff by allowing a partition wall to be built, but omitted to indicate the exact position of the plaintiff's share in its decree. On 5th October 1893 the plaintiff applied for excution by partition and that application was, on 29th January 1894, dismissed for default of prosecution. On 3rd August 1898 a second application was made for execution, and it was ordered that the Nazir should go to the house and effect a partition by metes and bounds. These he fixed, and reported accordingly. This application, however, was also dismissed on 18th February 1899 for default. On 23rd February 1899 a third application was presented, and an objection was raised by the judgment-debtors that execution of the decree was barred by limitation because the last preceding application for execution had been made more than three years after the dismissal of the application of 5th October 1893.

Held, that the above proceedings of 1893-94 and 1898 for effecting partition were proceedings in the suit itself and not in execution of a decree; that there was no final decree within the meaning of section 396 of the Civil Procedure Code which the Court could execute; and consequently, no decree to which the provisions of the Limitation Act, 1877, could apply.

Dwarka Nath Misser v. *Brinda Nath Misser* (*I. L. R. XXII Calc.* 425) and

PARTITION—*concld.*

Latchmanan Chetty v. *Rama Nathan Chetty* (*I. L. R. XXVIII Mad.* 127), followed.

Held, further, that if the proceedings could be regarded as proceedings in execution, the application of 3rd August 1898 having been treated as within time and an order for execution, made on it by a Court of competent jurisdiction, after notice to, and without objection by, the judgment-debtors, it was not open to them on a subsequent application for execution to plead that the preceding application of 3rd August 1898 had been barred by limitation.

Mangal Pershad Dichit v. *Girja Kant Lahiri* (*I. L. R. XIII Cal.* 51), *Manjunath Badrabhat* v. *Venkatesh Govind Shanbhog* (*I. L. R. VI Bom.* 54), *Sheoraj Singh* v. *Kameshar Nath* (*I. L. R. XXIV All.* 282) and *Lakshmanan Chetti* v. *Kuttoyan Chetti* (*I. L. R. XXIV Mad.* 669), referred to. DURGA DAS *v.* FAQIR CHAND. **47 P R 1906**

84. *Partition—Jurisdiction of Civil Court to decide the incompetency of a claimant to apply for partition—Question of title—Punjab Land Revenue Act,* 1887, *sections* 111, 158 (*XVII*).

Held, that a Civil Court is competent, in connection with a partition case to decide questions of "title" and the question whether a man holds such an interest in a plot of land as entitles him to ask for partition under the Land Revenue Act, is a question of "title." PRABHU *v.* MAYA.
104 P R 1906

85. *Partition—Common land—Right of proprietors to partition land used for tethering cattle.*

Held, that village common land used by the co-sharers for tethering cattle is not precluded from being brought into partition. MAKHAN SINGH *v.* ISHAR SINGH.
136 P R 1906

86. *Joint property—Validity of a testamentary disposition of his share by a member of joint Hindu family—Effect of partition by testator before death.*

Held that a testamentary disposition of his share of the joint property by a member of an undivided family would not be invalid if the interest of the testator had been separated off by means of a partition before his death. SOHAN LAL *v.* LABBU RAM
150 P R 1907

87. *Partition of joint immovable property—Authority of Courts to give money decree in lieu of share—Partition Act,* 1893.

Held, that in a suit for partition of joint immovable property the Court has no authority in the absence of an application under Act IV of 1893 to grant a mere money decree in lieu of a definite share to the claimant. MUKERJI *v.* ALFRED
36 P R 1909

PARTNERSHIP.

See CONTRACT ACT, SECTION 265.
JURISDICTION OF SMALL CAUSE COURT. **66 P R 1868**
71 P R 1870

1. *Power to sue one partner alone for partnership debt.*
See DECLARATORY DECREE. **93 P R 1884**

2. *Partner's power to bind co-partners.*
See HINDU LAW—UNDIVIDED FAMILY. **63 P R 1883**

3. *Suit for account and share of profits.*
See JURISDICTION. **71 P R 1881**

4. *Suit for return of jewels—Plaintiff alleging that jewels were deposited in connection with a partnership which had terminated—Defendant denying dissolution.*
See JURISDICTION OF SMALL CAUSE COURT. **35 P R 1886**

5. *Joint suit by alleged partners in respect of leases made in the names of certain individual members of alleged partnership—Joint undivided Hindu family.*
See CIVIL PROCEDURE CODE, 1908, SECTION 80. **67 P R 1894**

6. *Suit for dissolution of partnership and for rendition of accounts—Suit by adopted son of widow of deceased partner.*
See HINDU LAW—INHERITANCE. **20 P R 1897**

7. *Appointment of one member of joint family as partner—All the family not thereby made partners.*
See HINDU LAW—JOINT FAMILY. **162 P R 1888**

8. *Death of one respondent member of insolvent firm pending appeal by creditor—Partial abatement of appeal—Survival of right to sue.*
See INSOLVENCY. **69 P R 1888**

9. *Suit to wind up partnership in land—Co-sharers in agricultural land—Jurisdiction of Court.*
See JURISDICTION OF CIVIL OR REVENUE COURT. **115 P R 1888**

10. *Partnership or co-ownership—Construction of document.*
See REGISTRATION ACT, 1877, SECTION 17. **51 P R 1898**

11. *Suit for balance of partnership account.*
See SMALL CAUSE COURT ACT, 1887, ARTICLE 29. **92 P R 1889**

12. *Value of suit—Suit for dissolution of partnership and rendition of accounts—Suits Valuation Act, 1887, sections 8, 11—Course of appeal—Punjab Courts Act, 1884, section 39.*
See APPEAL III, COURSE OF APPEAL. **58 P R 1902**

13. *Suit for balance due at dissolution of partnership and the adjustment of partnership account—Absence of express agreement to pay interest—Implied agreement.*
See INTEREST. **104 P R 1901**

14. *Deed of partnership purporting to create right, title or interest in immovable property to be acquired—Registration.*
See REGISTRATION ACT, 1877, SECTION 17 (*b*). **89 P R 1903**

PARTNERSHIP—*contd.*

15. *Difference between ordinary and hereditary partnership of a joint Hindu family.*
See HINDU FAMILY. **97 P R 1910**

16. *Limitation.*
Suit for an account of dissolved partnership and a share in the partnership property and assets governed by article 106, Indian Limitation Act, 1877, and if barred, a claim for a share in specific assets of the partnership acquired within 3 years of institution of suit is equally barred.
See HINDU FAMILY. **97 P R 1910**

17. *Breach of agreement to enter into partnership—Damages.*
Where one party to an agreement to enter into a partnership refuses to carry out the arrangement, the damages claimable by the other party are the profits which plaintiff would have been entitled to had the agreement been carried out. AKULJOO *v.* HURBHUJ **6 P 1867**

18. *Accounts—Agency*
One partner may be authorised to act for another in the final settlement of accounts preparatory to dissolution of the partnership. It is not absolutely necessary that the former should hold a *written* authority from the latter so to act, the authority may be given by words or acts—it may even be inferred from silence and acquiescence. SODHA SINGH *v.* CHIPPUL. **84 P R 1867**

19. *Liability of partners* inter se, *and to others.*
A. sued his former partners *B.* and *C.* for adjustment of accounts, and obtained a decree fixing his share of the profits and losses during the period he was in the firm. Subsequently *X.* sued the firm for goods supplied during the period *A.* was partner. *A.* pleaded non-liability on the ground that his share of the profits and losses had already been fixed judicially.—*Held,* that as *X.* was not a party to the first suit he could not be bound by it—and that *A.* was still liable to *X.* for goods supplied during the time he was a partner. ROOLDOO MULL *v.* JOWAHIR. **90 P R 1868**

20. *General adjustment.*
By section XVII, para. 11, Punjab Civil Code, if one partner brought a suit against another, the Court would order a general adjustment of accounts between the parties. This did not apply to joint-proprietors of land, to whom only para. 8 of section XVII, was applicable. HEERA SINGH *v.* KANAH. **32 P R 1870**

21. *Partnership account—Suit for contribution—Limitation.*
Plaintiff and defendants borrowed money for carrying out a partnership contract. The partnership was dissolved in April 1864, and the lender of the money sued plaintiff, and in June 1865 obtained a decree for the sum lent. More than 6 years after the dissolution of the partnership, plaintiff sued defendants to recover a portion of the money paid under the decree, according to the defendants' partnership share. *Held*, that the suit was for money due on a partnership account and was therefore barred by limitation. MYA SINGH *v.* GUNESH DASS. **32 P R 1872**

PARTNERSHIP—*contd.*

22. *suit by partner against co-partner for money lent to the firm.*
Plaintiffs sued to recover Rs. 1,797, principal and interest, money lent for the purposes of the business to a partnership firm, composed of plaintiffs and defendants, for the purchase and sale of timber. *Held*, that the suit would not lie, and the plaint ought to have been rejected in the first instance, and that plaintiffs' proper form of suit would have been for a dissolution of the partnership and for an account. PHULA *v.* SHIB DIAL. **34 P R 1873**

23. *Agent of firm suing in his own name—Power of attorney to sue executed by one partner without authority of co-partners—Right of one partner to sue for firm—New firm suing upon debt of old firm.*

Where an agent holding a power of attorney to sue for a debt due to a firm, sued in his own name, *held*, that it was immaterial after judgment, as the name of the agent might have been struck out of the plaint and the names of the partners substituted. H. and Co. were a firm trading in Calcutta, and Brookes, one of the partners, gave J. B. a power of attorney under seal authorizing him to sue defendant for a debt due to the firm. The power purported to be given for each of the partners, but Brookes alone signed it, affixing to it the style of the firm, *viz.* "H. and Co." There was no evidence that Brookes had authority from his co-partners to execute the power of attorney. *Held*, that as one partner cannot, unless expressly authorized by deed, execute a deed on behalf of his co-partners, the power of attorney was informal, and conferred upon J. B. no authority to sue for the firm; but that the insufficiency of the power was cured by section 350, Civil Procedure Code. *Held*, also that one partner may sue in the name and on behalf of himself and his co-partners but he does so at the risk of having to indemnify them against costs if they object, or of having the proceedings stayed or the action put an end to by a release given by his co-partners to the defendant. *Held*, that where a change takes place in the members of a partnership, the new firm can sue upon a promissory note given to the old firm, if the members of the old firm at the time the note was given be joined as parties to the suit and if the new firm have power from the members of the old firm to sue upon the note. HAMILTON *v.* SHOWERS. **62 P R 1873**

24. *Suit for profits pending partnership.*
Plaintiff lent defendants Rs. 2,000, with which to work contracts on the great Northern State Railway, it being agreed that plaintiff

was to receive 6 annas out of each rupee of the profits made by the defendant. The partnership was to continue as long as defendant held a contract on the Railway. In January 1873, plaintiff applied for an account and in June of that year, as defendant had not rendered an account, sued for Rs. 2,936, plaintiff's share of the profits resulting from the railway contracts up to 30th November 1872, or such other sum as might appear due for profits up to that date after examination of defendant's books and papers. In June 1873, the partnership still existed. *Held*, that the suit did not lie. NAWAB KHAN *v.* SHEIKH GOLAM AHMAD. **7 P R 1875**

25. *Suit by member of partnership for account of profits to date of suit—Subsisting partnership.*

A suit by a member of a subsisting partnership for an account of profits up to date, in which the plaintiff does not seek a dissolution, does not lie. UMAR BAKHSH *v.* FAIZULLA. **13 P R 1879**

26. *Contract Act (IX of 1872), sections 253, 254, 265—Suit for dissolution and winding up of partnership—Form of suit—Dissolution prior to suit.*

In a suit for dissolution of partnership, and winding up of the business of the firm under section 265 of the Contract Act, in which it was not alleged that the partnership had been entered into for any fixed term, the lower Courts held that the suit could not be entertained until the partnership had been dissolved by a regular suit under section 254.

Held, reversing the orders of the lower Courts, that the plaintiff by bringing the suit had sufficiently indicated his intention of retiring from the partnership; that such retirement dissolved the partnership under section 253, clause 7 of the Contract Act, and that, therefore, the suit would lie. *Bagha* v. *Noranga* (No. 76 *P. R.* 1876), cited. RULDU MAL *v.* ARJAN.

12 P R 1881

27. *Cause o action—Suit by one partner against another for sum alleged to be realized over his share in the outstandings—Omission to implead all the partners—Suit for an account.*

Held, that while a partnership subsists, even though it continues only for the purpose of realizing outstandings, one partner is not entitled to sue another on the ground that the latter has realized more than his own share in the outstandings, especially where there are other members of the firm who are not made parties to the suit. Whatever any partner has realized, has been realized on account of the firm, and it is to the firm and not to individual partners that an account from him is due. An individual partner may sue for an account, and to have the affairs of the partnership wound up, but to such a suit all the members of the firm are necessary parties. PANDIT BHAWANI SAHAI *v.* GANESH DAS. **65 P R 1884**

28. *Contract Act (IX of 1872), section 265—Suit to wind up partnership—Power to pass decree against plaintiff in settling accounts—Defendant disclaiming order in his favour.*

A plaintiff who brings a case under section 265 of the Contract Act to wind up the affairs of a partnership, virtually submits himself to any decree which the Court may find requisite for the purpose of finally settling the accounts between the partners even to the extent of making an order for payment of money by the plaintiff to the defendant; but a defendant in such a case may disclaim any order being made in his favour and the Court is not bound to make such an order if he does not desire it, especially when there is no fund in Court to be distributed. RAM SARAN *v.* HAR GOBIND.

65 P R 1888

29. *Partnership, dissolution of—Burden of proof—Evidence of dissolution—Evidence Act, 1872, section 109.*

Plaintiff sued for a partnership account on the allegations that he and the defendants' grandfather were members of a firm which had been dissolved by the death of the latter a month before the institution of the suit. The defendants were minors, and through their mother and guardian pleaded that the partnership had been dissolved in 1887, and that the claim was barred by time. The Additional District Judge found in defendants' favour on this issue, and dismissed the suit, but this finding was set aside, on appeal, by the Divisional Judge, who remanded the case for re-decision under section 562, Civil Procedure Code, 1882. Defendants appealed to the Chief Court, and proved that (*i*) the books and accounts of the partnership continued only up to 1887, and that there was nothing to indicate that the business was subsequently continued and (*ii*) for the last eight years the business of the shop had been carried on by their grandfather alone, and that plaintiff did not take part in it as a partner, indents on the firm being made out in the name of defendants' grandfather alone. Plaintiff, on the other hand, failed to produce any satisfactory evidence of the continuance of the joint business subsequently to 1887.

Held, that though under section 109, Evidence Act, 1872, the partnership which once existed between plaintiff and defendants' grandfather should be presumed to have continued until its dissolution was affirmatively established, the facts proved led to the inference that it terminated eiher by consent or in consequence of a quarrel many years previously, and that there had been no joint business or joint dealings since then.

Held, therefore, that the claim was barred by limitation. BAKHSH ILAHI *v.* ALLA BAKHSH.

11 P R 1897

30. *Partnership—Insolvency of firm—Indian Evidence Act, 1872, section 109—Contract Act, 1872, sections 253, 254, 255—*

Punjab Laws Act, 1872, section 25—Limitation Act, 1877, article 106.

A certain firm was declared insolvent on the 9th April 1890 by the Judge of the Small Cause Court, Amritsar, who thereupon proceeded to administer the estate. On the 25th March 1891, a composition deed was executed to the effect that the creditors had already been paid $\frac{3}{16}$ths of their claims, that the insolvents would pay $\frac{3}{16}$ths more through the Court within a month, and that after such payment their property should be released from attachment. On the 17th May 1891, the Court ordered that effect should be given to the composition, and, on the subsequent payment into Court of the $\frac{3}{16}$ths as agreed, directed that the insolvent's property should be released from attachment. The case was struck off the file on the 7th August 1891.

On the 8th July 1893 plaintiff, who was one of the partners in the said firm, sued for dissolution of partnership and for an account, but his suit was dismissed as barred under article 106, Limitation Act, on the ground, *according to the first Court*, that the partnership was dissolved by the very fact that the firm had been declared insolvent and its estate administered by the Insolvency Court, and *according to the Divisional Court* that the partnership was dissolved under section 255, Contract Act, inasmuch as attempts by the firm to trade after being declared insolvent and while the estate was being administered by the Insolveney Court would have amounted to misconduct punishable under section 25, Punjab Laws Act, and "therefore prohibited by law."

Held, that under section 109, Evidence Act, the *onus* of proving that the partners had ceased to stand to each other in the relationship of partners was upon defendants, and that it was not a sufficient discharge of such *onus* to merely prove that their firm had been declared insolvent.

Held, therefore, that the suit was not barred under article 106, Limitation Act.

Section 25 of the Punjab Laws Act applies only to misconduct committed by a person previously to his being adjudicated an insolvent, and bankruptcy of a firm does not necessarily involve the prohibition by law of its business. The partners themselves are thereby prevented from carrying on the business, but it does not necessarily follow that the business itself is prohibited by law. MAHARAJ MAL *v.* HIRA MAL.

37 P R 1897

31. *Dissolution of partnership—Jurisdiction of Court—Civil Procedure Code, 1882, section 17 (3) (ii)—Misjoinder of causes of action—No appeal from preliminary decree within fixed period—Effect of as regards appeal from final decree—Representative of deceased partner, liability of—Presumption against wrong-doer—Comparison of handwriting by experts.*

Plaintiffs instituted a suit in the District Court of Ludhiana for dissolution of part-

nership, a settlement of accounts and a decree for whatever might be found due to them from defendants, which they stated to be in all probability a sum of Rs. 11,500. They joined as defendants both the remaining partners, and also the representatives of a deceased partner. Defendants pleaded, *inter alia*, that as the parties were all residents of Jullundur District, the Court had no jurisdiction to entertain the suit, and that there was a misjoinder of causes of action. The suit having been decreed by the District Court, defendants appealed to the Chief Court.

A preliminary objection by plaintiffs to the effect that inasmuch as defendants had not appealed from the preliminary decree of the lower Court within the prescribed period, the appeal from the final decree was barred, having been overruled.

Held, that as the contract of partnership was entered into by the parties at Ludhiana, where balance sheets of accounts were prepared between the parties, and plaintiffs had a share in a shop there which carried on the same business as the firm of the parties, the District Court of Ludhiana had jurisdiction in the suit under section 17 (3) (*ii*) of the Civil Procedure Code.

Held, further, that the defendants, whether they were partners or representatives of partners, were necessary parties to the suit as framed, and that therefore there was no misjoinder of causes of action.

A representative of a deceased partner is liable to the extent of the deceased's assets in his hands and this is ordinarily a matter for inquiry in execution of decree, but there is no absolute impropriety in its being decided prior to decree.

The Chief Court finding that the deceased partner had previously to his death removed an unknown quantity of partnership property from the shop at Ludhiana, and that he had died a few days thereafter concluded that his representatives had come into possession of the whole of the property so removed, and further finding that the shop books had come into the hands of the said representatives and were being wilfully withheld by them, held that, in the absence of trustworthy evidence as to the amount of assets in their hands, the defendants were liable to the full extent of the plaintiffs' claim.

A comparison of handwriting by experts is generally an unsafe test if it has to stand by itself. JAGNA *v.* GAINDA MAL.

62 P R 1897

32. *Partnership—Lien—Contract Act,* 1872, *sections* 60, 61, 217, 262—*Set-ff—Civil Procedure Code,* 1882, *section* 111.

The rule as to the equitable lien possessed by each partner on the partnership property cannot be applied so as to enable a managing partner to appropriate money due to another partner out of the assets of a firm in liquidation of a debt due from that partner to himself and entirely unconnected with the business of the firm.

Neither at common law nor in equity is there any right of set-off between parties mutually indebted in the absence of an agreement to that effect. Nor do the provisions of section 111 of the Civil Procedure Code apply where the debt sought to be set-off was barred by limitation before the suit was filed. SOHNA *v.* NAND RAM.

53 P R 1898

33. *Partnership property—Separation of —Notice to creditors of the firm—Good faith.*

In the absence of proof of bad faith agreements come to between partners converting the property of the firm into the separate estate of one or more of its members are binding on their joint and several creditors.

Held, that on the facts disclosed there was no obligation on the partners to give notice to their creditors that some of the property of the firm was being converted into a separate estate. HAZARI MAL *v.* NARSINGH DAS. **77 P R 1900**

34. *Partnership—Suit by partner against co-partner who was also manager of the business to have an account rendered of his stewardship—Accounts without dissolution—Contract Act,* 1872, *sections* 213, 258.

Held, that although there is a sound general principle that one partner should not be allowed to sue a co-partner for an account without at the same time claiming a final settlement of all questions between them, and a dissolution of partnership, yet in exceptional cases where equity requires such a course the general principle should be relaxed, and one partner may be allowed to file a suit against his co-partner for account without praying for dissolution of the partnership.

Phula and Dana v. *Shib Dial* (34 *P. R.* 1873), *Narain Das* v. *Bholi* (71 *P. R.* 1881), and *Kassa Mal* v. *Gopi* (*I. L. R. IX All.* 120), referred to. *Wallworth* v. *Holt* (48 *R. R.* 187), *Richards* v. *Davis* (34 *R. R.* 111), and *Hichens* v. *Congreve* (32 *R. R.* 173), cited. AZIM KHAN *v.* MUHAMMAD RIAZ-UD-DIN AND OTHERS. **110 P R 1901**

35. *Suit for dissolution of partnership and for an account—Limitation Act,* 1877, *Schedule II, article* 106.

Held, that a partnership entered into for a fixed term when the business was not continued after such term had expired, should be considered as terminated on the date of the expiry of such term and a suit by a partner for an account of such partnership business is governed by article 106 of the second schedule of the Limitation Act, 1877. RAM CHAND *v.* SUBHAN BAKHSH AND ANOTHER. **69 P R 1902**

36. *Suit for dissolution of partnership—Sale of outstandings before the business was dissolved—Validity of such sale—Civil Procedure Code.* 1882—*section* 215.

Under section 215, Civil Procedure Code, a Court trying a suit for dissolution of

partnership has no power to sell outstandings or to take any of the proceedings indicated in that section until it has passed an order dissolving the partnership, therefore where previous to the passing of the preliminary decree dissolving the partnership the Court sold a large portion of the outstandings and then dismissed the suit for want of prosecution *held*, that the aale was invalid and *ultra vires*.

Thirukumaresan Chetti v. *Subbaraya Chetti* (*I. L. R. XX Mad.*, 313) referred to. MUL CHAND *v.* PIYARE LAL. **23 P R 1903**

37. *Partnership—Dissolution of partnership—Liability of retired partner for debts contracted after dissolution—Contract Act,* 1872, *sections* 245, 264.

Held, that when it is sought to charge a party with liability as a partner many years after the dissolution of the partnership by a person who has had no dealings with the original firm prior to its dissolution, and was not even aware that the party sought to be charged was a partner therein, and where notices of the dissolution were given to the *artis* of the firm, and there was nothing to show any attempt at concealment of the change in the constitution of the firm, the mere fact that the continuing partner was allowed to carry on business in the old firm's name, which did not disclose the identity of the retired partner or the maintenance of a joint responsibility in a specific contract would not render the retired partner liable to such person for debts contracted by the firm long after his retirement therefrom.

Section 264 of the Contract Act does not cover the case of a person dealing with a firm for the first time after a change from its original constitution, so as to make a partner who had already retired liable.

Chundee Charn Dutt v. *Eduljee Cowasjee Bijnee* (*I. L. R. VIII Calc.* 678), *Mohori Bibee* v. *Dharmodas Ghose* (7 *Calc. W. N.* 441), *Rampal Singh* v. *Balbhaddar Singh* (*I. L. R. XXV All.* 1), *Dickinson* v. *Valpy* (*L. R.* 10 *B. and C.* 140), In re *Fraser Central Bank of London* exparte (*L. R.* 2 *Q. B.* (1892), 633), *Newsome* v. *Coles* (12 *R. R.* 756) *Scarf* v. *Jardine* (*L. R.* 7 *App. Cas.* 349), *Carter* v. *Whalley* (*L. R.* 1 *B. and Ad.* 11), *Ramasami* v. *Kadar Bibi* (*I. L. R. IX Mad.* 492), and *Bullen* v. *Sharp* (*L. R.* 1 *C. P.* 125) referred to. CHAND MAL *v.* GANGA RAM. **78 P R 1903**

38. *Partnership for cultivatioa of land—Suit by a co-sharer for share of profits—Jurisdiction of Civil or Revenue Court—Punjab Tenancy Act,* 1887, *section* 77 (3) (*k*).

A suit by the plaintiff for his share in the produce of certain land owned by the defendant which he cultivated in partnership with the defendant under an agreement whereby he was to receive one-fourth of the produce, *held*, to be a suit by co-sharer for a share in the profits of the holding within the meaning of section 77 (3) of the Punjab Tenancy Act

PARTNERSHIP—*contd.*

1887, and was cognizable by a Revenue Court. SUNDER SINGH *v.* KESAR SINGH. **80 P R 1904**

39. *Parties—Suit for partnership debt—Representatives of a partner who died pending the suit not necessary parties—Contract Act,* 1872, *section* 45.

Held, that the representatives of a deceased partner are not necessary parties to a suit for the recovery of a debt which accrued due to the partnership in the lifetime of the deceased partner.

Gobind Prasad v. *Chander Sekhar* (*I. L. R. IX All.* 486), *Moti Lal* v. *Ghella Bhai* (*I. L. R. XVII Bom.* 6), *Vaidyanatha Ayyar* v. *Chunasami Haik* (*I. L. R. XVII Mad.* 108), and *Devi Das* v. *Nirpat* (*I. L. R. XX All.* 365), cited and followed.

Ram Narain v. *Ram Chandar* (*I. L. R. XVIII Cal.* 86), dissented from. MULK RAJ *v.* GEORGE KNIGHT. **10 P R 1906**

40. *Suit for contribution after dissolution of partnership—Limitation in respect of such suit—Limitation Act,* 1877, *Schedule II, article* 106.

Held, that a suit by a surviving partner against the representatives of a deceased partner for contribution in respect of losses of a dissolved partnership being virtually a suit for an account and payment of the sum found due is subject to the limitation prescribed by article 106 of Schedule II of the Limitation Act, 1877. AMIN CHAND *v.* GUJAR MAL, **73 P R 1906**

41. *Partnership between a licensee under Act XII of* 1896 *and other persons—Valid contract—Public policy—Contract Act,* 1872, *section* 23.

A being the holder of a license under the Excise Act, XII of 1896, for wholesale vend of liquor, entered into an agreement of partnership with B. and C. in the business carried on under the license. One of the conditions subject to which the license was granted, was " No license is transferable."

Held, (1) that under the circumstances of the case there had been no transfer of the license within the meaning of the rules;

(2) that the contract was not void as opposed to public policy, but was capable of being enforced by one partner against the other

Jai Narain v. *Sultan Muhammad Khan* (96 *P. R.* 1902,), referred to. BASHESHAR DAS *v.* GOBIND RAM. **114 P R 1906**

42. *Partnership—Assignment of his share by a partner—Liability of assignee on admission for debts owing by the firm—Contract Act,* 1872, *sections* 140, 251.

Held that the assignee of a share in a partnership concern when admitted into partnership by the other partners is liable for the debts owing by the firm as originally composed, notwithstanding the fact that

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the creditor may not have accepted the assignment or absolved the assignor from liability. NIHARKA *v.* MADHO. **107 P R 1907**

43. *Partnership—Rights and obligations on dissolution—Distribution of assets and contribution to losses.*

Held, that, in settling accounts between partners after a dissolution of partnership in absence of any agreement on the point, the assets of the partnership should be distributed by paying to each partner his claims in respect of capital standing to his credit at the time of dissolution, and in cases of deficiency the parties are liable to contribute equally. MAM RAJ *v.* GOKAL CHAND. **40 P R 1908**

44. *Partnership—Notice of dissolution on the retirement of a dormant partner—Liability of such partner for debts of partnership—Contract Act,* 1872, *sections* 249, 264—Shikmi Sharik.

Held that it is not necessary to give any express notice of dissolution of a partnership on the retirement of a dormant partner, especially when the fact of the latter's relationship was unknown to the customers of the concern, but he is liable for all debts and obligations incurred by the partnership up to the date of his retirement from that business.

Shikmi Sharik found to be a dormant partner and not a mere sub-partner. HASHMAT ALI *v.* LACHMI NARAIN. **75 P R 1908**

PART-PAYMENT.

1. *Of principal of debt.*
   See LIMITATION ACT (XV OF 1877), SECTION 20. **62 P R 1881**
   99 P R 1884
2. *Of decree.*
   See LIMITATION ACT (XV OF 1877), SECTION 20. **61 P R 1886**

PASSENGER.

1. *Railway Company—Passenger's luggage—Person sending his luggage by a friend—Penal Code, section* 415—*Attempt to defraud—Railway Act—Bye-law imposing penalty for endeavouring to evade payment of full fare.*

See RAILWAY COMPANY. **25 P R 1903 Cr.**

See LIMITATION ACT, 1878, SECTION 20. **12 P R 1894**

2. *Held*, that the word passenger in the Railways Act includes a ticket-holder even before he has boarded the train. THE CROWN *v.* HARI SINGH. **26 P R 1910**

PATENT.

1. *Act XV of* 1859, *sections* 4, 22 *and* 34 *—Measure of damages—Royalty—Infringement—Jurisdiction—Detail of breaches.*

In a suit for damages for infringement of a patent, the defendant pleaded (*a*) that the plaintiff's privilege did not extend to the Punjab. It was found that only Bengal, the North-Western, and the Central

PATENT—*contd.*

Provinces were mentioned in the specification filed under the Act.

Held, that these Provinces were only mentioned as places where the invention was likely to be useful, that it was never intended that it might be counterfeited in any other part of India, and that under section 4 the exclusive privilege was given for the whole of India, notwithstanding anything contained in the specification, and that any person infringing the privilege was liable in any part of India.

(*b*) That evidence should not be received of any breaches other than those entered in a schedule prescribed by section 34. *Held* that the object of giving instances is to prove the infringement, and that other instances of purchases, sales or hiring could be enquired into to determine the amount of damages.

(*c*) That he had not infringed the patent. It was found that he had bought portions of machines from persons licensed by plaintiffs and put them together; that he had bought rollers from unlicensed persons and whole machines from persons not licensed—*Held* that these acts constituted a sufficient infringement.

On the other hand, the plaintiff contended that the measure of damages should be the profits made by the defendants. *Held*, following *Penn* v. *Jack*, *L. R.* 5 *Eq.* 81, and *I. L. R. II All.* 368, that the measure of damages is the royalty which ought to have been paid. LALA GANDA MAL *v.* MESSRS. WALTER THOMSON and JAMES MYLNE. **115 P R 1889**

2. *Patent, infringement of—Nature of exclusive privilege granted to patentee—Act XV of* 1859 *and Act V of* 1888—"*Make, sell or use*"—*Exclusive privilege acquired for process of producing certain article—Article manufactured without, but sold within limits of exclusive privilege*—"*Town and station of Rawalpindi.*"

One B. was granted under section 4 of Act XV of 1859, the sole and exclusive privilege of making, selling and using in British India. certain kilns for the manufacture of bricks, and of authorizing others to do so. Some time thereafter plaintiff obtained by assignment from Messrs. P. D., a license from the said B. granting him the sole and exclusive privilege of using patent kilns " within the town and station of Rawalpindi." Subsequently defendant, who had also obtained a license from the said B.'s agent authorizing him to use *one* patent kiln at any place in the district of Rawalpindi except within the cantonment and municipal limits of Rawalpindi, set up one such kiln on the outskirts of but admittedly not within the limits of the cantonment and municipality of Rawalpindi. Plaintiff thereupon instituted a suit for damages for breach of his patent rights under his license, and his claim was decreed in the first Court, but dismissed by the Divisional Judge on appeal. Plaintiff appealed o the Chief Court, and it was contended

PATENT—*concld.*

on his behalf, that (*i*) the words "town and station" in his license included places where kilns meant for the supply of the town and station were situated, or, at any rate, those places at which kilns were constructed when the exclusive privilege was originally granted to Messrs. P. D., his predecessors in title, and (*ii*), although the defendant was entitled to use his one kiln outside the limits of plaintiff's exclusive privilege, yet a sale by defendant within those limits of bricks manufactured in the said kiln outside the said limits constituted an infringement of plaintiff's said exclusive privilege.

Held, that plaintiff's suit had been rightly dismissed.

Per Curiam.—The words "town and station of Rawalpindi," in plaintiff's license, should be strictly construed, and did not include the place at which defendant had set up his kiln.

Stogdon, J. (Rivaz, J. doubting as to this). The exclusive privilege having been acquired by B. merely for the process or manner of producing bricks and not for the bricks so produced, a sale by a third party within the limits of the exclusive privilege of bricks manufactured by the said process outside those limits did not amount to an infringement of the patentee's rights.

Rivaz, J. Plaintiff had failed to prove any sale of such bricks by defendant within the local limits secured to the plaintiff. Bhagat Hira Nand *v.* Hari Ram.

24 P R 1896

PATTIDARI JAGIRS.

—*Cis-Sutlej districts—Right of adoption not recognized.*

See Succession. **1 P R 1910 Rev.**

PATWARI.

See Jurisdiction of Revenue Court.

28 P R 1876

Public Servant.

32 P R 1872 Cr.

1. *Duty of, to draw up his annual papers in conformity with Settlement record—Suit for correction of Patwari's papers.*

See Alluvion and Diluvion.

7 P R 1886 Rev.

2. *Act XXXIII of* 1871, *section* 6, *Rule No.* 29—*Patwari trading or acquiring land after appointment—Disqualification of candidate who has traded or owns land before appointment.*

Held by the Financial Commissioner, that Rule No. 29 of the rules relating to Patwaris, made under section 6 of the Land Revenue Act of 1871, while it prohibits a man from trading or acquiring land in his circle after he has been appointed Patwari, does not in any way hinder a man who has traded, or whose relations trade, or who already owns land, from being made a Patwari. Ganpat *v.* Devi Das. **8 P R 1881 Rev.**

3. *Transfer—Reasons for such transfer*

PATWARI—*concld.*

Held by the Financial Commissioner, that Patwaris should not be transferred from one circle to another as a punishment; and the mere fact that a Patwari is not acceptable to a particular faction in a village is not a sufficient reason for his transfer. Guru Das *v.* Crown.

3 P R 1885 Rev.

PAUPER.

1. *Suit by pauper—Application for leave to sue* in forma pauperis—*Subsequent payment of Court-fees after period of limitation—Date of institution of suit.*

See Limitation Act, 1877, section 4.

59 P R 1903

2. *Rejection of application for leave to sue as pauper on ground of omission by plaintiff to enter all his property in the Schedule.*

See Civil Procedure Code, 1908, Order XXXIII, Rule 5.

27 P R 1887

3. *Grounds for rejecting application for leave to sue as pauper.*

See Civil Procedure Code, 1908, Order XXXIII, Rule 5.

155 P R 1888

4. *Application to sue* in forma pauperis—*Court issuing notice to defendant without preliminary inquiry—Material irregularity—"Right to sue in such Court."*

See Civil Procedure Code, 1908, Order XXXIII, Rule 5.

130 P R 1894

5. *Application for leave to sue as a pauper dismissed in default—Subsequent application for same purpose.*

See Civil Procedure Code, 1908, Order XXXIII, Rule 7.

64 P R 1896

6. *Application for leave to appeal* in forma pauperis *filed by manager of idiot plaintiff's estate without schedule of pauper's property.*

See Civil Procedure Code, 1908, Order XXXIII, Rule 3.

19 P R 1899

7. *Application for review of judgment* in forma pauperis.

See Court Fees Act, 1870, 1st Schedule, article 4.

91 P R 1895

8. *Sufficient cause for not filing appeal within time—Prosecution of application for leave to appeal as a pauper.*

See Limitation Act, 1877, section 5.

47 P R 1899

9. *Application for leave to appeal in* forma pauperis—*Exclusion of time requisite for obtaining copy of judgment.*

See Limitation Act, 1877, section 12.

33 P R 1895

10. *Civil Procedure Code,* 1882, *Chapter XXVI—Suit by pauper—Plaintiff suing on allegation that certain property was joint—Plea by defendant that part of such property was plaintiff's separate property—Order by Court that such property should be excluded from claim.*

PAUPER—*concld.*

In a suit by plaintiff, suing *in forma pauperis* for a share of certain property, the whole of which she alleged to be the joint property of herself and defendant, the latter pleaded that part of such property was the separate property of plaintiff. The District Judge in considering whether the plaintiff was possessed of sufficient means to pay the prescribed Court-fee, held that as the defendant admitted her claim to part of the property in suit, she should exclude it from her claim, and thus reduce the Court-fee payable by her.

Held, that inasmuch as plaintiff's case was that none of the property claimed by her was her separate property but was part of the joint property of herself and defendant, while defendant's contention was that there was no such joint property both he and plaintiff being separately entitled to the property, respectively, held by them, the finding of the District Court trenched on the merits of the case which should be avoided in adjudicating on the question of pauperism.

Held, therefore, that the finding of the District Court must be set aside. Mussammat Tabo *v.* Nau Nihal. **17 P R 1900**

11. *Limitation Act,* 1877, *sections* 4, 5—*Application for leave to appeal* in forma pauperis—*Rejection of application—Extension of time granted for payment of Court-fees—Payment of Court-fees after period of limitation—Sufficient cause for not filing appeal within time.*

See Limitation Act, 1877, section 4.

84 P R 1904

12. *Application for leave to defend* in forma pauperis—*Civil Procedure Code,* 1882, *Chapter XXVI.*

Held, that there being no provision in the Civil Procedure Code for such a course a defendant cannot be allowed to defend a suit, *in forma pauperis*. Coates *v.* Secretary of State for India in Council.

54 P R 1905

13. *Suit* in forma pauperis—*Compromise—Withdrawal of suit—Failure in the suit—Payment of court-fees—Civil Procedure Code,* 1882, *section* 412.

Held, that if a plaintiff who had been permitted to sue as a pauper withdraws from the suit under a compromise by which he foregoes his original claim he fails in the suit within the meaning of section 412 of the Civil Procedure Code, 1882, and is liable to pay court-fees which would have been paid by him if he had not been admitted to sue as a pauper. Secretary of State for India in Council *v.* Surju Das.

104 P R 1908

PAUPER, PETITION FOR LEAVE TO APPEAL AS.

—*Revision of order rejecting.*

See Revision in Civil Cases.

21 P R 1885

PAUPER PETITION FOR LEAVE TO SUE AS.

- *Procedure on.*

See Civil Procedure Code, 1908, Order XXXIII Rule 1.

99 P R 1882

PAUPER PETITION FOR LEAVE TO SUE AS—*concld.*

See Civil Procedure Code, 1908, O. XXXIII, R. 5. **81 P R 1881**

See Civil Procedure Code, 1908, O. XXXIII, R. 5. **25 P R 1885** **122 P R 1886**

—*Revision of order refusing.*

See Revision in Civil Cases. **99 P R 1882**

PAWN OR PLEDGE.

See Company.
Jurisdiction of Small Cause Court.
Mortgage.
Stolen Property.

PAWNOR AND PAWNEE.

1. *Pledge by possessor of documentary title to goods—Good faith of pawnee—Presumption that pawnor was acting improperly—Validity of pledge.*

See Contract Act (IX of 1872), sections 69, 70. **199 P R 1882**

2. *Suit by pawnee for money lent and for sale of property pawned—Suit barred as against defendant personally but in time as against the pawned property.*

See Limitation Act (XV of 1877), Schedule II, Article 57. **116 P R 1881**

PAY.

—*Of Native grass-cutter attached to European battery—Liability to attachment.*

See Execution of Decree. **41 P R 1882**

PAYMENT.

See Appropriation of Payments.

1. *Payment of mortgage debt—Unregistered deed—Extinction of mortgage—Oral evidence.*

See Registration Act, 1877, section 17. **39 P R 1904**

2. Plea of payment is not a set-off within the meaning of section 111 of the Code of Civil Procedure. Bhagat Singh *v.* Devi Dial. **85 P R 1908**

PAYMENT INTO COURT.

—*Of pre-emption money—Omission to pay within time fixed in decree.*

See Pre-emption. **69 P R 1881** **79 P R 1881** **96 P R 1884** **101 P R 1883** **1 P R 1885**

PAYMENTS MADE OUT OF COURT IN EXECUTION OF DECREE.

See Execution of Decree.

PAYMENT, VOLUNTARY, SUIT TO RECOVER.

See Mistake.

PENALTY.

1. *Liquidated damages—Interest.*

See Damages. **153 P R 1883** **55 P R 1885**

2. *Under Stamp Act—Penalty leviable to be determined under Act in force at time of levy of penalty.*

See Stamp. **7 P R 1885 Rev.**

PENSIONS.

See Attachment.

—*Liability of, to attachment—Pension payable by Government other than British Government.*

See Execution of Decree. **58 P R 1884**

PENSIONS ACT, 1871.

See Attachment.

Section 4.

See Jurisdiction of Civil or Revenue Court. **17 P R 1882** **92 P R 1881** **164 P R 1882** **131 P R 1882**

1. *Suit by recorded muafidar of one field for produce of another field.*

See Jurisdiction of Civil or Revenue Court. **11 P R 1887**

2. *Suit relating to land revenue—Necessity of certificate—Jurisdiction of Civil Courts.*

See Jurisdiction of Civil or Revenue Court. **53 P R 1890**

3. *Suit relating to a grant of land revenue made by the British Government filed without obtaining a certificate under section 6 of the Act.*

See Jurisdiction of Civil or Revenue Court **77 P R 1891**

4. Where a suit included a claim to a certain *muafi, held* that the Civil Courts had no jurisdiction to entertain the suit *pro tanto* without the certificate required by section 6 of the Pensions Act, 1871. Ghulam Nabi *v.* Besharat Ali. **25 P R 1900**

Section 5.

See Jurisdiction of Civil or Revenue Court. **12 P R 1886 Rev** **160 P R 1884**

Section 6.

See Section 4, *supra.*

—Jagir—*Succession—Grant of Government revenue for life to parties' family in specific shares—Death of one sharer—Suit by the surviving sharer against the son of the deceased for certain instalments wrongfully enjoyed by the latter—Limitation—Limitation Act,* 1877, *Schedule II, article* 13—*Construction of such grant.*

See Jagir.

See Jurisdiction of Civil or Revenue Court. **17 P R 1882** **131 P R 1882** **12 P R 1886, Rev**

See Splitting Cause of Action. **64 P R 1882**

Section 11.

See Execution of Decree. **57 P R 1884**

1. *Section 11—Pension—Assignment of land revenue for benefit of shrine.*

The revenue of certain land was assigned to the custodian of a shrine for the benefit thereof. *Held*, that such assignment of land revenue was not a pension within the meaning of section 11 of the Pensions Act, XXIII of 1871. Baha-ud-din *v.* Moti Lal. **27 P R 1878**

2. *Jagir* income is a pension within the meanng of this section and is not liable to attachment. Qamar-ud-din Khan *v.* Lachmi Nath. **95 P R 1906**

PENSIONS ACT, 1871—*concld.*

Section 11—*concld.*

3. *Pension—Land revenue granted by Government on political considerations—Water advantage rate—Liability of, to attachment in execution of a decree—Decree, construction of.*

A decree for money directed "that the "defendant do pay Rs. 6,869-10-0 to the "plaintiff by halfyearly instalments of Rs. 500 "out of the *khush haisiyati* (water-advantage rate) income which accrues to him each "harvest. The instalment for each harvest will be paid in the months of March "and September when the defendant realises "his *khush haisiyati* income. The defendant "shall not be competent to alienate his "*khush-haisiyati* income until the payment of "this decree money." On default having been made the decree-holder applied for the attachment of the income in question.

Held, that the *khush-haisiyati* (water-advantage rate) was a part of the *jagir* granted on political considerations and was therefore exempt from attachment by virtue of the provisions of section 11 of the Pensions Act, 1871.

Held, also, that the decree did not specifically charge the income in question and the executing Court could not strain the interpretation so as to read into the decree a provision which would be illegal. Qamar-ud-din Khan *v.* Mani Ram. **96 P R 1906**

4. *Liability of political pension to attachment in execution of decree.*

See Civil Procedure Code, 1908, section 60. **133 P R 1888** **137 P R 1890** **47 P R 1893** **35 P R 1900**

Section 12.

—*Decree charging* jagir *income with payment—Attachment in execution thereof.*

See Civil Procedure Code, 1908, section 60. **35 P R 1900**

PERQUISITES OF VILLAGE OFFICER.

—*Suit for.*

See Jurisdiction of Small Cause Court. **28 P R 1882**

PETITION-WRITERS.

1. *Rules relating to—Chief Court's power to revise proceeding under rules—Construction of rule—Suspension and dismissal of.*

See Punjab Courts Act, 1884, section 13. **42 P R 1888**

"PHYSICAL POSSESSION."

See Limitation Act, (XV of 1877), Schedule II, Article 10. **10 P R 1881** **156 P R 1882** **23 P R 1882** **48 P R 1884** **61 P R 1885** **73 P R 1885** **68 P R 1884** **90 P R 1886**

PICHHLAG.

1. *Gift by sonless proprietor to* pichhlag—Locus standi *of distant collaterals to contest its validity.*

See CUSTOM—I. A. ALIENATION BY MALE PROPRIETOR.—1 (J.). GIFTS, &C., IN FAVOUR OF STRANGERS—(*ii*) NOT PROVED. **63 P R 1909**

PLACE OF PERFORMANCE OF CONTRACT.

—*Cause of action.*

See JURISDICTION. **118 P R 1881**
147 P R 1882
71 P R 1883
132 P R 1883

PLAINT.

1. PRESENTATION OF.
2. FORM OF.
3. VERIFICATION AND SIGNATURE OF.
4. AMENDMENT OF.
5. REJECTION OF.
6. RETURN OF.
7. MISCELLANEOUS.

1. Presentation of.

1. *Suit brought by an independent prince—Recognized agent—Signing and verification of plaint.*

See CIVIL PROCEDURE CODE, 1908, O. VI, R. 14. **41 P R 1902**

2. *Suit for pre-emption—Unregistered corporation sued through its manager—Names of members not specified—Plaint returned for addition of such names—Date of institution of suit.*

See CORPORATION—UNREGISTERED. **29 P R 1896**

3. *Institution of suit—Unstamped plaint—Presentation by post.*

See COURT FEES ACT, 1870, SECTION 28. **38 P R 1900**

4. *Return of, for representation when a clue to defendants could be found—Effect of such irregular return of plaint—Limitation.*

See LIMITATION ACT, 1877, SECTION 4. **22 P R 1887**

5. *Institution of suit—Plaint presented to the " proper officer "—Plaint presented to the officer within limitation and returned to plaintiff by such officer with order endorsed thereon to present it to subordinate Court deputed to try the suit—No subsequent presentation within time of limitation.*

See LIMITATION ACT, 1877, SECTION 4. **7 P R 1895**

6. *Plaint insufficiently stamped when deemed to have been presented.*

See LIMITATION ACT, 1877, SECTION 4. **3 P R 1897**

7. *Plaint insufficiently stamped—Payment of requisite Court-fee after the expiry of limitation allowed for the suit—Plaint when deemed to have been presented—Date of institution of suit.*

See LIMITATION ACT, 1877, SECTION 4. **74 P R 1903**

8. *Plaint received on a holiday.*

Gazetted holidays are permissive, not imperative. *Held*, accordingly, that a plaint could be legally received on a holiday. GOOR CHURN SINGH *v.* ROOSEE GOOJUR. **43 P R 1870**

PLAINT—*contd.*

1. Presentation of—*concld.*

9. *Unstamped plaint—Conditional order admitting plaint—Plaint properly stamped after period of limitation—Limitation Act, 1877, section 4, explanation.*

Held, that the presentation of an unstamped plaint is not a proper presentation within the meaning of the explanation to section 4 of the Limitation Act, 1877. It is not valid for any purpose whatever. PARTAB SINGH *v.* KISHEN DIYAL. **130 P R 1890**

10. *Presentation of a plaint insufficiently stamped through circumstances beyond the control of the plaintiff—Payment of requisite Court-fees after expiration of limitation—Date of institution of suit—Court Fees Act, 1870, sections 6, 28—Limitation Act, 1877, section 4.*

A plaint insufficiently stamped was presented in the Court of the District Judge on the 14th April 1903, the last day allowed for it by the law of limitation. The reason given was that the treasurer had no stamp of the proper denomination and had informed the plaintiff that he must wait until the Treasury Officer should open the double locks. The District Judge received the plaint and recorded an order making over the case to the Sub-Judge, adding a direction that the deficiency should be made up.

Plaintiff on the same day procured the requisite stamps, but on taking it to the District Judge's Court found that officer had left his Court and was thus unable to file the full stamp-duty until the 16th April. The defence pleaded limitation.

Held, by the Full Bench, that in the circumstances of the case the suit should be taken as instituted on the 14th April when the plaint was presented to the District Judge and that the claim was therefore not barred.

Lakha v. *Munshi Ram* (38 *P. R.* 1900) distinguished. MEHTAB RAI *v.* GOPAL RAI. **104 P R 1905 F. B.**

2. Form of.

See PLEADINGS.

1. *Joint suit by alleged partners in respect of leases made in the names of certain individual members of alleged partnership—Joint undivided Hindu family—Omission in plaint to specify grounds entitling plaintiffs to sue jointly in respect of such leases.*

See CIVIL PROCEDURE CODE, 1908, SECTION 80. **67 P R 1894**

2. *Suit to obtain a declaratory decree where no consequential relief is prayed for.*

See COURT FEES ACT, 1870, 2ND SCHEDULE, ARTICLE 17. **109 P R 1893**

3. *Suit for recovery of movable property and for an account—Plaintiffs in plaint claiming as owners by succession and as principals who had appointed defendants to manage their property—Subsequent statement by plaintiff that she had never appointed defendants as her agents—Dismissal of suit—Principles which should guide Courts in such cases.*

PLAINT—*contd.*

2. Form of—*contd.*

See DISMISSAL OF SUIT. **85 P R 1896**

4. *Ejectment suit—Trespasser—Jurisdiction of Civil or Revenue Courts—Construction of plaint.*

See JURISDICTION OF CIVIL OR REVENUE COURT. **41 P R 1894**

5. *Construction of plaint—Joint holding—Separate possession and enjoyment—Proof of partition.*

See SPECIFIC RELIEF ACT, 1877, SECTION 39. **44 P R 1894**

6. *Pleadings—Plaintiff putting forward claim based upon alternative sets of facts.* Allegans contraria non auditur.

Though a plaintiff may base his claim alternatively upon two or more different sets of facts, each entitling him to the relief sought or some modification of it he cannot be heard to allege at the same time nor can he honestly verify contrary sets of facts.

A plaint alleging first that four bonds were executed by defendant in lieu of certain earlier bonds and interest, and then alleging that the said four bonds were not executed, and the earlier bonds remained in force, *held* to be bad in law. It would have been otherwise if the later transaction had been alleged to be a nullity by reason of matter of law only, the fact first alleged not being disputed or negatived, as in such case there would be no real contradiction nor an allegation of two sets of inconsistent facts. KHALAS *v.* KALYAN SINGH. **109 P R 1887**

7. *Civil Procedure Code—Forms of action—Statement of facts in plaint.*

The Divisional Judge dismissed the plaintiff's suit as a suit for the price of goods sold and delivered, and directed the plaintiff to sue on a contract of 10th April 1885 ; he also held that the suit as laid, *viz.*, for the price of goods sold to the defendants as an ordinary purchaser independently of the contract would not lie, and that plaintiff's proper remedy was to sue for a statement of account on the contract.

Held that the Divisional Judge's decree should be reversed, and a hearing of the appeal directed.

The Code of Civil Procedure does not deal with forms of action ; it requires a statement of facts in the plaint and that the plaint should disclose a cause of action. If a cause of action is disclosed, that cause of action is to be heard and determined subject to the defence of the defendant. MUHAMMAD SHARIF *v.* SHAMSHER KHAN. **11 P R 1891**

8. *Plaint*—Secundum allegata—*Decree of occupancy rights on basis other than that sued for—Material irregularity.*

The plaintiff sued for occupancy rights under section 5, sub-section (1) (*d*), Punjab Tenancy Act, 1887 : the Commissioner being of opinion that the plaintiff had rights of occupancy under sub-section (1) (*a*), decreed accordingly considering it unnecessary to determine whether the plaintiff was entitled to succeed

PLAINT—*contd.*

2. **Form of**—*concld.*

upon the grounds alleged by him in his plaint.

Held, by the Financial Commissioner on revision that it was a material irregularity on the part of the Commissioner to award the plaintiff a higher *status* than that asked for. The plaintiff had made no claim under section 5, sub-section (1) (*a*), or amended his plaint asking for such relief, or in any way advanced a claim to be of a higher *status* than that described in sub-section (1) (*d*). DAULAT KHAN *v.* MAST ALI.

1 P R 1892 Rev.

9. *Pre-emption, suit for—Defective plaint —Procedure—Civil Procedure Code, section* 53—*Punjab Laws Act*, 1872, *section* 12 (*e*)—"*Landowner*"—*Punjab Land Revenue Act*, 1887, *section* 3 (2).

Plaintiff sued for pre-emption in respect of certain sales of land, but his suits were dismissed by the Divisional Judge, on the ground that the sales included a share of *shamilat*, and that as plaintiff did not expressly sue for this in his plaints he was really suing for less than was sold, which he could not legally do. It appeared, however, from a statement made by plaintiff's agent in Court, that it was the intention to sue for the *shamilat* as well as the principal land.

Held, that the procedure of the Divisional Court was erroneous. The dismissal of the suits would only have been justifiable if the plaint had expressly shown, or, plaintiff's agent had expressly stated, that a share in the *shamilat* was purposely excluded from the suits. Inasmuch, moreover, as none of the faults enumerated in clause (*b*) of section 53 of the Civil Procedure Code could be found with the plaints, amendment thereof could only have been made under clause (*c*) of the same section, which was practically done by the Court ascertaining from plaintiff's agent that the *shamilat* also was claimed. JASMIR SINGH *v.* RAHMATTULLAH.

7 P R 1896

10. *Form of plaint for declaration that a judgment-debtor had a mortgage on certain property—Plaint—Relief claimed.*

Held, that the actual form of the suit is of little consequence. The relief really claimed on the case set up by the plaintiffs is to be considered and as the Code of Civil Procedure does not deal with forms of suits, the substance and merits of the case should be kept in view and not merely the words in the plaint. MIRAN BAKSH *v.* ATRA.

111 P R 1900

11. A plaintiff should not be precluded from basing his claim upon a ground which, though not referred to in the plaint, was clearly and in express terms put in issue at the very commencement of the suit. MUHAMMAD UMAR *v.* KIRPAL SINGH.

78 P R 1904

3. **Verification and Signature.**

1. *Signing and verification of plaint—Plaint signed and verified by some only of*

PLAINT—*contd.*

3. **Verification and Signature** —*concld.*

the plaintiffs—Objection to such plaint taken on appeal—Co-plaintiffs.

See APPEAL—VI. PROCEDURE IN.

48 P R 1896

4. **Amendment of.**

1. *Order of Appellate Court returning plaint for amendment—Appeal.*

See APPEAL—II. COMPETENCY OF.

15 P R 1898

2. *Execution of decree—Bond given by surety for judgment-debtor—Suit by decree-holder against surety without impleading judgment-debtor—Plaint returned for amendment—Appeal.*

APPEAL—VI. PROCEDURE IN.

59 P R 1896

3 *Plaintiff claiming two kinds of relief in alternative—Misjoinder—Return of plaint for amendment.*

See CAUSE OF ACTION—V. MISJOINDER.

41 P R 1887

4. *Misjoinder of causes of action—Plaint returned for amendment.*

See CAUSE OF ACTION—V. MISJOINDER.

79 P R 1899

4 *a. Nonjoinder of parties—Amendment not allowed.*

See JOINDER OF PARTIES.

175 P R 1882

5. *Amendment of plaint by ascertaining intention of plaintiff—Suit not to be dismissed.*

See PLAINT, FORM OF. **7 P R 1896**

6. *Amendment of.*

See PRE-EMPTION—I. GENERAL.

10 P R 1909

7. *Amendment.*

The Court has power to amend a plaint at any time, so long as it does not substitute an entirely new cause of action. KOUR SEIN *v.* MUSSAMMAT SAMIRO. **66 P R 1873**

8. *Amendment of plaint—Act XI of* 1865, *section* 21—*New trial—Stage at which plaint may be amended.*

Held, that when a new trial has been granted under section 21, Act XI of 1865, it is competent to the Judge of the Small Cause Court to permit the plaint to be amended at the second trial under the same circumstances under which an amendment of plaint would have been allowable at the original trial.

The ruling of the Bombay High Court in *Modhe* v. *Dongrea* (I. L. R. 5 Bom. 609) to the effect that a plaintiff may, subsequently to the first hearing, amend his plaint, provided such amendment does not alter the original character of his suit, referred to and approved. MEHNDU KHAN *v.* CHUNNU KHAN.

110 P R 1882

9. *Civil Procedure Code (Act X of* 1877), *sections* 53, 578—*Amendment of plaint—Court allowing amendment after first hearing —Legality of such amendment—Alteration consistent with original claim—Irregularity not affecting merits or jurisdiction.*

In a suit, in which the plaint was in the first instance framed as one for accounts with respect to two bond transactions which the plaintiff had contracted with the defend-

PLAINT—*contd.*

4. **Amendment of**—*contd.*

ant, but with regard to which plaintiff contended that he had not received full consideration, the defendant (after the Court had summarily rejected the plaintiff's claim as regards one of the bonds) objected that plaintiff should file a full stamp with respect to the portion of the second bond that he disputed, and accordingly the Court ordered him to furnish the Court-fee prescribed for a claim of Rs. 1,000, as that amount represented the extent of the relief which he claimed. Plaintiff therefore filed the extra stamps and the suit was treated thereafter as one to have the last mentioned bond cancelled to the extent of Rs. 1,000. It appeared that the allegations on which plaintiff claimed the above relief were that he had been induced to execute the bond in question (which was for Rs. 1,300, and recited the consideration as being Rs. 1,100, on account of an old book debt, and a present cash advance of Rs. 200) on defendant giving plaintiff a solemn oath in the village temple that if he executed a bond for the above sum he would pay plaintiff's debts amounting to Rs. 1,000, the difference being made up of a cash advance of Rs. 200, and a book debt of Rs. 100, and that the defendant had not fulfilled his promise. The first Court considering plaintiff's allegations proved, gave him a decree declaring that defendant would not be entitled to recover from him the sum of Rs. 1,000 included in the bond. The lower Appellate Court considered that the first Court had acted improperly in permitting the plaintiff to amend his plaint so as to completely alter the character of the suit from one for accounts to one for the cancellation of an instrument on the ground of want of consideration, and on the merits that the plaintiff had failed to prove the allegations on which he based his claim, which should therefore be dismissed.

Held (referring to the decision of the Bombay High Court in *Modhe* v. *Dongrea I. L. R.* 5 *Bom.* 609) that the language of section 53 of the Civil Procedure Code would appear to be merely directory and not mandatory, and that therefore an amendment of the plaint might be permitted at a later stage of the proceedings than the first hearing, provided that the character of the suit was not so altered as to become inconsistent with the suit as originally brought; but that however that might be there is nothing in the Code which expressly forbids an amendment after the first hearing and thus, at most, where it is allowed it can only be regarded as an irregularity, which in the present instance neither affected the jurisdiction of the Court nor the merits of the case, and could not therefore justify the disturbance by the lower Appellate Court, of the decree of the first Court, with reference to the provisions of section 578 of the Code, as though the nature of the suit was to some extent changed, the alteration was not inconsistent with what the plaintiff first prayed for, and the amendment really only affected the form of relief to which the plaintiff was entitled, and was actually necessary in order

PLAINT—*contd.*

4. Amendment of—*contd.*

that the controversy between the parties might be settled once for all. KHUDA BAKHSH *v.* BUDHAR MAL. **186 P R 1882**

10. *Civil Procedure Code (Act X of 1877), section 53—Amendment of plaint.*

Plaintiffs sued for possession of a house alleged to have been mortgaged to them for Rs. 699 by two deeds, one for Rs. 600 andthe other for Rs. 99, both of which were unregistered. Subsequently they put in an amended plaint stating that, as they were out of possession, they had sued to get possession, but in case this could not be given they asked for a decree for the money.

Held, that section 53 of the Civil Procedure Code was no bar to the amendment of the plaint as stated above, as an amendment of a plaint for the purpose of asking for another remedy originally omitted is not a conversion of the suit into one of an inconsistent character. FATTEH SINGH *v.* MIAN SINGH. **131 P R 1883**

11. *Party must succeed on case put forward in plaint—Amendment of plaint—Claim incorrectly stated in plaint.*

It is a general rule that a party must be limited to the case which he puts forward in his plaint, and if he fails in proving his case as originally stated he is not entitled to succeed; but a plaintiff who has not put forward an alternative case may have leave to amend his plaint and to state his case therein correctly if it appears that he has rested his claim upon wrong grounds from misinformation, ignorance of law or fact, mistake or misconstruction of documents. POOL *v.* SECRETARY OF STATE. **68 P R 1886**

12. *Amendment of plaint—Conversion of suit of one character into a suit of another and inconsistent character—Civil Procedure Code (Act XIV of 1882), section 53.*

The plaint asked for cancellation of a deed of gift of certain land, but the plaintiff on being examined by the Court stated "that his claim was for possession after cancellation of the deed of gift."

Held, that the plaintiff could not rightly be said to have sought to alter his plaint so as to convert a suit of one character into a suit of another *and inconsistent* character, within the meaning of section 53 of the Code of Civil Procedure. GHULAM HUSAIN *v.* SHAHBAZ KHAN. **161 P R 1888**

13. *Suit for possession of land and for damages by way of mesne profits—Joint holding—Amendment of plaint in the Chief Court into a suit for a declaratory decree only.*

The plaintiff and B. M. were owners in equal shares of a holding which was joint, though the cultivation was separate.

In 1888, B. M. exchanged a portion of the land in his occupation for land belonging to the other defendants in the suit who proceeded to plant trees and sink a masonry well upon the land they had thus acquired. In 1892, the plaintiff sued to recover possession of the plot which held the trees and well, alleging that he had been forcibly evicted therefrom; both the Courts below finding this allegation against the plaintiff dismissed his suit.

At the hearing of his appeal in the Chief Court the plaintiff was permitted to amend his plaint into one for a declaratory decree only. Such amendment having been objected to by the respondent on the ground that it was equivalent to instituting a fresh suit inconsistent with the previous claim.

Held, that the plaintiff co-sharer was entitled to maintain his joint possession over the whole land; that there was no real inconsistency between the original and the amended plaints; and that the proper relief was by a declaratory suit. MULA MAL *v.* BASANT MAL. **106 P R 1893**

14. *Plaint, amendment of—Power of Court to extend time originally granted for amendment of plaint—Civil Procedure Code, 1882, sections 53, 54.*

Held, that there is nothing in either section 53 or section 54 of the Civil Procedure Code, 1882, which requires the Court to fix the time for amendment of a plaint once for all and immutably at the time of returning the plaint, or which prevents it from enlarging the period even after the period previously granted has expired. CHANDA SINGH *v.* ISHAR SINGH. **113 P R 1894**

15. *Plaint alleging possession and praying for declaration as to title—Preliminary issue as to possession decided against plaintiff—General prayer for relief—Procedure.*

Plaintiff alleged that she was in possession of certain property and prayed that her title thereto might be declared "and for any other relief which the Court might consider proper to grant with reference to the facts of the case." As defendants denied that plaintiff was in possession, the Court framed an issue as to whether she held possession, and after recording evidence on this issue found that she did not and dismissed her suit. On appeal it was contended on behalf of plaintiff that when the issue as to possession was decided against the paintiff, her general prayer for relief required that the Court should have called upon her to furnish further stamps, and on her doing so, have gone into the question of title with a view to giving her a decree for possession, as well as a declaration as to title.

Held, that inasmuch as the plaint as laid not only did not recite that plaintiff had been dispossessed but expressly stated that she was in possession and on that account merely claimed a declaration as to title, the plaint disclosed no cause of action for a suit for possession, and that, therefore, the general prayer for relief, whatever might be its meaning, did not and could not include a demand of relief by way of a decree for possession.

Held, therefore, that as the Court upon the plaint before it could not have decreed possession, there was no necessity for it to go into the question of title on that account. Amendment of the plaint allowed under the special circumstances of the case. MUSSAMMAT BIBI HUKAM KOUR *v.* SARDAR ASA SINGH. **1 P R 1900**

16. *Plaint—Amendment of—Suit for injunction converted into one for possession—Change in relief does not involve a change in character—Civil Procedure Code, 1882, section 53.*

Held, that inasmuch as a change in the relief sought does not necessarily alter the character of a suit, a claim for an injunction to restrain the defendant from interfering with the plaintiff's dealings with his property, of which the defendant had wrongfully taken possession can be amended to one for possession of that property and damages for wrongful possession, the two claims not being inconsistent. HARJI MAL *v.* POKHAR DAS. **135 P R 1906**

A suit for a declaration must not be dismissed merely because the plaintiff being able to seek further relief has omitted to claim it. In such a case the Court must allow plaintiff to amend his plaint by asking for the further relief. HAZARA *v.* BISHAN SINGH. **128 P R 1907**

17. *Held*, that where the Courts below have refused to exercise in favour of the plaintiff their discretion to allow an amendment of the plaint after a very full consideration of the circumstances of the case, and the consequences of such refusal are in no way serious, the Chief Court should not interfere with that discretion, where it was not exercised arbitrarily or without the Courts knowing all the facts of the case and applying their minds to them. ABDUL GHAFUR *v.* MUSSAMMAT MEHAR-UN-NISA. **101 P R 1909**

5. Rejection of.

1. *Plaint filed by unauthorized person—Rejection of plaint—Revision.*

See REVISION IN CIVIL CASES. **5 P R 1899**

2. Where plaintiff sued to cancel a deed of sale alleging that the consideration had not been paid, *held*, that the Court could not decree payment of the purchase-money. ABBAS *v.* ABAID. **54 P R 1866**

3. *Doubtful meaning of—Rejection.*

If there be any doubt as to the meaning of a plaint, the Court should return it for amendment, not reject it. PIR MAHOMED *v.* GHULAM HYDER. **42 P R 1874**

4. *Act VIII of 1859, sections 2, 32—Rejection of plaint.*

Where a plaint is rejected under section 32 of the Civil Procedure Code, a fresh plaint cannot be entertained on the same cause of action. NAGAR MAL *v.* BHAGWANDAS. **31 P R 1878**

5. *Defective plaint—Defendant objecting to Court's jurisdiction after investigation on merits—Rejection of plaint—Procedure.*

In a suit on a balance of account, plaintiff omitted to state in his plaint where his cause of action arose: nevertheless the Court accepted the plaint and summoned the defendant, on whose appearance the

PLAINT—*contd.*

5. Rejection of—*concld.*

matter in dispute was referred to arbitrators, who gave in an award unfavorable to defendant. Defendant then urged the defect in the plaint, and contended that the Court had no jurisdiction, because he resided at Mian Mir and the balance on which plaintiff sued had been struck there. The Court after taking evidence as to where the balance was struck, rejected the plaint under section 53 of the Code without deciding where the cause of action had arisen.

Held, that the Court's order could not be sustained, as section 53 of the Code only authorises a Court to reject a plaint or return it for amendment "at or before the first hearing," and not after the case has been fully investigated on its merits.

Held, further, that the defendant's objection being directed against the jurisdiction of the Court, the proper course for the lower Court to adopt was to proceed as if it had returned the plaint for amendment by inserting a statement of the place at which the cause of action arose, and as if such statement had been inserted by the plaintiff, and then to decide the point of jurisdiction, and either dismiss the suit as not within the Court's jurisdiction, or decide upon the validity of defendant's objections to the award. MEGHRAJ *v.* KARIM BAKHSH **126 P R 1881**

6. *Civil Procedure Code (Act XIV of 1882, section 54—Rejection of plaint—Stage at which such rejection may take place——Waiver by plaintiff of right to have a time for amendment fixed by the Court.*

Held, that section 54 of the Civil Procedure Code is not applicable only to the initial stages of a suit before the plaint has been registered, but also empowers a Court to reject a plaint on the ground stated in the section at any later stage of the case prior to its final disposal.

Held, further, that the provision in the same section requiring a time to be fixed by the Court within which a plaint returned for amendment must be amended, being a provision made in the interest of the party against whom the order is made, such party may, if he chooses, waive his right to insist upon the provision of the law being formally observed. SRI KISHAN DAS *v.* PIR BAKHSH. **126 P R 1888**

7. *Civil Procedure Code, 1882, sections 53, 54—Plaint not to be rejected by reason of insufficient verification—Procedure.*

Held, that a plaint should not be rejected on a mere question of defect of verification. Where the verification is found to be defective the Judge is bound to return the plaint for amendment and has no power to reject it until default had been made in amending it within the time allowed by his order.

Topi Ram v. *Sadu* (*I. L. R. XXI Bom.* 570), distinguished. TULSI RAM *v.* MUNSHI RAM **57 P R 1904**

PLAINT—*contd.*

6. Return of.

1. *Returning plaint after registration.*

The mere fact of a plaint having been registered, does not make the plaint unreturnable to the plaintiff. RAM GOPAL *v.* ASA RAM. **88 P R 1869**

2. *Returning after decree.*

A plaint cannot be returned after a decree has been passed thereon, on the ground that the Court had no jurisdiction to try the suit. JHANDU *v.* GURMUKH SINGH. **39 P R 1872**

3. The Chief Court returned a plaint after holding that the suit was prematurely brought. GUNGA RAM *v.* RAM KISHEN. **17 P R 1875**

4. *Power of Chief Court to set aside proceedings of Small Cause Court for want of jurisdiction and return the plaint.*

Where a case is referred by a Small Cause Court at the request of one of the parties, the Chief Court can, if it appears that the lower Court was without jurisdiction, set aside the decree and order the plaint to be returned to the plaintiff for presentation to the proper Court. SHANKAR DAS *v.* GHASITA. **73 P R 1876**

5. *Small Cause Court—Transfer of cases.*

Where a Small Cause Court is without jurisdiction, the Court must either dismiss the suit or return the plaint for presentation to the proper Court; the former Court has no power to transfer the suit to the latter Court. NUTHU *v.* MOODY. **74 P R 1876**

6. *Return of plaint after trial on the merits—Power of Appellate Court.*

An Appellate Court has power to direct the return of a plaint, notwithstanding a trial upon the merits in the first Court, if it be found that such Court ought to have returned it under section 57 (*a*) of Act X of 1877. SHADI *v.* MUSSAMMAT AISHAN. **55 P R 1878**

7. *Return of plaint after trial—Power of Chief Court—Jurisdiction.*

Where, on an application to the Chief Court to revise an order of the Judge, Small Cause Court dismissing plaintiff's claim, it appeared that if the plaint had been duly examined by the Judge, it would have been returned at once without summoning the defendant, as the Small Cause Court had no jurisdiction to entertain it, the Chief Court, following the previous rulings of the Court, directed that the decree of the Judge dismissing the plaintiff's suit should be altered into an order directing that the plaint be returned to the plaintiff for presentation by her, if so advised, to a Court of competent jurisdiction. *Shankar Das* v. *Ghasita* (*No.* 73 *P. R.* 1876,) and *Shadi* v. *Mussammat Aishan* (No. 55 *P. R.* 1878,) cited and approved. MUSSAMMAT PERMESHRI *v.* GOBIND RAM. **90 P R 1884**

8. *Return of plaint for presentation in proper Court—Cancellation of Court-fees—Restamping of plaint.*

Held, that a plaint which has been returned by a Civil Court to the plaintiff, after cancellation of the stamp, for presentation in a Court of competent jurisdiction can be received by the latter Court without, being again stamped. *Jagjivan Javherdas Seth* v. *Maqdum Ali* (*I. L. R.* 7 Bom. 487) not followed. *Mussammat Permeshri* v. *Gobind Ram* (No. 90 *P. R.* 1884,) cited. MUSSAMMAT AMIN JAN *v.* IBRAHIM. **91 P R 1884**

PLAINT—*contd.*

6. Return of—*concld.*

See APPEAL II.—COMPETENCY OF. **15 P R 1898**

See APPEAL VI.—PROCEDURE IN. **59 P R 1896**

See CAUSE OF ACTION V.—MISJOINDER. **41 P R 1887**, **79 P R 1899**

See JURISDICTION. **118 P R 1881**, **147 P R 1882**, **71 P R 1883**, **132 P R 1883**

See PLAINT 4.—AMENDMENT OF. **113 P R 1894**

9. *Return of—Erroneous valuation of suit or appeal—Jurisdiction—Practice.*

It is not the present practice of the Chief Court on discovering that a suit or appeal has been erroneously valued to dismiss it on the ground of want of jurisdiction in the lower Courts, but to send it or cause it to be sent to the Court having jurisdiction.

Budha v. *Muhammad Khan* (No. 20 *P. R.* 1879, and *Mussammat Permeshri* v. *Gobind Ram* (No. 90 *P. R.*, 1884), cited. MISHRI *v.* MUHAMMAD KHAN. **63 P R 1887**

10. *Civil Procedure Code*, 1882, *sections* 582 588, 589—*Order of Appellate Court returning plaint for presentation to proper Court—"Decree."*

Held, that an order of an Appellate Court returning a plaint, for presentation to the proper Court is not a "decree," but an order from which an appeal lies under sections 588, 589, of the Civil Procedure Code.

I. L. R. XXVI, Cal. 275, and *I. L. R. XXI Mad.* 234, followed; *No.* 15 *P. R.* 1898 not followed. HIRA LAL *v.* KARORI MAL. **59 P R 1899**

7. Miscellaneous.

1. *Variance between plaint and decree.*

There should be no variance between the plaint and decree.—LALL SINGH *v.* DHERM CHUND. **97 P R 1868**

2. *Alternative reliefs—Inconsistent claims.*

The plaintiffs sued to recover possession of a piece of land situate in front of their houses and shops, alleging that it had been jointly enjoyed by them, and that the defendants Nos. 1 and 2 having obtained a fictitious deed of sale of a portion thereof from defendant No. 5 had taken possession and commenced to build thereon, the relief sought being either a decree for possession of the land or an injunction restraining the defendants Nos. 1 and 2 from building thereon. *Held*, that the claims were not inconsistent, the difference being between sole right and joint right, and that the plaintiffs were at liberty to claim in

PLAINT—*concld.*

7. **Miscellaneous**—*concld.*

the alternative exclusive possession or an injunction to restrain the defendants from interfering with their rights as co-sharers in the land in suit. GUJAR MAL AND OTHERS *v.* RAM RICHPAL AND OTHERS. **91 P R 1901**

PLAINTIFF.

1. *Meaning of the word "plaintiff."*
See CIVIL PROCEDURE CODE, 1908, O. IX, R. 9. **117 P R 1891**

PLEA.

1. Plea of payment is not a set-off within the meaning of section 111 of the Code of Civil Procedure. BHAGAT SINGH *v.* DEVI DIAL. **85 P R 1908**

2. *Raised by defendant in Civil Court in respect of which a suit could be brought in Revenue Courts cannot be taken cognizance of.*
See JURISDICTION OF CIVIL OR REVENUE COURTS. **76 P R 1909 F. B.**

3. *Raised at the last stage of the case, not entertainable.*
See CIVIL PROCEDURE CODE, 1908, O. I., R. 9. **93 P R 1909 P. C.**

PLEADER.

See LEGAL PRACTITIONERS ACT, 1879.

1. *Power of, to compromise suit.*
See CIVIL PROCEDURE CODE, 1908, O. XXIII, R. 3. **50 P R 1898**

2. *Authority of, to bind client under Oaths Act.*
See OATHS ACT, SECTION 9. **75 P R 1900**

3. *Appointment of, as commissioner.*
See PUNJAB TENANCY ACT, 1887, SECTION 16. **3 P R 1899 Rev.**

4. *Receipt given by—Stamp.*
See STAMP. **85 P R 1885**

. *Not qualified for post of Zaildar.*
See ZAILDAR. **3 P R 1887 Rev.**

6. *Practising without certificate.*
Conducting a suit after Act XX of 1865 came into operation without a certificate under the Act, *held*, to be practising within the meaning of section 13, and renders the agent incapable of recovering his fees. BURKUT ALI KHAN *v.* MUSSAMMAT KANHO. **37 P R 1869**

7. *Fees—Discretion of Court.*
A Court may not award more, but may award less, than the fees mentioned in Book Circular XXIV of 1866. SOOTOO *v.* HOLMES **71 P R 1869**

8. *Stamp on agreement for fees.*
Where the agreement was to remunerate a pleader by paying a fixed sum at the close of the case, in any event, *held*, that it was an agreement for services, and should be stamped accordingly. DULPUT RAI *v.* RUHEEM BAKHSH. **86 P R 1869**

9. *Right of complainant to be represented by counsel.*
Held, under section 376, Act XXV of 1861, that a complainant had a right to retain and be represented by his own pleader or counsel, but where Government took up a prosecution, the complainant's pleader would be led

PLEADER—*concld.*

by the representative of Government. THE CROWN *v.* BIHAREE. **30 P R 1870 Cr.**

10. The Court, without entering into the question of the legality of the agreement, in a case stated by a Small Cause Court Judge, *held* that an agreement to pay a pleader in the event of the case terminating successfully was a bond and should be stamped accordingly SPENCER *v.* EMAMOODDEEN. **82 P R 1870**

11. *Right of accused to be heard by counsel.*
An appeal was filed on the 1st July, and appellant's pleader, who lived at a distance, requested by petition filed with the appeal, that the 13th July might be fixed for the hearing. On the 2nd July the Court dismissed the appeal on the merits, no one being present as appellant's counsel. *Held, per* LINDSAY and CUNNINGHAM, JJ., that it was incumbent on the Court to give appellant's pleader sufficient time to appear, as the accused was entitled under sections 417 and 432, Act XXV of 1861, to be heard by counsel or agent. *Held per* CAMPBELL, J. that the Lower Appellate Court had not erred in law in not giving appellant's pleader time to appear; but that the Court would have so erred had counsel appeared and been refused a hearing. FUZL *v.* THE CROWN. **31 P R 1870 Cr**

12. *Pleader and client—Agreement with client to share in the result of litigation—Professional misconduct—Legal Practitioners Act, 1879, section 13.*
A, a pleader of the Chief Court of the Punjab, entered into an agreement with his client to conduct certain cases for him as pleader on the condition of receiving a share in the result of litigation. *Held*, that such conduct on the part of the pleader in the discharge of his professional duties is grossly improper within the meaning of section 13 of the Legal Practitioners Act, and such as renders the offender liable to grave censure and disciplinary action.
In re *Ali Muhammad Mukhtar* (111 *P. R.* 1894), *Moung Htoon Oung* (21 *W. R.* 297), *In the matter of an Advocate of the Calcutta High Court* (IV *Cal. W. N.* Civil) and in re *Bhandara* (*III Bom. L. R.* 102, F. B.) referred to and followed. IN THE MATTER OF A PLEADER OF THE CHIEF COURT OF THE PUNJAB. **69 P R 1904**

PLEADER AND CLIENT.

See ADVOCATE.
See LEGAL PRACTITIONERS ACT (XVIII OF 1879).

1. *Champertous agreement between legal practitioner and client—Grossly improper conduct in discharge of professional duty.*
See LEGAL PRACTITIONERS ACT, 1879, SECTION 13. **111 P R 1894**

2. *Suit for fee—Absence of written agreement.*
See LEGAL PRACTITIONERS ACT, 1879, SECTION 28.
54 P R 1881
160 P R 1888
136 P R 1893

PLEADER AND CLIENT—*contd.*

3. *Suit to recover fees.*
A contract for fees can be enforced by pleader in a regular suit. *Durbara Singh* v. *Mussammat Teeka Devee* (*No.* 88 *P. R.* 1868), but the Court may inquire into the legality of the agreement of the failure to render services.
A pleader was retained by Chund Kour, a prisoner in jail, to prefer and conduct an appeal to the Chief Court, receiving Rs. 80 for a fee. His client also executed a document in which she promised to pay him Rs. 800 if she were acquitted. The pleader drafted the grounds of appeal, which he forwarded to the Chief Court by an agent. Two other prisoners, convicted with Chund Kour, and appealed to the Chief Court, and her appeal was ordered to be heard on the date fixed for the other appeal. This order did not come to the knowledge of the pleader, and on the 11th January (the date fixed) the appeals were considered in his absence and his client's acquittal ordered by the Court. Two days later, the pleader appeared at Court to attend to the appeal, and then learnt that his client's case was disposed of. Upon her refusal to pay the promised sum of Rs. 800, the pleader sued for the amount, contending that the event (his client's acquittal) had happened, which, according to the agreement entitled him to be paid the Rs. 800. *Held*, by the Chief Court that as the pleader had not rendered the services which his client contemplated as the consideration for her promise, he was not entitled to recover even if the action or interference of the Chief Court in ordering his client's release could not have been provided for by the pleader, and was the cause of his non-attendance at the hearing of the appeal. *Held*, also, that, considering the confidential relationship between the pleader and his client, the burden was upon the former of proving that he acted in good faith in taking the agreement. *Held*, also, that if the client had promised to pay, and there was no obligation that the pleader should work, the agreement was void for want of reciprocity.
Held, by *Boulnois* and *Campbell*, JJ. that if a client's promise was only to make a present or to pay *shukrana*, in the event of being acquitted, his promise was not binding on him. MUSSAMMAT CHUND KOUR *v.* KUNHYA LALL. **8 P R 1873**

4. *Held*, by *Boulnois* and *Campbell*, JJ., that the agreement was not illegal, where the pleader received a certain fee and it was arranged that he should receive a further fee if the decree were in the client's favour or if the suit were compromised. DURGA DUT *v.* NARPUT. **19 P R 1873**

5. *Held*, by *Boulnois* and *Melvill*, JJ., that an agreement that a person accused of a criminal offence will pay his pleader a sum of money by way of a fee if the former be acquitted, is unauthorized by Act XX of 1865, section 39, and is therefore necessarily opposed to public policy and void, by section 23, Act IX of 1872: but *held*

PLEADER AND CLIENT—*contd.*

by *Lindsay* J., that neither in a civil suit nor in a criminal prosecution is it illegal for a pleader to agree with his client that the payment of the fee, or a portion of it, shall depend upon the case terminating in favor of the client. BEECHCY *v.* GHOLAM GHOUS. **26 P R 1874**

6. *Recognized agent—Notification of* 25*th September* 1866.

In the lower Appellate Court, the appellant was represented by an agent who was not a licensed pleader or *mukhtar*. The lower Court refused to recognize the agent, and treating the appellant as unrepresented, dismissed the appeal for default of prosecution. *Held*, that the Courts have a discretion, under Notification No. 1225, dated 26th September 1866, to object to hear a particular agent; but as the lower Court had refused to hear the appellant's agent on the ground merely that he was not a licensed practitioner, the Court had acted without jurisdiction, and the appeal must be restored to the file. HAZUR SINGH *v.* JIWAH. **28 P R 1875**

7. *Payment of fee contingent on success*—Quantum meruit.

A pleader cannot recover his fees secured to him by a contract that he shall be paid if his client is successful in the suit conducted by the pleader. *Beechey* v. *Gholam Ghous* (*No.* 26 *P. R.* 1874), followed. *Held*, also, that where there is an agreement to perform services, if the agreement itself cannot be sued upon, the plaintiff is not entitled to sue upon a *quantum meruit*. MAHOMMAD BAKHSH *v.* SPENCER. **63 P R 1876**

8. *Contingent contract—Act XX of* 1865, *section* 39—*Act IX of* 1872, *section* 23.

A contract to pay a Pleader Rs. 200 conditional on his obtaining the imprisonment of an accused person is void as opposed to public policy. BEECHEY *v.* BUDHU MAL. **27 P R 1877**

9. *Right of accused to services of pleader—Criminal Procedure Code, section* 186.

Where the Magistrate of the District refused to allow a pleader to appear on behalf of two accused persons under trial in his Court, the Chief Court directed the Magistrate to allow the accused to be defended by Counsel or Pleader, with liberty to recall witnesses, and thereafter to record a fresh judgment. NANAK *v.* THE CROWN. **9 P R 1877 Cr.**

10. *Loss of confidence in pleader—Breach of contract.*

The defendant, after engaging plaintiff, as his pleader, saw him in company with one B. L., between whom and defendant there was enmity, and, in consequence, lost confidence in plaintiff. *Held*, (*Campbell*, J., dissenting) under the circumstances, that defendant was not entitled to break his contract and discharge plaintiff without paying him the full fee stipulated for. DEVI CHAND *v.* KUNDAN LALL. **49 P R 1877**

11. *Agreement by pleader for extra remuneration contingent on success—Contract Act,*

PLEADER AND CLIENT—*contd.*

IX of 1872, *sections* 10 *and* 23—*Act XX of* 1865, *section* 39.

Held, by the Full Bench, that the effect of section 39 of Act XX of 1865 is not to restrict the power of a pleader and client to settle by private agreement the remuneration to be paid to the former by the latter for professional services, but to leave them at full liberty to make such agreements, subject to the provisions of the general law of contract.

The validity of such an agreement when called in question must be determined by applying the tests prescribed in the Contract Act, 1872.

Held, further, by the Full Bench, that an agreement between a pleader and client regarding the remuneration for professional services of the former in conducting a legal proceeding for his client in Court, which stipulates for payment to the pleader, in addition to a sum to be paid in advance, of a further sum conditional upon success, is not void as being opposed to public policy, merely because it contains such a stipulation.

Circumstances affecting the validity of such agreements considered.

The decision of the majority of the Full Bench in *Beechey* v. *Gholam Ghous* (*No.* 26 *P. R.*, 1874), regarding the operation of section 39, Act XX of 1865, dissented from. BEECHEY *v.* FAIZ MAHOMED. **5 P R 1878**

12. *Act IX of* 1872, *sections* 32 *and* 53—*Contingent Contract*—Shukrana.

L, a Pleader, was retained to appear for the plaintiffs in a suit at Karnal. A certain fee was paid to him by his clients in advance, and one S. D. agreed in writing to pay L. a further fee of Rs. 250 in the event of plaintiffs' obtaining a decree in the Karnal Court. After L. had made two or three appearances on his client's behalf in the Karnal Court, the case was compromised by the parties in L.'s absence and without his advice or co-operation. L. therefore instituted this suit for Rs. 250 against S. D., alleging that he had been prevented from performing his contract within the meaning of section 53, Act IX of 1872, and had suffered damage accordingly.

Held, per Curiam, that the sum claimed was not recoverable.

Per LINDSAY, J.—Because section 53 of the Contract Act was not applicable to the case, as the contract in question contained no reciprocal promises, nor could it be said that S. D. had prevented L. from performing his contract: but that the case was that of a contingent contract within the meaning of section 32 of the Contract Act, and the event having become impossible, the contract was void.

Per THORNTON, J.—Because it was no element in the contract that plaintiffs should not withdraw from their suit, and therefore their having done so gave L. no claim against S. D. who was no party to the suit. SHUNKAR DAS *v.* LUDLAM. **155 P R 1879**

PLEADER AND CLIENT—*concld.*

13. *Pleader and client—Suit by pleader to recover fee from client—Suit for amount actually allowed on taxation—Legal Practitioners Act,* 1879, *sections* 28—30.

Held, that a pleader is not debarred by the provision of the Legal Practitioners Act, 1879, from recovering a fee from his client which is actually allowed on taxation. Sections 28—30 of the Act are applicable only to those cases, in which agreements made between pleaders and their clients relate to the payment of remuneration in excess of, and apart from the amount allowed in the taxation. SARJU PARSHAD *v.* GIRDHARI LAL. **1 P R 1909**

PLEADER'S FEE.

—*Mode of calculation—Book Circular No. CV.*

Under the rules contained in Book Circular No. CV on the subject of calculating pleaders' fees, what is to be regarded in calculating such fees is the value of the property or interest sued for, when that can be determined, no reference being made in the above rules to the value fixed under the Court Fees Act. DHARM SINGH *v.* ATTAR SINGH. **59 P R 1886**

PLEADERS' CLERKS.

—*Presentation of memo. of appeal by pleader's clerk—Recognized agent—Legal Practitioners Act,* 1879, *section* 10.

See APPEAL VI.—PROCEDURE IN. **6 P R 1896**

PLEDGE.

1. *By co-owner in possession.*

See CONTRACT ACT, 1872, SECTION 178. **1 P R 1895**

2. *Power of wife to pledge husband's credit—European Christians.*

See CONTRACT ACT, 1872, SECTION 187. **63 P R 1899**

3. *Of joint family property by elder brother for binding on minor brothers.*

See MUHAMMADAN LAW—JOINT FAMILY. **66 P R 1899**

PLEADINGS.

1. *Private award—Plea in bar.*

See ARBITRATION. **32 P R 1888**

2. *Inconsistent pleas.*

See CAUSE OF ACTION OF. **41 P R 1887**

See PLAINT 2.—FORM OF. **109 P R 1887**

See PLAINT 4.—AMENDMENT OF. **161 P R 1888** **106 P R 1893**

3. *Party must succeed on case put forward in plaint.*

See PLAINT 4.—AMENDMENT OF. **68 P R 1886**

4. *Suit for possession by prior purchaser—Defendants pleading right of pre-emption in property sold—Validity of such plea.*

See VENDOR AND PURCHASER. **32 P R 1884**

PLEADINGS.

5. *Secundum allegata et probata.*

A plaintiff cannot allege one sort of claim and be allowed to prove another sort of claim. Where plaintiff sued simply upon a bond which recited that it was in accordance with former bonds and executed by defendant after understanding the accounts and the Court found that the defendant never executed the instrument, *held*, that plaintiff could not be allowed to recover on an account stated. GHAILA SINGH *v.* AHMED KHAN. **32 P R 1876**

6. *Practice—Decree based on facts not founded on pleadings.*

Plaintiffs sued for the south *lao* of well No. 2681, and land attached thereto, alleging that, of two wells common property, at a division, they received the whole of one well No. 715, and one *lao* of well No. 2681. Defendants pleaded that at division the whole of well No. 715 was given to plaintiffs, and the whole of No. 2681 to defendants. The plaintiffs thereupon undertook to prove enjoyment of possession in accordance with the division alleged by them.

The Tahsildar decreed the claim as laid, but this decree was reversed by the Judicial Assistant. The Commissioner on appeal was of opinion that " the plaintiffs' claim was not " quite properly laid," and that, " it should " have been for a decree declaring that both " wells were the common property of the two " *pattis* or the whole village, and that the " land attached to them and rights of irri-" gation should be equally divided." He decreed accordingly.

Held, that the decree of the Commissioner was not maintainable, he not being competent to change the form of the suit, and to pass a decree passed on a view of the facts which had not been alleged by either party.

The determination of a cause should be founded upon a case either to be found in the pleadings or involved in or consistent with the case thereby made. TOTA *v.* JOWAHIRA. **36 P R 1879**

7. *Basis of decision of case—Suit for ejectment of widow—Court finding plaintiff not entitled to immediate possession, but declaring his right as heir on the widow's death —Dismissal of suit.*

In a suit for ejectment of a widow, who was in possession of her husband's estate, the plaint was framed as one for immediate possession on the ground that by custom the plaintiff as nephew of the female defendant's late husband, was entitled to succeed to his estate, while the female defendant was only entitled to maintenance. The Court below, though it found (for reasons stated) that the plaintiff was not entitled to immediate possession according to the terms of the plaint instead of dismissing the suit, proceeded to declare that on the widow's death the plaintiff would be the heir, in preference to another claimant, who on his own application had been impleaded as a defendant, on the allegation that he was the rightful heir to the estate and not the plaintiff.

Held, that the Court below should on its findings have passed a decree for the dismissal

PLEADINGS—*contd.*

of the plaintiffs 'suit, leaving the question as to the reversionary right of succession on the widow's death open for future decision in a suit properly framed with the view of obtaining such a declaration.

The determination in a cause must be founded upon a case, either to be found in the pleadings or involved in, or consistent with, the case there made. ALI GAUHAR KHAN *v.* MUHAMMAD HUSSAIN. **159 P R 1888**

8. *Civil Procedure Code—Forms of action —Statement of facts in plaint.*

The Divisional Judge dismissed the plaintiff's suit as a suit for the price of goods sold and delivered, and directed the plaintiff to sue on a contract of 10th April 1885 ; he also held that the suit as laid, *viz.*, for the price of goods sold to the defendant as an ordinary purchaser independently of the contract would not lie, and that plaintiff's proper remedy was to sue for a statement of account on the contract.

Held, that the Divisional Judge's decree should be reversed, and a hearing of the appeal directed.

The Code of Civil Procedure does not deal with forms of action: it requires a statement of facts in the plaint and that the plaint should disclose a cause of action. If a causse of action is disclosed that cause of action is to be barred and determined subject to the defence of the defendant. MUHAMMAD SHARIF *v.* SHAMSHER KHAN. **11 P R 1891**

9. *Suit for declaration of exclusive possession—Finding that exclusive possession not proved—Decree according to evidence.*

The plaintiffs alleging exclusive possession of two small plots of land, sued for declaration of their title.

The first Court found their possession, and title proved and gave them a decree.

On appeal, the Divisional Judge held that as the plaintiffs' exclusive possession was not proved, their suit must be dismissed, and that they should sue for possession and prove their title, if so advised.

Held, that it was competent to the Court to decree title according to the evidence, even if exclusive possession was not shown, and even to amend the plaint and decree exclusive possession, if desired. *I. L. R. XVII Calc.* 814 referred to. BUTA *v.* SATAR BAKHSH **67 P R 1891**

10. *Mortgage—subsequent sale of land to third person—Right to redeem—Pleadings.*

M. S. owned 34 *ghumaos* of land. He mortgaged to the defendant 20 *ghumaos* for Rs. 490 for a term which had expired, and 14 *ghumaos* for Rs. 220 for a term which had not expired.

After these mortgages, M. S. sold the whole 34 *ghumaos* to the plaintiff for Rs. 3,000 by a deed of sale, as to which it was admitted that M. S. had executed the instrument and received Rs. 366 in cash before the Sub-Registrar. The deed acknowledged receipt of the Rs. 3,000

PLEADINGS—*contd.*

thus—two deeds of mortgage to defendants for Rs. 710 (above specified), other book debts, and cash Rs. 366.

The plaintiff then sued to redeem the mortgage of 20 *ghumaos* for Rs. 490. He relied upon the deed of sale as showing his title to redeem.

The first Court found that there was no fraud or undue influence as pleaded by the defendants ; that Rs. 366 had been paid, as admitted, but that there was no necessity for the sale, and dismissed the suit on this latter ground.

The Divisional Judge decreed the plaintiff's claim, as the plaintiff had paid Rs. 366, and the mortgages for Rs. 700 were assigned to him, leaving it open to the defendants to contest the sale in all other respects in a separate suit.

Held, by PLOWDEN, J. (FRIZELLE, J. dissenting), that the decree of the lower Appellate Court was correct and should be maintained.

The plaintiff had proved an assignment to him of the mortgage in suit and a consideration for the assignment. That was enough to enable the plaintiff to maintain the suit, and to dispose of the plea that the transaction of sale was wholly fictitious and void.

The proper way of raising the question, whether the sale was good, or was only valid as a charge for Rs. 366, was by bringing a cross-suit, in which the defendants, as plaintiffs, could only have succeeded upon paying whatever was a valid charge upon the land, in the event of the sale being set aside and a charge being established. BUTA *v.* KHUSHAL SINGH **101 P R 1891**

11. *Plaint*—ocundum *allegata—Decree of occupancy rights on basis other than that sued for—Material irregularity.*

The plaintiff sued for occupancy rights under section 5, sub-section (1) (*d*), Punjab Tenancy Act, 1887 : the Commissioner being of opinion that the plaintiff had rights of occupancy under sub-section (1) (*a*) decreed accordingly, considering it unnecessary to determine whether the plaintiff was entitled to succeed upon the grounds alleged by him in his plaint.

Held, by the Financial Commissioner on revision, that it was a material irregularity on the part of the Commissioner to award the plaintiff a higher *status* than that asked for. The plaintiff had made no claim under section 5, sub-section (1) (*a*), or amended his plaint asking for such relief, or in any way advanced a claim to be of a higher status than that described in sub-section (1) (*d*). DAULAT KHAN *v.* MAST ALI. **1 P R 1892 Rev.**

12. *Suit for land awarded at partition of whole culturable land of village—Parties—Duty of Appellate Court.*

The plaintiff sued eleven defendants for possession of a small corner of *gorah* land which had been awarded to him at a partition of the whole culturable land of the village.

POSSESSION—*contd.*

Held, following the decision of the Full Bench, No. 93 *P. R.* 1879, that the decrees of the Courts below could not be sustained on the ground on which they proceeded.

Decrees are ordinarily absolute and unconditional, and as to such decrees it is clear that, as a rule, they must be enforced by process of execution and not by separate suit, and that if they be not enforced within the period of limitation fixed by law for their execution the decree-holder has lost his remedy. HAFIZ BAHA-UD-DIN *v.* MUSSAMMAT FATTEH BIBI. **16 P R 1893**

28. *Practice—Suit for exclusive possession Finding of joint ownership—Decree according to evidence.*

Held, that in a suit by plaintiffs claiming exclusive possession as owner of immovable property, in which the defendants plead that they also are entitled to the property it is competent to the Court, if it finds that the property belongs to the parties jointly, to give the plaintiffs a decree for joint possession. JAG RAM *v.* HANS RAJ. **17 P R 1893**

29. *Possession—Ejectment—Suit by person ejected brought more than six months from date of dispossession against one having no title—Title of possession—Burden of proof—Specific Relief Act*, 1877—*Section* 9.

Possession in law being a substantive right or interest which exists and has legal incidents and advantages apart from the true owner's title, a person in possession of land without title has an interest in the property which is good against all the world except the true owner. Therefore, where a plaintiff has been forcibly dispossessed of immovable property by a person having no title, he can sue for possession simply on the strength of the possession which he had before he was dispossessed, provided he sues within the twelve years' period allowed by article 142 of the Limitation Act. In such a suit, unless defendant proves a title, plaintiff should succeed without being asked to prove his own title to ownership and even if the defendant proves that he has no such title.

Section 9, Specific Relief Act, does not expressly take away this remedy, and was not intended to do so. Under that section a claim by the dispossessed person brought within six months of dispossession is good, and must be decreed, even against the rightful owner, *who is not permitted to set up his title as a defence.* After the expiry of the prescribed six months' period the only difference is that a defendant is permitted to prove his title, and on proof thereof defeats the plaintiff's claim. If, on the other hand, after the expiry of the six months plaintiff sues on the strength of previous possession and forcible dispossession, and defendant is unable to prove his title, or is shown to have no title, plaintiff will succeed without having to prove his title.

Mustapha Sahib v. *Santha Pillai* (*I. L. R. XXIII Mad.* 179), *Ismail Arif* v. *Mahomed Ghous* (*I. L. R. XX Calc.* 834), *Hanmantrav* v. *Secretary of State for India* (*I. L. R. XXV*

POSSESSION—*contd.*

Bom. 287), *Premraj Bhavaniram* v. *Narayan Shivaram Khisti* (*I. L. R. VI Bom.* 215), *Shama Soonduree Debia* v. *Collector of Malda* (12 *W. R.* 165), *Wali Ahmad Khan* v. *Ajudhia Kandu* (*I. L. R. XIII All.* 537), *Asher* v. *Whitlock* (*L. R I Q. B.* 1), *Krishnacharya* v. *Lingawa* (*I. L. R. XX Bom.* 270), *Sundar* v. *Parbati* (*I. L. R. XII All.* 51 P. C.) and *Gobind Prasad* v. *Mohan Lal* (*I. L. R. XXIV All.* 157), cited.

Wise v. *Ameerunnissa Khatoon* (*L. R. VII I. A.* 73), *Permeshur Chowdhry* v. *Bujo Lal Chowdhry* (*I. L. R. XVII Calc.* 256), *Debi Charn Boido* v. *Issur Chander Manjee* (*I. L. R. IX Calc.* 39), *Ertaza Hossein* v. *Bang Mistri* (*I. L. R. IX Calc.* 130), *Ameer Bibi* v. *Tookroonissa Begam* (7 *W. R.* 332), *Mussammat Tookroonissa Begam* v. *Mogul Jan Bibi* (8 *W. R.* 370), and *Nissa Chand Gaita* v. *Kanchiram Bayani* (*I. L. R. XVI Calc.* 579), dismissed and doubted. ABDUL HAMID *v.* SARBULAND KHAN. **78 P R 1902**

30. *Possession—Wrongful possession over the estate of a deceased upon pretended claims—Summary procedure for the rightful heir to obtain possession—Act XIX of* 1841.

Held, that the provisions of Act XIX of 1841 being intended to meet special circumstances only should not be put in motion until the Judge is fully satisfied by adequate evidence of the existence of the conditions required by section 3 of that Act, *i.e.* that the person in possession has no lawful title, and that the person applying is likely to be materially prejudiced if left to the ordinary remedy of a regular suit.

The procedure for a summary suit under Act XIX of 1841, considered and discussed. MUSSAMMAT JAGOJI AND OTHERS *v.* MAN MOHAN NATH. **7 P R 1904**

31. *Possession—Ejectment—Suit for possession by person dispossessed against one having better title than himself—Title of possession—Burden of proof—Specific Relief Act*, 1877, *section* 9.

Possession on the strength of which a suit can be brought for recovery of immovable property after dispossession by the defendant where the suit is not of the nature contemplated in section 9 of the Specific Relief Act must be of proprietary character and of long standing. Therefore a dispossessed plaintiff who was not the real owner of the disputed property but a mere temporary squatter and was dispossessed under colour of title by the defendant in whose favour the property was mutated by the Revenue authorities cannot succeed simply on the strength of such previous possession, but must prove a title in himself to justify a decree for recovery of possession.

Sudama v. *Kesho* (102 *P. R.* 1879), referred to. TULIA AND ANOTHER *v.* GOPI AND ANOTHER. **51 P R 1904**

32. Mere non-occupation and cultivation of unculturable land for a long period does not in the absence of a motive or evidence of intention to abandon or of adverse possession for

POSSESSION—*concld.*

the statutory period constitute abandonment. SHAHABAL SHAH *v.* GANESH DAS. **53 P R 1907**

33. *Adverse possession—Possession of a widow in lieu of maintenance—Limitation Act*, 1877, *Schedule II, article* 144.

Held, that the mere fact that a widow of a pre-deceased son entitled to maintenance from the estate of her father-in-law had been in possession of the latter's estate for a long time would not in the absence of an assertion of any rival rights or pretention to adverse possession by her raise the ordinary presumption that she had been in possession adversely to the real heir; especially where there was evidence that she had been in possession with the consent of the distant reversioners in lieu of maintenance. BURA MAL *v.* NARAIN DAS. **102 P R 1907**

34. *Vendor and purchaser—Agreement to sell to B—Subsequent sale to C with notice of original contract—Suit for possession by 'B'—Priority—Penalty mentioned in contract no bar to specific performance—Specific Relief Act*, 1877, *sections* 20, 27 (*b*).

A having entered into an agreement to sell certain property to B subsequently sold it under a registered deed to C, who had notice of the original contract to sell to B. Thereupon B brought a suit for possession by specific performance of his agreement. *Held* that B was entitled to possession. And that the title of C, though based on a registered deed, was ineffective against B, and did not afford a valid defence, his purchase having been with notice of the original contract.

Held also, that in such cases a party should not be allowed to evade specific performance merely because the agreement provided a penalty to be paid on default. HUKUM CHAND *v.* NIKKA SINGH. **15 P R 1908**

35. *Suit for possession of immovable property by a vendee in actual possession—Right of suit.*

Held that a person in actual possession of immovable property cannot maintain a suit for possession merely because the nature of his possession is disputed by the defendant. MUNSHI RAM *v.* HAMMI. **61 P R 1908**

POSTPONEMENT OF EXECUTION-SALE.

—*Omission to issue fresh proclamation.*
See EXECUTION OF DECREE. **45 P R 1886**

POVERTY.

—*Sufficient ground for extension of time for the deposit of security for respondents' costs in appeal to Privy Council.*
See CIVIL PROCEDURE CODE, 1908, O. XLV, R. 7. **44 P R 1910**

POWERS OF JUDICIAL OFFICERS.

See JUDICIAL ASSISTANT.

PRACTICE.

See APPEAL—VI. PROCEDURE IN. PLEADINGS.

1. *Appeal in civil cases—Deposit in a box.*

See APPEAL—V. LIMITATION OF. **101 P R 1890**

2. *Notice—Objection to sufficiency of notice made after issues had been framed on the merits by consent of parties—Admissibility of such objection.*

See CIVIL PROCEDURE CODE, 1908, SECTION 80. **155 P R 1890**

3. *Deciding case on tour without giving notice to plaintiff of place of hearing—Sufficient cause to restore such suit to the file.*

See CIVIL PROCEDURE CODE, 1908 O. IX, R. 3. **37 P R 1904**

4. *Erroneous valuation of suit or appeal—Return of plaint.*

See PLAINT—6. RETURN OF. **63 P R 1887**

5. *Dismissal of suit for non-attendance on a holiday.*

Attendance at a Civil Court on a holiday must be voluntary ; neither party can be compelled to attend, and the Court is not competent to dismiss the suit in default if either party fails to appear. SHARAF *v.* MUSSAMMAT GURDEVI. **86 P R 1890**

6. Vakalatnamas—*Advocates.*

An advocate of the Chief Court, who is not an Advocate of Chartered High Court, is bound, to file a power-of-attorney to enable him to appear in Civil cases. *Re* An Advocate. **103 P R 1890**

PRE-EMPTION.

1. GENERAL.
2. RIGHT OF, IN TOWNS.
3. RIGHT OF, ON SALE OF SHOPS.
4. RIGHT OF, ON ACCOUNT OF VICINAGE OR RELATIONSHIP.
5. RIGHT OF, ON MORTGAGES.
6. RIGHT OF, IN VILLAGES.
7. CONSTRUCTION OF WAJIB-UL-ARZ.
8. LIMITATION.
9. NOTICE.
10. PURCHASE MONEY (PRICE).
11. PAYMENT INTO COURT.
12. COMPENSATION FOR IMPROVEMENTS.
13. CONSTRUCTION OF TRANSFERS.
14. LOSS OR WAIVER OF RIGHT.
15. PUNJAB LAWS ACT, 1872.
16. PRE-EMPTION ACT, 1905.

PRE-EMPTION—*contd.*

1—GENERAL.

(*a*). *Value for purposes of appeal.*

See APPEAL—II. COMPETENCY OF. **29 P R 1893**

See APPEAL—VIII. SECOND. **94 P R 1890** **3 P R 1896**

See PUNJAB COURTS ACT, 1884, SECTION 39. **32 P R 1901**

(*b*). *Valuation of suit for.*

See COURT-FEES. **6 P R 1883**

(*c*). *Sale by widows.*

See CUSTOM—I. B. ALIENATION BY WIDOW. (*a*). GIFTS. **49 P R 1886**

(*d*). *See* ESTOPPEL. **104 P R 1882**

(*e*). *Exchange of land, during pendency of suit, to a pre-emptor having superior rights after expiry of period of limitation—Application of doctrine of* lis pendens.

See LIS PENDENS. **30 P R 1911**

(*f*). *Purchase of mortgaged land—Right to keep alive prior mortgage redeemed by purchaser—Pre-emption rights.*

See MORTGAGE—MERGER. **67 P R 1899**

(*g*). *Pre-emption—Death of claimant* pendente lite—*Abatement of suit—Muhammadan Law.*

See MUHAMMADAN LAW—RULE OF MUHAMMADAN LAW WHEN SUPERSEDED. **98 P R 1898**

(*h*). *It is not "superior diligence" to file a suit a week before a rival pre-emptor files his suit.*

See PRE-EMPTION, UNDER PUNJAB LAWS ACT, 1872. **7 P R 1910**

(*i*). *The Punjab Pre-emption Act does not recognise a right of pre-mortgage.*

See PRE-EMPTION, UNDER PRE-EMPTION ACT, SECTION 3. **82 P R 1909**

(*j*). *Applicability of section* 28 *of the Punjab Pre-emption Act,* 1905, *to rights already accrued—Change of rule as to existence of custom no ground against applicability.*

See PRE-EMPTION, UNDER PRE-EMPTION ACT, 1905, SECTION 28. **131 P R 1907** **143 P R 1907**

(*k*). *Deed of sale of right of pre-emption—Registration—Admissibility in evidence of unregistered deed—Right to or in immovable property.*

See REGISTRATION ACT, 1877, SECTION 17. **136 P R 1894**

(*l*). *Pre-emption—Rival claimants—Each claimant made defendant in the other suit—*

PRE-EMPTION—*contd.*

1.—GENERAL—*contd.*

*Suits tried together but decided by separate decrees—Decree allowing pre-emption in one case only on condition of default by other pre-emptor—Finality of decree in superior pre-emptor's suit—Appeal by inferior pre-emptor his own suit—*Res judicata.

See RES JUDICATA. **8 P R 1904**

(*m*). *Pre-emption—Rival claimants—Each claimant made defendant in the other suit—Suits tried together but decided by separate decrees—Decree allowing pre-emption in one case only on condition of default by other pre-emptor—Finality of decree in superior pre-emptor's suit—Appeal by inferior pre-emptor in his own suit—*Res judicata.

See RES JUDICATA. **85 P R 1905 F. B.**

(*n*). *Suit for pre-emption of land—Value of relief sought—Finding of Court exceeding its pecuniary limits of jurisdiction—Effect of.*

See VALUATION OF SUIT, **16 P R 1908 F. B.**

(*o*). *Value of suit for pre-emption of land—Effect of actual value exceeding the value as fixed by the Suits Valuation Act,* 1887.

See VALUATION OF SUIT. **46 P R 1908**

(*p*). *Validity of pleas of right of pre-emption in answer to suit for possession by prior against subsequent purchaser.*

See VENDOR AND PURCHASER. **32 P R 1884**

(*q*). *Vendor and purchaser—Personal covenant of indemnity against defective title—Acquisition of property by pre-emptor—Defective title—Right of pre-emptor to enforce covenant against original vendor.*

See VENDOR AND PURCHASER. **141 P R 1907**

(*r*). *Decree for pre-emption against purchaser—Right of purchaser to recover from vendor the loss sustained by him in the transaction—Covenant for title.*

See VENDOR AND PURCHASER. **111 P R 1908**

1. *Hindu widow.*

Suit by a pre-emptor to set aside a mortgage effected by a Hindu widow of property of her late husband to which she succeeded on a life interest. *Held,* that while the pre-emption rules applied only to permanent transfers, and not to mortgages, the plaintiff was entitled to a declaratory decree, to the effect that all that was mortgaged was the widow's life interest in the property. MAN SINGH *v.* MUSSAMMAT DYDEE. **98 P R 1868**

2. *Refusal of vendor to sell after right of pre-emption asserted.*

PRE-EMPTION—*contd.*

1.—GENERAL—*contd.*

Held, formerly, that a pre-emptor who had established his right on account of vicinage in a Court of law, could not force a sale to him, when both vendor and vendee, the original parties to the contract, elected to recede from the bargain, and annul the sale. BAHADOOR *v.* MOTEE RAM (*No.* 39 *P. R.* 1867) and BUNSEE LALL v. BUNSEE.

4 P R 1869

3. But afterwards *held* that a vendor could not refuse to sell to one whose right of pre-emption had been decreed; the force of such decree being not merely to set aside the sale to a particular person, but to put the pre-emptor in the vendee's shoes, on condition that the pre-emptor pay the price. THURMAN SINGH *v.* JHABA MULL.

34 P R 1870

4. *Right of pre-emptor to purchase a part only of the property sold.*

The vendor and pre-emptor were in joint possession of three out of four plots sold by the former. The pre-emptor claimed on the ground of relationship, but limited his claim to two only of the four plots, not wishing to purchase the remaining two.

Held, that the pre-emptor was bound to purchase all the plots or forego his claims altogether. MAHOMAD DIN *v.* DINA.

11 P R 1874

5. *Held*, under Act IV of 1872, section 17, that the vendor could not retract after the pre-emptor had come forward and asserted his rights. KHARAK SINGH *v.* BHUP CHAND.

27 P R 1874

6. *Christian vendor—Act IV of* 1872.

The law of pre-emption, as contained in Act IV of 1872, section 9, etc., applies to a case where the vendor is a Christian: the Act does not exempt any class of persons or persons of any particular religion, from its operation. MUSSAMMAT TAJWAR SULTAN BEGAM *v.* SHORE.

23 P R 1875

7. *Withdrawal from sale of parties thereto—Effect as against pre-emptor.*

Held, that when a sale is complete it is no longer open to the parties to undo their completed act, so as to deprive the pre-emptor of his right. KHANA *v.* DEWA SINGH.

62 P R 1879

8. *Custom—Suburbs of Delhi—Act IV of* 1872*—Right of pre-emptor to follow property in hands of second purchaser—Compensation of second purchaser—Saraogi sect—Rights of adopted son amongst.*

B. M., adopted son of M. S., a member of the Saraogi sect, sued for pre-emption in respect to a house situate in Pahari Dhiraj in the suburbs of the city of Delhi, sold by U. S., cousin of M. S.'s late husband B. D. to M. M. The Court directed M. S. to be added as plaintiff, and also directed C. M.. to whom the house was resold by M. M., to be added as a defendant.

PRE-EMPTION—*contd.*

1.—GENERAL—*contd.*

Found, that the custom of pre-emption prevailed in the suburbs of the city of Delhi where the house was situate, and

Held, that, though the evidence was not clear that among Saraogis an adopted son from the moment of his adoption by a widow takes his father's property, the plaintiff B. M. had *primâ facie* established that by custom he had a right of ownership in such property sufficient to entitle him to claim pre-emption.

Held, further that, when the customary right of pre-emption, described in Act IV of 1872, prevails, the second purchaser of property which is subject to the right of pre-emption takes a title from his vendor which is liable to be defeated by a successful claim for pre-emption against the first vendor and purchaser; and that the pre-emptor is entitled to follow the property into his hands without being bound to pay him the sum he may have paid as purchase money in excess of the original price.

The compensation of the second purchaser is a matter to be settled between the second purchaser and his vendor, and not between him and the pre-emptor. MUSSAMMAT SHAKRO *v.* MOLAR MAL. **68 P R 1879**

9. *Suit by two claimants as co-plaintiffs—Misjoinder—Procedure—Act X of* 1877, *section* 32.

In a suit for pre-emption, *held*, that it was not competent for two proprietors in the village, each entitled to claim pre-emption on the sale to which the suit related, but not having a joint right of pre-emption, to institute a single action as co-plaintiffs.

Held, further, that the proper course for a Court of first instance to adopt when such an error in the frame of the suit is brought to its notice, is to order the name of one of the plaintiffs to be struck out under section 32 of the Code of Civil Procedure, before going on to investigate the case on its merits. BARU MUL *v.* RADHA KISHEN. **3 P R 1881**

10. *Sale of several properties in a single bargain—Pre-emptor suing to enforce his right in such part of the property only as is subject to his right—Principle that pre-emptor must take over whole bargain how far applicable—Right of co-sharer in well to claim pre-emption over land watered by the well which is separate property of a co-sharer in the well—Custom.*

Held, by the Full Bench, that where a person is owner of several distinct properties, of which one is subject to a right of pre-emption, and he sells such properties in a single bargain to a person other than the pre-emptor, the latter is entitled, when the right of pre-emption exists and the claim is made under Act IV of 1872, to bring a suit to enforce his right in respect of the property subject to his right alone, without suing to take over the whole bargain.

The principle that the pre-emptor is bound to take over the whole of the bargain, as settled by the vendor, is a principle which may be admitted to the extent that the pre-emptor cannot omit to claim any portion of the property comprised in the bargain to which his right of pre-emption extends, but it cannot, consistently with the provisions of Act IV of 1872, be held to oblige him to claim the whole of the property sold when his right of pre-emption extends over only a portion of such property.

PRE-EMPTION—*contd.*

1.—GENERAL—*contd.*

Held further, that there is nothing in the express provisions of Act IV of 1872, which gives to a co-sharer in a well as such co-sharer a right of pre-emption over land which, being the separate property of a co-sharer in the well, is watered by the well: but it may be that by custom, when a well is owned by several co-sharers, and land, being the separate property of a co-sharer in the well and watered by the well, is sold, the right to acquire such land belongs to the co-sharers in preference to all other persons. *Mahomed Din* v. *Dina* (No. 11 *P. R.* 1874), *Dewa* v. *Dia Ram* (*No.* 98 *P. R.* 1876), and *Fatteh Chand* v. *Nihal Singh* (*No.* 106 *P. R.* 1880), referred to. SARDAR LALL SINGH *v.* DEWA SINGH.

107 P R 1882

11. *Sale of land to three sets of purchasers in one single conveyance—Plaintiff claiming pre-emption of that portion of the land only over which he had a preferential right—Right to succeed as to such portion only.*

In a suit for pre-emption, plaintiffs claimed two-thirds of four *khatas* of land sold in one single conveyance to three sets of people, alleging that though they and the purchasers of one-third of the four *khatas* had equal rights of pre-emption, the other two sets of purchasers were strangers and had no right as against the plaintiffs who were collaterals of the vendor.

Held, that as the plaintiffs had not rights of pre-emption of the whole land, they were justified in suing for that part of the land only to which their rights extended, and as they had proved their preferential right, and were not shown to have waived their rights or acted otherwise than in good faith, they were entitled to set aside the sale of the two-thirds of the land which they claimed. *Sardar Lall Singh* v *Dewa Singh* (No. 107 *P. R.* 1882 F. B.), cited. KAIM *v.* AMBIA. **44 P R 1883**

12. *Decree in respect of prior sale—Subsequent sale by first purchasers to third party—Right to sue arising out of such sale.*

Held, that when a decree for pre-emption has been obtained in respect to a prior sale, and has become final, a suit for pre-emption cannot be maintained in respect to a subsequent sale by the purchasers at the prior sale to a third party. *Mussammat Shakro* v. *Molar Mal* (*No.* 68 *P. R.* 1879) cited. KARIM BAKHSH *v.* GHULAM MUSTAFA.

146 P R 1883

13. *Original vendee re-selling to third party with pre-emptive right—Claim by plain-*

PRE-EMPTION—*contd.*
1.—GENERAL—*contd.*

tiff with right superior to original vendee, but inferior to second vendee—Dismissal of claim.

In a suit for pre-emption, it appeared that the owner of the property in suit first sold to one S., who subsequently resold to one S. A. in compliance with his pre-emptive right, whereupon the plaintiff, whose right was superior to that of S., but inferior to that of S. A., sued the vendor, together with S. and S. A., for pre-emption of the first sale.

Held, that the plaintiff's suit failed, as there is no ground for holding that where, after a sale has taken place, an acknowledged pre-emptor comes forward and claims the bargain, and in recognition of his rights the purchaser conveys the property to him, the latter can be ousted and made to give way to another pre-emptor with claims inferior to his own because the said pre-emptor sues to enforce his right by a suit. *Fatteh Chand* v. *Nihal Singh* (No. 106 *P. R.* 1880) distinguished. AMIRULLAH SHAH *v.* TABE HUSSEIN. **138 P R 1884**

14. *Muhammadan converted from Hinduism claiming from Sikh vendor as ek-jaddi*—Malik-qabza—*Landholder—Custom.*

In a suit for pre-emption it appeared that the plaintiff was a Muhammadan and the vendor a Sikh, the plaintiff's family having been converted from Hinduism several generations back.

Held that, under the above circumstances, the families having separated so widely and so long ago, the plaintiff could not succeed, with reference to the *Wajib-ul-arz*, as the "*ek-jaddi*" of the vendor.

Held further that a *malik-qabza* is for the purpose of pre-emption a landholder in terms of Act IV of 1872 as amended by Act XII of 1878, in the absence of a custom to the contrary. *Lal Khan* v. *Najib-ulla* (No. 14 *P. R.* 1882) cited and followed. *Nihal Singh* v. *Iwan Singh* (No. 56 *P. R.* 1882) referred to. DESU *v.* JOWALA. **13 P R 1885**

15. *Sale of land in portions of which plaintiff has superior rights and in the remainder of which equal rights with the purchaser—Defendant not pleading in lower Courts that plaintiff should limit his claim to those portions in which his claim was superior—Plaintiff's right to take over the whole bargain.*

In an appeal by the purchaser of certain land against a decree for pre-emption in respect of that land, it appeared that the defendant had included in one sale land to which the plaintiff's right as a co-sharer was superior with land in which the purchaser had an equal right with the plaintiff, and it was contended that as the plaintiff did not restrict his claim to those portions of the land to which his right was superior, he must be regarded as on the same footing with the defendant-purchaser as to the whole of the purchase, both being alike proprietors of the village. It was

PRE-EMPTION—*contd.*
1.—GENERAL—*contd.*

not contended in either of the Courts below that plaintiff was bound to limit his claim to the holdings in which he was a co-sharer.

Held, per *Curiam*, that the defendant was not in a position to deny that as to the whole bargain the plaintiff's right was superior.

Per BARKLEY, J.—Because it was the act of the defendant to combine in the same transaction land in which the plaintiff was a co-sharer with land in which he was not, and if the plaintiff was willing to take over the entire bargain there was no reason why he should lose his superior right merely because he did not ask to have the transaction split up.

Per PLOWDEN, J.—Because the defendant not having urged his objection in the first Court to the plaintiff taking the whole bargain by reason of his right extending only to part, it was too late to take it in second appeal, and the right of the parties must be determined by the success of the plaintiff on the ground he advanced in his plaint. *Sardar Lall Singh* v. *Deva Singh*, (No. 107 *P. R.* 1882, F. B.) referred to. WARIAM *v.* DESU. **64 P R 1886**

16. *Pre-emption, power of widow to sue for*—Bonâ fides *of claim—Form of decree.*

The right to claim pre-emption rests on the possession of other land, or a share in it, and the only person who can exercise that right is the holder of the land for the time being. A widow, therefore, who holds the land upon a life tenure, is entitled to exercise such right, and (*semble*) the Courts will refuse to allow the reversioners to exercise it, if they claim to do so in the presence of the widow.

The Court has no concern with the motives which may induce a plaintiff to claim pre-emption or with the source from which funds necessary to enforce the claim may be drawn. AHSAN-ULLA *v.* JOWAHIR LAL. **87 P R 1896**

17. *Pre-emption—Punjab Laws Act, 1872, section 9—Rights to use water of perennial stream—"Immovable property"—General Clauses Act, 1868, section 2 (5).*

Held, that inasmuch as the water of a perennial stream comes out of land, the right to use such water is "a benefit arising out of land," and is, therefore, "immovable property" within the meaning of section 2 (5) of the General Clauses Act, 1868, so as to found a suit for pre-emption in respect of a sale thereof under section 9 of the Punjab Laws Act, 1872. ALAM SHER *v.* RAM CHAND. **11 P R 1898**

18. *Suit for pre-emption—Subsequent suit by vendors representative for cancellation of sale—Pre-emptor added as defendant—Compromise between vendor's representatives and vendee—Pre-emptor's name struck off record.*

Appellant filed a suit for pre-emption of a garden against the vendor and three

PRE-EMPTION—*contd.*
1.—GENERAL—*contd.*

purchasers, but while the suit was pending the vendor died and his representatives sued the vendees for possession of the garden on the ground that the sale-deed was never executed by the vendor, and, if executed, was invalid and without consideration. In the latter suit the appellant was added as a co-defendant and filed pleas traversing the plaintiff's claim. Six issues covering all points in dispute, were framed, the fifth being whether appellant should have been added as co-defendants. Subsequently, and after the first hearing the plaintiffs and vendees compromised the suit, each party taking half the garden, and on the application of the former, the appellant's name was struck off the record.

Held, that the order striking off appellant's name was illegal, inasmuch as it had been passed after the first hearing, and without any adjudication on the fifth issue, and also because it precluded a decision of the questions in issue between the original parties to the suit and appellant who had a right to have them decided. ILAHI BAKHSH *v.* MUSSAMMAT NISHABA BEGAM. **75 P R 1899**

19. *Pre-emption—Suit to enforce a right of pre-emption—Appeal by purchaser—Court fee.*

In a suit to enforce a right of pre-emption a decree was passed against the vendees-defendants, who appealed from the same on the grounds that they were entitled to receive from the plaintiffs pre-emptors a sum larger than that found by the lower Appellate Court to be the purchase-money, and also that the plaintiff' claim should be dismissed on the ground that there had been no payment within the time fixed by the first Court when the appeal to the Divisional Court was presented. Objection to the amount of the Court-fee payable on the appeal having been taken, *held*, that the subject of suit being land for which an artificial value has been fixed by special rules in this Province, the value for the purposes of Court-fee was to be determined on five times *jama* value of the land in suit, and that it was not contemplated by the Legislature that the Court-fee payable on part of a whole claim in appeal is, in the absence of express direction to the contrary, to exceed the Court-fee payable on the whole claim. *Hafiz Ahmad v. Sobha Ram* (*I. L. R. VI All.* 488) distinguished.

Held, further, that as section 18, Punjab Laws Act, had been repealed previous to the institution of the present suit, section 214 of the Code of Civil Procedure alone prescribed the form of decree, and that as such a decree is appealable within a prescribed period the effect of non-payment no longer renders the decree null and void. *Moti Ram* v. *Kamman* (88 *P. R.* 1898), referred to. HAZARI SINGH AND ANOTHER *v.* PIRAN AND ANOTHER. **92 P R 1900**

20. *Pre-emption—Sale for a certain specific purpose on certain specific terms—Pre-emptor how far bound by the terms in the deed.*

PRE-EMPTION—*contd.*
1.—GENERAL—*contd.*

Where the *bonâ fide* intention of a vendor and vendee was that certain land should be sold and bought for the purpose of the erection of a *dharmsala* and that the sale should be cancelled on failure to fulfil this condition, and the plaintiff as a pre-emptor claimed to purchase without fulfilling the condition, alleging that it was not intended to be enforced and that he was not bound by the terms in the deed; *held*, that as there was nothing unusual or illegal in the arrangement and the conditions were *bonâ fide*, the pre-emptor must abide by the terms of the deed which had been offered and accepted by the vendee whom he wished to oust. BALDEO DAS *v.* PIARE LAL. **24 P R 1901**

21. *Pre-emption—Claim by a co-sharer—Right of a co-sharer who parted with his own property prior to the institution of suit and of one who acquired her share subsequent to the sale.*

Where a sale of half share in five shops was made on 4th October 1898 and subsequently the owner of the other half share gifted all his property including his half share in the shops to his mother, and then jointly with his mother instituted a suit for pre-emption in respect of the above sale.

Held, that the son was not competent to sue, as he had parted with his ownership before the suit, his right being lost with the loss of the ownership by transfer, and that the mother had no right to sue as the transfer of the property by gift to her could not confer on her any right to sue in respect of property which was sold before she had become owner of the property through which the right of pre-emption was claimed.

Semble.—Right of pre-emption is personal and incapable of being assigned. MUHAMMAD AYUB KHAN AND ANOTHER *v.* RURE KHAN AND OTHERS. **95 P R 1901**

22. *Pre-emption—Sale of share of joint estate—Vendor, purchaser and pre-emptor, all three being co-sharers in the joint estate—Vendor's election where parties are equally entitled—Punjab Laws Act, 1872, section 12(a).*

The plaintiff sued for possession by pre-emption of land sold by his brother to the defendant, all three being co-sharers, together with several others who had not elected to claim their right in the joint estate included in the land in dispute. The purchaser pleaded that the penultimate clause of section 12 defeated the plaintiff's claim.

Held, that under clause (*a*) of section 12 of the Punjab Laws Act, 1872, the plaintiff was entitled to half the bargain on payment to the purchaser of half the price, the right of pre-emption under such circumstances being a joint right of the co-sharers, and that the penultimate clause of that section did not apply to such cases.

Gami v. *Sahib* (91 *P. R.* 1875), *Karim Bakhsh* v. *Khuda Bakhsh* (20 *P. R.* 1881), *Ishar Singh* v. *Mangal Singh* (117 *P. R.* 1883), *Bhag* v. *Muhammad Yar* (17 *P. R.* 1884), and

PRE-EMPTION—*contd.*
1.—GENERAL—*contd.*

Mughal v. *Jalal* (69 *P. R.* 1898), distinguished. *Ahmad Din* v. *Mussammat Hasso* (54 *P. R.* 1882) cited. ASA RAM *v.* KAURA AND ANOTHER. **111 P R 1901**

23. *Pre-emption—Plaintiff in pre-emption suit entering into agreement with strangers to give them a share of the property in suit*—Bonâ fides *of claim—Loss of right.*

A plaintiff in a pre-emption suit agreed (after instituting his suit) with two strangers to give them each, in the event of decree being passed in his favour, a share of the property on their paying a proportionate share of the cost and purchase-money.

Held, that a pre-emptor being bound to take over the bargain of the vendee in its entirety, the plaintiff was not incompetent to supplement his own funds by such an agreement, and was not thereby disqualified from maintaining the suit previously instituted by him and that, if, after obtaining the property, he proceeded to transfer it, a fresh cause of action would arise to other pre-emptors.

Ahsan-ullah v. *Jowahir Lal* (87 *P. R.* 1896) and *Ramsukh Das* v. *Fazal-ud-din* (19 *P. R.* 1898), cited. *Brij Nath* v. *Jitu* (139 *P. R.* 1894), distinguished. JIWAN SINGH *v.* SHER SINGH. **10 P R 1902**

24. *Pre-emption—Pre-emptor's liability—Payment of purchase-money into Court—Withdrawal by vendee—Suit by incumbrancer for a declaration that the property which had been mortgaged to him by the vendee was subject to his mortgage.*

Where the holder of a decree for pre-emption duly deposited price in the Court as directed, and obtained possession of the land in dispute and subsequent to the withdrawal of the money so paid in by the vendee, a suit was filed by a mortgagee for a declaration of his incumbrance made on the property by the vendee.

Held, by a majority (Clark, C. J., dissenting), that as the pre-emption decree transfers to the pre-emptor the subject matter of sale as it subsists at the time of sale, the mortgage was not a valid charge against the land in the hands of the pre-emptor.

Mussammat Shakro v. *Molar Mal* (68 *P. R.* 1897), *Kalu* v. *Bhupa* (30 *P. R.* 1893), *Zahar Khan* v. *Mustojab Khan* (55 *P. R.* 1899), *Muhammad Ashiq* v. *Pars Ram* (56 *P. R.* 1896), *Gobind Dyal* v. *Inayat-ullah* (*I. L. R. VII All.* 775), *Deokinandan* v. *Sri Ram* (*I. L. R. XII All.* 234 F. B.), *Abdus Salam* v. *Wilayat Ali Khan* (*I. L. R. IX All.* 256). *Sant Singh* v. *Ghasita* (21 *P. R.* 1902), *Panju Ram* v. *Mussammat Niki Bai* (165 *P. R.* 1888), *Wazira* v. *Shadi Khan* (67 *P. R.* 1881), *Abdus Salam* v. *Wilayat Ali Khan* (*I. L. R. XIX All.* 256), *Hakam Singh* v. *Indar* (14 *P. R.* 1902), and *Khan* v. *Mahanda* (32 *P. R.* 1902), referred to. BOGHA SINGH *v.* GURMUKH SINGH. **93 P R 1902 F. B.**

25. *Pre-emption—Decree for pre-emption—Sale of decree to a stranger—Right of pre-*

PRE-EMPTION—*contd.*
1.—GENERAL—*contd.*

emptor to challenge such transaction—Sale of immovable property—Punjab Laws Act, 1872, section 9.

The plaintiff claimed pre-emption of certain property on the ground that the defendant, who had obtained a decree for pre-emption of the same property, had transferred his decree to his grandson who, having paid the decretal price into Court, had obtained possession of the land.

Held, that as under the provisions of section 214 of the Civil Procedure Code a pre-emptor's rights to or in the property do not accrue until he complies with the terms of the decree, the sale by the former pre-emptor to his grandson was merely a transfer of the right to obtain the property by compliance with the conditions of the decree and not the property itself, and was therefore not a sale of immovable property subject to the right of pre-emption within the meaning of section 9 of the Punjab Laws Act.

Dhani Nath v. *Budhu* (136 *P. R.* 1894), *Deokinandan* v. *Sri Ram* (*I. L. R. XII All.* 234), and *Sarju Prasad* v. *Jamma Prasad* (*I. L. R. VII All.* 109), cited. *Bhupa* v. *Kori Mal* (30 *P. R* 1893, Note), and *Muhammad Bakhsh* v. *Hayat Khan* (37 *P. R* 1888), doubted. LASHKARI MAL *v.* ISHAR SINGH. **94 P R 1902**

26. *Civil Procedure Code*, 1882, *section* 316—*Sale of immovable property in execution of decree—Sale certificate—Title of auction purchaser who has not obtained a certificate — Pre-emption — Right of pre-emptor to maintain suit before a certificate has been granted—Registration of sale certificate—Registration Act*, 1877, *section* 17 (*o*).

At a sale in execution of a decree the defendant purchased certain immovable property; the sale was confirmed, but at the purchaser's own request the certificate was not drawn up and given to him, although a draft had been prepared. The plaintiff sued for pre-emption, the defence pleaded that inasmuch as the certificate of sale had not been granted to him under section 316, Civil Procedure Code, the suit was premature.

Held, that under the circumstances the confirmation of sale by the executing Court is sufficient to confer a complete title upon an auction purchaser and that a party purchasing property subject to pre-emption at a sale held in execution of a decree cannot defeat the right of a pre-emptor by asking the Court to omit performance of its statutory duty to grant a certificate after confirmation of the sale. Clause (*o*) to section 17 of the Registration Act expressly exempts a sale certificate granted to the purchaser of immovable property sold by public auction by a Civil or Revenue Officer.

Velan v. *Kamarasami* (*I. L. R. XI Mad.* 296), *Tara Prasad* v. *Nund Kishore Giri* (*I. L. R. IX Calc.* 842), *Khushal Pana Chand* v. *Bhima Bhai* (*I. L. R. XII Bom.* 589), *Dagdu* v. *Pancham Singh*

PRE-EMPTION—*contd.*

1.—GENERAL—*contd.*

Ganga Ram (*I. L. R. XVII Bom.* 375), *Budhu* v. *Hira* (27 *P. R.* 1892) and *Than Singh* v. *Kazim Ali* (92 *P. R.* 1893), cited. AJUDHIA PERSHAD *v.* CHANDAN. **9 P R 1903**

27. *Pre-emption—Fraudulent concealment of sale—Limitation Act*, 1877, *section* 18—*Burden of proving when fraud first became known to the plaintiff.*

Where an original transaction is tainted by fraud it lies on the party against whom fraud is found to prove that the want of knowledge was not caused by fraud or that the plaintiff had a clear and definite knowledge of the fraud for more than the period of limitation allowed.

Abdul Rahim Khan v. *Muhammad Yar and others* (12 *P. R.* 1898), cited. GORDHAN DAS *v.* AHMAD. **34 P R 1904**

28. *Pre-emption—Sale of share of joint estate—Vendor, purchaser, and pre-emptor all three being co-sharers in the joint estate—Vendor's election where parties are equally entitled—Punjab Laws Act*, 1872, *section* 12 (*a*).

Held, by the Full Bench that under clause (*a*) of section 12 of the Punjab Laws Act, 1872, the co-sharers in joint undivided immovable property have not a joint right of pre-emption but only a several right, and that the penultimate clause of that section applies to cases falling under clause (*a*) and empowers the vendor to elect to sell to any one of the several co-sharers.

Ahmad Din v. *Mussammat Hasso* (54 *P. R.* 1882) and *Asa Ram* v. *Kaura* (111 *P. R.* 1901), overruled.

Mughal v. *Jalal* (69 *P. R.* 1898), *Kamar-ud-din* v. *Bakhtawar* (37 *P. R.* 1894), *Sukha* v. *Murad* (16 *P. R.* 1881), and *Johar Singh* v. *Mangal Singh* (117 *P. R.* 1883), referred to. AHMED *v.* GHULAM MUHAMMAD. **94 P R 1904 F. B.**

29. *Pre-emption—Right of pre-emption under the Punjab Laws Act*, 1872—*Effect of Alienation of Land Act upon such rights.*

As alienations of agricultural land by certain classes of people in the Punjab can now only be made as provided by section 3 (1) of the Punjab Alienation of Land Act, the provisions of the law of pre-emption, as enunciated in the Punjab Laws Act with respect to such property, have in consequence become in certain cases obsolete, and therefore in a case where a member of an agricultural tribe sold his share in a joint *khata* to a non-proprietor in the village, but who belonged to the same agricultural group as the vendor and one of the co-sharers in the *khata* comprising the land sold, who was not a member of an agricultural tribe, instituted a suit for pre-emption.

Held, that the plaintiff's right of pre-emption which he had possessed under the Punjab Laws Act has been abrogated by the provisions of the Punjab Alienation of Land Act by reason of his being neither an agriculturist in the village nor a member of an agricultural tribe, that he was not entitled to maintain his suit.

The pre-emption law being a general one, whilst the Punjab Alienation of Land Act intended to regulate sales by particular classes of alienors and thus a special law, the subsequent special statute must be treated as repealing the previous general statute *pro tanto* by implication.

The India (33 *L. J. Adm.* (1864), 193), cited and followed. PARMA NAND *v.* GHULAM FATIMA. **15 P R 1905**

30. *Pre-emption—Bargain consisting of several properties—Right of pre-emptor with superior right over a specific portion to acquire the whole bargain.*

Where a bargain consisted of several distinct properties and the pre-emptor's preferential right of purchase extended only to a portion of such bargain, *held*, that the pre-emptor was not entitled to take the whole bargain but only that portion over which he had superior right.

Maulvi Ilahi Bakhsh v. *Kaki* (87 *P. R.* 1895), and *Shahu* v. *Haku* (44 *P. R.* 1900), followed. *Wariam* v. *Desu* (64 *P. R.* 1886), not followed. RAM RAKHA MAL *v.* DEVI DAS. **89 P R 1905**

31. *Suit for pre-emption—Consent decree in a subsequent suit brought during the pendency of the original suit—Right of decree-holder against original pre-emptor.*

During the pendency of a pre-emption suit the original vendee allowed a consent pre-emption decree to be passed against him in favour of a person who had notice of the original suit and wished the sale to the original vendee to be maintained, *held*, that the latter transaction must be deemed to be a sale reduced into the form of a decree and subject to the law of *lis pendens* and therefore ineffectual against the original pre-emptor.

Nathu Ram v. *Kalian Das* (*I. L. R. XXVI All.* 522), referred to. HARNAM SINGH *v.* JIWAN. **7 P R 1906**

32. *Pre-emption—Sale of equity of redemption to mortgagee—Suit for pre-emption against vendee—Right of vendee to plead his own mortgage—Merger of mortgage into sale—Prevention of merger—Proof of.*

As a pre-emptor by reason of pre-emptive rights is entitled not merely to have the sale transferred to him but also to be vested with all the benefits which legally flow from the sale, *held*, that a purchaser of an equity of redemption, who already held possession of the property in dispute under unexpired mortgage, could not, in the absence of clear proof of an express indication of an intention to preserve the charge on his own estate, set up against the pre-emptor his own previous mortgage as still subsisting. AHMAD SHAH *v.* WALIDAD KHAN. **98 P R 1906**

33. *Suit for pre-emption—Assignment by vendee pendente lite—Addition of assignee as co-defendant after period of limitation—Limitation.*

The plaintiff brought an action to enforce a right of pre-emption within the period of limitation prescribed by law. The defendant vendee assigned over his interest to a third party after the institution of the suit. On the application of the plaintiff, after the period of limitation had expired, the Court ordered the assignee to be impleaded as a co-defendant. Thereupon the defence pleaded limitation.

Held that the suit was not barred by limitation in consequence of the joinder of the assignee. The provisions of section 22 of the Limitation Act do not apply when the original suit is continued against the added defendant who derives his title from the original defendant by an assignment pending the suit. FATTEH MUHAMMAD *v.* SAID AHMAD. **3 P R 1907**

34. *Pre-emption—Purchaser with right of pre-emption equal to plaintiff's associating in the purchase persons with inferior right—Right of such purchaser to defeat plaintiff's claim.*

Held, that if a purchaser having an equal right of pre-emption associates with himself in the purchase a person with rights inferior to those of the pre-emptor, he is not entitled to resist the claim of such pre-emptor to enforce his rights even as to his share of the purchase. *Ram Nath* v. *Badri Narain* (*I. L. R. XIX All.* 148, F. B.) dissented from.

Imam Din v. *Nur Khan* (10 *P. R.* 1884), *Murad* v. *Mine Khan* (94 *P. R.* 1895), and *Kesar Singh* v *Purtab Singh* (66 *P. R.* 1896), followed. ACHHRU *v.* LABHU. **48 P R 1907**

35. *Pre-emption—Assignment of property by vendee—Suit by pre-emptor against vendee alone, subsequent to the said assignment—Parties—Pre-emptor bound to implead transferee or to institute fresh suit against him— Limitation for such action—Limitation Act*, 1877, *Schedule II, article* 10.

Held, that where the subject matter of a pre-emption suit has been assigned by the original vendee before the pre-emptor had instituted his suit the latter is not entitled to recover the property from the transferee on the strength of a decree he obtains against the vendee alone. In order to obtain the property from the transferee he is bound either to implead the latter as a party to his original pre-emption suit or to institute a fresh suit within the period of limitation prescribed in article 10 of the Second Schedule of the Limitation Act, 1877. RAUSHAN *v.* MAKHAN. **106 P R 1907**

36. *Son's right to claim pre-emption on death of his father on a cause of action accrued to the latter in his lifetime:*

Held, by the Full Bench that a right to sue for pre-emption upon a cause of action which accrued to a person in his lifetime passes at his death to his successor who inherits the property through which the right had accrued. FAKIR ALI SHAH *v.* RAM KISHEN. **133 P R 1907 F. B.**

1.—GENERAL—contd.

37. *Pre-emption—Rival claimants with equal rights—Claimant suing subsequently cannot defeat the other by obtaining a consent decree during the pendency of the prior suit—Limitation for suits as between rival claimants—Limitation Act, 1877, Schedule II, articles* 10, 120.

Held that a rival claimant of the right of pre-emption cannot, by obtaining a consent decree in a subsequently instituted suit to which the first claimant was not a party, defeat another with equal rights who by first filing his suit has shown superior diligence in enforcing his right.

Held also, that the period of limitation as between rival pre-emptors is that prescribed by article 120 of the second schedule to the Limitation Act and not that prescribed by article 10, and that one pre-emptor can therefore be impleaded as a co-defendant in the suit of the other within the period prescribed by article 120. RAM PARSHAD *v.* GANGA DATT. **20 P R 1908**

38 *Pre-emption—Sale to two persons—Shares of vendee and price specified—Divisible contract—Assignment by one of the vendees—Addition of assignee after period of limitation—Effect of such addition—Limitation Act, 1877, section* 22.

On 18th October 1900 B and C purchased certain land in proportion of two-thirds and one-third, the price paid by them was fully specified in the deed of sale. The plaintiff brought an action against both of the vendees to enforce a right of pre-emption in respect of the whole sale within the period of limitation prescribed by law. It having been proved that C had assigned over the interest to a third party long before the institution of the suit, the Court, on the application of the plaintiff after the period of limitation had expired, ordered the assignee to be impleaded as a co-defendant. Thereupon the defence pleaded limitation. The Court allowed the plea in favour of the assignee, but decreed the suit for two-thirds of the claim against B. The latter appealed on the ground that part of the claim being dismissed as barred by limitation, the whole suit ought to have been dismissed as barred—*Held*, that the price and shares being distinctly specified the sale was divisible, and the plaintiff was consequently not debarred from claiming the two-thirds share sold to B by reason of dismissal of his suit in respect to the one-third share sold to C. BRIJ LAL *v.* MASSAN.

6 P R 1909

39. *Pre-emption—Right of pre-emptor to purchase a part when entitled to whole—Amendment of plaint.*

Held, that a person who, under the provisions of the Pre-emption law, is entitled to pre-empt the entire bargain, *i.e.* part of the property sold under one clause, and the remainder under another clause, of the Pre-emption Act, forfeits his rights altogether if he sues for one portion, and in such a case where in spite of defendant's objection to the contrary, he persists in his suit as laid, he is

1.—GENERAL—contd.

not entitled to amend his plaint. BANARSI DAS *v.* HAJI ABDUL GHANI. **10 P R 1909**

40. *Pre-emption—Sale by Jat Sikh of a plot of land to an Indian Christian for the purpose of building a Christian Church or School—Pre-emptor not bound to carry out such purpose.*

Held, that when a plot of land is sold by a Jat Sikh to a Native Christian and the deed of sale states, that it is purchased by the latter for the purpose of erecting a Christian Church or School without any stipulation for avoidance of the sale if no such building is erected, a pre-emptor can take over the bargain without agreeing to erect such a building and the principle laid down in 24 *P. R.* 1901 (*Buldeo Das* v. *Piare Lal*) does not apply to such a sale. HAZARA SINGH *v.* GANDA. **33 P R 1910**

41. *Pre-emption-Sale completed by execution of decree for specific performance of contract—Not subject to pre-emption—Punjab Pre-emption Act, II of* 1905, *sections* 3 (5) *and* 4.

In 1900 one J. sold certain land to defendants 2 and 6. One of the owners of the land happened to be a minor and J. his uncle, as his *de facto* guardian agreed that if at any time the minor repudiated the sale, he (J.) would give the vendees a like amount of land out of his own property. Subsequently the minor did repudiate the sale and recovered his share from the vendees by suit. Thereon the vendees sued J. for the land which he had agreed to give them in lieu of the minor's share. This claim was strenuously contested by J. but the vendees obtained a decree. The present plaintiffs who were the sons of J. sued for pre-emption of the land decreed to the vendees.

Held, that the vendee's suit against J. was in its essence one for specific performance of contract and the decree *per se* did not effect "a sale" of the land even though the price may have been previously paid. The sale (if it could be so called) was not completed until the decree-holders executed the decree and so obtained possession of the land, and that it thus fell within the exception given in section 3 (5) of the Punjab Pre-emption Act as a sale in execution of a decree and consequently no right of pre-emption arose in respect of it. **40 P R 1911**

42. *Pre-emption*—Lis pendens—*Resale of property to another pre-emptor during pendency of suit—Rival pre-emptors sharing bargain—Punjab Pre-emption Act, section* 14.

Held, where after the institution of a suit for pre-emption another pre-emptor asserted his right of pre-emption privately and the vendee, in recognition of his right, transferred the property to him, that the doctrine of *lis pendens* did not apply to such transfer, and that the same would bar plaintiff's suit, unless plaintiff had superior rights of pre-emption to the transferee.

Held, also, that section 14 of the Punjab Pre-emption Act had no application to such a

1.—GENERAL—concld.

case and that consequently the plaintiff was not entitled to share the property in suit with the transferee as a rival pre-emptor with equal rights of pre-emption.

53 P R 1911

43. *Pre-emption — Limitation — Where vendee has transferred bargain to another person, who is not made a party till after expiry of period of limitation—When Appellate Court justified in declining to go into point of limitation—Observations as to belated pleas of limitation.*

Held, following 25 *P. R.* 1903, that where, previous to the institution of a suit for pre-emption the vendee has resold the land to another person and the latter is not made a party to the suit until after the expiration of the period of limitation, the suit is barred.

Held also, where limitation has not been pleaded in the first Court nor taken in the grounds of appeal, but only in argument and the plea for its proper decision involved further enquiry into facts, the Appellate Court was justified in refusing to entertain it.

Observations as to how Courts should treat belated pleas of limitation.

Balaram v. *Mangta Dass*, (1907) *I. L. R.* 34 *Cal.* 941 (F. B.), *Ahmad Ali* v. *Waris Hussain*, (1893) *I. L. R.* 15 *All.* 123, *Dattu* v. *Kasai*, (1884) *I. L. R.* 8 *Bom.* 535 and *Venkata N. Naidu* v. *Bhashyakarlu Naidu*, (1902) *I. L. R.* 25 *Mad.* 367, referred to.

84 P R 1911

2.—RIGHT OF, IN TOWNS.

1. *Custom—Gujrat town—Relationship.*

In a suit for pre-emption, *held*, that no custom was established by which relationship conferred a right of pre-emption in respect of house property in the town of Gujrat.

Nabi Baksh v. *Karm Din* (No. 83 *P. R.* 1880), referred to. NURDIN *v.* NIZAMDIN.

113 P R 1881

2. *Katra Kanak Mundi, Amritsar—Custom.*

Found that the custom of pre-emption does not exist in Katra Kanak Mundi, a sub-division in the city of Amritsar. LABHU SINGH *v.* GURDITTA **46 P R 1882**

3. *Custom—Katra Parja, Amritsar—Act IV of* 1872, *section* 11—"*Sub-division*" *explained.*

Found, that the right of pre-emption exists in Katra Parja, a sub-division of the city of Amritsar.

The word "sub-division," as used in section 11 of Act IV of 1872, is intended to refer to main divisions or quarters of the town or city which are well-known and recognized and not merely to lanes or streets therein. The term would include a "mohalla," and also includes what is known as a "katra" in the city of Amritsar. SOHAVA MAL *v.* CHATTU MAL. **154 P R 1882**

4. *Preferential right—Custom—Mohalla Mohliyan, Lahore city—Plaintiff claiming pre-emption on ground of his house being*

PRE-EMPTION—*contd.*

2.—RIGHT OF, IN TOWNS—*contd.*

opposite to, though separated from, the house sold.

In a suit for pre-emption in respect of certain house property in *mohalla* Mohliyan in the Lahore city, plaintiff, whose house was opposite to the house sold, though separated from it by a blind lane, claimed to be entitled to a superior right over another resident of the same *mohalla*, whose houses were on all four sides, but which did not actually adjoin the house in dispute.

Held, that assuming that the right of pre-emption prevailed generally in the *mohalla* in question, the plaintiff had failed to establish the special custom he contended for in the present case. MEHTAB ROY *v.* AMIR CHAND. **189 P R 1882**

5. *Custom—Jalandhar city—Relationship.*

Found, that by the custom generally prevailing in the city of Jalandhar, relationship takes precedence of other grounds of pre-emption. ATA MUHAMMAD *v.* HARDIT MAL. **12 P R 1883**

6. *Custom—M. Samrial, Sialkot—Vicinage.*

Found that no custom exists in the town of Samrial in the Sialkot tahsil, under which pre-emption can be claimed merely on the ground of vicinage. LABHU *v.* CHANDA. **69 P R 1884**

7. *Custom—Jalandhar city—Vicinage—Burden of proof—Punjab Laws Act, section* 11.

In a suit for pre-emption of a house situated in the city of Jalandhar, it having been found that the plaintiff, whose wall was one of the boundaries of the property in dispute, had established that a custom of pre-emption resting on vicinage existed in the *mohalla* in question, it was contended for the defendant that the plaintiff had not definitely proved the circumstances under which the local custom was exercisable.

Held, that on the above facts it was for the defendants to prove that the custom was limited by other circumstances, and that the mere fact of being a next door neighbour was insufficient to establish plaintiff's right, and that the defendant had failed to prove any such limitations on the custom as would deprive a neighbour, whose house actually touched the disputed property. SHEIKH SHAHR YAR *v.* IMAM-UD-DIN. **33 P R 1885**

8. *Custom in Jalalpur, Gujranwala district—Right of person whose house immediately adjoins the property sold.*

Found that a custom of pre-emption exists in the town of Jalalpur in the Gujranwala district, under which a person whose house immediately adjoins the property sold, has a right superior to that of a vendee whose house stands across the lane. THAKUR DAS *v.* DIWAN CHAND. **56 P R 1885**

PRE-EMPTION—*contd.*

2.—RIGHT OF, IN TOWNS—*contd.*

9. *Custom*—mohalla *Dhilan, Peshawar.*

Found that a custom of pre-emption exists in *mohalla* Dhilan in the city of Peshawar, under which a resident in the *mohalla* has a preferential right over a purchaser residing in another district, who is also mortgagee of the house in dispute. *Shankar Das* v. *Said Ahmad* (No. 153 *P. R.* 1884), referred to. GOBIND RAM *v.* SAYAD AHMAD. **10 P R 1886**

10. *Custom*—Kucha *Sathan, Lahore city—Mortgage.*

Found that no custom in favour of pre-emption in the case of mortgages exists in the Sathan *Kucha* in Lahore. LAKHU MISSAR *v.* NARAIN DAS. **72 P R 1886**

11. *Custom of Gurdaspur—Vicinage.*

Found that a custom of pre-emption exists in the town of Gurdaspur.

Held, that under the custom the plaintiff whose house was divided by a narrow lane from the house in dispute, and whose front door was almost opposite to the front door of that house, was entitled to pre-emption. *Kalan Khan* v. *Ram Saran Das* (No. 97 *P. R.* 1880) referred to. RALLIA RAM *v.* KALLAN KHAN. **108 P R 1886**

12. *Sale of* "Katra" *in Naia Bazar, Delhi—Sub-division—Custom—Punjab Laws Act (IV of* 1872), *section* 11.

Plaintiff claimed pre-emption upon the sale of a "*katra*" situate in Naia Bazar Chahiwala in the city of Delhi, by reason of his house being contiguous in front to part of the "*katra*" sold.

Held, that plaintiff's claim failed and must be dismissed on the ground that he had failed to prove that the local custom attached a right of pre-emption to sales of "*katras*" C. A. No. 1569 of 1879 (unpublished) cited. NANNI MAL *v.* SHEO NATH. **64 P R 1887**

13. Mohalla *Lakhian, Wazirabad—Custom.*

Found that the custom of pre-emption exists in *mohalla* Lakhian in the town of Wazirabad. KISHEN GOPAL *v.* SUDH DAS. **105 P R 1887**

14. *Custom*—Mohalla *Bakhshi Ram Sahai in the Karimpura quarter of the Peshawar city—"Sub-division"—Act IV of* 1872, *section* 11.

Found, that the custom of pre-emption prevails in the *mohalla* Bakhshi Ram Sahai in the Karimpura quarter of the city of Peshawar.

The term "sub-division," as used in section 11 of the Punjab Laws Act, means a main division, a recognised and well-known, division or quarter. Where "*mohalla*" and "*katras*" are the only recognized main divisions of a town, these may be "sub-divisions" under the Act. In Peshawar where there are 5 recognised sub-divisions or main quarters of the city, each of which contains a number of *mohallas*, these main quarters and

PRE-EMPTION—*contd.*

2.—RIGHT OF, IN TOWNS—*contd.*

not the *mohallas* are the "sub-divisions" contemplated by the said section 11 of the Act.

Ajudia Parshad v. *Charanji Lal* (No. 55 *P. R.* 1880), *Sohava Mal* v. *Chattu Mal* (No. 154 *P. R.* 1882), *Gobind Ram* v. *Syad Ahmad* (No. 10 *P R.* 1886), and *Nanni Mal* v. *Sheo Nath* (No. 64 *P. R.* 1887), cited. CHARANJIT MAL *v.* MUSSAMMAT MITHO. **29 P R 1888**

15. *Custom—Sialkot City.*

The custom of pre-emption found to prevail in *mohalla* Pathana in the town of Sialkot. MUHAMMAD BAKHSH *v.* HAYAT KHAN. **37 P R 1888**

16. *Custom*—Guzar *Talwara, Lahore city.*

Found, that a custom of pre-emption prevails in *Guzar* Talwara, a sub-division of the Lahore city, extending to shops as well as houses—C. A. No. 1011 of 1881 (unpublished) and *Nanni Mal* v. *Sheo Nath* (No. 64 *P. R.* 1887), referred to. MIRZA AZAM BEG *v.* JAI DIAL. **48 P R 1888**

17. *Custom*—Mohalla *Marochian, Mooltan city.*

The custom of pre-emption found to prevail in *mohalla* Marochian in the city of Mooltan. PANJU RAM *v.* MUSSAMMAT NIKI BAI. **165 P R 1888**

18. *Custom—Pre-emption - Ghosi* mohalla, *Hansi—Evidence of existence of custom in other* mohallas.

Found, that the plaintiffs had failed to prove the existence of a custom of pre-emption in Ghosi *mohalla*, Hansi.

In suits for pre-emption in respect of property situate in a town, however probable and fair seeming the plaintiff's claim may be, he should never be relieved from the burden of proving the existence of the alleged custom in the special locality in which the property is situate, proof of its existence in neighbouring *mohallas* being at best only supplementary of the evidence required of the plaintiff. SAUDAGR MAL *v.* AMAN SINGH. **70 P R 1889**

19. *Suburbs of Mooltan*—Mohalla *Sultan Ganj.*

Found, that the custom of pre-emption does not prevail in *mohalla* Sultan Ganj, in the suburbs of Mooltan, where the house in dispute is situated. HAJI ALA DAD *v.* NUR MUSTAFA. **170 P R 1889**

20. *Custom—Pre-emption—Khoja* mohalla—*Gujrat.*

Found, that the custom of pre-emption prevails in Khoja *mohalla* of the town of Gujrat. GANGA RAM *v.* GANDA MAL. **13 P R 1890**

21. *Punjab Laws Act,* 1872, *section* 11—*Pre-emption in sub-division of town*—Mohalla *Bhogi in town of Jagraon.*

Found, that the right of pre-emption was not proved to exist in *mohalla* Bhogi in the town of Jagraon.

PRE-EMPTION—*contd.*

2.—RIGHT OF, IN TOWNS—*contd.*

If a town be composed of several sub-divisions, the fact that the custom of pre-emption is found to exist in one of such sub-divisions does not lead *per se* to the presumption that it exists in another.

No. 165 *P. R.* 1888 and No. 170 *P. R.* 1889 referred to. THAKUR DAS *v.* MUHAMMAD BAKHSH. **100 P R 1892**

22. *Punjab Laws Act,* 1872—*Pre-emption—Custom—Equity and good conscience—Wazir Khan Mosque, Lahore city—Claim to pre-emption based on right to take* tah zamini *for site.*

The plaintiff, the Mutwali or Manager of the Wazir Khan Mosque in the city of Lahore, sued for pre-emption of three shops or houses in the *chauk*, or square, adjoining the mosque but not situate on the same side of the square as the mosque itself.

The claim to pre-emption was based, not on vicinage, but on the grounds that—

(1) plaintiff was owner of a part of the materials of the houses or shops claimed ;

(2) plaintiff was also owner of their site.

Held, that as regards ground (1) the plaintiff must fail on the facts.

Held, also that the plaintiff had failed to prove any special custom of the city of Lahore, or of the *guzar* Rarra, that ownership of, or taking *tah zamini* for the site, gives a right of pre-emption of the buildings on it.

Held, also, that the plaintiff could not claim any right on the basis of Muhammadan Law, or on what might be called general grounds of equity and good consience. By the Punjab Laws Act, 1872, pre-emption is not one of the matters specified in section 5 as a matter to which, in the absence of proof of special custom, Hindu or Muhammadan Law is to be applied; and as the subject of pre-emption is specially provided for by other sections of the Act, it cannot fall under section 6 as a matter to be decided on grounds of equity and good conscience. MIRZA ANWAR ALI *v.* PANDIT SHAM NARAIN. **8 P R 1893**

23. *Custom—Pre-emption—*Mohalla *Bagh Shitab Rai, town of Rewari.*

Found, that plaintiffs had failed to prove that the custom of pre-emption exists in *mohalla* Bagh Shitab Rai. in the town of Rewari. KHUSHWAKT RAI *v.* RUR MAL. **17 P R 1896**

24. *Custom—Pre-emption—* Mohalla *Kazianwala, Dera Ismail Khan—Burden of proof.*

Found, that plaintiff has failed to prove the existence of a custom of pre-emption in *mohalla* Kazianwala, Dera Ismail Khan.

In suits for pre-emption in respect of property situate in a town, where the custom is not universal, it is necessary for the plaintiff to prove that it exists in the particular *mohalla* in question or

throughout some larger area of which it forms a part. TAGGA *v.* ALLAH BAKHSH. **69 P R 1901**

25. *Custom —Pre-emption — Pre-emption on sale of shop—*Bazar *Chauhatta Mufti Bakar, Lahore city—Punjab Laws Act,* 1872, *section* 11—*Burden of proof.*

Held, that plaintiff had failed to prove the existence of a custom of pre emption in respect of sale of shops in *Bazar* Chauhatta Mufti Bakar of Lahore city.

Held, also, that a *baithak* on the top of two shops does not alter the nature of the property, which property could not in consequence be considered a residential house.

(The subject of *guzars* in Lahore city discussed). HAKIM RAI *v.* MUHAMMAD DIN AND OTHERS. **83 P R 1901**

26. *Custom — Pre-emption — Kucha Chabuk Sawaran—*Mohalla *Qazi Sadr-ud-din,* guzar *Rarra in the city of Lahore.*

Fonnd, that the custom of pre-emption does not exist in respect of sale of houses in *kucha* Rang Mahal, which is a part of *kucha* Chabuk Sawaran, otherwise known as *kucha* Kakkazaian, *mohalla* Qazi Sadr-ud-din, *guzar* Rarra in the city of Lahore.

Held, that the law of pre-emption requires a certain stringency in deciding the question of the existence of such a custom in a city or sub-division thereof, and does not permit a finding in its favour simply on the ground that it exists in the neighbouring sub-divisions if there is no instance in the quarter in which the disputed property is situate

Raman Mal v. *Bhagat Ram* (17 *P. R.* 1895), *Thakar Das* v. *Mhhammad Bakhsh* (100 *P. R.* 1892), *Saudagar Mal* v. *Aman Singh* (70 *P. R.* 1899), and *Natha Singh* v. *Billa Singh* (50 *P. R.* 1900), followed. IMAM DIN *v.* GHULAM MUHAMMAD AND OTHERS. **86 P R 1901**

27. *Custom—Pre-emption—*Mohalla *Bagh Dhaggan in Halu* Bazar, *Bhiwani—Punjab Laws Act,* 1872, *section* 11—*Limitation—Fraudulent concealment of sale—Limitation Act,* 1877, *section* 18.

Held, that plaintiff had failed to prove the existence of a custom of pre-emption, by reason of vicinage in *mohalla* Bagh Dhaggan, which is a recognised sub-division of the town of Bhiwani.

Held, further, that the fact that a sale-deed of house property situate in Bhiwani, District Hissar, had been registered at Bombay where the parties, though resident of the former place, were carrying on business, and that for some time the vendees had not obtained physical possession of the property, as it did not admit of physical possession, it being at that time in possession of certain tenants did not establish a fraudulent concealment within the meaning of section 18 of the Limitation Act and that under clause 2

PRE-EMPTION—*contd.*

2.—RIGHT OF, IN TOWNS—*contd.*

of article 10 of that Act, limitation began to run from the date the instrument of sale was registered

Haji Aladad v. *Nur Mustafa* (170 *P. R.* 1889), *Nanni Mal* v. *Sheo Nath* (64 *P. R.* 1887), *Raman Mal* v. *Bhagat Ram* (17 *P. R.* 1895), *Natha Singh* v. *Billa Singh* (58 *P. R.* 1900), *Saudagar Mal* v. *Aman Singh* (70 *P. R.* 1899), *Hakim Rai* v. *Muhammad Din* (83 *P. R.* 1901), *Imam Din v. Ghulam Muhammad* (86 *P. R.* 1901), *Bhagwana* v. *Hanwantu* (90 *P. R.* 1901), *Tagga* v. *Allah Bakhsh* (69 *P. R.* 1901), *Ajudia Pershad* v *Chiranji Lal* (55 *P. R.* 1880), *Batul Begam* v. *Mansur Ali Khan* (*I. L. R. XX All.* 315 F.B. ; *V Calc. W. N.* 888, P. C.), *Bishen Singh* v. *Samdu* (48 *P. R.* 1884), and *Gauri Mal* v. *Jainti Mal* (73 *P. R.* 1885), referred to. PANNA LAL *v.* BHAGWAN DAS AND OTHERS. **16 P R 1902**

28. *Pre-emption—Pre-emption on sale of houses in Mukerian, District Hoshiarpur—Relationship—Vicinage.*

Found, that no custom of right of pre-emption of house property based upon relationship or vicinage is proved to exist in the town of Mukerian, District Hoshiarpur.

Ata Muhammad v. *Hardit Mal* (12 *P. R.* 1883) referred to. RAM BAKHSH AND ANOTHER *v.* THAKAR DAS AND ANOTHER. **70 P R 1902**

29. *Custom—Pre-emption—Thoola Norsan, Panna Jaunpal in Bhiwani, District Hissar—Punjab Laws Act,* 1872, *section* 11.

Found that the custom of pre-emption was not proved to exist in Thoola Norsan, Panna Jaunpal, in the town of Bhiwani.

Panna Lal v. *Bhagwan Das* (16 *P. R.* 1902), referred to. SIDHA *v.* PIRBHU LAL AND ANOTHER. **71 P R 1902**

30. *Custom—Pre-emption—Andar Shahr Bazar, Peshawar—Vicinage—Burden of proof.*

Found, that the custom of pre-emption based on vicinage extends to a building site formerly occupied by a shop in the Andar Shahr Bazar, a sub-division of the city of Peshawar.

Although the existence of a custom of pre-emption in a particular sub-division, such as is referred to in section 11 of the Punjab Laws Act, has to be established, instances in the neighbouring sub-divisions, though not of themselves sufficient to prove the existence of such a custom in that sub-division, are evidence of such existence.

Charinjit Mal v. *Mussammat Mitho* (29 *P. R.* 1888), *Hakim Rai* v. *Muhammad Din* (83 *P. R.* 1901), *Raman Mal* v. *Bhagat Ram* (17 *P. R.* 1895), *Natha Singh* v. *Billa Singh* (58 *P. R.* 1900), *Imam Din* v. *Ghulam Muhammad* (86 *P R.* 1901), *Kishen Singh* v. *Jai Kishen Das* (2 *P. R.* 1903), *Gobind Ram* v. *Sayad Ahmad* (10 *P. R.* 1886), and *Shankar Das* v. *Sayad Ahmad* (153 *P. R.* 1884), referred to.

Nanni Mal v. *Sheo Nath* (64 *P. R.* 1887) dissented from. SANT SINGH *v.* JOWALA SAHAI. **42 P R 1903**

2.—RIGHT OF, IN TOWNS—*contd.*

31. *Custom—Pre-emption in towns—Rival claimants—Vicinage—Preferential right—Burden of proof—Punjab Laws Act,* 1872, *section* 11.

Held, that where rival claimants to the pre-emption of house property in towns assert superior right by vicinage, each has to prove his vicinage to be of a superior kind, and in such cases, if the plaintiff fails to establish a local custom under which he has a superior right against his rival claimant and the respective claimants' rights are found to be equal, preference must be given to him who has shown superior diligence by suing first.

Rur Singh v. *Tansukh Rai* (82 *P. R.* 1889), *Karam Ilahi* v. *Ali Bakhsh* (199 *P. R.* 1889), *Chaudhri Khem Singh* v. *Mussammat Taj Bibi* (83 *P. R.* 1888), *Nawab Muhammad Mumtaz Ali* v. *Khan Ali* (36 *P. R.* 1897), *Mela Ram* v. *Prema* (109 *P. R.* 1900), *Mohkam Din* v. *Karimulla* (102 *P. R.* 1881), and *Ram Chand* v. *Abdul Hak* (32 *P. R.* 1889), cited.

Karim Bakhsh v. *Khuda Bakhsh* (20 *P. R.* 1881), *Gokal* v. *Bhola* (29 *P. R.* 1892), *Mahtab-ud-din* v. *Karam Ilahi* (*P. R.* 1898), *Serh Mal* v. *Hukam Singh* (*I. L. R. XX All.* 100), *Kalan Khan* v. *Ram Sarn Das* (97 *P. R.* 1880), and *Jhandu* v. *Umar Din* (17 *P. R.* 1889), distinguished.

Muhammad Salamatulla v. *Jalal-ud-din* (24 *P. R.* 1887) dissented from. RAHMAT ALI KHAN *v.* HAMID-UD-DIN. **43 P R 1903**

32. *Custom—Pre-emption—*Mohalla *Kassaban, Ferozepore city—Effect of vendee's parting with his own property the title in which gave him the right of pre-emption—Punjab Laws Act,* 1872, *section* 11.

Held, (1) that the city of Ferozepore is divided into sub-divisions within the meaning of section 11 of the Punjab Laws Act; (2) that the custom of pre-emption as regards dwelling houses prevails in *mohalla* Kassaban which is such a sub-division; and (3) that the plaintiff had failed to establish that he had a superior right of vicinage to that of the vendee merely because his house is coterminous with that in suit to a greater length and opens on the same part of the common street as the latter.

A vendee, defendant, having rights of pre-emption on the ground of vicinage does not forfeit them if he parts with his own property through which he had the rights immediately after the purchase and can set up those rights in defence of his purchase.

Sohava Mal v. *Chottu Mal* (154 *P. R.* 1882), *Chaudhri Khem Singh* v. *Mussammat Taj Bibi* (83 *P. R.* 1888), and *Nawab Muhammad Mumtaz Ali* v. *Khan Ali* (35 *P. R.* 1897), cited.

Ram Asra v. *Gurditta* (42 *P. R.* 1891), *Thakar Das* v. *Muhammad Bakhsh* (100 *P. R.* 1892), *Rama Mal* v. *Bhagat Ram* (17 *P. R.* 1895), *Atma Ram* v. *Devi Dial* (49 *P. R.* 1901), and *Muhammad Ayub Khan* v. *Rure Khan* (95 *P. R.* 1901), referred to. MUHAMMAD NAWAZ KHAN *v.* MUSSAMMAT BOBO SAHIB. **44 P R 1903**

33. *Custom—Pre-emption—Kot Abdulla Shah in Mozung, District Lahore—Punjab Laws Act,* 1872, *section* 11.

Found, that the custom of pre-emption prevails in Kot Abdulla Shah, a sub-division of the village of Mozang in the Lahore District.

Charanjit Mal v. *Mussammat Mitho* (29 *P. R.* 1888) and *Ram Asra* v *Gurditta* (42 *P. R.* 1891) referred to. ALI BAKHSH *v.* MOHYA. **52 P R 1903**

34. *Custom—Pre-emption—*Mohalla *Mohliyan, Lahore city—Vicinage—Punjab Laws Act,* 1872, *section* 11.

Found, that the custom of preemption based on vicinage in *mohalla* Mohliyan, subdivision of the city of Lahore, has not been established. GOKAL CHAND *v.* MOHAN LAL. **6 P R 1905**

35. *Custom—Pre-emption—Pre-emption on sale of shops—*Darshani Darwaza, *Amritsar city—Punjab Laws Act,* 1872, *section* 11.

Held, that the custom of pre-emption in respect of sale of shops by reason of vicinage in *Darshani Darwaza bazar* of the city of Amritsar has not been established. BISHEN SINGH *v.* MUSSAMMAT PARO. **19 P R 1905 Cr.**

36. *Custom—Pre-emption—Pre-emption on sale of house property—Nur Mahal, District Jullundur.*

Found, that the custom of pre-emption in respect of sales of house property exists in the town of Nur Mahal. RAMJAS *v.* BURA MAL. **42 P R 1905**

37. *Custom—Pre-emption in towns—*Mohalla *Sheikh Tayyab in the town of Kaithal —Vicinage—Rival claimants—Right of a co-sharer in the premises better than of a neighbour.*

Found, that the custom of pre-emption based on vicinage is proved to exist in *mohalla* Sheikh Tayyab in the town of Kaithal.

Where custom based on vicinage is established the rights of a co-sharer in the premises sold (in the absence of a local custom to the contrary) must be held superior to that of an adjoining neighbour.

Kalan Khan v. *Ram Saran Das* (97 *P. R.* 1880), *Muhammad Salamatulla* v. *Jalal-ud-din* (24 *P. R.* 1887), *Ali Muhammad* v. *Kadir Bakksh* (107 *P. R.* 1900), *Mela Ram* v. *Prema* (109 *P. R.* 1900), *Imam Din* v. *Ghulam Muhammad* (86 *P. R.* 1901), and *Babu Mal* v. *Sardar Singh* (17 *P. R.* 1903, referred to. JAI DEVI *v.* NAUBAT RAI. **71 P R 1905**

38. *Custom—Pre-emption—*Mohalla *Awan city of Ludhiana—Vicinage—Punjab Laws Act,* 1872, *section* 11.

Found, that the custom of right of pre-emption of house property based upon vicinage is proved to exist in *Mohalla* Awan in the city of Ludhiana DHAN DEVI *v.* KANSHI RAM. **38 P R 1906**

39. *Custom—Pre-emption—*Taraf *Ravi, suburbs of Multan city—Punjab Laws Act,* 1872, *section* 11.

Found, that the custom of pre-emption prevails in the commercial suburbs of Multan city, known as "*taraf* Ravi," which is a sub-division thereof for the purpose of section 11 of the Punjab Laws Act.

Chaudhri Khem Singh v. *Mussammat Taj Bibi* (83 *P. R.* 1888), *Punja Ram* v. *Mussammat Niki Bai* (165 *P. R.* 1888), *Imam Din* v. *Ghulam Muhammad* (86 *P. R.* 1901), *Haji Ala Dad* v. *Nur Mustafa* (170 *P. R.* 1889), *Umar Bakhsh* v. *Abdul Karim* (70 *P. R.* 1898) and *Kishen Dial* v. *Ali Bakhsh* (87 *P. R.* 1890), referred to. ABDULLA *v.* PUNNU RAM. **42 P R 1906**

40. *Custom — Pre-emption —* Mohalla *Gidarpur, Bairun Pak Darwaza, Multan city—Punjab Laws Act,* 1872, *section* 11.

Found, that the custom of pre-emption based on vicinage prevails in *Mohalla* Gidarpur, which is a part of Bairun Pak Darwaza, a sub-division of the city of Multan, for the purposes of section 11, Punjab Laws Act, 1872. GHULAM MURTAZA *v.* RUPA MAL. **57 P R 1906**

41. *Custom—Pre-emption—Plaintiff and defendant both claiming on ground of vicinage —*Kucha *Masjid Khajur, Delhi—Burden of proof.*

Held, that the plaintiff, upon whom the *onus* lay had failed to establish that the owner of a house which adjoins the house sold and which opens on the same street has a preferential right of pre-emption as against the owner of a house which merely adjoins the house sold at the back and opens into a different street.

The burden of proof that a particular form of vicinage gives a preferential right of pre-emption rests on the person making such an assertion.

Babu Mal v. *Sundar Singh* (17 P. R. 1903), *Chaudhri Khem Singh* v. *Mussammat Taj Bibi* (83 *P. R.* 1888), and *Nawab Muhammad Mumtaz Ali Khan* v. *Khan Ali* (36 *P. R.* 1897), followed. DHUMI MAL *v.* KALU. **67 P R 1906**

42 *Custom—Pre-emption—*Mohalla *Kakkezaian in the city of Lahore—Right of pre-emption claimed by virtue of ownership of house opposite but separate from that sold—Burden of proof—Punjab Laws Act,* 1872—*section* 11.

In a suit for pre-emption of a house in *Mohalla* Kakkezaian in the city of Lahore plaintiff claimed the right of pre-emption on the ground that his house was opposite to the house sold on the other side of a blind alley and that he had therefore superior right over the vendee who was a mere stranger.

Held, that, assuming that the custom of pre-emption prevailed in the locality in question, the plaintiff had failed to prove that it was exercisable by him by virtue of the position of his house in relation to that sold.

A pre-emptor is bound not only to prove the existence of a custom of pre-emption

in the particular locality where the property in dispute is situate, but all such incidents of that custom as would entitle him to succeed.

Ali Muhammad v. *Kadir Bakhsh* (107 *P. R.* 1900), doubted.

Sheikh Shahr Yar v. *Imam-ud-din* (33 *P. R.* 1885), *Gobind Ram* v. *Sayad Ahmad* (10 *P. R.* 1886), *Ralia Ram* v. *Kallan Khan* (108 *P. R.* 1886), *Muhammad Salamatulla* v. *Jalal-ud-din* (24 *P. R.* 1887), *Chaudhri Khem Singh* v. *Mussammat Taj Bibi* (83 *P. R.* 1888), *Mela Ram* v. *Prema* (109 *P. R.* 1900), *Mehtab Roy* v. *Amir Chand* (189 *P. R.* 1882), and *Imam Din* v. *Ghulam Muhammad* (86 *P. R.* 1901), referred to. ILAHI BAKHSH *v.* MIRAN BAKHSH. **68 P R 1906**

43. *Custom—Pre-emption — Pre-emption on sale of house property*—Katra *Moti Ram, Amritsar city—Punjab Laws Act*, 1872, *section* 11.

Found, that the custom of pre-emption in respect of sales of house property based on vicinage exists in *katra* Moti Ram, a sub-division of the city of Amritsar.

Sohava Mal v. *Chattu Mal* (154 *P. R.* 1882), *Natha Singh* v. *Billu Singh* (58 *P. R.* 1900), *Sant Singh* v. *Jawala Sahai* (42 *P. R.* 1903), and *Muhammad Nawaz Khan* v. *Mussammat Bobo Sahib* (44 *P. R.* 1903), referred to. MAMON *v.* GHAUNSA. **99 P R 1906**

44. *Custom—Pre-emption — Pre-emption on sale of house property*—Kucha *Aqal Khan, Delhi city—Evidence of existence of custom in other* mohallas—*Pre-emption Act*, 1905, *section* 6.

Found, that the custom of pre-emption in respect of sales of house property by reason of vicinage prevails in Kucha Aqal Khan in the city of Delhi.

Although in suits for pre-emption in respect of property situate in a town existence of the custom within any specified area forming a sub-division within the meaning of section 6 of the Pre-emption Act of 1905 has to be established, the instances in the neighbouring sub-divisions and in the city including the area are relevant and useful to strengthen the proof of such existence.

Prag Raj v. *Murari Lal* (81 *P. R.* 1906), *Muni Mal* v. *Sheo Nath* (64 *P. R.* 1887), *Babu Mal* v. *Sardar Singh* (17 *P. R.* 1903), *Mussammat Shakro* v. *Molar Mal* (68 *P. R.* 1879), *Mussummat Nur Jahan* v. *Aziz-ud-din* (108 *P. R.* 1895), and *Karam Ilahi* v. *Babu Mal* (21 *P. R.* 1900), referred to. ABDULLA BEG *v.* WALLAITI BEGAM. **120 P R 1906**

45. *Custom—Pre-emption — Pre-emption on sale of house property*—Katra *Karm Singh Amritsar city—Punjab Laws Act*, 1872, *section* 11.

Found, that the custom of pre-emption in respect of sale of house property based on vicinage exists in *Katra* Karm Singh, a sub-division of the City of Amritsar.

Held, also, that the fact that the pre-emptor's house adjoined the house sold

at the back or was in another Municipal Division does not affect or militate against his claim.

Labhu Singh v. *Gurditta* (46 *P. R.* 1882), *Sohava Mal* v. *Chattu Mal* (154 *P. R.* 1882), and *Natha Singh* v. *Billa Singh* (58 *P. R.* 1900) referred to. LACHMAN DAS *v.* KASHI RAM. **140 P R 1906**

46. *Custom—Pre-emption — Pre-emption on sale of house property*—Katra *Missar Beli Ram, Amritsar city—Punjab Laws Act*, 1872, *section* 11.

Found, that the custom of pre-emption in respect of sale of house property based on vicinage exists in *Katra* Missar Beli Ram, a sub-division of the city of Amritsar. MAULA BAKHSH *v.* DEVI DITTA. **6 P R 1907**

47. *Custom—Pre-emption—Claim to pre-emption by reason of owning site of house sold*—Mohalla *Khajuranwala, Jullundur city.*

Found, that a custom of pre-emption exists in *Mohalla* Khajuranwala in the city of Jullundur under which the owner of the site has a right of pre-emption in respect to the buildings erected on it. FATTEH MUHAMMAD *v.* KARIMAN. **7 P R 1907**

48. *Custom—Pre-emption — Pre-emption on sale of shops*—Katra *Patrangan, Amritsar city.*

Held that the custom of pre-emption in respect of sale of shops by reason of vicinage in *Katra* Patrangan of the city of Amritsar had not been established. KARIM BAKHSH *v.* WATTA MAL. **13 P R 1907**

49. *Custom—Pre-emption—Pre-emption on sale of house property*—Kucha *Gulzari Shah*, Mohalla *Wachowali in the city of Lahore—Decree in favour of pre-emptor—Payment of purchase money into Court—Withdrawal of such money by vendee—Effect of such withdrawal—Right of vendee to maintain appeal on substantive right.*

Found, that the custom of pre-emption in respect of sales of house property based on vicinage exists in *Kucha* Gulzari Shah, which is a part of *Mohalla* Wachowali, a well recognized sub-division of the city of Lahore.

Held, also, that in a pre-emption suit a vendee does not forfeit his legal right to appeal from a decree passed against him or to proceed with his appeal on substantive right, merely because he had withdrawn the purchase money paid in Court by the pre-emptor for his benefit. SUNDAR DAS *v.* DHANPAT RAI. **16 P R 1907**

50. *Custom—Pre-emption — Pre emption on sale of residential property lately converted into shops—Alteration in the nature of such property*—Katra *Ahluwalia, Amritsar city.*

Found, that the custom of pre-emption in respect of sale of house property by reason of vicinage exists in *Katra* Ahluwalia, Amritsar city.

Held, that the conversion of a part of a residential house into shops and their

use for godowns for a short period does not change the character of the property as originally built and hitherto used. DIAL SINGH *v.* BAKSHISH SINGH. **21 P R 1907**

51. *Custom—Pre-emption — Pre-epmtion on sale of house property*—Mohalla *Parachian in the city of Rawalpindi—Relevancy of instances decided on admission alone.*

Found, that the custom of pre-emption in respect of sales of house property based on vicinage exists in *mohalla* Parachian otherwise known as *mohalla* Matta or Waris Khan in the city of Rawalpindi.

The cases in which the right is claimed and decreed on admission alone are instances of the right being exercised within the meaning of the Evidence Act and are therefore relevant as to the existence of the custom. THAN SINGH *v.* TARA SINGH. **26 P R 1907**

52. *Custom—Pre-emption —Pre-emption on sale of agricultural land on ground of vicinage—Civil Station of Amritsar.*

Held that the custom of pre-emption in respect of sale of agricultural land by reason of vicinage in the Civil Station of Amritsar had not been established. ISHWAR DAS *v.* DUNI CHAND. **27 P R 1907**

53. *Custom—Pre-emption—Right of pre-emption claimed by virtue of ownership of house opposite but separate from that sold*—Katra *Kanhayan, Amritsar City—Burden of proof—Punjab Laws Act*, 1872, *section* 11.

Held, that although the custom of pre-emption in respect of sales of house property by reason of vicinage has been established to prevail in *Katra* Kanhayan of the city of Amritsar the plaintiff has failed to prove the special incident whereby he as owner of a house opposite to the house sold but separated from it by a road or land had a right to claim pre-emption against the vendee who was a mere stranger.

Ali Muhammad v. *Kadir Bakhsh* (107 *P. R.* 1900) not followed. *Mela Ram* v. *Prema* (109 *P. R.* 1900) and *Ilahi Bakhsh* v. *Miran Bakhsh* (68 *P. R.* 1906) followed. MAHTAB SINGH *v.* NIAZ ALI. **47 P R 1907**

54. *Custom—Pre-emption— Presumption of existence of right in a town in respect to agricultural land assessed to land revenue—Una, Hoshiarpur District—Punjab Laws Act*, 1872, *sections* 10, 11, 12.

Held, that the custom of pre-emption cannot be presumed to exist in Una, District Hoshiarpur, inasmuch as it is a town and not a village, and that there can be no presumption as to the existence of a custom of pre-emption in a town even in respect to assessed and cultivated land. HARJALLU MAL *v.* NATHU RAM. **51 P R 1907**

55. *Custom— Pre-emption— Pre-emption on sale of shops*—Katra *Ramgarhian, Amritsar city—Punjab Laws Act*, 1872, *section* 11.

Held, that the custom of pre-emption in respect of sale of shops by reason of vicinage

PRE-EMPTION—*contd.*

2.—RIGHT OF, IN TOWNS—*contd.*

in *Katra* Ramgarhian of the city of Amritsar has not been established. SUNDAR SINGH *v.* MEHR SINGH. **54 P R 1907**

56. *Custom—Pre-emption—Pre-emption on sale of house property*—Mohalla *Barwala, Jagadhri.*

Held, that the custom of pre-emption in respect of sales of house property by reason of vicinage does prevail in *mohalla* Barwala of the town of Jagadhri. MANOHAR LAL *v.* PARS RAM. **67 P R 1907**

57. *Custom—Pre-emption—Pre-emption on sale of shops*—Katra *Ramgarhian, Amritsar City.*

Found that the custom of pre-emption in respect of sale of shops by reason of vicinage in *Katra* Ramgarhian of the city of Amritsar had not been established. RAM RAKHA *v.* SANT RAM **68 P R 1907**

58. *Custom—Pre-emption—Pre-emption of existence of right in respect to area converted into building sites*—Killa *Gujar Singh—Suburbs of Lahore—Punjab Laws Act,* 1872, *sections* 10, 11, 12.

A certain area of land was originally comprised within the village of *Killa* Gujar Singh, a suburb of Lahore city and had been in years past agricultural land. For some time past, however, it had been used as a site for building purposes and had been gradually absorbed within the limits of Lahore city.

Held, under these circumstances that the land must be regarded as land situate in a town and that there was therefore no presumption that the custom of pre-emption existed in respect of sale of such land.

Found upon the evidence that the plaintiff had failed to prove that the custom of pre-emption existed in respect of a sale of such land. MUHAMMAD DIN *v.* SHAH DIN. **90 P R 1907**

59. *Pre-emption—Sale of two houses adjoining one another—Vendee and pre-emptor each having priority over one house by reason of vicinge—Pre-emptor not bound to acquire the whole bargain.*

Held, that in a case of sale of two houses adjoining one another a vendee whose right of pre-emption by reason of contiguity only extends to one house cannot defeat the next-door neighbour of the second house on the ground that by reason of his having rights over one house superior to plaintiff he has a right with respect to the other house equal to those of plaintiff.

A bargain of distinct properties by a person having preferential rights only to a portion of such bargain does not give him a right of pre-emption as regards the simultaneously purchased other portion.

In such a case the pre-emptor whose rights extend over only one lot is not bound to take over the bargain in its entirety. UTTAM CHAND *v.* LAHORI MAL. **112 P R 1907**

60. *Custom—Pre-emption—Pre-emption on sale of house property*—Mohalla *Wadharian, Sialkot city—Compensation for improvements made by vendee.*

Found, that the custom of pre-emption in respect of sales of house property by reason of vicinage prevails in *mohalla* Wadharian in the city of Sialkot.

Held, that as a general rule a purchaser of immovable property subject to the right of pre-emption who has effected improvements in spite of the pre-emptors warning not to do so, is under no circumstances entitled to recover their market value, but might be allowed to remove them if that can be done without injuring the property. BUTA SINGH *v.* TARA SINGH. **122 P R 1907**

61. *Custom—Pre-emption*—Kucha *Billa Kabutarbaz*, Mohalla *Kabuli Mal, Lahore city—Superiority of co-sharership over mere contiguity—Burden of proof—Punjab Laws Act*, 1872, *section* 11.

Found, that the custom of pre-emption prevails in *kucha* Billa Kabutarbaz which is a part of *mohalla* Kabuli Mal, a subdivision of the city of Lahore for the purpose of section 1, Punjab Laws Act, 1872, and that a co-sharer in the property sold has a preferential right as against the owner of an adjoining house.

The existence of a custom of pre-emption in the neighbouring *kuchas* is sufficient to prove the existence of such a custom in a *kucha* into which they run, although no case of pre-emption may have occurred in it. ALLAH DITTA *v.* RAJ KUMAR. **138 P R 1907**

62. *Pre-emption on sale of house property*—Kucha *Pati Ram, Delhi city.*

Found, that the custom of pre-emption in respect of sales of house property based on vicinage exists in *Kucha* Pati Ram of Delhi City. ISHRI PARSHAD *v.* BASHESHAR NATH. **35 P R 1908**

63. *Custom—Pre-emption—Pre-emption on sale of house property*—Mohalla *Dassan, Delhi city—Punjab Laws Act*, 1872, *section* 11.

Found, that the custom of pre-emption in respect of sale of house property by reason of vicinage exists in *mohalla* Dassan, Delhi city, which is a part of *mohalla* Billimarian. BHAGWANTI *v.* SOHAN LAL. **116 P R 1908**

64. *Custom—Pre-emption—Pre-emption on sale of house property*—Mohalla *Haveli Khan Duran Khan, Delhi city.*

Found, that the custom of pre-emption in respect of sales of house property by reason of vicinage prevails in *mohalla* Khan Duran Khan in the city of Delhi. ABDUL GHAFUR KHAN *v.* MUHAMMAD ZIA-UD-DIN KHAN. **147 P R 1908**

65. *Custom—Pre-emption—Pre-emption on sale of house property*—Katra *Amar Singh, Amritsar city.*

Held, that the custom of pre-emption in respect of sales of house property by reason of vicinage in *Katra* Amar Singh of the city of Amritsar had not been established. SAWAN SINGH *v.* SANT RAM. **9 P R 1909**

66. *Custom—Pre-emption—Pre-emption on sale of house property—Dinga, Gujrat district.*

Found, that the custom of pre-emption in respect of sale of house property by reason of vicinage exists in the town of Dinga in the Gujrat district. RAMJI MAL *v.* MATHRA DAS. **19 P R 1909**

67. *Custom—Pre-emption—Pre-emption on sale of house property—Kot Nau in Khem Karn*, tahsil *Kasur, Lahore district.*

Found that the custom of pre-emption in respect of sale of house property based on vicinage exists in Kot Nau, a sub-division of the town of Khem Karn, in the Kasur *tahsil* of the Lahore district. AMIR CHAND *v.* CHUNI LAL. **32 P R 1909**

68. *Custom—Pre-emption—Jullundur city, " Katra Jua Khana " sub-division.*

Held, that the so called " Katra Jua Khana" is not a separate sub-division of Jullundur city for purposes of pre-emption.

Held also, that in the old city of Jullundur pre-emption is general. RUSTOM ALI *v.* RODA. **70 P R 1909**

69. *Pre-emption—Vendee cannot defeat pre-emptor's claim by acquiring a status equal to plaintiff after the institution of the suit.*

Held by the Full Bench—(RATTIGAN, J., dissenting), that in a suit for pre-emption based on the ground that at the date of sale the pre-emptor was a proprietor in the village in which the property sold is situate and the vendee was not the vendee cannot defeat plaintiff's claim by becoming a proprietor in the village whether by gift or otherwise, afte the date of institution of the suit, but before the passing of the pre-emption decree. DHANNA SINGH *v.* GURBAKHSH SINGH. **91 P R 1909 F. B.**

70. *Pre-emption—New sub-division in an old town—Garhi Awan, Hafizabad, District Gujranwala.*

Held, that the custom of pre-emption does not prevail in the *abadi jadid* of the old village of Garhi Awan, a suburb of Hafizabad.

Held also, that the *abadi jadid*, which was situate just outside the old borders of the town, must be looked upon as a sub-division within the meaning of the Punjab Pre-emption Act, II of 1905, notwithstanding that it had not yet received a name as a *mohalla*, and that no sub-divisions were recognized in the old town. ALLAH DITTA *v.* MUHAMMAD NAZIR. **84 P R 1910**

71. *Custom—Pre-emption—Existence of—Town Kunjah, District Gujrat—Conversion of* tawela *into* serai—*Punjab Courts Act, XVIII of* 1884, *section* 70 (1) (*b*)—*Sufficient important question of law—Value of instances cited.*

Held, that a custom of pre-emption exists in the town of Kunjah, District Gujrat.

Held also, that the mere fact that some of

PRE-EMPTION—*contd.*

2.—RIGHT OF, IN TOWNS—*contd.*

the rooms are rented out to more or less permanent tenants and others to chance visitors does not necessarily convert what was originally a *tawela* into a *serai.*

Held also, that in pre-emption cases the question whether a certain building is or is not on the facts found by the Lower Appellate Court a *serai*, is a question of law and of sufficient importance to justify the admission of an appeal under section 70 (1) (*b*) of the Punjab Courts Act, 1884.

Held further, following 44 *P. R.* 1905 (*Ramjas* v. *Bura Mal*) and 44 *P. R.* 1903 (*Muhammad Nawaz Khan* v. *Mussammat Babo Sahib*) that the admission of plaintiff's right by the defendant does not render the case valueless as a precedent in favour of the existence of a custom. FEROZE-UD-DIN *v.* RAHIM BAKHSH. **96 P R 1910**

72. *Pre-emption—House property in Rawalpindi Cantonment—Punjab Pre-emption Act, II of* 1905, *sections* 7 (1) *and* 3 (3).

Held, that notwithstanding Punjab Government Notification No. 677, dated 10th November 1908, declaring Rawalpindi city and cantonment to be a town under section 3 (3) of the Punjab Pre-emption Act, 1905, a suit for pre-emption in regard to house property in the cantonment is barred by the provisions of section 7 (1) of the Act.

9 P R 1911

73. *Lahore city*—Mohalla *Sathan—House converted into a* Dharmsala *subsequent to sale—Punjab Pre-emption Act, II of* 1905, *section* 13 (2).

Held, that a custom of pre-emption in respect of houses exists in *mohalla* Sathan in the city of Lahore.

Held also, that where at the date of sale the property sold was a house and subsequently it was converted into and used as a *Dharmsala*, it is immaterial for the purposes of sub-section 2, section 13 of the Punjab Pre-emption Act, to consider such conversion, inasmuch as it is the character of the property sold at the date of sale which determines the question of the applicability of the said sub-section. **22 P R 1911**

74. *Pre-emption in respect of sale of a house or shop in a lane in* bazar *Baba Malak in the town of Nakodar—Punjab Pre-emption Act II of* 1905, *section* 6.

Held, that plaintiff, on whom the *onus* lay, had failed to prove that the custom of pre-emption existed in the Baba Malak sub-division of the town of Nakodar at the time of commencement of the Punjab Pre-emption Act, 1905, and that his suit for pre-emption must accordingly be dismissed. **59 P R 1911**

75. *Custom—Pre-emption*—Mohalla *Mimaran* alias *Pansarian, Kaithal—Value of proof of uncontested instances in neighbourhood of the* mohalla.

Held that the custom of pre-emption of houses exists in *mohalla* Mimaran *alias mohalla* Pansarian, a sub-division of Kaithal.

PRE-EMPTION—*contd.*

2.—RIGHT OF, IN TOWNS—*concld.*

Held also, that instances of pre-emption in the neighbourhood of the *mohalla* in question may indicate the existence of custom of pre-emption in that *mohalla* and that uncontested instances are by no means worthless evidence of the existence of right

71 *P. R.* 1905, 38 *P. R.* 1906, 99 *P. R.* 1906, 120 *P. R.* 1906, 67 *P. R.* 1907, 138 *P. R.* 1907, 44 *P. R.* 1903 and 26 *P. R.* 1907, referred to. **78 P R 1911**

76. *Pre-emption—Claimed by owner of adjacent shop—Punjab Pre-emption Act, II of* 1905, *section* 13 (1) *seventhly—Sale of half property in suit and agreement to sell other half not detrimental to pre-emptor's title to a decree.*

Held, that the words "immovable property" in section 13 (1) *seventhly* of the Punjab Pre-emption Act include a shop.

Held also, that the sale by the plaintiff pre-emptor of half the property in suit and an agreement to sell the other half, does not derogate from his right or disentitle him to a decree. **80 P R 1911**

77. Mohalla *Acharjan*—Gumti Bazar, *Lahore.*

Held, that it had not been proved that the custom of pre-emption prevailed in *mohalla* Acharjan, which is part of the recognised sub-division of *bazar* Gumti in the Lahore city. **91 P R 1911**

3.—RIGHT OF, ON SALE OF SHOPS.

See PRE-EMPTION—RIGHT OF, IN TOWNS.
64 P R 1887
83 P R 1901
21 P R 1907
54 P R 1907

1. *Suburbs of Delhi*—Mauza *Jahannuma.*

Held, taking Jahannuma to be a sub-division of Delhi, that there are varieties in the incidents of pre-emption; that it is not in all cases sufficient to show vicinage, that because in a sub-division custom allows pre-emption in the case of dwelling houses, it does not follow that it holds good in the case of shops also, or of big plots extending far and wide away from the property through which pre-emption is claimed. ANKAR LAL *v.* BAIJ NATH. **103 P R 1889**

2. *Custom*—Kasba *Chiniot, Jhang District—Pre-emption on the sale of a shop.*

Plaintiff claimed pre emption upon the sale of a shop situate in a *bazar* in *kasba* Chiniot, District Jhang. It was contended on his behalf that, as the custom of pre-emption prevailed generally in Chiniot, it should be considered to extend to dwelling houses as well as shops. There was no clear and verified instance, however, of a claim being made on the sale of a shop.

Held, that section 11 of the Punjab Laws Act, 1872, governed the case, and it was for plaintiff to prove (1) that the right of pre-emption exists in Chiniot; and (2) that it is exercisable in respect of shops.

PRE-EMPTION—*contd.*

3.—RIGHT OF, ON SALE OF SHOPS—*contd.*

Proof of a custom of pre-emption existing in a given locality as to houses is not *primâ facie* proof that it extends to shops also, with the result that the person giving such proof must succeed unless the opposite party proves positively that it does not extend to shops.

No. 89 *P. R.* 1888, considered with reference to No. 64 *P. R.* 1887, and No. 103 *P. R.* 1888. CHAUDHRI NUR AHMAD *v.* GANGA RAM. **63 P R 1890**

3. *Custom—Suburbs of Batala*—Bazar *Tahsilwala.*

The property in dispute consisted of shops and a *chaubara* and was situate in a *bazar* in the suburbs of Batala. Plaintiffs claimed pre-emption on the ground that they were co-sharers in *mauza* Faizpur within the boundaries of which the land had been entered at Settlement. It was found that the *bazar* was built about 1868 on a site which was previously a grave-yard adjoining one of the gates of Batala.

Held, that the property should be regarded as situate in a town, and that the plaintiffs on whom the *onus* lay had failed to prove that the right of pre-emption attached thereto by custom. KISHEN DIAL *v.* ALI BAKHSH.

87 P R 1890

4. *Custom—Pre-emption—Pre-emption on sale of shop—Sutar Mandi* bazar, *Lahore City—Punjab Laws Act,* 1872, *section* 11—*Burden of proof.*

On the sale of a shop in the Sutar Mandi *bazar*, Lahore city, plaintiff claimed to be entitled, by custom, to the right of pre-emption basing his claim on the fact that he was the next neighbour with a joint wall and staircase. On appeal to the Chief Court, he wished to refer to suits regarding shops in the neighbouring *mohallas* in order to prove that pre-emption could be claimed in respect of shops as well as houses.

Held, that under section 11 of the Punjab Laws Act, 1872, it was incumbent on plaintiff in a pre-emption suit regarding property in a town to establish the right and its incidents and proof that it exists in other or neighbouring *mohallas* of the town could at best only supplement plaintiff's evidence regarding its existence in the *mohallla* where the property in dispute was situate and could not supply the want of such evidence.

Held further, following No. 64 *P. R* 1887, No. 103 *P. R.* 1889 and No. 68 *P. R.* 1890, that it was not sufficient for the plaintiff to show that the right extended to *houses* in a particular portion of a town, that it must be affirmatively proved to extend to *shops*, and that plaintiff had failed to prove that a custom of pre-emption in respect of sale of *shops* existed in the Sutar Mandi *bazar* of Lahore city.

A shop in a *bazar* cannot be pre-empted as a *house* merely because there is an upper story to it which is sued as a residence.

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PRE-EMPTION—*contd.*

3.—RIGHT OF, ON SALE OF SHOPS—*contd.*

No. 55 *P. R.* 1880, No. 64 *P. R.* 1887, Nos. 103 and 170 *P. R.* 1889, 68 and 87 *P. R.* 1890, cited. No. 48 *P. R.* 1888 disapproved *pro tanto.* RAMAN MAL *v.* BHAGAT RAM. **17 P R 1895**

5. *Pre-emption—Claim in respect of land situate in out-growth of town of Batala and occupied by shops*—Onus probandi.

Plaintiff sued for pre-emption of certain land which though formerly agricultural was at the date of suit situate in an outgrowth of the town of Batala and was occupied by business premises, or shops, and not by dwelling-houses.

Held, that the claim must be treated as one in respect of property which, though formerly agricultural land, should now be regarded as subject to urban rules.

Held, therefore, that the burden of proving that there was a custom of pre-emption applicable to such property was upon plaintiff and *found* that plaintiff had failed to relieve himself of such *onus*.

No. 87 *P. R.* 1890 followed. UMAR BAKHSH *v.* ABDUL KARIM. **70 P R 1898**

6. *Custom—Pre-emption on sale of shop—Katra Harsa Singh, Amritsar city—Punjab Laws Act*, 1872, *section* 11—*Burden of proof.*

Held, that plaintiffs had failed to prove the existence of a custom of pre-emption in respect of sale of shops by reason of vicinage in Katra Harsa Singh of Amritsar city. *Held further*, following *Raman Mal* v. *Bhagat Ram* (17 *P. R.* 1895), and *Saudagar Mal and another* v. *Aman Singh* (70 *P. R.* 1899) that the *onus probandi* rested on the plaintiffs, and the mere fact that pre-emption has been held to exist in regard to *houses* is not sufficient to establish the right with respect to *shops* in the same *mohalla* or *katra*, and the fact that the right of pre-emption exists in other or neighbouring *mohallas* or *katras* of the town is not *per se* sufficient to prove its existence in the particular *mohalla* or *katra* in question. NATHA SINGH AND OTHERS *v.* BILLA SINGH. **58 P R 1900**

7. *Custom—Pre-emption on sale of shop—Hissar city.*

Found, that the custom of pre-emption in respect of sale of shops exists in the town of Hissar. BHAGWANA AND OTHERS *v.* HANWANTA. **90 P R 1901**

8. *Custom—Pre-emption—Right of, on sale of shops—Vicinage Chandni Chouk Bazar, Delhi city.*

Held, that the custom of pre-emption in respect of the sale of shops exists in the Chandni Chowk *Bazar* of Delhi city, and that vendee has failed to prove a special local custom whereby the owner of the house at the back was not competent to exercise the right of pre-emption as against him who was a mere stranger in the locality.

Sharif Hussain v. *Muhammad Yusaf* (88 *P. R.* 1905) followed. *Raman Mal* v. *Bhagat Ram* (17 *P. R.* 1895), referred to. PRAG RAJ *v.* MURARI LAL. **81 P R 1906**

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PRE-EMPTION—*contd.*

3.—RIGHT OF, ON SALE OF SHOPS—*concld.*

9. *Pre-emption—Sale of block of shops or mercantile property—Ambala city—Punjab Laws Act*, 1872, *section* 11.

Held, that plaintiff has failed to prove the existence of a custom of pre-emption in respect of sale of a block of shops or mercantile property by reason of vicinage in the city of Ambala.

The fact that a portion of such property comprised residential buildings does not alter the nature of such property.

Mussammat Nur Jahan v. *Aziz-ud-din* (108 *P. R.* 1895), *Nanni Mal* v. *Sheo Nath* (64 *P. R.* 1887), *Kishan Singh* v. *Jai Kishan Das* (2 *P. R.* 1903), *Raman Mal* v. *Bhagat Ram* (17 *P. R.* 1895), and *Natha Singh* v. *Billa Singh* (58 *P. R.* 1900), referred to. BHAGWAN DAS *v.* HAR PERSHAD. **111 P R 1906**

10. *Custom—Pre-emption—Pre-emption on sale of shops*—Bazar *Papran*, Katra *Nihal Singh, Amritsar city.*

Found, that the custom of pre-emption in respect of sale of shops by reason of vicinage exists in *Bazar* Papran, *Katra* Nihal Singh of the city of Amritsar. ATTAR SINGH *v.* SANT SINGH. **113 P R 1906**

11. *Custom—Pre-emption—Pre-emption on sale of residential property used for business purposes—Alteration in the nature of such property—Punjab Laws Act*, 1872, *section* 11.

Held, that the use of a residential property as business premises for transacting the business of commission agency does not alter the nature of such property and it would not in consequence of such usage be considered to be shop property. NAWAL KISHORE *v.* AMIR KHAN. **122 P R 1906**

12. *Custom—Pre-emption—Pre-emption in respect to sale of shops in villages—Punjab Pre-emption Act*, 1905, *sections* 12, 13 (2).

Held, that sub-section 2 of section 13 of the Punjab Pre-emption Act, 1905, is inapplicable to shops in villages. The custom of pre-emption exists in respect to such shops subject to the provisions of section 12 of that Act. KIRPA RAM *v.* KHUSHALI MAL. **80 P R 1907**

4.—RIGHT OF, ON ACCOUNT OF VICINAGE OR RELATIONSHIP.

See PRE-EMPTION—2. RIGHT OF, IN TOWNS. **56 P R 1885**
108 P R 1886
64 P R 1887
105 P R 1887
29, 37, 48 and 165, P R 1888
170 P R 1889
13 P R 1890
100 P R 1892
8 P R 1893
38 P R 1906
6 P R 1907
67 P R 1907
19 P R 1909
32 P R 1909

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PRE-EMPTION—*contd.*

4.- RIGHT OF, ON ACCOUNT OF VICINAGE OR RELATIONSHIP—*contd.*

See PRE-EMPTION—3. RIGHT OF, ON SALE OF SHOPS. **103 P R 1889**
17 P R 1895
58 P R 1900
81 P R 1906
113 P R 1906

See PRE-EMPTION—7. CONSTRUCTION OF WAJIB-UL-ARZ. **87 P R 1895**

1. *Act IV of* 1872, *section* 14—"*Relationship.*"

Held, that the right of pre-emption by reason of relationship, under section 14 of Act IV of 1872, cannot be restricted to near relations, but must be taken to extend to all relations however distant, whose relationship to the vendor is found to be established. PREM SINGH *v.* JALLA. **151 P R 1879**

2. *Co-sharers—Preferential right—Relationship—Custom.*

In a suit for pre-emption, the property in dispute was found to be joint undivided property, in which both the plaintiff and the purchaser as co-sharers had an equal right of pre-emption under clause (*a*), section 12 of Act IV of 1872, but it was contended for the plaintiff that he, being a relative, had by custom a preferential right over the purchaser. The Administration-paper was to the effect that anyone who wishes to sell a share in a well must first offer it to a co-sharer and if the *near* co-sharer (*hissadar karib shurka*) does not purchase it, he must then offer it to the sharers in other wells.

Held, that the clause in the *Wajib-ul-arz* did not prove that among co-sharers a relative had a preferential right. SUKHA *v.* MURAD. **16 P R 1881**

3. *Custom—Preferential right of relation over co-sharer in joint* khata *who is not a relation.*

In a suit for pre-emption arising out of a sale of land in M. Muhamdipur, *tahsil* Chunian, in the Lahore district, found that by custom the plaintiffs, who were relations of the vendor, had a preferential right of pre-emption as against the purchaser who, though a joint owner in the *khata*, was not related to the vendor. NIHAL SINGH *v.* IWAN SINGH. **56 P R 1882**

4. *Custom*—Mauza *Hissar—Biradaran hakiki*

Found that by the custom prevailing in *mauza* Hissar, the right of pre-emption accrues in the first instance to own brothers

(*biradaran hakiki*), and in default of them, to proprietors in the village. SOHAN LAL *v.* MULA. **114 P R 1882**

5. *Act IV of* 1872, *section* 12 (*b*)—"*Order of relationship*"—*Ground urged for the first time at hearing of appeal to Chief Court.*

Held, following *Khan Mulla* v. *Fazlur* (No. 65 *P. R.* 1878), that the words "order of relationship" in section 12 (*b*) of Act IV of 1872 cannot be construed so as to put a person collaterally related in a more remote degree on an equal footing with a person related in a nearer degree, and that therefore the lower Appellate Court had correctly decided that the plaintiff who was a first cousin of the vendor was nearer in the order of relationship than, and had a superior claim under the above section to, the defendant who was a son of a first cousin.

It was urged for the first time at the hearing of the above appeal that section 12 (*b*) of Act IV of 1872 did not apply to the case as the village was not shown to be "held on ancestral shares." There was nothing on the record to show that the section did not apply, nor was the point made a ground of the written appeal. *Held*, that no sufficient reason had been shown for allowing the defendant to urge a ground not set forth in his memorandum of appeal, and the circumstances were not such as would justify the Court in ordering a further enquiry on the ground taken at the hearing. JAWAHIR SINGH *v.* NAND SINGH. **117 P R 1882**

6. *Co-sharers in joint holding—Act IV of* 1872, *section* 12, *clause* (*a*)—*Sale by one co-sharer to her son—Custom.*

In suit for pre-emption, it appeared that the plaintiff and defendant seller were the proprietors of a joint holding inherited from their mother, and that the purchaser in the sale out of which the suit arose was the son of the defendant seller.

Held, that the plaintiff was entitled to assert her right under clause (*a*) of section 12 of the Punjab Laws Act (as amended), and that the circumstance of the purchaser being the presumptive heir would not, in the absence of a special local custom conferring the right of pre-emption on such heir, deprive the plaintiff of her legal privilege. MUSSAMMAT JIAN *v.* MUSSAMMAT NADIR NISHAN. **6 P R 1883**

7. *Custom*—Mauza *Naushahrah Panwan*, Tahsil *Tarn Taran, Amritsar—Relationship.*

In a suit for pre-emption in respect of the sale of a house in the village site of M. Naushahrah Panwan in the Tarn Taran *tahsil* of the Amritsar district, *held*, that the defendant had failed to prove that the custom of pre-emption did not exist in such village site.

Held, further, that the plaintiff had proved that by the custom of the village relationship

formed a ground for claiming the right. PIRBHU *v.* SAWAN. **40 P R 1883**

8. *Custom*—Mauza *Karbans, Panipat—Relationship.*

In a suit for pre-emption of certain land situated in M. Karbans in the Panipat *tahsil*, *held*, that the plaintiffs had failed to prove a special custom in the village in favor of near relations obtaining a right of pre-emption before others who were not so nearly related. DEBA *v.* RAM NATH. **11 P R 1884**

9. *Plaintiff claiming pre-emption of house bought by "mutwalli" for the benefit of a mosque—Right of mosque to exercise right of pre-emption—Vicinage.*

In a suit for pre-emption, it appeared that the house in question had been bought by the *mutwalli* of a mosque on behalf of and for the benefit of the mosque, the said house adjoining the mosque and also adjoining plaintiff's house. It was contended for the plaintiff that the mosque being *wagf*, *i.e.*, the property of the Deity and not of any earthly owner, no right of the kind in question could attach to it.

Held, that such contention could not prevail; that there was no rule or principle warranting a denial to the mosque (as an institution) of the same right of preventing strangers approaching its walls by the exercise of a right of pre-emption, as other householders possessed, and that the mosque, as an institution, had practically proprietary rights exercised through the guardians, one of those rights being to claim, on the ground of vicinage, a right of pre-emption in the case of sales of adjoining properties. SHANKAR DAS *v.* SAID AHMAD. **153 P R 1884**

10. Wajib-ul-arz—*Relationship—Right of relations inter-se—Custom.*

In a suit for pre-emption, it appeared that the custom as laid down in the *Wajib-ul-arz* of the village was to the effect that if a shareholder wishes to dispose of his land he must first offer it to the sharers who are his relatives (*rishtadaran karib*), and after them to the other sharers.

Held, that as the above provision gave a preferential right to sharers who were related, those sharers among themselves would take in the order of their relationship to the vendor or mortgagor, and that therefore the mortgagee in the present case, who was one degree nearer to the mortgagor than the plaintiffs, had a preferential right of pre-emption. NAJAF ALI *v.* KUTBU. **58 P R 1885**

11. *Custom of Panipat—Vicinage.*

Found that in Panipat in the Karnal district a custom of pre-emption exists resting upon vicinage, and that the said custom gives a preference to a neighbour through whose gateway and over whose ground the house sold is approached, to one who is only a

neighbour because the back of his house adjoins the one sold but whose approach is from a different side. MUHAMMAD SALAMATULLA *v.* JALAL-UD-DIN. **24 P R 1887**

12. *Custom—Jullundur city—Relationship—Vicinage.*

In a suit for pre-emption regarding a house in *mohalla* Muftian in the city of Jullundur, *held*, that no custom had been established under which a collateral relative in the male line of the vendor has merely as such a right of pre-emption equal or superior to a neighbour.

Ata Muhammad v. *Hardit Mal* (No. 12 *P. R.* 1883) distinguished. *Sheikh Shahr Yar* v. *Imamudin* (No. 33 *P. R.* 1885), cited. SARBOLAND KHAN *v.* ISMAIL. **53 P R 1888**

13. *Custom—Mooltan city—Rival claimants—Vicinage—Onus of proof—Punjab Laws Act* (*IV of* 1872), *section* 11—*Equity and justice—Claimants with equal rights—Preferential right of claimant who has shown greatest diligence by suing first—Procedure to be adopted where separate suits are brought by rival claimants of pre-emption.*

On an appeal to the Chief Court it appeared that the real contest in the case lay between two rival claimants for pre-emption of a house in a sub-division of the city of Mooltan (in which the custom of pre-emption admittedly prevailed), of whom the appellant before the Court had asserted his claim first, the first respondent being the other claimant. It appeared that the houses of both claimants adjoined the house sold, but whereas the appellant's house adjoined the latter at the back for seven cubits only that of the respondent had the same frontage as the house sold, both the latter houses opening into the same public street, and thus adjoining each other for a length of 35 cubits. The Courts below decided in favour of the respondent, purporting to base their decision partly upon custom and partly upon principles of justice and equity.

Held (reversing the orders of the Courts below), (1) that the respondent had failed to prove a special local custom giving the owner of the house in front a preference over the owner of the house at the back: (2) that in the case of two rival claimants circumstanced as the rival claimants in the present case, the one claiming a superior right must show that he is so entitled by custom, otherwise (assuming always the general right of pre-emption, to prevail in the locality) their rights would have to be regarded as equal; (3) that considerations of equity and convenience, though no doubt underlying the formation of a local custom in matters connected with pre-emption cannot be substituted by the Court itself in the place of custom, that is to say as supplying the rule of decision where no

PRE-EMPTION—*contd.*

4.—RIGHT OF, ON ACCOUNT OF VICINAGE OR RELATIONSHIP—*contd.*

local custom is proved; and (4) that as neither claimant had proved a superior right over the other, and the rights of both as owners of contiguous property must therefore be held to be equal, the appellant who by first filing his suit had shown the greatest diligence was entitled to the whole house, each claimant having throughout contended over the whole house, and neither party having alleged a custom by which next door neighbours are entitled to claim a half share each of a house offered for sale.

The proper procedure to be adopted, when there are rival claimants suing separately for pre-emption, both of whom have superior rights to the vendee, but one of whom has superior rights to the other explained by RATTIGAN, J.

Ganda v. *Khwaja Muhammad Khan* (No. 64 *P. R.* 1880), *Kallan Khan* v. *Ram Sarn Das* (No. 97 *P. R.* 1880), *Mohkam Din* v. *Karim-ul-lah* (No. 102 *P. R.* 1881), *Sheikh Shahr Yar* v. *Imam-ud-din* (No. 33 *P. R.* 1885), *Kalia Ram* v. *Kallan Khan* (No. 108 *P. R.* (1886)), and *Muhammad Salamat-ulla* v. *Jalat-ud-din* (No. 24 *P. R.* 1887), cited. CHAUDHRI KHEM SINGH *v.* MUSSAMMAT TAJ BIBI. **83 P R 1888**

14. *Custom of Ludhiana City—Vicinage.* In a suit for pre-emption of a house, situate in the city of Ludhiana, *held* that the plaintiff had failed to prove a custom by which he, as owner of a house *not* adjoining the house sold, but opening into a lane said to be the private property of himself and the vendor, access to which lane had been granted by the vendor through his own house to the vendee, had a right to claim pre emption against the vendee whose house adjoined the house sold at the back only.

Chaudhri Khem Singh v. *Mussammat Taj Bibi* (No. 83 *P. R.* 1888), cited. MUHAMMAD AZIM KHAN *v.* NABIR **192 P R 1888**

15. *Custom of Batala City—Vicinage.* In a suit for pre-emption of a house in Batala in the Gurdaspur District, plaintiff claimed to have a right superior to the defendant, because his house adjoined the house in dispute, though it appeared that defendant owned a house, in the same street as the disputed house, whereas the plaintiff's house was in another street, and its contact with the disputed house arose only from their being back to back.

Held, that the plaintiff had failed to establish that he had by local custom a superior right to the defendant. JHANDU *v.* UMAR DIN. **17 P R 1889**

16. Mauza *Jamraniwala*, tahsil *Lodhran*, zilla *Mooltan—Vicinage—Preferential right —Punjab Laws Act* (*IV of* 1872), *section* 12.

PRE-EMPTION—*contd.*

4.—RIGHT OF, ON ACCOUNT OF VICINAGE OR RELATIONSHIP—*contd.*

In a suit for pre-emption of certain land in Mauza Jamraniwala in the Lodhran *tahsil* of the Mooltan District, it appeared that both the plaintiffs and the defendant, purchaser, were proprietors in *mauza* Jamraniwala, but the plaintiffs' claim to pre-emption was based on the allegation that as their lands adjoined the land sold, custom gave them a preferential right.

Held, that the plaintiff's suit failed, as they had not succeeded in proving that the custom alleged prevailed in *mauza* Jamraniwala. SAWAN MAL *v.* WASU RAM. **49 P R 1889**

17. Mauza *Gohana, Rohtak District—Vicinage—Relationship.*

In a suit for pre-emption of a house in *mauza* Gohana, in the Rohtak District, it appeared that the house in question was situated in a blind lane, the house in which plaintiff lived being on the opposite side of the lane but not touching it, while the defendant purchaser was the owner of a house touching it at the back. Plaintiff claimed pre-emption on the ground that he lived in the same lane, while defendant's premises at the back did not open on to the lane, and also on the ground that he was a second cousin of the vendor.

Held, that plaintiff had failed to prove any custom which entitled him to succeed on either of the above grounds. RUR SINGH *v.* TANSUKH RAI. **82 P R 1889**

18. *Custom—Batala—House adjoining at the back, but opening into another* mohalla.

Found that a custom of pre-emption by vicinage exists in the town of Batala.

Held, that under the custom, the plaintiff, whose adjoined the house in dispute at the back, though it opened into a different *mohalla*, was entitled to pre-emption. KARAM ILAHI *v.* ALI BAKHSH. **199 P R 1889**

19. *Pre-emption—Custom—*Mohalla *Purian —Town of Bhera.*

The custom of pre-emption based on vicinage found to prevail in the town of Bhera, Shahpur District, *Mohalla* Purian, in the said town is not a sub-division thereof for the purposes of section 11, Punjab Laws Act, 1872. One co-sharer in a house is not debarred from instituting a suit to enforce a right of pre-emption based on vicinage on the ground that the other co-sharer therein refuses to join in such suit. RAM ASRA *v.* GURDITTA. **42 P R 1891**

20. *Punjab Laws Act*, 1872—*Pre-emption —Relationship to vendor—Custom—*Mauza *Bopa Rai, Jagraon* tahsil, *Ludhiana District.*

The land in suit was situate in *mauza* Bopa Rai in the Jagraon *tahsil* of the Ludhiana District—a *bhayachara* village—

PRE-EMPTION—*contd.*

4.—RIGHT OF, ON ACCOUNT OF VICINAGE OR RELATIONSHIP—*contd.*

both the plaintiff and the purchaser being *khewatdars* in the *patti* in which the property sold was situate. The plaintiff was related to the vendor, whereas the purchaser was not.

Found, that no special custom was established by which the plaintiff had a superior right of pre-emption merely by reason of his relationship to the vendor. GAJJAN *v.* BHOPA **27 P R 1893**

21. *Punjab Laws Act*, 1872—*Pre-emption —Suit for, of house on village site between non-proprietary residents to—Vicinage—Special custom.*

Held, that when a non-proprietary resident of a village claims pre-emption of a house in the *abadi* on the ground that vicinage gives him the right, and such right is denied, it is incumbent upon the plaintiff to prove affirmatively that by the custom of the village he has the right of pre-emption. FAKIR CHAND *v.* SANGAT SINGH. **85 P R 1893**

22. *Pre-emption—Sale of a* tawela *in* mohalla *Gali Qasim Jan, Delhi City—Plea that property was no longer used as a* tawela *but as a* katra *or* serai*—Vicinage—Right of pre-emption claimed in respect of large property by virtue of ownership of small contiguous house.*

Plaintiff sued for pre-emption in respect of a sale of a large property called, and originally used as, a *tawela* in *mohalla* Gali Qasim Jan, in the city of Delhi, consisting of an extensive plot of land and enclosed by walls and buildings on four sides with an open space in the middle, the claim being based on plaintiff's ownership of a small house which abutted the property in dispute to a certain length on the north side. The District Judge, after finding several issues in favour of plaintiff, dismissed her suit on the ground that (*i*), the mere ownership of a small adjacent house could not give rise to a right of pre-emption in respect of so large a property as that in dispute, and (*ii*) that as the *tawela* had ceased to be used as such for several years and had become more like a *katra*, something more than the existence of the right of pre-emption in regard to dwelling-houses was necessary to prove that it also existed in regard to property of such a nature. Plaintiff appealed to the Chief Court and it was

Held, that the mere largeness in size of a property is not of itself sufficient ground for holding that the ordinary rules of pre-emption do not apply, nor does the relative smallness of the property by virtue of which plaintiff institutes his suit militate against his claim.

Held, further, that the property in suit having been originally built and used as a *tawela* the right of pre-emption, which

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admittedly prevailed in the *mohalla* as regards dwelling-houses, presumably attached to it, in the absence of definite proof of structural alterations to change it into a *katra* or *serai* and of prolonged unmistakable user of it as such.

Found, upon the evidence, that in any event plaintiff had succeeded in proving that the right of pre-emption attached to the property in the dispute.

No. 64 *P. R.* 1887 and No. 103 *P. R.* 1889 explained. MUSSAMMAT NUR JAHAN *v.* AZIZ-UD-DIN. **108 P R 1895**

23. *Pre-emption in towns—Plaintiff and defendant both claiming on ground of vicinage—Burden of proof.*

Vicinage confers a right of pre-emption in towns, but vicinage of one kind may be superior to vicinage of another kind. A plaintiff, therefore, who asserts that his vicinage is of a superior kind to that of a defendant-vendor must prove his claim. Nor is the burden of proof shifted merely because the plaintiff altogether denies the defendant's right of pre-emption, while defendant admits that plaintiff is a pre-emptor, but denies that he has a superior right of pre-emption. NAWAB MUHAMMAD MUMTAZ ALI *v.* KHAN ALI. **36 P R 1897**

24. *Pre-emption—Custom — Pre-emption on sale of houses in* mauza *Baghbanpura, tahsil and district Lahore—Relationship—Vicinage.*

Found, that no custom of right of pre-emption of house property based upon relationship or vicinage is proved to exist in the village of Baghbanpura, *tahsil* Lahore.

Nizam Din v. *Roshan Amir and others* (54 *P. R.* 1880), approved. TAJ DIN *v.* MUHAMMAD YASIN. **99 P R 1900**

25. *Pre-emption — Custom — Vicinage —* Mohalla *Pirzadgan, Sadhaura, Umballa District—Burden of proof.*

Found, that a custom of pre-emption exists in *Mohalla* Pirzadgan in the village of Sadhaura under which a resident in the *mohalla* on the ground of vicinage has a preferential right over a purchaser who was only a mortgagee of the house in dispute, and had no other connection with the *mohalla*.

The *onus* to prove that vicinage was not sufficient to give right of pre-emption lies upon defendant.

Gobind Ram v. *Sayad Ahmad* (10 *P. R.* 1886), *Ralia Ram* v. *Kallan Khan* (108 *P. R.* 1886), *Sheikh Shahryar* v. *Imam-ud-din* (33 *P. R.* 1885), *Muhammad Salamat-ulla* v. *Jalal-ud-din* (24 *P. R.* 1887), and *Chaudhri Khem Singh* v. *Mussammat Taj Bibi* (83 *P. R.* 1888), referred to. ALI MUHAMMAD AND ANOTHER *v.* KADIR BAKHSH. **107 P R 1900**

26. *Custom—Pre-emption—*Mohalla *Bhabran in the city of Nakodar—Vicinage—*

PRE-EMPTION—*contd.*

4.—RIGHT OF, ON ACCOUNT OF VICINAGE OR RELATIONSHIP—*contd.*

Right of person who owns houses in the same mohalla—*Punjab Laws Act*, 1872, *section* 11.

In a suit for pre-emption of a house in *mohalla* Bhabran in the city of Nakodar, plaintiff claimed the right of pre-emption on the ground that he was a caste-fellow of the vendor and also a neighbour. The plaintiff had two houses in the *mohalla*, neither of which adjoined the house in dispute, one being situate on a public road running along its back and opposite to it and the other separated by a branch lane and a block of buildings which belonged to other people, but there was a common doorway for the whole *mohalla*.

Held, that the plaintiff had failed to prove the existence of a custom of pre-emption in *mohalla* Bhabran, Nakodar, on the grounds set forth by him. The right of pre-emption being a right of a very special kind, as it has a tendency to hamper free disposition of property, requires to be clearly and unequivocally shown to exist before it can be enforced. Considerations of equity, convenience, privacy, exclusion of strangers and the like doubtless underlie the custom of pre-emption, but the law requires that it should be proved in a concrete form, and it is not open to the Court to assume the existence of any particular incident in the absence of proof merely because such incident can be supported on those considerations. Mere opinion not based on instances are generally valueless to prove that such custom exists.

Chaudhri Khem Singh v. *Mussammat Taj Bibi* (83 *P. R.* 1888), *Thakar Das* v. *Muhammad Bakhsh* (100 *P. R.* 1892), *Raman Mal* v. *Bhagat Ram* (17 *P. R.* 1895), *Saudagar Mal* v. *Aman Singh* (70 *P. R.* 1899), approved and followed. *Thakar Das* v. *Diwan Chand* (56 *P. R.* 1885), *Ralia Ram* v. *Kallan Khan* (108 *P. R.* 1886), *Jhandu* v. *Umar Din* (17 *P. R.* 1889), referred to. *Chaudhri Nur Ahmad* v. *Ganga Ram* (68 *P. R.* 1890), and *Nawab Muhammad Mamtaz Ali Khan* v. *Ali Khan* (36 *P. R.* 1897), distinguished. MELA RAM AND OTHERS *v.* PREMA AND OTHERS.

109 P R 1900

27. *Pre-emption—Claim based on vicinage where the pre-emptor parted with his own property during the pendency of the suit.*

Where a pre-emptor filed a suit for pre-emption of a dwelling-house on the ground of vicinage, but before obtaining a decree divested himself by gift of the proprietary right in the house the title in which gave him the right to sue.

Held, that it would be inequitable to decree his claim, as a decree in his favour would not confer upon him the benefit for securing which the right of pre-emption exists, namely, the enjoyment of his own property without molestation from undesirable neighbours.

Sakina Bibi v. *Amiran and others* (*I. L. R.* *X All.* 472) and *Ram Gopal* v. *Piari Lal*

PRE-EMPTION—*contd.*

4.—RIGHT OF, ON ACCOUNT OF VICINAGE OR RELATIONSHIP—*contd.*

(*I. L. R. XXI All.* 441), referred to. ATMA RAM *v.* DEVI DYAL AND ANOTHER.

49 P R 1901

28. *Custom—Pre-emption—Plaintiff and defendant both claiming on ground of vicinage—Burden of proof.*

In a suit for pre-emption of a house situate in the city of Delhi on the ground of a superior vicinage inasmuch as the pre-emptor's house and the house sold adjoined on one side and opened into the same lane, while the vendee's house adjoined the house sold in part on the back and opened into a different lane, the plaintiff in order to prove his claim produced two witnesses, who could give no instances in support of their statements, *held*, that the plaintiff had failed to establish a custom under which he had a superior right to claim pre-emption against the vendee.

Mehtab Roy v. *Amir Chand* (189 *P. R.* 1882), *Chaudhri Khem Singh* v. *Mussammat Taj Bibi* (83 *P. R.* 1888), *Muhammad Azim Khan* v. *Kabir* (192 *P. R.* 1888), *Nawab Muhammad Mumtaz Ali Khan* v. *Khan Ali*, (36 *P. R.* 1897), and *Sela Ram* v. *Prema* 100 *P. R.* 1900), cited. *Muhammad Salamatulla* v. *Jalal-ud-din* (24 *P. R* 1887) not approved. BABU MAL *v.* SARDAR SINGH.

17 P R 1903

29. *Custom—Pre-emption—*Mauza *Kotli Kanjran, Gurdaspur District—Relationship—*Wajib-ul-arz.

Plaintiff claimed a right of pre-emption of certain land situated in *mauza* Kotli Kanjran, *tahsil* Gurdaspur, arising out of a sale by defendants Nos. 2 and 3 in favour of defendant No. 1, on the ground of his relationship to the vendor, and based his claim upon entries in the *Wajib-ul-arz* of the village prepared in 1852. These entries were to the effect that no sale or mortgage of land had ever occurred in the village and then prescribed that every co-sharer was thenceforward to be at liberty to mortgage or sell for necessity or to pay arrears of Government revenue, but that the should make the first offer of it to the *karabatian* and after that to the co-sharers in the *patti*. The facts found were that, although there had been more than 51 sales in the village, in no case had the right of pre-emption based on relationship in accordance with the provisions of the *Wajib-ul-arz* been asserted or allowed.

Held, that no custom of pre-emption based on relationshtp had been proved to exist in the village. The entries in the *Wajib-ul-arz*, never having been acted on or the right exercised in accordance therewith, were not sufficient to establish the custom set up.

Masta v. *Pohlo* (52 *P. R.* 1896) and *Dilsukh Ram* v. *Nathu Singh* (98 *P. R.* 1894, F. B.) distinguished.

Jafar Khan v. *Fazal Mohy-ud-din* (44 *P. R.* 1892) and *Jiwa* v. *Mussammat Bhari*

PRE-EMPTION—*contd.*

4.—RIGHT OF, ON ACCOUNT OF VICINAGE OR RELATIONSHIP—*contd.*

(92 *P. R.* 1892), referred to. RAM SAARN DAS *v.* MULA SINGH. **64 P R 1903**

30. *Custom—Pre-emption*—Mauza *Chhara, District Rohtak—Preferential right—Relationship—Burden of proof.*

In a suit for pre-emption of a house situate within the *abadi* of Chhara in the District of Rohtak, *held*, that under the terms of the *Wabjib-ul-arz* of the village, the plaintiff, a Jat and a near agnate of the vendor, had a right of pre-emption superior to that of a *Mahajan* who was only a share-holder in the village.

Burden of proof that any existing custom has been incorrectly stated in a record of rights rests on the person making such assertion. MAHA RAM *v.* RAM MOHAR.

65 P R 1903

31. *Pre-emption—Punjab Laws Act*, 1872, *section* 12 (*b*)—"*Order of relationship*," *meaning of*.

Held, by the Full Bench that the expression "in the order of relationship" in section 12 (*b*) of the Punjab Laws Act, 1872, has no reference to degrees of propinquity but is equivalent to "order of succession" in cases of inheritance of landed property under the Customary Law of the Punjab.

Masta v. *Pohlo* (52 *P. R.* 1896), and *Dilsukh Ram* v. *Natha Singh* (98 *P. R.* 1894, *F. B.*), referred to.

Khan Mulla v. *Fazlur* (65 *P. R.* 1878), *Jawahir Singh* v. *Nand Singh* (117 *P. R.* 1882), *Najaf Ali* v. *Kutbu* (58 *P. R.* 1885), *Narain Singh* v. *Hari Singh* (28 *P. R.* 1899), and *Khota* v. *Alu* (17 *P. R.* 1905), overruled. KARIM BAKHSH *v.* JEHANDAD KHAN.

74 P R 1906 F. B.

32. *Custom—Pre-emption — Pre-emption on sale of agricultural land on ground of vicinage*—Mauza *Chahan Miran Khan*, tahsil *Shujabad, Multan District.*

Held, that the custom of pre-emption in respect of sale of agricultural land by reason of vicinage in *Mauza* Chahan Miran Khan, *tahsil* Shujabad of the Multan District, had not been established.

Sawan Mal v. *Wasu Ram* (49 *P. R.* 1889), followed. THAKAR DAS *v.* MOTAN MAL.

77 P R 1906

33. *Pre-emption—Sale of several houses adjoining one another—Suit by owner of a house adjoining one only of the houses sold—Defence by vendee—Meaning of word "adjacent" in Punjab Pre-emption Act,* 1905, *section* 13 (7), *discussed.*

Held, by Full Bench—Chatterji, Rattigan and Chevis, JJ. (Chevis, J., dissenting), that when two houses which adjoin one another are sold jointly, the right of pre-emption of the owner of a house, which adjoins only *one* of the two houses sold, extends to that *one* house only and not to both the houses sold.

PRE-EMPTION—*contd.*

4.—RIGHT OF, ON ACCOUNT OF VICINAGE OR RELATIONSHIP—*concld.*

The meaning of the word "adjacent" in Punjab Pre-emption Act, 1905, section 13 (7), discussed. *Held* by Full Court (Robertson and Rattigan JJ., dissenting), that where on such a sale the owner of the adjoining house sues for pre-emption in respect of the one of the two houses sold to which his right extends, the vendee is *not* entitled to say that by reason of his having under the sale-deed become owner of the other house he stands on an equal footing with plaintiff (both being owners of adjoining houses) and that the plaintiff cannot, therefore, pre-empt the house adjoining his own.

Bhagwan Das v. *Mohan Lal* (¹), and *Ram Bit Singh* v. *Narain Rai* (²), dissented from.

Darehan Khan v. *Sohaura Mal* (³) overruled.

Uttam Chand v. *Lahori Mal* (⁴) approved of.

SANWAL DAS *v.* GUR PARSHAD.

90 P R 1909, F. B.

5.—RIGHT OF, ON MORTGAGES.

—*Construction of document—Mortgage or sale—Plea of custom raised for first time that right of pre-emption existed in respect of mortgages in Chief Court.*

See PRE-EMPTION—13. CONSTRUCTION OF TRANSFERS. **36 P R 1899**

1. As to mortgages, *held*, that unless there was a provision in the *Wajib-ul-arz* conferring the right, pre-emprtion could only be claimed in the case of a permanent transfer. *Quære*, whether it could be claimed upon foreclosure. GOLAB *v.* WUZEERA.

87 P R 1867

2. *Held*, also, that the right did not apply to mortgages, but to permanent transfers only. MAN SINGH *v.* MUSSAMMAT DYDEE.

98 P R 1868

3. Where the *Wajib-ul-arz* provided for the right in a case of usufructuary mortgage, *held*, that the provision should be enforced without regard to the real or supposed beneficial or detrimental effect in the particular case. BUNSEE LAL *v.* BUNSEE.

4 P R 1869

4. *Act IV of* 1872, *sections* 7 *and* 10—*Custom—Mortgage by conditional sale.*

Section 10 of Act IV of 1872 was not intended to exclude the application of custom under section 7 to cases of pre-emption. *Held*, therefore, that a right of pre-emption by custom arises on a mortgage by conditional sale, notwithstanding section 10 of Act IV of 1872, which extends the right of pre-emption to foreclosures of mortgages only. BIJEY SINGH *v.* KAHNA. **53 P R 1877**

5. *Mortgage—Custom—Act IV of* 1872, *sections* 7 *and* 10.

Found by the custom of *mauza* Majri, *tahsil* and *Zilla* Umballa, that the right

PRE-EMPTION—*contd.*

5.—RIGHT OF, ON MORTGAGES—*contd*

of pre-emption extends to mortgages; and *held*, following No. 53 *P. R.* 1877 that effect must be given to such custom under section 7, Act IV of 1872, notwithstanding section 10 of that Act.—DOULATYA *v.* KHEMAN. **49 P R 1878**

6. *Custom—Bhular Jats of Kasur* Tahsil *—Mortgage.*

In a suit for pre-emption, the parties to which were Bhular Jats of *mauza* Nirhali in the Kasur *tahsil* of the Lahore District, *held*, that the plaintiffs had failed to prove the existence of a custom of pre-emption in respect to mortgages. NIHAL SINGH *v.* UTTAM CHAND. **20 P R 1885**

7 *Custom*—Wajib-ul-arz—*Mortgage.*

A claim for pre-emption in the case of a mortgage, based upon a provision in the *Wajib-ul-arz* of the village, *held*, to be maintainable, the entry in the *Wajib-ul-arz* being regarded as evidence of the existence of the custom of pre-emption, as well as of a contract between the proprietors of the village regulating the exercise of the right. *Bunsee Lal* v. *Bunsee* (No. 4 *P. R.* 1869) and *Bijey Singh* v. *Kahna* (No. 53 *P. R.* 1877), referred to. UTTAM SINGH *v.* FATTEH SINGH.

103 P R 1885

8. *Mortgage*—Wajib-ul-arz.

In a suit for pre-emption of certain land situated in the Hoshiarpur *tahsil*, *held* that, under the terms of the *Wajib-ul-arz* of the village, the right of pre-emption attached to mortgages by a proprietor of every description without restriction. BULAND KHAN *v.* THAKUR DAS. **10 P R 1887**

9. *Custom—Pre-emption of mortgage*—Mohalla *Bhabrianwala, City Mooltan.*

Found, that no special custom was shown to exist in *mohalla* Bhabrianwala in the City of Mooltan, recognizing a right of pre-emption in the case of mortgages. KARAM BAKHSH *v.* POHKAR DAS. **33 P R 1890**

10. *Custom — Pre-emption— Mortgage—Suit for pre-emption based on mortgage*—Wajib-ul-arz—Mauza *Sahri*, tahsil *Hoshiarpur.*

In a suit for possession as pre-emptors of certain mortgage land, situate in *mauza* Sahri in the Hoshiarpur *tahsil* of the Hoshiarpur District, based upon a provision in the *Wajib-ul-arz* of the last Settlement, *held*, that the plaintiffs had failed to prove that the provision in the former *Wajib-ul-arz* had ever been acted upon, and that the true meaning of the existing *Wajib-ul-arz* was that the right of pre-emption arises, in cases of mortgages, only on foreclosure of the right of redemption.

Buland Khan and another v. *Thakar Das and another* (10 *P. R.* 1887) and *Masta* v. *Pohlo and others* (52 *P. R.* 1896), referred to. BHAGWAN SINGH AND ANOTHER *v.* HUKAM SINGH AND ANOTHER. **11 P R 1901**

PRE-EMPTION—*contd.*

5.—RIGHT OF, ON MORTGAGES —*concld.*

11. *Custom—Pre-emption—Right of, on mortgages*—Wajib-ul-arz.

Plaintiff claimed a right of pre-emption in respect of a mortgage of certain land situated in *mauza* Ghola, *tahsil* Zafarwal, and relied in support of his claim upon entries in the *Wajib-ul-arz* of 1855 of the village. The entries were to the effect—"*Asl hakiyat kissiki rahn nahin, Bawakt* "*zarurat jo koi intikal apni hakiyat ka* "*chahega hasb kimat mukarrar zamindaran-i-* "*dihat kurb jowar jab tak hakiki wa* "*hissadaran patti ya dusri patti ke malik* "*khawahan honge, hakiyatdar ko bai wa* "*rahn kakiyat ka shakhs ghair ke hath na hoga.*"—These were not repeated in any subsequent *Wajib-ul-arz* and notwithstanding the fact that there had since been numerous mortgages the plaintiff had not shown a single instance where there had been an attempt to assert a right of pre-emption extending to mortgages in accordance with the provisions of the *Wajib-ul-arz.*

Held, that the entries in the *Wojib-ul-arz* of 1855, relating to the existence of an alleged custom, unsupported by instances of its having been ever exercised, and contradicted by the entries themselves which expressly mentioned that there had never been any instance, and that they had been made for future guidance, could not be deemed to be sufficient evidence of such a custom.

Dilsukh Ram v. *Nathu Singh* (98 *P. R.* 1898, F. B.) and *Sham Ram* v. *Mussammat Hemi Bai* (73 *P. R.* 1896) cited. UMRA *v.* HARA. **46 P R 1903**

12. *Custom — Pre-emption — Mortgage—Suit for pre-emption based on mortgage—Relationship*—Wajib-ul-arz—Mauza *Langarpur*, tahsil *Dasuha, Hoshiarpur District.*

In a suit for pre-emption of certain mortgage land situate in *mauza* Langarpur, *tahsil* Dasuha of the Hoshiarpur District, *held* that under the terms of the *Wajib-u-arz* of the village the plaintiff, as a collateral of the vendor, had a preferential right on the ground of relationship.

Dilsukh Ram v. *Nathu Singh* (98 *P. R.* 1894, *F. B.*), cited. ALI MUHAMMAD *v.* PIRAN DITTA. **70 P R 1905**

6.—RIGHT OF, IN VILLAGES.

1. *Preferential right.*

Where there was a mortgage effected, and the mortgagee and pre-emptor's estates adjoined the mortgaged property, both parties being puttidars of the mortgagor, but the pre-emptor was of the same caste as the mortgagor and the mortgagee of a different caste, *held*, that the pre-emptor could not disturb the transaction. BOLA *v.* MAHOMED BUKSH. **41 P R 1866**

2. *Preferential right—Chukdaree tenure.*

In Mooltan while the *zemindar* is owner of the soil, the *chukdar* is owner of the well, and enjoys the right of arranging for the cultivation; and to the latter only belongs the right of repairing the old well or replacing it by a

PRE-EMPTION—*contd.*

6.—RIGHT OF, IN VILLAGES—*contd.*

new one. NAWAB MAHOMED SURFURAZ KHAN *v.* DEWA MULL. **34 P R 1868**

3. *Preferential right*—Wajib-ul-arz.

Where the *Wajib-ul-arz* only dealt with the right of relations as to pre-emption, and in the absence of proof of any custom, it was not to be implied that no other pre-emption rights existed in the particulur community but in such case, the general rights given by the Punjab Civil Code (section 13, para 11) were to be recognized, with proper attention to vicinage, relationship, partnership in the same *thok*, &c. GOOMANEE *v.* RUHEEMOOD DEEN. **35 P R 1870**

4. The co-sharer in the well *held* to have the right of pre-emption as to the shares in that well in preference to the general proprietor of the village, who had no share in the well, but merely received a *haq zemindari* payable by the *chukdars*. MUCKDOOM SHAH ALI MAHOMED *v.* OOMUR ALI. **44 P R 1870**

5. *Preferential right—Co-sharers.*

Where both parties are co-sharers, the fact of one possessing a larger share does not give him a preferential right to pre-emption over his co-sharers. UMUR ALI *v.* MUKHDUM SHAH ALI MAHOMED. **59 P R 1870**

6. *Preferential right—Co-sharers equally related to vendor—Act IV of* 1872*—Decision in case not specially provided for.*

In a suit for pre-emption, purchaser and pre-emptor were equally related to the vendor, and were co-sharers in the village. Of the land sold, only one plot, measuring one bigah fourteen biswas, was adjacent to the land of the purchaser, whereas the bulk of the land (50 bigahs) was adjacent to the holding of the pre-emptor. No custom was shown. *Held*, by BOULNOIS and LINDSAY, JJ., that the pre-emptor had not a preferential, but an equal right, and could not disturb the purchaser; CAMPBELL J., dissenting, "Equity," under Section VI, Act IV of 1872, considered. GAMI *v.* SABIB. **91 P R 1875**

7. *Haq biswadari.*

Plaintiff, a Muhammadan Rajput, defendant, a Jat, and some other Jats, were owners of village N.—B. was a representative of a former proprietor, who, not being able to show a good title at the Settlement against the persons in possession as the proprietary body of the village, received by the order of the Settlement Officer ten per cent. upon the revenue of village N. The father of plaintiff, a relation of B., was recorded as proprietor of half the village, and the Jats as proprietors of the other half; plaintiff's father having the right of pre-emption as to the Jats' half, but the Jats having no such right as to the other half B. sold his allowance of 10 per cent. on the revenue, or *haq biswadari*, to defendant; and plaintiff claimed pre-emption. *Held*, that the right of

PRE-EMPTION—*contd.*

6.—RIGHT OF, IN VILLAGES—*contd.*

pre-emption extended to this *haq biswadari* and (LINDSAY, J., dissenting as to this) that plaintiff had a preferential right to defendant, section 14, Act IV of 1872, applying to the case. GANGA RAM *v.* NAJIB KHAN. **61 P R 1876**

8. *Act IV of* 1872, *section* 14, *clause* 2—*Landowners of sub-division of village.*

In a suit for pre-emption, the purchaser held land in the *patti* in which the disputed land was situated, and he was also a sharer of the *khata* in which the same land was. *Held*, that the vendor and purchaser were, as co-sharers in the *khata*, landowners of the same sub-division of the village, within clause 2, section 14, Act IV of 1872, and that the purchaser had a preferential right to that of the superior proprietor who received 5 per cent. *malikana*. SOUDAGAR *v.* ILLAHI BAKSH KHAN. **11 P R 1877**

9. *Act IV of*21,87 *section* 14, *clause* 2—*Joint right.*

Plaintiffs, 13 out of 32 proprietors of a *patti*, claimed the right of pre-emption in respect of land situate in their *patti* sold to defendants, proprietors in another *patti* in the same village. *Held*, that they were entitled to pre-emption under clause 2, secticn 14, Act IV of 1872.

In the right of accepting the offer of sale which belongs, under clause 2, section 14, Act IV of 1872, to the pattidars jointly, there is involved a right on the part of every pattidar to accept the offer, and the joint right thus regarded is not lost or destroyed by the refusal or omission of some of the pattidars to join the rest in the acquisition of the land offered.

Quære.—Whether if the majority of the pattidars had by some positive act assumed to relinquish the right on behalf of all, the act of the majority could take effect so as to bind all to the prejudice of any one of those for whose join benefit the provision in clause 2, section 14, Act IV of 1872, existed. RODA *v.* KAKA. **94 P R 1877**

10. *Relationship—Hereditary occupant of land sold.*

Plaintiff claiming a right of pre-emption was collaterally related in the 8th degree to the vendors, while the vendees were collaterally related in the 9th degree and were also hereditary cultivators of the land sold, and had been in possession of it for a long time. On the latter ground the Courts below dismissed the plaintiff's suit. *Held*, by the Chief Court, that the plaintiff being nearer in the order of relationship, was entitled to a decree, under section 14, Act IV of 1872. KHAN MULLA *v.* FAZLUR. **65 P R 1878**

11. *Rival claimants — Acquiescence — Waiver—Estoppel—Principle of distribution of shares to each claimant—Act IV of* 1872, *section* 12, *as amended by Act XII of* 1878 *—Vendor's election where parties are equally*

PRE-EMPTION—*contd.*

6.—RIGHT OF, IN VILLAGES— *contd.*

entitled—Exercise of such election must be before sale.

Mere willingness to acquiesce in a sale, unaccompanied by any waiver or any conduct which would operate as an estoppel, does not bar a claim to pre-emption. *Nabi Bakhsh* v. *Kaka Singh* (42 *P. R.* 1878) cited.

In a suit for pre-emption, where there were two sets of plaintiffs claiming the right of pre-emption, it appeared that both sets of plaintiffs were aware of the sale, and that one set of plaintiffs (the present appellants) would probably not have come forward to claim pre-emption had not their brothers first done so, but that they brought their suit immediately after they learnt that the other suit had been instituted. *Held*, that under such circumstances there could not be said to be any estoppel between the two sets of plaintiffs, and that there being no proof of waiver or estoppel such as would bar the suit of the present plaintiffs against the purchaser, facts which merely tended to show acquiescence in the sale could not be taken into consideration.

The claimants of pre-emption in the above case were five brothers, two of whom joined in one suit, and three in another. Though by different mothers, it was admitted that, in case of succession, this fact would make no difference in their respective shares. The first Court, finding the rights of both sets of plaintiffs to be equal, decreed one half of the land in suit in favor of one set and the other half in favor of the second set. *Held*, that the correct principle was to give each brother, who was a party in either suit, an equal share in the property.

The provision in section 12 of Act IV of 1872 as amended by Act XII of 1879, which allows the vendor to determine between two persons equally entitled to pre-emption, which of them shall exercise the right, only enables the vendor before the sale is completed to make such election, but gives him no right after he has parted with the property to elect between two competing claimants to pre-emption. KARIM BAKSH *v.* KHUDA BAKSH.

20 P R 1881

See also MEHR AHMED *v.* KHUDA BAKHSH.

20 P R 1881 Note.

12. *Rival claimants with equal rights—Separate suit for pre-emption by each claimant—Superior diligence of first claimant in asserting his right—Custom.*

Plaintiff and defendant had originally an equal right of pre-emption in certain house property, both being next door neighbours. Plaintiff first brought a suit for pre-emption of the whole house against the purchaser and the defendant, and obtained a decree. Defendant, while the plaintiff's suit was pending, also brought a suit against the purchaser alone for the whole house, and got a decree. No custom was ever alleged by which next door neighbours were entitled to claim a half share each of a house.

PRE-EMPTION—*contd.*

6.—RIGHT OF, IN VILLAGES— *contd.*

Held, upon defendant's appeal, contending hat half of the house should have been decreed to plaintiff and half left with defendant, that the plaintiff, having by superior diligence in asserting his right got a decree against the purchaser and the defendant also for the whole house, and the defendant's decree against the purchaser being of no avail against the plaintiff, there was no ground for giving the defendant half the house. *Karim Baksh* v *Khuda Baksh* (No. 20 *P. R.* 1881), distinguished. MOHKAM DIN *v.* KARIM-ULLAH. **102 P R 1881**

13. *Custom*—Mauza *Kotha Kalan, Rawalpindi—Respective rights of full proprietor and malik qabza*—Wajib-ul-arz—*Preferential right of landowner in the same* patti *as that in which the land sold is situated.*

In a suit for pre-emption of land situated in *mauza* Kotha Kalan in the Rawalpindi district, it was found that the plaintiff had failed to prove any special custom under which his claim to pre-emption as a full proprietor was superior to that of a *malik gabza*, also a land-holder of the village, the land sold being sold by another of the village owners.

But *held*, that under the terms of the *Wajib-ul-arz* of the village (no contrary custom being shown to exist), the plaintiff had a superior right of pre-emption to the vendee-defendants, inasmuch as he was a landowner in the *patti* in which the land in dispute was situated, whereas the vendees were land owners in another *patti*. LAL KHAN *v.* NAJIB-ULLA. **14 P R 1882**

14. *Sale of share in undivided holding part of which was already joint property of plaintiffs and the purchaser—Joint right of pre-emption—Joint purchase—Act IV of* 1872, *section* 12.

In a suit for pre-emption, it appeared that the sale in question was of one-fourth share in an undivided holding, half of which was already the joint property of the plaintiffs and the purchaser.

Held, that the right of pre-emption was under these circumstances a joint right of the plaintiffs and the purchaser : that the latter by buying a share had exercised the plaintiffs' rights as well as his own : that the last clause but one of section 12 of Act IV of 1872 was not applicable to a case of the above nature, and, as nothing had been pleaded which would defeat plaintiffs' right to claim a share, they were entitled to treat the purchase as made for themselves and the purchaser jointly, and to claim half on payment to the purchaser of half the price. AHMED DIN *v.* MUSSAMMAT HASSO. **54 P R 1882**

15. *Sale of transferable right of occupancy—Punjab Laws Act, sections* 9, 10, *and* 12—*Tenancy Act, section* 34—*Who may claim pre-emption in default of landlord.*

In a suit for pre-emption arising out of a sale of a transferable right of occupancy, *held*, that though the last clause of section 12 of the Punjab Laws Act gives a preference, in case

PRE-EMPTION—*contd.*

6.—RIGHT OF, IN VILLAGES— *contd.*

the landlord does not exercise the right conferred on him by section 34 of the Tenancy Act, to persons belonging to the 6th and 7th of the classes mentioned in section 12 over all others, it does not wholly exclude the operation of the earlier part of the section, which states the order in which, in the absence of custom to the contrary, the right of pre-emption shall be claimable, nor are there any words to indicate that, in default of any claim by the landlord, only persons belonging to the 6th and 7th of the classes previously specified, and no others, shall be entitled to claim pre-emption. HAZARI *v.* ISA.

106 P R 1882

16. *Act IV of* 1872, *section* 10—*Sale of occupancy right—Presumption as to existence of right of pre-emption – Transferable right—Act XXVIII of* 1868, *sections* 5, 34—*Custom.*

Where the proprietor of the land in suit transferred by way of sale a right of occupancy to the defendant, who was then cultivating the land as a tenant-at-will, whereupon the plaintiff, who was a proprietor and lambardar in the village, sued to enforce his right of pre-emption in respect of the right of occupancy sold, *held*, that as the deed of sale simply purported to give the defendant a right of occupancy, and was silent as to whether that right was transferable or not, it was necessary to refer to the provisions of section 34 of the Tenancy Act to determine this question, and as a right of occupancy created by contract was not a right of occupancy under section 5 of the Act, therefore, under the last clause of section 34, defendant, in the absence of an agreement between him and the landlord excluding the operation of the last-named section, had no transferable right and therefore no presumption in favour of the right of pre-emption arose under section 10 of the Punjab Laws Act.

Held, further, that no custom giving such right in a case like that stated above had been established. *Sher Khan* v. *Gujar* (No. 55 *P. R.* 1879), cited. JEHANA *v.* CHOWDRI JIWAN KHAN. **196 P R 1882**

17. *Act IV of* 1872 (*as amended*), *section* 12—*Plaintiff and purchaser equally entitled to pre-emption—Custom.*

In a suit for pre-emption, in which it appeared that the plaintiff and defendant purchaser had an equal right of pre-emption, the lower Appellate Court dismissed the plaintiff's claim on the ground that as both parties were equally entitled, the vendor might determine which of them should exercise the right. In appeal to the Chief Court it was urged for the plaintiff that there was a custom in the village to divide the land in regard to which the right of pre-emption arose amongst the pre-emptors.

Held, that this contention could not prevail, as there were no grounds for holding that the last clause but one of section 12 of the Punjab Laws Act, which definitely laid down that when it had been decided, whether by

PRE-EMPTION—*contd.*

6.—RIGHT OF, IN VILLAGES—*contd.*

custom or law, that two persons were equally entitled to pre-emption, in that case the seller was entitled by law to choose which should exercise the right, was governed by the words "in the absence of a custom to the contrary," which occur in the first sentence of section 12. JOHAR SINGH *v.* MANGAL SINGH. **117 P R 1883**

18. *Punjab Laws Act, section* 10 (*b*)—*Transferable right of occupancy—Presumption of existence of right of pre-emption—Custom.*

In a suit for pre-emption, it appeared that the proprietor of the land in suit gave the defendant, his tenant-at-will, a right of occupancy in the said land in consideration of a cash payment, by a lease registered on the 31st August 1878, and after the death of the said proprietor, the defendant produced the deed in mutation proceedings before the Tahsildar on 8th October 1879, whereupon on 9th February 1880 the plaintiffs, the heirs of the proprietor, sued for pre-emption. The lower appellate Courts held that the act of the proprietor in giving rights of occupancy for a consideration was a permanent alienation, and the law of pre-emption therefore applied.

Held semble, that as the registered lease did not purport to give any transferable right in the land, therefore with reference to clause (*b*) of section 10 of the Punjab Laws Act no right of pre-emption could be presumed to arise, though evidence might be given to show that by custom such right existed. *Bulaki Shah* v. *Hafiz Esan* (No. 67 *P. R.* 1874), and *Jehana* v. *Chowdri Jiwan Khan* (No. 196 *P. R.* 1882), cited, GHIBA *v.* HAYAT **120 P R 1883**

19. *Adhlapi transaction—Sale—Punjab Laws Act, section* 9.

Held, that a transfer of half a well with the land attached thereto in *adhlapi* tenure, *i.e.*, in proprietary right in consideration of the transferee restoring a ruined well and paying a premium in cash, is a sale within the meaning of section 9 of the Punjab Laws Act, so as to be subject to the right of pre-emption ; and a pre-emptor, who undertakes to carry out all the terms of the contract, is entitled to a decree, putting him in the place of the *adhlapidar*. MUL CHAND *v.* MANSA RAM. (157 *P. R.* 1883) and GAMAN *v.* GHOLAM HUSEIN KHAN. **157 P R 1883 Note**

20. *Custom—Mauza Baragaon, zilla Karnal—Right of shareholder in village purchasing land in another patti to resist claim by shareholder in that patti.*

In a suit for pre-emption of land situated in M. Baragaon, *tahsil* and *zilla* Karnal, *held*, that the defendant had succeeded in showing that a custom existed which entitled him as a shareholder in the village, who had purchased land in another *patti*, to resist a claim for pre-emption brought by a shareholder in that *patti*. NAWAB MUHAMMAD ALI KHAN *v.* MIRAN BAKSH. **189 P R 1883**

PRE-EMPTION—*contd.*

6.—RIGHT OF, IN VILLAGES—*contd.*

21. *Purchaser with right of pre-emption joining in the purchase person without such right—Right of such purchaser to defeat plaintiff's claim.*

In a suit for pre-emption, where it appeared that one purchaser, having a right of pre-emption superior to the plaintiff's, had joined in the purchase with a person who had no such right, *held*, that the said purchaser could not be allowed to rely on his own right so as to defeat the plaintiff's claim, but being a party to a transaction by which the plaintiff's right of pre-emption was infringed was entitled to no superior position, when that right was asserted, to that of the other party who had joined with him in the purchase. IMAM-UD-DIN *v.* NUR KHAN. **10 P R 1884**

22. *Punjab Laws Act* (*IV of* 1872, *as amended by XII of* 1878), *section* 12, *clauses* (c) *and* (*d*)—*Joint claim by landowners of patti—Determination of right where two persons are equally entitled.*

In a suit for pre-emption, the lower Courts held that as plaintiff and the vendee had equal rights in the patti in which the land sold was situate, the plaintiff under clause (*c*) of section 12 of the Punjab Laws Act (as amended) was entitled to purchase the land jointly with the vendee. It appeared, however, that there was no joint claim for pre-emption on the part of the shareholders of the *patti*, the rest of the shareholders having stood aside, and the claim being brought by one shareholder only asserting his individual right.

Held, that under the above circumstances plaintiff's claim did not fall under clause (c) but under clause (*d*) of the Act, and as no joint claim was made by the landowners, and plaintiff and the purchaser each had a separate right to accept an offer of sale, the penultimate paragraph of section 12 must take effect, and as the vendor had elected to sell to the defendant, the plaintiff's claim failed. *Roda* v. *Kaka* (No. 94 *P. R.* 1877), and *Ahmed Din* v. *Mussammat Hasso* (No. 54 *P. R.* 1882), cited and distinguished. BRAG *v.* MUHAMMAD YAR. **17 P R 1884**

23. *Sale by sonless proprietor to daughter*—Wajib-ul-arz *permitting gift to daughter, but providing for offer to collaterals in other cases of alienation—Effect of such provision.*

In a suit for pre-emption of certain land sold by a sonless proprietor to his daughter, in which the plaintiff claimed as brother's son of the vendor and a co-sharer in the estate, the lower Courts dismissed the suit because of a provision in the *Wajib-ul-arz* of the village laying down that a sonless proprietor could give his land to his daughter during his lifetime. It appeared, however, that it was also provided in the *Wajib-ul-arz* that, in the case of alienation by sale or mortgage, the first offer was to be made to brothers and collaterals.

PRE-EMPTION—*contd.*

6.—RIGHT OF, IN VILLAGES—*contd*

Held, that, taking both clauses of the *Wajib-ul-arz* together, there could be no doubt that sales and gifts were to be treated as distinct ; that it did not follow that a man who might give land to his daughter to the prejudice of his collateral male relatives might also dispose of it by sale ; and that no custom to the contrary being proved, plaintiff was entitled, both according to the *Wajib-ul-arz* and the general law, to a decree for pre-emption. LALU *v.* MUSSAMMAT LAL BIBI. **114 P R 1884**

24. *Co-sharer*—Wajib-ul-arz—*Custom.*

In a suit for pre-emption, *held* (in accordance with the rule laid down in the *Wajib-ul-arz* of the village), that the plaintiffs, who were owners in the village and collaterally related to the vendors, but not co-sharers with them in any holding, had failed to show a right of pre-emption superior to the defendant-purchaser, who was a co-sharer in the well to which the land in dispute was attached.

Nathu v. *Dhanu* (C. A. No. 1300 of 1883), and *Uttam Singh* v. *Fatteh Singh* No. 103 *P. R.* 1885), referred to. KAHAN SINGH *v.* BARA SINGH. **30 P R 1837**

25. *Punjab Laws Act* (*IV of* 1872), *section* 12—*Meaning of "landholder" or "landowner"—Purchaser of small site in* abadi.

In a suit for pre-emption, it was contended that the defendant puchaser, whose general *status* in the village was that of a servant with a right of occupancy, had become by the purchase of a small site in the *abadi*, one of the village proprietors, or a landholder or landowner within the meaning of Section 12 of Act IV of 1872. *Held*, that the above contention could not prevail, as the first broad class entitled to pre-emption in villages under the section quoted are the proprietors, in the sense of the men, generally tribesmen, forming the proprietary body or *khewatdars*, the men entered in the Revenue records as assessed with a *quota* of the revenue, and jointly and severally responsible to Government for the whole. PHALLU *v.* MUKARRAB. **153 P R 1888**

26. *Custom—Non-transferable right of occupancy—Presumption of existence of right—Punjab Laws Act* (*IV of* 1872), *section* 10.

In a suit for pre-emption, it appeared that a proprietor in the course of a suit in which his tenant claimed occupancy rights came to terms with him, and in consideration of the payment of a sum of money, which he called *nazarana*, gave him a cultivating right. The plaintiff in the present suit, treating this transaction as a sale, claimed the pre-emption of it.

Held, that the right sold must be taken to be a non-transfertble right of occupancy, in regard to which no custom of pre-emption could be presumed (*see* Act IV of 1872, section 10) until proved.

PRE-EMPTION—*contd.*

6.—RIGHT OF, IN VILLAGES—*contd.*

Held, further, that the plaintiff had failed to prove any custom under which pre-emption could be claimed with respect to a right of occupancy created under the above circumstances.

Sadhu Singh v. *Mansura* (C. A. No. 1362 *of* 1879, unpublished) *Jehana* v. *Chowdri Jiwan Khan* (No. 196 *P. R.* 1882), and *Giba* v. *Hayat* (No. 120 *P. R.* 1883), cited. RUKNA *v.* KANH SINGH. **179 P R 1888**

27. *Suburbs of Delhi*—Mauza *Jahannuma*—*Village community*—*Act IV of* 1872, *sections* 10, 11 *and* 12—*Landholder*—*Incidents of local custom.*

The object and purpose for which the right of pre-emption was recognized and enacted in Act IV of 1872 was to protect the compactness of village communities, and in towns to respect native feeling as regards caste exclusiveness, the seclusion of private family life and so forth; not to interfere with private rights of contract or the disposal of property. The language of the Act, however, does not limit the right to such cases, but is very wide.

In cases, therefore, where pre-emption is claimed, not on the ground of any equity or social inconvenience, but solely in consequence of the extended applicability of the words of the Act, the vendee is entitled to insist that the requirements of the law on the side of the pre-emptor should be strictly complied with.

The land in dispute was situated in the so-called *mauza* Jahannuma. There was no revenue assessment; no proprietary body; and no headman. The village was wholly occupied with scattered buildings and some gardens.

Held, that Jahannuma was not a village community, and that no presumption could be made as to the existence of a custom of pre-emption therein under sections 10 and 12, as those sections contemplate not any mere area known by a local name and separately measured, but a property owned by a village community holding on either a *zemindari, pattidari* or *bhayachara* tenure, and that consequently the plaintiff was not a land-holder under section 12.

Held also that the plaintiff had failed to prove that he was owner of the soil by which he claimed pre-emption. *Held further* taking Jahannuma to be a sub-division of Delhi, that there are varieties in the incidents of pre-emption; that it is not in all cases sufficient to shew vicinage; that because in a sub-division custom allows pre-emption in the case of dwelling-houses it does not follow that it holds good in the case of shops also, or of big plots extending far and wide away from the property through which pre-emption is claimed. ANKAR LAL *v.* BAIJ NATH. **103 P R 1889**

28. *Punjab Laws Act (IV of* 1882), *section* 12 (*d*)—*Pre-emptor, owner of land in same* taraf *as land sold, preferred to purchaser, owner of land in* shamilat—*Sub-division.*

In a suit for pre-emption, it appeared that the plaintiff owned land in the *taraf* in which the land sold was situated. The purchaser, proprietor of land in *shamilat-i-deh* contended (1) that the *tarafs* into which the village was divided were not sub-divisions within the purview of section 12 (*d*) of the Punjab Laws Act, the division being merely for revenue purposes, (II) that the purchaser as owner of a portion of the *shamilat* of all the village was necessarily a landowner in the *taraf* in which the land sold was situate. *Held* that there is nothing in section 12 of the Punjab Laws Act to show that the term "sub-division" should be construed with reference to any particular principle of division. *Held, further*, that as the *shamilat* was not included in any particular *taraf*, but belonged to the whole village, the defendant could not be held to be a landowner in the *taraf* in question on the ground contended by him. BHAGAT HIRA NAND *v.* LAL KHAN. **169 P R 1889**

29. *Punjab Laws Act, section* 12, *clause* (*d*)—*Construction*—*Suits by landowners of patti severally.*

When suits for pre-emption have been filed at different times by persons equally entitled to pre-emption under clause (*d*), section 12, Punjab Laws Act, but no decree has been obtained by any claimant before the later suit has been instituted, the general rule applicable is not that the plaintiff who first succeeds in obtaining a decree will be entitled to retain the whole of the property, but that in the absence at least of some special bar, each claimant will be entitled to a decree for a proportionate share of the property on payment of a proportionate share of the purchase money. GOKAL AND JAWAHIR *v.* BHOLA. **29 P R 1892**

30. *Punjab Laws Act*, 1872, *section* 12 (*b*)—*Pre-emption*—*Villages held on ancestral shares*—*Meaning of the term.*

A village held on ancestral shares within the meaning of section 12 (*b*), Punjab Laws Act, 1872, as amended by Act XII of 1878 (regarding rights to pre-emption in villages) must be a *zamindari* village. If there has been a territorial division into *pattis*, the village (by which is meant the whole village) is no longer held on *shares* but by *pattis*. The land in the *pattis* may be still held upon ancestral shares, but this is insufficient to bring the village within the description in clause (*d*) of the section. JALAL *v.* MAZHAR ALI. **13 P R 1893**

31. *Punjab Laws Act*, 1872, *section* 12, *clauses* (c) *and* (*d*)—*Pre-emption*—*Village divided into* patti *and* thullas—"*Other sub-division of the village.*"

The village of Badowal in which the land in suit was situate was divided into two *pattis* each of which was again divided into *thullas*. The plaintiffs claimed pre-emption on the ground that their land and the land sold was in the same *thulla*, whereas the vendees held no land in this *thulla*, but in another *thulla* of the same *patti*.

Held, that the *thullas* were sub-divisions within the meaning of section 12, clauses (c) and (*d*) of the Punjab Laws Act, 1872 and that the plaintiff's right of pre-emption was superior to that of the defendants (vendees).

No. 10 *P. R.* 1884, and No. 44 *P. R.* 1892, referred to. UTTAM *v.* BUTA. **69 P R 1893**

32. *Pre-emption*—*Priority of rival pre-emptors*—"*Landowners of the* patti *or other sub-divisions of the village*"—*Sub-division of* patti *into* thullas—*Punjab Laws Act (IV of* 1872), *section* 12, *clause* (*c*) *and clause* (*d*).

Held, that, where a *patti* of a village is sub-divided into *thullas*, a *thulla* may be a sub-division of the village within the meaning of clause (*d*) of section 12 of the Punjab Laws Act, 1872.

Held, further, that in the particular instance before the Court, such a *thulla* was such a sub-division. SADDA *v.* MAJJA SINGH. **76 P R 1894**

33. *Punjab Laws Act*, 1872, *section* 12, *clause* (*b*)—"*Village held on ancestral shares*"—*Pre-emption.*

Held by the Full Bench, that a village cannot be said to be "held on ancestral shares within the meaning of clause (*b*) of section 12" of the Punjab Laws Act, 1872, unless the dominant feature of the tenure is a primary division of the village upon fractional shares ascertained with reference to ancestral right such primary division being commonly, but not necessarily, a territorial division, and importing, at least, a definite separation of interests in the village, as an entirety, in accordance with the customary rules of inheritance.

In the case of joint immovable property, the fact that portions of its area are separately cultivated by the persons recorded as having specified interests therein indicates no more than the fractional share to which such persons or group would become entitled on a partition being made either by a definite separation in interest by agreement among the co-owners, or by a division of the area itself. Until the group of co-owners is thus separated, the thing, which is the subject of their co-ownership, is joint undivided immovable property within the meaning of clause (*a*) of section 12 of the Punjab Laws Act, 1872, whether it be an entire village or a portion of a village, or a house, and the co-owners are co-sharers in such property for the purpose of that clause.

PRE-EMPTION—*contd.*

6.—RIGHT OF, IN VILLAGES—*contd.*

No. 13 *P. R.* 1893, overruled. CHAMPA MAL *v.* BASAIKHI MAL. **87 P R 1894 F. B.**

34. *Pre-emption— Landowner — Punjab Land Revenue Act,* 1887, *section* 3 *(2).*

Held, that plaintiff, as proprietor of certain waste land in the village had under section 12 *(e)* of the Punjab Laws Act, 1872, a right of pre-emption against the vendee, who was an entire stranger without any interest whatever in the village, although the land of which plaintiff was proprietor was unfit for cultivation and was not assessed with revenue. JASMIR SINGH *v.* RAHMATULLAH. **7 P R 1896**

35. *Pre-emption in respect of whole village—" Village" and " village community" —Punjab Laws Act,* 1872, *sections* 10, 12, 14 *—Act XII of* 1878, *section* 12.

Section 12 of the Punjab Laws Act, 1872, was intended to apply to whole villages as well as to parts of them, and a village is situate within itself in the sense that it is situate within its own circumscribing limits. The object of the said section is to declare the precedence of pre-emptors *inter se*, and not in any way to restrict their rights to the pre-emption of sales of parts of, and shares in, villages.

The expression " village community " in section 10 of the said Act should be construed as including not only the members of the proprietary body, but also all those individuals who dwell within the village boundaries, and whose rights and duties are as clearly defined as those of the proprietors themselves. Whether as proprietors or tenants, or menials, or shop-keepers, or village-officers, they are all members of a community or body associated together for the purpose of maintaining themselves and others, and none of them can be said to be wholly independent of the others. Whenever there is such a community, the right of pre-emption must be presumed to exist, though it would not be exercisable by any members of the community other than those referred to in section 12. If there are no such members, it cannot be exercised though there is no reason why it should not exist. It may remain dormant for a time, and then again become exercisable. HIRA LAL *v.* KHUDA BAKHSH. **27 P R 1897**

36. *Pre-emption in village—Punjab Laws Act,* 1872, *section* 12, *clauses (b), (c, (d)—Village nominally divided into* pattis.

In the village of J. K. the proprietary body of which belonged to two tribes, Sainis and Jats, a Saini sold his land to a Jat, whereupon the defendant a Saini, sued for pre-emption, alleging that the village was divided into two *pattis* named after the tribes of the proprietors, and that the land sold was situate within his *patti*. He based his claim solely upon clause *(d)* of section 12, Punjab Laws Act, 1872. The evidence

PRE-EMPTION—*contd.*

6.—RIGHT OF, IN VILLAGES—*contd.*

showed that the village consisted of two sections, one of eight ploughs held by Jats and the other of four ploughs held by Sainis; that the revenue was distributed over the ploughs in this proportion; that the Sainis and Jats had their separate lambardars; that the Sainis had their land in the eastern portion of the village and cultivated nearly all the land on the south-east, the remaining land being occupied by the Jats; that the Sainis owned a few scattered fields in the Jat section, and *vice versa*; and that the *shamilat* was joint of both and scattered everywhere among the cultivated fields. There was admittedly no territorial division between the two groups, nor did the Settlement Record recognize any *pattis*, while the *shamilat* had been recently divided, not according to *pattis*, but among proprietors according to *khewat*, taking the village as a whole.

Held, that though there were some points of differentiation between the Saini and the Jat proprietors, they did not represent two distinct *pattis* or other recognised subdivision in the village within the meaning of the Punjab Laws Act, and that, therefore, plaintiff's claim under clause (*d*) of section 12 of the Act must fail.

Clauses (*c*) and (*d*) of the said section are not entirely governed by clause (*b*). The first sentence in clause (*c*) is intended to refer back to co-sharers and relations mentioned in the two preceding clauses, while the latter portion refer to all villages of whatever tenure in which there are *pattis*, and is not confined to what are called *pattidari* villages. In such villages a relation holding land in a different *patti* will have preference over a landowner in the vendor's *patti* who is no relation or a more distant one. But where relations do not claim in a *pattidari* village, and in all cases in villages of *bhayachara* tenure, the owners of land within the *patti* jointly, and then individually, have superior rights to those of proprietors belonging to a different *patti*. BIJA *v.* BISHEN SINGH. **45 P R 1897**

37. *Pre-emption—Village divided into two* pattis—*Sale of* adna *rights in one* patti *to* ala *proprietor—Suit by* adna *proprietor of other* patti—*Respective rights of* ala *and* adna *proprietors—Punjab Laws Act,* 1872, *section* 12, *clauses* (*c*) *and* (*d*)*—Punjab Land Revenue Act,* 1887, *section* 3 *(2)—Mauza Sorab Hosar, Dera Ismail Khan District.*

In a suit for pre-emption it appeared that in the village in question which was in the Dera Ismail Khan District there were two classes of proprieters, *ala* and *adna*; that the interest of the former class in the village was undivided, the tenure so far as they were concerned being *zamindari bil ijmal*; that the *adna* ownership was partially divided the tenure being *pattidari ghair mukammal*; that there were two *pattis* in the village, *viz.*, Bhawani Das

PRE-EMPTION—*contd.*

6.—RIGHT OF, IN VILLAGES—*contd.*

and Ata Muhammad, the former comprising thirteen and the latter three shares in the village, and some of the area being partitioned and the rest *shamilat-deh*; that there was a provision in the *Wajib-ul-arz* to the effect that the *maliks alas* had no concern in the village or its management as they were mere *ta'alukdars*, and were only entitled to realize their dues, which were fixed at a certain percentage on the *jama*, and that the asssesment and settlement had been made with the *adna* proprietors, who were alone entitled to its profits and responsible for its losses.

One B., an *adna* proprietor in *patti* Bhawani Das having sold his *adna* rights to defendant, who was one of the *ala* proprietors of the village, plaintiff, an *adna* proprietor in *patti* Ata Muhammad, sued for pre-emption, on the ground that he, as an *adna* proprietor of the other *patti* and a co-sharer in the *shamilat*, had a preferential right to that of the vendee.

Held, that as the sale was merely *adna* rights in one *patti*, plaintiff *adna* proprietor of the other *patti* had a superior right of pre-emption in the whole of the property sold, and that his claim must succeed in full as against defendant, whose sole interest in the village as *ta'alukdar* was the percentage on the revenue fixed as his due in the Settlement Record. SETH LAKHMI CHAND *v.* NAWAB HAFIZ MUHAMMAD. **72 P R 1897**

38. *Pre-emption—Presumption as to existence of custom of pre-emption—Village —Punjab Laws Act,* 1872, *sections* 10, 11*—Mahal Baghat, Ludhiana.*

The land in respect of which pre-emption was claimed formed part of what was once an old palace of Shah Shujah, inside the boundaries of the old cantonment of Ludhiana, and was sold by auction in lots, which were purchased by various persons of various tribes and castes. At the recent settlement, as a part of the land was cultivated or culturable, it was assessed with land revenue and a record of rights prepared for it, and lambardars were appointed. The lower Courts found that these facts made the land " village land," that consequently the right of pre-emption must be presumed to exist, and its existence had not been disproved. Plaintiffs, therefore, received a decree from both Courts. Defendant appealed to the Chief Court.

Held, that though in the case of an ordinary village community the presumption that the custom of pre-emption exists is a most strong and natural one, in the case of a mere " paper " village, such as that in the present instance, created a few years back solely for administrative convenience, the presumption in favour of the existence of a custom of pre-emption, if such presumption existed at all, was of the weakest possible kind.

PRE-EMPTION—*contd.*

6.—RIGHT OF, IN VILLAGES—*contd.*

Found, on the evidence, that no custom of pre-emption had been proved to exist in the Mahal Bhagat of Ludhiana. KADIR BAKHSH *v.* GHULAM. **74 P R 1897**

39. *Pre-emption—Act IV of* 1872, *section* 12—" *Landowner* " *and* " *Landholder* "—*Purchaser of small plot of unculturable land.*

Plaintiff, one of the old proprietary body with a large holding, claimed possession by pre-emption of certain land which had been sold by one M. to defendants by registered deed of sale. Defendants admitted plaintiff's right to pre-empt, but pleaded that their rights of pre-emption were equal as they also owned land in the same *taraf* as the land in question. It appeared that defendants owned 1 *kanal* $1\frac{1}{2}$ *marlas* of land *ghair-mumkin chappar*, that is unculturable pond, which they purchased for Rs. 200. The point for decision was whether the possession of this plot of unculturable land constituted defendants vendees, " landowners or landholders " within the meaning of section 12 (*d*) of Act IV of 1872.

Held, that defendants were not "landowners" or " landholders " within the meaning of the said section so as to be entitled to a right of pre-emption equal to that of plaintiff.

No. 153 *P. R.* 1888, followed ; No. 7 *P. R.* 1896, distinguished. MAN SINGH *v.* DIP SINGH. **96 P R 1898**

40. *Suit by co-sharer in* khata—*Previous sale of another portion of same* khata *to vendee subsequently set aside*—Status *of vendee at time of later sale.*

On the 25th August 1893 one U. A. sold certain land belonging to a joint *khata* to Z. One A. B. sued for pre-emption in respect of the said sale and obtained a decree, the bargain made by Z. being transferred to him. Subsequently to the date of the former sale, but prior to the date of the institution of A. B.'s suit, other land belonging to the same joint *khata* was also sold to Z., whereupon M. K., a holder of land in the same *khata*, sued for pre-emption. The two suits by A. B. and M. K. were tried together, and the evidence in both was by consent recorded once. As regards the claim by M. K., it was contended on behalf of Z. that he had acquired the *status* of a joint-holder in the *khata* by virtue of the sale of the 25th August 1893, and that his rights were, therefore, equal to those of M. K.

Held, that owing to the decision in A. B.'s suit, Z. was not in a position to maintain that he had acquired the *status* claimed by him from the 25th August 1893, and that M. K. was entitled to the benefit of the decision which went to the root of Z.'s *status* as a holder of land in the joint *khata*. ZAHAR KHAN *v.* MUSTAJAB KHAN. **55 P R 1899**

PRE-EMPTION—*contd.*

6.—RIGHT OF, IN VILLAGES—*contd.*

41. *Custom—Pre-emption—Land assessed as garden land and situate in Jahan Numan, suburb of Delhi—" Village "—Punjab Laws Act*, 1872, *section* 12 (*e*)—*Essentials of custom.*

Found, that (*i*) land which was situate in Jahan Numan in the suburbs of Delhi and assessed as " garden land " could not be regarded as land of " a village community " within the meaning of section 12 of the Punjab Laws Act, 1872 ; and (*ii*) that plaintiff had failed to prove the existence of a custom of pre-emption in the immediate neighbourhood of the land in suit.

It is a necessary ingredient of a valid custom that it shall have existed from a time " so long that the memory of man runneth not to the contrary." KARAM ELAHI *v.* BABUA MAL. **21 P R 1900**

42. *Pre-emption—Preferential right—Punjab Laws Act* (*IV of* 1872), *section* 12—*Vendee and pre-emptor landholders in the village, the latter being a co-sharer in the well from which the land in suit was irrigated.*

Held, that a co-sharer in the actual well area is not, in the absence of proof of special custom entitled to pre-empt land on the ground that the land is irrigated from the well, a pre-emptor cannot, where objection is taken, be allowed to take any more of the whole bargain than that portion over which he can show a superior right. *Maulvi Ilahi Bakhsh* v. *Kaki and Mali* (87 *P. R.* 1895) followed.

Held, further, following *Bodi an Kalu* v. *Mussammat Mehtab Bibi and others* (131 *P. R.* 1892), that where land has been divided as far as possible, the remaining joint portion is a mere appendage or adjunct which does not come under the description of joint immovable property within the meaning of section 12, Punjab Laws Act. SHAHU *v.* HAKU. **44 P R 1900**

43. *Pre-emption—Sale to a co-sharer in the* khata—*Suit by a* yak-jaddi *of the vendor—Superior right—Punjab Laws Act* (*IV of* 1872), *section* 12, *clause* (*c*)—Riwaj-i-am.

In a suit for pre-emption of land on the grounds that the plantiff as one of the *yakjaddis* of the vendor had by custom a superior right to that possessed by the vendee who was merely by purchase a co-sharer in the *khata* and that inasmuch as the *patti* was sub-divided into *tolas*, and his own land and the land in dispute were situated in one *tola* known as Shahpurianwali, while defendants' land was in another *tola* known as Malakanwali he had a preferential right under clause (*c*) of section 12 of the Punjab Laws Act

Held, that as the village was not one held on ancestral shares there was no *a priori* reason why preference should be given to relations and that the plaintiff had failed to prove that he had a preferential right on the ground of relationship, or that the village was divided into any *tolas* or sub-divisions.

PRE-EMPTION—*contd.*

6.—RIGHT OF, IN VILLAGES—*contd.*

Held also, that an entry in a *Riwaj-i-am* is not satisfactory or even presumptive evidence if no instances in support of its correctness are given. ALLAH DITTA *v.* ALLAH BAKHSH. **89 P R 1900**

44. *Custom—Pre-emption— Presumption as to existence of custom of pre-emption—Rebuttal of—Punjab Laws Act*, 1872, *section* 10.

Held, that to establish a custom opposed to that which must, under section 10 of the Punjab Laws Act, be presumed to exist it was not sufficient to prove that notwithstanding several sales of land in the village, no suit for pre-emption was ever filed or that the present Settlement record was silent on the subject.

Samand Khan v. *Mahtaba* (48 *P. P.* 1883) followed. MAHAMAD KHAN *v.* RAM DAS AND OTHERS. **16 P R 1901**

45. *Sale to a co-sharer—Pre-emption—Suit by another co-sharer who was also a collateral of the vendor—Superior right—Custom—Punjab Laws Act*, 1872, *section* 12, Riwaj-i-am.

Held, that in *mauza* Patni, *tahsil* Jampur, Dera Ghazi Khan District, a co-sharer of a vendor who, is also his relation has a superior right of pre-emption than other co-sharers who are not relations of the vendor. DIN MUHAMMAD *v.* KARIM BAKHSH AND ANOTHER. **73 P R 1901**

46. *Pre-emption—Sale of occupancy right to a tenant with rights of occupancy in the village—Suit for pre-emption by landlords of the holding who did not proceed under the provisions of section* 53 *of the Tenaucy Act*, 1887—*Superior right—Punjab Laws Act*, 1872, *section* 12.

An old tenant who had under the *Wajib-ul-arz* full power of alienation sold his occupancy holding to another tenant with rights of occupancy in the village, the landlords of the holding filed a suit for pre-emption. The vendees contended that they being the tenants with rights of occupancy in the village have under the last clause of section 12, priority over them, as the pre-emptors who were the landlords of the holding had not proceeded under section 53 of the Tenancy Act.

Held, that as the operation of section 53 of the Tenancy Act was excluded by section 111 the entry in the *Wajib-ul-arz* being tantamount to an agreement under section 112 the last clause of section 12 of the Punjab Laws Act, could not apply, and the parties are relegated to their position under the first clause of that section by which the landlords have a superior right of pre-emption.

SUNDAR MAL AND OTHERS *v.* SAWAN SINGH AND OTHERS. **87 P R 1901**

47. *Pre-emption—Cause of action—Claim by a co-sharer—Partition of joint holding after sale but before suit, effect of—Punjab Laws Act*, 1872, *section* 12 (*a*).

PRE-EMPTION—*contd.*

6.—RIGHT OF, IN VILLAGES—*contd.*

The pre-emptive right of a co-sharer of land in joint holding does not subsist after partition at the application of the vendee.

Atma Ram v. *Devi Dyal* (49 *P. R.* 1901), *Muhammad Ayub Khan* v. *Rure Khan* (95 *P. R.* 1901), *Janki Prashad* v. *Ishar Das* (*I. L. R. XXI All.* 374), and *Ram Gopal* v. *Piari Lal* (*I. L. R. XXI All.* 441), *Kahna* v. *Dewa Singh* (62 *P. R.* 1879) *Mandu Khan* v. *Sandhi* (102 *P. R.* 1888), *Dilsukh Ram* v. *Nathu Singh* (98 *P. R.* 1894), *Mustu* v. *Pohlo* (152 *P. R.* 1896), and *Bodi* v. *Mussammat Mahtab Bibi* (131 *P. R.* 1892) referred to. KHAN *v.* MAHANDA AND OTHERS.

32 P R 1902

48. *Pre-emption—Suit by the sister of the vendor*—Shikmi sharikan *and* yak-jaddi—*Arains of the Lahore District.*

Held, that a married Arain woman who has merely received a portion of her father's land as a gift and not by succession cannot be held to have a preferential right of pre-emption over another Arain proprietor in the village, on the ground that she comes within the term *yak-jaddi shikmi sharikan* as regards her brother's property which that brother holds in right of succession. MUSAMMAT BEGAM *v.* QADIR BAKHSH AND OTHERS.

39 P R 1902

49. *Custom—Pre-emption—Kasur, District Lahore—Village community—Punjab Laws Act*, 1872, *sections* 10, 12.

The land in respect of which pre-emption was claimed was situated in Kasur, District Lahore In the settlement of 1856 Government was recorded as the proprietor of the whole village, which was leased to certain persons for the term of the settlement. At that time there were about 280 occupancy tenants whose possession extended over a hundred years. In the settlement of 1874 plaintiff's father and others were declared by Government to be proprietors of the land in their possession. In the settlement of 1892 the number of *khatas* was increased from three in 1874 to seven, of which five belonged to the Pathans, one to the Government and one to the Khatris. The first Court found that these facts were sufficient to show that Kasur was a village community within the meaning of section 10 of the Punjab Laws Act, 1872. The Divisional Judge disagreed with the finding of the first Court and dismissed the plaintiff's suit on the ground that the custom of pre-emption could not be presumed to exist.

Held, that the numerous occupancy tenants who had held land in Kasur for long periods and the descendants of the grantees of 1874 formed a village community within the meaning of section 10, clause (*a*) of the Punjab Laws Act, the village having passed as regards the portion not held in proprietary rights by Government from a *zamindari* to a complete *bhaiachara* tenure and that therefore the right of pre-emption must be presumed to exist in the village as regards the portion

PRE-EMPTION—*contd.*

6.—RIGHT OF, IN VILLAGES—*contd.*

not held in proprietary right by Government. GHULAM HUSSAIN KHAN AND OTHERS *v.* SHEIKH FAZAL DIN AND ANOTHER. **40 P R 1902**

50. *Pre-emption—Right of plaintiff who acquired property by pre-emption in the disputed* khata *subsequent to the sale.*

Held, that as a pre-emptor acquires all the rights and obligations arising from the sale under which he has derived his title, he is entitled to pre-emption in respect of a subsequent sale although his pre-emptive decree was passed after the subsequent sale was effected.

Gobind Dyal v. *Inayatullah* (*I. L. R. VII All.* 770, *F. B.*) cited. *Behari Ram* v. *Mussammat Shoobhudra* (9 *W. R.* 455), *Dwarka Parshad Sukal* v. *Ram Autar Sukal* (7 *N.-W. P. H. C. R.* 281), and *Muhammad Ayub Khan* v. *Pure Khan* (95 *P. R.* 1901) distinguished. HAKAM SINGH *v.* INDAR.

46 P R 1902

51. *Pre-emption—Village owned by a single proprietor—Sale of whole village to stranger—Suit by occupancy tenants in the village—Punjab Laws Act*, 1872, *sections* 10, 12—"*Village community.*"

Held, that the expression "village communities" in section 10 of the Punjab Laws Act 1872, as amended by Act XII of 1878, is not used to denote a village community of the typical sort consisting of members of one family or one clan holding the village lands in common and dividing between them the agricultural land according to the custom of the village but is used in a popular sense to denote a body of persons bound together by the tie of residence in one and the same village, amenable to the village customs and subject to the administrative control of the village officers.

A "village community" is not confined to the landowners in the village. Occupancy tenants are therefore members of a village community within the meaning of the Punjab Laws Act, and so are all persons in an inferior position who belong to the village though they may be unconnected with the land and not entitled to any right of pre-emption under the Act. RAHIM-UD-DIN *v.* REWAL.

66 P R 1903 P C

52. *Pre-emption—Sale by one taraddadkar of his rights to proprietor—Suit by other taraddadkar* — Wajib-ul-arz — *Custom—* Mauza *Hareli Diwan, Jhang District.*

A person holding as taraddadkar certain land in the Jhang *tahsil* sold his rights to one of the proprietors in the joint holding. The plaintiff, a taraddadkar with the same rights as the vendor, sued the vendee for pre-emption on the ground that as taraddakar, he had a right to the pre-emption of the *taraddadkari* land preferential to that of the vendee.

Held, that as the *tarraddadkari* tenure in question conferred on the taraddadkar full proprietary right to half of the land with half share in the well jointly with the origi-

PRE-EMPTION—*contd.*

6.—RIGHT OF, IN VILLAGES—*contd.*

nal proprietors, the plantiff's title was that of a co-sharer in joint holding with vendor and vendee, and that the burden of proving a special custom conferring on the plaintiff a superior right was on him.

Held, further that this burden had not been discharged.

Seth Lakhmi Chand v. *Nawab Hafiz Abdulla Khan* (72 *P. R* 1897), *Ganga Ram* v. *Najib Khan* (61 *P. R.* 1876), and *Bolaki Shah* v. *Hafiz Esan and others* (67 *P. R.* 1874), distinguished. GANGA RAM *v.* WARYAM.

40 P R 1904

53. *Pre-emption—Sale of* adna *rights to* adna *proprietor—Suit by* ala malik *of the khata—Superior right—Punjab Laws Act*, 1872, *section* 12, *clause* (*a*).

In a suit for pre-emption of certain land situated in *mauza* Khatar, Peshawar District plaintiff claimed the right of pre-emption on the ground that he being an *ala malik* of the land sold was a co-sharer with the vendor and that therefore he had a preferential right under clause (*a*) of section 12 of the Punjab Laws Act, as compared with that of the vendee. The vendor, vendee, and plaintiff being all *adna maliks* in the *kandi* where the land sold is situated.

Held, that the plaintiff as *ala malik* had no superior right of pre-emqtion in the property sold. He as *ala malik* was entitled only to a fixed percentage on the revenue and as such had no concern in the internal economy of the *adna kandi*, and was therefore not a co-sharer with the *adna maliks* within the meaning of Punjab Laws Act, section 12, clause (*a*), ABDUL RAB KHAN *v.* FAZAL MOHAMED. **64 P R 1904**

54. *Custom—Pre-emption—Sale of occupancy and* mukarraridari *rights to landlord—Suit by co-sharer in holding—Preferential right—Punjab Laws Act*, 1872, *section* 12.

A. sold his shares in joint holdings situate in the villages P. and D. to G., the recorded proprietor of the holding in village P. B. the brother and co-sharer of A. sued for pre-emption in respect of the said sale. It appeared that the status of A. and B. in the village D. and a part of the village P. was that of mukarridars, whereas in the other part of the village of P. it was that of a tenant with a right of occupancy only.

Held, that as regards the property in village P. the plaintiff had no *locus standi.* The sale having been made to the proprietors of the holding who have a statutory right of purchase under Chapter V of the Tenancy Act, could not in respect of the occupancy land be contested by plaintiff, a co-sharer in the tenancy, while in respect to the *mukarridari* portion the landlord had the first right of pre-emption under the terms of the *Wajib-ul-arz*, but as the vendee was not the proprietor of the *mukarridari* holding in the village D. that part of the claim was governed by section 12 of the Punjab Laws Act, and, the tenure being superior to that of occupancy

PRE-EMPTION—*contd.*

6.—RIGHT OF, IN VILLAGES— *contd.*

right, the plaintiff as a co-sharer with the vendor had a preferential right under clause (*a*) of that section over the vendee.

Maya Das v. *Malik Aulia Khan* (10 *P. R.* 1896, Rev). referred to. GAUHRA *v.* HAR BHAG. **16 P R 1905**

55. *Custom—Pre-emption*—Riwaj-i-am—*Provision in* Riwaj-i-am *granting right of pre-emption to collaterals—Right of collaterals* inter se—*Punjab Laws Act*, 1872, *section* 12.

In a suit for pre-emption of certain land situated in *mauza* Tuman Khosa, *tahsil* Dera Ghazi Khan *held*, that under the terms of the *Riwaj-i-am* of the village the collaterals of a vendor have a preferential right of pre-emption, and that as between collaterals propinquity in relationshp is the test of preferential right.

Najaf Ali v. *Kutbu* (58 *P. R.* 1885), *Narain Singh* v. *Hari Singh* (28 *P. R.* 1899), *Din Muhammad* v. *Karim Bakhsh* (73 *P. R.* 1901), cited.

Suka v. *Murad* (16 *P. R.* 1881), referred to. KHOTA *v.* ALU. **17 P R 1905**

56. *Custom—Pre-emption—Sayads of* mauza *Bal Saydan*, tahsil *Fattehjang, Rawalpindi District—Priority—Relationship.*

In a suit for pre-emption regarding agricultural land in the village of Bal Sayadan, *tahsil* Fattehjang, Rawalpindi District *held*, that by custom the plaintiffs, Sayads, being the first cousins of the vendor, had a right of pre-emption superior to that of a Khattar, who was only a proprietor in the village. KARAM SHAH *v.* TARA SHAH. **87 P R 1905**

57. *Pre-emption—Meaning of " village " in Punjab Laws Act—Presumption of existence of right of pre-emption in area not yet constituted a village*

In a certain *chak* in the Chenab Colony, demarcated and numbered by Government, and partly allotted to grantees, lambardars had been appointed and a chaukidar entertained, and there was common responsibility for maintenance of water-courses; but the *chak* had not yet become an " estate " as defined in Land Revenue Act, section 3, clause (1), no record of rights having been prepared, no joint responsibility for revenue having been declared and the *chak* not having been assessed as an estate to land revenue.

Held, that the *chak* was not a " village " nor its inhabitants a " village community," and no presumption arose that the right of pre-emption ex'sted init.

Held, further, that the *chak* having been demarcated and cultivated for the first time ending three years before suit, no actual custom of pre-emption could possibly have grown up.

Ankar Lal v. *Baij Nath* (103 *P. R.* 1889), *Karm Ilahi* v. *Bahna Mal* (21 *P. R.* 1900), *Kadir Bakhsh* v. *Ghulam* (74 *P. R.* 1897), *Umar Baksh* v. *Abdul Karim* (70 *P. R.* 1898), *Drig Bijai Singh* v. *The Deputy Commissioner of Gonda* (*I. L. R. XXIV All.* 420), *Mannu Lal* v. *Muhammad Ismail* (*I. L. R. XXVI All.* 574), *Hir aLal* v. *Khuda Bakhsh* (27 *P. R.* 1897), and *Rahim-ud-din* v. *Rewal* (66 *P. R.* 1903), referred to. RAM NARAIN *v.* SEWAK RAM. **21 P R 1906**

PRE-EMPTION—*contd.*

6.—RIGHT OF, IN VILLAGES— *contd.*

58. *Pre-emption—Sale of water-mill with occupancy rights in sites—Meaning of " land " in section* 10, *Punjab Laws Act—Fair market value.*

Where a water-mill in a village was on a site belonging to a proprietor, but was held and owned by a person who was an occupancy tenant under section 8 of the Punjab Tenancy Act the *Wajib-ul-arz* also contining a provision in favour of the transferability of all water-mills in the village, *held*, that upon a sale of the said mill by its owner a right of pre-emption must be presumed to arise, because—

(*a*) the sale of the mill implies sale of the occupancy rights in the site;

(*b*) " lands " in section 10, Punjab Laws Act, means lands in the dictionary meaning and not lands in the meaning attached to the word in the Tenancy Acts, and so the sale is of a *transferable* right of occupancy; and

(*c*) the sale of the structure of the mill cannot be separated from the sale of the occupancy rights in the site.

Held, further, that where the market value of property sold is conspicuously below the price stated in a sale-deed, and a large part of the consideration consists of old debts due to the vendee, the arithmetical value of the old debts cannot be taken to be the real value of that part of the consideration, the real value being the value of the old debts as *claims*, not as cash.

Phuman Mal v. *Keman* (75 *P. R.* 1901), and *Vir Bhan* v. *Mottu Shah* (77 *P. R.* 1901), referred to. *Nanak Chand* v. *Ram Chand* (68 *P. R.* 1902), distinguished. HAIDER *v.* ISHWAR DAS **22 P R 1906**

59. *Custom—Pre-emption*—Jagir *villages of the Goler* Jagir, *Kangra District—Punjab Laws Act*, 1872, *section* 12.

In a suit for pre-emption of certain land in a *jagir* village of the Goler *jagir* in the Kangra District, it appeared that the plaintiff as a landowner in the village had by custom a superior right to that possessed by the vendee, but the latter contended that by the custom of the village as laid down in Punjab Government letter of 1862 such rights were restricted to shareholders descended from a common ancestor. This rule had not been embodied in any of the village administration papers of the Goler *jagir*.

Held, that the presumption in accordance with the rules laid down in section 12 of the Punjab Laws Act, being in the plaintiff's favour, it was for the defence to rebut the same and to establish the custom set up by him. The letter of 1862 has no effect at all in declaring the custom in these villages, where it has neither been accepted nor embodied in the administration papers. ET RAM *v.* BAHADUR. **37 P R 1906**

PRE-EMPTION—*contd.*

6.—RIGHT OF, IN VILLAGES— *contd.*

60. *Pre-emption—Sale to a person who had accepted a gift of a share in* shamilat—*Suit by landowner in the village—Punjab Laws Act*, 1872, *section* 12—*Landowner, meaning of—Gift without possession—Validity—Hindu Law.*

In a suit for pre-emption it was contended that the vendee had become by virtue of a gift to him by a proprietor of that village of a share in the village common land a landowner within the meaning of section 12 of the Punjab Laws Act, and as such his rights were equal to those of the pre-emptor.

Held, that the above contention was correct and must prevail, as in order to avoid claim for pre-emption it is neither illegal nor fraudulent for a person who desires to acquire a footing in a village to accept a gift of land from one of its proprietors previous to his purchase.

Held also, that when a donor has taken all possible steps to complete a gift the non-delivery of actual possession is immaterial and the gift is not invalid merely because the donee was not put in actual possession.

Chaudhri Lila Kishen v. *Chaudhri Hoa Ram* (45 *P. R.* 1901), distinguished.

Ram Chand v. *Devi Chand* (21 *P. R.* 1901) *Joitaram Ram Krishna* v. *Ram Krishna Nandlal* (*I. L. R. XXVII Bom.* 31), and *Kalidas Mullack* v. *Kanaya Lal Pundit* (*I. L. R. XI, Cal.* 121 *P. C.*) followed. PARTAB SINGH *v.* FATTA. **45 P R 1906**

61. *Pre-emption—Sale of share of joint agricultural land to a co-sharer—Suit by another co-sharer of the* khata—*Punjab Pre-emption Act*, 1905, *section* 14.

Held, that under the provisions of the Punjab Pre-emption Act, 1905, a co-sharer in joint undivided agricultural land has no right of pre-emption in respect to a sale of a share of such land made to any of the several co-sharers in the estate.

Section 14 deals with several pre-emptors claiming in respect of the same property but does not provide for the case of a pre-emptor claiming against a vendee who has equal rights with him. KHAN ZAMAN *v.* FATTEH SHER **83 P R 1907**

62. *Custom—Pre-emption—Sale of agricultural land to an agrriculturist—Suit by a member of the alienors' tribe—Superior right—Punjab Pre-emption Act*, 1905, *section* 11.

Held, that by virtue of section 11 of the Punjab Pre-emption Act, 1905, a member of the alienors' tribe has a preferential right of pre-emption in respect to a sale of agricultural land by a member of an agricultural tribe to that of a vendee who was an agriculturist within the meaning of section 2 of the Punjab Land Alienation Act, 1900. MAHMUD *v.* NUR AHMAD. **101 P R 1907**

63. *Pre-emption—Sale of a share of joint property to a stranger—Subsequent acquisi-*

PRE-EMPTION—*contd.*

6.—RIGHT OF, IN VILLAGES— *contd.*

tion of another sharer's interest by vendee—Suit by a third co-sharer with respect to first sale alone.

Held, that a person who was at the date of sale a co-sharer in the land cannot claim pre-emption, in respect of a sale of that land as against the vendee who at the date of sale was not a co-sharer therein but became a co-sharer before the plaintiff instituted his suit for pre-emption. DAREHAN KHAN *v.* SOHAURA MAL. **124 P R 1907**

64. *Pre-emption—Right to sue on the strength of property, of which the pre-emptor is owner only during the life of a certain person—Pre-emptor suing for possession of the land as mortgagee—Waiver.*

F. D. the vendor defendant and one S. his cousin had a joint holding, of which S. sold his half share to K. B. the plaintiff in 1894, and the remaining half share was sold by F. D. to K.A. and others, by a registered deed of sale in 1907, without mentioning any previous encumbrance on the property. On 24th January 1908 K. B. (plaintiff in this case) brought a suit for possession of the same land as a mortgagee under an alleged mortgage of 1887, on the ground that he had been wrongfully dispossessed by the defendant the vendee. This suit was dismissed on 14th August 1908. While this case was pending, on 28th April 1908, F. D. instituted a suit against S. and K. B. for a declaration, that the sale effected by S. in favour of K. B. in 1894 was not binding on him, as the sale was without necessity. The claim was decreed subject to a valid charge of Rs. 50 on the land. The present pre-emption suit was instituted by K. B. on 5th June 1908, while both the above suits were pending. The defence was that no right of pre-emption accrued to plaintiff, inasmuch as he was owner only till S.'s death of the property on the strength of which he claimed pre-emption and that plaintiff's suing for the land as mortgagee in the previous suit amounted to acquiescence and waiver and that section 43 of the Civil Procedure Code, 1882, barred the suit. Both the Courts below decreed the claim. On revision the Chief Court—

Held, that plaintiff had a right of pre-emption on the strength of the property of which he was owner till the death of S., and that there was no waiver on his part and that section 43, Civil Procedure Code, 1882, had no bearing on the case—ROSHAN DIN *v.* KHUDA BAKHSH. **99 P R 1910**

65. *Pre-emption—Right to, of lineal descendant who is also a co-sharer—Pre-emptor and vendee having equal rights, share bargain—Punjab Pre-emption Act, II of* 1905, *sections* 12 *and* 14.

Held, that the fact that a pre-emptor is *both* a lineal descendant and a co-sharer does not give him superior rights to another lineal descendant of equal degree who is not a co-sharer, *vide* section 12, Punjab Pre-emption Act.

Held also, that where the pre-emptor and the vendee have equal rights of pre-emption the pre-emptor is entitled to one-half of the property sold and the vendee to the other half, *vide* section 14 *ibid.* **87 P R 1911**

7.—CONSTRUCTION OF WAJIB-UL-ARZ.

—*Construction of* Wajib-ul-arz—ek-jaddi—*Family separated for long from its stock by conversion to Islam.*

See under PRE-EMPTION—GENERAL, *supra.* **13 P R 1885**

See PRE-EMPTION—5. RIGHT OF, ON MORTGAGES. **10 P R 1887**

PRE-EMPTION—6. RIGHT OF, IN VILLAGES. **30 P R 1887**

PRE-EMPTION—14 LOSS OR WAIVER OF RIGHT. **121 P R 1888**
102 P R 1894

1. *Custom*—Wajib-ul-arz—" Karabatian Kareeb" *meaning of.*

In a suit for pre-emption, plaintiff based his claim on an entry in the *Wajib-ul-urz*, which was to the effect that the first offer to sell must be made by the vendor to his " Karabatian Kareeb. " Plaintiff was related to the vendor only in the 7th degree.

Held, that plaintiff was not a " Karabati Kareeb " within the meaning of the *Wajib-ul-urz* ; as the term only includes " near kinsmen, " within which a relative in the 7th degree cannot be said to come. SITA RAM *v.* GUJAR. **121 P R 1879**

2. *Right of a sharer in a* bhayachara *village as against a relation who is not a proprietor*—Wajib-ul-arz *and* Riwaj-i-am—*Meaning of terms* " sharkayan " *and* " yak jadi."

Plaintiff, a sharer in the village of Shishmahal, Lahore District, sued to enforce a right of pre-emption with regard to a half share in a joint holding sold by one N. L. to his cousin, the defendant, who was not a proprietor in the village. Defendant pleaded relationship as a bar to the suit, but having failed to prove the existence of a special custom under which a right of pre-emption could be asserted on the ground of relationship alone, he relied on the entries of the terms "*sharkayan*" and "*yak jadi*" in the *Wajib-ul-arz* and *Riwaj-i-am*, respectively.

Hed, in the absence of proof of a special custom to the contrary, that the plaintiff, as a sharer in the village, had a right of pre-emption as against the defendant, a non-proprietor, and that the term " *sharkayan* " in the *Wajib-ul-arz* obviously referred to sharers in the sense of proprietors in the village, and not merely to relatives or sharers in a joint family, and the " *yak jadi* " of the *Riwaj-i-am* in all probability meant the same. *Pirbhu* v. *Sawan* (No. 40 *P. R.* 1883), referred to. DEVI DAS *v.* MOHKAM DIN. **69 P R 1885**

PRE-EMPTION—*contd.*

7.—CONSTRUCTION OF WAJIB-UL-ARZ—*contd.*

3. *Agreement regulating rights of pre-emption not authorised by Punjab Laws Act—Landowners in* dheri *or sub-division of* patti.

An agreement recorded in the *Wajab-ul-arz* between the proprietors of a village as to the persons to whom the right of pre-emption would belong in future, cannot prevail against the provisions of section 12, Punjab Laws Act, 1872 (as amended), which give a detail of the persons to whom the right to pre-empt property in a village belongs, in the absence of a custom to the contrary. Such agreements are not saved by the section, and the law must therefore prevail against them.

Quære.—Whether the provisions of section 12, Punjab Laws Act, are applicable to a *dheri or* sub-division of a *patti*. JAFAR KHAN *v.* FAZAL MOHI-UD-DIN. **44 P R 1892**

4. *Punjab Laws Act,* 1872—*Pre-emption in village—Custom—Construction of administration paper to effect that no sale or mortgage had ever occurred.*

The village administration paper framed at first settlement recorded that no sale or mortgage of land had ever occurred in the village, and then prescribed that any one wishing to sell or mortgage his land must make the first offer of it to the *sharka shikmi wa yak jaddi.*

Held, in claims for pre-emption relying on this entry, that neither the entry, nor the other evidence, established that a custom regulating pre-emptive rights existed in the village, and that the claim must be disposed of in accordance with the provisions of Act IV of 1872 (Punjab Laws Act). JIWA *v.* MUSSAMMAT BHARI. **92 P R 1892.**

5. *Punjab Laws Act,* 1872—*Pre-emption*—Bhai nazdiki—*Co-sharers in joint undivided immovable property.*

Held, that the widow of a deceased collateral did not fall within the category of " *bhai nazdiki*," who under the terms of the *Wajib-ul-arz*, were entitled to pre-emption.—*Cf.* No. 196 *P. R.* 1889.

Held, also, that the land in suit was not joint undivided immovable property within the meaning of section 12 (*a*), Punjab Laws Act, 1872 : the land had been divided so far as it was possible to divide it.

That the property was a portion of what once formed a joint estate conferred no prior right of pre-emption. BODI AND KALU *v.* MUSSAMMAT MAHTAB BIBI. **131 P R 1892**

6. *Custom—Pre-emption in village—Mortgage by way of conditional sale—Entry*

PRE-EMPTION—*contd.*

7.—CONSTRUCTION OF WAJIB-UL-ARZ—*contd.*

in Wajib-ul-arz, *effect of contract—Evidence of custom.*

Plaintiff, who was a co-sharer with defendant No. 2 in the village of Mughalpura, claimed a right of pre-emption of certain land arising out of a mortgage by conditional sale by defendant No. 2 in favour of defendant No. 1, and relied, in support of his claim, upon entries in the *Wajib-ul-arz* of the village made in 1842 and 1880. These entries were to the effect that there had been no mortgage or sale in the village up to 1842 and 1880, respectively, but that every co-sharer was thenceforward to be at liberty to mortgage or sell his share for necessity or to pay arrears of Government revenue, provided that he first offered the said share to certain specified persons. It was urged, on behalf of plaintiff, that these entries either (*a*) established a custom in his favour or (*b*) evidenced an agreement sufficient to support his claim.

Held, (i) by the *Full Bench*, that these entries were not agreements, and (ii) by the *Divisional Bench*, that they were sufficient evidence of the custom set up. DILSUKH RAM *v.* NATHU SINGH. **98 P R 1894 F. B.**

7. *Custom—Pre-emption—Priority*—Sharkayan shikmi wa jaddi—*Arains of* mauza *Bela Basti Ram, Lahore district*—Bhayachara *village*—Wajib-ul-arz *and* Riwaj-i-am.

In a suit for pre-emption, the plaintiffs relied upon a provision in the *Wajib-ul-arz* of the village, giving the first right to *sharkayan shik mi wa jaddi* claiming to fall within the above description. The facts found were that the land in suit formed part of property which came to the defendant vendor by inheritance from an ancestor common to himself and the plaintiffs, who had inherited another portion of the same ancestral estate, but that the portions of the common estate which thus descended to the parties were at the time of the sale held jointly. The defendant-vendees were then landowners in the village, but collaterally related to the vendor.

Held, that in construing the provision in the *Wajib-ul-arz*, the words "*shikmi wa jaddi*" must be read conjunctively, and that plaintiffs must prove that they were *shikmi shariks* as well as *jaddis* of the vendor.

But *held*, further, that on the true construction of the *Wajib-ul-arz*, plaintiffs, collaterals of the vendor, descended from a common ancestor, the land being ancestral, had a right of pre-emption preferential to that of the vendees, who were landowners in the village, but not related to the vendor.

C. A. No. 350 of 1887 followed. MAULVI ILAHI BAKHSH *v.* KAKI. **87 P R 1895**

8. *Custom — Pre-emption — Entry in former* Wajib-ul-arz *not repeated in subsequent* Wajib-ul-arz—Onus probandi—*Right of pre-emption, nature of.*

PRE-EMPTION—*contd.*

7.—CONSTRUCTION OF WAJIB-UL-ARZ—*contd.*

The *Wajab-ul-arz* of 1864 of the village in which the land in dispute was situate, provided that a proprietor could make a gift of his *tarka* with the consent of the *haq-daran shufa*, but not otherwise, and that gifts made without such consent could be annulled at the instance of the person rightfully entitled to pre-emption on payment of the price of the gifted land to the donee. The same clause of that *Wajib-ul-arz* further classified in order the persons entitled to pre-emption. The *Wajib-ul-arz* of the present settlement contained no clause giving pre-emptors the right to acquire land transferred by gift on payment of the market value. Plaintiffs sued, relying on the entry in the *Wajib-ul-arz* of 1864, and their suit was decreed in the first Court, but dismissed by the Divisional Judge on appeal and after a remand for further inquiry, on the ground that the said entry did not embody an actual custom in force.

Held, that the entry in the *Wajib-ul-arz* of 1864, being one relating to custom, was not to be understood as one in force for a limited period only, and that such entry must be deemed sufficient proof of the custom stated therein in the absence of evidence to the contrary, and threw on the defendants the *onus* of proving that it was wrong.

Held, further, that the fact that the provisions of the former *Wajib-ul-arz* regarding pre-emption of gifts were not repeated in the present *Wajib-ul-arz* was not sufficient to rebut the presumption in favour of the correctness of the previous entry as a record of custom.

Held, on the evidence, that defendants had failed to rebut the entry in question, or to prove that the custom was different as regards pre-emption of gifts. MASTA *v.* POHLO. **52 P R 1896**

9. *Custom—Pre-emption—Provision in* Wajib-ul-arz *granting right of pre-emption to collaterals—Right of collaterals* inter se.

Held, that where a *Wajib-ul-arz* gives a right of pre-emption to collaterals, it follows, either as a necessary inference from such provision or on general grounds, that those who are more nearly related would, as in cases of succession, exclude the more remote. NARAIN SINGH *v.* HARI SINGH.

28 P R 1899

10. *Pre-emption—Village divided into* panas *and* thullas—*Punjab Laws Act*, 1872, *section* 12 (*c*)—*Construction of* Wajib-ul-arz.

In the village of Kharkhoda, in the Sampla *tahsil* of the Rohtak district, which was divided into two *panas* and each *pana* into two *thullas*, the plaintiffs claimed pre-emption on the ground that their land and the land in dispute although in different *thullas* was in the same *pana*, whereas the vendees owned land in the other *pana* only. The

PRE-EMPTION—*contd.*

7.—CONSTRUCTION OF WAJIB-UL-ARZ—*contd.*

vendees resisted the claim on the ground of a special custom contained in the *Wajib-ul-arz* of the village made in 1858 which was to the effect "that the alienor will alienate first "to his brothers and near relations, and in "case of their declining to the proprietors of "the same *thulla* and in case the aforesaid "persons decline the alienor is at liberty to "alienate to any one he pleases."

Held, that the provisions of section 12 (*c*) of the Punjab Laws Act applied, that the *panas* were sub-divisions within the meaning of that section and that the pre-emptive right of the plaintiffs were superior to that of the vendees.

Muhammad Bakhsh v. *Sardar Rajindar Singh* (121 *P. R.* 1888), *Goomanee* v. *Raheem-ud-din* (35 *P. R.* 1870), and *Uttam* v. *Buta* (69 *P. R.* 1893), cited. HARNAM *v.* MUHAMMAD AMAN ALI.

3 P R 1903

11. *Custom—Pre-emption—Provision in* Wajib-ul-arz *granting right of pre-emption to* sharkayan shikmi wa ekjaddi—*Mauza Mangarh, District Hoshiarpur.*

In a suit for pre-emption the plaintiff relied upon a provision of the first *Wajib-ul-arz* of the village which provided that those first entitled to exercise the right of pre-emption are the *sharkayan shikmi wa ekjaddi*. The *Wajib-ul-arz* of the subsequent settlement recorded that the parties are governed by the law as laid down in Act IV of 1872. It was urged on behalf of the defence that the provision of the later *Wajib-ul-arz* being opposed to those of the former the plaintiff could not maintain his suit.

Held, that the entry in the later *Wajib-ul-arz* cannot be taken to deny the custom alleged in the former *Wajib-ul-arz*, which is *primâ facie* proof of the custom therein stated, and that the defendant had failed to rebut the presumption in favour of the correctness of the previous entry as a record of custom.

Dilsukh Ram v. *Nathu Singh* (98 *P. R.* 1894, F. B.), *Masta* v. *Pohlo* (52 *P. R.* 1896), *Ram Saran Dos* v. *Mula Singh* (64 *P. R.* 1903), *Umra* v. *Hara* (46 *P. R.* 1903), *Muhammad Umar* v. *Kirpal Singh* (78 *P. R.* 1904), and *Narain Singh* v. *Hari Singh* (28 *P. R.* 1899), referred to. JOWAHIR *v.* RADHA.

35 P R 1905

12. *Pre-emption*—Bhai nazdiki *and co-sharer in joint-holding—Preferential right*—Wajib-ul-arz—*Punjab Laws Act*, 1872, *section* 12.

Held, that the collateral of a vendor related to him in the ninth degree does not come within the category *bhai nazdiki* who under the terms of the *Wajib-ul-arz* of the village had a superior right to that possessed by the co-sharers in the undivided holding. SHEOJI SINGH *v.* SHEOJI SINGH. **129 P R 1906**

13. The Punjab Pre-emption Act, 1905, is a retrospective enactment, and as such affects

7.—CONSTRUCTION OF WAJIB-UL-ARZ—*concld.*

causes of action which accrued or were acquired before it came into operation. BAHADUR *v.* ALIA. **30 P R 1907**

14. *Custom—Pre-emption—Value of* Wajib-ul-arz *chakwar—Conflict between earlier and later* Wajib-ul-arz.

Held, that the *Wajib-ul-arz chakwar* of Pindi Gheb *tahsil*, District Rawalpindi, is not a part of the record-of-rights and so has attaching to it no presumption of correctness, under section 44, Punjab Land Revenue Act, and that its evidential value is small, inasmuch as it states the custom of pre-emption which is always a *local* custom, *by tribes*

Held, also, that the value even of a genuine *Wajib-ul-arz* favouring relatives in the matter of pre-emption and standing unsupported by actual proof of custom, followed by a later *Wajib-ul-arz* in which the "law" or Act IV of 1872 is stated to contain the rule of pre-emption, is so small that even negative indications the other way are sufficient to reduce its value to nothing. GULDAD KHAN *v.* GUL KHAN. **44 P R 1907**

15. *Custom—Pre-emption—Provision in* Wajib-ul-arz *granting rights of pre-emption to* sharkayan shikmi—Mauza *Harpal*, tahsil *Zaffarwal, Sialkot district.*

In a suit of pre-emption of certain land situate in *mauza* Harpal, *tahsil* Zaffarwal of the Sialkot district, *held* that under the terms of the *Wajib-ul-arz* of the village the plaintiff as a collateral of the vendor had a preferential right on the ground of relationship.

Jointness of holding is not essential to status of *sharik-i-shikmi*, the term being applicable where the family bond of union still exists. ALLAH DITTA *v.* SHAHNA. **12 P R 1903**

8.—LIMITATION.

See LIMITATION ACT, 1859, SECTION 1, CLAUSE 1.
LIMITATION ACT, 1871, SCHEDULE II, ARTICLE 10.
LIMITATION ACT, 1877, SECTION 18 AND SCHEDULE II, ARTICLES 10 AND 120, 179.

(*a*) *Fraud—Omission to give notice of sale—Concealment of sale.*
See LIMITATION ACT, 1871, SECTION 19. **46 P R 1879**

(*b*) *Application of section 7 of the Limitation Act to order fixing time for payments of pre-emption money.*
See LIMITATION ACT, 1877, SECTION 7. **31 P R 1884**

(*c*) *Effect of fraudulent concealment of sale by purchaser.*
See LIMITATION ACT, 1877, SECTION 18.
32 P R 1881
3 P R 1882
120 P R 1883
73 P R 1885

8.—LIMITATION—*contd.*

(*d*) *Suit for, barred as against one of the defendant-purchasers Dismissal of suit.*
See LIMITATION ACT, 1877, SECTION 22. **104 P R 1882**

(*e*) *Mortgage by conditional sale—Foreclosure—Suit for pre-emption—Limitation—Time from which period begins to run.*
See LIMITATION ACT, 1877, SCHEDULE II ARTICLE 10. **103 P R 1901**

(*f*) *Sale of shop property in possession of tenant—Suit for pre-emption—Starting point of limitation.*
See LIMITATION ACT, 1877, ARTICLE 10. **88 P R 1905**

(*g*) *Limitation applicable to a suit for pre-emption where property sold is at the time of sale in the possession of a tenant.*
See LIMITATION ACT, 1877, ARTICLE 10. **49 P R 1903 F. B.**

(*h*) *Sale of immoveable property in execution of decree—Registration of sale certificate under section 89 of the Registration Act—Suit for pre-emption—Limitation.*
See LIMITATION ACT, 1877, ARTICLE 10. **142 P R 1903**

(*i*) *Pre-emption—Oral sale of joint share in an undivided holding—Physical possession—Limitation*
See LIMITATION ACT, ARTICLE 120. **14 P R 1904**

(*j*) *In respect of* benami *sale, suit against actual vendee whose name had been fraudulently concealed—Limitation.*
See LIMITATION ACT, 1903, SECTION 18. **89 P R 1911**

(*k*) *Suit barred against one defendant—Dismissal as regards all.*
See PRE-EMPTION—14. LOSS OR WAIVER OF RIGHT. **141 P R 1889**

(*l*) *Adding new defendant to suit after period of limitation expired.*
See PRE-EMPTION—14. LOSS OR WAIVER OF RIGHT. **25 P R 1903**

(*m*) *imitation as regards rights already accrued.*
See PRE-EMPTION, UNDER PRE-EMPTION ACT, 1905, SECTIONS 18, 29. **131 P R 1907**

—*Suit to enforce right of pre-emption—Date of registration of instrument of sale, meaning of—Time from which period begins to run—Registration Act,* 1877, *sections* 52, 58, 59, 60.

Held, that the limitation provided for a suit to enforce a right of pre-emption depending on registration under article 10 of the Limitation Act, 1877, begins to run from the date when the instrument of sale is registered within the meaning of section

8.—LIMITATION—*concld.*

60 of the Registration Act and not from the date of the presentation for registration.

Karm v. *Fazl* (10 *R. R.* 1881), followed. BHANJAN RAM *v.* GOPALA. **92 P R 1908**

9.—NOTICE.

1. *Notice to pre-emptor.*

Held, that a mere notification in general terms, by a proprietor of land, of his intention to sell, was not sufficient notice to the pre-emptor. HUSSAN *v.* KHAN SULTAN KHAN. **60 P R 1867**

2. *Held*, that notice under section 13, Act IV of 1872, must be given by the vendor; it is not enough that the pre emptor has notice from the vendee. MUHAMMAD MOKEEM *v.* MUHAMMAD YASSEEN. **55 P R 1873**

3. *Act IV of* 1872, *sections* 13, 14—*Mortgagee "proposing to foreclose" mortgage—Notice—Omission to redeem by party receiving notice—Estoppel.*

Held, in a suit for pre-emption to which Act IV of 1872 applied, that if a mortgagee was taking measures under Regulation XVII of 1806 towards foreclosure of a mortgage he was "proposing to foreclose" a mortgage within the meaning of section 13 of that Act, and he was bound to give notice of the amount due in respect of such mortgage to the person having the "right to redeem" under section 14.

Held further, that it was not necessary, under the same Act, that notice of the foreclosure proceedings should be served upon the person having the right of pre-emption; but that if such person, being aware of the fact that the mortgagee was engaged in foreclosure proceedings, and having received notice from the mortgagee of the amount due on the mortgage, refused to avail himself of the implied offer of redemption, he could not afterwards maintain a suit against the mortgagee to enforce his right of pre-emption. HANSRAJ *v.* SAIDA. **35 P R 1881**

4. *Foreclosure of mortgage—Offer and refusal—Sufficiency of notice under section 13, Act IV of* 1872.

In a suit for pre-emption arising out of the foreclosure of a mortgage by way of conditional sale, it was urged among other pleas by the mortgagee (defendant) that the plaintiff's suit was not maintainable, as he had refused an offer to take over the said mortgage by conditional sale. It appeared from the evidence that at the time of the foreclosure proceedings the plaintiff was asked by the defendant mortgagee if he was inclined to redeem the mortgage, and that the plaintiff declined urging his own indebtedness.

Held, that such notice did not fulfill the conditions of section 13 of Act IV of 1872, the law in force at the time the

PRE-EMPTION—*contd.*

9.—NOTICE—*contd.*

offer was made, as under that section the mortgagee was bound to give notice to the persons entitled to pre-emption of the amount due in respect of the mortgage; that the notice was not therefore a legal notice, the mere refusal of which apart from any other positive act of waiver by the pre-emptor (nothing of which kind was alleged) would debar the plaintiff from re-asserting his right of pre-emption within the prescribed period of limitation. *Hansraj* v. *Saida* (No. 35 *P. R.* 1881), cited. JOWAHIR MAL *v.* KALANDAR KHAN. **155 P R 1882**

5. *Act IV of* 1872, *sections* 13, 14—*Notice—Payment or tender—Mere expression of willingness to pay not equivalent to tender.*

Where within three months from the date of receiving the notice required to be given by section 13 of Act IV of 1872, the plaintiffs claiming pre-emption expressed in their written plaint their willingness and readiness to pay whatever the Court might fix as a fair price, *held*, that the said plaintiffs had not complied with the requirements of section 14 of Act IV of 1872, as amended by Act XII of 1878, it being impossible to hold that a mere expression of willingness to pay as above was equivalent either to a payment or a tender; for to constitute the latter there must be an actual production of the money, unless the production is dispensed with by an express declaration or equivalent act of the creditor. ALLAH BAKSH *v.* RAHIM BAKSH. **46 P R 1883**

6. *Foreclosure of mortgage—Notice to pre-emptors—Person "proposing to foreclose"—Act IV of* 1872, *sections* 13, 15, 16.

Held, that the mortgage is the person who "proposes to foreclose" within the meaning of section 13 of the Punjab Laws Act, and the persons concerned to whom notice is to be given under the same section are the persons entitled to redeem (*see* section 15), and such notice must be given at some time previous to the mortgage being foreclosed.

Held further, that a person "proposes to forcelose" within the meaning of section 13 when he institutes proceedings under Regulation XVII of 1806, and sections 15 and 16 show that the payment or tender within 3 months of the notice is a condition precedent to enforcing the right by suit.

Semble, that the 2nd clause of section 13 means that notice to be valid must be given through a Court, so as to avoid all disputes as to notice being given or not; and the latter part of the clause is subordinate to the former, and relates only to service by the instrumentality of the Court. UDE RAM *v.* BADHUR MAL. **90 P R 1887**

7. *Punjab Laws Act*, 1872—*Pre-emption—Payment—Exclusion of day on which notice is given.*

PRE-EMPTION—*contd.*

9.—NOTICE—*concld.*

In reckoning the three months within which, in pre-emption cases, a person having a right of pre-emption may pay or tender the price to the vendor, or in the case of a mortgage, the amount due to the mortgagee, the day on which the notice is given is to be excluded. JOTI PERSHAD *v.* GAJJU. **114 P R 1891**

8. *Pre-emption—Mortgage by conditional sale—Failure by pre-emptors to tender amount due on mortgage after notice, effect of.*

Held, that in the case of a foreclosure of mortgage by conditional sale, the failure on the part of the pre-emptor to tender the amount due on the mortgage after notice duly served upon him, does not involve forfeiture of his right of pre-emption, the provision as to forfeiture contained in section 14 of the Punjab Laws Act which deals with sales, having been intentionally omitted in section 15 of the Act which deals with foreclosures. RAM SUKH DAS *v.* FAZAL-UD-DIN. **19 P R 1898**

9. *Pre-emption—Notice to pre-emptors under section* 53 *of the Tenancy Act*, 1887—*Waiver of right—Suit by pre-emptor as an occupancy tenant—Punjab Laws Act*, 1872, *section* 13.

Held, in a suit for pre-emption of an occupancy holding that a landlord who was also an occupancy tenant in the same village served with a notice under section 53 of the Tenancy Act was at liberty to elect to claim pre-emption under either of his qualifications, and that his failure to proceed under the Tenancy Act did not bar him from resorting to the Civil Court, or constitute acquiescence or a waiver of his right.

Held, also, that the absence of specification of price demanded in a notice under section 53 prevents it being effectual under section 13 of the Punjab Laws Act. SARDAR ALI SHAH AND OTHERS *v.* JIWAN SINGH. **22 P R 1901**

10.—PURCHASE MONEY.

—*Pre-emption—Mortgage by way of conditional sale—Completion of purchase—Amount claimable by vendee from pre-emptor—Principal and interest.*

See INTEREST. **121 P R 1894**

1. *Price.*

Held, formerly, that either the vendor or vendee could insist on the Court fixing the proper value on the property, and if the pre-emptor were unwilling or unable to pay the price so fixed, his claim lapsed. LEKH RAJ *v.* DAVEE CHAND. **35 P R 1868**

2. *Held*, that the Court itself could not fix the price; if it were not agreed upon amongst the parties, it should be referred to a valuation committee. *Goomanee* v. *Ruheemooddeen* (No. 35 *P. R.* 1870); and so ruled in

PRE-EMPTION—*contd.*

10.—PURCHASE MONEY—*contd.*

MUSSAMMAT HUMEEDOOLNISSA *v.* MUHAMMAD AKBAR. **83 P R 1868**

3. *Valuation*—Shamilat.

In a suit for pre-emption, the Court in decreeing for plaintiff, should consider the value of the land sold and the value of the rights and interests in the common (*shamilat*) land which the purchaser, as owner of the land, acquires. DARBARA SINGH *v.* UTTAM SINGH. **12 P R 1873**

4. *Market value.*

In the absence of proof of a different market value, the Court may treat the sum paid by the vendee as evidence of the fair market value for the time when the sale took place. BHUP SINGH *v.* KHARAK SINGH. **29 P R 1875**

5. *Offer made in "good faith."*

If a person wishing to pre-empt, refuses to buy at a price named, he does so at his own risk; and in suing for pre-emption, he must show that the offer was not made in good faith—*i. e.* either that the land was offered to him at one price, and sold at another and a lower price, or that the land, though sold at the same price asked from him, was sold at a fictitious price, not representing the true value of the land. SHAMBU MAL *v.* JAMNA DAS. **38 P R 1875**

6. The market value is the value of the property at the time of action brought. SUNDAR DAS *v.* SHAM SINGH. **74 P R 1875**

7. *Custom*—Wajib-ul-arz—*Provision for offer of sale at a price to be fixed by* punchayat—*Omission to make such offer—Bonâ fides.*

In a suit for pre-emption, it appeared that a clause in the Administration paper of the village provided that before sale by a co-sharer the land must be offered to the other co-sharers, and should not be alienated by him unless the said co-sharers refused to take the land for the price fixed by a *punchayat* of zemindars of neighbouring villages.

Held, that the custom evidenced by the above clause did not give the pre-emptor an absolute right to an offer of purchase at such price as a *punchayat* might determine, nor as a matter of law could it be held that an offer made to the pre-emptor by the vendor at the price at which he was willing to sell, and for which he actually did sell, was not an offer made in good faith, merely because it was not accompanied by an offer to submit the price to be determined by arbitration or because there was a refusal so to submit it, though this was a circumstance to be considered in determining the question whether the offer was made in good faith. JALAL-UD-DIN KHAN *v.* SANDEH KHAN. **49 P R 1881**

8. *Plaintiff alleging and defendants denying that the price mentioned in the deed was not fixed in good faith—Duty of Court*

PRE-EMPTION—*contd.*

10.—PURCHASE MONEY—*contd.*

to frame issue on question of boná fides—Market value.

In a suit for pre-emption in which the plaintiff alleged that the sale had been made without notice and that the value of the property sold was less than that mentioned in the deed, and the defendants pleaded private notice, and that the sum named in the deed had been actually paid, the Court framed two issues, (1) whether the private notice was a good plea, and (2) what was the fair market value of the land in question.

Held, that the Court ought to have framed as a second issue "whether the price named in the deed was or was not fixed in good faith," and that it was only in the event of a finding in the negative on this issue that it would be necessary to determine the issue fixed as to the market value of the property, although the market value would be important evidence upon the question whether the price stated in the deed was a price fixed in good faith.

A price higher than the market value is not necessarily a price fixed in bad faith, as the difference may be satisfactorily explained. NANDA *v.* CHANDA SINGH. **69 P R 1882**

Cited with approval in IMAM-UD-DIN *v.* NUR KHAN. **10 P R 1884**

9. *Plaintiff claiming pre-emption at a price which afterwards appears to be less than the sum actually paid—First Court granting decree conditional on payment of the full sale-money—Reversal of such decree by Appellate Court on ground that plaintiff's suit was not maintainable as he expressed no willingness to purchase at whatever sum might be fixed by the Court—Validity of first Court's decree—Unwise exercise of discretion by Appellate Court.*

Plaintiff sued for pre-emption of a house which purported to have been sold for Rs. 900, but the outside market value of which plaintiff alleged was not more than Rs. 400, and he accordingly asked for a decree for pre-emption at the market value. The first Court gave the plaintiff a decree conditional on payment of Rs. 700, which it considered to be the sum that the purchaser had actually paid for the property, and the plaintiff duly paid up this sum within the time prescribed by the decree. On appeal the lower Appellate Court dismissed plaintiff's suit *in toto*, on the ground that as plaintiff had claimed in his plaint to purchase the house for Rs. 400, without expressing his willingness to pay any higher sum that might be fixed by the Court as the market value, he was not entitled to maintain his suit, when it was ascertained that the price *boná fide* paid was more than the sum mentioned in the plaint.

Held, that the lower Appellate Court was not justified in dismissing plaintiff's suit on the grounds above stated; that there is nothing in the Punjab Laws Act which precluded the Court from giving the plaintiff a conditional decree for pre-emption upon payment of the actual price of the property in

PRE-EMPTION—*contd.*

10.—PURCHASE MONEY—*contd.*

dispute: that in a suit for pre-emption principles of equity require that a Court should endeavour to put an end to useless litigation by determining once for all the condition under which the plaintiff is entitled to exercise the right, instead of leaving the parties to fight the whole matter out again in a fresh suit, simply because it turns out at the close of the investigation that the value of the property exceeded the sum mentioned in the plaint, and because the plaintiff did not add to his prayer a willingness to abide by any valuation which the Court might adopt: and that considering the stage to which the litigation had reached, and the fact that the plaintiff had shown his willingness to preserve his right of pre-emption by paying up the amount fixed by the first Court within the period stated in the decree, although he still contended that the amount so fixed was excessive, the lower Appellate Court did not exercise a wise or reasonable discretion in reversing the decree and in dismissing the suit on the grounds already stated. PRITAM DAS *v.* HIRA NAND. **178 P R 1882**

10. *Act IV of* 1872, *section* 16—*Price to be paid where the price entered in the deed has not been fixed in good faith—Market value—Price actually paid.*

Held, that where in a suit for pre-emption the price entered in the deed, or otherwise alleged by the parties, has been found not to have been fixed in good faith, the price at which the plaintiff can claim pre-emption is under section 16 of Act IV of 1872, the fair market value only, and not the price actually paid; and although the price actually paid is always an important fact to be duly considered in forming an estimate of the market value, it must be considered in connection with other facts. MEHTAB KHAN *v.* MUSTAFA BEG. **101 P R 1887**

11. *Custom*—Mohalla *Marochian, Mooltan city—Auction purchaser reselling at enhanced price to second purchaser—Price to be paid by pre-emptor—Right to follow property into hands of second purchaser.*

The custom of pre-emption found to prevail in *mohalla* Marochian in the city of Mooltan.

In a suit for pre-emption, it appeared that the house in question was sold in execution of a decree, and purchased at the auction by one B. for Rs. 625. Plaintiff sued for and obtained a decree releasing her husband's half of the house, and before the period within which she could claim pre-emption of the other half had expired, B. sold the said half to the present defendant for (as he alleged) Rs. 500.

Held, that plaintiff was entitled to pre-emption on payment of half of the amount paid by the auction-purchaser, *viz.*, Rs. 312-8-0, as defendant must be taken to have bought the property subject to the right of plaintiff to claim pre-emption at the price obtained at the first sale, and plaintiff was not bound to pay defendant any sum which he might have paid his vendor in excess of that which the latter paid for the property.

PRE-EMPTION—*contd.*

10.—PURCHASE MONEY—*contd.*

Mussammat Shakro v. *Molar Mal* (No. 63 *P. R.* 1879), cited and followed. PANJU RAM *v.* MUSSAMMAT NIKI BAI. **165 P R 1883**

12. *Plaintiff alleging and defendant denying that the price stated in the deed was not fixed in good faith—Proper procedure—*Onus probandi—*Market value.*

Held, that in pre-emption cases where the plaintiff alleges and the defendant denies that the price stated in the deed was not fixed in good faith, the vendee should be called upon to prove, as strictly as possible that the price entered in the deed of sale was actually paid, the *onus* of proving that it was not fixed in good faith lies on the pre-emptor. If the price actually paid is less, it follows that the price stated in the deed was not fixed in good faith. The price actually paid is in general the best evidence of market value at the time of sale. GULAB AND OTHERS *v.* RAM SINGH. **102 P R 1890**

13. *Decree for pre-emption—Payment of purchase money in foreign circle notes—Punjab Laws Act, section* 17 *and Civil Procedure Code, section* 214.

A successful plaintiff in a pre-emption suit paid part of the purchase money in foregin circle currency notes. The Court in the first instance accepted the notes in payment without any objection, and afterwards allowed the plaintiff two more days to supply currency notes of the Lahore Circle, or other legal tender, which order was complied with.

Held, that the order of the lower Court was correct. Currency notes are money in the ordinary acceptation of the term, although they may be notes of a different circle from that in which they are tendered. The words "purchase money" are not defined, and there is nothing either in section 17, Punjab Laws Act, or in section 214, Civil Procedure Code, 1882, to put a restricted or technical meaning upon them. No. 70 *P. R.* 1890 distinguished.

Held, also that an appeal lay from the order in question under section 214 (*c*), Civil Procedure Code, the order relating to the execution of the decree. IFTIKHAR ALI *v.* SAHIB RAM. **67 P R 1892**

14. *Price to be paid by pre-emptors on foreclosure of mortgage—Punjab Laws Act*, 1872, *sections* 13, 14, 15.

Held, that the pre-emptors entitled to take the property on foreclosure on payment, not of what was due on the mortgage, but of the market value only.

The mere fact that a pre-emptor in his eagerness to get the land and to outbid others, had professed himself ready to pay a sum considerably more than the market value, *held*, not to amount to an estoppel, it being established that such statement did not lead defendant to confess judgment or to do any other act which he would not have done had the statement not been made. RAM SUKH DAS *v.* FAZAL-UD-DIN. **19 P R 1893**

PRE-EMPTION—*contd.*

10.—PURCHASE MONEY—*contd.*

15. *Pre-emption, suit for—Sale by vendee after institution of suit, to rival pre-emptor—Frandulent transaction—" Superior diligence"*—Lis pendens.

On the 3rd May 1894 one M. sold certain premises in Delhi to defendant No. 2 for a sum of Rs. 6,000, and on the 1st December 1894, the latter sold the same premises to defendant No. 3 for Rs. 7,000. Plaintiff thereupon instituted a suit for pre-emption, and immediately after the institution of the suit defendant No. 3 sold the premises for Rs 12,000 to defendant No. 4, who, within a fortnight, sold them to defendant No. 5 at the same figure. It was found by the Chief Court on appeal (*a*) that defendant No. 5 had rights of pre-emption in respect of the premises, but that plaintiff's pre-emptive rights were not inferior; (*b*) that the sales by defendants Nos. 3 and 4 were colourable transactions intended to defeat plaintiff's claim; and (*c*) that defendant No. 5, though a pre-emptor, had not acted *bona fide*, and had joined in an intrigue for fictitiously raising the price against plaintiff and adding to the difficulties of the latter in the matter of proving his claim. On these findings it was

Held, that issues not having been fixed in plaintiff's suit the doctrine of *lis pendens* was not strictly applicable.

But, *held*, (without questioning the right of defendant No. 3 to transfer the property, if he thought fit to do so, before a decree for pre-emption had been passed against him), that as the price of the sales by defendants Nos. 3 and 4 had been fixed in bad faith, plaintiff, a *bona fide* pre-emptor with rights of pre-emption not inferior to those of defendant No. 5, had taken such action as showed superior diligence on his part, and was therefore entitled to a decree for pre-emption on payment of the amount fixed by the lower Court. RAM CHAND *v.* ABDUL HAK. **32 P R 1899**

16. *Pre-emption — Purchase money — " Good faith "—Punjab Laws Act,* 1872, *section* 16, *clauses (c) and (d).*

The law of pre-emption, though it does operate to keep down the price of property to some extent by hampering transfers, is not intended to have that effect; it merely aims at protecting the prior rights of purhase of certain persons on specific grounds, and as it stands cannot be interpreted to deprive the owner of the right to make the most he can of his property, and there is nothing improper to demand or to pay a price much above the market value. Therefore in a case for pre-emption where the price entered in the deed of sale though considerably above the market value was not shown to be fictitious and where there was no proof nor indication that any portion of it was refunded or otherwise appropriated, *held*, that the price was fixed in good faith. PHUMMAN MAL *v* KEMAN. **75 P R 1901**

17. *Pre-emption—Purchase of property in payment of previous debts—Market value—Good faith.*

PRE-EMPTION—*contd.*

10.—PURCHASE MONEY—*contd.*

In a case for pre-emption where the transfer was in satisfaction of old debts if the market value of the property does not appear to differ very materially from the amount of the debts due from the vendor, and the price actually paid is the cancellation of all the liabilities mentioned in the deed, the price so paid may be held to have been fixed in good faith; but where the disparity between the market value of the property and the sum in satisfaction of which is has been accepted is very great and the debtor is clearly insolvent and the property in question taken in satisfaction was practically the debtor's only asset, the market value of the property is the proper test of the value of the consideration paid and not the nomial amount of the debts due. VIR BHAN *v.* MATTU SHAH. **77 P R 1901**

18. *Pre-emption — Purchase money — " Good faith"—Punjab Laws Act,* 1872, *section* 16 (*c*).

The law of pre-emption does not allow a pre-emptor to take objection to a price actually and genuinely paid on the ground that it is a fancy price, the market value being no test of what should be paid by a pre-emptor until the price mentioned in the deed is shown to have been fixed not in good faith; therefore, in a case for pre-emption, though there was admitted enmity of a bitter type between the pre-emptors and vendees, and the latter paid what was undoubtedly a fancy price with the knowledge that these tactics would annoy and defeat the pre-emptors, *held*, that the price was not fixed in bad faith.

Phuman Mal v. *Keman* (75 *P. R.* 1901) and *Imam-ud-din* v. *Nur Khan* (10 *P. R.* 1884) cited. NANAK CHAND AND OTHERS *v.* RAM CHAND AND OTHERS. **68 P R 1902**

19. *Pre-emption—Purchase-money - Good faith—Punjab Laws Act,* 1872, *section* 16 (*c*).

Held, that the fact that the consideration for a transfer of property which is subject to right of pre-emption consisted of old debts made up largely of interest is not in itself a sufficient reason for finding that the consideration entered in the deed of sale was not fixed in good faith.

In such a case, where the vendor owns other property and is not insolvent, and there has evidently been a conscious adjustment of value and not merely a wiping out of debt regardless of amount in exchange for the land, there is no natural presumption that the price was fixed in bad faith.

Phumman Mal v. *Kama* (75 *P. R.* 1901) and *Nanak Chand* v. *Ram Chand* (68 *P. R.* 1901), followed. AJUDHIA PERSHAD *v.* AHSAN-ULLAH. **56 P R 1907**

20. *Pre-emption—Consideration for sale made up of previous debts—Option under proviso to section* 22, *Punjab Pre-emption Act, II of* 1905 *when to be granted.*

PRE-EMPTION—*contd.*

10.—PURCHASE MONEY—*concld.*

Where the consideration money for a sale (Rs. 1,200) was made up of previous debts and the market value of the property sold was found to be Rs. 780.

Held, that the *proviso* to section 22 of the Punjab Pre-emption Act was applicable and the amount payable by the pre-emptor must be the market value or the vendees may, at the discretion of the Court, be put to their option of either accepting such value or having the sale cancelled.

Held also, that as the vendees, appellants in this case, had not been able to show any equity in their favour, it was unnecessary for the Chief Court to allow the vendees any option in the matter and therefore the decree of the lower Appellate Court decreeing the claim on payment of the market value, was confirmed. **54 P R 1911**

21. *Pre-emption—Fraudulent over-statement of sale price—How far binding on successful pre-emptor in suit by heirs of vendor to have sale set aside for want of consideration and necessity—When actual price paid nearly approximates market value of property sold, Courts decline to change sale into mortgage.*

A sold certain land for Rs. 4,000, B sued for pre-emption alleging that the real price paid was Rs. 3,000. The Court found that this was so and decreed the claim on payment of Rs, 3,240 the ascertained market value. The sons of A. then sued for recovery of the land on the ground that the sale by their father was neither for consideration nor for necessity. The Lower Appellate Court held that B, the pre-emptor, stood in the shoes of the original vendee and must accept the fact that the sale was put down for a consideration of Rs. 4,000 and finding that only Rs. 3,000 was actually paid and for necessity decreed the claim on payment of that amount.

Held, that though a pre-emptor who obtains a decree becomes in many respects identified in interest with the original vendee he cannot be held a *particeps criminis* in a fraud perpetrated by the vendee, which he himself brought to light and succeeded in frustrating, and that B was not therefore debarred from urging in the present case that the sale though ostensibly for Rs. 4,000, was in fact merely for Rs. 3,000.

Held also, that as the sale was for Rs. 3,000 and that amount was for necessity and fairly represented the market value, there was no reason for converting the sale into a mere mortgage and that the suit must consequently be dismissed.

8 *P. R.* 1908 and 27 *P. R.* 1909, referred to. **83 P R 1911**

11.—PAYMENT INTO COURT.

(*a*) *Decree for pre-emption—Question whether decree-holder has paid money into Court within time.*

See CIVIL PROCEDURE CODE, 1908, SECTION 47. **38 P R 1898**

PRE-EMPTION—*contd.*

11.—PAYMENT INTO COURT—*contd.*

(*b*) *Price fixed by first Court—Decretal amount paid in after deducting costs—Price raised by Appellate Court.—Payment of difference without costs previously recovered—Sufficient compliance.*

See CIVIL PROCEDURE CODE, 1908, ORDER XX, RULE 14. **56 P R 1910**

(*c*) *Pre-emption—Money paid into Court by successful pre-emptor and withdrawn by original purchaser—Reduction of price by Appellate Court—Interest on excess in hands of original purchaser.*

See INTEREST **111 P R 1892**

(*d*) See LIMITATION ACT, 1871, SECTION 5. **31 P R 1877**

(*e*) *Application of section 7 of Limitation Act, to order fixing time for payment.*

See LIMITATION ACT, 1877, SECTION 7. **31 P R 1884**

(*f*) *Court's power to extend period fixed under section 19, Punjab Pre-emption Act.*

See. PRE-EMPTION UNDER PRE-EMPTION ACT, SECTION 19. **78 P R 1909**

1. *Strict enforcement of the law—Act IV of* 1872, *section* 18.

The pre-emption law must be construed strictly; and, therefore, where a decree, dated 11th July, directed the purchase money to be paid within three months, *held*, that the money not having been paid by the 10th October, the plaintiff had lost his right of pre-emption. RUMMUN LALL *v.* MUTSADDEE. **37 P R 1874**

2. *Act IV of* 1872, *section* 18—*Purchase money, Power of Court to receive, after date specified in decree.*

Where the purchase money is not paid before sunset of the day specified in a decree for pre-emption, the decree becomes void, and there is no power in the Court to receive the money after the specified date, even upon good cause being shown for default in punctual payment. FAZLA *v.* FAZAL DAD. **1 P R 1879**

3. *Sale of land subject to pre-emption—Decree for pre-emption against purchaser—Right of purchaser to recover from his vendor difference between the price paid by him and the price decreed to be paid by pre-emptor.*

Held, that when land subject to the right of pre-emption is sold by the owner to a person not having the right of pre-emption, the interest of the vendor passes to the purchaser, but is liable to be again transferred to the pre-emptor upon his demand by suit. When both parties to the sale are aware of this contingency, the original purchaser is not entitled, in the absence of any contract to that effect, to recover from his vendor any deficiency between the price paid by him and the price decreed to be paid by the pre-emptor for the property. WAZIRA *v.* SHADI KHAN. **67 P R 1881**

4. *Failure to deposit purchase-money within time fixed in decree—Tender within such period—Refusal to receive the money tendered—Effect of such refusal.*

PRE-EMPTION—*contd.*

11.—PAYMENT INTO COURT—*contd.*

Where the holder of a decree for pre-emption tendered the purchase-money at the proper Court within the time fixed in the decree, but the Naib Nazir refused to receive it in the absence of the Tahsildar, whose absence was unexpected and could not have been foreseen by the plaintiff, *held*, that the decree did not therefore become void, as the decree-holder complied with the terms of the decree when he tendered the money within the time fixed. AHMAD DIN *v.* RIHAN. **69 P R 1881**

5. *Decree-holder in pre-emption suit tendering amount fixed in decree before stipulated period—Refusal of Court to accept such amount till after the decision of the case in appeal—Act IV of* 1872, *section* 18.

Where the decree-holder in a pre-emption suit offered the amount mentioned in the decree after the date fixed for payment, but alleged that he had already tendered the said amount within the period fixed, and been directed to take it back and pay it, when an appeal, which was to decide to whom the money should be paid had been decided, *held*, that if the plaintiff did offer the amount as stated, he had in effect paid the amount into Court before the day fixed, within the meaning of section 18 of Act IV of 1872. MIR ZAMAN *v.* PYAO. **79 P R 1881**

6. *Plaintiff claiming, as owner of the site pre-emption of the building on the site—Lower Court decreeing pre-emption on payment for entire property—Failure by plaintiff to pay into Court amount thus fixed—Appeal on the ground that plaintiff was entitled to pre-emption on payment of value of the building only—Plaintiff entitled to decision by appellate Court on this point.*

Plaintiff claimed, as owner of the site, to exercise a right pre-emption in respect of the building on that site, on payment for which he should be put into possession both of the building and of the site without further payment. The first Court, finding in plaintiff's favour on both claims, decreed pre-emption on payment of Rs. 142, which it found to be the value of the materials; but the Judicial Assistant, on appeal, holding that he must pay for the rights of the vendors in the site, as well as for the building, and finding that Rs. 413 had been paid in good faith for the entire property, increased the sum to be paid for pre-emption to Rs. 413. The plaintiff, without paying the difference between this sum and the amount originally fixed, appealed to the Commissioner, contending that he was himself the owner of the land, and had therefore nothing to pay for that. The Commissioner held that the plaintiff had lost his right of pre-emption by non-payment of the enhanced price.

Held, that though by not paying the amount fixed by the Judicial Assistant, plaintiff had given up his right to buy for Rs. 413 in case the appellate Court

PRE-EMPTION—*contd.*

11.—PAYMENT INTO COURT—*contd.*

should find that he was bound to pay for the site as well as for the building, he did not give up his right to pre-emption in respect to the building if the appellate Court should hold that the decision of the first Court that he had nothing to pay for the site was correct; and that therefore he was entitled to a decision by the appellate Court on this point. RAI BASANT SINGH *v.* NIADAR MAL. **101 P R 1883**

7. *Decree-holder omitting to pay the cost as well as the purchase money within the stipulated time—Effect of such omission—Civil Procedure Code, (Act XIV of* 1882, *section* 214—*Punjab Laws Act (as amended) section* 18.

Held, that a pre-emptor, who has obtained a decree for pre-emption on condition that he pays the purchase-money and costs by a certain date, loses his decree if he fails to pay the costs, though he has paid the actual purchase-money within the stipulated time. TEHL SINGH *v.* RULDU. **96 P R 1884**

8. *Plaintiff in first suit allowing his decree to lapse by non-payment of purchase money—Second suit by father of first plaintiff for pre-emption of same property.*

One S. A. having brought a suit for pre-emption and obtained a decree, allowed such decree to lapse by omitting to pay within the prescribed period the purchase money fixed by the Court whereupon the father of S. A. brought a suit for pre-emption of the same property. There was nothing in the first suit to indicate that S. A. was suing in a representative capacity or that he did anything but assert his own individual right.

Held, that the first suit was no bar to a subsequent suit by S. A.'s father, in which he asserted his individual right. TAHIR KHAN *v.* MEGHA KHAN. **1 P R 1885**

9. *Decree subject to payment of a certain sum within a fixed period, and also awarding plaintiffs their costs—Payment of such sum within the specified period less the costs awarded—Effect of such payment—Right of plaintiffs to deduct the costs awarded in their favour.*

Plaintiffs obtained a decree for pre-emption subject to the payment of Rs. 1,000 within two months from the date of the decree, which also awarded the plaintiffs their costs which were assessed at Rs. 17-4-0. In the *parcha* given to the plaintiffs, it was distinctly intimated that they were to pay Rs. 982-12-0 within the period specified in the decree, and this last named sum was admittedly deposited by the plaintiffs within the prescribed period.

Held, that there had been such a compliance by the plaintiffs with the order of the Court as entitled them to enforce their decree.

Held, further, *semble*, that even in the absence of any express direction by the

PRE-EMPTION—*contd.*

11.—PAYMENT INTO COURT—*contd.*

Court which passed the decree, the plaintiffs would have been entitled to deduct the costs awarded in their favour. BAHADAR *v.* JALAL. **70 P R 1888**

10. *Payment of purchase money into Court—Punjab Laws Act (IV of 1872), section 18—Effect of payment made partly in cash) and partly by tendering a receipt acknowledging payment of the balance.*

A decree for pre-emption directed that the purchase-money should be paid on or before a specified date. Before that date the decree-holder deposited in Court a sum representing the ⅔rds share of the purchase-money due to one of the vendees, and filed a receipt from the other vendee for the balance, the latter vendee being present in Court and admiting the recepit of the money, whereupon the Court ordered the receipt to be filed with the record.

Held, that this last payment was a payment into Court within the meaning of section 18 of the Punjab Laws Act. SHER SHAH *v.* SHER JANG. **21 P R 1889**

11. *Payment of money to purchaser—Condition precedent to delivery of possession to pre-emptor—Payment by pre-emptor in Court—Attachment by his creditors.*

A decree for pre-emption was passed in favour of A. against B. conditional upon A. paying into Court a certain sum by a certain date. The money was duly deposited as directed, but it was attached and taken out by A.'s creditors as his money, A. applied for delivery of possession. B. objected to give up the land, unless the price decreed was first paid to him.

Held, that B.'s contention was correct. He had every right to object to being deprived of possession until he received the purchase money. The amount deposited had gone to A.'s benefit, and therefore he must pay it over again. SANDHA KHAN *v.* JHANDU KHAN. **61 P R 1890**

12. *Punjab Laws Act (IV of 1872, sections 17 and 18, Civil Procedure Code (Act XIV of 1882), section 214—Construction.*

Plaintiff obtained a decree for pre-emption in the first Court conditional on payment of Rs. 500 by a specified date. With this order he duly complied. Defendant appealed to the Divisional Judge, as regards the price only. The Divisional Judge amended the decree by altering the sum of Rs. 500 to Rs. 1,000, and directing that if the latter sum, together with the deficient Court-fee stamps in the original suit, be not paid within two months, the suit shall stand dismissed. Plaintiff deposited in Court within the prescribed period, two Government of India 4 per cent. Promissory Notes for Rs. 500 each, and paid in the amount of the deficient stamp duty. Having done this, he appealed to the Chief Court on the question of price. At the hearing it was objected for the respondents that the deposit of Promissory Notes was not a payment of money; that the plaintiff not having

PRE-EMPTION—*contd.*

11.—PAYMENT INTO COURT—*contd.*

complied with the decree of the Divisional Judge, that decree became void, and that therefore the appeal could not be sustained.

For the plaintiff it was argued, on the other hand, that the Court did not find for the plaintiff having found adversely to him that the price was Rs. 1,000, and that therefore the decree did not become void, nor did the suit stand dismissed as provided for in section 214, Civil Procedure Code, and section 18, Punjab Laws Act.

Held, by the Full Bench—

(*i*) that the deposit of Government Promissory Notes was not payment of money and not a sufficient compliance with the decree;

(*ii*) but that the non-compliance with the decree was not fatal to the further prosecution of the appeal;

(*iii*) that sections 17 and 18 of the Punjab Laws Act, 1872, do not extend to a Court of appeal as regards suits for pre-emption on a sale, section 214, Civil Procedure Code, applies to the decree of an Appellate Court made upon the successful appeal of a defendant for increasing the amount of money payable by the pre-emptor. THAKUR DAS *v.* TULSI DAS. **70 P R 1890 F. B.**

13. *Failure to deposit purchase money within time fixed in decre—Effect of such a failure—Punjab Laws Act (IV of 1872), section 18.*

The appellant brought a suit for pre-emption and obtained a decree in the Court of first instance, conditional on paying the purchase-money by a certain date. He allowed such decree to lapse by failing to pay within the stipulated time, but appealed therefrom on the ground that a decree should not have been passed in favour of his rival pre-emptors.

Held, that the non-compliance with the decree barred the hearing of the appeal.

No. 70 *P. R.* 1890, distinguished. UMRAO SINGH *v.* MUHAMMAD KARIM BAKHSH. **161 P R 1890**

14. *Pre-emption—Power to require payment into Court—Section 16 A, Punjab Laws Act.*

In a suit for pre-emption, the latest stage at which the Court may make an order under section 16A, Punjab Laws Act, 1872, requiring the plaintiff to pay into Court the price, or market value of the property, is up to the time when issues are settled and not afterwards.

The power of rejecting the plaint contained in section 16A is supplementary to the provisions of the Code of Civil Procedure, and must be read with the Code. GOBIND *v.* KISHEN CHAND. **52 P R 1891**

15. *Suit for pre-emption—Deposit of purchase money—Power of Appellate Court*

PRE-EMPTION—*contd.*

11.—PAYMENT INTO COURT—*contd.*

to extend time for deposit—Punjab Laws Act, 1872, section 18—Civil Procedure Code, 1882, sections 206, 214, 545, 546.

Plaintiff on the 8th June 1891 instituted a suit for pre-emption against defendant, who had obtained a decree for possession of certain land after foreclosure, and on the 8th October 1891, plaintiff's claim was decreed on condition that the whole of the purchase-money was paid into Court by the 9th November failing which payment the decree was, under Section 18 of the Punjab Laws Act, 1872, to be treated as null and void. Both parties appealed against this decree and the plaintiff, in filing his appeal on the 5th November, prayed that the time for making the payment might be extended. An *ex-parte* order was accordingly passed on the same date by the appellate Court granting an extension of the time while the appeal should be pending. The judgment of the lower Appellate Court, which was given on the 27th February 1892, contained no mention of the date of payment, but a postscript was added to the judgment to the effect that two months more should be allowed for that purpose, and a degree was drawn up accordingly.

Held, that the terms of the original decree could only be altered by the decree of a competent Court setting it aside, and that, inasmuch as the decree of the first Court had been drawn up in accordance with Section 18 of the Punjab Laws Act, 1872. payment into Court within the time fixed was a condition which had to be fulfilled in order that the decree might remain in force, and, as no such payment had been made within the said time, there was no decree of the first Court in existence in accordance with its terms at the time when the decree of the lower Appellate Court was made.

I. L. R., II All., 744, distinguished. SARAB DIAL *v.* NATHU. **137 P R 1894**

16. *Pre-emption—Payment of deposit money—Decree of lower Court fixing time for payment modified, subsequently to expiry of such period, by decree of Appellate court—Punjab Laws Act, 1872, section 18—Civil Procedure Code, 1882, sections 214, 579.*

Plaintiff, on 6th September 1893, obtained a decree for pre-emption of certain land on payment of Rs. 80 against N., vendor, and Gh., vendee, the decree directing payment of the purchase-money into Court within two months, failing which the decree was, under Section 18 of the Punjab Laws Act, 1872, to become null and void. On the 31st October 1893 plaintiff appealed to the Divisional Judge on the ground that the sum fixed was too high, and on the 5th December 1893, the Divisional Judge modified the decree by reducing the sum payable by plaintiff to Rs. 50. On the 9th January 1894, plaintiff took out execution and asked to be allowed to deposit the purchase-money, less costs, and on the 11th January the amount found due, after such deduction, was paid into Court. On the 12th January 1894, Gh., the vendee, filed a petition objecting, *inter alia*, that the purchase-money

11.—PAYMENT INTO COURT—*contd.*

not having been paid into Court within the time fixed by the first Court, the decree in plaintiff's favour had become null and void, and his right lost under section 18 of the Punjab Laws Act, 1872.

Held, on appeal by the plaintiff, that the only subsisting decree in the case being that of the Divisional Court (which modified the decree of the first Court), and no time having been fixed therein for the payment of the purchase-money, the pre-emptor was entitled to enforce the decree in his favour within the period prescribed for execution of decrees by the Limitation Act, and that failure of the Court to comply with the provisions of section 214 of the Civil Procedure Code, 1882, did not affect the validity of its decree.

Held, further, following No. 70 *P. R.* 1890 (F. B.), that section 18 of the Punjab Laws Act, 1872, only avoided the decree of the first, and did not apply to the decree of the Appellate Court, and that the objection that under it the right of pre-emption was lost in consequence of non-payment of the purchase-money within the time fixed in the first Court's decree not having been availed of to procure the dismissal of the appeal by the Appellate Court, could not be urged against the decree of the latter Court in execution of decree.

I. L. R. XI All. 267 and 346, and No. 21 *P. R.* 1889, and No. 70 *P. R.* 1890 (F. B.), referred to. CHAKAR DAR *v.* GHAPILA.

10 P R 1895

17. *Pre-emption suit—Punjab Laws Act, 1872, sections 17, 18—Failure to comply with order directing deposit of purchase-money by certain date, effect of—Appeal—Civil Procedure Code, 1882, section 214.*

A. A. filed a suit for pre-emption of certain land on the 26th January 1893, and on the 7th February N. A. the full brother of A. A. instituted a suit for pre-emption of the same land and made A. A. a defendant. Both suits were decided on the 24th April, the decree in N. A.'s case being in favour of A. A. and N. A. in equal shares, and directing that the sum of Rs. 3,000 be deposited on or before the 1st June, while the decree in A. A.'s case was for pre-emption of the whole land upon payment of Rs. 3,000 on or before the same date, and each decree was declared subject to the decision in the other suit. Further, the decree in A. A.'s case contained a provision declaring it void unless the sums specified were paid on or before the 1st June. N. A. allowed his decree to lapse, but A. A. deposited Rs. 1,500 on the 24th May, and on the 23rd June lodged an appeal in the Divisional Court from the decree in his case. This appeal was rejected by the Divisional Court on the ground that, when the appeal was lodged, the decree of the first Court had become void owing to the non-payment into Court by plaintiff of the whole sum of Rs. 3,000. Plaintiff appealed to the Chief Court.

Held, that the appeal to the Divisional Court was maintainable, and should have

11.—PAYMENT INTO COURT—*contd.*

been heard and disposed of on the merits.

The intention both of section 214, Civil Procedure Code, and of section 18 of the Punjab Laws Act, is not to hamper or preclude the right of appeal, but to provide a penalty for disobedience to the terms of the decree as to the deposit only if it is accepted as correct by the parties, or declared to be so after an appeal to a higher authority, and it was not intended to lay down a rule under which the plaintiff-appellant might in a just claim be excluded from a hearing in the Appellate Court merely because poverty or other causes prevented him raising, even temporarily, a sum largely in excess of the true market value of the property. MALIK AKBAR ALI *v.* HASSAN ALI

67 P R 1895

18. *Pre-emption—Conditional decree—Payment of purchase-money—Appeal—Decree of Appellate Court confirming decree of first Court, but silent as to time for payment of purchase money.*

The first Court granted plaintiff a decree for possession of certain land on payment by him of Rs. 300 within one month from the date of decree. Plaintiff appealed to the lower Appellate Court on the question of price and costs. The lower Appellate Court dismissed the appeal and concluded its judgment as follows : " I observe that plaintiff " admits not having paid Rs. 300 into Court " as directed by the 16th April 1898. This " should be taken into account by the lower " Court in the event of plaintiff now desiring " to pay in the money. I have not thought " it right to extend in any way the time " within which the plaintiff should have " liberty to deposit his money." Forty-eight days after the date of the latter decree plaintiff filed an application for revision in the Chief Court, but did not deposit the said purchase-money or any part thereof.

Held, following *Rup Chand* v. *Sham-ul-Jahan* (*I. L. R. XI All.* 346), that inasmuch as the decree of the first Court had allowed one month for payment of the purchase-money, and the appeal against that decree had been dismissed without any fresh period for payment being expressly allowed, the Appellate decree must be taken to have incorporated the terms of the original decree, that the period of one month allowed for payment must be calculated from the date of the Appellate decree, and that payment by the decree-holder within one month of that date would have been in time.

Under the circumstances of the present case, the Chief Court granted the decree-holder a further period of 14 days from the date of its order for such payment. MOTI RAM *v.* KAMMON.

88 P R 1898

19. *Pre-emption—Payment of purchase-money by pre-emptor in Court—Attachment by his creditor.*

The holder of a decree for pre-emption duly deposited the purchase-money into Court as directed and obtained possession of land. Subsequently the money so paid in

11.—PAYMENT INTO COURT—*contd.*

having been attached by a creditor of the decree-holder, who took it out of Court in execution of his own decree, the vendees applied for a return to them of the land as they had received no purchase-money, and the first Court ordered the pre-emptor to deposit a further sum for payment to the vendees. Pre-emptor appealed to the Divisional Judge who confirmed the lower Court's orders on the authority of *Sandha Khan* v. *Jhandu Khan* (61 *P. R.* 1890).

Held, that as the pre-emptor had fulfilled his part of the order and had duly complied with the decree by depositing in the Court the amount decreed, he was entitled to retain possession without payment of any further sum.

Held, further, that money deposited in a Court to be paid to a vendee under a pre-emption decree cannot be withdrawn by an attachment under a decree of a third party, and that a Court is not competent to pay it out to any one but the person entitled to it under the decree for pre-emption.

Sandha Khan v. *Jhandu Khan* (61 *P. R.* 1890) dissented from. *Abdus Salam* v. *Wilayat Ali Khan* (*I. L. R. XIX All.* 256), followed. *Joti Mal* v. *Coates* (15 *P. R.* 1901) and *Muhammad Ali* v. *Debi Din Rai* (*I. L. R. IV All.* 420) referred to. SANT SINGH *v.* GHASITA AND ANTOHER.

21 P R 1902

20. *Pre-emption—Payment of purchase-money by pre-emptor in Court—Subsequent withdrawal by him of the money so paid in.*

The holder of a decree for pre-emption duly deposited the purchase money, amounting to Rs. 1,475, in Court as directed. Subsequently a reversioner of the vendor brought a suit to have it declared that the sale was without necessity, and should not be allowed to affect his rights except in respect of Rs. 300, and obtained a decree. The pre-emptors then asked the Munsif for the return of their purchase-money as they no longer wished to go on with the purchase, as their decree of pre-emption had been superseded by the declaratory decree. The Munsif without informing the vendee ordered the refund of the money.

Held, that as a pre-emptor by reason of a legal incident to which the sale itself was subject steps into the vendee's shoes, it is the vendee and not the pre-emptor who has the control of the purchase-money which form the consideration for his resigning to the pre-emptor his right and title to the property. It would be most anomalous to allow the pre-emptor after he has obtained a decree, and paid in the purchase-money, to be allowed to change his mind suddenly and take back his money, and that the fact that he had made a bad bargain and would have to pay off reversioners could make no difference to his legal position.

Abdus Salam v. *Wilayat Ali Khan* (*I. L. R. XIX All.* 256), *Hakim Singh* v. *Indar* (46 *P. R.* 1902) and *Gobind Dyal* v. *Inayat-ullah* (*I. L. R. VII All.* 775), cited. ABDULLA *v.* AMIR-UD-DIN.

76 P R 1902

PRE-EMPTION—*contd.*

11.—PAYMENT INTO COURT—*concld.*

21. *Pre-emption—Decree for pre-emption omitting to state consequence of non-payment of pre-emptive price within the time prescribed thereby for payment—Civil Procedure Code,* 1882, *section* 214.

Held, that a pre-emption decree becomes void and inoperative if the pre-emptive price is not paid within the time prescribed for its payment in the decree. An omission in the decree of any order as to what would be the consequence of the decree-holders default in payment of the pre-emptive money does not in any way affect the case.

Jai Kishen v. *Bhola Nath* (*I. L. R XIV All.* 529) followed. GURDIT SINGH *v.* HUKAM SINGH. **52 P R 1903**

22. *Pre-emption—Conditional decree—Appeal by purchaser for enhancement of purchase-money—Duty of Appellate Court to extend time allowed for payment of price when confirming decree of first Court—Construction of decree of Appellate Court confirming decree of original Court, but silent as to time for payment of purchase-money—Civil Procedure Code,* 1882, *section* 214.

Held, by the Full Bench (Reid, J., dissenting)—

(*i*) that an Appellate Court when deciding an appeal by a purchaser from a decree for pre-emption and dismissing the same is not bound to fix a period subsequent to the date of its decree within which the price fixed by the Court of first instance is to be paid ;

(*ii*) that the decree of an Appellate Court dismissing the purchaser's appeal on the ground that the price fixed by the Court below in a pre-emption suit was correct but silent as to time for the payment of pre-emptive money must be construed to have incorporated all the terms of the decree confirmed including the provision fixing the date or time for payment and that in such cases the time allowed must be calculated from the date of the original and not of the appellate decree,

Jaggar Nath Pande v. *Jokhen Tewari* (*I. L. R. XVIII All.* 223), *Chirangi Lal* v. *Dharm Singh* (*I. L. R. XVIII All.* 455), and *Malik Akbar Ali* v. *Hassan Ali* (67 *P. R.* 1895), followed.

Moti Ram v. *Kamman* (88 *P. R.* 1898), overruled; *Rup Chand* v. *Shamsul Jehan* (*I. L. R. XI All.* 346), dissented from.

Ghakar Dar v. *Ghabila* 10 *P. R.* 1895, *Noor Ali Chaudhri* v. *Koni Meah* (*I. L. R. XIII Cal.* 13), *Nam Narain Singh* v. *Lala Raghunath Sahai I. L. R.* (*XXII Cal.* 476), *Daulat* v. *Bhukandas Manakchand* (*I. L. R. XI Bom.* 172), *Manakraman* v. *Unniappan* (*I. L. R. XV Mad.* 170), and *Muhammad Sulaiman Khan* v. *Muhammad Yar Khan* (*I. L. R. XI All.* 207) *F. B.* considered and distinguisd WASAWA SINGH *v.* LAL SINGH. **48 P R 1906 F. B.**

PRE EMPTION—*contd.*

12.—COMPENSATION FOR IMPROVEMENTS.

1. *Compensation for improvements—Erection of buildings by one man on the land of another.*

The general law applicable to the case of one man building on the land of another is that the buildings do not go as of right to the owner of the soil; but whether the builder should merely be allowed to remove his materials or the owner of the soil should (1) take them over at a valuation, or (2) content himself with a ground rent, must depend upon the particular circumstances, more specially the conduct of the parties themselves, in each particular case. RAMDHAN *v.* KURA MAL. **38 P R 1889**

2. *Punjab Laws Act,* 1872—*Pre-emption—Compensation for improvements made by original purchaser—Form of decree.*

The practice of the Court to award compensation for improvements to a vendee who has made them in good faith, or who may appear to be equitably entitled to it, followed and affirmed.

Nos. 34 *P. R.* 1875, 74 *P. R.* 1875, and 38 *P. R.* 1889, referred to.

Per BULLOCK, J.—The decree in such cases should provide separately for the payment of the pre-emption money and the payment of compensation, and that payment of the former within the time fixed in the decree should save the decree from forfeiture though the compensation be not paid (*cf.* section 214, Civil Procedure Code). AZIZ DIN v. SHAM DAS. **91 P R 1892**

13.—CONSTRUCTION OF TRANSFERS.

(*a*) *See* BURDEN OF PROOF. **26 P R 1882**

(*b*) *Suit for pre-emption—Fraudulent concealment of sale by purchaser—Fraud.*
See LIMITATION ACT, 1877, SECTION 18. **86 P R 1902**

(*c*) Benami *sale to escape pre-emption.*
See LIMITATION ACT, 1877, SCHEDULE II, ARTICLE 10. **30 P R 1893**

(*d*) *No right of—Arises on foreclosure of a right to redeem in respect of agricultural land.*
See PRE-EMPTION—PRE-EMPTION ACT, 1905, SECTION 3. **82 P R 1909**

(*e*) *An agreement creating right of occupancy in another person is not a sale and cannot be the snbject of pre-emption.*
See PRE-EMPTION — PRE-EMPTION ACT, 1905, SECTION 4. **136 P R 1907**

1. *Disposal by proprietor of his cultivating right—Presumption of right of pre-emption.*

The permanent disposal by a proprietor of his rights of cultivation is a disposition to which the right of pre-emption may extend ; but the right of occupancy is not of a transferable character and therefore, under section 11, Act IV of 1872, the right of pre-emption cannot be presumed to exist, but must be expressly proved. BALAKI SHAH *v.* HAFIZ ESAN. **67 P R 1874**

2. *Sale—Exchange—Punjab Laws Act (IV of 1872), as amended by Act XII of* 1878, *section* 9.

PRE-EMPTION—*contd.*

13.—CONSTRUCTION OF TRANSFERS—*contd.*

Held, that an exchange of one plot of land for another cannot be regarded as a sale, so as to give rise to a right of pre-emption under section 9 of the Punjab Laws Act, as amended by Act XII, of 1878. UDE RAM *v.* BAKHSHI. **12 P R 1884**

3. *Punjab Laws Act (IV of* 1872), *section* 9—*Custom—Right to enforce pre-emption in cases where land is given in exchange.*

Held, that in the absence of a proved special custom to the contrary, the law, as contained in section 9 of the Punjab Laws Act, does not contemplate that pre-emption should arise on an exchange of land taking place.

The plaintiff having failed to prove any such custom in the present case was held not entitled to succeed in his suit. *Mool Chand* v. *Mansa Ram* (*No.* 157 *P. R.* 1883), cited. *Ude Ram* v. *Bakhshi* (*No.* 12 *P. R.* 1884), followed. KHAIRULLA *v.* MIR HAMZA. **111 P R 1885**

4. *Mortgage or sale—Allegation that transaction in form of mortgage was really a sale—Admissibility of evidence to prove real nature of transaction—Mistake—Fraud.*

In a suit for pre-emption of certain property professedly mortgaged by defendant I to defendants II and III by a written deed, in which it was admitted that pre-emption did not, by custom, extend to mortgages, the plaintiff's case was that defendant I had really sold the property out and out, and that the deed of mortgage was merely drawn up to conceal the real nature of the transaction, and to defeat the rights of pre-emption.

Held, per *Curiam*, that the plaintiff's suit must be dismissed.

Per ROE, J.—Because the terms of the mortgage-deed not being such as to justify the Courts in treating the transaction as practically a sale, the plaintiff (in the absence of mistake which was not alleged in the present case) could only succeed by showing that prior to the execution of the deed there had been a complete sale from defendant I to the other defendants, so that at the time of executing the deed, defendant I was really incapable of dealing with the property at all, and merely professed to deal with it in order to conceal the fact of the sale which had already taken place ; and this plaintiff had failed to prove.

Per RATTIGAN. J.—Because the deed in question having been drawn up between the parties in the form of a mortgage, the mere circumstance (even if true) that the transaction was made to assume this form with the object of defeating the rights of a pre-emptor, would not alter the character of the transaction itself, or enable the plaintiff to treat it as a sale, there being no law which prevents an owner of land from so dealing with it as to avoid the accrual of any rights of pre-emption, by mortgaging for a long term of years instead of selling out and out, in cases where a right of pre-emption

13.—CONSTRUCTION OF TRANSFERS—*contd.*

only arises in the event of a sale; and further, that it was not open to the plaintiff in the present case to show by evidence that the original parties to the transaction really meant it to be a sale, but gave it the form of a mortgage with the design of defeating plaintiff's right of pre-emption, as to justify such a course it would be necessary to show that one of the parties to the transaction had been guilty of fraud, or what in equity would amount to fraud, whereas the plaintiff's case was that both parties deliberately drew up the deed as a mortgage, and with a full knowledge of what they were doing, with the simple intention of defeating his rights as a pre-emptor.

C. A. No. 2141 of 1882 (unpublished) cited. CHAUDHRI ASA NAND *v.* MAMUN.

64 P R 1888

5. *Punjab Laws Act (IV of 1872) section 9—"Sale"—Consideration—Basis for claim.*

In a suit for pre-emption, it appeared that defendant I agreed with defendant II, that if he brought a suit for her and succeeded in recovering certain land, she would, in consideration of his services and the money expended by him in prosecuting the suit (which was to be borne entirely by him) transfer to him half the land thus recovered; that defendant II accordingly brought the suit; and was successful, and defendant I carried out her agreement and transferred half the land to him. The Courts below dismissed the suit brought with reference to this transfer on the ground that the transaction was not a sale within the meaning of section 9 of the Punjab Laws Act.

Held, that the above view was erroneous, and that the transaction could not be regarded as anything but a sale, and one which by law afforded a basis for a claim for pre-emption.

Semble.—In such a case it would be impossible to say that any particular price was fixed in good faith, and the plaintiff would have to pay the market value of the property. HAJI MUHAMMAD *v.* MUSSAMMAT BAKHTO.

54 P R 1889

6. *Gift or sale—Allegation that a certain transaction in the form of a gift was really a sale—Admissibility of evidence to prove the real nature of the transaction—Fraud—Evidence Act (I of 1872), sections 92 and 99—"Varying the terms of a document"—Construction—Civil Procedure Code (Act XIV of 1882), section 44, Rule (a).*

Held, by the Full Bench, that in the case of an alienation of land, in which a document has been executed purporting to be a deed of gift or of mortgage, it is open to a third party claiming to exercise a right of pre-emption to prove that the transaction was in reality of sale, and that the document sought to be impugned was executed in order to conceal its real nature and to defraud him of his legal rights. TARA CHAND *v.* BALDEO.

117 P R 1890

13.—CONSTRUCTION OF TRANSFERS—*contd.*

7. *Transferable rights of occupancy—Section 10, Punjab Laws Act,—Right created by statute or contract—Perpetual lease, whether tantamount to sale.*

The provision of section 10, Punjab Laws Act, 1872 (as amended), that the right of pre-emption shall *primâ facie* be presumed to exist in all village communities and to extend to all transferable rights of occupancy affecting such lands, applies not only to sales *by occupancy tenants*, but is also applicable to transactions under which proprietors create a right of occupancy in another for a consideration.

A right of occupancy may be transferable within the meaning of section 10, Punjab Laws Act, 1872 (as amended), either because a power to transfer is given by the Tenancy Act, or because there is an agreement between the landlord and tenant excluding the operation of such of the provisions of the Act as would otherwise prevent alienation. In the present case, the right of occupancy being created by contract would ordinarily, and in the absence of express agreement, be non-transferable; but in conferring the right, the landlord had expressly granted full power of alienation and had thus created or sold a transferable right.

Semble.—A perpetual lease does not give rise to a right of pre-emption merely on the ground that it is tantamount to a sale.

I. L. R. XV Calc., 184, referred to. NIHAL CHAND *v.* RAI SINGH AND NAURANGA.

43 P R 1892

8. *Punjab Laws Act, 1872, section 9—Pre-emption—Sale of immovable property—Exchange.*

Held, that a permanent transfer of land in a village for a sum of money *plus* something that is not money, does not, merely because of such addition of necessity cease to be a sale within the meaning of section 9, Punjab Laws Act.

No. 12 *P. R.* 1884, 111 *P. R.* 1885, and No. 54 *P. R.* of 1889, referred to. GUL MUHAMMAD KHAN *v.* KHAN AHMAD SHAH.

29 P R 1893

9. *Pre-emption—Construction of deed—Colourable mortgage for purpose of evading law, of pre-emption—Fraud—"Question of law involved"—Appeal—Limitation Act, 1877, 1st Schedule, article 10.*

On the 6th August 1888, one B. R. executed and registered a deed, whereby he mortgaged a house with possession to one T. R. The terms of the said deed were to the following effect: the mortgage was for Rs. 550 and for a period of thirty years; interest on a sum of Rs. 150 was to be set off against rent, the balance of the principal to carry interest at the rate of 8 annas; the mortgagee was to effect whatever improvements he liked, and the costs thereof with interest at the same rate was to be paid by the mortgagor before redemption. At the time aforesaid the house was already mortgaged for five years to one J. R., from whom it was alleged, T. R. redeemed it in July 1891. On the 16th August 1892 plaintiff sued B. R. and T. R. for pre-emption of the house on the ground that the so-called deed of mortgage was in reality a deed of sale which had been written in the form of a mortgage-deed in order to stave off pre-emptors. He further alleged that defendants had fraudulently concealed the sale from him, and that he had only recently come to know of it. The lower Courts held that the transaction was in reality a sale, that there had been fraud, and that the suit was within time and gave plaintiff a decree for pre-emption. T. R. appealed to the Chief Court.

13.—CONSTRUCTION OF TRANSFERS—*contd.*

Held, that whether the transaction of the 6th Auguet 1888 was in reality a mortgage or a sale, plaintiff's suit must in either event be dismissed; if a mortgage, on the ground that the right of pre-emption did not exist in respect of mortgages; if a sale, on the ground that, as the property when sold was in possession of a mortgagee (J. R.) whose mortgage could not be redeemed for three years it was incapable of possession, and the suit was, therefore, barred under Article 10 of the 1st Schedule to the Limitation Act, 1877.

STOGDON, J.—It is no fraud on the part of either or both parties to a deed to resort to any legitimate means whereby to defeat the law of pre-emption, and it is not open to the Court in construing a deed which is in terms one of mortgage to attribute to such terms meanings other than those plain on the face of them, on the ground that the transaction, though certainly a mortgage, would probably eventually have the same effect as a sale.

ROE, S. J., *contra*. It is open to the Court to judge of the nature of a transaction, that is of the intention of the parties not merely, from the use of any particular word in the deed recording their contract, but from a fair and reasonable view of the nature of the terms agreed upon, and to declare that, if these terms show clearly that the transfer was intended to be permanent, the transaction was in reality a sale even though it was called a mortgage. TIKAYA RAM *v.* DHARAM CHAND.

45 P R 1895

10. *Pre-emption on sale—Colourable transaction—Defendant alleging his own fraud—Executory contract—Estoppel—"Par delictum."*

Plaintiff sued for pre-emption of certain land and based his suit on a statement made by defendant No. 1 before the Patwari, and recorded in the latter's diary of the 2nd February 1894, to the effect that defendant No. 1 had sold his interest in the said land to his wife for Rs. 15,000. Upon this statement an entry was made to the above effect by the Patwari in the *naksha intikal*

PRE-EMPTION—*contd.*

13.—CONSTRUCTION OF TRANSFERS—*contd.*

and was duly attested by the Kanungo on the 7th February, in the absence, however, of the parties to the alleged sale. Defendant pleaded, *inter alia*, that there had been no sale, that the entry was fictitious and that no consideration had passed, and gave evidence to prove that the alleged transfer was a colourable transaction without change of possession, made for the purpose of evading certain claims on the part of the Tank State in which defendant had been employed as a Mir Munshi, and which had dismissed him and seized his property within its territory for alleged misconduct. The Divisional Judge held that no sale had taken place and dismissed the suit. Plaintiff appealed to the Chief Court, and it was contended *inter alia* on his behalf, that defendant was legally precluded from setting up his own fraud and from pleading that the transfer was fictitious and was estopped from urging the said pleas as against plaintiff who had sued relying on the truth of defendant's statement before the Revenue officials.

Held, that, there being no proof of the actual transaction beyond the defendant's admission, the statement of the defendant though it threw on him the burden of proving that there had been no sale, was not conclusive proof of the fact stated therein unless it operated as an estoppel; nor did the fact that defendant had to allege his own fraud, in order to show that no sale had actually taken place preclude him from explaining the real nature of the transaction.

As regards the plea of estoppel, *held*, that inasmuch as defendant's statement was not made to plaintiff, or in order to make plaintiff act on it, and was not intended to come to plaintiff's knowledge, defendant could not be held to his statement to his detriment. HAFIZ ABDUL KARIM *v.* MUHAMMAD YUSAF. **61 P R 1895**

11. *Pre-emption—Mortgage or sale—Right of mortgagee to plead that mortgage was colourable to avoid pre-emption—Fraud—Condition in mortgage-deed restricting equity of redemption—Estoppel.*

Plaintiffs, alleging themselves to be purchasers for value of the equity of redemption of a mortgage of a house executed in favour of defendant, claimed redemption from the latter on payment of Rs. 1,400, the full amount of the mortgage-money. Defendant pleaded that the house was in reality sold, and not merely mortgaged to him, a mortgage-deed being executed instead of a deed of sale to avoid a suit for pre-emption, and that in any event, according to a condition in the mortgage-deed, the mortgagor or his representative was not entitled to obtain possession till twelve years had elapsed from the date of the payment of the mortgage-money.

PRE-EMPTION—*contd.*

13.—CONSTRUCTION OF TRANSFERS—*contd.*

Held, that the condition entered in the mortgage-deed, that even after redemption by payment of the mortgage-money, the mortgagor was to be debarred from ousting the mortgagee from actual possession for a period of twelve years, unduly fettered the mortgagor's equity of redemption, and was one which no Court of Equity could be required to enforce.

Held, further, that plaintiffs having purchased for value from the representatives of the original mortgagors the equity of redemption which, according to the deed, still, remained vested in them, and there being nothing on the record which deprived plaintiffs of the character of *bonâ fide* purchasers for value, or indicated that they had any notice that their vendor had no interest left in the property to dispose of, the mortgagee was estopped from urging, as against them at any rate, that the transaction was other than it purported to be. GANDA MAL *v.* DHERI SHAH. **99 P R 1895**

12. *Pre-emption—Construction of deed—Colourable mortgage for purpose of evading law of pre-emption—Fraud*—Onus probandi.

Held, by the Full Bench, that in every case in which the plaintiff sues for pre-emption upon the ground that a certain transaction, though in form a mortgage, was in fact a sale, the Court must decide as to the real nature of the transaction upon all the available material, including the terms of the document itself, the *onus* in the first instance being on the plaintiff to establish his case, and the true question being as to the real intention of the parties when entering into the transaction. If it is established beyond reasonable doubt that the parties intended a permanent transfer, the Court will find the transaction to be one of sale, though the deed is in form a mortgage. If there is a reasonable doubt, the plaintiff's case will fail on the ground that he has not succeeded in showing that the deed does not embody the true contract between the parties.

The conditions of a mortgage, however, may be intentionally onerous without giving rise to any irresistible presumption that the transfer was intended to be permanent, or they may so plainly exclude any possibility of redemption that the only reasonable inference is that a sale, and not merely a mortgage, was the true intention of the parties.

As regards the transaction in dispute, *held*, that there was no reliable direct evidence that the parties intended a sale of the property, nor did the conditions in the mortgage-deed raise so strong a presumption that it was entered into as a fraudulent contrivance to conceal a permanent transfer that, in conjunction with other evidence, the Court would be

PRE-EMPTION—*contd.*

13.—CONSTRUCTION OF TRANSFERS—*contd.*

justified in arriving at a finding that the real transaction between the parties was intended to be a sale. JAGDISH *v.* MAN SINGH. **100 P R 1895 F. B.**

13. *Pre-emption—Proposal to sell—Proposers right of revocation—Power of pre-emptor to enforce sale at market value*

An owner of certain land gave notice to the pre-emptor of his intention to sell at a stated price. The pre-emptor refused to give such price, but tendered what he considered to be the market value of the land, and, upon this tender being rejected by the owner, instituted a suit to enforce a sale at the market value.

Held, that the suit would not lie, there having been no completed sale, but merely a proposal of sale which the owner of the land was entitled to revoke at any time before acceptance, and which in the present case had not been accepted by the pre-emptor before the owner's revocation. When a vendor issues a notice under the Punjab Laws Act of his intention to sell, he does not thereby deprive himself of his right to realize for his property any price which the vendee is prepared in good faith to pay, or agrees to pay, the only effect of the issue of the notice being to reduce the period of limitation, or, possibly, to extinguish the pre-emptor's right altogether if he refuses to buy at the price named, and it is found that this price has been fixed in good faith. DIWAN CHAND *v.* GHULAM HUSSAIN. **30 P R 1897**

14. *Pre-emption suit for—Sale or contract to sell—Construction of document—Transfer of Property Act, 1882, section 54.*

According to the terms of a certain deed, which was stamped with a one rupee stamp, the vendor undertook to satisfy plaintiff further as to the vendor's title, and to excute a deed of sale within three months, after which if such deed was not executed, plaintiff might sue for specific performance. The amount of the purchase-money was Rs. 15,000 of which Rs. 4,300 was proved to have been paid in cash to the vendor.

Held, that the deed, rightly construed amounted merely to a contract to sell and, not a sale, and that the payment of consideration did not necessarily imply that the deed was a sale.

Held, further, that, under section 5 of the Transfer of Property Act, 1882, which, though not in force in the Punjab, represents generally the law in force in British India, a contract for sale of immovable property does not of itself create any interest in, or charge upon, such property. SHANKER DAS *v.* KAILASH CHANDER. **65 P R 1898**

15. *Pre-emption—Mortgage or sale—Colorable transaction—Evidence Act, 1872, sections 92, 99.*

PRE-EMPTION—*contd.*

13.—CONSTRUCTION OF TRANSFERS—*contd.*

In a suit for pre-emption based on the allegation that an ostensible deed of mortgage is in reality a deed of sale, the pre-emptor, a third party, is not bound by section 92 of the Evidence Act, and section 99 of the Act has not the effect of restricting his right to show that the contract embodied in writing is not the real contract between the parties to the particular case mentioned therein.

In a case where the parties to a contract have a private understanding that a transaction, ostensibly of mortgage, shall act as a sale, it is not a *sine qua non* that the mortgage-deed should contain onerous conditions. It is well known that such transactions are likely to be contested, and it is, therefore, not improbable that care will be taken to allow nothing to appear in a mortgage-deed which could excite suspicion, and yet the parties concerned might have a secret understanding, and have so arranged that there should be no option left to redeem the land.

In the present case the Court found on the facts that an ostensible deed of mortgage was in reality a deed of sale. PARMA NAND *v.* AIRAPAT RAM. **20 P R 1899**

16. "*Question of law involved*"—*Construction of document—Mortgage or sale—Plea of custom raised for first time in Chief Court.*

Plaintiff sued for pre-emption on the ground that the deed of transfer which purported to be one of mortgage was in reality one of sale, and had been drawn up in the form of a mortgage in order to prevent plaintiff from putting forward his claims. The suit was decreed by the first Court, but dismissed on appeal by the Divisional Court on the ground that the transaction was in fact a mortgage and not a sale. Plaintiff thereupon presented a further appeal to the Chief Court, and it was urged on his behalf that the question whether the deed was to be construed as one of mortgage or of sale was "a question of law" within the meaning of section 40 (2) of the Punjab Courts Act, and that, in any event, there was a question of custom involved, *viz.*, whether the customary right of pre-emption extended to mortgages as well as to sales.

Held, that the document being on the face of it one of mortgage, the question that arose was not as regards the proper construction of it, but rather as to the inference to be drawn from the deed and other evidence as regards the intention of the parties to the transfer, and that this was a question of fact and not of law.

Held, further, that as the plea that a customary right of pre-emption existed in respect of mortgages was opposed to the allegations in the plaint and to the pleadings in the lower Courts, plaintiff was not entitled to raise the point in the

PRE-EMPTION—*contd.*

13.—CONSTRUCTION OF TRANSFERS—*contd.*

Chief Court as the reason for the admission of a further appeal on the ground that there was "a question of custom involved." BUDHA MAL *v.* GULAB. **36 P R 1899**

17. *Pre-emption—Sale of immovable property—Exchange—Punjab Laws Act*, 1872, *section* 9.

Held, that an exchange which is intended to be an exchange is not a sale for the purposes of section 9 of the Punjab Laws Act merely because the value of the properties exchanged is equalised by the addition of a comparatively small sum of money, or by the mere fact that the two deeds of sale were drawn up contemporaneously, which was merely the method employed to arrange the transfer.

Gul Muhammad Khan v. *Khan Ahmad Shah* (29 *P. R.* 1893), followed. NATHU MAL *v.* HAR DIAL AND OTHERS. **97 P R 1900**

18. *Pre-emption—Sale—Assignment of immovable property by husband to wife in lieu of her dower.*

A husband transferred his immovable property to his wife in lieu of her dower, the value of the property purporting to be transferred being considerably in excess of the amount of dower due.

Held, that such transfer was not a sale, but to a great extent a gift, and was therefore not subject to pre-emption.

Fida Ali v. *Muzaffar Ali* (*I. L. R. V All.* 65) distinguished. MIR ZAMAN KHAN AND OTHERS *v.* MUSSAMMAT GHULAM FATIMA. **88 P R 1901**

19. *Pre-emption—Assignment of immovable property by husband to wife in lieu of dower—Sale.*

Held, that a transfer of immovable property by a husband to his wife in consideration of her dower must be regarded as a gift by the husband to the wife and not a sale subject to pre-emption. *Mir Zaman Khan* v. *Mussammat Ghulam Fatima* (88 *P. R.* 1901) followed. **86 P R 1902**

20. Sale of decree for pre-emption to a stranger is not sale of immovable property subject to the right of pre-emption within the meaning of this section. LASHKARI MAL *v.* ISHAR SINGH. **94 P R 1902**

21. *Custom—Pre-emption—Sale of property not used as residential house—Sale in lieu of money plus favour and past services—Guardian of minor—Lease of a portion of the property by guardian—Inability of minor to claim pre-emption—Estoppel—Punjab Laws Act*, 1872, *sections* 9, 11.

Plaintiff sued for pre-emption in respect of the sale of a large property known as Pari Mahal in the city of Lahore, consisting at the time of sale of an enclosure with shops outside and of a number of small huts inside, which were generally occupied by blacksmiths, carpenters and cow

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and goat herdsmen with their cattle. The claim was based on the ownership by plaintiff of a portion of the property adjoining. Amongst other defences the defendant pleaded :—

(*i*) that the plaintiff having through his guardian taken a portion of the property in suit on lease was estopped from making the claim ;

(*ii*) that part of the consideration for the transfer consisted of a favour and past services and that consequently the transfer did not amount to a sale ;

(*iii*) that the property was an enclosure consisting of shops, &c., and being of the nature of a *katra* or *sarai* the custom of pre-emption did not extend thereto ;

Held,

(*i*) that the mere fact that the guardian of the minor plaintiff temporarily leased a small portion of the property in suit at a date between the transfer and institution of the suit did not amount to an estoppel ;

(*ii*) that an assignment of immovable property for money plus favour and past services was a sale within the meaning of section 9, Punjab Laws Act, and that a plaintiff in such a suit would have to pay the market value of the property ;

(*iii*) that the plaintiff's claim must be dismissed on the ground that he had failed to prove that by local custom a right of pre-emption on sale of property which had not been used as residential premises for several centuries and which was of the nature of a *serai* or *katra* existed.

Hajji Muhammad v. *Mussammat Bakhto* (54 *P. R.* 1889), *Gul Muhammad Khan* v. *Kham Ahmad Shah* (29 *P. R.* 1893), *Fida Ali* v. *Muzaffar Ali* (*I. L. R. V All.* 65), *The Queen-Empress* v. *Appavu* (*I. L. R. IX Mad.*, 141), *Mussammat Nur Jehan* v. *Aziz-ud-din and others* (108 *P. R.* 1895) referred to. KISHEN SINGH *v.* JAIKISHEN DAS. **2 P R 1903**

22. *Custom—Pre-emption—Mortgage by way of conditional sale—Colourable transaction to evade pre-emption—Admissibility of evidence to prove the real nature of the transaction*—Onus *of proof—Punjab Laws Act*, 1872, *section* 9—Wajib-ul-arz—*Effect of entry in, especially when inconsistent with that of the subsequent* Wajib-ul-arz—*Evidence of custom.*

In a suit for pre-emption based on the allegation that an ostensible deed of mortgage is in reality a deed of sale, it is open to the pre-emptor to show by evidence that the true nature of the document is other

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than what it purports to be, and for this purpose the evidence of the mortgagor is relevant and admissible as regards plaintiffs' case, but this admission is not necessarily entitled to much weight, inasmuch, as it is a mere gratuitous statement which would not in any way affect the mortgagor's future interest.

As regards the transaction in dispute *held* that neither the terms of the mortgage deed itself nor the other circumstances referred to by plaintiffs in support of their contention were such as to justify the Court in arriving at a finding that the deed was not in truth what it purported to be.

As the right of pre-emption in respect of mortgages could not be presumed to exist under section 9 of the Punjab Laws Act, 1872, the burden of proving its existence rests in the first instance on the person alleging such custom.

The rule that an entry in a *Wajib-ul-arz* is *primâ facie* proof of the existence of an alleged custom is to be modified where such entry is inconsistent with an entry of the *Wajib-ul-arz* of a later settlement, more especially when the earlier entry itself states that there had never been any instances up to that date in the village, and the latter entry is in accord with the customs generally prevalent in the Province.

Held, on the merits, that no custom was shown to exist in the village of Manawala in the Gujranwala district recognizing a right of pre-mortgage.

Tara Chand v. *Baldeo and others* (117 *P. R.* 1890, F. B.), *Jagdish* v. *Man Singh* (100 *P. R.* 1895, F. B.), *Choudhri Asa Nand* v. *Mamun* (64 *P. R.* 1888), *Milkhi* v. *Fattu* (40 *P. R.* 1903), *Tika Ram* v. *Deputy Commissioner of Bara Banki* (*I. L. R. XXVI Calc.* 707 P. C.), *Dilsukh Ram* v. *Natha Singh* (98 *P. R.* 1894), *Musta* v. *Pohlo* (52 *P. R.* 1896), *Umra* v. *Hara* (46 *P. R.* 1903) and *Makha* v. *Karim* (47 *P. R.* 1903), referred to. *Parma Nand* v. *Airapat Ram and another* (20 *P. R.* 1899), dissented from. MUHAMMAD UMAR *v.* KIRPAL SINGH.
78 P R 1904

23. *Pre-emption—Assignment of immovable property in lieu of money* plus *past services and natural love and affection—Sale—Punjab Laws Act*, 1872, *section* 9.

Held, that an assignment of immovable property by a maternal uncle to his sister's son for money paid and to be paid by the transferee for the use of the transferor *plus* past services and natural love and affection was sale within the meaning of section 9 of the Punjab Laws Act and gave rise to the right of pre-emption.

Fida Ali v. *Muzaffar Ali* (*I. L. R. V All.* 65), *Rahim Bakhsh* v. *Muhammad Hasan* (*I. L. R. XI All.* 1), *Muhammad Esuph Ravutan* v. *Pattamsa Ammal* (*I. L. R. XXIII Mad.* 70), *Haji Muhammad* v. *Mussammat Bakhto* (54 *P. R.* 1889), *Samand Khan* v. *Munnawar*

PRE-EMPTION—*contd.*

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Khan (188 *P. R.* 1889), *Gul Muhammad Khan* v. *Khan Ahmad Shah* (29 *P. R.* 1893), *Kishan Singh* v. *Jai Kishan Das* (2 *P. R.* 1903), *Mir Zaman Khan* v. *Mussammat Ghulam Fatima* (88 *P. R.* 1901), and *Muhammad Azim Khan* v. *Nabir* (192 *P. R.* 1883), referred to. ALI BAKHSH *v.* SOBHA SINGH. **23 P R 1906**

24. *Pre-emption—Conditional sale of agricultural land—Application of right of pre-emption—Punjab Pre-emption Act*, 1905.

Held, that under the Punjab Pre-emption Act of 1905 a conditional sale of agricultural land is not subject to pre-emption. RAM PERSHAD *v.* HIRA. **87 P R 1906**

25. *Punjab Laws Act—Pre-emption—So-called mortgage really a sale.*

Plaintiff and defendants were equal joint owners of a vacant site in a town. On 18th August 1901 defendant sold her half to defendant 2. On 20th September 1901 plaintiff " a lady of 80 years of age, mortgaged " her half to a stranger for Rs. 175, the important conditions being that no interest should be charged, that plaintiff should not redeem for 32 years, that in the meantime the mortgagee, whose own family residence adjoined the site, should be entitled to build on the site without let or hindrance by plaintiff, who should not be entitled even to see the building accounts, that on redemption plaintiff would be obliged to pay back not only the sum of Rs. 175 but all sums spent by mortgagees in building, and so forth. Upon a suit for pre-emption by plaintiff in respect of the sale of 18th August 1901, vendee pleaded that the transaction of 20th September 1901 was really a sale and therefore plaintiff was no longer a co-sharer in the site. *Held*, that this contention should prevail.

100 *P. R.* 1895 and 78 *P. R.* 1904 distinguished. ANWAR HASAN *v.* UMAT-UL-KARIM.
145 P R 1906

26. *Pre-emption—Agreement granting occupancy rights—Sale—Punjab Pre-emption Act*, 1905, *sections* 3 (5) *and* 4.

Held, that an arrangement by which the proprietors of certain land granted occupancy rights to certain tenants on payment of a very trifling sum (the object of the arrangement being to induce the tenants to effect certain improvements in the land) is not a sale as contemplated by the Punjab Pre-emption Act, 1905, and cannot therefore be the subject of pre-emption. 136 *P. R.* 1907 followed. **37 P R 1911**

14. LOSS OR WAIVER OF RIGHT.

(*a*) *See* ESTOPPEL. **155 P R 8821**
161 P R 18831

(*b*) *See* PRE-EMPTION—RIGHT OF, IN VILLAGES. **99 P R 1910**

(*c*) *See* REGISTRATION ACT, 1877, SECTION 17. **37 P R 1888**

PRE-EMPTION—*contd.*

14.—LOSS OR WAIVER OF RIGHT—*contd.*

1. *Abandonment by pre-emptor.*

Held, that a right of pre-emption could not be abandoned unless an agreement for sale had already been entered into. PEAREE LAL *v.* AJOODHDYA PERSHAD. **74 P R 1869**

2. *Held*, that it was not necessary under the Punjab Civil Code, as under Muhammadan Law, that an offer of purchase should be made to the pre-emptor after the contract of sale was struck. MEHUR CHAND *v.* HURDEO
30 P R 1870

3. *Pre-emption—Guardian and minor—Claim of minor barred by conduct of guardian.*

Plaintiff (12 years old) sued for right of pre-emption. The land was sold by plaintiff's brother and uncle eight years before suit, plaintiff's mother acquiescing: his father was then dead, and had left the mother guardian of plaintiff's person and property. No right of pre-emption on behalf of the plaintiff was asserted at the time of sale, nor until plaintiff brought this suit. *Held*, that the silence and conduct of plaintiff's mother, his legal guardian, barred his claim. SADHU WAHAB *v.* ALADAD KHAN. **1 P R 1873**

4. *Abandonment of right—Auction sale.*

Held, by MELVILL and WILKINSON JJ. in a case before the passing of Act IV of 1872, that plaintiffs omission to take advantage of the opportunity he had of attending an auction sale and there asserting his rights as pre-emptor, amounted to a relinquishment of his right of pre-emption. MAHOMED BAKSH *v.* HIRA. **47 P R 1873**

5. Planitiff claimed the right of pre-emption in respect of a 5 annas 8 pies share of a house sold in execution of a decree. The sale was held in June 1873, and in May 1874 plaintiff made his claim to pre-emption. In the meantime, the shares sold had been divided off at the instance of the auction purchasers. *Held*, by BOULNOIS and CAMPBELL, JJ. that plaintiff was not precluded by standing by for nearly a year from enforcing his claim; and that if he had a right of pre-emption, it must be decreed to him, regard being had in fixing the price to the improvements made by the vendee, and the expenses of partition, &c. FAIZ BAKHSH *v.* RAMJI DAS.
34 P R 1875

6. *Second purchaser with notice—Compromise of pre-emption suit.*

B. K. purchased a price of land from R. A. and N. A. preferred a suit for pre-emption. The suit was compromised in Court B. K. agreeing to give back the land, if he got back the purchase money; R. A. undertaking to pay back the purchase-money; and N. A. withdrawing his suit provided the sale was cancelled and R. A. was put in possession of the land. In accordance with this arrangement, A. K. relinquished the land; but R. A. failed to pay back the purchase money,

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and afterwards sold the land to N. A. *Held* that B. K.'s title as prior purchaser to have the land declared subject to a trust for him against a subsequent purchaser with notice was lost by the compromise in the pre-emption suit, and his only remedy was to recover the purchase money from R. A. NAJIB ALI *v.* BAGEH KHAN. **44 P R 1875**

7. *Sale in execution—Notice.*

Plaintiff in a pre-emption suit had been Mukhtar for a judgment-debtor whose property was sold in execution of decree, and was the property which plaintiff asserted his right to. He was present at the sale. *Held*, that he was estopped from alleging that no offer of the property was made to him. RULLIA MAL *v.* DULO MAL. **7 P R 1876**

8. *Waiver of right by first pre-emptor in favour of stranger—Subsequent assertion of right against second pre-emptor—Estoppel.*

Held, that a pre-emptor, who has once waived his right to accept or assist upon an offer of sale, cannot afterwards come forward and re-assert his right against another person who has claimed pre-emption in the same sale, and obtained a decree transferring the property to himself. NABI BAKHSH *v.* KAKA SINGH. **42 P R 1878**

9. *Effect of mortgage by purchaser to plaintiff of property in suit for purpose of paying the purchase money—Waiver—Estoppel.*

In a suit for pre-emption, it appeared that the defendant-purchaser had mortgaged the property in suit to the plaintiff, claiming pre-emption, for the very purpose of paying the purchase money to his vendor

Held, that under these circumstances plaintiff was *prima facie* estopped from demanding pre-emption, as, in the absence of any reservation of his own right of pre-emption at the time of the acceptance of the mortgage deed he must be held to have waived it.

Case remanded to decide the issue whether at the time of the mortgage plaintiff gave notice to defendant that he reserved his right to claim pre-emption of the land mortgaged. ABDULLA *v.* BISHEN DAS. **22 P R 1881**

10. *Auction sale—Notice—Act IV of 1872, section 13—Waiver of right.*

In a suit for pre-emption, it appeared that the property in suit had been sold by auction in execution of a decree against the owner. The plaintiff, who was one of the bidders at the sale was outbid by the defendant, but it did not appear that any notice was subsequently given to plaintiff that he might have the house for the price bid by defendant.

Held, that plaintiff (whose right to pre-emption was not disputed) was entitled to a decree, as due notice had not been given him as required by section 13 of the Punjab Laws Act, and it could not be inferred from his abstaining to outbid defendant that he in any way waived his right of pre-emption. MULA *v.* NIHAL CHAND. **78 P R 1881**

14.—LOSS OR WAIVER OF RIGHT—*contd.*

11. *Waiver—Pre-emptor attesting deed of sale with intention of relinquishing his claim—Discharge of vendor from obligation of giving written notice.*

Held. that the act of attesting the deed of sale, if it be done by a pre-emptor with the intention of relinquishing his own claim, may properly be held to be a positive act discharging the vendor from the obligation of giving written notice to the pre-emptor, and waiving the latter's right to pre-emption. *Nabi Bakhsh* v *Kaka Singh* (No. 42 *P. R.* 1878) and *Phulel* v. *Buta* (No. 52 *P. R.* 1880), referred to. ABDUL RAB *v.* MUHAMMAD JI. **8 P R 1882**

12. *Refusal of verbal offer—Waiver—Act XII of* 1878, *section* 13.

In a suit for pre-emption to which the provisions of Act XII of 1878 were applicable, it appeared that no written notice such as is required by section 13 of that Act had been given to the plaintiffs, but the lower Courts dismissed their claim on the ground that a verbal offer had been made to them which they refused.

Held, that in the absence of some positive act of waiver on the part of the pre-emptor discharging the vendor from the obligation imposed upon him by the law of giving the pre-emptor formal written notice of the intended sale, the mere refusal to accept an oral offer is not sufficient defence to a subsequent action by the pre-emptor to enforce his legal rights. *Phulel* v. *Buta* (No. 52 *P. R.* 1880), followed. KARM KHAN *v.* JANG BAZ KHAN. **112 P R 1882**

13. *Custom—M. Dyal, Lahore—Effect of acquiescence by proprietors in previous sales.*

Held, in a suit for pre-emption of land situated in *mauza* Dyal, *tahsil* and *zilla* Lahore, that the defendants had failed to prove that the custom of pre-emption did not exist in that village.

It was not enough to show that some sales had taken place which were not objected to, for it was discretionary with the co-proprietors to object or not, and their mere acquiescence in previous sales did not imply that the custom which would entitle them to object to the sales and to claim the benefit for themselves had been abrogated. SAMAND KHAN *v.* MAHTABA. **48 P R 1883**

14. *Suit by proprietors of a* dharmsalah *—Waiver—Plaintiff drafting deed of sale.*

There is no rule of law which would prevent the proprietors of a *dharmsalah* or similar institution from claiming pre-emption. *Shankar Das* v. *Said Ahmad* (No. 153 *P. R.* 1884), cited.

In a suit for pre-emption, *held* that the plaintiff, who was a professional petition-writer, could not be held to have waived his right merely because he had made a rough draft of the deed of sale of the property in

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suit for the defandant. *Mahomed Bakhsh* v. *Hira* (No. 47 *P. R.* 1873), *Phulel* v. *Buta* (No. 52 *P. R.* 1880), *Abdul Rab* v. *Muhammad Ji* (No. 8 *P. R.* 1882), and *Karm Khan* v. *Jang Baz Khan* (No. 112 *P. R.* 1882), cited. SHAH BODHRAJ *v.* SUNDAR SINGH. **100 P R 1885**

15. *Dismissal of suit on ground that plaintiff after obtaining an* ex parte *decree (afterwards set aside) had resold the land at first decreed to him—Legality of such ground of dismissal.*

In a suit for pre-emption it appeared that the suit having been first decided *ex parte* in favour of plaintiff, and the Court having rejected an application for setting aside the *ex parte* decree, plaintiff sold the land in question at an enhanced price to a third party, but the defendants having thereafter appealed successfully against the order refusing to set aside the *ex parte* decree, and a re-hearing of the case having commenced, they brought to the Court's notice the fact that plaintiff had sold the land at first decreed to him, and on this ground the suit was thereupon dismissed.

Held, that such order of dismissal was not maintainable; that the plaintiff having sold the land after it had become his own by the decree of Court, and after the decree had as regards the first Court become final, was at liberty to do then what he pleased, and to make a profit if he could, subject to the rights of pre-emption by others over the re-sale by him, and was not thereby disqualified from maintaining the suit previously instituted, when the enquiry into the claim had been re-opened, and the decree which made him owner of the land had been set aside. TORABAZ *v.* PIR BAKHSH. **22 P R 1887**

16. *Refusal of oral offer—Waiver.*

Held, in a suit for pre-emption, following the doctrine laid down in *Phulel* v. *Buta* (No. 52 *P. R.* 1880), and *Karm Khan* v. *Jhang Baz Khan* (No. 112 *P. R.* 1882), that an oral offer of the bargain and a refusal by the pre-emptor is not enough by itself to dispense with the duty of serving a written notice through the Court as required by section 13 of the Punjab Laws Act, so as to estop the plaintiff from claiming the pre-emption subsequently on the ground that he has waived his claim. MUHAMMAD SALAMAT-ULLA *v.* JALAL-UD-DIN. **24 P R 1887**

17. *Joinder of vendor as co-defendant—Legal necessity for such joinder—Effect of non-joinder of vendor.*

Held that the joinder of the vendor in a suit for pre-emption (though such joinder is both usual and convenient) cannot be said to be in every case absolutely and strictly neceseary in law, so that on account of the non-joinder of the said vendor the pre-emptor must lose all his rights in the suit.

PRE-EMPTION -*contd.*

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Kahna v. *Dewa Singh* (No. 62 *P. R.* 1879) and *Wazira* v. *Shadi Khan* (No. 67 *P. R.* 1881), referred to. SHIV CHARN SINGH *v.* SECRETARY OF STATE. **80 P R 1888**

18. *Mortgage—Redemption of mortgage during pendency of suit*—Lis pendens.

While a suit for pre-emption of a mortgage with possession was pending the mortgagor executed a simple bond for the same amount in substitution of the usufructuary mortgage deed upon which the plaintiff was claiming pre-emption. The bond was written in December, whereas the mortgage deed expressly stipulated that redemption could only take place in the month of Jeth.

Held, that the doctrine of *lis pendens* must be held to apply so as to prevent the defendants, in the action then pending from doing anything which would defeat the object of that suit: that assuming that the plaintiff was entitled to claim pre-emption with respect to the mortgage, which the decree subsequently obtained by him and not appealed against must be held conclusively to have established, he acquired a right to have the mortgage transferred to him subject to all the terms and conditions of the original transaction, which might, when once he came forward to publicly assert it, could not be defeated without his consent by any act on the part of the mortgagor and mortgagee.

Kharak Singh v. *Bhup Chand* (No. 27 *P. R.* 1874), and *Kahna* v. *Dewa Singh* (No. 62 *P. R.* 1879), cited. MANDHU KHAN *v.* SANDHI. **102 P R 1888**

19. *Mortgage—Custom—Waiver—Omission to bid at execution sale—Construction of* Wajib-ul-arz.

Found, that a custom of pre-emption exists as to mortgages in *mauza* Gohan in the Hoshiarpur District, and must be held to extend to a transfer of a mortgage, or a sale of the mortgagee's rights in execution of decree.

Held, that a plaintiff having a right of pre-emption does not lose it by omitting to bid at the sale in execution of decree. *Mula* v. *Nihal Chand* (No. 78 *P. R.* 1881) followed.

The *Wajib-ul-arz* of the village provided that a proprietor, alienating his land by sale or mortgage, must first offer it to co-sharers who are partners in the same holding or descended from a common ancestor ("*sharkah shikami wa yak jaddi*"): if they refuse, he may then alienate to an outsider ("*ghair admi*").

Held, that the above clause did not take away from a plaintiff not falling within the above description any right of pre-emption he might have under the ordinary law as a village proprietor, the true meaning of the provision being that, whilst the ordinary provisions of the law as to pre-emption were in full force, the

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special provisions in this village gave a preference to two groups of pre-emptors, co-sharers in the same holding, or proprietors in the village descended from a common ancestor and that failing these an offer might be made under the ordinary law to any one outside these two classes. MUHAMMAD BAKSH *v.* SARDAR RAJINDAR SINGH. **121 P R 1888**

20. *Sale of house, part of which was mortgaged to plaintiff—Plaintiff after the sale demanding and accepting payment of the mortgage-money without any reservation of his right of pre-emption—Subsequent suit by plaintiff for pre-emption—Plaintiff estopped from maintaining such suit.*

In a suit for pre-emption, it appeared that when the house of which plaintiff was claiming pre-emption was sold, a ⅓rd share of it was under mortgage by one of the vendors to plaintiff, and that it was provided in the deed of sale that out of the nominal purchase money the amount due on the mortgage should be retained by the vendee for payment to the mortgagee. It further appeared that nearly two months after the sale the plaintiff gave a written notice to the vendee to pay the mortgage debt, threatening him with an action if he did not do so, but saying nothing in the notice about his right of pre-emption, whereupon the vendee paid the amount to the mortgagee who gave him a receipt. Subsequently plaintiff sued the vendee and the vendors for pre-emption, and among other pleas the vendee urged that plaintiff could not maintain this suit, in view of the transaction above described.

Held that such contention was correct that it was open to the plaintiff as between him and the defendant-vendee either to dispute or to affirm the validity of the sale: that plaintiff as mortgagee having without any reservation of his right as pre-emptor, called upon the vendee to pay up the mortgage-money, and having accepted it from him, had elected as between himself and the vendee to affirm the sale as valid, and it was not open to him after such election to treat the sale as voidable. BAWA LEHNA SINGH *v.* JAGAN NATH. **138 P R 1888**

21. *Guardian of minor—Consent—Estoppel—Inability of guardian to contest his own acts.*

A was entitled to pre-emption by reason of being a neighbour. He was also *de facto* guardian of a minor co-sharer in the land sold. After having taken part in the negotiations for sale he brought a suit for pre-emption on behalf of the minor. *Held*, that he was entitled to insist that it was his own interest that he gave up, and to distinguish between his own personal right of pre-emption and that of the minor.

PRE-EMPTION—*contd.*

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No. 112 *P. R.* 1881 distinguished KADIR BAKHSH *v.* MUSSAMMAT NUR BIBI. **121 P R 1889**

22. *Suit—Necessary parties—Vendor—Effect of non-joinder of vendor.*

Held, that the vendor is not, as a rule, and in all cases a necessary party in suits for pre-emption. In cases where the points in dispute cannot be decided without his being impleaded, he may be a necessary party. No general rule can be formulated and every case must be decided on its own merits.

80 *P. R.* 1888 followed; *I. L. R VII All.* 169 and 775, and *I. L. R. XI All.* 164, referred to. UDDHAM MAL *v.* GANDA MAL. **134 P R 1889**

23. *Representatives of vendee—Necessary parties—Limitation Act, section 22—Suit barred against one defendant—Dismissal as regards all.*

All the representatives of a deceased vendee and persons in possession of his estate are necessary parties to a pre-emption suit. Where one representative was impleaded after time, *Held*, that the suit being barred against him, must be dismissed as against all the defendahts. RAM CHAND *v.* RANA. **141 P R 1889**

24. *Pre-emption—Custom—Right of one co-sharer to sue.*

One co-sharer in a house is not debarred from instituting a suit to enforce a right of pre-emption based on vicinage on the ground that the other co-sharer therein refuses to join in such suit. RAM ASRA *v.* GURDITTA. **42 P R 1891**

25. *Act IV of* 1872—*Pre-emption—Two persons suing jointly, one alone of whom has the right to pre-emption—Effect of such error on substantive right—Procedure.*

The plaintiffs, S. and M., sued for pre-emption on the ground that they were collaterals of the vendor. The Divisional Judge finding that S. was not a collateral, dismissed the suit *in toto* on the ground that M. having joined with himself a stranger had thereby forfeited his own right to pre-emption.

Held, that M. was entitled to maintain the suit alone after the name of S. had been struck out of the plaint.

I. L. R. V. All. 197 dissented from. No. 4 *P. R.* 1884 distinguished. SHARF *v.* PIR BAKHSH. **83 P R 1893**

26. *Pre-emption—Suit by two plaintiffs each entitled to claim, but not having joint right of, pre-emption—Misjoinder—Withdrawal of one plaintiff, effect of.*

Held, that a suit by two individual plaintiffs, each entitled to claim pre-emption, but not having a joint right of pre-emption, is bad for misjoinder, and that

the Court should order the name of one of the plaintiffs to be struck out under section 32 of the Civil Procedure Code, 1882.

But *held*, further, that if one of such plaintiffs withdraws from the suit, there is no legal impediment to the suit proceeding and a decision being arrived at on the respective rights of the remaining plaintiff and the purcheser.

I. L. R. IV All. 259 and *I. L. R. V All.* 197, referred to. No. 10 *P. R.* 1884 distinguished. KHAWAS KHAN *v.* RASUL KHAN.
29 P R 1894

27. *Custom—Pre-emption—*Wajib-ul-arz*—Right of vendor to insist on pre-emptor taking over bargain in its entirety—Vendor unable to give good title to part of property—Waiver or loss of right of pre-emption—Misjoinder of plaintiffs.*

Plaintiffs, who were the occupancy tenants of the village of Muhammadpur, sued for pre-emption on a sale of the village by one Mrs. Ingram, by deed, dated 31st March 1891, in favor of the remaining defendants who were bankers of Panipat. It appeared that the village had been acquired from Government by one Colonel Skinner, and that the *status* of the original occupiers and proprietors had thereupon been reduced to that of tenants-at-will, but had been subsequently raised to that of occupancy tenants. The entry in the *Wajib-ul-arz* of the village was to the effect that there was no right of pre-emption because the ancestor of the proprietors had by will forbidden alienation. It was argued, *inter alia*, on behalf of the appellants, that if the alleged right of pre-emption existed—which was denied—the pre-emptors were bound to take over the bargain in its entirety, irrespective of the power of the vendor to give a good title to the whole of the property in question, and, further, that the plaintiffs, by mortgaging their rights without the assent of the proprietors had lost their rights as occupancy tenants.

Held, that though there was a presumption in favour of the correctness of the *Wajib-ul-arz* the terms of the entry in the present case were altogether insufficient to rebut the presumption of law that the right existed, and that the family arrangement referred to could not establish any rule at variance with immemorial custom.

Held, further, that the right of pre-emption being defined in section 9 of the Punjab Laws Act, 1872, as "the right of persons, hereinafter mentioned or referred to, to acquire in the cases hereinafter specified immovable property in preference to all other persons" the person entitled to the right is under no obligation either to forego his claim or to buy property for which the vendor cannot

give such a good title as may enable the pre-emptor to "acquire" it, or in which the vendor has no title whatever.

Held, also, that occupancy tenants, who mortgage their rights without the assent of the proprietors, do not thereby lose their rights as such tenants, though their mortgages are liable to be set aside under section 60 of the Punjab Tenancy Act, 1887.

With regard to an objection that those of the plaintiffs who were occupancy tenants had joined with them, as plaintiffs, certain tenants-at-will, who had no right to claim, *held*, that there is a material distinction between the case of pre-emption claimants joining strangers with them in a purchase which the Court is asked to set aside, and the case of such claimants allowing persons, who are not entitled and who retire from the suit when the mistake is discovered, to join with them in suing. The mistake in the latter case can be corrected by the authority of the Court duly exercised, whereas, when a purchase has been effected by pre-emptors and strangers combined the mischief can only be remedied by setting aside the sale.

I. L. R. V All. 382, No. 29 *P. R.* 1894, No. 98 *P. R.* 1894 (Full Bench), and Civil Appeal No. 1964 of 1882, referred to. HIRA LAL *v.* IBRAHIM. **102 P R 1894**

28. *Pre-emption—Suit by pre-emptor with superior right against pre-emptor with inferior right who has obtained a decree—Waiver of right—Acquiescence — Estoppel — Collusion between plaintiff and vendor.*

Plaintiff sued for pre-emption of certain land sold on the 19th January 1891, the suit being instituted on the 8th January 1892. Certain other persons had previously sued the vendor and vendee in respect of the same land and had obtained a decree for pre-emption and plaintiff now sued the decree-holders and joined the vendor and vendee as co-defendants. The decree-holders, while admitting plaintiff's superior right of pre-emption, pleaded (i) that they, having shown superior diligence and obtained a decree, plaintiff had no cause of action against them so long as the decree subsisted; (ii) that plaintiff was estopped by his own conduct from suing; (iii) that the suit was not *bonâ fide* or for the benefit of the plaintiff, but was brought for the benefit, and at the instance, of the defeated vendee.

Held, as to the first plea, that plaintiff's right of pre-emption being admittedly superior to that of defendants must *primâ facie* prevail, and, inasmuch as the right of pre-emption attached to plaintiff as a personal privilege and inhered until lost by his own act, or exhausted by suit or barred by the law of limitation, plaintiff's said right was not affected by the existence of defendant's decree.

Held, as to the second plea, that notice of the original sale not having been given to plaintiff in the manner prescribed by law, plaintiff had no opportunity of electing whether he would prefer a right to purchase or would acquiesce in the sale, and could not, therefore, be said to have waived his right to accept an offer which was never made, and was within his rights in preferring his claim at any time within the period allowed him by law, and against any person, holding mediately or immediately under the original sale, who could not establish positively facts or conduct giving rise to an estoppel.

Held, as to the third plea, that, though plaintiff's conduct was suspicious, there was no sufficient certainty to justify the Court in holding that plaintiff's suit was for the benefit of the defeated vendee.

Per BULLOCK J.—The nature of pre-emptive right being a personal privilege, exercisable only by the pre-emptor for his own benefit, his suit must fail if it be established that in suing he is seeking the benefit of it not for himself but for another.

No. 42 *P. R.* 1878, distinguished. BAIJ NATH *v.* JITA. **139 P R 1894**

29. *Pre-emption—Purchaser with right of pre-emption equal to plaintiff's joining in the purchase of an undivided share of a village, certain persons with rights of pre-emption inferior to plaintiff's—Right of such purchaser to defeat plaintiff's claim.*

Where certain vendees with rights of pre-emption equal to the plaintiff's right associated with themselves certain other persons whose rights were inferior in the purchase of an undivided share of a village, *held*, that as the Punjab Laws Act recognizes no equal or superior rights in a pre-emptor joined with a stranger on a joint sale, plaintiff's right of pre-emption was superior under the Act to that of the vendees collectively.

Held, further, that the sale, being of an undivided share in which the only specification was as to the proportions in which the several vendees should be regarded as joint owners, was bad in its entirety as against the plaintiff.

No. 10 *P. R.* 1884 followed; No. 83 *P. R.* 1893 and 102 *P. R.* 1894, referred to. MURAD *v.* MINE KHAN. **94 P R 1895**

30. *Pre-emption, suit for—Defective plaint—Procedure—Civil Procedure Code, section 53—Punjab Laws Act, 1872, section 12 (e)—"Landowner"—Punjab Land Revenue Act, 1887, section 3 (2).*

Plaintiff sued for pre-emption in respect of certain sales of land, but his suits were dismissed by the Divisional Judge on the ground that the sales included a share of *shamilat*, and that as plaintiff did not ex-

14. LOSS OR WAIVER OF RIGHT—*contd.*

pressly sue for this in his plaints he was really suing for less than was sold, which he could not legally do. It appeared, however, from a statement made by plaintiff's agent in Court, that it was the intention to sue for the *shamilat* as well as the principal land.

Held, that the procedure of the Divisional Court was erroneous. The dismissal of the suits would only have been justifiable if the plaints had expressly shown, or plaintiff's agent had expressly stated, that a share in the *shamilat* was purposely excluded from the suits. Inasmuch, moreover, as none of the faults enumerated in clause (*b*) of section 53 of the Civil Procedure Code could be found with the plaints, amendment thereof could only have been made under clause (*c*) of the same section which was practically done by the Court ascertaining from plaintiff's agent that the *shamilat* also was claimed.

Held, further, that plaintiff, as proprietor of certain waste land in the village, had under section 12 (*e*) of the Punjab Laws Act, 1872, a right of pre-emption against the vendee, who was an entire stranger without any interest whatever in the village, although the land of which plaintiff was proprietor was unfit for cultivation and was not assessed with revenue. JASMIR SINGH *v.* RAHMATULLAH.

7 P R 1896

31. *Pre-emption—Mortgage by conditional sale—Plaintiff in pre-emption suit acting* banami—*Joint suit for pre-emption by numerous occupancy tenants.*

Held, that, though when it is proved that a plaintiff in a pre-emption suit is acting *banami* the Court should refuse the nominal plaintiff a decree, a plaintiff in such a suit is not disentitled to a decree merely because, in order to raise funds for the maintenance of his suit, he has entered into an agreement with other persons as to what he will do with the land if he gets it, any subsequent transfer of such land by the plaintiff after he has obtained it giving rise to a fresh cause of action to the other pre-emptors.

In a joint suit for pre-emption by several occupancy tenants and others it was objected on appeal that (1) the occupancy tenanss had joined strangers in the plaint, (2) that plaintiffs were not the whole body of the occupancy tenants, and (3) that as individual tenants they could not combine their claims in a single suit.

Held, that the said objections were unfounded. If the list of plaintiffs included any persons who were not occupancy tenants, the proper course was to take the objection at the first hearing and have their names struck out, which could be done without altering the plaint generally or affecting the right of the remaining plaintiffs to claim the whole property. Moreover, as it was not disputed that each occupancy tenant could sue separately for the whole property, or

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that the whole property would be divided equally among those tenants who succeeded in obtaining a decree there was no reason why the plaintiffs could not sue jointly, even upon the assumption that they did not represent the whole body of the tenants. RAM SUKH DAS *v.* FAZAL-UD-DIN. **19 P R 1898**

32 *Pre-emption—Sale to two co-sharers and a stranger—Subsequent acquisition of stranger's share by third co-sharer—Suit by a fourth co-sharer for pre-emption.*

The land in suit was in the first instance sold to three persons, of whom two were co-sharers in the joint holding, but one was not. Subsequently plaintiff, who was also a co-sharer in the said holding, sued for pre-emption in respect of the sale, but shortly before the institution of his suit, the stranger vendee sold his share to one K. C., another co-sharer in the same holding. Accordingly at the time when the suit was instituted the land was in the hands of three vendees against no one of whom plaintiff could assert a superior right. It was, however, contended on behalf of plaintiff that regard must be had to the original transaction in which two vendees, who had equal rights with plaintiff, had joined with them in the purchase a third whose right was inferior to that of plaintiff, and that the right of pre-emption which plaintiff would in consequence have had as against the original vendees could not be defeated by the subsequent elimination of the stranger and the substitution of a person against whom plaintiff had not a superior right.

Held, overruling the said contention, that the mere fact that at one stage a stranger had a share in the bargain could not be held to vitiate the right of the three persons who were the vendees at the date of suit and resisted plaintiff's claim with one that was not inferior to his own. MUGHAL *v.* JALAL.

69 P R 1898

33. *Pre-emption—Parties with equal right of pre-emption—Liability of party who privately purchases from original vendor to be defeated by party who subsequently to such purchase sues original vendor and vendee for pre-emption.*

A, having sold certain property, in respect of which X. and Y. had equal rights of pre-emption to B., X. privately purchased the said property from B. Subsequent to such re-sale, Y. sued A. and B. for pre-emption.

Held, that X, by his purchase from B. had asserted his pre-emptive title in so efficacions a form as to be entitled to have his bargain secured to him against every one not having a superior right of pre-emption.

No. 138 *P. R.* 1884, and *I. L. R. XX All.* 100, followed. MAHTAB-UD-DIN *v.* KARAM ILAHI. **73 P R 1898**

34. *Pre-emption—Purchase by two brothers of whom only one was a proprietor in

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the village, their father being alive and proprietor of ancestral land—Consequence of such Act—Punjab Laws Act, section* 12.

In a suit for pre-emption where it appeared that the purchasers were two brothers, of whom one was a proprietor by purchase in the village, and the other had no property of his own, but based his rights on the ground that he was the brother of the other vendee and heir with vested reversionary rights to ancestral property situate in the village which was in possession of his father.

Held, that a son is not as such a co-sharer of his father within the meaning of section 12 of the Punjab Laws Act, and has no right of pre-emption, and that one brother by joining with himself in the purchase another brother who has no right of pre-emption has placed himself in no better position than that held by the latter.

Sher Singh v *Imamulla* (82 *P. R.* 1880), *Imam-ud-din* v. *Nur Khan* (10 *P. R.* 1884) and *Murad* v. *Mine Khan* (94 *P. R.* 1895), followed. RUKAN DIN *v.* ILAM DIN.

100 P R 1900

35. *Pre-emption—Notice to pre-emptors under section 53 of the Tenancy Act, 1887—Waiver of right—Suit by pre-emptor as an occupancy tenant.*

Held, in a suit for pre-emption of a holding that a landlord who was also an occupancy tenant in the same village served with a notice under section 53 of the Tenancy Act was at liberty to elect to claim pre-emption under either of his qualifications, and that his failure to proceed under the Tenancy Act did not bar him from resorting to the Civil Court or constitute acquiescence or waiver of his right. SARDAR ALI SHAH *v.* JIWAN SINGH.

22 P R 1901

36. *Pre-emption—Waiver of right in favour of stranger Subsequent assertion of right against person with right superior to original vendee—Parties—Adding new defendant to suit—Civil Procedure Code, 1882, section 32—Limitation—Limitation Act, 1877, articles 10 and 120.*

On 4th March 1898, G sold to F the land now in dispute. The deed was attested as a witness by one J who was the Lambardar of the parties' village. On 24th February 1899, N instituted the present suit for pre-emption against the vendor and purchaser. On 13th March 1899, the vendee stated that he had sold the land to J on 23rd January 1899, thereupon the Court added J as co-defendant, who pleaded that the suit against him was barred by time, and that his right of pre-emption was equal to that of plaintiff.

Held, that attesting the deed and taking an active part in its registration amounts to a distinct waiver by J of his right to pre-empt, and having once waived his right with respect to the bargain J was estopped from asserting it against the present

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pre-emptor whose claim to pre-emption was superior to that of the original vendee.

Held, also, that as the plaintiff in order to succeed against J notwithstanding his (J's) waiver, if his purchase was a genuine one, had to seek to enforce his right of pre-emption against him, the provision of the Limitation Act applicable was article 10 of the second Schedule; and although the suit against F, the original vendee, was instituted within the period prescribed by that article J having been added as a co-defendant three days after the period allowed, the suit should be held barred unless the plaintiff could prove that the sale to J was fictitious.

Nabi Bakhsh v. *Kaka Singh* (42 *P. R.* 1878), *Fatteh Chand* v. *Nihal Singh* (106 *P. R.* 1880), *Abdul Rab* v. *Muhammad Ji* (8 *P. R.* 1882), *Imam-ud-din* v. *Liladhar* (*I. L. R. XIV All.* 524), and *Harak Chand* v. *Deo Nath Sahay* (*I. L. R. XXV Calc.* 409), cited.

Grish Chander Sasmal v. *Devarkanath Dinda* (*I. L. R. XXIV Calc.*, 640), and *The Oriental Bank Corporation* v. *Charriol* (*I. L. R. XII Calc.* 642) disapproved.

Mutsadda Singh v. *Hamira* (11 *P. R.* 1893) and *Khan Muhammad Shah* v. *Muhammad Jan* (104 *P. R.* 1882) distinguished. NABI BAKHSH *v.* FAKIR MUHAMMAD. **25 P R 1903**

37. *Custom—Pre-emption—Sale to a stranger—Acquisition of pre-emptor with superior right—Suit by a pre-emptor with inferior right against the stranger—Waiver of right—Acquiescence.*

Where pre-emptor with superior rights agreed with a vendee, who was a stranger, that in consideration of his receiving a portion of the property sold he would waive his objections to the sale, *held*, that as the transaction was equivalent to that of taking over only a portion of the original bargain or associating a stranger in the purchase, it was not permissible by law and could not therefore defeat the rights of other pre-emptors.

Ramsukh Das v. *Fazal-ud-din* (19 *P. R.* 1898) and *Jawan Singh* v. *Sher Singh* (10 *P. R.* 1902), referred to. RALIA *v.* DYAL.

34 P R 1903

38. *Pre-emption—Claimant and vendee with equal rights—Vendee's right lost by him pending appeal—Competency of vendee to resist pre-emptor's claim.*

Held, that a vendee who by reason of a prior purchase had become a land-holder in the village and as such was competent to resist the claim of a pre-emptor with respect to a subsequent purchase cannot if in a pre-emption suit he loses the first bargain, retain the subject-matter of the second bargain. KEHR SINGH *v.* MAHMAN. **25 P R 1908**

39. Lis pendens—*Suit for pre-emption—Sale by the original vendee to a pre-emptor with superior rights during the pendency of a prior suit by other claimants with inferior rights.*

PRE-EMPTION—*contd.*

14.—LOSS OR WAIVER OF RIGHT—*concld.*

Held, that the doctrine of *lis pendens* does not apply to a sale of immovable property subject to a right of pre-emption by the original vendee in favour of a pre-emptor with superior rights, who had instituted a suit to enforce his rights during the pendency of similar suits by other claimants with inferior rights.

Harnam Singh v. *Jiwan* (7 *P. R.* 1906) doubted. MAHMUD KHAN *v.* KHUDA BAKHSH. **26 P R 1908**

40. *Pre-emption—Sale of property mortgaged to plaintiff—Acceptance of mortgage-money by plaintiff from vendee—Waiver.*

Held, that the mere acceptance of his money by a mortgagee from the vendee, or his silence at the time to express a desire to purchase or delay in suing, is not a waiver of his right to claim pre-emption and did not equitably estop him from asserting his pre-emptive right. FAZAL-DAD KHAN *v.* SAWAN SINGH. **37 P R 1908**

41. *Pre-emption—Sale completed by execution of decree for specific performance of contract—not subject to pre-emption—Punjab Pre-emption Act II of* 1905, *sections* 3 (5) *and* 4.

In 1900 one J. sold certain land to defendants 2 and 6. One of the owners of the land happened to be a minor and J. his uncle, as his *de facto* guardian agreed that if at any time the minor repudiated the sale, he (J.) would give the vendees a like amount of land out of his own property. Subsequently the minor did repudiate the sale and recovered his share from the vendees by suit. Thereon the vendees and J for the land which he had agreed to give them in lieu of the minor's share. This claim was strenuously contested by J. but the vendees obtained a decree. The present plaintiffs who were the sons of J. sued for pre-emption of the land decreed to the vendees.

Held, that the vendee's suit against J. was in its essence one for specific performance of contract and the decree *per se* did not effect "a sale" of the land even though the price may have been previously paid. The sale (if it could be so called) was not completed until the decree holders executed the decree and so obtained possession of the land, and that it thus fell within the exception given in section 3 (5) of the Punjab Pre-emption Act, as a sale in execution of a decree and consequently no right of pre-emption arose in respect of it. **40 P R 1911**

15.—PUNJAB LAWS ACT, 1872.
Section 9.

1. *Pre-emption—Sale of immovable property—Exchange.*

In a pre-emption suit the decree of the first Court, affirmed on appeal, was for possession of the land in suit on payment of the sum of Rs. 2,822, the deed of sale showing the price to be Rs. 4,500 and one ghumao of land. *Held*, that a permanent transfer of land in a village for sum of a money, plus something that is not money, does not merely because of such addition, of necessity cease to be a sale within the meaning of section 9, Punjab Laws Act. GUL MUHAMMAD KHAN *v.* KHAN AHMAD SHAH. **29 P R 1893**

PRE-EMPTION—*contd.*

15.—PUNJAB LAWS ACT, 1872—*contd.*

Section 9—*concld.*

2. *Pre emption—Punjab Laws Act,* 1872 *section* 9—*Rights to use water of perennial stream—" Immovable property "—General Clauses Act,* 1868, *section* 2 (5.)

Held, that inasmuch as the water of a perennial stream comes out of land the right to use such water is "a benefit arising out of land," and is, therefore, "immovable property" within the meaning of section 2 (5) of the General Clauses Act, 1868, so as to found a suit for pre-emption in respect of a sale thereof under section 9 of the Punjab Laws Act, 1872. ALAM SHER *v.* RAM CHAND. **11 P R 1898**

3. *Pre-emption—Sale of immovable property—Exchange—Punjab Laws Act,* 1872, *section* 9.

Held, that an exchange which is intended to be an exchange is not a sale for the purposes of secfion 9 of the Punjab Laws Act merely because the value of the properties exchanged is equalised by the addition of a comparatively small sum of money, or by the mere fact that the two deeds of sale were drawn up contemporaneously which was merely the method employed to arrange the transfer.

Gul Muhammad Khan v. *Khan Ahmad Shah* (No. 29 *P. R.* 1893), followed. NATHU MAL *v.* HAR DIAL AND OTHERS. **97 P R 1900**

Section 10.

1. *Presumption as to the existence of right of pre-emption in all village communities.*

See PRE-EMPTION—RIGHT OF, IN VILLAGES.

2. *Transferable rights of occupancy—section* 10, *Punjab Laws Act,—Right created by Statute or Contract—Perpetual lease whether tantamount to sale.*

The provision of sectiou 10, Punjab Laws Act, 1872 (as amended), that the right of pre-emption shall *prima facie* be presumed to exist in all village communities, and to extend to all transferable rights of occupancy affecting such lands, applies not only to sales *by occupancy tenants*, but is also applicable to transactions under which proprietors create a right of occupancy in another for a consideration.

A right of occupancy may be transferable within the meaning of section 10, Punjab Laws Act, 1872 (as amended), either because a power to transfer is given by the Tenancy Act, or because there is an agreement between the landlord and tenant excluding the operation of such of the provisions of the Act as would otherwise prevent alienation. In the present case the right of occupancy being created by con-

PRE-EMPTION—*contd.*

15.—PUNJAB LAWS ACT, 1872—*contd.*

Section 10—*concld.*

tract would ordinarily, and in the absence of express agreement, be non-transferable; but in conferring the right the landlord had expressly granted full power of alienation, and had thus created or sold a transferable right.

Semble.—A perpetual lease does not give rise to a right of pre-emption merely on the ground that it is tantamount to a sale (*I. L. R.* 15 *Calc.* 184, referred to. NIHAL CHAND *v.* RAI SINGH AND NAURANGA.

43 P R 1892

Section 11.

1. *The existence of right of pre-emption in towns is to be proved by the pre-emptor.*

See PRE-EMPTION—RIGHT OF, IN TOWNS.
PRE-EMPTION—RIGHT OF, ON SALE OF SHOPS.
PRE-EMPTION—RIGHT OF, ON ACCOUNT OF VICINAGE OR RELATIONSHIP.

2. *Explanation of the term " sub-division " as used in section* 11.

See PRE-EMPTION—RIGHT OF, IN TOWNS. **29 P R 1888**
48 P R 1888
70 P R 1889
100 P R 1892

Section 12 (*a*).

See PRE-EMPTION—WAJIB-UL-ARZ.

—*Pre-emption—Villages held on ancestral shares—Meaning of the term.*

See ANCESTRAL SHARES, VILLAGE HELD ON. **13 P R 1893**
87 P R 1894 F. B.

Section 12 (*b*).

See PRE-EMPTION—RIGHT OF, ON ACCOUNT OF VICINAGE OR RELATIONSHIP.
PRE-EMPTION—RIGHT OF, IN VILLAGES.

—*Pre-emption—Villages held on ancestral shares—Meaning of the term.*

See ANCESTRAL SHARES, VILLAGE HELD ON. **13 P R 1893**
87 P R 1894 F. B.

Section 12 (*c*).

See PRE-EMPTION—RIGHT OF, IN VILLAGES.

Section 12 (*d*).

See LANDOWNER. **96 P R 1898**
PRE-EMPTION, RIGHT OF, IN VILLAGES.

Section 12 (*e*).

See LANDOWNER. **7 P R 1896**
PLAINT, FORM OF. **7 P R 1896**
PRE-EMPTION, RIGHT OF, IN VILLAGES.

Section 13.

—*Foreclosure of mortgage—Notice to pre-emptors—Person " proposing to foreclose"—Act IV of* 1872, *sections* 13, 15, 16.

Held, that the mortgagee is the person who " proposes to foreclose " within the meaning of section 13 of the Punjab Laws Act, and the persons concerned to whom notice is to be given under the same section are the persons entitled to redeem (*see*

PRE-EMPTION—*contd.*

15.-PUNJAB LAWS ACT, 1872—*concld.*

Section 13—*concld.*

Section 15), and such notice must be given at some time previous to the mortgage being foreclosed.

Held, further, that a person " proposes to foreclose " within the meaning of section 13 when he institutes proceedings under Regulation XVII of 1806, and sections 15 and 16 show that the payment or tender within three months of the notice is a condition precedent to enforcing the right by suit.

Semble, that the 2nd clause of section 13 means that notice to be valid must be given through a Court, so as to avoid all disputes as to notice being given or not; and the latter part of the clause is subordinate to the former, and relates only to service by the instrumentality of the Court. UDR RAM *v.* BADHUR MAL. **90 P R 1887**

Section 16.

See PRE-EMPTION—PURCHASE MONEY.
PRE-EMPTION—PAYMENT INTO COURT.

Section 17.

See PRE-EMPTION—PURCHASE MONEY.
PRE-EMPTION—PAYMENT INTO COURT.

Section 18.

See PRE-EMPTION—PAYMENT INTO COURT.

16—PUNJAB PRE-EMPTION ACT, 1905

Pre-liminary.

1. Under this enactment a conditional sale of agricultural land is not je pre-emption. RAM PERSHAD *v.* HIRA.

87 P R 1906

2. *Punjab Pre-emption Act,* 1905—*Application of, to rights accrued before that Act came into force--Retrospective enactment.*

Held, that the Punjab Pre-emption Act, II of 1905, is a retrospective enactment, and as such affects causes of action which accrued or were acquired before it came into operation. BAHADUR *v.* ALLIA.

30 P R 1907

3. *Pre-emption—Member of an agricultural tribe—Mahtams of Muzaffargarh District—Punjab Pre-emption Act,* 1905.

Held that Mahtams of the Muzaffargarh District are not members of an agricultural tribe for the purposes of the Punjab Pre-emption Act, 1905 SONUN *v.* RUPAN BAI.

24 P R 1906

4. *Application of, to sales completed before its commencement in favour of vendees with superior rights under the Punjab Laws Act,* 1872—Riwaj-i-am—*Effect of entry, when unsupported by instances.*

Held that the Pre-emption Act, 1905, is inapplicable to a sale completed before its commencement, in favour of a person who had, under the Punjab Laws Act, 1872, a right of pre-emption superior to that of the plaintiff pre-emptor.

Held also, that the rule that an entry in a *Riwaj-i-am* is *prima facie* proof of the existence of an alleged custom is subject to modification if no instances in support of its correctness are forthcoming. INAYAT *v.* HAQNAWAZ KHAN. **90 P R 1908**

PRE-EMPTION—*contd.*

16.—PRE-EMPTION ACT, 1905—*concld.*

Section 2 (3).

1. *Pre-emption—Sale of agricultural land prior to the passing of the Punjab Pre-emption Act,* 1905, *by a non-agriculturist to a co-sharer—Claim by a member of an agricultural tribe as an occupancy tenant in the land after the new Act came into force—Effect of the new Act on such sale—Retrospective enactment—Punjab Laws Act,* 1872, *section* 12 (*a*)--*Punjab Pre emption Act,* 1905, *section* 2 (3).

Held by the Full Bench that although the Punjab Pre-emption Act, 1905, is a retrospective enactment in its operation as regards sales executed before its commencement, yet where the vendee had under the Punjab Laws Act, 1872, a right of pre-emption superior to that of the plaintiff claiming pre-emption and had asserted his claim by effecting the purchase of the property before the new Act came into force, he is protected by the saving clause of section 2 (3) of that Act against any claimant whose superior rights are brought into existence by the later Act. SURTA *v.* FATEH CHAND. **17 P R 1908 F. B.**

2. *Application of Pre-emption Act,* 1905, *to a right of pre-emption created by the provision of the Act itself--Punjab Pre-emption Act,* 1905, *section* 2 (3).

Held that the Punjab Pre-emption Act, 1905, applies to every claim to the right of pre-emption whether that right has accrued before or after its commencement or is created by the provisions of the Act itself.

The expression " whether that right has accrued before or after its commencement " in sub-section 3 of section 2 of that Act includes a right created by the provisions of the Act itself. ABAS ALI SHAH *v.* SHER ZAMAN. **22 P R 1908**

Section 3 (5).

1. *Pre-emption—Sale of immovable property by a receiver under section* 356—*Civil Procedure Code, is not subject to pre-emption.*

Held, that a sale of immovable property by a receiver, under direction of the Court, under section 356 of the Code of Civil Procedure, is a sale in execution of an order of a Civil Court within the terms of section 3 (5) of the Punjab Pre-emption Act, 1905, and consequently not subject to pre-emption. PIARA LAL *v.* GANESHI LAL.

46 P R 1909

2. *Punjab Pre-emption Act (No. II of* 1905), *section* 11, *Part II, word " tribe"—Pre-emption claimed by an Arora of a different tribal sub-division to vendor.*

Held, that the word " tribe " in section 11, Part II, of the Punjab Pre-emption Act, 1905, covers the whole group of Aroras in the village who satisfy the conditions laid down in that section. MANGHA RAM *v.* MANGHA RAM.

62 P R 1909

PRE-EMPTION—*contd.*

16.—PUNJAB PRE-EMPTION ACT, 1905—*contd.*

Section 3 (5)—*contd.*

3. *Pre-emption—Agricultural land—Punjab Pre-emption Act, II of* 1905, *section* 4—*No right of pre-emption arises on mortgages or on foreclosure of a right to redeem a mortgage.*

One L. mortgaged his agricultural land by way of conditional sale to B. D. B. D. had notice issued on L. under Regulatton XVII of 1806, the year of grace expired on 5th June 1901. In 1905 B. D. brought a suit to obtain possession of the land. The claim was contested by L. but a compromise was arrived at, and it was agreed that the land should remain in the possession of the mortgagee (B. D.), and that if L. (the mortgagor) failed to redeem the mortgage within two years on payment of the mortgage debt together with costs, the mortgagee should on the expiration of that period be deemed to be the absolute owner of the land. The Court passed a decree in conformity with the said compromise on 3rd March 1905. The mortgagor failed to redeem the land within the said period. His brother, the present plaintiff, now brings a suit for pre-emption.—*Held*, (1) that if the said decree conferred upon the mortgagee no more extensive rights than that of a mortgagee, the plaintiff's suit must fail, as the Punjab Pre-emption Act of 1905 does not recognise the right of pre-mortgagee, and (2) if the mortgagee by virtue of the decree become entitled after the expiry of two years to absolute ownership, the plaintiff's suit must also fail, as, in that event, he must be taken to be suing for pre-emption in respect of a transaction which amounts to a foreclosure of the mortgagor's right to redeem the land, and under section 4 of the Punjab Pre-emption Act of 1905 no right of pre-emption arises on the foreclosure of a right to redeem in respect of agricultural land. BISHEN DAS *v.* MASSU.

82 P R 1909

4. *Agreement granting occupancy rights—Whether a Sale.*

See PRE-EMPTION 13.—CONSTRUCTION OF TRANSFERS. **37 P R 1911**

5. *Sale completed by execution of decree for specific performance of contract not subject to pre-emption.*

See PRE-EMPTION 13.—CONSTRUCTION OF TRANSFERS. **40 P R 1911**

Section 4.

6. *And section* 3 (5)—*Pre-emption—Agreement creating right of occupancy—Sale-perpetual lease.*

Held, that an agreement by which a land owner created a right of occupancy in another person in consideration of money payment plus annual rent and services and whereby a right of reversion on the happening of a

PRE-EMPTION—*contd.*

16.—PUNJAB PRE-EMPTION ACT, 1905—*contd.*

Section 4—*concld.*

certain event was expressly stipulated for is not a sale within the meaning of sections 3 (5) and 4 of the Punjab Pre-emption Act, 1905, and cannot therefore be the subject of pre-emption. BHAGWAN DAS *v.* SIDHU.

136 P R 1907

Section 6.

See PRE-EMPTION 2.—RIGHT IN TOWNS. **120 P R 1906**

7. *Custom of pre-emption not proved to exist in Baba Malak, Nakodar, at time of commencement of Act.*

See PRE-EMPTION 2.—RIGHT IN TOWNS. **59 P R 1911**

Sections 7 (1) and 3 (3).

8. *A suit for pre-emption in regard to house property in the Rawalpindi Cantonment is barred by the provisions of section* 7 (1) *of the Act.*

See PRE-EMPTION 2.—RIGHT IN TOWNS. **9 P R 1911**

Section 9.

—*Assignment of immovable property in lieu of money plus past services and natural love and affection—Sale.*

See PRE-EMPTION 13.—CONSTRUCTION OF TRANSFERS. **23 P R 1906**

Section 10.

—*Meaning of " lands " in section* 10.

See PRE-EMPTION 5.—RIGHT IN VILLAGES. **22 P R 1906**

Section 11,

1. *Meaning of " Village " in.*

See PRE-EMPTION 5.—RIGHT IN VILLAGES. **21 P R 1906**
101 P R 1907

2. *And section* 12—*Pre-emption—Sale of agricultural land by a non-zamindar to a proprietor in the village not covered by the proviso to section* 11 *of the Punjab Pre-emption Act,* 1905—*Suit by a member of an agricultural tribe—Superior right—Punjab Pre-emption Act,* 1905, *sections* 11 *and* 12.

Held, that by virtue of the provisions of sections 11 and 12 of the Punjab Pre-emption Act, 1905, a member of an agricultural tribe has a preferential right of pre-emption in respect to a sale of agricultural land by a vendor who is not a member of an agricultural tribe against a vendee who is a proprietor in the village but who does not come within the purview of the proviso to section 11 of the Act.

Mahmud v. *Nur Ahmad* (101 *P. R.* 1907) approved. THAKUR DAS *v.* SOHAWA SINGH.

23 P R 1908

PRE-EMPTION—*contd.*

16.—PUNJAB PRE-EMPTION ACT, 1905—*contd.*

Section 11—*contd.*

3. *Held*, that the expression " tribe " in section 11 of the Punjab Pre-emption Act, 1905, means the main tribe and not the sub-division of a tribe and consequently Sheikhs of all denominations constitute one tribe for the purposes of that section. ALI MUHAMMAD v. SHAMAN. **112 P R 1908**

4. *Punjab Laws Act,* 1872—*Punjab Pre-emption Act, II of* 1905—"*Agricultural tribes*" Lis pendens.

K. D. sold the laid in suit to M. B.—Separate suits for pre-emption were brought by K. B. and A. B. on 22nd October, 1902, and summonses were served on 24th October for 7th November. On 29th October M. K. filed a suit for pre-emption, and on 7th November obtained from M. D. vendee, a deed of sale of the land for the full price mentioned in the previous sale-deed. M. D. then allowed his own suit to go by default and was made defendant in the other two suits.

Held, (*i*) that inasmuch as K. B. belonged to the *Kureshi* tribe, which was not notified as an agricultural tribe under Act XIII of 1901 until 1904, he had no right of pre-emption at all at time of suit, and therefore his suit must fail;

(*ii*) that A. B and M. K. must share the bargain neither being in the circumstances in a better position than the other, inasmuch as (*a*) A. B.'s suing a week earlier than M. K. does not amount to " superior diligence " (*b*) A. B. and M. K. had under pre-emption law, equal rights *ab initio*; (*c*) M. K's. not obtaining a decree but taking a transfer out of Court instead does not tell against him; (*d*) M. K.'s purchase being *pendente lite* does not operate to put him in a better position than A. B.

15 *P. R.* 1905 (*Parma Nand* v. *Gholam Fatima*) followed. 26 *P. R.* 1908 (*Mahmud Khan* v. *Khuda Bakhsh*) explained. *Narain Singh* v. *Parbat Singh I. L. R.* 23 *All*, 247 distinguished. MUHAMMAD KHAN *v.* SARDAR.

7 P R 1910

5. *Punjab Pre-emption Act II of* 1905, *section II and proviso—Aroras of Multan not a sub-division of Khatri tribe*—Onus probandi.

Held, that plaintiff on whom the *onus* lay had failed to prove that Aroras of the Mooltan District are a sub-division of Khatries and members of the same tribe within the meaning of the proviso to section 11 of the Punjab Pre-emption Act, 1905. CHOUDHRI KHUSHI RAM *v.* ASU RAM. **87 P R 1910**

6. *Punjab Pre-emption Act. II of* 1905, *section* 3, *sub-section* (2)—*Village immovable property.*

I. D. sold a house situate in the *abadi*, known as *Parao* Lala Musa to D. D.—M. A., I. D's son, sued for pre-emption alleging that the *abadi* was part of a " viliage." It

16—PUNJAB PRE EMPTION ACT, 1905—*contd.*

Section 11—*concld.*

appeared that many years ago Government established a halting ground or *parao* in the immediate vicinity and constructed a number of shops. Since then the *bazar* had grown and a number of houses were built close by and, at time of suit, this *abadi* contained 143 residential houses and 110 shops. The land occupied by the *parao* belonged to *mauza* Dhaman and the *abadi* or *bazar* included land within the limits of that village as well as of the village of Said Gul. It was contended that the house was not "village immovable property" nor subject to pre-emption inasmuch as the *abadi parao* Lala Musa lay at a distance from what was generally known as the *abadi* of *mauza* Dhaman and Said Gul.

Held, by the Division Bench, that if extensions are made to the existing *abadi* of a village or if a hitherto unoccupied site within the boundaries of the village is built over and settled upon, such new buildings would become "village immovable property."

Held, by Ryves J., that the word "village" in section 3, sub-section (2), Punjab Pre-emption Act, II of 1905, does not mean a collection of houses but means the whole estate or *mauza* and includes everything within the boundaries of the village area.

Held, also by Ryves, J. (Scott-Smith, J., dissenting) that the definition in this sub-section applies to all immovable property within the limits of a village.

Held, by Scott-Smith, J., that the expression "village site" in the above sub-section could not be considered synonymous with "village" or "estate" but meant the inhabited part of the village or "*abadi deh.*" DEVI DIAL *v.* MUHAMMAD AMIN. **89 P R 1910**

Section 12.

1. The expression "in the order of relationship" in this section has no reference to degrees of propinquity but is equivalent to "order of succession" in cases of inheritance of landed property under the Customary Law of the Punjab. KARIM BAKHSH *v.* JEHANDAD KHAN. **74 P R 1906 F. B.**

2. Custom of pre-emption exists in respect of shops in villages subject to the provisions of this section. KIRPA RAM *v.* KHUSHALI MAL. **80 P R 1907**

3. *Held* by a majority (Johnstone, J., doubting) that the priorities given by section 12 of the Punjab Pre-emption Act, 1905, are applicable to a claim to the right of pre-emption with reference to a sale executed before the commencement of that Act. SURTA *v.* FATEH CHAND. **17 P R 1908 F. B.**

16.—PUNJAB PRE-EMPTION ACT, 1905—*contd.*

Section 12—*concld.*

4. *And section* 14 (*b*)—*Pre-emption—Sale of agricultural land to a remote heir in the presence of nearer heirs—Suit by another remote heir of equal degree with the vendee—Right of such claimant to share the bargain—Punjab Pre-emption Act*, 1905, *sections* 12 (*a*) 14 (*b*).

Held that clause (*a*) to section 12 of the Punjab Pre-emption Act, 1905, confers the right of pre-emption on the whole line of heirs and not merely on the next and nearest heirs at the time of sale it being provided *inter se* that the right will be determined by the order of succession, that is, the nearer heir would exclude the more remote, and that in case of a sale to a remote collateral in the presence of nearer heirs a collateral of equal degree with that of vendee has no right in respect to that sale and cannot even avail himself of the provisions of section 14 of the Act.

Section 14 applies to cases where several pre-emptors are equally entitled against the vendee, it does not refer to the case of a claimant who has no preferential right of purchase as against the vendee. JANG BAHADAR KHAN *v.* KARAM KHAN. **21 P R 1908**

5. *Pre-emption—Sale of agricultural land by the descendant of a donee—Suit by the heirs of the donor in presence of other descendants of the donee.*

Held that in case of a sale of agricultural land by the descendant of a donee, the heirs of the donor in the absence of a claim by other descendants of the done are entitled to claim by pre-emption under section 12 (*a*) of the Pre-emption Act, 1905. DATTA RAM *v.* SHIV RAM. **131 P R 1908**

6. *A co-sharer, who is also a lineal descendant, has no advantage over another co-sharer, who is not.*

See PRE-EMPTION—6. RIGHT IN VILLAGES. **87 P R 1911**

Section 13.

1. This section is inapplicable to shops in villages. KIRPA RAM *v.* KHUSHALI MAL. **80 P R 1907**

2. *Pre-emption on sale of house property—Joint Hindu family—Suit by son in presence of father.*

Held that where the property on ownership of which the right to pre-empt is based belongs to a joint Hindu family, the right of pre-emption vests under clause 7 of section 13 of the Pre-emption Act, 1905, in every co-sharer in such property. ISHRI PARSHAD *v.* BASHESHAR NATH. **35 P R 1908**

16.—PUNJAB PRE-EMPTION ACT, 1905—*contd.*

Section 13—*concld.*

3. *Meaning of word* "adjacent" *discussed.*

See PRE-EMPTION—4. RIGHT OF, ON ACCOUNT OF VICINAGE OR RELATIONSHIP. **90 P R 1909 F. B.**

4. *See* PRE-EMPTION—2. RIGHT IN TOWNS. **22 P R 1911**

5. *The words "immovable property" include a shop.*

See PRE-EMPTION—2. RIGHT IN TOWNS. **80 P R 1911**

Section 14.

1. This section deals with several pre-emptors claiming in respect of the same property but does not provide for the case of a pre-emptor claiming against a vendee who has equal rights with him. KHAN ZAMAN *v.* FATTEH SHER. **83 P R 1907**

2. *Pre-emption—Rival claimants equally entitled—Preference.*

Held, that where rival claimants are found by the Court to be equally entitled to the right of pre-emption, preference must be given to him who is elected by the vendor under clause (*e*) of section 14 of the Pre-emption Act, 1905. IBRAHIM *v.* ILAHI BAKSH. **88 P R 1908**

3. *Has no application to a re-sale to another pre-emptor during pendency of a pre-emption suit.*

See PRE-EMPTION—1. GENERAL. **53 P R 1911**

4. *If pre-emptor and vendee have equal rights they share the bargain equally.*

See PRE-EMPTION—6. RIGHT IN VILLAGES. **87 P R 1911**

Section 19

—*Pre-emption—Punjab Pre-emption Act, II of* 1905—*Court's power to extend the time fixed under section* 19.

Held, that under section 19 of the Punjab Pre-emption Act, 1905, the Court has power to extend the period originally fixed by it, even after expiry of that period. Provided (1) that the Court should not extend the period save for good and sufficient reason; and (2) that in any event the extension of the period cannot in certain cases suffice to bring a claim within limitation when it would, save for such extension, have been barred by limitation. NARSINGH DAS *v.* GHULAM NABI. **78 P R 1909**

Section 22.

1. *Pre-emption—Purchase-money—Good faith.*

Held, that a person who in his anxiety to purchase a particular plot of land or to purchase land in a particular village gives a fancy

PRE-EMPTION—*contd.*

16.—PUNJAB PRE-EMPTION ACT, 1905—*contd.*
Section 22—*concld.*

price is acting in good faith within the terms of section 22 of the Punjab Pre-emption Act, 1905, although his intention is to render it practically impossible for any one with a superior right of pre-emption to oust him. NIADAR MAL *v.* MUKH RAM. **13 P R 1908**

2. *Pre-emption — Purchase-money—Good faith.*

Held, that the price entered in a deed of sale is fixed in good faith within the terms of section 22 of the Pre-emption Act, if it is actually paid for the property sold, but in the case of a transfer in satisfaction of old debts it is for the Court to find out whether the actual value of the debts amounted to its face value or not, and in case of its arriving at the latter conclusion, it should ascertain the market value of the property. HOA RAM *v.* RANA PALIA. **47 P R 1909**

3. *Proviso—Option to take market value or have sale cancelled, when to be granted by Courts.*

See PRE-EMPTION—10. PURCHASE-MONEY. **54 P R 1911**

Section 28.

1. This is not a substantive section, it only provides a period of one year from the 11th May 1905 during which, in spite of the shorter period provided by section 29, parties might exercise rights of pre-emption which had already accrued to them and which might be barred under the latter section. LADHU *v.* SARDAR MUHAMMAD. **131 P R 1907**

2. It applies to every suit where the right to sue for pre-emption had not expired at the date of the commencement of the Act.

The fact that where under the old Act a special custom for the enforcement of a right was required to be substantiated by a plaintiff, the new Act relieves him of the burden of proving that custom and confers those rights on him by Statute has no effect as on the applicability of the section to rights which were not barred by the law of limitation at its commencement. THAKARIA *v.* DAYA RAM. **143 P R 1907**

3. *Pre-emption—Limitation—Rights accrued before and after commencement of Punjab Pre-emption Act, II of 1905, sections 28 and 29.*

Held, that every claim to the right of pre-emption made after the commencement of the Punjab Pre-emption Act, II of 1905, (*i.e.*, the 11th May 1905), is governed by the provisions of that Act whether that right has accrued *before* or *after* its commencement.

Held, also, that the Act purports to fix one year as the period of limitation for every claim to pre-emption, and that any one whose cause of action arose and against whom limitation has begun to run under article 120 of the Indian Limitation Act, 1877, but which

PRE-EMPTION—*concld.*

16.—PUNJAB PRE-EMPTION ACT, 1905—*concld.*
Section 28—*concld.*

has not expired before the commencement of the Act, will have one year within which to sue from the date of the commencement of the Act under section 28 and any one, whose cause of action arises or whose right to sue accrues *after* the commencement of the Act or against whom limitation began to run for the first time *after* the commencement of the Act, will have one year within which to sue, such year to be computed from the periods laid down in that section.

Held, therefore, that a suit for pre-emption brought on the 8th February 1907, in respect of a sale, dated the 2nd September 1904, is barred by limitation under section 28 of the Act, notwithstanding that mutation was not effected till the 23rd February 1906. IMAM BAKSH *v.* NUR MUHAMMAD. **74 P R 1909**

Section 29.

—This is the substantive section fixing the period of limitation, and by section 2 (3) it applies to every claim to the right of pre-emption whether that right has accrued before or after its commencement. LADHU *v.* SARDAR MUHAMMAD. **131 P R 1907**

See also under SECTION **28**, *supra.*

PRESCRIPTIVE USER OF COMMON LAND.

See under COMMON LAND.

PRESUMPTION.

1. *Against wrong-doer.*
See APPEAL—VI. PROCEDURE IN. **62 P R 1897**

2. *Purchase by uncle with his own funds in name of himself and nephew—Presumption of English law of an advancement in favour of nephew.*
See BENAMI TRANSACTION. **61 P R 1889**

3. *Of ownership from possession.*
See BURDEN OF PROOF. **26 P R 1882**, **121 P R 1882**, **122 P R 1882**, **157 P R 1882**

See REGISTRATION ACT (III OF 1887), SECTION 49. **74 P R 1883**

See REGISTRATION ACT (III OF 1887), SECTION 50. **126 P R 1884**, **2 PR 1885**

4. *That transaction is* benami.
See BURDEN OF PROOF. **43 P R 1882**

5. *Of undue influence in case of will of* pardanashin *woman.*
See BURDEN OF PROOF. **149 P R 1882**

PRESUMPTION—*contd.*

6. *Presumption of truth of an acknowledgment of receipt of consideration before a registering officer.*
See BURDEN OF PROOF. **17 P R 1888**

7. *Facts sufficient to rebut the general presumption that every negotiable instrument was made for consideration.*
See BURDEN OF PROOF **2 P R 1902**

8. *Where a subsequent mortgagee acquires a right to extinguish the prior mortgage or to keep it alive, the presumption is that he intended when paying off the prior mortgage to keep the prior charge alive for his own benefit.*
See CAUSE OF ACTION—IV. MISCELLANEOUS. **83 P R 1894**

9. *Presumption of marriage.*
See CAUSE OF ACTION—IV. MISCELLANEOUS. **16 P R 1897**

10. *Presumption of a village community being the ultimate heirs of any co-sharer among them, who dies without heirs.*
See CUSTOM—I. B. ALIENATION BY WIDOW—(*d*). LOCUS STANDI AND ASSENT OF REVERSIONERS. **174 P R 1882**

11. *Held*, that although the initial presumption in the case of non-agricultural Sayads, residents of a city, is that they follow Muhammadan Law yet where in defiance of that law widows take over the whole of their husbands' immovable estate, a natural presumption arises that they do so life-holders only, subject to control by male reversioners
See CUSTOM—I. B. ALIENATION BY WIDOW—(*d*) LOCUS STANDI AND ASSENT OF REVERSIONERS. **14 P R 1911**

12. *Of power of testation where a power of gift is shown to exist.*
See CUSTOM—1. ALIENATION—J. RULE OF DECISION. **48 P R 1903 F. B.**

13. Presumption and burden of proof as to the validity of an alienation of ancestral immovable property by a member of an agricultural tribe who has settled to urban life.
See CUSTOM—1. ALIENATION—J. RULE OF DECISION. **55 P R 1908**

14. *Presumption of correctness of pedigree-table given in settlement record.*
See CUSTOM—VIII. MAINTENANCE AND SUCCESSION.—W. MISCELLANEOUS. **77 P R 1896**

15. The initial presumption in regard to Brahmins is, that they are governed by Hindu Law.
See CUSTOM—VIII. MAINTENANCE AND SUCCESSION—A. RULE OF DECISION. **1 P R 1910**

16. *Presumption as to dedication of road to public.*
See EASEMENT. **62 P R 1898**

PRESUMPTION—*contd.*

17. *Presumption as to the genuineness of ancient documents.*
See EVIDENCE ACT, 1872, SECTION 90.
82 P R 1902

18. *Presumption of death under Muhammadan Law.*
See EVIDENCE ACT, 1872, SECTION 108.
Also MUHAMMADAN LAW—17. RULE OF MUHAMMADAN LAW, WHEN SUPERSEDED. **42 P R 1892**

19. As to paternity of child born of a married woman living with another man during lifetime of husband.
See EVIDENCE ACT, 1872, SECTION 112.
28 P R 1906

20. *That Hindu family is joint.*
See HINDU LAW—VIII. JOINT FAMILY.
143 P R 1882
13 P R 1883

21. *Of legality of marriage.*
See HINDU LAW—MARRIAGE.
49 P R 1903

22. *Presumption of correctness of entry in Record as to who are the landowners.*
See JAGIR. **4 P R 1888 Rev.**

23. *Presumption against wrong-doer.*
See MUHAMMADAN LAW—10. JOINT FAMILY. **66 P R 1899**
See PARTNERSHIP. **62 P R 1897**

24. *Of legitimacy of child born within two years of alleged father's death.*
See MUHAMMADAN LAW—11. LEGITIMACY.
1 P R 1884

25. *Of equitable mortgage.*
See MORTGAGE—1. CONSTRUCTION.
59 P R 1882

26. *Presumption as to regularity of proceedings under Regulation XVII of* 1806.
See MORTGAGE—XVI. FORECLOSURE.
Also ESTOPPEL. **29 P R 1898**

27. *Of occupancy rights from long occupation.*
See OCCUPANCY RIGHTS.
62 P R 1882
187 P R 1882
154 P R 1883

28. *Presumption of continuation of partnership until its dissolution is affirmatively established.*
See PARTNERSHIP. **11 P R 1897**
37 P R 1897

29. *Of existence of right of pre-emption.*
See PRE-EMPTION—6. RIGHT IN VILLAGES. **196 P R 1882**
120 P R 1883

30. *As to observation of formalities requisite to confer authority upon Directors of a Joint Stock Company.*
See PUBLIC COMPANY. **81 P R 1903**

31. *Presumption as to character of yield.*
See PUNJAB TENANCY ACT, 1887, SECTION 16. **3 P R 1899 Rev.**

32. *Of occupancy rights.*
See TENANCY ACT (XXVIII OF 1868), SECTION 6. **18 P R 1882**
24 P R 1883
104 P R 1884

PRESUMPTION—*concld.*

33. The ordinary presumption arising out of a recital in a registered bond "that when a bond is registered and its "execution is admitted by the defendant "the *onus* of proof of want of con-"sideration and of free consent not having "been given would lie on the party "seeking to get out of its effect" is modified where one party is in relation of active confidence, and that in such cases the *onus* of proving good faith, fair dealing and full and free consent lies on the party interested in upholding the transaction. HOTI LAL *v.* RAM PIARI.
77 P R 1903

34. There is no general presumption that regardless of tribe and creed agnates, however remote, exclude daughters from succession to ancestral property. ABDUL KARIM *v.* SAHIB JAN. **5 P R 1908**

PRESUMPTION OF MARRIAGE.

See MAHOMEDAN LAW, ACKNOWLEDGMENT.

PRICE.

—*To be paid in pre-emption suits.*
See PRE-EMPTION—10. PURCHASE-MONEY PASSIM.

PRIEST.

See RELIGIOUS INSTITUTIONS.

PRIMOGENITURE.

See CUSTOM—VIII. MAINTENANCE AND SUCCESSION—A. RULE OF DECISION.
47 P R 1908

—*Succession to post of lambardar—Rule of primogeniture.*
See LAMBARDAR.

PRINCIPAL AND AGENT.

1. *Unincorporated Club—Principal and agent—Honorary Secretary—Personal liability as Honorary Secretary and as member of Club.*
See CLUB, PERSONAL LIABILITY OF SECRETARY OF. **15 P R 1891**

2. *Suit for recovery of money paid to agent for unlawful purpose—Suit instituted before execution of unlawful object—Principal and agent—*Locus penitentiæ.
See CONTRACT ACT, 1872, SECTION 23.
63 P R 1898

3. *Claim by commission agents to recover by way of set off sums due to them for losses incurred by principal—No proof of actual payment of such sums, but agents making themselves liable for the amount as a matter of account—Agent's liability not enforceable at law—Waging transaction—Brokerage fees in respect of wagering transaction.*
See CONTRACT ACT, 1872, SECTION 30.
80 P R 1895

4. Badni *Contracts—Void Contract—Suit for profits received by defendant as plaintiff's agents—Liability of agent to render accounts to his principal*
See CONTRACT ACT, 1872, SECTION 30.
4 P R 1901

PRINCIPAL AND AGENT—*contd.*

5. *Husband and wife—Power of wife to pledge husband's credit—European Christians.*
See CONTRACT ACT, 1872, SECTION 187.
63 P R 1899

6. *Suit by agent against principal for adjustment of account.*
See CONTRACT ACT, 1872, SECTION 213.
60 P R 1899

7. *Shah and gomashta.*
See CUSTOM—IX. MERCANTILE USAGE.
79 P R 1885

8. *Contract made by Military Officer invested with certain powers as Forest Officer—Unauthorized contract—Contract Act,* 1872, *section* 237—*Principal and agent.*
See FOREST ACT, 1878. **16 P R 1899**

9. *Signature of acknowledgment by agent.*
See LIMITATION ACT (XV OF 1877), SECTION 19 **25 P R 1886**

10. *Suit against representative of deceased agent for account—Limitation.*
See LIMITATION ACT (XV OF 1877), SCHEDUE II, ARTICLE 62.
96 P R 1886
See RIGHT TO SUE. **96 P R 1886**

11. *Principal and agent—Suit against agent for movable property received and not accounted for—Limitation.*
See LIMITATION ACT, 1877, SCHEDULE II, ARTICLE 89. **31 P R 1891**

12. *Right of undisclosed principal to take advantage of contracts made by his agent.*
See NEGOTIABLE INSTRUMENTS ACT.
71 P R 1909

13. *Agent suing in place of principal.*
See RIGHT TO SUE. **20 P R 1882**

14. *Want of skill—Unqualified law agent.*
If a person employs as his agent to conduct legal business one who is not a duly qualified practitioner, the agent is responsible only for a reasonable and *bonâ fide* exercise of such skill as he possesses. FENWICK *v.* MIRZA ELAHI BUKSH. **25 P R 1866**

15. All profits and advantages made by an agent are beyond ordinary compensation, made for the benefit of the principal. SARDAR HEERA SINGH *v.* SIRDAR JOWAHIR SINGH.
19 P R 1867 Rev.

16. An agent is not personally liable when he contracts on behalf of an association or a principal, and not personally. *Meer Khan* v. *Munden* (30 *P.R.* 1867). MAHOMED MOHKAM *v.* RAMZANEE **10 P R 1868**

17. *Purchase by Agent—Title asserted by him as principal.*
A hamlet occupied by boatmen having been washed away by the river Jhelum, the Deputy Commissioner compelled a neighbouring village to sell a piece of land to them for the purpose of establishing a new hamlet. Several years after, S., the lambardar or chowdry of the boatmen, in whose name alone the land had been recorded at Settlement, and who was in possession of a great part of it, set up an exclusive title to the whole. *Held* that S. as lambardar or agent of the boatmen when arranging the sale of the land, negotiated the transaction on behalf of the whole body, and that his claim to sole proprietorship was untenable. AHMED YAR *v.* SHAH BUKHSH. **104 P R 1868**

PRINCIPAL AND AGENT—*contd.*

18. *"Del credere" agent—May be appointed by express or implied contract—Contract implied from usage of trade or dealing of parties—Vendor of bills—Liability of, for negligence.*

Defendants were merchants at Sialkote, and plaintiff was their correspondent or agent at Mooltan. Defendants came to Mooltan to purchase goods, and to pay for them drew *hoondies* for Rs. 2,000 in favour of plaintiff on certain Amritsar firms at premium of Rs. 26-4, plaintiff sold the *hoondies* at the same rate to Tara Chund and Asanund, a Mooltan firm, on ten days' credit. The *hoondies* were duly paid by the Amritsar firms, and Rs. 1,000 were recovered from T. C. and A. of Mooltan, who then became bankrupt, and only Rs. 315-2 more were recovered from the bankrupt firm. *Held*, that as it had not been shown that plaintiff acted without reasonable care and prudence or had deviated from any known usage of trade, the firm of T. C. and A. being at the time of the sale of the *hoondies* in good credit, and the grant of 10 days' credit to them being in accordance with the usage of trade in Mooltan, the plaintiff was not liable to defendants on account of the *hoondies* in question unless he acted as a *del credere* agent. *Held*, also, that plaintiff did not, either by express or implied contract, act as a *del credere* agent, for he did not expressly become, for a higher remuneration than was generally given, responsible for the solvency of the firm of T. C. and A. and there was nothing in the usages of exchange brokers at Mooltan or the general course of dealing between plaintiff and defendants from which such a guarantee could be implied. *Quære*,—Whether delay on the part of the drawees at Amritsar in honoring the *hoondies*, if such delay were the cause of non-payment by T. C. and A. would have absolved the plaintiff from his guarantee as a *del credere* agent.

Upon payment of a *hoondi* it is customary with native firms for the drawee, to return the *hoondi* to the drawer and it is material to consider this custom when the drawer complains of want of notice of dishonour from an intermediate party to the instrument. HARDIAL *v.* KHILLOO MULLICK.

98 P R 1869

19. *Siri Nishanee*—Hoondee.

A. who had formerly been gomashta of a firm (Doongursee Dass and Gungajul), drew a *hoondee* with the words at the head of the instrument, "*siri nishanee Doongursee Dass Gungajul ke*," &c.

Held, that these words alone were not sufficient by usage to indicate that A. had authority to act for the firm or to bind the firm by the *hoondee*. SHADI RAM *v.* ARJI RAJ.

13 P R 1871

20. *Public Agent—Contract.*

The Local Government authorized A., Executive Engineer, 8th Division, Grand Trunk Road, to negotiate with the plaintiff for the purchase of certain *kunkar* quarries, and eventually gave A. permission to complete

PRINCIPAL AND AGENT—*contd.*

the purchase "to the extent of funds available;" but afterwards, before any contract was signed on behalf of the Government denied that there were funds available. *Held*, that so far as the statements of A. gave rise to an implied contract they were subject to the condition that there should be funds available in his hands for repairs of the 8th Division, Grand Trunk Road, and that as in fact A. had no funds available in his Division the Local Government was not bound by the course which A took in the matter, the precise extent of his authority having been communicated to the plaintiff.

The Local Government may contract by the head of a department or through subordinate agents; but the latter contracts to bind the Government must clearly be within the particular agent's authority, express or implied, with due regard to the character in which such agent has been held out. TAYLOR *v.* THE SECRETARY OF STATE.

60 P R 1871

21. *Appointment of Road Overseer to superintend building—Liability of, as agent for negligence.*

The defendant, a Road Overseer, was appointed by the Deputy Commissioner to superintend the building of a *kutcharry*. He received money as advances, but after completion of the building it was alleged that the materials were bad and the work defective, and he was sued for a refund of Rs. 3,726 as damages occasioned by his neglect.

Held, that the defendant was, under section 194 of Act IX of 1872, an agent, and responsible to the Government.

Held, also, that he was bound to act with reasonable diligence and to use such skill as he possessed, though, as Road Overseer, he could not be expected to conduct the business with as much skill as was generally possessed by professional builders and that with reference to the question of his inefficient superintendence, regard must be paid to his other work and duties.

Held, also, that as to the supply of bad materials, the question was whether they were so bad that reasonable diligence in securing proper materials could not have been exercised by defendant.

Held, also, that the duty of defendants superiors to supervise the work as it was being done, and the ratification by the Deputy Commissioner from time to time of what defendant did, should be considered.

Case remanded under section 351, Civil Procedure Code. BALMOKAND *v.* SECRETARY OF STATE.

77 P R 1874

22. *Public agent—Scope of authority—Liability of Government for unauthorized acts of agent.*

B., negotiating with the Government for the building of certain public works, communicated with the Secretary to Government through the Superintending Engineer and received through the latter replies to his letters. In forwarding one of the replies the Superintending Engineer led B. to understand that his contract had been accepted, whereas

PRINCIPAL AND AGENT—*contd.*

the Govenment had not authorized the Superintending Engineer to make a final or specific contract with B.

Held, that the Government was not bound by the mistake or unauthorized act of the Superintending Engineer, and that there was no such contract made between the Government and B., as the latter relied on, inasmuch as the Government had by the practice of forwarding to B. copies of the Secretary's letter to the Superintending Engineer, made known that the scope of the latter's employment in the matter was limited to his express instructions. BERTOLA *v.* THE SECRETARY OF STATE.

64 P R 1875

23. *Relinquishment of claim of principal for whom agent is acting in Court - Admission.*

The plaintiffs through their general agent under a duly executed power of attorney, claimed the land in suit as old proprietors, and, if not so entitled, by right of pre-emption. The agent in the course of the trial relinquished any claim in the part of the plaintiffs as proprietors, admitting that they had no claim as such. *Held*, that the agent was not authorized to make such a relinquishment, and, therefore, that the plaintiffs were not bound by it. BANSI LAL *v.* TWIGGE.

37 P R 1877

24. *Authority of Agent to confess judgment—Decree on confession—Review—Civil Procedure Code (Act VIII of 1859), sections 98 and 376—Circumstances under which principal is entitled to relief.*

On 24th February 1877, plaintiff instituted a suit against defendant to establish his right to the office of Diwan of the *khangah* of Mirah Sahib at Thuska, and to share in the management of the institution. Defendant was summoned for 20th March 1877 for settlement of issues. On 7th March 1877, before the summons was served, defendant's general agent or mukhtar, Mahamda Shah, appeared and confessed judgment, upon which a decree was passed in favour of plaintiff.

On 29th March 1877, defendant, through his pleader, applied for review of judgment on the grounds that, 1st, the decree on confession of judgment had been passed before the date fixed for hearing; and 2nd, that the confession of judgment had been made without defendant's consent or authority. The application was rejected on the ground that Mahamada Shah's power of attorney gave him power to confess judgment and bind defendant.

Held by SMYTHE, J. following No. 37, *Punjab Record*, 1877, that defendant was entitled to relief, unless it could be shown that the agent was in point of fact expressly or impliedly authorized to make the confession of judgment sought to be impeached.

Held by PLOWDEN, J. that even if the power of attorney was sufficient in itself, and without any further instrument of authorization to confer upon the agent authority to confess judgment generally, the

PRINCIPAL AND AGENT—*contd.*

defendant would be entitled to relief if he could show that the general authority had in the particular case been exercised in such a manner or with such results that it would be unjust to hold him bound by his agent's act.

Per PLOWDEN, J.—Under the Code of Civil Procedure, a decree by consent may be set aside by review if the attainment of the ends of justice require it, and, therefore, if it appeared that the confession of judgment had been made by the agent under such circumstances that it operated as a fraud upon the defendant, or was made in error or acted as a surprise upon him, he would be *primâ facie* entitled to the relief sought. ABDUL MAJID *v.* FAZL HAK. **58 P R 1878**

25. *Contract Act* (*IX of* 1872), *section* 230 —*Suit by agent of undisclosed principal.*

In a suit on a written contract, purporting to be entered into by plaintiff as a principal and not as an agent, defendants objected (after issues had been drawn, and the plaintiff's evidence recorded) that the firm of which plaintiff was the agent should have brought the suit: and the lower Courts, allowing this objection, dismissed the suit, holding that plaintiff had in fact entered into the contract as an agent.

Held, reversing the orders of the lower Courts, that plaintiff was competent to maintain the suit in his own name under the provisions of section 230 of the Contract Act, even if he had contracted as the agent of an undisclosed principal. SAHIB RAM *v.* MUNSHI LAL. **64 P R 1881**

26. *Contract Act* (*IX of* 1872), *section* 235 —*Liability of pretended agent*—" *Loss or damage* "—*Compensation how to be estimated.*

In a suit, to the facts of which section 235 of the Contract Act was held to be applicable, plaintiff sued to recover from the defendant compensation for the loss which he had incurred by taking a lease from the defendant, who untruly represented himself to be the authorized agent of his father, which lease the defendant's father refused to ratify. The Judge of the Small Cause Court gave plaintiff a decree, computing the damages at the profit which pliantiff would have gained had he succeeded in sub-leasing the land for the whole of the 3 years of his lease at the rate at which the owner had subsequently let the land for one year.

Held, that the loss incurred by dealing with a person who assumes to be an agent, within the meaning of section 235 of the Contract Act, but is not really authorized, and whose acts are not ratified by the alleged employer, includes the loss of the bargain, and that the Judge of the Small Cause Court was therefore right in attempting to estimate the value of the lease. But that he had not proceeded on correct principles in determining such value as he had apparently rather considered prospective profits than the present value, the correct estimate being the sum for

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which the plaintiff could have disposed of the lease to a solvent tenant, who would guarantee him against all further responsibility to the lessor. MUHAMMAD ISMAIL *v.* GULAB RAI. **160 P R 1882**

27. *Contract Act* (*IX of* 1872), *section* 230 —*Auctioneer and purchaser*—*Auctioneer's right to sue for priceof goods sold.*

Plaintiff as auctioneer put up the property of one X. to auction in execution of a decree held by one Y. and part of the property was purchased by the defendant, who was allowed to take it away without paying the price.

Held, that under the circumstances of the case the plaintiff was entitled to maintain a suit for the recovery of the price, as it might be taken that there was a distinct understanding that purchasers should pay the prices of the goods purchased by them to the auctioneer, the plaintiff. DANIELS *v.* BOULGER. **86 P R 1884**

28. *Contract Act* (*IX of* 1872), *section* 217 —*Agent's right of retainer*—" *Business* " *of agency.*

Held, that section 217 of the Contract Act does not justify an agent in retaining sums received on account of his principal in the business of an agency, on account of remuneration alleged to be due to him for acting in another agency which had long previously expired, the word " business " in the section meaning a continuing business or the same business as that for which the agent had been agent before. SARDAR MUHAMMAD HYAT KHAN *v.* BABU DASWANDHI RAM. **49 P R 1885**

29. *Agency*—*Merchant buying goods in a foreign market on behalf of another*—" *Principal and agent* "—" *Vendor* "—*Fraud*—*lower Appellate Court dismissing claim on a point not taken in the first Court*—*Right to rescind contract*—*Goods rdered according to sample*—*Difference in goods supplied*—*Contract Act*, 1872, *sections* 112, 118.

A commission merchant, who buys goods on behalf of a correspondent in a foreign market, does so as principal, and has no authority to pledge the credit of his correspondent. He is clothed with the rights of a vendor of the goods for the recovery of his dues from the correspondent, but he is not thereby absolved from his duty as agent to buy the goods as much below the limit of price fixed in the order given him as he reasonably can, and he ought to charge only what he has actually paid for them. If he acts otherwise, his conduct amounts to a fraud on his principal.

Where in such a case the contract between the commission merchant and his correspondent has not been induced by fraud, and no act of bad faith is imputable to the former, while the contract is in an executory state, the goods purchased under

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the contract become the property of the correspondent, who is bound to pay their proper value, and cannot rescind the contract merely because the commission merchant demands from him a higher price than was actually paid for such goods. But such over-charge will be disallowed in the account between the parties.

When goods are ordered according to sample and the goods supplied are appreciably different in quality from such sample, the buyer may, ordinarily, either reject the goods or keep them and claim a reduction in price by way of compensation, giving notice to the seller of such claim within a reasonable time. Such difference, however, must be one which men of sound sense in the particular trade would regard as appreciable. F. W. SHAW *v.* BAIJ NATH. **21 P R 1897**

30. *Principal and agent*—*Managing Agent and Company*—*Liability to account.*

Held, that the relationship between a Company and its Managing Agent being that of principal and agent, it is the duty of the latter to render proper accounts to the former. The fact that an agent of a Company was paid by commission or was subordinate to the control of its Directors, or that he had delivered up to them all the account books of the Campany, does not exonerate him from the liability to account.

Hurrinath Rai v. *Krishna Kumar Bakshi* (*I. L. R. XIV Calc.* 147, P. C.), and *Lawless* v. *Calcutta Landing and Shipping Company, Limited* (*I. L. R. VII Calc.* 627) referred to. ANDERSON *v.* DELHI COTTON MILLS, CO., LTD. **69 P R 1903**

31. *Oaths Act*, 1873—*Agent's authority to bind client by oath of opposite party*—*Power of principal to withdraw after other party has agreed to take the oath.*

Held, that an agent holding a power of attorney authorizing him, amongst other things, " to take all kinds of proceedings in connection with the case " was empowered to bind his principal by the oath of the opposite party under the Indian Oaths Act, and that his principal was not entitled, without showing good reasons for retracting it, to withdraw the offer made on his behalf after the other party has expressed his willingness to take the oath required.

Mussammat Gharib v. *Karim Bakhsh* (72 *P. R.* 1874), *Mussammat Azima Begum* v. *Muhammad Bakhsh* (63 *P. R.* 1881), *Ram Narain Singh* v. *Babu Singh* (*I. L. R. XVIII All.* 46) and *Aliuji* v. *Bala* (*I. L. R. XXII Bom.* 281) relied upon.

Mussammat Parag Devi v. *Ram Chand* (75 *P. R.* 1900), *Amir Chand* v. *Gobind Sahai* (5 *P. R.* 1903), *Lekhraj Singh* v. *Dulhana Kaur* (*I. L. R. IV All.* 302), and *Sadashiv Raiyaji* v. *Muruti Vithal* (*I. L. R. XIV Bom.* 455), referred to. GANGA BISHEN *v.* MATNA. **85 P R 1903**

PRINCIPAL AND AGENT—*concld.*

32. *Principal and agent—Goods received by agent on written authority—Suit against principal—Indian Limitation Act, XV of 1877, section 19—Acknowledgment by agent.*

Held, that under the provisions of section 19 of the Indian Limitation Act, 1877, an acknowledgment may be signed by an agent duly authorized and an agent who has authority to receive goods for his principal has also implied authority to sign an acknowledgment of balances due, and that such acknowledgment is good although the correctness of the amount charged is not admitted, and the acknowledgment is conditional and subject to the principal's approval.

Held also, that a suit for the price of timber supplied to the agent of a contractor on the authority of a letter lies against the contractor. THE FIRM OF SHERU MAL CHINA MAL *v.* GOLDSTEIN. **55 P R 1910**

PRINCIPAL AND SURETY.

1. *Security for costs—Recovery of costs from surety in execution or by separate suit—Liability of surety if decree against principal debtor is barred by limitation.*

See CIVIL PROCEDURE CODE, 1908, O. XLI, R. 10.

136 P R 1892

2. *Execution of decree—Bond given by surety for judgment-debtor—Suit by decree-holder against surety without impleading judgment-debtor.*

See CIVIL PROCEDURE CODE, 1908, O. XLI, R. 23. **59 P R 1896**

3. *Bail bond given for appearance of accused person—Non-appearance of accused and forfeiture of bond—Suit by surety against principal to recover amount of bond—Public policy.*

See CONTRACT ACT, 1872, SECTION 23.

1 P R 1899

4. *Liability of son whose father was surety.*

See HINDU LAW, SURETYSHIP.

60 P R 1886

5. *Suit by surety against principal debtor—Suit by co-surety to recover from principal debtor sum paid to a co-surety as contribution towards amount paid by him to the creditor.*

See LIMITATION ACT (XV OF 1877), SCHEDULE II, ARTICLES 81, 83.

98 P R 1881

6. A creditor may sue either principal or surety, when the principal makes default: he is not bound to proceed against one before suing the other; and judgment *recovered* against the principal is no bar to a suit against the surety; but judgment *satisfied* is a plea in bar. So also if the creditor sue both simultaneously, the one cannot plead in abatement the pendency of a suit against the

PRINCIPAL AND SURETY—*contd.*

other. By English law a joint action cannot be maintained against principal and surety; they are severally liable, as if each had contracted a distinct obligation under a separate bond. But in the Punjab the practice is (and it is a convenient practice) to implead the two together. MERCER *v.* DECORTANZE. **8 P R 1866**

7. *Guarantee.*

In consideration of a loan advanced by the Delhi Bank to Mary H, the said Mary H and her sureties bound themselves jointly and severally to liquidate by instalments the whole amount of principal and interest, insurance and other charges, within the period of 12 months from the date of bond. Default being made, a suit was filed against all the obligors, but as service could not be effected against Mary H, a decree was passed against the sureties only. *Held*, that it was necessary to proceed against the principal before decreeing against the sureties. *Held*, further, that the liability of the sureties was not limited to 12 months. It is for the debtor to find out and pay his creditor, and it is for the surety to see that the principal debtor pays the debt; and it is not the duty of the creditor (in the absence of special agreement to that effect), to call in and demand the debt within a certain time, provided that the period of limitation is not exceeded. *Held*, also on the plea of the appellants that the Bank caused loss by gross and wilful neglect in failing to sue M. H. though requested by one of the sureties, that there was no obligation on the Bank, either at law or in equity, to sue an insolvent person, and that the mere omission of the Bank to sue for the instalments, and the refusal of the Bank when asked to empower one of the sureties to act for the Bank in realizing the debt, could not of itself be taken to have had the effect of inducing or assisting in a fraudulent disposal of the principal's property, and therefore could not be taken to exonerate the sureties. INNES *v.* THE DELHI BANK.

100 P R 1866

8. Plaintiffs took B into his service upon the defendant guaranteeing B's honesty. B misappropriated plaintiff's money. *Held*, that the damages for which defendant was liable on his guarantee were the amount of the actual defalcations committed by B; all other damages (such as B's travelling expenses to join his appointment; the cost incurred by plaintiff in suing B at law in respect of the embezzlement, etc.) were too remote. DECORTANZE *v* MERCER.

106 P R 1866

9. Where there are several sureties, the surety who is compelled to pay the entire debt can in equity compel the other to contribute towards payment of it: and this equitable right is independent of contract, although it may be taken away by special agreement. A surety cannot, however,

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recover against a co-surety the cost of defending an action unless he is authorized or induced by the latter to do so, or unless from some combination of circumstances, it became necessary to defend such suit. BYRNE *v.* MCLEOD. **86 P R 1868**

10. Plaintiff proposed to M. to take a building contract: before the agreement was complete, M. urged a prior engagement, and proposed R. and B. to undertake the work in his stead, promising to overlook their work generally. To this plaintiff agreed, and ultimately the contract was entered into with R. and B. The latter failed in their contract, were guilty of acts of fraud, and finally absconded; whereon plaintiff sued M., R. and B. jointly and severally for damages. *Found* that M. had not connived at the fraud of R. and B., and was not pecuniarily interested in the contract made by them; and *held*, under the circumstances, that M. was not liable for damages for breach of contract. BRIND *v.* MUTHRA. **93 P R 1868**

11. A decree cannot be executed against a person who, after decree is passed, guarantees its performance. BUNSIDHAR *v.* BEHARI LALL.

62 P R 1871

12. Where A. became a surety for B. on the understanding that the latter would hand over a policy of insurance to the creditor as further security for the loan, and B. handed over the policy, intending that the creditor should pay the premia, which the latter failed to do, and consequently, upon B.'s death, the Insurance Company refused to pay the amount insured, *held* that A. was discharged from liability in respect of his suretyship. SIMLA BANK *v.* CAREY.

72 P R 1873

13. Sirdar H. S. was in the service of the Cashmere Government, or, as described by the Lower Court, "was the *factotum* of Raja Motee Singh, Governor of Poonch." H. S. employed R. to sell stamps and collect monies due on bonds to the Cashmere Government. R. and his son K. were, by order of Raja Motee Singh, arrested on suspicion of embezzling about Rs. 3,000 collected by R. in the course of his employment. To obtain the release of R. and K. the plaintiffs at the request of the defendants, undertook to pay Rs. 3,000 to H. S.; and in consideration of the plaintiffs undertaking this liability, the defendants executed bonds to the amount of Rs. 3,000 in favour of the plaintiffs. The plaintiffs failed to pay H. S. the sum of Rs. 3,000 and the latter sued them and obtained a decree for the amount. Afterwards the plaintiffs sued the defendants upon the bonds given by the latter to the former. It was pleaded that the suit would not lie, as the plaintiffs had not paid H. S. the debt which they undertook to pay. *Held*, that the plea was a bar to plaintiffs' suit, which was premature. Plaint returned

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PRINCIPAL AND SURETY—*contd.*

to the plaintiffs. GUNGA RAM *v.* RAM KISHEN. **17 P R 1875**

14. *Execution against one who undertakes to satisfy decree.*

Plaintiff obtained a decree against A. personally for a sum of money. B., on the ground that A. was his, B.'s agent, and that the subject-matter of the suit concerned B. and that A. agreed to satisfy the decree: *Held*, that execution of the decree could not be had against B., whose undertaking might furnish a separate case of action. DIWAN RAM CHAND *v.* MUHAMMAD SULTAN. **75 P R 1876**

15. *Liability of creditor to take legal proceedings against principal debtor—Discharge of sureties—Act IX of* 1872, *sections* 134, 137, *and* 139—*English Bankruptcy Act*, 1869 (32 & 33 *Vict. Chap.* 71).

Plaintiffs sued on a bond, the cause of action on which accrued on 15th September 1868, and relied on a series of letters from defendant extending from 14th June 1870 to 23rd June 1872 as acknowledgments. The claim as against the principal debtor was barred.

The letters generally complained of the way in which Dr. Menzies, the principal debtor, and his son—who was one of the sureties—were evading their obligations and urging on the Bank (plaintiffs) the necessity of taking vigorous measures against them, so as to protect the writer, Dr. Morice (defendant), and the third surety, Captain Price from the loss which otherwise they would suffer. Dr. Morice wrote throughout as a surety still liable for the debt.

In one letter dated 16th June 1871 Dr. Morice wrote as follows :—

" As Dr. Menzies has behaved in a most " dishonest and disgraceful manner I think " he ought to suffer and not the securities, " ...... I trust the Bank will in fairness to " the securities take all steps in their " power to make Dr. Menzies pay his own " debts....... .... I will agree to any " thing it proposes."

The letters of 21st and 23rd June 1872 contained the following :—

"I have just heard from Captain Price, " and I think we can make arrangements " regarding Dr. Menzies' debt to the Bank, " provided the Bank is not too hard on us. " I shall be glad to hear what the Bank " propose." ... . " It is quite impossible for us to pay the " whole of Dr. Menzies' debt, including " interest, down, but we might come to " some arrangement that would be fair " to the Bank without being utterly ruinous to " ourselves."

On or about 8th June 1870, Dr. Menzies fled from India, without giving any intimation to the Bank. After some correspondence with the sureties, and after writing to England to Dr. Menzies threatening proceedings, the Bank by a letter dated 22nd November 1870, put the matter in the hands of their London solicitor, Mr. Lattey.

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PRINCIPAL AND SURETY—*contd.*

It turned out that Dr. Menzies had gone to live in Guernsey, and the Attorney-General of that island, who was consulted, gave an opinion to the effect that proceedings could not be taken in the Courts there until Dr. Menzies had resided there a year and a day. Before the time for proceeding arrived, Dr. Menzies fled to some place on the Continent, and when next the Bank got a distinct clue to his whereabouts, he was at Buenos Ayres in South America.

Then followed correspondence in which the possibility of following him there was discussed, but the difficulties were great. On 23rd August 1872 Mr. Lattey advised the Bank to abandon the idea of instituting proceedings in Buenos Ayres. He wrote—" I am free to confess that such " steps if taken would, in my opinion, be " accompanied with considerable risk as to " costs, and more than a strong chance " of a futile result." On this advice the Bank acted.

On the 8th June 1871 Dr. Menzies was declared a bankrupt in England, and the Bank accepted a dividend under his bankruptcy in England.

On 27th April 1872, and again on 23rd June 1872, Dr. Morice, by letter, urged the Bank to institute proceedings against Dr. Menzies, and said he and his co-surety Captain Price were willing to pay expenses.

To the second letter the Secretary to the Bank replied on 28th June 1872—" I note " that you are willing to pay the expenses " of prosecuting Dr. Menzies at Buenos " Ayres. I am now taking steps to have " this done, but it must necessarily be a " good many months before the result can be " known."

Held, 1st, that the letters did not require a stamp under article 5, Schedule II, Act XVIII of 1869. The words " note or memorandum whereby a debt is acknowledged to be due " (article 5) mean a document made for the purpose of recording and affording evidence of an acknowledgment of a debt, and do not include every letter or other writing which though written without any idea whatever of securing evidence of an acknowledgment happens incidentally to contain an acknowledgment express or implied.

Held, 2ndly, that the letters contained an " unqualified admission of Dr. Morice's " liability as still subsisting " within the meaning of section 20, Act IX of 1871.

That the letter of 16th June 1871, being written within three years from the date on which the cause of action originally accrued gave plaintiff a new period of limitation extending to 16th June 1874.

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That the letters of 21st and 23rd June 1872 as acknowledgments extend the period over three years more, *i.e.*, to the latter half of June 1875, and that the suit having been instituted on 8th June 1875, was within time.

Held, 3rdly, that the Bank was not bound to take legal proceedings against Dr. Menzies, but that such a duty was cast on the Bank by its correspondence with Dr. Morice, and that it had done all that a prudent man would do under the circumstances, and properly discharged the duty it had taken upon itself by its Secretary's letter of 28th June 1872 ; and further, that even if the Bank by the letter of 28th June 1872, had undertaken absolutely, and at all risks, to proceed against Dr. Menzies, still its neglect to do so would not release Dr. Morice, unless it could be shown that Dr. Menzies was then solvent and had since become insolvent.

Held, 4thly, that the sureties were not discharged by reason of the Bank allowing the claim against Dr. Menzies to become barred by lapse of time, as the law of limitation did not discharge the principal or extinguish the debt, but merely barred the remedy.

Held, 5thly, that the Bank did not by accepting a dividend under Dr. Menzies' bankruptcy in England and assenting to his discharge by their own act release Dr. Menzies, so as to discharge his sureties ; that Dr. Menzies' discharge under his bankruptcy took effect in India without reference to anything the Bank said or did : that Dr. Menzies was discharged in India just as he was in England, not by the acts of the Bank, but by operation of law, and that, accordingly, his discharge did not carry with it a release of his surety, Dr. Morice. MORICE *v.* THE SIMLA BANK. **2 P R 1878**

16 *Money rightfully paid—Payment by surety of debt barred as against principal—Contract Act, IX of* 1872, *section* 145.

Plaintiff, a surety, sued his principal to recover the amount paid by him under a decree obtained by the creditor against him as surety. In that suit the principal debtor was also sued and the decree in the first Court was against both. The principal appealed, and the decree against him was reversed on the merits. The surety did not appeal, but acquiesced in the decree against himself. The action of the creditor as against the principal debtor was barred by limitation, and the action against the surety would also have been barred, but for the fact that he had before expiry of the period of limitation, struck a balance of the ac-

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count against the principal and signed an acknowledgment that the balance was due.

Held, under the circumstances that plaintiff was not entitled to recover from his principal the amount which he had been compelled to pay under the decree against him.

A moral obligation to pay a debt barred by limitation subsists, though the legal means of recovering it have been lost, but a surety, paying such a debt does not pay "rightfully" within the meaning of section 145 of the Contract Act, IX of 1872, and is therefore not entitled to recover from his principal. SUJA *v.* PAHLWAN.

30 P R 1878

17. *Right of surety to recover interest on monies paid for principal.*

A security is entitled as against the principal to be indemnified for all losses incurred by him which are directly due to the default of the principal, and therefore to interest on monies paid on his account and for his benefit as principal debtor. MADAR BAKSH *v.* AHMED ALI. **98 P R 1881**

18. *Contract for supply of timber—Advance made to contractors on plaintiff's security—Failure of contract—Liability of surety for balance of advance—Surety's right to recover such balance from contractors—Contract of indemnity made in Bahawalpur State not governed by law of British India.*

The defendants in November 1869 entered into a contract with the Political Agent of the Bahawalpur State to supply timber. Nothing was said as to the quantity of timber which was to be supplied, nor as to the time during which the contract was to remain in force, but the contract allowed the Political Agent to take the timber or not according to his approval of it. Shortly after the making of the contract, the contractors were desirous of obtaining an advance of money, and it appeared that an advance of Rs. 10,000 was made from the Bahawalpur State by the Political Agent on the security of the plaintiff. The contractors supplied some timber, part of which was accepted, and part rejected, and finally, in September 1870, the Political Agent called upon the plaintiff to pay the balance which then remained of the advance of Rs. 10,000 after giving credit for the timber which had been received for the State. This amount the plaintiff was obliged to pay, and he therefore sued to recover it from the defendants.

Held, by their Lordships of the Judicial Committee, upholding the decree of the Chief Court, that the plaintiff was entitled to recover from the defendants. The contract under which the plaintiff became the surety was made in Bahawalpur, and the parties must be considered to have made it according to the liabilities that would be ncurred there, the principle not being a correct one that when the surety came to

PRINCIPAL AND SURETY— *concld.*

enforce his rights against the principals the law of British India was to be looked at. As therefore the parties clearly contemplated that the plaintiff was to be responsible for the repayment of the advance in case the contract should fail, and the contract had clearly failed in September 1870, when the Political Agent directed the balance to be recovered from the plaintiff, the decree in favour of the plaintiff ought to stand.

Their Lordships held further on the facts that the Political Agent was both entitled to put an end to the contract, and justified in so doing. SIRDAR SUJAN SINGH *v.* GUNGA RAM.

7 P R 1882 P. C.

PRIORITY.

1. *Of attaching creditor in insolvency.*
See ATTACHMENT. **93 P R 1882**

2. *Priority among decree-holder.*
See CIVIL PROCEDURE CODE, 1908, SECTION 73. **60 P R 1892**

3. *Between shah and gomashta—Repayment of capital when agency is dissolved.*
See CUSTOM—IX. MERCANTILE USAGES.
79 P R 1885

4. *Between decree-holder and other creditors of insolvent.*
See INSOLVENCY. **46 P R 1884**

5. *Mortgage—Subsequent sale by mortgagor to third person—*Bona fide *purchaser—Priority—Notice.*
See MORTGAGE—MARSHALLING.
23 P R 1891

6. *Of registered over unregistered deeds.*
See REGISTRATION ACT (III OF 1877), SECTION 50. *Passim.*

7. *Vendor's lien for unpaid purchase-money—Recital in deed of full payment—Subsequent advance on strength of deed by third party without notice of lien.*
See VENDOR AND PURCHASER.
66 P R 1883

PRISONS ACT, 1870.

Section 36.

—Correlation of—Subsistence allowance of Civil prisoners—Clothing, bedding and cooking utensils of prisoner.
See CIVIL PROCEDURE CODE, 1908, O. XXI, R. 39. **43 P R 1893**

PRIVACY.

See EASEMENT.

—Right of—Suit to compel defendants to build a screen on upper story of their house—Proof required from plaintiffs in such case.
See CUSTOM—VII. EASEMENTS AND PROFITS. **19 P R 1882**

PRIVILEGED COMMUNICATION.

See DEFAMATION. **8 P R 1870**
16 P R 1879
83 P R 1908

PRIVY COUNCIL.

1. *Appeal to.*
See APPEAL—X. TO PRIVY COUNCIL.
CIVIL PROCEDURE CODE, 1908, SECTIONS 109, 110 AND O. XLV, R. 7.

2. *Appeal to—Extension of time for giving security.*
See APPEAL—X. TO PRIVY COUNCIL.
87 P R 1908

3. *Application for leave to appeal to Privy Council—Order of remand under section 562, Civil Procedure Code—Final decree.*
See CIVIL PROCEDURE CODE, 1908, SECTION 109. **56 P R 1888**

4. *Final decree—Leave to appeal to Her Majesty in Council.*
See CIVIL PROCEDURE CODE, 1908, SECTION 109. **12 P R 1896**

5. *Leave to appeal to the Privy Council—Substantial question of Law—Orders passed under section 588 (16).*
See CIVIL PROCEDURE CODE, 1908, SECTION 110.
61 P R 1900

6. *Appeal to Privy Council—Extension of time for the deposit of security for respondent's costs.*
See CIVIL PROCEDURE CODE, 1908, O. XLV, R. 7 **44 P R 1910**

PRIVY COUNCIL DECREE.

See INTEREST. **1 P R 1877**

PROBATE.

1. *Application for.*
See COURT FEES ACT, 1870, SECTION 19. **26 P R 1900**

2. *Probate duty—Foreign securities—Assets beyond jurisdiction.*
See COURT FEES ACT, 1870, SCHEDULE I, ARTICLE 11. **51 P R 1902**

3. *Revocation of.*
See EXECUTORS. **72 P R 1894**

4. *Will appointing no executor—Grant to widow—Universal legatee.*

Where the will of a deceased testator contained no express appointment of an executor but named the widow as universal legatee, *held*, that it might be gathered from the will that the testator intended the said widow to be executrix, and that probate might accordingly be granted to her. IN THE GOODS OF G. J. HARE. **106 P R 1881**

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PROBATE AND ADMINISTRATION ACT, 1881.

Section 2.

—Validity of will—Power of Court acting under Act V of 1881*—Succession Act,* 1865, *sections* 46, 48, *Illustrations—Lower Court refusing to grant probate of will to executor, but granting letters of administration without the will annexed to testator's representative—No appeal by executor—*Locus standi *of party interested in will to appeal against grant of letters of administration.*

See SUCCESSION ACT, 1865, SECTIONS 46, 48. **55 P R 1894**

—Hindu Wills Act (XXI of 1870), *Sikhs, Brahmos and unorthodox Hindus—Testamentary capacity of testator—Execution—Validity of bequests and trusts created by the will—Blanks in body of will—Costs in testamentary suits.*

The testator Sardar Dyal Singh Majithia, a member of a well-known Sikh family, died childless in 1898, and by his will, which he had executed and duly deposited with the Registrar of the District in 1895, after making certain provisions for his widow's maintenance and bequeathing his ancestral estate to his nephew Sardar Gajindra Singh, and a legacy of Rs. 20,000 to a Mrs. Catherine Gill, and appointing executors, bequeathed to certain trustees a considerable portion of his estate for the purpose of establishing and maintaining a first class Arts College at Lahore, and for a public library near the city of Lahore, and also bequeathed certain property to the Church Mission Society at Amritsar on the condition that they should raise the Middle School already established by them at Majithia to a High School, and he also bequeathed all his property in his newspaper known as the *Tribune*, published at Lahore, to certain trustees whom he appointed to manage and conduct it. The executors propounded the will and asked for probate Caveat were entered by the testator's widow, Rani Bhagwan Kour, his nephew, Sirdar Gajindra Singh, his relation, Sardar Attar Singh, and one Mrs. Catherine Gill, who alleged herself to be the second widow of the deceased, all of whom filed written statements objecting to the grant of probate and contesting the due execution and validity of the will on, amongst others, the following grounds.

That the Administration Act, V of 1881, did not apply to the deceased, as he was not a Hindu within the meaning of section 2 of that Act, because (*a*) he was born a Sikh and Sikhs are not included within the term Hindu ; (*b*) he had become a Brahmo, and (*c*) because he had in any case ceased to be a Sikh or Hindu by cutting his hair and smoking and by indulging in prohibited food, and by a eating with Muhammadans, Christians and others, with whom Sikhs and Hindus are not allowed to eat. That the will was not duly executed. That there were alterations and interlineations in the will which were not duly witnessed, and the will was therefore invalid. That the circumstances under which the will was executed

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PROBATE AND ADMINISTRATION ACT, 1881—*contd.*

Section 2—*contd.*

rendered it invalid on the ground of undue influence. That the trusts created by the will were void. That the deceased had no right to make a will bequeathing the property he did to the various trusts, and that, therefore, the deceased should be held to have died intestate.

Held, on the evidence, upon a comparison of the three Acts passed by the Indian Legislature in regard to Intestate and Testamentary succession and administration, that the term *Hindu* in section 2 of Act V of 1881 includes *Sikhs*. That a person born a Sikh did not cease to be a *Hindu* or *Sikh* unless he renounced *Hinduism* or *Sikhism*. Mere indulgence in certain practices as to eating and living reprobated by other Hindus or professing to be a Brahmo did not preclude his coming within the meaning of section 2 of Act V of 1881.

Held, further, that an alteration, even, if made after execution in the will of a Hindu testator (not effected by Act XXI of 1870) if attested by him does not invalidate it.

Held, also, that the question of the validity of the trusts contained in a will are not within the province of a Probate Court.

Held, also, on the facts that the testator represented the document to be his will, and signed it in the presence of the two attesting withnesses, and deposited it with the Registrar by a special attorney as his last will, and that he had a sound disposing mind at the time of its execution, and that there were no blanks in it when executed.

Held, also, that the objectors having protracted the proceedings and wasted the time of the Court by the production of false witnesses were not entitled to have their costs paid out of the estate. BABU JAGENDRA CHANDRA BOSE AND OTHERS *v.* RANI BHAGWAN KAUR AND OTHERS **63 P R 1900**

—Probate and Administration Act, 1881 *—Application of, to Sikhs, Brahmos and unorthodox Hindus—Will—Execution—Blanks in body of will.*

Held, by the Privy Council—

(*i*) That a Sikh is included in the term Hindu as used in the Probate and Administration Act of 1881.

(*ii*) That a Sikh or Hindu by becoming a Brahmo did not necessarily cease to belong to the community in which he was born.

(*iii*) That lapse from orthodox practices in matters of diet and ceremonial observance could not have the effect of excluding a Hindu or a Sikh from the category of Hindus in the Act, especially in the case of one who had been born within its purview and who had never become otherwise separated from the religious communion in which he was born.

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PROBATE AND ADMINISTRATION ACT, 1881—*contd.*

Section 2—*concld.*

Found, upon the evidence, that the testator had never become a professed Brahmo, and that the will had been duly executed and that there were no blanks in it at the time of its execution.

Sheo Singh Rai v. *Mussammat Dakho* (*I. L. R. I. All.* 688) and *Chothy Lal* v. *Chunno Lal* (*I. L. R. IV Calc.* 744) referred to. RANI BHAGWAN KAUR *v.* JOGENDRA CHANDRA BOSE **84 P R 1903 P. C.**

Section 7.

—And section 19*—Universal or residuary legatee—Grant of probate to, with copy of the will annexed, under section* 19 *of the Act.*

The testator, a Hindu, left a will disposing of his property as follows : two items mentioned in the list of property given in the will to be dedicated to charitable uses and all the rest of the property to go to his wife " besides whom I have no other heir to succeed to my property " ; provision was then made for the maintenance of an adopted son ; and, lastly, two persons were appointed by name " to act as *sarbarahs* for my wife."

No executor was appointed by the will.

Held, that the widow was not entitled to probate as an executrix appointed by necessary implication within the meaning of section 7 of Act V of 1881, but to letters of administration with the will annexed, under section 19 of the Act, as universal or residuary legatee.

Held, also, that the *sarbarahs* were not executors named in the will, and that such was not the testator's intention.

Held, further, per Rivaz J. The District Judge was correct in excluding from the inquiry any question relating to the capacity of the testator to dispose of his property at all by will or as to the validity (by law or custom) of any of the provisions contained in the will. SAIN DAS *v.* MUSSAMMAT SAHIB DEVI. **130 P R 1892**

Section 33.

—And section 64*—Letters of administration—Oral will.*

One G. M., caste Bhabra, died leaving ancestral and self-acquired movable and immovable property ; and the present litigation arose out of an application under section 64 of the Probate and Succession Act, 1881, for administration of the above estate by Mussammat H. as guardian of M. L. in whose favour she propounded an oral will of the deceased. The application was resisted by the defendants, first cousins and next of kin of the deceased, who denied both the factum and the validity of the will set up, and alleged that M. L. was an illegitimate son of the deceased and Mussammat H., a Jhiwari by caste, his concubine ; and they prayed that letters of administration to the estate in question

PROBATE AND ADMINISTRATION ACT, 1881—*contd.*

Section 33—*concld.*

should be granted to them. The District Judge found the will proved and by custom valid in so far as it related to the movable and self-acquired immovable property of the deceased; and in respect of such property he granted letters of administration to Mussammat H.

Held, on appeal to the Chief Court that the oral will alleged had not been proved and that even assuming the legitimacy of M. L. (on which point no finding was given), Mussammat H. was not a fit person to be appointed guardian of the minor M. L. or administratrix to the estate of the deceased.

It was further ordered that letters of administration be granted to the defendants. NATHU MAL *v.* MANNU MAL **105 P R 1893**

Section 55.

—Appointment of receiver in testamentary suit—Discretion.

See RECEIVER. **39 P R 1908**

Section 56.

—And section 64—Movable or immovable property within the jurisdiction of District Judge.

In an application made under section 64 of the Probate and Administration Act, 1881, for grant of letters of administration to the estate of H. S. deceased, it was found that the deceased had no place of abode or movable or immovable property in the Punjab unless a decree of the Chief Court for Rs. 25,602-9-0 in favour of the deceased in a suit dismissed by the District Judge of Delhi constituted "property" within the meaning of section 56 of the Act.

Held, that the judgment-debt of the deceased was not property, movable or immovable, within the meaning of section 56 of Act V of 1881, and that therefore the Chief Court had no jurisdiction to entertain the application for a grant of letters of administration. *Re* THE GOODS OF KAUR HIRA SINGH, DECEASED.

126 P R 1893

Section 83.

—Probate and Administration Act, 1881 Application for probate—Contentious proceeding—Courts competent to try and dispose of proceeding—Civil Procedure Code.

An application for probate under the Probate and Administration Act, 1881, is in a contentious proceeding cognizable by the District Judge or the High Court alone, and not by a District Delegate, if there be one. Such proceedings are governed by the Code of Civil Procedure.

PROBATE AND ADMINISTRATION ACT, 1881—*contd.*

Section 83—*concld.*

The District Judge having deliberately delegated the whole of his judicial functions, the proceedings ordered to be set aside and the District Judge directed to try the issue in the case in the manner in which it ought to be tried and decided in a suit under the Code of Civil Procedure and to give his final order in accordance with law and with due advertence to the provisions of the Act of 1881. SANT LAL *v.* MOHER SINGH **44 P R 1893**

Section 86.

1. *Surety for an executor—Release of surety on ground of waste of estate by the executor—Appeal from an order refusing discharge.*

See APPEAL I—CIVIL. **52 P R 1902**

2. *Probate and Administration Act*, 1881, *sections* 53, 55, 59, 74, 83, 86*—Order reducing amount of security—Appeal.*

Held, that an order under section 86 of the Probate and Administration Act, 1881, reducing the amount of security taken from an administrator is appealable.

The Court probably has power to reduce the amount of security required of an administrator, but such reduction should not be permitted in a case where the letters of administration as originally granted are intact, and have not been modified or revoked. SULTAN SINGH *v.* NIDHAN SINGH. **31 P R 1899**

3. *Probate and Administration Act, V of* 1881, *section* 86*—Appeal from interlocutory order—Revision—grounds for.*

Where upon an application being made for letters of administration under the Probate and Administration Act (V of 1881), it was objected that the District Judge had no jurisdiction to entertain the application and that officer decided against the objection.

Held, that no appeal lay from the order of the District Judge under section 86 of the Act, inasmuch as the order was not one made by the District Judge by virtue of the powers expressly conferred upon him by the Act.

Held, also, that the order being an interlocutory one on a point of jurisdiction, no revision lay in the Chief Court. SHIB DIT SINGH *v.* DEVINDAR SINGH.

70 P R 1910

Section 102.

—Amount agreed to be paid, as consideration for standing surety.

Held, that the amount due to a person as consideration for his becoming surety for the due administration of the estate of a deceased person is an expense in administering the estate within the purview

PROBATE AND ADMINISTRATION ACT, 1881—*concld.*

Section 102—*concld.*

of section 102 of the Probate and Administration Act and as such is a first charge against the estate. IMAM BAKHSH *v.* PURAN MAL. **31 P R 1906**

PROCEDURE.

—Suit for proprietary rights—Evidence disclosing title to occupancy rights—Duty of Court to adjudicate on question of occupancy rights.

See OCCUPANCY RIGHTS.

4 P R 1882 Rev.
105 P R 1884

PROCESS FEES.

—Pauper Proceedings.

In pauper proceedings, process fees are not chargeable. IN RE ANONYMOUS.

4 P R 1873

PROFITS.

—Of estate, suit by co-sharer for, after payment of land revenue and cesses.

See JURISDICTION OF CIVIL OR REVENUE COURT. **74 P R 1886**

PROFIT A PRENDRE.

—Right of one village to cut brushwood in neighbouring village for repairs to watercourse.

See CUSTOM VIII.—EASEMENTS AND PROFITS. **31 P R 1882**

PROFITS OF PARTNERSHIPS, SUIT FOR.

See SMALL CAUSE COURT ACT, **1887**, ARTICLE 29. **92 P R 1889**

PROHIBITORY ORDER.

—Prohibitory order—Suit by creditor to recover attached debt—Recovery.

See CIVIL PROCEDURE CODE, 1908, O. XXI, R. 46. **142 P R 1894**

PROMISE TO PAY.

See LIMITATION ACT (XV OF 1877), SECTION 19. **33 P R 1882**
36 P R 1886

PROMISSORY NOTE.

See PARTNERSHIP.

1. *Negotiable Instruments Act*, 1881, *section* 118*—Presumption—Proof of consideration—Undue influence—Contract Act*, 1872, *section* 16.

See BURDEN OF PROOF. **2 P R 1902**

2. *Promissory Note—Bill of Exchange—Original consideration—Stamp—Construction of instrument.*

PROMISSORY NOTE—*contd.*

See CAUSE OF ACTION, IV.—MISCELLANEOUS.
Also EVIDENCE ACT, 1872, SECTION 91.
Also NEGOTIABLE INSTRUMENTS ACT, 1881, SECTION 5. **61 P R 1888**

3. *Promissory Note—Instrument inadmissible in evidence—Original consideration—Stamp Act,* 1879, *section* 34.
See CAUSE OF ACTION, IV.—MISCELLANEOUS. **42 P R 1895**

4. *Construction of instrument—Marginal entry.*
See CONTRACT. **118 P R 1885**

5. *Construction of document—Promissory Note or acknowledgment of liability—Suit based on document stamped with anna stamp—Admissibility of document in evidence—Right of plaintiff to fall back on original consideration.*
See EVIDENCE ACT, 1872, SECTION 91. **92 P R 1898**

6. *Suit on Promissory Note not presented for payment—Cause of action*
See NEGOTIABLE INSTRUMENTS ACT, SECTION 64. **60 P R 1903**

7. *Effect of signature of the writer of a promissory note as scribe—Attestation by a witness.*
See STAMP ACT, 1899, SECTION 2. **14 P R 1902 F. B.**

8. *Promissory Note comprising separately written undertakings by two promissors to pay debt in equal shares—Stamp.*
See STAMP ACT, 1879, SECTION 7. **102 P R 1895**

9. *Promissory Note—Evidence—Original consideration—Suit on, when allowed.*

As a general rule, a person who receives a promissory note with a view to the settlement of prior transactions can, if the note be improperly stamped, fall back and sue on the original consideration. *I. L. R. VII Calc.* 256, followed.

But where the creditor grants a receipt admitting that the prior transactions are completely satisfied by the delivery of the promissory note (in this case to a third person), and that he, the creditor, has no further claim thereon, the above rule does not apply. RAHMATULLA *v.* GANESH DASS. **82 P R 1891**

10. *Promissory Note—Consideration—Inequitable bargain—Burden of proof.*

In a suit by plaintiff to recover from defendant No. 1 and his wife a sum of Rs. 10,000 principal and Rs. 2,400 interest on a promissory note purporting to be executed by both defendants on the 29th November 1895, payable six months after date, defendant No. 1 while admitting execution, pleaded that after he had attained majority his extravagance has necessitated his estate being again put under

PROMISSORY NOTE—*contd.*

the Court of Wards; that after the time the debt was contracted he was living on a small monthly allowance of Rs. 160, which was inadequate for his wants; that he cast about for a loan, and that plaintiff, whom he described as an astute lawyer's clerk, caught him in his meshes and got him to execute the note for a grossly inadequate consideration. It was, therefore, urged on his behalf that the doctrine of the English Court of Chancery in the case of expectant heirs and necessitous persons should be applied, and a decree passed merely for what he had actually received, with reasonable interest thereon. It appeared that defendant No. 1 was a well grown and mature man of about thirty, who had already succeeded to a large estate, and that, though addicted to extravagance and debauchery, he was not a person of weak mental capacity, or in any state of mental or bodily distress, or such necessity as made him incapable of weighing the consequences of the transaction into which he was entering with the plaintiff, with whom he had had no previous dealings.

Held, that under the above circumstances defendant No. 1 could not be placed in the category of those incapable of protecting themselves, and that the case must therefore, be treated as an ordinary case of debtor and creditor, the *onus* of proof of all the disputed facts being, on the pleadings, upon defendant No. 1.

Held, further, that there is an equity founded upon the gross inadequacy of consideration, but it can only be when the inadequacy is such as to involve the conclusion that the party either did not understand what he was about or was the victim of some imposition.

Found, upon the evidence that defendant No. 1 had failed to prove his allegations.

A plea by defendant No. 2 that she had never executed the promissory note or put her mark on it, or received consideration in respect thereof, *found,* not established. FATEH ALI SHAH *v.* MIRAN BAKHSH. **60 P R 1898**

11. *Promissory note, endorsement in blank and delivery to an agent for the benefit of his principal—Right of such principal to sue the maker—Negotiable Instruments Act,* 1881, *sections* 8, 54.

Held, that when a negotiable instrument has been endorsed in blank and delivered to a person in his capacity of agent and attorney for the use and benefit of his principal, the latter must be regarded as the holder, being entitled in his own name to the possession thereof, and to recover the amount due thereon from its maker. NANAK CHAND *v.* DURANT. **9 P R 1906**

12. *Suit on oral agreement which was embodied in an unstamped pro. note—Cause of action—Admission by defendant—Evidence.*

In a suit for a sum of money alleged to be due on an oral agreement entered into by the parties embodied the same day in a pro.

PROMISSORY NOTE—*concld.*

note which had been accepted by the plaintiff on account of the debt due to him, *held,* that the plaintiff had no cause of action for money due otherwise than in the note itself and was not entitled to prove the oral agreement, and that the note being unstamped was inadmissible in evidence under section 35 of Act II of 1899.

Held, also, that the mere fact that defendant admitted execution of the pro. note would not entitle plaintiff to put it in evidence. GANGA RAM *v.* AMIR CHAND. **66 P R 1906**

13. *Promissory Note — Negotiability — Transfer of instrument not negotiable by endorsement—Competency of holder to maintain action against maker—Negotiable Instruments Act,* 1881, *sections* 4, 13.

Held, that a promissory note in the following form:—

"On demand I promise to pay Mr. De Rozario, Rs. 600 only for value received."

was not a negotiable instrument and could not be transferred by endorsement to a third party, and consequently the holder to whom it had been transferred by a simple endorsement was not entitled to sue the maker upon it. PARFITT *v.* CHAIN SUKH. **144 P R 1906**

PROPERTY.

—*Distinction between the right to alienate the property acquired from adoptive and a natural father.*
See CUSTOM I A.—ALIENATION BY MALE PROPRIETOR. 1 (*k*).—GIFTS AND MISCELLANEOUS. **25 P R 1901**

PROPRIETARY BODY OF VILLAGE.

1. *Right of proprietary body to contest alienation by widow of a childless proprietor.*
See CUSTOM I. B.—ALIENATION BY WIDOW. (*d*).—LOCUS STANDI AND ASSENT OF REVERSIONERS. **61 P R 1898**

2. *Custom—Succession—Exclusion of collaterals by proprietors of Village.*
See CUSTOM VIII—MAINTENANCE AND SUCCESSION, W.—MISCELLANEOUS.
77 P R 1896
68 P R 1898
78 P R 1898

PROPRIETARY DUES.

—*M. Nizamabad, Wazirabad—Right of proprietors to proprietary dues on sales of houses.*

A custom found to exist in M. Nizamabad in the Wazirabad *tahsil* of the Gujranwala district, under which the proprietors are entitled to ¼th of the proceeds of sales of houses in the village as proprietary dues.

Held also, that such a custom is not contrary to justice, equity, or good conscience. RULDU *v.* FATTEH ALI. **27 P R 1882**

PROPRIETARY RIGHT.

—*Extinguishment of.*
See EXTINGUISHMENT OF RIGHT.

PROSTITUTES.

1. *Suit for rent for house let to prostitute.* See CONTRACT ACT, 1872, SECTION 23. **2 P R 1898**

2. *Right of inheritance to a female kanchan.* See CUSTOM VIII—MAINTENANCE AND SUCCESSION—V. AMONG PROSTITUTES. **166 P R 1888**

3. *Right of inheritance to father's estate.* See CUSTOM VIII—MAINTENANCE AND SUCCESSION—V. AMONG PROSTITUTES. **148 P R 1889**

4. *Right of inheritance to the property of a collateral.* See CUSTOM VIII—MAINTENANCE AND SUCCESSION—V. AMONG PROSTITUTES. **62 P R 1892**

5. *Invalidity of transaction intended for the furtherance of prostitution.* See CUSTOM VIII—MAINTENANCE AND SUCCESSION—V. AMONG PROSTITUTES. **52 P R 1893 P. C.**

6. *Suit for rent of house let to.* See LANDLORD AND TENANT. **65 P R 1904**

PROSTITUTION.

See CANTONMENTS. **72 P R 1883**
CONTRACTS. **64 P R 1876**
22 and 26 P R 1877

PROVINCIAL INSOLVENCY ACT, 1907.

See INSOLVENCY.

1. *Provincial Insolvency Act, III of 1907, section 43, not applicable to proceedings begun under section 25 of the Punjab Laws Act, IV of 1872—General Clauses Act, X of 1897, section 6, clauses (c), (d) and (e).*

Held, that under the provisions of section 6 of the General Clauses Act, X of 1897, proceedings against an insolvent begun under section 25 of the Punjab Laws Act and pending when the Provincial Insolvency Act, III of 1907, came into force and repealed the insolvency sections of the former Act, must be continued and punishment imposed where necessary, as if the latter Act had not been passed, inasmuch as the new Act lays down a different punishment. GANPAT RAI *v.* MALLA MAL. **11 P R 1910**

2. *Provincial Insolvency Act, III of 1907, section 27, not applicable to proceedings begun under section 28 of the Punjab Laws Act, IV of 1872—General Clauses Act, section 6, clauses (c), (d) and (e).*

Held, following 11 *P. R.* 1910, (*Ganpat Rai* v. *Malla Mal* that as the provisions (now repealed) of section 28 of the Punjab Laws Act, IV of 1872, differ materially from those of the repealing enactment. (The Provincial Insolvency Act, III of 1907, section 27,) and the latter makes important alterations in the vested and substantive rights of parties, orders in connection with a composition deed filed before the new Act came into force, should be made under the old law (*vide* section 6 of the General Clauses Act, X of 1897). SETH RADHAKISHEN *v.* BINJ RAJ. **12 P R 1910**

PROVINCIAL INSOLVENCY ACT, 1907—*concld.*

3. *Insolvency Act, III of 1907, sections 13 and 16 (2),—Power of Insolvency Court prior to order of adjudication.*

Held, that an Insolvency Court has no jurisdiction prior to the order of adjudication to order the release of an applicant for insolvency who has rightly or wrongly been committed to prison by a Civil Court in execution of a decree and that before any order of adjudication is made the ordinary rights of a creditor to proceed against the person and property of a judgment-debtor remain unaffected. KISHEN CHAND *v.* SASOON. **95 P R 1910**

4. *Provincial Insolvency Act, III of 1907, section 46, (1)—Appeals in Punjab lie to Divisional Court.*

Held, that under Punjab Home Department, judicial notification No. 889 of the 18th November 1908, appeals under section 46 (1) of the Provincial Insolvency Act, 1907, from orders made in exercise of Insolvency Jurisdiction by a Court Subordinate to the Divisional Court lie to that Court. **3 P R 1911**

PROVINCIAL SMALL CAUSE COURTS ACT, 1887.

Section 15.

See SMALL CAUSE. **20 P R 1911**

Section 17.

1. *The Provincial Small Cause Courts Act. IX of 1887, section 17—Payment of decretal amount in executing Court on an* exparte *decree by another Court is equivalent to payment into the latter Court and does not bar an application for setting aside the* exparte *decree.*

An *exparte* decree was passed by the Cantonment Small Cause Court, Ambala, and transferred for execution to Multan. The judgment-debtor paid the decretal amount into the Multan Court on 3rd June 1908 and made an application for setting aside the *ex parte* decree to the Ambala Court on 16th June 1908, the Court rejected the application on the grounds that the decree had been satisfied and had ceased to exist inasmuch as the deposit under section 17 of the Small Cause Courts Act, 1887, should have been made in the Ambala Court. The decree-holder took the money out of the Multan Court on 17th June.

Held, that the application for setting aside the decree was made while it was alive and the payment into the Multan Court was no bar to the application made to the Ambala Court and must be treated as a compliance with the rule laid down in section 17 of the Provincial Small Cause Courts Act, 1887. RUGHNATH DAS *v.* DOCTOR PANNA LAL. **54 P R 1910**

Section 25.

2. *Wrong decision on point of limitation, when not interfered with on revision.*

PROVINCIAL SMALL CAUSE COURTS ACT, 1887—*concld.*

Section 25—*concld.*

Held, that the Chief Court will not in the exercise of its discretional powers of revision under section 25 of the Provincial Small Cause Courts Act, interfere with an erroneous decision on a point of limitation, where the judgment of the Lower Court does substantial justice between the parties.

66 *P. R.* 1904 and 19 *P. R.* 1901, referred to. **93 P R 1911**

Section 32 (2).

3. *Imperative—Date of institution not affected by remand for retrial.*

Held, that the terms of section 32 (2), Provincial Small Cause Courts Act are imperative and apply to a suit instituted before the Court was invested with Small Cause Court jurisdiction, and that the date of institution is not affected by a remand order directing retrial *de novo* after the Court had been invested with such jurisdiction. **94 P R 1911**

PUBLIC AGENT.

See ACT OF STATE. **12 P R 1874**
PRINCIPAL AND AGENT. **60 P R 1871**
64 P R 1875

PUBLIC COMPANY.

1. *Public Company—Dividends—Liability to pay dividen dsdeclared by a Company—Right of the son of a deceased shareholder to sue—Cause of action.*

See CAUSE OF ACTION, IV. MISCELLANEOUS- **16 P R 1904**

2. *Power and authority of Directors—Articles of Association—Ratification by Company of acts* ultra vires *of Directors—Condition vital to contract or merely ancillary to it—Evidence as regards*

Where Articles of Association of a Company empowered the Directors generally to do all such acts as under the Indian Companies Act and Articles of Association are directed or authorised to be done by the Company in General Meeting, *held*, that this authority did not absolve the Directors from the necessity of observing the established principle which should regulate their management of the Company's affairs, and if their acts were not reasonably necessary for efficient management, the Company would not be bound by them. *Held further*, that to establish ratification by the Company of acts *ultra vires* of the Directors it was necessary for the plaintiff to prove (1) that the shareholders present at the meeting at which it was alleged that ratification had been accorded had clear knowledge of what was to be ratified, and (2) that the absent shareholders had individually assented to the ratification.

Whether a particular clause in an agreement should be held to embody a condition vital to the contract, or one subsidiary to its main purpose must depend

PUBLIC COMPANY—*contd.*

upon the intention of the contracting parties, and if possible that intention should be gathered from the terms of the agreement itself.

Ashbury Railway Carriage and Iron Company v. *Riche L. R. 7 H. L.* 653), *Houldsworth* v. *Evans* (*L. R.* 3 *H. L.* 263), and *Phosphate of Lime Company* v. *Green* (*L. R.* 7 *C. P.* 56), referred to. TARA CHAND *v.* THE GANESH FLOUR MILLS COMPANY, LIMITED, DELHI. **17 P R 1901**

3. *Public Company—Articles of Association—Directors exceeding borrowing powers—Adoption and ratification of* ultra vires *acts of Director—Lien on present and future property.*

The Articles of Association of the defendant company provided that the Directors might, from time to time at their discretion, borrow any sum or sums of money for the purposes of the Company, but so that not more than Rs. 4,00,000 should be owing at any one time without the sanction of a General Meeting. The Directors exceeded their borrowing powers, but the excessive borrowing had been brought through the balance sheets of the Company to the notice of the shareholders who, instead of objecting to it, endorsed the actions of the Directors by passing the accounts and declaring dividends. *Held*, that the above acts of the Company constituted sanction and ratification of the excessive borrowing by the Directors. *Held, also*, that as in equity there could be a valid assignment of property to be subsequently acquired the plaintiff had a lien on all the goods of the Company which had been obviously acquired by the latter by means of the overdraft allowed by the plaintiff bank *Held, further*, that the defendant had failed to substantiate their contention that the goods of the Company were wrongfully taken possession of by the Bank or sold for inadequate sums and without reasonable notice to the Company, or that the inadequacy of price exceeded the amount claimed, or that, by the fact of their taking over possession of the defendants' property, the plaintiff's remedy to recover any balance which remained due after credit of the sale proceeds, had become exhausted, as, under section 176 of the Contract Act, if the proceeds of sale of goods were less than the amount due, the Company was still liable to pay the balance. THE NATIONAL BANK OF INDIA, LIMITED, *v.* THE DELHI COTTON MILLS COMPANY, LIMITED. **57 P R 1902**

4. *Principal and agent—Managing Agent and Company—Liability to account.*

Held, that the relationship between a Company and its Managing Agent being that of principal and agent, it is the duty of the latter to render proper accounts to the former. The fact that an Agent of a Company was paid by commission or was subordinate to the control of its Directors, or that he had delivered up to them all the account books of the

PUBLIC COMPANY—*contd.*

Company, does not exonerate him from the liability to account.

Hurrinath Rai v. *Krishna Kumar Bakshi* (*I. L. R. XIV Calc.* 147, *P. C.*) and *Lawless* v. *Calcutta Landing and Shipping Company, Limited* (*I. L. R. VII Calc.* 627), referred to. ANDERSON *v.* DELHI COTTON MILLS CO., LTD. **69 P R 1903**

5. *Public Company—Suit by liquidator for money due to the Company in respect of unpaid calls on shares—Limitation—Limitation Act*, 1877, *Schedule II, article* 120.

Held, that the period of limitation applicable to a suit brought by liquidator of a Public Company to recover the unpaid amount of calls from a shareholder is six years from the date of default under article 120 of the Second Schedule to the Limitation Act.

The Parell Spinning and Weaving Company v. *Manek Haji* (*I. L. R. X Bom.* 483) cited. In re *Duckworths* (*L. R.* 2 *Ch.* 578), In re *Stockens* (*L. R.* 3 *Ch.* 412), *Waterhouse* v. *Jamieson* (*L. R.* 2 *H. L.* (*Sc.*) 29), In re *Whitehouse & Co.* (*L. R.* 9 *Ch. D.* 595), In re *National Funds Assurance Co.* (*L R.* 10. *Ch. D.* 118), *Sukho Bibi* v. *Ram Sukh Das* (*I. L. R. V All.* 263), *Raghubar Dial* v. *Madan Mohan Lal* (*I. L. R. XVI All.* 3), *Sorabji Jamsetji* v. *Ishwar Das Jugjiwan Das* (*I. L. R. XX Bom.* 654), In re *Ram Sunkar Bhodoori* (3 *Calc. L. R.* 440), *Manekji Framji* v. *Rustomji Naserwanji Mistry* (*I. L. R. XIV Bom.* 269), and *Parashram Jethmal* v. *Rakhma* (*I. L. R XV Bom.* 299), referred to. HARCHAND RAI *v.* RANG LAL. **70 P R 1903**

6. *Public Company—Contract on behalf of Company—Directors and Officers—Warranty of authority—Duty of third parties to see that the Directors and Officers are acting within their authority—Presumption as to observation of formalities requisite to confer authority upon Directors.*

Although any one dealing with a Joint Stock Company is bound to satisfy himself that the Agent or Director with whom he acts as representing the Company is acting within the powers which such Agent or Director might possess under the Articles of Association, it is not incumbent on him to ascertain whether the necessary formalities or proceedings have been held or performed requisite to confer such powers on such Agent or Director, and therefore where the person dealing with a Company has satisfied himself that such dealings by an Agent or Director are amongst those which an Agent or Director might perform within the scope of the Company's Articles of Association and could be validly entered into by such persons duly empowered on behalf of the Company, and he finds an Agent or Director of the Company, entering into such dealings on behalf of the Company, and acting as if he, the Agent or Director, had been duly empowered, he is entitled to infer the fact of the necessary authorisation to act and to maintain an

PUBLIC COMPANY—*concld.*

action on account of damages caused by the Company's non-compliance with the terms of a contract made with him whether through his Agent or personally, and is not bound to enquire further whether as a matter of fact such representative of the Company has been so empowered by the Company, or that all the proceedings of the Company and its Directors have all been strictly regular.

Ernest v. *Nicholls* (*L. R.* 6, *H. L. C.* 401), *Fountaine* v. *Carmarthen and Cardigan Railway Company* (*L. R* 5 *Ex.* 316), *Royal British Bank* v. *Turquand* (24 *L. J. R. P.* 327), *Smith* v. *The Hull Glass Company* (*L. R.* 11 *C. B.* 897), *Agar* v. *Athenæum Life Insurance Society* (*L. R.* 3 *C. B.* 725), *Davies* v. *Bolton* (*L. R.* 3 *Ch. Dn.* 678), *County Gloucester Bank* v. *Radry Merthyr Steam and House Coal Colliery Company* (*L. R.* 1 *Ch. Dn.* 629), *Biggerstaff* v. *Rowatt's Wharf, Lt.* (*L. R.* 2 *Ch. Dn.* 93), *Prince of Wales Insurance Society* v. *Athenæum Insurance Society* (*L. R.* 3 *C. B. H. S.* 756), *Duck* v. *Lower Galvanizing Company, Ld.* (*L. R.* 2 *K. B.* 349), and *Mahony* v. *East Holyford Mining Company* (*L. R.* 7 *H. L.* 869), referred to. THE KRISHANA MILLS COY., LD., DELHI, *v.* GOPI NATH. **81 P R 1903**

PUBLIC DOCUMENT.

1. *See* EVIDENCE ACT, SECTION 65. **63 P R 1878**

2. Public documents can only be proved by production of the papers themselves or by secondary evidence of the nature described in section 65 (*e*) but they cannot be proved by the oral evidence of a witness. GANGA RAM *v.* EMPEROR. **5 P R 1903 Cr.**

PUBLIC DRAIN.

—*Municipal Committee's power to carry water into public drain.*

See NUISANCE. **73 P R 1901**

PUBLIC FERRY.

—*Suit for right to ply a boat at.*

See JURISDICTION OF CIVIL OR REVENUE COURT. **82 P R 1886**

PUBLIC NUISANCE.

See NUISANCE.

PUBLIC OFFICE.

—*Trafficking in Public Office—Void agreement.*

See CONTRACT ACT, 1872, SECTION 23. **86 P R 1893**

PUBLIC POLICY.

See CHAMPERTY. **111 P R 1894**
26 P R 1906

See under CONTRACT ACT, 1872, SECTION 23.

1. *Transfer of expectancy of succession.* *See* CIVIL PROCEDURE CODE, 1882, SECTION 266, CLAUSE (*m*) **58 P R 1894**

2. *Illegality of assignment of or sub-letting of contract as opposed to public policy.* *See* CONTRACT. **99 P R 1901**

PUBLIC POLICY—*concld.*

3. *Marriage brocage contract—Void agreement—Public policy.*
See CONTRACT ACT, 1872, SECTION 23.
128 P R 1889

4. *Bail bond given for appearance of accused—Non-appearance of accused and forfeiture of bond—Suit by surety against principal to recover amount of bond—Public policy.*
See CONTRACT ACT, 1872, SECTION 23.
1 P R 1899

5. *Hindus—Suit by wife for dissolution of marriage—Anti-nuptial agreement—Public policy.*
See CONTRACT ACT, 1872, SECTION 23.
15 P R 1900

6. *Custody of wife—Agreement to divorce—*Khula*—Agreement opposed to public policy.*
See CUSTODY OF WIFE.
193 P R 1889

7. Agreement to supply funds for suit whereby the whole or much greater share of the profits was to go to the backer is void as contrary to public policy. STEWART *v.* RAM CHAND. **26 P R 1906**

8. It being opposed to public policy a murderer and his descendants cannot succeed to the property of the murdered man where the sole object of the murder was to secure the estate of the deceased. MUHAMMAD KHAN *v.* SIS BANO. **41 P R 1906**

9. Partnership between a licensee under Act XII of 1906 and other persons is not void as opposed to public policy. BASHESHAR DAS *v.* GOBIND RAM. **114 P R 1906**

10. *Public policy—*Dustoori *or commission.*
Held, that a claim for *dustoori* or commission on purchases is unlawful as being immoral and opposed to public policy. MADHO RAM *v.* BADAR-UD-DIN.
91 P R 1910

PUBLIC ROAD.

—*Obstruction—Special damage.*
See RIGHT TO SUE. **134 P R 1882**

PUBLIC THOROUGHFARE.

See JURISDICTION.
73 P R 1877

PUNJAB, ACTS IN FORCE IN.

—Acts of the Legislature, general in their terms and unrestricted as to their local application, are in force in the Punjab.
IN RE TWITCHEN. **23 P R 1867**
AND JABHA *v.* MEHTABA. **67 P R 1867**

PUNJAB ALIENATION OF LAND ACT, 1900.

Section 2 (3)

1. *And section 3 (2)—"Land," meaning of—Transfer of his interest in a mortgage executed before the Punjab Alienation of Land Act came into force by a mortgagee—Unobjectionable transfer.*

In 1876 'A' mortgaged his land to 'B' with liberty to redeem at any time. In 1884 'B' transferred his rights under the mortgage deed to 'C,' who in July 1901, after the Punjab Alienation of Land Act had come into operation, sold his rights as mortgagee under the transaction of 1884 to 'D,' a Khatri, who was not a member of an agricultural tribe. The sale-deed having been presented for mutation of names the Naib Tahsildar referred the case to the Deputy Commissioner for orders. The latter considering that the transaction was not permissible under the provisions of the Punjab Alienation of Land Act treated it as a sub-mortgage; and under section 9 of the Act revised the terms of the sale-deed, converting the sale into a usufructuary mortgage for 20 years and directed that on the expiration of that term the land should be re-delivered to the original owner. On appeal the Commissioner modified this order to this extent that on the expiration of the term of the mortgage the land should revert to 'C' instead of 'A' and that if within the period of 20 years, 'A' claims redemption he might recover possession from 'D' after payment to him through 'C' such sum less than Rs. 200 as the Deputy Commissioner might fix with regard to the number of years 'D' had been in possession.

Held, that a usufructuary mortgage of land which is not occupied as the site of any building in a town or village and is occupied or let for agricultural purposes or for purposes subservient to agriculture or for pasture is land within the meaning of clause (3) of section 2 of the Punjab Alienation of Land Act, and where a permanent alienation of such land had taken place since the said Act came into force the proper procedure for a Deputy Commissioner is to proceed under section 3 (2) to sanction or to refuse to sanction the sale, and in case of refusal to fix terms and conditions under section 14. *Held, further*, that the objects of the Punjab Alienation of Land Act are to encourage thrift and prevent the extravagance which excessive credit suggests and facilitates, and also to protect the ignorant zamindars against the wiles of the money-lender, and have no bearing at all upon sales of the nature described as having taken place between 'C' and 'D' which are quite harmless or matters of indifference, and therefore such a sale ought to have been sanctioned. SUKHBASHI RAM *v.* AKBAR SHAH.

6 P R 1903 Rev.

2. *And section 9 (3)—Occupancy right—Mortgage of occupancy rights by way of conditional sale—Effect of Punjab Alienation of Land Act, on suits for declaring such*

PUNJAB ALIENATION OF LAND ACT, 1900—*contd.*

Section 2 (3)—*concld.*

conditional sales absolute—Duty of Civil Court under section 9 (3) of the Act—Punjab Alienation of Land Act, 1900, sections 2 (3) and 9.

Held, that the Punjab Alienation of Land Act, 1900, applies to *baibilwafa* transactions regarding occupancy rights. The word "land" as defined in section 2 (3) of the Act includes occupancy rights in land and therefore in suits for declaring conditional sales of such right absolute brought after that Act came into force, the Civil Courts are bound to refer such cases to the Deputy Commissioner under the provisions of sub-section (3) of section 9 of the Punjab Alienation of Land Act. GAHNA *v.* SOHAN LAL AND ANOTHER.
11 P R 1904

3. *Punjab Alienation of Land Act, 1900, section 2 (3)—"Land"—Proprietor's share in standing crops.*

Held, that a proprietor's share of standing crops is not "land" within the definition of section 2, clause 3 of the Punjab Alienation of Land Act, 1900, and can therefore be sold in execution of decree. NUR MUHAMMAD *v.* TILOKA MAL. **14 P R 1905**

Section 3.

1. *Permanent alienation of land to a money-lender—Sanction of Deputy Commissioner—Financial Commissioner's Circular Letter No. 3441, dated 5th June 1901.*

Held, that where the money-lender is a member of an agricultural tribe and of the same tribe or a tribe in the same group as the alienor or is an agriculturist within the meaning of the Punjab Alienation of Land Act and holding as such land in the village where the land alienated is situate, the sanction of the Deputy Commissioner to the transfer is not required, and in such cases the mutation of name should be granted or refused on general grounds and not refused for any reason arising out of the Alienation of Land Act or the Financial Commissioner's Circular letter No. 3441, dated 5th June 1901.

Paragraph 11 (*viii*) of the Circular Letter of 5th June 1901 applies to a money-lender who although he is a member of an agricultural tribe is not a member of the same tribe as alienor or of a tribe in the same group, or where he is an agriculturist within the meaning of the Act does not as such hold land in the village where the land alienated is situated, or to other persons. WASANDA RAM *v.* RUSTAM. **5 P R 1904 Rev.**

2. *Pre-emption—Right of pre-emption under the Punjab Laws Act, 1872—Effect of Alienation of Land Act upon such rights.*

As alienation of agricultural land by certain classes of people in the Punjab can now only be made as provided by section 3 (1) of the Punjab Alienation of

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PUNJAB ALIENATION OF LAND ACT, 1900—*contd.*

Section 3—*concld.*

Land Act, the provisions of the Law of pre-emption, as enunciated in the Punjab Laws Act with respect to such property, have in consequence become in certain cases obsolete, and therefore in a case where a member of an agricultural tribe sold his share in a joint *khata* to a non-proprietor in the village, but who belonged to the same agricultural group as the vendor, and one of the co-sharers in the *khata* comprising the land sold, who was not a member of an agricultural tribe, instituted a suit for pre-emption.

Held, that the plaintiff's right of pre-emption which he had possessed under the Punjab Laws Act has been abrogated by the provisions of the Punjnb Alienation of Land Act by reason of his being neither an agriculturist in the village nor a member of an agricultural tribe, that he was not entitled to maintain his suit.

The pre-emption law being a general one whilst the Punjab Alienation of Land Act intended to regulate sales by particular classes of alienors and thus a special law, the subsequent special statute must be treated as repealing the previous general statute *pro tanto* by implication.

The India (33 *L. J. Adm.* (1864), 193) cited and followed. PARMA NAND *v.* GHULAM FATIMA. **15 P R 1905**

3. *Decree in contravention of the Punjab Alienation of Land Act* (1900)—*Effect of.*

Held, that a decree passed in violation of the terms of section 3, clause (2), of the Punjab Alienation of Land Act, XIII of 1900, is not a nullity. Section 9 of Punjab Act (I) of 1907, amending the Punjab Land Alienation Act, 1900, provides for such a case. DARYA DITTA *v.* MANA SINGH. **60 P R 1909**

Section 4.

1. The inclusion of a tribe among the list of the agricultural tribes of a district under this section should not be regarded as a conclusive proof that the tribe has adopted the general rules of customary law observed by the agricultural tribes in that district. JOWAHIR SINGH *v.* YAQUB SHAH. **5 P R 1906**

2. Likewise the fact that a tribe is not notified as an agricultural tribe for the purposes of the Punjab Alienation of Land Act is not conclusive in itself to prove that such tribe is not bound by the restrictive rules ordinarily observed by the agricultural tribes of the Province. FAQUIR MUHAMMAD *v.* FAZAL MUHAMMAD. **16 P R 1906**

Section 6.

–*Punjab Alienation of Land Act* (*XIII of* 1900), *sections* 6 *and* 9—*Mortgage by way of conditional sale—Reference to Collector*

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PUNJAB ALIENATION OF LAND ACT, 1900—*contd.*

Section 6—*contd.*

futile after expiry of year of grace under Regulation XVII of 1806—*Civil Courts have no jurisdiction to convert a mortgage by way of conditional sale into a mortgage prescribed by section* 6 (1) (*a*) *of the Act.*

M. S. mortgaged the land in suit to G. for Rs. 500 on the 8th April 1896, redeemable within six years, otherwise the land to be considered as sold. On 31st August 1903 the mortgagee applied to the Collector and prayed that in lieu of the said mortgage by way of conditional sale a mortgage of the kind recognised by section 6 (1) (*a*) of the Punjab Alienation of Land Act, 1900, might be granted to him for a period of 20 years. The Collector thereupon summoned the mortgagor and on his objecting to the change, the Collector recorded the fact of mortgagor's refusal and left matters in *statu quo*. In June 1904 the mortgagee applied to the District Judge for issue of notice of foreclosure, who after referring to the proceedings before the Collector decided that a further reference to the Collector under section 9 (3) of the Punjab Alienation of Land Act was unnecessary and issued notice of foreclosure, which was duly served upon the mortgagor on 23rd June 1904. The mortgagor took no objection to this notice nor did he attempt to redeem the land. On 28th July 1906 the mortgagee instituted the present suit for possession as vendee, the year of grace having expired. The First Court found that plaintiff had duly complied with all the provisions of Regulation XVII of 1806, but held that plaintiff was not entitled to take possession as full owner, because no reference was made to the Collector under section 9 (3) of the Punjab Alienation of Land Act, and passed a decree for possession of the land as mortgagee for 20 years under section 6 (1) (*a*) of that Act, this decree was upheld by the Divisional Judge. On further appeal, the Chief Court

Held, that the year of grace prescribed by Regulation XVII of 1806 having expired and plaintiff having complied with all the provisions of the Regulation he was now suing for possession as full proprietor, there was no mortgage now in existence or "current" within the meaning of section 9 (2) of the Punjab Alienation of Land Act, so that even the Collector had now no power to interfere with the right of the *quondam* mortgagee.

Held, also, that Civil Courts have no power at all to convert a mortgage by way of conditional sale into a mortgage prescribed by section (1) (*a*) of the Punjab Alienation of Land Act, this being a matter left entirely to the Revenue authorities.

Held further that the District Judge to whom application was made for issue of a notice of foreclosure under Regulation XVII of 1806 was right in not referring the

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PUNJAB ALIENATION OF LAND ACT, 1900—*contd.*

Section 6—*concld.*

mortgage again to the Collector under section 9 (3) of the Punjab Alienation of Land Act, it having already been before him and he having declined to take action in respect of it; that action on the part of the Collector being equivalent to his giving his sanction to the retention of the conditional sale clause. GOPAL DAS *v.* HARI SINGH. **88 P R 1909**

Section 9.

1. *Effect of, on appeals in suit for foreclosure of mortgages pending at the time the Act came into force.*

Held, that sub-section 3 of section 9 of the Punjab Land Alienation Act, 1900, does not apply to appeals filed in the Chief Court before the Act came into force. HARBHAGWAN *v.* SHAMUN AND OTHERS. **94 P R 1901**

2. *Punjab Land Alienation Act*, 1900, *section* 9 (3)—*Effect of, on suits for declaring conditional sales absolute with or without a prayer for possession pending at the time the Act came into force and on appeals in such suit.*

Held, that sub-section 3 of section 9 of the Punjab Land Alienation Act, 1900, does not apply to suits for declaring conditional sales absolute with or without possession pending in the Civil Court before the Act came into force or to appeals in such suits.

Batul Begum v. *Mansur Ali* (*V Calc. W. N.* 888 *P. C.*), *Attar Singh* v. *Rulla Ram* (103 *P. R.* 1901 *F. B.*), *Ali Abbas* v. *Kalka Parsad* (*I. L. R. XIV All.* 405 *F. B.*) and *The Administrator-General of Bengal* v. *Prem Lal Mullick* (*I. L. R. XXII Calc.* 788 *P. C.*), cited. JAGAN NATH *v.* FAZLA. **26 P R 1902**

3. *Punjab Alienation of Land Act*, 1900, *section* 9—*Effect of, on appeals from decrees declaring conditional sales absolute.*

The plaintiff sued and obtained decree for possession of certain land by foreclosure of mortgage on the 11th March 1901. The defendants appealed to the Divisional Judge, who, on 26th June 1901, referred the case to the Deputy Commissioner under section 9 (3) of the Punjab Alienation of Land Act, which had come into force on 8th of June 1901. On 25th September the Deputy Commissioner struck out the condition operating as a conditional sale, and on the 12th October the Divisional Judge dismissed the suit in consequence of the Deputy Commissioner's action.

Held, following *Jagan Nath* v. *Fazla* (26 *P. R.* 1902), that it was *ultra vires* both for the Divisional Judge to refer the case to the Deputy Commissioner and for the latter to deal with the case under section 9 (2), as the plaintiff held a decree for possession of the land at the time the

Punjab Alienation of Land Act came into force, there being no subsisting mortgage at the time. MAYA MAL *v.* JAIMAL AND OTHERS. **47 P R 1902**

4. *Power to revise mortgage made in form not permitted.*

In 1899 'A' who was a member of an agricultural tribe, mortgaged his land to 'B,' a Khatri. The mortgage was a collateral one and contained provisions intended to operate by way of conditional sale on default of repayment of the loan within two years. On default being made, no steps were taken to enforce the conditional sale, but the parties agreed that 'B' should take over possession as mortgagee allowing 'A' to cultivate the land as his tenant subject to payment of rent. The parties then applied for mutation of names, but the Deputy Commissioner, holding that the exchange of possession amounted to a fresh mortgage not permitted by the Punjab Alienation of Land Act, refused to give his sanction to mutation being effected.

Held, that there was no fresh mortgage, but as the position of the parties was not in accordance with the policy of the Act, which on behalf of the members of agricultural tribes aims at the excision of conditions intended to operate by way of conditional sale, the proper procedure for the Deputy Commissioner was to have acted under section 9 of the Act by putting the mortgagee to his election whether he would agree to the sale condition being struck out of his deed, and if he agreed to the said condition being excised the mutation of names should have been effected. HARJAS *v.* HARDITTA. **7 P R 1903 Rev.**

5. *Mortgage—Possession—Suit for possession under the terms of a registered mortgage-deed, wherein in addition to that condition other clauses intended to operate by way of conditional sale existed—Application of section 9 (3) of Punjab Alienation of Land Act to such cases—Duty of Appellate Court—Procedure—Punjab Alienation of Land Act, 1900.*

The plaintiff sued for possession as mortgagee of certain land by a registered deed which contained a condition that plaintiff should take possession as mortgagee in the event of failure to pay certain instalments, but there were two other clauses in the deed which were intended to operate by way of conditional sale. The first Court gave a decree for possession without making any reference to the Deputy Commissioner under section 9 (2) and (3) of the Punjab Alienation of Land Act, 1900. In appeal before the Divisional Judge it was urged that the deed should have been referred to

the Deputy Commissioner, and that that course should now be taken by the Appellate Court. The Divisional Judge referred the following points for the decision of the Chief Court:—

(1) Does section 9 (3) of the Land Alienation Act apply to a case in which the plaintiff sues on a mortgage to which section 9 (2) applies but does not sue to enforce the condition intended to operate by way of conditional sale?

(2) Whether, when the lower Court has wrongly neglected to refer the case to the Deputy Commissioner, the Appellate Court should pass over the irregularity?

(3) Assuming that the Appellate Court should amend the irregularity of the lower Court, what form should that amendment take?

Held—(1) that section 9 (3) apply but in cases in which the plaintiff not only did not sue on the clause regarding conditional sale, but surrenders that condition altogether and agrees of his own motion to have it struck out, the mortgage would cease to be one including such a clause and the reference to the Deputy Commissioner would be no longer necessary as there would be no mortgage before the Court coming within the purview of section 9 (2);

(2) that the provisions of section 9 (2), (3) of the Punjab Alienation of Land Act are imperative, and if the first Court passed a wrong order it is clearly the duty of an Appellate Court to set it right;

(3) That according to the provisions of section 582, Civil Procedure Code, the Appellate Court should proceed in the same manner as a Court of first instance would proceed to decide the perliminary points noted therein, and thereafter if a reference to the Deputy Commissioner is still necessary under section 9, it should be made either direct or through the lower Court, and in those cases where the exercise of his powers under the Alienation of Land Act by the Deputy Commissioner would not dispose of the case, the Civil Court making the reference should dispose it of after the Deputy Commissioner has discharged his duties in connection therewith. NARAIN SINGN *v.* HAYAT. **20 P R 1903**

6. *Mortgage—Possession—Suit for possession under the terms of a mortgage deed containing clauses intended to operate by way of conditional sale—Duty of Civil Court under section 9 (3) of the Alienation of Land Act.*

Held that notwithstanding the fact that a mortgagee holding a deed containing a condition intended to operate by way of conditional sale sues for possession only, the Civil Courts are bound in the first instance to refer the case to the Deputy Commissioner under the provisions of sub-section 3 of section 9 of the Punjab Alienation of Land Act, and should not grant him the relief asked for, although he may be willing to surrender and agree, of his own motion, to have the condition for sale struck out.

Narain Singh v. *Hayat* (20 *P. R.* 1903), referred to. BODH RAJ *v.* FAIZ BAKHSH. **91 P R 1903**

7. *Mortgage—Conditional sale—Effect of Punjab Alienation of Land Act on suits for possession after foreclosure of mortgage.*

Held, that section 9 of the Punjab Alienation of Land Act does not apply to a suit for possession after foreclosure of a mortgage by conditional sale where the year of grace allowed for redemption under Regulation XVII of 1806 has expired before that Act came into force.

Atar Singh v. *Ralla Ram* (103 *P. R.* 1901 *F. B.*), *Batul Begum* v. *Mansur Ali Khan* and *others* (5 *Calc. W. N.* 888 *P. C.*), *Forbes* v. *Ameer-oonissa Begum* (10 *Moo. I. A.* 340), *Jeorakhum Singh* v. *Hookum Singh* (3 *Agra H. C. R.* 358), *Jagan Nath* v. *Fazla* (26 *P. R.* 1902), and *Maya Mal* v. *Jaimal and others* (47 *P. R.* 1902), referred to. RAM NATH *v.* KERORI MAL. **38 P R 1904**

8. *Mortgage—Mortgage of land by agriculturist by way of conditional sale.*

Held, that section 9 (2) of the Punjab Alienation of Land Act applies to any mortgage made by an agriculturist of his land in which there is a condition intended to operate by way of conditional sale even where the alienee is also an agriculturist. NAND SINGH *v.* BISHEN SINGH. **5 P R 1905**

9. *Mortgage—Conditional sale—Effect of Punjab Alienation of Land Act on suits for possession after foreclosure of mortgage.*

Held, that section 9 (3) of the Punjab Alienation of Land Act does not apply to a suit for possession after foreclosure of a mortgage by conditional sale where the year of grace allowed for redemption under Regulation XVII of 1806 has expired

PUNJAB ALIENATION OF LAND ACT, 1900—*contd.*

Section 9—*contd.*

before that Act came into force. At the expiry of the year of grace such mortgage ceases to exist, and the proprietary right in the property mortgaged rests *ipso facto* in the mortgagee who becomes owner without it being necessary for him to bring any further suit.

Jagan Nath v. *Fazla* (26 *P. R.* 1902), *Maya Mal* v. *Jamial* (47 *P. R.* 1902), *Ram Nath* v. *Kerori Mal* (38 *P. R.* 1904), and *Attar Singh* v. *Ralla Ram* (103 *P. R.* 1901 *F. B.*), cited and followed. NATHU LAL *v.* JAFAR. **20 P R 1905**

10. *Mortgage—Conditional sale—Suit for possession after foreclosure of mortgage—Effect of Punjab Alienation of Land Act on such suits—Procedure.*

Held, that when a suit is brought for possession on the allegation of an already completed foreclosure and vested proprietary rights, and it is alleged that proceedings under Regulation XVII of 1806 have been validly concluded and the proprietary title of the conditional vendee has vested in the plaintiff before the Alienation of Land Act came into force, it is the duty of Civil Court to try the case and to pass a decree decreeing or dismissing the claim in whole or in part as may be necessary.

The interpretation of the Punjab Alienation of Land Act and the due observance of the procedure relating thereto discussed by *Robertson*, J.

Ram Nath v. *Kerori Mal* (38 *P. R.* 1904), *Attar Singh* v. *Ralla Ram* (103 *P. R.* 1901 *F. B.*), *Narain* v. *Hayat Singh* (20 *P. R.* 1903), cited and followed. *Bodh Raj* v. *Faiz Bakhsh* (91 *P. R.* 1903), disapproved. MELA RAM *v.* KIMAN. **38 P R 1905**

11. *Mortgage—Conditional sale—Suit on a mortgage by way of conditional sale effected by a person other than a member of an agricultural tribe—Application of section 9 (3) to such suits.*

Held, that section 9 (3) of the Punjab Alienation of Land Act does not apply to proceedings instituted after the Act came into force for the enforcement of a mortgage by way of conditional sale executed by a person who is not a member of an agricultural tribe. KALU *v.* MONA MAL.

64 P R 1906

12. *Duty of Court to refer mortgage by conditional sale to Deputy Commissioner if made by a member of an agricultural tribe—Refusal of Court to recognize a party as a member of such tribe who failed to prove his assertion no ground for revision—Punjab Courts Act*, 1884, *section* 70 (1) (*a*).

Although it is the duty of a Court to refer a mortgage of land by way of conditional sale to the Deputy Commissioner under section 9 of the Punjab Alienation of Land Act

PUNJAB ALIENATION OF LAND ACT, 1900—*contd.*

Section 9—*concld.*

if it was made by a member of an agricultural tribe, but it is for the party desiring to obtain benefit of that enactment to allege and prove that he is a member of an agricultural tribe. The mere assertion by a party that he is so and the refusal of the Court to recognize him as such does not amount to material irregularity and is not open to revision by the Chief Court under section 70 (1) (*a*) of the Punjab Courts Act, 1884. UDA *v.* MUL CHAND. **4 P R 1907**

13. *Mortgage—Conditional sale—Reference by Civil Court under sub-section 3 of section 9 of Punjab Alienation of Land Act, 1900—Refusal of Deputy Commissioner to take action after the non-acceptance of his proposal by the mortgagor—Procedure for mortgagee—Regulation XVII of 1806—Punjab Alienation of Land Act*, 1900.

A mortgage made before the commencement of the Punjab Alienation of Land Act by an agriculturist of his land in which there was a condition intended to operate by way of conditional sale and still current was brought by the District Judge, who was moved to issue a notice of foreclosure under Regulation XVII of 1806 after the Act had come into force, to the notice of the Deputy Commissioner. The mortgagee accepted the new mortgage as proposed by the Deputy Commissioner in lieu of the original one but the mortgagor refused. The Deputy Commissioner thereupon decided that nothing further could be done and returned the reference to the District Judge. Notice of foreclosure was then issued and after the expiration of the year of grace the mortgagee instituted a suit for possession as owner.

Held, that in these circumstances the foreclosure proceedings under Regulation XVII of 1806 were not barred by the provisions of the Punjab Alienation of Land Act, and that it was not necessary for the Civil Court upon the institution of the suit for possession to refer the matter again to the Deputy Commissioner under sub-section 3 of section 9 as the mortgage had then ceased to exist and the mortgagee had become *ipso facto* owner of the property by purchase.

The interpretation of the provisions of the Punjab Alienation of Land Act applicable to the subject discussed by Johnstone, J. BICHHA LAL *v.* GUMANI. **93 P R 1907**

Section 16.

1. *Sale of land in execution of decree—Punjab Alienation of Land Act*, 1900, *section* 16.

Held, that where a sale of land belonging to a member of an agricultural tribe, in execution of a decree was not confirmed under the provisions of section 316, Civil Procedure Code, before the Punjab Alienation of Land

PUNJAB ALIENATION OF LAND ACT, 1900—*contd.*

Section 16—*contd.*

Act came into force, the sale was barred by section 16 of that Act.

Budhu v. *Hira and others* (27 *P. R.* 1892), *Than Singh* v. *Kazim Ali* (92 *P. R.* 1893), and *Budh Singh* v. *Hardial Singh* (52 *P. R.* 1897), cited. GHULAM QADIR KHAN *v.* BAWA GURBUKHSH SINGH AND ANOTHER.

45 P R 1902

2 *Suit for a declaration that land belonging to an agriculturist is liable to attachment and sale.*

Held, that section 16 of the Punjab Alienation of Land Act does not prohibit the attachment in execution of a decree of the land belonging to an agriculturist, and that a decree-holder is entitled to claim a declaration that certain land is liable to attachment and to be thereafter dealt with as provided in section 326, Civil Procedure Code. BADAR DIN *v.* BURA MAL. **4 P R 1903**

3. *Punjab Alienation of Land Act*, 1900 *—Status of member of an agricultural tribe after entering into a religious order* qua *ancestral property inherited by him as such.*

Held, that a member of an agricultural tribe is not, by entering into a religious order, exempted from the restrictions on his power of alienation imposed by the Punjab Alienation of Land Act *qua* the property inherited by him from his ancestors. SANT RAM *v.* SARUP DAS. **5 P R 1905 Rev.**

4. *Decree against representative of deceased for money to be paid out of deceased's property—Personal liability of representative where the property descended to him is exempt from attachment and sale in execution of a decree—Civil Procedure Code*, 1882, *section* 252.

Held, that a decree-holder is not entitled to execute his decree against the private property of the legal representative of a deceased person merely because the property of the deceased which came into the hands of such representative was not liable to be seized under the Punjab Alienation of Land Act, 1900. RAM GOPAL *v.* HARJAS.

123 P R 1906

5. *Effect of, on suits for possession of land purchased before that Act came into force.*

Held, that the provisions of the Punjab Alienation of Land Act do not apply to a suit of a vendee for the possession of land, where the property was conveyed by defendant to him and the right to claim possession had accrued long before that Act came into operation.

Ram Nath v. *Kerori Mal* (38 *P. R.* 1904) and *Nathu Lal* v. *Jafar* (20 *P. R.* 1905), referred to. SUNDAR LAL *v.* RAM SINGH.

10 P R 1907

See MORTGAGE—XXII. EFFECT OF LAND ALIENATION ACT.

22 P R 1910

PUNJAB ALIENATION OF LAND ACT, 1900—*concld.*

Section 16—*concld.*

6. *Punjab Alienation of Land Act, XIII of 1900, sections* 2 (3), 16 *and* 21 *A* (2)—*Definition of land—Mortgage rights in agricultural land—Sale of—cancelled on application of Deputy Commissioner—Jurisdiction of Divisional Judge—Appeal—Revision—Punjab Courts Act, XVIII of* 1884, *section* 40.

Held, that no appeal lies, is of right, to the Chief Court from an order passed by the Divisional Court upon an application made by the Deputy Commissioner under section 21 A (2) of the Punjab Alienation of Land Act, 1900, for revision of the order of an executing Court, sanctioning the sale of the judgment-debtor's mortgage rights in agricultural land to the decree-holder, the order, though decree, not being an *appellate* decree within the meaning of section 40 of the Punjab Courts Act. But *held*, that the provisions of section 21 do not take away the right, which a party to a suit or an execution proceeding has, of applying to the Chief Court under the general provisions of section 70 of the Punjab Courts Act for revision of such an order.

Held also, that when a Divisional Judge refrained from passing a definite order on an application for revision made by the Deputy Commissioner under section 21 A (2) of the Punjab Alienation of Land Act, he had full jurisdiction to pass such an order upon a second application made by the Deputy Commissioner.

Held also, that the word "land" as defined in section 2 (3) of the Punjab Alienation of Land Act includes mortgage rights in land (1).

Held also, that where a sale of mortgage rights in execution of a decree contravenes provisions of section 16 of the Punjab Alienation of Land Act, the mere fact that the right of receiving the mortgage-money from the mortgagor personally was also included in the terms of the mortgage-deed, will not validate the sale which must stand or fall as a whole.

Held further, that when a sale of land belonging to a member of an agricultural tribe is made under order of a Civil Court in execution of a decree, the provisions of section 16 of the Alienation of Land Act are contravened and section 21 A of the Act applies.

6 *P. R.* (*Rev.*) 1903, approved.

12 P R 1911

PUNJAB CIVIL CODE.

—*Foreclosure proceedings under.*

See MORTGAGE—XVI. FORECLOSURE.

171 P R 1882

PUNJAB COURTS ACT (XVII OF 1877).

Section 4.

See CIVIL PROCEDURE CODE, 1908, SECTION 86. **51 P R 1886**

PUNJAB COURTS ACT (XVII OF 1877)—*concld.*

Section 9.

See CIVIL PROCEDURE CODE, 1908, SECTION 86. **51 P R 1886**

Section 30.

See CIVIL PROCEDURE CODE, 1908, SECTION 86. **51 P R 1886**

Section 32.

See MORTGAGE—XVI. FORECLOSURE. **55 P R 1883**

Section 34.

See EXECUTION OF DECREE. **45 P R 1882**

Section 37.

See MORTGAGE—XVI. FORECLOSURE. **55 P R 1883**

Section 38.

See APPEAL—VIII. SECOND. **133 P R 1882**

Section 39.

See SMALL CAUSE COURT, JURISDICTION OF.

28 P R 1881
5 P R 1882
38 P R 1882
167 P R 1882
177 P R 1882
4 P R 1883
87 P R 1883
87 P R 1883 Note.
166 P R 1883
8 P R 1885
8 P R 1885 Note.
75 P R 1885
50 P R 1886

Section 46.

See DISQUALIFICATION OF JUDGE. **7 P R 1883**

PUNJAB COURTS ACT (XVIII OF 1884).

Section 3.

See FRUIT GARDEN.

1. *Share in well for irrigating agricultural land—Land suit—Course of appeal.*

See APPEAL—I. CIVIL. **40 P R 1893**

See APPEAL—III. COURSE OF APPEAL. **62 P R 1891**

2. *Land suit—Land not occupied as the site of any building but occupied or let for agricultural purposes.*

See APPEAL—II. COMPETENCY OF. **111 P R 1890**

3. *Right to use of water—Land suit.*

See APPEAL—II. COMPETENCY OF. **1 P R 1892 F. B.**

4. *Claim for date trees—Land suit.*

See APPEAL—II. COMPETENCY OF. **46 P R 1893**

5. *And section 40—Suit for declaration that plaintiff is the sole owner of an orchard on a portion of the village* shamilat—*Land suit.*

See APPEAL—II. COMPETENCY OF. **4 P R 1908**

PUNJAB COURTS ACT (XVIII OF 1884)—*contd.*

Section 3—*contd.*

6. *Claim for share in an orchard,* i. e., *of the fruit trees—Land suit.*

See APPEAL—VIII. SECOND. **15 P R 1892 F. B.**

7. *Land suit—Village graveyard—Further appeal.*

See APPEAL—VIII. SECOND. **20 P R 1892**

8. *Decree directing registration of mortgage-deed—Appeal Registration Act,* 1877, *section* 77—*Further appeal—" Land suit."*

See APPEAL—III. COURSE OF APPEAL. **43 P R 1896**

9. *Appeal—"Land suit"—Right in tank used for watering cattle and excavating earth to make brick.*

See APPEAL—VIII. SECOND. **48 P R 1898**

10. *Suit by second mortgagee for possession against mortgagor and prior mortgagee—Valuation of suit—Value of subject-matter.*

See JURISDICTION. **1 P R 1887**

11. *Suit to establish right to attach and sell property in execution of decree—Value of subject-matter.*

See JURISDICTION. **50 P R 1890**

12. *Suit by a decree-holder to establish his right to attach certain property—Value of suit.*

See JURISDICTION. **121 P R 1890**

13. *Suit for the cancellation of an auction sale of a house sold in execution of a money decree not exceeding Rs.* 100—*Valuation of suit.*

See JURISDICTION. **42 P R 1901**

14. *Further appeal—Public road—Land suit.*

See SECTION 40 *infra*. **61 P R 1899**

15. *" Land suit," meaning of—Punjab Courts Act,* 1884 *(as amended by Act XIII of* 1888), *section* 3, *and Punjab Tenancy Act,* 1887, *section* 4, *clause* (i)—*" Unclassed suit "—Value of subject-matter.*

Held, that looking at the definitions of "land suit" in section 3 of the Punjab Courts Act, 1884 (as amended by Act XIII of 1888) and of "land" in section 4, clause (i) of the Punjab Tenancy Act, 1887, a suit for the recovery of certain land, within the municipal limits of Rawalpindi, though outside the city walls upon which a building had been erected and was nearly completed a month before suit was filed, was not a "land suit" for the purposes of section 40 of the Punjab Courts Act, inasmuch as in applying the definition to a land suit the time to be looked at is the time when the suit is instituted.

Held, further, that the value of an unclassed suit is not increased, because the defendant establishes an equitable claim to compensation for a building erected by him on the land before the plaintiff can take possession of the land and building. HAYAT *v.* SANT RAM.

20 P R 1894

PUNJAB COURTS ACT (XVIII OF 1884)—*contd.*

Section 3—*concld.*

16. "*Land suit*"—*Punjab Courts Act*, 1884, *section* 3, *Punjab Tenancy Act*, 1887, *section* 4.

The plaintiff sued to demolish a building erected by the defendant and to restore to its original condition the site which the plaintiff described as having been used for pasturing cattle, but which no doubt had been enclosed by a wall when the plaint was filed.

Held, that the suit was a "land suit" within the meaning of section 3 of the Punjab Courts Act, 1884, the true principle for a decision whether a suit is a land suit being to have regard to the character and use of the land at the time immediately before the cause of action has arisen. The use to which the defendant may have devoted the land after the cause of action has arisen is immaterial as determining the nature of the suit brought to contest his wrongful appropriation of it.

Hayat v. *Sant Ram* (20 *P. R.* 1894) referred to. MAWASI *v.* MAYA RAM.

31 P R 1901

17. A suit to establish title with reference to a mortgage-deed of land and to declare it not to be subject to attachment is a land suit. HIRA MAL *v.* BHAWANI RAM. **64 P R 1902**

Section 9.

1. *Appeal from decree of Judge in Chambers refusing probate of will.*

See APPEAL—II. COMPETENCY OF.

6 P R 1899

2. *Divorce—Dismissal by single Judge of application for dissolution of marriage—Appeal from such order of dismissal—Indian Divorce Act*, 1869, *section* 55.

See APPELLATE COURT, POWERS AND DUTIES OF. **18 P R 1903**

Section 13.

1. *Chief Court's power of superintendence and control over subordinate Civil Courts—Rules relating to petition-writers—Judicial Circular No. CXXV—Power to revise proceeding under above rules—Construction of Rule XXIX—Suspension and dismissal of petition-writer.*

There is nothing in the rules relating to petition-writers (contained in Judicial Circular No. CXXV) which is inconsistent with the retention by the Chief Court of its general power of superintendence and control over subordinate Civil Courts under section 13 of the Punjab Courts Act, 1884, and therefore proceedings and orders under Rule XXIX held and made by District and Divisional Judges, though no appeal is given by the rules to the Chief Court, may be dealt with by the Chief Court, under the above section.

The "grossly improper conduct" of a petition-writer, made a ground of dismissal under No. XXIX of the above Rules, is such conduct "in the discharge of his duty," and

PUNJAB COURTS ACT (XVIII OF 1884)—*contd.*

Section 13—*concld.*

does not justify the dismissal of a petition-writer acting, not in the discharge of his duty, but in his capacity as a private person: and where under the same rule a petition-writer is liable to suspension or dismissal "who in any petition uses insulting or abusive language," the word "petition" must be interpreted as restricted to petitions written by a petition-writer as such. JAIDIAL *v.* SECRETARY OF STATE. **42 P R 1888**

2. *Legal Practitioners Act, XVIII of* 1879, *section* 36—*Competency of Chief Court to revise orders under section* 13 *declaring a person a tout.*

Held, that proceedings under the Legal Practitioners Act, XVIII of 1879, are neither civil nor criminal, and consequently an order under section 36 of the Act cannot be revised by the Chief Court except under its power of superintendence under section 13 of the Punjab Courts Act.

MAN SINGH *v.* KING-EMPEROR.

11 P R 1909, Cr.

Section 17.

—*And sections* 28, 35—*Application to set aside* ex parte *decree—Transfer of officer who passed the decree.*

See CIVIL PROCEDURE CODE, 1908, O. IX, R. 13. **158 P R 1890**

Section 18.

—*Power of Revenue Officers to settle the boundaries of Districts.*

See CIVIL PROCEDURE CODE, 1908, SECTION 18. **1 P R 1901**

Section 23.

1. *Investiture of inferior Courts with jurisdiction of District Court—Punjab Government Notification No.* 570, *dated* 4*th November* 1889.

See APPEAL—III. COURSE OF APPEAL.
Also SUCCESSION CERTIFICATE ACT, 1889, SECTION 19. **124 P R 1890**

2. *Court empowered to exercise jurisdiction under the Act—Notification No.* 179, *dated February* 26*th*, 1885—*Ouster of jurisdiction of District Judge.*

See LAND ACQUISITION ACT (X OF 1870). **140 P R 1888**

Section 26.

—"*Business*" *and* "*functions*" *of District Court—Power of District Judge to assign function of trying a case to Additional District Court—Case in excess of pecuniary limits of latter Court's jurisdiction.*

See PUNJAB COURTS ACT, 1884, SECTION 75, *infra*. **46 P R 1898**

Section 30.

—*Investment of officer with powers of a Judge of Small Causes under Act XVIII of* 1884, *section* 30—*Exclusion of jurisdiction*

PUNJAB COURTS ACT (XVIII OF 1884)—*contd.*

Section 30—*concld.*

of Courts of Request—Army Act, 1881, *section* 148.

See SMALL CAUSE COURT, JURISDICTION OF. **21 P R 1887**

Section 33.

—*Power of District Judge to transfer case from Small Cause Court to his own Court.*

See CIVIL PROCEDURE CODE, 1908, SECTION 24. **77 P R 1889**

Section 35.

1. *Power of Court to execute decree in excess of the limits of its pecuniary jurisdiction as an original Court.*

See CIVIL PROCEDURE CODE, 1908, SECTION 6 **9 P R 1901**

2. *Power of Court to execute decree in excess of the limits of its pecuniary jurisdiction as an original Court.*

See CIVIL PROCEDURE CODE, 1908, SECTION 39. **31 P R 1887**

3. *Order for distribution of Civil business within a district—Jurisdiction of Court which has been directed to hear Civil cases arising in a particular part of a district to hear other cases arising within the local limits of its jurisdiction.*

On a reference by the District Judge of Hoshiarpur, under section 617 of the Civil Procedure Code, raising the question whether an order for the distribution of Civil business within a district passed under section 35 of the Punjab Courts Act, takes away the jurisdiction of a Court, which has been directed to hear Civil cases arising in a particular part of a district, to hear other cases arising within the local limits of its jurisdiction.

Held, that such an order, the object of which is not to restrict the jurisdiction of the Courts, but to regulate the distribution of business between several Courts having jurisdiction to entertain it, does not affect the jurisdiction of the Court. KARAR KHAN *v.* DAULAT RAM. **71 P R 1885**

Section 39.

1. *See* APPEAL—III. COURSE OF APPEAL.

115 P R 1886

See JURISDICTION. **98 P R 1886**

2. *Order passed by Munsif in execution of decree in suit not cognizable by Small Cause Court—Decree—Civil Procedure Code*, 1882, *section* 2—*Course of appeal.*

See APPEAL—III. COURSE OF APPEAL.

4 P R 1887

3. *Order passed in execution of decree in small cause—Decree giving effect to compromise dealing with immovable property—Course of appeal.*

See APPEAL—III. COURSE OF APPEAL.

55 P R 1887

PUNJAB COURTS ACT (XVIII OF 1884)—*contd.*

Section 39—*contd.*

4. *Valuation of suit for redemption of mortgage—Plaintiff suing to redeem for Rs. 2,300—Defendant pleading that the mortgage-money was over Rs. 5,000—Valuation of suit—Course of appeal.*

See APPEAL—III. COURSE OF APPEAL. **63 P R 1891**

Also see APPEAL—XI. VALUATION OF. **91 P R 1889**

5. *Jurisdiction—Suit for redemption of mortgage—Course of appeal.*

See APPEAL—III. COURSE OF APPEAL. **106 P R 1895, F. B.**

Also JURISDICTION. **44 P R 1888**
106 P R 1895 F. B.

6. *Value of suit—Mesne profits—Course of appeal.*

See APPEAL—III. COURSE OF APPEAL. **40 P R 1892**

7. *Suit to recover Rs. 200 the price of materials of a house and also to obtain possession of a small plot of building—Unclassed suit—Course of appeal.*

See APPEAL—III. COURSE OF APPEAL. **60 P R 1900**

8. *Value of suit—Suit for dissolution of partnership and rendition of accounts—Suits Valuation Act,* 1887, *sections* 8, 11—*Course of appeal.*

See APPEAL—III. COURSE OF APPEAL. **58 P R 1902**

9. *Suit for compensation for diversion of water-course.*

See APPEAL—III. COURSE OF APPEAL. **134 P R 1906**

10. *Suit for removal of* Mahant; *for declaration of right to appoint a successor and to enforce the provisions of a will—Value of relief sought—Jurisdiction—Course of appeal*

See APPEAL—XI. VALUATION OF.

Also COURT-FEES ACT, 1870, SECTION 7. **58 P R 1893**

11. *Suit for possession of house—Decree on payment of improvements—Value for appeal.*

See APPELLATE COURT, POWERS AND DUTIES OF. **19 P R 1908 F. B.**

12. *Suit for redemption of mortgage on payment of Rs.* 3,000—*Defendant pleading that the mortgage-debt was Rs.* 3,000—*Valuation of suit.*

See JURISDICTION. **169 P R 1888**

13. *Valuation of suit for redemption of mortgage—Plaintiff suing to redeem for Rs. 2,300—Defendant pleading that the mortgage-money was over Rs. 5,000—Valuation of suit—Course of appeal.*

See JURISDICTION. **91 P R 1889**

14. *Suit for account—Value of relief sought—Jurisdiction—Court disclaiming jurisdiction to order payment of additional Court fee.*

See JURISDICTION. **86 P R 1892**

15. *Civil Procedure Code,* 1882, *section* 244—*Mesne profits—Application for mesne profits which accrued between the date of decree and of delivery of possession—Jurisdiction—Value of suits—Course of appeal.*

See MESNE PROFITS. **29 P R 1902**

16. *Suit for share of offerings received for a specified period.*

See SMALL CAUSE COURT, JURISDICTION OF. **84 P R 1892**

SMALL CAUSE COURT ACT, 1865, SECTION 6. **188 P R 1888**

17. *Suit for* jagir *income retained wrongfully by one of several sharers—Course of appeal.*

Plaintiff sued to recover his share of certain *jagir* income which had been retained by one of several brothers who had been taking their shares in a family *jagir* by groups, the amount retained being in excess of the defendant's right and claimed by plaintiff as really due to him in order to make up the amount falling to him as representative of one of the said groups.

Held, that plaintiff's claim was in reality one not for damages but for the profits of immovable property wrongfully retained by defendant, and that such claim amounted to one for an account, falling within the category of suits for account within the meaning of article 31 of the 2nd Schedule to the Small Cause Court Act, 1887.

Held, therefore, that the suit was an unclassed suit, and that the appeal from the order passed by the Munsif lay, under clause (*c*) of section 39 of Act XVIII of 1884, to the Divisional Judge. HUSSAIN KHAN *v.* SAADAT KHAN. **2 P R 1900**

18. *Jurisdiction—Suit for pre-emption—Value of suit—Course of appeal.*

Plaintiff sued for pre-emption of a house sold for Rs. 150 to the defendant on the allegation that the actual sale consideration and the market value were Rs. 82. The relief sought was a decree for possession of the house subject to payment of Rs. 82 or the market value or such sum as the Court might fix. The first Court (Munsif, 2nd class) found the market value to be Rs. 82 and decreed the claim. The vendee appealed to the District Judge, who returned the appeal for presentation to the Divisional Court, the latter considering the question of jurisdiction a doubtful one, submitted the case to the Chief Court, under section 617, Civil Procedure Code.

Held, that as it could not be affirmed upon the plaint that the value of the suit did not exceed Rs. 100, the appeal lay to the Divisional Court and not to the District Judge.

Hazara Singh and others v. *Lal Singh and others* (63 *P. R.* 1891), *Muhammad Khan* v. *Ashak Muhammad Khan* (106 *P. R.* 1895), and *Haider Khan and others* v. *Ali Akbar Khan and others* (18 *P. R.* 1897), followed. SHAMAN *v* SUNDAR. **32 P R 1901**

19. *Jurisdiction—Appellate jurisdiction—Jurisdiction of Divisional Judge to decide an appeal which under section* 39 (*a*) *of the Punjab Courts Act lies to a District Judge—Consent to jurisdiction—Acquiescence.*

Held, by the Full Bench, that there is a defect of jurisdiction if a Divisional Judge entertains an appeal direct from a Court of first instance which, under the provisions of section 39 (*a*) of the Punjab Courts Act, lies to a District Judge. The consent and acquiescence of the parties to a suit cannot give jurisdiction to a Court of limited jurisdiction. HANSA *v.* RAN SINGH AND ANOTHER. **36 P R 1902 F. B.**

Section 40.

1. *Suit instituted before passing of Act XXV of* 1899—*Right of appeal how far affected by new Act.*

See APPEAL—II. COMPETENCY OF. **12 P R 1900**

2. *Pre-emption—Value of suit—"If the decree involves directly some claim to or question respecting property of the value of one thousand rupees or upwards.*

See APPEAL—II. COMPETENCY OF. **29 P R 1893**

See APPEAL—VIII. SECOND. **94 P R 1890**
3 P R 1896

JURISDICTION. **94 P R 1890**

3. *Appeals from orders of remand, when admissible.*

See APPEAL—II. COMPETENCY OF. **50 P R 1911**

4. *Rules and orders of the Chief Court, No. LV, Rule IV—Unclassed suit of less than Rs.* 100 *in value—appeal.*

See APPEAL—III. COURSE OF APPEAL. **86 P R 1896**

5. *Value of suit—" Decree involves directly some claim to, or question respecting property of, like value".*

See APPEAL—III. COURSE OF APPEAL. **24 P R 1903**

See VALUATION OF SUIT. **49 P R 1908**

PUNJAB COURTS ACT (XVIII OF 1884)—*contd.*

Section 40—*contd.*

6. *Unclassed suit of less than Rs.* 100 *in value.*

See APPEAL—III. COURSE OF APPEAL. **86 P R 1896**

See APPEAL—VIII. SECOND. **20 P R 1892**

See BURDEN OF PROOF. **41 P R 1898**

7. *Application for revision admitted by Judge in Chamber as a further appeal on ground that there is question of law involved—Objection by respondent at the hearing that the appeal ought not to have been admitted as no question of law was involved*

See APPEAL—VI. PROCEDURE IN. **80 P R 1894**

8. *Small cause under Rs.* 500 *in value—Claim involving property exceeding Rs.* 500 *in value—Further appeal.*

See APPEAL—VIII. SECOND. **95 P R 1887**

9. *Further appeal—Application for revision—treated as an appeal.*

See APPEAL—VIII. SECOND. **79 P R 1890**

10. *Suits Valuation Act,* 1887—*Rules under—Suit to declare an alienation of land to be not binding after grantor's death—Further appeal—Value of suit Rs.* 1,000 *or upwards.*

See APPEAL—VIII. SECOND. **145 P R 1892**

11. *Suit to declare an alienation of land to be not binding after alienor's death—Value for purposes of further appeal.*

See APPEAL—XI. VALUATION OF. **42 P R 1907**
60 P R 1907 F. B.
28 P R 1908

12. *Suits Valuation Act,* 1887, *section* 4—*Valuation of subject matter of suit in the Appellate Court.*

See APPEAL—XI. VALUATION OF. **132 P R 1893**

13. *Question of law involved—Burden of proof.*

See BURDEN OF PROOF. **41 P R 1898**
66 P R 1898

14. *Suit for partition of offerings—Order or taking accounts—Further appeal.*

See CIVIL PROCEDURE CODE, 1908, SECTION 2. **13 P R 1901**

15. *Appeal from order of remand in a small cause under Rs.* 500 *in value—Power of Chief Court to consider merits of preliminary point.*

See CIVIL PROCEDURE CODE, 1908, O. XLI, R. 23. **85 P R 1895 F. B.**

16. *Suit for decree directing registration of document—Registration Act,* 1877, *section* 77—*Valuation of suit.*

See COURT FEES ACT, 1870, 2ND SCHEDULE. ARTICLE 17. **109 P R 1893**

PUNJAB COURTS ACT (XVIII OF 1884)—*contd.*

Section 40—*contd.*

17. *Valuation of suit—Question respecting property exceeding Rs.* 500 *in value.*

See JURISDICTION. **26 P R 1887**

18. *Decree involving directly a claim to or question respecting property exceeding Rs.* 500 *in value—Appeal.*

See JURISDICTION. **96 P R 1887**

19. *Question of law involved—Construction of document—Mortgage or sale—Plea of custom raised for first time in Chief Court.*

See PRE-EMPTION—13. CONSTRUCTION OF TRANSFERS. **36 P R 1899**

20. *Valuation of suits for redemption.*

See VALUATION OF SUIT. **23 P R 1909**

21. *Certificate that case is a fit one for urther appeal—Defective certificate.*

A further appeal in a case under Rs. 500 in value was made in the Chief Court on the following certificate of the Divisional Court, granted on an application stating that there were several points of law worthy of the attention of the Chief Court: "Application accepted. If petitioner desires, let him appeal."

Held, that the above certificate did not satisfy the requirements of the law as laid down in clause (*d*) of section 40 of the Punjab Courts Act, and that the further appeal must be rejected. SADA *v.* SHAHABAL. **24 P R 1886**

See also LASHKAR *v.* LADHU. **24 P R 1886 Note.**

22. *And section* 70—*Application for certificate for leave to appeal filed after prescribed period—Refusal of such application—Right to apply for revision on the strength of such refusal—Civil Procedure Code* (*Act XIV of* 1882), *section* 622.

In an application by the plaintiff under section 622 of the Civil Procedure Code for revision of an order of a Divisional Judge dismissing an appeal in a suit under Rs. 500 in value, it appeared that the plaintiff applied, after the period prescribed by proviso (1) to section 40 of the Punjab Courts Act, for a certificate for leave to appeal, no cause for the delay in applying being shown, whereupon the application was rejected as out of time.

Held, that the refusal of such application on the above ground did not make the order of the Divisional Judge final within the meaning of section 70 of the Punjab Courts Act, so as to give a right to seek revision under section 622 of the Civil Procedure Code, as the Court has no power under section 40 of the Punjab Courts Act to *receive* an application for a certificate not made within 30 days, unless the applicant satisfy the Judge that he had sufficient cause for the delay. ASU SINGH *v.* MOTI RAM. **93 P R 1886**

PUNJAB COURTS ACT (XVIII OF 1884)—*contd.*

Section 40—*contd.*

23. *Certificate for leave to appeal—Defective certificate.*

Held that a certificate, purporting to have been granted under section 40 (*d*) of the Punjab Courts Act, which merely set forth that there was a question of law involved in the case, which was of sufficient importance to justify a further appeal, without specifying what the point of law was, or whether the case itself was of sufficient importance to justify a further appeal, could not be accepted as sufficiently complying with the requirements of the law as laid down in the above section. SHAIKH IMAM-UD-DIN *v.* SAYAD CHANDU SHAH. **119 P R 1888**

24. *And section* 70—*Application for certificate of leave to appeal—Refusal of application on ground that it is not within time—Right to apply for revision after such refusal—Civil Procedure Code* (*Act XIV of* 1882), *section* 622.

Held by a majority of the Full Bench (TREMLETT, J., dissenting) that a refusal by a Divisional Judge to grant or receive an application for a certificate under clause (*d*) of section 40 of Act XVIII of 1884, on the ground that it is not within time, is a refusal of the application within the meaning of section 79 of the same Act.

Asu Singh v. *Moti Ram* (No. 93 *P. R.* 1886) overruled. SAMAND SINGH *v.* NATHU. **158 P R 1888**

25. *Certificate for eave to appeal—Defective certificate.*

Held, that a document presented as a certificate under section 40, clause (*d*) of the Punjab Courts Act, which merely certified that, in the opinion of the Divisional Judge, the case was of sufficient importance to justify a further appeal, but did not certify that there was " question of law or custom or of general interest involved," could not be accepted as satisfying the requirements of the above section. BHAG MAL *v.* MOHRA. **169 P R 1888**

26. *Application for revision of order refusing certificate of leave to appeal—Computation of period of limitation allowed by the sub-section—Deduction of time spent in obtaining copy of order.*

The period of 30 days allowed by sub-section (2) of section 40 of the Punjab Courts Act for an application for revision of an order refusing a certificate under clause (*d*) of sub-section (1) is not extendible, and no time can be deducted for the period spent in obtaining a copy of the order. BUTA *v.* RALLA RAM. **86 P R 1889**

PUNJAB COURTS ACT (XVIII OF 1884)—*contd.*

Section 40—*contd.*

27. *Further appeal—Application for revision treated as an appeal.*

A further appeal lies to the Chief Court under section 40 of the Punjab Courts Act, 1884, only from an appellate *decree*, as distinguished from an order of the Divisional Court. Where a Divisional Judge in a case in which he had passed an order not open to appeal refused to certify the case as fit for appeal, *held*, that an application for revision of this order could not be dealt with as a further appeal under clause (2) of the above section. GOSAON *v.* NANAK.

79 P R 1890

28. *Certificate that there is a question of law involved in the case—Sufficiency of oral evidence in cases of* chadar-andazi *marriages —Omission of Divisional Judge to consider the evidence.*

In a case where the only question in dispute was whether a certain marriage had taken place by *chadar-andazi*, the Divisional Judge without considering the evidence dismissed the appeal. He, however, certified the case as fit for further appeal on the ground that it involved a point of law, *viz.*, whether oral evidence was sufficient to establish such marriage.

Held, that the question whether the evidence was legally sufficient did not arise at all, that the only point at issue was one of fact, and that the Divisional Judge was bound to come to a finding on it. MUSSAMMAT JIWAN *v.* CHANDA SINGH.

135 P R 1890

29. *Unclassed suit over Rs 100, and under Rs. 1,000, in value—Certificate of appeal—Question of law involved—Burden of proof.*

Plaintiffs, two widows, sued as co-owners for possession of a house occupied by defendant, which they alleged they had permitted their agent K. R. to occupy, as their agent, and which the defendant, the widow of K. R., now occupied by their permission. The defendant pleaded that K. R had purchased the house in 1877 from the plaintiffs by two deeds of sale, produced by her, and had bequeathed it, on his death in 1882, to his two daughters, who owned it subject to the widow's right of occupation. The plaintiffs denied that they had executed the deeds produced. The first Court having found that plaintiffs executed the deeds, the plaintiffs appealed to the Divisional Judge, who reversed the decree on the ground that the defendant had not proved that the deeds of sale were genuine or that they were executed with the authority or consent of the plaintiffs; that no sale to K. R. had been proved, and that "the deeds were probably executed by fraud." The Divisional Judge granted a certificate under section 40, clause (*d*) of the Punjab Courts Act, that there was a question of law involved in the appeal, *viz.*, whether the *onus probandi* rested on plaintiffs.

PUNJAB COURTS ACT (XVIII OF 1884)—*contd.*

Section 40—*contd.*

Held, that though the proper allocation of the burden of proof in a particular case may be, in some sense, "a question of law," it is rather a question incidental to the proceedings in the case between the contesting parties than "involved in it" within the meaning of section 40 (2) of the Punjab Courts Act.

A mere question of irregularity in the proceedings of the Court of first appeal contained in the judgment, though it may be a question of law, is an incidental question of law, and not a "question of law involved in the case" within the meaning of section 40 (2) of the Act.

The case having been argued as an application for revision, *held*, that the true issue in the case being "Is it proved that the plaintiffs did not execute the deeds?" the *onus* was on the plaintiffs to prove that the defendant was not owner of the house of which she was admittedly in possession. MUSSAMMAT JOWALI *v.* MUSSAMMAT MAN KAUR.

45 P R 1894

30. *Punjab Courts Act,* 1884, *section* 40, *sub-section* (1), *clause (d), and sub-section* (2) *—Power of Chief Court to treat petition of appeal in case where no appeal lies as an application for revision—No application under sub-section* (2) *filed within thirty days from date of refusal by Divisional Judge to grant certificate under clause* (*d*) *of sub-section* (1).

Plaintiffs sued for a declaration that a deed of gift of certain land would not affect their reversionary rights after the death of defendant No. 1, and on their suit being dismissed both by the District and the Divisional Court they preferred a further appeal to the Chief Court, which was admitted by the Judge in Chambers to a bench. It was then ascertained that the value of the gifted land was under Rs. 1,000, and that, therefore, an appeal did not lie as of right. Appellants' counsel not being prepared to meet this objection, the hearing was adjourned to a late date when it was further ascertained that subsequently to the adjournment plaintiffs had made an application under clause (*d*) of sub-section (1) of section 40, Punjab Courts Act, 1884, to the Divisional Judge for a certificate. This application had been refused, and a copy of the order of refusal had been filed in the Chief Court; but no application for revision under sub-section (2) of the said section had been presented to the Court within thirty days from the date of the refusal to grant a certificate. The question referred to the Full Bench was whether, under the circumstances of the case, the Court could treat the petition of appeal, as originally presented, as an application for revision under sub-section (2), section 40 of the Act, and allow the said petition to be amended.

PUNJAB COURTS ACT (XVIII OF 1884)—*contd.*

Section 40—*contd.*

Held, by the Full Bench, that inasmuch as the action of plaintiffs in presenting a copy of the order of refusal was tantamount to an application that their former petition, which was treated as a petition of appeal, might be considered as an application for revision under section 40 (2) of the Act, and as such presentation took place within thirty days of the date of the refusal of the certificate, and in view of the fact that the original petition disclosed a question of law or custom, the act of presenting a copy of the order of refusal was equivalent to the presentation of an application for revision under section 40 (2) of the Act. NIKHA *v.* PHULA.

27 P R 1895 F. B.

31. *Further appeal—"Question of law involved"—Question as to admissibility of evidence—Revision—Civil Procedure Code,* 1882, *section* 622.

The words "question of law involved" in section 40, sub-sections (1) (*d*) and (2), do not include every point of law that may arise incidentally in a case, but refer to some question of law similar in its nature to a custom or a question of general interest.

Held, therefore, that the question whether a certain judgment was admissible in evidence to prove adverse possession was not a question of law within the meaning of the said section, but merely one of legal procedure incidental to the decision of the question of fact.

Semble.—The fact that inadmissible evidence has been admitted in a case would be a ground for revision under section 622, Civil Procedure Code, if the Court had not brought its mind to bear on the question whether such evidence was admissible or not. If, however, the Court has considered the question but decided wrongly, there would be no relief under the said section of the Code. NUR ILAHI *v.* MUNICIPAL COMMITTEE, DELHI. **68 P R 1897**

32. *Application filed more than* 30 *days after refusal of certificate—Minor—Limitation Act,* 1877, *sections* 6, 7.

Held, that a minor is not by reason of section 7 of the Limitation Act, entitled to have extended the period of 30 days prescribed in section 40 (2) of the Punjab Courts Act. JAN *v.* ALA BAKHSH. **69 P R 1897**

33. *Questions of law involved—Burden of proof—Construction of deed—Contradictory finding by lower Appellate Court—Material irregularity.*

Held, that the proper allocation of the burden of proof and the construction of a deed which merely affected the parties to the suit, and concerned no one else, were not "questions of law involved in the case" within the meaning of section 40 of the Punjab Courts Act, 1884.

No. 45 *P. R.* 1894 and No. 68 *P. R.* 1897, followed. SADHU RAM *v.* MUSSAMMAT BAINI BAI. **66 P R 1898**

PUNJAB COURTS ACT (XVIII OF 1884)—*contd.*

Section 40—*contd.*

34. *Certificate granted by Divisional Court, power of Chief Court to reject on ground that no question of law was involved.*

Where a certificate was granted by the Divisional Judge under section 40 of the Punjab Courts Act, 1884, to the effect that questions of Muhammadan Law were involved, *held*, that it was not open to the Chief Court to reject or ignore such certificate on the ground that no question of law was involved, the appeal having been decided on a question of fact. ALLAH BAKHSH *v.* MUSSAMMAT AMIR BEGAM. **61 P R 1899**

35. *Further appeal—Public road—Land suit.*

The appellant sued for possession of part of a public road encroached on by the respondents who had built a wall on it as a boundary to an agricultural field. *Held*, that the suit was not a land suit, and that it being valued at Rs. 105, no further appeal lay to the Chief Court without a certificate from the Divisional Judge under section 49, sub-section 1 (*d*), Punjab Courts Act.

The appellant is not entitled to any time to enable him to apply for and obtain an order refusing a certificate as the appellant who is a Municipal Committee is presumed to be acquainted with the law and in a position to obtain legal advice. THE MUNICIPAL COMMITTEE, HOSHIARPUR, *v.* ALI AKBAR KHAN. **42 P R 1900**

36. *Section 40—Course of appeal—Suit for pre-emption of a house valued by plaintiff at Rs. 804—Jurisdiction.*

The plaintiff instituted a suit for pre-emption of a house and valued it both for the purposes of jurisdiction and of Court-fee at Rs. 804. The District Judge dismissed the suit on the merits, but found that Rs. 2,000, the amount entered in the deed of sale, was actually paid. The plaintiff appealed to the Divisional Court and again valued his suit at Rs. 804. The Divisional Judge directed the plaintiff to pay Court-fees on Rs. 2,000 in the first Court and on Rs. 1,500 in his Court, which order was complied with, but the appeal was rejected on the merits. On a further appeal being filed in the Chief Court the value of the claim having been fixed at Rs. 1,500 the respondent objected that no further appeal lay as plaintiff had originally valued his claim for Rs. 804 and had not obtained a certificate under section 40 (1) (*d*) of the Punjab Courts Act, 1884.

Held, that the value for the purposes of jurisdiction must ordinarily and in the absence of any special circumstances suggestive of *mala fides* on the part of the plaintiff be determined with reference to the claim made and not to the decision upon that claim, and that in the present case no further appeal lay without a certificate

PUNJAB COURTS ACT (XVIII OF 1884)—*contd.*

Section 40—*concld.*

under section 40 (1) (*d*) of the Punjab Courts Act, 1884.

Mahabir Singh v. *Behari Lal* (*I. L. R. XIII All.* 320), *Nilmony Singh* v. *Jagabandhu Singh* (*I. L. R. XXIII Calc.* 536), *Hazara Singh* v. *Lal Singh* (63 *P. R.* 1891), and *Muhammad Khan* v. *Ashak Muhammad Khan* (106 *P. R.* 1895), approved and followed. *Mrs. Parsick* v. *Mr. H. Parsick* (72 *P. R.* 1899), distinguished. MAM DIN *v.* GHULAM MUHAMMAD. **101 P R 1900**

37. *Appeal to Chief Court, where lower Appellate Court decreed Rs.* 3,000 *compensation.*

Plaintiff claimed to be part owner of a site in which the defendants were building a mosque and sued for an injunction to stop the building—both the Lower Courts found that as the building was practically completed plaintiff was only entitled to compensation, the first Court fixing the amount at Rs. 100 and the Divisional Judge on appeal at Rs. 3,000.

Held, that on the principle laid down in 24 *P. R.* 1903 (*F. B.*) the decree involved a question regarding property of Rs. 3,000 in value and a further appeal to the Chief Court was therefore competent. **90 P R 1911**

Section 42.

—Sub-Judge invested with powers of District Judge—Power of such Sub-Judge to dispose of cases under Act XL of 1858.

See JURISDICTION. **47 P R 1888**

Section 43.

—Period of limitation for an appeal under section 588 (17) *of the Code of Civil Procedure.*

See APPEAL—V. LIMITATION OF. **83 P R 1904**

Section 44.

—Suit for declaration of proprietary title to a share in a well—Land suit—Provisions of the law for obtaining a final decision as to whether a suit is cognizable by the Civil or Revenue Courts.

See APPEAL—I. CIVIL.
JURISDICTION OF CIVIL OR REVENUE COURT. **40 P R 1893**

Section 45.

See JURISDICTION OF CIVIL OR REVENUE COURT. **74 P R 1886**

1. *Suit for ejectment of tenant on the ground of defendant's refusal to pay rent.*

See JURISDICTION OF CIVIL OR REVENUE COURT. **102 P R 1887**

PUNJAB COURTS ACT (XVIII OF 1884)—*contd.*

Section 45—*concld.*

2. *Suit by owner of canal for a share of the produce of land watered therefrom—Customary dues.*

See JURISDICTION OF CIVIL OR REVENUE COURT. **103 P R 1887**

3. *Boundary suit.*

See JURISDICTION OF CIVIL OR REVENUE COURT. **7 P R 1888**

4. *Suit to establish claim to right of occupancy—Suit for ejectment of tenant.*

See JURISDICTION OF CIVIL OR REVENUE COURT. **9 P R 1888 F. B.**

5. *Suit for winding up of partnership in land—Co-sharers in agricultural land.*

See JURISDICTION OF CIVIL OR REVENUE COURT. **115 P R 1888**

6. *Suit by mafidar for revenue.*

See JURISDICTION OF CIVIL OR REVENUE COURT. **1 P R 1888 Rev.**

7. *Suit by mukarridar to establish right.*

See JURISDICTION OF CIVIL OR REVENUE COURT. **11 P R 1888 Rev.**

8. *Suit to disprove occupancy right.*

See JURISDICTION OF CIVIL OR REVENUE COURT. **12 P R 1888 Rev.**

9. *Ejectment of tenant on the ground that after service of a notice of ejectment on the tenant he (the landlord) had been placed in possession of the land but that subsequently the tenant had forcibly dispossessed him.*

See JURISDICTION OF CIVIL OR REVENUE COURT. **110 P R 1889**

Section 67.

—Hearing fixed for gazetted holiday—Obligation of party to appear on such day.

See HOLIDAY. **55 P R 1898**
111 P R 1906

Section 70.

See REVISION.
PUNJAB COURTS ACT (XVIII OF 1884), SECTION 40.
93 P R 1886
158 P R 1888
See APPEAL—III. COURSE OF APPEAL.
86 P R 1896

1. *Order of District Judge fixing the fee of a custodian of the property of the ward appointed under section* 12 *of the Guardian and Wards Act,* 1890—*Revision.*

See APPEAL—II. COMPETENCY OF. **48 P R 1901**

2. *Section* 70 (1) (*b*)—*Revision against an order of remand under section* 562. *Civil Procedure Code,* 1882.

See CIVIL PROCEDURE CODE, 1908, O. XLI, R. 23. **101 P R 1910**

PUNJAB COURTS ACT (XVIII OF 1884)—*contd.*

Section 70—*contd.*

3. *Revision from orders of Lower Court in regard to Court fees, etc., not being preliminary decrees, declined.*

See DECREE OR ORDER. **82 P R 1911**

4. *An order under section* 26, *Punjab Laws Act, annulling a transfer as fraudulent is not open to revision by Chief Court.*

See INSOLVENCY. **64 P R 1911**

5. *Power of Chief Court to revise orders appealable under section* 588 *of the Civil Procedure Code.*

See JURISDICTION. **77 P R 1909**

6. *Held*, that in pre-emption cases the question whether a certain building is or is not on the facts found by the Lower Appellate Court a *serai*, is a question of law and of sufficient importance to justify the admission of an appeal under section 70 (1) (*b*) of the Punjab Courts Act.

See PRE-EMPTION—2. RIGHT OF, IN TOWNS. **96 P R 1910**

7. *Revision from interlocutory order where an appeal lies from final decree.*

See REVISION. **64 P R 1905**

8. *Revision from an order under section* 295, *Civil Procedure Code, passed with jurisdiction.*

See REVISION. **65 P R 1905**

9. *Revision from an order under section* 295, *Civil Procedure Code—Practice of Chief Court.*

See REVISION. **82 P R 1905**

10. *Material irregularity.*

See REVISION. **45 P R 1909**

See SMALL CAUSE. **20 P R 1911**

11. *Revision—Chief Court, powers of—Practice—Civil Procedure Code,* 1882, *section* 622.

Held, that as a general rule the Chief Court will not exercise its extraordinary powers of revision under section 70 of the Punjab Courts Act, as amended by Act XXV of 1899, on the ground that a subordinate Court has exercised a jurisdiction not vested in it by law or has failed to exercise a jurisdiction so vested or has acted in the exercise of its jurisdiction with material irregularity, so long as there is any other remedy open to the party professing to be injured whereby he may obtain the relief sought. JOTI RAM *v.* COATES. **15 P R 1901**

12. *Revision—Interlocutory order—Revision of interlocutory order when appeal lies from final decree.*

The Chief Court is not competent to revise, under section 70 (*a*) of the Punjab Courts Act, interlocutory orders made with jurisdic-

PUNJAB COURTS ACT (XVIII OF 1884)—*contd.*

Section 70—*concld.*

tion where an appeal is allowed from final decree in the case.

Mohtab Rai v. *Kaman Mal* (51 *P. R.* 1899), cited. *Dhapi* v. *Ram Parshad* (*I. L. R. XIV Calc.* 768) distinguished. POKHAR DAS AND ANOTHER *v.* KAKA RAM AND OTHERS. **31 P R 1902**

13. *Revision—Chief Courts, powers of revision—Discretion.*

Held, by the Full Bench, that under section 70 (*a*) of the Punjab Courts Act, 1884, the Chief Court is not bound to interfere on the revision side even when there is a defect of jurisdiction unless failure of justice has directly resulted from such defect. HANSA *v.* RAN SINGH AND ANOTHER. **36 P R 1902 F. B.**

14. The value of a suit governed by Rule IV framed by the Chief Court under section 9 of the Suits Valuation Act, VII of 1887, for the purposes of section 70 (1) (*b*), proviso (*ii*) of the Punjab Courts Act, is the value assessed by the plaintiff under clause (*b*) of that Rule. NAJM-UD-DIN *v.* MUNICIPAL COMMITTEE, DELHI. **6 P R 1904 F. B.**

15. *Applicability of, to proceedings under the Succession Certificate Act.*

Held, that clause (*b*) of section 70 of the Punjab Courts Act does not apply to proceedings under the Succession Certificate Act. It is not co-extensive with clause (*a*) of that section, but treats of a different class of cases.

Mina Mal v. *Hardhian Singh* (48 *P. R.* 1901) and *Coates* v. *Kashi Ram* (76 *P. R.* 1903), referred to. KISHORE CHAND *v.* MUSSAMMAT NIHAL DEVI. **70 P R 1904**

16. *Chief Court's power of revision—Erroneous decision by Appellate Court as to jurisdiction of first Court.*

Held, that an appellate judgment deciding, though erroneously, that the Court of first instance had jurisdiction to hear the suit is not open to revision by the Chief Court under section 70 (1) (*a*) of the Punjab Courts Act, the Lower Appellate Court having had jurisdiction to entertain and decide the appeal.

46 *P. R.* 1886, followed. **4 P R 1911**

17. *Held*, that the provisions of section 21 of the Punjab Alienation of Land Act do not take away the right which a party to a suit of an execution proceedings has of applying to the Chief Court under the general provisions of section 70 of the Punjab Courts Act for revision of an order passed by the Divisional Court upon an application made by the Deputy Commissioner under section 21 A (2) of the Punjab Alienation of Land Act.

See PUNJAB ALIENATION OF LAND ACT. **12 P R 1911**

PUNJAB COURTS ACT (XVIII OF 1884)—*concld.*

Section 75.

—*Punjab Courts Act,* 1884, *sections* 26, 75—"*Business*" *and* "*functions*" *of District Court—Power of District Judge to assign function of trying a case to Additional District Court—Case in excess of pecuniary limits of latter Court's jurisdiction.*

Section 75 of the Punjab Courts Act must be construed in consonance with section 26 of the Act, and it is, therefore, not competent to a District Judge by any act of his under sub-section (2) of section 75 to extend the powers conferred on Judicial Officers by the Local Government under section 26.

The " business in the Court of the District Judge " spoken of in section 75 (1) of the Act means business it has to dispose of as the District Court, and the " functions " mentioned in sub-section (2) of the said section are functions proper to such Court, and must be such as a Sub-Judge of the highest class is unable to discharge, and do not mean the mere trial of civil suits of the value of over Rs. 5,000. MUSSAMMAT NEKHAN *v.* MUHAMMAD KHAN. **46 P R 1898**

PUNJAB COURT OF WARDS ACT, 1903.

—*Punjab Court of Wards Act, II of* 1903, *sections* 26 *and* 31 (2) *imperative—Non-production of a certificate bars further proceedings in a suit.*

Held, that the terms of section 31 (2) of the Punjab Court of Wards Act, 1903, are imperative, and prevent a Civil Court from proceeding with any suit pending before it against a person, the superintendence of whose property has been assumed by the Court of Wards, until the plaintiff has filed a certificate that the claim has been notified in accordance with section 26 of the Act. It is not within the province of a Civil Court to determine whether the Deputy Commissioner should or should not have granted a certificate. KANDA RAM *v.* KHAN MUHAMMAD KHAN. **6 P R 1910**

PUNJAB DESCENT OF JAGIRS ACT, 1900.

Section 8 (3).

—*Assignment of land revenue—Liability to attachment in execution of decree.*

Held, that under clause (3) of section 8 of the Punjab Descent of Jagirs Act, 1900, a sub-assignment of land revenue made with the sanction of Government is as incapable of attachment in execution of decree as the assignment itself.

Section 8 of the Punjab Descent of Jagirs Act, 1900, is not limited to assignment solely made by Government but also includes a sub-assignment made by the original assignees. BHAGWAN DAS *v.* RAM DAS. **117 P R 1907**

PUNJAB FRONTIER CRIMES REGULATION, 1887.

Section 10.

—And section 12—Resolution of a Jirga is no restriction on the jurisdiction of a Civil Court where the provisions of section 10 are not acted upon.

See JURISDICTION. **26 P R 1909**

PUNJAB GENERAL CLAUSES ACT, 1898.

Section 3.

—Punjab Loans Limitation Act, 1904—Date of coming into operation.

See PUNJAB LOANS LIMITATION ACT, 1904. **97 P R 1905**

PUNJAB LAND REVENUE ACT, XXXIII OF 1871.

Section 6.

See LAMBARDARS.
5 P R 1881 Rev.
9 P R 1881 Rev.
16 P R 1881 Rev.
2 P R 1882 Rev.
3 P R 1882 Rev.
3 P R 1884 Rev.
5 P R 1885 Rev.
14 P R 1885 Rev.
2 P R 1886 Rev.
5 P R 1886 Rev.

See PATWARI.
8 P R 1881 Rev.

Sections 14—16.

1. *Presumption of correctness of pedigree table given in Settlement record.*
See CUSTOM—I. B. ALIENATION BY WIDOW—(*d*) ASSENT OF REVERSIONER. **174 P R 1888**

2. *Presumption of correctness of entry in record as to who are the landowners—Power to alter entries in record.*
See JAGIR. **4 P R 1888 Rev.**

Section 16.
See CUSTOM—III. APPOINTMENT OF HEIR. **24 P R 1884**

Section 17.

See PUNJAB TENANCY ACT, XXVIII OF (1868), SECTION 2. **21 P R 1884**

Section 19.

See PARTITION. **7 P R 1883 Rev.**
—Power to alter entries in record.
See JAGIR. **4 P R 1888 Rev.**

PUNJAB LAND REVENUE ACT, XXXIII OF 1871—*contd.*

Section 20.

—Trees—Conflicting provisions in Settlement Record—Form of suit.

The Settlement record contained conflicting provisions as to right in trees; the *ikrarnamah* signed by the proprietors allowing the hereditary cultivators to cut trees for agricultural purposes with the proprietors' consent; the tenants' *ikrarnamah* giving the right without such consent. One of the proprietors sued to have his "rights declared "to enter his tenants' lands and cut trees "which had grown spontaneously." The Lower Courts decreed that plaintiff could not enter the lands without the tenants' consent, and that the tenants could not cut trees without the landlord's permission. The landlord appealed to the Chief Court, and the tenants preferred a cross-objection. *Held*, that the suit did not lie; that if the parties felt aggrieved the proper course was to sue under section 20 of Act XXXIII of 1871 to correct the record, the Government and other persons interested being joined. KANH SINGH *v.* DASAUNDHA SINGH.
111 P R 1876

Section 23.

See PARTITION. **11 P R 1881 Rev.**

Section 30.

See JAGIR. **4 P R 1888 Rev.**

See MAFIDAR. **17 P R 1881 Rev.**
1 P R 1885 Rev.

Section 41.

See MAFIDAR. **17 P R 1881 Rev.**
10 P R 1886 Rev.

Section 42.
See JURISDICTION OF CIVIL OR REVENUE COURT. **16 P R 1882**
84 P R 1884

Sections 42 and 43.
—Act XXXIII of 1871, *sections* 42 *and* 43*—Execution of decree of Civil Court—Lien for revenue.*

There is no lien for revenue, until the revenue is in arrear under section 42, Act XXXIII of 1871, and attachment has been made under section 43. Therefore, where a Civil Court attaches in execution of decree the immovable property of an agriculturist, it is not necessary to arrange first for the payment of the revenue, paying the balance to the judgment-creditor, but the judgment-creditor is entitled to payment in full. OOMUR DEEN *v.* HASHUM.
52 P R 1874

Section 65.
1. Pachotra—*Suits relating to*—
See JURISDICTION OF CIVIL OR REVENUE COURT. **27 P R 1875**
27 P R 1876

PUNJAB LAND REVENUE ACT XXXIII OF 1871—*concld.*

Section 65—*concld.*

2. *Patwari's pay—Suit for.*
See JURISDICTION OF CIVIL OR REVENUE COURT. **28 P R 1876**

3. *Marriage fees—Suit for.*
See JURISDICTION OF CIVIL OR REVENUE COURT. **1 P R 1876**

4. *Partition—Suit for.*
See JURISDICTION OF CIVIL OR REVENUE COURT.
71 P R 1875
40 P R 1876
97 P R 1876
17 P R 1877
48 P R 1877
69 P R 1877
22 P R 1878
126 P R 1879
134 P R 1879

5. *Partition of* abadi, *when no dispute as to shares.*
See JURISDICTION OF CIVIL OR REVENUE COURT. **14 P R 1876**

6. *Partition—Right of widow to, in a joint estate.*
See JURISDICTION OF CIVIL OR REVENUE COURT. **22 P R 1878**

7. See JURISDICTION OF CIVIL OR REVENUE COURT.
16 P R 1882
131 P R 1882
42 P R 1883
123 P R 1883
125 P R 1883
70 P R 1884
84 P R 1884
24 P R 1885

8. See LAMBARDAR.
5 P R 1881 Rev.
9 P R 1881 Rev.
16 P R 1881 Rev.
2 P R 1882 Rev.
3 P R 1882 Rev.
3 P R 1884 Rev.
5 P R 1885 Rev.
14 P R 1885 Rev.
2 P R 1886 Rev.
5 P R 1886 Rev.

9. See PARTITION. **11 P R 1881 Rev.**
3 P R 1886 Rev.

10. *Refusal of partition.*
See PARTITION. **8 P R 1887 Rev.**

Section 67.

1. *Rules framed under—Execution of decree for partition made by Civil Court.*
See JURISDICTION OF CIVIL OR REVENUE COURT. **100 P R 1876**

PUNJAB LAND REVENUE ACT, 1887.

1. *Rules under Punjab Land Revenue Act*, 1887.

See LAMBARDAR.
PARTITION.
ZAILDAR.

2. *Scope of mutation of names under Punjab Land Revenue Act*, 1887.

See MUTATION OF NAME.
1 P R 1891 Rev.

Section 3 (1).

See JURISDICTION OF CIVIL OR REVENUE COURT. **13 P R 1895**
30 P R 1895

Section 3 (2).

See JURISDICTION OF CIVIL OR REVENUE COURTS. **30 P R 1895**
LANDOWNER. **7 P R 1896**
PARTITION. **9 P R 1895 Rev.**
11 P R 1895 Rev
PLAINT—FORM OF. **7 P R 1896**
PRE-EMPTION—RIGHT OF IN VILLAGES. **7 P R 1896**
72 P R 1897

—The definition of landowner in clause 2 of section 3 of the Punjab Land Revenue Act includes a mortgagee. RAM CHAND *v.* UTTAM CHAND. **106 P R 1890**

Section 3 (3).

See JURISDICTION OF CIVIL OR REVENUE COURT. **106 P R 1890**

Section 3 (10).

Hak-buha is a village cess within the meaning of section 3 (10) of Land Revenue Act, 1887. GOWHRA *v.* ALI GOHAR.
11 P R 1890 Rev.

Section 13.

1. *Application for partition—Plea that holding had been already partitioned privately—Course of appeal—Question as to property to be divided or as to title in the property of which partition is sought—Entries in Settlement Records.*

See PARTITION. **4 P R 1898 Rev.**

2. *Succession to* jagir *— Mutation—Appeal.*

An order made regulating the mode of succession to a *jagir* and the entries to be made in the revenue records as the necessary consequence of such order is open to appeal under section 13, Punjab Land Revenue Act, 1887.

Such an order does not fall within the scope of section 36 of the Act; but even if it did an appeal would still lie under section 13. PAHAR SINGH *v.* PARTAB SINGH
12 P R 1891 Rev.

3. *Punjab Land Revenue Act*, 1887, *sections* 13 *and* 36—*Determination by Revenue Officer of entries to be made in a record of rights—Appeal.*

PUNJAB LAND REVENUE ACT, 1887—*contd.*

Section 13—*concld.*

An order made by a Revenue Officer under section 36, sub-section (1), Punjab Land Revenue Act, 1887, determining the entry to be made in a record of rights at the making, revision or preparation thereof is open to appeal under section 13 of the Act.

Held, also, that the respondent's requests that the other questions arising should be disposed of by the Financial Commissioner, thus shortening litigation and avoiding delay instead of remanding the case to the Commissioner could not be entertained

No. 12 *P. R.* 1891, Rev. followed. BHAGWAN DAS *v.* SECRETARY OF STATE FOR INDIA.
4 P R 1893 Rev.

Section 16.

—*And section* 53—*Commutation of revenue due to assignee from grain rates to cash.*

On 6th January 1886, the proprietors in this case applied to the Settlement Officer that they be allowed to pay revenue at cash rates. The Settlement Officer declined to accede to the request on the ground that *batai* had always been paid to the assignee. Thirteen months later, the Settlement Officer, in consequence of ruling of the Financial Commissioner, reviewed his original order and granted a petition for cash assessment. The Commissioner and the Financial Commissioner held on appeal that it was not competent to the Settlement Officer to review his order after thirteen months. Three years and some months after the order of the 6th January 1886, the Financial Commissioner was asked to revise the proceedings under section 16 of the Land Revenue Act (XVII of 1887).

Held that the Financial Commissioner was competent to do so, notwithstanding the lapse of time, as the law empowered him to modify the assessment of any estate at any time before its sanction by Government.

Held further that the proprietors were entitled to a cash assessment. The half produce share which the assignee formerly received, probably represented the Government share in the Sikh times. The practice continued after the Government share became much less, but by degrees the practice has been recognised as illegal, and at Settlements particularly the assignee's right has been brought down to the Government share. Though the present law permits assessment in kind, but this is only where the Local Government so directs, and the Government has never directed that assessment should be in kind—cash assessment being the universal rate of all recent Settlements. FAKEER *v.* BABA NARAINGIR.
2 P R 1889 Rev.

Section 32.

See SECTION 36, *infra.*
7 P R 1895 Rev.

Section 36.

1. *Determination by Revenue Officer of entries to be made in a record of rights—Appeal.*

See SECTION 13, *supra.*
4 P R 1893 Rev.

PUNJAB LAND REVENUE ACT, 1887—*contd.*

Section 36—*concld.*

2. *Procedure for making record of rights—Punjab Land Revenue Act (XVII of 1887), sections* 3 (2), 32, 36 (1) (2)—*Rule* 57 *of rules under the Act, and* jamabandi *form, column* 4—" *Owner* " *and* " *landowner* "—*Determination of disputes—Dispute not as to possession, but relating to ownership—Competency of Revenue Officer to determine such dispute.*

In making a first record of rights under section 32 of the Punjab Land Revenue Act, 1887, a Revenue Officer is not precluded by the mere fact that a certain person is the "landowner," as defined by section 3, clause (2), from the duty of recording any other person, whether owner, landowner, or one who is entitled to the rents and profits of the estate in the record of rights. If, therefore, one person is found to own the proprietary right in the land, his right must be recorded, and the Revenue Officer must not refuse to do so because another person is entitled to be recorded a "landowner" as defined in section 3 (2) of the Act.

As regards the determination of disputes clause (1) of section 36 is not limited by clause (2) thereof, merely to disputes regarding possession, and in making a first record of rights a Revenue Officer is competent to determine a disputed question of ownership and to make an entry in accordance with his decision in the said record.

Held, on the merits that appellant had failed to prove a proprietary right in the land of which respondents were admittedly in possession as "landowners" SECRETARY OF STATE FOR INDIA *v.* BHAGWAN DAS.

7 P R 1895 Rev.

Section 37.

1. *Power to alter entries in record.*

Section 19 of the Land Revenue Act of 1871, and section 37 of the Act of 1887, which define the circumstances under which entries in the record of rights may be altered, do not give to the Revenue Officer authority to make an alteration converting a jagirdar into a landowner, and then refusing to allow the landowner, entered in the record of rights, to engage for the revenue, except with the consent of the parties, or pursuant to a decree, or in order to make the record agree with facts which have occurred since it was made. MOWAZ KHAN *v.* MAHANT GANESH DAS.

4 P R 1883 Rev.

2. *Entries in Record of Right and annual Records—Correction of record—Procedure when question of title arises.*

In a case to erase the names of certain occupancy tenants from the Annual Record and enter the names of the landlords as the cultivating occupants of the land, on the

PUNJAB LAND REVENUE ACT, 1887—*contd.*

Section 37—*concld.*

ground that the occupancy tenants had abandoned the land for more than one year, which allegation was denied by the occupancy tenants.

Held, that the object of the mutation procedure is to bring the Annual Record into accordance with facts, so far as this can be done by a summary inquiry, when the Annual Record has been corrected it is under section 44 of the Land Revenue Act merely presumed to be true, so that an order in a mutation case does not finally settle any substantive question of right as between the parties. Therefore when a question of title is in issue, it is ordinarily the best and safest plan to refuse mutation and to refer the parties to the Civil or Revenue Courts as the case may be. HARNAND *v.* JAMNA.

1 P R 1901 Rev.

3. *Entries in record of rights and annual Records—Mutation of names—Construction of decree—Procedure when parties dispute the construction of a decree.*

Held, following *Harnand* v. *Jamna* (1 *P. R.* 1901, Rev.), that a Revenue Officer dealing with a mutation case should decline to go behind the plain language of a decree which is still in force and which has not been varied or set aside or superseded by any act of parties or a competent authority. *Naobat Rai* v *Taj Muhammad* (84 *P. R.* 1885) referred to. HAZARI MAL AND ANOTHER *v.* JOTI MAL. **11 P R 1901 Rev.**

4. *And section 44—Entries in record of Rights and annual records—Mutation of names.*

The mutation procedure is not designed for the final settlement of rights, its object is to bring the annual record into accordance with the facts which are most probably true. Revenue Officers should therefore refuse mutation of names based on alienations *prima facie* void until a decree affirming the validity of the ostensible transfer is obtained. MOMANDA *v.* FARID AND OTHERS.

14 P R 1901 Rev.

5. *Records of rights—Variation of entries in records when the matter is in dispute.*

Held, that it is beyond the scope of mutation proceedings to alter an entry in the records of rights with regard to the payment of rent when the matter is in dispute. GUJAR KHAN *v* AMIR BAZ.

4 P R 1905 Rev.

Section 44.

1. *Land Revenue Acts, XXXIII of* 1871, *section* 16, *and XVII of* 1887, *section* 44—*Jagirdars and lambardars—Settlement with whom to be made—Presumption of correctness of entry in record as to who are the landowners.*

Under section 30 of the Land Revenue Act of 1871, when land revenue is assessed,

PUNJAB LAND REVENUE ACT, 1887—*contd.*

Section 44—*concld.*

the settlement should be offered to the landowners ; but neither under the Land Revenue Act of 1871, nor under the Act of 1887, does any Revenue Officer, engaged in making an assessment, possess any authority to decide the issue who are the landowners, independently, and without reference to the record of rights, in districts where a record of rights exists. Both by section 16 of the Act of 1871, and section 44 of the Act of 1887, the Revenue Officer is bound to presume that those persons are the landowners who are entered as such in the record of rights. MOWAZ KHAN *v.* MAHANT GANESH DAS. **4 P R 1888 Rev.**

2. *Presumption of correctness of pedigree table given in Settlement record—Land Revenue Act (XXXIII of* 1871), *sections* 14, 15, 16.

Held that the presumption of correctness which attaches to the record of rights under section 16, para 2 of the Land Revenue Act, 1871, attaches also to a pedigree table given in the Settlement record, as though a pedigree table is not one of the documents mentioned in the six clauses of section 14 of the Act, which give in detail the different documents of which the record of rights consists, by section 15 of the same Act the Local Government is empowered to direct that other documents besides those specified shall be contained in the record of rights, and as a fact has directed that a *Shajra nasab* or pedigree table be so included (*vide* Rule C, III, 26 of the rules under Act XXXIII of 1871). CHUNI LAL *v.* NANDA **174 P R 1888**

Section 45.

1. *Suit for declaration of title—Adverse entry in Revenue papers—Causes of action.*

See CAUSE OF ACTION—IV. MISCELLANEOUS. **20 P R 1900**

2. *Suit for declaration of right and for correction of Settlement Record.*

See JURISDICTION OF CIVIL OR REVENUE COURT. **25 P R 1889**

3. *Suit for declaratory decree by person aggrieved by entry in a record of rights—Suit by occupancy tenant against landlord.*

See JURISDICTION OF CIVIL OR REVENUE COURT. **89 P R 1895**

Section 48.

Collection of land revenue in cash or in kind—Right of Jagirdar when and when not an owner in the estate.

See JAGIR. **14 P R 1892 Rev.**

Section 61.

1. *Correction of record and decision on claim of landowner to be settled with not to be included in same proceeding.*

The two operations of correcting an entry in the record of rights or in the

PUNJAB LAND REVENUE ACT, 1887—*contd.*

Section 61—*concld.*

annual record, and of deciding on the claim of a person as landowner to be liable for the revenue, cannot properly be included in the same proceeding; that person is liable for the land revenue (section 61, Act XVII of 1887 ; section 30, Act XXXIII of 1871) who is recorded in the records as landowner : if those records are to be altered, this must be done by a separate application and proceeding.

The rule laid down in section 61 of the Act of 1887 applies to all cases in which land revenue is assessed ; equally to general re-assessments and to special assessments. MOWAZ KHAN *v.* MAHANT GANESH DAS.

4 P R 1888 Rev.

2. If the estate is held in *jagir* by a jagirdar who is not the owner, he is only entitled to the Government demand. If he has any rights of ownership these rights are not affected by a re-assessment of the revenue, and under section 61 of the Land Revenue Act, 1887, the settlement may (subject to rule 208) be offered to him. NANDU *v.* MALLA SINGH.

14 P R 1892 Rev.

Section 70.

—*Liability of fodder to attachment in execution of a decree against an agriculturist.*

See ATTACHMENT. **82 P R 1907**

Section 111.

1. *Application for partition—Condition precedent to right to apply.*

See PARTITION. **9 P R 1895 Rev.**

2. *Partition—Suit by widow—Discretion of Court.*

See PARTITION. **11 P R 1895 Rev.**

3. *Partition—Right of widow who has succeeded to her husband's interests in joint holding to claim partition.*

See PARTITION. **82 P R 1893 F. B.**

4. *And sections* 115, 117—*Joint estate—Mortgagee's right to partition—Jurisdiction of Revenue Court—Procedure.*

See PARTITION. **4 P R 1903 Rev.**

5. *Partition of joint holding by Revenue Court.*

See PUNJAB TENANCY ACT, SECTION 5 (*d*).

4 P R 1904 Rev.

6. *And section* 158 (*XVII*)—*Jurisdiction of Civil Court to decide the incompetency of a claimant to apply for partition—Question of title.*

See PARTITION. **104 P R 1906**

Section 112.

1. *Application by majority of joint owners for partition—Objections by remaining joint owners and occupancy tenants—Discretion of Revenue officer.*

See OCCUPANCY RIGHTS.

1 P R 1895 Rev.

PUNJAB LAND REVENUE ACT, 1887—*contd.*

Section 112—*contd.*

2. *Application for partition—Plea that holding had been already partitioned privately—Question "as to property to be divided" or "as to title in the property of which partition is sought."*

See PARTITION. **4 P R 1898 Rev.**

Section 113.

—Partition of widow's share in joint holding—Right of reversioner to object to such partition being allowed.

See PARTITION. **6 P R 1896 Rev.**

Section 115.

1. *Suit for declaration of plaintiff's right to a partition of the village common land without consent of defendants.*

See JURISDICTION OF CIVIL OR REVENUE COURTS. **82 P R 1893**

2. *Suit for possession of land allotted by Revenue Officer on partition to defendants.*

See JURISDICTION OF CIVIL OR REVENUE COURT. **118 P R 1894**

3. *Partition—Suit by widow—Discretion of Court.*

See PARTITION. **11 P R 1895 Rev.**

4. *Partition of widow's share in joint holding—Right of reversioner to object to such partition being allowed.*

See PARTITION. **6 P R 1896 Rev.**

5. *Partition proceedings—Question of title involved—Entry in* Wajib-ul-arz *prohibiting partition.*

See PARTITION. **11 P R 1896 Rev.**

6. *Right of widow who has succeeded to her husband's interest in joint holding to claim partition—Grant of such prayer by Revenue Officer—Jurisdiction of Civil Court to entertain subsequent suit by co-sharers objecting that widow is by custom not entitled to claim partition—question as to title.*

See PARTITION. **82 P R 1898 F. B.**

Section 116.

1. *Suit for partition—Question of title.*

See JURISDICTION OF CIVIL OR REVENUE COURT. **150 P R 1890**

2. *Suit for possession of land allotted by Revenue Officer on partition to defendants.*

See JURISDICTION OF CIVIL OR REVENUE COURT. **118 P R 1894**

3. *Partition proceedings—Question of title raised before Revenue Officer, but not decided—Completion of partition—Jurisdiction of Civil Court to entertain subsequent suit in respect of the said question of title.*

See JURISDICTION OF CIVIL OR REVENUE COURT. **72 P R 1896 F. B.**

PUNJAB LAND REVENUE ACT, 1887—*contd.*

Section 116—*concld.*

4. *And section* 117*—Jurisdiction of Civil or Revenue Court—Suit for declaration as to principle of division—Question of title.*

See JURISDICTION OF CIVIL OR REVENUE COURT. **99 P R 1905**

5. *And sections* 117, 158*—Question relating to enforcement of partition—Entry in* Wajib-ul-arz*—"Question of title" or "mode of making partition."*

See JURISDCTION OF CIVIL OR REVENUE COURT. **4 P R 1908**

6. *Partition proceedings—"Question of title involved"—Entry in* Wajib-ul-arz *prohibiting partition.*

See PARTITION. **11 P R 1896 Rev.**

7. *Right of widow who has succeeded to her husband's interests in joint holding to claim partition—Grant of such prayer by Revenue Officer—Jurisdiction of Civil Court to entertain subsequent suit by co-sharers objecting that widow is by custom not entitled to claim partition—Question as to title.*

See PARTITION. **82 P R 1898 F. B.**

8. *Application for partition—Plea that holding had been already partitioned privately—Question as to property to be divided or as to title in the property of which partition is sought—Entries in Settlement Record.*

See PARTITION. **4 P R 1898 Rev.**

Section 117.

See SECTION 116, *supra.*

1. *Disposal of question as to title in property to be divided.*

See JURISDICTION OF CIVIL OR REVENUE COURT. **14 P R 1890 Rev.**
15 P R 1890 Rev.
150 P R 1890

2. *Suit for declaration that land was not subject to partition.*

See JURISDICTION OF CIVIL OR REVENUE COURT. **39 P R 1892**

3. *Suit for declaration of a plaintiff's right to a partition of the village common land without consent of defendants—Question of title.*

See JURISDICTION OF CIVIL OR REVENUE COURT. **82 P R 1893**

4. *Suit for possession of land allotted by Revenue Officer on partition to defendants.*

See JURISDICTION OF CIVIL OR REVENUE COURT. **118 P R 1894**

5. *Application to Revenue Officer for partition of land — Question of title decided by said officer—Subsequent suit for possession of house—Title to land and house identical.*

See PARTITION **30 P R 1898**

6. *Suit for partition—Revenue Officer referring question of title to Civil Court, but*

PUNJAB LAND REVENUE ACT, 1887—*contd.*

Section 117—*concld.*

completing partition without awaiting such decision—Jurisdiction of Civil Court to entertain subsequent suit regarding such question of title—Punjab Land Revenue Act, 1887, *sections* 117 (*i*), 122, 158 (17).

In certain partition proceedings before a Revenue Officer an objection, raising a question of title was preferred and the objector was directed to bring a civil suit to establish his title within fifteen days. He failed to do so, whereupon the partition proceeded and was completed. After its completion, the objector instituted the present suit in the Civil Court for the purpose of establishing his title. The question referred to the Full Bench was, whether, under such circumstances, the jurisdiction of the Civil Courts was barred by section 158, Punjab Land Revenue Act, or any other law.

Held, by the Full Bench, that the jurisdiction of the Civil Courts to entertain the present suit was not barred.

When in partition proceedings before a Revenue Officer a question of title is raised, the Revenue Officer is bound, under section 117 of the Land Revenue Act, 1887, to refuse partition until such question is decided by the Civil Court or to decide it himself, and if such officer completes the partition without the question of title raised before him being settled in one of the two ways provided in the said section, the mere fact that the partition has been completed cannot oust the jurisdiction of the Civil Courts to entertain a subsequent suit regarding such question of title.

No. 118 *P. R.* 1894 overruled *pro tanto.* BACHAN SINGH *v.* MADHAN SINGH.

61 P R 1897

7. Appeals from orders of Assistant Collectors under section 117 (1) lie to the Collector, and not to the Commissioner—but from orders under section 117 (2) (*b*) go to the Commissioner. GANDA SINGH *v.* JHANDA SINGH.

14 P R 1900 Rev.

Section 118.

See PARTITION. **4 P R 1898 Rev.**

1. Questions as to the property to be divided or the mode of making the partition may be dealt with under section 118 only when they do not involve any question as to title in the property of which partition is sought. CHANDA SINGH *v.* FATEH SINGH.

15 P R 1890 Rev.

2. Appeals from orders of Assistant Collectors under section 118 (1) lie to the Commissioner, and not to the Collector. GANDA SINGH *v.* JHANDA SINGH.

14 P R 1900 Rev.

Section 121.

—Suit for possession of land allotted by instrument of partition.

See JURISDICTION OF CIVIL OR REVENUE COURT. **63 P R 1894**

PUNJAB LAND REVENUE ACT, 1887—*contd.*

Section 122.

—*Suit for possession of land allotted by instrument of partition.*

See JURISDICTION OF CIVIL OR REVENUE COURTS. **63 P R 1894**
118 P R 1894

—*Where on partition of land a field allotted to B remains in possession of A, the latter can sue within three years for its recovery in the Revenue Court and after that in Civil Court.*

See LIMITATION. **81 P R 1911**

Section 123.

—*Partition of agricultural and residential land and house property privately effected—Suit to enforce terms of award.*

See JURISDICTION OF CIVIL OR REVENUE COURTS. **63 P R 1893**

Section 141.

—*Sale by Collector at instance of Civil Court—Jurisdiction of Civil Court in execution of decree to confirm such sale.*

See JURISDICTION OF CIVIL OR REVENUE COURT. **83 P R 1896**

Section 143.

—*Attachment of Jagir revenue—Procedure.*

See CIVIL PROCEDURE CODE, 1908, SECTION 60, CLAUSE (*g*). **4 P R 1894 Rev.**

Section 158 (1).

See SECTION 117, *supra*.

—*Suit for possession of land, allotted by instrument of partition instituted after more than three years.*

See JURISDICTION OF CIVIL OR REVENUE COURT. **63 P R 1894**

—*Section 158 (1) of the Punjab Land Revenue Act prevents a Civil Court from taking cognisance of a claim for land in addition to that allowed in partition proceedings.*

See CIVIL PROCEDURE CODE, 1908, O. II, R.R. 1 AND 2. **8 P R 1910**

Section 158 (2) (VI).

—*Suit for correction of Settlement Record and for declaration of title.*

See JURISDICTION OF CIVIL OR REVENUE COURT. **25 P R 1889**

Section 158 (2) (IX).

—*Suit relating to land revenue.*

See JURISDICTION OF CIVIL OR REVENUE COURT. **53 P R 1890**

—*Suit for declaration that the defendants were entitled to collect the revenue from them in cash, and not in kind.*

See JURISDICTION OF CIVIL OR REVENUE COURT. **77 P R 1891**

PUNJAB LAND REVENUE ACT, 1887—*contd.*

Section 158 (2) (XIV).

—*Suit for declaration that the defendants were entitled to collect the revenue from them in cash and not in kind.*

See JURISDICTION OF CIVIL OR REVENUE COURT. **77 P R 1891**

Section 158 (2) (XVII).

1. *Suit to set aside award of arbitrators appointed by Revenue Officer in partition proceedings—Allegation of fraud, but no dispute as to title.*

See ARBITRATION. **52 P R 1898**

2. *Jurisdiction of a Civil Court to entertain a suit for a declaration that a partition effected by the Revenue authorities was not binding on the reversioners of one of the parties.*

See JURISDICTION. **104 P R 1900**

3. *Suit for recovery of possession of land allotted to plaintiff on partition.*

See JURISDICTION OF CIVIL OR REVENUE COURT. **31 P R 1890**
63 P R 1894

4. *Suit for declaration that plaintiffs were owners of certain land which they alleged had come in their possession under a partition made by the Revenue authorities, but had by an error in the preparation of the final papers recorded in defendants' name.*

See JURISDICTION OF CIVIL OR REVENUE COURT. **88 P R 1892**

5. *Suit for possession of land allotted by Revenue Officer on partition to defendants.*

See JURISDICTION OF CIVIL OR REVENUE COURT. **118 P R 1894**

6. *Partition proceedings—Question of title raised before Revenue Officer, but not decided—Completion of partition—Jurisdiction of Civil Court to entertain subsequent suit in respect of the said question of title.*

See JURISDICTION OF CIVIL OR REVENUE COURT. **72 P R 1896 (F. B.)**

7. *Partition proceedings by the Revenue Authorities—Jurisdiction of Civil Court to entertain subsequent suit for a declaration that certain land was the plaintiffs' exclusive property.*

See JURISDICTION OF CIVIL OR REVENUE COURT. **29 P R 1901**

8 *Common land—Partition—Suit for declaration that land was not subject to partition.*

See JURISDICTION OF CIVIL OR REVENUE COURT. **144 P R 1907**

9. *Partition proceedings—"Question of title involved"—Entry in* Wajib-ul-arz *prohibiting partition—Reference to Civil Court.*

See PARTITION. **11 P R 1896 Rev.**

PUNJAB LAND REVENUE ACT, 1887—*contd.*

Section 158 (2) (XVII)—*contd.*

10. *Partition of agricultural and residential land and house property—Suit to enforce terms of award.*

Held, that a claim for the enforcement of an award by which the partition had already been fully carried out, being not one which asked the Court to effect a partition, was not excluded from the cognizance of the Civil Court by section 158, sub-section (2) (xvii). SARDAR WASAWA SINGH *v.* SARDAR AMR SINGH. **63 P R 1893**

11. *Decree of Civil Court passed without jurisdiction—Power of Revenue Court to ignore such decree—Punjab Land Revenue Act*, 1887, *section* 158 (*xvii*).

In a suit for partition of village *shamilat* a Civil Court passed a decree to the effect that plaintiffs were entitled to partition according to the extent of their holdings. No question of title was involved in the case.

Held, that the decree of the Civil Court was one passed without jurisdiction (section 158, clause (*xvii*) of the Punjab Land Revenue Act, 1887), and that, therefore, the Revenue Officer exercising jurisdiction under the Act, was entitled to ignore such decree.

XXII W. R. 361 referred to. MANNAGIR *v.* HAZARI. **2 P R 1895 Rev.**

12. *Suit for declaration of right to half share of joint undivided holding—Suit by co-sharer—No claim for partition—Procedure.*

In the present case it appeared that on the death of one R. S., the common ancestor of the parties in 1870, his land was entered as the property of his four sons in equal shares of one-fourth each, the same entry being repeated in the Settlement papers of 1879, and that subsequently, on deaths of the various sons of R. S., entries in respect of each of such sons' shares were made in the names of the respective sons of the latter. All these entries were in accordance with the *pagwand* principle, and were not contested until the present suit was filed by plaintiffs. It further appeared that plaintiffs had originally applied to the Revenue authorities for partition of their share in the holding which was joint and undivided, claiming one-half of the entire estate on the allegation that their family was governed by the *chundavand* rule. Partition having been refused by the said authorities on the ground that the partition sought was not in accordance with the shares entered in the Revenue Records, and plaintiffs having been referred to a civil suit to establish their right to one-half instead of one-fourth the property, the present suit was filed to obtain a declaration that plaintiffs were entitled to one-half the holding on the *chundavand* rule. In appeal it was contended on behalf of defendants (by way of preliminary objections) that no declaratory decree should be granted in this case because plaintiffs could sue for further relief, *i. e.*, partition under section

PUNJAB LAND REVENUE ACT, 1887—*concld.*

Section 158 (2) (XVII)—*concld.*

265 of the Civil Procedure Code, and that the claim was barred by limitation as defendants had been in adverse possession for more than twelve years.

Held, that the procedure that had been adopted by plaintiffs in this case was in accordance with the law, and that inasmuch as a claim for partition of a revenue-paying estate cannot, under section 158 of the Punjab Land Revenue Act, 1887, be entertained in a Civil Court, there was no further relief which plaintiffs could have sought in the causes of action disclosed in the plaint, which is the kind of further relief contemplated in section 42 of the Specific Relief Act, 1877

I. L. R. XI Mad. 116 and *I. L. R. X All.* 5, referred to. GOPAL *v.* SHEWAG RAM.

12 P R 1899

Section 158 (XVIII).

—*Suit for possession of land allotted by instrument of partition.*

See JURISDICTION OF CIVIL OR REVENUE COURT. **63 P R 1894**

Rule Nos. 177 (iii) (b) and 179.
See LAMBARDAR. **7 P R 1904 Rev.**

PUNJAB LAWS ACT, 1872.

Section 5.

1. *Custom the primary rule of decision in the matters specified in the section—Onus of proving alleged custom.*
See under CUSTOM—

2. *Presumption in favor of the existence of a custom—Non-agriculturists.*
See CUSTOM—VIII. MAINTENANCE AND SUCCESSION—A. RULE OF DECISION.
41 P R 1901

3. *Remarriage of Hindu widow—Rights in deceased husband's property—Act XV of* 1856—*Punjab Laws Act,* 1872, *section* 5—*Effect of the Act of* 1856 *upon a custom recognizing the remarriage of widows.*
See CUSTOM—VIII. MAINTENANCE AND SUCCESSION—I. REMARRIAGE AND UNCHASTITY OF WIDOW. **46 P R 1891**

4. Pre-emption is not one of the matters specified in section 5 as a matter to which in the absence of proofs of special custom, Hindu or Muhammadan Law is to be applied. MIRZA ANWAR ALI *v.* SHAM NARAIN.

8 P R 1893

See ALSO FATEH KHAN *v.* MUHAMMAD.

98 P R 1898

5. In the absence of a proved positive custom regulating the right of inheritance, rules of personal law of the parties must be followed in accordance with the provisions of section 5 of the Punjab Laws Act, 1872. SHERAN *v.* MUSSAMMAT SHARMAN

117 P R 1901

PUNJAB LAWS ACT, 1872—*contd.*

Section 5—*concld.*

6. As the Punjab Laws Act gives equal protection to those governed by their personal law as well as to those governed by custom, there can be no legal presumption in any case coming before a Court in the Punjab that it is to be governed by custom rather than the personal law of the parties. But in every case where a custom is set up, it is the duty of the person alleging it to prove where it is not admitted that it exists and is applicable to the points in issue. MUHAMMAD HUSSAIN *v.* SULTAN ALI.

54 P R 1903

Section 8.

The rule in section 8 deals with the devolution of revenue assignments only with which alone the Government is concerned, and has nothing to do with private property. MUSSAMMAT MUL KOER *v.* SARDAR MAHTAB SINGH. **16 P R 1890**

Sections 9—20.

See PRE-EMPTION.

Section 25.

Section 25 of the Punjab Laws Act applies only to misconduct committed by a person previously to his being adjudicated an insolvent, and bankruptcy of a firm does not necessarily involve the prohibition by law of its business. The partners themselves are thereby prevented from carrying on the business, but it does not necessarily follow that the business itself is prohibited by law. MAHARAJA MAL *v.* HIRA MAL.

37 P R 1897

Section 28.

—*Applicability of Chapter XXXVII of the Civil Procedure Code to insolvency proceedings under Act IV of* 1872—*Composition—Act IV of* 1872, *section* 28—*Jurisdiction of Judge in bankruptcy to make a reference under section* 617, *Civil Procedure Code.*

Held, that the provisions of Chapter XXXVII of the Civil Procedure Code are not applicable to a proceeding in insolvency under the provisions of the Punjab Laws Act, as between the creditors on one side, and the insolvent on the other.

If a majority of the creditors chose to say as between themselves and the insolvent that they will accept whatever arrangement or composition three arbitrators appointed by them may determine, and an arrangement is made by these means and brought into Court, this is no doubt an arrangement or composition which may become binding on the whole body of creditors if sanctioned by the Court, but in such a case the arbitration proceedings are not taken under the Code or through the Court, and the Court must proceed under section 28 of the Punjab Laws Act to

PUNJAB LAWS ACT, 1872—*concld.*

Section 28—*concld.*

deal with the arrangement or composition on its merits, apart from the question of how the arrangement or composition has been arrived at.

Quære, whether it is competent to a Judge acting under the insolvency jurisdiction conferred by the Punjab Laws Act to refer a question to the Chief Court under section 617 (read with section 647) of the Code of Civil Procedure. SIMLA BANK *v.* NARPAT RAI.

88 P R 1887

Section 45.

—*Revision—Order made under section* 45 *of the Punjab Laws Act,* 1872, *requiring foreign vagrants to leave district—Judicial proceedings—Power of revision by Chief Court.*

Held, that the proceedings of a District Magistrate requiring foreign vagrants to leave his district under section 45 of the Punjab Laws Act, 1872, are not judicial proceedings and are, therefore even if illegal, not open to revision by the Chief Court. SUNDAR *v.* KING-EMPEROR. **59 P R 1907 Cr.**

PUNJAB LIMITATION ACT, I OF 1900.

Section 2.

1. *Effect of Punjab Limitation Act,* 1900, *on claims barred under the Limitation Act,* 1877, *before it came into force.*

Held, that the right to sue barred under Act XV of 1877 before the Punjab Limitation Act (I of 1900) came into force was not revived by that Act. TEKA *v.* SOHNU.

39 P R 1901

2. *Punjab Limitation Act, I of* 1900—*Effect on suits instituted before its enactment.*

Held, that the Punjab Limitation Act I of 1900 does not apply to a suit instituted before the date of its enactment. RAM DITTA *v.* TEHLU. **4 P R 1902**

3. *Punjab Limitation Act, I of* 1900—*Application of, to rights acquired before the Act came into force—Retrospective Enactment.*

Held, that the Punjab Limitation Act I of 1900, does not affect any prescriptive right or title which had accrued or been acquired before that Act came into operation.

Queen v. *Leeds Bradford Railway Company* (21 *L. J. M. C.* 193), *In the matter of Ratansi Kaliani* (*I. L. R. II Bom.* 148 (*F. B.*)), *Delhi and London Bank, Limited,* v. *Orchard* (*I. L. R. III Calc.* 47 (*P. C.*)), *Sitaram Vasudev* v. *Khanderav Balkrishna* (*I. L. R. I Bom.* 286), *Behary Lal* v. *Goberdhan* (*I. L. R. IX Calc.* 446), *Khusalbhai* v. *Kahbai* (*I. L. R. VI Bom.* 26), *Girish Chandra Basu* v. *Aparba Krishna Das* (*I. L. R. XXI Calc.* 940), *Nursing Doyal* v. *Hurryhur Saha* (*I. L. R. V Calc.* 897), *Chowdhari Nursing Das* v. *Lala Dholan Das* (12 *P. R.* 1900, (*F. B.*)), and *Lal Mohun Mukerjee* v. *Jogendra Chunder Roy* (*I. L R. XIV Calc.* 636 (*F. B.*)), referred to. SAHIB DAD *v.* RAHMAT.

90 P R 1904 (F. B.)

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PUNJAB LIMITATION ACT, I OF 1900—*contd.*

Section 2—*concld.*

4. *Alienation by male proprietor of ancestral land—Suit by after-born son of such proprietor to recover possession of such land—Limitation—Starting point of—Punjab Limitation Act*, 1900.

Held that under the provisions of the Punjab Limitation Act a suit by a son of a male proprietor governed by the Customary Law of the Punjab to recover possession of ancestral land alienated by such proprietor during his life-time, must be instituted within twelve years from the date on which the alienation was attested by the Revenue Officer in the register of mutations maintained under the Punjab Land Revenue Act, 1887, and a son of such proprietor born after the date of such alienation is not exempted from its operations by section 7 of the Indian Limitation Act, 1877, and can claim no deduction on the ground of his minority, as when once time begins to run no subsequent disability to sue stops it.

Jawala v. *Hira Singh* (55 *P. R.* 1903) and *Ganpat* v. *Dhani Ram* (76 *P. R.* 1906) referred to.

Govinda Pallai v. *Thayam Mal* (14 *M. L. J.* 209) not approved. INAYAT KHAN *v.* SHABU.

108 P R 1907

5. *Alienation by male proprietor of ancestral land—Suit by reversioner to recover possession of such land—Limitation—Punjab Limitation Act*, 1900—Onus probandi *as to the inapplicability of the Act.*

Held that the *onus* of proving the inapplicability of Punjab Limitation Act, 1900, to a suit by a reversioner of a male proprietor to recover possession of ancestral land alienated by such proprietor, on the ground that the sale was made without any legal necessity or consideration, lies upon the plaintiffs, who should satisfy the Court that the cause of action had accrued to him before that Act came into operation. KARAM SINGH *v.* MUHAMMAD DIN.

11 P R 1909

Article 1.

1. *Custom—Alienation—Declaratory suit after the death of alienor in the lifetime of the widow—Punjab Limitation Act*, 1900, *Article* 1.

Held, that when a suit for possession is impossible owing to the presence of females entitled to hold for life a suit on the part of reversioners for a declaration to the effect that an alienation by a sonless proprietor shall not affect their reversionary rights is maintainable notwithstanding that the alienor is dead at the time when the suit is brought.

Also, that Article 1 of the Punjab Limitation Act is applicable to such a suit. JIWANA *v.* ABDULLAH.

64 P R 1909

2. *Held*, that a suit instituted in January 1907 for a declaration that a sale deed

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PUNJAB LIMITATION ACT, I OF 1900—*concld.*

Article 1—*concld.*

executed in January 1897 did not affect the reversionary rights of the plaintiffs was within limitation, being governed by Article 1 of the Schedule to the Punjab Limitation Act of 1900, and not by Article 120, Schedule II, of the Indian Limitation Act of 1877.

See INDIAN LIMITATION ACT, 1877 (9).

69 P R 1909

Article 2.

1. *Suit for possession by collaterals after the death of widow but more than* 12 *years after the alienation by the last male owner.*

See LIMITATION.

62 P R 1910

2. *Applicability of—to a suit by reversioners for possession of land mortgaged by male owner more than* 12 *years before suit and subsequently sold by his widow.*

See LIMITATION.

33 P R 1911 (F. B.)

3. *When mutation has taken place at any time limitation starts from date of mutation and not from date of possession.*

See LIMITATION.

48 P R 1911

4. A suit on the death of the widow of the last male proprietor by a reversioner for possession of ancestral land alienated by the husband of the widow is governed by Article 141 of the Indian Limitation Act, 1877, and not by this article. MIRAN BAKHSH *v.* AHMAD.

145 P R 1907

PUNJAB LOANS LIMITATION ACT, 1904.

1. *Punjab Loans Limitation Act*, 1904—*Date of coming into operation—Application of, to rights already barred under the Limitation Act*, 1877—*Punjab General Clauses Act*. 1898, *section* 3.

Held, that by virtue of section 3 of the Punjab General Clauses Act, 1898, the Punjab Loans Limitation Act, 1904, came into force on the 23rd June 1904, *i. e.*, the day on which the assent of the Governor-General was first published in the local Gazette by the Lieutenant-Governor in pursuance of sections 40 and 48 of the Indian Council Act, 1861, and that it does not apply to a right already barred at the date of its commencement under the Indian Limitation Act, 1877. KAHN SINGH *v.* HAKIM SINGH.

97 P R 1905

2. *The Punjab Loans Limitation Act, I of* 1904, *Article* 57—*applicability of—Transfer of liability for debt.*

2409

PUNJAB LOANS LIMITATION ACT, 1904—*concld.*

On 31st March 1902, one Mussammat M., guardian of certain minors, sold property to G. A. K., deceased husband of defendant, for Rs. 363-8-0, being part of the amount due by the minors to plaintiff, the purchaser undertook to pay the said sum to plaintiff and the plaintiff agreed to look to him for it. The deed of sale was deposited with plaintiff. On 18th February 1908, plaintiff brought a suit against the widow of G. A. K. for recovery of the debt and was met with a plea of limitation. The first Court held the suit fell under Article 59 or 61 and decreed the claim. The Divisional Judge on appeal confirmed the decree but held that Article 59 applied. The Chief Court on revision—

Held, that the case was one of mere transfer from one person to another of liability for a debt, G. A. K. having stepped into the shoes of the minors to whom money had been lent and that Article 57, as amended by the Punjab Loans Limitation Act, 1904, applied ("money payable for money lent"). MUSSAMMAT UMDA *v.* DILBAGH RAI.

59 P R 1910

PUNJAB MUNICIPAL ACT, IV OF 1873.

—*Octroi—Rules regarding levy of octroi on Government stores—Government of India No.* 2-99, *dated* 22*nd December* 1875—*Failure of importer to comply with rules—Refund.*

Where plaintiff, a contractor to the Military Works Department, sued defendants, who were the farmers of the cantonment octroi duties, for the refund of a sum of money paid as duty on certain articles imported for the use of Government, and it appeared that the terms of Rule II regarding the levy of octroi on Government stores passing a municipal barrier (comtained in Government of India No. 2-99, dated 22nd December 1875) had not been complied with, as no declaration was made by the importer, when the said stores were imported, that they were intended for the use of Government, *held*, that in the absence of a special agreement between the plaintiff and the octroi contractors, the plaintiff could not claim the refund sought, nor did the practice observed in previous years by other octroi contractors bind the defendants. CHUHAR SINGH *v.* GOKAL CHAND.

97 P R 1882

PUNJAB MUNICIPAL ACT, 1891.

section 2.

—*And section* 92—*Sanction to build—Sanction granted under Act XIII of* 1884—*Effect of Act XX of* 1891 *upon such sanction.*

A Municipal Committee refused to permit plaintiff to erect a certain building. Plaintiff filed a suit for perpetual injunction restraining the Committee from interfering with

PUNJAB MUNICIPAL ACT, 1891 —contd

Section 2—*concld.*

his building on the ground that in 1889 permission, of which he did not avail himself at the time had been granted to his ancestor under section 88, Act XIII of 1884, and that inasmuch as that Act contained no provision for sanction abating unless the building sanctioned was erected within a specified period he was entitled to avail himself of it at any time.

Held, that, inasmuch as under section 2 of Act XX of 1891 the sanction of 1889 must be treated as if it had been granted under that Act, the petitioner was only entitled to avail himself thereof within one year of the date on which that Act came into force. MUHAMMAD YASIN *v.* THE MUNICIPAL COMMITTE, LAHORE.

9 P R 1905

Section 26.

—*And sections* 122, 169—*Extraordinary powers of President in case of emergency—Notice issued by the President under section* 122 *to make drainage improvements—Legality of such notice without proof of emergency.*

Accused was convicted and fined for not complying with a notice issued by the Municipal Committee of Simla under section 122 of the Punjab Municipal Act of 1891. The notice was signed by the Secretary and purported to be given under the authority of the President vested in him by section 26 of the Act. There was no proof on the record, either that the necessary requirements of section 26 existed, or that its conditions were observed.

Held, reversing the conviction and sentence that the notice was *ultra vires* inasmuch as there was no proof that the requirements of section 26 existed. PURAN MAL *v.* KING, EMPEROR.

26 P R 1905 Cr.

Section 42.

1. *Punjab Municipal Act, XX of* 1891, *sections* 42 (1) (*f*) *and* 201—*Imposition of tax on goods stored at a place originally outside the octroi zone and brought subsequently within it—Duty of Magistrate to enquire, whether tax* is intra vires *before acting under section* 201

Held, that a Municipal Committee is not competent to levy octroi upon goods which were originally brought to a place *outside* the octroi limits and remained there after the octroi limits had been extended, so as to bring the place within the octroi zone, as such goods cannot be said to have been brought within the octroi limits within the meaning of section 42 (1) (*f*) of the Punjab Municipal Act, 1891.

Held also, that it is the duty of a Magistrate to whom an application is made on behalf of a Committee under section 201 of the Punjab Municipal Act, 1891, to see that on the facts, as stated by the claimant, the amount is *claimable*, *i.e.*, whether the claim is *intra vires* or *ultra vires* and if he finds that the sum claimed is beyond the power (*i.e.*, *ultra vires*) of that Committee he is bound to refuse the application. CROWN *v.* KANHAYA LAL.

2 P R 1910 Cr.

2. *Punjab Municipal Act, XX of* 1891, *section* 42 (1) (*A*) (*a*) (*i*)—*Gross annual rent included house-tax payable by tenant to landlord.*

Held, that when Municipal taxes on a house at Simla payable by the landlord, are, by contract between landlord and tenant, payable by the latter to the former as part of the consideration for occupation, the sum so payable must be included in assessing the gross annual rent or annual value of which the Municipal Committee is entitled to levy a house tax under section 42 (1) (*A*) (*a*) (*i*) of the Punjab Municipal Act, 1891, irrespective of the terms in which that sum is described in the contract. FLEMING *v.* THE MUNICIPAL COMMITTEE OF SIMLA.

46 P R 1910

Section 45.

—*Punjab Municipal Act*, 1891, *sections* 2 (2), 45 (8) (*c*)—*Tax leviable by the year.*

Held, that in a Municipality governed by Act XX of 1891, a tax leviable by the year is under section 45 (8), proviso (c), leviable by the calendar year from the 1st January to the 31st December, and that the said proviso relates equally to taxes which were imposed before the said Act came into force and which had hitherto been levied by the financial year from the 1st April to the 31st March. MR. R. SYKES *v.* MUNICIPAL COMMITTEE, DHARMSALA.

4 P R 1898

Section 80.

And sections 95, 164, 169—*Encroaching upon streets—Penalty for disobedience to orders of Committee.*

Where a Municipality has not been in possession of the disputed land (which according to its allegations formed part of a public street) for a considerable period, and where it was proved that as a fact the petitioner had occupied it for more than twenty years previous to date of the dispute, *held* that the Municipality had no right to interfere in its management or to enforce its authority by criminal proceedings without first establishing its right of ownership.

Held, also, that section 87 of the Punjab Municipal Act is inapplicable to a structure which had been built with the permission of a Committee although it may be on a part of a public thoroughfare, and therefore it does not entitle a Committee to take steps for its removal by a summary notice under section 95 of the Act.

PUNJAB MUNICIPAL ACT, 1891 —*contd.*

Section 80—*concld.*

Nur Din v. *The Municipal Committee, Lahore* (3 *P. R.* 1892 *Cr.*), *Hanumaya* v. *Roupell* (*I. L. R. VIII Mad.* 64), *Matsadi Mal* v. *Municipal Committee, Bhiwani* (6 *P. R.* 1891 *Cr.*) and *Chipal Buta* v. *The Municipal Committee of Simla* (24 *P. R.* 1890 *Cr.*), referred to. KARIM BAKHSH *v.* THE MUNICIPAL COMMITTEE OF UMBALLA.

11 P R 1904 Cr.

Section 91.

—*And sections* 92, 94, 95—*Refusal of Municipal Committee to sanction re erection of a projection—Discretion of Committee—Jurisdiction of Civil Court—Compensation.*

Sections 92 and 150 of the Punjab Municipal Act, 1891, provide for the disposal of certain matters by a Municipal Committee and the Commissioner, and a Civil Court has no jurisdiction to interfere with the discharge of their powers and duties by either. But when it is alleged that action has been taken by the Committee *ultra vires*, or in bad faith, or which is not covered by the authority of the Act, the Court has the power to enquire into the matter, and if it finds that the action complained of is not covered by the powers given to such Committee under the Punjab Municipal Act, 1891, or any other Act, the Court can grant relief which in certain cases would take the form of an injunction

In a case where a Municipal Committee refused to permit plaintiff to re-erect a certain construction which he had pulled down and wished to rebuild, except in accordance with the Committee's bye-law, whereupon plaintiff sued in the Civil Court for a decree that the Committee had no right to interfere with his rebuilding, and that they should not so interfere.

Held, that whether or not plaintiff was entitled to rebuild the construction without the permission of the Committee (a point not before the Court,) his right to do so was not indefeasible, but must come to an end as soon as the Committee chose to exercise their powers under section 91 or section 95 of the Act, a matter entirely within their discretion, and in which they were not liable to be controlled by the Civil Court, or if so liable at all, only when they exercised their discretion in a capricious, wanton and oppressive manner. —BADRI DAS *v.* MUNICIPAL COMMITTEE, DELHI.

90 P R 1898

Section 92.

1. *And sections* 95, 150—*Civil Court's jurisdiction to set aside Municipal Committee's orders—Municipal Committee's powers for recalling a sanction for the erection of a building once given—Specific Relief Act* (*I of* 1877), *sections* 54 *and* 56—*Prepetual injunction.*

A Sub-Committee of Lahore Municipality gave appellant permission to build on a site which they subsequently discovered was

PUNJAB MUNICIPAL ACT, 1891 —*contd.*

Section 92—*contd.*

part of a public thoroughfare. The Committee cancelled the sanction and gave notice to the appellant not to build and to pull down anything which had been erected. On appeal by the appellant to the Commissioner that officer dismissed the appeal and directed him to sue for a declaratory decree. Appellant filed a suit for perpetual injunction, both the lower Courts dismissed the suit on the ground that it did not lie in its present form. On appeal to the Chief Court,

Held, that the Civil Courts have no power to interfere with the discharge of the Committee and the Commissioner's powers and duties under sections 92 and 150 of the Act until it is shown that the Committee's action was *ultra vires* or taken in bad faith, or not covered by the authority of the Act.

Held, also, that there is no provision in the Act for cancellation of sanction once given, and that section 95 is inapplicable to such cases. The proper procedure in a case where after sanction has been given under a mistake by the Committee to build on part of the public thoroughfare, was for the Committee to have resorted to the Civil Court to restrain the appellant from building on a public thoroughfare.

Held, that the notice under section 95 should be cancelled, and that the Municipal Committee be directed not to take any steps under the Municipal Act contrary to the permission to build granted under section 92 of the Act. IBRAHIM *v.* MUNICIPAL COMMITTEE OF LAHORE.

52 P R 1900

2. *Building a house without receiving any order from the Municipal Committee—Notice under sub-section* (1) *of section* 92.

Held, that where a Municipal Committee failed to pass any order within six weeks after the receipt of a valid notice under sub-section (1) of section 92 of the Punjab Municipal Act, the accused was warranted under sub-section (5) of that section to build his house, and must be deemed to have obtained the necessary sanction. AYA RAM *v.* QUEEN-EMPRESS.

9 P R 1901 Cr.

3. *And section* 95—*Erection of a building—Bridging over a drain—Distinction between—Conditional sanction.*

The plaintiffs having applied to the Municipal Committee for permission to roof over the drain in front of their gates, the Municipal Committee by a resolution which was passed more than five months after the date of the application agreed to allow the drain to be roofed, provided that the plaintiffs executed an agreement disclaiming all title to a piece of land between the drain and their compound wall. The plaintiffs in the meanwhile had roofed the drain and as they did not execute the agreement relinquishing their right to the land between the drain

PUNJAB MUNICIPAL ACT, 1891 —*contd.*

Section 92—*contd.*

and their compound wall, the Municipal Committee issued a notice to them to remove the roofing over the drain. The plaintiffs sued for an injunction to restrain the threatened demolition and justified their acts under clause 5 of section 92 of the Municipal Act, inasmuch as the Committee had neglected to pass orders on their application within six weeks.

Held, that section 92 was not applicable to the case, for though the bridging of the drain came within the meaning of erection of a building in section 92, that section is governed in the matter of building over a drain by section 95, and so the written permission of the Municipal Committee was necessary. But, *held further*, that the imposed condition was *ultra vires*, and that the plaintiffs were entitled to the injunction. The Municipal Committee while acknowledging that there was no objection to the erection was not empowered to compel the applicant to do something quite foreign to the object of the application and to the purpose and object for which the power of sanction was given.

Mutsadi Mal v. *Municipal Committee, Bhewani* (6 *P. R.* 1891, *Cr.*) *Nagar Valab Narsi* v. *The Municipality of Dhandhuka* (*I. L. R. XII Bom.* 490), *Badri Das* v. *Municipal Committee, Delhi* (90 *P. R.* 1898), *Chipal Buta* v. *The Municipal Committee of Simla* (24 *P. R.* 1890, *Cr.*) and *Ollivant* v. *Rahmatullah Nur Muhammad* (*I. L. R. XII Bom.* 474), referred to. DAMODAR DAS *v.* MUNICIPAL COMMITTEE, DELHI.

27 P R 1901

4. *And section* 95—*Erection or re-erection of a building—Projection or encroachment on a street—Distinction between—Authority to add any projection or encroahment over a street without the permission of the Committee.*

Held, that section 92 of the Punjab Municipal Act refer to buildings to be erected on private property and section 95 to building which encroach or project into a street and therefore it is not lawful for the owner of such building to add to or place against or in front of his building any projection or encroachment without first obtaining the written permission of the Committee. KING-EMPEROR *v.* BILLU MAL.

27 P R 1904 Cr.

5. *Punjab Municipal Act*, 1891, *section* 92—*Erection of a building—Conditional sanction—Competency of a Municipal Committee to protect its private rights when dealing with public matters—Discretion of Committees—Power of Civil Court to interfere with such discretion.*

On 17th October 1899, plaintiff applied to the Municipal Committee of Kohat for

PUNJAB MUNICIPAL ACT, 1891 —*contd.*

Section 92—*contd.*

permission to rebuild certain *kothris*, the doors of which were to open on the adjoining land which belonged to the Committee. On 24th February 1900 the Committee granted the application on the condition that the plaintiff might build on his own land, but that he should not open any doors on the municipal land.

Held, that as the Municipal Committee had no power, when dealing with public matters, to use its statutory powers to protect its private rights, its action in restraining the plaintiff from opening doors on the municipal land was *ultra vires*, more especially as no order restraining the plaintiff from building as proposed by him had been passed or communicated to him within six weeks from the receipt of the application as required by clause 5 of section 92 of the Municipal Act.

The proper procedure in such a case was for the Committee to point out that as the opening of the doors would be an infringement of their rights in respect to the adjoining property, it would be resisted by all legal means, and in case of necessity to have resorted to the Civil Court to restrain the plaintiff from injuring their rights.

Held, also, that the Civil Courts have jurisdiction to set aside and restrain all such acts of a Municipal Committee which do not fall within the scope of the authority given them by the Municipal Act.

Badri Das v. *Municipal Committee of Delhi* (90 *P. R.* 1898) and *Ibrahim* v. *Municipal Committee of Lahore* (52 *P. R.* 1900), referred to. ALI MARDAN *v.* MUNICIPAL COMMITTEE, KOHAT. **45 P R 1905**

6. *Sanction to build—Necessity to commence building within the period fixed by clause* (6) *of section* 92, *meaning of.*

Held, that where a person after obtaining permission under section 92 of the Punjab Municipal Act commenced building within the period fixed by clause (6) of that section, it is not obligatory for him to proceed with the building until completion.

He is at liberty to commence and finish each separate part of the building as sanctioned at any time, thereafter convenient to him, provided he has commenced some part of the building operations within the period of one year from the date of sanction. BANWARI LAL *v.* KING-EMPEROR.

61 P R 1905 Cr.

7. *And section* 94—*Partition wall over a* tharra—*Authority to erect without the permission of the Committee—Erection of a building.*

Held, that building a new partition wall over a *tharra* amounts to "erecting a building" within the meaning of section 94 of the Punjab Municipal Act, 1891, and as such requires sanction of the Committee as provided by section 92 of the Act. BASANT RAM *v.* KING-EMPEROR. **13 P R 1907 Cr.**

PUNJAB MUNICIPAL ACT, 1891 *contd.*

Section 92—*contd.*

8. *And section 95—Erection of a new building—Application for including projections on a street—Omission of Municipal Committee to pass orders thereon within six weeks—Applicant not entitled to presume tacit sanction provided for in sub-section 5 of section 92 as to projection or encroachment.*

Held, that where sanction for the erection of a projection or structure overhanging into or encroaching upon any street which requires a written permission under section 95 of the Punjab Municipal Act, 1891, is applied for and included in an application for the erection or re-erection of a building provided for in section 92 and the Municipal Committee fails to pass any order within six weeks after the receipt of a valid notice under sub-section 1 of section 92, the person interested in such application is not warranted under sub-section 5 of that section to erect such projection and cannot be deemed to have obtained the necessary sanction in respect thereto.

The tacit sanction provided by sub-section 5 covers only erections or re-erections of buildings, but does not also cover a projection or structure overhanging into or encroaching upon any street or road. THE MUNICIPAL COMMITTEE OF DELHI *v.* DEVI SAHAI.

62 P R 1907

9. *Punjab Municipal Act, XX of 1891, section 92, sub-section (4), and section 145—Infringement of bye-law framed by the Kasur Municipality.*

Held, that non-compliance with the provisions of the first part of sub-section (4) of section 92 of the Municipal Act, XX of 1891, does not of itself make a person criminally liable to the penalty provided for the infringement of a bye-law framed by a Municipal Committee under the said section ; it only enables the Committee to issue a notice to him, calling upon him to alter or demolish the building.

Held, also, that the bye-law framed by the Kasur Municipality under section 92 of the Punjab Municipal Act, a breach of which is punishable with a fine, does not make it obligatory on the person giving to the Committee a notice of his intention to erect or re-erect a building, to refrain from so erecting or re-erecting within six weeks from the date of that notice, and the provisions of sub-section 4 of section 92 of the Municipal Act cannot be read into the bye-law as framed by the Committee. THE CROWN *v.* DINA NATH.

13 P R 1909 Cr.

10. *Municipalities—Power given to, under Acts to be construed strictly—Notice under section 92 for demolition of a building cannot be applied to case falling under section 95 of the Punjab Municipal Act, XX of 1891.*

Held, that powers given to a Municipal Committee under Acts must be construed strictly and that consequently when a Municipal Committee issued notice upon the plaintiff for the demolition of a *tharra* apparently under section 92 of the Punjab Municipal Act and not under section 95, plaintiff was entitled to a declaration that the Committee had not the power to order the demolition of the *tharra* in the absence of proof that it had been erected recently.

56 P R 1911

PUNJAB MUNICIPAL ACT, 1891 —*contd.*

Section 92—*concld.*

Section 120 E.

—Municipal Committee—Discretion of to take action under section 120 E.—Suit by person aggrieved for injunction—Jurisdiction of Civil Court to restrain action of Municipality—Punjab Municipal Act, 1891, section 120 E.

Although under the powers given by the Legislature a Local Body may act perfectly *bona fide* and *intra vires* in issuing a certain order, still if that order injuriously affects the rights of any person the latter can undoubtedly appeal to the Civil Courts for protection, and to that protection he will be entitled if he can prove that the order in question was made wantonly or without any reasonable justification.

Therefore, where a Municipal Committee, at the instance of a discontented neighbour, issued a notice under section 120 E of Act XX of 1891, directing the plaintiff to close his old drain and to make a new one in its place along a different alignment, without any proper enquiry as to whether the existing drain was a menace to the health of the people surrounding it or the general public,

Held, that the Civil Court should under such circumstances interfere by injunction to restrain the Committee from carrying out its order which was inequitable and pretended to proceed on an alleged danger to health which was in no way proved.

Ollivant v. *Rahimtulla Nur Mahomed* (*I. L. R.* 12 *Bom.* 474), *Damodar Das* v. *Municipal Committee, Delhi* (27 *P. R.* 1901), *Badri Das* v. *Municipal Committee, Delhi* (90 *P. R.* 1898), and *Due* v. *Rameswar Malia* (*I. L. R. XXVI Calc.* 811), referred to. GHULAM MUHAMMAD *v.* JANGBAZ.

58 P R 1907

Section 123.

—Municipal Committee's power to carry water into a public drain—Conditional injunction.

See NUISANCE. **78 P R 1901**

Section 128.

1. *Punjab Municipal Act, 1891, section 128—Competency of Municipal Committee to issue notice requiring owner to remove and rebuild a dangerous wall.*

Held, that the renewal of a dangerous wall or bank built by the owner or occupier of a building on a hill station as a support to the hill side for a more substantial one amounts only to repairs within the provisions of section 128 of the Punjab Municipal Act, 1891, and a Municipal Committee is therefore competent under that section to issue a notice requiring the rebuilding of such a structure of specified dimensions after pulling it down. DEVI SARAN *v.* KING-EMPEROR.

13 P R 1908 Cr.

PUNJAB MUNICIPAL ACT, 1891 —*contd.*

Section 128—*concld.*

2. *Punjab Municipal Act, 1891, sections 128, 169—Notice requiring owner to remove ruinous shed without option to repair—Non-compliance of illegal notice.*

Held, that a notice issued by a Municipal Committee under section 128 of the Punjab Municipal Act, 1891, requiring removal of a ruinous shed without option of repairing the same is defective, and non-compliance therewith is consequently not an offence under section 169 of the Act. HAZURI MAL *v.* KING-EMPEROR.

18 P R 1908 Cr.

3. *Simla Municipal Bye law No. 18—construction of—Punjab Municipal Act, XX of 1891, section 143 (h) (ii).*

Held, that the appointment of an agent by a non-resident house-owner of Simla without notifying the appointment to the Engineer-Secretary of the Municipality is not a compliance with Bye-law 18 framed under section 143 (*h*) (*ii*) of the Punjab Municipal Act, 1891, and such house-owner is liable to the penalties provided by clause (4) of the said Bye-law.

21 P R 1911 Cr.

Section 154 (j).

—Custom duty—Refund of, on goods being again exported—Appeal to Commissioner on refund being refused—Suit for refund—Punjab Municipal Act, XX of 1891—Rules by Local Government—Rule VI.

The plaintiffs sued the defendants for compensation for refusal to refund Re. 1-2-9 custom duty, when the goods on which the tax had been paid, were again exported by plaintiffs.

Held, that under rule VI of the rules made by the Local Government under section 154 (*j*) of the Punjab Municipal Act, XIII of 1884 (which were maintained in force under section 2 (2) of the Punjab Municipal Act, XX of 1891) the plaintiffs had an appeal to the Commissioner from the order refusing the refund—and that the plaintiffs were bound to exhaust their remedy by appeal before filing this suit.

Held, consequently, that the present suit was barred by the plaintiffs' failure to appeal.

38 P R 1911

Section 164.

—Placing moras on a public street—Obstruction to the public.

PUNJAB MUNICIPAL ACT, 1891 —*contd.*

Section 164—*concld.*

Held, that the placing of *moras* by a shopkeeper in front of his shop on a public street amounts to an obstruction within the meaning of section 164 of the Punjab Municipal Act. GHASI RAM *v.* KING-EMPEROR. **45 P R 1905 Cr.**

Section 169.

1. *Conviction for disobedience of orders of Committee under Chapter VI—"Continuing breach."*

The accused having been convicted under section 169 of the Punjab Municipal Act for not complying with a notice under section 95 were sentenced to a fine of Rs. 5 each and, in the event of failure to remove the building within a week, to pay an additional fine of two annas a day, for every day after the week's grace on which the order to remove the building was not complied with.

Held, that the order as to the payment of a daily fine, after the date of conviction for failure to comply with the order was bad as a fine cannot be imposed prospectively. The words "continuing breach" in section 169 empower a Magistrate to impose a daily fine from the date mentioned in the notice issued by the Committee under section 95 up to the date of compliance or to the date of conviction whichever may first occur.

Queen-Empress v. *Veerammal* (*I. L. R. XVI Mad.* 230), cited. CROWN *v.* GURDITTA. **13 P R 1903 Cr.**

2. *And sections* 5, 15, 28—*Disobedience of order of a Committee not legally constituted.*

Held, that an order of a Municipal Committee, passed at a meeting presided over by a President who was neither elected nor appointed as a member of the Committee, nor its President as required by section 15 of the Punjab Municipal Act, being materially defective and invalid, a person cannot be convicted under section 169 for non-compliance therewith. CHANDA *v.* KING-EMPEROR. **46 P R 1905 Cr.**

Section 201.

—*Recovery of Taxes, etc., by a Committee under the Act—Revision—Power of Chief Court to revise an order passed by a Magistrate under section* 201—*Criminal Procedure Code*, 1898, *section* 439.

Held, that arrears of a contract of Municipal sewerage do not come within the scope of section 201 of the Punjab Municipal Act and as such are not recoverable under that section.

The section contemplates the realization of arrears of any tax, fee, or any other money claimable by a Committee under that Act as such and does not include the arrears which are claimable under a simple contract.

Held, also, that under section 439 of the Criminal Procedure Code the Chief Court has

PUNJAB MUNICIPAL ACT, 1891 —*concld.*

Section 201—*concld.*

power to revise an order passed by a Magistrate granting or refusing an application of a Committee under section 201 of the Punjab Municipal Act.

Ellis v. *Municipal Board of Mussoorie* (*I. L. R. XXII All.*, 111), *Lalji* v. *Municipal Committee, Lahore* (1 *P. R.* 1891 *Cr.*), *Nando Lal Basak* v. *Mitter* (*I. L. R. XXVI Calc.* 852), *Dewan Chand* v. *Queen-Empress* (2 *P. R.* 1899 *Cr.*) *Ganda Singh* v. *Baisakhi* (18 *P. R.* 1902 *Cr.*) and In re *Jaju Santram* (*I. L. R. XXII Bom.* 709), referred to. DIN MUHAMMAD *v.* MUNICIPAL COMMITTEE OF AMRITSAR. **23 P R 1903 Cr.**

PUNJAB TENANCY ACT, XXVIII OF 1868.

Section 2.

See OCCUPANCY RIGHTS. **145 P R 1890**
20 P R 1896

1. *Agreement—Absence of consideration.*

Defendants, hereditary tenants, being in doubt as to their status being maintained, signed a lease for years, in which payment of rent in kind instead of cash was provided for; the lease was recorded by the Settlement officer. *Held*, that there was no consideration for defendants' entering into the lease or agreement, and it was not binding on them. KHAIR DIN *v.* MOHAMED. **16 P R 1872**

2. *Alienation—Agreement.*

Held by the Chief Court (CAMPBELL, J., doubting), that section 2 of the Tenancy Act does not refer only to special agreements between any particular landlord and his tenant, but includes general entries in the *wajib-ul-arz* or Administration paper. Alienation by sale, though not expressly prohibited by the *wajib-ul arz*, *held* to be prohibited upon a proper construction of the words. GOOLAB *v.* NAWAB MAHOMED ALI KHAN. **20 P R 1873**

3. "*Decree.*"

The meaning of the word *decree* in section 2 of the Tenancy Act is a decree in a regular civil or revenue suit—not one passed in proceedings of a summary nature. LACHMAN *v.* AMAR SINGH. **14 P R 1874**

4. *Agreement.*

The *wajib-ul-arz*, on the part of the proprietors, declared that as long as the hereditary cultivators paid the rent fixed, they should not be ousted, and that their lineal male heirs should succeed on the same condition. There was another paper signed by the hereditary cultivators to the same effect. Both this paper and the *wajib-ul-arz* formed part of the record of the Summary Settlement *Held*, that there was an "agreement in writing" between the pro-

PUNJAB TENANCY ACT, XXVIII OF 1868—*contd.*

Section 2—*contd.*

prietors and tenant, and that the former could not eject the latter except upon non-payment of the rent. HARNAND *v.* RAM DYAL. **2 P R 1876 Rev.**

5. *Agreement—Uncertainty.*

Entries in a Settlement record which, under section 2 of the Tenancy Act, and section 21 of the Punjab Land Revenue Act, are to be deemed to be agreements, stand on the same footing as other agreements known to the law; and an entry cannot be supported as an agreement if there is a mistake or uncertainty. An entry in the Settlement record which declared rent at a stated amount to be payable for the future, without fixing a term or period, *held*, to be void as an agreement for uncertainty. SARBALAND *v.* GHASITU. **81 P R 1876**

6. *Sections* 2, 8—*Occupancy rights—Decree of Court.*

In 1859 the defendant's father obtained a decree declaring him a tenant with rights of occupancy, conditional on his paying the cash rate and zamindari cesses. The plaintiffs now sued to disprove defendant's rights of occupancy, and the Court of first instance declared defendant a tenant with rights of occupancy under section 8 of Act XXVIII of 1868, and the Settlement Commissioner upheld the order. *Held*, on appeal by the Financial Commissioner, that as under section 2 of Act XXVIII of 1868 decrees of Court are exempted from its operation, and the defendant's position as a tenant under the decree of 1859 would be better than as a tenant under section 8, he was entitled to a decree declaring him as holding occupancy rights under the decree of 1859. SAHIB YAR *v.* MUSSAMMAT DOULAT BIBI. **3 P R 1877 Rev.**

7. *Section* 2—*Suit for ejectment of tenant—Claim to occupancy rights—Judicial decision by Settlement Court fixing a term for cultivation—Effect of.*

In 1865, J. S. sued U. S. for possession of land as proprietor. U. S. pleaded that he was hereditary cultivator. A full enquiry was made by the Settlement Superintendent with the aid of assessors, and on 13th April 1865 a decree passed granting U. S. ten years' time to vacate the land in suit.

In April 1876, J. S. had U. S. served with notice of ejectment, and on 13th June 1876, U. S. applied for review of the Settlement Superintendent's decree dated 13th April 1865. The application was accepted, and occupancy rights decreed to U. S. On appeal the Additional Commissioner (following an unreported decision of the Chief Court) allowed the application for review to be treated as a separate suit, and, reversing the order of the first Court, dismissed the claim of U. S. to occupancy rights.

Held, by the Chief Court, that the Settlement Superintendent's decree of 1865 was a

Section 2—*contd.*

valid and binding one between the parties, and that U. S. was precluded by section 2, Act XXVIII of 1868, from re-opening the former decree, which disallowed his claim to occupancy rights. ATTAR SINGH *v.* JOWAND SINGH. **22 P R 1879**

8. *And section* 11—*Enhancement of rent —Agreement*—Wajib-ul-arz.

In a suit for enhancement of rent, it appeared that the Administration paper of the village, which set out by declaring that its provisions were to be acted upon until the completion of a new Settlement, contained no provisions in regard to the enhancement of rent, but provided in clause 4 that the tenants, with whom defendants were identified, will continue (*ba dastur*) to pay for the land under their cultivation at the rate at which the revenue falls on owners as entered in clause 1, together with cesses, etc., payable by proprietors under the other clauses of the Administration paper in proportion to the revenue demand on their cultivation.

Held, that the provision in clause 4 was sufficient to indicate an intention that the rent payable by the tenants there described should remain fixed and unaltered for the term of Settlement. *Khazana* v. *Golab Singh* (36 *P. R.* 1880), *Baga Singh* v. *Dera Singh* (37 *P. R.* 1880), and *Jowahir Singh* v. *Chanda Singh* (37 *P. R.* 1880, Note) cited. MEHTAB SINGH *v.* KALA SINGH. **42 P R 1881**

9. *And section* 11—*Enhancement of rent —Agreement*—Wajib-ul-arz.

In a suit for enhancement of rent, where clause 4 of the Administration paper made express provision for the enhancement of rent from non-hereditary cultivators, but none for that of hereditary cultivators, who were empowered to sub-lease their lands and to take the profits: and further provided that from hereditary cultivators paying cash (to which class the defendants belonged) the revenue and malba were to be realized *ba dastur*, *held*, that the above clause sufficiently expressed an agreement between the parties that the rent of the defendants should not be liable to enhancement during the term of Settlement. *Haku* v. *Mangal Singh* (36 *P. R.* 1880, Note) followed. GULAB SINGH *v.* SAHIB SINGH. **43 P R 1881**

10. *And section* 36—*Succession to occupancy rights*—Wajib-ul-arz—*Agreement.*

In a suit by plaintiffs, the proprietors of the village, to eject the defendant from certain land, which he claimed to have succeeded to as heir to the last hereditary tenant, who was his uncle, under section 36 of the Tenancy Act, it appeared that there was an entry in the *Wajib-ul-arz* of the village, to which defendant was found to

Section 2—*contd.*

have been a party, to the effect that if a hereditary tenant died without leaving descendants (*aulad*), the proprietor should be entitled to take possession of his holding.

Held that this entry, with reference to section 2 of the Act, clearly excluded the operation of section 36 in the present case, and that effect must be given to it as an agreement between defendant and his landlord. BANA SINGH *v.* HARNAM SINGH. **108 P R 1881**

11. *Statements of landlord and tenant recorded in* naqsha mudakhilat—*Occupancy rights—Agreement.*

In a suit by plaintiff to establish his right of occupancy in land from which he had been ejected by the defendant (the proprietor), it was contended by the plaintiff that the statements of the parties which were recorded in the *naqsha mudakhilat* and duly attested by the proper officer at Settlement, constituted an agreement between landlord and tenant within the meaning of section 2 of the Tenancy Act, in accordance with which plaintiff was entitled to a right of occupancy in the land in suit. The landlord's statement was to the effect that he gave the land 20 years previously to the tenant, and had received from him rent in cash, and that it was not competent to him to evict the tenant. The tenant's statement was the counterpart of this, and he stated among other things that he would not relinquish the land and that he would pay rent at the same rate as the proprietors.

Held, that it was clearly the intention of the parties at that time, as embodied in their statements, that the tenant should have a right of occupancy in the land, and the statements, being duly attested by the proper Settlement official, amounted to an agreement within the meaning of the first para. of section 2 of the Tenancy Act.

Case remanded for a finding as to whether the said agreement still remained in force so as to entitle plaintiff to a right of occupancy in the land claimed. GHAZI *v.* JUMA KHAN. **18 P R 1882**

12. *And section* 36—*Succession to occupancy rights*—Karabatis—Wajib-ul-arz —*Agreement.*

Where the *Wajib-ul-arz* of the village was to the effect that, on the death of an occupancy tenant, his son, or in default of a son, his brother, or *karabati*, should be entitled to succeed, *held*, that the above provision was an agreement under section 2 of the Tenancy Act, and as such prevented the operation of section 36.

Held further, that under the above agreement, the defendants, who were first cousins and first cousins once removed of the deceased occupancy tenant in the male

Section 2—*contd.*

line, were entitled to succeed to the land held as an hereditary tenant by the deceased. *Ranjha* v. *Chuhar* (47 *P. R.* 1877), *Jowahir Singh* v. *Asa* (64 *P. R.* 1877), and C. A. No. 445 of 1878 (unpublished) cited and followed. LEHNA *v.* CHETU. **22 P R 1882**

13. *And section* 11—*Enhancement of rent* —Wajib-ul-arz—*Agreement.*

In a suit for enhancement of rent under section 11 of the Tenancy Act, it appeared from the *Wajib-ul-arz* of the village to which the parties belonged, which commenced with the usual declaration that its provisions should be binding for the term of Settlement, that as regards the mode of payment of revenue, and of arrears due to Government, no difference was made between the proprietors and the hereditary tenants, while the clause which dealt specially with hereditary tenants provided that such tenants had full power and authority in the same manner as proprietors in regard to the occupation, rates of collection and cultivation of the lands in their occupation, though they did not possess the power of sale, mortgage, or gift of their lands, the right to a share of the land of absconders, a voice in the partition of *banjar* lands, or a right to the compensation paid by Government for lands taken up for public purposes. No *malikana* was shown in any of the Settlement papers or declared by the *Wajib-ul-arz* to be payable by the hereditary tenants.

Held, that having regard to the above provisions, which constituted an agreement in writing within the meaning of section 2 of the Tenancy Act, it would be repugnant to their spirit to hold that the rent of the defendants was liable to enhancement during the currency of the present Settlement. *Khazana* v. *Golab Singh* (36 *P. R.* 1880) and *Baga Singh* v. *Dera Singh* (37 *P. R.* 1880), cited. SOBHA SIHGH *v.* VIRU. **32 P R 1882**

14. *And section* 36—*Succession to occupancy rights—Agreement*—Wajib-ul-arz —*Construction.*

Where the *Wajib-ul-arz* provided for the succession of the sons of occupancy tenants but contained no words showing that other collateral relatives were excluded, *held*, that in the absence of such words the document could not be construed as excluding a male collateral from the succession to an occupancy tenure. KABU *v.* DULO KHAN. **116 P R 1882**

15. *And section* 36—*Power of occupancy tenant to regulate the succession by will.*

Held, that an occupancy tenant cannot, in the absence of an agreement between landlord and tenant, which under section

PUNJAB TENANCY ACT, XXVIII OF 1868—*contd.*

Section 2—*contd.*

2 of the Tenancy Act would allow such tenant to regulate the succession, by will postpone the succession of his sons to a portion of his occupancy tenure until after the death of his widow, giving her a life estate in the land so held. MUSSAMMAT KARIMAN *v.* KHODA BUX. **137 P R 1882**

16. *And section* 11—*Enhancement of rent*—Wajib-ul-arz.

In a suit for enhancement of rent, it appeared that clause 4 of the Administration-paper of the village provided among other things that tenants recorded as paying cash rents at the revenue rates as paid by proprietors would pay the rent of their holdings according to the revenue rate as stated in clause 1, and also the prescribed cesses.

Held, that in the absence of any express provision for enhancement, the tenants recorded as above were not liable to be called upon to pay rent at any higher rate. *Khazana* v *Golab Singh* (No 36 *P. R.* 1880), cited and followed. JOWAHIR *v* BELA. **183 P R 1882**

17. *And section* 36—*Succession to occupancy rights*—*Wajib-ul-arz*—*Agreement.*

Where the *Wajib-ul-arz* of the village provided that on the death of an occupancy tenant his son should succeed, *held*, by the officiating Financial Commissioner, that the entry could not be literally construed as meaning that collaterals descended from the same ancestor, who was himself in possession of the land, should not succeed to the deceased tenant's right of occupancy. RAM SINGH *v.* JOWAHIR SINGH. **1 P R 1882 Rev.**

18. *Entry of parties' statements in naqsha mudakhilat*—*Agreement.*

A statement made by a tenant at Settlement to the officer appointed to enquire into the rights of tenants, in regard to the terms on which such tenant holds his land from the landlord, and the counterpart statement made at the same time by the landlord that what the tenant had stated was true, *held* to amount, when recorded in the *naqsha mudakhilat* before the passing of the Land Revenue Act, 1871, and duly attested by the proper officer, to an agreement within the meaning of section 2 of the Punjab Tenancy Act. *Ghazi* v. *Juma Khan* (No. 18 *P.R.* of 1882), followed. *Nihalu* v. *Mehtab Khan* (No. 2 *P. R.* 1879), distinguished. KADAR DIN *v.* NUR. **24 P R 1883**

19. *And section* 11—*Suit for enhancement of rent*—*Entry in regular Settlement sanctioned by Local Government*—*Agreement in writing*—*Uncertainty*—*Party disabling himself from performing promise wholly*—*Act IX of* 1872, *section* 39.

PUNJAB TENANCY ACT, XXVIII OF 1868—*contd.*

Section 2—*contd.*

In a suit for enhancement of the rent previously paid by defendant, who was a tenant with rights of occupancy in the village of Amritsar, it was contended that the plaintiff was debarred from exercising the right to claim an enhancement under the provisions of the Tenancy Act by reason of a statement recorded and signed by the parties before the Superintendent of Settlements. The said statement was to the effect that both parties agreed to abide by the decision of assessors who were appointed to settle the rent payable by hereditary tenants generally, that is to say, the tenant undertook to pay and the proprietor to receive *malikana* at the rate of 20 per cent. on whatever sum might be fixed as revenue. It appeared that the Settlement of the Amritsar village was not sanctioned by the Local Government till after the present suit was instituted.

Held, that although the statement relied upon failed to fulfil the conditions of an entry in a regular Settlement sanctioned by the Local Government within the meaning of section 2 of the Tenancy Act, the sanction which the Act contemplates being clearly the final sanction by which the Settlement operations are confirmed by the Local Government, the said agreement must nevertheless receive effect, unless it were shown to be invalid on some other ground, as an agreement in writing.

It was contended that the agreement was inoperative, because (1) the period for which the stipulated rent was to be paid was not specified, and the agreement was therefore void for uncertainty, and (2) because the tenant had himself subsequently applied for and obtained reduction of the revenue fixed by the Settlement officers, and had thus disabled himself from performing his promise in its entirety within the meaning of section 39 of the Contract Act.

Held, (1) that the agreement having been made in the course of Settlement operations, it must be presumed in the absence of any express contrary intention, that the parties intended that its operation should be controlled by the period for which the Settlement might eventually be sanctioned, and that the objection as to uncertainty could not prevail.

With regard to the second contention, it appeared that the *jama* fixed at the old Settlement and which was still in force in 1865, when the agreement was executed, was largely increased in 1878, when the new assessment was announced, whereupon the tenant applied for and obtained a material reduction. *Held*, that the tenant by effecting this reduction could not be said to bring himself within the purview of section 39 of the Contract Act, as the parties to the above agreement must be taken

PUNJAB TENANCY ACT, XXVIII OF 1868—*contd.*

Section 2—*contd.*

to have contemplated that 20 per cent. was to be paid on any revenue that might be *finally* fixed by the Government. *Sarbaland* v. *Ghasitu* (No. 81 *P R* 1876) and *Hans Ram* v. *Parsu* (No. 3 *P. R.* 1880, Rev.) referred to. KIRPA DEVI *v.* RAHIM BAKHSH. **50 P R 1883**

20. *And section* 36—*Succession to occupancy rights*—*Agreement.*

Plaintiffs, who were second cousins once removed of the deceased occupancy tenant, claimed to succeed to his rights of occupancy without proof that the holding was acquired by the common ancestor, by virtue of an alleged agreement entered in the Administration-paper of the village. The provisions of the clause relied upon were to the effect that unless the tenants or their heirs voluntarily surrendered their holdings, the proprietors were not at liberty to eject them or their heirs, nor to enhance the rent payable by them during the currency of the Settlement. It nowhere stated who were to be regarded as their heirs.

Held, that no agreement excluding the operation of section 36 of the Tenancy Act could be inferred from provisions of the above nature. *Ranja* v. *Chuhar* (No. 47 *P. R.* 1877) and *Jowahir Singh* v. *Asa* (No. 64 *P. R.* 1877), referred to. MATTAN *v.* LAKHA **90 P R 1883**

21. *And section* 36—*Succession to occupancy rights*—*Agreement*—*Provision in Administration-paper of first Settlement not repeated in subsequent Settlement*—*Effect of such omission*—*Intention*—*Rescission.*

In a suit relating to the succession to an occupancy tenant, in which it was found that the common ancestor of the deceased tenant and the defendants never cultivated the land, so that, so far as the provisions of section 36 of the Tenancy Act were applicable, the defendants would not be entitled to succeed, the defendants relied upon a provision in the Administration-paper of the first regular Settlement, as entitling them as nephews of the deceased to succeed to the tenancy. The lower Appellate Court, on the ground that no similar provision appeared in the record of the subsequent Settlement, which it was admitted was made before the passing either of the Tenancy Act or the Land Revenue Act, held that the agreement relied on had been rescinded.

Held, that the question whether an agreement in an Administration-paper would operate for the term of Settlement only is one of intention, and if anything in an Administration-paper appeared to be intended to remain in force beyond the Settlement for which it was made it would continue to operate as an agreement after a new Settlement had taken place, unless it was set aside by anything done at that

Section 2—*contd.*

Settlement; there being nothing in the law to make an entry in the Settlement record operating as an agreement under section 2 of the Tenancy Act irrevocable *Hari Singh* v. *Ranjit Singh* (No. 56 *P. R.* 1874) *Jasram* v. *Balram* (No. 6 *P. R.* 1877, Rev). and *Hans Ram* v. *Parsu* (No. 3 *P. R.* 1880, Rev), referred to.

Case remanded for the lower Court to determine (1) whether the provision in the Administration-paper of the first regular Settlement was intended to operate beyond the duration of the Settlement, and (2) whether, if so, it was rescinded or cancelled by anything amounting to an agreement between landlord and tenant done when the second Settlement was effected. SANGAT SINGH *v.* PUNJAB SINGH.

121 P R 1883

22. *And section* 19—*Suit by landlord to eject occupancy tenants—Tenants holding under a decree of Court.*

In a suit brought by the proprietor to eject the defendants, who were occupapancy tenants, from the lands in their occupation under the provisions of section 19 of the Tenancy Act, it appeared that the defendants held under a decree of Court by the terms of which they were declared to have a right of occupancy in the land.

Held, that the operation of section 19 was excluded by the provisions of section 2 of the Tenancy Act, and plaintiff's case must be dismissed. JIWAN SINGH *v.* NAWAB MUHAMMAD NIZAMUDDIN KHAN.

128 P R 1883

23. *And section* 36—*Entry in Administration-paper of first Settlement omitted in subsequent Settlement—Effect of such omission—Agreement—Rescission—Intention of parties.*

The question for decision was whether an entry in the Administration-paper of the first regular Settlement, excluding the succession of collaterals in the male line to tenants having rights of occupancy, failed to acquire the force of an agreement under section 2 of the Tenancy Act, on the ground that a subsequent Settlement had come into force before the passing of that Act, and that the Administration-paper of that Settlement contained no rule on the subject.

Held, that unless the above omission operated as a rescision (which was clearly not so in the present case), it became necessary to determine whether the original entry was intended to be in force only until a new Settlement was made, or so long as the tenancy continued; and if the latter was the intention, it would have the force of an agreement under section 2 of the Tenancy Act, but the question would then arise whether it was in fact rescinded, either expressly or by implication, by the acts of the parties thereto.

Section —*contd.*

Case remanded for a decision on the above questions of fact. *Harri Singh* v. *Kanjit Singh* (No. 56 *P. R.* 1874) referred to. GURDIT SINGH *v.* MUSSAMMAT SOBHI.

8 P R 1884

24. *And section* 11—*Enhancement of rent—Suit brought immediately after announcement of new assessment—Land Revenue Act (XXXIII of* 1871), *section* 17—*Premature suit.*

In a suit for enhancement of rent, it appeared that it was provided in the Administration-paper of the regular Settlement that the occupancy tenants named therein, of whom the father of the present defendants was one, should pay at revenue rates only, and that the plaintiff brought the present suit immediately on the new assessment being announced.

Held, that the suit must be dismissed as premature, as until the record of rights of the new Settlement was directed by the Local Government to be made over to the Deputy Commissioner on the report of the Financial Commissioner that the operations of the Settlement were complete, under the second clause of section 17 of the Land Revenue Act, the agreement in the previous Administration-paper remained in force. HAZARU *v.* KANHAIYA.

21 P R 1884

25. *Suit for ejectment of tenant—Claim to occupancy rights—Effect of judicial decision by Settlement Court fixing a term for cultivation.*

At the first Settlement of the Lahore district plaintiffs were recorded as proprietors and defendants as hereditary tenants of the land in suit, it being noted in the *khewat* that the defendants had been cultivating the land for 20 years. At the revision of Settlement in 1867, defendants were after a summary enquiry of the Superintendent of Settlement recorded as tenants protected for a term of 15 years, their rents being also fixed at a certain rate. The proprietors being dissatisfied with these arrangements brought a suit against the tenants, objecting to the term of protection which had been given and to the rates of rent which had been fixed, and claiming possession of the land from the tenants and new rates of rent while the tenants remained in cultivating possession. The defendants resisted the claim for possession and finally after fixing issues, which raised the question of the defendants' interests in the land and whether they were entitled to have their tenure protected, the Extra Assistant Commissioner, on the 20th December 1867, decided that the defendants were entitled to protection only for the period during which the *kutcha* wells which they had sunk on the land should continue to exist but they should not be allowed to

Section 2—*contd.*

sink any new well, and when the existing *kutcha* wells fell in the proprietors should be at liberty to oust them. Neither party appealed from this decision, but when the Tenancy Act was passed soon afterwards and the entries in the record of the revised Settlement of the Lahore district, which had not yet been sanctioned, were directed to be revised with special reference to section 6 of the Tenancy Act, the defendants were entered as tenants with presumptive rights of occupancy under that section.

In a suit by the proprietors for possession of the land on the allegation that the wells had fallen in, *held*, that the decision of the 20th December 1867, never having been set aside by competent authority, was binding on the parties, section 2 of the Tenancy Act expressly providing that nothing contained in the Act should affect the operation of any decree of Court under which a tenant held, and that, under the terms of the said decision, the plaintiffs were entitled to eject the defendants, if as a fact the *kutcha* wells had fallen in. *Baggu Khan* v. *Suja* (No. 77 *P. R.* 1877) and *Attar Singh* v. *Jowand Singh* (No. 22 *P. R.* 1879), cited and followed.

Case remanded for the determination of the question, whether as a matter of fact the wells had fallen in. FARIDA *v* JIWA.

104 P R 1884

26. *And section* 11—*Suit for enhancement of rent—Agreement in old Settlement that rates of rent should remain fixed for term of Settlement—Suit instituted before new rates of* jama *had been declared—Premature suit.*

In a suit for enhancement of rent, it appeared that there was a provision in the *Wajib-ul-arz* of the vtllage, which came within the scope of section 2 of the Tenancy Act, to the effect that as long as the Settlement lasted the rates of rent were to remain fixed; but it was contended that the period for which such fixed rates held good had elapsed, the Settlement having been formally sanctioned up to 1880, and such period having expired,

Held, that the very fact that the Government so arranged the operations of the new Settlement, that the old Settlement must go on beyond 1880, showed that the Government had extended the period originally fixed, but that in any case as the new rates of *jama* were admitted not to have been declared when the suit was brought, the said suit must be dismissed as premature. DOSONDHI *v.* HAMIR.

161 P R 1884

27. *And section* 36—*Widow succeeding to occupancy rights of her deceased husband*—Wajib-ul-arz—*Custom.*

In a suit to contest a notice of ejectment from certain land situated in Kunjpura, *tahsil* and *zilla* Karnal, to

Section 2—*contd.*

which the plaintiff, a widow, had succeeded on the death of her husband, an occupancy tenant, it appeared that the *Wajib-ul-arz* of the village provided that unless the tenants or their heirs (*warisan*) voluntarily surrendered their holdings, the proprietors were not at liberty to eject them or their heirs except for non-payment of rent, nor to enhance the rent paid by them during the currency of the Settlement.

Held that though, following *Mattan* v. *Lakha* (No. 90 *P R.* 1883), this provision did not amount to an agreement excluding the operation of section 36 of the Tenancy Act, still, it having been found that widows did succeed by custom to the occupancy holdings of their deceased husbands, the clause in question did contain an agreement which would limit the operation of the sections of the Act relating to ejectment, and would protect the widow, who had succeeded as heir or *waris* of her husband, from ejectment so long as she continued to pay the rent for which she was liable. NAWAB MUHAMMED ALI KHAN *v.* MUSSAMMAT JAWAHIRI. **104 P R 1885**

28. *And section* 11—*Enhancement of rent—Agreement in old* Wajib-ul-arz *barring enhancement—Suit instituted after announcement of new assessments, but before record of rights has been handed over to Deputy Commissioner—Premature suit.*

Held by the Full Bench, that a suit for enhancement of rent which would ordinarily be barred during the period of Settlement by an agreement between the landlord and the tenant, is not maintainable if instituted after the new assessments have been announced, but before the record of rights has, with the sanction of Government, been handed over to the Deputy Commissioner of the district, as the announcement of the assessments does not put an end to such agreement, which in the absence of anything to indicate a contrary intention, remains in force until the record of rights is so handed over. *Hazaru* v. *Kanhaiya* (No. 21 *P. R.* 1884), and C. A. No. 168 of 1882 (unpublished) followed. *Dosondhi* v. *Hamir* (No. 161 *P. R.* 1884), overruled. CHUHAR *v.* HAKIM. **9 P R 1886**

29. *And section* 11—*Enhancement of rent—Agreement.*

In a suit for enhancement of rent, it appeared that the defendants were men whose ancestors were recorded at the first Settlement as having held the land for 100 years paying nothing beyond the Government revenue, and that at the second Settlement a *malikana* of 2 annas per rupee of revenue was fixed by the Settlement Officer, which rate had continued in force up to the time of suit, when the plaintiff, who had bought the land from the old proprietors, claimed a *malikana* of one rupee per rupee of revenue on the ground that such rate was claimable under the

Section —*contd.*

Tenancy Act on a comparison with the rates usually paid by tenants-at-will.

Held, that the plaintiff was not entitled to the enhancement claimed, as under the particular circumstances of the case, it was reasonable to infer that the arrangement under which two annas per rupee was imposed by the Settlement Officer was fixed for the term of Settlement. NIHAL SINGH *v.* KHARAK SINGH. **73 P R 1887**

30. *And sections* 10, 11, 13—*Enhancement of rent—Agreement.*

In a suit for enhancement of rent, the defendants relied upon an agreement in writing between the tenants and landlord as barring the *prima facie* right of the landlord to sue for enhancement. It appeared that this agreement, which was given effect to in the Administration-paper, merely stated the rate of *malikana* to be 16 per cent. as heretofore, and was in substance an agreement relating to distribution of the revenue, the details of which were expressed to be subject to change, there being nothing either in the *Wajib-ul-arz* or the agreement to show that the rate of *malikana* was to be immutable for the period of Settlement.

Held, therefore, that the claim to enhancement was not barred by an agreement under section 2 of the Tenancy Act.

But *held*, further, that the agreement and *Wajib-ul-arz* were sufficient to bar the maintenance of the suit, it not being open to the plaintiff to repudiate his agreement forthwith as he had done. Had he not made the agreement, he might have brought a suit for enhancement (on account of an increase of the revenue) under the terms of the last clause of section 13 of the Tenancy Act, but having chosen to fix the percentage on the revised assessment without such suit, by mutual consent, he was therefore bound, and could be in no better position than if he had brought his suit. DHIAN SINGH *v.* DEVI DITTA. **110 P R 1887**

31. *Entry in Settlement Record—Agreement.*

An entry in the *Wajib-ul-arz* relating to a matter dealt with in Chapter VI of the Tenancy Act of 1868, which professed only to be an agreement by the proprietors, and did not profess to embody an agreement by the tenants by whom it was not in any instance signed, *held* not to amount to " an agreement between a landlord and tenant recorded by the proper officer," within the meaning of section 2 of the above Act. HEM SINGH *v.* JIWAN. **3 P R 1888 Rev.**

32. *And section* 11—*Enhancement of rent—Agreement prohibiting enhancement—Period of operation of such agreement.*

In a suit for enhancement of rent brought by a landlord in a village in the Una *tahsil* of the Hoshiarpur District against his ten-

Section 2—*contd.*

ant, it appeared that the circumstances of the Una *tahsil* generally as regards Settlement proceedings were as follows :—An assessment of land revenue was originally made which was ordered by Government to remain in force till the year 1880; but the Record of Rights prepared at the time of assessment being imperfect, it was subsequently determined by Government that a fresh record should be prepared, the amount of the land revenue remaining unaltered, and accordingly in the years 1872-73 a full Record was prepared, at the beginning of which it was stated that the period of Settlement extended to the year 1880. That record contained certain entries which the lower Appellate Court construed as prohibiting enhancement during the currency of the Settlement. When the re-settlement and re-assessment of the Hoshiarpur District generally was undertaken for the year 1878-79, it was determined by Government that in the Una parganah, although a re-assessment of the revenue was necessary, a revision of the Record of Rights was unnecessary, the result being that the assessment of the village in question in the present suit was very materially increased; but the Record of Rights prepared in 1873 was not replaced by a fresh record. The lower Appellate Court therefore considered that the old Record of Rights, which, in its opinion, contained a provision against enhancement, must be regarded as in force until it was superseded by a fresh record, and meanwhile no suit for enhancement would lie.

Held by the Financial Commissioner (reversing the order of the lower Appellate Court) that under the circumstances above stated the agreement regarding rents (assuming it to be an agreement prohibiting enhancement, which was doubtful) could not be fairly held to be operative for a longer period than that of the assessment of land revenue which was running at the time when the Record of Rights was made, and that there was therefore nothing in the Record of 1873 which necessitated the dismissal of the suit for enhancement.

Chuhar v. *Hakim* (No. 9 *P. R.* 1886), referred to. KANHAYA *v.* BADHAWA.

9 P R 1888 Rev.

33. *Enhancement of rent—Entry as regards rent—*Wajib-ul-arz *of Regular Settlement—Repetition in* Wajib-ul-arz *of Revised Settlement—Effect of such repetition.*

An entry as regards rent was made in the *Wajib-ul-arz* prepared at the Regular Settlement of Sirsa Under section 2, Act XXVIII of 1868, this entry had the force of an agreement between landlord and tenant. In the *Wajib-ul-arz* of the Revised Settlement, the entry was copied *verbatim* without any inquiry from the parties concerned.

In a suit brought by the landlord for enhancement of rent, it was contended for

PUNJAB TENANCY ACT, XXVIII OF 1868—*contd.*

Section 2—*concld.*

the tenants that the entry at the Revised Settlement had the effect of an agreement, and that consequently the suit for enhancement did not lie.

Held, that the repetition of the entry had not the effect of a new agreement, and that the force of the entry at the Regular Settlement terminated with that Settlement. MAMRAJ *v* RAMPAT. **3 P R 1889 Rev.**

34. *And section 36—Succession to occupancy right*—Wajib-ul-arz—*Construction.*

In a case where the *Wajib-ul-arz* provided that when an occupancy tenant dies leaving no sons, his holding reverts to the proprietors, *held*, that in the absence of clear words of exclusion, the document could not be construed as excluding male collaterals descended from the same ancestor, who was himself in possession of the land. CHANGA *v.* NABI BAKHSH. **145 P R 1890**

Section 3.

See PUNJAB TENANCY ACT (XXVIII OF 1868), SECTION 37.

12 P R 1885

Section 5.

See OCCUPANCY RIGHTS—*Passim.*

1. *Presumption from long occupation.*

See OCCUPANCY RIGHTS.

62 P R 1882
90 P R 1883
154 P R 1883

2. *Suit to establish occupancy rights under section 5—Confession of judgment by some of the defendants—Right indivisible—No decree even against confessing defendants.*

See OCCUPANCY RIGHTS **84 P R 1881**

3. *Alienation by occupancy tenant under section 5—Offer to landlord—Condition precedent.*

See PUNJAB TENANCY ACT (XXVIII OF 1868), SECTION 34.

45 P R 1883

4. *Landlord and tenant—Mortgage by tenant without consent of landlord—Delivery of possession—Suit for possession by landlord.*

See PUNJAB TENANCY ACT (XXVIII OF 1868), SECTION 34

138 P R 1883

Clause (1).

1. *Clause 1 — Proprietor — Occupancy rights.*

The plaintiff was one of several proprietors in the village, who were all of them cultivating each other's lands. It was proved that plaintiff had heretofore paid no rent and rendered no service in respect of the land occupied by him, to the proprietor thereof, beyond the amount of land revenue and cesses, and that his father and grandfather had occupied the same land, on the same terms. *Held*, that the plaintiff was entitled to occupancy rights under clause 1, section 5, Act XXVIII of 1868, notwithstanding the fact of his being a proprietor. RAJA RAM *v.* THOK RAM.

65 P R 1877

PUNJAB TENANCY ACT, XXVIII OF 1868—*contd.*

Section 5 (1)—*concld.*

2. *Clause 1—Tenant who has "heretofore" paid no rent, etc., explained.*

The first clause of section 5 of the Tenancy Act refers to the state of things existing at the time of the passing of that Act, and the word "heretofore" must be construed to refer to that time, and not to the time when a suit is brought to establish a title to right of occupancy under the clause in question.

Held, therefore, that unless a tenant can show that either he himself, or the person through whom he derives his title, was a tenant of the land at the date of the passing of the Tenancy Act, and moreover at that date had held the land for three generations, he is not entitled to a right of occupancy under the 1st clause of section 5. LAL SINGH *v.* CHEIT RAM. **121 P R 1881**

3. *Clause 1—Occupancy rights—Joint tenants.*

The land in dispute was formerly held by one G. R., who was succeeded on his death by his three sons, one of whom died before the passing of the Tenancy Act, leaving an adopted son, the present plaintiff. At the time of the passing of the Tenancy Act, the land was occupied by the plaintiff and his two uncles, and the latter having died without issue, plaintiff claimed rights of occupancy in the entire holding. It appeared that before the passing of the Tenancy Act, neither plaintiff, his father, his uncles, nor his grandfather ever paid any rent for the land beyond the revenue and cesses chargeable thereon, and also that the plaintiff and his uncles held the land jointly.

Held, that at the time of the passing of the Tenancy Act the plaintiff must be taken to have been in occupation of the entire holding, though no doubt jointly with others; and as father and grandfather had previously occupied the land, he had fulfilled the condition as to occupation of the land for three generations prescribed by clause 1, section 5 of the Act, and was entitled under that clause to a right of occupancy in the entire holding. *Bulunda* v. *Soondur* (No. 57 *P. R.* 1868), *Veer Singh* v. *Makkan* (No. 36 *P. R.* 1870), *Prem Singh* v *Bhagwana* No. 4 *P. R.* 1880), and *Bhola Singh* v. *Gopal* (No. 83 *P. R.* 1882), cited. BHORTA *v* BHORU.

86 P R 1883

Clause (2).

1. *Clause 2—"Involuntarily parting with rights."*

Held, that by a sale of proprietary rights in execution of a decree for arrears of revenue, the proprietor had "involuntarily parted" with his rights, within the meaning of clause 2, section 5, Punjab Tenancy Act; there being no proof that the fault was wilful, or the decree purposely or collusively allowed to pass: and that continuous occupation of the land from the date of sale gave rights of occupancy under that section, notwithstanding that by the law in force at the time of the sale all the defaulter's rights were transferred to the purchaser, and new rights could be acquired only by special contract or a new prescription. SHADI *v.* KASIM ALI. **19 P R 1871**

PUNJAB TENANCY ACT, XXVIII OF 1868—*contd.*

Section 5 (2)—*concld.*

2. *Clause 2—Conditional sale—Involuntarily parting with proprietary rights.*

Held, that a proprietor who has mortgaged his land by conditional sale which has been converted into an absolute sale cannot be said to have "involuntarily parted" with his rights within the meaning of section 5, clause 2 of the Tenancy Act. BHALLAN *v.* SOHNA. **6 P R 1881**

3. *Clause 2—Representative of proprietor claiming occupancy rights.*

Held, that only the proprietor himself, and not his representative, can acquire occupancy rights under clause (2) of section 5 of the Tenancy Act. *Bhola Singh* v. *Gopal* (No. 83 *P. R.* 1882), referred to. HABIB BAKHSH *v.* GULAB.

67 P R 1885

4. *Clause 2—Representative of proprietor who has involuntarily parted with his proprietary rights.*

Held, that clause 2 of section 5 of the Tenancy Act does not confer occupancy rights on the representatives of a proprietor who has involuntarily parted with his proprietary rights, if the proprietor himself had not acquired these rights under the Tenancy Act. NAHIR ALI KHAN *v.* KALU.

12 P R 1886

5. *Clause 2—Tenant who has involuntarily parted with proprietary right—Right of representative of such tenant not recognized.*

Held, that section 5, clause (2) of the Tenancy Act, 1868, must be construed as limiting the right of occupancy therein contemplated strictly to the actual person who involuntarily parted with his ownership, and does not recognize the existence of any right on the part of a representative to revive a claim which the original owner had failed to assert.

Habib Bakhsh v. *Gulab* (No. 67 *P. R.* 1885) and *Nahir Ali Khan* v. *Kalu* (No. 12 *P. R.* 1886), cited. NAND RAM *v.* AHMAD SHAFI.

148 P R 1888

Clause (3).

1. *Clause 3.*—To acquire rights of occupancy under clause 3, section 5, Act XXVIII of 1868, it is not necessary that the represen-

PUNJAB TENANCY ACT, XXVIII OF 1868—*contd.*

Section 5 (3)—*contd.*

tative of a person who settled as a cultivator in the village along with the founders of the village should be in the occupation of the very land cultivated by the settler. SAHIBA *v.* SHIV LALL. **1 P R 1874**

2. *Clause* 3.—*Per* THORNTON, J.—Settling in a village along with the founders and continuously occupying, do not confer occupancy rights under section 5, clause 3 of the Act : such rights under that clause can only be acquired by the *representative* of the settler. AMIRO *v.* WAHAB DIN. **49 P R 1874**

3. *Clause 3, section 7—Continuous occupation of land held by original settlers, by their representative—Exchange of land*

Mauza Ramnagar was formed in A. D. 1834 from waste land taken from adjacent estates, and conferred upon defendants in proprietary right, who located tenants of the Mali caste. The expense of sinking wells and starting the village was incurred by defendants. In 1846, by judicial decision, defendants were declared proprietors, and the Mali cultivators tenants, but the judgment was silent as to the tenants having or not having occupancy rights. In 1849, the Settlement Deputy Collector recorded an executive order that the Malis should be entered as tenants-at-will, paying rent at one-third of the produce; and in the Settlement records of 1850-51 they were so entered. Both the order and the entry were known to the cultivators, who paid and continued to pay one-third of the produce by way of rent In a suit brought against defendants to establish occupancy rights, *held*, upon the above stated facts that of the plaintiffs those who were the representatives of the original settlers were entitled to a decree for such rights, provided they had continuously occupied the land held by the settlers whom they represented, or had voluntarily exchanged the one land for the other. *Sahiba* v. *Shiv Lall and others* (No. 1 *P. R.* 1874), observed upon. MASSANIA *v.* PARTAB SINGH

62 P R 1874

4. *Clause 3—Representative of persons who settled in village with the founders—Rights in land other than the original holding.*

In a suit to establish occupancy rights in certain land under the provisions of clause 3 of section 5 of the Tenancy Act, *held* that the said clause will apply on its being shown that the tenant is the representative of a person who settled as cultivator in the village along with the founders, though the land in suit forms no part of the original holding, unless some express agreement between landlord and tenant that the tenant should hold on a different tenure be proved *Atar Singh* v. *Diwan Singh* (No. 94 *P. R.* 1880), followed. JAIMAL *v.* DYAL.

176 P R 1883

PUNJAB TENANCY ACT, XXVIII OF 1868—*contd.*

Section 5 (3)—*concld.*

5. *Clause 3—Representative of founder of village settling as cultivator.*

Held, that the distinction pointed out in clause 3 of section 5 of the Tenancy Act is between founders and non-founders, and the clause is designed to protect the representatives of a person who *being a non-founder* settled as a cultivator in the village, but is not intended to provide for the case of the founders of a village settling as cultivators in the village. PHALLU SINGH *v.* HIRA SINGH.

193 P R 1883

6. *Clause 3—Points to be proved by person seeking to establish occupancy rights under above clause—Agreement.*

Held by the Full Bench, that the only two points to be proved by a person seeking to establish the existence of any occupancy rights under clause 3, section 5 of the Tenancy Act on the date of the passing of the Act, are (1) that the tenant, on that date, was a representative, as defined in section 3, of a person who settled as a cultivator in the village in which the land on which such right is claimed is situate along with the founders of the village, and (2) that the land on which the right is claimed was occupied by such tenant on that date, or was received in exchange as provided by section 7 of the Act. It is not necessary to show that the tenant was representative of the original settler in respect to any particular portion of the land in which the right is claimed or to trace the history of its previous occupation. The whole of the provisions of clause 3, section 5, must, however, be read subject to the first clause of section 2 of the Act, which entitles the landlord to exclude the operation of section 5, by proving that a written agreement, or an agreement recorded by the proper officer in the record of a regular Settlement sanctioned by the Local Government before the passing of the Act, has been made in respect to the whole or any portion of the land on which the right is claimed. *Massania* v. *Pertab Singh* (No 62 *P. R.* 1874) and *Atar Singh* v. *Diwan Singh* (No. 91 *P. R.* 1880) cited. JANA *v.* BELI RAM. **33 P R 1884**

Clause (4).

1. *Clause 4—Occupancy rights—Grants of muafi to ala-lambardar in virtue of his office—Ala-lambardar joint owner of such land.*

See JAGIR. **1 P R 1897 Rev.**

2. *Clause 4—Occupancy rights—Jagirdar—Mafidar.*

Held, that the term jagirdar includes a mafidar in clause 4, section 5, Act XXVIII of 1868. RATTAN SINGH *v.* FAJJU SHAH.

12 P R 1878

3. *Clause 4—Occupancy rights—Ex-jagirdar—Representative—Continuous possession—Period of 20 years how calculated—Occupation as tenant.*

PUNJAB TENANCY ACT, XXVIII OF 1868—*contd.*

Section 5 (4)—*concld.*

Held, that a right of occupancy under section 5, clause 4 of the Tenancy Act can only be acquired by the jagirdar himself, and not by his representative.

Held further, that the term of 20 years specified in the above clause, during which continuous possession must be proved to entitle the ex-jagirdar to occupancy rights, does not mean 20 years before the passing of the Tenancy Act.

Quære, whether it is necessary for a person claiming under section 5, clause 4 of the Tenancy Act to prove that he has held *as tenant* for 20 years. Civil Appeal No. 53 of 1879 (unpublished) cited. BHOLA SINGH *v.* GOPAL.

83 P R 1882

4. *Clause 4—Claim to occupancy rights—Ex-mafidar.*

In a suit for occupancy rights by one F. S. and the widow of his brother M S. under section 5, clause 4, of the Tenancy Act, it appeared that the land in suit was held revenue free under an order of the Financial Commissioner, dated 1856, which was found to apply to both brothers. It also appeared that on the death of M. S. in 1883, the grant had been resumed and Settlement made with the owners.

Held that the first Court had rightly decreed the claim in favour of the widow of M. S. and in favour of F. S. jointly.

M. S having acquired occupancy rights under section 5, clause 4, at the time of his death, there was no good reason (in the absence of any objection by the owners) why his widow should not be allowed to retain his share for her life ; and in regard to F. S. as he was clearly mafidar of half the land, and, although he foolishly allowed the grant to be resumed on the death of his brother, had continuously occupied the land for not less than 20 years up to the date of such resumption, he was entitled to be occupancy tenant of his share. FATTEH SHAH *v.* DADU.

7 P R 1887

5. *Clause 4—Occupancy rights—Ex-mafidar.*

Held that section 5, clause 4 of the Tenancy Act, 1868, does not limit the right of occupancy to land actually held rent free, but gives that right to a person who is or has been a mafidar in the village, in respect to any land situated in that village which he has continuously occupied for not less than 20 years. FATTEH SHAH *v.* DADU.

7 P R 1887 Rev. Note.

Section 6.

1. *Suit to establish occupancy rights under section 5 by a tenant recorded as one under section 6—Confession of judgment by some of the defendants.—Right indivisible—No decree even against confessing defendants.*

See OCCUPANCY RIGHTS.

84 P R 1881

PUNJAB TENANCY ACT, XXVIII OF 1868—*contd.*

Section 6—*contd.*

2. *Presumption from long occupation.*
See OCCUPANCY RIGHTS.

62 P R 1882
90 P R 1883
154 P R 1883

3. *Award, under Act XVI of* 1887, *of higher status to tenant who held rights under section* 6 *of Act XXVIII of* 1868.
See OCCUPANCY RIGHTS.

4 P R 1885 Rev.

4. *Tenant recorded with consent of proprietors as occupancy tenant—Subsequent admission by tenant made previous to* 1887 *that he was merely tenant-at-will.*
See OCCUPANCY RIGHTS.

4 P R 1896 Rev.

5. *Occupancy right—Admission by tenant made previous to* 1887 *that he was merely tenant-at-will.*
See OCCUPANCY RIGHTS.

10 P R 1901 Rev.

6. *Continuous occupation—Acquisition of occupancy rights.*
See OCCUPANCY RIGHTS.

1 P R 1904 Rev.

7. *Mortgage by occupancy tenant without landlord's consent—Validity of such mortgage—Effect of consent of some of the proprietors.*
See PUNJAB TENANCY ACT, XXVIII OF 1868, SECTION 34.

35 P R 1883

8. *Voluntary admissions and acts of tenants—Mistake.*
An admission made under an erroneous impression does not effect occupancy rights. HAKIM *v.* NAD ALI SHAH.

3 P R 1872 Rev.

9. Defendant was recorded at the first Settlement as tenant with rights of occupancy. At the second Settlement, in 1865 defendant stated before the Superintendent, that he was a tenant-at-will, and would vacate the land when desired by the proprietor (plaintiff) so to do. In 1866, defendant wrote a *kabuliat* to the plaintiff, agreeing to cultivate the land on payment of enhanced rent and subject to the will of the plaintiff in regard to eviction. Defendant was recorded at the second Settlement as a tenant with rights of occupancy. In a regular suit under section 6 of the Tenancy Act, *held*, that defendant was not bound by his statement at Settlement in 1865, or the *kabuliat* of 1866, as the defendant had been influenced by the strong opinion held by the Settlement officers that occupancy rights should be much restricted, and by the results to other tenants who had been recorded in the first Settlement as having occupancy rights. AZIM *v.* JOWALA SINGH. **13 P R 1874**

PUNJAB TENANCY ACT, XXVIII OF 1868—*contd.*

Section 6—*contd.*

10. *Secondary evidence of Settlement record.*
Plaintiff claimed right of occupancy. The Settlement record was destroyed, but plaintiff appeared in the Patwari's papers as a *maurusi* cultivator. *Held*, that the Patwari's papers were sufficient, in the absence of the Settlement record, to establish plaintiff's presumptive right under section 6 of the Tenancy Act. Case remanded to Original Court to enable defendants, the landlords, to produce rebutting evidence under section 6. FATTU *v.* DALELA.

1 P R 1875 Rev.

11. *And sections* 19 *and* 37—*Exemption from liability to ejectment.*
Held, that to entitle a tenant, not being a tenant under section 5, Act XXVIII of 1868, to claim exemption from liability to be bought out on payment of compensation under sub-section 2, section 19, it is sufficient that the tenant and his ancestor together, *i.e.*, between them, have continuously held the land for 30 years.
The intention of sections 6, 19 and 37, Act XXVIII of 1868, is the same, namely, that, so far as possible, for the purposes of each section, the heir and the ancestor shall be regarded as a single person. BUTA SINGH *v.* PUNJAB SINGH. **28 P R 1879**

12. *Rebuttal of presumption arising from entry in Settlement record—Voluntary admission—Burden of proof.*
Held, that the burden of proof lies upon the landlord to show that an admission made by a tenant, shortly before the passing of the Tenancy Act, that he was a tenant-at-will, though previously recorded as a tenant with rights of occupancy, was a voluntary admission within the meaning of section 6, Act XXVIII of 1868. JYMAL SINGH *v.* JAMIAT SINGH. **115 P R 1879**

13. *Presumptive right of occupancy—Destruction of Settlement record—Entry in papers prepared to replace original record.*
Held, that an entry in a Patwari's papers prepared after the destruction of the Settlement record, cannot give a presumptive right of occupancy under section 6 of the same Act, though such entry may go to show that the tenant was recorded in the original record as having rights of occupancy.
Fattu v. *Dalela* (No 1 *P. R.* 1875, Rev.) dissented from. BHALLAN *v.* SOHNA.

6 P R 1881

14. *Presumptive right of occupancy—Rebuttal—Voluntary admission—Continuous occupation by tenant.*
In a suit under section 6 of the Tenancy Act to disprove defendant's right of occupancy, it appeared that the *naqsha mudakhilat* contained an admission, purporting to be made by defendant, that the proprietors could evict him. The order passed by the Superintendent of Settlement, however,

PUNJAB TENANCY ACT, XXVIII OF 1868—*contd.*

Section 6—*concld.*

was that defendant be recorded an occupancy tenant.
Held by the Financial Commissioner, that it could not be safely decided that plaintiffs had rebutted defendant's presumptive right of occupancy by proving a voluntary admission by defendant of the kind described in clause 2, section 6 of the Tenancy Act, the entry of the admission not being sufficiently reliable when it was not accepted by the officer who attested and passed orders on the statement.
Plaintiffs' suit dismissed by the Financial Commissioner, as they failed to rebut the presumption in defendant's favour under clause 1 of the above section, and as defendant's possession of the land in question was found to have been continuous, inasmuch as he had continued to cultivate, or to put in cultivators, and so arrange for the cultivation of the whole of the land. MAHLA KHAN *v.* HAKIM KHAN.

4 P R 1881 Rev.

15. *Presumptive right of occupancy—Tenant entered in some of the Settlement papers as hereditary and in others as non-hereditary—Effect of such contradictory entries.*
In a suit to establish occupancy rights, it appeared that the plaintiff's father was entered in the *khasra* as hereditary cultivator of the land in question, but in the *muntakhib* and *terij* documents of the same Settlement he was entered as *ghair maurusi.*
Held, that the above contrariant entries did not satisfy the requirements of section 6 of the Tenancy Act, and that a tenant cannot be held to have been recorded in a Settlement as an occupancy tenant, unless the documents of that Settlement taken together show clearly an intention to so record the occupant. KALANDAR SHAH *v.* ILAHI BAKHSH.

147 P R 1884

Section 7.

—" *Exchange* " *contemplated by above section, explained.*
Held, that the " exchange " contemplated by section 7 of the Tenancy Act, is the intentional and deliberate giving up of one plot in order to get, or on the understanding that the tenant will get, another in lieu of it, and that merely ceasing to cultivate some fields and tilling others, without an express intention to substitute the one for the other, is not a sufficient exchange within the meaning of the section. SIRDAR DYAL SINGH *v.* SOBHAN ALI.

124 P R 1884

Section 8.

1. *Grounds for decreeing occupancy rights under section* 8.
See OCCUPANCY RIGHTS.

8-

Section 8—*contd.*

2. *Long possession—Mortgage by tenant—Acquiescence by landlord.*

See OCCUPANCY RIGHTS.

96 P R 1889

3. *Luthbund.*

A cultivator who is also a *luthbund* (*i.e.*, one who has raised bunds and brought the land under cultivation, either personally or through labourers and retainers) has rights of occupancy. MOOSA KHAN *v.* MAHOMED NOWRUNG KHAN.

24 P R 1871

4. The village of Bajawa was formerly held by Rangurs, who deserted it many years ago. The inhabitants of Bawana gradually encroached upon it, and cultivated land to the east of a canal that passed through Bajawa; the Rangurs occupying land to the west of the canal where they built a village. The land thus brought under cultivation was assessed and the Settlement made with the Rangurs, it being recorded that they should not interfere with the possession taken by the inhabitants of Bawana, who continued to reside in their own village. The inhabitants of Bawana paid for the land thus taken 3½ annas per *bigha* for revenue more than the villagers of Bajawa, and Rs. 70 per annum for grazing on waste land. At the regular Settlement the inhabitants of Bawana were recorded as tenants-at-will, occupying common land of the village Bajawa. *Held*, that the Rangurs could not eject the inhabitants of Bawana from the land taken by them. HANS RAM *v.* RAM LAL.

21 P R 1873

5. A promise of occupancy rights is sufficient ground for a decree of the right under section 8 of the Tenancy Act. MEHR GIR *v.* JOWAHIR GIR.

2 P R 1874 Rev.

6. Section 8 of the Tenancy Act does not permit a Court to decree a right of occupancy on claims which would fall under section 5 or section 6, but for some qualification for establishing a right under those sections being wanting. Ordinarily a case would fall under section 8 where the tenant could show that the right claimed had generally or customarily been conceded to other tenants similarly circumstanced. A decree under section 8 should clearly state the grounds on which it is made. MOHAN *v.* SEWA.

4 P R 1875 Rev.

7. Where there was long possession, with the facts that in former litigation the tenants had been considered hereditary cultivators, and other tenants in similar circumstances in the same village had been admitted by the proprietors to occupancy rights, the Financial Commissioner decreed for the tenants under section 8 of the Tenancy Act. MAHMUD KHAN *v.* RAHMUTULLA.

4 P R 1876 Rev.

Section 8—*contd.*

8. *Occupancy rights—Agreement—Registration—Contract in writing—Oral agreement—Uncertainty—Oral agreement entered into after passing of Tenancy Act.*

In a suit to establish rights of occupancy, the plaintiff based his claim upon an agreement made between himself and the proprietors, the terms of which were recorded in the Patwari's diary and signed by one of the proprietors, who was found to have been acting for and representing the remaining proprietors. The terms of the agreement were to the effect that the tenant who had hitherto paid rent in cash should for future pay at a fixed rate in kind for the term of Settlement, subject to alteration afterwards, and that the land should be held by him and his descendants in the male line in perpetuity; and further, that land hereafter reclaimed should be paid for at the same rate.

Held, that the entry relied upon was not a contract in writing such as to require registration, but an oral agreement proved by the evidence of the patwari, and the note made by him at the time, and also by the evidence of others who were present. Nor was such agreement void for uncertainty, as its terms could be gathered, not merely from the entry in the Patwari's diary, but from the whole evidence.

Held further, that the agreement, though an oral one, made after the passing of the Tenancy Act, and not falling within section 2 of the Act, furnished a ground on which a claim for right of occupancy, under section 8 of the said Act, could be sustained. *Mehr Gir* v. *Jowahir Gir* (No. 2 *P. R.* 1874, Rev.), *Mohan* v. *Sewa* (No. 4 *P. R.* 1875, Rev.), *Mahmud Khan* v. *Rahmutulla* (No 4 *P. R.* 1876, Rev.), and Civil Appeal No. 1431 of 1879 (unpublished), referred to. KHAZAN SINGH *v.* FOUJU SINGH and KHAZAN SINGH *v* DEPU SINGH.

23 P R 1881

9. *Grounds for decreeing occupancy rights under the above section.*

Plaintiff claimed a declaration that he was proprietor of the land in suit. The lower Appellate Court held that, though the plaintiff had failed to prove that he was proprietor of the land, he was entitled to be declared a tenant with right of occupancy under section 8 of the Tenancy Act, and to this order plaintiff took no objection either by way of cross-appeal or cross-objection. The grounds upon which a right of occupancy was decreed were that, though the plaintiffs had made out no case under section 5 or section 6 of the Act, they had long considered themselves (though erroneously) to be proprietors, had not been shown to pay "*munafa*" to the proprietors, and had they been able to prove cultivation for 3 generations (which they could not) would have had a *status* under section 5, clause (1) of the Act. It was further pointed out (on defendants' appeal to the Chief Court) that plaintiff had been in cultivating possession for about 40 years, paying only at proprietor's rates; that the village was long held in jagir, and that there was practically no difference between the plaintiff and the proprietors, and it was contended that these were sufficient grounds for awarding the *status* of hereditary tenant under section 8.

Section 8—*concld.*

Held, that plaintiff's suit must be dismissed upon the ground that he had failed to prove that he was either proprietor or tenant with right of occupancy in the land in suit. *Mohan* v. *Sewa* No. 4 *P. R.* 1875, Rev.) and *Lachman* v. *Kaka* (Civil Appeal No. 630 of 1877, unpublished) cited and approved. *Shadee* v. *Arjun* (No. 55 *P. R.* 1868), referred to. ABBHE *v.* MUHAMMAD.

90 P R 1882

Section 9.

1. *Occupancy rights in common land—Jagirdars—Pattidari village.*

See COMMON LAND.

1 P R 1899 Rev.

2. *Occupancy right—Grant of muafi to ala lambardar in virtue of his office—Ala lambardar joint owner of such land—Impure pattidari village.*

See JAGIR.

1 P R 1897 Rev.

3. *Rights of occupancy in common land.*

Plaintiffs claimed a right of occupancy in land which was *shamilat* until about a year before suit, when it came into the defendants' possession by partition. *Held*, that the character of the land prevented a right of occupancy from attaching. KARAM BEG *v.* GOWHAR.

33 P R 1871

4. *Held*, on the other hand, by the Financial Commissioner, that section 9 of the Punjab Tenancy Act does not prevent persons who are not members of the proprietary body from acquiring rights of occupancy in the common land of a pattidari village community. Section 9, clause 2, refers only to land common to the village community, and not to a sub-division. DEVI DITTA *v.* ALLAYAR.

2 P R 1871 Rev.

5. Unless there is a special provision in the *Wajib-ul-arz* conferring such rights, rights of occupancy cannot be acquired in the *shamilat* or commnn land. *Devi Ditta* v. *Allayar* (No. 2 *P. R.* 1871, *Rev.*), dissented from. *Akbur* v. *Fulteh Shah* (No. 8 *P. R.* 1867), and *Karam Beg* v. *Gowhar* (No. 33 *P. R.* 1871), affirmed. JIWAN *v.* LANGAR.

30 P R 1872

PUNJAB TENANCY ACT, XXVIII OF 1868—*contd.*

Section 9—*contd.*

6. Plaintiff claimed to be hereditary tenant of land of which he had been recorded as tenant-at-will holding under an hereditary tenant, and had been in possession since the Sikh rule, paying on the same terms as hereditary tenants. *Held*, that his claim to be recorded hereditary tenant failed. KALA *v.* TANI. **49 P R 1872**

7. A *pahi-kasht* tentant does not obtain rights of occupancy by lapse of time. DULA SINGH *v.* JOWAHIR SINGH. **1 P R 1872 Rev.**

8. *Pattidari village common land.*

Under section 9, clause 2, Act XXVIII of 1868, neither tenants nor proprietors can acquire rights of occupancy in the common lands of a pattidari village. AMIRO *v.* WAHAB DIN. **49 P R 1874**

Followed in MADDAN *v.* PIRA. **9 P R 1876**

9 Section 9 of the Tenancy Act does not destroy rights acquired before the passing of the Act.

The disability to acquire a right of occupancy in the common land of a pattidari village, applies only to the members of the village community. CHUNI LAL *v.* IMDAD ALI. **1 P R 1874 Rev.**

10. *Sections* 9, 2—*Common land*—Wajib-ul-arz.

Plaintiffs sued to have defendants declared tenants-at-will, the latter having been recorded at the regular Settlement as tenants with rights of occupancy before the passing of the Tenancy Act. The correctness of this entry had been contested, and eventually the Settlement Court in 1871, held that defendants were tenants with rights of occupancy. The land was common land of the village. By Chapter II, section 9, of the Tenancy Act, occupancy rights in the common lands of a *pattidari* village cannot be acquired under that chapter. *Held*, by BOULNOIS and LINDSAY, JJ., that defendants were tenants with rights of occupancy, their right to be so regarded not falling under Chapter II of the Act, as one "acquired under that Chapter," but being a right recorded before the passing of the Act, and the Legislature not intending that the Act should be employed for the destruction of recorded rights. *Held*, by CAMPBELL, J. that section 2 gave effect to entries in the Settlement record as if they were agreements only when the entries dealt with matters comprised in Chapters III, IV, V and VI of the Tenancy Act, and therefore an entry relating to occupancy rights which are provided for in Chapter II could not, with regard to section 9, be taken to confer occupancy rights in common land. VAZIRA *v.* JAWAND SINGH. **20 P R 1876**

11. *Rights acquired prior to passing of Tenancy Act.*

Held, that section 9, Act XXVIII of 1868, which enacts that occupancy rights may not be acquired in the common lands of a village, does not apply to the case of a tenant with rights of occupancy in common land, who had previously acquired such rights, and could not therefore be said to have acquired rights under the Act. *Natha Singh* v. *Fatteh Singh* (No 40 *P. R.* 1877) *and* RURA *v.* LEHNA SINGH. **31 P R 1878**

PUNJAB TENANCY ACT, XXVIII OF 1868—*contd.*

Section 9—*concld.*

Section 11.

See ALSO UNDER SECTION 2, *supra.*

1. *Suit for enhancement of rent.*

The Court of first instance in determining the issue whether the rent paid by defendants was below the rate of rent usually paid in the neighbouring villages by tenants of the same class with right of occupancy for land of a similar description and with similar advantages, calculated entirely on the cash rates paid under the first regular Settlement by tenants of this class. The first Court of appeal, the Commissioner of the Division, held that the rent test should have been the rents paid by the tenants *in kind* and the proportion which these rents bore to the land revenue; also that the Court of first instance was bound to examine the claim with reference to any one of the three grounds under which, in section 11, Act XXVIII of 1868, enhancement might be claimed, and that under the third of these grounds plaintiff's claim was good. *Held*, in concurrence with the Commissioner, that the proprietor was entitled to enhanced rent at twice the Government revenue. BUR SINGH *v.* PREM SINGH. **2 P R 1872 Rev.**

2. *Tenant of "chahi" lands—Liability of, to ejectment or to pay enhanced rent, for producing "barani" crops.*

In 1859, the Financial Commissioner, in a suit between the parties, ordered that, if the defendant, the tenant, kept the land waste, the plaintiff, the landlord, "should have the option of transferring the land to other cultivators." The plaintiff now sued to eject the defendant as the latter refused to resort to well-irrigation. The land was entered at Settlement as *chahi* land in the hereditary occupancy of the tenant, and the revenue payable on it was at *chahi* rates; and it was also recorded, that of *barani* crops, the proprietor should receive one-fourth as rent, and of *chahi* crops one-fifth. The lower Appellate Court, having received the finding of a commission appointed to inquire "whether the defendant could with a reasonable profit use well water for the land in dispute," decreed that for the future the defendant must cultivate the whole of the land with well water. The defendant appealed to the Chief Court on the ground that he could not incur the outlay necessary for irrigation without loss: and upon a further inquiry directed by the Court, it was reported that the land was so small in area that it could not profitably be irrigated. *Held*, by BOULNOIS AND LINDSAY, JJ., that the defendant could not be ejected, but the plaintiff was at liberty to sue for enhanced rent under section 11 of the Tenancy Act. (*Held*, by the CAMPBELL, J., that plaintiff could not sue for enhancement of rent and that defendant was liable to be ejected. JODAR *v.* SODHI INDAR SINGH. **54 P R 1875**

PUNJAB TENANCY ACT, XXVIII OF 1868—*contd.*

Section 11—*contd.*

3. *Enhancement of rent—Agreement at Settlement not to enhance—Expiry of term of Settlement.*

An agreement contained in the Administration paper of Settlement is only binding during the currency of the Settlement in which and for the purpose of which it is drawn up. *Held*, therefore, that a proprietor is entitled to enhancement of rent under Act XXVIII of 1868, notwithstanding an agreement to the contrary, if the term of Settlement has expired. JAS RAM *v.* BAL RAM.

6 P R 1877 Rev.

4. *Sections* 2, 11—*Enhancement of rent—Agreement.*

Defendants held certain land under an agreement, dated 10th August 1853, the terms of which were also embodied in the *wajib-ul-arz* of the village, entitling them to hold the land for ever as cultivators, giving a certain share of the produce to plaintiff. In a suit brought by plaintiff, *held*, that he was not entitled to enhancement of rent under section 11, by reason of section 2, Act XXVIII of 1868. SODHI INDAR SINGH *v.* BHAGA. **50 P R 1878**

5. *Enhancement of rent—Principles on which enhancement should be made.*

In a suit brought by the proprietors against their occupancy tenant for enhancement of rent upon the second ground stated in section 11 of the Tenancy Act, the lower Courts held that, because in a suit for enhancement brought by the proprietors of land of a similar quality in a neighbouring village against a hereditary tenant of the same class as the present defendant, the rent was enhanced by increasing the malikana payable by the tenant to an amount equal to the Government revenue, therefore the rent of the present defendant should be similarly enhanced and, instead of a malikana of 20 per cent. on the Government revenue heretofore payable by him in addition to the revenue and cesses, a malikana at the rate of 100 per cent. on the Government revenue (on a portion of the land) should in future be paid by him.

Held, that the principle on which the enhancement had been made was erroneous.

The rate of rent referred to in the 2nd ground of section 11 of the Tenancy Act is the rate per acre or ghumao payable by tenants of the same class for land of a similar description and with similar advantages in the neighbourhood, and can only be arrived at by ascertaining the total amount payable for the land in each case, whether in a lump sum or as an aggregate of sums

PUNJAB TENANCY ACT, XXVIII OF 1868—*contd.*

Section 11—*contd.*

under the names of revenue, cesses, and malikana. It is necessary to compare the aggregate of these items per acre in one holding with their aggregate per acre in another before it can be said that the rent of the one is higher or lower than that of the other, and it is erroneous to say that the rents of both holdings are at the same rate because the malikana, which is only one of the items comprised in the rent, bears the same ratio to the revenne in both cases, seeing that the revenue itself may fall at very unequal rates on the two holdings. ALAYAR *v.* JALAL KHAN. **93 P R 1881**

6. *Enhancement of rent—Principles on which enhancement should be calculated under the 3rd ground of section* 11—*Comparison with rents in kind—Tenants of the "in same class."*

The principles in accordance with which the enhancement of rent should be calculated and decreed under the 3rd ground mentioned in section 11 of the Tenancy Act, discussed and explained.

With reference to the definition of "rent" given in section 3 of the Act, which includes the land revenue and cesses, and the provisions of section 11, 3rd ground, and section 12 of the Act, the Court should ascertain the rate of rent usually paid in the neighbourhood by tenants of the same class without occupancy rights for land of a similar description and with similar advantages, and after making the deduction allowed under section 11, 3rd ground, should calculate the entire sum payable by the tenant for the occupation of the land, and then deduct the land revenue and cesses, if these are payable by the tenant. Rent should not be fixed with reference to the *average* rents paid by a number of tenants who may be of different classes, and whose holdings may be very dissimilar in regard to the description of the land or its advantages.

Again, as rents in kind necessarily fluctuate considerably from year to year, the value of the rent in kind for a particular year would afford no standard for the calculation of a cash rent to be paid every year, whether the seasons were favorable or not, and whether the prices were high or low. Moreover in attempting to fix cash rents with reference to the estimated value of rents paid in kind, it would be necessary to allow the tenant some deduction on account of his taking the entire risk of failure of crops, though the amount of such deduction would vary in different parts of the country according to local circumstances. Unless therefore it can be determined what rent in kind would correspond with a particular cash rent in a particular locality, the rates of rents in kind prevailing there could not be made available for the calculation of enhanced cash rent under section 11 of the Tenancy Act.

The extent of the holding, as pointed out in *Ghulam Muhammad* v. *Jiwan*

PUNJAB TENANCY ACT, XXVIII OF 1868—*contd.*

Section 11—*contd.*

(No. 120 *P. R.* 1880), is also an element to be considered in determining whether tenants are of the same class or not, and another important element is whether the land has been held for any length of time at the rent now paid or that rent has been fixed for a single year or other short period. High rents may be paid for short periods because prices are at the time high, or for other reasons, but tenants taking lands for short periods would not be tenants of the same class as tenants who hold the same land for a long period, even if the rents paid by them could be regarded as the rates of rent usually paid. HAKU *v.* BHAGAT RAM **81 P R 1882**

7. *Suit for enhancement of rent—Suit by one of several joint proprietors—Right to sue.*

Held, that a suit against an occupancy tenant for enhancement of rent brought by one out of several joint proprietors, the other proprietors not joining in demanding that the rent should be enhanced, is not maintainable, but must fail on the ground that it is not brought by the landlord; the landlord under whom the defendant holds not being the plaintiff alone, but the plaintiff and his co-proprietors jointly. *Attar Singh* v. *Dewa Singh* (No. 17 *P. R.* 1879) and *Prem Singh* v. *Bhagwana* (No. 4 *P. R.* 1880), referred to. SHARIFULLA *v.* JAMAL KHAN. **77 P R 1883**

8. *Enhancement of rent.*

Held, that the 3rd ground of section 11 of the Tenancy Act applies only to tenants under section 5 or 6 of the Act, and cannot be applied to a suit for enhancement of the rent of tenants of the class described in section 8.

Muhammad v. *Hakim* (C. A. No. 644 of 1879) cited. MUHAMMAD *v.* MUHAMMAD ABDULA. **9 P R 1887 Rev.**

See also JAI SINGH *v* DASWANDHI **9 P R 1887 Rev Note.**

9. *Suit for enhancement of malikana—"Rent"*

A suit for enhancement of *malikana* is not a suit contemplated by the Tenancy Act (XXVIII of 1868).

Alayar v. *Jalal Khan* (No. 93 *P. R.* 1881), cited. FEROZ KHAN *v.* HAIDAR. **10 P R 1887, Rev**

Compare MUDDAT *v.* KALA. **10 P R 1887, Rev. Note (a** and IMAM UD-DIN *v.* ILAHI BAKHSH. **Ibid. Note (b)**

10. *Grounds 2 and 3—Enhancement of rent.*

In a suit for enhancement of rent under the 3rd ground mentioned in section 11 of the Tenancy Act, the lower Court based his decision on the view that the 3rd ground on which enhancement can be claimed under section 11 being alternative or sup-

PUNJAB TENANCY ACT, XXVIII OF 1868—*contd.*

Section 11—*concld.*

plementary to the 2nd ground, therefore until it appeared that there were no tenants with right of occupancy of a similar *status* to defendant with whom comparison might be made, comparison with tenants without rights of occupancy did not arise, except to strengthen a comparison already made with the former class.

Held by the Financial Commissioner, that this view was incorrect and opposed to the plain language of the Act, which contained nothing to show that a landlord must not be allowed to establish a claim under ground 3, until he had tried and failed to establish one under ground 2; but that the plaintiff was at liberty to choose his ground, though he could not succeed until he had adduced evidence of the kind required to establish a claim on the selected ground. RAHIM ALI *v.* PIR BAKHSH. **11 P R 1887 Rev.**

11. *Enhancement of rent—Rate of rent usually paid by tenants-at-will in the neighbourhood.*

The standard fixed by the 3rd ground of section 11 of the Tenancy Act, 1868, with reference to which enhancement can be decreed, is not an *average* rent rate, but an *usual* rent rate, and though, to constitute the latter, it is not necessary that there should be a large number of tenants paying an exactly uniform rate, still there must be at least a fair number paying rates which do not greatly vary, or there is no standard with reference to which enhancement can be derceed. INDRAJ *v.* MAHIPAT. **24 P R 1888**

Section 16.

1. *Agreement to commute—Want of consideration.*

Defendants were hereditary cultivators, and at the last Settlement, being in doubt as to whether their status would be maintained, signed a lease for ten years, in which payment of rent in kind was provided for,—the lease being recorded by the Settlement Officer. They had up to the last Settlement paid in cash. Plaintiff sued for rent in kind due under this lease. The Deputy Commissioner dismissed the suit on the ground that there was no consideration for the lease, under which defendants, who were entitled to hold in perpetuity, submitted to be ejected at the expiration of ten years. The Commissioner on appeal affirmed this decision. *Held*, that plaintiff's suit was properly dismissed, there being no consideration for defendant's promise to pay rent in kind. KHAIR DIN *v* MOHAMED **16 P R 1872**

2. *Claim for rent in kind—Materiality of last payment preceding suit.*

Where plaintiff sued for rent in kind, and defendant pleaded that he had all along paid in cash, *held*, that it was necessary to determine the nature of the last payment before suit; for if the payment were in

PUNJAB TENANCY ACT, XXVIII OF 1868—*contd.*

Section 16—*contd.*

money, the rent could not be commuted into rent in kind without the consent of the landlord and tenant under section 16 of Act XXVIII of 1868. MOKAM SINGH *v.* LADHA MULL. **53 P R 1872**

3. *Receipt by landlord of value of produce no bar to claim for the produce itself.*

In a suit for payment of rent in kind, the fact that the plaintiff has been in the habit of receiving the value of the share of the produce payable to him, instead of the produce itself, does not necessarily bind him to take rent in cash for the future. SARDAR KHAN *v.* WARYAM. **23 P R 1873**

4. *Commutation of rent.*

At the revised Settlement of the Lahore District, plaintiff was for the first time recorded a tenant-at-will with his occupancy protected for ten years. Plaintiff had since then paid rent in kind, but at a revision of the record of rights as to tenants, plaintiff having been restored to his original status of hereditary cultivator, claimed to revert to cash payments of rent. *Held*, that under section 16 of Act XXVIII of 1868 there could be no commutation of rent in kind into rent in money without the consent of the landlord. HAJI *v.* KASHU.

43 P R 1873

5. Where a tenant had taken a spring crop of grain off land on which he had had an autumn crop of cotton, but the grain was only sown owing to partial failure of the cotton and full cash cotton rates had not been paid by the tenant, *held*, that he was liable to give the proprietor *batai* from the grain crop. LABHA *v.* DULO.

77 P R 1873

6. *And section 2—Rent—Change from cash to kind—Agreement—Want of consideration*

Before 1867, the tenant was recorded hereditary and paid rent in cash; he was then erroneously recorded a tenant without occupancy rights, but protected for a term of years, and paid rent in kind until 1870, according to the entry made when the record of his status was altered; in 1870, the entry was again altered, and he was recorded hereditary tenant. He declined to pay rent in kind from that time. *Held* (CAMPBELL, J., dissenting), that the agreement in 1867 did not bind the tenant to pay rent in kind, as there was no consideration for the agreement, and the entry was made under an erroneous impression as to fact. The consent required by section 16, Tenancy Act, was also wanting. NANDU *v.* SANT SINGH.

67 P R 1876

7. *Commutation of rent—Involuntary commutation.*

PUNJAB TENANCY ACT, XXVIII OF 1868—*contd.*

Section 16—*concld.*

The defendants, who were tenants with rights of occupancy, paid rent in cash. In 1867, by direction of the Settlement officer of the day, they gave to plaintiff a *kabulyat* binding themselves to cultivate for two years paying rent in kind, and after that at the option of the proprietor. Believing themselves to be tenants-at-will they continued paying rent in kind up to 1875, when they instituted a suit to have themselves declared tenants with rights of occupancy, and for cancelment of the *kabulyat*. The claim having been decreed, the tenants refused to continue paying rent in kind. In a suit by the proprietor for the money equivalent of the rent paid in kind, *held* (CAMPBELL, J., dissenting) that the commutation of rent in cash into rent in kind having been an involuntary commutation, without the *consent* of the tenants as contemplated in section 16 of Act XXVIII of 1868, they were entitled to revert to cash payments. SIRDAR BISHEN SINGH *v.* JOWINDA. **42 P R 1877**

Section 19.

1. *Suit by landlord to eject occupancy tenants—Tenants holding under a decree of Court.*

See UNDER SECTION 2, *supra*.

128 P R 1883

2. *Ejectment.*

Plaintiff sued to eject defendant on the ground that the latter had failed to satisfy a decree for arrears of rent for upwards of fifteen days. The Lower Appellate Court ordered that fifteen days should be allowed to the defendant to pay the arrears, and in default of payment a decree for his ejectment should issue. *Held*, by the Chief Court, that this order was bad in law; that subject to the question of compensation, the plaintiff was entitled to a decree for ejectment under section 19 of the Tenancy Act. MAHOMED ASHRUF KHAN *v.* BANAN. **69 P R 1871**

3. But where a tenant has appealed from a decree for rent, a decree for ejectment against him cannot be passed under section 19, Tenancy Act, until the appeal is determined. SADHU *v.* KHAZAN SINGH.

78 P R 1873

4. The proprietor obtained a decree for arrears of rent against his tenant on the 28th April, 1873, from which the teannt preferred an appeal: and on the 20th May 1873, sued for his tenant's eviction; on the 23rd July, a decree for ejectment was passed on the ground that the decree in the rent suit had remained unsatisfied for 15 days. The appeal of the tenant in the rent suit had not then been determined, and in the ejectment suit he pleaded that he was not aware that he was bound to pay the arrears of rent within 15 days. *Held*, that, as it appeared that the tenant had not

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contumaciously refused to satisfy a decree for rent for 15 days or upwards, the Court should have delayed passing the decree for ejectment, so as to allow the tenant an opportunity of paying the decree for arrears. RORA RAM *v.* DEWA SINGH. **60 P R 1874**

5. *Decree for ejectment of hereditary cultivator for alienating his land—Want of jurisdiction—Suit to set aside decree.*

In 1868, plaintiff, an hereditary cultivator was directed by the Court in a suit brought against him by the landlords (now defendants) not to alienate his land. In 1874, the landlords again sued to eject the tenant for alienating his land contrary to the decree of 1868, and, obtaining a decree, ejected the tenant in execution thereof. The tenant now sued to set aside that decree, and recover possession of his land. *Held, per* BOULNOIS AND LINDSAY, JJ. (CAMPBELL, J. dissenting), that the decree for ejectment was made without jurisdiction, as alienation by the tenant was not a ground upon which such a decree could stand under section 19 of the Tenancy Act, and that plaintiff was entitled to sue to set it aside. *Held*, by CAMPBELL, J. that the decree for ejectment barred the present suit, as though based upon an error or illegality, it was passed by a Court competent to make a decree for the ejectment of an hereditary tenant. MUSTAFA *v.* SHIBBU.

51 P R 1875

6. *Ejectment—Giving time to tenant to satisfy decree for rent.*

Section 19 of the Tenancy Act does not compel the Court to decree ejectment when there is an unsatisfied decree for rent for 15 days. The Court should give time to the tenant to satisfy the decree, unless there has been some conduct on his part rendering it unreasonable to give him time. MOULA BAKSH *v.* GULSHER KHAN.

3 P R 1876

7. *Landlord and tenant—Decree for ejectment after satisfaction of decree for arrears of rent.*

Where a tenant satisfied a decree for arrears of rent more than 15 days after it had been passed, but before the passing of a decree for his ejectment—*Held*, that the tenant could not be ejected from his holding under section 19 of the Act. RULDU *v.* MUTSADDI. **29 P R 1877**

8. *Suit to eject occupancy tenant on payment of compensation—Valuation of suit for purpose of jurisdiction.*

Held that, in a suit to eject an occupancy tenant on payment of compensation under section 19, Act XXVIII of 1868, the subject matter of the suit for the purpose of jurisdiction is the value of the hereditary right of occupancy, *i. e.* the price which the tenure would fetch if put up to sale, not the sum

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which the landlord has to pay to buy the tenant out under section 19. BUTA SINGH *v.* PUNJAB SINGH. **28 P R 1879**

9. *Ejectment of tenant—Unsatisfied decree for arrears of rent—Meaning of "decree for an arrear of rent" in clause (1), section 19.*

In a suit for ejectment under section 19 of the Tenancy Act, it appeared that the defendants were three brothers, hereditary cultivators of a joint holding, their cultivation being separate. The proprietors sued them jointly for arrears of rent and obtained a decree which was based on a compromise by which the three brothers agreed to pay the arrears in proportion to their shares in the cultivation, and the decree embodied the agreement to this extent. Two of the brothers paid their shares of the amount decreed, but the third brother left a part of his share unpaid, notwithstanding that execution of the decree had been taken out by the decree-holders. The proprietors then sued to eject the three brothers on the ground that the decree for rent above referred to had remained unsatisfied for more than 15 days. Two of the brothers pleaded that they had paid the amounts decreed against them, while the third brother admitted that he still owed Rs 2 on the decree. The said balance of Rs. 2 was found to consist partly of a sum due for rent and partly of a sum due for costs

Held, that the two brothers who had paid their shares of the amount decreed were not liable to ejectment, as at the time that the plaintiffs brought their suit it could not be said that a decree against them for an arrear of rent remained unsatisfied, within the meaning of section 19, clause 1 of the Tenancy Act; but that the third brother was liable to ejectment within the section.

Held further, by SMYTH, J., that the phrase "decree for an arrear of rent" in clause 1, section 19 of the Tenancy Act, includes the amount decreed for costs in the suit as well as the amount found to be actually due for rent. MOHAMDA *v.* NIHAL SINGH. **87 P R 1881**

10. *Landlord instituting his suit for ejectment before tender of compensation—Jurisdiction of Court to make a decree before such tender—Procedure—Tenant who has "continuously occupied" "for thirty years," explained*

Held, per SMYTH and BRANDRETH, JJ., that a landlord is entitled to institute a suit under clause 2, section 19 of the Tenancy Act for the ejectment of his occupancy tenant before he has made or tendered payment of the compensation therein referred to, but the Court should not make a decree for ejectment before such tender. The proper procedure, where the parties differ as to the amount of compensation payable, is for the Court, after making the necessary

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Section 19—*concld.*

enquiry, to record an intermediate order determining the amount of compensation to be paid by the landlord and fixing a date on or before which he must pay or tender such amount to the tenant. If the landlord fails to pay or tender it on or before that date the suit should be dismissed. If payment or tender is made within the time fixed, the Court should then proceed to make a decree for ejectment, provided that the case is one in which it is proper in other respects to make such a decree.

Held further, per SMYTH, J. (BRANDRETH, J doubting as to this), that the period of 30 years referred to in the last clause of section 19 of the Tenancy Act need not have been completed before the institution of the suit for ejectment, but if the occupation has extended over a period of 30 years, prior to the making of a decree for ejectment, or, at any rate, prior to the tender of compensation, the tenant ceases to be liable to ejectment under the provisions of the above-cited clause. *Kaka* v. *Bhola* (No. 96 *P. R.* 1881), distinguished. SHADA *v.* TELU MAL. **13 P R 1882**

Section 20.

—Notice of ejectment served by two of three joint owners—Validity of such notice.

Held, that a notice of ejectment served on the tenants by two out of three joint owners of an estate, is not a sufficient notice under section 20 of the Tenancy Act, as two out of the three joint owners do not constitute the "landlord" within the meaning of that section. RAM SINGH *v.* WADHAYA. **19 P R 1886**

Section 22.

—Ejectment—Limitation—Sections 22-25, Tenancy Act, applicable only to tenants not having occupancy rights.

A tenant claiming a right of occupancy is not precluded by section 25 of the Punjab Tenancy Act from suing to establish that right, because he has failed to bring a suit to contest his liability to be ejected on or before the 15th May next after the serving of a notice of ejectment on him, and he may bring his suit within the general law of limitation, which is 12 years. Sections 22-25 of the Act apply exclusively to tenants not having rights of occupancy. NAIN SUKH *v.* HIRA SINGH. **44 P R 1873**

Section 25.

See UNDER SECTION 22, *supra.*

1. *Suit to contest notice of ejectment—Landlord and tenant—Failure by defendant to prove that the relation of landlord and tenant subsisted at time of notice.*

In a suit to contest a notice of ejectment issued under the Tenancy Act by the defendant, a milki mafidar of Rohtak, against the plaintiff whom the defendant assumed to treat as a tenant of the holding of mafi

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Section 25—*contd.*

land of Rohtak in his occupation, the prayer of the plaint merely being for cancellation of the notice issued, the plaintiff not having been in fact ejected, *held*, that the plaintiff having given *prima facie* proof that he was not a tenant of the defendant, this was sufficient to make it incumbent on the defendant to prove that the relation of landlord and tenant subsisted between him and the plaintiff when the notice of ejectment was issued; and as the only mode in which they could succeed was by showing that they were proprietors of the mafi lands of Rohtak, and they had failed to do so, the plaintiff was entitled to a decree declaring the notice in question to have been invalid. MASTA *v.* RAMZAN ALI. **91 P R 1881**

2. *And sections 37, 38—Compensation for improvements—Condition precedent—Tender of amount due by landlord before notice of ejectment—Suit by tenant under section 25 to contest notice—Nature of decree to be made by Court in such case.*

A tenant to whom compensation for improvements is due under section 37 and 38 of the Tenancy Act, cannot be ejected from his holding by notice unless and until such compensation is paid.

Payment of compensation by the landlord being a condition precedent to the ejectment of the tenant by notice of ejectment, the landlord is bound to tender the full amount due before notice of ejectment is served upon the tenant.

If the notice is served without such tender, and the plaintiff sues under section 25 to contest his liability to ejectment under the notice, he both may and ought to make the non-fulfilment by the landlord of this condition precedent a ground for contesting his liability to ejectment by the notice served upon him.

In such a suit the Court should make an absolute and unqualified decree, either that the plaintiff is not liable to ejectment under the notice served upon him, or that he is liable to ejectment, and that his suit is dismissed In no case should a decree be given for payment of a specified sum as compensation, or a decree for ejectment conditional upon payment of a specified sum, except with the express consent of both parties. *Roopa* v. *Kesha* (No 39 *P. R* 1871) and *Nathal* v. *Sultan* (No. 149 *P. R.* 1879), cited. KAKA *v.* BHOLA. **96 P R 1881**

3. *Notice of ejectment—Condition precedent—Illegality of notice without tender of compensation.*

Held, that it is a condition precedent to the service of a valid notice of ejectment upon a tenant under the Tenancy Act that the landlord should have made a tender of the compensation due to the tenant for improvements. Where, therefore, in a suit to contest such notice of ejectment it appeared

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Section 25—*concld.*

that no such tender had been made, *held*, that the omission must be regarded as a fatal defect in the notice and that the plaintiff was entitled to a decree declaratory of the invalidity of such notice, and to retain possession of his holding until such time as he was ousted in due course of law. *Kaka* v. *Bhola* (No. 96 *P. R.* 1881), followed. BOORA *v.* SALEEM. **18 P R 1883**

4. *And section 37—Compensation for improvements—Payment of compensation a condition precedent to right to eject tenant.*

Held, that, under section 37 of the Tenancy Act the payment of compensation is a condition precedent to the right to eject accruing, and a finding that improvements had been made for which the tenant had not received compensation would therefore entitle him to succeed in a suit under section 25 of the Act to contest his liability to ejectment. *Kaka* v. *Bhola* (No. 96 *P. R.* 1881), followed. *Shada* v. *Telu Mal* (No. 13 *P. R.* 1882), distinguished. BUDH SINGH *v.* RAHMAT.

39 P R 1883

5. *Suit to contest notice of ejectment—Form of decree where plaintiff is found entitled to compensation.*

In a suit to contest a notice of ejectment, if it be found after due enquiry that plaintiff is entitled to a certain amount as compensation, and that defendant has not tendered him that amount before issue of notice, an absolute and unqualified decree should be passed to the effect that plaintiff is not liable to ejectment under the notice served, and not a decree for payment of a specified sum as compensation. *Kaka* v. *Bhola* (No. 96 *P. R.* 1881), followed. NURULLA *v.* ATTAR SINGH. **111 P R 1883**

Section 27.

Growing crops—Crops sown after notice of ejectment, but cut before actual ejectment.

Where plaintiffs, who were tenants-at-will of certain land of which defendants were proprietors cultivated the land after receiving a notice of ejectment with respect to the said land: and afterwards in the ensuing year reaped the produce of the land: whereupon defendants forcibly possessed themselves of the crops thus cut by plaintiffs.

Held, in a suit by plaintiffs to recover the money value of the crops, that they were entitled to a decree, as defendants had no right to the crops sown by the plaintiffs, unless it further appeared that the plaintiffs had been ejected from the land by the defendants while the crops were still growing crops. GANDHI SINGH *v.* LEHNA.

99 P R 1879

Section 34.

—Sale by occupancy tenant of his holding without landlord's consent—Landlord by

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his conduct affirming the transfer—Subsequent suit by landlord for pre-emption.

See ESTOPPEL.

161 P R 1883

—Sale of transferable right of occupancy—Landlord not exercising right conferred on him by section 34—Suit for pre-emption.

See PRE-EMPTION—6. RIGHT OF, IN VILLAGES.

106 P R 1882

—Sale of occupancy rights—Presumption as to existence of right of pre-emption—Transferable right—Act XXVIII of 1868, sections 5 and 34 custom.

See PRE-EMPTION—6. RIGHT OF, IN VILLAGES. **196 P R 1882**

1. *Alienation—Mortgage.*

A tenant having a right of occupancy within section 5 of Act XXVIII of 1868, has power to mortgage the land in his occupation subject to the proviso contained in section 34 of the Act, unless there be an agreement forbidding the mortgage under section 2. AKBER *v.* WAZIR ALI. **77 P R 1870**

2. *Gift.*

A tenant with right of occupancy cannot give away his land without first offering it for sale at the market value to the landlord. ELAHYA *v.* KANHA.

12 P R 1871

3. *Alienation—Sale of occupancy rights in execution of decree—Government Notification No. 1225 of 26th September 1866.*

A obtained against *B*, a tenant with rights of occupancy, a decree for Rs. 630, and in execution of this decree attached the occupancy rights. The yearly profit of the rights was put up to auction, and *A* bid Rs. 45 in addition to what *B* had to pay on the land. The Court ordered that *A* should hold the occupancy rights for 14 years, and that at the end of that term the land should revert to *B* or his heirs whether or not *A's* decree were then fully satisfied from the profits. *Held*, (BOULNOIS, J. dissenting), that the alienation of *B's* rights did not require the sanction of the Chief Court under Government Notification No. 1225 of 26th September 1866; but that (*per* LINDSAY and CAMPBELL, JJ.) the alienation should not be carried into effect without giving the proprietor of the land the option of taking the land on the terms accepted by *A* the decree-holder, the proprietor paying Rs. 45 a year to the decree-holder for 14 years. KANDA *v.* RAM KARAN **32 P R 1873**

4. *Mortgage.*

An hereditary tenant mortgaged his land to his daughter's son, without offering it for sale to the landlord; in a suit brought by the landlord the Chief Court decreed the mortgage to be void. PARTAB SINGH *v.* GAHIA. **67 P R 1875**

PUNJAB TENANCY ACT, XXVIII OF 1868—*contd.*

Section 34—*contd.*

5. *Landlord's consent to mortgage of hereditary rights—Consent given by landlord's mortgagee.*

The landlord mortgaged his land and the hereditary tenant, with the mortgagee's consent, mortgaged his also. *Held*, that section 34, Tenancy Act, applied to the mortgage effected by the tenant, and that by that section the consent of the landlord's mortgagee was not sufficient, but the tenant's alienation required the landlord's consent. LAL DASS *v.* GURU JOWAHIR SINGH.

19 P R 1877

6. *Landlord and Tenant—Mortgagee—Limitation.*

B. on 16th January 1869 mortgaged his occupancy rights in certain land to one B. S. The deed contained a clause that if B. made default in certain payments B. S. might enter into possession of the land. B. made default, and on 10th March 1874 B. S. claimed and obtained a decree for possession. On 29th July 1875 S. M. A., a mortgagee of the proprietors' rights, instituted the present suit to set aside the mortgage of the occupancy rights. *Held*, that the word "landlord" included a mortgagee for the purposes of section 32, Act XXXIII of 1868, and therefore that S. M. A. as a mortgagee from the proprietors was entitled to object to the mortgage by B. of his occupancy rights to B. S.

Held, further, that the limitation provided in Article 92, Schedule II of Act IX of 1871, did not apply to the suit. SHEIKH MEHR ALI *v.* BUTA. **39 P R 1877**

7. *And section 35—Occupancy rights—Mortgage of—Death of occupancy tenant without heirs—Right of mortgagee as against proprietor.*

Plaintiff proprietor sued to recover possession of land held by defendant, mortgagee of Sharaf Din, occupancy tenant, who died without heirs two years before suit was brought. *Held*, that plaintiff was entitled to a decree, as the interest of the mortgagee in the land could be no greater and last no longer than that of the mortgagor (occupancy tenant) from whom it was derived, and that the mortgagor's interest having come wholly to an end by reason of his death without heirs, the mortgagee's interest ceased with it, even if the mortgage was made with the proprietor's knowledge or was afterwards assented to by him. SHER KHAN *v.* PIR BUKSH. **79 P R 1878**

8. *Landlord and tenant—Mortgage by occupancy tenant without consent of landlord—Cancelment of mortgage at suit of landlord—Right of landlord as against mortgagee to recover possession of tenant's land.*

S K., proprietor of certain land, sued to cancel a mortgage thereof by G., his occupancy tenant, to P. B. and to oust P. B. from possession of the land. The lower Courts decreed the mortgage void as against S. K, having been made without his consent,

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Section 34—*contd.*

as required by section 34 of the Tenancy Act, XXVIII of 1868, but refused him a decree for possession of the land.

Held, by the Chief Court, that S. K., as proprietor, was entitled to recover possession of the land of which as between him and P. B., the latter was in possession as a stranger.

The question, whether in such a case the possible existence of a right in the tenant to subsequently recover possession from the proprietor, on the ground that his attempt to alienate did not involve a forfeiture of the tenant's right of occupancy, does not bar the landlord's right to recover possession from the transferee. SHER KHAN *v.* GUJAR.

55 P R 1879

9. *Alienation of occupancy rights.*

Where an hereditary cultivator sold his rights to his landlord, whereupon the vendor's near collaterals (nephews and grand-nephews), who would have been entitled to succeed to the land sold on the death of the vendor, if no such sale had occurred, sued to set aside the sale, *held*, that by reason of section 34 of the Tenancy Act the plaintiffs could not maintain an objection to the sale in question unless they could show that the land alienated was part of an entire holding held jointly by themselves and the vendor. GANDA SINGH *v.* GOLAB SINGH.

159 P R 1879

10. *Occupancy rights—Sale—Objection by vendor on ground of landlord's right to first offer.*

In a suit for possession of land, the occupancy rights in which had been sold to plaintiff by defendant, *held*, (the proprietors not being parties to the suit), that defendant, the vendor, could not dispute the validity of his own sale on the ground of his landlord's right, under section 34 of the Tenancy Act, to the first offer of the land sold. GOHAR SINGH *v.* FATTU.

30 P R 1881

11. *Mortgage of occupancy rights—Suit by proprietor to eject mortgagee—Delay in suing—Acquiescence.*

Where an occupancy tenant mortgaged with possession his occupancy rights in certain land and the owner of the land made no objection to the transfer for five years, when the mortgagee having applied for mutation of names he was summoned into Court, and objected to the *dakhil kharij*, which was therefore refused, whereupon the said owner, a year and a quarter later, sued to eject the mortgagee as a stranger in possession of his land, *held*, that the owner must be taken to have acquiesced in the transfer, and that his suit must be dismissed. *Nur Bukhsh* v. *Ghulam Mohiuddin* (No. 47 *P. R* 1872), *Sheikh Mehr Ali* v. *Buta* (No. 39 *P. R.* 1877), and *Sher Khan* v. *Gujar* (No. 55 *P. R.* 1879), cited. FATTEHJANG *v.* BUDHA

82 P R 1881

PUNJAB TENANCY ACT, XXVIII OF 1868—*contd.*

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12. *Gift made by hereditary tenant without offer to landlord—Want of landlord's consent no ground for setting aside gift in suit to which landlord is not a party.*

In a suit brought by a collateral relative of an occupancy tenant to set aside a deed of gift executed by the latter in favour of his daughter's son, the lower Appellate Court directed the gift to be cancelled mainly on the ground that as the donor had not made an offer of the land, the subject of the gift, to the landlord (who was not a part to the suit) the gift was therefore invalid with reference to the provisions of section 34 of the Punjab Tenancy Act.

Held, that the above section, which was passed in favour of the landlord, could only be enforced in a suit properly instituted by the landlord against the tenant who had contravened its provisions ; that the landlord might or might not choose to contest his tenant's action, and where he elected not to do so there was nothing in the section which could be construed to render an alienation by the tenant *ipso facto* invalid, at least as against third persons standing in the position of the present appellants. KARM DIN *v.* ISMAIL.

109 P R 1881

13. *Mortgage by occupancy tenant without landlord's consent—Validity of such mortgage—Effect of consent of some of the proprietors.*

In a suit to have a mortgage by a tenant with rights of occupancy under section 6 of the Tenancy Act, without the landlord's previous consent, set aside as invalid, *held*, following *Sher Khan* v. *Gujar* (No. 55 *P. R.* 1879), that section 34 of the Act is applicable to mortgages, and further, following the Full Bench decision in *Bhupa* v. *Badhawa* (No. 45 *P. R.* 1883), that the landlord's consent is a condition precedent to the validity of an alienation made by such tenant.

Held also, that the above condition was not supplied by the consent of two of the proprietors at the time of mutation of names, as, assuming such consent to have been given, it would not bind the other proprietors (the plaintiffs in the present suit) whose consent was not obtained. MUHAMMAD BAKSH *v.* MUSSAMMAT NURBHARI.

35 P R 1883

14 *Alienation by tenant with right of occupancy under section 5—Offer to landlord—Condition precedent.*

Held, by the Full Bench that it is essential to the valid exercise of the power of alienation vested, under section 34 of Act XXVIII of 1868, in a tenant with right of occupancy under section 5, that he should, previously to the exercise of such power, have made an offer of sale of his land to the landlord at the market-value. *Mayda* v. *Harjus* (No. 96 *P. R.* 1867), *Nuthoo Khan* v. *Sultan* (No. 18 *P. R.* 1868), *Akber* v. *Wazir Ali* (No. 77 *P. R.* 1870), *F. B. Elahya* v. *Kanha*

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(No. 12 *P. R.* 1871). *Murad* v. *Bhag Singh* (No. 46 *P. R.* 1879), and *Sher Khan* v. *Gujar* (No. 55 *P. R.* 1879), cited. BHUPA *v.* BADHAWA.

45 P R 1883

15. *Alienation by occupancy tenant—Offer to landlord—Condition precedent.*

Held, that the offer required by the proviso attached to section 34 of the Tenancy Act, is a condition precedent to the valid exercise by the tenant of the power of the alienation conferred by the section, and that consequently where no such offer has been made the sale itself is invalid against the landlord. *Bhupa* v. *Badhawa* (No. 45 *P. R.* 1883 *F. B.*) followed. MUBARAZ *v.* DHERA.

80 P R 1883

16. *Landlord and tenant—Mortgage by tenant without consent of landlord—Delivery of possession to mortgagee—Suit for possession of mortgaged land—Forfeiture of occupancy right by tenant.*

In a suit brought by the proprietors to recover possession of certain land on the ground that the hereditary tenants of the land, not being tenants under section 5 of the Tenancy Act, and not being authorized by any agreement in writing or any provision in the *Wajib-ul-arz*, had executed a mortgage and delivered possession of the land to a third person, the tenants and the mortgagee both being defendants in the suit, it was alleged that the tenants, though they had mortgaged their holding, still remained in cultivating possession of the land, and paid rent to the mortgagee by *batai*.

Held, that if this were so, as between the proprietors and the tenants the relation of landlord and tenant still existed, and the tenants were still entitled to rely on their right of occupancy as a valid defence in a suit by the proprietors to evict them, and all that the proprietors would be entitled to claim was a decree declaring that the mortgage was void and of no effect as against them

Case remanded for a distinct finding as to whether the tenants had delivered possession of the land to the mortgagee. *Sher Khan* v. *Gujar* (No. 55 *P. R.* 1879), cited and explained. KAKA *v.* DIAL SINGH.

133 P R 1883

17. *Alienation by occupancy tenant—Non-forfeiture of interest by reason of unauthorised alienation.*

Held, that there is nothing in the law which renders the interest of an occupancy tenant liable to forfeiture merely by reason of an unauthorised alienation by way of mortgage. HIRA *v.* JIA.

51 P R 1884

18. *Unauthorised alienation by occupancy tenant—Non-forfeiture of tenure—Tenant's right to recover possession from landlord while still bound by his contract with the purchaser—Refund of purchase-money.*

Held, that the doctrine that an attempt by an occupancy tenant to alienate his holding in contravention of section 34 of the Tenancy

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Section 34—*contd.*

Act does not involve a forfeiture of the tenure, cannot be extended to the length of holding that, when the tenant has given another person a right to possession as against him by an invalid transfer, and the landlord has had that transfer set aside as inconsistent with his rights, the tenant, having parted with the possession can recover that possession from the landlord without showing that he is no longer bound by the contract inconsistent with the rights of the landlord. He may be able to show this, because the purchaser has released him from the contract by taking back the purchase-money or by substituting a new contract not affecting the land, or because, as between him and the purchaser, it has been put an end to in some other way. If he is not able to show this, he is not entitled to recover the land, because the contract by which he is bound to the purchaser is inconsistent with his duties as tenant. *Sher Khan* v. *Gujar* (No. 55 *P. R.* 1879), cited. AGHA JAN *v.* GHULAM MOHYUDDIN.
74 P R 1884

19. *Alienation by occupancy tenant in favour of one proprietor without consent of other proprietors—Effect of such transaction.*
Certain tenants with a right of occupancy (not under section 5 of the Tenancy Act in a plot of land jointly owned by several proprietors, sold the right of occupancy to one proprietor, without the consent of the other proprietors. The latter thereupon sued the purchasing proprietor for joint possession of the land and for a share in the profits since the date when he took possession, and obtained a decree from the lower Courts.

Held, (upholding the decree of the lower Courts) that the transaction between the tenants and the defendant fell within the last clause of section 34 of the Tenancy Act, and did not operate to transfer the tenants' right of occupancy to the defendant any more than it would to a stranger.

Per Plowden, J. Though the term alienation as used in section 34 and section 35 of the Tenancy Act probably does not include a transaction between landlord and tenant, but only transactions between the tenant and a person other than the landlord, still a transaction between a tenant and one of several persons who jointly are the landlord cannot accurately be described as a transaction between the tenant and the landlord, and the mere circumstance that the person to whom the tenant alienate happens to be one of the persons who jointly are the landlord cannot alter the legal character of the transaction which but for such a circumstance would be void. SARDAR BALWANT SINGH *v.* MEHR SINGH.
92 P R 1887

20. *And section 5. Unauthorized alienation by tenant—Acquiescence of landlord.*
Plaintiffs, proprietors, sued to recover from defendants certain land held by the latter under mortgage from certain tenants with

PUNJAB TENANCY ACT, XXVIII OF 1868—*contd.*

Section 34—*concld.*

a right of occupancy under section 5 of the Tenancy Act, alleging that the mortgage was invalid as made without their previous consent The lower Courts found that, although there was no express evidence of any previous consent to the mortgage by plaintiffs, or of any offer of the land to them, yet the possession of the defendants and their father as mortgagee had extended over so long a period as to warrant the inference that, even if there was no previous consent plaintiffs had had full knowledge of, and had acquiesced in, the mortgage to an extent which removed the original flaw in it and rendered it now valid.

Held, (upholding the orders of the lower Courts) that the conduct of the plaintiffs cured any original defect in the mortgage, and that the plaintiffs' suit must be dismissed. NANAK CHAND *v.* NUSSAMMAT CHANDO.
100 P R 1887

21. *Alienation by tenant without landlord's consent—Ratification of unauthorized alienations.*
Though a tenant may defeat his landlord's action brought with intent to cancel an alienation made in contravention of the provisions of section 34 of the Tenancy Act, 1868, by proving that the landlord had subsequently ratified his act, any such plea must be supported by the clearest and most unequivocal evidence. PARS RAM *v.* MANJA KHAN.
26 P R 1889

Section 36.

See UNDER SECTION 2, *supra*.
108 P R 1881
1 P R 1882
22 P R 1882
116 P R 1882
137 P R 1882
90 P R 1883
121 P R 1883
8 P R 1884
104 P R 1885
See UNDER SECTION 37, *infra*.
12 P R 1885

1. *Succession to occupancy rights*—Wajib-ul-arz—*Construction.*
See OCCUPANCY RIGHTS.
145 P R 1890

2. Three persons held land on a Joint hereditary occupancy. On the death of one of them, the proprietor claimed his third share on the ground that the deceased had not left male lineal descendants or collateral relatives, within section 36, Act XXVIII of 1868.

Held, that the proprietor's claim failed, as the two surviving tenants were entitled to hold the third share in question by right of survivorship, without proof that their and the deceased's common ancestor had occupied the land; and that the above section would not apply until the last joint tenant died. VEER SINGH *v.* MUKKUN.
36 P R 1870

PUNJAB TENANCY ACT, XXVIII OF 1868—*contd.*

Section 36—*contd.*

3. *Occupancy rights.*
Under section 36 of the Tenancy Act, an adopted son succeeds to occupancy rights. CHUNI LAL *v.* IMDAD ALI. **1 P R 1874 Rev.**

4. *Succession—Karabatis—*Wajib-ul-arz.
Held, that, under the provisions of the *Wajib-ul-arz*, the *karabatis* (near relations) of a deceased tenant with rights of occupancy, can succeed to such estate, notwithstanding section 36, Act XXVIII of 1868, even though the common ancestor of the deceased and the *karabatis* claiming may not have occupied the land as an occupancy tenant. RANJHA *v.* CHUHAR.
47 P R 1877

5. *Succession—Karabatis—Agreement—*Wajib-ul-arz—*Succession of widow for life—Continuity of possession.*
The *Wajib-ul-arz* provided that on the death of a tenant with rights of occupancy, his son, in default of his son his *bhai*, and in default of his *bhai* his *karabati* might succeed. *Held*, that the entry in the *Wajib-ul-arz* was an agreement within the meaning of section 2, Act XXVIII of 1868, and that under it a *karabati* (near relation), was entitled to succeed, notwithstanding the proviso to section 36 which requires that the common ancestor of the deceased tenant and the male collateral relative claiming shall have occupied such land.

Held, further, that the fact that the widow of the deceased hereditary cultivator took up her husband's cultivating rights, though she was not the next heir, could not be held to defeat the rights of the next heirs, who allowed her so to do. JOWAHIR SINGH *v.* ASA.
64 P R 1877

6. *Occupancy rights—Succession—Adopted son.*
Held, that an adoption by an occupancy tenant is legal, and the adopted son succeeds to the occupancy rights of his adoptive father. GAHYA *v.* JASWANT SINGH.
69 P R 1879

7. *Appointment of heir by occupancy tenant—Muhammadan agriculturist—Adopted son—Male lineal descendant—Act I of 1868, section 2, clause 19—Act IV of 1872, section 5—Custom.*
Held, by the Full Bench (*Plowden, Smyth, Elsmie* and *Barkley*, JJ.) that the words "male lineal descendants" in section 36 of Act XXVIII of 1868 include the sons of the tenant, and the sons of such sons, without limit, and that in accordance with the provisions of Act I of 1868 where the personal law of the tenant permits adoption, the word "sons" as above used includes adopted sons; but where there has merely been an appointment of an heir, the person so appointed is not a "male lineal descendant" within the meaning of the section.

Held further, per *Smyth, Elsmie, Barkley* and *Rattigan*, JJ. with reference to the pro-

PUNJAB TENANCY ACT, XXVIII OF 1868—*contd.*

Section 36—*contd.*

visions of section 5, Act IV of 1872, and section 36, Act XXVIII of 1868, that a person cannot claim to succeed by custom to a right of occupancy in land, who is not a male lineal descendant or a male collateral relative of the deceased tenant. *Gopal Singh* v. *Jowahir Singh* (No. 1 *P. R.* 1868), and *Gahya* v. *Jaswant Singh* (No. 69 *P. R.* 1879), referred to. DAD *v.* BAGH SINGH and ALA BAKHSH *v.* MUSSAMMAT EMA.

34 P R 1883

Followed in CHAJJU *v.* MUSSAMMAT BHANO.

34 P R 1883 Note (a)

HIRA *v.* PIRANDITTA.

34 P R 1883, Note (b)

ALADIN *v.* MUSSAMMAT JAWAHIR BIBI.

34 P R 1883, Note (c)

and SHADI KHAN *v.* DITTU.

34 P R 1883 Note (d)

8. *Succession to occupancy rights—Sanyasi fakirs—"Male collateral relatives."*

Plaintiffs, who were Sanyasi fakirs, claimed to succeed to the occupancy tenancy of a Sanyasi of a collateral branch, who had died leaving no disciples, urging (which was found to be proved) that the occupancy tenure was originally acquired by the Guru from whom both branches were derived.

Held, that the plaintiffs were "male collateral relatives" within the meaning of section 36 of the Tenancy Act; that those words might be interpreted in accordance with the law or custom by which succession among Sanyasis was regulated; that as the latter do not marry, but a disciple succeeds his Guru in the same way as the son succeeds his father, therefore, though there is no blood relation, there is a relationship of an analogous character, and the word "male collateral relatives" were wide enough to include the plaintiffs. SUNDAR SINGH *v.* BISHNGIR. **82 P R 1883**

9. *Succession to occupancy rights—Collaterals whose common ancestor has "occupied" the land.*

The proviso to section 36 of the Tenancy Act does not require that the common ancestor of the deceased hereditary tenant and the male collateral relatives claiming under the section should have occupied the land as an hereditary tenant; it is sufficient if such common ancestor "occupied" the land. ALLADIN *v.* KHUDA BAKHSH. **88 P R 1883**

10. *Succession of occupancy tenant—Common ancestor occupying land—Character of such occupation immaterial.*

Held, that section 36 of the Tenancy Act, 1868, does not in terms require that the common ancestor should have occupied the land as an occupancy tenant, and there is no ground for holding that this is implied, as the Legislature appear to have advisedly used the expression "occupied the land" without qualification, so that the only question should be the question of simple fact, whether a given person had occupied, without further question as to the character in which he occupied. MUSSAMMAT BEGO *v.* BASIA.

47 P R 1889

11. Wajib-ul-arz—*Karabati—Construction.*

The *Wajib-ul-arz* of the village in question provided that the rule of succession to occupancy rights was that *karabaties* of the deceased were to succeed him in order of relationship. *Held*, that the word "*karabati*" means "*near male collaterals*" and that consequently the uncle succeeded to the exclusion of the widow of the deceased tenant. MUSSAMMAT JIWAN *v.* IBRAHIM.

196 P R 1889

Section 37.

See UNDER SECTION 25, *supra*.

96 P R 1881
39 P R 1883

1. *Improvements.*

Both a tenant with rights of occupancy and a tenant-at-will can, without the consent of the proprietor, make such improvements as are contemplated in the Tenancy Act. PURAN *v.* BEJA. **73 P R 1870**

2. *Ejectment—Right of tenant to compensation when "wajib-ul-arz" is silent—Necessity of determining question of ejectment and of compensation at same time—Res judicata.*

Plaintiff, a tenant without right of occupancy, brought a suit to contest his liability to be ejected and for "damages." His suit failed, and a decree for his ejectment was passed. He again sued for compensation for tenant's improvements. The *Wajib-ul-arz* contained no provision for compensation. *Held*, *per* LINDSAY, J. that the *Wajib-ul-arz* was an agreement within section 2 of Act XXVIII of 1868, and the parties were bound by its terms to which the Court could not add anything; and that, consequently, the plaintiff had no right to compensation; moreover, that the matter was *res judicata.*

Held, *per* BOULNOIS, J., that the silence of the *Wajib-ul-arz* as to compensation for improvements could not control the operation of the Punjab Tenancy Act on the subject, but that plaintiff was precluded from raising the question of compensation in a separate suit filed several months after a decree for his ejectment, the Act requiring that the question of ejectment and of compensation thereupon should be determined at the same time. ROOPA *v.* KHESHA. **39 P R 1871**

3 *Improvements, necessary.*

Compensation for improvements under section 37, Act XXVIII of 1868, only includes the cost of the actual improvements, and not money spent unnecessarily on supposed or alleged improvements. Where a well (the alleged improvement) watered other land besides that which the defendant occupied as tenant to the plaintiff, *held*, that the assessment of compensation should have reference only to the proportionate benefit that plaintiff's land derived from the well, and should not be measured by the expense of making the well. LALLOO *v.* LALL MUN.

1 P R 1872

4. *Compensation.*

Plaintiff (tenant-at-will) was served with notice of ejectment under the Tenancy Act, and brought a suit under section 26 to contest the ejectment. His suit was dismissed. *Held*, that the decree made in the suit after notice of ejectment dismissing his suit, was tantamount to an order of ejectment; and that before such decree could be passed, the question of compensation for improvements raised by the plaintiff should have been disposed of under section 37. KURRUM BUX *v.* KIRPA. **8 P R 1872**

5. *Improvements—Planting trees without consent of landlord—Delay in complaining.*

Plaintiffs were proprietors, and defendants hereditary tenants. The planting of trees by hereditary tenants was customary in the village; but the *wajib-ul-arz* provided that when trees were planted, it was to be with the permission of the proprietor. Two years and a half before suit, the defendants, without plaintiffs' express permission, planted certain fruit trees; plaintiffs sued to have the trees removed. *Held*, that plaintiffs' delay, which was unexplained, in coming forward to complain of the planting of the trees, and the planting of such trees being customary in the village, were circumstances from which permission might be inferred. Plaintiffs' suit dismissed accordingly. NUR BAKHSH *v.* GHOLAM MOHIUDDIN.

47 P R 1872

6. *Improvements—Reclaiming waste—Trees*

Compensation not allowed for trees that grew spontaneously or were planted here and there, and were taken care of and nourished by the tenants; but compensation allowed for reclaiming waste land and making a *jhalar*. IMAMDIN *v.* MOHOMDA. **18 P R 1874**

7. *Compensation—Improvements—Labor—Damages.*

The Additional Commissioner on the report of a commission decreed to plaintiffs, tenants without rights of occupancy, Rs. 45 as compensation for improvements, Rs. 15 being money expended, Re. 1 the value of the tenants' labour, and Re. 1 damages. *Held*, that the money value of the tenants' labor in reclaiming waste lands may be given as compensation under section 37, Act XXVIII of 1868. *Held*, further, that damages cannot be awarded as compensation. MANU *v.* FATTA.

35 P R 1877

8. *And section 40.—Compensation to tenant for improvements—Claim first raised in special appeal.*

PUNJAB TENANCY ACT, XXVIII OF 1886—*contd.*

Section 37—*contd.*

The terms of section 37, Act XXVIII of 1868, make it incumbent upon a plaintiff suing to eject a tenant to declare either that proper compensation for improvements has been paid to the defendant, or that no compensation is payable, or that there is a difference between the parties as to the amount or value of the compensation to be made.

Therefore, where the plaintiff omitted to place these matters before the first Court, and that Court did not deal with them on its own motion, *held*, that the defendant had a right to have the omissions rectified in special appeal. NATHAL *v.* SULTAN.

149 P R 1879

9. *Suit for enhancement of rent—Defendant claiming compensation for improvements—Compensation found to be due must be paid or tendered before decree for enhancement is made—Procedure to be adopted where there is a dispute as to tenant's right to receive compensation or as to amount due.*

A decree for enhancement of a tenant's rent cannot, with reference to the provisions of section 37 of the Tenancy Act, be made until he has received the compensation for improvements to which he is entitled: but this condition is sufficiently complied with for the purpose of the above section, if the compensation found on the enquiry in the enhancement suit to be due is paid or tendered to the tenant before the decree for enhancement is made.

Where there is a *bona fide* dispute raised in an enhancement suit as to the right of the tenant to receive compensation or as to the amount of the compensation to which he is entitled, the Court, after fixing an issue as to the tenant's right to compensation and the amount of compensation to be paid to him and making the necessary enquiry, should record an intermediate proceeding determining these issues; and if it finds that the tenant is entitled to receive compensation, under section 37 of the Act, before his rent can be enhanced, it should fix a date on or before which the landlord should pay or tender payment of the amount to the tenant, or should pay the amount into Court for the use of the tenant: if the landlord fails to pay or tender payment of the amount on or before the date fixed, the suit should be dismissed: if payment is made or tendered within the prescribed time the suit may then proceed, and a decree for enhancement be made if the plaintiff proves that in other respects he is entitled to such a decree. *Shada* v. *Telu Mal* (No. 13 *P. R.* 1882), cited. ROLU *v.* BURSAWA SINGH.

61 P R 1883

10. *Compensation for improvements—Right of representative of tenant-at-will to compensation—Tenant's right to payment of compensation prior to ejectment*

In a suit by the plaintiffs to contest a notice of ejectment partly on the ground that they

PUNJAB TENANCY ACT, XXVIII OF 1865—*contd.*

Section 37—*concld.*

were occupancy tenants, but chiefly on the ground that they had made improvements for which they were entitled to compensation under section 37 of the Tenancy Act, the Court of first instance dismissed the suit on the ground that the plaintiffs had not shown any reason for claiming a right of occupancy in the land. In appeal the plaintiffs contended that they were entitled to compensation before ejectment, but the lower Appellate Court held that as one of the plaintiffs admitted that the land was reclaimed from waste by his uncle at a time when the plaintiffs were too young to have given any assistance, they were not entitled to compensation under section 37, that section allowing *occupancy* tenants only to claim compensation as representatives of the person who made the improvements.

Held, that there was no reason to put a narrower construction on the words "his representative" in section 37 than that given to them by the legislature in the definition clause, there being nothing in the section repugnant to giving them their full signification.

Case remanded for fresh decision after framing issues as to the improvements for which the plaintiffs claimed to be entitled to compensation before being ejected from the land, with a direction that if compensation were found to be due for the improvements made by the tenant himself within 30 years before suit, or by a tenant whose representative he was, he must be held not to be liable to ejectment under the notice served upon him (see *Kaka* v *Bhola*, No 96 *P. R.* 1881), KAKA SINGH *v.* BASANT SINGH

136 P R 1883

11. *Suit to contest notice of ejectment—Plaintiffs claiming to have succeeded to last occupancy tenant—Compensation for improvements.—"Representative" of tenant.*

In a suit to contest a notice of ejectment, in which the plaintiffs, who were daughters' sons, claimed to have succeeded to the occupancy tenure of one G., deceased, *held*, that though the plaintiffs had not proved their title to succeed to the occupancy rights, they were entitled to rely upon section 37 of the Tenancy Act as protecting them from ejectment until they had received compensation for any improvements made by G. within 30 years next before the ejectment, they being his representatives within the meaning of section 37, though his rights of occupancy had come to an end on his death: (see the definition of "representative" in section 3 of the Act). *Kaka Singh* v. *Basant Singh* (No. 136 *P. R.* 1883), cited. JAMALA *v.* FARIDA.

12 P R 1885

Section 38.

See UNDER SECTION 25, *supra*.

96 P R 1881

PUNJAB TENANCY ACT, XXVIII OF 1868—*concld.*

Section 38—*concld.*

1. *Improvements—Compensation.*

Section 38 of the Tenancy Act is not exhaustive, and does not exclude other improvements than those specially mentioned, which fall under the general description of works by which the annual letting value of the land is increased. A fruit-garden may, therefore, be an improvement entitling the tenant to compensation. A tenant is entitled to the actual money he has expended in making the improvement, but not to the cost of maintaining it. KHODA BUKSH *v.* PIR KASIM ALI.

30 P R 1876

2. *Improvements—Reclaiming and clearing waste lands—Compensation.*

Held, that under section 38, Act XXVIII of 1868, the reclaiming and clearing of waste lands is an improvement, entitling the tenant to compensation, if the annual letting value of the land has been, and at the time of demanding compensation continue to be increased.

It is a fair presumption, not of law, but of fact, that a tenant who clears waste land and brings it under cultivation, improves it within the meaning of that section. WAZIRA *v.* GANDHI SINGH.

37 P R 1879

Section 40.

1. *Improvement—Compensation.*

If a tenant reclaims waste land and recoups himself the outlay in the first year by reason of the soil being virgin and of superior productive power, and the tenant continues to pay the same rent as before, the rate by him being the same as that paid by other tenants in the village, the tenant is entitled to compensation, and the landlord cannot be said, within the meaning of section 40 of the Act, to have indirectly assisted the tenant by subsequently allowing the tenant to hold at a rent more favorable than the rent at which he would otherwise have held.

Per Division Bench (LINDSAY and PLOWDEN, JJ.).—Merely bringing pasture land under cultivation is not an improvement entitling the tenant to compensation. MACHI *v.* SUBHAN

92 P R 1876

2. *Compensation for improvements—Application by tenant after his ejectment from his holding—Jurisdiction to entertain application.*

The applicaion contemplated by section 40 of the Tenancy Act is one to be made before the tenant has been ejected from his holding.

Where, therefore, it appeared upon an application by a tenant under the above section that no question arose between the landlord and the tenant as to the amount or value of any compensation tendered before the applicant was ejected, *held*, by the Financial Commissioner, that it was very doubtful if a claim to compensation would now lie at all; but that if it did lie, it was one that must be instituted in and determined by the Civil Court. SAHIB DIN *v.* SARA.

P R 1887 Rev.

PUNJAB TENANCY ACT, 1887.

Preliminary.

In matters of succession special tenancies created by Act III of 1893 are governed by the provisions of this Act. SAHIBZADA *v.* JAWAYA **14 P R 1908**

Section 4 (1).

1. *See* JURISDICTION OF CIVIL OR REVENUE COURT. **77 P R 1904**

2. "*Land Suit.*"

See PUNJAB COURTS ACT, 1884, SECTION 3. **31 P R 1901**

3. Site of watermill being occupied for the purpose of grinding corn is not "subservient to agriculture" within the meaning of section 4 (1) of the Tenancy Act, 1887. MUTSADDI *v.* SAWAN. **41 P R 1892**

4. *Ghair mumkin* land outside the *abadi* and attached to a well upon which *khurlis* are built and *bhusa* is stacked is "land" within the meaning of this clause. GANDU SINGH *v.* NATHA SINGH. **12 P R 1907**

Section 4 (5).

1. *See* JURISDICTION OF CIVIL OR REVENUE COURT. **112 P R 1893**

2. *Grant of a portion of the village common land to a person holding the office of ala-lambardar rent free—Suit for dispossession by the proprietors of the land—Landlord and tenant.*

See JURISDICTION OF CIVIL OR REVENUE COURT. **101 P R 1901**

Section 4 (7).

When a son succeeds his father in the *ala-lambardarship*, the *muafi* and in cultivating occupancy, the father is the predecessor in interest of the son within the meaning of section 4 (7) of the Tenancy Act, 1887. LAHNA SINGH *v.* HIRA SINGH.

1 P R 1897 Rev.

Section 4 (10).

The canal advantage land revenue rate levied in the Montgomery District is essentially part of the land revenue and falls within the meaning of section 4 (10) (*a*) of the Act. HIRA SINGH *v.* RULLIA. **3 P R 1900 Rev.**

Section 4 (12).

1. *Hak-buha* is a village cess within the meaning of section 4 (12) of the Tenancy Act, 1887. GOWHRA *v.* ALI GOHAR.

11 P R 1890 Rev.

2. *Kamiana* leviable in the village under the terms of the *Wajib-ul-arz* was a due customarily leviable from the kamins of the classes specified and not a payment for the use of private property or for personal service, nor imposed by any enactment, and that it was therefore a "village cess" as defined in section 4, sub-section (12) of the Punjab Tenancy Act, 1887. FAZAL *v.* SAMANDAR KHAN. **49 P R 1891**

3. A suit to recover *puch takri*, or dues on marriages payable by non-proprietors was one which fell within the provisions of section 4, sub-section (12) of the Tenancy Act, 1887. DILBAR *v.* ALI AKBAR. **42 P R 1893**

See also SHARF-UD-DIN *v.* SHER KHAN. **55 P R 1893**

Section 4 (13).

When an ala-lambardar, to whom a grant of *muafi* had been made in remuneration of his services, continues, after resumption of such *muafi*, to hold on as cultivator, he is a

PUNJAB TENANCY ACT, 1887—*contd.*

Section 4 (13)—*concld.*

"tenant" holding under the proprietors, and is also a "village officer" within the meaning of section 4 (13), and a "*jagirdar*" within the meaning of section 4 (15) of the Tenancy Act, 1887, if the land revenue has been assigned to him in whole or in part by the Government or by an officer of the Government. LAHNA SINGH *v.* HIRA SINGH.

1 P R 1897 Rev.

Section 4 (15).

1. The definition of 'jagirdar' insection 4 (15) of the Punjab Tenancy Act, 1887, includes a muafidar. JODH SINGH *v.* KISHEN SINGH. **8 P R 1896 Rev.**

2. When an ala-lambardar, to whom a grant of *muafi* had been made in remuneration of his services, continues after resumption of such *muafi*, to hold on as cultivator, he is a "tenant" holding under the proprietors, and is also a 'jagirdar' within the meaning of section 4 (15) of the Tenancy Act, 1887, if the land revenue has been assigned to him in whole or in part by the Government or by an officer of the Government. LAHNA SINGH *v.* HIRA SINGH.

1 P R 1897 Rev.

3. Plaintiffs claimed occupancy rights upon the allegation that they were jagirdars within the meaning of section 4 (15) of the Tenancy Act, 1887, of a certain *muafi* which they had held jointly with the descendants of one H. to whom the said *muafi* had been sanctioned in perpetuity by the British Government in 1858. It was proved that a share of the said *muafi* had originally been granted by the Moghal Emperors to plaintiffs' branch of the family, but at the Settlement of 1889-90, when the question arose as to whether plaintiffs should be recorded as *jagirdars* or *muafidars* the Settlement Officer, acting upon the Financial Commissioner's Circular No. 13/16 of 1865 refused to record plaintiffs as such on the ground that it was undesirable to increase the number of names in which *muafis* were shown.

Held, that a share of the said *muafi* having been originally granted to plaintiffs' branch of the family by the Moghal Emperors, who were predecessors of the British Government, plaintiffs were *jagirdars* within the meaning of section 4 (15) of the Tenancy Act, 1887. GANDU *v.* GANPAT RAI.

2 P R 1897 Rev.

Section 5.

1. *Right of tenant under section 5 not less than that of one under section 6.*

See ACQUIESCENCE.

8 P R 1904 Rev

2. *Continuous occupation—Acquisition of occupancy rights.*

See OCCUPANCY RIGHTS.

1 P R 1904 Rev.

Section 5 (1) (*a*).

See CUSTOM I—I. ALIENATION OF OCCUPANCY RIGHTS.

JAGIR. **2 P R 1892 Rev.**

PUNJAB TENANCY ACT, 1887—*contd.*

Section 5 (1) (*a*)—*concld.*

See OCCUPANCY RIGHTS.

5 P R 1891 Rev.
6 P R 1891 Rev.
5 P R 1892 Rev.
4 P R 1895 Rev
8 P R 1895 Rev.
5 P R 1896 Rev.
12 P R 1896 Rev.
22 P R 1898 Rev.

See PLAINT—FORM OF.

1 P R 1892 Rev.

Section 5 (1) (b).

See CUSTOM I—I. ALIENATION OF OCCUPANCY RIGHTS.

6 P R 1893 Rev.

See OCCUPANCY RIGHTS.

6 P R 1895 Rev.

Section 5 (1) (c).

See ENHANCEMENT.

3 P R 1900 Rev.

See OCCUPANCY RIGHTS.

7 P R 1890 Rev.
2 P R 1891 Rev.
6 P R 1891 Rev.
5 P R 1893 Rev.
3 P R 1898 Rev.

1. *As amended by Regulation XIII of 1887—Finality of entry in the record of rights of the Hazara District—Rule 60 of the Hazara Settlement Rules—Conflicting enactments—Procedure.*

See OCCUPANCY RIGHTS.

1 P R 1902 Rev.

2. *And section 10—Acquisition of occupancy rights by the representative of one founder against another.*

See OCCUPANCY RIGHTS.

1 P R 1907 Rev.

Section 5 (1) (d).

See COMMON LAND.

1 P R 1899 Rev.

See JAGIR. **8 P R 1896 Rev.**
1 P R 1897 Rev.
2 P R 1897 Rev.

See OCCUPANCY RIGHTS.

13 P R 1896 Rev.

See PLAINT—FORM OF.

1 P R 1892 Rev.

1. *Occupancy rights—Jagirdar under grant from Sikh Government.*

Held, that the holder of a *jagir* granted in A.D. 1809 by an officer of the Sikh Government on behalf of that Government and resumed by the British Government at annexation, was a "jagirdar" within the meaning of section 5, sub-section (1) (*d*), Punjab Tenancy Act, 1887, which confers, under the circumstances specified therein, rights of occupancy on persons who have been jagirdars of the lands occupied by them. NATHU AND LALJI *v.* ATMA RAM.

2 P R 1892 Rev.

2. *Grant of land to office of ala-lambardar—Acquisition of occupancy rights in such land—Tenant—section 5, sub-section (1) (d), Punjab Tenancy Act, 1887.*

In a suit by the village proprietors to recover from the sons of one G. S. certain lands held by him as ala-lambardar, the claim was resisted on the ground that G. S.

PUNJAB TENANCY ACT, 1887— *contd.*

Section 5 (1) (d)—*contd.*

had before his death acquired by long possession occupancy rights in the land, and that his sons therefore could not be dispossessed without payment of compensation for improvements.

Held, that the suit was not excluded from the cognizance of the Civil Courts as one for ejectment of tenant, as the history of the acquisition of the land in suit by G. S. negatived the proposition that he held the land under the plaintiff proprietors, and this being so, his sons clearly could not claim either occupancy rights or compensation. SHAM SINGH *v.* GHULA SINGH.

123 P R 1893

3. *Occupancy rights—Continuous occupation of twenty years.*

In a claim for occupancy rights, the continuous occupation of twenty years, referred to in section 5 (*i*) (*d*) of the Punjab Tenancy Act, 1887, may be partly occupation by a jagirdar as such, and partly occupation by the same person or his representatives as a tenant when he has ceased to be a jagirdar. JODH SINGH *v.* KISHEN SINGH. **8 P R 1896 Rev.**

4. When an ala-lambardar, to whom a grant of *muafi* had been made in remuneration of his services, continues, after resumption of such *muafi* to hold on as cultivator, he is a "tenant" holding under the proprietors and is also a "village officer" within the meaning of section 4 (13), and a "*jagirdar*" within the meaning of section 4 (15) of the Tenancy Act, 1887, if the land revenue has been assigned to him in whole or in part by the Government or by an officer of the Government. And if such ala-lambardár has, at the date of suit, continuously occupied for twenty years the land so allotted to him, not being himself a joint owner of such land, he is entitled to occupancy rights under section 5 (1) (*d*) of the said Act. LAHNA SINGH *v.* HIRA SINGH. **1 P R 1897 Rev.**

5. *Occupancy rights—Punjab Tenancy Act*, 1887, *sections* 4 (15), 5 (1) (*d*)—"*Jagirdar*"—"*Government*"—*Grant of* muafi *originally made by Moghal Emperors—Financial Commissioner's Circular No.* $\frac{1}{2}\frac{3}{8}$ *of* 1865.

Plaintiffs claimed occupancy rights upon the allegation that they were jagirdars within the meaning of section 4 (15) of the Tenancy Act, 1887, of a certain *muafi* which they had held jointly with the descendants of one H. to whom the said *muafi* had been sanctioned in perpetuity by the British Government in 1858, and that they were, therefore, entitled, under section 5 (1) (*d*) of the Act, to rights of occupancy in certain other lands in the village which they had held continuously for not less than twenty years. It was proved that a share of the said *muafi* had originally been granted by the Moghal Emperors to plaintiff's branch of the family, but at the Settlement of 1889-90, when the question arose as to whether plaintiffs should be recorded as jagirdars or muafidars the Settle-

PUNJAB TENANCY ACT, 1887— *contd.*

Section 5 (1) (d)—*concld.*

ment Officer, acting upon the Financial Commissioner's Circular No. $\frac{1}{2}\frac{3}{8}$ of 1865 refused to record plaintiffs as such, on the ground that it was undesirable to increase the number of names in which *muafis* were shown. The lower Courts having decreed plaintiffs' occupancy rights as prayed for, defendant applied to the Financial Commissioner for revision of the said orders.

Held, that a share of the said *muafi* having been originally granted to plaintiff's branch of the family by the Moghal Emperors, who were predecessors of the British Government, plaintiffs were jagirdars within the meaning of section 4 (15) of the Tenancy Act, 1887.

Held, further, that it not being necessary that plaintiffs should be jagirdars of the particular land in the village in which the occupancy right was claimed, plaintiffs, as such jagirdars, were entitled to occupancy rights in the said land under section 5 (1) (*d*) of the Act, and could not be deprived of such rights by the said Circular which was issued before the passing of even the first Tenancy Act. GANDU *v.* GANPAT RAI.

2 P R 1897 Rev.

6. *Acquisition of occupancy rights in joint holding—Continuous occupation of* 20 *years—Jagirdar—Partition of joint holding by Revenue Court—Punjab Land Revenue Act*, 1887, *section* 111.

In a suit by a successor in interest of an original jagirdar who had a joint interest in the *muafi* with others to contest a notice of ejectment and establishment of his occupancy rights, it was proved that the tenant was a jagirdar within the meaning of section 4 (5) of the Punjab Tenancy Act, 1887, and that the joint occupation of the land by him and his family had been continuous for a period exceeding 20 years, *held*, that the plaintiff was entitled to occupancy rights in the land equal to his share in the joint holding under section 5 (1) (*d*) of the Act. In such cases it is within the competence of a Revenue Court to dispense with an application from a joint tenant under section 111 of the Land Revenue Act and to direct by its decree that a partition shall be effected and that the share of the tenant in which he has been found to have acquired occupancy rights should be marked off and that he should be ejected from the residue. DOGAR MAL *v.* THE SECRETARY OF STATE FOR INDIA IN COUNCIL.

4 P R 1904 Rev.

Section 5 (2).

Punjab Tenancy Act, XVI of 1887, *section* 5 (2)—*meaning of occupatian for thirty years.*

Held, following 5 *P.R.* (Rev.) 1896, that the period of thirty years referred to in section 5 (2) of the Punjab Tenancy Act, 1887, means thirty years *prior to the institution of the suit* and not *prior to the commencement of the Act.* **3 P R 1911 Rev.**

PUNJAB TENANCY ACT, 1887— *contd.*

Section 6.

See CUSTOM I—I. ALIENATION OF OCCUPANCY RIGHTS.
1 and 2 P R 1898 Rev.

See OCCUPANCY RIGHTS.
5 P R 1892 Rev.
8 P R 1895 Rev.
4 P R 1896 Rev.
22 P R 1898

1. *And section* 111—*Admission by tenant made previous to* 1887, *that he was merely tenant-at-will.*

See OCCUPANCY RIGHTS.
10 P R 1901 Rev.

2. *And section* 56—*Sale of right of occupancy under section* 6 *of the Punjab Tenancy Act by landlord in execution of a money decree against the tenant.*

See OCCUPANCY RIGHTS. **82 P R 1903**

Section 8.

See CUSTOM I—I. ALIENATION OF OCCUPANCY RIGHTS.
1 and 2 P R 1898 Rev.

See OCCUPANCY RIGHTS.
9 P R 1896 Rev.
22 P R 1898
3 P R 1898 Rev.

Section 9.

And section 57—*Mortgage of occupancy right—Right of mortgagee after death of mortgagor.*

See OCCUPANCY RIGHTS.
8 P R 1905 Rev.

Section 10.

1. *Occupancy rights—Grant of* muafi *to* ala-lambardar *in virtue of his office*—Ala-lambardar *joint owner of such land.*

Held that a joint owner of land cannot under section 10 of the present Tenancy Act acquire occupancy rights in the land granted to him as *muafi* in remuneration of his services as ala-lambardar. LAHNA SINGH *v.* HIRA SINGH. **1 P R 1897 Rev.**

2. *Occupancy rights in common land—Jagirdar—Punjab Tenancy Act*, 1868, *section* 9 (2)—Pattidari *village.*

Held, following 15 *P. R.* 1880 Rev., that section 9, clause (2) of the Tenancy Act, 1868, read with section 10 of the Tenancy Act, 1887, should be construed to mean that no right of occupancy in the common lands of a *pattidari* village community should be acquired by a pattidar of the village under Chapter II of the said Acts, there being in this respect no distinction between pure and impure *pattidari* villages.

No. 1 *P. R.* 1897 Rev. referred to and considered. JHANDU KHAN *v.* SAMMAN.

1 P R 1899 Rev.

Section 11.

See OCCUPANCY RIGHTS.
4 P R 1895 Rev.
12 P R 1896 Rev.

Section 12.

Punjab Tenancy Act (XVI of 1887), *section* 12 (1) *and section* 33 (1)—"*Rent for the time being payable*"—*Landlord's lien upon produce of tenancy, extent of.*

Held, by the Full Bench, that section 12 (1) of the Punjab Tenancy Act, 1887, was

PUNJAB TENANCY ACT, 1887— *contd.*

Section 12—*concld.*

intended to give the landlord a lien upon the produce of a tenancy for a particular harvest in respect of not only the rent due for that harvest, but also the arrears of rent due for previous harvests, the words "rent for the time being payable" in that section meaning rent which has accrued due and which is just accruing due. MOHAN LAL *v.* GHASITA MAL.

54 P R 1895 F. B.

Section 14.

1. *Suit for compensation for use and occupation of land occupied without consent of landlord—Jurisdiction.*

See JURISDICTION OF CIVIL OR REVENUE COURT. **19 P R 1891**

2. *Suit by mortgagee for value of profits of mortgaged land—Illegal ejectment of mortgagee by mortgagor.*

See JURISDICTION OF CIVIL OR REVENUE COURT. **68 P R 1891**

3. *Suit for sum recoverable for occupation of land without consent of landlord.*

See JURISDICTION OF CIVIL OR REVENUE COURT. **26 P R 1895**

4. *Punjab Tenancy Act,* 1887, *section* 77, *sub-section* (3) (*n*) *and section* 14—*Land occupied without consent of landlord—Suit for use and occupation.*

A mortgagee sued to obtain possession of the mortgaged land under a default clause in that behalf in the mortgage-deed and obtained a decree.

A second mortgagee was in possession at the time of the suit.

The first mortgagee (plaintiff in the first suit) then sued the second mortgagee for payment for the use and occupation of the land during the time that the first suit was pending.

Held, that in these circumstances the first mortgagee must be regarded as landlord of the land within the meaning of section 14, Punjab Tenancy Act, 1887, for the period in question, and the second mortgagee as a person in occupation without the landlord's consent. THAKAR DAS *v.* KANHAYA.

1 P R 1893 Rev.

5. It is not a correct interpretation of section 14 of the Punjab Tenancy Act, 1887, that it is not intended to apply to trespassers generally. The object of the section is to entitle "the landlord" of land occupied without his consent to recover payment on account of the use and occupation of such land from any person in possession of it, as though such person was for this purpose a tenant, and as though the money payable were for this purpose rent.

Nos. 19 and 68 *P. R.* 1891, approved. GHUNA MAL *v.* JHANDA SINGH. **82 P R 1894**

6. *Suit for produce of land—Rival mortgagees alleging possession—Land occupied without the consent of the landlord—Landlord and tenant.*

Plaintiff claimed the produce of certain harvest on the allegation that the defendant had taken from him certain land (of which he was the mortgagee in possession) for cultivation on payment of half the produce; the defendant denied the claim, alleging that he had taken

PUNJAB TENANCY ACT, 1887— *contd.*

Section 14—*concld.*

the land from one Budhe Shah, who having been made a defendant in the case by an order of the first Court, supported the defendant's allegation. The plaintiff's mortgage was an unregistered one, dated 19th July 1890 (the registration of which was not compulsory), and mutation of names had been granted in his favour on the 14th June 1895, and he had since that date been shown in the *jamabandi* papers as a mortgagee in possession. The second defendant, Budhe Shah, based his claim on a subsequent registered mortgage, and mutation of names had never been effected in his favour. The first Court ordered the plaintiff to obtain a decree for possession from a Civil Court. On appeal the Collector remanded the case, remarking that the sole issue was whether defendant No. 1 was put in as tenant by the plaintiff or not, and ordered Budhe Shah's name to be struck off the record. Both Courts having found that the defendant had not been put in as a tenant by the plaintiffs *held*, upon the special merits of the case, that as the plaintiff's mortgage was a completed transaction, and had been in force for years, and as the entry in the annual record was in the plaintiff's favour, if any one was to be referred to a Civil Court to establish his claim it should have been the subsequent mortgagee, who claims against the plaintiff, and was rightly joined as a defendant by the first Court. The plaintiff must be treated by the Revenue Courts as the mortgagee entitled to possession, and held to be landlord, and Budhe Shah to be a person in possession of the land without the consent of the landlord, and liable to pay rent to the plaintiff under section 14 of the Tenancy Act, until the subsequent mortgagee had been held by a Civil Court to be entitled to possession.

Shanker Das v. *Sher Zaman* (56 *P. R.* 1900) as to priority, when a registered deed is in competition with an unregistered deed cited with concurrence. GOBIND RAM *v.* ILAH. **4 P R 1901 Rev.**

7. *Punjab Tenancy Act,* 1887, *section* 14—*Status of mortgagee after obtaining formal possession through Civil Court against person in possession of such property—Right to receive payment for use and occupation.*

Held, that a mortgagee, who had obtained formal possession in execution of a Civil Court decree, must be regarded as the landlord within the meaning of section 14 of the Punjab Tenancy Act entitled to receive payment from the person in possession of that land for the use and occupation thereof. MUL CHAND *v.* MUL CHAND.

6 P R 1905 Rev.

Section 16.

Presumption as to character of yield—Suit for arrears of rent—Delay in suing—Pleader appointed commissioner.

Held, that the presumption as to the character of the yield contained in section 16 of the Punjab Tenancy Act, 1887, can only arise if it is proved that the tenant acted dishonestly in order to prevent due division or appraisement, and that the

PUNJAB TENANCY ACT, 1887— *contd.*

Section 16—*concld.*

landlord, acting with timely promptitude, honestly did his best to bring about the due sharing of the crop.

The very fact that the landlord is a non-resident should cause a Court to allow weight to the said presumption with more than ordinary caution, as otherwise it would be to a landlord's interest to avoid due sharing and sue for arrears of rent.

Suits for arrears of rent, when taken in kind and on *barani* land specially, should be brought promptly, and if not, the strictest proof should be required of plaintiff's claim, it being hardly possible for the Court to get *data* for a fairly safe estimate of the outturn unless the claim is made without delay.

Held, further, that the employment of a pleader to ascertain locally what the yields were is unsatisfactory.—JIWAN *v.* HASHAM.

3 P R 1899 Rev.

Section 20.

See OCCUPANCY RIGHTS

5 P R 1893 Rev.

Section 22.

See OCCUPANCY RIGHTS.

12 P R 1896 Rev.

1. *And sections* 68, 72—*Enhancement of rent—Landlord and tenant—Liability to pay compensation for improvements to tenant on enhancement of his rent—Matters to be regarded in assessment of compensation for improvements.*

See ENHANCEMENT.

7 P R 1902 Rev.

2. In a suit for enhancement of rent, the *status* of the tenant should be defined once for all, inasmuch as future claim for further enhancement may depend upon the termination, and that the mere fact that under section 22 (*i*) (*b*) of the Punjab Tenancy Act, 1887, the tenants who claimed occupancy rights under section 5 (*i*) (*c*) would, even if their claim was established, be equally liable to the enhancement decreed, is no ground for refusing to determine their *status*. The Courts are not bound to decree in every case the full enhancement permissible under section 22 of the Act. HIRA SINGH *v.* RULIA.

3 P R 1900 Rev.

Section 24.

Landlord and tenant—Enhancement of rent—Suit by a majority of joint proprietors.

See PARTIES. **3 P R 1905 Rev.**

Section 38.

1. *Occupancy rights—Abandonment—Abandonment without arranging for cultivation and for payment of rent—Abandonment by minor—Forfeiture of rights.*

Where a minor on coming of age sued for occupancy rights in certain land which on the death of his father, during his minority, had been handed over by his uncle to the landlords who had themselves cultivated it and received the full profits.

Held, that under the provisions of section 38 of Act XVII of 1887 the minor's rights were not lost, his minority being a sufficient cause for his failure to cultivate, and the fact of his uncle having handed

PUNJAB TENANCY ACT, 1887— *contd.*

Section 38—*concld.*

over the land to the landlords to cultivate was a substantial arrangement, as they took the whole profits of the land, for the payment of the rent.

When during the minority of an occupancy tenant his holding comes without consideration into the hands of his landlords, they must be presumed to stand in a *quasi-fiduciary* position towards the tenant, and are bound to restore his holding to his possession when he comes of age. LAKHA *v.* THAKAR DIAL. **2 P R 1901 Rev.**

2. Under section 38 of the Punjab Tenancy Act, 1887, the occupancy rights of minors are not lost if they fail to manage the cultivation during minority.

See OCCUPANCY RIGHTS. **3 P R 1910**

Section 39.

1. *And section* 48—*Landlord and tenant—Ejectment—Liability to ejectment on the ground of the alteration of the holding from arable to building land—Relief against forfeiture.*

Although when the land of a tenancy has been diverted from its original purpose the tenant is liable to be ejected under section 39 (*a*) of the Punjab Tenancy Act, but in cases where the property by reason of its situation in the neighbourhood of large cities advancing in prosperity has been converted from its original purpose to land suitable for building purposes and where there is no immediate injury to the landlord, it is by no means necessary to eject the tenant if the rights of the landlord can be recognized in some other way as provided for by section 48 of the Act. In such cases the Revenue Courts should facilitate the process in the interest of the landlord and tenant and the general community. *Dawandhi* v *Ghulam* (122 *P. R.* 1888), referred to. KARAM BAKHSH *v.* GHULAM MUHAMMAD. **3 P R 1904 Rev.**

2 *Landlord and tenant—Ejectment—Liability to, on the ground of alteration of the holding from arable to building land—Relief against forfeiture.*

Held, following *Karam Bakhsh* v. *Ghulam Muhammad* (3 *P. R* 1904 Rev.), that where land is let by an occupancy tenant for building purposes in the neighbourhood of a town ejectment is not the proper remedy, but in accordance with the provisions of section 48 of the Tenancy Act the landlord should be compensated in the form of enhanced rent, which should be assessed at the rate of one-third of that payable to the tenant so long as the building exists. DOGAR MAL *v.* SECRETARY OF STATE FOR INDIA IN COUNCIL. **4 P R 1904 Rev.**

Section 40.

Suit by mortgagee to recover possession on failure of mortgagor to pay rent—Suit by landlord to eject tenant.

See JURISDICTION OF CIVIL OR REVENUE COURT. **19 P R 1893**

PUNJAB TENANCY ACT, 1887— *contd.*

Section 41.

Landlord and tenant—Ejectment—Liability to, on the ground of non-payment of rent—Plea of absence of such condition.

See LANDLORD AND TENANT. **10 P R 1905 Rev.**

Section 43.

See OCCUPANCY RIGHTS. **8 P R 1895 Rev.**

Section 44 (1) and (2).

1. *Ejectment of occupancy tenant for failure to satisfy decree for arrear of rent—Meaning of the words "good cause" in section* 44 (2).

In a suit for ejectment where the defendant (an occupancy tenant) had failed to satisfy a decree for arrears of rent, *Held*, that it is "good cause" under section 44 (2) to refuse an order for ejectment of an occupancy tenant if he pays the amount of the arrears decreed against him before the order of ejectment is passed.

Ruldu v. *Mutsadi* (29 *P. R.* 1877) and *Ghulam* v. *Abdullah Khan* (13 *P. R.* 1880, Rev.), approved and followed. UTTAM MAL *v.* GHULAM SARWAR. **5 P R 1900 Rev.**

Section 45.

See OCCUPANCY RIGHTS. **5 P R 1896 Rev.**

1. The question of compensation should not be determined in a suit to establish occupancy rights brought under section 77 (3) (*a*) independently of section 45 of the Tenancy Act, no notice of ejectment having previously been served. FATTU *v.* MAHANT SHANKER GIR. **9 P R 1890 Rev.**

2. *Jurisdiction of Civil or Revenue Courts—Suits to contest liability of ejectment—"Landlord and Tenant" Punjab Tenancy Act,* 1887, *sections* 45, 77 (3) (*f*)—*Procedure.*

T. G. and others had notices of ejectment under section 45 of the Punjab Tenancy Act, 1887, served upon B. and J., who thereupon instituted suits in the Revenue Court in the terms of the notices to contest their liability to ejectment. The Collector, being of opinion that these suits could not be brought in the Revenue Court under section 77 (3) (*f*) of the Act, because the plaintiffs B. and J. did not hold themselves out as "tenants" but asserted that they were proprietors, referred the question to the Chief Court.

Held, that the word "the tenant" in section 45 of the Act means any such person to whom a notice of ejectment is issued, and that in accordance with the terms of the notice any such person must be allowed to come into the Revenue Court and contest it, whether he admits that he is a tenant or claims some other *status*, the same meaning being assigned to the word "tenant" both in section 45 and in section 77 (3) (*f*). THAKAR GIR *v.* BAISAKHI. **3 P R 1895**

3. *And section* 50—*Landlord and tenant—Suit by tenant who has been served with a notice of ejectment—Suit instituted more than two months after the service of such*

PUNJAB TENANCY ACT, 1887— *contd.*

Section 45—*concld.*

notice—Punjab Tenancy Act, 1887, *sections* 44 (5), 50.

Held, that a suit to contest a notice of ejectment can only be brought within two months from service of such notice, and that a suit under section 50 cannot be brought till ejectment has taken place. KAHN SINGH *v.* GAMAN AND OTHERS. **2 P R 1902 Rev.**

Section 48.

See UNDER SECTION 39 *supra*. **3 P R 1904 Rev.** **4 P R 1904 Rev.**

Section 50.

1. *Suit for recovery of possession by occupancy tenant illegally dispossessed—Suit against person other than landlord.*

See JURISDICTION OF CIVIL OR REVENUE COURT. **3 P R 1889**

2. *Suit by occupancy tenant to recover possession of land from the proprietor more than one year after dispossession.*

See JURISDICTION OF CIVIL OR REVENUE COURTS. **45 P R 1891 F. B.**

3. *And section* 77 (3) (*g*)—*Jurisdiction of Civil or Revenue Court—Suit for recovery of possession from landlord claiming on ground of succession as tenant.*

See JURISDICTION OF CIVIL OR REVENUE COURT. **43 P R 1904**

4. *Suit by tenant who has been ejected for possession—Suit instituted more than one year after ejectment.*

See LANDLORD AND TENANT. **64 P R 1898**

5. *Succession to occupancy rights—Custom—*Wajib-ul-arz—*Abrogation by provision in latter settlement record.*

See OCCUPANCY RIGHTS. **160 P R 1890**

6. *Suit by tenant for recovery of his tenancy from the proprietors, after latter have had alienation made by the tenant set aside, cognisable by Civil Court.*

See OCCUPANCY TENANT. **1 P R 1911 Rev.**

Section 51.

See CUSTOM I—I. ALIENATION OF OCCUPANCY RIGHTS. **2 P R 1898 Rev.**

Suits for recovery of possession by occupancy tenant illegally dispossessed—Suit against person other than landlord.

See JURISDICTION OF CIVIL OR REVENUE COURT. **3 P R 1889**

Section 53.

See CUSTOM I—I. ALIENATION OF OCCUPANCY RIGHTS. **6 P R 1893 Rev.** **89 P R 1898 F. B.** **2 P R 1898 Rev.**

See JURISDICTION OF CIVIL OR REVENUE COURT. **11 P R 1895 F. B.**

See OCCUPANCY RIGHTS. **65 P R 1894** **31 P R 1896 F. B.** **32 P R 1906**

1. *Sale of occupancy rights without consent of landlord—Acquiescence—Right of tenant under section* 5 *not less than that of one under section* 6.

See ACQUIESCENCE. **8 P R 1904 Rev.**

PUNJAB TENANCY ACT, 1887—*contd.*

Section 53—*concld.*

2. *And sections* 56, 60—*Alienation of occupancy rights—Rights of reversioner to restrain such alienation—Burden of proof.*
See Custom I.—I. Alienation of Occupancy Rights. **115 P R 1901**

3. *And section* 56—*Unauthorised alienation of occupancy rights—Acquiescence.*
See Occupancy Rights.
7 P R 1901 Rev.

4. *And section* 56—*Occupancy rights—Alienation of rights of occupancy—Sale by tenant to landlord*—Locus standi *of reversioners.*
See Occupancy Rights.
24 P R 1902 F. B.

5. *Transfer of right of occupancy under section* 5—*Measure of fixing value by the Revenue Officer.*
See Occupancy Rights.
2 P R 1904 Rev.

6. *And section* 60—*Sale of occupancy rights without consent of landlord—Acquiescence.*
See Occupancy Rights.
3 P R 1907 Rev.

7. *Mortgage by tenant in favour of landlord*—Locus standi *of reversioners to impugn the same.*
See Occupancy Rights. **73 P R 1911**

8. *Sale of occupancy right to a tenant with rights of occupancy in the village—Suit for pre-emption by landlords of the holding who did not proceed under the provisions of section 53 of the Tenancy Act, 1887—Superior right.*
See Pre-emption 6. Right of, in Villages. **7 P R 1901**

9. *Pre-emption—Notice to pre-emptors under section 53 of the Tenancy .., 1887—Punjab Laws Act,* 1872, *section* 13.
Held, that the absence of specification of price demanded in a notice under section 53 prevents it being effectual under section 13 of the Punjab Laws Act. Sardar Ali Shah *v.* Jiwan Singh. **22 P R 1901**

10. *Transfer of right of occupancy under section* 5 (1) (c)—*Measure of fixing value by the Revenue Officer.*
Held, that the value to be fixed for the purposes of section 53 of the Tenancy Act is the value of the holding to the tenant at the time when the notice of the tenant's intention to transfer is served on the landlord. The best measure of that value is what the tenant was able to get and was willing to accept at the time. Sohna and others *v.* Muhammad Bakhsh.
12 P R 1901 Rev.

Section 56.
See Custom I.—I. Alienation of Occupancy Rights.
89 P R 1898 F. B.
1 and 2 P R 1898 Rev.

Section 57.
See Custom I.—I. Alienation of Occupancy Rights. **2 P R 1898 F. B.**
See Occupancy Rights.
31 P R 1896 F. B.

Mortgage of occupancy rights—Right of mortgagee after death of mortgagor.
See Occupancy Rights.
8 P R 1905 Rev.

PUNJAB TENANCY ACT, 1887—*contd.*

Section 58.

Landlord and tenant—Right of landlord to claim rent from sub-lessee—Attornment by sub-lessee to stranger claiming title to property—Termination of tenancy—Punjab Tenancy Act, 1887, *section* 58.

Held, that upon the determination of a tenancy, it is the duty of the tenant not merely to relinquish possession of the premises but to restore possession thereof to the landlord, and that if such tenant has underlet the whole or any portion of the premises, he will be liable for a breach of the obligation if his sub-tenant refuses or neglects to give up possession when the term ends.

An attornment made by a tenant or a sub-tenant to a stranger claiming title to the estate of the landlord is absolutely null and void, and the possession of such landlord is in no way affected or changed thereby.

Held, further, that there being no privity of contract between the original lessor and a sub-lessee, the former is not entitled to claim rent from the latter, his remedy being only against the lessee with whom he made the contract.

The provision in section 58 of the Punjab Tenancy Act, 1887, is a special provision in a special enactment, and has no application to the ordinary law of landlord and tenant. Abdul Kadir *v.* Nur-ud-din.
14 P R 1898

Section 59.

1. *See* Custom II—Alienation of Occupancy Rights.
3 P R 1897 Rev.
39 P R 1898
2 P R 1898 Rev.
2 P R 1900 Rev.

2. *See* Occupancy Rights.
40 P R 1894
43 P R 1895
4 P R 1897 Rev.
52 P R 1906
56 P R 1906
76 P R 1907
2 P R 1907 Rev.
100 P R 1908
101 P R 1908

3. *And section* 60—*Sale of occupancy rights by widow—Subsequent birth of a son of the deceased occupancy tenant—Right of landlord to avoid the sale and for possession.*
See Occupancy Rights.
3 P R 1901 Rev.

4. *Occupancy rights — Succession — Joint tenancy—Survivorship.*
See Occupancy Rights
6 P R 1902 Rev.

5. *Right of reversioner to restrain alienation of occupancy rights.*
See Occupancy Rights.
98 P R 1907 F. B.

6. *And sections* 111, 112—*Succession to occupancy rights—Common ancestor not occupying land—Entry in Wajib-ul-arz overriding provisions of law.*
See Occupancy Rights.
130 P R 1907

PUNJAB TENANCY ACT, 1887—*contd.*

Section 59—*concld.*

7. *Section* 59 (c) *entry in* Wajib-ul-arz *regarding succession of bhaiya k[illegible]abati, cannot be used to override or ext[illegible]d the scope of the section.*
See Occupancy holding.
38 P R 1910

8. *Succession to childless* mukarraridar *in Pindigheb* tahsil, *Rawalpindi District—Claim by collaterals whose common ancestor never held the lands—Customary right of succession*—Status *of* mukarraridar *in said district—Punjab Tenancy Act,* 1887, *section* 59—*Punjab Laws Act,* 1872, *sections* 5, 7.

In the Rawalpindi District a *mukarraridar* is a tenant, but there is a difference between his *status* and that of an ordinary tenant with rights of occupancy.

Held, therefore, that the succession to a deceased *mukarraridar* of the said district is not governed by section 59 of the Punjab Tenancy Act, 1887, and that his right devolves according to the law applicable to the parties, as if it were a proprietary right.

In the case of a deceased childless *mukarraridar* of the Pindigheb *tahsil*, Rawalpindi District, who had acquired his right by constructing a well in the land of a proprietor with his consent, *found* that the question of succession was governed by custom, and that by such custom collaterals, whose common ancestor had never held the lands in dispute, were entitled to succeed, subject to the life-interest of the widow of the deceased. Maya Das *v.* Aulia Khan.
10 P R 1896 Rev.

Section 60.
See Acquiesence.
8 P R 1904 Rev.

See Custom I.—I. Alienation of Occupancy Rights.
6 P R 1897 Rev.
89 P R 1898 F. B.
1 P R 1898 Rev.
2 P R 1898 Rev.
4 P R 1900 Rev

Jurisdiction of Civil or Revenue Court.
88 P R 1894
11 P R 1895 F. B.

Occupancy Rights.
65 P R 1894

Limitation—Irregular transfer of right of occupancy—Suit by landlord for possession after cancellation of sale—Limitation Act, 1877, *Schedule II, article* 120—*Transfer to one of several landlords*—Locus standi *of other landlords to contest such alienation.*
See Occupancy Rights.
7 P R 1905 Rev.

Sections 65, 69.

Improvements by tenant—Compensation—"*Tenant.*"

PUNJAB TENANCY ACT, 1887— *contd.*

Sections 65, 69—*concld.*

The owners of a certain village having applied for partition of the village *shamilat*, plaintiffs applied that that part of the *shamilat* which had been cultivated by them, and in which they alleged that they had sunk a well, should be retained in their possession, or that they should be awarded compensation for the improvements effected thereon by them. The well in question was found to have been constructed more than thirty years ago. The Collector, on appeal, held that plaintiffs were "tenants" within the meaning of the Punjab Tenancy act, and remanded the case to the first Court for further inquiry as to the amount of compensation to which plaintiffs were entitled. Defendants thereupon preferred a further appeal to the Commissioner, who held that plaintiffs, though "tenants," were merely tenants-at-will, and, as such, not entitled to compensation for improvements effected by them without the consent of the landlords. Plaintiffs having applied to the Financial Commissioner for revision of the order of the Commissioner, it was

Held, that the relationship of the parties in respect of the land in question being that of landlord and tenant, and the well in dispute having been constructed before the commencement of the Punjab Tenancy Act, 1887, section 65 of the Act applied, and plaintiffs were, therefore, entitled to compensation for such "improvements" within the meaning of the Act as they could prove that they had effected unless they had acted in contravention of any written agreement between them and their landlords.

Held, therefore, that the order of the Collector was correct and must be restored. ILAM DIN *v.* SHAMS-UD-DIN.

3 P R 1896 Rev.

And section 72—Partition of shamilat deh *including the land which had been assigned to a* ala-lambardar *in virtue of his office—Compensation for Disturbance or improvements.*

See COMMON LAND.

9 P R 1902 Rev.

Section 70.

See OCCUPANCY RIGHTS.

9 P R 1890 Rev.

1. *Ejectment—Compensation.*

Held that the question of compensation should be decided in the suit whether for ejectment by the landlord, or to contest the notice of ejectment by the tenant, and should not be left over for future settlement. GULAB *v.* BHAGWAN SINGH.

13 P R 1890 Rev.

2. *Compensation—Omission to frame issue—Material irregularity.*

It is a material irregularity to dispose of a suit by a tenant to contest his liability to ejectment without determining the question of compensation in accordance with the provisions of section 70, Punjab Tenancy Act, 1887. MOHAR SINGH *v.* MUHAMMAD ZAKI. **4 P R 1891 Rev.**

PUNJAB TENANCY ACT, 1887— *contd.*

Section 70—*concld.*

3. *Ejectment—Omission to direct tenant to file a statement of claim to compensation—Material irregularity.*

It is a material irregularity if a Court of first instance omits, in a suit to contest a notice of ejectment, to call upon the tenant to file a statement of his claim, if any, to compensation for improvements or for disturbance, and of the grounds thereof, in pursuance of the directions contained in section 70, Punjab Tenancy Act, 1887. No. 13 *P. R.* 1890, Rev. referred to. FAZLA *v* LAL SINGH. **6 P R 1892 Rev**

Section 77.

1. *Sale of occupancy rights to landlord—Suit by mortgagee for possession against the landlord—Jurisdiction of Civil or Revenue Court—Punjab Tenancy Act*, 1887, *section* 77.

In 1899 an occupancy holding was mortgaged with possession to the plaintiff. In 1901 the tenants transferred their rights to their landlords by a sale pretended to be in accordance with the provisions of section 53 of the Punjab Tenancy Act. The value was determined by mutual agreement, a portion of the amount so agreed on was applied, in payment of another mortgage, a portion was paid to the tenants, balance being left in deposit with the lanldord for payment to plaintiff. The plaintiff thereupon instituted the present suit for possession as mortgagee. The defence contended that the suit was not cognizable by a Civil Court, *held*, that as the plaintlff was not a tenant under the landlord and as his suit was for the restoration of his possession as mortgagee against a trespasser it was cognizable by the Civil aud not by the Revenue Court. BHAG MAL *v.* PIR BAKHSH. **32 P R 1906**

Section 77 (3) (*a*).

1. *Enhancement of rent—Revenue Court bound to decide all points necessary to the decision of the questions before it, including that of title*

See JURISDICTION OF CIVIL OR REVENUE COURT. **2 P R 1890 Rev.**

2. *Suit for declaration of occupancy rights—Determination of compensation.*

See OCCUPANCY RIGHTS.

9 P R 1890 Rev.

Section 77 (3) (*b*).

—And section 77 (4)*—Rent suit for commutation of rent—Power of Assistant Collector to hear suit for commutation of rent.*

A suit for commutation of rent falls under the first group in sub-section 77 (3) (*b*) of the Punjab Tenancy Act and under sub-section 4 is not cognizable by an Assistant Collector of the first grade, unless he has been by name specially empowered in that behalf by the Local Government. JAIMAL SINGH *v.* SHER KHAN. **5 P R 1903, Rev.**

Section 77 (3) (*d*).

1. *Suit by a person out of possession claiming possession on ground of possession of succession as tenant.*

See JURISDICTION OF CIVIL OR REVENUE COURT. **44 P R 1891 F. B.**

PUNJAB TENANCY ACT, 1887— *contd.*

Section 77 (3) (*d*)—*concld.*

2. *Suit by tenant to establish claim to a right of occupancy.*

See JURISDICTION OF CIVIL OR REVENUE COURT. **70 P R 1893**

3. *Suit for recovery of land from trespasser—Plea by defendant that he has a right of occupancy—Jurisdiction of Civil or Revenue Court.*

See JURISDICTION OF CIVIL OR REVENUE COURT. **92 P R 1902, F. B.**

4. *Occupancy rights—Suit by a tenant for a declaration that he is occupancy tenant by exchange with the original tenant—Jurisdiction of Civil or Revenue Court—Punjab Tenancy Act*, 1887, *section* 77 (3) (*d*).

See JURISDICTION OF CIVIL OR RFVENUE COURT. **139 P R 1906**

5. *Suit for recovery of land from trespasser—Jurisdiction of Civil and Revenue Courts.*

Held, that a suit by a landlord for recovery of certain lands lately held by a tenant who died *lawaris*, from a person who is alleged to have taken possession thereof without any title, is cognizable by a Civil Court as a suit against a trespasser and is not a suit by a landlord to prove that a tenant has not a right of occupancy, notwithstanding that defendants in their answer claim such a right 44 *P. R.* 1891, distinguished. MEWA SINGH *v.* NATHA SINGH *v.* NATHA. **22 P R 1894**

6. *Suit by a tenant for a declaration that he is occupancy tenant by exchange with the original tenant—Jurisdiction of Civil or Revenue Court.*

See JURISDICTION OF CIVIL OR REVENUE COURT. **139 P R 1906**

7. *Suit for declaration of mukarraridari rights.*

See JURISDICTION OF CIVIL OR REVEUUE COURT. **42 P R 1908**

Section 77 (3) (*e*).

See SECTION 77 (3), CLAUSE (*m*) *infra.*

1. *Suit by a landlord to eject a tenant holding over after the expiration of an agricultural year.*

See JURISDICTION OF CIVIL OR REVENUE COURT. **162 P R 1890**
53 P R 1893

2. *Suit by mortgagee to recover possession on failure of mortgagor to pay rent—Suit by landlord to eject tenant.*

See JURISDICTION OF CIVIL OR REVENUE COURT. **19 P R 1893**
46 P R 1894 F. B.

3. *Suit for ejectment—Trespasser.*

See JURISDICTION OF CIVIL OR REVENUE COURT. **41 P R 1894**

4. *Ejectment suit—Suit to establish proprietary right—Landlord and tenant.*

See JURISDICTION OF CIVIL OR REVENUE COURT **57 P R 1894**

5. *Suit by mortgagee to recover possession on failure of mortgagor to pay rent.*

See LANDLORD AND TENANT.

1 P R 1908 Rev.

PUNJAB TENANCY ACT, 1887— *contd.*

Section 77 (3) *(f).*

—Jurisdiction of Civil or Revenue Court—Suit to contest liability to ejectment—"Landlord and tenant"—Punjab Tenancy Act, 1887, *sections* 45, 77 (3) *(f)—Procedure.*

T. G. and others had notices of ejectment under section 45 of the Punjab Tenancy Act, 1887, served upon B. and J., who thereupon, instituted suits in the Revenue Court in the terms of the notices to contest their liability to ejectment. The Collector, being of opinion that these suits could not be brought in the Revenue Court under section 77 (3) *(f)* of the Act, because the plaintiffs B. and J. did not hold themselves out as "tenants" but asserted that they were proprietors, referred the question to the Chief Court.

Held, that the word "the tenant" in section 45 of the Act means any such person to whom a notice of ejectment is issued and that in accordance with the terms of the notice any such person must be allowed to come into the Revenue Court and contest it, whether he admits that he is a tenant or claims some other *status*, the same meaning being assigned to the word "tenant" both in section 45 and in section 77 (3) *(f)*. THAKAR GIR *v.* BAISAKHI. **3 P R 1895**

Section 77 (3) *(g).*

1. *Suit for recovery of possssion by occupancy tenant illegally dispossessed—Suit against person other than landlord.*

See JURISDICTION OF CIVIL OR REVENUE COURT. **3 P R 1889**

2. *Suit by occupancy tenant to recover possession of land from the proprietor more than one year after dispossession.*

See JURISDICTION OF CIVIL OR REVENUE COURT. **45 P R 1891 F. B.**

3. *Landlord and tenant—Suit by tenant who has been ejected for possession—Suit instituted more than one year after ejectment—jurisdiction of Civil Court.*

See LANDLORD AND TENANT. **64 P R 1898**

Section 77 (3) *(h).*

1. *Jurisdiction of Civil or Revenue Court—Suits for declaratory decree that land has reverted to landlord free of incumbrance—Suit by landlord to set aside transfer of right of occupancy—Punjab Tenancy Act,* 1887, *section* 60, 77 (3) *(h).*

Plaintiff was landlord, and one C. was occupancy tenant, under section 6 of the Punjab Tenancy Act, 1887, of the land in suit. C. during his life-time mortgaged his rights in the land to the defendants and afterwards died, leaving no heirs, whereupon plaintiff entered into possession and sued for a declaratory decree that the said land had reverted to him free from any incumbrance.

Held, that the suit was one "by a landlord to set aside a transfer made of a right of occupancy" within the meaning of clause *(h)* of section 77 (3) of the Punjab Tenancy Act, and was cognizable only by a Revenue Court.

Clause *(h)* of section 77 (3) of the Act covers all suits in which the landlord calls in question the validity of a transfer of a right of occupancy whether the suit is

PUNJAB TENANCY ACT, 1887— *contd.*

Section 77 (3) *(h)—concld.*

in form merely declaratory or is to dispossess the transferee. GURDIAL *v.* FARIDA. **88 P R 1894**

2. *Punjab Tenancy Act, XVI of* 1887, *sections* 60 *and* 77 (3), *(h)—Transfer of occupancy rights by widow—Suit by landlord for dispossession of vendee—Parties and limitation for such suit—Indian Limitation Act, XV of* 1877, *article* 144.

Held, that in a suit against the vendor and vendee of a right of occupancy for dispossession of the vendee, if the suit succeeds, the decree is one for possession as against the vendee. The mere fact that the word "dispossession" is used in section 77 (3) *(h)* of the Punjab. Teancy Act, 1887, and the word "possession" in article 144 of the Second Schedule of the Indian Limitation Act, 1877, makes no difference, therefore when a landlord specifically sues for the dispossession of the vendee article 144 of the Indian Limitation Act applies.

Held also, overruling 4 *P. R.* 1900 Rev. (*Prem Singh* v. *Jamit Singh*), that section 60 of the Punjab Tenancy Act, 1887, makes transfers under any section of Chapter V including sectfon 59 (3), "voidable at the instance of the landlord," who alone can enforce his rights in the Revenue Court by bringing a suit under section 77 (3) *(h)* of the Punjab Tenancy Act, and that a reversioner of the widow's deceased husband cannot be added as a plaintiff as he is not a landlord. He has his remedy in a Civil Court if the landlord takes no action or the widow abandons the land. HAR LAL *v.* MUSSAMMAT GOHR. **3 P R 1910 Rev.**

Section 77 (3) *(i).*

1. *Suit between a landlord and tenant arising out of the conditions on which a tenancy is held.*

See JURISDICTION OF CIVIL OR REVENUE COURT. **65 P R 1890**
104 P R 1890
105 P R 1890

2. *Suit by owner of trees against occupancy tenant of land on which they stand for value of fruit trees.*

See JURISDICTION OF CIVIL OR REVENUE COURT. **119 P R 1890**

3. *Suit by a person out of possession claiming possession on ground of succession as tenant.*

See JURISDICTION OF CIVIL OR REVENUE COURT. **44 P R 1891 F. B.**

4. *Suit by occupancy tenant to recover possession of land from the proprietor more than one year after dispossession.*

See JURISDICTION OF CIVIL OR REVENUE COURT. **45 P R 1891 F. B.**

5. *Suit for damages for wrongful seizure of produce—Landlord and tenant.*

See JURISDICTION OF CIVIL OR REVENUE COURT. **19 P R 1892**

6. *Suit for declaratory decree by persons aggrieved by entry in a record of rights—Suit by occupancy tenant against landlord.*

See JURISDICTION OF CIVIL OR REVENUE COURT. **89 P R 1895**

PUNJAB TENANCY ACT, 1887— *contd.*

Section 77 (3) *(i)—concld.*

7. *Suit by mortgagee to recover money advanced to mortgagor to pay Land Revenue.*

See JURISDICTION OF CIVIL OR REVENUE COURT. **126 P R 1906**

8. *Common land—Partition—Suit for declaration that land was not subject to partition.*

See JURISDICTION OF CIVIL OR REVENUE COURT. **144 P R 1907**

9. *Tenant suing proprietors for possession after latter have had alienation of occupancy rights set aside—Revision.*

See OCCUPANCY RIGHTS. **1 P R 1911 Rev.**

10. *Punjab Tenancy Act,* 1887, *section* 77 (3) *(i)—Suit by mortgage to recover money advanced to mortgager to pay land revenue—Jurisdicton of Civil or Revenue Court.*

See JURISDICTION OY CIVIL OF REVENUE COURT. **126 P P 1906**

Section 77 (3) *(j).*

1. *And section* 100*—Suit for sums payable as* dhart *and for marriage dues—Jurisdiction of Civil and Revenue Courts—Claims based on two causes of action, one cognizable by Civil Court, the other cognizable by Revenue Court—Power of Chief Court to deal with part of decree.*

See CAUSE OF ACTION, I. DISTINCT. **28 P R 1894**

2. *Suit for the recovery of* [illegible]k-buha*—Jurisdiction.*

See JURISDICTION OF CIVIL OR REVENUE COURT. **11 P R 1890 Rev.**

3. *Suit for the recovery of* kamiana *payable by non-agriculturist artizans in respect of the privilege of carrying on their trades in the village by the permission of the proprietary body.*

See JURISDICTION OF CIVIL OR REVENUE COURT. **[illegible]9 P R 1891**

4. *Suit for the recovery of* puch-bakri *or dues on marriages payable by non-proprietors.*

See JURISDICTION OF CIVIL OR REVENUE COURT. **42 P R 1893**
55 P R 1893

—Suit for a declaration that persons who are owners of their houses and cultivators in the village are not liable to pay the kamiana *dues—Village cess.*

See JURISDICTION OF CIVIL OR REVENUE COURT. **67 P R 1905**

5. *Suit for a declaration that occupancy tenants in the village are not liable to pay* haq bua *dues.*

See JURISDICTION OF CIVIL OR REVENUE COURT. **33 P P 1908**

6. *Suit for recovery of* haq sep.

See JURISDICTION OF CIVIL OR REVENUE COURT. **41 P R 1908**

7. *Kudhi kamini* is a "village cess" within the meaning of this section. RAJ SARUP *v.* HARDAWARI. **95 P R 1907**

PUNJ.B TENANCY ACT, 1887—*contd.*

Sectiq 77 (3) (j)—*concld.*

8. *Sit for a share of* kamiana *dues which the def'dant ought to have recovered and paid to ie plaintiff.*

ie JURISDICTION OF CIVIL OR REVENUE COURT. **128 P R 1908**

9. *St for declaration that plaintiffs are not liab to pay* Bakri *and* Thana patti *dues when conisable by Revenue Court.*

Se JURISDICTION OF CIVIL OR REVENUE COURT. **79 P R 1911**

Sectin 77 (3) (k)

1. *Stion 77 (3) (k) does not oust jurisdictn of Civil Court in regard to claim for a shce in profits of agricultural land, which ha been realised and entered in books as part d parcel of a business.*

S HINDU FAMILY. **97 P R 1910**

2. *Sit by co-mortgagee for share of produce.*

S JURISDICTION OF CIVIL OR REVENUE COURT. **106 P R 1890**
47 P R 1891

3. *Sit by co-sharer for a share of profits.*

S JURISDICTION OF CIVIL OR REVENUE COURT. **38 P R 1891**

4. *Mrtgage by occupancy tenant—Mortgagee to eceive half net profits without possession—Suit for recovery of such profits.*

S JURISDICTION OF CIVIL OR REVENUE COURT. **70 P R 1892**

5. *St for declaration as to the amount of rent pyable by one mortgagee to another mortgage both mortgagees cultivating and taking th produce according to their mortgage sha.*

Se JURISDICTION OF CIVIL OR REVENUE COURT. **112 P R 1893**

6. *Sui for compensation for forcibly cutting an carrying away reeds—Suit by a co-sharer i holding for a share of tho profits thereof.*

See .RISDICTION OF CIVIL OR REVENE COURT. **119 P R 1894**

7. *Suit b occupancy tenant against co-sharer in the enancy for share of produce—" Co-sharer in an Estate or holding."*

See JUISDICTION OF CIVIL OR REVENU COURT. **44 P R 1895 F. B.**

8. *Suit by ssee for the whole income of certain village, against landlord.*

See JURIDICTION OF CIVIL OR REVENUE COURT. **55 P R 1900**

9. *Suit for hare of profit—Partnership for cultivation o land—suit by a co-sharer for share of proj.*

See JURISCTION OF CIVIL OR REVENUE CURT. **80 P R 1904**

10. *Suit for nesne profits accrued between the date of ecree and of delivery of possession—Suit bsed on two causes of action, one cognizable by ivil Court, the other by Revenue Court.*

See JURISDI ION OF CIVIL OR REVENUE COURT. **81 P R 1904**

11. *Suit for mes, profits—Suit by a mortgagee entitled to possesion under his mortgage —Suit by a co-sharer or a share of profits.*

See JURISDICTIO OF CIVIL OR REVENUE COURT. **9 P R 1905 Rev.**

PUNJAB TENANCY ACT, 1887—*contd.*

Section 77 (3) (k)—*concld.*

12. *Punjab Tenancy Act, XVI of* 1887, *section* 77 (3) *(k)—Suit against a co-sharer for share of sale-proceeds of certain trees in a joint holding.*

See JURISDICTION OF REVENUE COURT **52 P R 1910.**

13. *Not applicable to suit for value of a tree as its sole owner.*

See JURISDICTION OF CIVIL OR REVENUE COURT. **10 P R 1911**

Section 77 (3) (l).

—Suit for damages for wrongful seizure of produce—Landlord and tenant.

See JURISDICTION OF CIVIL OR REVENUE COURT. **80 P R 1891**

Section 77 (3) (m).

1. *Suit for damages or the money value of the share of the produce which plaintiff, muafidar, was entitled to receive from the defeadant.*

See JURISDICTION OF CIVIL OR REVENUE COURT. **52 P R 1890**

2. *Suit for land alleged to have been granted to the plaintiff, revenue free, as ala-lambardar—Emoluments of a village officer.*

See JURISDICTION OF CIVIL OR REVENUE COURT. **66 P R 1893**
104 P R 1894
105 P R 1894

3. *Suit for land alleged to have been granted to defendant's father revenue free, as ala-lambardar—Acquisition of occupancy right in such land—Tenant.*

See JURISDICTION OF CIVIL OR REVENUE COURT. **123 P R 1893**
23 P R 1895

4. *Suit to recover land from person holding it in virtue of his office as ala-lambardar —Plea that muafi has been resumed.*

See JURISDICTION OF CIVIL OR REVENUE COURT. **28 P R 1895**

Section 77 (3 (n).

1. *Suit for damages or the money value of the share of the produce which plaintiff, muafidar, was entitled to receive from the defendant.*

See JURISDICTION OF CIVIL OR REVENUE COURT. **52 P R 1890**

2. *Suit for compensation for use and occupation of land occupied without consent of landlord.*

See JURISDICTION OF CIVIL OR REVENUE COURT. **19 P R 1891**

3. *Suit by mortgagee for value of profits of mortgaged land—Illegal ejectment of mortgagee by mortgagor.*

See JURISDICTION OF CIVIL OR REVENUE COURT. **68 P R 1891**

4. *Suit by mortgagee to recover sum due by mortgagor who had leased the mortgaged land.*

See JURISDICTION OF CIVIL OR REVENUE COURT. **41 P R 1893**

5. *Purchaser of growing crop undertaking to clear land of it by stipulated time—Suit by owner of land for damages and value of crop —" Arrears of rent or money equivalent of rent "—" Use or occupation of land "—Breach of contract.*

See JURISDICTION OF CIVIL OR REVENUE COURT. **14 P R 1894**

PUNJAB TENANCY ACT, 1887—*contd.*

Section 77 (3) (n)—*concld.*

6. *Suit for sum recoverable for occupation of land without consent of landlord.*

See JURISDICTION OF CIVIL OR REVENUE COURT. **26 P R 1895**

7. *Arrears of rent of land—suit upon bond given for arrears of rent.*

See JURISDICTION OF CIVIL OR REVENUE COURT. **41 P R 1907**

8. *" Landlord "—Suit for compensation for occupation of land—Jurisdiction of Civil and Revenue Court—Mortgage by alleged widow impeached by* prima facie *heirs of last holder.*

Plaintiffs sued in a Civil Court alleging that certain land, the property of one Mussammat H. K., the widow of the deceased proprietor S. S., was mortgaged by her to them with possession; that they had obtained *dakhil kharij*, and that the defendants in Sambat 1950 prevented the plaintiffs' servant from sowing the land and cultivated it themselves. Plaintiffs claimed compensation based on the computation of what tne crops would have been, had they cultivated the land personally or, in the alternative, that they might cut the crops and compensate defendants for their seed.

Held, that upon these allegations the plaintiffs were " the landlord " as regards the defendants, inasmuch as they were the persons immediately entitled to the use and occupation of the land of which the defendants were in possession without their consent; that section 14 and section 77 sub-section (3) (n) of the Punjab Tenancy Act, 1887, applied to the case, and that the fact that plaintiffs assessed compensation on a wrong principle did not oust the jurisdiction of the Revenne Courts. GHUNA MAL *v.* JHANDA SINGH.

82 P R 1894

Section 77 3) (o).

1. *Suit by lessee of Government parade ground for money due on accouut of grazing dues—" Estate."*

See JURISDICTION OF CIVIL OR REVENUE COURT. **13 P R 1895**

2. *Suit by tirni contractor to recover moneys due for the enjoyment of the right of pasturage over land.*

See JURISDICTION OF CIVIL OR REVENUE COURT **30 P R 1895**

Section 77 (3) (p).

1. *Suit for damages or the money value of the share of the produce which plaintiff, muafidar, was entitled to receive from the defendant.*

See JURISDICTION OF CIVIL OR REVENUE COURT. **52 P R 1890**

PUNJAB TENANCY ACT 1887—*contd.*

Section 77 (3) (p)—*concld.*

2. *Suit for the recovery of date revenue as assessed in the Dera Ghazi Khun District.*

See JURISDICTION OF CIVIL OR REVENUE COURT. **109 P R 1890**

3. *Lease of tirni—Suit by lessee to enforce contribution from co-lessee towards sum paid into Treasury.*

See JURISDICTION OF CIVIL OR REVENUE COURT. **33 P R 1894**

4. *Suit on a* ruka *executed by a village proprietor on a third party for sum payable on account of land revenue—Suit against such third party.*

See JURISDICTION OF CIVIL OR REVENUE COURT. **9 P R 1896**

Section 80.

1. *And section 88—Appeal from order of remand passed by a Collector as an Appellate Court—Civil Procedure Code, 1882, Sections 588 (28), 589.*

See APPEAL—VII. REVENUE. **1 P R 1905 Rev.**

2. *And section 93—Joinder of parties having no joint interest—Appeal—Decree.*

In a case in which 121 proprietors sued 236 tenants for enhancement of rent under section 93 of the Tenancy Act, *held*, that the combined effect of sections 80 and 93 was, that as regards appeal, a single decree passed against 200 separate tenants should be regarded as made up of 200 separate and distinct decrees, each of which effected only one tenant or one set of joint tenants, and that a reversal in appeal of the joint decree as regards some only of the tenants, had not the effect of modifying the original decree as to all. NATHU *v.* SARDAROO. **1 P R 1890 Rev.**

3. *Further appeal—Decree confirmed on first appeal—Section 80, Punjab Tenancy Act, 1887—Construction of statute.*

The correction of an error and consequent modification of the decree of a Court of first instance by the Collector on appeal gives a further appeal on the whole case to the Commissioner under section 80, proviso (iii), Tenancy Act, 1887.

The first rule is that decrees of a Collector are appealable to the Commissioner (section 80, clause (b)); but this is subject to the qualification that, when an original decree is confirmed on appeal, a further appeal to the Commissioner shall not lie (section 80, proviso (ii)). JAIMAL AND FATTU *v.* MAIDHAN. **3 P R 1891 Rev.**

Section 82.

Review—Second application for.

See REVIEW. **9 P R 1905 Rev.**

Section 84, (3).

Reference under—Deloyin making application.

See LIMITATION. **6 P R 1901 Rev.**

PUNJAB TENANCY ACT, 1887—*contd.*

Section 84, (5).

—Revision—Financial Commissioner's powers of discretion.

See REVISION IN REVENUE CASES. **5 P R 1903 Rev.**

Section 88.

1. *Appeal—Non-appearance of appellant—Dismissal for default.*

If on the day fixed in that behalf for the hearing of an appeal, the appellant does not attend in person or by his pleader, the appeal *shall* be dismissed for default (section 551, Civil Procedure Code, and section 88, Punjab Tenancy Act, 1887). GOPAL SINGH *v.* KHUSHAL KHAN. **4 P R 1892 Rev.**

2. *Appellate Court—Judgment in appeal—Section 574—Civil Procedure Code,* and Section 88, *Punjab Tenancy Act,* 1887.

The judgment of a Collector passed in appeal must state—

(*a*) the points for determination;

(*b*) the decision thereupon;

(*c*) the reasons for the decision; and

(*d*) when the decree appealed against is reversed or varied, the relief to which the appellant is entitled, agreeable to the provisions of section 574, Civil Procedure Code, and section 88, Punjab Tenancy Act. SAIN DITTA *v.* ALICE FORSTER. **2 P R 1893**

3. *Procedure of Revenue Courts—Appeal—Notice of appeal to respondent—Punjab Tennancy Act (XVI of 1887), section* 88 (2) (*a*).

A Revenue Court when entertaining an appeal, ought to give notice to the opposite party to appear in order that he may have an opportunity of being heard in support of the order appealed against. BALDEO DAS *v.* BISHAMBAR DAS. **10 P R 1895 Rev.**

Section 93.

See SECTION 80. **1 P R 1890**

Section 98.

—Appeal against an order under Section 98, Punjab Tenancy Act, sanctioning an application for leave to refer a party to Civil Court—Competency of Appellate Court to decide the suit on merits.

See APPEAL—REVENUE. **2 P R 1905 Rev.**

Section 99.

—Power to refer to Chief Court questions as to jurisdiction.

See APPEAL, I. CIVIL. **40 P R 1893**
JURISDICTION OF CIVIL OR REVENUE COURT. **63 P R 1904**

Section 100.

1. *And section 77 (3) (j)—Suit for sum payable as* "dhart" *and for marriage dues—Jurisdiction of Civil and Revenue Courts—Claim based on two causes of action, one cognizable by Civil Court, the other congnizable by Revenue Court—Power of Chief Court to deal with part of decree.*

See CAUSE OF ACTION. **28 P R 1894**

PUNJAB TENANCY ACT, 887—*contd.*

Section 100—*concld.*

2. *Registration of decree of Civi[illegible] late Court in Revenue Appelate Court.* [illegible] *ppel-*

See DECREE. **34 P R [illegible] 1901**

3. *Discretion of Chief Court in o[illegible] dering that a decree of Civil Court passe[illegible] under mistake as to jurisdiction be register[illegible] as a decree of Revenue Court which had [illegible] risdiction.*

See JURISDICTION OF CIVIL OR [illegible] EVENUE COURT. **68 P [illegible] 1891**
53 P [illegible] 1893

4. *And section 77—Reference [illegible] Chief Court validation of proceedings h[illegible] under mistake as to jurisdiction.*

The only suits in which it is com[illegible] tent for Civil Courts to make a reference to [illegible] e Chief Court under section 100 of the [illegible] enancy Act of 1887 are suits of a class men[illegible] oned in section 77 of the same Act. MUH[illegible] MMAD *v.* MIRDAD. **73 P [illegible] 1888**

See to the same effect.

HUSSAIN MUHAMMAD *v.* HASH[illegible] KHAN. **73 P R 1888 N[illegible] te (a)**

And KARAM SHAH *v* HASHIM SHAH. **73 P R 1888 N[illegible] te (b)**

5. *Reference to Chief Court—Vali[illegible] tion of proceedings where there had been no[illegible] mistake as to jurisdiction.*

Where a Commissioner, on appeal [illegible] n a suit which as framed was cognizab[illegible] by a Revenue Court, after coming to th[illegible] conclusion that the plaintiff had failed to substantiate his claim as laid down, b[illegible] that on the facts as proved he could have [illegible] rought a suit on a different cause of act[illegible] on which would be cognizable by a C[illegible] il Court, referred the case to the Chief [illegible] ourt with a suggestion that the decree of th[illegible] Assistant Collector might be registered a[illegible] the decree of the District Judge. *Held,* tha[illegible] the suit as framed being exclusively cog[illegible] zable by a Revenue Court, and there ha[illegible] ng been no mistake as to jurisdiction the [illegible] eference did not fall within the scope of s[illegible] ction 100 of the Punjab Tenancy Act, and consequently the Chief Court was not com[illegible] tent to order the decree of the Assistant [illegible] ollector to be registered as that of the [illegible] istrict Judge. KALU *v.* PALA MAL. **45 P R 1907**

6. *Validation of procee[illegible] ngs where these had been mistaken as to juri[illegible] diction—Registration of decree of Civil C[illegible] rt in Revenue Court.*

Where a suit cognizabl[illegible] by a Revenue Court only had been instit[illegible] ted in and decided by a Civil Court the p[illegible] siding officer of which was invested with [illegible] revenue powers which did not give him [illegible] risdiction to try the suit, *held* that, as a m[illegible] tter of principal the decree should not b[illegible] registered as the decree of a Revenue [illegible] ourt. RAMJAS *v.* RALLA. **25 P R 1909**

Section 110 (1).

Of the Punjab Te[illegible] ancy Act does not supersede the doctr[illegible] e of *res judicata* or the consequences of dis[illegible] ssals in default. SUKH RAM *v.* MUL CHAND. **6 P R 1904 Rev.**

PUNJAB TENANCY ACT, 1887— *concl.*

Section 111.

1. See CUSTOM I.—I. ALIENATION OF OCCUPANCY RIGHTS. **3 P R 1897 Rev.**
OCCUPANCY RIGHTS. **20 P R 1896**
4 P R 1896 Rev.

2. *Punjab Tenancy Act, XVI of* 1887, *sections* 59, 111 *and* 112—*Statement of custom in a* Wajib-ul-arz *cannot override section* 59—*Agreements limited to term of Settlement.*

Held, that it is settled law that statements of Custom in a *Wajib-ul-arz* cannot override section 59 of the Punjab Tenancy Act, 1887.

Held, also that an "agreement" under sections 111 and 112 of the Act expressly limited to the term of the first Settlement cannot be held to persist through a later Statement in which the agreement was not renewed. FATEH BAKHSH *v.* LEHNA.
97 P R 1909

Section 112.

See CUSTOM I.—1. ALIENATION OF OCCUPANCY RIGHTS. **3 P R 1897 Rev.**
OCCUPANCY RIGHTS. **20 P R 1896**
See SECTION 111 *supra*. **97 P R 1909**

PURCHASER.

See VENDOR AND PURCHASER.

—*Agreement by purchaser of equity of redemption to pay mortgage—Personal liability of purchaser—Trust.*
See MORTGAGE. XV.—REDEMPTION.
54 P R 1902

PURCHASE AT EXECUTION SALE.

See EXECUTION OF DECREE.

PURCHASER BONA FIDE.

See VENDOR AND PURCHASER.

PURCHASE MONEY.

Purchase money. Refund of an execution sale being set aside.
See EXECUTION OF DECREE.
99 P R 1881
19 P R 1884
68 P R 1885
96 P R 1885
45 P R 1886

PRE-EMPTION ACT, 1905.

Section 22.

1. *Purchaser bound to pay interest on purchase money withheld by him.*
See INTEREST.
148 P R 1907

2. See PRE-EMPTION. **13 P R 1908**

3. *Suit to recover.*
See RIGHT TO SUE. **114 P R 1908**

4. *Vendor's lien for unpaid purchase money Recital in deed of full payment – Subsequent advance on strength of deed by third party without notice of lien—Priority.*
See VENDOR AND PURCHASER.
66 P R 1883

5. *Refund of—sale to Plaintiff without notice of former sale—Caveat Emptor.*
See VENDOR AND PURCHASER.
26 P R 1884

PURCHASES

See VENDOR AND PURCHASER.

Q.

QUANTUM MERUIT.

See PLEADER AND CLIENT.
63 P R 1876

QUASI—ADOPTION.

See CUSTOM-ADOPTION.
108 P R 1879

QUASI-CONTRACT.

See SMALL CAUSE COURT—JURISDICTION OF. **57 P R 1877**

QUESTION.

1. *Of fact.*
See REVISION. **16 P R 1907**

2. *Of law.*
See JURISDICTION OF CIVIL OR REVENUE COURT. **4 P R 1908**
See REVISION. **16 P R 1907**

3. *How far, if at all, a decision on a pure question of law can operate as* res judicata.
See RES JUDICATA. **44 P R**

4 *Of title.*
See PARTITION. **104 P R 1906**

R.

RAFFLES.

See GAMING AND WAGERING.
16 P R 1868

RAILWAYS ACT, 1854.

See CARRIERS. **77 P R 1867**
91 P R 1868
29 P R 1872

RAILWAYS ACT, 1879.

Section 8.

1. *Liability for damages—Suit for compensation for damages caused to horse during transit by rail—Contract Act (IX of* 1872), *sections* 151, 152—*Railway Act* (*IV of* 1879), *sections* 8, 10, 13—*Special contract—Company pleading their own regulations in answer to plaintiff's suit—Effect of such regulations on Company's liability—Notice—Agreement.*

In a case which came before the Chief Court as a reference made by the Judge of the Small Cause Court, Lahore, it appeared that plaintiff sued the Sindh Punjab and Delhi Railway Company to recover Rs. 250 as compensation for injuries sustained by a horse while being carried by the defendants' railway from Umballa to Lahore, alleging that owing to the negligence and unskilfulness of the Company's servants the horse was thrown down and injured while being carried as aforesaid.

Held, that the question of the liability of the defendants to make compensation to the plaintiff turned, under section 152, Act IX of 1872, upon whether the defendants took as much care in respect of the horse as a man of ordinary prudence would, under the circumstances of the case, have taken of a horse of his own of equal value, and that the *onus* of proving that they took this amount of care was, under section 13 of Act IV of 1879, on the defendants. As therefore the Judge of the Small Cause Court had found on the evidence that there was want of due care on the part of the defendants' servants, in that they used an unsuitable vehicle for the conveyance of the horse, and that this contributed to the injuries sustained by the animal, this of itself was sufficient to render the defendants liable to make compensation, unless they could show that they were exempt from liability on some special ground.

RAILWAYS ACT, 1879—*contd.*

Section 8—*contd.*

The defendants in the above suit relied, among other pleas, upon two general regulations of the Company as a defence to plaintiff's action. The 1st regulation relied on was in the following terms : "All claims "against the Railway Company for loss or "damage to any consignment of goods must "immediately be made to the Station Master "or clerk in charge of the station to which "they have been booked, and also a written "statement of the nature of the damage "received and contents of the articles miss-"ing must be forwarded to the Traffic "Manager, Lahore, within forty-eight hours "after such consignment has arrived at its "destination, otherwise the Railway Com-"pany will not hold themselves responsible."

Held, that this regulation if viewed simply as a public notice to persons sending goods by Railway, obviously could not operate to relieve the Company from liability for loss of, or damage to, the goods when the terms of the notice had not been complied with; but at most it could only be relied on as evidence of an implied agreement, and any such agreement would be void, under section 10, Act IV of 1879, for the purpose of limiting the obligation or responsibility of the Railway Company. The only way in which the defendants could successfully set up the regulation as an answer to the suit would be by showing that it was made in pursuance of a power given to them by the Legislature, and that it therefore had the force of law ; but as the rule now relied upon by the defendants did not come within the scope of the power to frame general rules given by section 8 of Act IV of 1879, therefore even viewed as a rule under that section, it was of no legal force and failed as an answer to plaintiff's suit.

The 2nd rule relied upon was one of those that regulate the traffic, and was in the following terms: "Horses,—One syce free "with each animal. An insurance rate of ½ "per cent. per 100 miles or portion of 100 "miles will be charged on all horses of the "declared value of Rs. 400 and upwards and "a form of conditions under which the "Railway Company undertake to carry "horses must be signed by the sender or "his agent." With regard to the latter part of this rule, it appeared that there was no contract in the present case sufficient to satisfy the requirements of section 10 of Act IV of 1879, but it was argued for the defendants that the plaintiff should under the 1st part of the above rule have declared the value of the horse and should have paid an insurance rate, and that not having done so he was not entitled to value the horse at more than Rs. 400 in any question of the loss of, or damage to, the horse arising between him and the Company.

RAILWAYS ACT, 1879—*contd.*

Held, that this contention could not be maintained, as, under the circumstances of the present case, a mere notice to the sender of the existence of the rule in question was not sufficient with reference to the provisions of section 10 of the Railway Act to limit the ordinary liability of the Company imposed by the Contract Act. As the sender was not required by the Company to sign an agreement as prescribed by section 10 of Act IV of 1879, nor to make any declaration of the value of the horse, and the horse was received without such declaration and the rate demanded by the defendants' servants was paid, the defendants could not claim to be absolved from liability to make compensation to the full extent for the injuries shown to have been caused to the horse by the want of due care on the part of their servants. PLOWDEN *v.* S. P. AND D. RAILWAY COMPANY.

127 P R 1882

Section 10.

1. *See* SECTION 8, *supra*.

127 P R 1882

2. *Suit for damages for injury to consignment—Carriers — Warehousemen— Act IX of 1872, section 151—Care to be taken by bailee—Refusal by consignee to take delivery of part of consignment on arrival—Effect of such refusal on carrier's responsibility—Demurrage.*

Plaintiff sued the Railway Company for damages for injury to gunny-bags consigned to him from Serampur, he having refused to accept delivery on the ground that they had been damaged owing to the want of proper care on the part of the Company. The first Court holding in effect that when the damage was sustained the Company had ceased to be liable as carriers, and that there was no want of due care on their part, gave the plaintiff a decree only for the surplus realized by the sale of the goods after paying the Railway Company's charges, including three months' demurrage. The lower Appellate Court substantially concurred in this finding, holding that the liability of the defendants as carriers ceased at 10 A.M. on the morning of the 17th June, 24 hours after the arrival of the last three bales of bags, the damage being admitted to have taken place on the night of the 17th; and also finding that there had been negligence on the plaintiff's part, as he was aware on the morning of the 16th that the greater part of the consignment, 23 out of 26 bales, had arrived, but made no arrangements to take delivery. In second appeal to the Chief Court, it was contended for the plaintiff that the Company did not take even ordinary care of the goods and were therefore liable to the plaintiff; that no charge for demurrage was admissible after the goods had been damaged by their neglect; and further that plaintiff was under no obligation to take delivery until the entire consignment had arrived.

Held, that there was no reason to think that the lower Appellate Court was wrong in holding that the goods were ready for 24 hours before 10 A.M. on the 17th June, and that a reasonable time having then elapsed,

RAILWAYS ACT, 1879—*contd.*
Section 10—*contd.*

the responsibility of the Company as carriers ceased; that when that responsibility came to an end, they became responsible as warehousemen, their responsibility in that capacity being regulated by section 151 of the Contract Act; and that as the finding of the lower Appellate Court (which must be accepted as binding in second appeal) amounted to a finding that the defendants did in fact take all the care that was reasonably practicable under the circumstances, this was sufficient to discharge them of their liability under the above section.

Held further, that there being no rule of law that when a large quantity of goods of the same description are delivered to a carrier, the carrier's responsibility as such must continue until the whole are ready for delivery, though the plaintiff was under no obligation to remove the 23 bales which he knew had arrived on the morning of the 16th, still, on his failure to do so within reasonable time the liability of the Company as carriers ceased, and their liability as warehousemen and right to charge demurrage arose.

Held also, that as there was no final refusal by the plaintiff to accept the goods before the expiration of the three months for which demurrage was charged, in which case probably the Company would have ceased to be warehousemen, and have been entitled to sell the goods as soon as they could conveniently arrange to do so, there was no ground for holding that the Courts below were wrong in law in allowing demurrage for three months. CHET RAM *v.* AGENT, S. P. AND D. RAILWAY COMPANY.

92 P R 1883

3. *Contract to deliver goods at rate specified in receipt note—Refusal by Company to deliver without payment of higher freight than that mentioned in receipt—Mistake—Alternative modes of carriage—Duty of Company to ascertain what mode of carriage consignor wishes to adopt—Election by consignor—Power of Company to charge for more expensive mode of carriage without consignor's consent—Under-charge—Practice of Company.*

In a suit against a Railway Company to recover the value of certain *ballis*, it was found that the plaintiff's agent delivered the said *ballis* at one of the defendant Company's stations, and then received a receipt note wherein the Company contracted to convey the *ballis* at a specified rate per maund, and that on the arrival of the consignment at the place of destination the plaintiff's agent there tendered the freight entered in the receipt as payable which the agent of the defendant Company refused to accept. The *ballis* were afterwards sold by the defendant Company as the plaintiff refused to pay a higher rate which was claimed for the carriage in consequence of the *ballis* having been conveyed in covered trucks. It appeared that at the time when the contract was entered into between the parties two alternative methods of carriage, involving a different scale of charges, prevailed on the defendant's line with respect to *ballis*, which

RAILWAYS ACT, 1879—*contd.*
Section 10—*contd.*

in the Goods Tariff book were simply classified as second class goods, though by a Company's circular an additional rule had, before the *ballis* were delivered for carriage, been brought into operation, whereby *ballis* loaded in covered wagons were to be charged "at a minimum rate per wagon as for 164 maunds per wagon," and the *ballis* having been conveyed by covered wagons were said by the Railway Company to have been subject to the charge provided for by the said rule, which it was alleged was not charged in the first instance by mistake, such mistake being liable to rectification before delivery of the goods to the consignee in accordance with the express terms of the receipt-note. Plaintiff, however, contended that as his agent made no application for the conveyance of the *ballis* by covered wagons, and as the charge entered in the receipt-note was allowable under the Tariff book, the defendant's agents were themselves responsible for having employed covered wagons, for which plaintiff had not contracted to pay.

Held that, assuming that the additional rule above quoted was lawfully introduced and published, it was the duty of the Company's agent at the receiving station to ascertain by which of the alternative modes of carriage the consignor desired the *ballis* to be conveyed; as an alternative rate implies an option on the part of the consignor, and it must be shown that he had an opportunity of exercising that option before he can be held bound by his election: and if he selected the cheaper mode, to which according to the rules of the Company a condition of signing a risk-note was attached, the goods-clerk or other servant of the Company concerned should have caused such a note to be prepared and signed before accepting the goods for transit; but as none of the above matters were attended to, and the *ballis* were received as falling under class II, and the charge entered in the receipt note was that legally claimable on *ballis* sent otherwise than in covered wagons, therefore the Company was not justified in demanding a higher charge than that entered in the receipt note, because its servants subsequently chose to use covered wagons for its own protection, nor in subsequently selling the plaintiff's *ballis* because he refused to comply with that demand.

With regard to the contention that the practice of the Company at the time when the *ballis* were delivered was to send such articles by covered wagons unless instructions to the contrary were given by the consignor, *held*, that there was nothing on the record to show that such a practice did exist, or that plaintiff or his agent had any notice of its existence. SETH BANSI RAL RAM RATTAN *v.* AGENT, S. P. AND D. RAILWAY CO.

94 P R 1883

4. *Consignment of goods for conveyance by rail—Receipt-note—Conditions—Contract—Power to correct under-charge.*

The defendant having consigned certain live stock to the Punjab Northern State Railway

RAILWAYS ACT, 1879—*concld.*
Section 10—*concld.*
for conveyance from Sialkot to Rawalpindi, received a receipt-note in the usual form, in which the freight charged was, by a mistake of the booking clerk, calculated at half the correct rate. The goods were duly delivered to the consignee (the defendant) at Rawalpindi, and the amount of freight at the incorrect rate was duly paid by him. On the mistake being discovered, the difference between the rate charged and what ought to have been paid was demanded from the defendant, whose refusal to pay the amount led to the institution of the present suit to recover it. On the face of the receipt-note appeared the words: "For conditions of "contract, see back," and on the back of the note, among other conditions, appeared the following: "Note.—It must be "distinctly understood that the State Railway "department claims the right to correct any "charge made on goods that may be under-"charged in the Railway receipt * * * *. "The amount of cash entered is only an "estimate and is subject to revision." It was found as a fact that the defendant was ignorant of the rights reserved by the above condition to the Railway, nor did he sign the receipt-note.

Held, that the defendant was liable to pay to the Railway the extra freight claimed, the receipt-note being the contract between the parties, and containing the conditions on which the goods were delivered to and accepted by the Railway for carriage; that the fact that the defendant had not signed the note was immaterial, as it was under the terms of the note that defendant delivered the goods for carriage, and he could not claim exemption from any of those terms on the ground that he omitted to inform himself of them. *Seth Bansi Lal Ram Rattan* v. *Agent, S. P. and D. Railway Co.* (No. 94 *P. R.* 1883), cited. BEAN *v.* SANDYS.

99 P R 1885

5 *Railway Act (IV of 1879), section 10—Liability of carrier by Railway—Common carrier—Contract Act (IX of 1872), sections* 151, 161.

Held, that under the enactment contained in section 10 of Act IV of 1879, a carrier by railway is not subject to the common law liability of common carriers. The intention of the Legislature in enacting that section would appear to have been to define the liability of carriers by railway as identical with that of bailees in section 151 and section 161 of the Contract Act. LADHU *v.* S. P. AND D. RAILWAY CO. **97 P R 1886**

Section 13.

See SECTION 4 *supra*. **127 P R 1882**

RAILWAYS ACT, 1890.
Section 54.

See SECTION 77. **76 P R 1908**

Section 72.

1. *Railways Act, 1890, section 72 (2)—Responsibility of Railway administration as carriers—Risk note, Form B—Exemption from liability.*

RAILWAYS ACT, 1890—*contd.*
Section 72—*concld.*

Held that a consignor who executes a risk note in Form B. and elects to despatch his goods at a special reduced rate cannot claim damages from a Railway Company for the loss, deterioration or damage of his consignment even if the damage may have been due to the goods being conveyed in an open truck. GANESH FLOUR MILLS COY., LD., DELHI, *v.* THE GREAT INDIAN PENINSULAR RAILWAY COY., BOMBAY.

113 P R 1908

2. *Indian Railways Act,* 1890, *sections* 72, 73, 74, 75—*Luggage in charge of passenger.*

Held, that luggage belonging to, or in charge of a passenger which has been booked by a railway servant and for which a receipt has been given under the provision of section 74 of Act IX of 1890 is a parcel or package delivered to a Railway Administration for carriage by Railway within the scope of section 75 of the said Act.

Where, therefore, plaintiff had made no declaration in respect of such "luggage" which was valued by him at a sum exceeding Rs. 100, *held*, that, under section 75 of the Act, the Railway Administration was freed from liability for the loss thereof, both as regards scheduled and non-scheduled articles contained therein. MUHAMMAD ABDUL GHAFUR *v.* SECRETARY OF STATE. **56 P R 1897**

Section 75 (1).

Passenger's luggage booked by luggage van—Liability of a Railway Company as carrier of articles of special value.

Held, that a Railway Company is not liable for the loss of a box containing gold and silver ornaments and Government Currency Notes of the value of over Rs. 100 which had been entrusted to it for conveyance in the luggage van by a passenger who had not made the declaration prescribed by section 75 (1) of the Indian Railways Act, 1890.

The terms "parcel" or "package" in section 75 (1) included a passenger's luggage. AIWAZ *v.* SIMLA-KALKA RAILWAY COMPANY. **73 P R 1907**

Section 77.

1. *Indian Railways Act,* 1890, *section* 77—"*Loss, destruction or deterioration of goods*"—*Negligent misdelivery of goods by Railway Company—Liability of common carriers in India.*

Section 77 of the Indian Railways Act, 1890, confers an exemption or privilege on a railway administration, and should be strictly limited in its operation to cases clearly falling within its terms.

Held, therefore, that a negligent misdelivery of goods by a Railway Company to a person other than the owner is not such a "loss" of the said goods, within the meaning of the said section as would bar a suit by the owner, instituted more than six months thereafter, for damages for breach of contract to carry the goods and deliver them to him at destination, because a claim for compensation was

RAILWAYS ACT, 1890—*concld.*
Section 77—*concld.*
not preferred in writing by him or on his behalf to the railway administration within six months from the date of delivery of the goods for carriage by railway.

The liability of common carriers in India discussed historically. CHANGA MAL *v.* BENG. N. W. RAILWAY COMPANY.

6 P R 1897

2. *Indian Railways Act,* 1890—*Conditions entered on back of railway receipts for passenger's luggage—Test of binding nature of such conditions.*

Plaintiff at Colaba took train for Delhi, handing seven packages to the Railway officials and obtaining a receipt for them. On arrival at Delhi only six packages were forthcoming. Thereupon he did not "forthwith" send a written statement of the descriptions and contents of the missing package to the District Traffic Superintendent of Colaba or Delhi, and so failed to comply with condition 4 of the conditions on back of receipt; but he complied with section 77, Railways Act, in that he complained in writing to the "railway administration" within 6 months of his taking train at Colaba.

Held that he was not barred from claiming compensation by anything contained in said condition 4. That condition is a bye-law; and bye-laws can be framed only under section 54 (1) of the Act, which only authorizes the framing of rules consistent with the Act, with respect to the "receiving, forwarding or delivery" of articles. Condition 4 is not consistent with section 77 aforesaid, and it deals with a matter not intended to be dealt with by bye-laws under section 54 (1). The condition is therefore *ultra vires* of the railway administration and is not enforceable. AZIZ-UL-RAHMAN *v.* THE BOMBAY, BARODA AND CENTRAL INDIA RAILWAY.

76 P R 1908

RAILWAY COMPANY.

See RAILWAY ACT, 1854.
Do. 1879.
Do. 1890.

RAKH RULES.

See TIRNI.

RATIFICATION.

1. *Of alienation of ancestral estate by one co-parcener without consent of others.*

See HINDU LAW. **153 P R 1883**

2. *Of acts of managing member of undivided family.*

See LIMITATION ACT, 1877, SECTION 22, **58 P R 1882**

3. *Of marriage by minor female on attaining puberty.*

See MUHAMMADAN LAW—MARRIAGE. **51 P R 1888**

4. *Public Company—Power and authority of directors—Articles of Association—*

RATIFICATION—*concld.*

Ratification by Company of Acts, ultra vires *of directors.*
See PUBLIC COMPANY.
17 P R 1901
57 P R 1902

5. *Of unauthorized alienation.*
See PUNJAB TENANCY ACT, 1868, SECTION 34. **26 P R 1889**

RAYATARI OR RAYATGIRI.

See CUSTOM—CESSES.
14 P R 1879

RAZINAMA.

See REVIEW OF JUDGMENT.
47 P R 1880

REASONABLE AND PROBABLE CAUSE.

See MALICIOUS PROSECUTION.
40 P R 1884

REBELLION.

See ACT OF STATE. **7 P R 1867**

RECEIPT.

—*Given by Advocate or Pleader—Stamp.*
See STAMP. **85 P R 1885**

RECEIPT NOTE.

See RAILWAYS ACT, 1879, SECTION 10.
94 P R 1883
99 P R 1885

RECEIVER.

1. *Insolvency—Appeal from order discharging insolvent—Agreement to satisfy debts—Property vested in Receiver—Future salary of insolvent.*
See CIVIL PROCEDURE CODE, 1882, SECTION 358. **43 P R 1894**

2. *Power of Divisional Court to appoint—Enquiry to be made before appointment of.*
See CIVIL PROCEDURE CODE, 1908, O. XL, RR. 1–3. **102 P R 1885**

3. *Appointment of Receiver—Power to cancel appointment—Jurisdiction of District Judge.*
See CIVIL PROCEDURE CODE, 1908, O. XL, RR. 1–3. **74 P R 1889**

4. *Power of Court to appoint Receiver.*
See CIVIL PROCEDURE CODE, 1908, O. XL, RR. 1–3. **136 P R 1890**

5. *Appointment of Receiver—Duty of Court.*
See CIVIL PROCEDURE CODE, 1908, O. XL, RR. 1–3. **69 P R 1891**

6. *Order refusing to direct receiver to pay out monies—Appeal.*
See CIVIL PROCEDURE CODE, 1908, O. XL, RR. 1–3. **107 P R 1895**

7. *Receiver—Appointment of Receiver—In what cases appointment necessary—Discretion—Appeal—Civil Procedure Code*, 1882, *section* 104.

RECEIVER—*contd.*

Held, that the appointment of a Receiver is a matter of discretion to be governed by all the circumstances of each particular case, one of these being the probability of the plaintiff being ultimately entitled to a decree, that a case of necessity for such appointment for the realization, preservation, better custody or management of the property the subject of suit has to be established before the Court can exercise its powers under section 503, Civil Procedure Code, and that no such order should be given unless strong grounds are made out.

B. L., a Brahman of Lahore, possessed of considerable landed property, died childless in July 1897, leaving two widows, who applied for mutation of names before the Revenue authorities in favour of both through defendant No. 2, as their agent, to whom they gave a joint power-of-attorney to manage the whole property on their behalf. Mutation of names took place in favour of both. They also through their agent (defendant No. 2) applied for and obtained from the District Judge of Lahore a certificate for collection of debts of the deceased as his heirs. Subsequently the younger widow and defendant No. 2 fell out, and the former gave notice cancelling her power-of-attorney in the latter's favour, who retorted by denying her title altogether and setting up the sole right of the elder widow under an oral will of the deceased B. L. asserting that the deceased had thereby made the elder widow his sole heir and charged her with the duty of building a temple with the income of the property, while he disinherited her, and assigned her only Rs. 100 a month as maintenance with right of residence in the family house. The younger widow sued the elder widow and their agent for her share of her husband's estate, and during the pendency of the suit applied for the appointment of a Receiver.

Held, that as by custom and Hindu Law both the widows of B. L. were entitled to a life interest in his estate, and plaintiff's right had been admitted, and she had been allowed to succeed, the defendants had at the outset a very difficult task to establish the alleged oral will they subsequently set up and as defendants had not rebutted the strong *prima facie* title of the plaintiff in the inquiry held on the application, and were actually spending her share of the income without her consent, the order for the appointment of a Receiver was justified and must be upheld.

Held also, that where a Court after hearing both sides has decided that a Receiver should be appointed, such order is appealable under sections 588 (24), Civil Procedure Code, even though, owing to the refusal of the Court's nominee, no one has actually been appointed to the office.

Bhai Bhagat Singh v. *Harnam Singh* (136 *P. R.* 1890), *Owen* v. *Homan* (*L. R.* 4 *H. L.* 997), and *Mussammat Brij Kumari* v. *Ramrick Das* (*V Calc. W. N.* 781), cited. *Srimati Prosonomoyi Devi* v. *Beni Madhab Rai* (*I. L. R. V All.* 556), *Sidheshwari Dabi* v. *Abhoyeswari Dabi* (*I. L. R. XV Calc.* 818), *Mun Mohine Dossee* v. *Ichamoyee Dosee* (13 *W. R.* 60), *Watson and Company* v. *Ram Chand Dutt* (*I. L R. XVIII Calc.* 10), *Foxwell* v. *Van Grutten* (*L. R. Ch. Dn.* (1897), 64), *Hamilton* v. *McBroyden* (*L. R. W. N.* (1891), 14), and *Holmes* v. *Millage* (*L. R. I Q. B. Dn.* (18[illegible]3), 551), distinguished. MUSSAMMAT BUD[illegible]VANTI *v.* MUSSAMMAT BISHEN KAUR. **73 P R 1902**

RECEIVER—*contd.*

8. *Appointment of, in testamentary suit—Discretion—Probate and Administration Act*, 1881, *section* 55—*Civil Procedure Code*, 1882, *section* 503.

Held that no receiver should be appointed in a testamentary suit unless it is shown that there is a fair probability of the suit succeeding and that there is risk of loss or damage to the property. KESAR DEVI *v.* PARTAB SINGH. **39 P R 1908**

9. *Receiver—Appointment of receiver—Suit by a reversioner against a tenant for life—Mismanagement and waste—Civil Procedure Code*, 1882, *section* 503.

Held, that the appointment of a receiver is not a matter of course, but a matter of discretion, which must be reasonable and should be exercised with the greatest care and caution on a view of the whole circumstances of the case connected with the right which is asserted and has to be established and not merely the circumstances which might make the appointment expedient for the protection of the property.

As a rule receiver should not be appointed in regard to property in possession of a tenant for life unless gross mismanagement and waste on the part of the defendant is made out. JIWANI *v.* LABHU RAM.
10[illegible] P R 1908

10. *Receiver—Appointment of—Civil Procedure Code, Act V of* 1908, *Order XL, Rule* 1—*Appeal from order refusing to make appointment—Discretionary power of first Court not lightly interfered with by Appellate Court—Receiver not to be appointed on mere apprehension of waste.*

Held, on the authorities cited, that an appeal lies from an order refusing to appoint a receiver under Civil Procedure Code, 1908, Order XL, Rule 1.

Held, also, that the exercise of the jurisdiction to appoint a receiver is not a matter *ex debito justitiæ*, and it is for the Court, to which the application is made, to decide in its discretion, whether or not it will act upon the application, and the Appellate Court should not interfere with the opinion of the first Court unless it finds such opinion to be either arbitrary, vague or fanciful.

Held further, that a receiver should not be appointed when the application is based not upon any specific allegation of misconduct, but upon a mere apprehension that the defendant, though he has done nothing in the past, will after the institution of the suit, forthwith proceed to waste the property, and that the principle is applicable also to the case where one of three Hindu brothers seeks

RECEIVER—*concld.*

partition o[f] the joint family property. SANT RAM *v.* R[AM] CHAND, ETC. **36 P R 1910**

RECIPROCAL PROMISES.

See CONTRACT ACT, 1872, SECTION 52. **17 P R 1898**

RECOGNIZED AGENT.

See CIVIL PROCEDURE CODE, 1908, O. III, R. 2.
9 P R 1878
165 P R 1889
134 P R 1890

1. *Suit brought by an independent prince —Signing and verification of plaint by recognized agent.*
See CIVIL PROCEDURE CODE, 1908, O. VI, R. 14.
41 P R 1902

2. *Civil Procedure Code,* 1882, *sections* 36, 541—*Presentation of memo. of appeal by pleader's clerk—Recognised "agent".*
See APPEAL—VI. PROCEDURE IN.
6 P R 1896

3. *Power of, to refer to arbitration.*
See ARBITRATION. **1 P R 1882**

4. *Written authority—Punjab Government Notification No.* 2357, *dated 3rd October* 1877.

Held, that the authority given to a recognised agent under clause (*d*), Punjab Government Notification No. 2357, dated 3rd October 1877, to present the plaint in a suit, need not be in writing. *Jodh Singh v. Wassawa Singh* (No. 9 *P. R.* 1878) followed. SIRDAR HARCHARAN DAS *v.* LACHMI SAHAI. **191 P R 1883**

5. *Person carrying on business for parties out of jurisdiction—Recognised Agent—Agent without special authority cannot sue on contract entered into by him on behalf of his principal—Civil Poocedure Code,* 1882, *sections* 37—51.

Held, that a manager of a branch-office of an export agency carrying on business in the name of the owners of the firm resident in England, under the instructions of a Chief Manager, cannot be regarded a recognised agent of the firm within the meaning of section 37 of the Code of Civil Procedure, and that, in the absence of a special authority on this behalf, he cannot either subscribe or verify a plaint or sue for the enforcement of a contract entered into by him on behalf of his principals. FATEH D[I]N *v.* RALLI. **109 P R 1907**

RECORDS.

1. *Inspection of judicial—Power of Court to make rule limiting period up to which record of pending cases may be inspected.*
See INSPECTION OF JUDICIAL RECORDS.
103 P R 1882

2. *Loss of—Collector deciding appeal in the absence of the record which had been lost.*
See OCCUPANCY RIGHTS.
3 P R 1898 Rev.

RECORD OF RIGHTS.

See PUNJAB LAND REVENUE ACT, SECTIONS 13, 36, 37, 44.

1. *Suit for declaratory decree by person aggrieved by entry in record of rights—Jurisdiction of Civil or Revenue Court—Landlord and tenant.*
See JURISDICTION OF CIVIL OR REVENUE COURT. **89 P R 1895**

2. *Claim to occupancy rights—Entry in Record of Summary Settlement—Sanction of Local Government.*
See OCCUPANCY RIGHTS.
8 P R 1895 Rev.

3. *Finality of entry in the record of rights of the Hazara District—Rule* 60 *of the Hazara Settlement Rules—Punjab Tenancy Act,* 1887, *section* 5 (1) (*c*) *as amended by Regulation XIII of* 1887—*Conflicting enactments—Procedure.*
See OCCUPANCY RIGHTS.
1 P R 1902 Rev.

4. *Determination by Revenue Officer of entries to be made in record of rights—Appeal—Punjab Land Revenue Act,* 1887, *sections* 13, 36.
See PUNJAB LAND REVENUE ACT, 1887, SECTION 13. **4 P R 1893 Rev.**

5 *Procedure for making record of rights—Owner and landowner—Determination of disputes—Dispute not as to possession but relating to ownership, competency of Revenue Officer to determine.*
See PUNJAB LAND REVENUE ACT, 1887, SECTION 36. **7 P R 1895 Rev.**

6. *Entries in Record of Rights and Annual Records—Mutation of names.*
See PUNJAB LAND REVENUE ACT, SECTION 37. **14 P R 1901 Rev.**
1 P R 1901 Rev.

7. *Correction of entries in Record of Rights and Annual Records—Procedure when question of title arises.*
See PUNJAB LAND REVENUE ACT, SECTION 37 (*a*). **1 P R 1901 Rev.**

8. *Variation of entries in records when the matter is in dispute.*
See PUNJAB LAND REVENUE ACT, 1887, SECTION 37. **4 P R 1905 Rev.**

9. *Record of rights—Application of general customs of agriculturists as entered in the record of rights to every landowner of the village.*

Khatris, although following agricultural pursuits, cannot be presumed to have adopted the general customs of agriculturists in matters of succession and alienation, and the record of rights cannot operate to make a Khatri proprietor an agriculturist subject to customs which govern the latter. The presumption is that a Khatri is only bound by so much of the record of rights as deals with pre-emption and similar customs. HARNAM SINGH *v.* DEVI CHAND. **107 P R 1901**

10. *Record of rights—Entry in.*

Held, that an entry in the Record of Rights and *Riwaj-i-am* in favour of daughters being excluded by pattidars in matters of succession, unsupported by any instances, is not sufficient to discharge the *onus* which

RECORD OF RIGHTS—*concld.*

lay on the pattidars. DEVI SINGH *v.* MUSSAMMAT PREMI. **11 P R 1911**

REDEMPTION.

See MORTGAGE.

1. *Suit for redemption of mortgage.*
See APPEAL, CIVIL. **91 P R 1889**
63 P R 1891
106 P R 1895 F. B.
1 P R 1896 F. B.
See JURISDICTION. **82 P R 1882**
44 P R 1888
169 P R 1888
91 P R 1889
106 P R 1895 F. B.
See MORTGAGE—15. REDEMPTION.

2. *Valuation of suit for redemption.*
See APPEAL, CIVIL. **91 P R 1889**
63 P R 1891
106 P R 1895 F. B.
1 P R 1896 F. B.
See JURISDICTION. **82 P R 1882**
44 P R 1888
169 P R 1888
91 P R 1889
106 P R 1895 F. B.

3. *Court granting decree for redemption in suit for possession free from any lien.*
See CUSTOM—ALIENATION BY MALE PROPRIETOR—SALES AND MORTGAGES IN FAVOUR OF STRANGERS.
69 P R 1887

4. *Mortgagee obtaining money decree against his mortgagor not allowed to purchase equity of redemption in the property mortgaged to him.*
See EQUITY OF REDEMPTION.
2 P R 1907

5. *Limitation in suit for.*
See LIMITATION. **57 P R 1883**
See LIMITATION ACT, 1859, SECTION 1, CLAUSE 16. **109 P R 1884**

6. *Acknowledgment of mortgagor's title to redemption.*
See LIMITATION ACT, 1871, SCHEDULE II, ARTICLE 148.
157 P R 1888
62 P R 1900
See LIMITATION ACT, 1877, SECTION 19.
97 P R 1884
20 P R 1887
63 P R 1888
16 P R 1891
116 P R 1891
53 P R 1894
9 P R 1897

7. *Effect of payment of produce by mortgagor to mortgagee.*
See LIMITATION ACT, 1877, SECTION 20.
37 P R 1883

8. *Suit for redemption—Defendant's right to interest due under the mortgage—Right to treat such interest as a charge upon the estate.*
See LIMITATION ACT, 1877, SCHEDULE II, ARTICLE 132.
57 P R 1888
147 P R 1890 F. B.

9. *By party not interested in the equity of redemption from mortgagee in possession—Effect of possession for over 12 years by such*

REDEMPTION—*concld.*

party—Suit by mortgagor for redemption—Adverse possession.
See LIMITATION ACT (XV OF 1877), SCHEDULE II, ARTICLE 134.
124 P R 1883

10. *Redemption of mortgage during pendency of suit for pre-emption*—Lis pendens.
See LIS PENDENS. **102 P R 1888**

11. *Condition in mortgage deed that mortgagee should continue in possession after redemption.*
See MORTGAGE. **32 P R 1886**

12. *Redemption of mortgage by conditional sale.*
See MORTGAGE. **1 P R 1881**
132 P R 1882

13. *By one of several mortgagors of his share of the mortgage—When admissible.*
See MORTGAGE. **62 P R 1911**

14. *Mortgage for fixed period—Representative of the mortgagor not allowed to redeem before the expiry of the term—Long term alone does not amount to clogging the equity of redemption.*
See MORTGAGE. **39 P R 1907**

15. *Dismissal of suit by mortgagor for redemption—Subsequent suit for the same object.*
See MORTGAGE. **43 P R 1907**

16. *Right of redemption.*
See MORTGAGE—REDEMPTION.

17. *Redemption of mortgage resulting from decree of Court.*
See MORTGAGE—REDEMPTION.
10 P R 1888

18. *Mortgagor not bound to redeem within reasonable time when mortgagee takes no steps under the Regulation.*
See MORTGAGE—REDEMPTION.
123 P R 1888

19. *Decree for redemption—Subsequent suit for redemption of same mortgage.*
See RES JUDICATA. **14 P R 1881**
20 P R 1887

REFERENCE.
See REPEAL OF ACT.
REVIEW OF JUDGMENT.

REFERENCE TO CHIEF COURT.

1. *Jurisdiction of Judge in bankruptcy to make, under section* 617, *Civil Procedure Code*, 1882.
See INSOLVENCY. **88 P R 1887**

2. *Validation of proceedings had under mistake as to jurisdiction.*
See JURISDICTION OF CIVIL OR REVENUE COURT. **150 P R 1890**
68 P R 1891
53 P R 1893
See PUNJAB TENANCY ACT, 1887, SECTION 100.

3. *Act X of* 1877, *section* 617—*Reference to Chief Court.*

Plaintiff sued defendant for Rs. 400 damages in the Small Cause Court, Simla. The defendant at the hearing pleaded contributory negligence on plaintiff's part, but the Court held that no contributory negligence was proved, and gave plaintiff a decree. After decree the defendant applied for a reference to the Chief Court

REFERENCE TO CHIEF COURT—*concld.*

on certain points of law, and the case was referred by the Judge, Small Cause Court, under section 617, Act X of 1877. *Held*, that the reference could not be made under the provisions of section 617, Act X of 1877, as the questions of law arose at the hearing of the suit, and had not then been referred, nor was the decree made contingent on the result of a reference to the Chief Court. DRUMMOND *v.* LOWRIE. **31 P R 1879**

4. *Reference to Chief Court—Act X of* 1877, *sections* 284, 617—*Finality of decree—Order for sale of attached property—Question of finality of such order immaterial—Legality of reference.*

On a reference under section 617 of Act X of 1877, as to whether the sanction of the Commissioner or of the Chief Court is necessary before a sale of house-property in execution of decree can take place, *held*, that the reference was not permitted by law, as the decree was not a final one in either of the cases in connection with which the reference was made, and although an order directing the sale of attached property under section 284 of the Code would appear not to be appealable, still the finality which permits a reference under section 617 relates to the decree which is sought to be executed and not to the order passed in execution. LAKHU MAL *v.* TULLA. **100 P R 1880**

5. *Civil Procedure Code (Act XIV of* 1882), *section* 617—*Court must entertain reasonable doubt on the questions referred.*

Under section 617 of the Civil Procedure Code, the existence of reasonable doubt on the questions referred is one of the conditions on which a reference under that section can properly be made. BEHARI LAL *v.* CHATTAN LAL. **25 P R 1886**

6. *Civil Procedure Code (Act XIV of* 1882), *section* 617—*Reference only to be made where a reasonable doubt is entertained.*

Section 617 of the Civil Procedure Code only authorizes a Court to make a reference, when it entertains reasonable doubt upon the question referred. KHADIM HOSSEIN *v.* ABDUL GHANI. **35 P R 1886**

REFERENCE TO THIRD JUDGE.

1. *Difference of opinion among Judges of Division Bench—Procedure.*
See CIVIL PROCEDURE CODE, 1908, SECTION 98. **15 P R 1887**

2. *Section* 575—*Reference to third Judge.*
Held, per BARKLEY, J., that it is competent to one of a bench of two Judges to make a reference to a third Judge, under section 575 of the Code of Civil Procedure, 1877. TELU MAL *v.* SUBHA SINGH.
90 P R 1880

"REFLECTION OF A SON."
See HINDU LAW, ADOPTION.
125 P R 1880

REFUND OF MONEY IMPROPERLY ATTACHED IN EXECUTION.
See EXECUTION OF DECREE.
82 P R 1878
131 P R 1879

REFUND OF OCTROI.
See MUNICIPAL COMMITTEE.
97 P R 1882

REFUND OF PENALTY.
—*Under Stamp Act—Penalty to be governed by Act in force at time of levy of penalty.*
See STAMP. **7 P R 1885 Rev.**

REFUND OF PURCHASE MONEY.

1. *On execution-sale set aside.*
See EXECUTION OF DECREE.
99 P R 1881
68 P R 1885
19 P R 1884
96 P R 1885
45 P R 1886

2. *On sale set aside.*
See VENDOR AND PURCHASER.
26 P R 1884

REFUND OF TOLLS.
—*Suit for—Illegal levy by lessee under Act XVII of* 1878—*Limitation.*
See LIMITATION ACT (XV OF 1877), SCHEDULE II, ARTICLES 2, 3, 4.
6[illegible] P R 1886
12[illegible] P R 1886

REFUSAL OR OMISSION TO DECIDE PARTICULAR ISSUE.
See RES JUDICATA.
[illegible]68 P R 1882
[illegible]04 P R 1883
104 P R 1883 Note (*a*)
[illegible]37 P R 1883
25 P R 1884

REGISTER OF BIRTHS.
—*Register of births kept by the village chaukidar is not by itself a conclusive proof of its contents.*
See CUSTOM. **51 P R 1900**

REGISTERED BOND.
See CONSIDERATION.
—*Limitation to suit on.*
See LIMITATION ACT, 1877, SCHEDULE II, ARTICLE 66. **110 P R 1880**
86 P R 1881

REGISTERED SALE.
See MORTGAGE. **70 P R 1880**

REGISTERING OFFICER.
—*Acknowledgment of receipt of consideration before Registering officer—Pre-*

REGISTERING OFFICER—*concld.*

sumption of truth of such acknowledgment—Rebuttal of such presumption.

See BURDEN OF PROOF.

17 P R 1888

68 P R 1900

See CONSIDERATION. 8 P R 1878

See ESTOPPEL. 153 P R 1882

REGISTRATION.

See CONSIDERATION.

REGISTRATION ACT, 1877, SECTIONS 17 AND 49.

1. *Non-delivery of document by executant after registration—Validity and operation—Complete transaction.*

See DOCUMENT. **40 P R 1906**

2. *Inadmissibility of documents for want of registration.*

See BURDEN OF PROOF. **26 P R 1882**

121 P R 1882

157 P R 1882

122 P R 1882

123 P R 1882

See REGISTRATION ACT, 1871, SECTIONS 18, 19. **68 P R 1886**

3. *Contract in writing—Registered and executed by some of the parties—Limitation.*

See LIMITATION ACT, 1871, SCHEDULE II, ARTICLE 117. **6 P R 1875**

13 P R 1876

4. *Date of registration, how determined.*

See LIMITATION ACT, 1877, SCHEDULE II, ARTICLE 10. **10 P R 1881**

5. *Contract in writing—Oral agreement.*

See PUNJAB TENANCY ACT, 1868, SECTION 8. **23 P R 1881**

6. So long as the letter of the law relating to registration is observed, the Court cannot object to any apparent evasion of it. IN RE A REFERENCE BY JUDGE, SMALL CAUSE COURT, AMRITSAR. **5 P R 1866**

7. At a time when Judicial Commissioner's Circular No. 1 of March 1859 was in force, defendant gave plaintiff a bond for an amount exceeding Rs. 50. The bond was not registered. After the passing of Act XX of 1866, plaintiff sued upon the bond. *Held*, that the bond was admissible in evidence in the suit, as the Registration law related to procedure only, and barred a remedy without extinguishing a right. A debt or contract secured or made by an instrument inadmissible in evidence, cannot be proved by parol or evidence *aliunde*. MYA DAS v. KOULNAIN.

46 P R 1869

8. Res judicata—*Validity of deed intended to be registered but not registered—Mistake of Small Cause Court—Undue restriction of jurisdiction.*

Plaintiff sued in the Court of the Assistant Commissioner for possession of land mort-

REGISTRATION—*concld.*

gaged to him by the defendant for Rs. 99, the deed of mortgage alleging that Rs. 40 was an old debt due from defendant to plaintiff and the balance was a further advance or loan. The defendant admitted the deed, and the debt of Rs. 40, but denied receipt of the further loan. The deed was not registered, defendant alleging that he refused to register as the balance of the consideration had not been paid to him, and the plaintiff alleging that the non-registration was owing to the parties having reached the office of the Registrar when the office was closed for the day, and the defendant having failed to attend again to register the deed. The Assistant Commissioner, considering it doubtful whether defendant have received the full consideration for the mortgage, dismissed plaintiff's suit for possession of the land, recording that " he was at liberty to sue for such money as was still due to him from defendant." Plaintiff sued in the Small Cause Court for Rs. 99, and that Court dismissed his claim as *res judicata*, holding that the judgment of the Assistant Commissioner had determined the question of defendant's liability to the plaintiff. The plaintiff appealed to the Additional Commissioner from the Assistant Commissioner's judgment, and his appeal was rejected on the ground that the Court could not give him possession of the land under the deed as the parties had intended that the deed should be registered, and not being registered, it did not create a valid mortgage; but the Court stated that " plaintiff should be left to recover the amount which might be due to him as a simple debt." On special appeal to the Chief Court, it was *held* that though the Small Cause Court was mistaken in dismissing plaintiff's claim, it had not over-stepped its jurisdiction or unduly restricted it so as to enable the Chief Court to interfere with its proceeding ; but that the case must be remanded to the Lower Appellate Court to dispose of the question whether there was consideration for the deed. SAHIB DASS v. ARUR SINGH.

55 P R 1875

9. *Want of registration—Agreement partly valid and partly invalid—Agreement to mortgage.*

Defendant, in consideration of a loan of Rs. 165, promised the plaintiff to mortgage his land to the plaintiff on the death of defendant's father, and not to sell or mortgage the land to any one else until the debt was paid. The agreement was in writing but not registered. *Held*, that the agreement was valid so far as the defendant promised to mortgage the land on his father's death, but, from want of registration, was invalid as to the promise not to mortgage or sell to any other than the plaintiff until the debt was paid. JAMEYAT RAI v. SULTANA.

57 P R 1875

REGISTRATION ACT (XX OF 1866).

1. *Section 36—Absence of one of several parties executing a document—Limitation.*

Held, that the absence at the time of registration of one of the parties executing a document, does not render the registration invalid. Registration, though effected in a manner contrary to an express provision in the Act, is registration nevertheless, and the limitation prescribed for a registered document is applicable even in the case of a party who is absent at the time of registration. SHEO MAL v. UMR DIN.

60 P R 1877

2. *Section 48—Oral agreement with possession—Subsequent registered instrument.*

Under the Registration Act, 1866, an oral mortgage, followed by or accompanied with possession, prevailed against a subsequent registered mortgage. BAHADUR v. MUSSAMMAT GRATTAN. **47 P R 1871**

3. *Sections 50, 100—Unregistered mortgage and registered sale.*

Defendant No. 1 in 1865 mortgaged his property to plaintiff (the deed not being registered), and afterwards, in 1872, sold a portion of the property to defendant No. 2. The deed of sale was duly registered. *Held*, that under sections 50 and 100 of Act XX of 1866, plaintiff ought to have registered his deed of mortgage within one year after the Act came into operation ; and as this was not done, the registered sale was free from any lien or incumbrance effected by the prior mortgage. ADU RAM v. SADIK MUHAMMAD KHAN.

34 P R 1876

Section 52.

See CIVIL PROCEDURE CODE, 1908, O. XXI, R. 16. **142 P R 1882**

1. *Section 53—Act IX of* 1871, *Schedule II, article* 15.—" *Proceedings other than a suit.*"

Held, that proceedings taken under section 53, Act XX of 1866, to enforce payment of a specially registered obligation, were not a suit ; and where such proceedings were taken in 1869, a suit instituted more than a year after the date of the decree in the summary proceedings, was barred by article 15, Schedule II, Act IX of 1871. JAMNA DAS v. MAHOMED ALI KHAN. **23 P R 1874**

2. *Section* 53—*Bond payable by instalments—On default, whole amount payable—Petition for payment under section* 53 *of Act XX of* 1866.

Where a bond payable by instalments, stipulated that in case of default in payment of any one of them the whole amount secured should become due, *held*, that on such default a petition in a summary way under section 53 of Act XX of 1866, for the payment of the whole amount remaining due, could not be presented. JAI KISHEN v. ELAHIA. **85 P R 1869**

REGISTRATION ACT (XX OF 1866)—*concld.*

Section 91—*concld.*

3. *Offence against Registration Act.*

Saudagur sold a piece of land to Gunga Ram for Rs. 215, but to defeat the claims of pre-emptors entered in the deed of conveyance that the purchase money was Rs. 400. The deed was taken before the Sub-Registrar for registration under Act XX of 1866, when Saudagur at first stated that Rs. 400 had been paid; but upon being questioned by the Sub-Registrar, he admitted that he had received only Rs. 215. The Sub-Registrar then questioned Gunga Ram, who said—" I have committed a fault and will now pay : I confess." Gunga Ram afterwards on the same day brought the rest of the money to the Sub-Registrar, who refused to receive it or to register the deed. *Held*, that Saudagur had committed an offence within section 91 of Act XX of 1866, *viz.* that he had made a false statement before an officer acting in execution of that Act ; but that Gunga Ram had not committed an offence under that Act, neither had he abetted the offence committed by Saudagur. But *held*, that Gunga Ram had committed an offence within section 423, Indian Penal Code ; and the Chief Court altered his conviction under Act XX of 1866, to one under section 423, Indian Penal Code. THE CROWN *v.* SAUDAGUR. **23 P R 1869 Cr.**

REGISTRATION ACT (VIII OF 1871).

1. *Section 17—Agreement to sell.*

The parties executed the following instrument : " Whereas *A.* has sold to *B.* a pucca house, &c., for Rs. 1,200. Out of the above *A.* has received Rs. 200 as earnest money ; the balance Rs. 1,000 he will receive after the deed of sale is legally executed and registered. Should *A.* withdraw from this sale, he binds himself to refund the Rs. 200, and to pay Rs. 200 more as a penalty. Should the purchaser withdraw he will forfeit the Rs. 200 paid. The charge incurred on account of the present agreement and the deed of sale, will be borne by the party who breaks the promise."

Held, that the instrument was an agreement to sell, and did not require registration. HURGOBIND *v.* MUSSAMMAT JUMNA DAI.

8 P R 1877

2. *Sections 17, 49—Evidence Act (I of 1872), section 91—Unregistered mortgage accompanied by possession—Subsequent registered mortgage—Admissibility of parol evidence.*

C. S. mortgaged his land to D. S. by deed dated 26th July 1873, for Rs. 620. The deed, however, was not registered as required by section 17 of Act VIII of 1871, C. S. again mortgaged the land to one C. by registered deed dated 13th July

REGISTRATION ACT (VIII OF 1871—*contd.*

1874 for Rs 709. In a suit by C. against C. S. and D. S. for possession of the mortgaged lands—*Held*, that the unregistered mortgage to D. S., whether accompanied by possession or not, was invalid as against the registered mortgage to C., and that D. S. was precluded by section 49 of Act VIII of 1871 from proving that the land was mortgaged to him under the deed of 1873, and was further precluded by section 91 of the Evidence Act, 1872, from proving it by oral evidence. CHOWGATTA *v.* CHATAR SINGH. **18 P R 1878**

Sections 18, 19.

And section 49—Lease for one year certain with option of renewal—Lease of above character when compulsorily registrable—Admissibility of unregistered lease of house to support claim in respect of movable property—Indivisible transaction.

A lease for one year certain containing a provision for the possible extension of the term beyond one year depending upon the option of the landlord or upon something being done before the term can be extended, must be construed as a lease for one year only, of which registration is optional ; but if the term is extensible at the option of the tenant, the lease is not limited to one year, and requires registration.

In a suit based upon a lease of a house, which vested in the lessee a right to continue tenant for a longer period than one year independently of the will or permission of the landlord, and where nothing remained to be done by the tenant to give effect to the lease, no fresh document or title being required, nor any notice having to be given, but where the defendant had simply to hold on under the same document and title from year to year, *held*, that the document in question conferred an interest for a longer period than one year, and required registration under section 17 of the Registration Act of 1871, and being unregistered could not, under section 49 of the Act, be received as evidence of any transaction affecting the property comprised therein.

It was contended in the above case that if the lease was inadmissible for want of registration, it was only so *quoad* the immovable property, and that it could be received to prove that part of the claim which related to compensation in respect of the movable property, *viz.*, the furniture contained in the house.

Held, that the lease was inadmissible for all purposes, the document being in its terms indivisible and disclosing one transaction only, that of hiring a house, there being no hiring of the furniture apart from the house ; and this being so, the lease for want of registration could not be received as evidence of the contract to maintain the furniture in good condition, on which the claim for compensation was based. POOL *v.* SECRETARY OF STATE. **68 P R 1886**

REGISTRATION ACT (VIII OF 1871)—*contd.*

Section 28.

And sections 49, 60—Admissibility in evidence of document registered in wrong district—Parties acting without fraud and in good faith—Estoppel of party pleading his own mistake.

A registration made in good faith should not be treated as invalid merely by reason of the terms of the Registration Act, even in some substantial respects, not having been complied with.

In a suit for the sum alleged to be due from the defendant to the plaintiff for rent of a house, the plaintiff in support of his claim produced an agreement in writing duly executed and registered at the Panipat tahsil. It was contended by the defendant that the registration of the said agreement having been effected at Panipat, while the house was situate at Karnal which is not within the sub-district of Panipat, was null and void so as to make the document inadmissible in evidence under section 49 of Act VIII of 1871. It was not shown that either the parties to the instrument in presenting it for registration at Panipat, or the Sub-Registrar of Panipat in registering it in his office, had any fraudulent object in view or acted otherwise than in good faith.

Held, that the registration of the agreement on which the plaintiff sued was not null and void merely by reason that it was effected in contravention of the provisions of section 28, Act VIII of 1871, and that the agreement was a registered document within the meaning of section 49 of the Act, and, further, that the defendant not being a stranger to the deed, the objection as to the nullity of the registration was not one which could properly come from him, and it would be in the highest degree unjust to allow him to take advantage of the error of his father who registered the deed at Panipat for the purpose of depriving the plaintiff of his just rights. KASAMBRI DAS *v.* KIDARNATH. **67 P R 1883**

Section 49.

See REGISTRATION ACT (VIII OF 1871), SECTIONS 18, 19.

See REGISTRATION ACT (VIII OF 1871) SECTION 28.

1. *Section 49.*

Though an unregistered deed of mortgage cannot be admitted to effect the property, it is receivable in evidence to prove the debt, for the purpose of granting a money decree. BISHEN SINGH *v.* SUNDAR. **40 P R 1874**

2. *Section 49—Unregistered document—Admissibility of oral evidence to prove a transaction reduced into the form of a document of which registration was compulsory.*

The plaintiff sued for a declaration that he had acquired a certain interest in land falling short of ownership (*viz.*, that of a hereditary cultivator), by virtue of a certain transaction which was reduced into writing. The

REGISTRATION ACT (VIII OF 1871)—*concld.*

Section 49—*concld.*

written instrument was a document of which the registration was compulsory, and not having been registered, was not receivable in evidence by reason of section 49, Act VIII of 1871. The plaintiff then sought to fall back on an oral transaction preceding the execution of the written instrument. *Held*, that oral evidence of the transaction was not receivable. BADRA *v.* MAKHNA.

58 P R 1877

3. *Section 49—Mortgage of land with right to half produce or crops—Want of registration—Admissibility of deed to support claim to produce—Power of Appellate Court to reject a deed wrongly admitted in evideuce by first Court.*

Defendant mortgaged to plaintiff by two written deeds two plots of land, with the right to half the produce thereof. The deeds were for sums over Rs. 100, and were not registered. In a suit brought by plaintiff to recover the value of his share of the produce from defendant for kharif, Sambat 1932, the Court of first instance admitted the deeds in evidence and decreed the claim, but this decree was reversed by the Judicial Assistant on appeal, on the ground that the deeds were inadmissible in evidence for want of registration.

Held, by the Chief Court—1st, that the Judicial Assistant was competent to reject the deeds on the ground that they were inadmissible in evidence, notwithstanding their admission by the Court of first instance; *2nd* that as the deeds did not give a right to a share in the growing crops independently of an interest in the land, but as accessory to the interest in it, which the mortgage created, their registration was compulsory, and not having been registered, they were inadmissible in evidence under section 49, Act VIII of 1871, *3rd*, that as plaintiff could not prove his right to the money claimed without resorting to the mortgage transaction in order to prove his title to the crops, which he could not do under section 49, Act VIII of 1871, the deeds were inadmissible to prove the title to the crops notwithstanding that crops are movable property within the meaning of the Registration Act. SARBALAND KHAN *v.* CHANDA SINGH. **84 P R 1877**

4. *Section 80—Offence against Registration Act—False statement.*

A agreed to lend *B* 100 rupees on a mortgage of some land. The mortgage-deed was drawn up reciting that the rupees 100 had been paid. Before the Sub-Registrar, the parties first said that the money had been paid, but on being further questioned stated that 60 rupees had been adjusted in payment of a former debt and rupees 40 had still to be paid. *Held*, that neither the presentation of the mortgage-deed for registration nor the oral statements of the parties amounted to "making a false statement" under section 80 of Act VIII of 1871. THE CROWN *v.* ISHURDASS, **17 P R 1871**

Section 60.

See REGISTRATION ACT, 1871, SECTION 28.

REGISTRATION ACT, 1877.

Section 3.

1. *And section* 17 "*Fruit upon trees*"—*Fruit to be produced in future—Movable property.*

A mortgage-deed giving to the mortgagee the right to receive two-thirds of the fruit of certain trees, the mortgagor, whose possession was not interfered with, taking the remaining one-third, *held* not to be an instrument the registration of which is compulsory under section 17 of the Registration Act of 1877, the right to receive a share of the fruit to be produced in future not being a benefit to arise out of land, so as to bring it within the definition " of immovable property " in section 3 of the Act, and the words " fruit upon trees " in the definition of movable property in the same section not being intended to be restricted to fruit existing at the time the contract is entered into. BAGU MAL *v.* BAHAWAL BAKHSH. **72 P R 1884**

2. *And sections 18 and 50—Fruit on trees—Mortgage-deed of land and garden registered—Subsequent sale of fruit by unregistered contract—Mortgagors pleading invcildity of their own act—Lien on future fruit—General Clauses Act (X of 1897), section 3, clause 25.*

N. D. A. G. and A. L. were occupancy tenants of certain land on which they planted a fruit garden. On 30th January 1893 they mortgaged by a registered deed to the plaintiffs-appellants their right in the land and garden on the condition that possession was to remain with the mortgagors, but the mortgagees would have the right of selling the fruit, and that the former would not be competent to sell except through the agency of the latter, who, after deducting their *arat* and *dallali* charges out of the sale-proceeds, were to recover the interest due to them as well as any instalment that might be payable at the time, and hand over the residue to the mortgagors for expenses of maintaining the gardens, and that if the mortgagors should sell the fruit themselves or evade or neglect to sell through the mortgagees, the latter would be entitled to take possession of the land and the garden. For one year, N. D., one of the mortgagors, was allowed to sell the fruit in retail, mortgagees realizing their dues from the sale proceeds, and in another he was permitted to retain the entire proceeds for expenses of garden. On 5th September 1896 N. D. sold without the permission of the other mortgagors the orange crop of that year to K. and S. D. for Rs. 680 by an unregistered deed, with a stipulation that if the *sahukars* and his co-sharers made any claim or sought ejectment he was to indemnify the purchasers. On 6th of December 1896 the mortgagee appellants sued the mortgagors as well as the purchasers for possession of the land and garden, including the fruit. The first Court gave them a decree for the possession of the land and garden, and Rs. 875, the value of the fruit. The purchasers of the fruit only appealed to the Divisional Judge, who accepted their appeal. On further appeal by the

REGISTRATION ACT, 1877—*contd.*

Section 3—*concld.*

mortgagees to the Chief Court on the grounds that their lien extended to the fruit on the trees in the garden, and that the purchasers were accountable to them for the fruit removed by them and that their deed, which was registered, had priority over the deed of sale, which was unregistered. *Held*, that plaintiff's deed, although registered, did not give them any priority over the " unregistered deed " of the purchasers of the fruit, as by section 3 of the Registration Act, fruit on trees is defined to be movable property. *Held, also*, that the mortgagors (although they might have only occupancy rights) could not plead the invalidity of their own acts, whatever the rights of their landlords might be. *Held*, further, that the plaintiffs' lien extended to the fruit even if the fruit could be treated as movable property, but that the right to the fruit was clearly a right in immovable property, as future fruit crops and fruit on trees must be held to be such under the General Clauses Act, X of 1897, section 3, clause 25, though they are movable property for the purposes of the Registration Act, and that K. and S. D.'s purchase was subject to plaintiffs' lien whether they had notice or not, though as a fact it was proved that they had notice of the plaintiff's mortgage. ASA RAM AND OTHERS *v.* NUR DIN. **66 P R 1900**

Section 17.

See REGISTRATION ACT, 1877, SECTION 3. **72 P R 1884**

See REGISTRATION ACT, 1877, SECTION 49.

17 P R 1881
80 P R 1881
10 P R 1883
131 P R 1883
139 P R 1883

1. *Section 17—Mortgage deed—Value of interest created.*

Held, that for the purposes of section 17 of the Registration Act, the value of the interest created or otherwise dealt with is determined in the case of a mortgage-deed by the principal amount secured and not by the value of the land. JHANDA *v.* JOWAYA.

21 P R 1880

2. *Instrument "declaring" title to immovable property—Entry in ledger—Admission in writing—Contract reduced to form of a document—Exclusion of other evidence of the contract—Evidence Act (I of 1872), section 91.*

In a suit for redemption of mortgage in which the defendant pleaded a sale of the mortgaged property, the lower appellate Court held that the sale could not be proved as the terms of the contract had been reduced to the form of a document, and that as this required registration, but was neither registered nor stamped, it was inadmissible in evidence and other evidence of the contract was excluded by section 91 of the Evidence

REGISTRATION ACT, 1877—*contd.*

Section 17—*contd.*

Act. The document in question was an entry in the plaintiff's diary consisting of two parts, the first of which was merely a memo. by the creditor of the particulars of the transaction between the parties, while the second part was as follows:—

"I. H. M., have sold the house of my own free will to K. C. for Rs. 273, dated Jeth Sudi 1st, 1927."

Held, that the above entry could not be regarded as an instrument declaring any title to or in immovable property within the meaning of section 17 of the Registration Act, the transaction being already complete, and the entry in question being evidently merely intended as an acknowledgment of the correctness of the facts stated in the memo. and not being an acknowledgment of the receipt or payment of the consideration, did not require registration. Such an acknowledgment was a mere admission in writing, which might be contradicted by other evidence, as it could not properly be said that the terms of the contract had been reduced to the form of a document, so as to exclude other evidence. BADHAWA MAL *v.* HIRA. **30 P R 1884**

3. *Instrument of exchange of immovable property—Registration compulsory or optional.*

A document began by reciting that the parties, after *tazdik* of the patwari and munsarim had exchanged certain specified plots of land, of which they were respectively the owners, the one party with the other, and had each taken possession; and that if either party should retire from the agreement, then the sum of Rs. 50 would be payable by such party to the other as damages, and each would re-enter upon his own original land.

Held, that the above document was not one the registration of which was compulsory under section 17, Indian Registration Act, 1877. The first portion of the document was nothing more than a recital of what had already taken place; and the operative part merely provided for the payment of a penalty by either party, who prevented the arrangement being fully and finally carried into effect, and for the result of either party going back from the agreement, *viz.*, that each would revert to his original rights. AMIR-UD-DIN *v.* JAMAL-UD-DIN.

26 P R 1891

4. *Mortgage for Rs. 400—Subsequent sale for additional sum of Rs. 99-8-0—Registration compulsory or optional.*

The plaintiffs mortgaged their occupancy rights in certain land for Rs. 400. They subsequently obtained a further sum of Rs. 99-8-0 from the mortgagees selling to them out and out their occupancy rights by an unregistered deed of sale, the material part of which was as follows:—

> Whereas we own the occupancy rights in 17 *ghumaos* 2 *kanals*, 1 *marla* of land, which are already mortgaged for Rs. 400 to N. and P., we have now taken a further sum of Rs. 99-8-0 and have absolutely sold the said occupancy rights.

Held, that the registration of the document was optional. PIR BAKHSH *v.* MANGAL.

16 P R 1892 F. B.

5. *Certificate of sale—Admissible in evidence without registration—Right to sue—Omission by auction-purchaser to obtain delivery of immovable property under section 318, Civil Procedure Code.*

A certificate of sale granted in December 1880, under section 316, Civil Procedure Code, to a purchaser of immovable property at an execution sale, but not registered, *held* to be admissible in evidence, when tendered in 1891, under clause (*o*) added to section 17 of the Registration Act, 1877, by Act VII of 1888, by virtue of the provision in section 65 of the amending Act.

Held, further, that an auction-purchaser (not a party to the original suit) who has taken no action under section 318, Civil Procedure Code, to recover possession of the property sold to him from the judgment-debtor, is not thereby debarred from maintaining a regular suit for po session of the property, as the two remedies are concurrent.

The opinion on this question expressed in No. 58 *P. R.* 1888, not followed. MUSSAMMAT HAR DEVI *v.* JIWANI. **14 P R 1893**

6. *Instrument of exchange of immovable property—Document embodying previous oral contract—Registration Act (III of 1877), section 17.*

Plaintiff sued on the allegations that the lands in suit were owned originally by defendant and certain other lands were owned originally by plaintiff; that by an agreement in writing, dated 7th March 1892, an exchange of the lands was made between the parties and possession was given accordingly; that the exchange could, by the agreement and on payment of a certain sum, be repudiated within, but not after, one week, and that after plaintiff had cultivated the lands, defendant had wrongfully ejected him. The defendant pleaded that the agreement was ambiguous and unenforceable; that the document required registration; that plaintiff had himself repudiated the agreement within the week, and that possession had not been given of the land now sued for. The suit was dismissed by the first Court on the grounds that it had not been proved that the contract had been completed and each party put in possession of the exchanged lands, and that the written agreement was ambiguous and required registration. On appeal the Divisional Judge reversed the order of the lower Court, holding that the contract of exchange having been completed orally, the written agreement was merely a memorandum of what had taken place with an agreement for payment of money as a penalty under certain conditions; that registration thereof was not necessary, and that it was, therefore, admissible in evidence to show the exact plots of land which formed the subject of exchange. The Divisional Court also held that possession has given under the exchange; that the exchange was a completed transaction, and the plaintiff did not repudiate it. Defendant appealed to the Chief Court.

Held, on consideration of the document as a whole, that it was not intended by the parties to be merely a recital of a completed exchange with an agreement for payment of money as a penalty, but was intended to be the instrument superseding and embodying the oral bargain which necessarily precedes every such contract, and, therefore, required registration and, being unregistered, was not admissible in evidence.

Held, further, on the evidence, that plaintiff not having proved peaceable possession as owner of the lands in suit lawfully derived from defendant as prior owner, the doctrine laid down in No. 102, *P. R.* 1876, did not apply so as to give plaintiff a decree apart from the instrument of exchange.

No. 26 *P. R.* 1891, distinguished. GURMUKH SINGH *v.* POHLO. **120 P R 1894**

7. *Deed of sale of right of pre-emption—Registration—admissibility in evidence of unregistered deed—"Right to or in immovable property—" Registration Act (III of 1877), section 17.*

Plaintiff having sued for pre-emption in respect of certain land, defendant D. N. relied upon a certain deed which, after reciting a sale of the land by one M. to S. R., and that plaintiff was nephew of M. and a sharer in the *khata* sold, and as such, entitled to a right of pre-emption, stated that plaintiff had sold his said right of pre-emption to D. N. for Rs. 40, and would have no further concern with the right sold, but that the purchaser (D. N.) would be entitled to take himself, he also being already a *malik* in the *patti* in which the land has been sold. It was contended, *inter alia*, on behalf of plaintiff, that the deed purported to extinguish a right to or in, immovable property within the meaning of section 17 of the Registration Act, 1877, and therefore, being unregistered, was inadmissible in evidence.

Held, that the subjection of village land to rights of pre-emption is a burden on the lands in the hands of every holder of the land, and restricts his freedom of transfer, but from this burden no right or interest in the land so subject arises in any other person, and that, therefore, the document in question did not need registration and was admissible in evidence.

No. 37 *P. R.* 1888, dissented from. DHANI NATH *v.* BUDHU. **136 P R 1894**

8. *Document, construction of—Document "purporting to create, whether in present*

Section 17—*contd.*

or in future, any right, title or interest to or in immoveable property "—Registration Act, 1877, *section* 17.

Plaintiff sued for a declaration of proprietary title to a one-sixth share of certain land and based his claim on a document, executed by defendants on the 23rd January 1886, wherein it was stated that defendants had put plaintiff in possession of 500 *bighas* of land which he was to bring under cultivation and in which he was to sink certain wells. The document further declared that when plaintiff had cleared the ground he would be proprietor of a one-sixth share of it. Plaintiff alleged that he had performed his part of the contract and had spent Rs. 3,000 in breaking up the waste. The defendants pleaded, *inter alia*, that the document relied on by plaintiff required registration, and being unregistered, could not affect the property in suit, the value of which exceeded Rs. 100.

Held (*Plowden*, J. dissenting), that inasmuch as it did not convey to plaintiff a one-sixth share of the estate but merely gave him a right to demand a conveyance thereof at a future time if he could show that he had fulfilled the conditions agreed upon, the document relied upon by plaintiff did not require registration under section 17 of the Registration Act, 1877, and was admissible in evidence.

Section 17 of the Registration Act must be strictly construed, and " the right, title or interest " contemplated by thats ection, whether in its nature present or future, vested or contingent, must be created at once by the document, and a document which merely entitles a person to a right to come into existence in future is not within the section. IMAM BAKHSH KHAN *v.* KARIM SHAH. **16 P R 1895 F. B.**

9. *Re... ion Act (III of* 1877), *section* 17—*Instrument purporting or operating to create or declare any right, title or interest to, or in, immoveable property—Application in pending suit setting out a compromise orally arranged and asking Court to decide suit in accordance therewith.*

Plaintiff was the assignee of the representative of the original mortgagor, who sued, in June 1883, to redeem a certain mortgage, which suit resulted in a compromise, assented to by the parties to the suit, to the effect that the then plaintiff in consideration of Rs. 90 paid by defendants, gave up a certain portion of the land, and that the rest should remain under mortgage with defendants for Rs. 210. This compromise was brought to the notice of the Court by a written petition on which a Court fee stamp of 8 annas was affixed, and which, after reciting the terms of the compromise, prayed the Court to decide the case in accordance therewith. The petition was signed by both parties, but was not attested by witnesses. The Court thereupon recorded the statements of the parties in vernacular, set

Section 17—*concld.*

out the abstract of the compromise in English, and ordered the dismissal of the suit under section 375, Civil Procedure Code.

Plaintiff subsequently sued on the strength of this arrangement and tendered the Rs. 210. Defendants contended (*inter alia*) that the suit failed because the plaintiff was unable to prove the said arrangement, the terms of the compromise having been reduced to writing and being unregistered, although registration was compulsory under section 17 of the Registration Act.

Held that the petition of June 1883 if an " instrument " at all (which was doubtful) did not purport or operate of itself to create or declare any interest in the property, but was, in its plain terms, nothing more than an application in a pending suit setting out a compromise orally arranged by the parties, and asking the Court to decide the case in accordance therewith, and that the acceptance of the arrangement in no way altered the character of the document, or rendered it an instrument or deed of compromise requiring to be registered under section 17 of the Registration Act. INDRAJ *v.* MOUJA. **97 P R 1895**

10. *Document embodying terms of contract—Document inadmissible in evidence—Prior oral contract, proof of.*

On the 28th December 1894 B. S. executed a deed by the terms of which he sold a plot of land to G. S. for Rs. 200, and on 21st May 1895 G. S. sued B. S. for possession of the said land, or such other relief as the Court might think fit, the plaint being based on the sale-deed, which was unregistered. The first Court dismissed the suit, on the ground that the sale-deed being unregistered could not be received in evidence or affect the property, but the Divisional Judge held, on appeal, that as plaintiff had merely brought in his sale deed incidentally, and had sued on his oral contract, he was entitled to prove it and subsequent possession.

Held, that the suit should be dismissed. A formal sale-deed having been drawn up which was obviously intended to supersede the oral bargain and to evidence the contract between the parties, the deed was the only proof of the sale and a prior oral contract could not be proved.

No. 83 *P. R.* 1891, distinguished. BUTA SINGH *v.* GURDIT SINGH. **10 P R 1896**

11. *Mortgage—Payment of mortgage debt—Unregistered receipt—Extinction of mortgage—Oral evidence—Registration Act,* 1877, *section* 17.

Held, that a receipt purporting to extinguish the right and interest of a mortgagee in the mortgaged property comes within the provision of section 17 of the Registration Act, and is not admissible in evidence without registration, but oral evidence is admissible in proof of the payment of the sum expressed in the receipt.

Nabi Bakhsh v. *Mewa Ram* (*All. W. N.* 1887, 188) cited. AMIR *v.* DIALA MAL. **39 P R 1904**

Section 17, clause (b).

1. *Petition to Court to recognize arrangement in satisfaction of decree—Document not creating, declaring, or assigning any right in immovable property—Sanction of Court necessary before arrangement could take effect.*

Plaintiff obtained a decree against defendant on account of certain instalments due on a bond executed by the defendant. While this decree was in course of execution defendant presented a petition to the Court executing the decree, setting forth the amount due on the decree with interest, and that for the total amount thus arrived at the petitioner agreed that the plaintiff should receive certain specified half-yearly instalments from his jagir income to be paid to the plaintiff from the Tahsildar's office for a specified period; wherefore he applied that the said instalments might be paid half-yearly from the *tahsil*, and that the adjustment of the plaintiff's claim being approved, the necessary orders should be issued to the Tahsildar, adding that, until the plaintiff's claim was satisfied, the petitioner should have no claim on any grounds to receive the money either from the zamindars or from the Government. The petitioner's seal was attached to the petition, which was also signed by the decree-holder for the purpose of showing his assent to the terms set forth. The Court therefore recorded an order, stating the terms of the agreement as acknowledged by the judgment-debtor in person, an addition being made that the village should be hypothecated as security for the debt due to the decree-holder, adding that the decree-holder's consent was conditional on the money being paid to him from the *tahsil*, and directing that the instalments agreed to by the parties being approved, the case should be filed, and a proceeding be sent to the Revenue Officer asking that payment might be made through the Tahsildar, after deducting the fixed charges for collection.

In a suit brought upon the above agreement for the instalments stipulated for in the agreement which remained unpaid, *held*, that the petition did not require registration under section 17 (*b*) of the Registration Act, its real purport being to inform the Court that the parties had come to an arrangement providing for the satisfaction of the decree and of other claims existing between them, which, so far as it related to the decree, could only take effect on being approved by the Court, the Court being asked to approve of the arrangement, and to give effect to it by communicating it to the Revenue authorities; that as the petition showed that the arrangement was only to take effect on being approved by the Court, it could not be held to have created, declared or assigned any right, for the right only became complete on the Court's approval being subsequently given to terms in part set forth in the petition, and in part stated by the parties in Court. SIRDAR AMAR SINGH *v.* BASWA MAL. **51 P R 1885**

REGISTRATION ACT, 1877—(*contd.*

Section 17, clause (b)—*contd.*

2. *Document operating to declare right to immovable property.*

Held, that a receipt which operates as a relinquishment of mortgage rights and as an acknowledgment that a mortgage has been redeemed requires registration. NAND LAL *v.* GURDIDTA MAL.

99 P R 1902

3. *Document, construction of—"Instrument operating to declare right to immovable property"—Document addressed to Court embodying terms of contract and compromising suit—Admissibility of such document as evidence of oral contract—Registration Act (III of 1877), section 17, clause (b).*

Plaintiffs obtained a decree against defendant, and proceeded to execute it. An order in execution having been passed, defendant appealed to the Chief Court, and the case was remanded. On the remand the parties came to a compromise, the defendant orally agreeing to settle plaintiff's claim by a sale and a mortgage of certain portions of the land claimed. Thereupon a document, signed by the parties and duly witnessed, in which the terms of the contracts were fully set forth, was addressed to the Court which was to hear the case on remand, informing it that the parties had compromised matters in the manner stated and that the appellant (defendant) withdrew from his appeal. The plaintiffs now sued on the allegations that defendant had given them possession, but had subsequently ousted them, and they claimed possession in accordance with the oral contracts of sale and mortgage, and adduced the document as evidence of such contracts. The defendant pleaded that the document was an "instrument purporting or operating to create, declare, assign, limit or extinguish rights in immovable property within the meaning of section 17, clause (*b*) of the Registration Act; that as such it ought to have been registered, and that, not being so registered, it could not be received in evidence.

Held, that the word "declare" in section 17, clause (*b*) of the Registration Act is equivalent to define "or authoritatively set forth," and that the document, on its proper construction, was rather an historical recital of a fact which had already occurred, and which had in itself brought the right into existence than "an instrument purporting or operating "to declare rights in immovable property" within the meaning of the said section, and was admissible in evidence although not registered. WAZIR ALI *v.* ASA RAM.

95 P R 1894

4. *Petition addressed to Court embodying terms of contract and compromising suit—Document not operating to declare right to immovable property—Admissibility of such document as evidence of oral contract.*

Plaintiff obtained a money decree against defendants, and in course of its execution an agreement was arrived at between the

REGISTRATION ACT, 1877—*contd.*

Section 17, clause (b)—*contd.*

parties which was embodied in an application filed in Court under which the equity of redemption of the two disputed houses which had been attached were hypothecated for Rs. 325, being the amount due on account of the decree including costs, four months' time being given for payment. Execution proceedings were then struck off in pursuance of the settlement. In a suit brought upon the above agreement for the recovery of the Rs. 325 by sale of the equity of redemption of the two houses, *held*, that the petition did not require registration under section 17 (*b*) of the Registration Act, and was admissible in evidence, its real purport being to inform the Court that the parties had come to an arrangement providing for the satisfaction of the decree, and could not properly be treated as the original contract between the parties, but must be held to be a mere recital of the contract independently entered into between them. PRABH DYAL *v.* GURMUKH. **98 P R 1902**

5. *Registration Act*, 1877, *section* 17 (*b*)—*Unregistered compromise declaring right to immovable property addressed to Court and judicially acted upon—Admissibility of, in evidence.*

A compromise affecting immovable property over Rs 100 in value, signed by the parties attested by witnesses and stamped with an eight-anna Court-fee and addressed to the Court setting forth the names of the parties and the nature of the claim, was filed in Court. The Court thereupon examined the parties, who repeated in full detail all that was set forth in the document, concluded by expressly requesting it to dismiss the suit in accordance with the terms of the document. The Court accordingly wrote an order reciting the said terms and dismissed the suit as prayed.

Held, that the document did not require registration under section 17 (*b*) of the Registration Act and was admissible in evidence, because (*a*) it was a mere application to the Court informing it of the terms of the agreement entered into by the parties out of Court, and as such neither created nor declared rights so as to require registration, and (*b*) it was submitted to and acted upon judicially by the Court and was in itself a step of judicial procedure not requiring registration.

Mussammat Deoki v. *Kala* (76 *P. R.* 1887), *Muthayya* v. *Venkataratnam* (*I. L. R. XXV Mad.* 553), *Indraj* v. *Mouja* (97 *P. R.* 1895), *Wazir Ali* v. *Asa Ram* (95 *P. R.* 1894), and *Prabh Dyal* v. *Gurmukh* (98 *P. R.* 1902), referred to. KHAIR-UL-NISA *v.* BAHADUR ALI.

27 P R 1906

6. *Partnership—Deed of partnership purporting to create right, title or interest in immovable property to be acquired—Registration.*

Held, that an agreement between certain persons providing the manner in which

REGISTRATION ACT, 1877—*contd.*

Section 17, clause (b)—*contd.*

certain property should be divided between them in the event of their succeeding in purchasing the same was not an agreement falling under section 17 (*b*) of the Registration Act and did not require registration. BHAN SINGH *v.* THAKAR DAS. **89 P R 1908**

7. *Clauses* (*b*), (*c*) *and* (*h*)—*Document declaring an interest in immovable property of upwards of Rs.* 100—*Acknowledgment of receipt of consideration—Document merely creating right to obtain another document.*

Plaintiffs' suit was based upon an agreement in writing, which was unregistered, to the following effect: It distinctly declared that certain persons (the plaintiffs) were sharers in a decree for half of a certain well, decreed by the Extra Assistant Commissioner to the writers of the deed as pre-emptors, for which half share the plaintiffs had paid to them the sum of Rs. 850. It then explained why the said plaintiffs were not parties to the plaint in the suit, and that cross-appeals were pending by the plaintiffs and defendants in that suit in the Commissioner's Court, and then provided that "it is agreed that when "the appeals shall have been decided, whatever share we (the writers) get, we will "have a registered conveyance duly prepared "and cause mutation of names to be made "in favour of the persons named."

Held, by *Plowden* and *Elsmie JJ.* (*Smyth, J.* dissenting), that the registration of the above document was compulsory under section 17 of the Registration Act, and that plaintiffs' suit must fail.

Per *Plowden J.*—The document did not fall under clause (*h*) of section 17 of the Registration Act, as though it clearly created a right to obtain another document which would, when executed, declare or assign a right, title or interest of the kind described in clause (*h*), it did not merely create such a right, but did also in itself declare or purport to declare that the promisee were jointly and equally interested with the promisors in the decree which gave to the promisor a title to half the well named in the deed on payment of Rs. 1,700.

Per *Elsmie*, J.—The document fell within clause (*c*), section 17 of the Registration Act, in that the receipt of consideration on account of declaration of a title or interest in immovable property of the value of Rs. 100 and upwards was expressly acknowledged.

Per *Smyth*, J.—The document did not of itself create or declare a right in immovable property, and its effect was merely to create a right on the part of the plaintiffs to obtain another document, *viz.*, a deed of conveyance, which when executed would create a right in immovable property, and therefore fell within clause (*h*) of section 17 of the Registration Act, and did not require to be registered. MALLIK KARIM BAKSH *v.* MUHAMMAD BAKSH. **82 P R 1884**

Compare BELA SINGH *v.* BARA.

82 P R 1884 Note.

8. *Clauses* (*b*), (*c*) *and* (*h*)—*Agreement to mortgage—Compulsory and optional*

REGISTRATION ACT, 1877—*contd.*

Section 17, clause (b)—*concld.*

registration—Suit for specific performance of mortgage—Limitation Act, section 5—Admission of appeal beyond time—Sufficient cause—Appeal filed in wrong Court.

A executed the following document in favour of B :—"I agree and do hereby write "that I have now mortgaged a plot of land "(described) to B. and I agree to the conditions to be entered in a deed of mortgage. "I have mortgaged the said land for Rs. "5,000 ; out of the above sum, I have received Rs. 1,000 as earnest money. I will "receive payment of the balance, Rs. 4,000, "at the time of registration of the deed of "mortgage." Then followed conditions as to interest, the manner in which the debt was to be liquidated, &c., &c., the final clause being to the following effect :—"I will "have registration of the deed of mortgage "effected in favour of the mortgagee within "fifteen days. If I do not effect the registration, or if I refuse to do so, then I will "pay Rs. 1,000, the sum received, and "Rs. 1,000 on account of damages. I also "hereby agree to effect mutation of names. "If I evade giving possession, or refuse "mutation, I shall be liable for the damages stated above."

A refused to execute the mortgage-deed as promised. B sued for specific performance of the agreement, and prayed that A be compelled to execute and register a deed of mortgage on the conditions stated in the agreement. A pleaded that the agreement required registration, and not having been registered was inadmissible in evidence, and as the contents of the document could not be legally proved by other evidence, the suit should be dismissed.

Held by the Full Bench (1) that the words "I have now mortgaged" should be taken merely as a recital that a mortgage had already been made or agreed upon, and that they could not be taken as meaning "I now mortgage by virtue of this deed" ; (11) that the document did not itself create or assign an interest in immovable property. The right created by the deed was merely the right to compel the executant to execute another document, and the deed therefore fell under clause (*h*), section 17 of the Registration Act, and consequently its registration was not compulsory.

Held, by the Division Bench that the presentation of an appeal within the period of limitation prescribed therefor to a wrong Court in ignorance of the provisions of law may be a sufficient cause within the meaning of section 5, Limitation Act, for admitting the same appeal in the proper Court after the period of limitation prescribed therefor has expired.

I. L. R. V All. 5 ; *IX Bom.* 425 *XII Bom.* 302 ; 81 *P. R.* 1886 ; 43 *P. R.* 1889, followed.

I. L. R. X All. 524 and 587, not followed. SARDAR PARTAB SINGH *v.* LALA KARM CHAND.

18 P R 1889 F. B.

REGISTRATION ACT, 1877—*contd.*

Section 17, clause (b) (i).

9. For the purposes of section 525 of the Code of Civil Procedure an award of arbitrators privately appointed by the parties even if it effects partition of joint immovable property of over Rs. 100 in value and is signed by the parties to signify their acceptance of the same does not require registration and can be filed and made a rule of Court. BHAGAT RAM *v.* PARAS RAM. **84 P R 1907**

10. *Clauses (c) and (h)—Evidence Act, section 91—Receipt—Terms of an agreement reduced to writing—Specific performance.*

A executed the following document in favour of B. :—Whereas I have irrevocably sold two plots of building land for Rs. 2,185, including expenses, to B., therefore I have got payment of Rs. 185, as earnest money for the cost of the deed of sale, &c., from purchaser, and Rs. 2,000 will be received at the time of registration, so I have written these few words as a receipt for Rs. 185 after affixing a one-anna stamp, that it may be used as a document when necessary.

A. declined to execute the conveyance and sold the property to C. and D. B. sued to establish the sale and to obtain possession, C. and D. contended *inter alia* that the receipt contained the terms of the contract in writing—that it was inadmissible in evidence for want of registration, and that oral evidence could therefore not be received to prove the transaction. The District Judge held that the receipt was not intended to constitute the contract, and that it was intended simply as a receipt. He decided that oral evidence was admissible as to the terms of the contract, and finding the sale proved decreed the claim. The Divisional Judge dismissed the claim, agreeing in the defendant's contention.

Held, by the Full Bench that the terms of the contract could not be considered to have been reduced to writing in the receipt, and that oral evidence was admissible to prove the terms of the contract. SANGAM LAL *v.* MUSSAMMAT SIKANDAR JEHAN BEGAM.

183 P R 1889

Section 17, clause (d).

1. *Registration Act*, 1877, *section* 17, *clause (d)—Unregistered lease determinable at will of landlord, but mentioning annual rate of rent, admissibility of, in evidence—"Lease reserving a yearly rent.*

Held, that the mere recital of an annual rate of rent in a lease, determinable at any time at the will of the landlord, does not constitute it "a lease reserving a yearly rent" within the meaning of clause (*d*) of section 17 of the Registration Act, 1877, and render it compulsorily registrable as such. MUHAMMAD MASAM KHAN *v.* MUSSAMMAT BAKHTAWAR. **70 P R 1895**

2. *Unregistered lease determinable a will of landlord, bult mentioning annual rate of rent—Admissibility of, in evidence.*

REGISTRATION ACT, 1877—*contd.*

Section 17 (d)—*concld.*

The agent of a guardian purporting, though without authority, to act as the agent of the minor's guardian made a lease of certain land belonging to the minor. The minor when he came of age sued to recover possession of the land. *Held*, that the minor was entitled to recover possession of the land without paying compensation for a house which had been built in accordance with the terms of the lease (the materials of which the lessee was allowed to remove) as the lessee had not proved the authority of the agent or that the act was beneficial to the minor's interest.

Held, also, that a lease by which the landlord reserves to himself the right to take possession at any time he chooses, although a yearly rent has been agreed to be paid, is not a lease for a period exceeding one year within section 17, clause (*d*) of the Registration Act. KANWAR RANZOR SINGH *v.* CHIPPAL.

37 P R 1900

Section 17 (o).

Registration of Sale Certificate.

Held that clause (*o*) to section 17 of Registration Act expressly exempts a sale certificate granted to the purchaser of immovable property sold by public auction by a Civil or Revenue Officer. AJUDHIA PERSHAD *v.* CHANDAN.

9 P R 1903

Sections 17 and 49.

1. *Suit for money decree—Admisibility in evidence of unregistered mortgage-deed for Rs.* 500.

In a suit for a money decree on an unregistered bond which recorded a single and indivisible transaction of mortgage for Rs. 500, *held*, that the unregistered deed was inadmissible as evidence when it became necessary to prove the transaction. THAKUR DAS *v.* FATTEH KHAN.

60 P R 1880

2. *Admissibility in evidence of unregistered mortgage-deed to prove acknowledgment of debt—Divisible nature of transaction.*

An unregistered mortgage-deed, the registration of which was compulsory under section 17 of the Registration Act, 1877, but which was in its nature divisible, the first part containing a complete acknowledgment of an existing debt, *held*, in a suit to recover the original money-debt which was the consideration for the mortgage, to be admissible as evidence of such acknowledgment though inadmissible as evidence of any transaction affecting the immovable property. SYAD MUHAMMAD KHAN *v.* JAISUKH. **88 P R 1880**

3. *Admissibility in evidence of unregistered mortgage to prove mortgage-debt.*

In a suit for the money alleged to be due on an unregistered mortgage-deed for

Rs. 400, where it appeared that the transaction was one of mortgage only, and that there was no admission of a debt or promise to pay a debt which could be divided from the mortgage and which would remain if everything relating to the mortgage were struck out of the deed, *held*, that the deed was inadmissible as evidence for any purpose. JAISUKH *v.* SYAD MUHAMMAD KHAN.

89 P R 1880

4. *Suit on unregistered mortgage-deed—Admissibility of deed as evidence of acknowledgment of liability—Indivisible transaction—Merger of old liability in new contract.*

Plaintiff sued for the money due on an unregistered mortgage deed, in which defendant recited that he owed plaintiff Rs. 199-8-0 on a balance of account, as security for which he mortgaged his land, stipulating for the payment of interest, &c. It was contended for the plaintiff that the mortgage-deed, though unregistered and inadmissible in evidence to affect the land mortgaged, could be accepted as an acknowledgment of a subsisting liability, so as to prevent a suit for the original debt being barred by limitation.

Held, that as plaintiff had not sued on the old accounts, and offered the bond as proof of an acknowledgment, but had sued to enforce the bond, the suit must fail, as there was no contract or agreement in the bond sued upon which could be separated from the mortgage.

Quære, whether, if plaintiff had sued on the old account, defendant could not have pleaded that the old liability had been determined, and merged in a new contract? *Syad Muhammad Khan* v. *Jaisukh* (No. 88 *P. R.* 1880), and *Jaisukh v. Syad Muhammad Khan* (No. 89 *P. R.* 1880), cited CHUHAR *v.* WAZIRA.

17 P R 1881

5. *Bond hypothecating immovable property—Divisible transaction—Admissibility of the instrument as evidence of defendant's personal liability.*

In a suit on a bond, which also hypothecated immovable property over Rs. 100 in value, where it appeared that the document in question evidenced a single but not indivisible transaction, namely of a loan, and of a pledge to secure the loan, there being a distinct formal undertaking by the defendant to repay the money lent, and the portions of the document relating to the pledge being capable of being struck out or treated as non-existent without impairing the remaining portion containing the personal undertaking of the defendant, *held* that, though as regards the pledge, the document not being registered was by reason of section 49 of the Registration Act inoperative and inadmissible to prove the pledge, it was admissible to prove a transaction affecting the defendant's personal liability. *Syad Muhammad Khan* v. *Jaisukh* (No. 88 *P. R.* 1880), followed *Thakar Das* v. *Fatteh Khan* (No. 60 *P. R.* 1880,) *Jaisukh* v. *Syad Muhammad Khan* (No. 89 *P. R.* 1880), and *Chuhar* v. *Wazira* (No. 17 *P. R.* 1881), distinguished. KHUDDU MAL *v.* KUNJ LALL.

80 P R 1881

6. *Suit to enforce defendant's personal liability on unregistered mortgage bond—Divisible contract—Admissibility of bond in evidence to prove defendant's personal liability.*

In a suit brought in a Small Cause Court to enforce the defendant's personal liability on a bond for Rs. 200, which purported to mortgage certain house property for the debt, but which was unregistered, it appeared from the instrument that after setting forth the mortgage of the property for Rs. 200, it went on to provide that the debt should bear interest at 1 per cent. per month; that Rs. 2 should be paid monthly, the rent being deducted; that if the interest were not paid month by month, the obligor would pay the whole sum at once whenever the mortgagee demanded it, that the mortgagor would redeem the property at the end of 3 years by paying the principal, and that if on the lapse of this term the debt were not discharged, the mortgagee should be at liberty to enforce payment of the debt in whatever manner he thought proper.

Held, that the above contract, in addition to the mortgage of property as security for the loan, made the defendant personally liable for the principal debt, as well as for the payment of interest month by month, and that it was divisible, so that, if the portions relating to the mortgage were struck out, it might still be admitted as evidence of the defendant's personal liability for the debt. *Khuddu Mal* v. *Kunj Lall* (No. 80 *P R.* 1881) followed. PREM SINGH *v.* MULA MAL.

10 P R 1883

7. *Admissibility in evidence of unregistered deed—Acknowledgment—Promise to pay—Proof of liability under unregistered deed by acknowledgment in subsequent deed—Evidence Act (I of 1872), section 91—Admission by defendants rendering question of admissibility of deed unnecessary.*

Plaintiffs sued for possession of a house alleged to have been mortgaged to them for Rs. 699 by two deeds, one for Rs. 600 and the other for Rs. 99 both of which were unregistered. Subsequently they put in an amended plaint stating that as they were out of possession, they had sued to get possession, but, in case this could not be given, they asked for a decree for the money. Two of the defendants in their written plea admitted that the Rs. 600 mentioned in the first bond had been borrowed, but the other two defendants put in no plea, and were not asked whether they admitted or denied the plaintiffs' allegation. It appeared that the mortgage-deed for Rs. 600 contained no acknowledgment of a previously existing debt, nor any promise to pay the money, and there was therefore nothing in it which could be admitted as evidence; but it was contended that the debt for Rs. 600 might be proved by an acknowledgment contained in the bond for Rs. 99.

Held, that as the terms of the mortgage were reduced to writing, they could not be proved apart from the mortgage-deed itself, under the provisions of section 91 of the Evidence Act, and as it was not alleged that there was any debt apart from the mortgage transaction, if the debt of Rs. 600 were denied by the defendants it would be out of the power of the plaintiffs to prove it, the mortgage being unregistered.

But *held* further, that if all the defendants admitted that the Rs. 600 had been borrowed, no issue would arise as to this fact, nor would it be necessary for the plaintiffs to produce any evidence of it, and no question as to the admissibility in evidence of the mortgage-deed for Rs. 600 would arise.

Case remanded that, after examination of the parties proper issues might be framed, and the suit decided according to the result of the determination of the issues. FATTEH SINGH *v.* MIAN SINGH.

131 P R 1883

8. *Unregistered document, failure of suit based on.*

Plaintiff, as superior proprietor of certain land, sued defendant, the inferior proprietor, on a deed of agreement whereby the plaintiff on the one hand agreed to hold himself responsible for the Government revenue, whilst the defendant on the other hand agreed to give plaintiff ⅜ths of the produce for twenty years.

Held, that as the agreement in question, which was in reality a lease, required registration under section 17 of the Registration Act, and was not registered, it could not be admitted in evidence, and therefore on this ground the plaintiff's suit failed. AZAZ *v.* KALLU.

139 P R 1883

9. *Deed of compromise—Petition to Court—Document declaring right to immovable property over Rs. 100 in value—Inadmissibility of whole document in evidence—Plaint disclosing a cause of action irrespective of the unregistered document.*

Plaintiff sued under section 265 of the Contract Act asking for a dissolution of partnership, and the allotment to him of his share in the assets and property of

the first and appealing to a document (which was unregistered) as explaining the relative rights of the parties, and the share he was entitled to. It appeared that the plaintiff had previously filed a suit for dissolution, but having come to terms with the defendant, appeared in Court with the document propounded in the present case, which showed that on certain concessions being made, and notably on certain properties alleged in the case to be joint, or firm properties being recognized as defendant's sole property, the partnership business should not be dissolved but go on. This document, though headed with the names of the parties and with the form of claim in the suit, was in itself clearly an agreement between the parties, signed by them and witnessed. On the said document being filed, the Court ordered "that as plaintiff withdrew, the suit should be dismissed."

Held, that the document relied upon in the present suit could not be regarded as a mere petition to the Court conveying information that an agreement had been come to, which agreement was not in the document itself, but existed as an oral agreement apart from, and independently of, it; and that as the document clearly did "declare," that is define or arrange, or settle, some question relating to the title to immovable property, which on the face of the document, though no particular value was set forth, obviously exceeded the limit of Rs. 100 in value, and as it was impossible to separate the parts of the document which required registration from the parts which did not, therefore the whole document was inadmissible for want of registration, and oral evidence could not be taken to supply its place.

But *held* further that as the prayer in the plaint in the present case (on a reasonable construction of that document) was not absolutely restricted to the enforcement of the particular agreement, but might fairly be taken for a prayer for dissolution and distribution of assets, even though the prayer that such distribution should be in accordance with the (invalid) agreement could not, as such, be acceded to, the Court of first instance should be directed to take up the suit as one for a dissolution, &c., between the parties, and for a distribution of assets, &c., independently of the agreement which had failed, the first point to consider being, whether in fact plaintiff had a new cause of action which entitled him to bring the new suit after the withdrawal of the first, without permission or reservation by the Court, on which point the lower Courts had hitherto expressed no opinion. MUSSAMMAT DEOKI *v.* KALA.

76 P R 1887

10. *Deed of compromise—Petition to Court—Deed evidencing waiver of right of pre-emption—Test of value of such right—Inadmissibility in evidence of unregistered deed—Exclusion of oral evidence—Evidence Act (I of 1872), section 91.*

In a suit for pre-emption the defendant relied (*inter alia*) upon an agreement which had been entered into between the parties by way of compromise of a former suit relating to the same property, which, if admissible, was sufficient to prove a voluntary waiver or relinquishment by the plaintiffs of his right to claim pre-emption, but which, though executed on an agreement stamp, and in no sense a petition to the Court, and relating to property worth Rs. 200, was unregistered.

Held, that a right of pre-emption being a right to or in immovable property, and the value of such right in the present case being, according to the true test, the amount the defendant was liable to pay before he could enforce it, *viz.*, Rs. 200, it followed that the agreement relied upon by the defendant being an instrument which purported or operated to extinguish a right of the above value to or in immovable property, required registration under clause (*b*), section 17 of the Registration Act, and not having been registered it could not be received as evidence of such a transaction with reference to the provisions of section 49 of that Act, while oral evidence of such a transaction was equally excluded under the provisions of section 91 of the Evidence Act.—*Malik Karim Baksh* v. *Mohammad Baksh* (No 82. *P. R.* 1884) cited. MUHAMMAD BAKHSH *v.* HAYAT KHAN.

37 P R 1888.

11. *Letter intimating that plaintiff did not wish to purchase certain land—Abandonment—Extinction of right to immovable property—Compulsory registration—Inadmissibility in evidence.*

In a suit for pre-emption, defendant relied on a letter alleged to have been sent to him by the plaintiff admitting that the purchase had been made with the plaintiff's advice and consent, and intimating that he no longer desired to purchase the land sold. This document, if admissible, was sufficient to prove a voluntary waiver or relinquishment by the plaintiff of his right to pre-emption. It was contended for the plaintiff that the document should have been registered being a release and operating to extinguish a right in immovable property and being unregistered was inadmissible in evidence.

Held per Benton, J. (Frizelle, J., *dubitante*) that the document did not purport or operate to extinguish any right or interest in immovable property. It was only evidence of past conduct, and gave expression to certain future intentions which should give the defendant confidence to complete his purchase. BARKAT ALI *v.* FAIZ MUHAMMAD.

58 P R 1890

12. *Suit on unregistered agreement—Admissibility of deed as evidence of acknowledgment of personal pecuniary liability—Indivisible transaction.*

The purchasers of certain land paid the pre-emptors a certain sum of money in consideration of the latter forbearing to urge their claim The pre-emptors executed a document in which it was provided that, if any of them sued to enforce their rights they should forfeit their share in the money received with half as much again. The pre-emptors notwithstanding this agreement instituted a suit for pre-emption, and obtained a decree. The purchasers then sued to recover the money forfeited as above. The defendants denied execution, and the sole question in the case was whether the document being unregistered was admissiable in evidence to enforce personal liability. *Held*, that the document could not be received in evidence. In order to succeed, the plaintiffs were bound to prove (*a*) an obligation not to prosecute the claim for pre-emption; and (*b*) its breach. The former could not be established without the document, which could not be received in evidence for want of registration, and consequently the suit failed. SANTA *v.* WASSAWA SINGH. **59 P R 1890**

13. *Document, construction of—Registration Act, 1877, sections 17, 49—Partnership or ownership—Abandonment—Estoppel—Limitation Act, 1877, 2nd Schedule, articles 1 42, 144.*

Plaintiffs sued for an account of the income and expenditure of a certain *kul* (or water-course) jointly excavated by the parties under an agreement in writing, dated 24th February 1873, whereby it was agreed, *inter alia*, that in consideration of half the outlay in excavating the *kul*, which originally belonged to defendant and his ancestors, but had fallen into disrepair and become useless, the plaintiff was to become a half-sharer therein, that thenceforth the income and expenditure on the *kul* was to be shared in the same proportion, and that in the event of a sharer failing to pay the expense of repairs, he was to be debarred from participating in the income of that year. Defendants admitted the agreement and rendition of accounts till 1936 Sambat, but alleged that after that year the *kul* was stopped, and litigation ensued with the owners of certain villages; that plaintiff refused to contribute towards the expenses and gave up his share; and that defendants had conducted the cases themselves and enjoyed the profits of the *kul* ever since. The District Judge dismissed the suit on the ground that plaintiff, by refusing to contribute towards the expenses of the said litigation and by his subsequent conduct had abandoned and lost his rights in the *kul*. This decree was upheld on appeal, by the Divisional Judge, both on the ground that plaintiff, abandoned and lost his said rights, and also that his conduct estopped him from preferring the present claim.

Plaintiff having appealed to the Chief Court, the defendants supported the decree of the

REGISTRATION ACT, 1877—*contd.*

Sections 17 and 49—*contd.*

lower Courts, not only on the ground of abandonment and estoppel, but also on the grounds (*a*) that plaintiff's rights in the *kul* could not be proved, as the written agreement of 1873 required registration, and being unregistered was inadmissible in evidence; (*b*) that the suit was practically one for accounts of a partnership, and therefore could not lie without a prayer for dissolution; and (*c*) that the failure of plaintiff to contribute towards the expenses of repairs debarred him from claiming a share of the produce for any of the years for which accounts were claimed.

Held, that the claim was one relating to profits of immovable property, and that the right, in respect of which the parties were litigating and which formed the basis of the claim, was one regarding such property and that, therefore, the limitation for the possession of a share in the *kul* would be 12 years, whether under article 142 or article 144 of the Limitation Act.

Found, upon the evidence, that there was no proof of abandonment on the part of plaintiff.

Held, further, that the written agreement of 1873 did not require registration inasmuch as, taken as a whole, it meant nothing more than that the defendant agreed to give plaintiff a half share in the *kul*, provided that the latter paid a half share of the expenses of excavation, and that such a condition did not create a present right in the *kul*, but merely one that would come into existence in the event of plaintiff fulfilling the said condition.

Held, also, that even if it were conceded that a present right was created by the instrument, it was only a right in the ruined *kul*, which had at the time no value at all, and certainly could not be said to have been worth Rs. 100, and that the valuable property which might come to existence if the conditions of the agreement were carried out could not be held to furnish the test of valuation.

Section 17 of the Registration Act must be strictly construed, and unless a document is clearly brought within the purview of the section, it cannot be excluded from evidence, and, in case of doubt, the benefit must be given to the document.

Held, upon the facts of the case, that the claim was one for accounts of a co-ownership in immovable property, and not of a partnership.

Held, finally, that the agreement, rightly construed, only deprived a co-sharer of the income in case he *refused* to pay his *quota* of expenses of repairs, etc., and that mere *non-payment* did not amount to such refusal, though defendant was entitled to deduct the amount of the said expenses from plaintiff's share of the profits. SANSAR SINGH *v.* TILOKA.

51 P R 1898

REGISTRATION ACT, 1877—*contd.*

Sections 17 and 49—*contd.*

14. *Unregistered deed—Admissibility of, for collateral purposes—Adoption.*

Held, that a document inadmissible for want of registration as evidence of the relinquishment of immovable property, cannot in a suit for possession of the land to which it refers be received in evidence for the collateral purpose of proving an admission of an alleged adoption which to all intents and purposes would be equivalent to an acknowledgment of the adoptees' title to such property, especially where it evidences a single and not an indivisible transaction.

Ulfat-un-Nissa v. *Hosain Khan* (*I. L. R. IX Calc.* 520), *Sheo Dial* v. *Prag Mal Misr* (*I. L. R. III All.* 229), *Khuda Mal* v. *Kunj Lal* (80 *P R.* 1881), and *Ram Singh* v. *Hargobind* (83 *P. R.* 1891), distinguished. *Ralla* v. *Budha* (50 *P. R.* 1893), followed. ALI BAKHSH AND OTHERS *v.* RAUSHAN.

102 P R 1900

15. *Partition of immovable property—Entries consisting of recitals of completed facts—Admissibility in evidence.*

Held, that entries in a third party's book consisting of details of a partition carried out independently by the parties themselves being only recitals of past facts which had already been completed could not be regarded as a deed of partition declaring any right in immovable property within the meaning of section 17 of the Registration Act, and was therefore admissible in evidence, though unregistered. GONGOD GIR *v.* SHAM GIR.

48 P R 1905

16. *Assignment—Assignment of a mortgage of immovable property—Registration—Admissibility in evidence.*

Held, that an assignment of a mortgage of immovable property where the amount secured on the mortgage was Rs. 250, for a consideration of less than Rs. 100, must be regarded an assignment of the property covered by the mortgage and of the value stated therein and as such requires registration and is not admissible in evidence under section 49 of the Act if unregistered.

Satra Kumaji v. *Visram Hasganda* (*I. L. R. 11 Bom.* 97) and *Vasudev* v. *Rama* (*II Bom. H. C. R.* 149), dissented from. *Robinee Debia* v. *Shib Chunder Chatterjee* (15 *W. R.* 558), and *Subramaniam* v. *Perumal Reddi* (*I. L. R. XVIII Mad.* 454), distinguished. RAM SARUP *v.* MUBARAK SINGH.

1 P R 1906

17. *Partition—Partition by arbitrator of immovable property—Registration—Admissibility in evidence—Secondary evidence—Evidence Act, 1872, section 91.*

REGISTRATION ACT, 1877—*contd.*

Sections 17 and 49—*concld.*

'A' and 'B,' two co-parceners, with a view to effect partition of their joint ancestral immovable property divided it into two lots and executed an agreement wherein after reciting the above arrangement they appointed a certain arbitrator to assign the lots among them by taking bids. The arbitrator took the bids, assigned the lots between the brothers and wrote out the terms of his award on the back of the original agreement which was not registered.

Held, that the award declared the rights of the respective parties in immovable property of over Rs. 100 in value and required registration under clause (*b*), section 17 of the Registration Act, and was not admissible in evidence, and that the plaintiff could not be permitted to establish his claim independently of the document the existence of which had been disclosed.

Waman Ramchandra v. *Dhondiba Krishnaji* (*I. L. R. IV Bom.* 126), *Ramier* v. *Gould* (*I. L. R. XIII Mad.* 255), *Gongod Gir* v. *Sham Gir* (48 *P. R.* 1905), *Wazir Ali* v. *Asa Ram* (95 *P. R.* 1894), *Imam Bakhsh Khan* v. *Karim Shah* (16 *P. R.* 1895), *Sansar Singh* v. *Tiloka* (51 *P. R.* 1898), *Girja Nand* v. *Nathu Ram* (175 *P. L. R.* 1905), and *Jiwan Ali Beg* v. *Basa Mal* (*I. L. R. IX All.* 108, *F. B.*), considered and distinguished. AZIMAT SINGH *v.* KALWANT SINGH.

71 P R 1906

Section 23.

1. *Time within which a document should be registered—Within four months from its execution—Construction of 'From'—General Clauses Act* (*I of* 1868), *section* 3 (2)—*Presentation by an unauthorised person—Defect of procedure, section* 82, *Registration Act.*

In computing the period of four months provided for registration by section 23, Registration Act, the day on which the document was executed is excluded by force of section 3 (2) of the General Clauses Act (I of 1868).

When a document bore the certificate required by section 60 of the Registration Act showing that it had been registered.

Held, that notwithstanding that it had been presented for registration by an unauthorised person, it must be treated as a registered document. MALIK PERMANAND *v.* KALA.

90 P R 1890

2. *And sections* 24, 25, 26, 47 *and* 87—*Validity of registration effected after period allowed by law—Defect in procedure—Notice of prior mortgage—Presumption arising from admission of receipt of consideration before Registrar—Specific performance of mortgage—Contract.*

Plaintiff sued to complete his title as a mortgagee under a registered deed of mortgage, dated 22nd June 1880, by obtaining possession of the mortgaged property

REGISTRATION ACT (VIII OF 1877)—*contd.*

Section 23—*concld.*

from the defendants, who held possession of the same under a prior, but at the date of the suit, unregistered deed of mortgage, dated 7th October 1879, for Rs. 260. The suit was filed on the 23rd November 1880, and on the 24th December 1880, issues were drawn: but before any evidence was adduced, the defendant mortgagees sued for and obtained a decree directing the mortgagor to cause their deed to be registered, which was accordingly effected on the 13th January 1881. The defendant mortgagees then appeared in Court and claimed to be treated as prior mortgagees in possession under a registered title.

Held, that if the defendants' mortgage-deed was capable of being registered on the 13th January 1881, the effect of section 47 of the Registration Act would be to render it operative as a registered document from the date of its execution.

But *held* further that, as, under the provisions of section 23—26 of the Act, a document like the deed of the 7th October 1879, which was executed in British India and presented at the registry office fifteen months after execution, was no longer on that date capable of registration; and as it was open to the plaintiff, who was not a party to the suit in which the decree for compulsory registration was passed, to challenge the validity of the registration notwithstanding such decree; and as the registration of a document, which has been presented for the purpose beyond the period allowed by law, is not a defect of such a character as to be cured by the provisions of section 87 of the Act, but is one which affects the authority of the registering officer to register at all, and must, where it exists, be patent on the face of the document, the defendants' deed could not be regarded, in competition with the deed propounded by the plaintiff, as having been duly registered within the meaning of section 49 of the Act.

There being nothing on the record to support a finding that the plaintiff had either actual or constructive notice of a prior mortgage at the time when he caused a registered deed of mortgage to be executed in his favour, and the defendant mortgagor having failed to rebut the presumption of full payment of consideration arising from his admission to that effect before the Registrar, *held* that the plaintiff was entitled to an unconditional decree for specific performance of the contract of mortgage. *Sheo Mal* v. *Umrdin* (No. 60 *P. R.* 1877), and *Chowgatta* v. *Chatar Singh* (No. 18 *P. R.* 1878), referred to. BHAGAT SINGH *v.* RAM NARAIN. **93 P R 1883**

Section 24.

3. *Registration—Registration of a document under section 24 of Act III of 1877—Finding of Registrar—Validity.*

REGISTRATION ACT (VIII OF 1877)—*contd.*

Section 24—*concld.*

Where a sale-deed was presented for registration within six months of its execution and was dealt with under section 24 of the Registration Act, the vendor admitting execution, but pleading non-payment of a large portion of the consideration, and was registered on payment of a penalty under that section. *Held*, that the Registrar's finding as to the existence of the circumstances mentioned in section 24 of the Registration Act must be accepted, and the validity of the registration cannot be questioned in a suit instituted by the vendee nearly five years after registration.

Raya Raghoba Kamat v. *Anapurna Bai* (*X Bom. H.C. R.* 98), and *Bhagat Singh* v. *Ram Narain* (93 *P. R.* 1883), distinguished. KHAIR MUHAMMAD *v.* ABDUL GHAFFAR KHAN. **44 P R 1901**

Section 34.

Certificate of registration—Admissibility of document notwithstanding absence of executant—section 34, contravention of.

The Divisional Judge rejected as inadmissible in evidence a deed of mortgage on which the certificate under section 60 of the Registration Act had been duly endorsed on the ground that the registration took place in the absence of the mortgagor and in contravention of section 34 of the Act.

Held, following *Sah Makhan Lal's case* (15 *B. L. R.* 228) that the registration was valid and the document admissible in evidence. BHAGAT SINGH *v.* GAUHAR. **77 P R 1890**

Section 47.

See SECTION 23, *supra*. **93 P R 1883**

Section 48.

1. *And section 49—Oral agreement—Unregistered written agreement accompanied with possession.*

Held, that section 48 of the Registration Act refers only to oral agreements followed by possession and does not include the case of an unregistered document of which the registration was compulsory. Such document not being registered has, under section 49, no effect. GHANSHAM DAS *v.* HEMRAJ. **92 P R 1890**

2. *Oral sale of equity of redemption—"Delivery of possession."*

Held, that section 48 of the Registration Act, 1877, refers only to delivery of possession of the property and cannot be taken to cover the transfer merely of an equity of redemption. RAM DAS *v.* SANWANA RAM. **10 P R 1900**

Section 49.

See SECTIONS 17, 34 AND 48, *supra*.

1. *Section 49—Admissibility in evidence of unregistered instrument requiring registration under Judicial Commissioner's Circular No. 11 of 1859.*

REGISTRATION ACT (VIII OF 1877)—*contd.*

Section 49—*contd.*

Held, that an instrument which ought to have been registered under the rules contained in Judicial Commissioner's Circular No. 11 of 1859 not being affected by the Registration Act (III of 1877), there is nothing in section 49 of that Act which excludes as inadmissible or renders inoperative an instrument executed in the Punjab in 1866. NANAK *v.* CHAILU. **10 P R 1880**

2. *Suit on unregistered mortgage—Defendant admitting amount due on mortgage, but pleading payment—Objection to maintenance of suit on ground of inadmissibility of deed.*

Plaintiffs sued to recover Rs. 320, alleged to have been advanced to the defendant on a mortgage of land. Defendant admitted that Rs. 320 was due to the plaintiffs, but pleaded that he mortgaged the land elsewhere for Rs. 600, out of which he paid Rs. 320 to plaintiffs. It was contended in an application to the Chief Court under section 622 of the Civil Procedure Code, that the plaintiffs' suit should have been dismissed as the mortgage deed on which they brought their suit had not been registered.

Held, that such objection was not maintainable, as upon the pleadings it was not necessary for the plaintiffs to produce the deed of mortgage at all, as the defendant admitted that he had received the Rs. 320 under the mortgage, and the only issue was whether this amount had been repaid. NIAZ GUL *v.* RAM DITTA. **52 P R 1883**

3. *Inadmissibility in evidence of unregistered deed to prove admission of vendor's subsisting title—Adverse possession—Possession as evidence of title—Evidence Act (I of 1872), section 110.*

In a suit by plaintiff for possession of a house, defendant pleaded that he had got the house in proprietary right 30 years ago from the plaintiff's father, but that in 1875 the plaintiff had claimed the house, and defendant had been induced to settle the matter by purchasing it from him for Rs. 180. The deed had not been registered. Plaintiff denied the sale and alleged that defendant had become his tenant in Sambat 1929. The Court of first instance held that the deed was inadmissible, being unregistered and that defendant could not be allowed to prove the sale by other evidence, nor could he plead adverse possession, as, according to his own statement, he admitted the plaintiff's title in 1875 by taking a deed of sale from him. The lower Appellate Court, on defendant's appeal, agreed with the first Court, holding that the circumstances of the execution of the deed could be taken into consideration in conjunction with the evidence on the record as explaining what the defendant's *status* was in respect to the property before 1875.

REGISTRATION ACT (VIII OF 1877)—*contd.*

Section 49—*contd.*

Held, that both the Courts below were in error in taking the deed of sale into consideration as evidence of an admission by the defendant that the plaintiff had a subsisting title in 1875, and that the defendant's previous possession was not adverse : had the plaintiff admitted the sale, it would have been unnecessary for the defendant to tender the deed in evidence : as it was, he was not entitled to take advantage of a transaction, which he himself denied, as amounting to an admission in his favour by the defendant.

Held further, that the defendant's plea could not be regarded as an admission of plaintiff's title having subsisted up to 1875, the allegation being that he had an adverse title, but, on the plaintiff claiming in that year, was induced to compromise the matter by a payment of Rs. 180 in full satisfaction of the plaintiff's rights, whatever they were, and as plaintiff denied that any such compromise took place, defendant was entitled to fall back upon his previous possession, which he alleged to be adverse, and which under section 110 of the Evidence Act was *prima facie* evidence of title. *Hassan* v. *Fazl Wahid* (No. 121 *P. R.* 1882), and *Jodh Singh* v. *Sundar Singh* (No. 122 *P. R.* 1882), referred to. NIHAL CHAND *v.* TEJU.

74 P R 1883

49. *Correlation of Contract and Registration Acts—Registration Act, section 49—Meaning of the words "affect immovable property"—Admissibility of document for other purposes.*

The words "No document shall be received as evidence of any transaction affecting immovable property," in section 49, Indian Registration Act, 1877, mean "no document shall be received as evidence of any transaction, *so far as it affects immovable property.*" *I. L. R. IX Calc.* 520, adopted and followed.

Where, therefore, the plaintiff sued upon a document which was unregistered, and the registration of which was compulsory, claiming :

(1) that the defendants be caused to execute a deed of sale of the land and income in his favour, and to deliver possession ; or failing this relief ;

(2) that the sums expended by him, with interest thereon, be awarded to him ; or

(3) any other relief the Court thought proper ;

Held, that although section 49 of the Registration Act excluded proof of the contract for the purpose of obtaining specific performance of the contract, and in consequence of this provision the contract could not be specifically enforced, there was nothing in that Act to excuse the defendants from performance of their promise, or to deprive the plaintiff of the right given by section 73, Contract Act, *viz.* a right to receive compensation for breach of the contract.

REGISTRATION ACT (VIII OF 1877)—*contd.*

Section 49—*contd.*

A contract does not wholly cease to be enforceable merely because the right to specific performance of it cannot be enforced —it only ceases to be enforceable in that particular manner ; but if there has been a breach of the contract, a right arises to receive compensation which is independent of the right to specific performance, and which may be enforced by action.

Quære.—Whether *masani* income is "immovable property" within the definition of that term contained in section 3, Registration Act, 1877. RAM SINGH *v.* HAR GOBIND.

83 P R 1891

5. *Mortgage-deed relating to immovable property—Deed compulsorily registrable, but registered in wrong Registry Office—Admissibility of deed in evidence—Registration Act,* 1877, *section* 49—*Fraud.*

Held, that the mere fact that a mortgage-deed, which is compulsorily registrable, has been registered in a wrong Registry Office, does not render such deed inadmissible in evidence as against a purchaser at execution sale of the land mortgaged, who, not knowing that such land was subject to mortgage, does not plead that he was misled by the deed not being registered at the proper office. or that he was induced to purchase because, on inquiry, at the latter office, he learnt that there was no outstanding incumbrance.

A plea that the said mortgage was in fraud of creditors, *held*, not established. BASHESHAR DAS *v.* BHAGWAN DAS.

44 P R 1898

6. *And section 50—Unregistered mortgagee claiming priority over transferee by registered deed—Possession—Presumption of ownership.*

The question for decision was whether defendant, who set up an unregistered mortgage of the land in suit from the original owner, had a good and valid claim on the land in respect of his mortgage against the plaintiff, who claimed to be a transferree by registered deed from the heir of the said owner. It was found that the mortgage being for more than Rs. 100, in writing, but not registered, was inadmissible in evidence under section 49 of the Registration Act of 1877, and it was further held that under section 91 of the Evidence Act the place of the document could not be supplied by oral evidence, but it was contended that the defendant was entitled to succeed by reason of his being in possession of the land in question, such possession being presumptive proof of his right.

Held, that as defendant did not claim to be *owner*, there was no rule of evidence setting up a presumption in his favor ; and that therefore the defendant having no title to the land could not claim priority over the plaintiff, the registered transferree from the heir of the original owner. *Chowgatta* v. *Chatar Singh* (No. 18 *P. R.* 1878), cited and followed. *Sudama* v. *Kesho* (No. 102 *P. R.* 1879), *Imam Buksh* v. *Pokhar* (No. 26 *P. R.* 1882), *Hassan* v. *Fazal Wahid* (No. 121 *P. R.* 1882), *Jodh Singh* v. *Sundar Singh* (No. 122 *P. R.* 1882), *Aziz* v. *Ladha Singh* (No. 102 *P. R.* 1883), and *Ghulam Nakshband* v. *Mira Khan* (No. 159 *P. R.* 1883), referred to. MUSHKA KHAN *v.* JAFIR KHAN.

REGISTRATION ACT (VIII OF 1877)—*contd.*

Section 49—*contd.*

126 P R 1884

7. *And section 50—Purchaser under registered deed for Rs.* 600 *claiming possession of land held by prior purchaser by unregistered deed for over Rs.* 100—*Notice—Specific Relief Act (I of 1877), section 27 (b)—Evidence Act (I of 1872), sections 91, 110—Oral evidence inadmissible to prove contents of written contract—Presumption of ownership arising from possession—Compensation for improvements made under bona fide belief of ownership—Plaintiff purchasing with actual notice of prior unregistered sale—Fraud.*

Plaintiff sued the defendant for possession of certain land which he had purchased from the original owner by registered deed for Rs. 600. Defendant, who was found to have been in possession for $2\frac{1}{2}$ years before suit, alleged a prior purchase from the said owner, but his deed of sale was admitted to be unregistered, and being for an amount exceeding Rs. 100, was an instrument which, under section 49 of the Registration Act, would not affect the property. Defendant, however, denied that the original owner had any title to the land purchased from him by the plaintiff, and pleaded that he had made improvements to the value of Rs. 500.

Held, per BARKLEY and BURNEY, JJ., that as the defendant did not allege a contract to sell to him, but an actual sale, it was clear that he could not sue for specific performance, and therefore section 27, clause (*b*) of the Specific Relief Act had no application, and further, that as section 91 of the Evidence Act excludes evidence being given of the terms of a contract, grant, or other disposition of property, when those terms have been reduced to writing, other than the document itself, if it were necessary for the defendant to prove his title, he must fail.

But *held* also following *Imam Buksh* v. *Pokhar* (No. 26 *P. R.* 1882), *Hassan* v. *Fazl Wahid* (No. 121 *P. R.* 1882), and *Pir Baksh* v. *Jhanda Mal* (No. 157 *P. R.* 1882), and distinguishing *Chowgatta* v. *Chatar Singh* (No. 18 *P. R.* 1878), and *Ralla Ram* v. *Harji Mal* (No. 70 *P. R.* 1880), that it was for the plaintiff to prove his own title and to rebut the presumption of ownership, which under section 110 of the Evidence Act, arose, from the defendant's possession, weak as that presumption might be in a case where the defendant could only show possession for $2\frac{1}{3}$ years, and, moreover if the defendant holding the land with a *bona fide* belief that he had become owner was allowed by the real owner

REGISTRATION ACT (VIII OF 1877)—*contd.*

Section 49—*contd.*

to make improvements which had increased its value, he would be entitled to compensation for those improvements, at least, if the plaintiff, when he purchased, had notice that he was holding the land under a claim of right; and if the plaintiff was entitled to recover the land, he must do so on the term of making compensation for improvements so made. *Kunhaya Lall* v. *Kishan Chand* (No. 42 *P. R.* 1866), cited.

It having been found (after a remand directed for enquiry into the point) that the defendant was in possession as owner by purchase and that the plaintiff knew this when he made his purchase, *held*, by *Elsmie* and *Burney*, JJ. that the plaintiff being found to have had actual notice of his vendor having parted with the ownership, even if he knew that the deed of sale was one which, being unregistered, would not affect the land, he could not claim to be put in a better position than the person from whom he purchased; and that, being aware that his vendor was committing a fraud, he could not be allowed to take advantage of such fraud to which he thus made himself a party. *Aziz* v. *Ladha Singh* (No. 102 *P. R.* 1883,) cited. AKBAR *v.* PREM SINGH. **2 P R 1885**

8. *Section 49—Purchaser buying land with notice of prior unregistered mortgage for over Rs.* 100—*Effect of such notice —Fraud.*

The question referred for the consideration of the Full Bench was whether a person purchasing immoveable property with notice of a prior mortgage on the same property for over Rs. 100 in writing but unregistered, can take more than the remaining interest of the vendor, on the ground that the mortgage being unregistered cannot affect the property.

Held, by a majority of the Full Bench (*Barkley*, J. dissenting) that the purchaser in the above case is entitled to oust the mortgagee from possession of the land, although he had notice of the fact that the land was held by him as mortgagee and to take the property free from any charge on it.

Per Barkley, J.—To defeat the purchaser's claim to possession there must be notice, not only that the defendant got possession as mortgagee, but of facts which put the purchaser in a position to ascertain that the defendant was still entitled to retain possession against the mortgagor, and if there is notice of such facts, the purchaser is entitled only to what his vendor would have been entitledto, had the sale not taken place.

Mushka Khan v. *Jafir Khan* (No 126 *P. R.* 1884), and *Mathra* v. *Gurditta* (No. 14 *P. R.* 1885), approved of. *Akbar* v. *Prem Singh* (No 2 *P. R.* 1885), dissented from. *Chowgatta* v. *Chattar Singh* (No. 18 *P. R.* 1878), *Ralla Ram* v. *Harji Mal* (No. 70 *P. R.* 1880), *Arur Singh* v. *Chuhar* (No. 37 *R. R.* 1882), *Aziz* v. *Ladha Singh* (No. 102 *R. R.* 1883), and *Ghulam Nakshband* v. *Mira Khan* (No. 159 *P. R.* 1883), referred to. HARNAM DAS *v.* HIRA. **90 P R 1885**

Cited in. SHANKAR DAS *v.* DAMODAR DAS. **90 P R 1885 Note.**

REGISTRATION ACT (VIII OF 1877)—*contd.*

Section 49—*concld.*

Section 50.

See SECTIONS 3 AND 49 *supra.*

1. *Registered and unregistered mortgage —Priority—Notice.*

Plaintiffs claimed possession of the land in suit by virtue of a registered mortgage for Rs. 100, dated 26th September 1878. The defendants held an unregistered mortgage of the same land for Rs. 50, dated 3rd July 1878, in which it was promised that possession would be given on a specified date, subsequent to that of the mortgage to plantiffs if the mortgage debt was not then discharged. It appeared that the defendants were in possession of the land as tenants prior to their mortgage, and under the terms of that mortgage they were to hold as tenants until the date above-mentioned.

Held, that under section 50 of the Registration Act the registered mortgage must take effect against every unregistered document relating to the same property, not being a decree or order, and that therefore unless plaintiff had notice of the prior contract (which was not pleaded in the present case) in which case he would be bound by it—see section 27 (*b*) of the Specific Relief Act,—he was entitled to be put in possession of the land; and the mortgagor having been in possession at the time of the registered mortgage, he was in a position to give possession to the plaintiffs. ARUR SINGH *v.* CHUHAR. **37 P R 1882**

2. *Registered and unregistered documents—Priority—Notice.*

Held, that the priority conferred by section 50 of the Registration Act on a registered document of the kinds mentioned therein, cannot be claimed where the person in whose favour the subsequent document was executed had notice of the prior title of another person.

The question as to what constitutes notice discussed and explained. AZIZ *v.* LADHA SINGH. **102 P R 1883**

See also GURANDITTA *v.* JOWALA SHAH. **102 P R 1883 Note.**

3. *Priority between registered and unregistered deeds—Notice—Possession.*

Plaintiff claimed possession of certain lands by virtue of a deed of sale executed in February 1880, and registered under Act III of 1877. In reply defendant set up two unregistered deeds relating to the same property, *viz.*, a deed of sale bearing date the 24th May 1876 and a mortgage-deed dated the 5th June 1879, the registration of both instruments being optional.

Held, that under Act III of 1877 plaintiff's deed, being registered, took precedence of defendant's unregistered deeds, the registration of which was optional and the circumstance that defendant's deed of sale was executed before Act III of 1877 came into force made no difference.

REGISTRATION ACT (VIII OF 1877)—*contd.*

Section 50—*contd.*

But *held* also, that if plaintiff had notice of the right of the prior purchaser when he purchassd, he could not without fraud rely upon a purchase from a person whom he knew at the time to have no title, and that in such case he could not claim the advantage given him by section 50 of the Registration Act.

Held further, that possession, being one of the indications of ownership, may in many cases be sufficient notice to the second purchaser to put the duty of enquiry upon him, but to operate as notice, knowledge of the possession should be brought home to him, possession not being in all cases sufficient notice. GHULAM NAKSHBAND *v.* MIRA KHAN. **159 P R 1883**

4. *Priority betwen registered sale and prior unregistered mortgage for Rs.* 100—*Notice.*

Plaintiff sued for possession of an occupancy tenure which he bought from one of the defendants by a registered deed for Rs. 195. The second defendant resisted his entry, alleging that he was already in possession under an unregistered deed of mortgage for Rs. 100. The lower Courts decreed for the plaintiff on the ground that there was no proof that he took with notice of the prior mortgage.

Held, that as the prior deed required registration, and by not being registered did not affect the land, the doctrine of notice did not under the circumstances of the case apply, and that plaintiff was entitled to have the decree in his favor upheld on this ground. *Mushka Khan* v. *Jafir Khan* (No. 126 *P. R.* 1884), followed. *Akbar* v. *Prem Singh* (No. 2 *P. R.* 1885), distinguished. MATHRA *v.* GURDITTA. **14 P R 1885**

5. *Registered and unregistered documents—Mortgagee under subsequent registered deed entitled to priority over holder of decree on prior unregistered deed.*

G. mortgaged a plot of land to A. by an unregistered deed for Rs. 93.

G. subsequently mortgaged the same plot to R. by a registered mortage-deed for Rs. 125 on the 16th January 1878.

On the 18th October 1878, A. obtained a decree against G. on his unregistered mortgage deed.

On the 6th June 1887, R. sued both G. and A for possession under his registered mortgage-deed.

A. pleaded that R.'s registered deed did not take effect against his decree.

Held, that R.'s registered mortgage-deed took effect from the date of its execution against A.'s unregistered mortgage-deed, and the fact that a decree was subsequently

REGISTRATION ACT (VIII OF 1877)—*contd.*

Section 50—*contd.*

obtained on the unregistered deed made no difference, because the competition was in reality between the two deeds and not between the registered deed and the decree. RAM DITTA MAL v. AMIR CHAND.

195 P R 1889

6. *Notice.*

A registered purchaser with notice of an oral mortgage takes subject to the latter. NAJAM-UD-DIN v. AKBAR DIN.

143 P R 1889

7. *Priority—Priority between registered sale and prior unregistered sale of which the registration was optional—Notice.*

The question referred to the Full Bench was whether, when two documents being of the kinds specified in the first clause of section 50 of the Registration Act, 1877, come into competition, the earlier of which the registration is optional being unregistered, and the latter being registered, the question of notice by any means of the prior deed is material. *Held*, that the holder of the latter document is not affected by notice of the former. Civil Judgments 102 and 159 *P. R.* 1883, and 37 *P. R.* 1882, overruled. *Krishnasami Pillai* v. *Venkata Chella Aiyar*, 3 *Mad. H. C. R.* 89, and *I. L. R.* 5 *Mad.* 75 followed. LEHNA v. GANPAT. **115 P R 1890 F. B.**

Overruled by—

56 P R 1900 F. B.

8. *Registration Acts—Priority of registered deed of sale over unregistered deed of mortgage—Explanation to section* 50, *Act III of* 1877—*Deed executed before Act XVI of* 1864 *came into operation—Fraud.*

In a suit for the recovery of possession of a house which the plaintiff had purchased by a registered deed of sale, dated 11th August 1889, the defendants in possession claimed to hold the property under three unregistered mortgage-deeds from the original owner executed respectively in 1863, 1865 and 1873.

Held, by the Chief Court on appeal, that the plaintiff's registered deed of 1889 was not entitled to priority over the defendant's deeds of 1863 and 1865, by reason of the provisions of section 50, Act III of 1877, but that the plaintiff's deed must prevail over the deed of 1873.

Held, also, that the two deeds were clearly antagonistic, inasmuch as the sale deed ignored the charge created by the mortgage, and that no fraud had been established, for that a transfer was not fraudulent merely because the transferee had notice of a prior unregistered transfer.

No. 115 *P. R.* 1890, referred to.

No. 34 *P. R.* 1876, distinguished. DHAN MAL v. GANGA RAM. **95 P R 1893**

9. Lis pendens—*Registered and unregistered deeds—Registration Act,* 1877, *section* 50.

REGISTRATION ACT (VIII OF 1877)—*contd.*

Section 50—*concld.*

Section 50 of the Registration Act, 1877, gives priority to registered documents of certain specified classes, as regards property comprised therein, over unregistered documents relating to the same property, not being decrees or orders, provided, in the latter case, that such decrees or orders are prior in point of date to the registered document.

Where, however, an unregistered mortgagee had already brought his suit to enforce his mortgage, *held*, that a mortgage, by registered deed, of the same property made during the litigation must, in accordance with the principles of *lis pendens*, be treated as subject to the result of the suit. PIR BAKHSH v. KADIR BAKHSH.

32 P R 1898

10. *Priority between unregistered sale with possession and subsequent registered sale—Notice.*

The defendant No. 1 sold certain land on 26th July 1897 to the plaintiffs by unregistered deed for Rs. 95, the money was paid and possession given. Subsequently, in February 1898, he sold the same land by registered deed of sale to defendants Nos. 2 and 3, who accepted their deed of sale with notice of the sale of July 1897. *Held*, by the Full Bench, that when it is proved that a subsequent encumbrancer under a registered conveyance had notice of a valid prior unregistered encumbrance and of possession by such encumbrancer of such conveyance without possession, the Courts are not bound to interpret the Registration Act of 1877, section 50, so as to defeat the title of the prior encumbrancer. *Held, futher, per Robertson*, J. When it is shown that the original transferee was in possession under his transfer at the time of the second conveyance it is to be presumed that the second grantee had notice of the prior title or interest.

Lehna v. *Ganpat and Kaka* (115 *P. R.* 1890, F. B.), overruled.

Kushnamma v. *Suranna* (*I. L. R. XVI Mad.* 148), followed. SHANKAR DAS AND OTHERS v. SHER ZAMAN. **56 P R 1900 F. B.**

Section 75.

And section 77—Suit to compel registration—Omission by plaintiff to present deed for registration within 30 *days of obtaining a decree in such suit—Effect of such omission—Lapse of decree.*

Plaintiffs sued under section 77 of the Registration Act for an order for the registration of a mortgage and obtained a decree from the First Court, which was ultimately reversed on appeal by the Divisional Court, whereupon plaintiff lodged an appeal in the Chief Court and was met by the preliminary objection that as he had failed to present his deed for registration within 30 days from the date of

REGISTRATION ACT (VIII OF 1877)—*contd.*

Section 75—*concld.*

the decree originally obtained by him in the first Court, that decree had lapsed, and could not be revived by any subsequent proceedings taken after the decree had already become void of itself.

Held, that the above objection must prevail: that the terms of section 77 of the Registration Act read with the provisions of the second para. of section 75 of the same Act, show that no registering officer would be bound to obey a decree directing a document to be registered, if it were not presented for registration within 30 days after the passing of the decree; and that it therefore followed that as the plaintiff in the present case did not obey the requirements of the law, and present his mortgage-deed for registration within 30 days of his obtaining a decree, the decree itself became inoperative, and all rights under it lapsed, and the decree having thus become extinct before it was reversed on the merits by the lower Appellate Court, the plaintiff could not by appealing against the latter decision revive the extinct decree. DUDA MAL v. FAQIR MUHAMMAD.

120 P R 1888

Section 77.

1. *And sections* 71 *and* 75—*Suit to compel registration—Omission to execute within* 30 *days decree obtained in such suit—Effect of such omission.*

In a suit brought under section 77 of the Registration Act for an order directing a deed of sale to be registered, registration having been refused both by the Sub-Registrar and the Registrar on the ground of the vendor denying execution plaintiff obtained a decree that the deed of sale be registered in the office of the Sub-Registrar, if presented within 30 days after the passing of the decree. Plaintiff however did not avail himself of this decree by presenting the deed for registration, but defendant having after more than 30 days had elapsed appealed on the merits, the lower Appellate Court reversed the decree of the first Court on the ground that it was not proved that defendant had executed the deed. Thereupon plaintiff filed a further appeal in the Chief Court on the merits, and was met with the objection by the defendant-respondent that the plaintiff's decree had not been executed

Held that this objection was fatal to the plaintiff, as no registering officer would be bound (under the provisions of sections 75, 77 of the Registration Act) to obey an order directing the deed to be registered 30 days from the date of the order of the first Court having long since expired. ABDUL HALIM v. GHULAM MIAN.

70 P R 1887

2. *Suit for decree directing registration of document—Registration Act (III of* 1877), *section* 77—*Valuation of suit—Court Fees*

REGISTRATION ACT (VIII OF 1877)—*contd.*

Section 77—*contd.*

Act (VII of 1870), *2nd Schedule, article* 17 *(vi)—Punjab Courts Act (XVIII of* 1884*), section* 40 *(i) (a).*

Plaintiff sued under section 77 of the Registration Act, 1887, for a decree directing registration of a receipt for Rs. 100 said to have been paid as earnest-money of the price of a house which, it was alleged, defendants agreed to sell for Rs. 2,500. No value was put on the suit in the plaint, which was written on a Rs. 10 stamp, but in his appeal plaintiff valued it at Rs. 100.

Held, that (i) as regards Court fees the suit fell under article 17, clause *(vi)* of the 2nd Schedule to the Court Fees Act, 1870; and (ii) that although the property might have been agreed to be sold for Rs. 2,500 the suit did not "involve directly any question respecting property of the value of Rs. 1,000 or upwards," within the meaning of clause *(a)* of section 40 *(i)* of the Punjab Courts Act, 1884, but was an unclassed suit, of which the value, for purposes of jurisdiction, was Rs. 100 only. MUHAMMAD ZAKARIA *v.* MUSSAMMAT FATIMA BEGAM.

21 P R 1895

3. *Decree directing registration of mortgage deed—Appeal—Registration Act,* 1877, *section* 77*—Further appeal—" Land suit."*

Plaintiff sued under section 77 of the Registration Act, 1877, for a decree directing registration of a deed whereby certain land was mortgaged for Rs. 199. The suit was decreed in the first Court and the deed was duly registered, but subsequently the Divisional Judge, on appeal dismissed the suit. Plaintiff, thereupon, preferred a further appeal to the Chief Court, and it was contended, on his behalf, that no appeal lay from the decree of the first Court, and that, even if an appeal did lie, it must be infructuous, as the document had been already registered and there was no provision of law for the cancellation of registration once effected. For the defendant it was objected that a suit under section 77 of the Registration Act was not a "land-suit" within the terms of section 3 (2) of the Punjab Courts Act, 1884, and that, therefore, no further appeal lay from the decree of the Divisional Court.

Held, that an appeal lay to the Divisional Court from the decree of the first Court, and that the fact that registration had already been effected under that decree was no bar to such appeal being heard.

Held, further, that inasmuch as the mortgage operated to create an interest in land, a suit under section 77 of the Registration Act to secure legal efficacy for the mortgage transaction, was a suit "Relating to a right or interest in land," and that

REGISTRATION ACT (VIII OF 1877)—*concld.*

Section 77—*concld.*

therefore, a further appeal lay to the Chief Court. DEVI DITTA *v.* AHMAD KHAN.

43 P R 1896

4. *Registration—Suit for compulsory registration of a document—Execution admitted but fraud and misrepresentation pleaded—Power of Court to inquire into the validity of such document.*

In a suit under section 77 of the Registration Act where the defence had admitted the execution of a deed but pleaded that it was executed under fraud or misrepresentation and without free consent, *held*, that the plaintiff was entitled to the decree asked for. In suits under section 77 of the Registration Act the Courts are only authorized to consider the question of execution, and have no authority to go into any matter affecting the validity of the document sought to be registered.

Balambal Ammal v. *Arunachela Cheti (I. L. R. XVIII Mad.* 255), and *Raj Lakhi Ghose* v. *Debendra Chundra Majumdar (I. L. R. XXVI Calc.* 668), cited. HAZURI MAL *v.* KUTAB-UD-DIN.

11 P R 1903

5. *Registration—Suit to enforce registration of a document—Execution admitted but fraud and misrepresentation pleaded—Power of Court to inquire into the validity of such document—Registration Act,* 1877, *section* 77.

In a suit under section 77 of the Registration Act, the Civil Court should enquire into nothing more than whether the ostensible executant signed and delivered to the other party the document which he produces for registration, and in cases where it is shown that he signed and delivered the document to the person claiming under it the Court should direct its registration without entering into the question of its validity.

Raj Rakhi Ghose v. *Debendra Chundra Mojumdar (I L. R. XXXVI Calc.,* 668), *Hazuri Mal* v. *Kutab-ud-din* 11 *P. R.* 1903), and *Balambal Ammal v. Arunachela Chetti (I. L R. XVIII Mad.* 255), referred to. NAWAB *v.* ARJAN DAS.

13 P R 1004

Section 87.

See SECTION 23, *supra.*

Section 89.

A sale certificate received in accordance with this section and duly filed in register prescribed in section 51 is not a registered document within the meaning of article 10 of the second Schedule of the Limitation Act. FATTEH SINGH *v.* DAROPADI.

142 P R 1908

REGULATION III OF 1793.

See ACT OF STATE. **6 P R 1867**

REGULATION I OF 1798.

1. *Conditional sale—Foreclosure—Regulations I of* 1798 *and XVII of* 1806*—Mortgagee in possession omitting to sue after*

REGULATION I OF 1798—*concld.*

expiry of year of grace—Mortgagor's right to sue for recovery of land on allegation that mortgage debt was liquidated before expiry of year.

See MORTGAGE. **75 P R 1883**

2. *Mortgage—Conditional sale—Foreclosure—Preservation of right of redemption on deposit of principal and interest within the year of grace.*

See MORTGAGE. **21 P R 1901**

REGULATION II OF 1803.

See ACT OF STATE. **6 P R 1867**

REGULATION XXXVI OF 1803.

See LIMITATION ACT, 1871, SCHEDULE II, ARTICLE 44. **41 P R 1881**

REGULATION XVII OF 1806.

See ESTOPPEL. **155 P R 1882**

See LIMITATION ACT, 1877, SECTION 23. **28 P R 1897**

See LIMITATION ACT, 1877, SCHEDULE II, ARTICLE 10. **30 P R 1892**
87 P R 1893
76 P R 1895

See LIMITATION ACT, 1877, SCHEDULE II, ARTICLE 135.
90 P R 1895 F. B.
35 P R 1899

See MORTGAGE. FORECLOSURE.
22 P R 1910

See PRE-EMPTION. **90 P R 1887**
19 P R 1898

Applicability of.
See MORTGAGE. **Cf. 50 P R 1906**

REGULATION IV OF 1808.

See KANUNGO. **2 P R 1867 Rev.**

REGULATION XIX OF 1810.

This Regulation is applicable to the Punjab. BANSI DHAR *v.* CHHANGA RAM.
7 P R 1908
95 P R 1900

REGULATION VII OF 1822.

See LIMITATION ACT (IX OF 1871) SCHEDULE II, ARTICLE 44.
41 P R 1881

See LIMITATION ACT (XV OF 1877), SCHEDULE II, ARTICLE 46.
25 P R 1883

REGULATION IX OF 1825.

See LIMITATION ACT (IX OF 1871), SCHEDULE II, ARTICLE 44.
41 P R 1881

See LIMITATION ACT (XV OF 1877), SCHEDULE II, ARTICLE 46.
25 P R 1883

REGULATION XI OF 1825.

Section 4.

—Alluvion—Title to land acquired by accretion—Identification of site.

See ALLUVION AND DILUVION.
66 P R 1901

REGULATION IX OF 1833.

See LIMITATION ACT (IX OF 1871) SCHEDULE II, ARTICLE 44.
41 P R 1881

See LIMITATION ACT (XV OF 1877), SCHEDULE II, ARTICLE 46.
35 P R 1888

REGULATION (BENGAL) OF 1836.
See CANTONMENT. 71 P R 1873
38 P R 1877
115 P R 1882

REGULATION II OF 1900.
—*Jurisdiction—Jurisdiction of Hazara Civil Courts over Upper Tanawal tract—Effect of Regulation II of 1900 on suits pending at the time the Regulation came into force.*

Held, by the Full Bench—

(*i*) That the Civil Courts of the Hazara District had jurisdiction over the Upper Tanawal tract prior to the enactment of Regulation II of 1900;

(*ii*) that Regulation II of 1900 has no application to a suit pending in the Civil Courts before it came into force.

Crown v. *Fazal Nur* (6 *P. R.* 1878, Cr.), referred to. SAMUNDAR KHAN *v.* ATTA MUHAMMAD. 73 P R 1904 F. B.

REGULATION VII OF 1901.
Section 87 A.
Jurisdiction of Chief Court to hear civil appeals transferred by Judicial Commissioner of North-West Frontier Province.
See CHIEF COURT.
50 P R 1907 F. B.

REGULATION I OF 1906,
See CHIEF COURT.
50 P R 1907 F. B.

REIMBURSEMENT.
—Person paying money due by another in payment of which he is interested—Obligation of person enjoying benefit of non-gratuitous act.
See CONTRACT ACT, (IX OF 1872) SECTIONS 69, 70. 199 P R 1882
See MINOR. 165 P R 1833

REJECTION OF PLAINT.
See PLAINT—REJECTION OF.

RELATIONSHIP.
1. *Mode of calculating degrees of.*
See DEGREES OF RELATIONSHIP.
2. *Pre-emption based on.*
See PRE-EMPTION, RIGHT OF, ON ACCOUNT OF VICINAGE OR RELATIONSHIP.

RELIEF.
—*General prayer for.*
See PLAINT—AMENDMENT OF.

RELIGION.
A father who was the only living parent and who had the custody of his children and was making suitable provision for their up-bringing should not lose his natural rights on the ground of change of his religion. GUL MUHAMMAD *v.* MUSSAMMAT WAZIR BEGAM. 60 P R 1901

RELIGIOUS ENDOWMENTS ACT, 1863.
See RELIGIOUS INSTITUTIONS.

RELIGIOUS INSTITUTIONS.
1. *Suit by persons interested in shrine.*
See CIVIL PROCEDURE CODE, 1908, SECTIONS 92, 93. 94 P R 1885

RELIGIOUS INSTITUTIONS— *contd.*

2. *Suit for share of offerings.*
See CIVIL PROCEDURE CODE, 1908, SECTIONS 92, 93. 76 P R 1886

3. *Suit by worshippers to restrain alterations of temple property—Right to maintain suit without the consent of the Advocate General.*
See CIVIL PROCEDURE CODE, 1908, SECTIONS 92, 93. 29 P R 1897

4. *Suit for removal of Muhant and for declaration of right to appoint a successor and to enforce the provision of a will.*
See COURT FEES ACT, 1870, SECTION 7. 58 P R 1893
See APPEAL XI—VALUATION OF.
58 P R 1893
56 P R 1895

5. *Customary right of certain persons to perform certain religious ceremonies on behalf of an indeterminate class of persons on property belonging to third parties.*
See CUSTOM VII.—EASEMENTS AND PROFITS. 4 P R 1896

6. *Suit for removal of a Mutwalli and Imam by reason of a change in his religious views—Limitation for such suit.*
See LIMITATION ACT, 1877, ARTICLE 120. 53 P R 1909

7. *Claims to pre-emption by proprietors of.*
See PRE-EMPTION. 100 P R 1885
153 P R 1884

8. *Suit to set aside alienation of shrine property.*
See RIGHT TO SUE. 75 P R 1884
27 P R 1885

9. *Maintenance.*
In a claim for maintenance by a disciple of a religious institution, *held*, that it was wrong to award plaintiff " a reasonable " supply of necessaries," and in the event of further disputes between plaintiff and the *guddee-nashin* a fixed sum; the proper decree was to award simply that plaintiff was entitled to such maintenance as befitted his condition. HOCSAIN SHAH *v.* HUSSUN SHAH. 84 P R 1866

10. *Succession.*
Plaintiff claimed to succeed to a thakoordwara in possession of defendant, on the ground that plaintiff was the *chela* of the last mohunt. *Held*, that as defendant had built the thakoordwara with the consent of the mohunt, and had been named by the latter as his successor with the consent of the city people, while plaintiff's title as *chela* was not clearly made out; defendant was entitled to be maintained in possession. POORUN CHUND *v.* SOONDUR DASS. 32 P R 1867

11. *Succession.*
Parus Ram, Gooroo, had two *chelas*, Mungal Dass and Ramjee Dass (plaintiff). Before his death, Parus Ram verbally appointed Mungal Dass, the senior *chela*, to succeed him until Ramjee Dass should have attained his majority; Mungal Dass sub-

RELIGIOUS INSTITUTIONS— *contd.*

sequently died, having by a written will constituted his *chela*, Rugbeer Dass (defendant) to be his heir and successor. Ramjee Dass claimed to succeed under the original appointment of Parus Ram. Rugbeer Dass contended that Parus Ram could not appoint more than his *immediate* successor. *Held*, that the custom of the institution did not sanction the appointment of an intermediate director of the *guddee* pending minority of the intended successor, so as to give a title to the latter. Plaintiff's suit dismissed, and the appointment of Rugbeer Dass upheld. RAMJEE DASS *v.* RUGBEER DASS. 52 P R 1867

12. *Birt.*
Where there are two *parohits* in a village, either has a right to collect *birt* from those of the villagers who prefer him as their priest; but effect may be given by the Courts to any valid contract between the priests for division of the fees. RAM KISHEN *v.* DOONEE CHUND. 62 P R 1867

13. *Management of affairs of the institution.*
A mafi had been released by Government for the support of a thakoordwara. The grant was originally made to S. B. who left four *chelas* (one of whom was the plaintiff). After the death of S. B. the *chelas* jointly administered the grant. Defendant claimed the exclusive right to administer, on the ground that he was mohunt in succession to S. B.—*Held*, that even if defendant had succeeded S. B. as mohunt by virtue of his connection with another temple (which was not satisfactorily shown,) there was evidence of a custom to support plaintiff's case, *viz.*, that the administration of the grant should be given to the disciples jointly. In cases of dispute as to the management of religious endowments, the general presumption is that the *mohunt* alone is entitled to administer; but the decision as regards any particular institution must be guided by the custom pertaining to that institution. RAM SOOKH DASS *v* PERMESHREE DASS. 76 P R 1867

14. No Muhammadan or Hindu official can claim a prescriptive right to render certain services to any member of his faith. GHUNIA *v.* BOOTA. 94 P R 1867

15. *Wakf—Property—Inheritance—Sujadanashin and Mutwalli.*
The offices of the two are distinct; the former is charged with the spiritual affairs of the endowment, and the latter is trustee of its temporal affairs.

No property should be considered *wukf* unless specially appropriated by the donor.

Property attached to a *khangah*, if not specially devoted to religious uses, may be subject to the ordinary laws of inheritance. HOSSEIN SHAH *v.* ZAHOOR SHAH. 67 P R 1868

16. *Presumption.*
A grant of land made by the proprietors to a person in consideration of his acting

RELIGIOUS INSTITUTIONS—*contd.*

as *imam* of the village mosque, is of the nature of a grant to a village servant, and tenable only during the pleasure of the grantors. But if the grant be made jointly by the village proprietary body, and their shares are joint, the grant is resumable only as a whole and not piecemeal; and it cannot be resumed until proprietors representing the major part of the property of the village, desire to resume it. MAZOOLA *v.* BAHADUR KHAN. **70 P R 1868**

17. *Wukf.*

The consignment and delivery of consecrated real property to a Mutwalli is not necessary to render a *wukf* legal; a bare declaration in words is sufficient, and no particular formality or ceremony is necessary to make the declaration binding and the appropriation complete; but there should be clear proof that such a declaration has really been made; and this should not be hastily presumed from casual remarks let fall by the alleged appropriator in the course of conversation unsupported by his acts and conduct. The only things capable of being appropriated by user alone are those mentioned in Chapters VII and VIII, Book IX of Baillie's Digest of Muhamadan law, *viz.* mosques, caravanserais, cemeteries, inns, reservoirs, ways and aqueducts. Buildings susceptible of use for secular as well as religious purposes such as *imambaras*, cannot be so appropriated. Once created, a *wukf* is irrevocable. THAKOOR DASS *v.* MUSSAMMAT HAJEE BEGUM. **100 P R 1868**

18. *Protection of sacred buildings.*

A, a Hindu, purchased a piece of land from *B*, a Muhammadan, owner of the village, and built a temple and located a priest thereon. At Settlement the priest was recorded *mafidar* for life; and on his death the descendants of *B* took possession, while the descendant of *A* claimed the proprietary rights. The Lower Courts found for the descendants of *B*. *Held*, in appeal, that the latter could not destroy the temple as long as there were worshippers at the shrine. ASA NUND *v.* RAJA SHUMSHER KHAN.

3 P R 1868 Rev.

19. *Succession—Custom.*

The Punjab Civil Code (section XXII, para 6) laid down the general rule, but did not obviate the necessity of an enquiry into the usage of a particular institution,—The Chief Court directed an enquiry into the customary succession of a dhurmsala and the neighbouring dhurmsalas occupied by the same section of faqirs, where the contest was whether plaintiff was to succeed on the ground of discipleship, or the defendant on the ground of his election by the neighbouring faqirs. ADJOODIA DASS *v.* DEVI DASS. **73 P R 1869**

20. *Mutwalli—Tenure of office by, consistent with right of worshippers to restrain his acts—Power of, to determine what is for benefit of mosque*

RELIGIOUS INSTITUTIONS—*contd.*

In a suit brought by the worshippers at a mosque to restrain the Mutwalli from encroaching upon the enclosure of the mosque—*Held*, that the plaintiff's remedy was not necessarily by obtaining the removal of the defendant from the office of Mutwalli; but it was consistent with the defendant's right to be Mutwalli; and to continue in the trust, that the plaintiffs should have the right to restrain him by an order of Court from doing a particular act. *Held*, also, that the defendant's right to encroach upon the enclosure of the mosque depended either upon his power as Mutwalli to determine whether the encroachment was for the benefit of the mosque, independently of the opinion of the plaintiffs; or upon the question whether the defendant *bona fide* permitted the encroachment for the benefit of the mosque. *Found*, also, that the defendant had not as Mutwalli power to determine whether or not an encroachment of the sort was for the benefit of the mosque independently of the opinion of the worshippers. WULLEE OOLA *v.* KURREEM BUKHSH. **81 P R 1869**

21. *Sikh temple at Umritsar—Office of "Grunthee" or "Guddee Nusheen" not a descenndible inheritance.—Special offerings intended for use of "Grunthee" are not joint family property.*

The plaintiffs and defendant were cousins, and grandsons of one Mukkun Singh, who was some time *Grunthee* of the Temple at Umritsar. During Mukkun Singh's lifetime the defendant had officiated as *Grunthee* or *Guddee Nusheen*, and continued to do so after his grandfather's death. Certain special offerings called *ardass* went to the *Grunthee*, and these offerings the defendant shared with the plaintiffs during their grandfather's life-time, and for a time after his death. Disputes then arose, and the defendant refused any longer to share the *ardass* with the plaintiffs. *Held*, that in the absence of an agreement binding between the parties that the plaintiffs should receive a share of the *ardass*, they had no claim to any such share; that the office of *Guddee Nusheen* was not a descendible inheritance; that the *ardass* was not joint family property, but went separately to the *Guddee Nusheen*, though he was a member of a joint undivided Hindu family; and that only what was thrown into the joint family funds must be divided equally between the parties. NOWRUNG SINGH *v.* BHUGUT SINGH.

4 P R 1870

22. *Power of Court to appoint imam—Act XX of 1863, section 22.*

Under Act XX of 1863, a Court can declare the right of a particular person to appoint the *imam* of a mosque, but cannot nominate the *iman* or declare a given nomination to be right. BUDDER DIN *v.* MULLIK ATTAR. **35 P R 1871**

23. *Right of member of parohit's family to a share in birt.*

RELIGIOUS INSTITUTIONS—*contd.*

Defendant, a *parohit*, received *birt* or fees from pilgrims who stopped at defendant's house. Plaintiff, on the ground of relationship, claimed from the defendant a share of these fees; the defendant resisted the claim with the plea that he obtained the fees by performing services, and the plaintiff without rendering any services was not merely as a relative entitled to share in the fees. The Lower Courts held this plea a good answer to the action, and dismissed plaintiff's suit. *Held*, by the Chief Court, remanding the case for a new trial, that such a suit as the plaintiff's might be maintainable if there were any relation of ancestral right or contract or customary proceeding between the parties, giving rise to a liablity on the part of the *parohit* to allow his relative to share in the fees. RAM RUTTUN *v.* GORI. **38 P R 1872**

24. *Suit for profits of a shrine—Res judicata—Effect of decision upon property in foreign territory—Jurisdiction of Small Cause Court.*

Sodi Utum Singh had four sons—*viz.* Ranjit Singh (father of plaintiff) by his first wife, and the three defendants by his second wife. Plaintiff sued for Rs. 148-8-3, being a share of the profits of a share at Kiratpur in the Jullundur district, claimed by him on the ground that by custom the sons of the senior or first married wife were entitled to a tenth share in addition to what they would obtain on division. Plaintiff based his claim on a decision of the Political Agent, Ambala, (dated 14th December 1837), which then determined a dispute between the defendant and plaintiff's father relating to Utam Singh's estate, and which, the plaintiff now contended, judicially established the custom in his favour and made the matter *res judicata*. The Political Agent's order was—"to divide the "estate in the following way—*viz.*, that "each of the four brothers was to have "an equal share, and Sodi Ranjit Singh, "(plaintiff's father,) the eldest son, was to "have a tenth share of all the property, "both movable and immovable, in addition "to his regular share." *Held*, that this decision only affected property situated in British territory, and did not therefore extend to the Kiratpur shrine, which at the time of the decision was in territory under the rule of Maharajah Ranjit Singh; and that the matter in suit was not consequently *res judicata*. *Held*, also that the claim was not one of the nature cognizable by a Small Cause Court. SODI BRIJ BULLAB SINGH *v.* SODI KARTAR SINGH.

41 P R 1872

25. *Private or separate estate of members—Custom.*

Plaintiff, mohunt of a religious institution, sued the defendant, a member or *suniassi*, in order to be recorded pro-

prietor of certain land, as head of the institution, which land defendant alleged he had purchased from his own resources. *Held*, that the position of *suniassis* being in many cases such that they could not acquire private property, and all that they acquired went to the benefit of the institution, the proper points for inquiry were,—first what was the custom of *suniassis* generally as to holding private property; secondly, what was the practice of this institution, and was that practice sufficiently in conformity with general custom to be enforceable. TOTA PURI *v.* PADAM PURI. **21 P R 1874**

26. *Succession of females.*

Plaintiff, a female, *found* to be entitled to succeed as *mohant* of a religious institution, having been nominated successor by the deceased *mohant*. MUSSAMMAT MUNNIA *v.* JIWAN DAS. **76 P R 1874**

27. *Nature of relationship—Office of* parohit—*Hereditary right of heir of deceased* parohit *to sue for fees paid to another* parohit.

A. and *B.* were members of a family of *parohits*. Under an arrangement between the ancestors of both, it was settled that *A.*'s ancestor *C.* should receive the fees paid by the *jujmans* during two months of each year. This arrangement was carried out during *C.*'s lifetime, and after his death his widow received the dues in his place. At her death, certain *jujmans*, erroneously thinking that *B.* was the heir of *C.*, and that *A.* had no pretentions to be such heir, paid their fees to *B.* during the said months. *A.*, *C.*'s daughter's son, sued *B.* to recover the amount so paid.

Held by a Full Bench (BOULNOIS, LINDSAY and CAMPBELL, JJ.), affirming the order proposed by PLOWDEN, J., and dissenting from that of FITZPATRICK, J., that the suit would lie.

Per PLOWDEN, J.—The office of *parohit* was hereditary as amongst his successors and descendants, and gave the heir the right to share the emoluments of the office; but the relation of *parohit* and *jujman* was voluntary, the latter being at liberty to pay his fees to the priest of his own choice, and the *parohit* being entitled to exercise his office in his individual capacity and retain the fees paid to him in that capacity as his own,—in what capacity a particular fee was received being a matter of evidence in each instance. *A.*, as daughter's son of *C.*, was the heir of *C.*, and entitled to recover from *B.* the fees received by the latter during the appointed months.

Per FITZPATRICK, J.—At a time when the exclusive right of a *parohit* to minister to and receive fees from his *jujmans*, was recognized by the Courts, the claim of *A.* would have been maintainable, but as the office was now, as between *parohit* and *jujmans*, voluntary, the question of hereditary right could not arise. A contract between the relations of a deceased *parohit* as to officiating at different seasons and their shares in the fees, might be enforced, and a fee paid to one *parohit*, but intended for a whole collective body, might be recovered from the receiver of it. As *A.* sued as heir of *C.*, his suit should be dismissed. GOBIND *v.* SADDA. **7 P R 1877**

28. *Donation made to member of family of priests—Express exclusion of specified* parohit *from benefit of donation.*

Where a *jujman* in making a donation (birt) to a member of a family of priests intentionally and expressly excludes another member of the family from the benefit of the donation, *held*, that the latter is not entitled upon the mere ground of hereditary right to recover the whole or a part of the donation so made to the recipient. MATHRA *v.* KANHYA. **119 P R 1879**

29. *Jurisdiction of Civil Court—Suit for the right to a religious office—Custom—Kangra Bhojkis of Bhowan shrine—Right to officiate at temple.*

A suit by a family of priests for a decree prohibiting another branch of the family from conducting religious services in a shrine, *held*, to be cognizable by the Civil Courts.

Found that by the custom of the Bhojkis of the Bhowan shrine at Kangra, only Bhojkis by wives who are the daughters of Kangra Bhojkis are entitled to officiate at the temple, and not sons of Kangra Bhojkis by daughters of Jawala Mukhi or Naina Devi Bhojkis. BHAG MAL *v.* SANT. **27 P R 1880**

30. *Alienation by manager of property attached to institution—Necessity.*

A *mohant*, who holds the position of manager of the property of a religious institution, has the power in that capacity to alienate such property, if it is necessary to resort to this means of raising money for the purposes of the institution.

In considering whether it was necessary to raise money for the purposes of the institution, the income as well as the necessary expenses of the institution must be taken into account, and it should further be shown how much of the money was required for such purposes, the power to incur debts binding the institution must be measured by the necessity of incurring them. *Shahabal* v. *Ram Das* (No. 95 *P. R.* 1879), referred to. BISHEN DAS *v.* GHASITA. **39 P R 1882**

31. *Relative position of* mujawars *and* sajjada-nashin *of shrine—Liability of* mujawars *to dismissal at will of* sajjada-nashin—*Custom of Peshawar District—Suit for declaratory decree.*

A suit brought by certain *mujawars* of a shrine in the Peshawar district for a declaration that they were entitled to receive a third share of the offerings of the shrine whilst the defendant (who it appeared was the *sajjada-nashin*) was entitled to the other two-thirds, dismissed on the ground that it was fully established by the evidence in the case that *mujawars* generally in the shrines of the Peshawar District were servants liable to be dismissed by the *sajjada-nashin* at pleasure; and that the plaintiffs had failed to prove that they, owing to the post having come down to them from three generations, or for any other cause, were on a more privileged footing; and that this being so, they were not entitled in a suit for a declaratory decree, to require the Courts to define and ascertain their rights. MUHAMMAD TAHIR *v.* NAJIBULLA. **154 P R 1888**

32. *Succession to office of* mahant—*Custom of Institution—Onus of proof—Nomination or election—Will of deceased* mahant.

Plaintiff sued to dispossess defendant from a shrine and property which he held as *mahant* elected by the brotherhood, on the strength of a will executed by the last *mahant*, nominating him as his successor and alleged to have been confirmed (after registration) before the brotherhood.

Held that to succeed in his suit, plaintiff had to show that he had a better title than defendant, that is, that according to the rule of succession governing that particular shrine he as nominee of the last *mahant*, had a right to oust defendant, and that as he had failed to prove this, his suit failed. GURDIT SINGH *v.* RANJIT SINGH. **87 P R 1889**

33. *Custom—Succession—Bairagis of Rawalpindi—Nomination—Election—*Chela.

J., the *mahant* of a Bairagi shrine at Rawalpindi, executed a will whereby he nominated his own brother R., as his successor. It was found that the will was not executed in the presence, or with the consent, of the members of his religious brotherhood, and that R. had never been initiated as a *chela*. *Held* that by the custom applicable to the institution to which the deceased *mahant* belonged, a *mahant* may appoint his successor from among his *chelas* with the approval of an assembly of the religious brotherhood, and some of the respectable *chowdhris* of the place, and if one has not been so appointed in the life-time of the said *mahant*, that he is elected by an assembly of the brotherhood on the death of his predecessor, and that defendant's nomination, not being of this character, failed and must be set aside. BABU RAM KAUR DAS *v.* GOPAL DAS. **175 P R 1889**

34. *Custom—Alienation—Nirmala Sadhs of Amritsar—Power of* chela *to alienate property inherited from* guru.

Found that by the custom of Nirmala Sadhs of Amritsar, a *chela* who succeeds to

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the estate of his Guru has no power to alienate any portion of that estate. RAM SINGH *v.* NIHAL SINGH. **136 P R 1889**

35. *Suit to recover possession of shrine —Civil Procedure Code,* 1882, *section* 539—*Right of* sewaks *or worshippers to remove a* mahant *for alleged misconduct*—Onus probandi.

In a suit by a person claiming as the lawful *mahant* of a shrine for recovery of possession thereof and of the lands attached thereto, defendant who had been elected *mahant* by the worshippers of the shrine pleaded *inter alia* that section 539, Civil Procedure Code, barred the suit. *Held*, that section 539 had no application to such a suit; that section deals with two classes of cases—(*i*) where there is an alleged breach of any trust created for public, charitable or religious purposes, and (*ii*) where the direction of the Court is necessary for the administration of any such trust. On the facts of the case, *held*, that the defendant, on whom the *onus* lay, had failed to prove—(*i*) that by general or special custom, the worshippers of a shrine were competent to remove a *mahant*, and to appoint his successor, and (*ii*) that the plaintiff had acquiesced in his removal. BAWA SUKHRAM DAS *v.* BURHAM PURI. **122 P R 1890**

36. *Nirmala Sadhs*—Mahant—*Nomination of* chela *by, as his successor—Consent of* gurbhai.

Found that no custom was proved whereby among Nirmala Sadhs the nomination of a *chela* by a *mahant* as his successor was invalid as having been made without the consent of a *gurbhai*. BHAI CHET SINGH *v.* BHAI NIHAL SINGH. **37 P R 1891**

37. *Sadhs—Alienation—Power of father to alienate his life estate.*

Found, that no special custom applicable to the parties who were *sadhs* (Bairagis) was proved justifying a departure from the usual rule in the Punjab, that a proprietor with a restricted power of alienation can, even in the case of ancestral property, deal with such property so as to bind the heirs during his lifetime. FATTEH SINGH *v.* HARI AND OTHERS. **112 P R 1891**

38. *Golden Temple, Amritsar—Succession of* gaddi-nashin,—*Custom as to—Survivorship.*

In determining the right of succession to the office of *gaddi-nashin*, the only law to be observed is to be found in the custom and practice, which must be proved by evidence.

Hitherto the rule of succession in the case of the Darbar Sahib, or Golden Temple at Amritsar, has been that the *gaddi-nashins* have nominated successors who have been installed in each case without objection.

Held, that no good grounds existed for applying the doctrine of survivorship to a case such as this, there being no analogy

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between three *gaddi-nashins*, who were to all intents and purposes separate and not joint, and the case of an undivided Hindu family among whom the doctrine of survivorship prevails.

Held, also, that it would not be just or equitable to reduce the customary number of *gaddi-nashins* from three to two, merely to benefit the plaintiff and to the detriment of the insttution and its supporters. BHAI BHAGAT SINGH *v.* HARNAM SINGH. **49 P R 1892**

39. Dharmsala—*Right of worshipper at, to contest alienation of property attached to —Application of section* 539, *Civil Procedure Code.*

The plaintiffs were worshippers at a *dharmsala* and interested in the maintenance of the institution and preservation of the property intact.

Held, that in this capacity they had a *locus standi* to challenge certain alienations of property alleged and found to be *waqf* and attached to the *dharmsala*, not as self-constituted representatives of the body of worshippers who should have obtained an order under section 30, Civil Procedure Code, but as persons themselves interested in the preservation of the property.

Held, further, that section 539, Civil Procedure Code, has no application to a suit of this description. SEWA SINGH *v.* BUDH SINGH. **66 P R 1892**

40. *Right to sue—Habitual worshipper at mosque—Ejectment of trespasser.*

In a suit by one who was a habitual worshipper at a certain Muhammadan mosque, of which he was also a neighbour and a supporter or well-wisher, for the ejectment of the defendant from certain land alleged to be attached to the mosque and to have been unlawfully encroached upon, the Divisional Judge dismissed the plaintiff's suit, holding that he was not competent to maintain it.

Held, that the suit would lie. Every Muhammadan who has a right to use a mosque is competent to maintain a suit against any one who interferes with the exercise of his such right to use; and by the same analogy every Muhammadan has a right to maintain a suit against persons who commit an injury upon property which has been devoted to the support of a mosque. MUHAMMAD UMAR *v.* RAM CHAND. **87 P R 1892**

41. *Custom—Succession to office of* mahant—*Dharmsala Thakar Bahawal Singh, Amritsar—Nomination of successor—Approval of brotherhood.*

In a suit regarding the succession to the office of *mahant* of the *dharmsala* of Nirmala Sadhs, known as Thakar Bahawal Singh, situate outside the city of Amritsar, *held*, that by custom the rule of succession was that the *mahant* may nominate his successor, but that the nomination will not prevail unless the brotherhood formally approve the appointment.

RELIGIOUS INSTITUTIONS—*contd.*

If there be no nomination, then the brotherhood meet and formally appoint.

If the *mahant* misconducts himself the brotherhood have the power to dismiss him.

The brotherhood, strictly speaking, are those connected by spiritual ties with the founder of the institution, although it apparently may be held to include also the whole sect who are also related to each other by spiritual ties.

No. 37 *P. R.* 1891 referred to. ARBEL SINGH *v.* BAJ SINGH. **105 P R 1892**

42. *Muhammadan shrine, Dera Ismail Khan District—Succession to land and offerings—Alienation—Religious office.*

J. M., who died about a year before suit, was owner of half the land attached to the Shah Habibwala khangah in the Dera Ismail Khan District and was entitled to a half share in the management and offerings of the shrine; he settled this property on N. M., his sister's son, on condition that he (the grantor) should receive maintenance during his lifetime.

The plaintiffs, members of the family and related to J. M. in the fourth degree (computed in accordance with the opinion expressed in No. 126 *P. R.* 1890) were entitled to a two-thirds share of the other moiety of the management and offerings, sued to set aside the above arrangement on the grounds (1) that the property was *waqf*; and (2) that J. M was not competent to make the alienation.

Held, that by custom the plaintiffs were entitled to inherit the share in the management and offerings in preference to N. M., a sister's son, his place being after collaterals related in the fourth degree.

Held, also, that assuming that J. M. as proprietor could alienate only for necessity, there appeared to be satisfactory reasons for holding that the alienation of the land was justified by necessity. The land was simply heritable property unconnected with the shrine, save that hitherto both had belonged to the same people.

Held, also, that the shrine must be regarded as a religious institution of a sort. It could not be regarded as a *waqf*, it being nowhere laid down that a mausoleum raised to a saint is to be so treated. The succession to the superintendence and management of the shrine are to be determined by the rules and customs which have hitherto been applied to the particular institution, as in other like cases.

Held, further, that the transfer of a share in the shrine and the offerings was akin to the transfer of a religious office and was invalid. *I. L. R. VI Mad.* 76, referred to and followed. NUR MUHAMMAD *v.* GHULAM HABIB. **106 P R 1892**

43. *Management of religious institution—Founder's rights.*

There is no authority for the proposition that the management of a Hindu religious or charitable institution is on the footing of a joint tenancy and that the succession goes

to the survivor. SAIN DAS *v.* MUSSAMMAT SAHIB DEVI. **140 P R 1892**

44. Mahant, *appointment or deposition of—Powers of* bhekh—*Jurisdiction of Civil Court—Chitta Akhara, Amritsar City.*

Questions of succession and appointment to, and dismissal from the office of *mahant* must be governed by the evidence in each case.

In a case relating to the mahantship of the Chitta Akhara, Amritsar city, *found*, on the evidence, that the *bhekh*, or college of *mahants*, when composed of the *mahants* of the principal *akharas* at Amritsar, including *mahants* nominated by the *guru* of the *mahant* who has to be dealt with, has full power to remove a *mahant* for misconduct, and that in the event of a vacancy in the mahantship, whether caused by the removal or otherwise of the *mahant*, a successor can be validly appointed only with the sanction of, or ratification by, the *bhekh*.

Held, that when a *mahant* has been appointed by the *bhekh*, a Civil Court should not interfere with the appointment except for very cogent reasons.

Quære : whether a Civil Court, after it has once held that a *bhekh* has power to depose a *mahant* for misconduct and has actually deposed him, can go into the question whether such *mahant's* conduct was or was not bad. GIYAN PARKASH *v.* HUZURA SINGH.

3 P R 1899

45. *Suit by plaintiff as* mutwali *of mosque—Dismissal of suit and death of plaintiff pending appeal—Application by persons named by plaintiff in plaint as* co-mutwalis *to be brought on record as legal representatives—Burden of proof.*

One I. B. sued as *mutwali* of a certain mosque, and in his plaint named the present appellants as joint *mutwalis* with him, but at the time resident at Mecca, I. B., whose suit was dismissed in the District Court, appealed to the Chief Court but died pending the appeal, whereupon the appellants applied to be brought on the record as the legal representatives of the deceased. The Chief Court refused to allow this to be done until appellants had proved by a regular suit that they were joint *mutwalis* with deceased, the appeal of I. B. being meantime postponed. Appellants accordingly instituted the present suit, but their claim was dismissed. On appeal to the Chief Court it was contended that inasmuch as appellants had been named by I. B. as his co-trustees, there could be no objection to their obtaining a decree declaring them his legal representatives for the purpose of continuing the appeal originally preferred by him, without going into the question of how they may have become co-trustees.

Held, that, in accordance with the previous order of the Chief Court, it was incumbent on appellants to prove their *status* as joint *mutwalis* with the deceased

before their application to be brought on the record could be entertained.

Held, on the evidence, that appellants had failed to prove that they were the duly appointed joint *mutwalis* of the mosque in question, and that accordingly, whether defendants' title to retain possession of it was good or bad, appellants had no right to interfere in its management. ABDUL HAMID *v.* AHMAD HUSSAIN. **28 P R 1900**

46. *Jurisdiction of Civil Court to remove* kardar *or manager from the management of the endowed property*—Locus standi *of plaintiff—Act XX of* 1863, *sections* 14 *and* 18—*Regulation XIX of* 1810.

In a suit which was instituted after sanction of the District Judge under section 18 of Act XX of 1863 by some of the tenants of the land endowed on two temples in Kulu along with several others against the defendants, who was the *kardar* or manager, asking for a decree for the money value of the property belonging to the temples, which was alleged to have been misappropriated by the defendant, the first Court gave a decree for the major portion of their claim and directed his removal from the office of *kardari*. On appeal the Divisional Judge found that the defendant was not responsible for the loss for property, but upheld the order of his removal. The defendant preferred a further appeal to the Chief Court on the grounds—

(*i*) that the order of dismissal was without jurisdiction, as Act XX of 1866 was not applicable ;

(*ii*) the plaintiffs had no *locus standi* ;

(*iii*) no legal permission has been obtained ; and

(*iv*) the order of dismissal was not justified.

Held, that Bengal Regulation XIX of 1810, was extended to the Punjab by general rules and orders which were given the force of law by the Indian Councils Act, and that Act XX of 1863 is applicable to this Province : that the endowment, the subject-matter of the present dispute, was one of the nature of those contemplated in that Act ; that the suit had been rightly instituted after obtaining permission under section 18 ; and that the facts that the application asking permission made no mention of the Act, and that all the plaintiffs were not applicants for permission to sue, did not constitute defects vitiating the order for the dismissal of defendant from managership.

Budder Din v. *Mulik Attar* (35 *P. R.* 1871) and *Sukhram Das* v. *Sundar Mal* (75 *P. R.* 1884), referred to. GOKAL RAM *v.* KAHANI RAM AND OTHERS. **95 P R 1900**

47. *Management of—Funds of the temple —Worshippers not entitled to call for accounts from the* mahant *unless there is proof of a custom or practice entitling them to do so—Civil Procedure Code,* 1882, *section*

539—*Sanction—Court cannot grant relief outside the sanction.*

Where the plaintiffs had applied for permission under section 539 of the Code of Civil Procedure to sue to have a committee appointed by a Civil Court for the management of a certain religious trust, and to obtain such other relief as they might be entitled to under the said section and the Collector had merely accorded permission."

Held, that the suit must be limited to matters covered by the sanction and that the plaintiffs were not competent to sue for the removal of the defendant from the office of *mahant*, the Court having no authority to enlarge the scope of the suit and to grant any other reliefs other than those included in the terms of the sanction.

Held, also, that the *mahant* of a religious institution is presumed to be the manager of the institution over which he presides, and is not bound to submit accounts for the information or approval of the worshippers at the shrine unless it is proved by evidence that it is the custom and practice of the institution for him to do so. Civil Courts are not justified in forcing a scheme of management on a religious or charitable institution unless there is clear proof that there has been such mismanagement or misconduct as calls for judicial interference. PREM SINGH *v.* LABH SINGH AND OTHERS.

89 P R 1901

48. *Religious Institution—Alienation of immovable property belonging to a shrine—Power of* mahant—*Necessity—Burden of proof.*

Held, that the powers of a *mahant* of a religious institution in matters of alienations of the endowment property are analogous to those of a Hindu widow. He can only alienate for the necessary purposes of the institution, and it should be shown that such purposes could not be fulfilled by contracting debts, and, that the ordinary income of the endowment was not available, and was insufficient for them, and that the debts could not be discharged from the income.

The lender advancing money to such a person on the security of trust property must show that he has made a proper enquiry as to the necessity, which will be tested by the principles enunciated above.

Prosunno Kumari Debya v. *Gulab Chand Baboo* (14 *B. L. R.* 450), and *Shahabal* v. *Ram Das* (95 *P. R.* 1879) cited. KASHI RAM *v.* BAWA TOLA. **3 P R 1902**

49. *Religious Institution—Management of Religious Institution—Founder's right—Bungah Nur Mahlyanwala, attached to Golden Temple, Amritsar.*

Held, that the *bungahs* in the outer quadrangle of the tank of the Golden Temple, according to Hindu Law, were (where the nature of the property remains unchanged and its management at the discretion of the founder or his representatives) imperfect

trusts and not religious institutions pure and simple, and that the *bungahis* were not equal in status to *mahants*. KISHEN SINGH *v.* SARDARNI PARTAB KAUR. **81 P R 1902**

50. *Religious Institution—Liability of, for debts incurred by* mahant—*Duty of lender when advancing money to heads of religious institutions—Necessity.*

Held, that it is not sufficient for persons who lend money to heads of religious institutions and desire to charge the institution with liability to show that the purposes for which the loans are taken are necessary, but they must also show that they made inquiries and satisfied themselves that on the occasion on which they made the advance the loan was justified by the state of the institution's finances.

Kashi Ram v. *Bawa Tola* (3 *P. R.* 1902), cited and followed. GURMUKH SINGH *v.* SUNDER SINGH. **45 P R 1903**

51. *Religious institution—Suit by person interested in endowed property for dispossession of an assignee of the last manager—Limitation—Limitation Act*, 1877, *Schedule II, article* 120.

In 1899 plaintiff brought a suit as a worshipper to contest an alienation made in 1889, by the last manager of the endowed property and asked for the dispossession of the assignee in favour of the endowment, *held*, that the limitation applicable to such suit was that prescribed by article 120 of the Second Schedule to the Limitation Act, and that time began to run for the purposes of limitation from the date of the alienation.

Narain Singh v. *Ishar Singh* (8 *P. R.* 1899), *Behari Lal* v. *Muhammad Mutaki* (*I. L. R. XX All.* 482), and *Chukkun Lal* v. *Lolit Mohan Roy* (*I. L. R. XX Calc.* 906), referred to. ASA RAM *v.* PARAS RAM. **9 P R 1904**

52. *Religious Institution*—Mahant—*Right of supporters or worshippers to remove a* mahant *for immorality.*

In a suit by a person claiming as the lawful *mahant* of a *dera* for recovery of possession thereof and of the lands attached thereto, where it appeared that the plaintiff enticed away a young widow from the village and had gone off with such property belonging to the *dera* as he was able to seize, and deserted the *dera* which had been entirely supported by the villagers, and in the arrangements for which they had always taken a predominant part, and had after the plaintiff's desertion installed another *mahant* in his place and to which appointment the *bhek* had taken no exception, either as to the rejection of plaintiff or as to the appointment of the substitute in his place.

Held, that the plaintiff's conduct being unworthy of his office, the worshippers of the *dera* were fully justified in removing and competent to remove him and to appoint his successor.

Bawa Sukhram Das v. *Barhampuri* (122 *P. R.* 1890) and *Giyan Parkash v. Hazura Singh* (3 *P. R.* 1899), referred to. ASA RAM *v.* HARI SINGH. **53 P R 1904**

53. *Religious Institution—Endowment—Succession to endowed property—Right of a son or widow to succeed—Udasi Sahds.*

Held, that according to general principles regulating the devolution of endowed property belonging to a religious institution of Udasi Sadhs, where the last incumbent dies without leaving a spiritual disciple or *chela*, the endowment reverts to that order, and that a claim by a son or widow of the last incumbent to succeed to such property under the ordinary law of inheritance is not maintainable HAR DEVI *v.* CHARN DAS. **101 P R 1905**

54. *Religious Institution—Succession to office of* mahant—*Right of a son to succeed—Udasi Sadhs of Ludhiana district.*

Held, that, by the custom prevailing among married (Bindi) Udasi Sadhs of the Ludhiana district, the son of a deceased Bindi Mahant of a religious institution has a right as such to succeed to the office and property appertaining to such institution.

Har Devi v. *Charan Das* (101 *P. R.* 1905) and *Ram Singh* v. *Nehal Singh* (136 *P. R.* 1889) referred to. DASAUNDHI RAM *v.* KHAZAN DAS. **112 P R 1906**

55. *Religious Institution*—Mahant—*Suit relating to appointment and removal of—Right to sue without obtaining sanction—Civil Procedure Code*, 1882, *section* 539.

Held, that a suit for the removal of the incumbent *mahant* of a *dharmsala* who has misbehaved as *mahant* and misused the funds of the institution and for the appointment of the plaintiff in his place falls within the scope of section 539 of the Code of Civil Procedure and is not maintainable without obtaining previous sanction of the Collector to the institution of such suit. DALIP SINGH *v.* ISHAR SINGH. **78 P R 1907**

56. *Right of a head of a religious institution to succeed to occupancy rights in his representative capacity—Punjab Tenancy Act*, 1887, *section* 59.

Held, that where occupancy rights belong to a religious institution the *chela* of the last incumbent who has become *mahant* of the institution is entitled to succeed to them in his representative capacity as head of such institution. SHER SINGH *v.* SAYA RAM DAS. **2 P R 1907 Rev.**

57. *Mortgage of property attached to religious institution—Suit by* mahant *to set aside various mortgages made by his predecessor in office to several persons—Limitation for such suit—Starting point of Limitation—Limitation Act*, 1877, *Schedule II, articles* 134, 144—*Misjoinder of causes of action and parties—Civil Procedure Code*, 1882, *sections* 28, 45.

Held by the Full Bench (1) that the limitation applicable to a suit by a *mahant* to set aside a mortgage of *waqf* property attached to a religious institution by his predecessor in office on the ground that the alienor had no power to alienate such property is that prescribed by article 144 of the Second Schedule to the Limitation Act and not that prescribed by article 134, and that it begins to run from the date of the plaintiff's appointment as *mahant*, *i.e.*, the date on which he becomes entitled to possession by virtue of his appointment.

(2) That a suit for possession of land and also for a sum of money realized by the defendants as rent from persons to whom the said land had been leased, is not bad for misjoinder of causes of action. BASHESHAR LAL *v.* NATHA SINGH. **30 P R 1908 F. B.**

58. *Sale by* mahant *of immovable property belonging to his shrine—Suit by his successor to recover property—Limitation for such suit—Starting point of limitation—Limitation Act*, 1877, *Schedule II, article* 134.

Held by the Full Bench that where immovable property conveyed in trust to a *mahant* of a religious institution for the time being for the benefit of the institution is sold by him for value, a suit by his successor in office to recover the property so alienated is governed by article 134 of the Indian Limitation Act, and is barred if the purchaser has been in possession of such property for more than twelve years from the date of his purchase. HAR GIAN DEO *v.* BALDEO DAS. **127 P R 1908 F. B.**

59. *Religious Institution—Removal of a duly constituted manager—Discretionary power of a temple committee to remove the existing manager and to appoint his successor—Procedure—Religious Endowments Act*, 1863, *sections* 14, 18—*Civil Procedure Code*, 1882, *section* 539.

Held that a duly constituted manager of a religious institution cannot be removed from his office otherwise than by a civil suit instituted with a previous sanction obtained under either sections 14 and 18 of Act XX of 1863 or section 539 of the Civil Procedure Code.

It is not open to a self-constituted temple committee in the event of dispute with the manager either to suspend or remove him from office or to appoint another in his place.

Application to the Punjab of Bengal Regulation, XIX of 1810. BANSI DHAR *v.* CHANGA RAM. **7 P R 1908**

60. *Custom — Religious institutions—Darbar Sahib, Amritsar—Adopted son—Succession to* rozina *dues—Hindu Law not applicable.*

Held, that an adopted son does not come under clause (*b*) of the *Dastur-ul-Aml* of Darbar Sahib, Amritsar, and therefore cannot succeed to the *rozina* dues of the said institution; the matter is not one to be decided under Hindu Law but under the custom and practice of the institution.

See CUSTOM—RELIGIOUS INSTITUTION.
94 P R 1909

RELIGIOUS INSTITUTIONS–*concld.*

61. *Religious Institutions—Liability of* Mujawars *in a Muhammadan shrine, Attock district, to dismissal.*

Held, that the rule laid down in 154 *P. R.* 1889, that *Mujawars* in shrines, generally in the Peshawar district, are servants liable to dismissal, applies equally to *Mujawars* in shrines in the adjacent district of Attock, and that long service and the fact that the *Mujawars* have built houses in the neighbourhood of the shrine, do not deprive the heads of the shrine of the right to dismiss *Mujawars*, though the latter may be entitled to compensation on ejectment. FAKIRA, ETC. *v.* MEHR SHAH, ETC. **6 P R 1911**

RELINQUISHMENT OF CLAIM.

1. *Or omission to sue for portion of claim.*

See CAUSE OF ACTION—IV. MISCELLANEOUS. **28 P R 1907**

2. *Relinquishment of claim of principal for whom agent is acting in Court—Admission.*

See PRINCIPAL AND AGENT. **37 P R 1877**

RELINQUISHMENT OF OCCUPANCY RIGHTS.

See OCCUPANCY RIGHTS.

RELINQUISHMENT OF RIGHT.

— *Surrender of her life interest by widow of a part of her estate in favour of next reversioner—Suit by reversioner in lifetime of widow.*

See RIGHT TO SUE. **17 P R 1902**

REMAND.

1. *Appeal from order of—Refusal to hear appeal after completion of proceedings under remand.*

See APPEAL—VI. PROCEDURE IN. **129 P R 1884** **83 P R 1886**

See APPELLATE COURT, POWERS AND DUTIES OF. **117 P R 1886**

2. *Order of, by District Judge in small cause under Rs* 500 *in value—Finality of such order on merits of preliminary point.*

See APPEAL—VI. PROCEDURE IN. **126 P R 1886**

3. *Objection to jurisdiction first raised after.*

See APPELLATE COURT, POWERS AND DUTIES OF. **54 P R 1883**

4. *Appeal from order of—Power of Chief Court to go into the merits of the case.*

See APPELLATE COURT, POWERS AND DUTIES OF. **38 P R 1908**

5. *Limits of appellate Court's powers of.*

See APPELLATE COURT, POWERS AND DUTIES OF. **46 P R 1885**

6. *Scope of appeal from order of—Preliminary point.*

See CIVIL PROCEDURE CODE, 1908, O. XLI, R. 23. **109 P R 1887**

REMAND—*contd.*

7. *Validity of proceedings following order of remand made on appeal heard without jurisdiction.*

See CIVIL PROCEDURE CODE, 1908, O. XLI, R. 23. **40 P R 1887**

8. *Completion of proceedings under remand order pending the hearing of the appeal from the order of the remand—Appellant refusing to recognize the jurisdiction of the Court acting under the remand—Reversal of order of remand.*

See CIVIL PROCEDURE CODE, 1908, O. XLI, R. 23. **65 P R 1887**

9. *Dismissal of appeal by lower Appellate Court on preliminary ground—Reversal of decision on preliminary point by Court of second appeal—Remand to lower Court for decision on merits.*

See CIVIL PROCEDURE CODE, 1908, O. XLI, R. 23. **98 P R 1887**

10. *Improper record of evidence in first Court—Power of Appellate Court to remand cause on such ground—Procedure.*

See CIVIL PROCEDURE CODE, 1908, O. XLI, R. 23. **45 P R 1896**

11. *Application for leave to appeal to Privy Council from order of—Final decree.*

See CIVIL PROCEDURE CODE, 1908 SECTION 109. **56 P R 1888**

12. *Appellate Court remanding case under section* 566, *Civil Procedure Code, to Court other than original Court.*

See REVISION. **64 P R 1885**

13. *Civil Procedure Code,* 1882, *sections* 562, 566—*Competency of Chief Court to remand case on grounds other than specified in sections* 562 *and* 566 *of the Code of Civil Procedure.*

Held, that it is competent for the Chief Court to remand a case to rectify errors, omissions and defects which unless so rectified would result in serious miscarriage or failure of justice on grounds other than provided for in sections 562 and 566 of the Code of Civil Procedure.

Durga Dyal Das v. *Anoraji* (*I. L. R. XVII, All.* 29), and *Perumbra Nayar* v. *Subrahmanian Pottor* (*I. L. R. XXIII Mad.* 445), cited followed. SHER KHAN *v.* BAHADUR SHAH. **91 P R 1904**

14. *Civil Procedure Code,* 1882, *section* 562—*Remand—Preliminary point—Suit decided with reference to some only of several issues framed.*

Held by the Full Bench that the words preliminary point in section 562, Civil Procedure Code, mean a point, the decision upon which is sufficient to dispose of the case in which it arises.

Khalis v. *Kalyan Singh* (109 *P. R.* 1887) and *Ghulam Jilani* v. *Ghulam Haidar Khan* (89 *P. R.* 1891, F. B.), overruled. ABDUL GAFAR KHAN *v.* MUHAMMAD ZIA-UD-DIN. **2 P R 1908 F. B.**

15. *Preliminary point—Civil Procedure Code,* 1882, *section* 562.

REMAND—*concld.*

Held, that a suit dismissed on the ground that the plaintiff had no *locus standi* must be considered as one decided upon a preliminary point within the meaning of section 562, Civil Procedure Code. JIWA SINGH *v.* KHAZANA. **56 P R 1908**

16. *Appellate Court—Remand of case by—Limit to—Civil Procedure Code,* 1882, *sections* 562, 564.

Held that an Appellate Court has no power to remand a case for a second decision except as provided in section 562 of the Code of Civil Procedure. AZIMAN *v.* BHURIA. **138 P R 1908**

17. *Civil Procedure Code,* 1908, *O. XLIII, R.* 1, (*u*)—*Order of remand under section* 562, *Civil Procedure Code,* 1882—*Appeal.*

Held, that under O. XLIII, R. 1, clause (*u*), Civil Procedure Code, 1908, no appeal lies to the Chief Court from the order of the Divisional Judge, remanding a case under section 562 of the Civil Procedure Code, 1882, in a case where an appeal would not lie from the final decree of the Divisional Judge. ALI BAKHSH *v.* CHUHAR SINGH. **101 P R 1910**

18. *Appeal from order of remand under O. XLI, R.* 23, *Civil Procedure Code,* 1908, *section* 105, *and O. XLIII, R.* 1 (*u*).

Held, that where it is impossible to say whether an appeal would have lain to the Chief Court had the Divisional Judge disposed of the case instead of remanding it, no appeal lies to the Chief Court from such order of remand. FAIZ AHMAD *v.* BADAR DIN. **50 P R 1911**

REMARRIAGE.

1. *Remarriage of widow—Forfeiture of life interest in former husband's estate.*

See CUSTOM—VIII. MAINTENANCE AND SUCCESSION. I. REMARRIAGE AND UNCHASTITY OF WIDOW.

137 P R 1883
123 P R 1884
80 P R 1885
81 P R 1885
25 P R 1888
117 P R 1888
171 P R 1888
90 P R 1889
25 P R 1891
46 P R 1891
100 P R 1891
74 P R 1893
143 P R 1893
144 P R 1893
145 P R 1893
88 P R 1900
115 P R 1900

2. *Marriage by* chadar andazi or karewa *between a Khatri and Khatrani widow—Legitimacy of children of such marriage—Act XV of* 1856.

See MARRIAGE. **4 P R 1905** **61 P R 1905**

REMARRIAGE—*concld.*

3. *Muhammadans of Hanfi sect—Remarriage of divorced couple—Legality of such marriage.*
See MUHAMMADAN LAW—DIVORCE.
97 P R 1908

REMISSION OF AWARD.

—*To render it capable of execution.*
See ARBITRATION. **50 P R 1881**

—*As incomplete—Arbitrators filing second and different award—Legality of such award.*
See ARBITRATION. **50 P R 1881**

REMOVAL OF GUARDIAN.
See GUARDIAN. **137 P R 1893**
7 P R 1898

RENT.
See SMALL CAUSE COURT—JURISDICTION OF.

1. *Rent in cash and kind—Commutation.*
See JAGIR. **7 P R 1867 Rev.**
6 P R 1868 Rev.
1 P R 1869 Rev.

2. *Suit by occupancy tenants for commutation of rent—Village held in* jagir—*Dues in kind paid by tenants partly to landlord and partly to jagirdar.*
See JAGIR. **3 P R 1895 Rev.**
See OCCUPANCY RIGHTS.
6 P R 1867 Rev.
15 P R 1867 Rev.
90 P R 1867 Rev.

3. *Agreement to commute—Want of consideration.*
See PUNJAB TENANCY ACT, 1868, SECTION 16. **16 P R 1872**

4. *Commutation of rent.*
See PUNJAB TENANCY ACT, 1868, SECTION 16. **43 P R 1873**
42 P R 1877

5. *Suit for enhancement of.*
See ENHANCEMENT.
See JURISDICTION OF CIVIL OR REVENUE COURTS. **2 P R 1890 Rev.**
OCCUPANCY RIGHTS.
102 P R 1867
18 P R 1867 Rev.
60 P R 1868
110 P R 1868
15 P R 1869
5 P R 1892 Rev.
5 P R 1893 Rev.
See PUNJAB TENANCY ACT, 1868, SECTION 2. **50 P R 1878**
36 P R 1880
37 P R 1880
1 P R 1880 Rev.
2 P R 1880 Rev.
3 P R 1880 Rev.
13 P R 1887
110 P R 1887
9 P R 1888 Rev.
3 P R 1889 Rev.

RENT—*concld.*

6. *Suit by lessee after lessor had vacated premises for one month's rent accrued due—Subsequent suit for rent for the remainder of the term of the lease as damages.*
See CAUSE OF ACTION—SPLITTING CAUSE OF ACTION. **64 P R 1882**

7. *Suit for rent of house let to prostitute.*
See CONTRACT. **10 P R 1872**
22 P R 1877
See LANDLORD AND TENANT.
65 P R 1904

8. *Suit for rent—Defendants setting up title of third party.*
See JOINDER OF PARTIES.
66 P R 1886

9. *Suit for rent—Suit by* 3 *out of* 4 *joint lessors for rent.*
See JOINDER OF PARTIES.
87 P R 1886

10. *Suit for declaration as to the amount of rent payable by one mortgagee to another mortgagee, both mortgagees cultivating and taking the produce according to their mortgage shares.*
See JURISDICTION OF CIVIL OR REVENUE COURTS. **112 P R 1893**

11. *Landlord and tenant—Notice to quit or to pay higher rate—Tenant holding over after tenancy—Landlord's right to demand enhanced rent.*
See LANDLORD AND TENANT.
5 P R 1904

12. *Rent for the time being payable—Landlord's lien upon produce of tenancy, extent of.*
See PUNJAB TENANCY ACT, 1887, SECTION 12. **54 P R 1895 F. B.**

13. *Suit for rent of revenue paying land.*
See SMALL CAUSE COURT, JURISDICTION OF. **86 P R 1887**

14. *Suit for arrears of rent on account of land.*
See SMALL CAUSE COURT—JURISDICTION OF. **86 P R 1887**

See SMALL CAUSE COURT ACT, 1865, SECTION 6. **33 P R 1887 F. B.**
See PUNJAB TENANCY ACT, 1887, SECTION 16. **3 P R 1889 Rev.**

15. *Suit for recovery of ground rent of a shop.*
See SMALL CAUSE COURT ACT, 1887, 2ND SCHEDULE, ARTICLE 8.
1 P R 1894

16. *Suit for hire of water—Rent.*
See WATER RENT. **16 P R 1869**
See LIMITATION ACT, 1877, SCHEDULE II, ARTICLE 115. **171 P R 1883**

REPEAL OF ACT.

1. *Act XVII of* 1877, *section* 39—*Act IX of* 1873, *section* 4- *Second regular appeal —Pending appeal.*

REPEAL OF ACT—*contd.*

A second regular appeal was presented to the Additional Commissioner, Jullundur, under Act IX of 1873, in a suit under Rs. 50 in value, of the nature cognizable by a Small Cause Court but was heard and determined after Act XVII of 1877 came into force, which repealed the former Act, and (in section 39) excepted, from the benefit of the general provision as to second regular appeals in Small Cause Court suits under 50 rupees in value. *Held*, that Act XVII of 1877 did not take away the jurisdiction of the Court over a pending appeal in such a suit. PANA LALL *v.* ALA DIA SHAH. **4 P R 1878**

2. *Civil Procedure Code (Act X of* 1877), *section* 617—*Reference in case open to appeal —Reference in suit pending when Act X of* 1877 *came into force.*

Plaintiffs instituted on 8th August 1877 a suit to cancel one of two decrees passed against them for Rs. 40 in respect of the same cause of action. On 12th November 1877 the Court of first instance referred certain questions of law arising in the suit, for the decision of the Chief Court, under section 617, Act X of 1877. *Held*, that as the suit was instituted before 1st October 1877 (the date on which the Act came into force) the procedure prior to decree was not governed by Act X of 1877 (*vide* last clause of section 3), and section 617 did not apply.

Per Smyth, J. Held, further, that the reference was not authorized by section 617, Act X of 1877, even if the suit had been instituted after 1st October 1877, as any decree which might be passed in the suit would not be final. ALADIN *v.* JOWAYA. **40 P R 1878**

3. *Act X of* 1877, *sections* 3, 591—*General Clauses Act* (1 *of* 1868), *section* 6—*Order in execution made under Act VIII of* 1859—*Appeal preferred after Act X of* 1877 *came into operation.*

Held, by the Full Bench, that a special appeal lies from an order passed on appeal in course of execution of decree under Act VIII of 1859, where that Act allowed such appeal, although the appeal was presented after Act X of 1877 came into operation. BHAG SINGH *v.* BISHAMBER DAS.
129 P R 1879

4. *Execution proceedings commenced under Act VIII of* 1859, *and continued under Act X of* 1877—*Application by auction purchaser for refund of part of purchase-money—Appeal from order.*

Proceedings in execution of decree commenced while Act VIII of 1859 was in force, and continued after Act X of 1877 came into force, *held*, to be governed by the former Act.

Held, also, that, under Act VIII of 1859 the purchaser at an auction sale in execution of decree cannot recover summarily a portion of the purchase money paid by him on the ground that the judgment-

REPEAL OF ACT—*concld.*

debtor had a less interest in the property sold than the auction-purchaser supposed himself to have purchased.

Semble, that under Act X of 1877 the auction-purchaser would have no right to the refund claimed, nor would the order of the Court refusing such refund be open to appeal. BULAKI CHUND *v.* MOKUNDA MALL. **16 P R 1880**

REPLEVIN.

See SMALL CAUSE COURT ACT, 1865, SECTION 6. **4 P R 1889**

REPRESENTATION.

—*Right of.*

See CUSTOM. **71 P R 1882**
80 P R 1882
172 P R 1882
19 P R 1884
26 P R 1885
82 P R 1887

See RES JUDICATA. **139 P R 1888**

REPRESENTATIVE.

See CIVIL PROCEDURE CODE, 1908, SECTION 47, O. XXII, RULES 3 AND 4.

See EXECUTION OF DECREE.

1. *Right to obtain a succession certificate for collection of part of a debt.*

See CERTIFICATE OF ADMINISTRATION. **70 P R 1904**

2. *Representative of proprietor claiming occupancy rights.*

See PUNJAB TENANCY ACT, 1868, SECTION 5. **67 P R 1885**

3. *Representative of proprieto: who has involuntarily parted with his proprietary right.*

See PUNJAB TENANCY ACT, 1868, SECTION 5. **12 P R 1886**

4. *Right of representative of tenant who has involuntarily parted with occupancy rights.*

See PUNJAB TENANCY ACT, 1868, SECTION 5. **148 P R 1888**

5. *Representative of persons settling with founders in a village.*

See PUNJAB TENANCY ACT, 1868, SECTION 5. **176 P R 1883**

6. *Representative of founder of village settling as cultivator.*

See PUNJAB TENANCY ACT, 1868, SECTION 5. **193 P R 1883**

7. *Occupancy rights — Ex-Jagirdar— Representative.*

See PUNJAB TENANCY ACT, 1868, SECTION 5. **83 P R 1882**

8. *Points to be proved by person seeking to establish occupancy rights under Punjab Tenancy Act*, 1868, *section* 5, *clause* 3.

See PUNJAB TENANCY ACT, 1868, SECTION 5. **38 P R 1884**

9. *Improvements—Right of representative of tenant-at-will to compensation for.*

See PUNJAB TENANCY ACT, 1868, SECTION 37. **136 P R 1883**
12 P R 1885

10. *Payment—Payment of debt to representative of deceased person—Discharge—Right of executor of the deceased to ignore

REPRESENTATIVE—*concld.*

such payment—Notice of claim—Duty of executors—Negligence, effect of.*

Held, that as no one is under legal obligation to pay debts due to the estate of a deceased person to any one claiming to be entitled to the effects of the deceased, except on the production of a probate, letters of administration, certificate or some authority to collect the debts due to the estate of the deceased, therefore a payment by a debtor to the widow of his deceased, creditor who had not obtained any authority to recover the debts due to her deceased husband's estate, was not a valid discharge to the debtor, and that the executors of the deceased creditor were fully entitled to ignore such a payment, and to sue for the same.

Mere neglect on the part of the executors to give notice of their claim to the debtor did not debar them from claiming the debt, although it might be a good reason for declining to give interest, damages or even costs as regards such a claim.

Purshotam Mansukh v. *Ranchhod Purshotam* (*VIII Bom. H. C. R.* 152 A. C.), referred to. GOLAK NATH *v.* CRADDOCK. **72 P R 1903**

11. *Decree against representative of deceased for money to be paid out of deceased's property—Personal liability of representative where the property descended to him is exempt from attachment and sale in execution of a decree—Civil Procedure Code*, 1882, *section* 252.

Held, that a decree-holder is not entitled to execute his decree against the private property of the legal representative of a deceased person merely because the property of the deceased which came into the hands of such representative was not liable to be seized under the Punjab Alienation of Land Act, 1900. RAM GOPAL *v.* HARJAS. **123 P R 1906**

REPRESENTATIVE OF DECEASED PERSON.

See REPRESENTATIVE.

REPUTED OWNERSHIP.

See INSOLVENCY. **162 P R 1879**

REQUEST, COURT OF.

See MUTINY ACT.

RESALE.

See PRE-EMPTION. **146 P R 1883**
138 P R 1884

RESCISSION OF CONTRACT.

See CONTRACT. **60 P R 1882**

See CONTRACT ACT, 1872, SECTION 62. **66 P R 1888**
71 P R 1897

See LIMITATION ACT, 1877, SCHEDULE II, ARTICLE, 141. **141 P R 1882**

RESIDENCE.

1. *Right of residence in house belonging to shrine—Attachment.*

See CIVIL PROCEDURE CODE, 1882, SECTION 266. **8 P R 1900**

2. *Right of—in family dwelling house.*

See HINDU LAW. **36 P R 1907**

RESIDENCE FOR PURPOSES OF JURISDICTION.

See CIVIL PROCEDURE CODE, 1908, SECTION 16.
SOLVENCY.
JURISDICTION.
SMALL CAUSE COURT.

RESIDUARIES.

See MUHAMMADAN LAW, INHERITANCE. **87 P R 1885**

RES JUDICATA.

1. *Suit by one of several co-heirs for his share in an estate—Dismissal of such suit—Subsequent suit by all the heirs for the whole estate*—Res judicata.

See CO-HEIRS. **2 P R 1882**

2. *Finality of order passed in execution proceedings.*

See EXECUTION OF DECREE. **105 P R 1882**
143 P R 1883
4 P R 1886

3. *Right of mortgagee to sue separately for money decree and for lien.*

See MORTGAGE. **69 P R 1876**

4. *Pre-emption suit—Plaintiff allowed decree to lapse by non-payment of purchase-money—Second suit by father of such plaintiff for pre-emption of same property.*

See PRE-EMPTION. **1 P R 1885**

5. *Validity of deed intended to be registered but not registered*—Res judicata.

See REGISTRATION. **57 P R 1875**

6. *Suit for profits of a shrine*—Res judicata—*Effect of decision upon property in foreign territory.*

See RELIGIOUS INSTITUTION. **41 P R 1872**

7. A judgment in a suit between A and B cannot bar C's claim; but where a suit was litigated some years back relating to a mortgage of property the fact that a third party who afterwards sued for the same property, then made no objection or claim, should be enquired into. SADHU RAM *v.* HOSHNAK. **6 P R 1866**

8. Plaintiff having obtained a decree in part only of his claim, and being told by the Judge to bring a fresh suit for the part disallowed :—*held* that this extra judicial advice had no effect upon the right of defendant to insist upon his defence of judgment recovered. MOKURDAR MULL *v.* KHODA BAKHSH. **14 P R 1866 Ref.**

9. *Held* that *dakhil kharij* did not amount to *res judicata*. HEERA SINGH *v.* JAGEER BEG. **3 P R 1868**

10. Plaintiff having unsuccessfully sued the Government for a debt due from a convict whose property had been confiscated by judicial sentence, next sued the convict himself. *Held*, that the plaintiff's claim in the second suit was not barred merely because he had already erroneously sued the Government on the same cause of action. MAHOMED MOHKAM *v.* RAM ZANEE. **10 P R 1868**

RES JUDICATA—*contd.*

11. A obtained a decree against B on a bond; subsequently B charged A with cheating, in that the consideration recited in the bond had not been paid; the criminal prosecution having failed, B sued A civilly for the consideration money. *Held*, that a suit would lie to set aside a decree obtained by fraud; but as in this case, the very point whether the consideration was paid or not was raised and decided (though erroneously) in the former suit adversely to B. his only remedy was to apply for a review of the first judgment. MALAK SHAH BAZ *v.* MOWAZ.

31 P R 1868

12. A sued his former partners, B and C for adjustment of acccounts, and obtainad a decree fixing his share of the profits and losses during the period he was in the firm. Subsequently X sued the firm for goods supplied and A pleaded non-liability, as his share of the profits and losses had already been fixed judicially. *Held*, that X, who was not a party to the former suit, could not be bound by it and that A was still liable to him for goods supplied during the time A was a partner in the firm. ROOLDOO MULL *v.* JOWAHIR.

90 P R 1868

13. Plaintiffs (pre-emptors) obtained a decree. In execution the Tahsildar (incorrectly) reported that the decree was for mutation of names, which had been effected. On this the Deputy Commissioner ordered the plaintiffs to apply to the Civil Court which made the decree, or bring a suit for the land. Plaintiffs accordingly brought a second suit. *Held*, that the suit would not lie, and that plaintiff's remedy was by executing the decree in the first suit. BIRJ LALL *v.* BURKUT ALI.

109 P R 1868

14. *Collection of revenue by Jagirdars—Cash and grain rates*—Res-judicata.

Suit by proprietor of a village to have the revenue payable to jagirdar converted from grain to cash rates, resisted on the ground that the claim had before been advanced and disallowed in 1862. *Held*, that a question of this kind was more administrative than judicial, and that the matter was one which was open to revision from time to time, and was not necessarily concluded by a previous order. MULLIK FUTTEH SHER KHAN *v.* MULLIK SHER BAHADOOR KHAN.

6 P R 1868 Rev.

15. The doctrine of *res judicata* does not apply where the principle in issue is the same in both cases, but the thing in dispute is different (per CAMPBELL, J. UMAR ALI *v.* MUKHDUM SHAH.

59 P R 1870

16. Where on the verbal application of the defendant's agent, the Settlement Officer called upon plaintiff to state his claim to the proprietary right of the village in question, and he did so, and the Settlement Officer passed a decree for proprietary rights in favour of defendant, which decree was affirmed by the Commissioner on appeal.

RES JUDICATA—*contd.*

Held, that as all the facts in dispute had been thoroughly sifted and decided upon the action of the Settlement Officer in taking up the case without any petition or plaint before him, was not such an irregularity as would vitiate the decision and that the matter was *res judicata*. MULLIK SHER BAHADUR KHAN *v.* MULLIK FUTTEH SHER KHAN.

60 P R 1870

17. A brought a suit for pre-emption, and obtained a decree for possession on payment of a certain sum; pending the suit, the vendor cut and disposed of several trees on the land in dispute. A afterwards sued the vendor for the value of those trees. *Held* that the second suit was barred by section 2, Civil Procedure Code, and that A's remedy was to be had when executing the decree in the former suit, by deducting from the price payable the value of the missing trees. FUTTA *v.* BHANI SINGH.

48 P R 1871

18. *Omission to appoint guardian* ad litem *for minor defendant.*

Eshur Das purchased at a sale in execution of a decree the right and interest of Inderman in a house; and subsequently sued Inderman and Kour Sein, infant son of Inderman, for possession. The Court trying the suit held that Inderman was sole proprietor of the house, and on the 4th June 1867, gave Eshur Das a decree for possession of the entire house, which decree was not appealed from. In that suit a *guardian ad litem* was not appointed for Kour Sein, who, upon attaining his majority, sued the widow of Eshur Das for possession of half the house, alleging that the house was the ancestral property and that he had a half share in it. The suit was dismissed by the Lower Courts, on the ground that it was barred by the decree of 4th June 1867, under section 2 of Act VIII of 1859. The Chief Court held that the suit was not so barred, as Kour Sein was not properly before the Court in the former suit, no *guardian ad litem* having been appointed for him, and his co-defendant and father, Inderman, not being such guardian from the mere fact that he was his natural guardian. KOUR SEIN *v.* MUSSAMMAT SAMIRO.

66 P R 1873

19. *Judgment—Privy in estate.*

Upon the death of one J. S. K. S. took possession of his land, claiming to hold it as J. S.'s adopted son. The widow of J. S. sued K. S. for possession as widow, and K. S. pleaded the adoption. It was found by the Court that K. S. had not been adopted, and the widow obtained a decree. After her death, K. S. again took possession, and the collateral kindred of J. S. sued him. K. S. again pleaded his adoption by J. S. *Held*, that the finding of the Court in the suit between the widow and K. S. did not estop the latter from again setting up the plea of adoption as against the collaterals, there being no privity of estate between them and the widow. FATTEH SINGH *v.* HAKIM SINGH.

82 P R 1874

RES JUDICATA—*contd.*

20. *Evidence Act, sections* 13 *and* 40—*Act VIII of* 1859, *section* 2—*Judgment inter parties*—Res judicata.

In 1872, plaintiff sued defendant for alienating certain land which the former alleged belonged to the *gaddi* of S. and the latter asserted was his acquired property. The judgment in that case declared the property to belong to the *gaddi* and not to the defendants by acquisition. In 1874, plaintiff sued again for a second act of alienation by the defendant with regard to the same land. *Held*, that the judgment of 1872 finally determined the question between the parties as to whether the land belonged to the *gaddi* or was defendant's acquired property, and that defendants could not re-open the question. LACHMAN GIR *v.* LAHAR GIR.

70 P R 1875

21. *Decree of Court—Occupancy rights.*

The landlord in 1865 obtained a decree in the Court of the Settlement Superintendent declaring certain tenants not to be hereditary and giving them protection for ten years. The Superintendent at first did not pass a final order but sent the case to the Extra Assistant Commissioner of Settlement for confirmation of an order that the Jats were non-hereditary tenants, but should be protected for ten years; the Extra Assistant Commissioner ordered a further inquiry and eventually directed the Superintendent himself to pass orders, leaving the Jats to appeal; upon this, the Superintendent recorded that his former order would take effect; no appeal was preferred. In 1875, the ten years' protection having expired, the landlord proceeded to eject the tenants under the Tenancy Act; and the present suit was brought by one of the tenants alleging that his ejectment was illegal, and that he was a tenant with right of occupancy. *Held*, that the suit would lie, and that it was not barred by the proceedings in 1865. SIDHA *v.* DATA RAM.

118 P R 1876

22. *Act VIII of* 1859, *section* 2.

The plaintiff sued for proprietary possession of a house, and his suit was dismissed for want of proof. He then sued as mortgagor to redeem the house from mortgage.

Held, that the second suit was barred, the judgment in the first suit, declaring defendant proprietor of the house, being final. PARI MAL *v.* VASANDA RAM.

33 P R 1877

23. *Judgment of Criminal Court.*

The present plaintiff preferred a charge under section 498 of the Indian Penal Code against the present defendant for enticing away his wife, Mussammat Sardari, with criminal intent. The Magistrate discharged defendant (accused), holding that the marriage had not been consummated or the *nikah* read; thereupon plaintiff instituted the present suit for the custody of his wife. *Held*, that the question of marriage was not *res judicata* by reason of the finding of the Magistrate in the criminal case. GHOLAM HOSEIN *v.* MAHOMED KHAN.

56 P R 1877

RES JUDICATA—*contd*

24. *Decree—Compromise—Decree as to occupancy rights prior to passing of Tenancy Act—Punjab Tenancy Act, section 2.*

In 1865 the present plaintiff brought a suit claiming proprietary rights in and possession of land. A jury of five assessors was appointed, and on their finding, which was accepted by the parties, the Court on 6th November 1865, passed its order that plaintiff should be maintained in cultivation as a tenant with rights of occupancy for seven years. In 1876 (after the seven years had expired), the plaintiff having been served with a notice of ejectment, brought the present suit to contest his liability to be ejected and claiming to hold as a tenant with rights of occupancy under section 5 of the Tenancy Act. *Held*, that the claim to occupancy rights was barred.

Per PLOWDEN, J.—1st, by the rule of *res judicata*, because the question of plaintiff's status was decided by a competent Court in a contested suit in 1865, and 2nd, by section 2 of the Tenancy Act, 1868.

Per FITZPATRICK, J.—That the suit was barred by the rule of *res judicata*; but even if that rule did not strictly apply, the order of 1865 having been made by consent of parties on a compromise, still that order barred the suit, the cause of action being the same.

Per PLOWDEN, J.—That if the order of 1865 was based on a compromise, without any decision being come to by the Court, the compromise itself furnished a complete answer to the second suit to establish the disputed right. BAGGU KHAN *v.* SUJA.

77 P R 1877

25. *Act VIII of 1859, section 2—Decree for redemption barred by limitation—New suit for redemption of mortgage.*

On 27th May 1870 the present plaintiff obtained a decree against the present defendant for redemption of mortgage of a shop on payment into Court within 15 days of Rs. 1,000. No steps were taken by plaintiff towards redeeming the mortgage, and no money was paid by him into Court or to the defendant on account of the Rs. 1,000. In May 1876 the plaintiff brought a fresh suit against defendant to redeem the shop on payment of Rs. 1,000. *Held*, that the second suit was not barred by the rule of *res judicata*. SHIBBU MUL *v.* PAIRA SINGH. **86 P R 1877**

26. *Act VIII of 1859, section 2.*

Held, that an order refusing an application to execute a decree is not an adjudication within the rule of *res judicata* or within section 2 of Act VIII of 1859. THE DELHI AND LONDON BANK *v.* ORCHARD.

7 P R 1878

27. *Civil Procedure Code (Act VIII of 1859), sections 2 and 32—Rejection of plaint under section 32—Institution of new suit on same cause of action.*

N. M. and B. D. brothers, with their brother B. were recorded in the Settlement

RES JUDICATA—*contd.*

papers as joint owners of a holding. B. D. applied in 1877, in the Revenue department, for partition of his share, and the partition was objected to by N. M. on the ground that the holding had been divided in July 1874 by private partition, and was no longer joint. The objection was disallowed, and, on 20th December 1876, a partition was made and sanctioned.

On 22nd March 1877, N. M. brought a suit against B. D. and B. to cancel the partition made in the Revenue department, but the plaint was on the same day rejected on the ground that under section 65 of the Punjab Land Revenue Act, 1871, such a suit was not maintainable.

Meanwhile, N. M. appealed to the Commissioner from the order of partition dated 20th December 1876, made by the Revenue authorities who on 19th July 1877 suspended that order so as to allow N. M. an opportunity to bring a civil suit. Accordingly on 18th August 1877, N. M. brought a fresh suit against B. D. and B. to prove that the holding had beeen privately divided in July 1874.

Held, assuming the order in the first suit to have been passed under section 32, Act VIII of 1859, that the second suit was barred by section 2, Act VIII of 1859.

Where a plaint is rejected under section 32, a fresh plaint cannot be entertained on the same cause of action. NAGAR MAL *v.* BHAGWAN DAS. **81 P R 1878**

28. *Estoppel.*

On 24th March 1876, B. S. brought a suit against J. for custody of J. as his wife. J. denied that she was the wife of B. S. and on 19th June 1876 the suit was dismissed on the ground that the marriage was not proved.

On 12th April 1877, L. S. brought a suit against J. for custody of J. as his wife. J denied that she was married to L. S. and alleged that she was the wife of B. S.

Held, that the finding in the former case that the marriage between B. S. and J. was not proved did not estop J. from pleading in the second suit that she was married to B. S. at the time she went through a form of marriage with L. S.—L. S. not being a party to the former suit; and the parties to the second suit not being the same as those to the former suit, *held*, that they were not bound by the decision in the former suit. MUSSAMMAT JIWANI *v.* LALL SINGH. **9 P R 1879**

29. *Joint ancestral property—Undivided family—Mortgage by co-sharer—Rights of creditors.*

One N. was joint in estate with J., father of R. C. defendant, and they owned in undivided moieties the house in dispute, which was ancestral property. After J.'s death, N. in 1868 mortgaged the whole property to M. C. for Rs. 1,500. After N.'s death M. C. in 1873 sued his widow

RES JUDICATA—*contd.*

M. M. on the mortgage. At her request L. M. and H. S. plaintiffs paid M. C. Rs. 1,200 in 1874, which with other monies discharged the property from incumbrances, and the suit between M. C. and M. M. was compromised.

L. M. and H. S. then sued M. M. for specific performance of an alleged agreement to sell the property to them for the Rs. 1,200 advanced, making R. C. and his grandmother as guardian M. Z., also defendants. That suit was dismissed on the ground that M. M., widow of N., had no power to convey the interest of R. C. whose guardian she was not.

L. M. and H. S. then instituted the present suit against the same defendants, seeking to recover Rs. 1,200 lent with interest and to bring to sale the interest of N. in the ancestral property, for the possession of which they formerly sued, excluding the interest therein which devolved on R. C. through his father, J. Both the lower Courts found that L. M. and H. S., plaintiffs, did in fact pay M. C. Rs. 1,200 in order to discharge the mortgage created by N., and decreed their claim in its entirety.

Held, that the present suit was not barred by the rule of *res judicata*. MUSSAMMAT ZAHRO *v.* LALLU MAL. **21 P R 1879**

30. *Finding of issue not material or necessary to decision of suit—Custom—Hindu Jats—Kalkat Got, Hoshiarpur district—Alienation by childless village proprietor in favour of brother's daughter's husband.*

In 1873 D. S. and N., collateral relations of S. in the eleventh degree, sued to set aside a deed of sale of certain lands executed by S. in favour of K. S., husband of his brother's daughter. The Additional Commissioner, on appeal, while affirming the finding of the first Court that the sale was fictitious and fraudulent, dismissed the suit as premature, S. a male proprietor being then alive, reserving liberty to D. S. and N. to sue after his death.

S. shortly after died, whereupon D. S. and N. instituted the present suit against K. S. for possession of the same land, as heirs of S.

Held, by the Full Bench (LINDSAY, PLOWDEN and SMYTH, JJ.) that the former issue as to the sale being fictitious aud fraudulent, not being an issue material or necessary to the decision of the suit of 1873, the finding on the same was not *res judicata* so as to preclude K. S. from setting up his title to the land in suit, under the deed of sale as a *bona fide* transaction.

Held, further, by the Division Bench (PLOWDEN and ELSMIE, JJ.) that, by the custom of the Kalkat Got of Hindu Jats in the Hoshiarpur district, the collateral relations of S. in the eleventh degree, were not entitled to set aside the transfer made by S. of his land, which was followed by possession, even though such transfer was made without consideration. KANHYA SINGH *v.* DEWA SINGH. **27 P R 1879**

31. *Suit for possession—Plea as to occupancy rights—Reference to separate suit to establish occupancy rights.*

V. sued K. and B. for possession of certain land. K. and B. pleaded as an answer to that suit that they were tenants with rights of occupancy. V's claim to possession was decreed, and K. and B. directed to bring a separate suit to establish their occupancy rights, whereupon they instituted the present suit. *Held*, that the decree for possession in the former suit, though erroneously ignoring the defence of K. and B. on the ground of occupancy right and leaving the question of their status undetermined, was a bar to the second suit. KALA *v.* VILAYAT. **45 P R 1879**

32. *Civil Procedure Code (Act X of 1877), section 13, Explanation V—Special appeal—Plea in bar taken for first time in.*

In 1877 R. D. sued A. N. for possession of land over which a right of way was claimed in the present suit, on the ground that A. N. had sold it to R. D.—A. N. pleaded that the plot in suit had been reserved at the time of sale as a road.

The present suit was brought by J. and four others against R. D., H. and B. to establish a right of way over the same land. The Courts below found that the real purchaser from A N. was H. not R. D., and decreed a right of way in favor of plaintiffs.

On special appeal to the Chief Court, it was urged that the suit was barred under Explanation V to section 13 Act X of 1877.

Held, that, inasmuch as R. D. and A. N. were each singly, and not on behalf of others or in a representative capacity, litigating in the former suit, and inasmuch as it had been found that H. and not R. D. was the real purchaser, R. D. and A. N. had not, in the suit of 1877, *bona fide* litigated in respect of a right claimed in common with others within the meaning of Explanation V. of section 13, Act X of 1877, and, therefore, that the present suit was not barred.

Quære, whether such a plea can be taken in special appeal if not pleaded in bar to the suit in the first Court. HAR GOBIND *v.* JOTH RAM. **59 P R 1879**

33. *Act VIII of 1859, section 2—Partition—Suit by Hindu father as representative of ancestral estate—Subsequent suit by son raising issue decided in former suit—Finality of decision in former suit.*

One J. M. sued his brother M. M. for a part of a house, alleging that at a partition of the family property the said house had fallen to his share. M. M. pleaded that no partition had ever taken place; but it was decided by the lower Courts that there had been a partition of all the ancestral property under which each had obtained possession of his share. This finding was upheld by the

Chief Court. Subsequently J. M. sold his houses to one R. C. whereupon A. D., the eldest son of J. M., sued the vendor and vendee for possession of his share in the family property which he alleged was still joint, afterwards joining his brothers and father as co-defendants.

Held, that the suit was barred by section 2, Act VIII of 1859, as the present and former suits were respecting the same property, and the present plaintiff was clearly "claiming under" his father M. M. within the meaning of the above section and not in his own right. A son, according to the Mitakshara, takes by birth an interest in the ancestral estate; but until a partition has been effected between a father and his sons, the father possesses large powers over the ancestral estate, which he may exercise for lawful purposes in the interest of the family independently of his sons. By virtue of these powers, and whether with or without express authority from his sons, he is competent in the interest of the family of which he is the head to defend on behalf of his sons and the other subordinate associated members of the family as well as on his own behalf, a suit brought against him in respect of the ancestral estate of the family. The decision in such a suit brought against the father and defended by him in good faith and in the interests of his family, is binding upon the sons associated with him, even although he may not have had express authority from them to defend the suit, and although the suit may not have been expressly brought against him as representing the joint family. ARJUN MULL *v.* JHUNDA MUL. **103 P R 1879**

34. *Act X of* 1877, *section* 13.

In a suit for redemption of mortgage, where it was found that a former suit between the same parties, and involving the same right, had been dismissed on the ground that certain third parties, the sons of one M., were the proper persons to sue, but the Court gave a direction in its judgment (which was not embodied in the decree) that if the said third parties did not sue within three years the plaintiffs might then do so, provided they were still within limitation; *held*, that a subsequent suit by the same plaintiffs after the lapse of the three years above mentioned (the sons of M. having made no claim in the meanwhile) was barred as a *res judicata*, as the direction contained in the Court's judgment must be regarded as mere surplusage, which could not enable the plaintiffs to institute a fresh suit with respect to a cause of action once heard and determined. UDMI *v.* NEKI. **84 P R 1880**

35. *Act X of* 1877, *section* 13.

Where a suit for land by plaintiff was summarily dismissed by the Court without the defendant's statement being recorded or issues drawn, because the plaintiff had failed to file, as directed, an extract from the Settlement Record relating to the particular land claimed by him, and the Court, there-

fore, expressed itself unable to understand what the plaintiff was really claiming, *held*, that a subsequent suit for the same land was not barred as a *res judicata* with reference to section 13 of the Civil Procedure Code. SHAM SINGH *v.* KHARK SINGH. **107 P R 1880**

36. *Civil Procedure Code (Act X of 1877), section* 13, *Explanation V.*

The present suit was brought by all the proprietors of two out of three *thullas* of the village of Rohat against the proprietors of the third *thulla* to recover possession by right of inheritance of ⅔ths of the estate of one H., deceased, lately held on a life tenure by one Mussammat M. K. (the widow of H.'s son), on the ground of their being equally related with the defendants to the said H. It appeared that in a former suit, eight of the present plaintiffs (four from each *thulla*) sued Mussammat M. K. for the land now in suit, on the ground that she had forfeited her life interest by a remarriage. In that suit the present defendants were subsequently joined as parties, and it was finally decided that the then plaintiffs had no *locus standi* in Court, as defendants and not plaintiffs were the nearest heirs of H. It was found in the present suit that those of the plaintiffs who were not parties to the first suit had notice of that suit: that the plaintiffs in both suits had identical interests in the rights involved: that the then plaintiffs were clearly suing in a representative capacity for the whole of the two *thullas*: and also that the former suit had been litigated by the then plaintiffs in good faith and with due diligence.

Held, that the present suit was barred as a *res judicata* under Act X of 1877, section 13, read with Explanation V to that section, as (1) the question of title now raised was directly and substantially in issue in the first suit, looking at the substance rather than the form of the two actions, and (2) the present plaintiffs were claiming under the plaintiffs in the former suit within the meaning of the above Explanation. CHET RAM *v.* BAHAL SINGH. **103 P R 1880**

37. *Act X of* 1877, *section* 13—*Trial in Small Cause Court of issue decided in District Court during pendency of case.*

In a suit for dower in the Small Cause Court, the trial of the issue whether or no plaintiff had received her dower, was stayed by consent of parties pending the decision of the same issue in a suit for restitution of conjugal rights between the same parties which was going on in the District Court. *Held*, that the decision of such issue by the District Court was, under section 13 of the Civil Procedure Code, a bar to the second trial of the same issue in the Small Cause Court. MUSSAMMAT GAITIARA BEGAM *v.* MUSSITA BEGH. **118 P R 1880**

38 *Act X of* 1877, *section* 13—*Suit by one member of a village community against the rest—Subsequent suit between the former defendants in which the same issue is raised*

RES JUDICATA—*contd.*

—*Jurisdiction of Revenue Court—Act XXXIII of* 1871, *section* 65, *Clause* 3—*Dispute at partition as to tenure of village—Suit for declaration of right according to possession.*

Held, by the Full Bench, that when a common question, such as the tenure of a village community, arises between the members of a community, and one of such members sues the rest, the determination of such common question in that suit will not bind the whole of the defendants as *res judicata*, so as to bar a subsequent suit among themselves in which the same question is again raised, unless they have been distinctly at issue on the point in the suit, and acting as opposite parties, and the order made is one affecting the rights of the defendants among themselves.

At partition of the village lands, plaintiff claimed proprietary rights in certain lands in his possession, on the ground that the tenure of the village was Bhyachara and not Zamindari, as asserted by the opposite side, and that therefore possession regulated the measure of right. *Held*, by the Division Bench, that a suit by plaintiff in the Civil Court for a declaration of his right as above, was not barred by section 65, clause 3, of the Land Revenue Act of 1871. GHISA *v.* RANJIT. **121 P R 1880**

39. *Decree for redemption—Subsequent suit for redemption of same mortgage.*

Held, that the fact of a decree for redemption of mortgage having been obtained in a previous suit, is no bar to a second suit for redemption of the same mortgage. *Shibbu Mul* v. *Piara Singh* (No. 86 *P. R.* 1877), followed. NATHU SINGH *v.* RURA. **14 P R 1881**

40. *Suit on mortgage bond—Omission by defendant to plead that the mortgaged property was waqf—Subsequent suit by defendant in former case to release from attachment the mortgaged property on ground of its being waqf.*

The plaintiff in the present suit was sued as a defendant in a former suit based upon two mortgage bonds, the prayer of the plaint being in the alternative either for payment of principal and interest, or for possession of the mortgaged property. The then defendants pleaded that the money lent had been returned: the fact of the mortgage was not denied, but no plea was raised that it was inoperative as against the property on the ground that it was *waqf*. The present suit was for a declaration that the mortgaged property, which the plaintiff had attached in execution of the money decree obtained in the first suit, was *waqf*, and for its release from attachment.

Held, that the plaintiff might and ought to have pleaded in the former suit that the mortgage was inoperative to bind the property of which the plaintiff sought possession in the alternative; that the plea would have been relevant, and would, if decided in the defendant's favour, have been a complete answer to the prayer for possession, and that, therefore, the present suit was rightly dismissed as a *res judicata*. BANNE SHAH *v.* KARM CHAND. **89 P R 1881**

RES JUDICATA—*contd.*

41. *Civil Procedure Code (Act X of* 1877), *section* 13, *Explanation II—Suit by reversioners to set aside alienation by widow—Former suit by same parties to set aside a similar alienation—Question of plaintiffs' locus standi as reversioners—Decision of that question in the first suit binding on parties to second suit—Matter directly and substantially in issue.*

In a suit brought by the plaintiffs, as reversioners of one W., deceased, against Mussammat J., the widow of W., and one K., her brother's son-in-law, to obtain a declaration that an alienation by Mussammat J. in favour of the said K. of W.'s land was not binding upon them, it was urged, among other pleas, that the plaintiffs were not the reversionary heirs and entitled as such to bring the suit. It appeared that in a former suit brought by the same plaintiffs against Mussammat J., and the then alienee, to set aside an earlier alienation of the same land, it was put in issue and decided that the plaintiffs were by custom entitled to bring the suit.

Held, that the question of the plaintiffs' *locus standi* in the present suit was a *res judicata*, as the allegation by the defendants in the former suit that the plaintiffs were not the reversioners and therefore not entitled to sue to set aside the alienation, would, if proved, have been a good defence to that suit, and therefore the question of the plaintiffs' right as reversioners to challenge by suit the validity of an alienation of W.'s land made by Mussammat J., was directly and substantially in issue in the first suit within the meaning of Explanation II to section 13 of Act X of 1877, and the decision then passed was therefore binding upon the parties to the present suit. KHAIRDIN *v.* AHMAD. **95 P R 1881**

42. *Act X of* 1877, *section* 13, *Explanation II—Suit to contest his liability to ejectment—Omission of plaintiff to contest his liability to ejectment on ground of non-payment of compensation—Subsequent suit for compensation.*

Held, that a suit for compensation claimed as due for improvements made before the service of the notice, is not maintainable by a tenant, who has been served with notice of ejectment, and has brought a suit under section 25 of the Tenancy Act to contest his liability to ejectment, without making non-payment of compensation a ground for disputing his liability, and whose suit has been dismissed. The right of the plaintiff to compensation at the time when the notice of ejectment was served being a matter which ought to have been made a ground of attack in such suit, must, under Explanation II to section 13 of the Civil Procedure Code, be deemed to have been directly and substantially in issue in the former suit, and consequently the trial of the second suit is barred under the provision of that section. KAKA *v.* BHOLA. **96 P R 1881**

RES JUDICATA—*contd.*

43. *Civil Procedure Code (Act X of* 1877), *section* 13, *Explanation II.*

The widow of one A. Y. having succeeded to a 5-biswas share in the village, mortgaged this share by way of conditional sale to one S. R., now represented by the defendant. The mortgagee having foreclosed was put into possession of the land under a decree for possession. After the death of the widow, one of the present plaintiffs, brother of A. Y., sued to recover from the mortgagee certain resumed revenue-free grants in the village, which had been settled with the widow, on the ground that this land was not included in the mortgage or in the decree for possession, saying that he would sue separately for the mortgaged land as heir of A. Y. The only issue in this case was whether the land claimed was included in the mortgage and subsequent decree. This issue was decided by the first Court in plaintiff's favour, but the appellate Court (after impleading the the plaintiffs nephew, the second plaintiff in the present suit) accepted the appeal and dismissed the plaintiff's suit. Meanwhile, and while the above appeal was pending, the two plaintiffs brought the present suit to recover the 5-biswas share from the defendant on the ground that the widow's alienation was only valid for her life and did not bind them as heirs of A. Y.

Held, that the present suit was not barred by section 13 of the Civil Procedure Code; as, though the plaintiff in the former suit might have made the invalidity of the alienation ground of attack, he did not in fact do so, and, the question not having been raised in that suit, the matter could not be said to have been heard and finally decided by the Court. SYAD YAR KHAN *v.* RAM CHAND. **24 P R 1882**

44. *Civil Procedure Code (Act X of* 1877), *section* 13, *Expl. II.*

Plaintiff sued to recover a sum alleged to be due for interest on a mortgage originally entered into by the defendant with one S., the benefit of which was alleged to have been transferred by defendant to her brother-in-law, the present plaintiff, in consideration of his having paid to S. the principal sum secured by the mortgage. It was found as a fact that plaintiff had paid the mortgage money out of his own funds to S., and it was therefore contended that he held the position of an equitable mortgagee and succeeded to all the rights possessed by S. under his mortgage.

It appeared that, previously to the above suit, the present defendant sued the present plaintiff to recover possession of the mortgaged land. In that suit the then defendant did not plead his rights as mortgagee, and it was therefore contended that he was debarred from maintaining the present suit by section 13 of the Civil Procedure Code, Explanation II.

RES JUDICATA—*contd.*

Held, that this contention was not well founded, as the present plaintiff had never contended that he was under the terms of the mortgage entitled to possession of the land, and the defence that he was mortgagee would have been no answer to the former suit for possession, unless he could have shown that as mortgagee he was entitled to retain possession. SHEIKH MEHR ALI *v.* MUSSAMMAT AZIM BIBI. **59 P R 1882**

45. *Estoppel by conduct.*

When a defendant has successfully objected in a previous suit between the parties that the Court had not jurisdiction to entertain a portion of the claim, he cannot be allowed in a subsequent suit for such portion to contend that the subject-matter of the latter suit should have been adjudicated upon in the former. The decision in the former suit that the Court had not jurisdiction is a final determination on the question of jurisdiction. MUHAMMAD RUSTAM ALI KHAN *v.* NAWAB MUHAMNAD AZMAT ALI KHAN. **64 P R 1882**

46 *Civil Procedure Code (Act X of 1877), section 13—First suit brought by plaintiffs as reversioners to set aside alienation by widow—Subsequent suit for pre-emption of the subject of the same alienation.*

The present plaintiffs first brought a suit against one Mussammat H. and the present defendant, to have the sale of a house by Mussammat H. to the said defendant cancelled, on the ground that they (plaintiffs) were the reversionary heirs of Mussammat H.'s late husband and entitled as such to succeed to the house on her death and that the sale was made without necessity. That suit having been dismissed on the ground that the sale was for necessity, the plaintiffs brought the present suit against the purchaser (Mussammat H. having in the meantime died) to obtain possession of the house in virtue of their right of pre-emption.

Held, that the suit was not barred by section 13 of the Civil Procedure Code, as the matter directly and substantially in issue in the present suit, that is, the plaintiffs' right of pre-emption in respect of the house in dispute, was clearly not in issue in the former suit, either expressly or constructively, with reference to Explanation II to section 13 of the Code. KHAIRATI *v* AKKO. **108 P R 1882**

47. *Civil Procedure Code (Act X of 1877), section 13—Explanation V—Suit by or against one co-sharer how far binding on another co-sharer—Notice.*

In the present suit, the plaintiff claimed (1) a declaration that he was entitled to build up a wall, (2) to erect a *balakhana* or upper story, so as to exclude defendants from the use of a roof, and (3) an injunction to restrain the defendants from interfering with his building the said wall, alleging that his right to build both the wall and the *balakhana* was established by previous decisions. The present appellant, who was one of the defendants, urged (among

RES JUDICATA—*contd*

other pleas) that the previous decrees upon which the plaintiff relied were not binding upon him as he was no party thereto, and had received no notice of action. It appeared that in the first of the two suits referred to, in which the right to build the wall was in issue, plaintiff sued one M. M., the brother of the present appellant, alone for an act of obstruction committed by the defendant some few days before suit, and although M. M. in his written answer set up a claim to the wall in dispute and urged that the plaintiff had taken advantage of his father's death and of the absence of his elder brother (the present appellant) in Hindustan to open out a doorway leading to the top of the defendant's house, there was nothing to show that he professed to defend the action otherwise than on his own behalf; it was also clear from the file that M. M. had no authority from his brother to defend the suit or to submit its determination to the plaintiff's oath, as he eventually did, nor was it alleged that the present appellant had any notice of action. In the second case in which the right to the roof on which it was now sought to build the *balakhana* was in issue, the position of the parties was reversed, M. M. the brother of the present appellant being the plaintiff, and the present plaintiff one of the defendants. In this suit also there was no allegation that the plaintiff was suing not merely on his own behalf but also on behalf of his absent brother, although it appeared that the doorway which he sought to have closed opened out on to the roof of a house which belonged to the plaintiff and his brother jointly, and it was clear that he had no authority from his brother (the present appellant) to conduct the case on his behalf, nor was it alleged that the said appellant had any notice of this suit.

Held that, under the circumstances stated above, the present appellant was not bound by the decisions in the suits above referred to, with reference to the provisions of Explanation V, section 13, Act X of 1877.

Per RATTIGAN, J.—The language of the above clause seems to contemplate a case where a large number of persons are interested in the one right, and the provisions of the above section must be read with section 30 of the Act, as the Legislature could never have intended to so far depart from the rule so consonant with natural justice and so well established, that persons should not be bound by a decision in a suit of which they had no notice and which was obtained behind their backs.

Per ELSMIE, J.—Although I have some difficulty in holding that it is open to us to rule positively that section 13, Explanation V, must be read with section 30, I am quite clear that this part of the law must be construed very strictly, and that the Courts are bound not to allow Explanation V, section 13 to operate as a bar to litigation unless they are firmly persuaded

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that it applies to the exact case in point. This provision of the law was not intended to apply to a case like the present, where a junior brother finding himself involved in litigation regarding property held jointly by himself and an elder brother, during the absence of that brother in a distant part of the country, did his best to defend the joint rights, but at the same time pointed out to the Court that advantage had been taken by the opposite party of the fact of his elder brother's absence; and where no notice whatever had been given through the Courts to that elder brother of the fact of the pendency of the litigation. GHULAM GHOUS *v.* SHER MUHAMMAD. **111 P R 1882**

See also SHEOYA *v.* SHADI. **111 P R 1882 Note (a)**

DINA *v.* MUSSAMMAT ATMA DEVI. **111 P R 1882 Note (b)**

JAI SINGH *v* THOBA. **111 P R 1882 Note (c)**

and CHUHAR *v.* DEVIA. **111 P R 1882 Note (d)**

48. *Civil Procedure Code (Act X of 1877), section 13—Decision in former suit of matter necessary for decision of that suit—Same matter again in issue in subsequent suit between same parties.*

Held by the Full Bench, that the decision in a former suit between the same parties of a matter of which the decision was necessary to the decision of the former suit is conclusive upon the same matter when it comes in issue in a subsequent suit between the same parties in the same Court, both suits being equally within the competency of such Court. MUHAMMAD BAKSH *v.* NAMDAR KHAN. **118 P R 1882 F. B.**

49. *Civil Procedure Code (Act X of 1877), section 13, Explanation III.*

Plaintiff's father, who was mafidar of ¾ths of the village of Sekhwan, entered into a private arrangement with his brother, the grand-father of defendant, whereby in consideration of the brother assisting him in collecting the produce in kind from the proprietors he was to be allowed a half-share of whatever remained from the proceeds of the sale of the produce, after deducting the Government revenue on the resumed portion of the mafi and the mafidar's own dues. In pursuance of this arrangement the produce of certain harvests was stored, preparatory to division, in two granaries, but before any division was effected the two brothers died. Disputes then arose between their descendants, and the present plaintiff filed a suit against the present defendant in which, ignoring the former agreement between his father and uncle, he claimed possession of the entire grain, contending that defendant had no title to it whatever. This suit was eventually dismissed, the Court holding that the plaintiff was not entitled to more than a ½ share of the grain, which the defendant had never refused to give him, and that

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RES JUDICATA—*contd.*

according to the practice which had prevailed between the father and grand-father of the parties, it was usual to sell the grain, and after deducting the Government revenue to divide the balance in equal proportions. The Court added that it appeared that a sum of Rs. 673-12-0 was due to plaintiff for the Government and mafidar's share of the revenue, but as it was not clear whether any portion of this sum had already been paid by the defendant's grand-father, or what was the state of the accounts between the parties, it left it open to the plaintiff to bring a separate suit for this item. Plaintiff then brought the present suit for the revenue of 10 harvests.

Held, that the present suit was not barred by reason of section 13 of the Code of Civil Procedure. As a defence to the action brought by the plaintiff in the first suit, it was open to the defendant to plead, as he did, that the plaintiff was not entitled to more than a half-share of the grain stored up in the granaries under an agreement which was binding between the parties, and that as his right to this portion had not been denied he had no cause of action, and since the Court held the agreement proved and dismissed the plaintiff's suit, it may be taken as having finally decided that the rights of the parties were governed by the terms of the agreement and to this extent the decision in question was a *res-judicata* controlling the rights of the parties; but it could not *perse* operate as a bar under section 13 of the Code to the maintenance of another suit by the same plaintiff to enforce the agreement, nor again, as the plaintiff did not claim in his first plaint any relief with respect to the revenue and mafi charges, could the dismissal of his suit be deemed to be a refusal by the Court to grant any relief with respect thereto, within the meaning of Explanation III of section 13. *Syad Yar Khan* v. *Ram Chand* (No. 24 *P. R.* 1882), cited. SODHI HARNAM SINGH *v.* SODHI SUNDAR SINGH.

168 P R 1882

50. *Civil Procedure Code (Act X of 1877), section* 13, *Explanation IV—Suit for* mesne *profits—Dismissal of suit on ground of non-accrual of right till redemption of land—Subsequent suit after redemption for* mesne *profits for same year.*

Plaintiff, who was the purchaser of the rights of one L. D. in certain land mortgaged by the latter to the defendant, sued the defendant for *mesne* profits for Kharif 1937, alleging that the mortgage-debt had been paid by L. D. before the sale, but that defendant had wrongfully taken the produce. This suit was dismissed on the ground that as redemption had not been effected, no right to the produce had yet accrued to the plaintiff. Subsequently, in another proceeding, the plaintiff and L. D. obtained a decree for redemption on payment of a certain sum in addition to that

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RES JUDICATA—*contd.*

already paid; and the plaintiff then instituted the present suit against the defendant, again claiming the *mesne* profits of Kharif 1937, alleging that as the mortgage-money had been paid in Har 1937, the defendant was not entitled to the produce subsequent to that date.

Held, that as the previous case was between the same parties and for the same matter as the present suit, and the plaintiff was not allowed to withdraw his claim with permission to sue again, but the claim was dismissed, it could not be maintained that the previous decision was not a final decision of the same matter: if the plaintiff was entitled to the produce of Kharif 1937, he was entitled at the time when that suit was brought, and the Court was in error in deciding that no cause of action had arisen; but the decision not having been appealed against became final and barred the present suit. PRABH DYAL *v.* DEVI DAS. **69 P R 1883**

51. *Act X of* 1877, *section* 13, *Explanation IV*—Ex-parte *decree—Value of* ex-parte *decree as evidence.*

An *ex-parte* decree, which has never been executed and which the defendant therefore could apply to have set aside, cannot be held to have become final within the meaning of Explanation IV, section 13 of the Civil Procedure Code: but such a decree is admissible in evidence in a subsequent suit between the same parties, and where a question arises in the second suit common to that and the former suit, it is not enough for the defendant to say that he absented himself from the trial of that question; but he must at least show grounds which would have justified the Court in setting aside the *ex parte* decree, had he applied for this, or that owing to some fraud, or some irregularity in the proceedings, it should not be treated as binding on him. MUSSAMMAT MEHARI *v.* GUNDA SINGH. **78 P R 1883**

See also HASAN MUHAMMAD *v.* SHAH MUHAMMAD **78 P R 1883 Note**

52. *Civil Procedure Code (Act X of 1877), section* 13, *Explanation IV—Dismissal of previous suit for same relief on ground of res judicata—Subsequent suit between same parties barred.*

In a suit to recover possession of certain land from the defendants, it appeared that a previous suit for the same relief had been dismissed by the Munsiff on the erroneous ground that an earlier decision had made the matter *res judicata*, and that the plaintiff's proper course was to take out execution of the decree then passed.

Held, that the Munsiff's decision was a final decision of a matter directly and substantially in issue between the parties within the meaning of section 13 of the Civil Procedure Code (*see* Explanation IV), and that the same question could not

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be again tried between the parties otherwise than by an appeal from the Munsiff's decision. UMRA *v.* DITTA **95 P R 1883**

53. *Civil Procedure Code (Act X of 1877), sections* 12, 13—*Dismissal of suit for default—Subsequent suit for same subject-matter.*

A suit dismissed for default under section 110 of Act VIII of 1859, *held* to be no bar, with reference to section 12 or section 13 of the Civil Procedure Code, to the institution of a subsequent suit relating to the same subject-matter, as the matter in issue in the first suit was not finally decided between the parties within the meaning of Explanation IV to the latter section, as the Court could on the application of the plaintiff have altered the decision then passed. GULABA *v.* RAI SINGH.

104 P R 1883

54. *Civil Procedure Code (Act X of 1877), section* 13, *Explanation IV—Issue raised in former suit must have been heard and finally decided.*

To constitute a *res judicata* under section 13 of the Civil Procedure Code, not only must the same issue have been raised between the proper parties but it must have been heard and finally decided. *Sham Singh* v. *Khark Singh* (No. 107 *P. R.* 1880), cited. KHUSHALA *v.* ISHAR DAS.

104 P R 1883 Note (*a*)

Compare ALLAHYAR *v.* SHAHWALI.

104 P R 1883 Note (*b*)

55. *Civil Procedure Code (Act X of 1877), section* 13—*Matter directly and substantially in issue in former suit but not finally decided—Estoppel.*

In a former suit between the parties to the present case, the plaintiff sued the defendant, the widow of a Sikh Jat, on the allegation that by contracting a karewa marriage with one K. S. she had forfeited the property of her deceased husband, which the plaintiff claimed accordingly. The defendant denied the karewa marriage, and the Court without any enquiry on this subject dismissed the suit on the ground that, whilst the defendant was alive, plaintiff had no cause of action. Subsequently the plaintiff sued the defendant on the same ground, alleging that whatever might have happened at the time of the first suit, there was no doubt now that the widow had married R. S. three years ago, or two years after the first suit was decided.

Held, that the previous decision did not make the matter of the karewa marriage a *res judicata*, as though the said marriage was alleged on the one hand and denied on the other, the Court did not decide whether it had taken place, and therefore did not decide what its effect would be; and the defendant could not be allowed to plead in the present case, when the plaintiff alleged that karewa had since taken place, that it had really been carried out before the former suit was brought, if this would be any bar to the plaintiff's right to bring the present suit. PREMA *v.* MUSSAMMAT PARDHAN. **137 P R 1883**

RES JUDICATA—*contd.*

56. *Civil Procedure Code (Act X of 1877), section 13—Competent Court.*

In a suit for possession of a shop valued at Rs. 1,500 it was contended that the issue whether the relation of landlord and tenant continued to exist between the parties in respect of the shop was *res judicata*, because in a previous suit for rent decided between the same parties in 1879 the same material issue was decided. It appeared, however, that the Court in which the suit for rent was brought could not have entertained a suit for possession of the shop, or for a declaration of the plaintiff's title as landlord, its value, Rs. 1,500, being beyond the jurisdiction of the said Court.

Held by the Full Bench, following the decision of the Privy Council in *Misir Raghobandial* v. *Sheo Baksh Singh* (I. L. R. 9 Calc. 439), that the plea of *res judicata* was not maintainable, as the words "finally decided "by a Court of competent jurisdiction" in section 13 of Act X of 1877 make it necessary that the Court which decided the issue relating to the title in the previous suit for rent should have been competent to decide a suit for possession of the property, in order to make its decision upon that issue conclusive in a subsequent suit for possession. *Muhammad Baksh* v. *Namdar Khan* (No. 118 *P. R.* 1882), referred to. ABDUL RAHMAN *v.* MULA.

163 P R 1883

57. *Suit for correction of Settlement record—Subsequent suit for declaration of title—Act X of 1877, sections 13, 43.*

In a suit for declaration of proprietary right in certain *shamilat* land, it appeared that the plaintiffs had instituted a previous suit against the same defendants for correction of the Settlement record by entering their names as sole proprietors of the same lands in the Settlement Court, which at the time was the only Court which could entertain such suit under a notification which further declared that a suit for declaration of the title to rights of which the claimant was in possession was cognizable only by the Civil Courts of ordinary jurisdiction. The plaintiffs' suit was dismissed by the Settlement Officer on the sole ground that the suit for correction of the Settlement record was barred by time, no adjudication being made upon the merits of the claim.

Held, that neither the form of the claim in the former suit nor the decree therein was a bar under section 43 or section 13, Civil Procedure Code, to the maintenance of the present suit for declaration of proprietary rights in the same land to which the former suit related. HAMAD *v.* WAHAB. **190 P R 1883**

58. *Civil Procedure Code (Act XIV of 1882), section 13—Court in previous suit refusing to decide a matter in issue—Final determination of suit.*

In a suit for a declaration that defendant was not an occupancy tenant of certain land, it was contended that as the right of the defendant to an occupancy tenure in the same land had been expressly challenged by the same plaintiff in a former suit brought

RES JUDICATA—*contd.*

for redemption of a mortgage, and had been put in issue, it must be assumed to have been decided against the plaintiff, notwithstanding that the Court expressly left the question undecided, and that therefore the present suit was barred under section 13 of the Civil Procedure Code.

Held, that this contention could not prevail, inasmuch as much as though the point was substantially in issue in the former suit it was never decided at all. *Kala* v. *Vilayat* (No. 45 *P. R.* 1879) and *Udmi* v. *Naki* (No. 84 *P. R.* 1880), cited. BAGO *v.* DIWAN.

25 P R 1884

59. *Decision in former suit of question not essential to decision of case—Finality of such decision.*

In a suit for possession of certian land, it appeared that in a previous case the present plaintiff sued the present defendants for the rent for one season of the same land, alleging they were tenants of his father, H. The Judicial Assistant (on appeal) found that the plaintiff was the son of H., but instead of proceeding to decide the suit on the merits, dismissed the plaintiff's appeal on the ground that he should first sue for possession of the land and then for *mesne* profits, or should sue for both together.

Held, that the previous decision that plaintiff was the son of H. did not make the same question a *res judicata* in plaintiff's favour in the present suit, as the previous decision of the Judicial Assistant must be regarded as a decision that the suit would not lie as framed, and therefore no conclusion come to by him upon any question of fact arising in the case which was not essential to that decision could be regarded as a final decision of that question between the parties. GAMA *v.* AMERA.

29 P R 1884

60. *Suit by proprietor against occupancy tenant for possession on ground of invalid mortgage—Subsequent suit by tenant against the proprietor to be restored to possession—Accrual of tenant's title to recover possession.*

In a suit by certain occupancy tenants against their proprietors to recover possession of their holdings, it appeared that in a former case the proprietors sued the tenants and their mortgagee for possession of the same land on the ground of an invalid transfer of possession by the mortgagors, the tenants and the transfer being decided to be invalid against the propeietors, the latter obtained a decree.

Held, that the plaintiffs' title to possession in the present case was not *res judicata*, such title accruing only after the former suit had been decided and in consequence of the decision. HIRA *v.* JIA. **54 P R 1884**

61. *Civil Procedure Code (Act XIV of 1882), section 13, Explanation II—Suit for enhancement, of rent—Defendants pleading nonpayment of compensation for improvements made prior to a former suit for enhancement—Defendants bound to resist claim on all possible grounds.*

Defendants pleaded in answere to a suit

RES JUDICATA—*contd.*

by their landlord for enhancement of rent, that the plaintiff had not paid compensation for improvements made prior to the institution of a former suit for enhancement between the same parties.

Held, that as the defendants might and ought to have pleaded in defending the former suit that they had not been compensated for improvements as required by sections 37 and 38 of the Tenancy Act, their omission to do so precluded them from now bringing forward such plea under Explanation II to section 13 of the Civil Procedure Code. *Kaka* v. *Bhola* (No 96 *P. R.* 1881), cited. KESAR SINGH *v.* JAWAND SINGH. **142 P R 1884**

62. *Civil Procedure Code (Act XIV of 1882), section 13—Insolvency proceedings under Act IV of 1872 no bar to subsequent proceedings under section 344, Civil Procedure Code—"Suit"—"Civil proceeding.*

Held, that a decision in a proceeding under the solvency sections of the Punjab Laws Act (IV of 1872), though based on findings exactly coinciding with the requirements and terms of section 351 of the Civil Procedure Code, does not bind the same parties as a *res judicata* in a subsequent proceeding under section 344 of the Civil Procedure Code; as insolvency proceedings under the special provisions of the Punjab Laws Act do not amount to a "suit" as the term is used in section 13 of the Code. CHIRANJI MAL *v.* CREDITORS. **145 P R 1884**

63. *Civil Procedure Code (Act XIV of 1882), section 13—Suit on hundis after refusal of payment, subsequent to the dismissal, as premature, of a previous suit on the same hundis.*

Plaintiffs obtained a decree on two hundis, but on appeal to the Chief Court the decree was set aside on the ground that there was then no cause of action as the hundis had not been presented, and payment had not been refused or objected to (*vide Malori Mal* v. *Buta Mal*, No. 148 *P. R.* 1883). Subsequently the hundis were presented, and on payment being refused the plaintiffs instituted a fresh suit on the same hundis. The first Court gave a decree, but on appeal to the Commissioner the claim was dismissed as barred by section 13 of the Civil Procedure Code.

Held, that the previous decision of the Chief Court did not in any way bar the claim as now brought. The first suit was dismissed as premature, but the plaintiffs having cured this defect by presenting the hundis, a cause of action arose when defendants refused to pay. BUTA MAL *v.* RAM CHAND. **72 P R 1885**

64. *Civil Procedure Code (Act XIV of 1882), section 13, Explanation II—Parties litigating in different capacities—Plaintiff not bound to assert all his titles at once.*

Plaintiffs, who had in a previous suit joined with third persons in making a joint claim to the pre-emption of certain land sold, which suit was eventually dismissed, then brought a second suit to recover certain

RES JUDICATA—*contd.*

plots of the land so sold, on the ground that it belonged to them, and not to the vendor.

Held, that the second suit was not barred by reason of the plaintiffs not having claimed the ownership of the land in the former suit, first, because the plaintiffs in the two suits were acting in different capacities, as in the first suit they were promoting with others a joint claim, whereas in the second they were propounding a private and exclusive title: secondly, because the words "matter which might *and ought* to have been made ground of attack" in Explanation II, section 13, Civil Procedure Code, show that a plaintiff is not bound to assert at once all his titles to property or to be estopped from hereafter advancing them. MUHAMMAD DIN *v.* RAHIM GUL. **6 P R 1886**

65. *Suit for redemption of mortgage—Previous unexecuted decree for redemption of the same property—Right to maintain second suit.*

In a suit for redemption of a mortgage, it appeared that the plaintiff was the heir of a mortgagor who had previously obtained a decree for possession of the same property on payment of a specified sum, which decree the said mortgagor never executed, and as the period for execution had expired, the plaintiff, as his representative, brought the present suit for possession on payment of the amount previously fixed.

Held, following *Shiba Mal* v. *Paira Singh* (No. 86 *P. R.* 1877) and *Ram Singh* v. *Nodh Singh* (No. 93 *P. R.* 1879), that the present suit was not barred by section 13 of the Civil Procedure Code. BALMOKAND *v.* RAMJI LAL. **20 P R 1887**

66. *Suit for relief sought and refused in former suit.*

Plaintiff in a former suit against the same defendant claimed possession of a site after demolition of a building thereon. The Munsif decreed to the plaintiff "proprietary right in half the site claimed, but that the house should not be demolished." On appeal the Judicial Assistant made an order dismissing the appeal, observing that plaintiff had not sued to demolish the building. No decree was drawn up in the Appellate Court, nor did the plaintiff make any further appeal or apply for a review of judgment or for a formal decree to be drawn up in the Appellate Court. Subsequently, however, he brought a second suit against the same defendant for demolition of the same building.

Held, that the second suit could not be maintained, as plaintiff was claiming a relief sought in the former suit and refused by the Munsif in his decree in that suit, which decree stood unreversed. SARDAR WASAWA SINGH *v.* AMIR **79 P R 1887**

67. *Civil Procedure Code (Act XIV of 1882), section 13—Plea at what stage admissible—Objection not taken in grounds of appeal—Decree against widow how far binding on reversioners—*Bona fide *litigation.*

Held that a plea of *res judicata* may be raised at any stage of a case, the words of section 13 of the Civil Procedure Code being imperative, provided that where the plea is urged in the Appellate Court the facts are already in evidence which are alleged to bar the suit under the above section.

Held further, that a widow, whether Hindu or Muhammadan, in possession of her husband's estate in the Punjab, and holding on the usual customary life interest, is a representative for binding all future heirs on matters which may be decided, after a full and fair trial, in *bona fide* litigation between her and third parties.

Viru Mal. v. *Mussammat Bhagwandevi* (No. 80 *P. R.* 1884), referred to. FATTEH KHAN *v.* BAZ. **119 P R 1888**

68. *Civil Procedure Code (Act XIV of 1882), section 13—"Court of jurisdiction competent to try such subsequent suit."*

In a suit by plaintiff, who was in possession of defendant's land as mortgagee for a declaration that he had a right (*inter alia*) to the fruit of the trees standing on the land at the time of the mortgage, it appeared that the question of such right had formed the subject of previous litigation between the parties, plaintiff having sued for Rs. 15, the value of the fruit of certain trees taken by the defendant, in which suit it was held by the Munsif, and on appeal by the Judicial Assistant, that the agreement in the mortgage-deed did not entitle the plaintiff to the fruit of the trees standing at the time of the mortgage. It was found that the Munsif who decided the first suit would have had jurisdiction to try the present suit.

Held, that the part of plaintiff's claim relating to the fruit of trees standing at the time of the mortgage had been rightly dismissed as a *res judicata*.

Muhammad Bakhsh v. *Namdar Khan* (No. 118 *P. R.* 1882), cited. MAHSUM ALI *v.* NIJABAT KHAN. **145 P R 1888**

69. Res judicata—*Civil Procedure Code (Act X of 1877), sections 102, 103—Dismissal of suit—Non appearance of plaintiff—Effect of such dismissal—Suit for injunction—Suit to set aside gift—Cause of action.*

The dismissal of a suit in terms of section 102 of the Civil Procedure Code for the plaintiff's non-appearance does not operate in favour of the defendant as *res judicata*, though it precludes the plaintiff whose suit has been dismissed from bringing a fresh suit in respect of the same cause of action.

A. and B. who were agnates of K. sued K.'s widow for an injunction restraining her from alienating the property of K. in her possession, but the suit was dismissed under section 102 of the Civil Procedure Code on account of the non-appearance of the plaintiffs. The widow afterwards executed a deed of gift to P. who was a stranger to the succession of the fee of K.'s estate, and A. and B. with two other agnates of K. sued the widow and K. for a declaration that the deed of gift did not affect their reversionary rights.

Held by the Privy Council, that the dismissal of the first suit was not a bar to the second suit. MUSSAMMAT CHAND KOUR *v.* PARTAP SINGH. **177 P R 1888 P. C.**

70. Res judicata—section 13—*Directly and substantially in issue—Decision on a point not material to the ultimate decision of the case.*

The question referred was whether when a suit is dismissed by reason of the decision on some collateral point, a decision upon an issue not necessary to the dismissal of the suit upon the ground on which it is actually dismissed, is a final decision upon a matter directly and substantially in issue, so as to be *res judicata*.

Held by the Full Bench that the true test is whether the matter has been directly and *substantially* in issue in the former case, and has been heard and *finally* decided. No matter can be said to be directly and substantially in issue or to have been finally decided unless a decision thereon is necessary for the decision of the case upon the ground on which the final decision ultimately proceeds. Other matters may have been directly, though not *substantially*, but rather *incidentally* in issue and may have been heard without being finally decided, and the decision on these matters does *not* constitute *res judicata*.

I. L. R. VI Calc. 301, dissented from.

I. L. R. II Calc. 321, *IV Mad.* 134, *VII Mad.* 145, *VII All.* 606, *VII Bom.* 464. and 29 *P. R.* 84, referred to. NARAIN DAS *v.* FAIZ SHAH. **157 P R 1889 F. B.**

71. In 1880, plaintiff's suit for enhancement of rent was dismissed on the ground that the defendant held under an unexpired lease. Subsequently the Revenue Authorities re-assessed the land. The plaintiffs again sued for enhancement of rent. *Held*, that the fact that the Government had increased the assessment did not alter the relative position of parties and that the claim was barred as *res judicata*. MUHAMMAD GUL *v.* KARAM CHAND **6 P R 1890 Rev.**

72. Res judicata *as between defendants.*

In 1869, C. sued his brothers, M. N. and K. for partition of ¼ share in ancestral property. N. pleaded that he, as the adopted son of P., was entitled to one half, and the other half only was liable to distribution among the remaining brothers. M. and K. combined with C. in denying the adoption, but the Court found in N's favour that he had been adopted as alleged. Some years later, N. sued to recover half the property from M. C. and K. Defendants pleaded that the plaintiff had not been adopted, and was entitled to ¼ share only. N. contended that this question had been finally decided in the previous suit. *Held*, that this contention was correct. In cases where there is a conflict of interest between defendants *inter se*, an adjudication of rights may be *res judicata* between them as well as between the plaintiff and the defendants.

RES JUDICATA—*contd.*

I. L. R. XI Bom. 216 followed. NEHAL SINGH *v.* CHANDA SINGH. **140 P R 1890**

73. Res judicata—*Claim to inheritance—First suit based on custom—Second on Hindu Law—Material findings.*

Plaintiffs first sued defendant for a declaration that by custom they were entitled to succeed to the estate of T. in preference to defendant. It was decided in that case that the suit failed on the merits as also on the ground that the plaintiffs being entitled to sue for possession had sued for declaration only. Plaintiffs then sued defendants for the same estate on the ground that they were entitled to it by Hindu Law. Defendant pleaded the bar of *res judicata. Held*, (*i*) that the decision in the first cases on the merits was material and necessary ; the decree was based on it, and that therefore the second suit was barred ; (*ii*) that it was also barred on the ground that the plaintiffs had only one ground of action—their title to inheritance. If they were entitled to succeed both by law and custom they were bound to make both as their ground for attack in the first suit not having done so, the second claim was barred by Explanation II, section 13 of the Civil Procedure Code. PALA MAL *v.* MAYA. **146 P R 1890**

74. *Res judicata.*

The collaterals of a sonless proprietor sued the donor and the donees to obtain a declaration that the gift by him of certain land, houses and movables would not affect their reversionary interests. They obtained a decree in the Court of first instance. Defendants appealed, pending appeal, the donor died and the plaintiffs, reversioners, their estate having now fallen in possession, brought a second suit for possession. This also was decreed and defendants appealed. Both appeals were heard on the same date. In the declaratory suit the Court of first appeal upheld the gift as to the houses and the movables and declared it invalid as to land. In the possession case following its decision in the previous case, it dismissed the claim to houses and movables and decreed as to land. Plaintiffs appealed from the latter order alone. *Held* that the hearing of the appeal was barred by section 13, Explanation IV, by plaintiffs' omission to appeal from the decree of even date in the declaratory suit. NUR MUHAMMAD *v.* JAMUN. **153 P R 1890**

75. Res judicata—*Civil Procedure Code, 1882, section 13—" Court of jurisdiction competent to try such subsequent suit."*

In 1888, the plaintiff in the present suit instituted a suit against F. and G., the present defendants, for Rs. 5, the value of the loppings of certain trees which plaintiff alleged to be his property.

The defendants denied the cutting of the branches, and further pleaded that the trees were their own property standing on their own land.

The issues were : Whether the trees

RES JUDICATA—*contd.*

belonged to the plaintiff, and if so, whether the defendants had misappropriated the loppings.

The suit was heard by a Munsif, 2nd class. He found that the trees stood upon plaintiff's land and were his property, and gave plaintiff a decree for Rs. 2, at which sum he estimated the loppings taken by the defendants.

The defendants appealed to the Subordinate Judge. He decided that the trees stood on defendants' land ; and therefore dismissed the suit, an application by the plaintiff to the Chief Court on the Revision Side being summarily rejected.

The plaintiff then instituted the present suits, claiming separately from each defendant the land and trees in his possession, the land and the trees being admittedly the same as in the former suit.

The present suits were tried by a Munsif, 1st class, the value of the subject-matter of one suit being Rs. 15 and of the other Rs. 5.

The Munsif decreed both claims in part; but the Divisional Judge on appeal dismissed both suits as barred by the provisions of section 13, Civil Procedure Code, 1882.

The plaintiff appealed to the Chief Court.

Held, that the Court which decided the first suit was not a Court of jurisdiction competent to try the subsequent suits, within the true meaning of section 13, Civil Procedure Code, 1882, and that the subsequent suits were therefore not barred by the rule of *res judicata.*

The true test of the competency of the Court which decided the former suit or issue is not merely the jurisdictional powers of the original Court in which the previous suit was instituted, but the jurisdiction of that Court viewed in connection with the course of appeal allowed in that particular case, and the degree of finality attaching to the decisions of each of the Courts, original and appellate, which may be called upon to exercise jurisdiction in the case.

In the present instance, the Munsif who tried the suit of 1888 would have had jurisdiction to try the present suits ; but he would not have tried the second suits with the same jurisdiction as the first, inasmuch as the first suit was a small cause and one appeal lay to the District Judge, whose decision was final, whereas the present suits were land suits, appealable in the first instance to the Divisional Judge, with a possible further appeal to the Chief Court.

No 145 *P. R.* 1888 overruled. SHAMAS DIN *v.* GHULAM KADIR. **20 P R 1891 F. B.**

76. *Occupancy rights—Administrative proceeding—Res judicata.*

By an administrative proceeding in 1863, the object of which was to determine whether the tenants of the village should be recorded as having rights of occupancy, the Settle-

RES JUDICATA—*contd.*

ment Officer decided that the plaintiff had no such rights.

Held, in a suit instituted in 1890, to contest a notice of ejectment, that if the tenant be found to possess the qualifications required by section 5, sub-section (1) (c) of the Punjab Tenancy Act, 1887, he would be entitled to a decree for occupancy rights (No. 7 *P. R* 1890, Revenue followed.)

Since 1863, two Tenancy Acts have been passed, and they have conferred rights of occupancy on many tenants who, prior to the passing of these laws, might have failed to prove themselves to be occupancy tenants. It was no answer to the plaintiff in the present suit who claimed to be entitled to occupancy right under section 5, sub-section (1) (c) of the Act of 1887, to say that, in a Settlement proceeding in 1863, or even for the matter of that in a judicial proceeding, they were found to be tenants-at-will. SURTA *v.* IMIN-UD-DIN. **2 P R 1891 Rev.**

77. *Civil Procedure Code, section 13—Cause of action—Mortgage—Sale.*

In January 1878, defendant's father mortgaged a house to plaintiff for Rs. 90, the house to remain in possession of the mortgagor, and the mortgage-debt to carry interest repayable in one year. If not paid within this period, the mortgage-deed provided that the mortgagor would sell the house to the mortgagee for the mortgage-debt.

In January 1885, plaintiff sued on the mortgage-deed, his plaint concluding with a prayer for entry on the house and completion of the sale. The suit was decided *ex parte* in favour of plaintiff. In execution, plaintiff attempted to get possession of the house but the Court of execution construed the decree as merely entitling him to a conveyance, and eventually itself gave him a deed of sale of the house.

Plaintiff then brought the present suit for possession of the house setting out in his plaint the mortgage that he sued upon the mortgage-deed for completion of the sale and got a deed of sale from the Court; and that this, notwithstanding, the defendant refused to give him possession.

The lower Courts dismissed the plaintiff's suit as barred by section 13, Civil Procedure Code, because the plaintiff in the suit of 1885, had asked for possession and the decree had refused him that relief.

Held, upon application for revision that the decrees of the lower Courts must be reversed. The plaintiff alleged a cause of action subsequent to the decree of 1885. All that was in effect decided by the previous suit was that plaintiff was not *at that time* entitled to possession.

The suit remanded for retrial as though it were a suit by the plaintiff as mortgagee for possession of the house consequent upon foreclosure proceedings having been duly taken by him prior to the suit of 1885, and subject to any defence that the

RES JUDICATA—*contd.*

defendant might make other than a plea of limitation. SHAM DAS *v.* GAMUN.

41 P R 1891

78. *Civil Procedure Code, section* 13—*Res judicata.*

The defendant in the present suit executed a mortgage-deed for Rs. 757 in favour of the present plaintiff, the deed reciting receipt of consideration in full.

When before the Registering officer the mortgagor denied receipt of Rs. 217 out of the mortgage-money. The deed was nevertheless registered, the objection being recorded.

Thereupon the mortgagee sued the mortgagor for Rs. 217, which was decreed by the Munsif and District Judge but the Chief Court, upon revision, dismissed the mortgagee's suit on the ground that the plaint disclosed no cause of action.

After the decision of the lower Courts in the mortgagee's favour, and while the petition for revision was pending in the Chief Court, the mortgagee filed a suit for possession of the mortgaged property under the terms of the mortgage-deed. The first Court without fixing issues or recording evidence, rejected the plaint on the ground that the plaintiff (the mortgagee) having already sued for and obtained a decree for a refund of a portion of the mortgage-money which decree then stood unreversed, could not be heard to ask for specific relief on the ground that the defendant (the mortgagor) had received the whole of the consideration money.

After the Chief Court had rejected the mortgagee's claim (decreed by the lower Courts) for Rs. 217 the mortgagee instituted a fresh suit for possession of the land.

The Divisional Judge dismissed this last suit as barred by the rule of *res judicata.*

Held, that the suit was not *res judicata*, it being impossible to affirm that the matter in issue in the first suit had been heard and finally decided, the fact being that the Court had refused to adjudicate upon the merits at all. KOKAN MAL *v.* MIR ALAM.

15 P R 1891

79. *Arbitration and award—Civil Procedure Code, sections* 13 *and* 525 - *Order refusing to file award.*

In a suit by two sons of a deceased Muhammadan to recover their shares in their father's estate from their brother, the defendant pleaded that he was entitled to the said estate under an award in his favour made on a submission to which the plaintiffs were parties, but it appeared that the Civil Court had refused an application under section 525, Civil Procedure Code, to file the same.

Held, that this order was not a decision as to the validity of the award within the meaning of section 13. MUHAMMAD NAWAZ KHAN *v.* ALAM KHAN.

70 P R 1891 P. C.

RES JUDICATA—*contd.*

80. *Section* 13, *Explanation II, Civil Procedure Code*, 1882—Res judicata—*Matter which ought to have been made ground of defence in former suit.*

Section 13, Explanation II, Civil Procedure Code, 1882, which provides that any matter which might and ought to have been made ground of defence or attack in the former suit shall be deemed to have been a matter directly and substantially in issue in such suit does not further declare that such matter shall be deemed to have been heard and finally decided.

The explanation was not intended to enable a party to treat a point as having been decided in his favour in a former suit which was in fact not so decided. It applies rather to a case where the defendant has a defence which, if he had so pleased, he might and ought to have brought forward, but as he did not bring it forward the suit was decreed against him. SAIFUL RAHMAN *v.* UMAR-UD-DIN.

124 P R 1892

81. *Civil Procedure Code, section* 13, *Explanation II—Ground of defence or attack in former suit—Parties litigating under the same title.*

The widow of one K. B. sued K. B.'s brother (G. H. and daughter for her deceased husband's share of the estate for her life, and obtained a decree for half the property. While the above suit was pending G. H. died, and the present plaintiff, who was K. B.'s son-in-law, was brought on the record (with others) as G. H.'s legal representative, but was not allowed by the Court to put forward any claim of his own as K. B.'s *khanadamad* in answer to the widow's claim. Subsequently the said plaintiff sued the widow and daughter of K. B. for K. B.'s estate as his heir and *khanadamad*.

Held, that the suit was not barred as *res judicata* under Explanation II, section 13, Civil Procedure Code, by reason of the previous decision as the plaintiff was not litigating under the same title in the two suits, and moreover his title to succeed as K. B.'s *khanadamad* was properly rejected as a ground of defence in the previous litigation. AHMAD KHAN *v.* MUSSAMMAT BHAGBHARI.

142 P R 1892

82. *Civil Procedure Code*, 1882, *section* 13—Res judicata—*Matter directly and substantially in issue between parties under whom they or any of them claim.*

An assignee cannot be held bound by a decision relating to the property assigned in a suit instituted after the assignment and to which he was not a party.

An assignor who has assigned away his interests in certain property cannot claim to represent his assignee in a suit relating to that property which has been instituted after the assignment.

Semble.—The words "parties under whom they or any of them claim" in section 13, Civil Procedure Code, can only refer to a title which had not come into existence at the date of the former suit. MADU *v.* UMAR DIN.

26 P R 1893

RES JUDICATA—*contd.*

83. *Civil Procedure Code, sections* 42 *and* 43—*Whole claim which the plaintiff is entitled to make—Previous suit dismissed as premature, there being no cause of action.*

Section 43, Civil Procedure Code, is not applicable where the suit set up in bar has been dismissed because there was no cause of action.

A plaintiff must under section 43 include the whole of the claim which he is entitled to make in respect of the cause of action and cannot afterwards sue for any portion of the claim in respect of which he may have omitted to sue. The object of the section, which is a sequel to section 42, is to prevent further litigation. A premature suit is not within the purview of the section at all.

What is contemplated in the second clause of the section is a second suit advancing a claim supplementary to the first and in respect of "the portion omitted or relinquished in the first suit." When the cause of action arises a second suit may be brought for the whole of the claim arising out of it, notwithstanding, the dismissal of the first suit as premature and it need not be for the same claim or the same remedies as was sued for in the first plaint. AHMAD KHAN *v.* MEHR KHAN.

35 P R 1893

84. *Civil Procedure Code (Act XIV of* 1882), *section* 43—*Suit to include whole claim—Plaintiff having several causes of action suing in respect of one only—Subsequent suit in respect of another cause of action.*

Held that a plaintiff is not required by section 43 of the Civil Procedure Code to bring his suit upon all the causes of action he has, nor is he prevented if he renounces any, from suing again; all that is required by that section is that he should include the whole claim which he is entitled to make in respect of the cause of action. MEWA SINGH *v.* NATHU.

23 P R 1894

85. *Succession—Daughters—Suit by reversioners to contest daughters' succession—Compromise—Subsequent suit by same reversioners to set aside alienation by daughters—Civil Procedure Code*, 1882, *section* 43.

One K. S., a Hindu Jat, died leaving a son Kh., two daughters, the present petitioners, and certain immovable property. Kh. married and had a son L., who survived him. After the death of Kh. and the remarriage of his widow the daughters of K. S. went to the house left by K. S. to reside with, and take care of, their minor nephew L. On the death of L., the reversionary heir of K. S. sued the said daughters who had taken possession of both the land and horses left by K. S., but in 1860 this suit was compromised, one-third of the land and houses being left

with the daughters. On the 28th January 1893 the daughters having sold part of the said house property to B. S. and C. S., the reversioners again sued, praying for a declaration that the sale should not affect their rights after the death of the female vendors, and they pleaded that the sale was not for a necessary purpose and that the consideration was fictitious. The defendants who were the daughters and the vendees pleaded that the daughters had inherited the property in dispute from K. S.; that they were full owners and had been in possession for the preceding 27 years, and that the sale was for necessity and for full consideration.

The lower Courts found that in the absence of evidence to the contrary, the presumption was that the daughters were not full owners but merely life tenants; that their possession was permissive and not adverse to the plaintiffs; that the sale was not for necessity or for consideration, and that the plaintiffs were not barred, under section 43 of the Civil Procedure Code from suing by reason of their suit in 1860, and decreed plaintiff's claim. A certificate to appeal having been refused by the Divisional Judge, the defendant-daughters applied to the Chief Court on the Revision side, to admit a further appeal on the following grounds:

"(I). That the certificate should have been granted as there is a point of law and custom involved;
 (*a*) does section 43 apply or not?
 (*b*) have, or have not, the daughters by custom more than a life tenancy?
(II). The daughters have full power to alienate.
(III). There was a necessity."

Held, that the real question was not whether the daughters by custom took more than a life tenancy, but what were their rights under the compromise of 1860, and that there was no ground for admitting an appeal upon that question.

Held, further, that the present suit being upon an entirely new cause of action was not barred under section 43 of the Civil Procedure Code by the omission to claim the house in the former suit. MUSSAMMAT IND KAUR *v.* SUJAN SINGH. **47 P R 1894**

86. Res judicata—*Civil Procedure Code*, 1882, *section* 13—"*Parties under whom they or any of them claim.*"

Held, that where A. claims under, in the sense of deriving title from B. and C., who were parties to a previous suit relating to the same subject-matter but who did not fill that character before, or at the time when A. obtained his title from them, A. is not claiming under a party to that suit within the meaning of section 13 of the Civil Procedure Code and is not bound by the decision in such previous suit.

I. L. R. VIII All. 324, and *Mercantile Investment Co.* v. *River Plate Trust, &c., Co.,* "*Weekly Notes*" (*Engl.*), *January* 27*th*, 1894, page 9), cited. SHAM SUNDER V. BHAIRON PERSHAD. **51 R P 1894**

87. *Civil Procedure Code*, 1882, *section* 13—Pro forma *defendant in former suit suing former plaintiffs in respect of same subject matter*—Res judicata.

In 1890 the sons of one Nadu sued the descendants of Janu and Kadu on the allegations that certain land which they stated had been given by one Nur, the father of Nadu and Kadu, to Mussammat K. for her maintenance and ought to have reverted on her death to the descendants of Nur, had improperly been entered in the names of all the descendants of one Neka, the common ancestor. The plaintiffs admitted that the sons of Kadu were equally entitled with the plaintiffs, but they made them defendants on the ground that they had refused to join in the plaintiff's claim. At the trial the sons of Kadu applied to be made co-plaintiffs but no order was passed on this application and the Court finding that the land had belonged to Nur, decreed the whole claim in favour of the plaintiffs. On an appeal by the other defendants (in which the sons of Kadu did not join) the decree was upheld by the Divisional Court. The sons of Kadu now sued the sons of Nadu claiming their share in the land formerly in dispute, and their claim having been dismissed on appeal by the Divisional Judge on the ground that the suit was barred under section 13 of the Civil Procedure Code, they appealed to the Chief Court.

Held, per PLOWDEN, S J. and RIVAZ, J., (BENTON, J., dissenting) that the present plaintiffs having been merely *pro forma* defendants in the former suit and the only question "heard and finally decided" in that case being as to the respective rights of the then plaintiffs and the defendants, sons of Janu, the present suit was not barred under section 13 of the Civil Procedure Code, by reason of the said previous suit.

Per BENTON, J.—There is no distinction according to the Civil Procedure Code between *pro forma* defendants and other defendants, and if a *pro forma* defendant does not come forward and show that he is substantially interested or if he do come forward and fail to establish his interest in the matter, the decree will bind him.

I. L. R. XIX Calc. p. 159, cited. ZAMAN ALI *v.* MANJI. **60 P R 1894**

88. Res judicata—*Suit by reversioner for declaration that deed of mortgage should not affect his rights—Mortgagor and mortgagees co-defendants—Reversioner's claim decreed—Subsequent suit by mortgagees against mortgagor for possession.*

One Mussammat M., a widow, having mortgaged certain land to the present plaintiffs, her husband's kinsman and heir sued her and the mortgagees, praying for a declaration that the deed of mortgage should not affect his reversionary rights. Several issues were raised and decided, but there was no issue as to whether the deed was valid and binding as between the mortgagor and mortgagees. The reversioner obtained a decree such as he prayed for, and none of the defendants appealed. Subsequently the

mortgagees, the present appellants, sued the widow mortgagor, and her daughter's husband, who was her tenant for possession of the land mortgaged.

The first Court, holding that the mortgage was good as between the mortgagor and the mortgagees, decreed the claim, but the Divisional Judge, on appeal, held that, as in the previous suit the deed was found to be *farzi* and without consideration, that the validity of the mortgage was *res judicata* as between the present parties, notwithstanding they were co-defendants in the former suit. The plaintiffs appealed to the Chief Court.

Held, that inasmuch as the issue raised in this case was not tried and decided in the former suit, the present suit was not barred as *res judicata* by reason of the decision in the former suit.

I. L. R. XI Bom. 216, citted and approved. THAKUR DAS *v.* MUSSAMMAT MANNA. **77 P R 1894**

89. *Interlocutory decision of lower Court, not reversed on appeal, how far binding on Appellate Court on appeal from a final order in same proceeding—Execution proceedings.*

Held, that though a decision by a competent Court in an execution proceeding that on application for execution is not time-barred is, unless reversed on appeal, conclusive between the parties in a subsequent proceeding for execution of the same decree, such decision is not binding upon an Appellate Court on an appeal from a final order *in the same proceeding* merely because the interlocutory order was not appealed from immediately.

IV B. L. R. (F. B.), p. 101, *I. L. R. VIII Calc.* 51 and No. 200 *P. R.* 1889, referred to. SARDAR *v.* FATEH CHAND. **89 P R 1894**

90. *Suit for possession of land allotted by Revenue Officer on partition to defendants—Jurisdiction of Civil Court—Civil Procedure Code*, 1882, *Section* 13—*Punjab Land Revenue Act*, 1887, *sections* 115, 116, 117, 122 *and* 158 (*XVII*) *and* (*XVIII*).

On the 22nd December 1888 certain persons applied to the Revenue Officer for partition of *shamilat* land as against certain persons, among whom were the present plaintiffs, alleging that of these defendants some were proprietors and others tenants; that each was in possession of more than his rateable share of the *shamilat*, and that, though there was a large quantity of such *shamilat*, the whole of it was unculturable with the exception of the area for partition of which they prayed. The usual proclamations having been issued, several persons objected to the partition, and on the 29th January 1889 plaintiffs presented a petition stating that they were in possession of part of the *shamilat* which they had brought under cultivation at their own expense, and of which they had obtained a lease at *barani* rates, and prayed that even if the *shamilat* were partitioned, the partition might be effected on

RES JUDICATA—*contd.*

condition of their being re-imbursed for their outlay in rendering the land culturable. They also joined with others in presenting a petition on the same date praying that partition might not be effected on the ground that the proprietors had, in 1875, agreed not to partition the *shamilat* and had ratified their agreement before the Tahsildar. On the same date, the Revenue Officer passed an order to the effect that such of the proprietors as had not joined in the agreement of 1875 were entitled to partition, and directed the partition to be completed by the 1st March 1889. On the 22nd February 1889, plaintiffs and others presented a further petition praying for the stay of partition proceedings on the ground that they had, at great expense, reclaimed their ratable share of the *shamilat*, and that it had been agreed that any plot reclaimed by a proprietor should be his *(usi kg hua)* and the other proprietors should have no concern with it. This petition, and an appeal to the Commissioner from the order of the 29th January 1889 having been rejected, the latter as being barred by limitation, partition proceedings went on for about two years, and on their termination, plaintiffs, on the 30th March 1891, again objected to land which had been reclaimed by them being given to others. The partition, however, was finally sanctioned by the same Revenue Officer on the 5th July 1891, and an instrument of partition prepared on the 29th January 1892. On the 14th December 1891, plaintiffs instituted a suit in the Civil Court for possession of certain land, alleging that they were proprietors thereof by reclamation, the sinking of a well and the planting of trees, but that it had remained wrongly recorded as *shamilat* and had at a partition been allotted and made over to defendants. Defendants pleaded that the Civil Court had no jurisdiction to entertain the claim, and further that the plainiffs were not proprietors of the land by reason of having reclaimed it. The District Judge held that the Civil Court had jurisdiction, but that plaintiffs had not established their title, and the Divisional Judge, on appeal by plaintiffs, held that the suit was barred under section 13 of the Civil Procedure Code, 1882. Plaintiff appealed to the Chief Court on a certificate granted by the Divisional Judge.

Held that inasmuch as the Revenue Officer had not tried the question of title involved either as a Civil or as a Revenue Court, but had merely decided the question as to property to be divided, the suit was not barred under section 13 of the Civil Procedure Code; but *held*, further, that inasmuch as partition had already been carried into effect and was no longer "sought" when the suit was instituted, the Civil Court had no jurisdiction under section 158 (2) (xvii) of the Punjab Land Revenue Act, 1887, to entertain the suit despite the fact that there was a question of title in the property partitioned involved. AHMAD GUL *v.* BOSTAN. **118 P R 1894**

91. *Custom—Succession of married daughter in presence of collaterals—*

RES JUDICATA—*contd.*

Riwaj-i-am—Muhammadan Gujars of Ludhiana District—Res judicata—*Waiver.*

On the death in 1854 of one Shahbaz, a Muhammadan Gujar of the Ludhiana District and a landed proprietor in *mauza* Bhukri Khurd, his widow Mussammat Raso, was entered in the village records as proprietors of his lands, and in 1861 gifted the said lands to her two sons-in-law, B. plaintiff's husband and M. The reversionary heirs of Shahbaz thereupon sued to set aside the gift and obtained a decree to the effect that the gift would be considered effectual only for the widow's lifetime and that after her death whosoever proved his title would be considered the proprietor. In 1878 the widow gifted the same lands to her two daughters, plaintiff and Mussammat J., wife of M. The reversioners again brought a suit which was decided in their favour in both the first and the Appellate Courts, and on the death of the widow in 1886 they sued B. and M. for possession of Shahbaz's lands and obtained a decree for their respective shares in the same. Subsequently plaintiff sued the said reversioners and her own husband, B., claiming the lands of Shahbaz, her father, on the ground that by custom among Muhammadan Gujars of the Ludhiana district, the daughter of a sonless proprietor who has never left her father's house is, on the father's death, entitled to succeed to the exclusion of her father's male relatives. Plaintiff relied in support of her claim upon the entry in the *Riwaj-i-am.* Defendants, with the exception of plaintiff's husband, who admitted the claim, denied plaintiff's right and pleaded, *inter alia*, that the matter was *res judicata*; that plaintiff by her conduct in the previous litigation had waived her title to succeed as heir of her father, and that, in any event, she was not entitled to so succeed by custom. The first Court decreed plaintiff's claim but the decree was reversed, on appeal, by the Divisional Judge, on the ground that plaintiff had by her conduct waived her right to succeed as her father's heir. Plaintiff appealed to the Chief Court, and it was

Held, that inasmuch as the officer who tried and decided the suit in 1878, when the reversioners contested the gifts by the widow to her two daughters, would not have had jurisdiction to try the present suit, plaintiff's claim was not *res judicata* by reason of the former decision.

Held, also, that as plaintiff could not have objected to the gift to her sister and her sister's husband during the life-time of her sister and her mother, her conduct did not amount to waiver of her right to succeed after their death, as the heir of her father. MUSSAMMAT BASRI *v.* MOKHAN. **146 P R 1894**

92. *Custom—Inheritance—Right of adopted son to succeed collaterally in his adoptive father's family—Sarsut Brahmans of Amballa district*—Res judicata—*Previous decision in favour of adopted son against the widow of the adoptive father's brother in respect of the latter's joint property, how far*

RES JUDICATA—*contd.*

binding on the daughters of such brother claiming to succeed as heirs to their father's separate property—Daughters not parties to former suit—Civil Procedure Code, 1882, *section* 13.

In 1876, in a suit brought by plaintiff against Mussammat I. B., the widow of one B., for a declaratory decree that after the death of the said widow plaintiff was entitled to succeed, as the adopted son of A., brother of B., to the entirety of B.'s *joint property*, it was decided that plaintiff was the validly adopted son of A, and, as such, entitled to succeed as claimed. To this suit the daughters of B. by Mussammat I. B. were not parties. Subsequently Mussammat I. B. made a gift of the *separate property* left by B. in favour of her said daughters, whereupon plaintiff sued for a declaration that such gift should not affect his reversionary rights after the death of the widow, and made Mussammat I. B. and her daughters co-defendants. The latter pleaded that plaintiff was not the validly adopted son of A., and that, in any event, he was not entitled, by custom, to succeed as claimed. For plaintiff it was contended that the question as to his right, to succeed as the adpoted son of A. to property left by B. was *res judicata* by the decision in the former suit.

Held, per PLOWDEN S. J., and *Benton*, J., (FRIZELLE, J., dissenting), that inasmuch as (i) the widow of B., succeeding to her husband's estate as his heir, represented the estate fully; (ii) reversioners claiming to succeed after her were bound by decrees relating to her husband's estate obtained against her without fraud or collusion; and (iii) the widow's daughters were not necessary parties to the former suit, the daughters though not made parties in the former suit, were bound by a decision on a relevant issue tried and decided therein, and that therefore the question as to the validity of plaintiff's adoption was *res judicata* and was not affected by the fact that the property now in dispute was different.

But *held* further, that it was competent to the said daughters to plead in the subsequent suit that the adopted son of A. was not entitled by custom to succeed as heir to the *separate* property of B. MUSSAMMAT INDRA BAI *v.* GADU DHAR. **29 P R 1895 F. B.**

93. Res judicata—*Civil Procedure Code*, 1882, *section* 13—"*Former suit.*"

Held, that the expression "former suit" in section 13 of the Code means a previously instituted suit and cannot apply to a suit instituted *subsequently* to the suit in which the bar is pleaded. GHAMANDI LAL *v.* BHANA MAL. **57 P R 1895**

94. *Civil Procedure Code*, 1882, *section* 13—Res judicata.

In 1891 plaintiffs sued defendants in the Civil Court for possession of certain land, and alleged that in 1865 a dispute between the parties was settled by a decree which gave plaintiffs possession of the said land on payment of Rs. 40; that thereafter J. S.

plaintiffs' uncle, remained in occupation, but that on his death, a few years before the suit, defendants obtained possession which they now refused to surrender to plaintiffs. At a late stage of the suit one of the plaintiffs stated that, on the death of J. S. defendants had been allowed to hold the land on payment of a yearly rent of Rs. 20. The Munsif who tried the case thereupon recorded an order that it appeared from the statement of plaintiffs' other witnesses that the relationship of landlord and tenant existed between them and defendants, and that the case was therefore cognizable in the Revenue Courts. He therefore dismissed the suit without going into the issues, and told plaintiffs to seek their remedy in the Revenue Court. This order having been upheld on appeal by the Divisional Judge, plaintiffs sued for the ejectment of defendants in the Revenue Court, but lost their case before the Collector and the Commissioner, who concurred in holding that defendants were not in possession of the land as tenants of the plaintiffs. Plaintiffs then instituted the present claim in the Civil Court for possession of the land and omitted the allegation of defendants' tenancy as the point had been decided against them in the Revenue Court. The defendants pleaded that the suit was barred by the rule of *res judicata* with reference to the former decision and could not be heard again in the Civil Court. This objection was overruled by the first Court, but on appeal the Divisional Judge dismissed the suit as barred by the former decision.

Held, that inasmuch as in the former suit there was no *finding* by the Munsif, that the parties stood in the relation of landlord and tenant, but merely that the plaint, taken together with the plaintiffs' statement towards the close of the case, disclosed a case, cognizable by the Revenue Court, the present suit, which was not based on any allegation of tenancy between the parties, but was merely for the recovery of the land on the strength of plaintiffs' title as owners, defendants' possession being treated as wrongful, was not the same as that instituted in 1891, and the rule of *res judicata* had no application. RAM SINGH *v.* JOWALA SINGH.
55 P R 1896

95. *Suit for proprietary possession of land—Dismissal of suit—Subsequent suit by same plaintiff for possession as non-proprietor*—Res judicata—*Civil Procedure Code*, 1882, *section* 13, *Explanation II.*

Plaintiff sued defendants for possession of certain land, alleging that he was proprietor thereof and the Munsif, who tried the case, granted him a decree for possession only, on the ground that he was not a proprietor in the village in which the land was situate. On appeal by defendants, the District Judge dismissed the suit, holding that as the proprietary possession for which plaintiff had sued had not been proved the Munsif had no jurisdiction to grant a decree for possession. The District Judge, however, allowed plaintiff to bring a separate suit for

possession as a non-proprietor, but the Munsif before whom it was instituted dismissed it as barred by section 13, *Explanation II*, of the Civil Procedure Code. This decree having been reversed by the District Judge and the case remanded for re-decision, defendants appealed to the Chief Court.

Held, that the second suit had been rightly dismissed as barred by section 13, *Explanation II*, of the Civil Procedure Code. Although in the first suit plaintiff did not expressly plead his right of possession as a non-proprietor, he should have done so, and even without his doing it, the suit was of a nature in which the Court was justified in considering the point without its being specially put forward. NEK MUHAMMAD *v.* SATTAR MUHAMMAD.
6 P R 1896

96. *Two suits tried together by consent of parties—No appeal from decree in one suit*—Res judicata.

One Malik Karim Bakhsh of Sabzi Mandi, a suburb of Delhi, died on the 5th March 1890, leaving a large property in land, houses and movables, and the following descendants (i) by his first wife, three sons and two daughters, and (ii) by his second wife, one son and four daughters. After his death one of his sons by the first wife brought a suit for partition and possession of a one-fourth share in the deceased's property, first, in terms of an award made by one A. D., to which all the defendants were alleged to have agreed, and failing that under a custom by which daughters were excluded from inheritance, and lastly, if no such custom was proved, for two out of fourteen shares under Muhammadan Law. The present plaintiff, who was one of the daughters by the second wife was made a party in order to have all the questions relating to succession to the deceased's property finally decided, though it was admitted in the plaint that the entire property in dispute was in the possession of the four sons. Shortly after the institution of the above suit, the present plaintiff also instituted a suit in the same Court, claiming to be entitled to one-fourteenth share of the said property under Muhammadan Law. By consent of all the parties the suits were tried together and a full judgment disposing of all the issues was written in the first case, and a short one in the second, deciding it in accordance therewith. Present plaintiff appealed from the decree in her suit, but there was no appeal from the decree in the first suit, which, therefore, had become final at the date of hearing of plaintiff's appeal. A preliminary objection having been taken by respondents to the effect that, there having been no appeal in the first suit, the questions involved in plaintiff's appeal were *res judicata*, and could not be adjudicated on by the Chief Court.

Held, following *I. L. R. XVI Calc.* 233, that on the facts of the present litigation, plaintiff's appeal was barred neither under section 13 of the Civil Procedure Code, nor on the general principles of *res judicata*, and that respondent's objection must be

overruled. MUSSAMMAT FAKHIR-UN-NISSA *v.* MALIK RAHIM BAKHSH.
23 P R 1897

97. Res judicata—*Civil Procedure Code*, 1882, *section* 13, *Explanation V—Effect of decree as regards minor who was unrepresented in former suit.*

In a former suit the then plaintiffs (now defendants), while in their plaint recognizing the existence of the present plaintiff, who was at the time of decree a minor, took no steps to bring him on the record or to have a guardian *ad litem* appointed for him. To a subsequent suit by the said minor, in which the point at issue in the former suit was again directly involved, the present defendants pleaded that the suit was barred under Explanation V of section 13, Civil Procedure Code.

Held, that a minor, although he may sue through a guardian or next friend, cannot, in the absence of any such representation, be held bound by a suit the very nature of which he is incapacitated by his nonage from comprehending, or taking part in, unless duly represented, the rules with reference to notice laid down in some authorities not being applicable to minors. GURDIT SINGH *v.* MUSSAMMAT CHANDO.
38 P R 1897

98. Res judicata—*Civil Procedure Code*, 1882, *sections* 13, *Explanation (II)*, *and* 365.

Plaintiffs sued for possession of certain property transferred by their father on the ground that the transfer being unnecessary and the property ancestral their reversionary interest was not thereby affected. The suit was dismissed by the first Court as barred under Explanation (II) to section 13, Civil Procedure Code, on the ground that the plaintiffs should have pleaded the right now sought to be established, when they were brought on the record of an appeal to which their father and defendants were parties, as legal representatives of their father. In that litigation the present defendants sued plaintiff's father, one G. S., for possession of the property now in suit under a mortgage-deed. Plaintiffs were originally impleaded as co-defendants, but their names were subsequently struck off as not being parties to the mortgage. G. S. raised numerous pleas, but no plea was taken that the property was ancestral or that the mortgagor's interest was limited. The suit having been decreed in the lower Court, G. S. appealeld to the Chief Court, but died pending appeal and his sons, present plaintiffs, were brought on the record as his legal representatives. In that appeal no plea was raised by them that the property was ancestral, or that G. S.'s interest therein was limited to his own life-time. In the present suit plaintiffs appealed from the decree of the first Court to the Divisional Judge, who accepted their appeal and remanded the case for a decision on the merits. Defendants having appealed from this order to the Chief Court, it was

Held, that plaintiffs' suit was not barred,

RES JUDICATA—*contd.*

inasmuch as no question of the reversionary rights of G. S.'s sons arose in the suit between defendants and G. S., and the decree of the first Court in that suit passed against G. S. could not have been set aside by the Chief Court on appeal on the ground that G. S.'s estate was limited to his own life, or that his sons could not be bound by his alienations except for necessity. RANJHA MAL *v.* BHADAN SINGH. **76 P R 1897**

99. Res judicata—*Cross suits relating to same subject-matter and involving identical issues tried together—Findings on issues in both judgments identical—Appeal from judgment in one case only—Civil Procedure Code,* 1882, *section* 13.

Where two cross suits, relating to the same subject-matter and giving rise to identical issues are tried by the same Court, and it cannot be urged that there is a bar to the trial of the issues by the Court in either case, an Appellate Court is not precluded from adjudicating on those issues, if one judgment is appealed and the other is not, by the operation of the latter judgment under the rule of *res judicata* though the findings on the issues in both judgments are identical.

I. L. R. XVI Calc. 233 followed; *I. L. R. VI Calc.* 319 not followed; *I. L. R. XI All.* 148 distinguished.

A decision on a point, which is decided, but which is not necessary for the decision of the suit which is disposed of on another point, cannot operate as *res judicata*.

Where a plaintiff brought her own suit, in which the question of her right necessarily and directly arose, *held*, that she could not be held to have acquiesced in the same issue being treated as a material one in another suit in the same Court, in which she was impleaded only as a member of the family, the two suits being tried together. MALAK RAHIM BAKHSH *v.* MUSSAMMAT FAKHR-UN-NISA. **31 P R 1898**

100. Res judicata—*Omission by guardian* ad litem *of minor to appeal against decree—Gross negligence on part of guardian—Effect of such decree.*

Where in a previous suit a decree was passed against the present plaintiff, who at the time was a minor, and was duly represented by his mother as his guardian *ad litem*, *held*, that the omission by the latter to appeal on his behalf from such decree, notwithstanding that there were excellent grounds, both in law and on the facts, for an appeal, amounted to gross negligence on her part, and that under such circumstances it would be contrary to law and equity to hold the plaintiff bound by the former decree.

The position of a guardian *ad litem* of a minor being that of a trustee, he is bound strictly to act in the interests of the minor, and he has not the liberty, as long as he retains his position of abandoning the case as he would have were it his own, unless such abandonment is clearly in the interests of the minor. Every case must be judged by its own facts, and for the purpose of finding out whether such guardian was guilty of laches or fraud in previous proceed-

RES JUDICATA—*contd.*

ings, the Court has power to go into them, and to form its own conclusions regarding them. AHMED ALI SHAH *v.* AMIR SHAH. **35 P R 1898**

101. Res judicata—*House and land sold by one deed of sale—Suit in respect of house—Subsequent suit in respect of land—Finding in first suit that deed of sale was void, effect of, as regards subsequent suit.*

A. had a decree against B., and in execution thereof attached a house belonging to B. whereupon C. objected that B. had conveyed the house to him by a deed of sale which covered the house in dispute and also a building site. The objection was disallowed and C. was referred to a suit which he brought, and in which it was held that the sale by B. to C. was fictitious and in fraud of creditors and was therefore invalid. Subsequently A. attached the building site, and C. again objected on the same ground as before. The objections having been again disallowed, C. filed the present suit to establish his right to the building site. The question referred to the Full Bench was whether the decision in the first suit as to the validity of the sale was binding on the parties in the second suit.

Held, by the Full Bench that though the subject-matter of the second suit was different in the sense that in the one suit a plot of land and in the other a house was claimed, yet the material issue, whether the sale deed conveyed a title or was fictitious and fraudulent, was identical in both suits, and that, therefore, the finding thereon in the first suit operated as *res judicata*, and precluded the issue which it had decided being raised again between the same parties in a subsequent suit, the latter suit being within the jurisdiction of the Court which decided the prior suit. ZAFARYAH KHAN *v.* FATEH RAM. **100 P R 1898 F. B.**

102. *Civil Procedure Code*, 1882, *section* 13, *Explanation II*—Res judicata.

In 1882, one K. L. and his brother, sued for possession by redemption of a shop mortgaged by H. M., and founded their right to sue on the ground that they were the grandsons of H. M. who had, as they alleged, adopted their father. Defendants pleaded that H. M. had not adopted plaintiff's father, but that H. M. was equally related to both defendants and plaintiff, and that the shop had fallen to defendants on partition. The Court, without considering any other issue, dismissed the suit on the first issue, on the ground that plaintiffs had failed to prove that they were the sons of an adopted son of H. M., and as such entitled to the whole of the latter's property. In this suit, however, it was admitted by defendants and found by the Court that the plaintiffs were collaterals of H. M. and entitled to one-eighth of his property, but plaintiff put forward no alternative claim on this basis. Subsequently K. L., one of the former plaintiffs, sold his rights to the present plaintiff, who thereupon sued for possession by redemption of half the said shop, basing his claim on the ground that K. L.,

RES JUDICATA—*contd.*

his vendor, was one of the heirs of H. M., the mortgagor. The defendants, who were the same as in the former suit, pleaded that the plaintiff's claim was barred under section 13, Explanation II, of the Civil Procedure Code.

Held, that inasmuch as it was open to K. L. and his brother when they sued in 1882, alternatively to their exclusive title as grandsons by adoption, to have made their title by inheritance through collateral relationship a ground of attack and to have obtained a decree for possession of the whole shop (subject to the rights of other heirs) as some of several heirs of H. M., their omission to put forward such alternative ground of attack was fatal to the present suit, which was based on that very ground (section 13, Explanation II, of the Civil Procedure Code. KANHAYA LAL *v.* CHARATI LAL. **4 P R 1899**

103. *Previous suit dismissed on merits as well as on ground of limitation—" Matter directly and substantially in issue"—Effect of former suit as regards one of several joint brothers who was no party to the suit brought by the latter—*Pro forma *defendant.*

Held, that when a suit is dismissed after a full consideration of the facts and merits of the case, a finding being given adversely to the plaintiffs on each of the issues framed, the decision on such findings is none the less *res judicata*, because the suit was also dismissed on the ground that it was barred by limitation.

A practical test for determining whether a matter has been directly and substantially in issue in a previous suit is furnished by effecting a separation of the discussions and findings on the various groups of issues dealt within the judgment. If, after the elimination of all but one such group, the judgment still remains intelligible and in itself sufficient for the adjudication of the suit, and the decree is in entire harmony with it, then the matter so dealt with has been directly and substantially in issue.

Where the elder brother of one B. R. brought a suit, in conjunction with other reversioners, for possession of certain land which formed part of a joint holding, but in such suit no mention was made of B. R., or any hint given even of his existence, the plaint not professing to claim anything for him and it not being shown that he had any knowledge of the litigation, *held*, that though the land claimed might be part of a joint holding, as each claimant in the suit, had he been successful, would have acquired separate rights in the land, the plaintiffs could not be regarded as claiming anything for B. R. within the meaning of Explanation V of section 13 of the Code, merely because some of them happened to be his elder brothers.

Held, therefore, that as against B. R., the decision in the said suit was not *res judicata*.

A *pro forma* defendant in a suit who neither put in an appearance nor defended it, and from whom no relief was asked, no decree being given either for or against him, *held*

not debarred from subsequently bringing a suit as plaintiff, although the matter in issue in the second suit had also been in issue and formally determined in the suit in which he was a *pro forma* defendant. LABHU *v.* HIRA SINGH. **41 P R 1899**

104. Res judicata—"*Matter directly and substantially in issue*"—*Unnecessary finding.*

In 1893, after some previous litigation, one H. A., the present defendant, sued a widow and her reversioners for possession of certain land which he alleged had been sold to him by the former. The suit was dismissed in the first Court and also by the Divisional Judge on appeal, but while dismissing H. A.'s appeal, the Divisional Judge found that though no sale had been effected by the widow "the reversioners had sold their contingent interests to the plaintiff and had received full consideration for the sale." The reversioners after the death of the said widow, sued for a declaration that the land had not been sold to H. A., and that they were proprietors. It was contended on behalf of H. A. (and so held by the Divisional Judge on appeal) that the Appellate Court's finding in the previous litigation was *res judicata.*

Held, that the only finding that was necessary for the decision of the appeal in the former litigation was that H. A. was not entitled to the remedy for which he prayed, *viz.*, possession of the land, there having been no sale by the widow, and her life estate still subsisting, and that the further finding with regard to the reversioners was necessary, and must be regarded as mere *obiter dictum*, in no way binding on them in subsequent litigation. FATTA *v.* HAJI AHMED. **50 P R 1899**

105. *Civil Procedure Code*, 1882, *sections* 13, 14—*Decree of Foreign Court—Kabul Court—Compromise.*

Plaintiff sued on the allegations that defendant had entered into a sort of partnership with His Highness the Amir of Kabul in regard to the tolls to be levied on fruit leaving Kabul territory, one of the terms of such agreement being that defendant was to receive one-third share and His Highness the Amir the remaining two-thirds share of the said dues; that defendant had sold his one-third share to plaintiff, and that the said transaction had resulted in a profit. Plaintiff, therefore claimed a settlement of accounts, and a sum of Rs. 17,500 to be due to him. Defendant in reply pleaded that there was a loss and not a profit on the transaction, that nothing was due to plaintiff, and that the plaintiff had already sued him in the Kabul Court, which had found that a certain sum was due to defendant, that this claim had been settled, and that plaintiff's present claim was barred by the decision of the Kabul Court. Defendant further pleaded that as plaintiff had affixed his seal to the said decision and as it had been acted upon, it should be regarded as a mutual settlement and should stand as a bar to the plaintiff's suit. It was alleged that plaintiff, in December 1894, filed a petition

praying His Highness the Amir to have plaintiff's accounts with defendant settled, and that this petition was referred by His Highness to the officer in charge of the *Panchayat-khana* at Kabul "to be directed to decide according to the principles of equity and justice the case relating to partnership business between plaintiff and defendant." It appeared that some of defendant's witnesses were examined by the said *Panchayat-khana*, but on plaintiff asking for time to produce his witnesses from Peshawar, the Court rejected his application on the ground that if plaintiff could produce proof from Peshawar, he might bring this fact to the notice of His Highness, "so that His Highness may pass orders on his behalf." On the 20th January 1895 the *Panchayat-khana* submitted its findings to His Highness, and on the receipt of his orders upon them, the Court, on the 3rd February 1895, passed its judgment, whereby plaintiff was directed to pay defendant Rs. 3,213 of Kabuli coin, and defendant was mulct in Rs. 1,150 Queen's coin. The seal of plaintiff and the signature of defendant were then taken upon the said judgment.

The lower Court held that though the order of the Kabul Court, considered as the judgment of a Foreign Court, could not be pleaded as a bar to the present suit, it amounted to a compromise binding on the plaintiff, and therefore dismissed the suit.

Held, on the facts of the case, that the said order did not amount to a compromise binding on plaintiff.

Held, further, that the judgment pleaded in bar to plaintiff's suit had not been shown to be the order of a regularly constituted tribunal having jurisdiction to pass final orders in this case, and that it had not in fact passed any such final orders, the fact that the *Panchayat-khana* did not pass orders on its own authority, but before giving judgment referred the case for the opinion of His Highness, clearly showing that the Court was not one of independent jurisdiction capable of finally deciding the matter before it.

When the judgment of a Foreign Court is pleaded in bar, under sections 13 and 14 of the Civil Procedure Code, it must be shown that the judgment so relied on is the judgment of a duly and regularly constituted Court of law having independent jurisdiction to decide the matter in dispute, and, so far as the Court itself is concerned, to decide it finally. SHAHBAZ KHAN *v.* NUR MUHAMMAD KHAN. **2 P R 1899**

106. Res judicata—*Civil Procedure Code*, 1882, *section* 2—*Foreclosure proceedings—Suit by mortgagor for redemption after expiry of year of grace.*

In a suit for redemption of mortgage by one of four sons of the original mortgagor, it appeared that some time previously another of the said sons had sued for redemption of the mortgage in question; that on the defendant's objection that the

plaintiff could not sue alone, the latter endeavoured to make out that he was suing on behalf of his brothers, and as regards the present plaintiff, undertook to either produce him in person or to procure a power-of-attorney from him, and that he failed to do either. There was, moreover nothing to show that the present plaintiff who was at the time absent in Jhang knew of, or participated in, his brother's suit except the mere statement of the latter made in his own interest.

Held, under the circumstances, that the present suit was not *res judicata* by reason of the decision in the previous suit.

Held, further, that inasmuch as foreclosure proceedings are merely ministerial and carry no final judicial sanction, it is open to a mortgagor to bring a suit for redemption after the expiry of the year of grace, and that such mortgagor would be entitled to a decree if he proved his claim on the merits, and that the foreclosure proceedings were for any reason not good or conclusive as against him or for other sufficient cause.

A mortgagor is not bound to take any notice of foreclosure proceedings which he knows to be defective, or to wait till the mortgagee sues to complete his title, to plead irregularity in the said proceedings. In such a case he may sue for redemption even after expiry of the year of grace. GURDITTA MAL *v.* SANDHI KHAN. **27 P R 1900**

107. Res judicata.

J. D. having died his widow and two sons together were entered as proprietors of his land in equal shares. In a suit by the widow for possession of her share of her husband's property which she had allowed her step-sons to cultivate on the condition of their giving her maintenance out of the profits of the land, *held*, that her suit was not barred under section 13 of the Civil Procedure Code, by reason of her having been made a party to a suit by a person who had obtained a mortgage from the step-sons and had sued for possession, as the point as to her being entitled to possession on non-payment of her maintenance had never been raised or decided in the former suit. CHUNI LAL *v.* MUSSAMMAT AMIR BIBI. **39 P R 1900**

108. Res judicata—"*Matter directly and substantially in issue*"—*Effect of former suit as regards* pro forma *defendants.*

On the death of a childless occupancy tenant some of the village proprietors filed a suit and obtained a decree for possession of the land against persons who had taken possession as representatives of the deceased tenant and impleaded as *pro forma* defendants the co-proprietors of the village who had refused to join with them.

Held, that the respondents, who were the plaintiffs in the former suit, could not,

in a subsequent suit brought against them by the co-proprietors, who were *pro forma* defendants in the former suit, plead *res judicata*, as the question of their right to exclusive possession against the plaintiffs was not directly and substantially in issue or affected by the decree in the former suit, and that the *soi disant* representatives were substantially the only defendants and the *pro forma* defendants were no parties to that suit. SAHIB SINGH AND OTHERS *v.* SHER SINGH AND OTHERS.

70 P R 1900

109. *Order dismissing suit—Subsequent suit between same parties*—Res judicata.

On the date fixed for settlement of issues, defendant was not present and an adjournment was necessary under all circumstances as no evidence had been called for, and accordingly an adjournment was made, a date being fixed for the production by plaintiff of a certain deed and for the hearing of the evidence *ex parte*. On the date specified the deed called for was put in, and a further adjournment was asked for and granted. On the second date fixed for plaintiff to produce his evidence he was not present but sent a pleader to ask for a further adjournment. This was refused and the suit dismissed, but it was not clearly recorded that the dismissal was under section 158 of the Civil Procedure Code. A review of judgment having been applied for and refused, plaintiff subsequently instituted the present suit, which was dismissed as barred by reason of the former suit having been dismissed under section 158 of the Code.

Held, that though it may not be necessary in order to take action under section 158 of the Code to give specific warning to the party concerned that action under that section will be taken, there must be something on the record to show clearly that the adjournment is one which brings the case within the purview of that section, and also to make it plain that the order itself is one under that section and not under section 157, and that this was not the case in the present instance.

Section 158 of the Code is a very stringent one, and is only to be applied when the facts do not admit of the application of any other. KALE SHAH *v.* SHAHABAL SHAH.

80 P R 1899

110. *Civil Procedure Code*, 1882, *section* 13—Res judicata—*Competency of Court to try subsequent suit*.

In order to make a matter *res judicata* concurrency of jurisdiction is essential. Where the former suit was exclusively triable by a Revenue Court and for the proper trial of such a suit that Court had to decide incidentally every point including that of the subject-matter of the present suit the decision of that Court, it not being a Court of jurisdiction competent to try the present suit, was not

binding on the Civil Court, and the present suit was not barred by the rule of *res judicata*.

Mussammat Edun v. *Mussammat Bechun* (8 *W. R.* 175, *F. B.*) and *Run Bahadur Singh* v. *Lucho Koer* (*I. L. R. XI Calc.* 301, *P. C.*) followed. SULTAN HABIBULLA KHAN *v.* MOHABAT KHAN. **68 P R 1901**

111. *Execution of decree—Order releasing property from attachment—Finality of such order*—Res judicata.

The heir and representative of a deceased judgment-debtor, being himself also a judgment-debtor under another part of the same decree, objected to the attachment of the property of the deceased on the ground that he had a lien upon it. On the date fixed for evidence, as the decree-holder did not appear, the executing Court without taking any evidence allowed the objections and released the property. The decree-holder, not having attempted to have the *ex parte* order set aside, applied for a fresh execution by attachment of the same property, and in defence it was urged that he had finally lost his right of executing against that property, as the previous order of release was final and conclusive, between the parties.

Held, that though the order aforesaid allowing the objection was passed in a proceeding under section 244 (*c*), Civil Procedure Code, that order was in effect nothing more than a dismissal for default, and therefore it was no bar to a fresh application for execution of the same decree.

Similarly such an order could not operate as *res judicata* as the matter was not "heard and finally decided."

Dhaukal Singh v. *Phakkar Singh* (*I. L. R. XV All.* 84), *Sodhi Hukam Singh* v. *Sardar Arjan Singh* (12 *P. R.* 1887), *Ram Kirpal* v. *Rup Kuari* (*I. L. R. VI All.* 273), *Behari Lal* v. *Majid Ali* (*I. L. R. XXIV All.* 138), *Karsan* v. *Ganpat Ram* (*I. L. R. XXII Bom.* 875), and *Mungul Pershad Dichit* v. *Grija Kant Lahiri* (*I. L. R. VIII Calc.* 51) referred to.

Fakir Bakhsh v. *Mayadari* (4 *P. R.* 1884) distinguished. MAGHAR MAL *v.* JOTI RAM.

90 P R 1902

112. *Civil Procedure Code*, 1882, *section* 13—Res judicata.

Plaintiffs sued in 1896, in the Court of the District Judge, for possession of land from the present defendants who claimed to be the occupancy tenant. The land was formerly held by one Hari Singh as an occupancy tenant, and on his death was inherited by his widow, who got her brother (defendant No. 1) entered as occupancy tenant of one-half, while the other half continued to be recorded in her own name and remained in her possession. On her death her half was mutated in plaintiffs' names, but the defendant No. 1 continued in possession of the whole. The District Judge held that the case was triable by a Revenue and not by a

Civil Court, and returned the plaint for presentation in the proper Court with the remark that the plaintiffs' proper course was to sue under section 77 (3) (*d*) of the Punjab Tenancy Act. The plaintiffs acting on this suggestion sued in the Revenue Court for a declaration that the defendant was not such a tenant under section 77 (3) (*d*) of the Tenancy Act and obtained a decree. The plaintiffs then brought the present suit for possession of the whole. The Subordinate Judge dismissed the suit on the ground of *res judicata* by reason of the previous order of the District Judge.

Held, by the Full Bench that as the matter of jurisdiction had not been put in issue and finally decided by the District Judge in 1886, the rule of *res judicata* had no application to the present case. The mere fact of a Civil Court declining to exercise jurisdiction either by returning the plaint or by dismissing the suit on the ground that the jurisdiction lay in the Revenue Court could not be treated as an adjudication on the point. MULA *v.* GANDU.

92 P R 1902 F. B.

113. Res judicata—*Civil Procedure Code*, 1882, *section* 13—*Matter which might have been a ground of defence in former suit*.

A, in execution of a decree against B (an Arain Zamindar), attached B's share in certain landed property. C, who alleged himself to be a mortgagee, objected to the attachment. Subsequently, however, C withdrew the objection based on his mortgage-deed and put forward a deed of sale. The objection founded on the deed of sale was held to be sound, and the property released from attachment. A then brought a suit for declaration, to the effect that the property was liable to attachment, C resisted the claim on the strength of his deed of sale, but it was decreed by the Munsif and confirmed on appeal. A then proceeded in execution of his decree to attach the share of B in the property, but the sons of C, who had died in the interim, again objected to the attachment, basing their objection on the mortgage-deed purporting to have been executed in favour of their father by B. The objection being upheld, A instituted the present suit for a similar declaration, the sons of C pleaded the deed of mortgage.

Held, that the sons of C were precluded from pleading the mortgage-deed in bar of the present claim, as it was "a matter "which might and ought to have been made "a ground of defence" in the former suit, and that it must accordingly be deemed to have been a matter substantially and directly in issue in such suit. BADAR DIN *v.* BURA MAL. **4 P R 1903**

114. Res judicata—*Omission or addition of parties*.

The plaintiffs obtained a decree against the present defendant in 1897 in the Court of the Divisional Judge to the effect that the defendant be restrained from using a certain door and certain *parnalas* except for the purpose of discharging rain water,

with a direction that, if the defendant should thereafter use any of the said *parnalas* for the discharge of water from the privy, the plaintiff might claim to have such *parnala* or *parnalas* closed. In 1901 the plaintiffs again sued the defendant on the allegation that she had been using the door and one of the *parnalas* contrary to the terms of former decree and asked that they might be closed. The defendant having pleaded that the plaintiffs were not the sole owners of the lane, two other persons were added as defendants. The first Court decreed the plaintiffs' suit in respect to the closing of the *parnala*, but dismissed the claim with respect to the door, holding that the former suit was not a bar to the re-opening of the point or question in dispute, as the parties to the suit were not the same. On appeal the Divisional Judge held that the point or question in dispute was *res judicata*, and decreed the claim in full. On further appeal to the Chief Court the defendant contended (*i*) that the question in dispute was not *res judicata*, as the parties in the two suits were different, and all the necessary issues in the previous suit were not determined by the first Court; and (*ii*) that the only remedy of the plaintiffs was by execution of their former decree. *Held* (i) that the question in dispute between the parties was *res judicata*, the omission or addition of parties in a former or subsequent action making no difference where the parties to the subsequent action were before the Court in the previous action, and the plea that in the previous suit the Divisional Judge had determined several points which were not decided by the first Court having no force, inasmuch as the decision on those points could be arrived at on the pleadings and the evidence on the record;

(*ii*) that having regard to the form of the decree in the previous suit, the present claim was not barred by any rule of law.

Gopal Das v. *Gopi Nath Sircar* (12 *Calc. L. R.* 38), cited. MUSSAMMAT JANNO *v.* RAFIK KHAN. **12 P R 1903**

115. *Jurisdiction*—Res judicata, *plea of —Competency of inferior Court to enquire the jurisdiction of superior Court which passed the former decree—Consent to jurisdiction.*

Held, that a decree given by a Court not competent to grant it is a mere nullity and cannot be pleaded as a bar to a subsequent suit, the parties being entitled to ignore its existence altogether, and in such a case there is no impropriety in an inferior Court deciding in the subsequent proceeding whether the decree of the superior Court in a former suit (pleaded as a bar) was not void on the ground of defect of jurisdiction.

Nistarini Dassi v. *Nundo Lall Bose* (*I. L. R. XXVI Calc.* 891), *Dabee Dutt Shahco* v. *Subodra Bibee* (25 *W. R.* 449), *Eshan Chundra Safooi* v. *Nunda Moni Dossee* (*I. L. R. X Calc.* 357), *Karmali Rahim Bhoy* v. *Rahim Bhoy Habib Bhoy* (*I. L. R. XIII Bom.* 137), *Mirali Rahim Bhoy* v. *Rahim Bhoy Habib Bhoy* (*I. L. R. XV Bom.* 594), *Virupakshappa* v. *Shidappa* (*I. L. R. XXIII Bom.* 620), *Haji Ahmad Hussain* v. *Sunder Lal* (80 *P. R.* 1893), *Bibi Ladli Begam* v. *Bibi Raji Rahia* (*I. L. R. XIII Bom.* 650), *Ledgard* v. *Ball* (*I. L. R. IX All.* 191), and *Meenakshi Naidoo* v. *Subramaniya Sastri* (*L. R.* 14 I. A. 160), referred to. PARWA *v.* MUSSAMMAT SANGARAN. **37 P R 1903**

116. *Compromise of suit—Subsequent suit to enforce promise on strength of which original claim was foregone*—Res judicata—*Civil Procedure Code*, 1882, *sections* 13, 373.

In 1901 plaintiff sued for settlement of accounts. The case was referred to arbitration. The arbitrator, having induced the parties to enter into a compromise to the effect that they had settled all the accounts and had no further dispute, forwarded the same to the Court together with a petition asking that the suit should be consigned to the record room. The parties acknowledged the terms of the compromise before the Court, whereupon the suit was dismissed.

Subsequently the plaintiff brought a second suit against the same defendant, which was in substance to the same purport and for the same relief with the addition of a statement to the effect that the defendant had in the presence of the arbitrator promised to explain the accounts to him and to pay whatever sum was found due thereon, provided that a compromise was first filed in the case then pending; that although relying on that promise, compromise had been filed in Court, the defendant had yet not rendered the accounts as agreed.

The defendant denied the promise on which the suit was brought and pleaded the bar of *res judicata* and estoppel by the compromise.

Held, (1), that although a consent decree based on a compromise is final and operates as *res judicata* in regard to matters disposed of thereby, yet as the present suit was one based on an alleged agreement made at the time the compromise was arrived at and on an express understanding that plaintiff was to enter full satisfaction of his claim and to keep it outside the Court, and its breach which did not exist before the former suit was brought and could not have consequently been set up or denied or be directly and substantially in issue, the causes of action involved in the two cases were quite different, and the present suit therefore was not barred by the rule of *res judicata* and (2), that the provisions of section 373, Civil Procedure Code, have no application to it.

Held, also, that the statement of the plaintiff in the previous suit that accounts had been fully understood could create no estoppel against him, as the defendant was not led to do anything thereby which he would not have done otherwise.

Cooke v. *Gill* (*L. R.* 8 *C. P.* 107), *Murti* v. *Bhola Ram* (*I. L. R. XVI All.* 165), *Kamin Kant Roy* v. *Ram Nath Chuckerbutty* (*I. L. R. XXI Calc.* 265), and *Narain Das* v. *Baba Bishen Das* (95 *P. R.* 1880), cited.

Srimut Raja Mootto Vijaya Raganadha v. *Katama Natchiar* (11 *Moo. I. A.* 50), and *Janaki Ammal* v. *Kamalathammal* (7 *Mad. H. C. R.* 263), distinguished.

Achuta Menon v. *Achuta Nayar and others* (*I. L. R. XXI Mad.* 35), referred to. THAKAR DAS *v.* JASWANT RAI. **1 P R 1904**

117. *Pre-emption—Rival claimants—Each claimant made defendant in the other suit—Suits tried together but decided by separate decree—Decree allowing pre-emption in one case only on condition of default by other pre-emptor—Finality of decree in superior pre-emptor's suit—Appeal by inferior pre-emptor in his own suits*—Res judicata.

'T' instituted two suits for pre-emption with respect to two sales of land. Four days after, one 'G' instituted two similar suits on the same sales. Eventually each pre-emptor was made a defendant in the other's suit. The Court framed similar issues and heard one set of witnesses in all four cases and disposed of all the cases by one judgment. 'T' was held to have a preferential right to 'G' and similar decrees were drawn up in all the cases, by which 'T' was directed to pay the price within a certain time, and on his default 'G' was to get the property on payment of the prices within another fixed time. 'G' appealed only in the two cases in which he was plaintiff.

Held, that the omission to appeal against the decree of the rival claimant was a fatal defect, which having become final and binding operated as *res judicata* between the two pre-emptors.

Chajju v. *Sheo Sahai* (*All. W. N.* (1887), 301), and *Chaudhri Khem Singh* v. *Mussammat Taj Bibi* (83 *P. R.* 1868), cited. GURMUKH SINGH *v.* HARI CHAND. **8 P R 1904**

118. Res judicata—*Civil Procedure Code*, 1882, *section* 13—*Decree in suit of small cause nature—Subsequent suit for establishment of title—Competency of Court to try such subsequent suit.*

Held, that an incidental decision on a question of title given in a suit for rent does not operate as *res judicata* in a subsequent suit brought for the purpose of establishing a title to the property itself, when the Court which had given the incidental decision had no jurisdiction to try the subsequent suit.

Kasiswar Mukhopudhya v. *Mohendra Nath Bhandari* (*I. L. R. XXV Calc.* 136), *Dwarkanath Roy* v. *Ram Chand Aich* (*I. L. R. XXVI Calc.* 428, *F. B.*) *Shamas Din* v. *Ghulam Kadir* (20 *P. R.* 1891, *F. B.*), *Bholabhai* v. *Adesang* (*I. L. R. IX Bom.* 75), *Govind bin Lakshmanshet Anjorlekar* v. *Dondbarav* (*I. L. R. XV Bom.* 104), *Vithilinga Padayachi* v. *Vithiliyan Mudali* (*I. L. R. XV Mad.* 111), *Srirangachariar* v. *Ramasami Auyangar* (*I. L. R. XVIII Mad.* 189), *Sultan Habibulla Khan* v. *Mohabat Khan* (68 *P. R.* 1901),

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and *Nitya Nunda Sarkar* v. *Ram Narain Das* (6 *Calc. W. N.* 66), referred to JIWAN DAS AND OTHERS *v.* UMAR AND OTHERS.

54 P R 1904

119. The rule of *res judicata* does not apply to claims for occupancy rights where successive suits are brought under the two successive Tenancy Acts. RAM DITTA *v.* BHOLA SINGH. **1 P R 1904 Rev.**

120. *Landlord and tenant—Ejectment—Suit by tenant to contest liability to ejectment—Suit withdrawn without permission of Court—Subsequent suit for the same matter—* Res judicata—*Punjab Tenancy Act, sections* 5 (1) (*c*), 110 (1).

In a suit by a tenant to contest his liability to be ejected on the ground that he was settled by the founder and otherwise fulfilled the conditions of section 5 (1) (*c*) of the Punjab Tenancy Act, it appeared that in 1889 the plaintiff had instituted a suit for a similar relief against his landlord which he subsequently withdrew.

Held, that the present suit was not maintainable, as the matter directly and substantially in issue in the suit withdrawn in 1889 was the same as in the present suit.

Section 110 (1) of the Punjab Tenancy Act does not supersede the doctrine of *res judicata* or the consequences of dismissals in default. SUKH RAM *v.* MUL CHAND.

6 P R 1904 Rev.

121. *Custom—Alienation—Alienation by sonless proprietor—Suit by reversioner to have such alienation declared null and void—Dismissal of suit on merits—Subsequent suit by the son of such reversioner for possession after the death of the alienor—Estoppel.*

Held, that under customary law the dismissal on the merits of a suit brought during the lifetime of a sonless proprietor by a reversioner to have an alienation of ancestral property by the former declared null and void as against his reversionary rights bars a subsequent suit by his son for possession of that property after the death of the alienor.

Roda v. *Harnam* (18 *P. R.* 1895), *Harvans Singh* v. *Harnam Singh* (84 *P. R.* 1898, *F. B.*), *Ram Rakha Mal* v. *Balwant Singh* (58 *P. R* 1905), *Kesar Singh* v. *Gunga Singh* (2 *P. R.* 1882, *F. B.)* and *Labh Singh* v. *Gopi* (15 *P. R.* 1903), referred to. *Isri Dut Koer* v. *Hansbutti Koerani (I. L. R. X Calc.* 324, *P. C.)*, *Bhagwanta* v. *Sukki* (*I. L. R. XXII All.* 33 *F. B.*). and *Bahadar Singh* v. *Mohar Singh* (*I. L R. XXIV All.* 94 *P. C.*), distinguished. INDAR *v.* CHOKI RAM.

68 P R 1905

122. The rule of *res judicata* applies to insolvency proceedings under section 344, Civil Procedure, Code, when successive applications are made on the same facts. ARJAN SINGH *v.* GAMAN.

75 P R 1905 F. B.

123. Res judicata—*Effect of a decree as regards a reversioner who was no party to*

RES JUDICATA—*contd.*

the suit brought by other reversioners, but whose father was impleaded therein pro forma *defendant.*

Held, that a reversioner is not debarred from contesting an alienation in favour of his own brother merely because in a previous suit instituted by certain other reversioners of the deceased proprietor against the alienee, his father was impleaded as a *pro forma* defendant, especially where there was no adjudication of the father's rights as opposed to the alienee his own son, and that therefore the present suit was not barred under section 13 of the Civil Procedure Code by reason of such previous suit.

Harvans Singh v. *Harnam Singh* (84 *P. R.* 1898) and *Ram Chandra Narayan* v. *Narayan Mahadev (I. L. R. XI Bom.* 216), cited. *Nehal Singh* v. *Chanda Singh* (143 *P. R.* 1890), *Zafaryab Khan* v. *Fatteh Ram* (100 *P. R.* 1898, *F. B.*) and *Venkayya* v. *Narasamma* (*I. L. R. XI Mad.* 204), referred to. KARM KULLI *v.* KARMDAD. **79 P R 1905**

124. *Pre-emption—Rival claimants—Each claimant made defendant in the other suit—Suits tried together but decided by separate decrees—Decree allowing pre-emption in one case only on condition of default by other pre-emptor—Finality of decree in superior pre-emptor's suit—Appeal by inferior pre-emptor in his own suit*—Res judicata.

Two identical suits for pre-emption were filed by two rival pre-emptors against the same defendant and each pre-emptor was impleaded as a defendant in the other's suit. Similar issues having been framed in each case, both were tried together and disposed of by one judgment and decree. In one of the suits the pre-emptor was held to have a preferential right over the other, and a decree was passed giving him the right to pre-empt within a certain time and to the other on his failure to do so. The unsuccessful pre-emptor appealed from the decree in his own suit, which was thrown out by the Divisional Judge upon the ground that the omission to appeal against the decree of the rival claimant was a fatal defect and operated as *res judicata*.

Held, by the Full Bench, that it was not necessary for the unsuccessful pre-emptor to file an appeal in each of the two cases, and that the Court of Appeal was not precluded under the rule of *res judicata* from going into any matter common to the two cases by reason of the finding in the cross case not having been appealed.

Gurmukh Singh v. *Hari Chand* (8 *P. R.* 1904), overruled.

Chajju v. *Sheo Sahai* (*I. L. R. X All.* 123) dissented from.

Fakharunnissa v. *Rahim Bakhsh* (23 *P. R.* 1897), *Rahim Bakhsh* v. *Fakharunnissa* (31 *P. R.* 1898) and *Abdul Majid* v. *Jew Narain Mahto* (*I. L. R. XVI Calc.* 233), cited.

Khem Singh v. *Taj Bibi* (83 *P. R.* 1888), referred to. JOGAL KISHOR *v.* CHAMMO.

85 P R 1905 F. B.

RES JUDICATA—*contd.*

125. Res judicata—*Suit by reversioner for a declaratory decree that a certain deed of sale would not affect his reversionary interest—Dismissal of suit as barred by limitation—Subsequent suit by same reversioner after the death of the alienor to recover the immovable property so sold.*

Held, that when a previous suit brought by the reversioner of a sonless male proprietor during the lifetime of the alienor for a declaration that a sale effected by the latter would not affect his reversionary rights is dismissed as barred by limitation, no matters affecting the rights of the parties being decided between them, such dismissal does not operate as *res judicata* to a subsequent suit brought by the same reversioner after the death of the alienor for recovery of possession of the property so sold from the vendee. BARKAT ALI *v.* HUSSAIN KHAN.

6 P R 1906

126. When in execution proceedings a previous application had been treated as within time, and an order for execution was made on it by a Court of competent jurisdiction, after notice to, and without objection by the judgment-debtors, it was not open to the latter on a subsequent application for execution to plead that the preceding application had been barred by limitation. DURGA DAS *v.* FAQIR CHAND.

47 P R 1906

127. The fact that property not liable to attachment has been improperly attached on one or more occasions without objection does not debar the judgment-debtor from pleading exemption when it is subsequently attached. QAMAR-UD-DIN KHAN *v.* LACHMI NATH. **95 P R 1906**

128. Res judicata—*First suit to set aside a gift made by a widow—Subsequent suit for possession on the death of such widow—Finally heard and decided, necessity of—Civil Procedure Code,* 1882, *section* 13, *Explanation II.*

Plaintiffs some of the reversioners of a sonless proprietor instituted a declaratory suit against his widow for setting aside a gift made by the latter in favour of one of her sons-in-law and obtained a decree. On the death of the widow they sued her daughters for the possession of the property. The defence contended that the plaintiffs had not a superior right to succeed but their contention was overruled as barred under section 13, Civil Procedure Code.

It appeared that in the former litigation the daughters were not impleaded as parties and the question whether the collaterals had a preferential right against them was neither in issue nor judicially determined by the Court.

Held, that the matter in issue now raised is not such as ought to have been made ground of defence in the former suit and that at any rate it was not heard and finally decided expressly or even by implication by the Court within the meaning of section 13

RES JUDICATA—*contd.*

of the Code of Civil Procedure and the defendants were therefore not precluded in the present suit from raising it now. BHARI *v.* PIR BAKHSH. **107 P R 1906**

129. Res judicata—*Alienation by widow—Suit by reversioner to have such alienation declared null and void—Compromise of such suit between the widow in possession and the reversioner—Subsequent suit by the son of such reversioner—Estoppel.*

Where a person entitled to object to an alienation made by a widow brought a suit to have such alienation declared null and void and ultimately entered into a compromise in good faith with the widow *held*, that he and his successors in title were bound by it and that a similar suit by the son of such reversioner was barred by the rule of *res judicata*. DEVI DIAL *v.* UTAM DEVI. **37 P R 1907**

130. *Suit by mortgagor for redemption—Dismissal of suit for default—Subsequent suit for the same object.*

Held, that a dismissal under section 102 of the Code of Civil Procedure of a suit by a mortgagor for redemption of mortgaged property precludes the plaintiff under section 103 from bringing a fresh suit for the redemption of the same property. GURDITTA *v.* NARAIN DAS. **43 P R 1907**

131. Res judicata—*Suit for declaration of ownership of land by purchase—Dismissal of suit on merits—Subsequent suit for possession by same plaintiff as heir—Different causes of action—Civil Procedure Code*, 1882, *section* 13.

Held, that the dismissal of a suit for a declaration that the plaintiff was the sole owner in possession of certain land by purchase is not *res judicata* a subsequent suit brought for the possession of the same property on the ground that the plaintiff was entitled to the said land not as an owner but as heir and adopted son of the last male owner, inasmuch as his title as an heir being an inconsistent claim could not have formed an alternative ground of attack in the former suit without creating confusion.

lthough a party is bound to put forward all grounds of attack as have reference to the same cause of action, but where several independent grounds are available to him he is not bound to unite them all in one suit. CHIRAGH DIN *v.* NIZAM DIN. **55 P R 1907**

132. Res judicata—*Matter directly and substantially in issue—Unnecessary finding—Pro forma defendants—Civil Procedure Code*, 1882, *section* 13.

"A" died leaving four sons and six daughters. One of the four sons brought a suit impleading all his brothers and sisters for partition and possession of a one-fourth share in the deceased's property, first by enforcement of an award against his brothers and sisters, the latter having, according to his

RES JUDICATA—*contd.*

contention, consented to the reference, and failing that for partition (*a*) under a custom by which daughters were excluded from inheritance and (*b*) if no custom was proved, in accordance with the personal law of the parties. The Court found that the sons were bound by the award, but that the daughters had been duped into signing an agreement consenting to the reference and were therefore not bound by the award. It then took up the question of the rights of the daughters, and came to the conclusion that they were excluded by custom, and consequently, their consent to the reference being immaterial, decreed substantially in accordance with the award.

No declaration against the daughters was prayed for or given in the decree. No part of the property in dispute was alleged or found to be in their possession, nor were they required by the decree to surrender any. Subsequently four out of the six daughters instituted separate suits for possession by partition of their shares of the estate left by their deceased father in accordance with Muhammadan Law. The defence pleaded that the suit was *res judicata* under the decree in the previous cause, inasmuch as it was thereby found that daughters were excluded by custom, and as they did not appeal from that adjudication it had become final.

Held by a majority (JOHNSTONE, J. dissenting) that on the facts as found the suit was not barred either under section 13 of the Code of Civil Procedure or on the general principles of *res judicata*, the issue relating to daughters' right in the former judgment being unnecessary for the decision of the case on the ground on which it proceeded, *viz.*, the award being binding on the brothers who had all the property in suit in their possession, and not being raised by the pleadings, such rights not being in question in the claim upon the award, but by the Court gratuitously after it had held the award to be binding on the brothers; and that the finding on it could consequently not be pleaded as a bar to the present suit.

Held, also, that a party setting up a plea of *res judicata* is bound to establish it, and the Court competent to examine, whether the point was necessary for the decision of the case upon the ground upon which the final decision ultimately proceeded and was directly in issue in the former litigation. RAJAB-UN-NISSA *v.* HABIB BAKHSH. **57 P R 1907**

133. Res judicata—*Court of jurisdiction competent to try subsequent suit—Civil Procedure Code*, 1882, *section* 13.

Held, that for the purposes of section 13 of the Code of Civil Procedure, the competency of a Court to try such subsequent suit or the suit in which such issue has been subsequently raised as compared with another is not affected by the circumstance that in one case an appeal lies in the first instance to the Divisional Court and from that Court to the Chief Court, and in the other directly to the Chief

RES JUDICATA—*contd.*

Court, and, therefore, the decree in one operates as *res judicata* in the other. GIRDHAR LAL *v.* DEOKI NANDAN. **111 P R 1907**

134. Res judicata—*Decision on a question of law—Civil Procedure Code*, 1882, *section* 13.

Defendants, being engaged in litigation with third parties regarding a plot of land, entered into an agreement with the plaintiffs, wherein it was stipulated that the latter should undertake to act as their agents and institute an appeal at their own expense in the Chief Court connected with a pre-emption case in consideration of receiving a half share of the land which might be decreed to them. The appeal was successful, but immediately after the defendants sued for the cancellation of the said agreement on the ground that it was without consideration and unenforceable. The Court trying that case decided all the issues against the defendants, and no appeal was preferred. Plaintiffs thereafter instituted the present suit for half the land in accordance with the terms of the said agreement, and defendants pleaded that it was contrary to law and procedure. The First Court held that by reason of the former suit this question was *res judicata*, but on appeal the Divisional Judge, being of the opinion that the question being purely one of law could not operate as *res judicata*, accepted the defendant's contention.

Held that a judgment in the previous suit being a decision on a mixed question of law and fact was a bar to the present suit. The agreement having once been held to be valid as between the parties, it was not open to the Court subsequently to try the same question between the same parties.

Observations by Rattigan, J. as to how far, if at all, a decision on a pure question of law can operate as *res judicata*. MUAZAM SHAH *v.* ALAM KHAN. **44 P R 1908**

135. *Mortgage—Decree for redemption—Omission to execute—Second suit to redeem the same mortgage—Maintainability of such suit.*

Held by the Full Bench that in view of the conflict of authority upon the question the principle laid down in No. 86 *P. R.* 1877, and subsequent decisions of this Court should be accepted as law for this Province. DHANPAT MAL *v.* JHAGGAR SINGH. **93 P R 1908 F. B.**

136. Res judicata—*Decree against member of joint Hindu family—Subsequent suit by the son of such member on same cause of action.*

Held that a judgment against a Hindu father in a suit brought by him for partition of joint undivided ancestral property is *res judicata* against his son, and it is not open to the latter to sue a second time on the same right merely because he was not a party to the former suit. RAMAN MUL *v.* HEM RAJ **141 P R 1908**

137. *Jurisdiction of Civil or Revenue Court—Landlord and tenant—Ejectment of*

RES JUDICATA—*concld.*

tenant in execution of a Revenue Court decree —Suit by tenant in Civil Court for recovery of possession of land other than that leased to him—Res judicata—*Competency of Civil Court to try subsequent suit.*

Held, that a suit for recovery of possession by a tenant who had been ejected in execution of a decree of a Revenue Court, on the allegations that the decree in question included, in addition to the land leased to him, other plots over which he had either rights of occupancy or had become proprietor by long adverse possession, is cognizable by a Civil Court only, and the decree of the Revenue Court cannot operate as a *res judicata*, that Court having no jurisdiction to try the present suit. SHIB DIAL *v.* CHIRAGH BIBI. **12 P R 1909**

138. *Held*, that the doctrine of *Res judicata* involves a substantive right to which the provisions of section 6, General Clauses Act X of 1897, apply, and that the provisions of the old Civil Procedure Code were applicable where the suit was *instituted* before the Civil Procedure Code, 1908, came into force. MUSSAMMAT NIHAL DEVI *v.* KISHORE CHAND. **97 P R 1910**

RESPONDENT.

1. *Death of, in a suit for dissolution of marriage.*

See ABATEMENT OF SUIT. **60 P R 1906**

2. *Joinder of, on appeal.*

See CIVIL PROCEDURE CODE, 1908, O. XLI, R. 20. **23 P R 1901**

RESTITUTION OF CONJUGAL RIGHTS.

See CONJUGAL RIGHTS.

See CUSTODY OF WIFE.

1. *Plea of cruelty in defence of suit for.*

See DIVORCE. **101 P R 1882**

2. *Application by wife for stay of execution of decree for restitution of conjugal rights.*

See CIVIL PROCEDURE CODE, 1908, O. XLI, R. 5. **2 P R 1894**

3. *Husband and wife.—Restitution of conjugal rights—Right of husband to claim custody of wife after long deliberate desertion.*

Held, that among Hindus a husband who for years deliberately deserts his wife and fails to fulfil his obligations of giving her a home and of supporting her, is not entitled to enforce his maritial rights and claim the custody of his wife. DHANI *v.* NARAIN SINGH. **82 P R 1908**

RESUMPTION BY GOVERNMENT.

See ACT OF STATE.

RESUMPTION OF RENT FREE LANDS.

See ACT OF STATE.

RESUMPTION OF MUAFI.

See MAFIDAR. **108 P R 1892**

RETAINER.

—*Agent's right of.*

See PRINCIPAL AND AGENT. **49 P R 1885**

RETROSPECTIVE EFFECT OF ACT.

See COURT FEES ACT, 1870, SECTION 19. **26 P R 1900**

RETURN OF PLAINT.

See PLAINT, RETURN OF.

See JURISDICTION. **118 P R 1881**
147 P R 1882
71 P R 1883
32 P R 1883

REVENUE.

See ADVERSE POSSESSION.
CUSTOM—INHERITANCE.
EXECUTION OF DECREE.
JURISDICTION OF CIVIL OR REVENUE COURT.
LIMITATION.
OCCUPANCY RIGHTS.
PENSIONS ACT.

REVENUE COURT.

See JURISDICTION OF CIVIL OR REVENUE COURT.

1. *Power of Revenue Court to ignore decree of Civil Court passed without jurisdiction.*

See PUNJAB LAND REVENUE ACT, 1887, SECTION 158 (2), XVII. **2 P R 1895 Rev.**

2. *Procedure of Revenue Courts—Appeal, notice of, to respondent.*

See PUNJAB TENANCY ACT, 1887, SECTION 88. **10 P R 1895 Rev.**

3. *Suit cognizable by Revenue Court when Small Cause Court Act was passed.*

See SMALL CAUSE COURT—JURISDICTION. **28 P R 1881**
5 P R 1882
28 P R 1882
77 P R 1882
87 P R 1883
166 P R 1883
75 P R 1885
50 P R 1886

REVENUE FREE GRANT.

See JURISDICTION OF CIVIL OR REVENUE COURT. **122 P R 1880**

REVENUE SUIT.

See JURISDICTION OF CIVIL OR REVENUE COURT.
PUNJAB TENANCY ACTS, 1868, 1887.

REVERSIONARY RIGHT, ALIENATION OF.

See CUSTOM I. H.—ALIENATION OF REVERSIONARY RIGHTS. **58 P R 1894**

CIVIL PROCEDURE CODE, 1908, SECTION 60, CLAUSE M. **66 P R 1897**

SPECIFIC RELIEF ACT, 1887, SECTION 18. **13 P R 1899**

REVERSIONER.

See UNDER CUSTOM.
See UNDER ALIENATION.
See UNDER APPOINTMENT OF HEIR.
See UNDER GIFT.
See UNDER MAINTENANCE AND SUCCESSION.
See UNDER DECLARATORY DECREE.

1. *Alienation by a Jat proprietor of ancestral property—Suit by the son of the alienor to declare the alienation invalid and*

REVERSIONER.

not binding after the alienor's death—Competency of the reversioners of such son to continue the suit or appeal on the death of the son.

See ABATEMENT OF SUIT OR APPEAL. **58 P R 1905**

2. *Attachment and sale of ancestral property of absconding offender subject to Punjab Customary Law.*

Effect of such sale upon the rights of inheritance of the absconder's male lineal descendants and collaterals.

See ABSCONDING OFFENDER. **18 P R 1908 F. B.**

3. *Power of a reversioner out of possession to assign his interest after devolution of inheritance—Right of assignee to sue for possession.*

See ASSIGNMENT OF CHOSE IN ACTION. **11 P R 1907**

4. *Locus standi of.*

See CAUSE OF ACTION. **47 P R 1884**
91 P R 1898
24 P R 1899

See CUSTOM III—APPOINTMENT OF HEIR—I.—LOCUS STANDI OF REVERSIONERS AND OTHERS TO CONTEST ADOPTION.
CUSTOM I. A.—ALIENATION BY MALE PROPRIETORS—7 LOCUS STANDI OF REVERSIONER AND WIDOW.
CUSTOM I. (1)—ALIENATION OF OCCUPANCY RIGHTS.
89 P R 1898 F. B.
69 P R 1900
4 P R 1900 Rev.
56 P R 1887
68 P R 1894
63 P R 1895
39 P R 1898

5. *Joint suit by reversioners against person in unlawful possession—Misjoinder of causes of action.*

See CAUSE OF ACTION. **91 P R 1898**

6. *Suit by Hindu widow—Dismissal for default—Subsequent suit by reversionary heirs on same cause of action.*

See CIVIL PROCEDURE CODE, 1908, O. IX, R. 8. **80 P R 1884**

7. *Gift by Jat proprietor—Gift in favour of sister's son—Suit by a reversioner to declare the gift invalid and not to be binding after the donor's death—Donee setting up his own adoption as a bar to the suit—Limitation.*

See CUSTOM III—APPOINTMENT OF HEIRS. **68 P R 1908**

8. *Adoption of Brother's daughter's son.* **47 P R 1910**

9. *Next, assenting to adoption by widow—Validity of such adoption as against more remote reversioners.*

See CUSTOM III.—APPOINTMENT OF HEIRS (*g*)—ADOPTION BY WIDOW. **77 P R 1888**

10. *To contest alienation by childless proprietor.*

See CUSTOM I. A.—ALIENATION BY MALE PROPRIETOR (7) LOCUS STANDI OF WIDOWS AND REVERSIONERS.

10*a*. *To contest Alienation by widow.*

See CUSTOM I. B. ALIENATION BY WIDOW ASSENT OF REVERSIONER.

REVERSIONERS—*concld.*

11. *Sale by sonless Jat proprietor to a distant collateral who is co-proprietor in the village*—Locus standi *of nearer collaterals not residing in the village.*

See CUSTOM I—ALIENATION.

75 P R 1902

12. *Alienation by sonless proprietor*—Locus standi *of reversioner.*

See CUSTOM I—ALIENATION.

71 P R 1902
24 P R 1902 F. B.
75 P R 1902
103 P R 1902

13. *Suit by reversioner to enforce his right in respect to land on the ground that the alienation had been made without necessity which alienation had been already challenged by his ancestor on the ground of pre-emption only*—Locus standi—*Waiver—Necessity.*

See CUSTOM—ALIENATION.

15 P R 1903

14. *Alienation by sonless proprietor—Right of reversioner to contest such alienation in presence of wife and daughter-in-law.*

See CUSTOM—ALIENATION.

29 P R 1903

15. *Gift by widow with the consent of the nearer reversioner—Suit by reversioner of equal degree.*

See CUSTOM—ALIENATION.

47 P R 1903

16. *Gift by a sonless Hindu zargar of the Umballa City to daughter's son in presence of collaterals in the fifth degree.*

See CUSTOM—ALIENATION.

15 P R 1903

17. *Suit by reversioner to set aside alienation by daughter for necessity.*

See CUSTOM—ALIENATION.

90 P R 1903

18. *Gift by widow with the consent of the reversioners*—Locus standi *of the sons of the consenting reversioner to contest such alienation—Burden of proof.*

See CUSTOM—ALIENATION.

59 P R 1904

19. *Alienation by sonless proprietor with the consent of the nearest reversioner—Suit by the son of such reversioner.*

See CUSTOM—ALIENATION.

7 P R 1905

20. *Gift by sonless proprietor to daughter's son with the consent of the near reversioner—Right of distant reversioners to contest such alienation in presence of a widow of donor's brother's grandson.*

See CUSTOM—ALIENATION.

44 P R 1905

21. *Right of after-born reversioner to contest alienation beyond time.*

See CUSTOM—ALIENATION.

22 P R 1907

22. *Right of distant reversioners to contest alienations by sonless proprietors.*

See CUSTOM—ALIENATION.

23 P R 1907

23. *Right of, to question alienation by Hindu widow of self-acquired property of her husband.*

REVERSIONERS—*contd.*

See HINDU LAW—ALIENATION.

114 P R 1907

24. *Competency of the collaterals of the eighth degree to contest alienation of a sonless proprietor of ancestral immovable property to daughter.*

See CUSTOM—ALIENATION.

11 P R 1908

25. *Right of more remote, in presence of daughters of the deceased owner to contest alienation effected by the latter's widow with the consent of nearer reversioners.*

See CUSTOM—ALIENATION.

48 P R 1908

26. *Suit by, to set aside alienation by male proprietor in the presence of the adopted son of such proprietor—Right of suit.*

See CUSTOM—ALIENATION.

56 P R 1908

27. *Right of, to contest gift by male proprietor to his daughter with the consent of his son.*

See CUSTOM—ALIENATION.

58 P R 1908

27*a*. Locus standi *of—Residing in another village to contest an alienation of self-acquired property by mother and widow of the last male owner—Sayads of* Mauza *Tal Khalsa, District Rawalpindi.*

See CUSTOM—ALIENATION.

71 P R 1910

27*b*. Locus standi *of—Gift by widow to her daughter—Succession of daughter—Sayads of* Mauza *Chunia,* Tahsil *and District Gurgaon.*

See CUSTOM—ALIENATION.

58 P R 1910

28. *Assent by one, to sale by widow—Effect of such assent—Such assent no obstacle to the sale being set aside as a whole.*

See CUSTOM II. ALIENATION BY WIDOW—ASSENT OF REVERSIONER.

174 P R 1888

29. *Power of reversioner to alienate right of succession.*

See CIVIL PROCEDURE CODE, 1906, SECTION 60, CLAUSE M.

58 P R 1894

CUSTOM I. H.—ALIENATION OF REVERSIONARY RIGHTS.

66 P R 1897

SPECIFIC RELIEF ACT, 1877, SECTION 18. **13 P R 1899**

30. *Succession of unmarried daughters to deceased father's estate in presence of distant collaterals.*

See CUSTOM.—INHERITANCE.

:2 P R 1902

31. *Custom — Inheritance — Right to succeed to daughter who has inherited from her father—Collaterals claiming in preference to daughter's daughter.*

See CUSTOM.—INHERITANCE.

61 P R 1902

32. *Right of reversioner whose grandfather was converted to Muhammadanism to succeed to ancestral property.*

See CUSTOM —INHERITANCE.

104 P R 1902

33. *Suit by a reversioner for possession of immovable property—Defendant in possession under will made by testator without title—Reversioner not barred by reason of his having failed to contest such will within three years.*

REVERSIONERS—*contd.*

See CUSTOM.—INHERITANCE.

19 P R 1903

43. *Right of, to succeed in presence of daughters and their sons.*

See CUSTOM—INHERITANCE.

3 P R 1908
5 P R 1908
68 P R 1908
86 P R 1908
92 P R 1908
134 P R 1908
136 P R 1908

35. *Succession to childless proprietor—Exclusion of near collaterals by proprietors of village—Village founded within boundaries of old village—Right of collaterals residing in latter to succeed to land in former.*

See CUSTOM—INHERITANCE—MISCELLANEOUS. **68 P R 1898**

36. *Suit between co-proprietors of village in which the land was situate and deceased's near agnates residing in another village—Finding in a previous suit that one of the co-proprietors was deceased's collateral, effect of*—Res judicata.

See CUSTOM —INHERITANCE—MISCELLANEOUS. **78 P R 1898**

37. *Suit by. Valuation of.*

See JURISDICTION. **198 P R 1882**
94 P R 1886
98 P R 1886

38. *Mortgage by Hindu widow—Attachment in execution of decree obtained on the mortgage—Claim by reversioner to attached property—Order passed against claimant—Suit by claimant to establish his title—Limitation—Civil Procedure Code,* 1882, *sections* 278, 283.

See LIMITATION ACT, 1877, ARTICLE 11.

32 P R 1904

39. *Cancellation of mortgage—Suit for possession of immovable property—Reversioner.*

See LIMITATION ACT, 1877, SCHEDULE II, ARTICLE 91.

155 P R 1883

40. *Suit by a reversioner for possession of immovable property—Defendant in possession under an alleged gift—Time from which period begins to run.*

See LIMITATION ACT, 1877, SCHEDULE II, ARTICLE 91.

23 P R 1902

41. *Suit by a reversioner for possession of immovable property—Defendant in possession under an alleged adoption—Limitation.*

See LIMITATION ACT, 1877, SCHEDULE II, ARTICLE 118.

20 P R 1902

42. *Suit by, for declaration that an alienation will not bind his interests.*

See LIMITATION ACT, 1877, SCHEDULE II, ARTICLE 120.

19 P R 1883
111 P R 1884

43. *Suit by reversioner for declaration—Defendant's title based on an alleged adop-*

REVERSIONERS—*contd.*

tion—Limitation.

See LIMITATION ACT, 1877, ARTICLE 120. **35 P R 1904**

44. *Plaintiff claiming as, after death of widow—Defendant setting up title by purchase from widow effected* 18 *years ago—Accrual of right to sue.*

See LIMITATION ACT, 1877, SCHEDULE II, ARTICLE 141.

15 P R 1882
141 P R 1882

45. *Mortgage by widow—Decree of foreclosure against widow—Suit by reversioners for recovery of land after death of widow.*

See LIMITATION ACT, 1877, 2ND SCHEDULE, ARTICLE 141.

29 P R 1898

46. *Suit by, for possession of immoveable property held by female—Suit within* 12 *years of her death.*

See LIMITATION ACT, 1877, SCHEDULE II, ARTICLE 141.

84 P R 1901

47. *Suit by reversioner on death of widow—Possession adverse to the female cannot be adverse to the reversioner.*

See LIMITATION ACT, 1877, ARTICLE 141 **41 P R 1903**

48. *Alienations by a widow—Suit for declaration by reversioner against the widow and various alienees claiming under distinct titles—Misjoinder of causes of action.*

See MULTIFARIOUSNESS.

1 P R 1905

49. *Alienation of rights of occupancy—Sale by tenant to landlord*—Locus standi *of reversioners—Punjab Tenancy Act,* 1877, *sections* 53, 56.

See OCCUPANCY RIGHTS.

24 P R 1902 F. B.

50. *Right of, to restrain alienation of occupancy rights.*

See OCCUPANCY RIGHTS.

98 P R 1907 F. B.

51. *Right of—To contest alienation of occupancy rights even after it had been successfully contested by the landlord.*

See OCCUPANCY RIGHTS.

38 P R 1909

52. *To set aside alienation by widow—Former suit between same parties to set aside a similar alienation in which the question of plaintiff's* locus standi *was decided.*

See RES JUDICATA. **95 P R 1881**

53. *To set aside alienation by widow—Subsequent suit for pre-emption.*

See RES JUDICATA. **108 P R 1882**

54. *How far bound by decree against widow.*

See RES JUDICATA.

139 P R 1888
51 P R 1894

55. *Alienation by sonless proprietor—Suit by reversioner to have such alienation declared null and void—Dismissal of suit on merits—Subsequent suit by the son of such reversioner for possession after the death of the alienor—Estoppel.*

See RES JUDICATA. **68 P R 1905**

56. *For apportionment of compensation awarded to Hindu widow under Land*

REVERSIONERS—*concld.*

Acquisition Act.

See RIGHT TO SUE. **47 P R 1884**

57. *Surrender of her life interest by widow of a part of her estate in favour of next reversioner—Suit by reversioner in life-time of widow.*

See RIGHT TO SUE. **17 P R 1902**

58. *Speculative suit by reversioners for declaratory decree.*

See SPECIFIC RELIEF ACT, 1877, SECTION 42. **42 P R 1898**

59. It is not necessary for the reversioner of a holder of ancestral agricultural land to sue during his life-time for a declaration of the invalidity of an alienation made by him as respects such reversioner's interest, and in the event of his failing to do so, such reversioner is not precluded from suing for possession on the death of the alienor after the lapse of the period prescribed for such declaratory suits. DHERU *v.* SIDHU.

56 P R 1903 F. B.

60. Assent of a reversioner to an alienation of ancestral land by a sonless proprietor is binding on his sons and on all reversioners more remote than himself. SHIB RAM *v.* SAHIB SINGH. **78 P R 1908**

61. Distant reversioner is competent to maintain a declaratory suit in presence of the widow's daughter where the latter has no male issue. KAPURIA *v.* MANGAL.

149 P R 1908

REVERSIONARY RIGHT, ALIENATION OF.

See CUSTOM—ALIENATION OF REVERSIONARY RIGHTS.

CIVIL PROCEDURE CODE, 1908, SECTION 60, CLAUSE 'M'.

SPECIFIC RELIEF ACT, 1877, SECTION 18.

Held, that a reversioner's right to contest an alienation under Customary law is not transferable to a stranger.

See CUSTOM—ALIENATION.

67 P R 1909

REVIEW.

1. *Further appeal from order passed on appeal from order admitting review.*

See APPEAL—VIII. SECOND.

133 P R 1882

2. *Review of judgment—New decree—Appeal.*

See APPEAL—II. COMPETENCY OF.

85 P R 1891

3. *Review of judgment—Informalities in presenting application for review.*

See CAUSE OF ACTION—IV. MISCELLANEOUS. **17 P R 1897**

4. *Suit dismissed by default—Application for review made more than* 30 *days after date of dismissal.*

See CIVIL PROCEDURE CODE, 1908, ORDER IX, RULE 9.

15 P R 1897

5. *Application for, on behalf of minor must be made by guardian* ad litem.

See CIVIL PROCEDURE CODE, 1908, ORDER XXXII, RULE 3.

115 P R 1885

REVIEW—*contd.*

6. *Application to re-admit application to set aside* ex parte *decree dismissed in default—Power of Court to treat such application as one for review.*

See CIVIL PROCEDURE CODE, 1908, ORDER XLI, RULE 17.

5 P R 1900

7. *Civil Procedure Code,* 1882, *section* 624—*Application to whom made within the section.*

See CIVIL PROCEDURE CODE, 1908, ORDER XLVII, RULE 2.

6 P R 1887

8. *Review of interlocutory order—Application made to judge other than judge who passed original order.*

See CIVIL PROCEDURE CODE, 1908, ORDER XLVII, RULE 2.

7 P R 1894

9. *Review of Review—Competency of.*

See CIVIL PROCEDURE CODE, 1908, ORDER XLVII, RULE 7.

57 P R 1892

10. *Order granting review—Appeal.*

See CIVIL PROCEDURE CODE, 1908, ORDER XLVII, RULE 7.

62 P R 1895

11. *Application for review of judgment* in forma pauperis.

See COURT FEES ACT, 1870, 1ST SCHEDULE, ARTICLES 4 AND 5.

91 P R 1895

12. *Delay in appealing caused by pendency of—"Sufficient cause."*

See LIMITATION ACT, 1877, SECTION 5.

89 P R 1882
166 P R 1883
100 P R 1910

13. *Deduction of period spent in applying for review, in calculating period for appeal.*

See LIMITATION ACT, 1877, SECTION 5.

183 P R 1888 F. B.

14. *Small Cause Court Act,* 1887, *section* 25—*Second application for revision after rejection of first application—Civil Procedure Code,* 1882, *sections* 622, 623 (*b*).

See REVISION IN CIVIL CASES.

23 P R 1898

15. *Application for review of order of Small Cause Court unaccompanied by tender of amount due under decree or of security for performance thereof.*

See SMALL CAUSE COURT ACT, 1887, SECTION 17. **5 P R 1894**

16. *Application for review of judgment of Small Cause Court—Tender of amount due under the decree or of security for performance thereof.*

See SMALL CAUSE COURT ACT, 1887, SECTION 17.

108 P R 1894

17. *Pauper proceedings.*

An order refusing an application to be allowed to appeal *in forma pauperis* is final and not subject to review ; but the applicant should be allowed a reasonable time to appeal on a full stamp. BHAG SINGH *v.* GHUSEETA MULL.

73 P R 1868

18. *Act XIX of* 1865, *section* 22—*Act IV of* 1866, *section* 13—*Act VII of* 1868, *section* 9—*Review by Chief Court of Financial Commissioner's decisions and vice versa—Meaning of "business" in section* 9 *of Act VII of* 1868—*Power of Financial Commissioner to review his own decisions.*

Section 22 of Act XIX of 1865 and section 13 of Act IV of 1866 prescribe the only mode in which suits falling within the conditions of the former section can be disposed of on appeal and in review. Under those sections the Chief Court has no jurisdiction to review the decisions of the Financial Commissionergiven under section 22 of Act XIX of 1865 ; on the other hand the Financial Commissionercannot review the decisions of the Chief Court passed when the settlement of land revenue is not in progress, or before the investment by the Local Government with the powers of a Court of final appeal The classes of suits provided for in section 22 of Act XIX of 1865, are not "business" transferred to the Chief Court within the meaning of section 9 of Act VII of 1868.

Quære—Whether the Financial Commissioner can review his own decisions passed under section 22 of Act XIX of 1865, after the settlement operations have been declared at an end by notification in the *Gazette*. DEVI DITTA *v.* GHUSEETA.

38 P R 1869

19. *Application for review* in forma pauperis.

Where the petitioner had not sued or appealed *in forma pauperis*, the Chief Court rejected his prayer for permission to apply for a review of judgment in that form. BULDEO DAS *v.* JEEWUN SINGH

24 P R 1870

20. *Review of Financial Commissioner's order by Chief Court.*

Held (*per* BOULNOIS and LINDSAY, JJ.), that the Chief Court can review an order passed by the Financial Commissioner in the exercise of his old jurisdiction prior to the passing of Act XIX of 1865, or in the exercise of his powers conferred by Act XXVII of 1865 ; *per* BOULNOIS, J., *aliter* as to an order passed by him under section 22 of the former Act. BIJJA SINGH *v.* NAMDAR.

16 P R 1871

21. *Review granted after* 90 *days—Reasonable cause—Act VIII of* 1859, *section* 377.

Where review was granted after the lapse of 90 days, *held* by the Chief Court, following the decisions of the High Court of Bengal (CAMPBELL, J., doubting), that an Appellate Court can legally consider the question whether just and reasonable cause for

the delay in presenting an application for review has been shown. Two suits in which the plaintiffs were proprietors and the defendants' two brothers, hereditary cultivators, were filed together, heard on the same days and evidence in one held good in the other. In appeal the Deputy Commissioner decreed the plaintiffs' suits, whereupon the defendant in one suit appealed to Commissioner, who reversed the order of the Deputy Commissioner. The defendant in the 2nd suit (who did not appeal, believing that his case would be decided according to the decision in his brother's case) then applied to the Deputy Commissioner for a review of the order in his case, which was granted, notwithstanding that 90 days had elapsed. *Held*, by BOULNOIS and CAMPBELL, JJ., (LINDSAY J., dissenting) that just and reasonable cause had been shown for the delay in presenting the application for review. HURREE SINGH *v.* MUKHA. **51 P R 1871**

22. *Act XXIII of* 1861, *section* 28—*Reference on review.*

Plaintiff five or six years before suit made over some camels to the defendant to graze. Defendant refusing to restore the camels, plaintiff sued for their value (rupees 400). The original Court dismissed the suit, holding that it ought to have been brought within three years from the date of plaintiff's making the camels over to defendant. The Commissioner on appeal affirmed this decision. On plaintiff's application for a review of judgment, the Commissioner submitted a statement of the case under section 28, Act XXIII of 1861, to the Chief Court for decision. *Held*, that if the limitation was three years the suit would lie, unless there had been a demand and refusal more than three years before action brought. *Semble*, the defendant being an agister or depositary, the period for suing was thirty years (section 1, clause XV, Act XIV of 1859). *Held* also, that the reference, though made on review, could be entertained by the Chief Court, as coming within the intention of section 28, Act XXIII of 1861. GYAN CHUND *v.* MOHUMDA. **23 P R 1872**

23. Time occupied in applying for review deducted from time allowed for appealing. CHUNDA *v.* MIHAN. **35 P R 1872**

24. *Wrongfully withholding exercise of jurisdiction—Interference of Chief Court under section* 35, *Act XXIII of* 1861.

Plaintiff's suit on a bond for Rs. 218-9-6 was dismissed by the Court of first instance, whose decision was affirmed on appeal, on the ground that the suit was barred by section 7 of Act VIII of 1859. Plaintiff petitioned the Chief Court under section 35 of Act XXIII of 1861, alleging that he had not in fact split his claim, and urging that the Lower Court had, in rejecting its suit as barred by section 7, Civil Procedure Code, exercised a jurisdiction not vested in it by law, *i. e.*, had wrongfully withheld the exercise of its jurisdiction. *Held*, by the Chief Court, that it was not a case where the proceeding of

the Lower Court could be revised under section 35 of Act XXIII of 1861 ; but that the petitioner's remedy was a review of the Lower Court's judgment. JUSSA SINGH *v.* NOORA. **36 P R 1872**

25. *Ground for review.*

Held, by the Financial Commissioner, that except where the decision is so absolutely wrong in principle that there can be no doubt as to the impropriety of the judgment granting a review is unadvisable. DULA SINGH *v.* JOWAHIR SINGH. **1 P R 1872 Rev.**

26. *Act VIII of* 1859, *sections* 347 *and* 376—*Review of judgment passed for default.*

An appellant who has unsuccessfully applied, under section 347, Civil Procedure Code, for re-admission of an appeal struck off for default, cannot apply for a review, under section 376, of the judgment given against him in default. ABDULA *v.* MORAD SHAH.

52 P R 1873

27. *Review of ruling of Chief Court on case stated by Judge of Small Cause Court.*

Upon a case stated by the Judge of Small Cause Court of Ludhiana, the Chief Court ruled (following *Billings* v. *Bank of Upper India*, No. 4 *P. R.* 1872), that the receipts of dividends in bankruptcy kept a decree alive under section 20 of Act XIV of 1859. The judgment-debtor applied for a review of the Chief Court's ruling. *Held*, that the application for review was inadmissible, there beingno "decree" of the Chief Court. SIRDAR JULLALUDDEEN *v.* KALA MUL.

74 P R 1873

28. *Small Cause Court.*

The decree of a Small Cause Court was for payment by instalments ; and afterwards the decree-holder applied, on the ground that the circumstances of the judgment-debtor were altered, to be allowed to execute at once for the full amount. *Held*, that the decree was final and could not be varied on review. RUTTAN SINGH *v.* DARMODY.

4 P R 1876

See also GULAB SHAH *v.* LUCHMAN DAS.

70 P R 1867

29. *Admitted after* 90 *days—Explanation of delay—Jurisdiction.*

An order admitting a review of judgment after the expiration of 90 days from the date of decree, without stating that there was, or that it was shown to the satisfaction of the Court that there was, sufficient cause for the delay, is an order framed improperly, and must be set aside together with all subsequent proceedings in the cause ; the party being left to renew his application for review and to explain his delay, as if no such subsequent proceedings had taken place (*per* BOULNOIS and LINDSAY, JJ. (CAMPBELL, J., dissenting).

Per CAMPBELL, J.—Where the order admitting the review was not objected to by

REVIEW—*contd.*

the opposite side on the ground that the delay had not been explained, and the objection was put forward when the subsequent proceedings had lasted two or three years, it might be assumed that the delay was at the proper time satisfactorily explained. MUSSAMMAT FATTO *v.* LASHKAR KHAN. **101 P R 1876**

30. *Explanation of delay in applying for review—Special appeal.*

The admission of a review applied for after the lapse of 90 days, lies in the discretion of the Court, but an error in the principle governing the exercise of that discretion is ground for special appeal. It is an error for the Court to satisfy itself only as to the delay for 90 days; the subsequent delay must also be explained by the applicant. Where the Lower Court admitted a review nearly two years after decree, and inquired only as to the delay for 90 days the Chief Court returned the case for the applicant to explain his further delay. HYAT *v.* RAHIM-UD-DIN. **114 P R 1876**

31. *Second application for review—Civil Procedure Code (Act X of* 1877*), section* 629.

A second application for review which is in effect an application to review an order passed on an application for review, cannot, under the last clause of section 629, Act X of 1877, be entertained. KHARAK SINGH v. PANJAB SINGH. **6 P R 1878**

32. *Decree by confession.*

Per PLOWDEN, J.—Under the Code of Civil Procedure, a decree by confession may be set aside by review if the attainment of the ends of justice require it, and therefore, if it appears that the confession of judgment was made by an agent under such circumstances that it operated as a fraud upon the defendant, or was made in error or acted as a surprise upon him, he would be *prima facie* entitled to the relief sought in an application for review of the judgment following on such confession. ABDUL MAJID *v.* FAZL HAQ. **58 P R 1878**

33. *Civil Procedure Code (Act X of* 1877*), sections* 5, 623, *and Schedule II—Decree or order of Small Cause Court constituted under Act XI of* 1865.

Held by a majority of the Full Bench (ELSMIE, J., *contra*), that the decrees or orders of Small Cause Courts constituted under Act XI of 1865 are subject to review of judgment under Chapter XLVII of the Civil Procedure Code. SITA RAM *v.* HUKM SINGH. **29 P R 1879**

34. *Act X of* 1877, *sections* 281, 283—*Order disallowing claim to attached property—Review.*

Held, by the Full Bench, that an order passed under section 281 of Act X of 1877 disallowing a claim to release of property attached in execution of decree, is not open to review, such review being excluded by the concluding words of section 283, Act X of 1877. *In re* BANWARI LAL. **143 P R 1879**

REVIEW—*contd.*

35. *Small Cause Court Judge reviewing his predecessor's judgment—Act X of* 1877, *sections* 210, 624—*Fixing instalments without decree-holder's consent—Jurisdiction.*

Where the Judge of a Small Cause Court on the judgment-debtor's application modified a decree passed by his predecessor by ordering that the said decree should be payable by instalments, the Chief Court on the revision side set aside the order as made without jurisdiction, the Judge having no power to entertain an application for review of his predecessor's judgment, except on the grounds specified in section 624, Act X of 1877, nor being able under section 210 to alter the decree by fixing instalments without the decree-holder's consent, which was not given. GOPI MAL *v.* AHMED HASSAN. **144 P R 1879**

36. *Power of Chief Court to review order of Financial Commissioner.*

Held, that the Chief Court has no jurisdiction to review an order of the Financial Commissioner passed when a Settlement of land revenue is in progress, after the Settlement operations have been declared at an end. *Devi Ditta* v. *Ghuseeta* (No. 38 *P. R.* 1869), followed. *Bijja Singh* v. *Namdar* (No. 16 *P. R.* 1871), referred to. NIAMATULLA *v.* KAIMDIN. **5 P R 1881**

37. *Small Cause Court—Deposit of amount of decree by applicant—Act XI of* 1865, *section* 21—*New trial.*

Held, that an application for a review of a judgment of a Small Cause Court by a defendant can be entertained though he fails to deposit with it the amount for which the decree is passed against him, as the provisions of section 21 of Act XI of 1865, regarding deposit upon application by a defendant for a new trial, do not extend to an application for a review of judgment under section 623 of the Code of Civil Procedure. *Sita Ram* v. *Hukm Singh* (No. 29 *P. R.* 1879, *F. B.*) cited. PRESIDENT, MUNICIPAL COMMITTEE, DELHI *v.* SULLUR. **60 P R 1881**

38. *Civil Procedure Code (Act X of* 1877*), sections* 522, 623—*Review of judgment passed in accordance with an award of arbitrators.*

Held, that under the provisions of section 623 of the Code of Civil Procedure, a review is admissible of a judgment passed in accordance with an award of arbitrators, there being nothing in section 522 of the same Code, which merely excludes an appeal from the decree in such a case, to exclude the admissibility of a review. BUTA *v.* GUNI DAS. **111 P R 1881**

39. *Civil Procedure Code (Act X of* 1877*), sections* 578, 623—*Error in law—Sufficient cause—Power of appellate Court to reverse decree passed after review erroneously granted—Error not affecting the merits of the case or the jurisdiction of the Court.*

It cannot be laid down as a matter of law

REVIEW—*contd.*

that an application for review made upon the ground of error in law in the judgment to be reversed is not based upon a sufficient reason for review, within the meaning of section 623 of the Civil Procedure Code, so as to justify a reversal of the final order passed upon review. Even if the proper procedure, in order to correct a positive error in law, is by way of appeal rather than review, and an order admitting a review for this purpose is for this reason erroneous, still, as it is an error not affecting the merits of the case or the jurisdiction of the Court, it is contrary to the express prohibition in section 578 of the Code for an Appellate Court to reverse the decree subsequently passed, merely on the ground that the application ought not to have been granted. HIRA *v.* MUSSAMMAT MALO. **128 P R 1881**

40. *Plea of want of jurisdiction of first Court—Ground for review.*

On an application for review of judgment in which the plaintiff urged that the first Court had no jurisdiction to try the suit, and it appeared that no plea of want of jurisdiction had been advanced by either of the parties in the lower Courts, nor by the plaintiff till after his appeal to the Chief Court had been dismissed by a single Judge in Chambers, the Chief Court *held* without deciding whether the plea advanced was correct or otherwise, that it was not one which the Court was bound to admit at the present stage of the case, especially coming as it did from the plaintiff himself. MARATIB KHAN *v.* MUSSAMMAT MOUJO. **94 P R 1882**

41. *Respondent applying for review of Chief Court's order on ground of discovery of new evidence—Admissibility of such application—Act X of* 1877, *section* 623.

Held by the Full Bench, that under section 623 of the Civil Procedure Code a review can be granted of a judgment passed by the Chief Court on second appeal upon the ground that the respondent has discovered new and important evidence since the decision of the appeal, his inability to produce such evidence before not arising from any want of due diligence on his part. LALA MAL *v.* GHULAM MUHAMMAD. **145 P R 1882**

42. *Act X of* 1887, *section* 629—*Admissibility of second application for review.*

Held, that the prohibition contained in the last clause of section 629 of the Civil Procedure Code to the admission of an application to review the order passed on review or on an application for review, does not extend to the admission of a second review of the original order, when some fresh ground is advanced in support of such application which the applicant was not in a position to adduce in a former application. *Kharak Singh* v. *Punjab Singh* (No. 6 *P. R.* 1878), referred to. JAI GOPAL *v.* JOWAHIR. **107 P R 1883**

REVIEW—*contd.*

43. *Civil Procedure Code (Act XIV of 1882), section 624—Application "made" to Judge other than Judge who delivered the original judgment.*

Held, that upon a reasonable construction of section 624 of the Code of Civil Procedure, the mere presentation of a petition praying for a review of judgment is not "making an application for review" within the meaning of the section, such application being made when the petitioner moves the Court to bring its mind to bear upon the merits of the petition for review, and when that is done for the first time in respect to the successor of the Judge who delivered the judgment, the application is made to the successor within the meaning of the section. AZIZ-UD-DIN *v.* BADAR-UD-DIN.

134 P R 1884

44. *Civil Procedure Code (Act XIV of 1882), sections 624, 626—Application when "made" to the Judge who passed the original decision.*

Held, that when a petition for review is presented to the Judge who passed the judgment complained of, and that Judge, instead of rejecting it under section 626, Civil Procedure Code, orders it to be entertained, and the opposite party to be called upon to show cause why it should not be allowed, the application may fairly and reasonably be held to have been "made" to the Judge who passed the original decision, within the meaning of section 624 of the Code. *Aziz-ud-din* v. *Badar-ud-din* (No. 134 *P. R.* 1884), referred to. DIWAN SINGH *v.* JOWAHIR MAL. **97 P R 1885**

Cited and followed in TULSI RAM *v.* RAM LAL. **97 P R 1885 Note.**

45. *Review of judgment—Appeal—Jurisdiction of Divisional Judge to review his judgment after it has been upheld on appeal by the Chief Court—Civil Procedure Code, 1882, section 623.*

A subordinate Court is competent to review his judgment on an application put in before an appeal has been preferred against his decree and is not prevented from proceeding upon it by the subsequent presentation of an appeal, but he cannot entertain or deal with any such petition after an appeal in the case has been decided by a superior Court although it might have been put in proper time and is still pending in his Court.

Bhurrat Chunder Mojoomdar v. *Ram Gunga Sein* (5 *W. R.* 59, *F. B.*) *Thacoor Prosad* v. *Baluck Ram* (12 *Calc. L. R.* 64), *Bunkoo Lal Singh* v. *Basoomunisa Bibee* (7 *W. R.* 166), *Mussammat Jowala Devi* v. *Kanwar Sen* (32 *P. R.* 1896), and *Abdul Kasim* v. *Piyare Lal* (59 *P. R.* 1900), referred to. JAGAN NATH *v.* DEVI DAS.

25 P R 1904

46. *Review—Review by some only of several defendants—Power of Court to reverse decision as regards persons not parties to the review—Civil Procedure Code, 1882, sections 544, 623.*

One Phusa, a Jain Jat, died childless leaving immovable property which in default of heirs reverted to the proprietary body of the village. A, also a Jain of the same village, claimed to be a collateral of the deceased and brought a suit against all the khewatdars of the village for recovery of possession. The suit was decreed. Among the defendants four alone applied for a review of judgment on the ground that they have discovered the pedigree-table of the Settlement of 1863, which conclusively proves that the plaintiff was not a collateral of the deceased proprietor. The other defendants were neither impleaded in the review proceedings nor did they take any steps to become parties to it. After enquiry the Court granted the review and reversed the decree as to the petitioners without disturbing decree as to those defendants who were not parties to the review proceedings. Thereupon the remainder of the khewatdars appealed to the Divisional Judge urging that the claim of the plaintiff should have been dismissed not only as regards the share of the four petitioners but as regards all the defendants. The Divisional Judge accepted this view and dismissed the whole claim.

Held, that the Divisional Judge had no jurisdiction to reverse the decree of the first Court against the appellants, who being no party to the application for review, nor to the subsequent proceedings, had no *locus standi* to appeal to the Divisional Judge.

Section 544, Civil Procedure Code, has no application to applications for review; that section applies only to appeals and cannot be applied to reviews by analogy, for there is in effect no analogy between the two.

Poresh Nath Mundul v. *Khettra Monee-Debia* (20 *W. R.* 284) and *Chinta Monee Paul* v. *Pearee Mohun Mookerjee* (15 *W. R.* 1, *F. B.*) distinguished. GULLA *v.* MOTA AND OTHERS. **47 P R 1904**

47. *Review—Power of Judge of a Court of Small Causes to review judgment of his predecessor—Civil Procedure Code, 1882, sections 624, 629.*

Held, that a Judge of a Court of Small Causes has jurisdiction to review a judgment delivered by his predecessor dismissing an application for review of judgment. NATHA *v.* ALLAH DIN. **63 P R 1905**

48. *Review—Second application for—Sufficient cause for delay—Punjab Tenancy Act, 1887, section 82, Limitation Act, 1877, section 5.*

Held, that the Financial Commissioner is competent to receive and entertain a second application for review under the provisions of section 629, Civil Procedure Code, and section 88 of the Punjab Tenancy Act, even when presented long after the period of limitation prescribed for such purposes, especially where the party seeking redress was prevented from filing his application not by any omission on his part but by the disagreement of the Civil and Revenue Courts. MAYA DAS *v.* JOWALA SAHAI.

9 P R 1905 Rev.

49. *Review—Power of a Divisional Judge to review order of another Divisional Judge—Civil Procedure Code, 1882, section 624.*

Held, that a Divisional Judge has no jurisdiction to review an order of another Divisional Judge dismissing an appeal in default, on the ground that it was passed in the absence of the petitioner and without giving him notice of the hearing.

Jagarnath Singh v. *Budhan* (*I. L. R.* XXIII *Calc.* 115), dissented from. BAHADOO *v.* FATTEH KHAN. **82 P R 1906**

50. *Review—New exposition of law—Reason for granting review—Civil Procedure Code, 1882, section 623.*

Held, that the fact that an existing exposition of the law by a superior Court was not brought to the notice of the Court at the hearing by reason of the parties' ignorance of its existence is a sufficient ground for granting a review.

Sharup Chand Mala v. *Pat Dassee* (*I. L. R. VI All.* 292), followed, *Amrit Lal* v. *Madho Das* (*I. L. R. XIV Calc.* 627), distinguished. SUJAN SINGH *v.* FATEH MUHAMMAD.

124 P R 1906

51. *Review—Order refusing to appoint guardian is not subject to review—Guardian and Wards Act, 1890,—sections 7, 47, 48—Civil Procedure Code, 1882, section 623.*

Held, that an order made by a District Judge under section 7 of the Guardian and Wards Act, 1890, refusing to appoint a guardian is not open to review. Section 623 of the Code of Civil Procedure which deals with reviews of judgments has no application to the proceedings under the Guardian and Wards Act, 1890. FARID *v.* MITHO **143 P R 1906**

52. *Dismissal of suit for default—Failure of plaintiff to avail himself of the provision of section 99—Review of judgment—Civil Procedure Code, 1882, sections 98, 99, 623.*

Held, that no review of judgment is admissible under section 623 of the Code of Civil Procedure of an order dismissing a suit for default under section 98, where the plaintiff has failed to avail himself of his proper remedies under section 98 of the Code. INDER SINGH *v.* RAM SINGH.

33 P R 1909

REVISION IN CIVIL CASES.

1. *Civil Procedure Code, 1882, section 336—Release of judgment-debtor on finding a surety undertaking that he should apply to be declared an insolvent—Dismissal*

REVISION IN CIVIL CASES—*contd.*

of application for want of prosecution—Execution of decree against surety—Appeal—Revision.

See APPEAL—I CIVIL. **72 P R 1902**

2. *Appeal dismissed by lower Court on ground that it was unauthorised by appellant—Appeal filed by Advocate—Power of Chief Court to revise order of the lower Appellate Court—"Failure to exercise jurisdiction vested by law"—Appeal also dismissed as contrary to rule of equity, justice, and good conscience—Material irregularity—Revision.*

See APPEAL—II COMPETENCY OF. **54 P R 1896**

3. *Order of the District Judge fixing the fee of a custodian of the property of the ward appointed under section 12 of the Guardian and Wards Act, 1890—Revision.*

See APPEAL—II COMPETENCY OF. **48 P R 1901**

4. *Punjab Courts Act, 1884, sections 40, 70—Rules and Orders of Chief Court, No. LV, rule IV—Unclassed suit of less than Rs. 100 in value—Appeal—Revision.*

See APPEAL—III COURSE OF. **86 P R 1896**

5. *Order directing private award to be filed—Finality of such order—Revision.*

See APPEAL—IV IN ARBITRATION CASES. **1 P R 1908 F. B.**

6. *Munsif returning plaint on ground that case was cognizable by Small Cause Court—District Judge on appeal reversing Munsif's order and directing him to try the suit—Munsif refusing to proceed on ground that if the case was not a Small Cause, the District Judge had no jurisdiction—Appealable order—Appeal—Revision.*

See APPELLATE COURT, POWERS AND DUTIES OF. **36 P R 1887**

7. *Arbitrators, remuneration of—Jurisdiction of Court to direct payment of sum ordered to be deposited in Court as remuneration—Interlocutory order—Revision.*

See ARBITRATION. **94 P R 1894**

8. *Revision—Arbitrator—Application by arbitrator for payment of his fees before producing award—Arbitrator's lien on award—Civil Procedure Code, 1882, section 622—Right of arbitrator to sue for his fees in absence of express agreement to pay such fee—Contract Act, 1872, sections 95, 171.*

See ARBITRATION. **22 P R 1897**

9. *Burden of proof—Material irregularity—Revision.*

See BURDEN OF PROOF. **89 P R 1893**

10. *Power of Chief Court in revision to dispose of case on merits.*

See BURDEN OF PROOF. **41 P R 1898**

11. *"Material irregularity"—Contradictory finding by lower Appellate Court.*

See BURDEN OF PROOF. **66 P R 1898**

12. *Chief Court's power to set aside void execution sale—Revision.*

See CIVIL PROCEDURE CODE, 1908, SECTION 67. **95 P R 1888**

REVISION IN CIVIL CASES—*contd.*

13. *Order of remand under section 562, Civil Procedure Code 1882, where no appeal would lie from the final decree—revision by Chief Court.*

See CIVIL PROCEDURE CODE, 1908, ORDER XLVI, RULE 23. **101 P R 1910**

14. *Not entertained from orders in regard to Court-fees, etc., which are not decrees.*

See DECREE OR ORDER. **82 P R 1911**

15. *Allowed against order returning plaint for amendment.*

See DECREE OR ORDER. **96 P R 1911**

16. *To Chief Court—security taken under Chief Court Circular Order LVII, rule II (1)—Execution of decree.*

See EXECUTION OF DECREE. **66 P R 1909**

17. *Surety under Chief Court Circular Order LVII, rule II (1), for petitioner for revision to the Chief Court—Extent of liability of.*

See EXECUTION OF DECREE. **66 P R 1909**

18. *Guardian and Wards Act, 1890, sections 12 (3) (b), 47—Preliminary order as to custody of property—Revision.*

See GUARDIAN. **10 P R 1898**

19 *Rules under Act IV of 1872—Duty of Court to make enquiry on its own motion under section 25, Act IV of 1872—Failure to make such enquiry—Grounds for Revision.*

See INSOLVENCY. **65 P R 1882**

20. *Power of Chief Court to revise orders appealable under section 588, Civil Procedure Code.*

See JURISDICTION. **77 P R 1909**

21. *Limitation for—*

See LIMITATION ACT, 1908, SECOND SCHEDULE, ARTICLE 181. **92 P R 1910**

22. *Suit for redemption of motrgage—Decree—Material irregularity.*

See MORTGAGE—REDEMPTION. **34 P R 1896**

22 a. *Application for certificate of leave to appeal—Refusal of application on ground that it is not within time—Right to apply for revision after such refusal.*

See PUNJAB COURTS ACT, 1884, SECTION 40 (i) (d). **158 P R 1888**

23. *No revision lies on a point of jurisdiction from an interlocutory order.*

See PROBATE AND ADMINISTRATION ACT. **70 P R 1910**

24. *Revision lies from an order passed by the Divisional Court upon an application made by the Deputy Commissioner under section 21 A (2) of the Punjab Alienation of Land Act for cancellation of the sale of mortgage rights of a judgment-debtor sold by the Civil Court in execution of a decree.*

See PUNJAB ALIENATION OF LAND ACT. **12 P R 1911**

25. *Application for certificate for leave to appeal filed after prescribed period—Refusal of such application—Right to apply for revision on the strength of such refusal.*

See PUNJAB COURTS ACT (XVIII OF 1884), SECTION 40. **93 P R 1886**

REVISION IN CIVIL CASES—*contd.*

26. *Chief Court's power of—Practice—Punjab Courts Act, 1884, as amended by Act XXV of 1899, section 70.*

See PUNJAB COURTS ACT, SECTION 70. **15 P R 1901**

27. *Erroneous decision by Appellate Court as to jurisdiction of first Court not open to revision under section 70 (i) (a) of Courts Act.*

See PUNJAB COURTS ACT. **4 P R 1911**

28. *Small Cause Court suit—Error of law—Chief Court's powers of revision—Discretion.*

See SMALL CAUSE COURT ACT, 1887, SECTION 25. **19 P R 1901**

29. *Act XXIII of 1861, section 35—Wrongfully withholding exercise of jurisdiction—Interference of Chief Court.*

Plaintiff's suit on a bond for Rs. 218-9-6 was dismissed by the Court of first instance, whose decision was affirmed on appeal, on the ground that the suit was barred by section 7 of Act VIII of 1859. Plaintiff petitioned the Chief Court under section 35 of Act XXIII of 1861, alleging that he had not in fact split his claim, and urging that the lower Court had, in rejecting his suit as barred by section 7, Civil Procedure Code, exercised a jurisdiction not vested in it by law—*i. e.*, had wrongfully withheld the exercise of its jurisdiction

Held, by the Chief Court, that it was not a case where the proceedings of the lower Court could be revised under section 35 of Act XXIII of 1861 ; but that the petitioner's remedy was a review of the lower Court's judgment. JUSSA SINGH *v.* NOORA.

36 P R 1872

30. *Act IV of 1866, section 16—Want of jurisdiction in Small Cause Court—Discretion of Chief Court—Delay in moving the Court.*

The Chief Court, under section 16—of Act IV of 1866, is not bound to call for the record of a case decided by the Small Cause Court on the ground that the latter Court was without jurisdiction and having called for the record, the Chief Court has a discretion and may refuse to interfere with the order of the Small Cause Court. Delay on the part of the defendant in applying to the Chief Court is a ground for refusing to interfere. LUDLAM *v.* ABDUL GUFUR. **50 P R 1876**

31. *Act X of 1877, sections 558, 622—Appeal dismissed for default—Omission of appellant to apply for re-hearing.*

Where an appellant, whose appeal before the Commissioner was dismissed for default, took no steps to have his appeal restored to the file of that Court under section 558 of the Civil Procedure Code, the Chief Court *held* that they were unable to interfere on the revision side under section 622 of the Code, as the final order of the Commissioner in appeal to his Court would have been open to appeal. KARAM BAKHSH *v.* BALMAKAND.

13 P R 1881

REVISION IN CIVIL CASES—*contd.*

32. *Dismissal of application for default—Re-hearing—Procedure.*

An application for re-hearting of an application for revision under section 622 of the Civil Procedure Code which has been dismissed in default is not the correct mode of procedure: a fresh application for revision should be put in. COURT OF WARDS *v.* FATTEH SINGH.

75 P R 1881

33. *Act XIX of 1841, power of Chief Court to revise order under—Act X of 1877, section 622.*

Held, by the Full Bench, that an order passed under Act XIX of 1841 is open to revision by the Chief Court under section 622 of the Civil Procedure Code on any of the grounds specified in that section. GORAKH NATH *v.* BISHEMBER NATH. **66 P R 1882**

34. *Civil Procedure Code (Act X of 1877), sections 401, 622—Order refusing application for leave to sue* in forma pauperis.

In a suit for partition of the ancestral property of the parties, the lower Court dismissed an application by plaintiff for leave to sue as a pauper on the ground that he was in possession of sufficient property to enable him to pay the Court-fee. The plaintiff applied for revision of this order on the ground that the property referred to by the Court as being in his possession formed part of the ancestral property for partition of which the suit was brought, and being part of the subject-matter of the suit, should not, with reference to the Explanation to section 401 of the Civil Procedure Code, have been taken into account.

Held, overruling an objection by respondent that the present application was not admissible under section 622 of the Civil Procedure Code that the enquiry as to whether the plaintiff was a pauper being a judicial proceeding, and the order determining it not being subject to appeal the person against whom the question is decided may apply to the Chief Court for revision of the order on any of the grounds stated in section 622 of the Civil Procedure Code. *Lakhu* v. *Mussammat Ramu* (No. 81 *P. R.* 1881) cited *Harsaransingh* v. *Muhammad Raza* (*I. L. R.* 4 *All.* 91) disapproved of. SHEIKH MUHAMMAD MUBARIK *v.* SHEIKH FAZAL ILAHI.

99 P R 1882

35. *Civil Procedure Code (Act XIV of 1882), section 622—Application for revision of order rejecting appeal from order refusing to set aside ex-parte decree—"Case" in which no appeal lies.*

Held, that an application to the Chief Court to set aside an order passed by a Commissioner rejecting an appeal from an order by a Judicial Assistant refusing to set aside an *ex-parte* decree is not one which properly falls under section 622 of the Civil Procedure Code, as that section only applies to *cases* in which no appeal lies to the High Court; whereas in the above case an appeal would have lain to the Chief Court in the ordinary course, if the defendants had chosen to adopt the remedy of appeal which the law allowed to them from an *ex-parte* decree, instead of the alternative remedy allowed by section 108 of the Code. *Mussammat Sahib Dai* v. *Jaga Singh* (No. 105 *P. R.* 1880)) cited. GANDA MAL *v.* SHIBJI RAM. **114 P R 1883**

36. *Civil Procedure Code (Act XIV of 1882), sections 206, 622—Appeal from amended decree—Rejection of such appeal as barred by time—Application to revise order of rejection.*

Upon the application of the plaintiff decree-holder, the first Court, after giving notice to the judgment-debtors under section 206 of the Civil Procedure Code, amended the decree in the suit so as to bring it into conformity with the judgment. The judgment-debtors then brought a miscellaneous appeal (on a Court fee stamp of one rupee) from the amended decree to the Commissioner, who rejected the appeal as barred by limitation. On an application by the judgment-debtors to the Chief Court, under section 622, Civil Procedure Code, for revision of the last named order *held*, that the defendants' remedy was to bring a regular appeal on full stamp to the Commissioner from the amended decree within the period of limitation and as an appeal would have lain to the Chief Court from the Commissioner's decree on such appeal, an application under section 622 of the Code was barred, and the fact that the judgment-debtors delayed in appealing to the Commissioner's Court till their appeal was barred by time gave them no right to make the present application and conferred no power on the Chief Court to entertain it. ABDUL GHANI *v.* KUNDAN LAL.

71 P R 1884

37. *Civil Procedure Code (Act XIV of 1882), sections 592, 622—Application to appeal* in forma pauperis*—Rejection of application—Powers of revision.*

Held, that it is open to the Chief Court to exercise its powers under section 622 of the Civil Procedure Code, where the Lower Court has acted illegally or with material irregularity in rejecting an application to appeal *in forma pauperis* under section 592 of the Code. *Harsaran Singh* v. *Muhammad Raza* (*I. L. R.* 4 *All.* 91) not followed. BARKAT ALI *v.* GHULAM KADIR. **21 P R 1885**

38. *Civil Procedure Code (Act XIV of 1882), section 622—Chief Court's powers of revision—Court acting in the exercise of its jurisdiction illegally.*

Held, following the ruling of the Privy Council in *Amir Hassan Khan* v. *Sheo Bakhsh Singh* (*I. L. R.* 11 *Calc.* 6), that section 622 of the Civil Procedure Code does not authorize the Chief Court to interfere with an erroneous decision on the ground that the Court which passed it has acted in exercise of its jurisdiction illegally.

Where the lower Court has given a wrong decision on the question whether the plaintiff had a cause of action for the relief prayed for, the case falls within the principle of the decision of the Privy Council above cited, provided that the lower Court had jurisdiction to decide and did decide, whether a cause of action existed or not. RAMA *v.* JOWAHIR.

64 P R 1885

39. *Civil Procedure Code (Act XIV of 1882), section 622—Chief Court's powers of revision.*

Held, that where a Court having jurisdiction over a suit or other proceeding has to consider a plea of limitation and does consider and decide it, but erroneously, the error in the decision is not an irregularity within the meaning of section 622 of the Code of Civil Procedure, so as to open a door to revision. *Rama* v. *Jowahir* (No. 64 *P. R.* 1885), cited. HARI SINGH *v.* DIT MAL.

22 P R 1886

40. *Civil Procedure Code (Act XIV of 1882), section 622—Decree passed on alleged admission of plaintiff's claim by defendant—Absence of any evidence of alleged admission—Material irregularity.*

Where the Cantonment Magistrate decreed plaintiff's claim against defendant on the ground that defendant admitted it, whereas a reference to the written plea of the defendant showed that he did not admit the claim, but on the contrary said it was false, nor was there any evidence on the record to show that the defendant ever admitted the claim, the Chief Court, holding that a material irregularity had been committed within the meaning of section 622, Civil Procedure Code, set aside the decree and remanded the case for a fresh trial and decision. THAKUR MAL *v.* RAM NATH.

29 P R 1886

41. *Civil Procedure Code (Act XIV of 1882), section 622—Chief Court's powers of revision—Lower Appellate Court passing erroneous decision as to first Court's jurisdiction.*

Held, that an appellate judgment deciding, though erroneously, that the Court of first instance had jurisdiction to hear the suit, is not open to revision by the Chief Court where no appeal lies, as the lower Appellate Court cannot in such a case be said to have exercised a jurisdiction not vested in it by law, simply because it has come to an erroneous decision on a question of jurisdiction raised by an appeal properly preferred to it, and which it was therefore bound to decide, nor could it be said, under such circumstances, that the Appellate Court had acted with material irregularity. *Rama* v. *Jowahir* (No. 64 *P. R.* 1885), cited DOWLAT RAM *v.* ASA RAM. **46 P R 1886**

42. *Civil Procedure Code (Act XIV of 1882), section 622—Lower Court giving plaintiff a decree, though deciding that he has no cause of action—Court exercising a jurisdiction not vested in it by law.*

REVISION IN CIVIL CASES—*contd.*

In a suit by plaintiff to compel the defendant to close certain windows recently enlarged, which the plaintiff alleged interfered with his privacy and caused him inconvenience, the lower Courts, though holding that no recognized customary right of privacy to householders was established, decreed the demolition of the windows.

Held, that as the Courts had virtually decided that the plaintiff had no cause of action, and yet notwithstanding this had given him a decree, they must be held to have exercised a jurisdiction not vested in them by law, which warranted the interference of the Chief Court under section 622 of the Civil Procedure Code. *Rama* v. *Jowahir* (No. 64 *P. R.* 1885), distinguished. ASA RAM *v.* UDAN MAL. **70 P R 1886**

43. *Civil Procedure Code (Act XIV of 1882), section 622—Small Cause Court granting new trial without notice to opposite party—Material irregularity—Act XI of 1865, section 21.*

Held, that the omission by a Small Cause Court to call on the opposite party to show cause before granting a new trial under section 21 of Act XI of 1865, is not a material irregularity in the exercise of the Court's jurisdiction within the meaning of section 622 of the Civil Procedure Code.

It is, however, desirable and fitting that a new trial should not be granted until the opposite side has been allowed to show cause against it. MAHNA *v.* HARCHARN SINGH. **102 P R 1886**

44. *Civil Procedure Code (Act XIV of 1882), sections 566, 622—Appellate Court remanding case under section 566 to Court other than original Court—Court exercising jurisdiction not vested in it by law—Immaterial irregularity.*

Held, that a Court of first appeal in remanding a case under section 566, Civil Procedure Code, to a Court other than the Court which tried the case, cannot be said to exercise a jurisdiction not vested in it by law, within the meaning of section 622 of the Code of Civil Procedure. The error (assuming it to be an error) is one of procedure, and the Court at most acts erroneously in the exercise of its jurisdiction, and the irregularity does not afford ground for revision unless it is shown to be material. BHOJAN DAS *v.* MUSSAMMAT MURADDU. **111 P R 1886**

45 *Discretion—Error of law.*

Per Plowden, J.—It is not every legal error of the subordinate Court that entitles a party to an order from the Chief Court under section 25 of Act IX of 1887. The jurisdiction under that section is one the exercise of which is discretional with the Court, and should not be exercised except to remedy injustice. SECRETARY OF STATE *v.* JOHNSON. **79 P R 1888**

46. *Amendment of decree—Appeal—Revision.*

REVISION IN CIVIL CASES—*contd.*

Held, that whether or not an amended decree made in the proper exercise of the power conferred by section 206, Civil Procedure Code, is a new decree for the purposes of appeal (if no appeal has already been made), the mere order which directs the decree to be amended is a separate adjudication and is not a decree, and being an order not specified in section 588 of the Code is not appealable, and therefore is open to revision on the ground of being made without jurisdiction. KHAN SHIRIN *v.* NASIR KHAN. **101 P R 1888**

47. *Court acting in the exercise of its jurisdiction with material irregularity.*

On an application for revision under section 622 of the Civil Procedure Code, the ground urged by the plaintiff, petitioner, and found to be correct in fact was that on a date which had been fixed for the production of evidence in the first Court he produced seven witnesses for examination, whom the Court declined to examine on the ground that there was no necessity to do so; and that the Divisional Judge on plaintiff's appeal erroneously overruled the plaintiff's contention that the first Court was bound to examine the witnesses in attendance, under the mistaken view that the date when the said witnesses were present was not specially fixed for taking evidence whereas in reality the date had been so fixed.

Held, that as the erroneous decision of the Divisional Judge in affirming on appeal the decree of the Court below which was open to the objection of material irregularity was the consequence of an erroneous assumption of a fact, to wit, that the plaintiff did not tender his evidence at the time specially fixed for taking it, whereas the record showed he did do so, the decision in question was open to revision under section 622 of the Civil Procedure Code, read with section 70 of Act XVIII of 1884, on the ground that the Divisional Judge had acted in the exercise of his jurisdiction with material irregularity.

The interpretation put upon section 622 of the Civil Procedure Code by their Lordships of the Privy Council in *Amir Hassan* v. *Sheo Bakhsh Singh* (*I. L. R. XI Calc.* 6), that, so long as a Court has jurisdiction over the subject-matter of a suit, the mere circumstance that the Court decides wrongly is no ground for saying that it has exercised its jurisdiction illegally or with material irregularity, must, to be precisely understood, be considered in connection with the particular question which their Lordships had to decide, *viz*, whether the Judicial Commissioner had jurisdiction to set aside the orders of the Courts below from which there was no further appeal to his Court, merely because in his opinion they had erroneously decided a plea of *res judicata* which arose in the case.

The matter stands in a different light when the wrong decision is the result of

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an erroneous assumption that a certain law or fact exists which has really no existence. In the latter case the High Court can interfere on the ground of material irregularity. *Rama* v. *Jowahir* (No. 64 *P. R.* 1885), *Hari Singh* v. *Dit Mal* (No. 22 *P. R.* 1888) and *Dowlat Ram* v. *Asa Ram* (No. 46, ibid) referred to. SARDAR FAKIR MUHAMMAD KHAN *v.* KASIM. **105 P R 1888**

48. *Revision in Civil Cases—Material irregularity—Error in law.*

Held, that though a mere error in law in a lower Court is not matter of revision under section 622 of the Civil Procedure Code, and if a Court apprehending the points at issue and looking at certain documents or certain sections of an Act, necessary to arrive at a decision comes on consideration to a legal conclusion as to the interpretation of such section or the construction of such documents, which conclusion may be held to be bad in law, the power of revision under the above section does not arise, yet where the Court has assumed a fact to exist or has assumed the applicability of a rule or a sections of an Act which does not exist at all or is wholly inapplicable, then there is material irregularity which the Chief Court, in revision, can correct. SHIB DIAL *v.* JHANDA MAL. **42 P R 1889**

49. *Arbitration—Arbitrators omitting to examine all the defendant's witnesses, Lower Court overruling plea of misconduct and giving judgment in terms of award—Ground for revision—Material irregularity—Court giving wrong decision upon legal question.*

In this case it was objected that the arbitrators did not examine all the witnesses, though they were present. The lower Court found that the arbitrators were not bound to take all the evidence produced, but only so much as they considered necessary for the purpose of justice, and finding no misconduct proved, made a decree in terms of the award. *Held*, that the decision was wrong, but it was not open to revision as the Court considered the objection, and adjudicated upon it, and the mere circumstance that the adjudication was erroneous was no ground for revision. PIR BAKHSH *v.* BAWA NIHAL SINGH. **58 P R 1889**

50. *Compromise—Guardian—Civil Procedure Code, sections 462—464.*

When a guardian *ad litem* compromised a suit without the sanction of the Court in which the suit was pending, and the Court passed a decree on the compromise without making any inquiry as to whether it was beneficial to the minor or not. *Held*, that the Court committed a material irregularity. MUSSAMMAT RAMBHAJJI *v.* HARNARAIN **105 P R 1889**

51. *Material irregularity—section 13—Resjudicata.*

A previous suit between the same parties regarding the same land was dismissed on

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the ground that the plaint did not show a cause of action. The second suit was dismissed on the ground that it was barred by section 13, Civil Procedure Code. *Held*, that this order was wrong, as the plaint in the first suit had been rejected at the first hearing, and section 56 did not bar the institution of a fresh suit. It was then contended that though the order was wrong, this was not a ground for revision. *Held*, that when there is a misstatement of fact and a misrepresentation of what is apparent on the face of the record there is material irregularity furnishing ground for revision. BASAWA SINGH *v.* SEWA. **130 P R 1889**

52. *Revision in Civil cases—Material irregularity—Issues incorrectly framed—Points for determination of appeal incorrectly stated—Facts assumed which did not exist—Contents of document misstated—* Res judicata—*Effect of Privy Council decision in Raja Amir Hassan* v. *Sheo Bakhsh Singh* (*I. L. R. XI Calc.* 6).

In a suit not open to further appeal to the Chief Court the lower Appellate Court concurring with the first Court dismissed the suit of plaintiffs, 17 in number, as to certain land in suit, as being barred under section 13, Civil Procedure Code, by a previous decision. In fact one of the plaintiffs had sued some of the same defendants for the same land and his suit had been dismissed merely for want of parties.

Held, that the Chief Court was competent to interfere as a Court of Revision under section 622, Civil Procedure Code. It is the duty of a Court of first instance to frame issues on the pleadings of the parties and to frame them correctly. It is the duty of an Appellate Court to state the points for determination, and to state them correctly.

An incorrect issue or an incorrect statement of the points for determination in an appeal is an irregularity which *may be material*, and may warrant the exercise of the Chief Court's powers of revision. The misrepresentation of documentary evidence as distinguished from the misconstruction of a document is an irregularity as distinguished from an error of law.

The judgment of the Judicial Committee of the Privy Council in *Amir Hassan Khan* v. *Sheo Bakhsh Singh* (*I. L. R XI Calc.* page 6) commented upon. In that case it was not decided by the Judicial Committee that a Court which erroneously decides upon a plea of *res judicata* does not act illegally or with material irregularity in the exercise of its jurisdiction, and therefore its decision cannot be set aside upon revision under section 622, Civil Procedure Code. GURBAKHSH SINGH *v.* BELA. **206 P R 1889**

53. *Civil Procedure Code, section* 622.

The parties to the suit (members of a partnership) executed an agreement to refer certain accounts *inter se*, and as between

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the partnership and a certain other person A, for settlement to a private arbitrator. The arbitrator settled the account between the parties and A only. On application by plaintiffs that the agreement be filed, the Court erroneously considering that the effect of settling the parties' account with A was to settle the account *inter se*, and that therefore nothing remained to be determined, refused to file the agreement. *Held*, that this order was not open to revision, as the Court did not assume any non-existing fact, but only drew a wrong inference from admitted facts. CHIRAGH *v.* PIR BAKHSH. **6 P R 1890**

54. *Material irregularity—Absence of notice of adjourned hearing, effect of—Necessity of due diligence by parties.*

A respondent had notice of the day fixed for hearing his appeal. On that day he attended, but the case was not called up. After several adjournments, the appeal was heard and decided in respondent's absence, without further notice to him. The respondent, after the day first fixed, took no steps to ascertain what was being done in the appeal, although he was in Sialkot the day before the actual hearing. The application under section 622, Civil Procedure Code, made more than a month after the hearing to set aside the decree made on appeal without notice to him of adjourned date of hearing was rejected by the Chief Court. KARAM SINGH *v.* CHANDU. **34 P R 1890**

55. *Judgments of Courts of final appeal.*

District Judges sitting as Courts of final appeal in suits of the nature of small causes are bound to exercise their jurisdiction in a regular manner and to write their judgments, according to the provisions of section 574, Civil Procedure Code. In a case in which the District Judge did not state the true points for determination nor the reasons for his decision, the Chief Court on the revision side, reversed his order and directed a rehearing of the appeal. GANGA RAM *v.* JAWAHAR SINGH. **72 P R 1890**

56. *Material irregularity—Court acting in the exercise of its jurisdiction illegally—Wrong decision on the question of cause of action—Assignment of decree—Remedy by regular suit.*

Held, by the full Bench

(*i*) that the assignee of a decree (the assignment being in writing) whose application under section 232, Civil Procedure Code, had been refused by the Court, the judgment-debtor having notice of this assignment, had a cause of action against the judgment-debtor, the application and order being made in a case in which the clause added to section 244, Civil Procedure Code, by Act VII of 1888 had no operation.

Quære—As to the proper relief to be granted in such a suit.

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(*ii*). That when a plaintiff files a plaint stating facts which, if true, constitute in law a cause of action, and the Court rejects the plaint, or dismisses the suit, merely on the ground that these facts constitute no cause, the Court fails to exercise a jurisdiction vested in it by law within the meaning of section 622, Civil Procedure Code. HABIBULLA *v.* MUSSAMMAT FATEH BIBI. **75 P R 1890, F. B.**

57. *Exercise of jurisdiction not vested by law—Regulation I of* 1798.

Regulation I of 1798 applies only to mortgages by conditional sale, and the functions of a District Judge under that enactment are merely ministerial, not judicial. In a case where a District Judge on the application of a mortgagor in mortgages not by way of conditional sale received certain moneys tendered as the amount due on the mortgagee, issued notice to the mortgagee and decided summarily what was actually due.

Held, that the proceedings must be set aside for want of jurisdiction. SANWANT *v* DYA RAM. **107 P R 1890**

58. *Material irregularity—Proper issues not settled—Misapprehension of case.*

When there had been material irregularity in framing the issues and a complete misapprehension of the case presented for decision by parties to the Court, the Chief Court under section 622, Civil Procedure Code, set aside the decree of the Appellate Court, and returned the case for re-disposal of the appeal after further enquiry, if necessary. MULA SHAH *v.* NIZAM DIN. **108 P R 1890**

59. *Material irregularity—Revision—Civil Procedure Code,* 1882, *section* 622.

The erroneous construction of a judgment and decree is not a material irregularity within the meaning of section 622, Civil Procedure Code, 1882, and forms no ground for revision. UTTAM SINGH *v.* DHARM SINGH. **60 P R 1891**

60. *Material irregularity—Revision—Appellate Court reversing decree on point not affecting merits.*

It may be a material irregularity and ground for revision, that an Appellate Court, in contravention of the provisions of section 578, Civil Procedure Code, has reversed the decree of a subordinate Court merely by reason of an irregularity not affecting the merits or the case of the jurisdiction of the Court.

No appeal lies from an order granting a review of judgment except in the cases set forth in section 629, Civil Procedure Code, 1882.

I. L. R. XII Bom. 171 followed. JAIMAL SINGH *v.* GUNPAT MALL. **65 P R 1891**

61. *Material irregularity—Grounds for revision.*

It is a material irregularity and forms a ground for revision when the lower Courts act upon a misrepresentation of a fact apparent

upon the record or the erroneous assumption of a fact, or the application of a rule or a failure to appreciate the true points for determination raised by a general issue, such as one of *res judicata* or limitation, when such irregularity results in the dismissal of a suit on a technical ground, apart from the merits, which can be shown to be erroneous. No. 105 *P. R.* 1888, Nos. 42, 130 and 206 *P. R.* 1889, Nos. 6 and 108 *P. R.* 1890, and Nos. 60 and 65 *P. R.* 1891, referred to. GURDITTA MAL *v.* PAL SINGH. **26 P R 1882**

62. *Jurisdiction—Revision—Refusal of District Judge to issue a notice under Regulation XVII of* 1806.

The District Judge refused to issue a notice under Regulation XVII of 1806, holding that the mortgage deed propounded was not a mortgage by conditional sale and therefore not within the scope of the Regulation.

The plaintiff applied for revision.

Held, overruling the District Judge as to the nature and construction of the document that his order was under the circumstances open to revision.

I. L. R. III All. 576, referred to and followed. GULAB SINGH *v.* KARAM. **119 P R 1892**

63. *Civil Procedure Code, section* 622 *—Order under section* 108 *of the Code setting aside an* ex-parte *decree—Revision.*

An application was made to revise an order made under section 108, Civil Procedure Code, setting aside an *ex parte* decree, such order being made nearly seven years after the date of the decree.

Held, following No. 114 *P. R.* 1883, that no application under section 622 of the Code would lie. The suit was one in which an appeal would lie, and by the word "case" the whole suit is meant. HASAN ALI SHAH *v* SALIG RAM. **125 P R 1892**

64. *Civil Procedure Code (Act XIV of* 1882), *section* 622*—Revision, grounds for— "Material irregularity"—Wrong decision on merits of case.*

Held, that however erroneous a decision may be upon the merits, whether it be in conclusions drawn from the evidence, or in the application of the law to the facts, it is not an irregularity to give a wrong decision upon the merits. HIRA SINGH *v.* BHANA. **9P R 1894**

65. *Execution of decree—Court refusing to execute decree on ground of indefiniteness —Power of Court to make inquiry or take evidence as to meaning of decree—Judge not following opinion expressed by his predecessor on some matter—Revision.*

A decree-holder applied for execution of his decree, but the Court refused to execute it on the ground that it could not be ascertained after enquiry what was intended by the decree. On appeal by the decree-holder,

the Divisional Judge held that an executing Court cannot go behind the decree itself and that the decree-holder's remedy was to apply to the Judge who made the decree to amend it. The decree-holder accordingly applied to that Judge to amend the decree, but his application was rejected. He thereupon again applied for execution and on execution being again refused, appealed to the Divisional Judge—a third officer—who, after reference to the preceding orders, directed execution to proceed. The judgment-debtor applied to the Chief Court on the Revision side on the ground that the last order of the Divisional Judge ought to be set aside inasmuch as the question whether the decree was capable of execution was *res judicata* by reason of the previous order of the Divisional Court.

The question having been referred to a Bench, *held*, that though it might be a ground for revision that the Judge of the lower Appellate Court had re-opened a question on which his predecessor had already expressed an opinion, final as regards appeal, the Chief Court is not bound to interfere on revision when it is found that the lower Appellate Court had jurisdiction over the appeal and exercised it. The Court, not being satisfied that the earlier opinion was correct, dismissed the application. MOHAN LAL *v.* NANAK CHAND. **16 P R 1894**

66A. *Sale made in contravention of terms of a compromise—Restriction on alienor's powers of alienation unknown to alienee—Omission by lower Court to frame issue as to alienee's knowledge of such restriction—"Material irregularity."*

Held, that an agreement contained in a deed of compromise of a suit, that the promisor shall not exercise his power of transfer of land in dispute except in favour of the promisee is lawful and binding between the parties and enforceable against a person taking from the promisor with notice that he is so bound. The omission to raise and try an issue of fact which if decided in defendant's favour is a complete answer to the claim, is a material irregularity sufficient to warrant revision being granted. JHANDA *v.* LAKHA. **19 P R 1894**

66. *Application for revision admitted by Judge in Chambers as a further appeal on ground that there is question of law involved—Punjab Courts Act,* 1884, *section* 40, *sub-section* (2)*—Objection by respondent at the hearing that the appeal ought not to have been admitted as no question of law was involved.*

Held, that when an application for revision has been admitted by a Judge in Chambers as a further appeal on the ground that there was a question of law involved, under section 40, sub-section (2) of the Punjab Courts Act, 1884, the respondents are not bound by such *ex-parte* order but are entitled to call it in question and show it was erroneous and that a further appeal did not lie,

and was admitted through mistake or misconception.

The Divisional Bench, finding that there was no question of law involved, dismissed the appeal on that ground. FATTEH SINGH *v.* HARNAM SINGH. **80 P R 1894**

67. *Application to sue* in forma pauperis*—Court issuing notice to defendant without preliminary inquiry—Material irregularity—"Right to sue in such Court"— Civil Procedure Code,* 1882, *sections* 406, 407, 408, 409, 413.

Plaintiff having applied to the District Judge for leave to sue as a pauper, the District Judge, without making any inquiry under section 406 or 407 of the Civil Procedure Code, 1882, issued notice to defendant, fixing a date for the parties to give evidence. On the date so fixed, the Court on an objection by defendant that plaintiff was subject to prohibition (*c*) of section 407 inasmuch as his suit was barred by limitation, rejected the application, for leave to sue *in forma pauperis*, but without specifying the section under which he acted.

Held, that the irregularity committed by the District Judge, in omitting to proceed under sections 406 and 407 before issuing notice to defendant was a "material irregularity," inasmuch as the rejection of an application under section 407 does not debar the applicant from making another similar application, whereas an order under section 409 is, under section 413, a bar to a fresh application under Chapter XXVI of the Code in respect of the same cause of action.

Held, further that the expression "right to sue in such Court" in clause (*c*) of section 407 was not intended to refer only to want of jurisdiction in the particular Court in which the application is made but extends to a case where the right to sue is barred by the law of limitation.

I. L. R. VII All. 661, followed. MUHAMMAD TAHIR *v.* SECRETARY OF STATE FOR INDIA. **130 P R 1894**

68. *Suit, institution of—"Plaint presented to the proper officer"—Plaint presented to proper officer within limitation and returned to plaintiff by such officer with order endorsed thereon to present it to Subordinate Court deputed to try the suit. No subsequent presentation within time of limitation—Limitation Act,* 1877, *section* 4*— "Material irregularity."*

Plaintiff on the 25th July 1892 filed his plaint which was on that date admittedly within time, in the Court of the District Judge, Kangra, who endorsed an order thereon that the case be made over to "the Munsif of Kangra" and returned the plaint to the plaintiff that he might himself take it to the Munsif's Court. Plaintiff, however did not present the plain to the Munsif till the 11th November 1892,on which date limitation applicable to the suit had expired. The District Judge on appeal from the Munsif's order decreeing

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plaintiff's claim dismissed the suit on the ground that the claim was time-barred.

Held, that the plaint having been originally presented to the proper officer within limitation was not liable to dismissal because having been improperly given back to the plaintiff by that officer, it was not again presented to the Court deputed to try the case until the period of limitation had expired and that the District Judge had committed a material irregularity in applying a rule of limitation not contained in any provision of the Limitation Act. SETH THANDI RAM *v.* MAHDIA. **7 P R 1895**

69. *Suit for custody of wife—Minors—Reference to arbitrators—Sanction of Court—Civil Procedure Code,* 1882, *sections* 462, 522—*Appeal—"Material irregularity."*

Plaintiff, a minor, through his father as next friend, sued for the custody of his minor wife, whose mother was appointed her guardian *ad litem*. The first Court framed only one issue, *viz.*, whether plaintiff's marriage with his wife was legal and valid, and allowed the matter in dispute to be referred by the respective guardians to two arbitrators, an umpire being appointed by itself in case of a difference of opinion. The arbitrators on the 13th November 1893, filed an award, finding the marriage proved, whereupon the Court, after allowing the usual time for objections, decreed plaintiff's claim. This decree having been confirmed on appeal by the Divisional Judge, defendants preferred a further appeal to the Chief Court.

Held, that though it was doubtful whether an appeal could be said to lie, the defects that were apparent in the proceedings of the first Court were such as to amount to "material irregularity," inasmuch as (*a*) the Court failed to record an order under section 462 of the Civil Procedure Code, before allowing the case to be referred to arbitrators by the guardian of the minor defendant, and (*b*) it was not competent to the Court to delegate to arbitrators the question, whether or not a claim for custody of a wife should be decreed, such question, especially when either party is a minor, being entirely one for the discretion of the Court. HIRA *v.* DINA. **37 P R 1895**

70. *Provincial Small Cause Court Act,* 1887, *section* 25—*Decree of Small Cause Court—Error of law—Revision—Money paid under unlawful agreement, suit to recover—Penal Code, section* 215 - *Contract Act,* 1872, *section* 65.

Plaintiff sued in the Small Cause Court, Lahore, on the allegations that defendant had promised that, in consideration of the sum of Rs. 100, he would either put plaintiff on the track of certain cows which had been stolen from him, or would return him the money; that plaintiff had paid defendant the said sum, but that the latter had neither pointed out the cows nor returned the money, and that, therefore, plaintiff sued

REVISION IN CIVIL CASES *contd.*

him for refund of the same. The Court found that the money had been paid as alleged, and held that plaintiff was entitled to sue for its recovery, as defendant, not having done the service for which he had received it, could not retain money for doing nothing. Defendant applied to the Chief Court for revision, and it was contended, on plaintiff's behalf, that under section 25 of Act IX of 1887, the decree of the Small Cause Court could not be set aside merely on the ground of error of law.

Held, that the scope of section 25 of Act IX of 1887 is wider than that of section 622, Civil Procedure Code, and that the Chief Court when acting thereunder, is competent to correct errors of law made by Judges of Small Cause Courts.

Held, further, that plaintiff's suit was not maintainable on the ground that if defendant had actually received the money, he had committed an offence under section 215, Penal Code, and that, therefore, plaintiff could not make out his case without showing as part of it that he had himself been guilty of an illegality, *viz.* of abetment of the said offence. ARUR SINGH *v.* KHUDA BAKHSH. **66 P R 1895**

71. *Civil Procedure Code,* 1882, *section* 203—*Judgments of Small Cause Courts—Reasons for decision when question of law involved—Revision.*

Section 203 of the Civil Procedure Code was enacted with the object of exonerating Judges of Small Cause Courts from giving their reasons for findings on simple and uncomplicated questions of fact, but it was not intended thereby to invest such Judges with power to decide difficult questions of law in an arbitrary and off-hand manner, without giving any reasons whatever in support of their findings. A discretion has been given by the said section, but such discretion must be exercised in a reasonable and judicial manner, and, if it has not been so exercised, the Chief Court will interfere on revision. HARI MAL *v.* NIKKA. **78 P R 1895**

72. *Civil Procedure Code,* 1882, *sections* 278, 283, 622—*Refusal to release property from attachment—Power of Chief Court to revise such order.*

Upon an application to release certain property from attachment, the lower Court declined jurisdiction under the impression that the application before it was barred by authority, and not because it found that the applicant had no case on the merits. No order under section 281, Civil Procedure Code, was passed, and there was no investigation.

Held, following *I. L. R. XIII Calc.* 90, and *I. L R. VII Bom.* 341, that the Chief Court had power to revise the order of the lower Court declining jurisdiction.

Semble: Though section 283 of the Code was not applicable to the present case, petitioner had a remedy by suit to establish the

REVISION IN CIVIL CASES—*contd.*

right claimed in respect of the said property. MUSSAMMAT CHAND KAUR *v.* MELA RAM. **8 P R 1897**

73. *Application by guardian for custody of minor—Appeal—Guardian and Wards Act,* 1890, *sections* 12, 25, 47 (*c*)—*Revision—Right of guardian to custody of minor.*

An application by a duly appointed guardian for custody of the minor was rejected by the Additional District Judge on the ground that the proper course for the guardian would be to bring a civil suit against the respondent if she refused to make over the minor to his custody. The guardian appealed to the Chief Court.

Held, that the order of the lower Court was not appealable.

But *held*, that the said order was open to revision on the ground that the lower Court should have directed the respondent to produce the minor with a view to his being made over to the petitioner, and that in failing to do so, the lower Court failed to exercise a jurisdiction vested in it by law. WADHAWA SINGH *v.* MUSSAMMAT MALAN. **13 P R 1897**

74. *Advocate and client—Advocate's fees—Suit for money deposited with Advocate—Revision—Finding of fact by Small Cause Court.*

Plaintiff sued on the allegation that he had retained defendant as counsel for defending a certain appeal in the Chief Court on the terms that he was to be paid Rs. 50 as his advanced fee and a similar sum as his back-fee on his winning the case; that subsequently he deposited Rs. 200 with defendant, on the understanding that he was to retain Rs. 150 as his back-fee in the event of success, the remainder being the back-fee for another counsel on the same terms; that the said case was lost, and that defendant refused to return the Rs. 150. Defendant, in answer to the claim, admitted his liability to refund the Rs. 50, but pleaded that as respects the balance of the Rs. 150 there was an arrangement between him and plaintiff by which he was allowed to retain it as his advance-fee for filing an application for review of judgment in the case which had been lost; that he was ready and willing to file the said application, but that plaintiff had engaged some one else to do the work. Defendant, therefore, contended that no suit lay for refund of the Rs 150 as he was a barrister. The Judge of the Small Cause Court found that defendant had failed to prove the agreement set up, and decreed the claim less a deduction of Rs. 50, which he allowed the defendant on equitable grounds for the trouble which he might have taken in thinking out the grounds of review, though none had been actually drawn up, and no copy of the judgment of the Chief Court applied for or obtained.

Held, that the award of Rs. 50 must be disallowed, and plaintiff's claim decreed

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without any deduction. KIRPA RAM *v.* SARDAR KRISHNA SINGH. **32 P R 1897**

75. *Civil Procedure Code,* 1882, *section* 622—*" Material irregularity "—Error of procedure due to misapprehension of law—Revision.*

Where an Appellate Court, without going into the question on the merits which had been decided by the lower Court, and was before the Appellate Court for determination, decided the case on an admittedly erroneous view of a Full Bench ruling of the Chief Court.

Held, that there had been an error of procedure amounting to a " material irregularity" within the meaning of section 622, Civil Procedure Code, and none the less so because such error was due to a misapprehension of the law, substantive or adjective. DIPU MAL *v.* GOKAL CHAND. **34 P R 1897**

76. *Suit dismissed for default—Appeal from order of dismissal—Civil Procedure Code,* 1882, *sections* 2, 102—*Revision, Civil Procedure Code,* 1882, *section* 622—*Case," meaning of.*

Plaintiff's suit was dismissed by the first Court under section 102, Civil Procedure Code, and on the following day plaintiff applied for its re-admission, pointing out that he had been present in the Court premises all day, but had gone to the Bar-room to call his pleader, when his case was called on and dismissed for default. The first Court dismissed the application on the ground that no sufficient cause had been shown for the absence, and plaintiff appealed to the Divisional Judge, who, after an inquiry through the first Court, rejected the appeal on the ground that the case had been called on twice, first at 12 o'clock and again 2 or 2-30 P. M. and plaintiff had only accounted for his absence on the second occasion. Plaintiff appealed to the Chief Court for revision of the order of the Divisional Judge, and it was contended on behalf of defendant that an application for revision did not lie, inasmuch as the order dismissing the case for default was appealable to the Divisional Court, and thence to the Chief Court on a certificate. The questions referred to the Full Bench were (*i*) whether an order of dismissal for default under section 102, Civil Procedure Code, is appealable as a decree ; (*ii*) whether the word " case" in section 622 of the Code means the *whole* case in every instance, or whether a definite portion of a case for which a special remedy is provided in the Code, or specific orders in it for which a separate procedure is prescribed, can form the subject of revision under section 622 ; and (*iii*) whether plaintiff had shown sufficient cause for his absence.

Held, by the Full Bench (*i*) that an order under section 102 of the Code is a decree within the meaning of section 2, and, as such, is appealable under section 540 ; (*ii*) that the word " case " in section 622 does

not necessarily, in every instance, mean the *whole* case, but may mean a particular branch of a case for which an independent remedy or a different procedure, is provided in the Code, and may include an interlocutory order not falling under section 591 ; and (*iii*) the Divisional Judge committed a material irregularity in not accepting the plaintiff's appeal when he found that plaintiff's absence at the time when his case was dismissed in default had been accounted for, on the ground that plaintiff had not accounted for his absence when the case was first called on. PANDIT RAMA KANT *v.* PANDIT RAGDEO. **60 P R 1897 F. B.**

77. *Evidence Act,* 1872, *section* 34—*Account books—Revision—Small Cause Court Act,* 1887, *section* 25.

The Small Cause Court gave plaintiff a decree on his account books and the evidence of his book-keeper, who deposed that the books were kept by him from memoranda supplied to him by plaintiff, the entries in the books being made on the days on which memoranda were supplied. The plaintiff did not himself give evidence in support of his claim, nor was his absence from the witness-box accounted for.

Held, that plaintiff having declined to support his claim by the best evidence available was not entitled to succeed. HIRA BHAGAT *v.* GOBIND RAM. **63 P R 1897**

78. *Punjab Courts Act,* 1884, *section* 40 (2)—*Further appeal—" Question of law involved "—Question as to admissibility of evidence—Revision—Civil Procedure Code,* 1882, *section* 622.

The words " question of law involved " in section 40, sub-sections (1) (*d*) and (2), do not include every point of law that may arise incidentally in a case, but refer to some question of law similar in its nature to a custom or a question of general interest.

Held, therefore, that the question whether a certain judgment was admissible in evidence to prove adverse possession was not a question of law within the meaning of the said section but merely one of legal procedure incidental to the decision of the question of fact.

Semble : The fact that inadmissible evidence has been admitted in a case would be a ground for revision under section 622, Civil Procedure Code, if the Court had not brought its mind to bear on the question whether such evidence was admissible or not. If, however, the Court has considered the question, but decided wrongly, there would be no relief under the said section of the Code. NUR ILAHI *v.* MUNICIPAL COMMITTEE, DELHI. **68 P R 1897**

79. *Civil Procedure Code,* 1882—*Application for revision—Other remedy open to applicant.*

Held, by the Full Bench that it is not the invariable, though it is the usual, practice

for a High Court to refuse to interfere, under section 622 of the Code, when the party professing to be injured has another remedy open to him. NARAIN DAS *v.* MANOHAR LAL. **21 P R 1898 F. B.**

80. *Small Cause Court Act,* 1887, *section* 25—*Second application for revision after rejection of first application—Civil Procedure Code,* 1882, *sections* 622, 623 (*b*).

Held, that there is nothing in the Civil Procedure Code or in the Small Cause Court Act, 1887, to prevent the Court entertaining a fresh petition under section 25 of the latter Act, after dismissal of a previous petition under the same section.

Held, further, that even if the former order on the previous petition could be held to be a bar to the Court entertaining the subsequent petition, the latter could, and ought to be treated as one for review of judgment, falling under clause (*b*) of section 623 of the Civil Procedure Code, which is wide enough to include unappealable orders of the Court hearing the application, whatever may be the *status* of the Court.

The Court has inherent power to remedy injustice by a reconsideration of an order passed by it unless precluded by a rule of procedure or practice. KAHAN CHAND *v.* MUSSAMMAT INDAR KAUR. **23 P R 1898**

81. *Provincial Small Cause Court Act,* 1887, *section* 25 — *Revision — Wagering transaction—Written contract—Admissibility of evidence to prove that contract was void under section* 30 *of the Contract Act—Evidence Act,* 1872, *section* 92.

The Judge of the Small Cause Court dismissed plaintiffs' suit on the ground that the evidence proved that the written agreement sued upon, which purported to be one for sale of silver, was not a *bona fide* transaction, no actual interchange of silver being contemplated, but merely an adjustment of profit and loss with reference to a difference in the market rates. Plaintiffs applied to the Chief Court for revision of the order of dismissal on the ground, (1) that there was no evidence to show that delivery of silver was not intended and (2) that oral evidence was inadmissible to contradict the terms of the written agreement, according to which silver was to be delivered.

Held, that as there was evidence on which the Judge of the Small Cause Court might base his finding that the transaction was a wager, that finding should not be disturbed on revision.

Held, further, that the oral evidence was admissible, under the first *proviso* to section 92 of the Evidence Act, for the purpose of invalidating the written agreement.

I. L. R. XVII Mad. 480, and *I. L. R. XII Bom.* 585, followed ; *I. L. R. IX Calc.* 791, not followed. DHOLAN DAS *v.* RALYA SHAH. **85 P R 1898**

82. *Civil Procedure Code,* 1882, *section* 53—*Plaint filed by unauthorised person—Rejection of plaint—Revision.*

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Held, that a person acting under a general power-of-attorney is not competent unless specially authorised to prosecute a suit on behalf of a principal who is permanently resident within the jurisdiction of the Court, and that the temporary absence of such principal from the district does not excuse him from the obligation of having to appoint a specially authorised agent to file suits during such period.

Where a Court rejected a plaint, filed under section 9 of the Specific Relief Act, 1877, by a person who held merely a general power-of-attorney from a principal who, though at the time temporarily absent, was a permanent resident within the jurisdiction of the Court.

Held, that the Chief Court should not interfere on the revision side both on the ground that the suit had been rightly dismissed, and also because the suit being one under section 9 of the Specific Relief Act, the plaintiff had not been deprived of his remedy. THAKAR TARA NATH *v.* THAKAR JAMNA NATH. **5 P R 1899**

83. *Revision—"Material irregularity."*

Where a suit was dismissed as barred, according to the first Court under section 43, Civil Procedure Code, and according to the lower Appellate Court under section 13 of the Code, and it appeared that the lower Appellate Court was fully aware of the nature of the question at issue between the parties and had adequately considered the reasons for its decision on that question.

Held, that whether such decision was right or wrong, there had been no irregularity either in the Court's conception of the facts or in its method of reasoning entitling the plaintiff to a revision of the order under section 622 of the Code. BARU MAL *v.* AMIR-UD-DIN. **26 P R 1899**

84. *Question of jurisdiction—Power of Chief Court to consider lower Appellate Court's findings on facts relative to question of jurisdiction.*

Semble.—Upon an application for revision under section 622 of the Civil Procedure Code on the ground that the lower Courts had no jurisdiction to entertain the suit, it is competent to the Chief Court to consider the correctness of the lower Appellate Court's findings on the facts relative to the question of jurisdiction. ASA RAM *v.* TARA CHAND. **44 P R 1899**

85. *Interlocutory order — Revision "Cases" meaning of.*

On an application to file an award of arbitrators, the pleader for defendants pleaded orally to the effect that the reference to the arbitration was admitted, but that there was no award. After some adjournments defendant's pleader filed written objections, the substance of which was that the reference to arbitration, the meeting of the arbitrators and an award by them were denied. The Court drew certain issues, of which the second

REVISION IN CIVIL CASES—*contd.*

was, whether in point of fact there had been a reference, and the remainder whether the reference and award were valid. The evidence for the defence having been duly recorded, the defendant's pleader some time thereafter pleaded that the Court had no jurisdiction to inquire into the matter (No. 21 *P. R.* 1899, F. B.). The Court held that the objection as to jurisdiction taken at so late a stage was not tenable, and overruled it, directing plaintiff to produce his evidence as defendant had closed his case. Defendant having applied for revision of this order.

Held, that the refusal of the Court to accept the objection as to jurisdiction on the ground that the allegation upon which it was founded had not been made at an earlier stage, and was inconsistent with the oral pleas of the defendant, was, even if erroneous, not one calling for immediate interference by way of revision at the present stage.

From the absence of any provision in the Code for appeals from interlocutory orders, except certain specified ones in which a speedy decision is considered necessary, the inference is that there is to be no interference with the procedure of the lower Courts as long as a "case" is being decided, except on specified grounds, and though the word "case" in section 622 of the Code does not necessarily and in every instance mean the whole case, it must at least mean a particular bench of a case for which an independent remedy or different procedure is provided by the Code. MAHTAB RAI *v.* KAMAN LAL. **51 P R 1899**

86. *And section 623—Revision—Second application for revision after decision of first application—Review of order passed on revision—Civil Procedure Code,* 1882, *sections* 622 *and* 623.

Held, that the dismissal of an application for revision in default of apppearance does not bar the entertainment of a second application for revision, but where an application for revision has been entertained, and an order passed after consideration of the case a second application for revision should not be received, the proper remedy being for the applicant to ask for a review of judgment, which may be had in such a case. UMAR DIN AND OTHERS *v.* ALA BAKSH AND ANOTHER. **54 P R 1901**

87. *Interest—Implied agreement to pay interest—Interest Act, XXXII of* 1839—*No objection to notice on contract—Promise to pay—Discretion of Court—Revision.*

Held, that as it is within the discretion of a Court to allow interest under the provisions of the Interest Act, 1839, the Chief Court will not interefere on revision with the order of a Court disallowing interest, except where there has been an abuse of the discretion. EDULJI & Co. *v.* McDONALD. **55 P R 1901**

88. *Revision—Power of Chief Court to revise an order which was* ultra vires *and without authority.*

REVISION IN CIVIL CASES—*contd.*

Although, as a genaral rule, the practice of the Chief Court is to refuse to exercise its extraordinary powers of revision when the party professing to be injured has another remedy open to him, but in a case where the order complained of was *ultra vires* and without authority, the Chief Court interfered on the revision side notwithstanding that the petitioner had failed to appeal from a subsequent decree of the Court below based on the petitioner's failure to obey that order. SANT SINGH *v.* GHASITA. **21 P R 1902**

89. *Revision of interlocutory order when appeal lies from final decree—Punjab Courts Act,* 1884, *section* (70) (*a*).

The Chief Court is not competent to revise under section 70 (*a*) of the Punjab Courts Act interlocutory orders made with jurisdiction where an appeal is allowed from final decree in the case,

Mahtab Rai v. *Kaman Mal* (51 *P R* 1899,) cited *Dhapi* v. *Ram Parshad* (*I. L. R. XIV Calc.* 768) distinguished. POKHAR DAS AND ANOTHER *v.* KAKA RAM AND OTHERS. **31 P R 1902**

90. *Chief Court's powers of revision—Discretion.*

Held, by the Full Bench, that under section 70 (*a*) of the Punjab Courts Act the Chief Court is not bound to interfere on the revission side even when there is a defect of jurisdiction unless failure of justice has directly resulted from such defect. HANSA *v.* RAN SINGH AND ANOTER. **36 P R 1902 F. B.**

91. *Revision—Power of Chief Court to consider lower Appellate Court's findings on facts relative to question of jurisdiction.*

Held, that although the Chief Court has power to look into the grounds on which the question of jurisdiction has been decided in order to see if there are grounds for interference on the revision side, this ought to be done only under very special circumstances. Ordinarily the findings of facts on which jurisdiction is decided ought to be accepted. DEVI DYAL *v.* HARI CHAND. **79 P R 1902**

92. *Decree on judgment in accordance with an award—Revision.*

Where an application had been made to set aside an award on the ground of the arbitrator's misconduct and refused after judicial determination, and a decree was in accordance with and not in excess the award passed under section 522 of the Code."

Held, that the Chief Court had no authority to interfere with the decree either by way of appeal or revision. HANSRAJ *v.* GANGA RAM. **88 P R 1902 F. B.**

93. *Revision—Arbitration—Decree in accordance with award—Civil Procedure Code,* 1882, *section* 622.

Held, by the Full Bench that a revision lies against a decree passed upon an award

REVISION IN CIVIL CASES—*contd.*

where the Court which passed the decree committed an error in procedure or has misused the jurisdiction prescribed by the Civil Procedure Code.

Ghulam Jilani v. *Muhammad Hassan* (25 P. R. 1902 *P. C.*) discussed. PANNA LAL *v.* MUSSAMMAT SOMAN. **89 P R 1902, F. B.**

94. *Revision—Chief Court's powers of—Practice—Punjab Courts Act,* 1884, *section* 70 (1) (*a*) *as amended.*

Respondent became surety under section 336, Civil Procedure Code, for a judgment-debtor, and undertook to produce him in Court when called upon, and that he should within one month file an application to be declared an insolvent. The judgment-debtor duly applied to be declared an insolvent, but his application was rejected in default of prosecution after one appearance The decree-holder thereupon applied for the execution of his decree against the surety, which was refused by the District Judge on the ground that the obligation of the surety was discharged. The decree-holder preferred an appeal to the Chief Court, and on the Court's deciding that such an order was not appealable, the decree-holder applied for revision under section 70 (1) (*a*) of the Courts Act.

Held, following *Joti Mal* v. *Coates* (15 P. R 1901), that as the decree-holder had an action against the respondent on the surety bond and the question involved was of considerable importance the matter was not one for the exercise of the extraordinary powers of revision of the Chief Court under section 70 (1) (*a*) of the Courts Act

Banna Mal v. *Jamna Das* (*I. L. R. XV All.* 183), distinguished. BRIJ LAL *v.* HARJI MAL. **8 P R 1903**

95. *Revision from a decree in a suit to recover possession under section* 9 *of the Specific Relief Act—Chief Court's powers of.*

Held, that a decree in a suit for the recovery of possession under section 9 of the Specific Relief Act in favour of the plaintiff is not open to revision by the Chief Court, on the ground that the Court below has misapprehended and misrepresented the evidence, oral and documentary, on the record where, on the allegations contained in the plaint, the plaintiff had a cause of action and the Court had jurisdiction to entertain the suit, and the errors attributed by the petitioner to the Court below were intrinsic to the inquiry and decision. SAFDAR JANG *v.* SHANKAR SINGH. **13 P R 1903**

96. *Chief Court's powers of revision—Practice—Punjab Courts Act,* 1884, *section* 70.

Held, that it is the general policy of the law and the usual practice of the Superior Courts that the latter should interfere on the revision side in the interests of justice only in those cases where there

REVISION IN CIVIL CASES—*contd.*

is no other remedy or the remedy is cumbrous or expensive, and to refer the applicant to it would be tantamount to denying him his relief.

Omrao Mirza v. *Jones* (12 *Calc. L. R.* 148) and *Farid Ahmad* v. *Dulari Bibi I. L. R. VI All.* 233), cited. COATES *v.* KASHI RAM. **76 P R 1903**

97. *Arbitration—Decree in accordance with an award—Revision—Civ Procedure Code,* 1882, *section* 622.

Held, that the omission of a Court to remit an award which determines matters not referred to arbitration is not subject to revision, and, although a revision lies against a decree based upon an arbitration award on the ground of material irregularity, yet that material irregularity must have reference to the proceedings of the lower Court and not to those of the arbitrator.

Punna Lal v. *Mussammat Soman* (89 P. R. 1902, F. B.), *Choohur Singh* v. *Jeet Singh* (64 *P. R.* 1870, F. B.), and *Ghulam Jilani, &c.* v. *Muhammad Hassan* (25 *P. R.* 1902, P. C.), cited. SITA RAM *v* DHANNI RAM. **92 P R 1903**

98. *Revision—Error of law—Chief Court's powers of Revision—Discretion—Small Cause Court Act,* 1887, *section* 25.

Section 25 of the Provincial Small Cause Courts Act is not intended to allow appeals on points of law. Under the discretionary powers given by that section the Chief Court will not interfere except where a clear case of substantial injustice resulting from a material misapplication or misapprehension of the law has been made out.

The subject of revision under section 35, Small Cause Courts Act, considered and compared with section 622, Civil Procedure Code, by Chatterji, J.

Fakir Chand v. *Mussammat Balkaur* (19 *P. R.* 1901), *Poona City Municipality* v. *Ramji Raghu Nath* (*I L. R. XI Bom.* 25), *Shivanathaji* v. *Joma Kashinath* (*I. L. R. VII Bom.* 442), and *Vias Ram Shankar* v. *Ralla Ram Misir* (*I. L. R. XXI All.* 89)

Sarman Lal v. *Khuban* (*I. L. R. XVI All.* 476), not approved. SAYAD MIR SHAH *v.* ATAR SINGH. **66 P R 1904**

99. *Applicability of clause* (*b*) *of section* 70 *to proceedings under the Succession Certificate Act,* 1889.

Held, that clause (*b*) of section 70 of the Punjab Courts Act does not apply to proceedings under the Succession Certificate Act. It is not co-extensive with clause (*a*) of that section, but treats of a different class of cases.

Mina Mal v. *Hardhian Singh* (48 *P. R* 1901), and *Coates* v. *Kashi Ram* (76 *P R.* 1903), referred to. KISHORE CHAND *v.* MUSSAMMAT NIHAL DEVI. **70 P R 1904**

100. *Revision—Power of Chief Court to discuss and draw inference of fact from*

REVISION IN CIVIL CASES—*contd.*

evidence—Punjab Courts Act, 1884, *section* 70 1 (*b*) (*iv*).

Held, that when an application has been admitted under clause (1) (*b*) of section 70 of the Punjab Courts Act, the Chief Court is competent under proviso (*iv*) to that clause to discuss and draw any inference of fact from the evidence bearing on the points to which the question of law or custom involved relates. BUDHA SINGH *v.* MULA SINGH. **40 P R 1905**

101. *Arbitration—Award—Omission to remit to Arbitrators—Revision—Civil Procedure Code,* 1882, *section* 520.

Held, that inasmuch as a Court has discretion to remit or not to remit an award on any of the grounds specified in section 520 of the Code of Civil Procedure, the omission to remit on any of those grounds is not subject to revision.

Sita Ram v. *Dhani Ram* (92 *P. R.* 1903) cited and followed. *Ghulam Jilani* v. *Muhammad Hussan* (25 *P. R.* 1902, *P. C.*) and *Panna Lal* v. *Mussammat Soman* (89 *P. R.* 1902, *F. B.*), referred to. SANT SINGH v. JIWAN SINGH. **41 P R 1905**

102. *Revision—Revision of interlocutory order where an appeal lies from final decree—Punjab Courts Act,* 1884, *section* 70 (1) (*a*).

Plaintiffs, whose place of business was at Lahore, filed a suit in the Court of a first class Munsif at Lahore against the defendant, who carried on business at Delhi, for the recovery of Rs. 1,000 by way of damages in respect of a breach of contract. The defendant objected to the jurisdiction of the Court, on the ground that as the contract was to be performed at Delhi the Lahore Court had no jurisdiction. The objection being overruled, the defendant applied to the Chief Court for revision of this order. *Held*, that such order being an interlocutory order, made with jurisdiction in a suit where an appeal is allowed from the final decree, cannot be revised under section 70 (1) (*a*) of the Punjab Courts Act. GOPI NATH *v.* LIVIERATO & Co. **64 P R 1905**

103. *Revision—Revision from an order under section* 295, *Civil Procedure Code, passed with jurisdiction—Chief Court's powers of—Punjab Courts Act,* 1884, *section* 70 (i) (*a*) (*b*).

Held, that an order made with jurisdiction under section 295 of the Code of Civil Procedure is not open to revision by the Chief Court under section 70 (*i*) (*a*) of the Courts Act, on the ground that the Court below has misapprehended the facts or erred in law. *Held, also*, that clause (*b*) of section 70 being in the nature of a second appeal under the Code of Civil Procedure applies to decrees only.

Sew Bux Bogla v. *Shib Chunder Sen* (*I. L. R. XIII Cal.* 225), *Kashi Ram* v. *Mani Ram* (*I. L. R.* 14 *All.* 211), *Tiruchittambala Seshav Vangar* (*I. L. R. IV Mad.* 383)

REVISION IN REVENUE CASES
—*contd.*

1887, *as affecting claim to occupancy rights.*

A lower Court acts with material irregularity in disposing of a plaintiff's claim to occupancy rights without reference to the new Tenancy Act, XVI of 1887.

In the Settlement Record of 1882, a Record compiled when the old Tenancy Act (XXVIII of 1868) was in force, the plaintiffs were apparently rightly recorded as being tenants-at-will, because they were not in 1868 the representatives of persons who had settled in the village with the founders (section 5 (3), Act XXVIII of 1868).

Since 1882, however, the new Tenancy Act has been passed, section 5, sub-section (1) (c) of which is much wider than section 5 (3) of the old Act.

The case remanded to the Commissioner for re-decision accordingly. AZIMULLA *v.* JEHANGIR KHAN. **16 P R 1892 Rev.**

6. *Material irregularity—Granting decree for occupancy rights under section* 8, *Punjab Tenancy Act*, 1887, *on vague and ill-considered grounds.*

The lower Courts decreed the plaintiff's rights of occupancy under section 8, Tenancy Act, 1887, on vague grounds and without considering the test laid down in No. 4 *P. R.* 1875 Rev.

Held, that this amounted to a material irregularity justifying the remanding of the case to the first Court for re-decision, after further inquiry, if necessary. LEKHA MAL *v.* MUHAMMAD BAKHSH. **17 P R 1892 Rev.**

7. *Material irregularity — Revision— Section* 622, *Civil Procedure Code.*

The lower Courts refused to consider the defendant's claim to an occupancy status under section 5, Punjab Tenancy Act, 1887, their predecessor in interest having been recorded in 1879 as a tenant under section 6 of the Act of 1868 and having taken no steps to claim a higher status.

Held, that this constituted a material irregularity, facts found being no bar to the defendants acquiring the status they claimed under section 5, if they could prove that the present conditions of their tenancy were such as to fulfil the requirements of the Tenancy Act of 1887 in respect of the acquisition of such a status. BAHADUR *v.* DUL CHAND.

3 P R 1893 Rev.

8. *Occupancy rights, claim to—Entry in record of summary Settlement—Sanction of Local Government—Punjab Tenancy Act (XVI of* 1887) *sections* 5 (1) (*a*) *and* 6— "*Material irregularity.*"

In a suit in which plaintiffs claimed occupancy right under section 5 (1) (*a*) or (*c*) of the Punjab Tenancy Act, 1887, the Assistant Collector framed an issue as to whether they had acquired an occupancy status under any section of the Act and took some evidence. In his judgment, however, he omitted any reference to the claim under section 5 (i) (*a*) or (*c*), but held that plaintiffs were entitled

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to an occupancy status under section 6, because their predecessor in interest was recorded as an occupancy tenant at the summary Settlement before the passing of the Punjab Tenancy Act, 1868. This finding was upheld by the Collector on appeal.

Held, that, in the absence of proof that the record of the summary Settlement had received the sanction of the Local Government, the entry in question was not sufficient to confer upon plaintiffs an occupancy status under section 6 of Act XVI of 1887.

But *held*, further, that the omission on the part of the first Court to consider plaintiffs' claim under section 5 (1) (*a*) (*c*) amounted to a "material irregularity," and that the case must, therefore, be remanded for further enquiry and fresh decision thereupon. SANTA SINGH *v.* HAZARA SINGH. **8 P R 1895 Rev.**

9. *Revision—Material irregularity.*

Held, that the application of a rule of limitation which in fact does not apply to the case at all amounts to a material irregularity. NARINDAR SINGH *v.* LEHNA SINGH.

6 P R 1901 Rev.

10. *Punjab Alienation of Land Act*, 1907, *sections* 3 (3), 19—*Permanent alienation of land—Granting or refusing sanction—Discretion—Appeal.*

Held, that an order of a Deputy Commissioner granting or refusing sanction to a permanent alienation under section 3 (3) of the Punjab Alienation of Land Act, 1900, is open to appeal and revision as provided by the provisions of Chapter II of the Punjab Land Revenue Act, 1887. RAM SARAN DAS *v.* SARDARA.

4 R R 1903 Rev.

11. *Revision, grounds for—Wrong decision as to* res judicata—*Financial Commissioner's discretion unfettered.*

Held, that a wrong decision as to *res judicata* is a good ground for revision, if it prevented a case being heard on the merits but the Financial Commissioner's discretion to exercise revisional powers in any case is quite unfettered and the broad principle to follow is to interfere only when a refusal to interfere would result in injustice or failure of justice. IMAM DIN *v.* JIWAN.

2 P R 1910 Rev.

12. *Occupancy tenancy—alienated—Tenant suing proprietors for possession after latter have had alienation set aside—Jurisdiction of Civil or Revenue Court—Punjab Tenancy Act, XVI of* 1887, *sections* 50 *and* 77 (3) (i)—*Exercise of revisional powers by Financial Commissioner.*

Held, that an occupancy tenant who has alienated his rights may recover his tenancy from the landlords after the latter have had the alienation declared void and obtained possession from the alienee, and it is no good answer to such a suit that the plaintiff is not able to show that he is no longer bound by the contract of alienation.

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—*concld.*

Held, also, that such a suit by a tenant is one for the Civil Courts and not the Revenue Courts to decide.

Held, further, that the Financial Commissioner will not exercise his discretionary powers of revision to correct a defect of jurisdiction unless it resulted in injustice or failure of justice. **1 P R 1911 Rev.**

REVIVAL OF TIME-BARRED RIGHT.

See LIMITATION ACT (XIV OF 1859), SECTION 1. **74 P R 1882**
109 P R 1884

See LIMITATION ACT (XV OF 1877), SECTION 20. **62 P R** 1881

REVOCATION.

1. *Of adoption.*
   See CUSTOM III, APPOINTMENT OF HEIR.
   98 P R 1882
   98 P R 1884
2. *Revocation of gift to wife and mother.*
   (*a*) See CUSTOM—ALIENATION.
   120 P R 1889
   45 P R 1901

—*To wife and mother.*
(*b*) See HINDU LAW, GIFT.
153 P R 1883

3. *Of offer to sell.*

Pre-emption—Proposal to sell—Proposer's right of revocation—Power of pre-emptor to enforce sale at market value.

See PRE-EMPTION—CONSTRUCTION OF TRANSFERS. **30 P R 1897**

4. *Of Trust.*
   See TRUST.
5. *Of will.*
   (*a*) See SUCCESSION ACT, 1865, SECTIONS 57, 58. **6 P R 1899**
   (*b*) See WILL. **27 P R 1883**

RIGHT OF APPEAL.

—*Pre-emption—Decree in favor of pre-emptor—Payment of purchase-money into Court—Withdrawal of such money by vendee —Effect of such withdrawal—Right of vendee to maintain appeal on substantive right.*

See APPEAL, II.—COMPETENCY OF.
16 P R 1907

RIGHTS OF OCCUPANCY.

See CUSTOM I.—(I) ALIENATION OF OCCUPANCY RIGHTS.
OCCUPANCY RIGHTS.
PUNJAB TENANCY ACT, 1887.

RIGHT OF WAY.

See EASEMENT. **22 P R 1888**
39 P R 1888
62 P R 1898
76 P R 1900

"RIGHT TO PROPERTY."

See DECLARATORY DECREE.
115 P R 1883
32 P R 1885

RIGHT TO BE HEARD.

See ZAILDAR.

RIGHT TO SUE.

See CUSTOM, ALIENATION.
See DECLARATORY DECREE.
See DEFAMATION. **140 P R 1882**

1. *Suit by reversioners to contest daughters' succession — Compromise—Subsequent suit by same reversioners to set aside alienation by daughters.*
See APPEAL I.—CIVIL. **47 P R 1894**

2. *Appeal by one defendant as to the disposal of certain money decreed to be paid by plaintiff—Separate suit.*
See APPELLATE COURT, POWER AND DUTIES OF. **71 P R 1883**

3. *Suit for advances made on an unlawful agreement.*
See BADNI TRANSACTION. **194 P R 1882**

4. *Suit against vendor by sons of real vendee.*
See BENAMIDAR. **83 P R 1885**

5. *Suit for possession of immovable property situate in different districts—Joint suit by reversioners against person in wrongful possession--Misjoinder of causes of action—Cause of action, meaning of.*
See CAUSE OF ACTION, V.—MISJOINDER. **91 P R 1898**

6. *Question for Court executing the decree—" Parties to suit "—Representative—Right to sue.*
See CIVIL PROCEDURE CODE, 1908, SECTION 47. **12 P R 1887**

7. *Question for Court executing decree—Parties—Representative.*
See CIVIL PROCEDURE CODE, 1908, SECTION 47. **47 P R 1887**

8. *Suit by auction-purchaser (who was also decree-holder) for possession of immovable property purchased at execution sale—Question for Court executing decree—Separate suit barred—Right of purchaser who has failed to apply for possession under section 318, Civil Procedure Code, to sue for such possession.*
See CIVIL PROCEDURE CODE, 1908, SECTION 47. **58 P R 1888**

9. *Mesne profits—Civil Procedure Code, 1882, section 244—Decree for redemption and possession on payment of a certain sum —Modification of decree—Final decree making redemption conditional on payment of a larger sum—Suit for recovery of mesne profits which accrued between the date of obtaining possession under the first decree and payment under the final decree.*
See CIVIL PROCEDURE CODE, 1908, SECTION 47. **60 P R 1890**

10. *Joint suit by alleged partners in respect of leases made in the names of certain individual members of the alleged partnership—Joint undivided Hindu family —Omission in plaint to specify grounds entitling plaintiffs to sue jointly in respect of such leases—Notice of action.*
See CIVIL PROCEDURE CODE, 1908, SECTION 80. **67 P R 1894**

11. *To enforce trust for public charitable purposes.*
See CIVIL PROCEDURE CODE, 1908, SECTIONS 92, 93. **50 P R 1882**

RIGHT TO SUE—*contd.*

12. *Suit by persons interested in shrine.*
See CIVIL PROCEDURE CODE, 1908, SECTIONS 92, 93. **94 P R 1885**

13. *Suit for share of offerings.*
See CIVIL PROCEDURE CODE, 1908, SECTIONS 92, 93. **76 P R 1886**

14. *Suit by worshippers to restrain alienation of property belonging to temple.*
See CIVIL PROCEDURE CODE, 1908, SECTIONS 92, 93. **29 P R 1897**

15. *Dismissal for default—Suit by Hindu widow—Subsequent suit by reversioners.*
See CIVIL PROCEDURE CODE, 1908, O. IX, R. 1. **80 P R 1884**

16. *Suit by assignee of money-decree obtained on specially registered mortgage-deed to establish lien under the deed on property subsequently sold—Validity of assignment.*
See CIVIL PROCEDURE CODE, 1908, O. XXI, R. 16. **142 P R 1882**

17. *Suit for compensation for injury caused by irregularity in conducting sale of movable property—Questions for Court executing the decree.*
See CIVIL PROCEDURE CODE, 1908, O. XXI, R. 78. **14 P R 1886**

18 *Suit by widow with life interest to recover from collaterals property of her deceased husband—Legal representative of such widow for the purpose of continuing the suit on appeal on widow's death.*
See CIVIL PROCEDURE CODE, 1908, O. XXII, R. 3. **97 P R 1893**

19. *Execution sale of house—Suit by plaintiff to establish her proprietary right to the property sold—Cancellation of sale by executing Court after institution of plaintiff's suit—Withdrawal by plaintiff (without permission) from her suit—Subsequent order by Appellate Court upholding sale—Fresh suit by plaintiff for declaration of her title to the property.*
See CIVIL PROCEDURE CODE 1908, O. XXIII, R. 1. **119 P R 1881**

20. *After withdrawal of suit without permission to sue again when order of withdrawal is* ultra vires.
See CIVIL PROCEDURE CODE, 1908, O. XXIII, R. 1. **147 P R 1888**

21. *Application to sue* in forma pauperis *—Court issuing notice to defendant without preliminary enquiry—Material irregularity —Right to sue in such Court.*
See CIVIL PROCEDURE CODE, 1908, O. XXXIII, R. 5. **130 P R 1894**

22. *Common land*—Shamilat *land—Suit by khewatdar to obtain share in village common land*—Wajib-ul-arz.
See COMMON LAND. **10 P R 1894**

22a. Pattidars *contesting adoption by widow of deceased owner*—Locus standi *of plaintiffs.*
See CUSTOM III.—APPOINTMENT OF HEIR I.—LOCUS STANDI OF REVERSIONERS AND OTHERS TO CONTEST ADOPTION. **178 P R 1888**

RIGHT TO SUE—*contd.*

23. *Right of suit of some of the inhabitants of a* mohalla *affecting common piece of land in their* mohalla.
See COMMON LAND. **91 P R 1901**

24. *Right of suit of some of the several co-sharers against the trespasser affecting common land.*
See COMMON LAND. **105 P R 1901**
—Joint promise to plaintiff and others —Right of plaintiff to sue alone—Cause of action.
See PARTIES. **56 P R 1901**

25. *Suit on mortgage-bond by one of three persons jointly entitled.*
See CONTRACT **175 P R 1882**

25a. *Suit by* Chumars *to have their share in certain village perquisites declared—" Right as to any property."*
See DECLARATORY DECREE I.—DECLARATION OF TITLE. **115 P R 1883**

25b. *Merger of decree in subsequent arrangement—Arrangement enforceable by suit and not by execution.*
See EXECUTION OF DECREE. **51 P R 1885**

25c. *Suit by 3 out of 4 joint lessors for rent—Joinder of 4th lessor as co-defendant.*
See JOINDER OF PARTIES. **87 P R 1886**

25d. *Suit for right to ply a boat at a public ferry.*
See JURISDICTION OF CIVIL OR REVENUE COURT. **82 P R 1886**

25e. *Suit for redemption—Conditional decree—Omission to take out execution—Cause of action.*
See LIMITATION. **57 P R 1883**

25f. *Suit by one partner against another for sum alleged to be realised over his share in the outstandings.*
See PARTNERSHIP. **65 P R 1884**

25g. *Decree for pre-emption in respect of prior sale—Subsequent sale by purchasers to third party—Right to sue arising out of such sale.*
See PRE-EMPTION. **146 P R 1883**

25h. *Auctioneer's right to sue for price of goods sold.*
See PRINCIPAL AND AGENT. **86 P R 1884**

25i. *Suit by one of several joint proprietors for enhancement of rent.*
See TENANCY ACT (XXVIII OF 1868), SECTION 11. **77 P R 1883**

26. *Right of agent to recover from principal sums due on account of wagering contracts—Maintainability of such suit.*
See CONTRACT ACT, 1872, SECTION 30. **74 P R 1908**
79 P R 1908
See CUSTOM I. A.—ALIENATION BY MALE PROPRIETOR, 1 (*e*) GIFTS TO DAUGHTERS (*i*), PROVED. **11 P R 1908**
58 P R 1908

RIGHT TO SUE—*contd.*

27. *Gift to Khanadamad—Right of donee to alienate property acquired by gift*—Locus standi *of donees's wife and son to contest alienation.*

See CUSTOM I. A.—ALIENATION BY MALE PROPRIETOR 1.—(*g*) GIFTS TO SON-IN-LAW. **20 P R 1904**

28. *Gift by sonless proprietor to wife's sister's son—Suit by donor's brother.*

See CUSTOM I. A.—ALIENATION BY MALE PROPRIETOR—GIFTS AND WILLS IN FAVOUR OF STRANGERS, (*i*) PROVED. **46 P R 1900**

29. *Alienation by sonless proprietor—Right of reversioner to contest such alienation in presence of wife and doughter-in-law.*

See CUSTOM I. A.—ALIENATION BY MALE PROPRIETOR, (2) SALES AND MORTGAGES IN FAVOUR OF HEIRS AND COLLATERALS. ALIENATION. **29 P R 1903**

30. *Alienation by childless proprietor of ancestral property to one of his collaterals in sixth degree—Suit by collaterals of fifth and sixth degree.*

See CUSTOM I. A.—ALIENATION BY MALE PROPRIETOR—3. SALES AND MORTGAGES IN FAVOUR OF STRANGERS. **40 P R 1890**

31. *Suit by reversioner to enforce his right in respect to land on the ground that the alienation had been made without necessity which alienation had already been challenged by his ancestor on the ground of pre-emption only*—Locus standi.

See CUSTOM I. A.—ALIENATION BY MALE PROPRIETORS—5. NECESSITY. **15 P R 1903**

32. *To contest alienation by male proprietor.*

See CUSTOM I. A.—ALIENATION BY MALE PROPRIETOR—9. LOCUS STANDI OF REVERSIONER AND WIDOW. *Passim.*

33. *Ancestral land—Custom—Alienation—Sonless proprietor—Gift of land by, to his wife, and by her to her daughter*—Locus standi *of the* warisan ek jaddi—*Ancestral and acquired property.*

See CUSTOM I. B.—ALIENATION BY WIDOW—(*a*) GIFTS. **10 P R 1893**

34. *Gift by widow with the consent of the nearer reversioner*— Locus standi *of reversioner of equal degree.*

See CUSTOM I. B.—ALIENATION BY WIDOW, (*a*) GIFTS. **47 P R 1903**

35. *Alienation by widow with the consent of the reversioners*—Locus standi *of the sons of the consenting reversioners to contest such alienation.*

See CUSTOM I. B.—ALIENATION BY WIDOW, (*a*) GIFTS. **59 P R 1904**

RIGHT TO SUE—*contd.*

36. *To contest alienation by widow.*

See CUSTOM I. B.—ALIENATION BY WIDOW, (d) LOCUS STANDI OF REVERSIONERS, *Passim.*

37. *Right of some only of proprietary body to sue in respect of an alienation by non-proprietor.*

See CUSTOM I. F.—ALIENATION BY NON-PROPRIETOR. **48 P R 1899**

38. *Occupancy rights—Alienation by widow in favour of proprietor—Right of reversioner to object.*

See CUSTOM I. (I).—ALIENATION OF OCCUPANCY RIGHTS. **39 P R 1898**

39. *Unauthorised alienation of occupancy rights—Customary right of collaterals to object to alienation.*

See CUSTOM I. (I)—ALIENATION OF OCCUPANCY RIGHTS. **89 P R 1898**

40. *Right of collaterals to object to alienation of occupancy right with the consent of landlords.*

See CUSTOM I. (I)—ALIENATION OF OCCUPANCY RIGHTS. **69 P R 1900**

41. *When document is inadmissible for want of stamp—Original consideration.*

See EVIDENCE ACT, SECTION 91. **61 P R 1888**

See CUSTOM I.—ALIENATION J. RULE OF DECISION.

See CUSTOM 7.—LOCUS STANDI OF REVERSIONERS. **78 P R 1905**
56 P R 1908

42. *On foreign judgment.*

See FOREIGN JUDGMENT. **191 P R 1888**

43. *Sale by Sikh Jat without male issue at the date of sale—Right of subsequently born male issue to object to a sale of land made prior to his birth.*

See HINDU LAW—ALIENATION. **79 P R 1900**

44. *Survival of, on death of respondent.*

See INSOLVENCY. **69 P R 1888**

45. *One of several co-promises cannot sue alone to enforce payment of a debt due to them jointly.*

See JOINDER OF PARTIES. **156 P R 1889**

46. *Joint promise to plaintiff and others—Right of plaintiff to sue alone.*

See JOINDER OF PARTIES. **86 P R 1891**

47. *For* tambol.

See JURISDICTION OF CIVIL OR REVENUE COURT. **141 P R 1888**

48. *Suit by minor on attaining majority to recover land mortgaged by his guardian—Limitation.*

See LIMITATION ACT, ARTICLE 91. **23 P R 1904**

RIGHT TO SUE—*contd.*

49. *Alienation of right of occupancy—Sale by tenant to landlord*—Locus standi *of reversioner to object to sale.*

See OCCUPANCY RIGHTS. **31 P R 1896 F. B.**

50. *Suit for account on death of principal—Right of some of several representatives to sue alone—Refusal to join other representatives in the suit—Non-joinder of a necessary party, effect of.*

See PARTIES. **12 P R 1905**

51. *Partition of widow's share in joint holding—Right of reversioner to object to such partition being allowed.*

See PARTITION. **6 P R 1896**

52. *Dismissal of suit on ground that plaintiff after obtaining an*-ex parte *decree afterwords set aside had resold the land at first decreed to him—Legality of such ground of dismissal.*

See PRE-EMPTION—LOSS OR WAIVER OF RIGHT. **22 P R 1887**

53. *Lease of a portion of the property by guardian—Inability of minor to claim pre-emption—Estoppel.*

See PRE-EMPTION. **2 P R 1903**

54. *Sale of immovable property in execution of decree—Title of auction-purchaser who has not obtained a certificate—Right of pre-emptor to maintain suit before a certificate has been granted.*

See PRE-EMPTION. **9 P R 1903**

55. *Suit for pre-emption on sale of house property by a son of joint Hindu family in presence of father.*

See PRE-EMPTION UNDER PRE-EMPTION ACT, 1905, SECTION 13. **35 P R 1908**

56. *Right of* Sewaks *or worshippers to remove* mahant *for alleged misconduct.*

See RELIGIOUS INSTITUTIONS. **122 P R 1890**
3 P R 1899
95 P R 1900

See CIVIL PROCEDURE CODE, 1908, SECTIONS 92, 93. **122 P R 1890**

57. *Jurisdiction of Civil Courts to remove* Kardar *or manager from the management of the endowed property*—Locus standi *of plaintiff.*

See RELIGIOUS INSTITUTIONS. **95 P R 1900**

58. *Suit for redemption of mortgage—Previous unexecuted decree for redemption of the same property—Right to maintain second suit.*

See RES JUDICATA. **20 P R 1887**

59. (*a*) *Suit by non-proprietors for declaration of their right to hold their houses free from certain fees and dues—Right to maintain suit.*

See SPECIFIC RELIEF ACT, 1877, SECTION 42. **48 P R 1887**

RIGHT TO SUE—*contd.*

60. (*b*) *Alienation of right of occupancy by widow—Right of reversioners to object to alienation.*

See SPECIFIC RELIEF ACT, SECTION 42. **205 P R 1889**

61. (*c*) *Suit by certificate-holders for half of sum due on a bond—Certificate confined to half of deceased's property—Heirs to other half refusing to join as co-plaintiffs.*

See SUCCESSION CERTIFICATE ACT, 1889, SECTION 16. **29 P R 1899**

62. *Suit against legal representatives of deceased debtor—Proof of receipt of assets.*

Held, that when a creditor sues certain defendants as legal representatives of a deceased debtor without alleging that they received assets, the suit will lie, and a decree may be given against such persons in their representative capacity without proof that they have received assets of the deceased. BIRJA *v.* KISHEN JIWAN. **11 P R 1881**

63. *Suit by judgment-debtor to have adjustment of decree recognized by decree of Court—Civil Procedure Code (Act X of 1877), section 258.*

Held, that no suit will lie by a judgment-debtor against his decree-holder to have an alleged adjustment of a decree out of Court recognized by decree of Court. The plaintiff must take proceedings under section 258 of the Civil Procedure Code, if he wishes the adjustment to be recognized.. KARM SINGH *v.* AMIN CHAND. **47 P R 1881**

64. *Suit for an account—Right to sue for an account where parties stand merely in the relation of debtor and creditor.*

A suit for an account only lies when the defendant is liable to account to the plaintiff. There must be something more than the mere relation of debtor and creditor before one party can be held entitled to sue the other for an account : the defendant must stand in some other relation to the plaintiff, as, for instance, that of agent, or bailee, or receiver, or trustee, or partner, or mortgagor.

Where therefore the plaintiff was a lambardar who had executed a bond to a money-lender, and made some payments upon it, *held*, that he was not entitled to sue the latter for an account simply because he considered that the creditor had not carried out the stipulations of the bond in regard to the mode in which the consideration was to have been paid, and that he had not credited all the payments which had been made towards the liquidation of the debt. GURDITTA *v.* AZAM. **122 P R 1881**

65. *Suit by creditor impeaching alienation by debtor—Fraud—Act I of 1877, section 42—Declaratory decree.*

Held, that a mere creditor who has not obtained a decree for his debt cannot sue to impeach, as being fraudulent and void, a voluntary conveyance by his debtor; (1) because he is not competent to claim a declaration under section 42 of the Specific Relief

RIGHT TO SUE—*contd.*

Act, until he has a decree for his debt; and (2) because before that decree is made, the only relief that could be sought by him is the relief afforded by a declaratory decree. *Mussammat Gangi* v. *Mehr Chand* (No. 86 *P. R.* 1879), cited. NATHA SINGH *v.* GURBAKSH SINGH. **10 P R 1882**

66. *Agent suing in place of principal—Dismissal of suit—Power of Appellate Court to substitute the principal as plaintiff—Act X of 1877, sections 27, 582.*

The practice of a gomashta instituting a suit in his own name, describing himself as gomashta of a specified firm, is not a correct practice, as the suit brought should be brought by the person or persons in whom the legal right of suit is vested, and not by agents in their own names.

Quaere, whether the combined effect of section 27 and section 582 of the Civil Procedure Code is to empower an Appellate Court to substitute the principal as plaintiff, on sufficient grounds being shown for such a course. THAKUR DASS *v.* GOLAM MOHYUDDIN. **20 P R 1882**

67. *Suit for land allotted in execution of decree—Actual possession—Formal possession—Limitation.*

Plaintiffs, having obtained a decree for a share in an estate, applied formally for execution of such decree, and their application having been made over to the Revenue authorities, fields representing their share were divided off to them, the proceedings being duly affirmed, and orders being finally passed that the partition was completed and effect should be given to it in the Patwari's papers. Plaintiffs never having taken actual possession of the fields allotted to them, after more than three years had elapsed, brought a regular suit for the fields allotted to them in the above-noted execution-proceedings.

Held, that such a suit would lie, if brought within 12 years from the date of the close of the execution-proceedings, as formal possession had been awarded to the plaintiff's in the mode in which such possession is ordinarily given in execution of such decrees, and limitation ran from the date of such formal possession. MUSSAMMAT KARIM-NISSAN *v.* BASHO. **75 P R 1882**

68 *Suit on decree—Execution.*

Where plaintiff obtained a decree for a share in an occupancy tenure, which he never executed, nor did defendant allow him to take possession of the land, whereupon the plaintiff instituted a second suit for the same land after the period within which the previous decree could be executed had expired, *held*, that the decree being unconditional and giving a relief which the decree-holder could enforce by taking out execution, if the judgment-debtor did not give up possession out of Court, the decree-holder was bound to follow the

RIGHT TO SUE—*contd.*

procedure prescribed by law to enforce the right created by the suit and could not again proceed by action. DASONDHA SINGH *v.* WARIAM SINGH. **78 P R 1882**

69. *Suit for declaratory decree—Declaration of right to build a wall—Subsequent obstruction by defendant—Right of plaintiff to maintain a fresh suit for an injunction.*

Where the plaintiff sued for and obtained a decree declaratory of his right to build up a wall which formerly divided off his house from the defendant's, and there was no allegation that the defendant had taken possession of the site on which the old wall had stood, *held*, that a subsequent suit based on the allegation that the defendant had prevented the plaintiff from building up the same wall, and praying for an injunction that the said defendant might be restrained from obstructing him, the plaintiff, in exercising a right which he was declared entitled to exercise by a competent Court, was maintainable; and further, that supposing even that in the former suit the plaintiff had asked and obtained a decree for possession of the site of the old wall as well as for a declaration of his right to rebuild the wall, provided that he was not again suing for possession of the site, which he could only obtain by process of execution, the existence of the previous decree would not be a bar to his seeking a subsequent injunction founded on a distinct and later act of obstruction on the part of the defendant, as such an act would constitute a fresh cause of action, and the only advantage of the previous decree would be, supposing the parties in the two suits to be identical, that the issue as to the plaintiff's right to rebuild the wall would be a *res judicata.* GHULAM GHOUS *v.* SHER MUHAMMAD. **111 P R 1882**

70. *Public road—Obstruction—Damage—*

Held, that a civil suit does not lie for an obstruction to a public road or highway unless the plaintiff can show some particular damage to himself personally in addition to the general inconvenience occasioned to the public. *Lalu* v. *Jamiyat Rai* (No. 72 *P. R.* 1877), and *Nur Ali* v. *Ram Gopal* (No. 10 *P. R.* 1878), cited. MALUK SINGH *v.* BELA SINGH. **134 P R 1882**

71. *Civil Procedure Code (Act X of 1877), section 258—Bond executed in satisfaction of decree—Failure to certify satisfaction of decree—Right to sue on bond—New contract.*

Where plaintiff sued on a bound executed by defendant in satisfaction of a decree passed in favour of plaintiff's husband against defendant, *held*, that the suit was not liable to be dismissed in accordance with the last sentence of section 258 of the Civil Procedure Code because plaintiff had failed to certify satisfaction of the decree to the Court, as the decree

RIGHT TO SUE—*contd.*

having been superseded by a valid contract between the parties, there was no reason why plaintiff should not sue on the new bond. MUSSAMMAT KISHEN DEVI *v.* UMR DIN. **182 P R 1882**

72. *Suit to recover money paid out of Court in satisfaction of decree—Civil Procedure Code (Act X of* 1877), *section* 258.

Held, that no suit will lie to recover money paid out of Court in satisfaction of a decree, section 258 of the Civil Procedure Code, as amended by Act XII of 1879, providing that no such payment shall be recognized by *any* Court unless it has been certified. *Karm Singh* v. *Amin Chand* (No. 47 *P. R.* 1881), followed. ALA BAKSH *v.* MUHAMMAD SHAH. **11 P R 1883**

73. *Suit for value of ornaments alleged to have been stolen by defendant—Merger of tort in felony.*

The principle that tort merges in a felony, which is recognized in the English Courts as suspending the right of civil action until the party guilty of the felony shall have been prosecuted, is not one which applies in the Mufassil Courts in India.

Held, therefore, that a suit brought to recover the value of certain ornaments which it was alleged by the plaintiff that the defendant had stolen, was one cognizable by a Civil Court. MUSSAMMAT BEGAM *v.* MUSSAMMAT UMRAO. **26 P R 1883**

74. *Suit for damage sustained in consequence of defendant's neglect to drain his garden*—Sicutero tuo ut alienum non laedas. *explained.*

Held that a suit for damages, based on an allegation that defendant had neglected to drain his garden so as to prevent water from collecting there and injuring the adjoining property of the plaintiff, is not maintainable, as the owner of property is under no legal obligation to incur expense upon it for the benefit of his neighbours, where it has not been altered in character by his acts or with his permission in such a way as to expose them to any injury. BALDEO DAS *v.* SECRETARY OF STATE. **30 P R 1883**

75. *Suit for wager lost and paid.*

Held, that an action will not lie to recover money which has actually been lost and paid on a wager. *Ram Karan* v. *Zahira* (No. 101 P. R. 1868), cited. KANDARI MAL *v.* SAVANT MAL. **89 P R 1883**

76. *Damages, suit for—Plaintiff failing in suit for land because defendant had made over the title-deed to the original donors—Wrongful act—Measure of damages.*

Plaintiff sued the defendant for damages on the ground that he had failed in a previous suit to obtain possession of certain land, because the said defendant had kept back the deed of gift on which plaintiff based his title and had made it over to the

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original donors. Plaintiff had brought the previous case against the donors of the land and the Court had dissmissed the claim, because the deed was not forthcoming.

Held, that the defendant by making over plaintiff's instrument of title to third party, whose interest was clearly adverse to plaintiff, had committed a wrongful act, and was liable for damages: that there was no necessity for proving that the possession of the document originated in a crime, or to enquire how the defendant got possession, the question being whether, after he had got possession of the deed, he could justify his making over the said deed to a party whose interest was adverse to plaintiff, in which he had entirely failed.

Held further, that plaintiff was entitled to recover the full value of the estate by way of damages. KHAN MUHAMMAD *v.* MORAD BAKSH. **116 P R 1883**

77. *Suit on hundi which has not been presented for payment.*

Held, that a suit cannot be brought to recover on a *hundi* until it has been presented and payment has been objected to or refused. MALORI MAL *v* BUTA MAL. **148 P R 1883**

78. *Compensation awarded to Hindu widow under Land Acquisition Act—Suit by reversioner for apportionment of such compensation—Widow's right to absolute possession—Waste.*

Plaintiff, the reversionary heir, sued the defendant, a Hindu widow, for a portion of the sum which had been awarded to her by the Collector as compensation for a house which had been taken up under the Land Acquisition Act.

Held, that the plaintiff's suit as framed would not lie, the interest of the plaintiff in the estate being merely a contingent interest, and it being necessary that the foundation of any suit by him against the widow with reference to her husband's estate should be either that her acts were such as to interfere with his interest in an unauthorized manner, or that her conduct amounted to waste of the estate.

Semble: had the plaint contained an allegation that the defendant was wasting the money or by her conduct manifested an intention of wasting it, this would have given rise to a cause of action to restrain her from waste, and possibly in a suit founded on such cause of action, if the allegation were proved, such directions might be given as to the custody and investment of the money as to protect it from waste. MUSSAMMAT PRAB DEVI *v.* HARKISHEN DAS. **47 P R 1884**

79. *Suit by worshippers at Hindu temple to set aside improper alienation of property belonging to the temple—Act XX of* 1863.

Plaintiffs, who were residents in the mohalla in which the temple in dispute was situate and supporters of the worship, sued to set aside an improper alienation by the defendants of certain property belonging to the temple.

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Held, that the suit was maintainable, the plaintiffs being persons beneficially interested in the maintenance of the worship, and that there was no reason for holding that a suit, which did not relate to property which could have come under the control of Government under Regulation XIX of 1810, and Act XX of 1863, must be brought under the provisions of the latter Act. or that, apart from that Act, the plaintiffs could have no right to sue. *Wullee Oola* v. *Kurreem Bukhsh* (No. 81 *P. R.* 1869), cited. SUKH RAM DAS *v.* SUNDAR MAL. **75 P R 1884**

80. *Civil Procedure Code (Act XIV of* 1882), *section* 258—*Suit to recover money paid in satisfaction of decree, but not certified to the Court by the decree-holder.*

Held, by the Full Bench, that the language of the last clause of section 258 of the Civil Procedure Code does not exclude a suit to recover the money paid to a decree-holder and not applied in satisfaction of the decree, because he failed to certify the payment to the Court whose duty it was to execute the decree, as the words "any Court" in the above clause are to be construed as restricted to the Court executing the decree, and the Courts having jursidiction over the execution-proceedings as such. *Karm Singh* v. *Amin Chand* (No. 47 *P. R.* 1881), and *Ala Bakhsh* v. *Muhammad Shah* (No. 11 *P. R.* 1883), overruled. *Mamu* v. *Kalu Mal* (No. 66 *P. R.* 1877), referred to. MULA MAL *v.* RAHMAN. **83 P R 1884**

81. *Suit for cancellation of condition in Wajib-ul-arz—Provision for partition by mutual consent of proprietors or by order of competent authority (ba hukm sarkar).*

Plaintiffs sued to cancel a provision in the *Wajib-ul-arz* of the village, which provided that the kinds of land last mentioned therein should be divisible "either with the mutual " consent of all the proprietors or by order of " competent authority (*ba hukm sarkar*)."

Held, that the suit was not maintainable, as it was not for the Civil Court to decide in the first instance whether the land ought to be divided or not, the "*hukm sarkar*" clearly not being the order of a Civil Court. MEDU *v.* NIKKA. **100 P R 1884**

82. *Civil Procedure Code (Act XIV of* 1882), *sections* 316, 318—*Suit for possession—Delivery of possession in execution-proceedings—Formal possession—Complete transfer of possession.*

Plaintiffs sued to obtain possession of a garden alleging that they had previously been put in possession of it by order of Court under a purchase made by their father in execution of a decree against the defendant, and that they had subsequently been ousted by the defendant. The defendant denied that the plaintiffs had ever obtained possession of the garden. It appeared that the plaintiffs as representatives of the auction-purchaser (their father) had applied to the Court to be put in possession

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under the provisions of the Code of Civil Procedure, and an order to put them in possession was made and the officer of the Court reported that possession had been given.

Held, that the plaintiffs' suit would lie; that assuming the possession given in the execution proceedings was only formal, it was sufficient to perfect the title which the plaintiffs' father acquired by purchase at the auction sale in execution of decree, and must, as against the defendant, be taken to have operated as a complete transfer of the possession to the plaintiffs. KARAM BAKSH *v.* NAND LAL.

103 P R 1884

83. *Civil Procedure Code (Act XIV of 1882), section 11—Cause of action—Suit brought in British territory on liability contracted in foreign territory.*

Held, that an alleged liability contracted in foreign territory can form the basis of an action brought against a British subject in a district in which he resides at the time when the suit is brought, provided that the law of the country where the transaction took place between the plaintiff and the defendant recognized it as a transaction attaching liability by the latter to the former, and provided it be not opposed to morality or the law of British India. HARI SINGH *v.* TUCKER. **4 P R 1885**

84. *Suit by worshippers at shrine to set aside mortgage by Puj of property belonging to the shrine.*

A suit brought by certain Bhabras of Jagraon to have a mortgage by the Puj of property said to belong to a religious institution set aside, *held* to be maintainable, it being found that the plaintiffs were worshippers at the shrine, and therefore had an interest in seeing that the property which ought to be used for its due support was not diverted to private objects. *Sukh Ram Das* v. *Sundar Mal* (*No.* 75 *P R* 1884), followed. RAM PARTAB *v.* KALU MAL.

27 P R 1885

85. *Suit for cancellation of mortgage—Covenant not to alienate.*

Plaintiff sued for the cancellation of a mortgage executed by one of the defendants in favour of the other, in contravention of a covenant made by the mortgagor with the plaintiff, by which he bound himself not to alienate the property by sale or mortgage elsewhere, until he had first satisfied the mortgage debt due to the plaintiff.

Held, that the suit as laid was not maintainable, as the later lien created by the mortgagor did not affect injuriously or encroach upon the rights of the plaintiff as prior mortgagee, who had therefore no ground for suing for a declaration that the lien was invalid. *Faiz Muhammad Jan v. Kazi Muhammad Amir Jan* (No. 10 *P. R.* 1879), referred to. CHUNI LAL *v.* BADAR MAL.

2 P R 1886

86. *Cause of action—Suit against representative of deceased agent for account.*

Plaintiff sued on the allegation that one S. M. who was his agent, and as such agent had property of his (plaintiff's) for which he was accountable, died on the 24th Decem-

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ber 1880 without accounting: that the balance on that date in plaintiff's favour was estimated at Rs. 3,700; and that the defendant was the son, and in possession of the property of the deceased S. M. The plaintiff also desired that an account might be taken of the amount recoverable by him, and a decree be made for that amount in his favour.

Held, that the plaint disclosed a cause of action against the defendant, and further, that plaintiff was entitled to have the account taken and to have a decree for the sum found to be the balance due upon the account between him and S. M. as it stood upon the day of his death. SETH CHAND MAL *v.* KALIAN MAL. **96 P R 1886**

87. *Cause of action—Suit by Insolvency Court or Official Assignee for declaration of right to an unexecuted decree obtained by Insolvent—*Locus standi *of plaintiff—Duty of Court to attach property of Insolvent outside the jurisdiction.*

A suit brought either by an Insolvency Court through its official assignee, or (as it was contended) by the Official Assignee, to have it declared that a decree obtained by an insolvent, which was at present unexecuted, was the property of the Insolvency Court, *held* not to be maintainable, as in either case the plaintiff had no *locus standi*.

If the suit were regarded as having been brought by the Insolvency Court, or by the said Court through the Official Assignee, it would not lie, as the Court was not the legal owner of the decree as a trustee for the Assignee.

If the Official Assignee were regarded as plaintiff, still the suit would not lie, as the rules made under Act IV of 1872 (*vide* Rules 10 and 15) clearly contemplate that the Court should attach the property of an insolvent not within its own jurisdiction, and not that it should come either itself or by its Receiver to the Court as a suitor to be declared a decree-holder. KIDAR NATH *v.* OMAN PERSHAD. **118 P R 1886**

88. *Husband's right to maintain a suit in his own name for slanderous imputations against his wife—Special damage.*

Held, that there is no rule of law in force in India which prevents a husband suing in his own name for damages for a slanderous imputation against his wife's chastity or modesty, which has produced no special and consequential damage to him; and that an imputation of this kind when published with such particularity and precision, that having regard to time and place, it may well create a reasonable apprehension in the mind of the husband that his reputation is injured and thus inflict on him the pain consequent on such a belief, is actionable *per se*. AJUDHIA PARSHAD *v.* SHIBBU MAL. **27 P R 1887**

89. *Cause of action—Suit by plaintiff on allegation that defendant being the agent of third parties received certain money from plaintiff which he omitted to pay over to his principals—Obligation as between debtor and the agent of the creditor that latter should pay over money received to his principal—Discharge of debtor by payment to agent of creditor.*

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H. and J., through their agent P., sold certain sleepers to one N. who was in the transaction an agent for his brother, K. N. paid P. the price of the sleepers, but subsequently H. sued K. for the price of the same sleepers, and K. having denied the purchase, a decree was made against him for the amount claimed. This amount was paid into Court by N. to satisfy the decree against K., and N. then sued P. to recover the amount of the decree with interest.

Held, that the suit was not maintainable. All that could be alleged against the defendant was that he being the agent of H. and J. received certain monies from the plaintiff, which he did not pay over to his principals whereby the plaintiff was damaged. There was no allegation of an express contract of the defendant with the plaintiff to pay the money to his principals, and in the absence of an express contract, there is no obligation as between the person who pays a debt and the agent of the creditor, that the latter shall pay the monies received to his principal. Payment to an agent authorized to receive payment of a debt is payment to the principal creditor, and discharges the debtor: thereafter the disposal of the monies received by the agent is a matter in which, in the absence of express contract, the agent is responsible to his principal only. NAGAR MAL *v.* PIRBHU DIAL. **57 P R 1887**

90. *Suit by minors to set aside decree—*Bona fides *of previous guardian* ad litem*—Cause of action.*

A suit brought by certain minors to set aside a decree passed against them, in which it appeared from the plaint that the plaintiffs were impugning the *bona fides* of the person who had assumed to represent them in the previous litigation, *held*, to be *prima facie* maintainable, and one in which the Court was not justified in refusing to go into the question whether the transaction impeached by the plaintiffs could be upheld against them, subject to any defence by the defendants not based upon the mere form of the suit. GHULAM JILANI *v.* YUSAF SHAH.

72 P R 1887

91. *Partition of joint property—Suit for partition of a portion only of the ancestral property—Right to maintain such suit without assent of defendant.*

If a sharer in joint property chooses to select a portion of the joint property for partition, and sue for partition of that alone, his suit for partition of such portion cannot proceed without the assent or acquiescence of the defendant. If the latter object, the plaintiff must either amend with the leave of the Court so as to include the whole of the joint property or such less portion as the parties agree to divide, or submit to have his suit dismissed. SHADI *v.* SAINDITTA. **77 P R 1887**

92. *Suit to establish right to property released from attachment—Objection by a person not a party to the suit—Civil Procedure Code, sections* 244—280 *and* 283.

Plaintiff, a decree-holder against whom an order for release of certain property from attachment had been passed under section

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280, Civil Procedure Code, on the objection of a person not a party to the suit, sued to establish his right to such property. *Held*, that the suit lay, and that no appeal lay under section 244, as the property was released on the objection of a person not a party to the suit. DEVI DITTA *v.* MIRAN BAKHSH.

63 P R 1889

93. *Suit to contest order under section 133, Criminal Procedure Code—Removal of nuisance.*

In a suit to establish plaintiff's right to close a way by building two walls across it, at either end, it appeared that defendant had obtained an order from the Criminal Court, under section 133 of the Criminal Procedure Code, for the demolition of the walls and the continuance of the way, and that the present suit therefore called in question that order.

Held, that the suit was barred by the penultimate clause of section 133 of the Criminal Procedure Code. KHAIR-UD-DIN *v.* KARAM BAKHSH. **94 P R 1889**

94. *Suit for damages caused by a Civil action.*

Held, that a suit for damages arising out of a Civil action, brought maliciously and without reasonable or probable cause, does not lie.

Quartz Hill Gold Mining Company v. *Eyre* 11 *Q. B. D.* 674.

I. L. R. I Bom. 467 ; 14 *P. R.* 1886, considered. ABDUL SAMAD KHAN *v.* RAHMATULLA KHAN. **162 P R 1889**

95. *Criminal Procedure Code*, 1882, *sections* 133 *and* 137—*Public place—Right to sue for declaration of rights in Civil Court.*

Notwithstanding the words in section 133, Criminal Procedure Code, 1882 : " No order duly made by a Magistrate under this section shall be called in question in any Civil Court," it is open to a person who claims to be the sole proprietor of land, with reference to which a Magistrate has made a conditional order under the said section treating it as a " public place," which conditional order has, in due course of law, been made absolute under section 137 of the Code, to sue the opposite party in the Civil Court for a declaration of his rights in such land.

No. 94 *P. R.* 1889, overruled. MEGHA AND JASSA *v.* SHADI. **34 P R 1892 F. B.**

96. *Right to sue—Suit to contest alienation on ground of relationship—Failure to prove allegations—Enquiry as to plaintiffs' right as ultimate heirs.*

The plaintiffs sued on the allegation that they were collateral heirs of S. S. in the fifth degree. The lower Appellate Court while agreeing with the Court of first instance that the plaintiffs had failed to establish any definite relationship to S. S. remanded the suit for an inquiry as to whether plaintiffs were not entitled to sue as the ultimate heirs, being members of the same *got* as S. S. and therefore presumably descended from a common ancestor, and also being proprietors in the same division of the village. Ultimately, it was decided that the plaintiffs

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could sue as being of the same *got* and patti as S. S.

Held that the decree of the lower Appellate Court must be reversed. No distinct relationship to S. S. and no custom entitling them to sue upon the grounds set up on their behalf by the Appellate Court was established by the plaintiffs.

No. 78 *P. R.* 1888 referred to and distinguished. MUHAMMAD RAFI *v.* KHAZAN SINGH. **68 P R 1892**

97. *Indian Limitation Act*, 1877, *Schedule II, articles* 97 *and* 115—*Suit to recover amount paid out of Court in execution of decree.*

The defendant, K. L., obtained a decree against plaintiff for Rs. 2,347, and employed the other defendant K. R. to execute the decree as his agent under a formal power of attorney.

The plaintiff in the present suit alleged a payment of Rs. 900 in cash to the agent on 3rd February 1885.

On 2nd November 1887, execution of the decree was sued out without credit being given for the Rs. 900, and on 28th February 1888 K. L. denied the receipt of the money through his agent and declined to give credit for the amount.

On 22nd April 1889, the plaintiff (in the present suit) sued to recover the Rs 900 alleged to have been paid.

Held, that the suit would lie and was governed either by article 97 or 115, Schedule II of the Indian Limitation Act, 1877, and was within time. GANPAT *v.* KIRPA RAM. **79 P R 1892**

98. *Right to sue—Habitual worshipper at mosque—Ejectment of trespasser.*

In a suit by one who was a habitual worshipper at a certain Muhammadan mosque, of which he was also a neighbour and a supporter or well-wisher, for the ejectment of the defendant from certain land alleged to be attached to the mosque and to have been unlawfully encroached upon, the Divisional Judge dismissed the plaintiff's suit holding that he was not competent to maintain it.

Held, that the suit would lie. Every Muhammadan who has a right to use a mosque is competent to maintain a suit against any one who interferes with the exercise of his such right to use : and by the same analogy every Muhammadan has a right to maintain a suit against persons who commit an injury upon property which has been devoted to the support of a mosque. MUHAMMAD UMAR *v.* RAM CHAND. **87 P R 1892**

99. *Certificate of sale—Admissible in evidence without registration—Right to sue—Omission by auction purchaser to obtain delivery of immovable property under section* 318, *Civil Procedure Code*

A certificate of sale granted in December 1880, under section 316, Civil Procedure Code, to a purchaser of immovable property at an execution sale, but not registered, *held* to be admissible in evidence, when tendered in 1891, under clause (*o*) added to section 17 of the Registration Act, 1877, by Act VII

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of 1888, by virtue of the provision in section 65 of the amending Act.

Held, further, that an auction-purchaser (not a party to the original suit) who has taken no action under section 318, Civil Procedure Code, to recover possession of the property sold to him from the judgment-debtor, is not thereby debarred from maintaining a regular suit for possession of the property, as the two remedies are concurrent.

The opinion on this question expressed in No. 58 *P. R.* 1888, not followed. MUSSAMMAT HAR DEVI *v.* RAM JIWAN. **14 P R 1893**

100. *Cause of action—Alienation by sonless proprietor—Starting point of limitation—Limitation Act (XV of* 1877), *section* 3, *and 2nd Schedule, articles* 140, 142 *and* 144 —*Plaintiff—" Right to sue."*

Plaintiffs, who were the collateral heirs of a sonless proprietor whose power of disposition of ancestral land was liable to be controlled by his heirs in accordance with the customary law of the Province, sued, within twelve years of the death of the said proprietor, for possession of his ancestral land which had been in the possession of strangers for more than twelve years before suit under a gift created by the said deceased proprietor. The question referred to the Full Bench was whether the suit was within limitation.

Held, overruling Nos. 10 *P. R.* 1890 and 141 of 1892, that the suit was governed by article 144 of the 2nd Schedule of the Limitation Act, 1887, and was within time, inasmuch as it was brought within twelve years of the date when the defendants' possession became adverse to the plaintiff, such date being the date of the death of the donor and no earlier. RODA *v.* HARNAM.

18 P R 1895 F. B.

101. *Hindu Law—Alienation by Hindu widow—Right of collaterals to question such alienation in presence of daughters and their sons—Collusion.*

Held, that where the daughters and their sons are held to be the heirs of a deceased male proprietor, the collaterals cannot maintain their action unless they can prove that the abstention of daughters and their sons, who are heirs, were in collusion with the widow, or did not sue for some improper and insufficient reasons. WISHAN DAS *v.* THAKAR DAS. **119 P R 1901**

102. *Relinquishment—Surrender of her life interest by widow of a part of her estate in favour of next reversioner—Suit by reversioner in lifetime of widow—Right to sue.*

N. died possessed of certain immovable properties, leaving a widow B. who succeeded to her husband's estate, including a mortgagor's interest in the disputed land which was mortgaged by her husband to the defendants during his lifetime for twenty years. The widow relinquished her rights in the mortgaged property in favor of the plaintiffs, who, as the next reversioners, brought the present suit for possession, alleging that the title to possession had accrued in consequence of the widow's act and

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that the mortgage was without consideration or necessity.

Held, that the suit was not maintainable in the lifetime of the widow. The widow was competent to relinquish her whole estate, and thereby to accelerate the succession of the plaintiffs to the property left by her husband, but that there could not be a valid renunciation of a part of the estate which could give rise to a right of succession in the reversioners to that part.

Sher Muhammad v. *Phula* (9 *P. R.* 1899), distinguished, *Behari Lal* v. *Madho Lal* (*I. L. R. XIX Calc.* 236), *Marudamathu Nandan* v. *Srinivasa Pillai* (*I. L. R. XXI Mad.* 128), *Nobo Kishore* v. *Hira Nath* (*I. L. R. X Calc.* 1102), and *Hem Chander* v. *Sarnamoyi Debi* (*I. L. R. XXII Calc.* 354), referred to. WAZIR CHAND AND OTHERS *v.* MAKHU AND OTHERS. **17 P R 1902**

103. *Suit by a sharer for possession of a portion only of the joint property—Right to maintain such suit.*

Held, that a suit by a sharer for joint possession of his share in a portion of the joint undivided estate is maintainable, and cannot be defeated on the ground that he has not included the entire joint property in his claim. SURA SINGH *v.* SANT SINGH **43 P R 1906**

104. *Suit for partnership debt—Suit on a contract entered into with one partner—Right of such partner to sue alone—Contract Act*, 1872, *sections* 44, 45.

Held, that a partner with whom personally a contract has been made is competent to maintain a suit upon that contract in his own name without joining his co-partners as plaintiffs. MEHR SINGH *v.* CHELA RAM. **127 P R 1906**

105. *Transfer of instrument not negotiable by endorsement—Competency of holder to maintain action against maker—Negotiable Instruments Act*, 1881, *sections* 4, 13.

Held, that a promissory note in the following form:—

> "On demand I promise to pay Mr. De Rozario Rs. 600 only for value received"

was not a negotiable instrument and could not be transferred by endorsement to a third party and consequently the holder to whom it had been transferred by a simple endorsement was not entitled to sue the maker upon it. PARFITT *v.* CHAIN SUKH. **144 P R 1906**

106. *Alienation of reversionary rights—Power of a reversioner out of possession to assign his interest after devolution of inheritance—Right of assignee to sue for possession.*

Held, that a reversioner out of possession of a childless male proprietor can transfer his interests to a stranger after devolution of inheritance and the assignee is entitled to recover possession of the property and contest the validity of the title of the person in possession subject to the same rules which could have been enforced by the assignor.

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Jhoki Ram v. *Malik Kadir Bakhsh* (12 *P. R.* 1894), *Achal Ram* v. *Kazim Husain Khan* (*I. L. R. XXVII All.* 271, *P. C.*), *Tota* v. *Abdulla Khan* (66 *P. R.* 1897), and *Mouladad* v. *Ram Gopal* (22 *P. R.* 1900), referred to. SHER SINGH *v.* SIDHU. **11 P R 1907**

107. *Agreement to refer to arbitration filed in Court—Award of arbitrators set aside as void—Right to institute regular suit to enforce such award.*

Held, that wherein proceedings taken under section 523 of the Code of Civil Procedure an award is declared to be void by the Court conducting such proceedings, no regular suit to enforce such an award will lie. MIRAN BAKHSH *v.* CHIRAGH DIN. **19 P R 1907**

108. *Religious institution*—Mahant—*Suit relating to appointment and removal of—Right to sue without obtaining sanction—Civil Procedure Code*, 1882, *section* 539.

Held, that a suit for the removal of the incumbent *mahant* of a *dharmsala* who has misbehaved as *mahant* and misused the funds of the institution and for the appointment of the plaintiff in his place falls within the scope of section 539 of the Code of Civil Procedure and is not maintainable without obtaining previous sanction of the Collector to the institution of such suit. DALIP SINGH *v.* ISHER SINGH. **78 P R 1907**

109. *Minor—Settlement on behalf of a Muhammadan minor by his brothers—Competency of minor to repudiate through a next friend such settlement without restoring other party to position he occupied at time of arrangement—Maintainability of suit.*

Held, that no suit can be maintained on behalf of a minor to set aside a settlement which has been made on his behalf by his brother during his minority and had been acted upon by the other party thereto, even on the ground that under Muhammadan Law the brothers had no power to contract on behalf of their minor brother, without first restoring that party to the position which he occupied at the time the settlement was made. NUR MUHAMMAD *v.* AIMNA. **91 P R 1907**

110. In matters of alienation a widow in possession of self-acquired immovable property of her husband is subject to the same restrictions as if the property were ancestral and the existence of a daughter does not preclude a near reversioner, such as a first cousin, from contesting an alienation effected by such a widow. MUHAMMAD UMAR *v.* ABDUL KARIM. **103 P R 1907**

111. *Person carrying on business for parties out of jurisdiction—Recognised Agent—Agent without special authority cannot sue on contract entered into by him on behalf of his principal—Civil Procedure Code*, 1882, *sections* 37, 51.

Held, that a manager of a branch office of an export agency carrying on business in the name of the owners of the firm resident in England, under the instructions

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of a Chief Manager, cannot be regarded a recognized agent of the firm within the meaning of section 37 of the Code of Civil Procedure, and that, in the absence of a special authority on this behalf, he cannot either subscribe or verify a plaint or sue for the enforcement of a contract entered into by him on behalf of his principals. FATEH DIN *v.* RALLI. **109 P R 1907**

112. *Consent to action against public charities—Court cannot entertain suit asking reliefs not included in the consent—Civil Procedure Code*, 1882, *section* 539.

Held, that the provisions of section 539 of the Code of Civil Procedure are express and are to be strictly adhered to, and a Court cannot entertain an action unless it is limited to matters included in the sanction of the Collector.

An action for the removal of a *Mahant* and that the public be given authority to make a new appointment cannot, therefore, be entertained where the sanction granted was to remove the present *Mahant* and to appoint a new *Mahant* in his place, as the subject of the suit was for appointment by the public, whereas the Collector's consent was for an appointment by the Court. GANGA RAM *v.* RALLA SINGH. **110 P R 1907**

113. *Son's right to claim pre-emption on death of his father on a cause of action accrued to the latter in his lifetime.*

Held, by the Full Bench that a right to sue for pre-emption upon a case of action which accrued to a person in his lifetime passes at his death to his successor who inherits the property through which the right had accrued. FAKIR ALI SHAH *v.* RAM KISHEN. **133 P R 1907 F. B.**

114. *Right of suit—Party without right or interest in subject matter—Maintainability of suit by—Unnecessary trial of issues concerning private affairs of parties.*

A testator governed by Hindu Law bequeathed all his real and personal estate in the absence of a son to his widow for life, and after her death to her daughter's son, and in default of such issue it was to revert absolutely to the first taker and expressly desired that neither his brother nor any of his family should under any circumstances inherit or interfere. The testator died and left surviving him his widow and a minor daughter. Some five months later the widow announced the birth to her of a posthumous son. Thereupon the brother of the testator sued for a declaration that the alleged newly born child was not the lawful son of the testator.

Held that as by the terms of the will the plaintiff had no due right or interest of any kind in the estate of the testator, he being neither an immediate nor a prospective reversioner, the suit was not maintainable.

In such circumstances the unnecessary trial of issues concerning private affairs of parties should be avoided, and the Courts must

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see that unscrupulous persons in plaintiff's position are not allowed to unnecessarily drag into publicity private matters with which the case is not directly concerned. In the present case there was no occasion for taking evidence on the points whether the boy was a supposititious child, or whether the testator and his wife had the capacity to be get a child.

Rule of construction of Hindu will considered. RALLIA *v.* GOKAL CHAND. **139 P R 1907**

115. *Suit for possession of immovable property by a vendee in actual possession—Right of suit.*

Held, that a person in actual possession of immovable property cannot maintain a suit for possession merely because the nature of his possession is disputed by the defendant. MUNSHI RAM *v.* HAMMI. **61 P R 1908**

116. *Custom—Alienation—Alienation by an adopted son of his adoptive father's property*—Locus standi *of sons born before the adoption of their father to contest alienation.*

Held that sons born before the adoption of their father do not, by the mere reason of his adoption, become members of the agnatic family of the adoptor and have therefore no *locus standi* to contest an alienation made by their father of his adoptive father's property as being made without necessity or consideration. TULSI *v.* RAM RAKHA. **66 P R 1908**

117. A suit by an auction-purchaser against the decree-holder for refund of the purchase-money proportionate to a share in the purchased property of which he has been deprived on a suit by a third party is maintainable in addition to the summary remedy provided for by section 315, Civil Procedure Code, but the right to obtain relief is limited to conditions and circumstances prescribed by that section. GURDIT SINGH *v.* GHANAYA LAL. **114 P R 1908**

118. *Right of a female prospective heir to contest alienation by another female.*

Held, that a female with a right to succeed to the estate held by another female is competent to control the acts of the latter, provided she establishes—

(i) that she is in fact entitled to succeed on the death of the alienor, and

(ii) that the alienor is holding only a limited estate resembling that of a widow,

but she can in no case challenge an alienation by a male proprietor even if he be childless or by a female holding as a full owner on the same tenure as a male proprietor. MAQSUD-UL-NISA *v.* KANIZ ZOHRA. **135 P R 1908**

119. *Minor—Competency of, to sue for breach of his betrothal made by his father—Contract—Damages.*

Held, that a minor is competent to maintain a suit for damages for breach of his betrothal which had been made by his father during his minority. MUHAMMAD OMAR *v.* BUDHA. **3 P R 1909**

RIGHT TO SUE—*concld.*

120. *Betrothal contract—Suit for damages for breach of—Proper person to sue and to be sued.*

Held, that it is competent for the plaintiff, a minor, for whose direct benefit the betrothal contract was effected between his father and the father of the girl, to sue for damages in respect of its breach, and the proper person to be sued is the father of the girl who broke it and not the girl who was no direct party to the contract. NABI BAKHSH *v.* RAHIM BAKHSH. **83 P R 1909**

RISK NOTE.

See RAILWAYS ACT, 1890, SECTION 72. **13 P R 1908**

RIVAL PURCHASERS.

—*Suit for possession by prior purchaser—Defendants pleading* inter alia *a right of pre-emption in the property sold—Validity of such plea.*

See VENDOR AND PURCHASER **32 P R 1884**

RIWAJ-I-AM.

See PRE-EMPTION, 7. CONSTRUCTION OF *Wajib-ul-arz.* **69 P R 1885**

—*Value of entries in.*

See CUSTOM, III. E. ADOPTION OF STRANGERS. **51 P R 1881**

See CUSTOM III. E. OBSERVANCE OF FORMALITIES—WHAT CONSTITUTES ADOPTION. **96 P R 1883** **24 P R 1884**

1. Observation by Plowden, J., as to the weight to be given to the *Riwaj-i-am*, and as to the relevancy, under the Indian Evidence Act, of the entries therein (No. 24 *P. R.* 1884 and No. 86 *P. R.* 1885), referred to. JODHA *v.* MUSSAMMAT JASSAN. **81 P R 1891**

2. An entry in a *Riwaj-i-am* is not satisfactory or even presumptive evidence if no instances in support of its correctness are given. ALLAH DITTA *v.* ALLAH BAKHSH. **89 P R 1900**

3. Entry unsupported by instances in a *Riwaj-i-am* is not sufficient to override the ordinary custom. NIZAM DIN *v.* SHAHAB-UD-DIN. **108 P R 1900**

4. All disputes relating to alluvion and diluvion of land should be decided by giving full effect to the provisions of *Riwaj-i-am* of the village concerned. BANDU KHAN *v.* MUSSAMMAT UMRI. **63 P R 1903**

5. *Effect of entry in* Riwaj-i-am *when unsupported by instances.*

Held, that the rule that an entry in a *Riwaj-i-am* is *prima facie* proof of the existence of an alleged custom is subject to modification if no instances in support of its correctness are forthcoming. INAYAT *v.* HAQNAWAZ KHAN. **90 P R 1908**

6. The mere attestation of a *Riwaj-i-am* by a non-agriculturist who had acquired agricultural land in a village as a means of investment is not *ipso facto* sufficient to prove that in matters of alienation or succession his family residing in a town followed the ordinary customary rules of dominant agricultural tribes. JAMIAT-UL-NISA *v.* HASHMAT-UL-NISA. **124 P R 1908**

RIWAJ-I-AM—*concld.*

7. *Entry in—Unsupported by any instances, not sufficient to discharge* onus *in case of succession dispute between* pattidars *and daughters.*

Held, that an entry in the *Riwaj-i-am* and Record of rights unsupported by any instances is not sufficient to discharge the *onus*. DEVI SINGH *v.* MUSSAMMAT PREMI. **11 P R 1911**

8. *Proof of custom.*

Held, that *Riwaj-i-am* supported by instances is sufficient to establish validity of oral gift in favour of daughter's son whose father lived in donor's house. HARNAM SINGH *v.* LACHMAN SINGH. **16 P R 1911**

9. *Riwaj-i-am* of Sialkot District of 1892 approved of and not that of 1865. RAHIM BAKHSH *v.* NATHA. **23 P R 1911**

10. *Mere entry in—Not supported by instance—Not sufficient to rebut presumption against validity of adoption of daughter's son among Jats.*

Held, that a mere entry in the *Riwaj-i-am* unsupported by instances is insufficient to prove validity of adoption of daughter's son among Jats of the Garhshankar Tahsil, Hoshiarpur District. NATHU *v.* RAHMAN. **44 P R 1911**

11. *Custom—Succession*—Chundawand *or* Pagwand—*Sidhu Musalman Jats,* mauza *Pakhowali,* tehsil *Gurdaspur*—Riwaj-i-am.

Held, that notwithstanding the entry in the *rewaj-i-am* of the Gurdaspur District in favour of the *chundawand* rule, the *onus probandi* that this rule exists among Sidhu Musalman Jats of *mauza* Pakhowali, *tehsil* Gurdaspur, is on the person asserting it, and that he had failed to prove it. IDA *v.* RAHIM BAKHSH. **58 P R 1911**

12. *Custom—will of self-acquired property in favour of some sons to exclusion of another son—validity of, among Arain agriculturists of* tahsil *Kasur, Lahore district*—Riwaj-i-am—onus probandi.

Held, that plaintiff, on whom the *onus probandi* lay, had failed to prove that by custom his father, a Lahore Arain agriculturist, who had become dissatisfied with him and separated from him, giving him his share of the family estate as it then stood, was incompetent to bequeath his remaining estate with its subsequent self-acquired accretions to his other sons. KARAM BAKHSH *v.* CHIRAGH DIN. **66 P R 1911**

13. *Value of entries in new and old* Riwaj-i-am.

Held, that the *Riwaj-i-am* of 1907 persumably represents the custom of 1906 more accurately than a *Riwaj-i-am* 20 or 30 years older. TASA *v.* MUSSAMMAT JATTI. **72 P R 1911**

RULES.

—*Under section* 31, *Punjab Laws Act.*

See INSOLVENCY. **65 P R 1882**

RULES—*concld.*

—Relating to inspection of records—Power of Court to make rule limiting period up to which record of pending case may be inspected.
See INSPECTION OF JUDICIAL RECORDS.
103 P R 1882

RULES AND ORDERS OF CHIEF COURT.
See APPEAL—III. COURSE OF APPEAL.
86 P R 1896
COUNSEL'S FEES. **61 P R 1896**
CUSTODY OF MINOR. **10 P R 1897**
JURISDICTION OF CIVIL OR REVENUE COURTS. **83 P R 1896**

RULES UNDER LAND REVENUE ACT.
See LAMBARDAR. **1 P R 1899 Rev.**
4 P R 1889 Rev.
4 P R 1890 Rev.
16 P R 1890 Rev.
2 P R 1894 Rev.
3 P R 1894 Rev.
5 P R 1894 Rev.
7 P R 1896 Rev.
2 P R 1899 Rev.

S.

SADHS.
See RELIGIOUS INSTITUTIONS.
136 P R 1889
175 P R 1889
37 P R 1891
112 P R 1891

SAJJADA NASHIN.
See RELIGIOUS INSTITUTION.
154 P R 1888

SALARIES, ATTACHMENT OF.
See under ATTACHMENT.
Also CIVIL PROCEDURE CODE, 1908, SECTION 60 (*h*).

SALE.
See CUSTOM I.—ALIENATION.
See VENDOR AND PURCHASER.
A.—IN EXECUTION.
B.—BY NON-PROPRIETORS (OF HOUSES).
C.—OF OCCUPANCY RIGHTS.
D.—BY SONLESS PROPRIETOR.
E.—OF GOODS.
F.—ON APPROVAL.
G.—BY MORTGAGEE, SUIT FOR.
H.—BY WIDOW.
I.—BY HEADS OF RELIGIOUS INSTITUTIONS.
J.—BY GUARDIAN.
K.—SANCTION FOR.
L.—OF REVERSIONER'S RIGHT.
M.—PRE-EMPTION.
N.—MISCELLANEOUS.

A.—IN EXECUTION.

1. *Appeal from order rejecting application to set aside—Omission to implead auction-purchaser as respondent—Effect of such omission.*
See APPEAL—VI. PROCEDURE IN.
188 P R 1882

SALE—*contd.*

A.—IN EXECUTION—*contd.*

2. *Execution of decree—Attachment of immoveable property by one creditor—Claim by another creditor under section 295—Removal of attachment—Assignment for consideration—Effect of assignment on person claiming under section 295—Validity of such assignment—Civil Procedure Code, 1882, sections 274, 276, 295—Transfer of Property Act, 1882, section 53.*
See ATTACHMENT. **81 P R 1908**

3. *Sale in execution of decree without sanction required by the rules made by the Local Government—Such sale void* ab initio.
See CIVIL PROCEDURE CODE, 1908, SECTION 67. **95 P R 1888**

4. *Irregularity in conducting—Suit for compensation—Question for Court executing decree.*
See CIVIL PROCEDURE CODE, 1908, O. XXI, R 78.
14 P R 1886

5. *Suit by plaintiff to establish her proprietary title to the property sold—Cancellation of sale by executing Court after institution of plaintiff's suit—Withdrawal by plaintiff (without permission) from her suit—Subsequent order by appellate Court upholding sale—Right to maintain fresh suit for declaration of title to the property sold.*
See CIVIL PROCEDURE CODE, 1908, O. XXIII, R. 1. **119 P R 1881**

6. *Sale of agricultural land no longer requires sanction of Commissioner since enactment of new Civil Procedure Code, 1908.*
See CIVIL PROCEDURE CODE, 1908, SCHEDULE III.
4 P R 1910 Rev.

7. *Sale of house by non-proprietor—Suit for ejectment of vendee.*
See CUSTOM—I. F. ALIENATION BY NON-PROPRIETOR.
69 P R 1910

8. *Liability of son's interest in ancestral property to.*
See CUSTOM—VIII.—MAINTENANCE AND SUCCESSION. C. SUCCESSION OF SONS AND GRANDSONS.
113 P R 1886

9. *Sale of house-property—Sanction of Commissioner and Chief Court.*
See EXECUTION OF DECREE.
6 P R 1882

10. *Sale of land—Sanction for sale—Procedure—Duty of Deputy Commissioner and Commissioner.*
See EXECUTION OF DECREE.
96 P R 1882

11. *Refund of purchase-money where judgment-debtor has no saleable interest.*
See EXECUTION OF DECREE.
99 P R 1881
157 P R 1834

12 *Refund of purchase money when sale is set aside.*
See EXECUTION OF DECREE.
183 P R 1883
63 P R 1885

SALE—*contd.*

A.—IN EXECUTION—*contd.*

13. *Irregularity in conducting.*
See EXECUTION OF DECREE.
19 P R 1884
96 P R 1895
45 P R 1886

14. *Stay of, on representation of Collector—Procedure.*
SEE EXECUTION OF DECREE.
114 P R 1886

15. *Sale of land in execution of decree—Sanction for sale—Procedure.*
See EXECUTION OF DECREE.
1 P R 1887 Rev.
59 P R 1891

16. *Application for execution of decree—Sale in execution thereof—Application subsequently set aside by Appellate Court on ground that it was time-barred—Effect of such reversal on sale—Suit by auction purchaser, not party to decree, against decree-holder for refund of purchase money.*
See EXECUTION OF DECREE.
49 P R 1894

17. *Application to have sale set aside by reason of defective attachment—Limitation for—*
See EXECUTION OF DECREE.
40 P R 1910

18. *Sale in execution of decree—Undivided family—Mortgage—Decree.*
See HINDU LAW—ALIENATION.
1 P R 1888 P. C.

19. *Priority between decree-holder and other creditors of insolvent.*
See INSOLVENCY. **46 P R 1884**

20. *Sale by Collector at instance of Civil Court—Jurisdiction of Civil Court in execution of decree to confirm such sale.*
See JURISDICTION OF CIVIL OR REVENUE COURTS **83 P R 1896**

21. *Effect of sale of mortgaged property in execution of money decree.*
See MORTGAGE—XII. MERGER.
62 P R 1903

22. *Sale of mortgaged property in execution of decree for instalments due—validity of.*
See MORTGAGE—II. POSSESSION UNDER.
15 P R 1911

23. *Sale of mortgage rights in agricultural land in execution of decree cancelled on application of Deputy Commissioner.*
See PUNJAB ALIENATION OF LAND ACT.
12 P R 1911

24. *Civil Procedure Code, 1882, sections 287, 311—Material irregularity in publishing or conducting a sale—Omission to state the nature of property.*

Where the proclamation issued under the authority of section 287 of the Code of Civil Procedure of an intended sale of a tea garden and building attached thereto gave only the

SALE—*contd.*

A.—IN EXECUTION—*contd.*

khasra numbers of the property and did not specify of what it consisted of, *held* that the omission to state the description of the property and the buildings attached thereto was a material irregularity within the meaning of section 311 of the Code, which would warrant the setting aside of the sale. PEACHEY *v.* JAMNA DAS. **47 P R 1905**

25. *Attachment and sale of immovable property in execution of decree—Private alienation of property after attachment and sale, but prior to confirmation—Confirmation of sale—Title of alienee against the auction purchaser—Suit by the alienee to recover possession from the auction purchaser—Limitation—Limitation Act,* 1877, *Schedule II, article* 12 (*a*).

In the course of certain execution proceedings the property in dispute was attached, and on the 4th December 1899 sold by auction to defendant subject to confirmation. On 7th March 1900, prior to the confirmation, the judgment-debtor paid into Court the amount of the decree and the sale was set aside and attachment withdrawn. Against that order the defendant (auction purchaser) filed an appeal, which having been accepted, the sale was confirmed by the order of the Appellate Court, dated 22nd May 1900. On 26th August 1901 the plaintiff brought a suit for possession of the property against the auction purchaser alleging that he had purchased it from the judgment-debtor on 20th February 1900 and that out of the consideration money paid by him the decree had been paid off. It appeared that no action was taken by the judgment-debtor under section 310 A of the Code of Civil Procedure.

Held, that the private sale of the property to the plaintiff while it was under attachment and in fact had been sold subject to confirmation to the defendant, was void by virtue of the prohibition contained in section 276, Civil Procedure Code, as against the defendant, and further the suit having been brought more than one year after the confirmation of the sale was barred by article 12 (*a*), Schedule II of the Indian Limitation Act.

Moti Lal v. *Karrabuldin* (*I. L. R. XXV Calc.* 179), *Umesh Chunder Roy* v. *Raj Bullubh Sen* (*I. L. R. VIII Calc.* 279), *Dogdu* v. *Panchamsing* (*I. L. R. XVII Bom.* 375), and *Bahuwar* v. *Govind Shankar* (*I. L. R. X Bom.* 588), referred to. NAGINA SINGH *v.* PURRAN CHAND. **11 P R 1906.**

26. *Sale in execution of decree—Material irregularity—Mistake in proclamation as to place of sale—Evidence—Court not limited to irregularities specifically mentioned in the application to set aside sale—Civil Procedure Code,* 1882, *sections* 287, 311.

Where property under attachment had been expressly ordered to be sold on the premises and the proclamation issued under the authority of section 287 of the Civil Procedure Code, advertised the sale to take place at the Court-house, while as a fact it

SALE—*contd.*

A.—IN EXECUTION—*concld.*

was actually conducted on the spot and was found to have been sold for an inadequate price.

Held, that the mistake in the sale proclamation as regards the place of sale was a material irregularity sufficient in itself to justify a Court to set aside the sale under section 311 of the Civil Procedure Code. Such an irregularity even in the absence of any direct evidence on the point might well be presumed to have caused substantial injury by keeping away the bidders, although there may not be direct evidence connecting the irregularity with the inadequacy of price obtained.

Held, also, that an error in sale proclamation might be considered even if it may not be specifically mentioned in the application provided that it is patent on the record and the other side have had an opportunity to rebut it if they had wished to do so. DUNI CHAND *v.* ATMA SINGH. **132 P R 1906**

27. It is illegal for a Court to set aside a sale by auction under a decree and then without further proclamation and a further regular sale to sell the property to the decree-holder (or any other person). BISHAMBAR DAS *v.* UDHO RAM. **25 P R 1907**

28. *Sale in execution of decree—Effect of sale when not set aside either under section* 310 *A. or* 311*—Competency of executing Court to allow time to judgment-debtor to raise amount of decree after such sale—Civil Procedure Code,* 1882, *sections* 305, 310 *A.* 311.

Held, that where immovable property has once been sold in execution of a money decree the executing Court has no authority to allow time to the judgment-debtor to enable him to raise the amount of the decree by a private transfer of the property or otherwise as provided by section 305 of the Code of Civil Procedure; and if such a sale is not set aside either under section 310 A or 311 of the Code the Court has no option but to confirm the sale as provided by section 312. GIRDHARI LAL *v.* BHAGO. **92 P R 1907**

B.—BY NON-PROPRIETORS (OF HOUSES).

See under COMMON LAND.

See CUSTOM—I. F. ALIENATION BY NON-PROPRIETOR.

C.—OF OCCUPANCY RIGHTS.

See CUSTOM—I. I. ALIENATION OF OCCUPANCY RIGHTS.

1. See PUNJAB TENANCY ACT (XXVIII OF 1868), SECTION 34. **30 P R 1881**

2. *Suit for possession on ground that a certain sale was invalid as against plaintiff—Plea by defendant that plaintiffs acquiesced in sale—Acquiescence—Estoppel.*

See ESTOPPEL. **81 P R 1898**

3. *Landlord claiming in one suit cancellation of several sales to different persons.*

See CAUSE OF ACTION—V. MISJOINDER **80 P R 1883**

SALE—*contd.*

D.—BY SONLESS PROPRIETOR.

See CUSTOM,—I. A. ALIENATION BY SONLESS PROPRIETOR.

E.—OF GOODS.

1. *By sample—Vendee's power of rejection of all the goods, in case of entire contract, if some are not equal to sample.*

See CONTRACT ACT, SECTION 112. **79 P R 1888**

2. *To firm represented by minor—Liability of assets of business.*

See MINOR. **25 P R 1886**

3. *Merchant buying goods in a foreign market on behalf of another—Goods ordered according to sample—Difference in goods supplied—Right to rescind contract.*

See PRINCIPAL AND AGENT. **21 P R 1897**

F.—ON APPROVAL.

See CONTRACTS. **28 P R 1886**

G.—BY MORTGAGEE, SUIT FOR.

—Limitation.

See LIMITATION ACT (XV OF 1877), SCHEDULE II, ARTICLE 147. **19 P R 1885**

H.—BY WIDOW.

See CUSTOM I. B.—ALIENATIONS BY WIDOW.

I.—BY HEADS OF RELIGIOUS INSTITUTIONS.

See RELIGIOUS INSTITUTIONS.

J.—BY GUARDIAN.

Sale of minor's property by Guardian.

See CUSTOM—I. G. ALIENATION BY GUARDIAN, *Passim.*

See GUARDIAN. **56 P R 1890**

K.—SANCTION FOR.

—In execution.

See EXECUTION OF DECREE. **6 P R 1882** **96 P R 1882**

L.—OF REVERSIONERS' RIGHT.

See CUSTOM—I. H. ALIENATION OF REVERSIONARY RIGHTS.

1. *Sale of share of residential house by one of four Hindu co-sharers—House occupied by tenant—Right of vendee to joint physical possession.*

See CIVIL PROCEDURE CODE, 1908, O. XXI, R. 35. **16 P R 1898**

2. *Right sold subsequently falling in possession—Validity of sale.*

See SPECIFIC RELIEF ACT, 1877, SECTION 18. **13 P R 1899**

M.—PRE-EMPTION.

See PRE-EMPTION, *Passim.*

1. *Pre-emption—Fraudulent concealment of sale—Presumption as to knowledge of facts.*

See LIMITATION ACT, 1877, SECTION 18, *Passim.*

See LIMITATION ACT, 1877, ARTICLE 10. **30 P R 1893**

2. Benami *sale to escape pre-emption.* PRE-EMPTION—14. LOSS OR WAIVER OF RIGHT. **19 P R 1898**

SALE—*contd.*

M.—PRE-EMPTION—*concld.*

3. *Sale certificate—Title of auction purchaser who has not obtained a certificate—Right of pre-emptor to maintain suit before a certificate has been granted.*

See PRE-EMPTION—1. GENERAL.
9 P R 1903

4. *Deed of sale of right of pre-emption—Registration—Admissibility in evidence of unregistered deed—Right to or in immovable property.*

See REGISTRATION ACT, 1877, SECTION 17. **136 P R 1894**

5. Assignment of immovable property for money plus favour and past services is a sale and gives rise to the right of pre-emption. KISHAN SINGH *v.* JAI KISHAN DAS.
2 P R 1903

6. *Custom—Alienation—Sale by limited owner—Failure to prove payment of the whole of the consideration—Maintainability of such sale.*

Held, that a sale of immovable property by a limited owner ought not to be maintained where a considerable fraction of the whole consideration is found to have been previously inserted to keep off pre-emption and formed no part of the price actually paid.

The Courts should in such a case lean to the side of strictness and refuse to allow a party in a suit to take advantage of his own fraud. KESAR *v.* SUNDAR SINGH.
27 P R 1909

N.—MISCELLANEOUS.

1. *Sale to three persons—Shares of vendors specified distinctly, but purchase money for all shares mentioned in lump—Joinder of parties—Indivisible contract.*

See CONTRACT.
66 P R 1896

2. *Suit for enhancement of rent—Plea that landlord had sold the land to defendants—Written agreement to sell, reciting payment of purchase money—Consideration only partly paid.*

See ENHANCEMENT.
7 P R 1897 Rev.

3. *Sale of ancestral property in satisfaction of father's debt—Liability of son's shares.*

See HINDU LAW, ALIENATION.
87 P R 1887

4. *Sale or mortgage—Construction.*

See MORTGAGE—CONSTRUCTION.
131 P R 1894

See PRE-EMPTION—CONSTRUCTION OF TRANSFERS, *Passim.*

5. *Suit to contest validity of sale—Right of plaintiffs to attack mortgage made in favour of vendee more than 12 years before suit—Merger of mortgage in sale—Limitation Act, 1877.*

See MORTGAGE, MERGER. **71 P R 1898**

SALE—*contd.*

N.—MISCELLANEOUS—*contd.*

6. *Assignment of immovable property by husband to wife in lieu of her dower.*

See PRE-EMPTION—CONSTRUCTION OF TRANSFER. **88 P R 1901**

7. *Sale completed by execution of decree for specific performance of contract, not subject to pre-emption.*

See PRE-EMPTION—1. GENERAL.
40 P R 1911

8. *Agreement granting occupancy right, not a sale for purposes of pre-emption.*

See PRE-EMPTION—13. CONSTRUCTION OF TRANSFERS. **37 P R 1911**

9. *Sale of equity of redemption.*

See REGISTRATION ACT, 1877, SECTION 48. **10 P R 1900**

LIMITATION ACT, 1877, SCHEDULE II, ARTICLE 10. **160 P R 1889**

10. *House and land sold by one deed of sale—Suit in respect of house—Subsequent suit in respect of land—Finding in first suit that deed of sale was void, effect of, as regards subsequent suit.*

See RES JUDICATA. **100 P R 1898**

11. *Sale made in contravention of terms of a compromise—Restriction on alienor's powers of alienation unknown to alienee—Omission by lower Court to frame issue as to alienee's knowledge of such restriction—Material irregularity.*

See REVISION. **19 P R 1894**

12. *Suit by auction-purchaser to recover purchase-money—Maintainability of such suit—Civil Procedure Code, 1882, section 315.*

See RIGHT TO SUE. **114 P R 1908**

13. *Construction of document—Sale or contract to sell—Bulk of purchase money allowed to remain in deposit until title was assured.*

The deed of sale in question provided as follows:—"I have taken Rs 300 in cash "from the vendee, and have allowed Rs. "2,800 to remain in trust with the vendee "on the condition that at the next Settlement, when *dakhil kharij* shall have been "completely effected and carried out in "the official papers on my behalf in favour "of the said vendee, then I will recover "the said deposited amount from the vendee. "Till recovery of the deposited amount a "profit of Rs. 60 *per annum* will be taken "from the vendee year by year at the "*rabi* harvest. If *dakhil kharij* is not fully "sanctioned in favour of the vendee at "the time of Settlement, I will pay to "the vendee out of whatever compensation "is received from Government for the "sinking of wells, &c., on account of my "proprietorship, the said Rs. 300 which "I have now taken in cash, together with "any other amount which the vendee may "spend out of his own pocket in improving "and cultivating the land sold, or in "repairing and putting in order the wells, "&c., or at the next Settlement as the "occasion may arise, together with interest

SALE—*contd.*

N.—MISCELLANEOUS—*contd.*

"at the rate of Re. 1-9-0 *per cent. per mensem*, if the compensation is not received "from Government, I will pay the money "out of my other property."

Held, that upon its proper construction the deed was a complete conveyance of the vendor's interest in the land and, that upon its execution and registration the plaintiff, vendee, became vested with the title which the vendor had in the property sold, the non-payment at the time of sale of the bulk of the purchase money making no difference in this respect.

Held, further, that inasmuch as it was understood that the title was defective and liable to be defeated by the action of Government certain precautions were taken to protect the vendee from loss, but that the provision accordingly made for refunding the portion of the purchase money and payment of compensation if the title could not be assured as agreed upon, was for the benefit of the vendee alone and could not be taken advantage of by the vendor in order to avoid the sale. KIRPAL SINGH *v.* MUHAMMAD HUSSAIN.
77 P R 1899

14. *Assignment of immovable property by husband to wife in lieu of dower—Sale.*

A transfer of immovable property by a husband to his wife in consideration of her dower must be regarded as a gift by the husband to the wife and not a sale subject to pre-emption. GHULAM RAZA *v.* SARDAR KHAN. **86 P R 1902**

15. *Sale—Suit by vendor for declaration of right—Non-payment of purchase-money—Sale complete without payment of purchase money—Burden of proof.*

Where a plaintiff, who had professed to make over as sold before a Revenue Officer certain property which had been previously mortgaged to the defendant, in consequence of which action on his part mutation had been effected, subsequently filed a suit for a declaration of right disputing the genuineness of the mutation proceedings. *Held*, that the plaintiff was bound to establish his case affirmatively, the *onus probandi* being upon him, either by proving that he was personated before the Revenue Officer or that in fact he never admitted the transaction before him.

Held, also, that the mere fact of non-payment of purchase money would not annul a sale if it had already been made. Sale of immovable property for an ascertained price, part payment of which had taken place or been deferred by arrangement, is complete and cannot be avoided by the parties on account of the alleged non-payment of the purchase money.

Abbas Ali Shah v. *Pir Bakhsh* (132 *P. R.* 1879), cited. GHARIB KHAN *v.* SIKANDAR.
91 P R 1902

16. *Sale—Non-payment of consideration—intention of parties whether sale shall be com-*

SALE—*concld.*

N.—MISCELLANEOUS—*concld.*

plete without payment of consideration or not —relevancy of subsequent conduct of parties in ascertaining their intention.

Held, that, although title in property sold can pass without payment of consideration, no title will pass where there is proof of an intention in both the parties that ownership should not pass until payment of consideration, and the subsequent conduct of the parties to the sale is relevant in order to shew whether the parties intended ownership to pass independently of the payment of consideration or not. **55 P R 1911**

17. *Of property in execution, not admissible, unless conditions laid down in section 26, Civil Procedure Code, have been strictly complied with.*

Held, that no sale can be ordered under section 260, Civil Procedure Code, 1882, unless the conditions laid down in that section have been strictly complied with, *viz.*, (*a*) a valid original attachment, (*b*) application *within* one year of that attachment by decree-holder for sale, and (*c*) lapse of one year from date of attachment, and that consequently no such order could be made when the decree-holder applied to have the property sold more than a year after its attachment. BADRI PARSHAD *v.* FAKIRA. **69 P R 1911**

SAMPLES.

—*Sale of goods by.*

See CONTRACT ACT, SECTION 112. **79 P R 1883**

PRINCIPAL AND AGENT. **21 P R 1897**

SANCTION OF COMMISSIONER.

—*Since the enactment of Civil Procedure Code, 1908, the sanction of the Commissioner of the division is no longer required as a condition precedent to the sale in execution of decree of land applied to agricultural purposes.*

See CIVIL PROCEDURE CODE, 1908, SCHEDULE III. **4 P R 1910 Rev.**

SANCTION TO AGREEMENT FOR SATISFACTION OF DECREE.

—*Decree passed by Judicial Assistant Commissioner— Jurisdiction of District Judge to sanction agreement after Judicial Assistant Commissioner's Court has ceased to exist.*

See CIVIL PROCEDURE CODE, 1882, SECTION 257 A. **25 P R 1887**

SANKALP.

See CUSTOM—I. A. ALIENATION BY MALE PROPRIETOR, 4. ALIENATION FOR RELIGIOUS PURPOSES. **23 P R 1885** **76 P R 1885** **11 P R 1890**

SATISFACTION OF CLAIM.

See CIVIL PROCEDURE CODE, 1908, O. XXIII, R. 3. **12 P R 1867**

SATISFACTION OF DECREE UNCERTIFIED.

See CIVIL PROCEDURE CODE, 1882, SECTION 257 A.

SCHOOL, POWER OF GOVERNORS TO DISMISS MASTER OF.

See CONTRACTS. **85 P R 1874**

SEAL.

—*Signature of acknowledgment by affixing.*

See LIMITATION ACT, 1859, SECTION 4. **10 P R 1873**

See LIMITATION ACT, 1871, SCHEDULE II, ARTICLE 148. **93 P R 1877**

See LIMITATION ACT. 1877, SECTION 19. **185 P R 1883**

SECOND APPEAL.

See APPEAL, VIII—SECOND.

1. *Power to dismiss, for default, at preliminary hearing.*

See APPEAL VIII. SECOND. **76 P R 1882**

2. *Objections first raised in.*

See APPEAL VI. PROCEDURE IN. **74 P R 1882**

See APPELLATE COURT, POWERS AND DUTIES OF. **62 P R 1883**

See CIVIL PROCEDURE CODE, 1908 O. XXVI, R. 10. **161 P R 1882**

See CIVIL PROCEDURE CODE, 1908, O. XXXII, R. 1. **125 P R 1882**

See JOINDER OF PARTIES. **151 P R 1883**

See CAUSE OF ACTION, IV. MISCELLANEOUS. **37 P R 1885**

3. *Ground for.*

See CIVIL PROCEDURE CODE, 1908, SECTION 86. **51 P R 1886**

See DEFAMATION. **140 P R 1882** **5 P R 1882**

4. See SMALL CAUSE COURT, JURISDICTION OF— **8 P R 1885** **5 P R 1886**

5. *Review of judgment passed on, on ground of discovery of new evidence.*

See REVIEW OF JUDGMENT. **145 P R 1882**

SECONDARY EVIDENCE.

See EVIDENCE. **49 P R 1882**

EVIDENCE ACT, SECTION 65.

—*Admissibility of.*

See EVIDENCE ACT, 1872, SECTION 90. **93 P R 1910**

SECRETARY OF STATE.

—*Institution of suit on behalf of—Competency of Collector to institute without power-of-attorney from Financial Commissioner.*

See CIVIL PROCEDURE CODE, 1908, O. III, R. 2. **84 P R 1905**

SECUNDUM ALLEGATA ET PROBATA.

See PLEADINGS. **32 P R 1876**

SECURITY.

1. *Appeal to Privy Council—Extension of time for giving security.*

See APPEAL X.—TO PRIVY COUNCIL. **87 P R 1908**

2. *Extension of time for the deposit of security for respondent's costs in appeal to Privy Council—sufficient ground for—*

See CIVIL PROCEDURE CODE, 1908, O. XLV, R. 7, **44 P R 1910 P. C.**

3. *Failure of guardian to furnish.*

See GUARDIAN. **7 P R 1898**

4. *Guardian—Appointment of testamentary guardian by the Court—Obligation of such guardian to furnish security.*

See GUARDIAN AND WARDS ACT, 1890, SECTION 34. **99 P R 1908**

SECURITY FOR SATISFACTION OF DECREE.

Power of Appellate Court to order, before re-hearing of appeal decided ex-parte.

1. See APPELLATE COURT, POWER OF. **70 P R 1885**

2. See EXECUTION OF DECREE. **84 P R 1885**

SELF-ACQUIRED PROPERTY.

1. *Alienation of*

See CUSTOM I. A.—ALIENATION BY MALE PROPRIETOR—1, (*d*), GIFTS IN FAVOUR OF COLLATERALS (*i*) PROVED. **59 P R 1885**

See CUSTOM I. A.—ALIENATION BY MALE PROPRIETOR—3. SALES AND MORTGAGES IN FAVOUR OF STRANGERS. **17 P R 1883**

See CUSTOM I.—ALIENATION—J. RULE OF DECISION. **29 P R 1881**

2. *Inheritance of.*

See CUSTOM VIII—MAINTENANCE AND SUCCESSION A.—RULE OF DECISION. **44 P R 1884**

See CUSTOM VIII—MAINTENANCE AND SUCCESSION H. SUCCESSION OF WIDOW. **105 P R 1831**

See CUSTOM VIII—MAINTENANCE AND SUCCESSION K. SUCCESSION OF DAUGHTER. **77 P R 1831** **110 P R 1834**

3. *Onus probandi.*

See CUSTOM I. A.—ALIENATION BY MALE PROPRIETOR 7. LOCUS STANDI, ETC. **21 P R 1881**

See HINDU LAW, VIII. JOINT FAMILY. **13 P R 1883**

SELF-ACQUIRED PROPERTY— *concld.*

4. *Alienation of self-acquired property by mother and widow of the last male owner*—Locus standi *of collaterals residing in another village to contest the alienation.*
See CUSTOM I. B.—ALIENATION BY WIDOW (*b*) SALES AND MORTGAGES. **71 P R 1910**

5. *Plenary powers of disposition by Hindu in regard to*—
See HINDU FAMILY. **97 P R 1910**

SEPARATE PROPERTY OF FEMALES.
See HINDU LAW, STRIDHAN.

SEPARATE SUIT FOR MESNE PROFITS.
See MESNE PROFITS. **44 P R 1869**
72 P R 1875

SEPARATION, DEED OF.

—Between husbahd and wife.
See BURDEN OF PROOF. **41 P R 1898**

SERAI.
Held, that the mere fact that some of the rooms are rented out to more or less permanent tenants and others to chance visitors does not necessarily convert what was originally a *tawela* into a *serai*. FEROZE-UD-DIN *v.* RAHIM BAKHSH. **96 P R 1910**

SERVANT.
MASTER AND SERVANT.

SERVICE OF SUMMONS.
See SUMMONS.

SET-OFF.
See CIVIL PROCEDURE CODE, 1908, O. VIII, R. 6 *Passim*.
See JURISDICTION. **169 P R 1888**

LIMITATION ACT, 1877, SECTION 19. **60 P R 1887**

PARTNERSHIP. **53 P R 1893**

—Written Statement—Plea of payment—Set-off—Levy of Court-fee on such written statement—Civil Procedure Code, 1882, *section* 111.

A sued B to recover the amount alleged to be due to him under a mortgage. In his written statement B stated that A had been in wrongful possession of the premises mortgaged and had realized profits equal to the amount alleged to be due to him under his security, and prayed that the claim should therefore be dismissed.

Held that the written statement was not a set-off against the plaintiff's demand within the meaning of section 111, Civil Procedure Code, and was not chargeable with a Court-fee as on a plaint. BHAGAT SINGH *v.* DEVI DIAL. **85 P R 1906**

SETTLEMENT.

See FINANCIAL COMMISSIONER.
JURISDICTION OF SETTLEMENT COURT.
PUNJAB TENANCY ACT, 1868, SECTION 11.

1. *With whom to be made—Jagirdars and landowners.*
See JAGIR. **4 P R 1888 Rev.**

2. Wakf—*Settlement in perpetuity for aggrandisement of settler's family—Shiah law.*
See MUHAMMADAN LAW—*Wakf.* **84 P R 1896**

3. *Charitable trust—Voluntary settlement—Non-delivery of possession to trustees.*
See TRUST. **14 P R 1896**

4. *Alteration of arrangement fixed at Settlement—Power of Civil Courts to interfere with Government engagements under Regulation VII of* 1822.
Held, that the arrangement made at the time of the Settlement with regard to the management of the village and making collections, could not be altered during the term of the Settlement except by consent. The Civil Courts had no power to question the discretion exercised by the Government under clause 1, section X of Regulation VII of 1822, in electing which of two classes of proprietors it would admit to engagements. GHYNA *v.* MUSSAMMAT HURDEVI. **42 P R 1869**

5. *Lease for the term of Settlement.*
Where lands were leased for the term of Settlement, *held*, that the lease was not determined at the expiration of the term of years for which the Settlement was made, but continued until re-Settlement. STAINES *v.* HURBHUJ. **41 P R 1870**

6. Plaintiffs claimed certain land leased to them by the defendants in January 1863. The lease was "for the term of Settlement." The Settlement was made and confirmed for ten years, the announcement of the Settlement being made when it received confirmation. The last assessment was to lapse in 1873. The Settlement was afterwards extended by Government to 1880. The question between the parties therefore was whether the lease expired in 1873 or would run on to 1880. *Held* that, looking at the intention of the parties, the lease was one for ten years only, and expired in 1873. MAHOMED BUX *v.* OULIYA. **27 P R 1873**

7. A new Settlement cannot take away rights acquired under or recorded in the old Settlement. *Harri Singh* v. *Ranjit Singh* (No. 56 *P. R.* 1874, *and* AZMUT ALI KHAN *v.* HARNAM. **61 P R 1875**

8. *Agreement for term of Settlement—Subsequent extension of period of Settlement—Effect of.*
In 1861 plaintiffs, proprietors of Mouzah Chokri, executed an agreement binding themselves to give the defendant, jaghirdar, to whom the village was assigned, rent in kind and certain cash rates, till the end of the

SETTLEMENT—*concld.*

Settlement, which at that time it was believed would expire in 1867. In 1873 the term of the Settlement was extended to 1880 by order of the Government of India. *Held*, that the agreement bound the parties only to the year 1867, or to such subsequent date as that on which either party to the agreement desired to bring it to a conclusion or objected to be bound by it. MIRZA *v.* CHOWDRI AHMED KHAN. **5 P R 1877 Rev.**

SETTLEMENT AWARD.
1. Suit for recovery of land lost, by summary order at Settlement, in equalization of shares. The lower Courts held that the claim could not be heard in the regular Courts, because (1) it would lead to the Courts being inundated with similar claims; and (2) because a Settlement award of this sort, *coram populo*, and not appealed against in the Settlement Department, must be taken to have been accepted by the parties, and not liable to be set aside except on proof of objector's involuntary absence, minority, or other very cogent reason. *Held*, in appeal, that no considerations of expediency or policy could over-ride the claims of equity; and that a suit to set aside a Settlement award, where, as in this case, the parties most interested were not consulted or informed of what was being done, would lie, and must be heard in the regular Courts, even though no appeal were made in the Settlement Department. BOOTA *v.* AMEER SINGH. **4 P R 1863 Rev.**

2. In 1866, plaintiff brought a summary suit to be recorded proprietor; his claim was decreed, and he was directed to pay certain dues to defendant as provided for in the Settlement record. This decree was affirmed on appeal, and plaintiff was referred to a regular suit to correct the Settlement record. Plaintiffs' suit brought more than three years from this order, *held*, barred by time. MUNSA SINGH *v.* SOOLTAN. **9 P R 1871**

3. In a contested case during the Settlement of 1867, between the plaintiff and R. D. the father of the defendant, the Settlement Officer decided that R. D. should pay as rent to the plaintiff a sum equivalent to the Government revenue payable by him. More than 3 years after this decision, the plaintiff sued for the arrears of the rent so awarded, none of it having been paid. *Held*, that the decision of the Settlement Officer was an award which the defendant or R. D. should have contested in a suit brought within three years; and no such suit having been brought the plaintiff was entitled to recover the arrears claimed. BUNDE KHAN *v.* LALL DASS. **68 P R 1871**

SETTLEMENT COURT.
—Effect of judicial decision by, between landlord and tenant fixing term for cultivation.
See PUNJAB TENANCY ACT (XXVIII OF 1868), SECTION 2. **104 P R 1884**

SETTLEMENT OFFICERS.

—Powers of Settlement Officers under Board's Circular 8 *of* 11*th February* 1852, *to make grants of zamindari in Khana Khali or Government estates—Sanction to Settlement—Ratification—Estoppel.*

By an order of the Settlement Officer of the Umabala district, dated 24th March 1852, one D. was granted the zamindari of Raiyanwala, and his name was directed to be entered in the proprietary column in the Settlement papers. In pursuance of this order the subordinate Settlement officials recorded D. as proprietor of each field or plot in the village, inculding two plots now in dispute. The Settlement Officer was acting under the authority of Revenue Circular No 8, dated 11th February 1852, of the Board of Administration, which authorized Settlement Officers to grant the zamindari or proprietary rights in *Khana Khali* or Government estates to private persons.

It did not appear that the Settlement officer had his attention drawn to the fact that, although the entire village of Raiyanwala belonged to Government, there were portions of it which were in the possession of the Canal Department, and part of it occupied by the bed of the Western Jamna Canal. All such portions including even the bed of the canal, were recorded as the property of D. in pursuance of the above order.

It was found that the two plots in dispute formed part of the land then in possession of the Canal Department, and that they had been in possession prior to the grant to D. and had continued in possession up to the present date, and had all along used the plots for canal purposes. In 1860 certain letters passed between D's representatives and the Commissioner and Deputy Commissioner of Umballa. The Deputy Commissioner heard that negotiations were going on for the sale of D's estate. He pointed out that they would not be allowed to sell the farms of certain villages which had been held by D., and the terms of which had not then expired, as these were not transferable; and that as regards the villages held by D. in proprietary right, they must sell to the resident cultivators, who had the right of pre-emption. The cultivators were unable to purchase, and eventually D's representatives sold the village of Raiyanwala to plaintiffs, on which *dakhil kharij* or mutation of names took place.

Held, by FIZPATRICK, J, that the grant of the zamindari did not inculde the two plots in dispute, which were looked upon as part of the canal.

Per SMYTH, J., that the Settlement Officer exceeded his authority in granting the zamindari without reserving to Government the plots in dispute as the Circular of the Board of Administration referred only to lands which were used for agricultural purposes, or which might by reclamation or otherwise be used for such purposes, and did not include lands held by Government for public purposes.

Per Curiam. That the Government in sanctioning the Settlement of the Umballa district

SETTLEMENT OFFICERS—*concld.*

did not ratify all the acts of the Settlement officer, including the grant of the entire village of Raiyanwala; and that plaintiffs had failed to show any acts or admissions on the part of the officer of Government since the date of the grant which would have the effect of estopping Government from contesting plaintiff's claim. BANSI LAL *v.* THE SECRETARY OF STATE.
1 P R 1878

SETTLEMENT OF MAFI PLOTS

See MAFIDAR.

SETTLEMENT RECORD.

1. *Presumption of correctness of pedigree table recorded in.*
See CUSTOM I B—ALIENATION BY WIDOW (*d*) LOCUS STANDI AND ASSENT OF REVERSIONERS.
174 P R 1888

2. *Destruction of Settlement Record—Secondary evidence.*
See EVIDENCE. **1 P R 1875 Rev.**

3. *Finality of entry in.*
See HAZARA SETTLEMENT RULES.
17 P R 1887

4. *Presumption of correctness of entry in, as to who are the landowners—Power to alter entries in Record—Correction of Record and decision on claim of landowner to be settled with not to be included in same proceeding.*
See JAGIR.
See PUNJAB LAND REVENUE ACT, 1887, SECTION 44.
4 P R 1888 Rev.

5. *Partition—Settlement Record—meaning of.*
See JURISDICTION OF CIVIL OR REVENUE COURT. **40 P R 1876**

6. *Suit for correction of Settlement Record—Government necessary party.*
See LIMITATION ACT, 1871, ARTICLE 118.
79 P R 1879

7. *Entry in—Acknowledgment of mortgage.*
See LIMITATION ACT, 1877, SECTION 19.
63 P R 1888
116 P R 1891
53 P R 1894

8. *Limitation to suit for correctness of.*
See LIMITATION ACT, (XV OF 1877) SCHEDULE II, ARTICLE 120.
27 P R 1882

9. *Variance between areas recorded at old and new Settlement—Presumption to be drawn from such discrepancy—Proper method of dealing with cases based on such discrepancy in the recorded areas.*
See OCCUPANCY RIGHTS.
5 P R 1887 Rev.

10. *Effect of entry in—Variance between area entered and area actually possessed.*
See OCCUPANCY RIGHTS. **5 P R 1888**

11. *Effect of entry in—Agreement.*
See OCCUPANCY RIGHTS. **20 P R 1896**
4 P R 1896 Rev.
9 P R 1896
See PARTITION. **4 P R 1898**
See PUNJAB TENANCY ACT, 1888, SECTION 2. **3 P R 1888 Rev.**

SETTLEMENT RECORD—*contd.*

12. *Revision of entry as to shamilat in old Settlement—New Settlement.*
See PARTITION. **7 P R 1883 Rev.**

13. *Suit for correction of—Subsequent suit for declaration of title.*
See RES JUDICATA. **190 P R 1883**

14. *Alteration of Record.*
The Chief Court dismissed a suit brought to alter the Settlement record (the alteration prayed for being to record defendant as non-hereditary, instead of hereditary tenant), holding that the Civil Courts had no jurisdiction to compel an alteration; had plaintiffs sued in other form, (*e.g.* for possession after giving notice to quit), the orders of the Revenue Department would have come in question so far as they afforded evidence into proof or disproof of rights cognizable by the Civil Courts. KHUZANA *v.* WARIAN.
27 P R 1867

15. *Suit to alter record.*
Held, that a suit inolvoing the alteration of the Settlement record—required by Financial Commissioner's Circular 33 of 1860—was not necessary as a preliminary to a suit for proprietary right. NOORPOO *v.* JUGGUT SINGH. **57 P R 1867**

16. *Separate suit to determine correctness of Settlement record.*
Held, to be illegal first to decide a suit brought for land in accordance with the Settlement record which was impugned, and then to refer the party impugning the record to a separate suit to establish the point; the right to the land should be tried out in the first case. GHABA *v.* DATA.
55 P R 1869

17. Where there is an allegation that an entry in the Settlement record is wrong, in trying that question, nothing can be argued from the existence of the entry. SAWUNT *v.* AMAR SINGH. **70 P R 1869**

18. *Declaratory decree—Possession.*
Plaintiffs sued for a declaratory decree for proprietary right in land erroneously recorded in the Settlement record as owned by plaintiffs and defendant in equal shares and the lower Courts founded their judgments solely on the Settlement record, and refused to go into the question of possession.
Held, that evidence should have been taken and the merits of the claim enquired into, and that the question of possession might be enquired into in a suit for a declaratory decree. MEHR DAD *v.* CHOWA.
48 P B 1873

19. Plaintiff sued for a share of compensation money granted for land taken up for a public road. The land was the common land of the patti, plaintiff alleging he was a proprietor and defendant denying the allegation. The amount sued for was

SETTLEMENT RECORD—*concld.*

Rs. 84-4-1. The Commissioner decreed plaintiff's claim, treating the Settlement record as sufficient proof of plaintiff's proprietary title for the purpose of the suit, and referring the party alleging error in the record to a separate suit to determine the question. *Held*, that the lower Court should have decided the question of plaintiff's title independently of the Settlement record. SITAL SINGH v. DALIP SINGH.
73 P R 1875

20. *Presumption—Land Revenue Act.*
The entries made at a Summary Settlement should be presumed to be true, in the absence of any evidence or reason to discredit them. JIA *v.* ACHI RAM. **3 P R 1876**

21. *Hazara Settlement Rules—Suit to correct entry in Settlement Record—Jurisdiction.*
Held, that under the rules made for the Hazara Settlement, a suit is not maintainable in a Civil Court to set aside an entry in the Settlement record.
The proper mode of correcting an entry (other than an entry made in accordance with a decree) would be either by suit in the Settlement Court, or by proceedings by way of appeal or application for revision. RAJA FEROZ KHAN *v.* RAJA MAHOMED KHAN.
111 P R 1879

SHAH AND GOMASHTA.

—Customary relations of—Repayment of capital when agency is dissolved—Priority in payment.
See CUSTOM IX.—MERCANTILE USAGES.
79 P R 1885

SHAMILAT LAND.

See COMMON LAND.

1. *Inclusion or exclusion of share of shamilat.*
See CONSTRUCTION OF DOCUMENT.
194 P R 1889

2. *Land granted to ala-lambardar in virtue of his office—Landlord and tenant—Punjab Tenancy Act,* 1887, *section* 77 (3) *(m).*
See JURISDICTION OF CIVIL OR REVENUE COURTS. **66 P R 1893**
123 P R 1793
104 P R 1894
105 P R 1894
23 P R 1895
30 P R 1895

3. *Suit for declaration of plaintiff's right to a partition of the village common land without consent of defendants—Question of title—Punjab Land Revenue Act,* 1887, *sections* 115, 117.
See JURISDICTION OF CIVIL OR REVENUE COURTS. **82 P R 1893**

4. *Suit for pre-emption of house or village site between non-proprietary residents—Vicinage.*
See PRE-EMPTION — RIGHT OF ON ACCOUNT OF VICINAGE.
85 P R 1893

SHARES.

See COMPANY. **17 P R 1868**
38 P R 1868
25 P R 1874

Purchase of shares in a Joint Stock Company—Fraud—Misrepresentation.
See BANK. **127 P R 1889**
72 P R 1891

Suit by Liquidator for call on.
See JURISDICTION OF SMALL CAUSE COURT. **97 P R 1881**

SHARES, ANCESTRAL.

See ANCESTRAL PROPERTY.

"SHARKAYAN."

See PRE-EMPTION—RIGHT OF IN VILLAGES. **89 P R 1900**
PRE-EMPTION—CONSTRUCTION OF WAJIB-UL-ARZ. **69 P R 1885**
87 P R 1895

SHAREHOLDERS.

Cannot sue in name of Company without express consent of majority at meeting of shareholders. Cannot bring questions of internal management of a Company before a Court of law. Chairman of meeting of—not liable to damages for giving wrong decision on a matter before him at meeting.
See COMPANIES. **46 P R 1911**

SHERIFF.

—Refund of commission paid to—Execution sale set aside.
See EXECUTION OF DECREE.
183 P R 1883
68 P R 1885
45 P R 1886

SHRINE.

—Attachment of right of residence in house belonging to a shrine.
See CIVIL PROCEDURE CODE, 1908, SECTION 60. **8 P R 1900**

SHUKRANA.

See PLEADER AND CLIENT.
155 P R 1879

SIC UTERE TUO UT ALIENUM NON LAEDAS.

See RIGHT TO SUE. **30 P R 1883**

SIGNATURE.

See LIMITATION ACT (IX OF 1871), SCH. II, ART. 148. **93 P R 1877**

—By initials, sufficiency of.
See MORTGAGE XVI.—FORECLOSURE.
185 P R 1889

SISTERS, SISTER'S DESCENDANTS.

See CUSTOM I—ALIENATION.
A.—ALIENATION BY MALE PROPRIETOR.
(*f*) GIFTS AND WILLS IN FAVOUR OF SISTERS AND THEIR CHILDREN.
See CUSTOM III.—APPOINTMENT OF AN HEIR.
D.—ADOPTION OF SISTER'S SON OR GRAND SON.
See CUSTOM VIII.—MAINTENANCE AND SUCCESSION OF SISTER'S SONS.
See MAHOMMEDAN LAW—INHERITANCE.
18 P R 1881

SMALL CAUSE COURT.

1. *Judgment of Small Cause Court—Contents of.*
See CIVIL PROCEDURE CODE, 1908, O. XX, R. 4. **78 P R 1895**

2. *Jurisdiction.*
See JURISDICTION OF SMALL CAUSE COURT.

3. *Review of judgment of—Deposit of amount of decree by applicant.*
See REVIEW OF JUDGMENT.
60 P R 1881
See REVISION. **102 P R 1886**

4. *Power to review judgment passed by predecessor.*
See REVIEW. **63 P R 1905**

SMALL CAUSE COURT. JURISDICTION OF.

1. A Court of Small Causes may take cognizance of a suit for damages for breach of betrothal contract restricting its enquiry and award to any pecuniary loss which the plaintiff has necessarily sustained. The mere fact of a plaintiff's having mixed a claim to recover expenses incurred, with one for damages in respect of injured feelings, is not a ground for dismissing both. The plaint should be amended so as to limit it to the former, if the plaintiff is willing to abandon his claim in respect of the latter. IN RE A REFERENCE BY JUDGE, SMALL CAUSE COURT, DELHI.
8 P R 1866

2. *Mortgage.*
The plaintiff cannot enforce in the Small Cause Court his lien on the land, but if he chooses to sue for the debt in the Small Cause Court, abandoning his claim over the land, he is at liberty to do so. If, however, the trial and decision of the case should eventually be found to involve an account of the profits of land, the jurisdiction would be barred. AMI CHUND *v.* BOODAH.
71 P R 1867

3. *Suit against Government Officer.*
A suit for a claim not exceeding Rs. 500 against a Government officer as representative of Government, must be brought in the Small Cause Court at the seat of Government. BAHAR SHAH *v.* BHAWANA.

89 P R 1867

4. *Assault.*
A suit for damages for an assault, made up partly of actual pecuniary loss and partly of injured feelings, is not cognizable by the Small Cause Court. RUTTUN CHUND PAREE *v.* MUSSAMMAT GOOJNEE.
53 P R 1868

5. *Choongee Tax.*
A Court of Small Causes has no jurisdiction over claims for Choongee tax, and not under contract express or implied. PEER BUKSH *v.* KHUDA BAKSH.
58 P R 1868

SMALL CAUSE COURT. JURISDICTION OF—*contd.*

6. *Partnership.*

There is no distinction, so far as the jurisdiction of Small Cause Courts is concerned, between partnership and part-ownership, where the claims arising between part-owners involve the taking of the accounts of the part-ownership property. BUDRODEEN *v.* RAMDYAL.

66 P R 1868

7. *Cancellation of document.*

A suit for the cancellation of a document does not lie in the Small Cause Court. SYAD MAHOMED *v.* ZUREEF.

1 P R 1869

8. *Lambardari dues.*

Under para. 4 of section 6 of Act XI of 1865, a suit for lambardari dues is not cognizable by Courts of Small Causes. That para. excludes all claims which under the general revenue system of India were held to be connected with and to arise out of revenue collections; and Act XIX of 1865 did not transfer such claims to Courts of Small Causes. KHUZANA *v.* DYALA.

25 P R 1869

9. *Purchaser of land tortiously prevented from cultivating it.*

Where plaintiffs had purchased certain land and sued defendants for tortiously preventing them from cultivating the land, whereby, as plaintiffs alleged, they had been exposed to pecuniary loss, which they measured by the interest upon the purchase money, *held*, that plainttffs' suit was cognizable by a Small Cause Court, under section 6, Act XI of 1865. BOORA *v.* ELAHEE BUKSH.

29 P R 1870

10. *Partnership.*

Plaintiffs and defendants agreed that if any one or more of them took a certain contract for building a house, they would equally share profit and loss. Defendants took the contract and refused to give the plaintiffs their share of the alleged profit. *Held*, that the suit was practically for a partnership account, and consequently not triable by the Small Cause Court. PEER BUX *v.* PEERADITTA.

71 P R 1870

11. *Act VIII of* 1850, *section* 246.

A. obtained a decree in the Small Cause Court against *B.* and in execution thereof attached certain personal property belonging to *C.* who intervened under section 246, Civil Procedure Code. *C's.* claim was disallowed, and he thereupon brought a regular suit against *A* to recover the property or its value. *Held*, that *C's* suit was cognizable by the Court of Small Causes, as it was a suit for personal property or its value, and that it was not barred on the ground that that decision of a Small Cause Court is final. JEEWA *v.* KULLOO.

34 P R 1870

12. *Declaratory decree.*

A suit by a judgement creditor to establish or have declared his judgment-debtor's title

SMALL CAUSE COURT. JURISDICTION OF—*contd.*

to property seized in execution of a decree will lie but not in the Small Cause Court, explaining *Nuthoo Mull* v. *Radha Kishen* (*No.* 72 *P. R.* 1868), *viz.* that in the latter decision, for the words "any Court" should be read "any Small Cause Court." JEEWA *v.* KULLOO.

84 P R 1870

13. *Possession of a bond.*

A suit to recover possession of a bond is cognizable by a Court of Small Causes, provided the amount secured by the bond does not exceed Rs. 500. The plaint in such case should be valued at the amount payable under the terms of the bond, not according to the price of the paper on which the terms are written. CHET SINGH *v.* MUL SINGH.

10 P R 1871

14. *Choongee—Drawback.*

A suit by an exporter against a Choongee contractor for drawback, will not lie in the Small Cause Court. GOOR SAHIE *v.* GUNGA RAM.

18 P R 1371

15. *Rent of land.*

A Small Cause Court can entertain a suit upon a bond given for rent of land already due; but a document securing rent of land prospectively, does not give such Court jurisdiction. DYA *v.* WUZEERA.

42 P R 1871

16. *Contribution.*

A. sued *B.* for partition, and in execution certain houses passed to *A.* Subsequently *C.* sued A. for one of these houses, claiming it as his property, and obtained a decree. The house was valued at Rs. 1,000, and *A* considering that he was entitled to recover from *B.* half the value as compensation for his loss, sold his supposed right to *D.* who thereupon sued *B.* in the District Court for payment of Rs. 500. *Held*, that this suit was not barred by section 11 of Act XXIII of 1861, and that the suit was not of the nature cognizable in Courts of Small Causes. HURPERSHAD *v.* HEERA LALL.

66 P R 1878

17. *Grazing dues—Waste land—Lessee of grantee.*

A suit by the lessee of the grantee of waste land, for arrears of grazing rent, is not cognizable by a Court of Small Causes. DITTOO SHAH *v.* NANUCK.

11 P R 1872

18. *Accounts.*

A suit on village or other accounts (not being partnership accounts) is triable by a Small Cause Court. *In re a Reference by Judge, Small Cause Court, Peshawar* (No. 3 *P. R.* 1866, *Civil References*) KANIA MULL *v.* SHEOJI.

55 P R 1872

19. *Cause of action in foreign territory—Intricate nature of inquiry.*

Plaintiff and defendant were merchants trading in Cabul and Bokhara, and the transactions between the parties took place in foreign territory. Plaintiff sued defendant, who at the time of action brought was residing at Peshawar, in the Small Cause Court of Peshawar, upon an account stated at Cabul. The Judge of the Small Cause Court referred two points to the Chief Court; 1*st* whether his Court had, with reference to where the cause of action arose, jurisdiction to try the suit; 2*ndly*, whether, the accounts being very intricate and extending over several years, his Court had jurisdiction. *Held*, as to both points, that the Small Cause Court had jurisdiction. KANIA MULL *v.* SHEOJI.

55 P R 1872

SMALL CAUSE COURT. JURISDICTION OF—*contd.*

20. *Suit against representative of contracting party.*

A Small Cause Court has jurisdiction to try a suit against the representative of a party to a contract, as by Act IX of 1872 the liability of the representative falls under the head of contract and not of certain relations resembling those created by contract. BISHEN DASS *v.* SIRDAR DIAL SINGH.

9 P R 1873

21. *Pledge.*

A suit for possession of moveable property pledged as security for a debt, lies in the Small Cause Court. SOHAN LALL *v.* KULA MAL.

18 P R 1873

22. *Wages of agricultural servant—Produce of land.*

Plaintiff, a farm sweeper, sued for the value of grain due to him as wages. By the terms of the *wajib-ul-arz*, a sweeper, such as the plaintiff was, was to receive *inter alia* 5 maunds per 100 maunds of grain each *fasl*. *Held*, that the suit was not cognizable by the Court of Small Causes. GANDA *v.* GANGOO.

68 P R 1873

23. *Act IX of* 1872, *section* 70—*Obligation of person enjoying benefit of non-gratuitous act—Jurisdiction of Small Cause Court as to such obligation.*

By section 70, Act IX of 1872, where "a person does anything for another "person, or delivers anything to him, "not intending to do so gratuitously, and "such other person enjoys the benefit "thereof, the latter is bound to make compensation to the former in respect of, "or to restore, the thing so done or delivered."

Held, that a suit founded on that section was not cognizable by a Court of Small Causes. SHER SINGH *v.* SHIB SINGH.

69 P R 1874

24. *Dower.*

A suit by a Muhammadan wife for dower does not lie in a Small Cause Court. MUSSAMMAT HALIMAN *v.* KHWAJA.

71 P R 1874

25. *Malicious prosecution.*

Where plaintiff claimed Rs. 320 for a malicious prosecution; *viz.* Rs. 220 general damages and Rs. 100 for expenses incurred in retaining counsel and defending himself

SMALL CAUSE COURT. JURISDICTION OF *contd.*

in the criminal case. *held*, that the suit was cognizable by the Small Cause Court. SUBAH *v.* GUJUR. **86 P R 1874**

26. *Suit by decree-holder against rival decree-holder for money paid in execution to latter.*

A decree-holder sued a rival decree-holder for money paid to the latter in execution of decree to which money plaintiff alleged he was entitled on the ground of priority of attachment. *Held*, that the suit would lie in the Small Cause Court. DEVI SAHAI *v.* JAMASJI. **22 P R 1875**

27. *Mortgage.*

Held, that a suit for a money decree and for a declaration of plaintiff's right to enforce his lien under a deed of mortgage executed as security for the debt, does not lie in a Small Cause Court; but such Court can entertain a suit for a debt secured by a mortgage if plaintiff does not also ask to be allowed to enforce his lien on the property mortgaged. JEHANGIR KHAN *v.* HOOKMA MAL. **30 P R 1875**

28. *Betrothal contracts.*

A suit for breach of betrothal contract, where plaintiff claims damages for expenses actually incurred, and also damages for injured feelings, does not lie in the Small Cause Court. KARIM BAKHSH *v.* HABIBULLA. **35 P R 1875**

29. *Compensation for land.*

Plaintiff sued for a share of compensation money granted for land taken up for public purposes. The land was *shamilat* plaintiff alleging that he was proprietor, and defendant denying the allegation. *Held*, that the suit was not cognizable by a Court of Small Causes. SITAL SINGH *v.* DALIP SINGH. **73 P R 1875**

30. But in a suit for re-imbursement under section 69 of Act IX of 1872, *held*, by the Full Bench, that the suit was cognizable by a Small Cause Court: the facts were that *A.* and *B.* were plaintiffs in a pre-emption suit; their suit was dismissed with costs; *A.* was called upon to pay and paid, the costs, and sued *B* for his share. NABBI BAKSH *v.* MALI. **90 P R 1875**

31. *Offerings of shrine.*

Plaintiffs sued in the Small Cause Court for Rs. 46 alleged to be their share of an offering made to a shrine; their brother, the defendant, claimed to retain the whole amount of the offering on the ground that he was the Mohunt. *Held*, that the suit was not cognizable in the Small Cause Court. *Sodi Brij Balab Singh* v. *Sodi Kartar Singh* (41 *P. R.* 1872) *followed*. BISHEN SINGH *v.* HARBHAGGAT SINGH. **71 P R 1876**

32. *Grazing fees—Money illegally exacted—Suit to recover—Title—Small Causes Court suit.*

A suit to recover a sum of money (the amount claimed not exceeding Rs. 500)

SMALL CAUSE COURT. JURISDICTION OF—*contd.*

illegally exacted as grazing fees, the defendant relying on his title as lessee of the grass in the rakh, and the plaintiff disputing his title, is a suit of the nature cognizable by a Small Cause Court, and one in which a special appeal does not lie to the Chief Court GHULAM MUHAMMAD KHAN *v.* SHADI KHAN. **108 P R 1876**

33. *Suit for share of money realized by sale of shamilat proceeds—Joinder of all the co-sharers.*

The parties belonged to the proprietary body of the village; and plaintiffs sued defendants for Rs. 3, their alleged fifth share of a sum of money realized by the defendants by the sale of some *shamilat* grass *Held*, that the suit was not of the nature cognizable by a Court of Small Causes. *Held*, also that all the co-sharers were necessary parties to the suit. JAFIR KHAN *v.* FIROZ KHAN. **110 P R 1876**

34. *Suit for birt.*

A suit for *birt* is not cognizable by a Small Cause Court. NATHU *v.* TEKA. **32 P R 1877**

35. *Suit for money payable under an award—Suit for money had and received—Quasi contract.*

Held, that a suit to recover a sum (under Rs. 500) due under an award of arbitrators, is a suit based on a contract, and as such cognizable by a Small Cause Court. *Held*, further, that a suit to recover money wrongfully realized is of the nature of an action for money had and received—an action on a *quasi* contract—and as such cognizable by a Small Cause Court. The Full Bench ruling in Civil Judgment No 90, *Punjab Record* for 1875, followed. GANESHA *v.* DYALA. **57 P R 1877**

36. *Act XI of 1865, section 6, proviso 4—Suit for grazing dues.*

A suit for grazing dues is not cognizable by a Small Cause Court, the claim being one for which a suit might have been brought before a Revenue Officer at the time Act XI of 1865 was passed, and therefore excluded from the jurisdiction of a Small Cause Court, under proviso 4 of section 6 of that Act. HAKAM *v.* SHANKAR DASS. **63 P R 1877**

37. *Offerings at shrine—Question of title incidentally raised.*

Plaintiff, averring that he was the Motwalli of a shrine, sued to recover Rs. 200 from defendant, which he alleged the defendant had realized by falsely representing himself to be the Motwalli. Defendant admitted receipt of the money, but pleaded that he was entitled to receive it as Motwalli. *Held*, that the suit was cognizable by a Small Cause Court, as a suit for money had and received by the defendant to the use of the plaintiff, notwithstanding that a question of title was raised in the case.

SMALL CAUSE COURT. JURISDICTION OF—*contd.*

No. 41 of 1872, Civil, and No. 71 of 1876, Civil, distinguished. HOSEIN SHAH v. HABIBULLA SHAH. **73 P R 1877**

38. *Special Appeal—Act XXIII of 1861, section 27—Question of title incidentally decided.*

The plaintiffs sued for Rs. 100, value of trees cut by defendants of land belonging to them. The Courts below dismissed the suit on the ground that plaintiffs were not entitled to the trees. *Held*, the suit being one of the nature cognizable by a Small Cause Court, that a special appeal was barred by section 27, Act XXIII of 1861, notwithstanding that the Courts below had incidentally decided a question of title in the case. UMAR *v.* KARIM BAKSH. **75 P R 1877**

39. *Act XI of 1865, section 6, clause 4—Suit for rent of abadi land.*

Held, that the words "for which a suit may now be brought before a Revenue Officer," in clause 4, section 6, Act X of 1865, apply to suits "for the rent of land."

Held, further, that a suit for rent of land occupied by a house in the *abadi*, not being a suit cognizable by a Revenue Court before the passing of Act XI of 1865, was cognizable by a Small Cause Court. KIDAR NATH *v.* MUSSAMMAT MANBHARI. **80 P R 1877**

40 *Act XI of 1865—section 6, proviso (4)—Suit for value of trees cut and appropriated—Special appeal.*

Plaintiff sued to recover half the value of certain trees cut and appropriated by defendant, alleging that he and defendant were co-owners of the land on which the trees grew. *Held*, that the suit was one of the nature cognizable by a Small Cause Court, that it was not excluded from the jurisdiction of the Small Cause Court by proviso 4 to section 6 of Act XI of 1865, not being a claim for which, in 1865, when the Small Cause Court Act was passed, a suit could have been brought before a Revenue Officer; and therefore, that no special appeal lay The decision in *Nutha Singh* v. *Ahmed* (*No. 43 P. R.* 1872), overruled. TIRATH MAL *v.* HIDAYAT. **88 P R 1877**

41. *Suit for rent of cultivated land.*

A suit for rent of cultivated land is excluded from the cognizance of a Court of Small Causes by the 4th proviso to section 6 of Act XI of 1865. MAHOMED DIN *v.* BANKA. **44 P R 1878**

42. *Act XI of 1865, section 6—Movable property—Title deeds—Suit for recovery of.*

Plaintiffs sued to recover the title deed of a house valued at Rs. 250, on the allegation that they had purchased the house through the defendant who retained the purchase-deed against their will. *Held*, that the suit was one to recover movable property, cognizable by a Court of Small Causes, and

SMALL CAUSE COURT. JURISDICTION OF—*contd.*

therefore, that no special appeal lay. MALAWA MAL *v.* DALA MAL. **64 P R 1878**

43. *Suit for arrears of maintenance.*

Where plaintiff sued defendant for maintenance in the Civil Court, and, upon defendant agreeing to maintain plaintiff, a decree was given for maintenance at a fixed rate.—*Held*, that a subsequent suit for arrears of maintenance was maintainable in the Small Cause Court, as there was in fact a contract on the part of defendant, followed by a decree, to pay plaintiff a monthly stipend. MILAWA MUL *v.* MUSSAMMAT MOHNI. **138 P R 1879**

44. *Suit against Military officer—Mutiny Act, section* 99.

Where, on a cause of action arising at Amritsar, a suit was brought for Rs. 430 in the Small Cause Court of that place against a Military officer whose place of residence was Ferozepore, *held*, that the Amritsar Small Cause Court had jurisdiction to try the suit notwithstanding section 99 of the Mutiny Act. BYRAMJI *v.* IVES. **8 P R 1880**

45. *Suit for release of movable property from attachment.*

Held, that a suit for release of movable property from attachment is not of the nature cognizable by a Court of Small Causes. CHOWDRI NARAIN DASS *v.* AHMED. **22 P R 1880**

46. *Partnership—Act IX of* 1872, *section* 239—*Agent remunerated by a share in the profits.*

Where plaintiff, a shopkeeper of Lahore entrusted goods to defendant for sale at Simla, the agreement being that defendant should be remunerated with half the profits, *held* that the parties were not partners within the meaning of section 239 of the Contract Act, and that therefore a suit by plaintiff for the balance due to him was cognizable by a Small Cause Court. CHIRAG ALI *v.* SIRDAR SHAH. **74 P R 1880**

47. *Suit for fruit of a tree which has been severed and removed.*

Held, that suit for the fruit of a tree which has been severed and removed, is a suit for movable property, and therefore cognizable by a Small Cause Court. *Tirath Mal* v. *Hidayat* (No. 88 *P. R.* 1877), followed. CHANDU *v.* BANWARI DASS. **28 P R 1881**

48. *Suit for compensation for land taken up by Government—Damages.*

Held, that a suit to recover, upon proof of proprietary right, a sum not exceeding Rs. 500 as compensation for land alleged to have been taken possession of by the Government for canal purposes, is a suit for damages, and as such is of a kind cognizable by a Court of Small Causes. BANSI LAL *v.* SECRETARY OF STATE. **59 P R 1881**

49. *Suit by Liquidator of a Company against a shareholder for call upon his share* —*Companies Act* (*X of* 1866), *section* 98—*Debt—Money due on a contract—Act XI of* 1865, *section* 6.

Held, that a Small Cause Court in the mofussil has no jurisdiction to entertain a suit by the Liquidator of a Company registered and being voluntarily wound up under Act X of 1866 against a shareholder, who is a contributory, for a call upon his share, the money thus due being money which is, by statute, to be deemed a debt (see section 98, Act X of 1866), but is not "money due on a contract" within the meaning of section 6, Act XI of 1865. NUND KISHORE *v.* KIRKPATRICK. **97 P R 1881**

50. *Army Discipline and Regulation Act,* 1879—*Amenability of soldier in active military employ to jurisdiction of Civil Courts in claims under thirty pounds—Lahore Fort, jurisdiction of Small Cause Court, Lahore, over—"Municipal limits."*

Held, that the provisions of the Army Discipline and Regulation Act, 1879, do not oust the Civil Courts of their jurisdiction over a defendant, merely because he is a soldier of Her Majesty's regular forces in active military employ, and the claim against him is under thirty pounds. Soldiers of Her Majesty's regular forces are amenable to be sued in the ordinary Civil Courts, after notice in writing has been given to them or left at their quarters, irrespective of the amount of the claim; but they cannot be *taken out of the service or compelled to appear in person* where the debt does not exceed thirty pounds, and in carrying out execution, the exemptions embodied in proviso (1) of section 138 of the Act must be recognized.

Held further, that as the Fort of Lahore lies within the geographical area defined by Notification No. 2777, dated 25th October 1867, as constituting the boundaries of the Municipality of Lahore, it must be held to be within "municipal limits," and therefore within the territorial jurisdiction of the Court of Small Causes, Lahore, as declared in Notification No. 615, dated 21st February 1876. PIARE LAL *v.* KERR. **125 P R 1881**

51. *Suit for value of fruit alleged to have been wrongfully taken by defendants—Plea of defendants raising question of title to immovable property—Claim which would have been heard by Revenue officer at time of passing of Small Cause Court Act XI of* 1865, *section* 6, *column* (4).

A suit brought to recover the value of certain fruit alleged to have been wrongfully taken by the defendants in which the defendants pleaded that the trees from which the fruit had been taken were on *shamilat* land of which they were joint owners with the plaintiffs, and that the trees also were joint property *held* to be one of the nature cognizable by Courts of Small Causes, and in which no second appeal lay to the Chief Court; and that the fact that the plea of the defendant raised a question incidentally as to the exclusive right of the plaintiffs to the trees did not affect the nature of the suit.

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Held further, that the above claim was one which at the time of the passing of the Small Cause Court Act (XI of 1865) would have been heard in the ordinary Civil Courts of the province and not by the Revenue officers of Government, and that therefore it did not fall within the provisions of section 6. cl. (4) of the said Act. JHANDOO *v.* KARIM BAKHSH. **5 P R 1882**

52. *Suit for hide and flesh of a dead buffalo—Customary right of chamars to appropriate dead animals—Act XI of* 1865, *section* 6, *clause* 4—*Perquisites of a village officer — Financial Commissioner's Book Circular No XLVI of* 1860.

A suit to recover the hide and flesh of a dead buffalo, valued at Rs. 10, based on a custom by which the plaintiffs, as the chamars of the taraf were entitled to appropriate the dead animals, *held*, to be one of a nature cognizable by a Small Cause Court, in which a further appeal was barred by section 39 of Act XVII of 1877.

Held, further, that the jurisdiction of the Small Cause Court was not excluded by section 6, Clause 4 of Act XI of 1865, by reason of the claim being one for which, in 1865, a suit might have been brought before a Revenue officer, as being a suit for the perquisites of a village officer, as the circumstance that the right of the chamars to hides of dead animals was provided for in the Administration-paper, did not constitute them village officers within the meaning of Financial Commissioner's Book Circular No. XLVI of 1860. *Ganda* v. *Gangoo* (No. 68 *P. R.* 1873), distinguished. HARGO LAL *v.* GUMANI. **28 P R 1882**

See also MOHNA *v.* LALMAN. **28 P R 1882 Note.**

53. *Suit for damages for grazing cattle on land alleged to be plaintiff's property—Defendants contesting title on which plaintiff based his claim—Further appeal—Act XI of* 1865, *section* 6.

Plaintiff sued to recover from the defendants Rs. 30 as damages for grazing cattle, &c., on certain waste land, originally common, but which plaintiff alleged had fallen to him under a partition, the plaint asking for no declaration of title, but for damages only. Defendants pleaded that the land was common over which they had grazing rights, &c., and denied the alleged partition.

Held, that the suit was one of a nature cognizable by a Small Cause Court under section 6 of Act XI of 1865, and one in which therefore no further appeal would lie, and that the facts that the plaintiff set forth the title on which his claim to damages depended in his plaint, and that the defendants contested his right to exclude them from grazing on the land, did not alter the character of the suit. *Umar* v. *Karim Bakhsh* (No. 75 *P. R.* 1877), *and Bansi Lal* v. *Secretary of State* No 59 *P. R.* 1881), referred to. BABU KHAN *v.* GAHI. **38 P R 1882**

SMALL CAUSE COURT. JURISDICTION OF—*contd.*

54. *Suit by claimant of movable property attached in execution—Punjab Courts Act, section 39—Further appeal barred where goods are under Rs. 50 in value.*

Held, that a suit brought by a person claiming to be the owner of goods attached in execution of a decree against another is of the nature cognizable by a Small Cause Court, and one in which, when the goods are under Rs. 50 in value, a further appeal is barred by section 39 of the Punjab Courts Act. JOWALA SINGH *v.* DEVIA. **167 P R 1882**

55. *Suit for ground rent under Rs. 50—Further appeal—Act XVII of* 1877, *section* 39—*Act XI of* 1865, *section* 6 (4).

Held, that a suit for Rs. 12 on account of ground rent for houses in the village site is one of the nature cognizable by a Small Cause Court, and in which therefore no further appeal will lie under section 39 of the Punjab Courts Act, such a suit not falling within any of the classes of suits enumerated in Financial Commissioner's Book Circular No. XLVI of 1860, which describes the suits which might have been brought before a Revenue officer when Act XI of 1865 was passed. *Kidar Nath* v. *Mussammat Manbhari* (No. 80 *P. R.* 1877), cited. SHADI KHAN *v.* FAKIR MUHAMMAD KHAN. **177 P R 1882**

56. *Suit for value of trees cut by defendant—Question of title incidentally raised—Act XVII of* 1877, *section* 39—*Further appeal.*

In a suit for Rs. 15, the value of certain trees in which plaintiff claimed to have a half share, and which, it was alleged, the defendant had cut and carried away without the plaintiff's permission, *held*, that the suit as laid was one for the value of personal property, and as such was cognizable by a Small Cause Court under S. 6 of Act XI of 1865, nor did the circumstance that defendant's plea may have raised a question of title alter the original character of the suit, and therefore a further appeal was barred under the proviso to the last clause of section 39 of Act XVII of 1877. *Umar* v. *Karim Baksh* (No. 75 of 1877), and *Jhandoo* v. *Karim Baksh* (No. 5 *P. R.* 1882), cited and followed. SIRDARNI RAJ KOUR *v.* NEHAL SINGH. **4 P R 1883**

57. *Suit to recover from defendant money awarded to him by the Collector as compensation under the Land Acquisition Act—Act X of* 1870, *section* 40—*Act XI of* 1865, *section* 6—*Money due on contract—Damages.*

Held, by the Full Bench, that a suit to enforce the liability of a person who has received compensation awarded under Act X of 1870 for house property taken up for public purposes, to pay the same to the person lawfully entitled thereto (see section 40 of the Act), is cognizable by a Court of Small Causes, as though such a suit cannot be said to be based

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on contract, either express or implied, within the meaning of the term in section 6 of the Small Cause Court Act, the claim may be regarded as one for damages within the meaning of the same section. *Sital Singh* v. *Dalip Singh* (No. 73 *P. R.* 1875), overruled. *Nabbi Bakhsh* v. *Mali* (No. 90 *P. R.* 1875, F. B.), *Ghulam Muhammad Khan* v. *Shadi Khan* (No. 109 *P. R.* 1876), *Ganesha* v. *Dyala* (No. 57 *P. R.* 1877), and *Hosein Shah* v. *Habibulla Shah* (No. 73 *P. R.* 1877), appproved. MUSSAMMAT NUR BHARI *v.* ANWAR ALI. **8 P R 1888**

58. *Suit for dower—Express contract.*

Held, that a claim for dower based on an express contract is cognizable in a Small Cause Court. FAZAL DIN *v.* MUSSAMMAT BASA BIBI. **85 P R 1883**

MAHIA *v.* MUSSAMMAT IMAM BIBI. **85 P R 1883 Note.**

59. *Suit for share of manure heaps—Act XI of* 1865, *section* 6, *proviso* 4.

A suit for a share of certain manure heaps, on account of plaintiff's ancestral rights in the land of the patti, *held* to be excluded from the jurisdiction of the Small Cause Court by the 4th proviso to section 6 of Act XI of 1865. LAKPAT *v.* THANA. **67 P R 1883 Note.**

60. *Landlord and tenant—Suit for excess rent realized by landlord—Act XI of* 1865, *section* 6, *proviso* 4.

A suit by an occupancy tenant against his landlord for rent which the defendant was alleged to have realized in excess of what was rightly payable, *held*, to be excluded from the jurisdiction of a Small Cause Court by the 4th proviso to section 6 of Act XI of 1865, being a suit which at the time of the passing of the said Act could have been brought before a Revenue officer. RAM SARN *v.* MASAHIB. **87 P R 1883**

61. *Suit to recover value of movable property attached and sold in execution—Damages.*

Held, that a suit to recover the value of salt attached and sold in execution of decree, on the ground that the salt was the property of the plaintiff and not of the judgment-debtor, being a suit for damages, is, when the amount claimed is under Rs. 500, cognizable in a Small Cause Court. *Chowdri Narain Dass* v. *Ahmed* (No. 22 *P. R.* 1880), distinguished. SHUGAN CHAND *v.* BAKSHA. **97 P R 1883**

62. *Suit for marriage dues—Ground rent.*

Held, that a suit for marriage dues, when such dues are payable by way of ground rent, is one of the nature cognizable by a Court of Small Causes. *Shadi Khan* v. *Fakir Muhammad Khan* (No. 177 *P. R.* 1882), cited. SAHIBA *v.* HIRA. **166 P R 1283**

SMALL CAUSE COURTS. JURISDICTION OF—*contd.*

63. *Act XI of* 1865, *section* 6, *proviso* 3—*Suit for defamation—Actual pecuniary damage.*

Held, that when the only "actual pecuniary damage" claimed in a suit for damages on account of defamation is compensation for outlay upon a criminal prosecution of the defendant for the same matter, the suit does not come within the saving clause of the 3rd proviso to section 6 of Act XI of 1865, and is therefore not maintainable in a Small Cause Court. MARTIN *v.* ALEXANDER. **143 P R 1884**

64. *Act XI of* 1865, *section* 6—"*Rent*"—*Contract.*

Held, that the expression "rent" in section 6 of the Small Cause Court Act, 1865, is not limited in meaning to rent due on contract, but includes money claimable in respect of premises of the plaintiff used and occupied by the defendant without a contract. CHUNNI LAL *v.* MUSSAMMAT SHAHZADA KHANAM. **158 P R 1884**

65. *Suit for damages—Court deciding incidentally on question of title to immovable property.*

Held, that a suit for damages for stoppage of a water-cut, in which defendants pleaded that they had a right to the water-cut, which question was put in issue and decided, is one of the nature cognizable by a Court of Small Causes, and in which a second appeal to the Chief Court is barred. *Babu Khan* v. *Gahi* No. 38 *P. R.* 1882), followed. SHAH MUHAMMAD *v.* ASLAM KHAN. **8 P R 1885**

66. *Suit for share of birt—Damages—Test of jurisdiction of Court—Act XI of* 1865, *section* 6.

Plaintiff sued on the allegation that, as a widow of the defendants' cousin, she was a joint owner of the family estate, which comprised the right to collect *birt* from the family *jujmans*, that some years ago an arrangement had been come to by the members of the family as to the division of the *birt*, and that under this arrangement a sum of Rs. 320, which the defendants had wrongfully kept back, was payable to the plaintiff.

Held, that the suit was one for damages cognizable by a Court of Small Causes under section 6, Act XI of 1865, inasmuch as the jurisdiction of such Court rests on the immediate form of relief prayed for, and not on the real points of law or fact on which the dispute ultimately rests, *Babu Khan* v. *Gahi* (No. 38 *P. R.* 1882), and *Sirdarni Raj Kour* v. *Nehal Singh* (No. 4 *P. R.* 1883), cited. MUSSAMMAT INDAR KOUR *v.* TEKA. **8 P R 1885 Note.**

67. *Marriage fees—Further appeal.*

The defendant, a *tarkhan* in Basti Shekh Darwesh, was sued by the plaintiffs, the proprietors, for a sum due from him by custom as rent of his house on a marriage taking place in his family.

SMALL CAUSE COURT. JURISDICTION OF—*contd.*

The Tahsildar dismissed the suit, which the Judicial Assistant decreed. It was again appealed to the Commissioner, and the Additional Commissioner, accepting the appeal, dismissed the claim.

Held, that the suit was one of a nature cognizable by a Court of Small Causes, and being for less than Rs. 50 in amount, the Additional Commissioner had no jurisdiction to entertain the appeal. *Shadi Khan* v. *Fakir Muhammad Khan* (No. 177 *P. R.* 1882), and *Sahiba* v. *Hira* (No. 166 *P. R.* 1883), cited and followed. GHULAM ALI *v.* MUHAMDI. **75 P R 1885**

68. *Agreemant to sell kunkur.*

Defendants agreed in writing to sell "plaintiff all the kunkur in their land." Afterwards, defendant sold the kunkur to anoher person. Plaintiff sued for damages. *Held*, that the suit would lie in the Small Cause Court. IN RE A REFERENCE BY THE JUDGE, SMALL CAUSE COURT, LUDHIANA. **2 P R 1886**

69. *Suit for proceeds of house taken up under the Land Acquisition Act—Damages—Act XI of 1865, section 6—Second appeal.*

Plaintiff sued for possession of a house, alleging that as a nephew of the deceased owner he was entitled to succeed in preference to the daughter of the deceased. It appeared that when the suit was filed, the house in question had already been taken up under the Land Acquisition Act, and had therefore ceased to be property about which a suit could be brought. The lower Appellate Court therefore directed that the plaint should be amended, and the case re-heard as an inheritance case for the cash sum representing the house which had disappeared under the operation of the Land Acquisition Act, the Court being of opinion that the claim was dependent solely on the law or custom of inheritance, exactly as it would have been if the house was standing, and as such was not cognizable by a Court of Small Causes.

Held, that the suit must be regarded as one to enforce the liability of the defendant who had received compensation under the Act to pay the same to the plaintiff who was entitled to it, and as such the claim, notwithstanding that the question of title might have to be enquired into incidentally, must be regarded as one for damages within the meaning of section 6 of the Small Cause Court Act, and being of the value of less than Rs. 500, a second appeal would not lie. *Mussammat Nurbhari* v. *Anwar Ali* (No. 8 *P. R.* 1883, F. B.) cited. GURMUKH SINGH *v.* RAM NARAIN. **5 P R 1886**

70. *Act XI of 1865, section 6 (3)—Suit for damages for malicious prosecution—Actual pecuniary damage.*"

In a suit for damages arising from a malicious prosecution, it appeared that in

addition to general damages, actual pecuniary damage was alleged to have been sustained in the shape of loss of pay, plaintiff having been dismissed from his employment in consequence of the charge brought against him.

Held, that the suit was of the nature cognizable by a Small Cause Court, *Karim Baksh* v. *Habibulla* (No. 35 *P. R.* 1875), disapproved of. *Subah* v. *Gujar* (No. 86 *P. R.* 1874) and *Martin* v. *Alexander* (No. 143 *P. R.* 1884), cited. BAISHNO DAS *v.* RUP CHAND. **11 P R 1886**

71. *Suit for return of jewels—Plaintiff alleging that jewels were deposited in connection with a partnership which had terminated—Defendant denying dissolution of partnership.*

Plaintiff claimed the return of certain jewels valued at Rs. 70 alleging that he had deposited the jewels in payment of his share in a contract, in which the defendant had joined him as a partner with a one-third share : that for one month plaintiff remained a sharer, when, disputes having arisen, arbitrators decided that plaintiff should pay Rs. 10 for losses and retire : that defendant agreed to return the jewels, but would not now do so ; hence the plaintiff's claim. Defendant denied that the partnership had been dissolved, or that any settlement had been come to, or that he had pledged any jewels of plaintiff.

Held, that the claim as laid by plaintiff raised no question of partnership, but was for moveable property or the value thereof, and was cognizable by the Small Cause Court. KHADIM HOSSEIN *v.* ABDUL GHANI. **35 P R 1886**

72. *Suit for contribution—"Contract"—Act XI of 1865, section 6.*

Defendant obtained a decree for possession of three houses, the joint property of himself and the plaintiff, on payment of Rs. 365. Before the decree was executed, plaintiff, in compliance with the order of the Magistrate, repaired the house at a cost of Rs. 154, and when defendant applied for execution, claimed half the costs of the repairs, and was referred to a separate suit, which he brought in the Court of Small Causes.

Held, that the suit was not one of the nature cognizable by a Court of Small Causes, such Courts not having jurisdiction in suits for contribution between parties who are not co-contractors in any sense. KIRPA RAM *v.* JASWANT. **37 P R 1886**

73 *Suit for pachotra—Wajib-ul-arz—Suit which would have been cognizable by a Revenue officer in 1865—Act XI of 1866, section 6 (4).*

A suit by one lambardar under a clause in the *Wajib-ul-arz* to recover from another *pachotra*, which the latter had taken in excess of his own share, *held*, not to be of a nature cognizable by a Small Cause Court, as it was a sui by a lambardar to recover a right entered

SMALL CAUSE COURT. JURISDICTION OF—*contd.*

at Settlement, and was therefore, in 1865, one which, could have beeen brought before a Revenue officer. BAKKAN *v.* SAHIB SINGH. **50 P R 1886**

See also JOWAHIR SINGH *v.* KAKU SINGH. **50 P R 1886, Note.**

74. *Suit for return of bond—Specific Relief Act (I of 1877), section 39.*

Plaintiff sued defendant for the return of a bond alleging that he had paid Rs. 25, and that he had offered payment of the balance, which defendant refused to accept.

Held, that the suit was in effect one under section 39 of the Specific Relief Act for a declaratory decree with consequential relief, and was not cognizable by a Small Cause Court. *Mirajdeen* v. *Mohomed Buksh* (No. 8 *P. R.* 1869), followed. GOPAL *v.* LALU RAM. **69 P R 1886**

75. *Suit for release from attachment of moveable property under Rs. 500 in value—Civil Procedure Code, (Act XIV of 1882), section 283.*

Held, that a suit by a person who has intervened in execution proceedings and unsuccessfully objected to the attachment of moveable property, brought against the decree-holder as defendant, and praying for the release of the property, the said property being still under attachment and under Rs. 500 in value, is not cognizable by a Small Cause Court, being a suit to establish the right claimed by the plaintiff within the meaning of section 283 of the Civil Procedure Code and not a suit for personal property, though the decree may indirectly enable the plaintiff eventually to recover such property. *Chowdri Narain Dass* v. *Ahmed* (No. 22 *P. R.* 1880), followed. *Jeewa* v. *Kulloo* (No. 84 *P. R.* 1870), and *Jowala Singh* v. *Devia* (No 167 *P. R.* 1882), referred to. SULTAN MUHAMMAD *v.* KANSHI RAM. **91 P R 1886**

See also SUBA *v.* GHANDA SINGH. **11 P R 1886, Note.**

and SAHIBDITTA *v.* WARYAMAN. **11 P R 1886**

76. *Suit by one lambardar against another for dues alleged to have been wrongly collected and retained by the defendant—Damages.*

A suit based on the allegation that under the Revenue Rules, plaintiff, as lambardar, was entitled to levy from the khewatdars revenue and a certain due called *inam*, and that defendant, another lambardar, had wrongly collected the *inam*, and refused to pay it over to the plaintiff, *held* to be a suit for damages for money which the defendant was said to have wrongfully refused to pay over to the plaintiff, and consequently to be of a nature cognizable by a Court of Small Causes.

Bakkan v. *Sahib Singh* (No 50 *P. R.* 1886, distinguished. POHLA *v.* PERTAP SINGH.

2 P R 1887

SMALL CAUSE COURT. JURISDICTION OF—*contd.*

77. *Investment of an officer with powers of a Judge of Small Causes under Act XVIII of* 1884, *section* 30—*Execution of jurisdiction of Court of Request—Army Act, section* 148.

Held, that the investment of an officer under section 30 of Act XVIII of 1884 with the powers of a Judge of Small Causes does not operate to oust the jurisdiction of the Court of Requests under section 148 of the Army Act, 1881, which requires the Court to which a Military Officer is liable to be a Court of Small Causes established by the Governor-General. BUTA *v.* GORE.

21 P R 1887

78. *Suit for value of skins of certain animals—Defendants pleading custom authorizing them to secure such skins from the chumars of the village.*

Plaintiff, a non-proprietor in a village, sued the defendants, one of whom was lambardar and the other a proprietor, to recover Rs. 10, the value of the skins of certain animals which had belonged to plaintiff and had died in the village. Defendants pleaded that according to the custom of the village they were authorized to secure the skins for the *mochis* and *chumars* of the village.

Held, that the suit as brought was of the nature cognizable by a Small Cause Court, and one in which the appeal from the Munsif's order lay to the Subordinate Judge and not to the Divisional Court, though had the suit been one by the lambardars or the *mochis* to enforce the custom, the case would have been different.

Hargo Lal v. *Gumani* (No. 28 *P. R.* 1882) cited. RAHMAT KHAN *v.* BUDHA.

34 P R 1887

79. *Suit for damages for breach of betrothal contract—Damages for injured affections as well as for actual expenditure.*

Held, that a suit claiming damages for breach of a betrothal contract, consisting in part of damages for injured affections and in part of damages for actual expenditure, is not a suit of the nature cognizable by a Small Cause Court constituted under Act XI of 1865.

Karim Bakhsh v. *Habibulla* (No. 35 *P. R.* 1875, F. B.) followed. *Ruttan Chand* v. *Mussammat Goojnee* (No. 53 *P. R.* 1868) and *Baishno Das* v. *Rup Chand* (No. 11 *P. R.* 1886) referred to MUSSAMMAT TABI *v.* BUR SINGH.

43 P R 1887

80. *Suit for refund of purchase-money of sale set aside—Money had and received.*

Plaintiff having bought the occupancy rights of defendant, and the sale having been subsequently set aside on the intervention of the owner, sued to recover the purchase-money from the defendant.

Held, that the suit being one to recover "money had and received" by the defendant, was of the nature cognizable by a Small Cause Court. RADHA KISHAN *v.* SARDAR ISHAR SINGH.

50 P R 1887

81. *Suit for share of ferry income—Money received by defendants to plaintiffs' use.*

SMALL CAUSE COURT. JURISDICTION OF—*contd.*

Plaintiffs alleged that they had a right to ply boats in a certain ferry and had so plied them, and that the defendants had received all the earnings, and retained the share of the plaintiffs, *viz.*, two-thirds, for which the plaintiffs sued.

Held, that the suit was one cognizable by a Small Cause Court, being for money received by defendants to plaintiffs' use. DINA *v.* FAIZ BAKHSH.

51 P R 1887

82. *Suit for money due under an arrangement made by the Court in satisfaction of a decree—Agreement.*

The plaint set forth that under an arrangement made by the Civil Court, the defendant took over the judgment-debtor's interest in certain land, and in return became liable to pay into Court Rs. 40 a year in satisfaction of the decree: that the right to receive this sum had passed to plaintiffs: that the defendants had made default in payments, and that plaintiffs therefore sued to recover.

Held, that the suit as framed was not one of the nature cognizable by a Small Cause Court, the liability of the defendants not been alleged to have arisen from any agreement made between them and plaintiffs, but under an arrangement made by the Court. REWATI RAM *v.* CHAJJU.

74 P R 1887

83. *Subordinate Judge on appeal in small cause refusing to decide question relating to immovable property—Necessity for decision of all material issues.*

Plaintiffs, the proprietors, sued to recover Rs. 100 damages from defendants, who were tenants, because the latter had trespassed on a certain part of the *banjar* which the plaintiffs had reserved for themselves as their own grazing ground. The first Court having given plaintiffs a decree, the defendants appealed to the Subordinate Judge, urging (as they had urged in the first Court) that the plaintiffs were not authorized to reserve this rakh because they (defendants) being occupancy tenants had a right to graze over the whole of the *banjar* land. The Subordinate Judge held that as the case was of a nature cognizable by a Small Cause Court, he had no jurisdiction to decide a question as regards land, and dismissed the appeal.

Held, that the order of the Subordinate Judge was not maintainable, as the fact that the case appealed to him was of a nature cognizable by a Small Cause Court did not take away from him the jurisdiction vested in him to deal with all questions of civil rights that were brought up before him in the appeal, and which it was necessary to adjudicate on for the purpose of deciding the appeal. JOWALA *v.* HARI DAS.

78 P R 1887

84. *Jurisdiction of Revenue Court—Suit for rent—Revenue paying land—Act XVIII of* 1884, *section* 45.

Certain land was mortgaged to plaintiff by defendant for four years with possession, but defendant remained in occupation as a

SMALL CAUSE COURT. JURISDICTION OF—*contd.*

tenant under a lease for a year, and held over for three years more, after which plaintiff sued him for the mortgage money and rent in the ordinary Civil Court. It was eventually decided in this case that the claim for rent was wrongly joined and should have been excluded as not cogniaable by the Court. The present suit for rent was accordingly instituted in the Small Cause Court.

Held, that the suit was not cognizable by the Small Cause Court, the land in suit of which the plaintiff claimed from the defendant a specified sum for the use and occupation thereof being admittedly revenue paying land (*vide* section 45, Act XVIII of 1884). RATTAN CHAND *v* UMAR DIN.

86 P R 1887

85. *Suit for* "atrafi" *dues—Contract—Rent—customary due.*

Held that a suit for *atrafi* dues, levied annually by the village proprietors from the *kamins* residing and carrying on their trade in the village, is not of a nature cognizable by a Small Cause Court, such dues not being founded on contract express or implied, and not being rent, but rather a tax levied at an uniform rate of so much *per* house or family by a superior class on an inferior class, and simply to be regarded as a customary due. DASAUNDI RAM *v.* PIR SINGH.

108 P R 1887

86. *Suit against military officer—Army Act,* 1881, *sections* 148, 151—*Court of Requests.*

Held, by the Full Bench, that when a suit of the kind described in section 151 (1) of the Army Act, 1881, under Rs. 400 in value is brought against a defendant being of the class described in that section in a mofussil Small Cause Court upon a cause of action alleged to arise within the territorial limits of the Court in which it is brought, it is sufficient for the plaintiff to aver that the defendant is within the territorial jurisdiction of some Small Cause Court, and is not at a place beyond the territorial jurisdiction of any Small Cause Court; and the only valid plea to such a suit founded on the Army Act, 1881, by such a defendant is that he is, within the meaning of section 148 (1) of the Army Act, at a place in India beyond the territorial jurisdiction of any Small Cause Court; it not being enough to plead that he is within the territorial jurisdiction of some other Small Cause Court.

Jamsetji's Sons v. *McTurk* (No. 33 *P. R.* 1879), overruled. NORTON *v.* NICHOLLS.

111 P R 1887 F. B.

87. *Suit for share of produce in certain land—Suit by co-sharer—Act XVIII of* 1884, *section* 45 (*i*).

A suit by plaintiff for her share in the produce of certain land which she owned in common with the defendants, which produce she alleged they had wrongfully retained, *held* to be one cognizable by a Small Cause Court, and not by the Revenue Court under section 45 (*i*) of the Punjab Courts Act.

SMALL CAUSE COURT. JURISDICTION—*contd.*

Ude Ram v. *Sanda* (No. 74 *P. R.* 1886) distinguished BUTA *v.* MUSSAMMAT RAHMATI.
34 P R 1888

88. *Acts XI of* 1865 *and IX of* 1887—*Suit instituted under old Act and cognizable under that Act—Dismissal of suit for default—Re-institution of suit after new Act had come into force—Suit governed by old Act.*

A suit first instituted in the Small Cause Court under Act XI of 1865, and which was triable as a Small Cause Court under that Act, having been dismissed for default, was remitted after Act IX of 1887 had come into force, under which Act the suit was no longer triable as a small cause.

Held, that under the above circumstances the suit was governed by the provisions of the old Act, as the suit having been dismissed for default was only in suspense, till it was revived on plaintiff's application. SANT RAM *v.* NIHALA. **52 P R 1889**

89. *Small cause—Suit by mortgagee to recover Rs.* 400, *and for such other relief to which he may be entitled.*

A mortgagee having been forcibly dispossessed of the mortgaged property by his mortgagor, sued in a Civil Court to recover Rs. 400 mortgage money, and *for such other relief to which he may be entitled.. Held*, that the suit was not a small cause. Though there was no specific prayer for recovery of possession of the mortgaged property the general prayer was sufficient to cover that relief if the circumstances proved showed that the plaintiff was entitled to it, and the Court in which the suit was instituted was a Court competent to grant it. ISHAR SINGH *v.* BAL BHADDAR DAS. **24 P R 1890**

90. *Army Act*, 1881, *section* 151—*Amendment made by Army (Annual) Act*, 1828, *section* 7—*Effect of amendment—Suit against military officer.*

When on a cause of action arising at Umballa, a suit for Rs. 443-8-0 was brought in 1890 in the Umballa Cantonment Small Cause Court against a military officer, residing at Allahabad, *held* that the Umballa Small Cause Court had no jurisdiction. The effect of the amendment of section 151 of the Army Act, 1881, by section 7, Army (Annual) Act, 1888, is that from the 1st January 1889, a military officer is not liable to be sued in a Small Cause Court within the local limits of whose jurisdiction he does not reside.* PHUL CHAND *v.* MULLINS.
110 P R 1890

* *Note*.—Civil Ruling No. 111 of 1887 is no longer a binding authority, having been passed before the alteration was made.

91. *Small cause—Suit for share of offerings received for a specified period.*

A suit for certain share of offerings received at a shrine for a certain period, the plaintiffs claiming as rightful successors to the former incumbent, the defendants being, one, the Manager of the Golden Temple, who held the money in dispute in safe custody only, and the other defendant a rival claimant

SMALL CAUSE COURT, JURISDICTION OF—*contd.*

who set up a title as donee, is a "small cause." JOWAHIR SINGH *v.* SARDAR MAN SINGH.
84 P R 1892

92. *Jurisdiction—Small Cause Court—Withdrawal of suit pending in, and determined by District Judge—Objection as to jurisdiction.*

In a suit heard and determined by a competent Court, the parties, having without objection joined issue and gone to trial upon the merits, cannot subsequently dispute the jurisdiction of the Court on the ground of irregularities in the initial proceedings, which, if objected to at the time, would have led to the dismissal of the suit.

Ledgard v. *Bull, I.L. R. IX All.* 191 (P. C.), referred to and followed. SETH RAM RATTAN AND RATHI RAM LAL *v.* SUNDER DAS.
118 P R 1892

93. *Provincial Small Cause Courts Act*, 1887—*Jurisdiction—Actions of debt and personal actions against persons subject to Military Law—The Army Act*, 1881, *and the Army (Annual) Act*, 1888.

An action of debt instituted in a Provincial Small Cause Court after the coming into force (31st December 1888) of the Army (Annual) Act, 1888 (51 and 52 Vict. C. 4), against a person of the class described in section 151 of the Army Act, 1881 (44 and 45 Vict. C. 58), *i.e*, persons subject to Military Law, other than soldiers of the regular forces, is not cognizable by such Small Cause Court when the defendant, at the time of the institution of the suit, is not resident within the local jurisdiction of such Court.

No. 110 *P. R.* 1890, referred to and followed.

I. L. R. XVIII, Calc. 144 and 372, not followed. GILLON AND Co *v.* WHITE.
1 P R 1893 F. B.

94. *Jurisdiction—Actions of debt and personal actions against persons subject to Military Law, other than soldiers of the regular forces—The Army Act*, 1881, *and the Army (Annual) Act*, 1888—*Sergeant of the regular forces employed in the Barrack Department.*

The defendant, a sergeant of the regular forces employed in the Barrack Department at Meean Meer, was sued for a debt in the Small Cause Court in the Cantonment of Ferozepore, where the cause of action had arisen.

Held, that the defendant was not of the class of "persons subject to Military Law, other than soldiers of the regular forces," within the provisions of section 151 of the Army Act, 1881, read with sections 176 and 190 (6) of the same Act, and that the decree in the suit was not made without jurisdiction DINSHAW AND CO. *v.* SERGEANT STOCKEY.
48 P R 1893

95. *Jurisdiction—Small cause of value exceeding Rs.* 50—*Jurisdiction of presiding Judge limited to Rs.* 50—*Procedure—Civil Procedure Code*, 1882, *section* 25.

In cases where the jurisdiction of a Small Cause Court is Rs. 500, but that of the presiding Judge of such Court is limited to Rs. 50, all suits between Rs 50 and Rs. 500 in value must be instituted in such Court and must remain pending until a Judge competent to hear them is appointed. But it is competent to the District Judge, under section 25, Civil Procedure Code, to withdraw such suits and transfer them to the Court of a Judge who has jurisdiction to hear them. ALLA DIN *v.* MUL CHAND. **74 P R 1896**

SMALL CAUSE COURT. JURISDICTION OF—*contd*,

96. *Jurisdiction—Place of suing—Contract with commission agent for supply of goods—Contract made by letters—Place where contract completed—Contract Act*, 1872, *sections* 4, 5, 91—*Civil Procedure Code*, 1882, *section* 17.

Plaintiffs sued in the Small Cause Court at Delhi on the allegations that on the 7th December 1895, they wrote to the defendant to buy certain goods at Bombay and to despatch them by railway with all possible speed to Delhi; that other letters and a telegram were sent to him for this purpose; that on the 23rd December he replied promising to send the said goods within two days, but that they did not in fact reach Delhi till 11th January 1896, when they were no longer required. Plaintiffs refused delivery and sued for recovery of Rs. 200, which they had remitted to defendant as an advance to make the purchases with expenses and damages, in all Rs. 234-11-6. Defendant pleaded that the Court had no jurisdiction to try the suit inasmuch as the whole cause of action arose at Bombay. For the plaintiffs it was contended that the goods were at defendant's risk until they reached plaintiffs' hands; that plaintiffs had not indicated any particular railway to which the goods were to be handed over in their letter and could not recover them from the railway; that in reality the transaction should be treated as one for the sale of goods as plaintiffs did not know who were the actual vendors of the goods, and that, in any event, the contract was made in Delhi as it was not complete until the defendant's acceptance of plaintiffs' offer was communicated to them at that place.

Held, that the Small Cause Court at Delhi had no jurisdiction to try the case, which was in reality a suit against an agent for an account of money received by him as such for his principal in the course of the agency business.

Although an offer made by letter does not become a contract binding against the promise until acceptance thereof is communicated to the promisor, the communication of such acceptance does not make any change in the *place* where the contract is made, but only affects the *time* of its coming into force.

Held, therefore, that the plaintiffs' proposal having reached defendant at Bombay and having been accepted at that place, the contract between the parties was made at Bombay. MUHAMMAD SHAFFI *v.* KARAMAT ALI.
76 P R 1896

97. *Jurisdiction—actions of debts and personal actions against military officers not*

SMALL CAUSE COURT. JURISDICTION OF—*contd.*

residing within the jurisdiction of Court where the cause of action arose.

Held, that section 151 of the Army Act of 1881 having been expressly repealed by section 5 of the Army Act of 1895, the ruling of this Court in *E. Gillon & Co.* v. *White*, No. 1 *P. R.* 1893, *F. B.* has, in consequence, become obsolete, and the test of a Civil Court's jurisdiction against a military officer now is, as in other cases arising out of the contract that supplied by section 17 of the Civil Procedure Code. PHELPS AND CO. *v.* CAPTAIN HAMMOND. **93 P R 1900**

98. *Suit to recover money spent in connection with the guardianship of a minor—Suit relating to a trust—Provincial Small Cause Court Act*, 1887, *Schedule II, article* 18.

Held, that a suit by the guardian of a minor to recover money spent by him in connection with the guardianship of the person and property of his ward over and above the amount of the income realized by him is a suit "relating to a trust" within the meaning of article 18 of the second Schedule to the Provincial Small Cause Court Act, and is therefore not cognizable by the Small Cause Court.

Bamjoy Mojoomdar v. *Koomar Kedar Narain Roy* (25 *W. R.* 75), referred to. JAGAN NATH *v.* NIRANJAN DAS. **58 P R 1903**

99. *Small Cause Court suit—Munsif trying case withdrawn from Small Couse Court—Finality of order of Munsif—Civil Procedure Code*, 1882, *section* 25.

Plaintiff filed his suit as a Small Cause Court case in the Court of the District Judge at Hoshiarpur, with a note that it was triable by the Small Cause Court, but as the Judge of that Court was related to one of the parties it should not be sent to him. It was accordingly sent to an Additional Munsif without Small Cause Court powers, by order of the District Judge. After decision by that Munsif an appeal was preferred to the District Judge and decided by him.

Held, that the action of the District Judge in sending the case to the Additional Munsif amounts to transfer within the meaning of section 25, Civil Procedure Code, the Additional Munsif must be deemed for the purposes of this suit to be a Court of Small Causes under the last clause of that section, and this decision was therefore not open to appeal.

Ram Chandra v. *Ganesh* (*I. L. R. XXIII Bom.* 382), dissented from.

Mangal Sen v. *Rup Chand* (*I. L. R. XIII All.* 324), *Kauleshar Rai* v. *Dost Muhammad Khan* (*I. L. R. V. All.* 274), *Parsick* v. *Buta Mal* (80 *P. R.* 1887), *Alia Din* v. *Mul Chand* (74 *P. R.* 1896), and *Saidhu Mal* v. *Hassu* (58 *P. R.* 1897), followed. RALLIA RAM *v.* GOKAL CHAND. **83 P R 1903**

100. *Suit for damages after avoiding sale on the ground of fraud—Small Cause Court Act*, 1887, *Schedule II, article* 15.

The defendant, a horse dealer, sold a mare to the plaintiff which he knew had a cracked hoof. He filled up the crack with some substance in such a way as to defy detection. Shortly after the purchase the mare

SMALL CAUSE COURT. JURISDICTION OF—*concld.*

having to walk a short distance was found to be lame and on enquiry being made the defect was discovered. The plaintiff brought an action to avoid the purchase on the ground of fraud and to recover damages. *Held*, that the suit was one for damages after avoiding the agreement on the ground of fraud and as such was cognizable by a Court of Small Causes. ABDULLA KHAN *v.* GIRDHARI LAL. **49 P R 1904**

101. *Suit to recover movable property or its value deposited for safe custody—Suit relating to a trust—Small Cause Courts Act*, 1887, *Schedule II, article* 18.

Held, that a suit for the recovery of moveable property or its value alleged to have been deposited for safe custody with the defendant is not a suit relating to a trust within the meaning of article (18) of the second schedule to the Provincial Small Cause Courts Act and is therefore cognizable by a Small Cause Court. KARTAR DEVI *v.* SURASTI. **9 P R 1908**

102. *Suit by auction-purchaser to recover purchase-money — Maintainability of such suit—Civil Procedure Code*, 1882, *section* 315.

Held, that a suit by an auction-purchaser against the decree-holder for refund of the purchase money proportionate to a share in the purchased property of which he has been deprived on a suit by a third party is cognizable by a Court of Small Causes, as it involves no question of rescission or specific performance of a contract.

Held, *also*, that such a suit is maintainable in addition to the summary remedy provided for by section 315, Civil Procedure Code, but the right to obtain relief is limited to conditions and circumstances prescribed by that section. GURDIT SINGH *v.* GHANAYA LAL. **114 P R 1908**

SMALL CAUSE COURT ACT (XI OF 1865).

Section 6

1. *Act XI of* 1865, *section* 6—*Suit for "haq tora"—Rent of land—Customary dues—Jurisdiction of Revenue Court—Punjab Courts Act* (*XVIII of* 1884), *sections* 3, 45—*Suit for arrears of rent on account of land.*

In a suit by plaintiff as Khan of the tappa and malik against defendant, an occupancy tenant of land owned by the plaintiff, for "*haq tora*," in which it appeared that the claim was based chiefly upon a provision in the administration-paper as evidence of a general custom, and the dues were described as payable by non-proprietary residents in the village to the proprietors by reason of their being owners of the village site on specified occasions of uncertain occurrence (*viz.* on occasions of betrothal and marriage), and not periodically, and not in respect or the occupation of any definite holding or plot of land, *held*, that such occasional payments by residents in a given area, in acknowledgment or recognition of the territorial title of the payee over that area, might properly be treated as merely customary dues and not rent of land within the meaning of

SMALL CAUSE COURT ACT (XI OF 1865)—*contd.*

Section 6—*contd.*

section 6 of Act XI of 1865, or section 45 of Act XVIII of 1884.

Held, further, that even if the sum claimed could be regarded as rent, sums overdue could not be treated as arrears of rent for *and* within the meaning of section 45 of Act XVIII of 1884, having regard to the definition of that term in section 3 of the same Act, there being no ground for holding that the dues were payable by a tenant of agricultural land, as such tenant merely.

Ganda v. *Khwaja Muhammad Khan* (*No.* 64 *P. R.* 1880), *Shadi Khan* v. *Fakir Muhammad Khan* (*No.* 177 *P. R.* 1882), *Sahiba* v. (*Hira No.* 166 *P. R.* 1883) and *Gulam Ali* v. *Muhamdi*, (*No.* 75 *P. R.* 1885), referred to. MUHAMMAD AKBAR KAHN *v.* SAYAD ALAM. **33 P R 1887 F. B.**

2. *Landlord and tenant—Suit for value of trees cut and appropriated.*

Held, that a suit by a landlord for the value of trees cut and appropriated by his tenant is one cognizable by a Small Cause Court under clause 4 of section 6 of Act XI of 1865. *Nutha Singh* v. *Ahmad* (*No.* 43 *P. R.* 1872), dissented from. *Tirath Mal* v. *Hidayat* (*No.* 88 *P. R.* 1877), *Chandu* v. *Banware Das* (*No.* 28 *P. R.* 1881), *Jhandoo* v. *Karim Bakhsh* (*No.* 5 *P. R.* 1882), *Sardarni Raj Kour* v. *Nihal Singh* (*No.* 4 *P. R.* 1883), and *Mussammat Begam* v. *Mussammat Umrao* (*No.* 26 *P. R.* 1883), followed. ALLAHDAD *v.* BAHADAR. **13 P R 1888**

See to the same effect ALLAH BAKHSH *v.* KURA. **13 P R 1888, Note.**

3. *Suit for* "khudi kamini"—*Ground rent—Claim cognizable by Revenue Officer at date of passing of the Act.*

Held, that a suit for *khudi kamini* which was found to be a due levied from occupiers of houses in the *abadi* of the village of the nature of house or ground rent is of the nature cognizable by a Small Cause Court under section 6 of Act XI of 1865 not being a claim which might have been brought before a Revenue Officer at the date of the passing of that Act.

Dewok Ram v. *Kour Pirthi Singh* (*No.* 74 *P. R.* 1879), *Shadi Khan* v. *Fakir Muhammad Khan* (*N.* 177 *P. R.* 1882), *Muhammad Akbar Khan* v. *Syad Alam* (*No.* 33 *P. R.* 1887), and *Dasaundi Ram* v. *Pir Singh* (*No.* 108 *P. R.* 1887) cited. NATHA *v.* JAI RAM. **21 P R 1888**

4. *Suit for "atrafi" dues.*

Held that a suit for "*atrafi*" dues is not one of a nature cognisable by a Small Cause Court under Act XI of 1865. *Dasaundhi Ram* v. *Pir Singh* (No. 108 P. *R.* 1887), followed. ILAHIA *v.* SARDAR DEWA SINGH. **81 P R 1888**

5. *Suit on foreign judgment.*

Held that a suit on foreign judgment when maintainable is a suit cognizable by the ordinary Civil Courts and not by a Small Cause Court, not being a suit of any of the kinds specified in section 6 of Act XI of 1865.

Kheta Mull v. *Jowahir Mull* (No. 4 *P. R.* 1874), referred to. KANHYA LAL *v.* ALLA DITTA. **97 P R 1888**

LL CAUSE COURT ACT (XI 1865)—*contd.*

on 6—*contd.*

Damages for defamation of character tual pecuniary damage."

ntiff sued to recover Rs. 400 on account nages for defamation of character stat-at he claimed Rs. 200 on account of d feelings and Rs. 200 for expenses red by him in a previous criminal pro-ng which he brought against the same dant, under sections 352, 504 of the Code, arising out of the same act as for which the present suit was brought. *ld*, that the suit in the form in which it nstituted was not one of the nature zable by a Small Cause Court with ence to the provisions of proviso 3, on 6 of Act XI of 1865.

rtin v. *Alexander* (No. 143 *P. R.* 1884), wed. PUNNA MAL *v.* KHUSHALA MALL.

98 P R 1888

"Damages."

eld that the word " damages," as used ction 6 of Act XI of 1865, is not restrict-damages to personal property, but is enough to include damages for any gful act. SARDAR PARTAB SINGH *v.* SAR-THAKAR SINGH. **100 P R 1888**

Suit for contribution—Express con-—Relation resembling contract.

suit for contribution against a co-suitor re there is no express contract, and the gation which is sought to be enforced therefore only be said to arise out of a ion resembling that created by contract to fall under one of the sections of pter V of the Contract Act held not to suit cognizable by a Small Cause Court er Act XI of 1865.

irpa Ram v. *Jaswant* (No. 37 *P. R.*), approved. AZMAT *v.* GURMUKH.

118 P R 1888

" Haq malikana "—*Customary dues.*

suit for Rs. 5 based upon the allegation by custom all the residents of a certain i, except the descendants of the founder, liable on certain occasions of which riage was one to pay proprietary dues *malikana*), to the plaintiff's, descendants he founder, *held* not to be of the nature nizable by a Small Cause Court under XI of 1865.

uhammad Akbar Khan v. *Sayad Alam* . 33 *P. R.* 1887, F. B.) followed. ATA HAMMAD *v.* IBRAHIM. **125 P R 1888**

0. *Suit for ferry tolls—Suit not based contract, express or implied.*

Plaintiff sued as a ferry-contractor for Rs. due for tolls alleging that defendant with followers and cattle had habitually used ferry generally without paying the toll, which, however, plaintiff kept an account ich showed the amount claimed due at end of the year. No contract, either press or implied, was alleged in the plaint, not being asserted that defendant had en allowed to pass without payment on y promise to pay hereafter, or that any ntract for a fixed payment had been made. *Held*, that the suit was not one cognizable a Small Cause Court under Act XI of 65.

SMALL CAUSE COURT ACT (XI OF 1865)—*contd.*

Section 6—*contd.*

Goor Sahie v. *Gunga Ram* (No. 18 *P. R.* 1871), cited. PAIRA RAM *v.* IMAM BAKHSH.

173 P R 1888

11. *Suit for share of offerings at shrine—Money had and received—Defendant's plea raising question of title—Test of jurisdiction.*

Plaintiff sued on the allegation that from ancient times he had a right to a certain share in the offerings of a certain shrine; that the defendant (who was the manager of the shrine) had not paid this due for a stated period, and that according to accounts a sum of Rs. 30 was due to the plaintiff for which the suit was accordingly brought. The distributing Darogah having also been impleaded as a defendant, both defendants, while admitting plaintiff's right, threw the responsibility of non-payment on the *Pujaris* of the temple who were accordingly impleaded and they then contended that the money claimed by the plaintiff was not due as of right.

Held, that the suit as laid being one for " money based on the ordinary count for " money had and received," was cognizable by a Small Cause Court under Act XI of 1865, and although the *Pujaris* by their plea had raised a question of title that circumstance would not alter the original character of the suit, the jurisdiction of a Court depending on the immediate form of the suit as embodied in the plaint, and not on the collateral questions of law or fact which may be raised by the pleadings.

Mussammat Indar Kour v. *Teka* (No. 8 *P. R.* 1885, Note) approved. ATRA *v.* JOWALA SINGH. **188 P R 1888**

12. *Suit for value of trees illegally cut and appropriated—Replevin.*

A suit based on the allegation that the defendant had illegally cut and appropriated certain trees and the leaves of other trees to which the plaintiff was alone entitled, the claim being for Rs. 20, the value of the same, *held* to be one of the nature cognizable by a Small Cause Court under Act XI of 1865, and not to fall under the class of suits for replevin which were cognizable by a Revenue Court at the time of the passing of that Act. DEVI SINGH *v.* CHANDAN.

4 P R 1889

13. *Act XI of* 1865, *section* 6—*Claim to property attached and sold in execution—Suit for recovery of debt and for declaration of lien against property in hands of auction-purchaser—Suit for movable property or its value.*

A suit by a unsuccessful intervenor for the recovery of a debt of Rs. 94 on the pledge of 2 *ekkas*, which had been attached and sold in execution of a decree against the principal debtors, the object of which was to obtain a decree against the latter and also to have the plaintiff's lien declared against the *ekkas* in the hands of the auction-purchaser, *held* to be one for the recovery of movable property or its value and to be cognisable by a Small Cause Court under Act XI of 1865 MASTA *v.* RADHA KISHEN. **5 P R 1889**

SMALL CAUSE COURT ACT (XI OF 1865—*concld.*

Section 6—*concld.*

14. *Act XI of* 1865, *section* 6—*Co-sharers—Suit for specific amount due by representative of one sharer—Agreement—Act XVIII of* 1884, *section* 45.

A suit by persons holding three shares in a tea garden against the representative of the fourth co-sharer for a specific sum of money, under Rs. 500, found due by the fourth sharer to the others, who were alleged to have spent the money on the garden, the said sum having been settled and agreed to by the original fourth sharer in his lifetime, as shown by a written agreement, *held* to be of the nature of a " small cause " under Act XI of 1865. RAM SINGH *v.* DALIP SINGH. **28 P R 1889**

15. *Act XI of* 1865, *section* 6—*Suit for* " dharat."

A suit brought by the lambardars of a village for " *dharat,* " based upon a Settlement entry, *held* not to be cognizable by a Small Cause Court under Act XI of 1865. RAM SINGH *v.* SIKANDAR.

29 P R 1889

16. *Suit on foreign judgment—Jurisdiction of Small Cause Court—Act XI of* 1865.

Held (following No. 97 *P. R.* 1888), that a suit on a foreign judgment will lie but not in a Small Cause Court constituted under Act XI of 1865. UDE RAM *v.* DYAN.

37 P R 1889

SMALL CAUSE COURT ACT (IX OF 1887).

Section 15.

1. *Suit for damages for non-delivery of goods by Government Railway Company—Jurisdiction of Small Cause Court—" Act purporting to be done by officer of Government in his official capacity "—Provincial Small Carse Court Act (IX of* 1887), *section* 15 *and* 2*nd Schedule, article* 3.

Held, that a suit based upon an alleged breach of contract by a Government Railway Company to deliver goods entrusted to them in the ordinary way as agents of Government for conveyance to a specified place cannot be rightly decribed as a suit concerning " an official act, " such as is contemplated by article 3 of the 2nd Schedule of the Provincial Small Cause Courts Act, 1887.

Before a suit can be held to fall under article 3, the plaintiff must be able to allege some particular act of some particular official, which has given rise to the suit, and such act must not be a mere, omission or neglect of duty such as any private individual might be guilty of, but must be some definite act purporting to be done by the official under the authority of his office and reasonably falling within the scope of such authority.

(*I. L. R. XVII Calc.* 290), cited. PUNJAB RAI AND CO. *v.* SECRETARY OF STATE FOR INDIA.

97 P R 1894

2. *Suit for Rs.* 300 *damages for trespass and diversion of water-course—Small Cause Court Act,* 1887, *section* 15 (2), *and* 2*nd Schedule, article* 35 (*i*)—" *Water-course,*" *meaning of.*

SMALL CAUSE COURT ACT (IX OF 1887—*contd.*

Section 15—*concld.*

Plaintiff sued for the recovery of Rs. 300 damages for certain acts of trespass committed by defendant to his immovable property, which, according to the plaint, consisted in breaking down, or causing to be broken down, some boundary pillars and "diverting a water-course." The suit was instituted in the District Court, and decided by a Munsif in plaintiff's favour. Defendant appealed to the Divisional Judge, who held, on plaintiff's objection, that the case was a small cause, and returned the appeal for presentation in the District Court, which set aside the proceedings of the Munsif for want of jurdiction and directed the plaint to be returned to plaintiff.

The alleged water-course consisted, apparently, of a drain, and defendant's act, which was complained of, amounted to an encroachment on the bank of the channel at a place where it ran between the parties' estates, or was an attempt to push it further towards plaintiff's property. It was not contended that there was any attempt to deprive plaintiff of the use of the water of the channel or to dispute his right to it.

Held, that inasmuch as plaintiff's claim did not relate to any injury to the right in water, but was for an encroachment on the land over which the water-course runs, the claim was one cognizable by the Small Cause Court, and did not fall under article 35 (*i*) of the Small Cause Court Act of 1887. COLLINS *v.* TENBROKE.

71 P R 1896

3. *Small cause—Suit for a share in offerings, Darbar Sahib, Tarn Taran—Provincial Small Cause Courts Act, IX of 1887, section 15—Revision—Punjab Courts Act, section 70 (1) (a) and (b).*

Plaintiff sued on the allegation that S.S. a *pujari* of Darbar Sahib at Tarn Taran had died leaving, *inter alia*, a share in the *charhawa* (offerings) and in the income of a *jagir* attached to the Darbar Sahib, that the plaintiff was the adopted son and heir of the deceased, that defendant No. 1 was the manager of the Darbar Sahib who had collected the offerings and income, that defendant No. 2 was the brother of the deceased who claimed to be his heir and that the share of profits and income amounted to Rs. 800 up to date of suit. The first Court decreed Rs. 657-6-10 against defendant No. 1 which decree was upheld by the Divisional Court on appeal.

Held, that the suit was in the nature of small cause and as the value of it was less than Rs. 1,000 no appeal lay under section 70 (1) (*b*) of the Punjab Courts Act.

Held also, that the lower Appellate Court had not ignored or placed a perversely erroneous interpretation upon any evidence cited, and that a mere misinterpretation of documents or error in law was no ground for interference on revision under section 70 (1) (*a*).

20 P R 1911

SMALL CAUSE COURT ACT (IX OF 1887—*contd.*

Section 16.

—*Munsiff trying case withdrawn from Small Cause Court—Appeal—Court having jurisdiction within local limits of jurisdiction of Small Cause Court.*

See CIVIL PROCEDURE CODE, 1882, SECTION 25. **58 P R 1897**

Section 17.

1. *Small Cause Court Act (IX of 1887), section 17—Application for review of order of Small Cause Court unaccompanied by tender of amount due under decree, or of security for performance thereof.*

Held, that it is a condition precedent to the granting of an application under section 17 of the Small Cause Court Act (IX of 1887) that the applicant should *at the time of presenting his application* either deposit in Court the amount due under the decree or tender security for the performance of the same. GOBIND *v.* MOHAN.

5 P R 1894

2. *Small Cause Court Act (IX of 1887), section 17—Application for review of judgment of Small Cause Court—Tender of amount due under the decree or of security for performance thereof.*

Held, that the words "at the time of presenting his application" in section 17 of the Small Cause Court Act, 1887, are merely directory and not mandatory, and that the time for making the deposit or giving the security is extendible at the discretion of the Court. MUHAMMAD FAZAL ALI *v.* KARIM KHAN. **108 P R 1894**

Section 23.

—*Jurisdiction of Small Cause Court to return a plaint for presentation to an ordinary Civil Court when the title of the plaintiff is questioned—Suit for rent—Remand—Preliminary point—Civil Procedure Code, 1882, section 562.*

A Court which has jurisdiction to grant the relief sought and to try a claim should decide all issues for the purposes of such suits which it is necessary to decide before a correct finding can be come to on the main issue before it, therefore where the plaintiff brought an ordinary Small Cause Court suit for Rs. 60 rent, and the Judge of the Small Cause Court, in the exercise of his discretion, returned the plaint under section 23 of the Small Cause Court Act on the ground that the defence disclosed a dispute regarding the title in the property itself, *held*, that the order of the Judge was wrong, his jurisdiction was not barred because the defence set up made it necessary incidentally to decide a question for the purposes of the suit which the Court could not try if it had been the subject-matter of the claim. MIRAJ-UD-DIN *v.* KARIM BAKHSH AND OTHERS. **43 P R 1902**

Section 25.

See REVISION IN CIVIL CASES.

66 P R 1895

—*Decree of Small Cause Court—Error of law—Revision.*

See REVISION IN CIVIL CASES.

—*Judgment, of Small Cause Courts—*

SMALL CAUSE COURT ACT (IX OF 1887)—*contd.*

Section 25—*concld.*

Reasons for decision when question of law involved—Revision.

See REVISION IN CIVIL CASES.

78 P R 1895

—*Suit for money deposited with Advocate—Finding of fact by Small Cause Court—Revision.*

See REVISION IN CIVIL CASES.

32 P R 1897

—*Evidence Act, 1872, section 34—Account books—Revision.*

See REVISION IN CIVIL CASES.

63 P R 1897

—*Second application for revision after rejection of first application.*

See REVISION IN CIVIL CASES.

23 P R 1898

—*Revision—Wagering transaction—Written contract—Admissibility of evidence to prove that contract was void under section 30 of the Contract Act.*

See REVISION IN CIVIL CASES.

85 P R 1898

—*Revision—Small Cause Court suit—Error of law—Chief Court's powers of revision—Discretion.*

Where upon the circumstances of the case the view of the law taken by the lower Court was not on the face of it incorrect, and there was no reason to think that injustice has been committed, the Chief Court declined to use its discretionary power of revision under section 25 of the Provincial Small Cause Courts Act.

Secretary of State for India in Council v. *Johnson* (*79 P. R.* 1888), *The Poona City Municipality* v. *Ramji Raghunath* (*I. L. R. XX Bom.* 250), and *Sarman Lal* v. *Khuban* (*I. L. R. XVI All.* 476) followed. FAQIR CHAND *v.* MUSSAMMAT BALKAUR.

19 P R 1901

Second Schedule, article 3.

Suit for damages for non-delivery of goods by Government Railway Company—Jurisdiction of Small Cause Court—"Act purporting to be done by officer of Government in the official capacity."

See SECTION 15, *supra*. **97 P R 1894**

Second Schedule, article 4.

See APPEAL, III. COURSE OF APPEAL.

60 P R 1900

Second Schedule, article 7.

—*And article 8—Objection to jurisdiction taken for the first time by plaintiff in the Chief Court.*

Held, that a suit for rent of a house, including rent at an enhanced rate as agreed upon was cognizable by the Small Cause Court alone and had been erroneously treated as an "unclassed suit" by the Courts below.

Held, also, that the defect of want of jurisdiction could not be cured by consent of parties, and that the objection, though urged for the first time in the Chief Court and by the plaintiff must be given effect to. HAJI AHMAD HUSAIN *v.* SUNDAR LAL.

80 P R 1893

SMALL CAUSE COURT ACT (IX OF 1887)—*contd.*

Second Schedule, article 8.

1. *Suit for money due for the use of a masonry outlet* (moga)—*Rent—Agreement.*

A suit for Rs. 27 as money due for the use of a masonry outlet, or *moga*, alleged to be the property of the plaintiff, for the irrigation of defendant's land, *held* to be a suit for the recovery of a sum in the nature of rent, and not being for house rent to be a suit not cognizable by a Small Cause Court (article 8 of the Second Schedule of Act IX of 1887): and further, that the mere existence of an agreement for the payment of such money, the suit being one for rent, would not give the Small Cause Court jurisdiction, which it would not otherwise possess. MAHARAJA OF KASHMIR *v.* FATTEH DIN. **164 P R 1888**

2. *And article* 11—*Suit for recovery of ground rent of a shop—Jurisdiction of Small Cause Court.*

A claim for recovery of rent merely of the site on which stands a house not claimed by the plaintiff is one that falls either under article 8 or under article 11 of the Second Schedule to the Small Cause Court Act, 1887, and is excepted from the cognizance of a Small Cause Court.

Makhan Lal Ditta v. *Garibulla Sardar* (*I. L. R. XVII Calc. p.* 541), distinguished. MULLA BAKHSH *v.* MIRZA ANWAR ALI. **1 P R 1894**

Second Schedule, article 11.

1. *And article* 31—*Suit for compensation for forcible cutting and carrying away reeds*—"*Suit by a co-sharer in holding for a share of the profits thereof*"—*Jurisdiction of Civil and Revenue Courts—Punjab Tenancy Act,* 1887, *section* 77 (3), *clause* (*k*)—*Jurisdiction of Small Cause Court—Small Cause Court Act,* 1877, *Second Schedule, article* 11 *and* 31.

Plaintiff sued on the allegations that he and defendants Nos. 4—8 were co-sharers in certain land: that defendants Nos. 1—3 in *Sambat* 1949 forcibly cut and carried away certain reeds which grew upon the said land, and of which the total value was Rs. 741-11-0; that plaintiff's share was Rs. 296-10-9, and that as defendants Nos. 4—8 would not join plaintiff in the claim, they had been impleaded as defendants. The defendants Nos. 5—8 admitted the claim, but defendants Nos. 1—3 contested it. The Munsif having decreed the claim in part, defendant No 2 appealed to the District Judge, and on his appeal being rejected, applied to the Chief Court on the Revision side, on the grounds that the suit was either one cognizable only by a Revenue Court under clause (*k*) of section 77 (3) of the Punjab Tenancy Act, 1887, or an unclassed suit over Rs. 100 in value and, as such, excluded from the cognizance of the Small Cause Court by article 11 or article 31 of Act IX of 1887.

Held, that inasmuch as plaintiff's co-sharers were merely nominal defendants, and the real defendants were alleged to be trespassers, having no proprietary right in the land, the suit was not one "by a co-sharer in a holding for a "share of the

SMALL CAUSE COURT ACT (IX OF 1887)—*contd.*

Second Schedule, article 11—*contd.*

profits thereof" within the meaning of clause (*k*) of section 77 (3) of the Punjab Tenancy Act, 1887, and further that the suit did not fall under clause (*n*) of the same section, as there was no allegation that defendants Nos. 1—3 occupied the land and cultivated it, but they forcibly took from the lands certain portion of spontaneous growth and that the suit was cognizable by the Civil Courts.

Held, further, that the suit being for damages for the wrongful removal of the produce of immovable property, and not for the enforcement of any right to or interest in immovable property, was not excluded from the cognizance of the Small Cause Court by article 11 of the 2nd Schedule of Act IX of 1887.

Held, also, that the suit was not excluded from the cognizance of the Small Cause Court as being a suit "for profits of immovable "property belonging to the plaintiff which "had been wrongfully received by the defendants" within the meaning of article 31 of the 2nd Schedule of Act IX of 1887.

The final clause of article 31 of the 2nd Schedule of Act IX of 1887 was intended to apply only to "suits for mesne profits of immovable property" in the strict and technical sense of the expression, and the test of the applicability of the article is not so much whether the defendant has received the profits "under some claim of title," as whether he has received them as a person in wrongful possession, it being immaterial whether he has any *bond fide* claim of title to the land or not.

I. L. R., XVII Calc. 541 and 707; *XVIII Calc.* 316; *XV Mad.*, 298; *XVII Bom.*, 42, cited. NAZAM *v.* JOTI MAL. **119 P R 1894**

2. *And articles* 31 *and* 35.—*Jurisdiction of Small Cause Court—Small Cause Court Act,* 1887, *Second Schedule, articles* 11, 31, 35—*Suits for damages for wrongful ouster—Suit based on lease—Question of plaintiff's title as lessee involved.*

Plaintiff sued for Rs. 328 as compensation for damage caused by the defendants to plaintiff by wrongfully ousting him from land which he alleged he was entitled under a lease to cultivate for one year, the measure of damages being the profit which he could have made by such cultivation. The title of plaintiff as lessee was put in issue.

Held, that the suit was one cognizable by a Small Cause Court. DAL SINGH *v.* BHUPA. **80 P R 1896**

3. *Suit for* jagir *income retained wrongfully by one of several sharers—Course of appeal.*

Plaintiff sued to recover his share of certain *jagir* income which had been retained by one of several brothers who had been taking their shares in a family *jagir* by groups, the amount retained being in excess of the defendant's right and claimed by plaintiff as really due to him in order to make up the amount falling to him as representative of one of the said groups.

SMALL CAUSE COURT ACT (IX OF 1887)—*contd.*

Second Schedule, article 11—*concld.*

Held, that plaintiff's claim was in reality one not for damages but for the profits of immovable property wrongfully retained by defendant, and that such claim amounted to one for an account falling within the category of suits for account within the meaning of article 31 of the Second Schedule to the Small Cause Court Act, 1887.

Held, therefore, that the suit was an unclassed suit and that the appeal from the order passed by the Munsif lay, under clause (*c*) of section 39 of Act XVIII of 1884, to the Divisional Judge. HUSAIN KHAN *v.* SAADAT KHAN. **2 P R 1900**

4. *Jurisdiction of Small Cause Court—Suit for the value of crop illegally cut and carried by the defendant.*

A suit for the value of a crop cut and carried by a person in wrongful possession, being an action for damages and not for an account is not excluded from the cognizance of the Small Cause Court as being a suit for "profits of immovable property belonging to "the plaintiff which had been wrongfully "received by the defendant," within the meaning of article 31 of the 2nd Schedule of Act IX of 1887.

Dul Singh v. *Bhupa* (80 *P. R.* 1896), *Nazam* v. *Joti Mal* (119 *P. R.* 1894), *Krishna Prosad Nag* v. *Maiz-ud-din Biswas*, *I. L. R. XVII Calc.* 707), *Sriram Samanta* v. *Kalidas Ray*, *I. L. R. XVIII Calc.* 316, *Aunamalai* v. *Subramanyan I. L. R. XV Mad.* 298), *Kunjo Behary Singh* v. *Madhub Chundra Ghose*, *I. L. R. XVIII Calc.* 884) and *Seshagiri Ayyar* v. *Marakathammal* (*I. L. R. XXII Mad.* 196), referred to and commented upon. ISHWAR SINGH AND OTHERS *v.* WASAWA SINGH. **94 P R 1900**

Second Schedule, article 13.

1. *Jurisdiction of Small Cause Court—Small Cause Court Act,* 1887, *Second Schedule, article* 13—*Suit by lease of Government ferry for recovery of tolls—Northern India Ferries Act,* 1878, *section* 3—"*Ferry.*"

Held, that a suit by the lessee of a Government ferry for recovery of tolls falls under article 13 of the Second Schedule to the Small Cause Court Act, 1887, and is therefore excluded from the cognizance of a Small Cause Court. GOKAL CHAND *v.* LAL CHAND. **48 P R 1887**

2. *Suit for* "*birt*" *realized by defendant and claimed by plaintiff as payable to him—Such suit not one to enforce payment of dues within above article.*

A suit by certain Acharajs to recover from the defendant a sum of Rs. 20, being the *birt* realized by him upon a death occurring on a date which according to the plaintiffs was allotted to them alone *held* to be cognizable by a Small Cause Court under Act IX of 1887, and not to fall within article 13 of the second schedule of that Act, as a suit to enforce payment of dues payable to the plaintiff.

The above article, as it stands, must be limited to suits against the person by whom the dues are payable, or his legal representatives, and cannot be extended to suits to

Second Schedule, article 13—*concld.*

recover dues, which have been paid, from the person to whom they have been worngfully paid. HARNAM *v.* GANDU. **81 P R** 1889

3. *Suit by lessee of Government parade ground for money due on account of grazing dues—" Estate"—Punjab Tenancy Act,* 1887, *section* 77, *clause* (*o*), *and Punjab Land Revenue Act,* 1887, *section* 3—*Jurisdiction of Small Cause Court—Small Cause Court Act,* 1887, *Second Schedule* (13)—"*Interest in immovable property.*

Plaintiff in his plaint alleged by implication that he held a lease under Government of the grazing rights over a certain parade ground, and (apparently) that defendant entered into an agreement with him under which he was allowed to graze cattle on the land, and became liable to pay for so doing the sum of Rs. 7-13-0.

Held, that the parade ground, of which plaintiff held a lease not being an "estate" as defined in section 3 of the Punjab Land Revenue Act, 1887, the suit though one for money due on account of grazing dues did not fall under clause (*o*) of section 77 of the Punjab Tenancy Act, 1887, and was cognizable by the Civil Court.

Held, further, that if plaintiff's allegation was merely that he held a lease of the parade ground, and that by virtue of such lease and apart from any agreement, he was entitled to demand certain dues from all persons grazing cattle on the land, the suit was one for dues payable to plaintiff "by reason of his interest in immovable property" within the meaning of article (13) of the second schedule of the Small Cause Court Act, 1887, and as such excepted from the jurisdiction of the Small Cause Court. Otherwise, if the claim was based on an express agreement by the defendant to pay certain rates. KHUDA BAKHSH *v.* DANA. **13 P R 1895**

4. *Jurisdiction of Small Cause Court—Suit, lessee of Government ferry for recovery of tolls—Small Cause Court Act,* 1887, *Second Schedule, article* 13.

Held, that a ferry, such as that at Khushalgarh, must be regarded as immovable property vested in the Local Government and that a plaintiff, when claiming as lessee of the ferry to recover tolls or dues, claims to recover by reason of an interest in immovable property transferred to him by Government.

Held, therefore, that such a suit is excluded from the cognizance of a Small Cause Court by article 13 of the second Schedule to the Small Cause Court Act, 1887. DESA SINGH *v.* NARAIN DAS. **80 P R 1898**

Article 15.

—*Suit for damages after avoiding sale on the ground of fraud—Suit cognizable by Court of Small Causes.*

See SMALL CAUSE COURT. JURISDICTION OF. **49 P R 1904**

Article 18.

—*Suit to recover money spent in connection with the guardianship of a minor—Suit relating to a trust.*

See SMALL CAUSE COURT. JURISDICTION OF. **58 P R 1903**

Second Schedule, article 20.

1. *Suit to establish right to property released from attachment—Execution of decree—Right to sue—Objection by person not a party to the suit—Civil Procedure Code* (*Act XIV of* 1882), *sections* 244, 280, 283.

Plaintiff, a decree-holder, against whom an order for release of certain property from attachment had been passed under section 280 of the Civil Procedure Code, on the objection of a person not a party to the suit, sued to establish his right to such property (section 283), and in the alternative for the value of the property.

Held, that the suit being instituted after 1st July 1887, was not cognizable by a Small Cause Court, as it fell under article 20 of Schedule II of the Small Cause Court Act of 1887.

Held, further, that the suit clearly lay, as the property released was released on the objection of a person who was not a party to the suit, and no appeal against the order of release lay as against him under section 244, Civil Procedure Code. DEVI DITTA *v.* MIRAN BAKHSH. **63 P R 1889**

2. *Suit instituted under section* 283, *Civil Procedure Code.*

A suit by the owner of attached property, whose objection to the attachment has been disallowed to recover the property or its value from the decree-holder and the auction-purchaser, *held* to be excluded from the cognizance of a Provincial Small Cause Court, by Act IX of 1887, Schedule II, clause 20. DYAL *v.* SUNDAR SINGH. **51 P R 1890**

Second Schedule, article 29.

1. *Act IX of* 1887, *Schedule II, article* 29 (*c*)—*Profits of partnership—Partnership in land.*

Held, that a suit for the profits arising out of a partnership business, alleged to exist between the parties for the cultivation of land, is excluded from the cognizance of the Small Cause Court by article 29 (*c*), Schedule II, Act IX of 1887, the transaction not being less a partnership because it was one of an agricultural nature. BHUP SINGH *v.* FATTA. **92 P R 1889**

2. *Provincial Small Cause Courts Act,* 1887, *Second Schedule, article* 29 (*c*)—*Suit for balance of partnership account—Jurisdiction of Small Cause Court.*

Held, that the words "unless the balance has been struck by the parties or their agents," in article 29 (*c*) of the second schedule to Act IX of 1887, indicate a balance showing finally what is due by one party to the other, that is to say, a final adjustment of the whole

Second Schedule, article 29—*concld.*

partnership account, no portion thereof remaining for future adjustment, and the result being stated in the form of a balance struck. SRI RAM *v.* BANSI DHAR. **64 P R 1895**

Schedule II, article 31.

Held, by the Full Bench that a suit for damages sustained by plaintiff on account of his having been kept out of possession of two-thirds of a house purchased by him at an auction sale by the defendant (who was owner of the remaining third), and prevented by her from access to it for twenty-five months, did not fall within the purview of clause 31, Schedule II, of the Small Cause Court Act, 1887, and was of a nature cognizable by Courts of Small Causes. MUSSAMMAT KISHEN KAUR *v.* TULSA SINGH. **35 P R 1902, F. B.**

Second Schedule, article 35 (*c*).

Act IX of 1887, *Schedule II* (35) (*c*).—*Suit for damages for malicious prosecution.*

A suit for damages for malicious prosecution is not cognizable by a Small Cause Court, under Act IX of 1887, whether the claim be for money as a salve to injured feelings or as a payment for actual loss in trade or other loss caused to the plaintiff. WAZIRA *v.* GANGA RAM. **30 P R 1889**

Second Schedule, article 35 (g).

Act IX of 1887, *Schedule II, clause* 35 (*g*)—*Suit for compensation for breach of promise of marriage.*

Plaintiff claimed Rs. 150 from the defendant on the ground that the latter had taken that sum from the plaintiff, promising to give him his daughter in marriage, but had failed to do so. *Held*, that the claim fell within clause 35 (*g*) of the Provincial Small Cause Court Act, as being a suit for compensation for breach of a promise of marriage—the expression "compensation" as used in the above clause bearing the same sense as in section 73, Contract Act. NURA *v.* ALA DITTA. **132 P R 1889**

Second Schedule, article 38.

Act IX of 1887, *Schedule II, clause,* 38—*Suit for arrears of maintenance—Punjab Courts Act* (*XVIII of* 1884 *and XIII of* 1888)—*Jurisdiction of District Judge—Unclassed suit.*

Under Act XVIII of 1884, a District Judge was not competent to hear an appeal in a suit for arrears of maintenance, such suit not being cognizable by a Small Cause Court (clause 38, Schedule II, Act IX of 1887). Act XIII of 1888 has, however, made a change in the law inasmuch as a suit for maintenance is according to it an unclassed suit, and the appeal will, subject to the other provisions of the Act as to value, lie to the District Judge. DHIRTA *v.* NIHAL DEVI. **123 P R 1889**

SMALL CAUSE COURT ACT (IX OF 1887—*concld.*

Second Schedule, article 39.

—*Suit for Arhat—Small Cause Court Act, IX of* 1887, *Schedule II, article* 39.

The chaudhris of a village sued the zemindars for Rs. 40 on the allegation that they were by custom entitled to levy a fee of one per cent. on all articles sold in the village, and that the defendants had forcibly and wrongfuly realized these dues.

Held, that the suit was cognizable by the Civil and not by the Revenue Court, as, even assuming that " *arhat* " is a village cess within the meaning of section 77 (*j*) of the Tenancy Act (which was doubtful) that clause must be construed as applying only to suits brought against the parties liable to pay such cess.

Held, also that the suit was cognizable by a Small Cause Court. HAYAT SHAH *v.* JAWAYA **204 P R 1889**

Second Schedule, article 44.

Act IX of 1887, *Schedule II* (44)—*Landlord and tenant—Ejectment of tenant by landlord—Suit by tenant for refund of portion of rent paid in advance—Tenancy Act (XVI of* 1887), *section* 77 (3), *clause* (*g*), (*i*) *and* (*l*).

Held, that when a tenant rents land for a fixed term for agricultural purposes and pays up to the landlord the rent in advance, and is subsequently ejected by the landlord before the expiry of the said term, and on the ground of such ejectment sues for the refund of a portion of the rent so paid, the amount claimed being under Rs. 500, such suit is cognizable by a Small Cause Court under Act IX of 1887, the cognizance of such Court not being barred by any of the clauses of section 77 of the Tenancy Act (XVI of 1887). MEHR DIN *v.* KARM ILAHI. **172 P R 1888**

SODHIS (KHATRIS).

—*Presumption is against their following agricultural custom.*

Held, that the initial presumption in the case of Khatris especially of Sodhis is that they follow Hindu Law. Among Sodhis of Bhamipur, District Ludhiana, custom allowing exclusion of daughter by collatrals of 4th degree not proved. HARNAM SINGH *v.* MT. HARDEVI. **43 P R 1911**

SON-IN-LAW.

Gift by widow to.

See CUSTOM I. A.—ALIENATION BY MALE PROPRIETOR—7. LOCUS STANDI, &c. **39 P R 1905**

SPECIAL DAMAGE.

See COMMON LAND. **108 P R 1889**
EASEMENT. **39 P R 1888**
NUISANCE. **4 P R 1895**

SPECIFIC PERFORMANCE.

See CONTRICT ACT, s. 208. **63 P R 1874**

1. Where *A* purchases a piece of land on behalf of himself and *B* jointly, and pays the whole price, retaining sole possession until such time as *B* reimburses him his share of the purchase money; if *B* allows more than a reasonable time to elapse without paying, he cannot disturb *A's* sole

SPECIFIC PERFORMANCE—*concld.*

possession, or insist upon specific performance of the original arrangement. MOTEE RAM *v.* LUCHMUN SINGH. **106 P R 1868**

2. *Contract to assign lambardari dues.*

A suit will not lie to enforce a contract made by a *sudder malguzar*, for a share of his lambardari allowance; but the assignee has his action for breach of contract. HURREE SINGH *v.* MAHAN SINGH. **16 P R 1870**

3. *Specific performance involving liability for life—Specific Relief Act,* 1877, *section* 21 (*g*).

The defendant executed and registered agreement by which he agreed with plaintiff's father that he would bring about cohabitation between plaintiff (his daughter-in-law) and her husband (his son) and would also treat her well and promised, in case he failed to do so, to provide maintenance and residence in future for the term of plaintiff's life. The defendant having faild to perform the first covenant, plaintiff instituted the present suit for specific peformance of the second covenant of the agreement. It appeared that plaintiff's husband being an adult and there being no ancestral property in defendant's hands, there was no liability under the law on him to maintain or provide a residence for the plaintiff.

Held, that under the circumstances of the case, and as it would be opposed to the terms of section 21 (*g*) of the Specific Relief Act, the Court would not decree specific performance of the contract but, as the agreement was voluntary on the part of the defendant, the plaintiff was entitled to an adequate compensation by way of damages for the breach of the conditions undertaken to be performed by the defendant. DAROPTI *v.* JASPAT RAI. **49 P R 1905**

SPECIFIC RELIEF ACT I OF 1877.

Section 9.

See POSSESSION.

1. *Possession—Ejectment—Suit by person ejected brought more than six months from date of dispossession against one having no title—Title of possession—Burden of proof—Specific Relief Act,* 1877, *section* 9.

See POSSESSION. **78 P R 1902**

2. *Revision—Chief Court's powers of revision—Revision from a decree in a suit to recover possession under section* 9 *of the Specific Relief Act.*

Held, that a decree in a suit, for the recovery of possession under section 9 of the Specific Relief Act in favour of the plaintiff is not open to revision by the Chief Court, on the ground that the Court below has misapprehended and misrepresented the evidence, oral and documentary on the record where, on the allegations contained in the plaint the plaintiff had a cause of action and the Court had jurisdiction to entertain the suit, and the errors attributed by the petitioner to the Court below were intrinsic to the inquiry and decision.

Hira Singh v. *Bhana* (9 *P. R.* 1894), *Joti Mal* v. *Coates* (15 *P. R.* 1901), *Guise* v.

SPECIFIC RELIEF ACT I OF 1877—*contd.*

Section 9—*concld.*

Jaisraj (*I. L. R.*) *XV All.* 405), *Shiva Nathaji* v. *Joma Kashinath* (*I. L. R. VII Bom.* 341), *Bhundal Panda* v. *Pandol Pos-Potil* (*I. L. R., XII Bom.* 221), and *Kashinath. Sukharam* v. *Nana* (*I. L. R. XXI Bom* 731), cited. *Narain Das v. Manohar Lal* (21 *P. R.* 1898, F. B.), *Sant Singh* v. *Ghasita* (21 *P. R.* 1902), *Tarin Mahan Mozumdar* v. *Gunga Prosad Chuckerbutty* (*I. L. R. XIV Calc.* 649), and *Sonoton Shome* v. *Sheikh Helim* (6 *Calc. W. N.* 616), referred to. SAFDAR JANG *v.* SHANKAR SINGH. **13 P R 1903**

Section 12.

1. *And sections* 21 *and* 24—*Specific performance of an agreement to execute and register a deed in favour of a third party—Personal bar.*

Plaintiff sued defendant for pre-emption of a shop. An agreement was made between parties that they should unite in gifting the shop to a *dharmsala*, and a petition describing the terms of the compromise was submitted to Court and the suit withdrawn. Defendant subsequently refused to carry out the agreement. Plaintifl sued for specific performance of the agreement to execute and register a deed of dedication in favor of the *dharmsala*. The defendant pleaded (*i*) that the agreement as embodied in the petition to Court was inadmissible in evidence for want of registration ; (*ii*) that specific performance of an agreement cannot be enforced in favour of a person who could not recover compensation for its breach, and that the plaintiff in this case could not recove compensation, a third party being the beneficiary under the agreement, and the only person damaged by its breach ; and (*iii*) that a suit for special performance of an agreement to register did not lie.

Held, (i) that the agreement did not require registration. It did not of itself purport or operate to create, declare, or assign any right, title or interest, to or in, immovable property ; and (*ii*) that the suit for specific performance of the agreement to execute and register the deed of dedication was maintainable. Section 24, Specific Relief Act, deals with objection not derived from the nature of the contract, but objections personal to the plaintiff, and there is nothing in the law to prevent suit lying for specific performance of an agreement to register an instrument which has yet to be executed, a suit distinct from a suit to compel registration of an already executed deed of which the registration is compulsory. SHIB DIAL AND OTHERS *v.* HIRA NAND AND OTHERS. **100 P R 1890**

Section 13.

—*Auction sale of house—House knocked down to highest bidder, but no deed of conveyance executed—Completion of sale—Transfer of Property Act, section* 54.

See AUCTION SALE. **52 P R 1897**

Section 18.

—*And section* 22—*Sale of reversionary right—Right sold subsequently falling into*

SPECIFIC RELIEF ACT (I OF 1877)—*contd.*

Section 18—*concld.*

possession—Undue influence—Vendee vendor's surety—Specific Relief Act, 1877, *sections* 18, 22.

Held, that under section 18 of the Specific Relief Act, 1877, a sale of a reversionary right of succession, though at the time of sale it does not effect a transfer of property, gives rise to a right which the Court will enforce when the inheritance falls into possession.

From the mere fact that at the time of sale the vendee was the vendor's surety for keeping the peace, an inference cannot fairly be drawn that the former was in a position to exercise undue influence over the latter in respect of the sale.

When a person pays cash for the purchase of a reversionary right, the Court in considering whether the price was inadequate, will have regard to the fact that the right will not come into possession for an indefinite time, and, in certain cases, may never come into possession, and will not release from his obligations a vendor who has made the bargain with his eyes open, merely because the bargain has proved to be a bad one. MALIK ALA BAKHSH *v.* GULAM.
13 P R 1899

Section 20.

—*And section 27 (b)—Agreement to sell to B—Subsequent sale to C with notice of original contract—Suit for possession by B—Priority—Penalty mentioned in contract no bar to specific performance.*

See VENDOR AND PURCHASER.
15 P R 1908

Section 21.

See ARBITRATION. **130 P R 1882**

1. *Arbitration—Reference to, made out of Court during pendency of suit—Specific Relief Act,* 1877, *section* 21—*Effect of.*

Held that the last clause of section 21, Specific Relief Act, is inapplicable to a case in which a reference to arbitration is made out of Court during the pendency, and not before the institution of a suit.

P. R. No. 130 of 1882, followed. FAKIR *v.* JAIMAL.
50 P R 1891

2. *Contract to refer controversy to arbitration—Refusal to perform contract—Bar to suit.*

In a suit brought by plaintiff against defendants alleging a partnership between the parties which had been dissolved, and asking for the affairs of the dissolved partnership to be wound up, defendants pleaded, in bar of the suit, a written agreement between plaintiff and the principal defendant under which they agreed to refer to the arbitration of one M. the question as to what was due to or by either party on the partnership account. It appeared that this agreement was executed at M.'s house and made over to him then and there to take action upon, but that nothing further came of this submission. Defendants relied upon the final clause of section 21 of the Specific Relief Act in support of their plea.

SPECIFIC RELIEF ACT (I OF 1877)—*contd.*

Section 21—*concld.*

Held, that the plea failed, first because it was not proved with sufficient definiteness that plaintiff refused to go on with the submission to arbitration, though the defendants wished it to proceed; secondly, because a refusal to carry out a submission to arbitration once fully made is not a "refusal to perform the contract to refer" within the true meaning of section 21 of the Specific Relief Act, 1887. KARAM CHAND *v.* RAM DAS.
19 P R 1896

3 *Specific Relief Act, I of* 1877, *section* 21, (*last*) *clause—Suit based on agreement containing a clause for reference to arbitration—not barred, unless defendant proves that plaintiff refused to submit to arbitration.*

In a suit based on a registered agreement containing a clause "If any dispute arises between the parties regarding this agreement it shall be settled by master N. B .... and his decision shall be binding on the parties." Defendant raised a plea that the suit is barred by section 21 of the Specific Relief Act.

Held, that the defendant, on whom the *onus* lay, had failed to prove that plaintiffs had refused to perform the contract to refer the matter to arbitration before the present suit was instituted and that consequently the last clause of section 21 of the Specific Relief Act did not operate as a bar to the plaintiff's suit. **25 P R 1911**

Section 22.

—*And sections* 12, 20—*Specific performance of contract—Discretion of Court—Decree of lower Court reversed on respondents' cross-objections—Civil Procedure Code, section* 561—*Appeal from part only of decree.*

One D. D. having alienated his rights in a certain shop to one T. R., defendant was about to sue the latter for pre-emption when it was agreed between them that T. R. should sell his rights to defendant for Rs. 2,000. Thereupon defendant entered into an agreement with plaintiffs to the following effect; that defendant should pay Rs. 350, and plaintiffs the balance of the said Rs. 2,000 through defendant, to T. R.; that plaintiffs should bear all incidental expenses; that thereafter plaintiffs should be put into possession of three-fourths of the shop, one-fourth remaining with defendant, and that, in the event of any breach of the said agreement, the party in default should pay the other party Rs. 500. A question having arisen subsequently as to what sum should be entered in the sale deed as consideration for the three-fourths part of the shop, the deed of sale was not executed, and the parties separated. Plaintiffs thereupon instituted the present suit, and alleged that defendant had given them possession of three-fourths of the shop and had subsequently dispossessed them. They prayed that they might be restored to possession and that defendant might be ordered to execute a conveyance in their favour, the latter portion of the prayer being inserted in the heading of the plaint, and not (presumably by an oversight) at the end of

SPECIFIC RELIEF ACT (I OF 1877)—*contd.*

Section 22—*concld.*

it. The first Court gave plaintiffs a decree in the terms of their prayer, but the Divisional Judge, on appeal, though finding all the facts in plaintiffs' favour, modified the decree of the first Court by granting them a decree merely for the Rs. 500, on the ground that there had been no complete constructive possession of the shop by plaintiffs and because the suit was not one for specific performance. From this decree defendant appealed to the Chief Court and plaintiff filed cross-objections under section 561, Civil Procedure Code. For defendant it was contended that the said cross-objections were not maintainable, on the ground that defendant had appealed only against a portion of the decree of the lower Appellate Court.

Held, overruling the objection, that the cross-objections were maintainable under section 561 of the Code.

Held, further, without considering defendant's appeal, that plaintiffs' cross-objections must be allowed, on the ground that the suit as laid was for specific performance of a contract which, under the circumstances, was a proper contract to be specifically enforced, and none the less so because a sum was named in it as the amount to be paid in case of its breach by the party in default, the fact that in this case the party in default was not willing to pay such sum being an additional reason for specifically enforcing the said contract.

According to section 22 of the Specific Relief Act, jurisdiction to decree specific performance is discretionary, but the discretion of the Court is not arbitrary, but sound and reasonable, guided by judicial principles and capable of correction by a Court of Appeal. HAJI GHULAM MUHAMMAD *v.* KAKA RAM.
31 P R 1897

Section 27.

See REGISTRATION ACT (III OF 1877), SECTION 50. **69 P R 1886**

Section 33.

1. *And section* 41—*Sale of minor's property by next friend—Validity of sale—Necessity—Sale not beneficial to minor's interest—Refund of purchase money paid to minor with knowledge of minority—Liability of minor in equity—Contract Act, sections* 11, 65.

See MINOR. **33 P R 1904**

Sections 39, 40.

See SMALL CAUSE COURT, JURISDICTION OF. **69 P R 1886**

1 *Suit for cancellation in part of document on ground of failure of consideration—Contract Act (IX of* 1872), *section* 2, *clause* 1, *and sections* 46, 73—*Voidable contract—Evidence Act (I of* 1872), *section* 92, *prov.* (3)—*Admissibility of oral evidence to add to written contract—Condition precedent*—Onus probandi.

Plaintiff sued for cancellation of a bond to the extent of Rs. 1,000, alleging that he had been induced to execute the bond in question (which was for Rs. 1,300, and recited the consideration as being Rs. 1,100 on

SPECIFIC RELIEF ACT (I OF 1877)—*contd.*

Setions 39, 40—*contd.*

account of an old book debt, and a present cash advance of Rs. 200) on defendants giving plaintiff a solemn oath in the village temple that if he executed a bond for the above sum they would pay plaintiff's debts amounting to Rs. 1,000, the difference being made up of a cash advance of Rs. 200, and a book debt of Rs. 100, and that the defendants had not fulfilled their promise.

Held, that the allegations put forward by the plaintiff, assuming them to be true, entitled him to relief under sections 39 and 40 of the Specific Relief Act ; that the agreement was in consequence of defendants' failure to perform their promise within a reasonable time (section 46 of the Contract Act) not enforceable at their option, though it continued to be enforceable by plaintiff by way of a suit for damages for breach of the agreement under section 73 of the Contract Act, and thus became a "voidable contract" within the meaning of section 2, clause (i) of the same Act ; but although enforceable by the plaintiff in the way above mentioned, the plaintiff was not bound to adopt his remedy on the contract, because the breach he complained of went to the entire consideration, and as there would be a reasonable apprehension that if the bond for Rs. 1,300 were left outstanding it might cause him serious injury, the plaintiff was entitled under sections 39 and 40 of the Specific Relief Act to have that portion of the bond adjudged voidable which had become unenforceable by the defendants.

Held also, that evidence of the oral agreement above-mentioned was admissible in the present case under section 92, proviso 3 of the Evidence Act, as if the plaintiff's statement was accepted as true, the alleged oral agreement constituted a condition precedent to the attaching of any obligation *qua* the item of Rs. 1,000 under the bond.

The Chief Court, however, held on the facts (upholding the judgment of the lower Appellate Court) that plaintiff had failed to discharge the *onus* which lay upon him of proving the oral agreement alleged to have been made by the defendants. *Gurditta* v. *Azam* (No. 122 *P. R.* 1881), referred to. KHUDA BAKSH *v.* BUDHAR MAL.

186 P R 1882

2. *Declaratory decree—Cancellation of instrument—Balance entered in account book professing to have been struck by a certain person—Written instrument—Threat of civil suit—Reasonable apprehension of injury—Discretion of Court.*

Plaintiff having received information that a balance was entered in defendants' books as struck by him (plaintiff), sued for a declaratory decree that the entry was a forgery. The first Court going into the merits gave the plaintiff a decree. The Divisional Court dismissed the suit as unmaintainable under section 42, Specific Relief Act. On appeal to the Chief Court it was contended on behalf of plaintiff (*i*) that the suit was maintainable under section 39, Specific Relief Act, the alleged entry being a written instrument and threat of civil suit by defendant, whenever it may suit his convenience to bring it, being sufficient to cause reasonable apprehension of injury to plaintiff, and (*ii*) that the Appellate Court ought not to have refused relief by a mere exercise of discretion after the first Court had gone into the merits.

Held, that it could not be said that an entry of a balance, binding as an acknowledgment was not a written instrument and that a suit did not lie to cancel it. Each case, however, must be judged on its own merits, and a suit allowed only if the possible injury were very serious and its apprehension very reasonable. *Held*, also that the first Court having gone into the merits (although it would have exercised a proper discretion in rejecting the suit *in limine*) and come to a finding in plaintiff's favour, the plaintiff was entitled to a consideration of the merits by the Appellate Court. GAUSA *v.* GANGA RAM.

12 P R 1890

3. *And section 40—Plaint, construction of—Joint holding—Separate possession and enjoyment—Partition, proof of.*

The plaint set forth that plaintiff and S. were co-sharers in a joint *khata*, plaintiff's share being two-thirds and that of S. one-third ; that S. by a deed of sale, registered on the 8th June 1880, sold to the father of the defendants certain specific fields ; and that, inasmuch as the holding was joint, S. had no power to sell the said fields. Plaintiff therefore prayed for a declaration that the said deed should be declared void as against himself, and that he was owner of two-thirds of the joint holding and he further prayed to be placed in possessien of his share or for any other relief the Court might think fit to grant.

Held, that the suit was one, not for cancellation of a deed under section 39 of the Specific Relief Act, 1877, but for a declaratory decree under section 40, to the effect that notwithstanding the acts of the defendants, the holding was still joint and plaintiff's share in it two-thirds.

Held, also, that the mere fact that each co-sharer in a joint *khata* has dealt with specific portions thereof is proof that portions of the *khata* have been separately possessed and enjoyed, but does not amount to proof that the *khata* has been divided, nor does a purchaser of specific land in such *khata* become thereby a co-sharer in it. MATU *v.* HIRDE.

44 P R 1894

4. *Specific Relief Act, I of 1877, section 41—Indian Contract Act, IX of 1872, sections 64 and 65—Sale by minor—Misrepresentation—Vendee acting in good faith—Refund of purchase money.*

Where the facts found were that the plaintiff when within 39 days of being *sui juris*, sold some land for Rs. 400 to the defendant who was not aware that the vendor was an infant but was deceived and acted in good faith.

Held, that plaintiff was bound in equity to refund the purchase money under section 41 of the Specific Relief Act, 1877, as a condition precedent to obtaining a decree for possession of the land.

Held also, that the circumstance that sections 64 and 65 of the Contract Act do not apply to the facts does not exclude the application of section 41 of the Specific Relief Act and the rule of equity therein contained. BALAK RAM *v.* DADU. **76 P R 1910**

Section 42.

See DECLARATORY DECREE.

RIGHT TO SUE. **10 P R 1882**

1. *Jurisdiction of Civil Courts—Declaration—Mode of assessment—Pensions Act, 1871—Jurisdiction of Revenue Courts—Punjab Land Revenue Act, 1887, section 158, sub-section (2), clauses (ix) and (xiv).*

See JURISDICTION OF CIVIL OR REVENUE COURTS. **77 P R 1891**

2. *Suit by non-proprietors for declaration of their right to hold their houses free from certain fees and dues—Right to maintain suit.*

A suit for a declaration that certain non-proprietary residents of a village were entitled to hold their houses in the village *abadi* free of any demands on the part of the proprietors for certain fees and dues, *held* to be maintainable under the terms of section 42 of the Specific Relief Act. *Ramdial* v. *Budha* (115 *P. R.* 1883), referred to. RALA RAM *v.* BIR SINGH. **48 P R 1887**

3. *Suit for a declaration that plaintiff is in possession of certain property—Title to property.*

Held, by the Full Bench, that section 42 of the Specific Relief Act does not allow of a suit for a declaration that a plaintiff, who alleges no title is in possession of certain property, and has the benefit or is entitled to the benefit arising from the fact of such possession, as against the defendant who is also asserted to have no title. SAYAD BADR-UD-DIN *v.* SAYAD ABDUL KARIM. **12 P R 1888**

4. *Suit for declaration of invalidity of marriage of defendant No. I with defendant No. II.*

Plaintiffs who were the brothers and paternal uncle of one Mussammat S. (defendant No 2), sued for a declaration that a marriage between her and the first defendant which admittedly took place with the usual ceremonies, but with the consent only of the girl's maternal grandfather, was null and void.

Held, that the suit must be dismissed on the ground that the decree sought for, even if given, would be inoperative as regards the persons it would profess to affect, as it would not make the question of the validity of the marriage a *res jduicata* in any future suit between the co-defendants themselves, and was therefore not one which the Court should grant under section 42 of the Specific

SPECIFIC RELIEF ACT (I OF 1877)—*contd.*

Section 42—*contd.*

Relief Act to the plaintiffs suing on their own behalf. SOHEL SINGH *v.* MUSSAMMAT SADI. **99 P R 1888**

5. *Suit for declaration by reversioners—Alienation by an occupancy tenants' widow.*

A suit lies by the collaterals of an occupancy tenant for a declaration that an alienation by his widow is of no effect on their reversionary interest. GAMI *v* MUSSAMMAT KHIO. **205 P R 1889**

6. *Right of distant collaterals to question alienation by widow in presence of daughter's sons—Right to sue—Declaratory decree.*

Plaintiffs, the collateral heirs of one "A" in the tenth remove sued to set aside an alienation made by the widow. The defendants contended that the plaintiffs had no right to sue, as they were not the nearest reversioners, the daughter and the daughter's sons of the deceased being the persons presumptively entitled to succeed if they survived the widow. The pedigree table prepared at Settlement showed that in the course of many generations there was not a single instance of a daughter's succession to sonless proprietors. The *Wajib-ul-arz* and the *Riwaj-i-am* also clearly excluded the daughter from succession to her father's estate.

Held, that without finally deciding whether daughters and daughter's sons were by custom excluded from succession among Sindu Jats, the tribes to which the parties belonged, the plaintiff's position was sufficiently well established by the evidence to entitle them to maintain the suit as the nearest reversioners. RAM DITTA *v.* KISHAN SINGH. **4 P R 1890**

7. *Suit for declaration—Consequential relief—Objection to hearing of appeal.*

Plaintiff, alleging to successive mortgages to him by the defendants, sued for a declaration that the defendants could not redeem the property without paying off the debt due on the second mortgage. On the date the suit was instituted, the amount due on the second mortgage had already become due. Defendants contended, *inter alia*, that the suit did not lie as consequential relief was available. While defendant's appeal was pending in the Chief Court, they also sued for redemption of the property and paid off the amount of both mortgages. At the hearing of the appeal, it was objected for plaintiff-respondent that the defendants having paid up the amount due on the second mortgage, there remained nothing to decide, and that the appeal should not be allowed to proceed.

Held (i) that the defendants were entitled to have their appeal heard; (*ii*) that the suit for a declaration was maintainable, there being no further appeal arising out of the cause of action sued upon, *i. e.*, the refusal to recognise the second mortgage. Recovery of the money due was only an alternative relief which the plaintiff was not bound to enforce. JODHA AND OTHERS *v.* BUDHA RAM. **35 P R 1890**

SPECIFIC RELIEF ACT (I OF 1877)—*contd.*

Section 42—*contd.*

8. *Declaratory decree—Plaintiff alleging title as well as possession, asking for declaration as to possession only—Judicial discretion.*

The plaintiffs sued, alleging that they were owners and in possession of certain land; that two deeds of sale were executed by them in 1877 and 1879, purporting to convey portions of the said land to the defendant; that the defendants never got possession under the said deeds, as the full consideration money was never paid by him; that notwithstanding this fact the defendant had succeeded in obtaining *dakhil kharij* from the Revenue authorities, which was calculated to cause injury to the plaintiffs, though it had not ousted them from actual possession; and the plaintiff, therefore, paid for a declaratory decree *that they were in possession of the entire land*, and that the mutation in the defendant's favour would not affect their rights of possession. The plaint was silent on the question as to with whom the ownership of the property legally rested.

Held, that the suit as laid had been rightly dismissed. Assuming it to be correct that a plaintiff who alleges title as well as possession cannot be allowed to ask for a declaration as to his possession only, there being a further dispute between parties as to the title, the suit would not lie.

But in any case, the proper decree for a Court to make upon a claim framed in the above manner, and leaving open the question of title, would be one declining to exercise its judicial discretion by making any such declaration, the effect of which would be to leave the real matter of dispute between the parties undealt with and undisposed of. MUTA ALI *v.* MEHTAB RAI. **48 P R 1892**

9. *Hindu Law—Custom—Succession of adopted son to share of* birt*—Panjzati Brahmans of Amritsar city—Suit for declaratory decree and for a sum of money—Specific Relief Act (I of* 1877), *section* 42, *proviso.*

Plaintiff, one of the sons of R. K., sued the other descendant of R. K. and of D. for a declaration that he was the adopted son of N. C., a brother of R. K. and D. and as such was entitled to succeed to N. C.'s one-third share of the family *birt* and also for a money decree for one-third of the *birt* alleged to be in the hands of defendants at the time of the institution of the suit. The parties were Panjzati Brahmans of Amritsar city. The first Court found that plaintiff was in fact the adopted son of N. C., and gave him the declaratory decree prayed for, and also a money decree for part of the amount claimed. On appeal by one of the defendants, the plaintiff was informed by the Divisional Judge that he could not in the same suit ask for a declaratory decree and for a money decree for *birt*. Plaintiff thereupon elected to proceed with his claim for a money decree for a *birt* only. and the Divisional Judge confirmed the decree of the first Court as a whole. On appeal to the Chief Court, it was contended on behalf of the appellant that the suit

SPECIFIC RELIEF ACT (I OF 1877)—*contd.*

Section 42—*contd*

having been reduced in the lower appellate Court to one for a money decree for *birt* only became a Small Cause, and that neither of the lower Courts had jurisdiction to try it.

Held, that having regard to the proviso to section 42 of the Specific Relief Act, 1877, the plaintiff was entitled to institute the suit as laid and, as laid both courts had jurisdiction to try it.

Held, further, that plaintiff's election to proceed for the suit for a money decree only having been forced on him by a ruling or expression of opinion by the Court, plaintiff was not bound thereby. BHAGAT RAM *v.* SHIV DATT. **141 P R 1894**

10. *Declaratory decree, suit for, by reversioner—Speculative suit—Specific Relief Act,* 1877, *section* 42.

Plaintiffs sued for a declaration that, after the death of Mussammat J. who was at the time in possession of the property, with a widow's interest, they were entitled to succeed to it. Their suit was dismissed by the Divisional Judge, on the ground that the widow had not done any act or made any alienation of the property which might raise an apprehension of injury to plaintiffs' rights there being no allegation that any denial of their rights was made before the institution of the suit.

Held, that the suit had been rightly dismissed. MUHAMMADI *v.* MUSSAMMAT JIWANI. **42 P R 1898**

11. *Deed of grant, construction of—*Adhlapi *tenure—Declaratory decree.*

According to the terms of certain deeds of grant, executed more than forty years before suit by the father of defendant in favour of plaintiffs' ancestors, portions of a large tract of waste land were conveyed to the grantees on condition of their breaking up the waste, bringing it under cultivation and constructing embankments for storage of water, it being provided that on fulfilment of these conditions one half of the area in each case was to become the property of the grantees. In the Revenue papers the latter were in each instance shown as proprietors, half-and-half, of the land. Plaintiffs, descendants of the original grantee, sued for declaratory decrees on the allegations that they were respectively full proprietors of the lands shown as their property in the Revenue papers, but that they had hitherto paid to the defendant *mahsul* or *batai* in respect thereof, and that these payments were purely voluntary and were made simply because the defendant was the hereditary chief. It appeared that by arrangement between the parties, the defendant paid the Government demand in respect of the lands in cash and realized from plaintiffs in kind. The declarations prayed for were to the effect that plaintiffs were not bound to make such payments in future.

Held, that according to the terms of the deeds of grant and the entries in the

SPECIFIC RELIEF ACT (I OF 1877)—*contd.*

Section 42—*contd.*

Revenue papers, plaintiffs were *adhlapidars* and full proprietors of the lands concerned.

Held, further, that as plaintiffs were full proprietors of the said lands, the arrangement whereby they allowed the defendant to come between them and Government, realizing from them in kind and paying the Government demand in cash, was purely voluntary one, terminable by plaintiffs at their pleasure.

Held, finally, that as plaintiffs' liability to pay *mahsul* or *batai* was in dispute, and as defendant alleged his right to levy it and to continue the existing practice, defendant was "interested to deny" plaintiffs' right to terminate these payments, and that as circumstances prior to the institution of the suit clearly proved defendant's intention to enforce his claim to them by some means or other, plaintiffs were entitled to sue for declaration under section 42 of the Specific Relief Act, 1877. S. BAHADUR KHAN *v.* JIWAN.

27 P R 1899

12. *Suit for declaration of title—Adverse entry in Revenue papers—Cause of action—Limitation Act,* 1877, *2nd Schedule, article* 120—*Punjab Land Revenue Act*, 1887, *section* 45—*Secific Relief Act, 1877, section* 42.

Plaintiffs sued for a declaration of proprietary rights in certain land upon the allegation that defendants were taking advantage of an entry in the Revenue papers to endeavour to oust plaintiff from the said land. It appeared that the Revenue authorities when making the entry in question, more than six years before suit, had included the area in dispute in defendants' estate, but that neither plaintiffs nor defendants were parties to the action of the Revenue authorities. For defendants it was contended that plaintiffs had no cause of action apart from the entry in question, and that the suit, having been instituted more than six years after the making of such entry, was barred under article 120 of the Limitation Act, 1877.

Held, having regard to the plaintiffs' allegations and the circumstances of the case that plaintiffs had, with reference to section 42 of the Specific Relief Act, 1877, and section 45 of the Punjab Land Revenue Act, 1887, a cause of action which accrued within the period of limitation and would be entitled to a decree if they prove their allegations. NATHA SINGH *v.* SADIQ ALI. **20 P R 1900**

13. *Attachment—Property liable to be attached—Cause of action—Form of plaint for declaration that a judgment-debtor had a mortgage on certain property—Plaint—Relief claimed—Specific Relief Act*, 1877, *section* 42.

Plaintiffs in execution of a money decree against one Gurdit Singh, deceased, who had a mortgage on the land belonging to defendants, attached those rights, whereon the defendants objected that they had redeemed the land from mortgage and that no representative of the deceased judgment-debtor had been placed on the record. The objections were disallowed by the first Court, but on appeal the District Judge reversed the decision, and the attachment was removed

SPECIFIC RELIEF ACT (I OF 1877)—*contd.*

Section 42—*contd.*

on the ground that mutation had taken place, and no person was recorded as a mortgagee. Plaintiffs then sued the defendants, the successful objectors, and asked for a declaration that the mortgage on the land had not been removed; they also asked for any other relief which under the circumstances alleged the Court might think them entitled to. The first Court found the redemption not proved and decreed the claim. The Divisional Judge was disposed to accept this finding on the merits, but dismissed the claim on the ground that the suit did not lie. He held that suit was not one under section 283 of the Code of Civil Procedure, as the defendants' objections did not fall under section 278 and as plaintiffs were not claiming to establish a right to any property or a declaration that the mortgage rights were liable to attachment in execution of their decree, nor were the defendants contending that the mortgage rights if they existed were not liable to attachment for that purpose. He was also of opinion that section 42 of the Specific Relief Act was not applicable as there was no dispute as to plaintiffs' title to any legal character or to their right to any property, and plaintiffs did not even allege that they had any right over the land owned by the defendants and could not say who was vested with the alleged right, the original mortgagee being dead without any heirs. He considered that the dispute was not whether the plaintiffs were entitled to attach the mortgage rights, but whether as a matter of fact those rights exist, and this could not give rise to a cause of action.

Held, that as the object of the present suit was to establish that there was no redemption and that the property of the objectors was still under mortgage and was liable to attachment in execution of plaintiffs' decree to the extent of the mortgage interest, it must be treated as one falling under section 283 of the Code of Civil Procedure, and as the right of the (mortgagee) judgment-debtor in the land is an interest in the land and is property, and the plaintiffs assert their right to recover their decree from it, which defendants denied, plaintiffs are entitled to sue for a declaration under section 42 of the Specific Relief Act. *Held, also*, that the actual form of the suit is of little consequence. The relief really claimed on the case set up by the plaintiffs is to be considered, and as the Code of Civil Procedure does not deal with forms of suits, the substance and merits of the case should be kept in view and not merely the words in the plaint.

Sardar Dial Singh v. *Beli Ram* (51 *P. R.* 1897), followed. *Muhammad Sharif* v. *Shamsher Khan* (11 *P. R.* 1891) and *Rup Singh* v. *Bisni, I. L. R. XII. All.* 149), relied on. MIRAN BAKHSH AND OTHERS *v.* ATRA AND OTHERS. **111 P R 1900**

14. *Declaratory decree—Marriage—Suit for a declaration that the defendant is not the lawful wife of the plaintiff—Jurisdiction*

SPECIFIC RELIEF ACT (I OF 1877)—*contd.*

Section 42—*contd.*

of Civil Court to entertain such a suit when an order for maintenance passed under section 488 *of the Criminal Procedure Code is in force against the plaintiff—Specific Relief Act, section* 42.

Held, that a suit by a person against whom an order for maintenance in favour of defendant has been made by a Criminal Court under section 488, Criminal Procedure Code, lies in a Civil Court for a declaration that defendant is not his wife.

Mussammat Baji v. *Nawab Khan* (21 *P. R* 1894, *Cr.*), *Subhudra* v. *Basdeo Dube* (*I. L. R. XVIII All.* 29), *Subad Domni* v. *Kateram Dome* (20 *W. R.* 58, *Cr.*) *Aunjona Dasi* v. *Problad Chandra Ghose* (6 *Beng. L. R.* 243), and *Jagat Singh* v. *Jit Singh* (41 *P. R.* 1876), referred to. MUSSAMMAT BAKHAN *v.* ALA BAKHSH. **26 P R 1903**

15. *Declaration of status of right—Specific Relief Act*, 1877, *section* 42.

Where the property in dispute was in the actual possession of mortgagees and tenants and the mutation entry in favour of one party and that of *girdawri* in favour of the other, *held*, that under such circumstances a suit for a mere declaration of title was maintainable. ABDUL KARIM *v.* SAHIB JAN.

5 P R 1908

16. *Specific Relief Act (I of* 1877), *section* 42, *proviso—Declaratory suit brought under direction of Revenue Court under section* 98 (1) *of the Punjab Tenancy Act, XVI of* 1887.

The plaintiffs were the brothers of one Buta Khan, deceased, who, by his will, left his landed property to his brothers and sons in certain proportions. Upon Buta Khan's death mutation was effected of the property entirely in favour of the sons and widows. The plaintiffs were in possession of only a small area of 12 *kanals* 19 *marlas* in one village, and were in respect of this recorded as tenants-at-will holding under the sons. The sons got notice of ejectment issued in regard to this land. The brothers then sued in the Revenue Court to contest the notice of ejectment, and the Revenue Court passed an order under section 98 (1) of the Punjab Tenancy Act, 1887, requiring the brothers to bring a civil suit for the purpose of determining the validity of the will. The brothers then brought the present suit for a declaration that the will is valid, and that the defendants have no right to oust them from the 12 *kanals* 19 *marlas* of land in their possession. The lower Courts held that the suit was barred under the proviso of section 42 of the Specific Relief Act, 1877, plaintiffs not having included in their suit a claim for possession to their shares according to the will in the portions of the estate of which they were at present out of possession.

Held, that the cause of action was the notice of ejectment, and the relief sought was a declaration that the will was valid and that the plaintiffs were not liable to

SPECIFIC RELIEF ACT (I OF 1877)—*contd.*

Section 42—*contd.*

ejectment and so far as the ejectment proceedings were concerned, the suit included all the relief to which the plaintiffs (who were in possession of 12 *kanals*, 19 *marlas*) were entitled in respect of the proceedings of the Revenue Courts, the mere fact that the will on which plaintiffs based their title to that area purported also to convey title to other property being immaterial.

Held therefore, that the suit was not barred under the proviso of section 42 of the Specific Relief Act, 1877. ALI GAUHAR *v.* SARDAR KHAN. **81 P R 1909**

17. *Specific Relief Act, I of* 1877, *section* 42, *proviso—Land in possession of tenants—Further relief — Discretionary powers of Court to allow amendment of plaint.*

Held, that the fact that the land in dispute is in possession of tenants who hold under defendants in no way entitles the plaintiff, who is out of possession, to bring a declaratory suit. In such a case plaintiff is able to seek further relief than a mere declaration of title within the purview of section 42 of the Specific Relief Act, 1877.

Held also, where the Courts below have refused to exercise in favour of the plaintiff their discretion to allow an amendment of the plaint after a very full consideration of the circumstances of the case, and the consequences of such refusal are in no way serious, the Chief Court should not interfere with that discretion, where it was not exercised arbitrarily or without the Courts knowing all the facts of the case and applying their minds to them. ABDUL GHAFFUR *v.* MUSSAMMAT MEHAR-UN-NISA. **101 P R 1909**

18. *Section* 42—*Consequential relief—Suit or declaration that plaintiff is real owner of a decree obtained by defendants.*

Held, that in a suit for a declaration that plaintiff is the real holder of a decree obtained by defendants against a third party and praying also that the decree be transferred to the plaintiff, the latter prayer is mere surplusage and may be disregarded—the result being that no consequential relief has been sought in the plaint and a ten-rupee Court fee stamp is adequate.

Held also, that it is for the lower Court to decide whether the plaintiff could seek further reliefs which would bring the proviso to section 42 of the Specific Relief Act, 1877, into operation. GANESHI LAL *v.* BENI PERSHAD. **1 P R 1911**

19. —*And section* 54—*Neither suit for declaration nor for injunction can be entertained in respect of a so-called right to realize* birt *as* parohit *from* jujmans.

Held that although the order of the Court below which amounted to an order returning a plaint for amendment and not a preliminary decree was only interlocutory, the very

SPECIFIC RELIEF ACT (I OF 1877)—*contd.*

Section 42—*concld.*

peculiar circumstances of the case justified the Chief Court in dealing with it on the revision side.

Held also, that plaintiff's claim to a decree declaratory of their so-called right as heirs of one Buta to realize *birt* could not be recognized by a Civil Court, the so-called right not being *property* within the meaning and for the purpose of section 42 of the Specific Relief Act, 1877.

[The relations between a *parohit* and his *jujmans* discussed.

8 *P. R.* 1901, differed from—

7 *P. R.* 1877, *Strimathoo Moothoo* v. *Darasinya Tevar* (1875), 15 B. L. R. 108 (P. C.) *Samarindra Chandra Deb* v. *Birendra K. Deb.* (1908), I. L. R. 35 Cal. 789-794, and 115 *P. R.* 1883, referred to.

Held further, that the objections to the grant of a declaratory decree are equally fatal to the grant of an injunction, in the absence of a specific agreement between the parties, (*vide* section 54, Specific Relief Act).

Rajavalad Shivapa v. *Krishna Bhat* (1879), I. L. R. 3 Bom. 232 and *Daya Ram, Hargowan* v. *Jetha Bhat Lakhmiram* (1896), I. L. R. 20 Bom. 784, referred to. GURDAS *v.* BHAG. **96 P R 1911**

Sections 54 and 56.

1. *Injunctions.*

See EASEMENT. **22 P R 1888**
2 P R 1893
INJUNCTIONS. **49 P R 1900**

2. *Easement—Light and air—Obstruction—Injunction or damages.*

See EASEMENT. **21 P R 1893**

3. *Injunction—Slaughter-house — Apprehended danger to health and interference with physical comfort and convenience—Diminution in value of property—Ground for relief—Municipal Committee—Statutory powers— Justification of nuisance—Infringement of private rights—Act XIII of 1884, sections 68, 92—Approval of Deputy Commissioner.*

See NUISANCE. **106 P R 1888**

4. *Municipal Committee's power—Conditional injunction.*

See NUISANCE. **78 P R 1901**

5. *Perpetual injunction—Civil Court's jurisdiction to set aside Municipal Committee's orders.*

See PUNJAB MUNICIPAL ACT, 1890, SECTION 92. **52 P R 1900**

6. *Suit for injunction against realisation of* birt *dues—Parohit and Jujmans.*

See UNDER SECTION 42 *supra.* **96 P R 1911**

7. *Temporary injunction to restrain partition proceedings in Revenue Court.*

Held, that the same principles apply to the granting of a temporary injunction as to the grant of a perpetual injunction, and that those principles must be sought in the Specific Relief Act, *I. L. R. VI, Bom.* 266 followed.

Held, therefore, that in accordance with the principle embodied in section 56 (*b*) of

SPECIFIC RELIEF ACT (I OF 1877)—*concld.*

Sections 54 and 56—*concld.*

the Specific Relief Act, the Chief Court is not competent to grant a temporary injunction to restrain partition proceedings in a Revenue Court, the latter Court not being subordinate to the Chief Court. MALIK SOHARA KHAN *v.* AHMAD KHAN. **57 P R 1899**

SPECULATIVE SUIT FOR DECLARATORY DECREE.

See SPECIFIC RELIEF ACT, 1877, SECTION 42. **141 P R 1894**

SQUATTERS.

See COMMON LAND. **103 P R 1868**

STAKEHOLDER.

—*Suit for money deposited with Advocate to be retained by him only if the case is successful—Privilege as Barrister.*

See ADVOCATE. **194 P R 1883**
52 P R 1894
32 P R 1897

STAMP.

1. *Deficiency of, on instrument—Right to sue for original consideration.*

See CAUSE OF ACTION—IV. MISCELLANEOUS. **42 P R 1895**
CONTRACT ACT, 1872, SECTION 62. **71 P R 1897**
EVIDENCE ACT, 1872, SECTION 91. **61 P R 1888**
92 P R 1898
PROMISSORY NOTE. **82 P R 1891**

2. An agreement to sell " all the kankar" in defendant's land to plaintiff, *held*, not to be a conveyance but an agreement to execute a conveyance. IN RE A REFERENCE BY JUDGE, SMALL CAUSE COURT, LUDHIANA. **2 P R 1866**

3. An instrument recited that *A* had sold a shop to *B* for Rs. 620, of which *B* had paid Rs. 25; and that A on receiving the balance would execute a conveyance; but that if he retracted, he should pay *B* Rs. 50. *Held*, to be a bond. IN RE A REFERENCE BY JUDGE, SMALL CAUSE COURT, AMRITSAR. **4 P R 1866 Ref.**

4. So long as the letter of the Stamp law is adhered to, the Court cannot object to any apparent evasion of it. *A* executed on the same day in favour of the same person, three bonds of Rs. 49 each, on three pieces of paper, each bearing a stamp of 4 annas. Had only one bond been written for Rs. 147, the stamp under Act X of 1862 would have been one rupee, and not 12 annas. *Held*, that *A* was within the law. IN RE A REFERENCE BY JUDGE, SMALL CAUSE COURT, AMRITSAR. **5 P R 1866 Ref.**

5. A mere acknowledgment that a certain sum of money was due, without any express promise to pay, *held*, not to require a stamp under Act X of 1862. THE CROWN *v.* JETHOO MULL. **43 P R 1867 Cr.**

6. *Held*, that when a plaintiff undervalued his claim, and the suit was dismissed after investigation on the merits, he could not be called upon after the decision of the case, to pay the deficiency of stamp duty, although his plaint might under section 31, Act VIII of

STAMP—*contd.*

1859, have been rejected *in limine* for undervaluation. CHOOHUR KHAN *v.* MUMMOO KHAN. **15 P R 1868**

7. *Adjustment or satisfaction of claim—Refund of Stamp duty—Act VIII of* 1859, *section* 98, *Act X of* 1862, *section* 26.

When a refund of stamp duty was provided for in the case of a suit being compromised, *held*, that if the parties *bona fide* terminated a suit, so that no decree could issue, though they might not finally dispose of the questions causing the dispute, and might only be forming a new cause of action, —in such case, the plaintiff was entitled to a refund of half the stamp duty paid on the plaint. SOWDAGAR SINGH *v.* PIR BUKSH. **47 P R 1869**

8. *Appeal to Privy Council—Security for costs.—Stamp Act, XXVI of* 1867, *Schedule B, article* 1—*Meaning of bond " given by direction of any Court."*

An instrument of mortgage to secure the costs of an appeal to the Judicial Committee of the Privy Council held liable to an *ad valorem* stamp under Schedule A of Act X of 1862, and not an eight anna stamp under Schedule B of Act XXVI of 1867, as it was not an obligation given by the direction of a Court within the meaning of article 1 of the latter schedule, the security being required by the rules made by the Privy Council, in enforcing which the Courts in this country acted merely ministerially. MAHOMED RUFFEE *v.* SECRETARY OF STATE. **63 PR 1869**

9. *Unstamped agreement and contemporaneous stamped agreement.*

Held, that the unstamped agreement was not admissible —KHURHO *v.* BOOTA SINGH. **23 P R 1870**

10. *Pleader's for—Stamp.*

An agreement to pay a pleader a certain sum in the event of the case terminating successfully, is a bond under Act XVIII of 1869, and must be stamped accordingly. SPENCER *v.* EMAMOODDEEN. **82 P R 1870**

11. *Entry in account book.*

Defendant sealed, but did not stamp, a balance against himself in plaintiff's book. *Held* that, under Act XVIII of 1869, the entry was admissible in evidence. KALU *v.* BASANTA MAL. **33 P R 1873**

12. Where the defendant wrote an acknowledgment for debt in plaintiff's account book; and the entry was not stamped, *held*, that though the acknowledgment was not admissible in evidence against the defendant, the book itself could be put in as corroborative evidence of plaintiff's claim. DEVI DITTA *v.* MIAN SINGH. **43 P R 1874**

13. *License—Selling at unauthorized places.*

A licensed stamp-vendor may not sell stamps at any other place than that named in his license and where his sign-board is put up. A breach of this rule entails a forfeiture of license. GHUMANDI LAL *v.* THE CROWN. **6 P R 1876**

STAMP—*contd.*

14. *Act XVIII of* 1869—*Instrument drawn on two pieces of paper.*

Plaintiff sued on a bond partly written on stamp paper of two rupees and partly on another of one rupee eight annas; the stamp required being Rs. 3-8. *Held*, that without the certificate required by section 49 of Act XVIII of 1869, the bond was not properly stamped, and could not be received in evidence without a penalty.

Ganga Ram v. *Molak Ram* (*No.* 64 *P. R.* 1874), over-ruled. CHEYN SUKH DASS *v.* MUSA **26 P R 1876**

15. *Act XVIII of* 1869, *Schedule II, No.* 5—*Acknowledgment.*

Held, that the words " Note or memo" randum whereby a debt is acknowledged to " be due," in article 5, Schedule II of Act XVIII of 1869, mean a document made for the puprose of recording and affording evidence of an acknowledgment of a debt, and do not include every letter or other writing which though written without any idea whatever of securing evidence of acknowledgment, happens incidentally to contain an acknowledgment express or implied. MORICE *v.* THE SIMLA BANK. **2 P R 1878**

16. *Objection to document on ground of Stamp in special appeal.*

Held, that an objection to a document on the ground of stamp cannot be allowed to prevail in special appeal where the lower Court has levied the penalty and admitted the document in evidence. SUDAMA *v.* KESHO. **102 P R 1879**

17. *Stamp Act* (*I of* 1879), *Schedule I, article* 2—*Administration Bond—Court Fees Act* (*VII of* 1870), *Schedule II, article* 16.

Held, that an Administration Bond requires a stamp under article 2, Schedule I of the Stamp Act of 1879, as that Act by necessary implication repeals the provision in article 16, Schedule II, of the Court Fees' Act of 1870. IN THE GOODS OF TROWARD. **165 P R 1879**

18. *Inadmissibility in evidence of hundi for want of stamp—Admissibility of evidence of original consideration—Suit to recover money lent.*

In a suit to recover the balance of money paid for a hundi, which was inadmissible in evidence for want of stamp, *held*, that plaintiff, on proof of payment of the original consideration, could recover the balance of the monies thus lent, although he could not put the hundi in evidence. MANI RAM *v.* KALA MAL. **4 P R 1881**

19. *Conveyance—Act X of* 1862, *Schedule A, articles* 23, 25.

A deed evidencing a transfer for consideration of the exclusive right of all the kankar under the land owned by the grantors, *held*, by the Full Bench, to be a conveyance within the meaning of article 23 of Schedule A of Act X of 1862, as it transferred for a consideration a right to property.

STAMP—*contd.*

Held further, that as no value appeared upon the face of the conveyance, it fell under the 2nd clause of article 25 of the schedule, and was liable to a stamp duty of fifty rupees. SCOTT *v.* BANNA. **44 P R 1881**

20. *Stamp Act* (*I of* 1879), *Schedule I, article* 39—*Lease—Fine or premium—Rent reserved—Provision that lessees shall pay Government demand.*

By the terms of the instrument under consideration, the owners of certain shares in two villages leased a portion of such shares to certain persons for a term of 11 years in consideration (1) of the previous payment by such persons to the lessors of a lump sum of Rs. 5,900 (the receipt of which was acknowledged in the instrument) being, as expressed in the instrument, at the rate of Rs. 536-5-11 per annum; and (2) the payment by such persons of the Government demand at the rate then paid till the term of the lease expired.

Held, per *Plowden, Smyth* and *Elsmie*, JJ., that the instrument in question was a lease falling under the provisions of article 39 of the 1st Schedule of the Stamp Act of 1879.

Held further, that the sum of Rs. 5,900 paid as above was of the nature of a fine or premium, and was not the less of that nature because the rate *per annum* at which it fell, when distributed over the entire term of the lease, happened to be stated in the instrument.

Held also, per *Smyth* and *Elsmie*, JJ. (*Plowden*, J. dissenting as to this) that, with regard to the provision in the lease that the lessees should pay the Government demand at the rate then paid till the term of the lease expired, the sums so to be paid periodically by the lessees during the continuance of the lease being certain in amount, were of the nature of rent, and would not be less of that nature because the parties had agreed (which was not clear from the instrument), that the said sums were to be paid by the lessees, not to the lessors direct, but on their account to the Government or the person appointed to realise the Government demand in the village on behalf of the Government: that therefore the lease in question was granted for a fine or premium of Rs. 5,900 in addition to a rent reserved, *viz.* the Government demand at the present rate, and therefore fall under clause (*d*) of the article above cited.

Per *Plowden*, J—The instrument referred to fell under clause (*c*) and not (*d*) of article 39 of the Stamp Act. Land revenue and cesses are in their nature a tax assessed upon the land, and constituting a charge upon the land, in whoseever hands it may be, as owner or occupant, and a sum payable under an engagement by the lessee to pay the taxes payable in respect of the property demised is not in the nature either of a rent reserved or of a fine or premium. REFERENCE BY FINANCIAL COMMISSIONER, PUNJAB. **102 P R 1882**

STAMP—*contd.*

21. *Stamp Act (I of* 1879), *sections* 33, 34, 50—*Admission in evidence of instrument not duly stamped—Procedure to de adopted by Appellate Court where first Court erroneously admits an instrument inadmissible under proviso* 1 *to section* 34 *of the Act.*

Held, by the Full Court, that section 50 of the Stamp Act does not apply to the case of an instrument of any of the classes excepted in the first proviso to section 34 of the Act which has been erroneously admitted in evidence by a lower Court, but in such case the Court could proceed under section 33 of the Act, and impound the instrument. BAIJU *v.* JOWAHIR.

195 P R 1883

22. *Stamp Act (I of* 1879), *sections* 3 (17), 46, *and Schedule II, article* 15 *(b)—Advocates and pleaders—Receipts given for money paid for professional services in litigation.*

On a reference by the Financial Commissioner, Punjab, under section 46 of the Stamp Act, *held*, that a receipt given by an advocate or pleader for money paid for service in litigation falls within the definition of "receipt" given in section 3 (17) of the Stamp Act; and that a receipt given by an advocate for money so paid is not necessarily exempt from duty as being a "payment of money without consideration" within the meaning of article 15 (*b*), Schedule II of the Act, as such payment does not cease to be "consideration" for the purposes of the Stamp Act, merely because of the formal incapacity of an advocate to enter into an enforceable agreement providing for payment of remuneration for advocacy. *Mukdum Shah Ali Mahomed* v. *Plowden* (No 20 *P. R.* 1874), cited. REFERENCE BY FINANCIAL COMMISSIONER, PUNJAB.

85 P R 1885

23. *Stamp Act (I of* 1879), *section* 3, *Clause* 4, *and section* 42—*Bond—Acknowledgment.*

An entry in an account-book, which purported to attest that the accounts of a certain person had been balanced by a third party, who had declared that the result of the making up of the accounts was to show that a certain person, who in the presence of a witness signed in acknowledgment of the correctness of the accounts, *held*, (by the Financial Commissioner) not to be a "bond" within the meaning of the definition of that word in section 3 (4) of the Stamp Act, and therefore not liable to duty as such. CHAMBA RAM *v.* CROWN.

4 P R 1885 Rev.

24. *Stamp Act (I of* 1879), *sections* 34, 42—*Refund of penalty—Penalty leviable to be determined under Act in force at time of levy of penalty.*

Held, by the officiating Financial Commissioner, that though, under the provisions of the Stamp Act (I of 1879), the duty chargeable on an insufficiently stamped document must be decided with reference to the Act in force at the date of the execution

STAMP—*concld.*

of the document, the *penalty* leviable is determined in all cases by Act I of 1879. IN RE DEVI DITTA MAL.

7 P R 1885 Rev.

25. *Stamp Act (I of* 1879), *sections* 9, 34—*Suit on hundi written on two pieces of impressed paper instead of one—Admissibility of hundi in evidence—Plaintiff's right to succeed irrespective of hundi.*

Held, that a hundi which should, in accordance with a rule issued under section 9 of the Stamp Act, have been written on *one* impressed stamp, but which was in contravention of the said rule written on two stamp papers sewn together, is not duly stamped, and is therefore under section 34 of the Stamp Act inadmissible in evidence.

A suit based upon a hundi inadmissible for the above reason may still be maintainable if the plaintiff can show that he has a cause of action supporting the relief he prays for, complete in itself and anterior to and independent of the hundi, and for which the hundi was given as a collateral security. *Mani Ram* v. *Kala Mal* (No 4 *P. R.* 1881), followed. SAMAD MIR *v.* BRIJ LAL.

73 P R 1886

Indian Stamp Act, II of 1899, *section* 5, *articles* 40 *(b) and* 57 *(b)—Deed of mortgage executed by mortgagor, mortgagee and surety—Stamp duty leviable on such instrument.*

An instrument purporting to be a deed of mortgage in consideration of the loan of Rs. 2,000, was executed by three parties (1) mortgagor, (2) surety for the due fulfilment of the obligation, and (3) the party making the loan; and it bore a stamp of Rs. 10 as a mortgage deed within the meaning of article 40 (*b*) of the Indian Stamp Act, 1899. On presentation before the Sub-Registrar at Peshawar a question arose, whether it should not in addition bear a stamp of Rs. 5 as falling also within the provisions of article 57 (*b*). On a reference by the Revenue Commissioner North-West Frontier Province—

Held, that the instrument in question was properly stamped, inasmuch as the subject-matter of the agreement was but one, *viz.*, the repayment of the amount of the advance, and the mere fact that there were two contracts embodied in the instrument, the one by the mortgagor and the other by the surety, in respect of this matter, could not bring the instrument within the purview of section 5 of the Stamp Act. IN RE STAMP DUTY LIABLE ON A CERTAIN DEED.

15 P R 1910 F. B.

STAMP ACT, 1879.

See STAMP.

Section 3.

—*And section* 5, *and Schedule I, article* 19—"*Cheque*"—*Cheque drawn in India on bank in England and bearing impressed stamp of the value of one penny—Admissibility of such in evidence—Cheque exceeding Rs.* 20 *in value.*

Plaintiffs sued defendant for Rs. 1,056, alleged to be due by defendant on account of principal and interest due on two cheques, one for £35, dated 21st October 1889, and the other for £25, dated 16th November 1889,

STAMP ACT, 1879—*contd.*

Section 3—*concld.*

drawn at Nowshera on Messrs Cox and Co. of London, on cheque forms bearing impressed stamps of the value of one penny, which it was alleged were dishonored by the drawees on presentation. Plaintiff alleged that the cheques were endorsed with defendant's signature, and sought to make defendant liable on the ground that he was an acceptor or drawee in case of need.

Held, that inasmuch as the cheques were for amounts exceeding Rs. 20 in value and were executed in British India after the 1st April 1879, they were, by section 5 of the Indian Stamp Act, 1879, chargeable with a duty of one anna, and as they were not duly stamped they were not admissible in evidence. DAMODAR DAS *v.* MAJOR DORAN.

69 P R 1894

Section 7.

—*Indian Stamp Act (I of* 1879), *section* 7—*Instrument relating to same matter but embodying distinct contracts—Stamp duty—Promissory Note comprising separately written undertakings by two promisors to pay debt in equal shares.*

Plaintiff sued A. S. and M. on a Promissory Note bearing a stamp of one anna. The note was to the following effect: "The compliments of A. S. and M. to K." (the plaintiff), "Rs. 1,440-3-0 are due on "account of past Promissory Notes. This "money we shall pay you. This note is "written on a stamp of one anna in the pre-"sence of K. R. R. N. and T. D. on 22nd "Magh 1946.—S. by A. S."

There was no attestation of the witnesses named in the note, and though the note purported to be on behalf of A. S. and M. only the signature of A. S. was affixed below. Beneath the signature of A. S. were added the following words:—

"I. M. wrote a Promissory Note on account "of Mr. H. P.: that will be paid without "objection. Written by M. Half of the "amount of the above note is truly due by "me." To these words the signature of M. was affixed.

The first Court held that there were in reality two documents, each of which should have borne one-anna stamp, and that inasmuch as the second which bore M.'s signature was not separately stamped, it was inadmissible in evidence, and passed a decree for the full amount claimed, together with interest, against A. S. alone. Plaintiff appealed to the Divisional Judge, who held that there was only a single document; that M.'s writing above his signature related to the same matter as A. S.'s portion, and that a single stamp was, therefore, sufficient. M. appealed to the Chief Court, and it was

Held, agreeing with the Divisional Judge, that the note was sufficiently stamped.

The test under section 7 of the Indian Stamp Act, 1879, is whether the instrument comprises or relates to several distinct matters. If it does, the fact that all such matters are grouped together, and the

STAMP ACT, 1879—*contd.*

Section 7—*concld.*

instrument is signed at one and the same place by all the executants, will not save it from being chargeable with the aggregate duty payable in respect of all such matters. If, on the other hand, the matter is single, the fact that the several executants signed separately, and wrote separate endorsements reciting their liability, will not multiply the duty. Nor is it material that the instrument comprises distinct contracts, provided that such contracts relate to the same matter. MUSA *v.* KAHAN. **102 P. R. 1895**

Section 34.

1. *Document, construction of— Promissory note or acknowledgment of liability —Suit based on document, stamped with anna stamp—Admissibility of document in evidence—Right of plaintiff to fall back on original consideration—Evidence Act,* 1872, *section* 91—*Stamp Act,* 1879, *section* 34.

See EVIDENCE ACT 1872, SECTION 91. **92 P R 1898**

2. *Admission of document in evidence—Power of Appellate Court to question its admissibility.*

When a document has once been received in evidence, the order of admission cannot be called in question on appeal. Proviso 3 of section 34 of the Indian Stamp Act, 1879, applies to all instruments chargeable with date including the instruments exempted under proviso 1. MANGAL SAIN *v.* GOBIND DAS. **139 P R 1890**

3. *Admission of document by first Court —Power of Appellate Court to question such admission.*

When an instrument has been admitted in evidence by the first Court, such admission cannot be called in question in appeal on the ground that the instrument has not been duly stamped.

No. 139 *P. R.* 1890, followed. DIWAN LACHMAN DAS *v.* DHOLAN DAS. **2 P R 1891**

4. *Indian Stamp Act,* 1879—*Promissory Notes—Impressed sheets bearing the word "hundi"—Rules under the Act.*

Two promissory notes, each for an amount not exceeding Rs. 5,000, made in British India and payable otherwise than on demand but not more than one year after date or sight, *held* to be "duly stamped" though written on impressed sheets of the proper value (three rupees) bearing the word "hundi."

I. L. R. XIII All. 66, and *I. L. R. XIV Mad.* 32, followed. HILL *v.* NIHAL CHAND. **21 P R 1891**

5. *Promissory Note—Instrument inadmissible in evidence—Original consideration —Stamp Act* (*I of* 1879), *section* 34 *and* 1*st Schedule, Article* 1—*Evidence Act* (I *of* 1872), *sections* 65, 91—*Construction of document.*

STAMP ACT, 1879—*contd.*

Section 34—*concld.*

When a document is admissible in evidence under section 34 of the Stamp Act, 1879, section 65 of the Evidence Act, 1872, does not allow, and therefore section 91 expressly forbids, secondary evidence of the document to be given. Whether there is a cause of action independent of the instrument upon which independent evidence may be given, depends upon the question whether plaintiff can allege any contract as the basis of his suit which is not the contract reduced to the form of the document excluded from consideration under the aforesaid provisions of law.

I. L. R. VII Calc. 260, and *Nos.* 4 *P. R.* of 1881, 73 *P. R.* 1886, 61 *P. R.* 1888, and 82 *P. R.* 1891, referred to. BAKHSHI RAM LABHAYA *v.* KAKA RAM. **42 P R 1895**

6. *Contract— Novation —New contract reduced to writing, but inadmissible in evidence—New contract not duly completed—Suit based on formed contract.*

On the 22nd *Bhadon Sambat* 1948, balance was struck by defendant in plaintiff's favour for Rs. 1,800, and subsequently defendant received from plaintiffs two sums, one of Rs. 300, the other of Rs. 400, making up a total of Rs. 2,500 and Rs. 125, paid on account of interest. To a suit by plaintiff based on this account, defendant pleaded that subsequently to the striking of the balance, plaintiff had agreed, in writing, to take the amount due to him in ten years with interest at 4 annas *per cent* payable annually, and that in the face of the said new contract for the discharge of defendant's liability, plaintiff's present suit on the old balance and subsequent advances would not lie. It was admitted that the document embodying the alleged new contract was insufficiently stamped, and was inadmissible in evidence, and that no evidence *aliunde* could be given of its terms. It was further found by the first Court, and accepted by the Chief Court, on appeal, that the plaintiff did in fact take the document in question, but that he did so without fully considering its nature, and that immediately after he came to know of its defects, he insisted on a proper bond on a sufficient stamp being executed, which the defendant refused to give.

Held, that the alleged new contract set up by defendant could not be successfully pleaded in bar of plaintiff's claim because (*a*) the new contract having been reduced into the form of a document, inadmissible in evidence, could not be proved, much less operate as a discharge of the former contract, and (*b*) assuming that the *factum* of the new contract could be proved, the naked promise to pay the old debt in ten years at a reduced rate of interest was not sufficient to extinguish the old liability.

Held, further, that in any case plaintiff was entitled, on defendant's refusal, to give a proper security for the debt, to treat the old contract as snbsisting, and to sue on the same. UDHO SHAH *v.* HIRA SHAH. **71 P R 1897**

STAMP ACT, 1879—*concld.*

First Schedule, Article (1).

1. *Promissory Note—Instrument inadmissible in evidence—Original consideration.*

See SECTION 34, *supra.* **42 P R 1895**

First Schedule, Article 27.

And Schedule II, Exemption 11—*Entry as Advocate of any High Court—Court of the Judicial Commissioner of Burma not a "High Court" within the meaning of the exemption.*

Held, that the term "High Court" as used in Exemption No. 11 in Schedule II of the General Stamp Act, 1879, does not include the Court of the Judicial Commissioner of Burma. *In re* GRANT. **14 P R 1889**

STAMP ACT, 1899.

Section 2 (5) (*b*).

1. *Attestation by a witness—Promissory note.*

Held, that a document, by which the executant promised to pay to a person named therein a certain sum of money within a certain time although it contained the signature of the writer, as scribe, was not attested by a witness within the meaning of clause (*b*) of sub-section 5 of section 2 of the Stamp Act, and was consequently a promissory note. GURDITTA MAL *v.* DHANNA SHAH. **14 P R 1902 F. B.**

2. *Acknowledgment of a debt—Bond.*

Held, that an acknowledgment of a debt signed by the executants and attested by a witness by which the plaintiff was to receive the balance from the executants was a bond within the meaning of section 2 (5) (*b*) of the Indian Stamp Act, 1899, as the executants had obliged themselves thereby to pay the money. DAULA *v.* GONDA. **35 P R 1903 F. B.**

Section 12 (3).

—*Cancellation of adhesive stamps—"Any other effectual manner."*

Semble : Drawing two lines across the face of an adhesive stamp would be an effective mode of cancellation within the meaning of clause 3 of section 12 of the Stamp Act, 1899. PIRAN DITTA *v.* MANGAL SINGH. **108 P R 1908**

Section 36.

Admission of document by First Court—Power of Appellate Court to question its admissibility.

Held that once a document has been admitted in evidence by the First Court without objection, no question as to its admissibility can be raised in appeal. PIRAN DITTA *v.* MANGAL SINGH. **108 P R 1908**

STATE, ACT OF.

See JURISDICTION. **21 P R 1894**

First Schedule, articles 40 and 57

—*Deed of mortgage executed by mortgagor, mortgagee and surety—Stamp duty leviable on such instrument.*

See INDIAM STAMP ACT, 1899. **15 P R 1910 F. B.**

STATUTE.

1. *Army Act*, 1881, *section* 151.
   See Civil Procedure Code, 1908, section 60, clause (*h*). **59 P R 1897**

   See Small Cause Court—Jurisdiction of. **21 P R 1887**
   111 P R 1887
   110 P R 1890
   1 P R 1893
   48 P R 1893
   93 P R 1900
2. 11 *and* 12 *Vic.*, c.21, *sections* 7, 49.
   See Civil Procedure Code, 1908, O. XXI, R. 24. **57 P R 1897**
3. *Retrospective effect of.*
   See Court Fees Act, 1870, section 19. **26 P R 1900**

STATUTORY AUTHORITY OF MUNICIPAL COMMITTEE.

See Nuisance. **106 P R 1888**
103 P R 1892

STAY OF EXECUTION.

1. *Power of Appellate Court to stay execution while an appeal is pending.*
   See Civil Procedure Code, 1908, section 151. **82 P R 1910**

2. *Pending suit between decree-holder and judgment-debtor.*
   See Civil Procedure Code, 1908, O. XXI, R. 29. **41 P R 1904**
   See Execution of Decree. **130 P R 1908**

STAY OF PROCEEDINGS.

1. *Analogous suit instituted elsewhere—Plaintiff not party thereto—Staying proceedings, grounds for.*
   See Civil Procedure Code, 1908, section 22. **8 P R 1894**

2. *Decree for restitution of conjugal rights—Application by wife for stay of execution.*
   See Civil Procedure Code, 1908, O. XLI, R. 5. **2 P R 1894**

3. *In insolvency—Alleged debtor denying his liability—Reference to civil suit.*
   See Insolvency. **181 P R 1883**

STEP IN AID OF EXECUTION.

See Limitation Act, 1877, Schedule II, Article 179.

STEPSON.

1. *Adoption of*
   See Custom—III. Appointment of an Heir—P. Adoption of Stepson.
   Custom —VIII. Succession —S. Succession of Stepson.

2. *Adoption of—not valid among Arains of Jullundur City.*

Held, that the respondents, on whom the burden of establishing the custom was, had failed to prove that a sonless Arain of Jullundur City can adopt his stepson, who is not of his *got*. Azim *v.* Ismail. **45 P R 1911**

STOLEN MONEY.

—Bona fide *holder—Goods.*
See Contract Act, section 108. **83 P R 1890**

STRIDHAN.

See Hindu Law, Stridhan.

SUB-DIVISION

See Pre-emption.—2. Right of, in Towns.

SUB-MORTGAGE.

See Mortgage—Possession under. **31 P R 1900**

SUBORDINATE COURT—DUTY OF.

Subordinate Courts are bound in all cases to follow the rulings of the Chief Court quite irrespective of any conflict of authority that there may be between those rulings and the decisions of other High Courts and of their own personal views as to the equities of the case dealt with. Kasu *v.* Atar Singh. **103 P R 1908 F. B.**

SUBORDINATE JUDGE.

1. *Power of, to dispose of cases under Act XL of* 1858.
   See Jurisdiction. **47 P R 1888**

2. *Of* 1*st class, not inferior to District Judge under section* 265, *Contract Act.*
   See Jurisdiction. **55 P R 1888**

SUBSTITUTED SERVICE.

See Civil Procedure Code, 1908, O. V.

SUBSTITUTION OF NEW CONTRACT.

—*Incomplete contract—Right of rescission—Right to revert to old consideration.*
See Contract Act, 1872, section 62.
Evidence Act, 1872, section 91.
Promissory Note. **82 P R 1891**

SUB-TENANT.

See Punjab Tenancy Act, 1887, section 58. **14 P R 1898**

SUCCESSION.

See Custom—VIII. Maintenance and Succession.
Hindu Law—VII. Inheritance.
Lambardar.
Muhammadan Law—9. Inheritance.
Occupancy Rights.
Religious Institutions.

—*Among converts to Christianity.*
See Converts. **36 P R 1909**

—*Succession*—Pattidari jagirs *in the Cis-Sutlej district—Adopted son.*

Held, that the right of adoption has not been recognized in the case of *pattidari jagirs* in the Cis-Sutlej districts. Even in the case of major *jagirdars*, the right of adoption only

SUCCESSION—*concld.*

exists by special grant, made in certain cases by the Government of India under rules approved by His Majesty's Secretary of State in 1902. Attar Singh *v.* Sant Singh. **1 P R 1910 Rev.**

SUCCESSION ACT, 1865.

Sections 46, 48.

Will, validity of—Power of Court acting under Act V of 1881*—Succession Act* (*X of* 1865), *sections* 46, 48, *Illustrations—Lower Court refusing to grant probate of will to executor, but granting letters of administration without the will annexed to testator's representative—No appeal by executor—*Locus standi *of party interested in will to appeal against grant of letters of administration.*

One A. K. propounded a will and applied, as executor, for probate to the District Judge, and the appellant, who was the representative of one of the legatees under the will, the legatee himself being dead, supported the application for probate. The application was opposed by the widow of the testator's deceased son, who also applied for letters of administration without the will annexed. The lower Court disposed of both applications, and, after drawing up issues, *inter alia*, as to the effect of the will if proved, as to how far it was valid, and as to what property it might or might not affect, held the will not proved, and granted administration to the said widow. The deceased legatee's representative appealed to the Chief Court.

Held, that it is competent to a person, who is a party to the proceedings in the lower Court and interested in having a will propounded and maintained as a will, to appeal against the grant of letters of administration without the will annexed, even if the executor does not appeal and abandons his application for probate.

Held, further, that the only question to be tried by the lower Court was whether the will propounded was the will of the testator, the Court being competent to consider not merely whether the document had been executed by him, but whether he was in a state of mind competent to exercise his testamentary power, and whether it was his own voluntary act. The effect of the will, if proved, how far it was valid, and what property it might or might not affect, were not properly before the Court.

The principles underlying sections 46 and 48 of the Indian Succession Act (X of 1865) are of universal application in dealing with testamentary dispositions. Mussammat Bali *v.* Mussammat Hussain Bibi. **55 P R 1894**

Section 50.

Hindu Will—Attestation.
See Will. **74 P R 1891**

Sections 54, 57, 59.

Codicil—Execution.

A codicil that merely appoints an executor to a will, must be executed in the

SUCCESSION ACT, 1865—*contd.*

Sections 54, 57, 59—*concld.*

manner required by Act X of 1865 for an unprivileged will. *Semble*—Where the attesting witnesses do not see the testator sign the will, it is a sufficient personal acknowledgment by him to them of his signature if he by his acts, without speaking, conveys to their minds that they are attesting what he has signed. GOAD *v.* COLYEAR. **33 P R 1876**

Sections 57, 58.

Revocation of will—"Burning, tearing or otherwise destroying"—Appeal from decree passed by Judge in Chambers—Punjab Courts Act, 1884, section 9.

The deceased testator, on the 2nd February 1892, executed a will, duly attested, in favour of his wife, the present appellant, and died on the 24th February 1898, leaving him surviving his wife and five sons and five daughters, aged from five to thirty years. About three years before his death, the deceased wrote the word "cancelled" across both sides of the half sheet of paper on which the will was written, and drew several lines in ink through his signature and the signatures of the attesting witnesses in such a manner as to make it extremely difficult, if not impossible, to decipher those signatures and impossible for the signatures to be identified as his and the witnesses, even, if the names could be deciphered. The Chief Court on the evidence found that the deceased intended thereby to cancel the said will absolutely, and to die intestate. It was, however, contended on behalf of appellant that the will had not been duly revoked as provided by sections 57 and 58 of the Indian Succession Act, 1865.

Held, on a consideration of the facts and the authorities, that the obliteration of the signatures constituted a destruction of the will within the terms of the Act, and that such destruction having been effected by the deceased *animo revocandi*, the said will had been duly revoked.

An appeal lies under section 9 of the Punjab Courts Act, from the decree of a Judge in Chambers refusing probate of a will. MRS. THADDEUS *v.* THADDEUS. **6 P R 1899**

Section 137.

And section 140—Legacy—Specific or demonstrative—Failure of funds pointed out—Non-ademption of demonstrative legacy.

See WILL. **109 P R 1908**

Section 212.

Absent executor.

Letters of administration granted by the Chief Court to the agent of an absent executor. IN RE THE WILL OF H. M. DURAND. **28 P R 1871**

Section 234.

1. *Application by one of two executors for revocation of grant of probate—"Grant has*

SUCCESSION ACT, 1865—*contd.*

Section 234—*concld.*

become useless and inoperative through circumstances"—Dissensions between co-executors—Indian Succession Act (X of 1865), section 234 (4)—Court referring question to arbitrators.

Held on an application under section 234 of the Indian Succession Act, 1865, by one of two executors, for revocation of a probate previously granted to both that the expression that "the grant has become useless and inoperative through circumstances" in clause (4) of the section did not apply to a case where the allegation was that the two executors appointed by the will, to whom probate had been granted, found it difficult to work harmoniously in concert.

Semble: that though under section 261 of the Act the proceedings in contentious cases are to take as nearly as may be *the form of a regular suit*, according to the provisions of the Civil Procedure Code the Court before whom an application under section 234 of the Act is instituted has no jurisdiction to delegate the decision of the question raised to arbitrators, even with the consent of the parties. CAMPBELL *v.* SIMPSON. **72 P R 1894**

2. *And section 264—Letters of administration—Grant by District Judge—Jurisdiction of Chief Court to extend the original grant—Just cause for revocation of grant.*

Held, that the Chief Court has no jurisdiction to amend a grant of letters of administration granted by a District Judge so as to give it operation beyond the local limits of such District Judge's jurisdiction.

Held, further, that where the attorney for an executrix and the District Judge know that effects of the testator existed in British India, outside the Punjab, and in spite of this the one applied for probate, and the other granted letters of administration, not with the will, but with a copy of the will annexed and the will was not filed as prescribed by section 259 of the Succession Act, the proceedings to obtain the grant were so defective in substance as to furnish a just cause for revocation of the grant. IN THE GOODS OF ARTHUR JAMES GRANT. **1 P R 1902**

Section 244.

Held, that an executor of a will is under no obligation to set out in the application for probate a complete or any list of the heirs and relations of the testator. RALPH *v.* HALE. **7 P R 1902**

Section 250.

And sections 234, 241—Probate—Proceedings for revocation of probate.—Locus standi of objector—Interest in testator's estate.

Held, that an objector claiming specific property adversely to, and not through the testator, is not a person who has such an interest in the estate of the deceased as

SUCCESSION ACT, 1865—*concld.*

Section 250—*concld.*

will entitle him to ask for a revocation of a grant of probate.

Held, also, that an executor of a will is under no obligation to set out in the application for probate a complete or any list of the heirs and relations of the testator. RALPH *v.* HALE. **7 P R 1902**

Section 282.

1. An executor is not entitled to withhold payment of debts due from deceased for one year, and execution can issue against the estate of the deceased within that period. ABDOOL RAHMAN *v.* RYPER. **70 P R 1871**

2. *Section 282—Distribution of assets—Priority—Mortgage lien—Interest on claim secured by decree.*

In July 1876 B. took out letters of administration of the estate of O'C. deceased. The largest creditor was B. himself, who *held* a lien on a life policy, which represented almost the entire assets of the deceased. B's claim was, however, under a decree which carried no interest. The remaining creditors contended that B. was only entitled to his *pro rata* share under section 282, Act X of 1865, and also that he was entitled to no interest on his claim.

Held that the only claims to priority intended to be excluded by section 282 were claims on the ground that the debt is a speciality debt, and on other grounds *ejusdem generis*, and therefore, that B. was entitled to be first paid.

Held, further, that B's claim being based upon a decree which did not provide for the payment of interest, he was not entitled to interest on it. DIALU MAL *v.* BRYAN. **11 P R 1878**

SUCCESSION CERTIFICATE ACT, 1889.

Section 4.

1. *Certificate for collection of part of a debt.*

See CERTIFICATE OF ADMINISTRATION. **70 P R 1904**

2. *Muhammadan Law—Dower—Debt—Necessity of a certificate under the Succession Certificate Act, 1889.*

Dower, whether prompt or deferred, is until paid a debt due from the husband to the wife, and as such is subject to the provisions of the Succession Certificate Act, 1889.

Although the said Act, by section 4, forbids the Court to pass "a decree against a debtor of a deceased person for payment of his debt" except on the production of a certificate, there is nothing in the Act to prevent the Court from entertaining a suit or even indicating that ordinarily, in the absence of a certificate, an order of dismissal is the proper order to pass. The

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SUCCESSION CERTIFICATE ACT, 1889—*contd.*

Section 4—*contd.*

certificate may be produced after institution of the suit, but prior to decree. SAYAD AHMAD SHAFI *v.* MUSSAMMAT BUNYADI BEGUM.
88 P R 1891

3. *Succession Certificate Act, 1889—Execution of decree -Civil Procedure Code, section 232—Hindu widow assigning decree obtained by her deceased husband—Effect of abesence of certificate under the Act of 1889.*

A decree-holder died leaving a widow: she did not take out a certificate under the Succession Certificate Act, 1889, but made an assignment in writing of the decree to N. L.

N. L. proceeded to attach property of the judgment-debtor, who objected that N. L. had no title to execute the decree on the ground that the widow had not obtained a certificate under the Act of 1889 to collect debts due to her husband.

Held, that that the objection was well founded. Assuming that the widow was competent without a certificate to assign the debt, she could only assign effectually what right she herself had. She had not the right to execute the decree unless and until she had applied to the Court under section 232, Civil Procedure Code, for execution of the decree under a transfer by operation of law from the deceased decree-holder. An application by the widow could not be granted unless she produced a certificate under the Act of 1889, section 4 of the Act, prohibiting the Court from acting on an application of the kind without the production of a certificate. LAL CHAND *v.* NAND LAL.
37 P R 1893

4. *Indian Limitation Act, 1877, Schedule II, article 179, clause 4—Application in accordance with law—Absence of certificate under the Succession Certificate Act, 1889.*

An application for execution by the heir of a deceased decree-holder may be in accordance with law within the terms of article 179, clause 4 of the Limitation Act, notwithstanding that at the date of the application no certificate under section 4 of the Succession Certificate Act, 1889, has been obtained, the latter section not forbidding the Court to *entertain* an application of person claiming to be the heir of a deceased person without production of a certificate, but merely directing that the Court shall not *proceed* on such application except on the production of the certificate. SOBHA SINGH *v.* FATHA.
54 P R 1893

5. *Execution of decree—Application by representative of deceased decree-holder—Absence of certificate under Act VII of 1889, section 4—Subsequent applications—Civil Procedure Code, 1882, section 230.*

Held, that an application by the legal representative of a deceased decree-holder for execution of the decree is none the less an application "in accordance with law" because when it was preferred the

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SUCCESSION CERTIFICATE ACT, 1889—*contd.*

Section 4—*concld.*

applicant had not obtained a certificate as required by Act VII of 1889, section 4, that section merely directing that a Court shall not proceed upon the application till the production of the certificate, but not preventing the reception of such application.

Certain subsequent applications *held* not barred under section 230 of the Civil Procedure Code as being applications not to execute the decree, but to carry on the proceedings initiated by the first application. KUNDAN LAL *v.* MUSSAMMAT MAKENI.
27 P R 1894

6. *Joint family - Pre-emption of joint ownership—Hindu Law—Necessity for certificate.*

In a suit brought to recover certain money due on account of a balance struck by the defendant in favour of the plaintiff's father the plaintiffs had not obtained a succession certificate. *Held*, that no certificate was necessary, as the plaintiffs were suing for a joint Hindu family property by right of survivorship.

Semble.—Act VII of 1889 does not require a Court to dismiss a plaintiff's suit where a certificate should have been but has not been obtained. Section 4 only enacts that in the absence of the certificate a decree shall not be passed. There is nothing to preclude the Court from staying proceedings and directing the plaintiffs to take measures to procure a certificate.

Joti Ram v. *Mussammat Surasti* (13 *P. R.* 1883), followed; and *Rup Chand* v. *Basanta Mal* (102 *P. R.* 1889), explained. MAYA RAM *v.* SHIB DAS AND ANOTHER.
20 P R 1901

Section 7.

See APPEAL—II. COMPETENCY OF.
139 P R 1903

Section 9.

See APPEAL—II. COMPETENCY OF.
139 P R 1903

Section 16.

1. *And section 11—Joinder of parties—Suit by representative of deceased mortgagee, who has obtained certificate under Act VII of 1889—Necessity of impleading mortgagee's other heirs.*

Plaintiff sued on the allegations that in 1883 defendant No. 1 mortgaged two houses to plaintiff's father for Rs. 2,000 and agreed to pay interest thereon at a specified rate, and the principal on demand; that plaintiff's father had died, and that plaintiff had obtained a certificate, under Act VII of 1889, for realisation of the debts due to the deceased including the amount due on the said mortgage; that defendant No. 2 had purchased the said houses in execution-sale with full knowledge of plaintiff's rights, and was now in possession thereof, and that defendant No. 1 despite demand had failed to pay the principal money or any interest since *Sambat* 1945. Plaintiff therefore prayed for recovery of a sum of Rs. 3,192 and costs

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SUCCESSION CERTIFICATE ACT, 1889—*contd.*

Section 16—*concld.*

with a lien on the property mortgaged and recoverable by auction sale, and that defendant No. 1 be made personally liable for the amount of the decree and future interest. For defendants it was contended that the suit must fail by reason of the non-joinder as co-plaintiff of the deceased mortgagee's other son and co-heir, the latter being equally interested with plaintiff in the mortgage-deed.

Held, that inasmuch as, according to the authorities, the relief sought in the present suit could not have been granted in its entirety without a certificate under Act VII of 1889, the certificate-holder, who represented the estate *qua* the particular debt just as fully as an executor or administrator, was entitled to sue alone without impleading the other heirs of the deceased mortgagee. MEHR CHAND *v.* SYAD MUHAMMAD LATIF.
99 P R 1893

2. *Joinder of parties—Succession Certificate Act, 1889, section 16—Suit by certificate-holders for half of sum due on a bond—Certificate confined to half of deceased's property—Heirs to other half refusing to join as co-plaintiffs.*

Plaintiffs sued for half the money due on a bond, executed in favour of their ancestors, after obtaining a certificate for collection of the same as heirs to half the property of the obligee. They impleaded the heirs to the other half of the obligee's property, and stated that they had done so because those heirs had not obtained a certificate and had declined to sue.

Held, that under section 16 of the Succession Certificate Act, 1889, plaintiffs, as holders of a certificate entitling them to collect any part of the debt due to the deceased, were competent to sue for that part, and that the suit as laid could proceed. SHIB RAM *v.* MUHAMMAD SHAH.
29 P R 1899

Section 19.

1. *Order granting certificate conditional upon furnishing security—Appeal.*

See APPEAL—II. COMPETENCY OF.
139 P R 1903

2 *Applicability of clause (b) of section 70 of the Punjab Courts Act, 1884, to proceedings under the Succession Certificate Act.*

See PUNJAB COURTS ACT, 1884, SECTION 70 (*b*).
70 P R 1904

3. *And section 26—Jurisdiction—Appeal—Investiture of inferior Courts with jurisdiction of District Court—Punjab Government Notification No. 570, dated 4th November 1889, Punjab Courts Act, 1884, section 23, proviso 6.*

Appeals from all orders under section 7 of the Succession Certificate Act, whether passed by a District Judge or a Subordinate Judge in the Punjab, lie to the Divisional Court and not to the Chief Court under Government Notifications 570 and 571 of 4th November 1889. TIKAYA MAL *v.* LAUNGA MALIK.
124 P R 1890

SUCCESSION TO OCCUPANCY RIGHTS.

1. *See* Custom—I. Alienation.

2. *See* Custom—VIII. Maintenance and Succession.

3. *See* Occupancy Rights.
Tenancy Act, sections 2, 36.

SUFFICIENT CAUSE.

1. *Presentation of appeal in Civil cases—Practice—Deposit in a box—"Sufficient cause."*
See Appeal—V. Limitation.
101 P R 1890

2. *Application to implead the legal representative of a deceased respondent—Sufficient cause for not applying within the prescribed period—Ignorance of law.*
See Civil Procedure Code, 1908, O. XXII, R. 4. **43 P R 1889**

See Limitation Act, 1877, Schedule II, article 171 B. **42 P R 1887**

3. *For re-admission of appeal dismissed for default.*
See Civil Procedure Code, 1908, O. XLI, R. 19, *Passim.*

4. *For admission of appeal after time.*
See Limitation Act, 1877, section 5, *Passim.*
Registration Act, 1877, section 17, clause (*b*). **184 P R 1889**

5. *Filing a petition for review is not a "Sufficient cause" within the meaning of section 5 of the Indian Limitation Act, 1877, for not presenting an appeal within time.*
See Limitation Act, 1877, section 5.
100 P R 1910

SUIT.

1. *Alienation by a Jat proprietor of ancestral property—Suit by the son of the alienor to declare the alienation invalid and not binding after the alienor's death—Competency of the reversioners of such son to continue the suit or appeal on the death of the son.*
See Abatement of Suit.
58 P R 1905

2. *Institution of on behalf of Secretary of State—Competency of Collector to institute without power-of-attorney from Financial Commissioner.*
See Civil Procedure Code, 1908, O. III, R. 2. **84 P R 1905**

3. *Dismissal of, for default—application to restore—Sufficient cause for non-appearance.*
See Civil Procedure Code, 1908, O. IX, R. 9. **46 P R 1905**

4. *Withdrawal of, without permission to sue again—Subsequent suit filed on a different title not in existence at date of former suit.*
See Withdrawal of Suit.
3 P R 1905

SUIT BY JUDGMENT-DEBTOR TO RECOVER MONEY PAID OUT OF COURT.

See Execution of Decree.

SUIT BY SHARER IN JOINT KHATA FOR RECOVERY OF PARTICULAR LANDS.

See Joint Family and Joint Property.
21 P R 1878

SUIT, DISMISSAL OF.

For default in appearance.
See Civil Procedure Code, 1908, O. IX, R. 3. **37 P R 1904**

SUIT FOR MONEY PAYABLE UNDER AN AWARD.

See Small Cause Court. Jurisdiction of. **57 P R 1877**

"SUIT," MEANING OF.

Held, that the word "suit" includes all proceedings in a suit including the proceedings in execution. Price *v.* Golak Nath.
39 P R 1903

SUIT ON DECREE.

See Cause of Action—IV. Miscellaneous. **124 P R 1880**

SUIT TO RECOVER VALUE OF CATTLE FRAUDULENTLY RECEIVED.

See Limitation Act (IX of 1871), Sch. II, art. 95. **19 P R 1878**

SUIT TO REMOVE OBSTRUCTION TO PUBLIC THOROUGHFARE.

See Jurisdiction. **73 P R 1877**

SUITS VALUATION ACT, 1887.

See Appeal—X. to Privy Council.
60 P R 1905

See Valuation of Suit, *Passim.*

Section 3.

1. *And section 4—Rules under Suits Valuation Act, 1887—Suit to declare an alienation of land to be not binding after grantor's death—Further appeal—Value of suit Rs. 1,000 or upwards—Punjab Courts Act, 1884, section 40.*

The plaintiffs sued for a declaratory decree that an alienation by a childless proprietor would not affect their reversionary interests in the land, the subject of the alienation: the grantor was alive and no consequential relief was prayed for.

The alienation challenged by the plaintiffs purported to be for Rs. 1,300: the value of the land calculated at 30 times the revenue was Rs. 770.

Held, that no further appeal to the Chief Court was competent in the absence of an application to the Divisional Judge for a certificate under section 40, sub-section (1) (*d*), Punjab Courts Act, 1884, the value of the suit for purposes of jurisdiction being less than Rs. 1,000 and both Courts having concurred in decreeing the claim.

The suit as brought, though it fell within the description of claim mentioned in No. II of the Rules issued under Part II of the Suits Valuation Act, was subject to the proviso to that Rule, and as the subject of the alienation impugned was land as specified in section 3 of the Act, and was valued for purposes of jurisdiction at 30 times the revenue, or Rs. 770, according to the rules made under that

SUITS VALUATION ACT, 1887—*contd.*

Section 3—*contd.*

section, it followed from section 4 of the same Act that the value of the present claim could not be held to be in excess of that sum. Bakhu *v.* Jhanda.
145 P R 1892

2. *Suit by mortgagee for possession of land—Foreclosure under Regulation XVII of 1806—Value of suit for purposes of jurisdiction—Suits Valuation Act, 1887, section 3.*

A suit for possession of land by a mortgagee by conditional sale, who claims to have foreclosed is mortgage under Regulation XVII of 1806, is a "suit for the possession of land" falling within clause V, section 7, Court Fees Act, 1870, and is not a "suit by a mortgagee to foreclose the mortgage" falling under clause IX of the section, suits for foreclosure of mortgages being unknown in the Punjab, where foreclosure takes place as a ministerial and not a judicial proceeding under the Regulation of 1806.

For purposes of jurisdiction under section 3, Suits Valuation Act, 1887, the value of the subject matter of such a suit is to be calculated at thirty times the revenue assessed upon the land in accordance with the rules made under the Act—Punjab Government Notification No. 255, dated 4th March 1889 (*Chief Court Book Circular VII of* 1889).

No. 56 *P. R.* 1892 (F. B.), referred to. Telu Mal *v.* Lal Singh. **20 P R 1893**

3. *Suit for pre-emption of reversionary rights in land—Value of suit—Course of appeal—Rules framed by Local Government under Suits Valuation Act, 1887—Rule No. 2—"Land."*

Plaintiffs sued for pre-emption of reversionary rights in a half share of certain land held by three widows on a life interest, and alleged that, though the deed of sale stated the purchase-money to be Rs. 7,000, only Rs. 2,900 passed. They, therefore, prayed for a decree on payment of the proper price, and for purposes of jurisdiction valued their suit in the plaint at Rs. 3,804-6-0, being thirty times the *jama*. The first Court found that Rs. 2,900 only passed, but that the proper market price of the land was Rs. 7,000. The suit was, however, dismissed as premature.

Held, that the appeal lay to the Divisional Court. The suit being for the acquisition of a *contingent* interest in land, and not for possession or for a present interest, the rules framed by the Local Government under section 3 of the Suits Valuation Act, 1887, were not applicable, and the test of jurisdiction was to be furnished by the value set forth in the plaint, which was not shown to be above Rs. 5,000. Haidar Khan *v.* Ali Akbar Khan. **18 P R 1897**

4. *And section 8—Suit for possession of house—Value of suit—Court Fees Act, 1870,*

SUITS VALUATION ACT, 1887—*contd.*

Section 3—*concld.*

section 7 (v) (e)—Suits Valuation Act, 1887, *sections* 3, 8.

Held, that in a suit for posssesion of a house the value for purposes of jurisdiction should be the same as the value for purposes of Court fee which, under section 7 (v) (e) of the Court Fees Act, 1870, is the market value of the house.

Held, further, that under the circumstances of the present case the value of the suit for the purpose of jurisdiction was the value of the house as found by the District Judge, *viz.,* Rs. 5,000, and that it was not competent to the plaintiff to assign an arbitrary value, *viz.,* Rs. 8,000, to the subject-matter of the suit.

I. L. R. XXIII Calc. 541, distinguished.

Held, therefore, that the appeal from the decree of the District Judge lay to the Divisional Court. PARSICK *v.* PARSICK. **72 P R 1899**

Section 4.

See APPEAL—III. COURSE OF. **24 P R 1903**

See APPEAL—VIII. SECOND. **145 P R 1892**

Punjab Courts Act, 1888, *section* 40, *clause (a)—Suits Valuation Act,* 1887, *section* 4. *Valuation of subject-matter of suit in the Appellate Court.*

In a suit for the possession of land the value of which under the Rules framed under section 4 of the Suits Valuation Act was less than Rs. 500, both the lower Courts concurred in decreeing the claim. The defendants thereupon, without obtaining a certificate for appeal, appealed to the Chief Court alleging that the market value of the land was over Rs. 1,000, and that an appeal lay under the second branch of clause (a) of section 40 of the Punjab Courts Act.

Held, that the decree of the Divisional Judge confirming the decree of the first Court, which decreed the plaintiffs' claim to proprietary possession of land, which claim, valued according to the Rules framed under section 4 of the Suits Valuation Act, 1887, did not amount to Rs. 1,000 in value, was a decree which did not fall under the second branch of clause (a) of section 40 of the Punjab Courts Act, 1888, being a decree in which the claim to, or question respecting, land was identical with the subject-matter of the suit, which was excluded from appeal under the first branch of that clause, because the value of the suit did not amount to Rs. 1,000. KANSHI RAM *v.* SUJAN SINGH. **132 P R 1893**

Section 8.

1. *And section 11—Suits for dissolution of partnership and rendition of accounts.—Value of suit—Course of appeal—Punjab Courts Act,* 1884, *section* 39.

See APPEAL, III. COURSE OF. **58 P R 1902**

SUITS VALUATION ACT, 1887—*contd.*

Section 8—*contd.*

2. *Suit embracing two or more distinct subjects—Value for Court-fees and for appeal different.*

See APPEAL—XI. VALUATION OF. **41 P R 1910**

3. *Suit for the cancellation of an auction sale of a house sold in execution of a money decree not exceeding Rs.* 100.—*Valuation of suit.*

See JURISDICTION. **42 P R 1901**

4. *Suit to enforce a right to share in joint family property—Valuation for purposes of jurisdiction and Court fee.*

See PARTITION. **28 P R 1903**

5. *See* VALUATION OF SUIT. **27 P R 1910**

6. Under section 8, Suits Valuation Act, 1887, the value of suit for an account as determinable for the computation of Court fees and the value for purposes of jurisdiction are the same. FATTEH MUHAMMAD KHAN *v.* MOHAN LAL. **86 P R 1892**

7. *Suit for removal of* mahant: *for declaration of right to appoint a successor and to enforce the provisions of a will—Value of relief sought—Jurisdiction—Course of appeal—Court Fees Act, section* 7, *paragraphs iv (c), v, vi, ix and x (d)—Suits Valuation Act,* 1887, *section* 8—*Punjab Courts Act, section* 39.

The plaintiffs in their plaint valued the relief sought as follows:—

	Rs.
(1) Removal of defendant from the office of *mahant*	1,000
(2) Declaration of plaintiffs' right to appoint a successor	500
(3) Enforcement of the provisions of a will	1,000

or Rs. 2,500 in all.

The District Judge having found, on a preliminary objection raised by the defendant, that the value of the property attached to the institution in question was Rs. 2,53,037-13-11, directed the plaintiffs to file additional Court fees, and upon their refusal to comply with such order rejected the plaint under section 54, Civil Procedure Code.

The plaintiffs thereupon appealed to the Divisional Judge, who returned the memorandum of appeal for presentation to the Chief Court, holding that, though he would have had jurisdiction looking only at the claim as valued in the plaint, his jurisdiction had been taken away by the District Judge's decision that the true valuation was Rs. 2,53,038.

Held, that this view of the law was untenable, and that the appeal should be returned for presentation to the Divisional Judge. The suit being other than any of those referred to in section 7, paragraphs

SUITS VALUATION ACT, 1887—*contd.*

Section 8—*concld.*

v, vi and ix, and paragraph x, clause (d) of the Court Fees Act, and the value for the computation of Court-fees and for purposes of jurisdiction being the same by virtue of section 8 of the Suits Valuation Act, 1887; and such value being determinable according to the amount (in this case Rs. 2,500), at which the relief sought was valued in the plaint or memorandum of appeal, the Divisional Judge had jurisdiction to entertain the plaintiff's appeal notwithstanding that the District Judge had decided that the true value of the relief sought was in excess of Rs 5,000. BAWA MANGAL DAS *v.* MAHANT NARINJAN DAS. **58 P R 1893**

8. *Suit, valuation of, for purposes of Court-fee and of jurisdiction—Suits Valuation Act,* 1887, *section* 8, *Court Fees Act,* 1878, *section* 7 *(iv) (e)—Further Appeal.*

A suit in which the Court-fee payable was *ad valorem* under section 7 (iv) (d) (e) of the Court Fees Act, was valued by the plaintiff for purposes of jurisdiction at Rs. 1,005, and for purposes of Court-fee at Rs. 130. The suit having been dismissed by the Additional District Judge and the Divisional Judge on appeal, plaintiff filed a further appeal in the Chief Court

Held, that under section 8 of the Suits Valuation Act, 1887, the value of a suit of this nature as determinable for the computation of Court-fees and the value for purposes of jurisdiction was the same, and that under section 7 (iv) (d) (e) of the Court Fees Act the amount of the Court-fee payable was to be computed according to the amount at which the relief sought was valued in the plaint.

Held, therefore, that the value of the suit being Rs. 130, no further appeal lay to the Chief Court.

I. L. R. XVIII Bom. 207, followed. SOHAN LAL *v.* GULAB MAL. **50 P R 1896**

9. *Valuation of suit for purposes of jurisdiction and Court fee—Suits Valuation Act,* 1887,—*sections* 8, 9.

Held, that section 8 of the Suits Valuation Act so far governs section 7 (iv) of the Court Fees Act as to indicate that it was not the intention of the legislature that a purely arbitrary value should be fixed by the plaintiff, and that it follows from section 8, and rules under section 9, Suits Valuation Act, that in an injunction suit, where no damages are claimed, the Court-fee payable is on the jurisdictional value fixed by the plaintiff within the limits laid down by the Rule.

Boidya Nath Adya v. *Makhan Lal Adya (I. L. R. XVII Calc.,* 680), *Sohan Lal* v. *Gulab Mal (50 P. R.* 1896), and *Bai Varunda Lakshmi* v. *Bai Manegavri (I. L. R. XVIII Bom.* 207), cited. *Saradarsingji* v. *Ganpatsingji (I. L. R. XVII Bom.,* 56), not followed. NANAK *v.* GURANDITTA.

63 P R 1902

SUITS VALUATION ACT, 1887—*concld.*

Section 9—*concld.*

Jurisdiction—Rules under section 9 of the Suits Valution Act, 1887—Value of suit for purposes of jurisdiction, how far affected by new rules.

Held, that the rules framed under section 9 of the Suits Valuation Act, 1887, for the valuation of suits for custody of a wife, have not retrospective effect, and cannot therefore effect jurisdiction with respect to an appeal in a suit instituted before they came into force. DHIRTA *v.* KESRI

31 P R 1909

Section 11.

1. *Suit by mortgagee for possession—Suits Valuation Act, 1887—Value for purposes of jurisdiction.*

A suit by a mortgagee seeking to recover possession of land under his mortgage is a suit falling within the rules made under the Suits Valuation Act, 1887, which provide that in suits for possession of land under clause 5, section 7, Court Fees Act, 1870, the value of the suit for purposes of jurisdiction is thirty times the land revenue.

The ruling in No. 1 *P. R.* 1887, that in a suit by a mortgagee for possession, the subject-matter was not the land itself but the mortgagee's interest therein under the mortgage, must be deemed to be superseded by the passing of the Suits Valuation Act, and the rules made thereunder. RAM KISHEN *v.* SAYAD BRAHIM SHAH.

56 P R 1892 F. B.

2. *Valuation of suit for purposes of jurisdiction—Suit for perpetual injunction—Jurisdiction of Munsif, 3rd class—Rules of the Chief Court, Book Circular No. V. of 1889—Suits Valuation Act (VII of 1887), section 11.*

Plaintiff sued in the Court of a Munsif of the 3rd class with powers up to Rs. 100 only, for a perpetual injunction, and in the plaint valued the suit at Rs. 35.

Held, that inasmuch as the valuation of a suit for a perpetual injunction has, for the purposes of jurisdiction, been fixed by the rules of the Chief Court, sanctioned by Government, at a sum between Rs. 100 and Rs. 500, the Munsif had no jurisdiction to try the suit, and that the defect of jurisdiction was not cured by section 11 of the Suits Valuation Act, 1887, which is limited to cases of "over-valuation or under-valuation" in which the valuation depends on the discretion of the parties or the Court. GUNGA SAHAI *v.* SHEO LAL.

132 P R 1894

SUIT, VALUE OF.

1. *Value of pre-emption suit for purposes of appeal—Plaintiff claiming on payment of Rs. 2,500, and the deed of sale showing the price to be Rs. 4,500 and one* ghumao *of land.*

See APPEAL—II. COMPETENCY OF.

29 P R 1893

SUIT, VALUE OF—*contd.*

2. *Value of suit for the purposes of appeal, where the relief sought in appeal by the plaintiff together with the amount decreed in his favour exceeded Rs. 5,000.*

See APPEAL—III. COURSE OF

40 P R 1892

See APPEAL—XI. VALUATION OF.

86 P R 1892

3. *Value of suit for return of an ornament worth Rs. 726, but pawned for Rs. 400.*

See APPEAL—VI. PROCEDURE IN.

62 P R 1896

4. *Valuation of suit for pre-emption where property of the real value of upwards of Rs. 2,000 was sold for Rs. 400.*

See APPEAL—VIII. SECOND.

94 P R 1890

5. *Value of pre-emption suit for purposes of appeal—Plaintiff claiming upon payment of Rs. 700, and the deed of sale showing the price to be Rs. 1,000, where the value calculated at thirty times the revenue was below Rs. 1,000.*

See APPEAL—VIII. SECOND.

3 P R 1896

See SUITS VALUATION ACT, 1887.

6. *Valuation of suit for redemption of mortgage—Plaintiff suing to redeem for Rs. 2,300—Defendant pleading that the mortgage money was over Rs. 5,000—Valuation of suit—Course of appeal.*

See APPEAL—XI. VALUATION OF.

91 P R 1889

See also APPEAL—III. COURSE OF.

63 P R 1891
106 P R 1895

7. *Suit for removal of* mahant, *for declaration of right to appoint a successor, and to enforce the provisions of a will—Value of relief sought—Valuation by plaintiff—Powers of Court to revise.*

See APPEAL, XI. VALUATION OF.

58 P R 1893

See COURT FEES ACT, 1870, SECTION 12.

56 P R 1895

8. *Suit for possession of immovable property—Suit by mortgagee against third party in actual possession—Value of suit for purposes of jurisdiction.*

See APPEAL—XI. VALUATION OF.

1 P R 1896 F. B.

9. *Value of suit to obtain separate possession of admitted share in joint family property for purposes of Court-fee.*

See COURT FEES ACT, 1870, SECTION 7.

104 P R 1895

10. *Value of suit for possession of house for purposes of jurisdiction and Court-fee.*

See COURT FEES ACT, 1870, SECTION 7.

72 P R 1899

11. *Suit for confirmation of title in land without consequential relief—Appeal as to valuation.*

See COURT FEES ACT, 1870, SECTION 12.

2 P R 1889

SUIT, VALUE OF—*contd.*

12. *Value of suit for specific performance of contract to sell, and for pre-emption on sale—Appeal and cross-objections—Court-fee payable.*

See COURT FEES ACT, 1870, SECTION 12.

96 P R 1895

13. *Suit for money and declaration of lien as equitable mortgagees—Appeal as regards the declaration only—Stamp on such appeal.*

See COURT FEES ACT, 1870, 2ND SCHEDULE, ARTICLE 17.

43 P R 1888

14. *Suit to obtain a declaratory decree where no consequential relief is prayed for—Stamp on plaint.*

See COURT FEES ACT, 1870, 2ND SCHEDULE, ARTICLE 17. **109 P R 1893**

15. *Suit for decree directing registration of document—Valuation of suit.*

See COURT FEES ACT, 1870, 2ND SCHEDULE, ARTICLE 17. **21 P R 1895**

16. *Suit under section 283 of the Civil Procedure Code, 1882—Valuation of suit for purposes of Court-fee.*

See COURT FEES ACT, 1870, 2ND SCHEDULE, ARTICLE 17. **51 P R 1897**

17. *Valuation of suit for custody of minor.*
See CUSTODY OF MINOR. **10 P R 1897**

18. *Valuation of suit for custody of wife.*
See CUSTODY OF WIFE. **53 P R 1891**

19. *Valuation of suit—Value of subject-matter—Punjab Courts Act, 1884, section 3—Suit by second mortgagee for possession against mortgagor and prior mortgagee.*

See JURISDICTION. **1 P R 1887**
56 P R 1892 F. B.

20. *Valuation of suit to close a doorway.*
See JURISDICTION. **5 P R 1887**

21. *Valuation of suit for partition—Value of subject-matter.*

See JURISDICTION. **8 P R 1887**
110 P R 1888

22. *Valuation of suit for removal of a wall.*
See JURISDICTION. **26 P R 1887**

23. *Valuation of suit for injunction against defendant to remove obstruction to plaintiff's window.*

See JURISDICTION. **52 P R 1887**

24. *Valuation of suit for redemption of mortgage.*

See JURISDICTION. **44 P R 1888**
169 P R 1888
91 P R 1889

25. *Suit for removal of dams—Value of subject-matter.*

See JURISDICTION. **163 P R 1888**

26. *Valuation of suit—Set-off.*
See JURISDICTION. **91 P R 1889**

SUIT, VALUE OF—*concld.*

27. *Suit to establish right to attach and sell property in execution of decree—Value of subject-matter.*
See JURISDICTION. **50 P R 1890**

28. *Valuation of suit for pre-emption.*
See JURISDICTION. **94 P R 1890**

29. *Value of suit by a decree-holder to establish his right to attach certain property.*
See JURISDICTION. **121 P R 1890**

30. *Valuation of suit—Suit by mortgagee for possession against mortgagor and certain third persons alleged to be trespassers.*
See JURISDICTION. **1 P R 1891**
1 P R 1896

31. *Suit by mortgagee for possession—Value for purposes of jurisdictian.*
See JURISDICTION. **56 P R 1892**
1 P R 1896

32. *Value of suit for account.*
See JURISDICTION. **86 P R 1892**

33. *Valuation of suit for perpetual injunction.*
See JURISDICTION. **132 P R 1894**

34. *Suit for the concellation of an auction sale of a house sold in execution of a money decree not exceeding Rs.* 100.
See JURISDICTION. **42 P R 1901**

35. Lekha mukhi *mortgage—Suit by mortgagor for possession on ground that mortgage debt was satisfied—Nature and value of suit.*
See MORTGAGE—REDEMPTION.
71 P R 1900

36. *Valuation of suit—Suit for decree directing registration of document.*
See REGISTRATION ACT, 1877, SECTION 77. **21 P R 1895**

37. *Partition—Suit to enforce a right to share in joint family property—Valuation for purposes of jurisdiction and Court fee—Court Fees Act,* 1870, *section* 7 (*iv*) (*b*)—*Suits Valuation Act,* 1870, *section* 8.
See PARTITION. **28 P R 1903**

38. The value, for purposes of jurisdiction, of a suit to set aside a sale of land assessed to Government revenue is not the amount of sale consideration but thirty times the annual assessment. RAM RAKHA MAL *v.* BALWANT SINGH. **58 P R 1905**

39. In section 596, Civil Procedure Code, "the value of the matter in dispute," for the purpose of appealing to the Privy Council, means the real or market value of the property in dispute and not a nominal value such as is assessed under the provisions of the Suits Valuation Act, 1887. KARM SINGH *v.* KHEM SINGH. **60 P R 1905**

SUMMARY SETTLEMENT.

See SETTLEMENT.

SUMMONS.

1. *Due service of—"Substituted service" when sufficient—Duty of Court.*
See CIVIL PROCEDURE CODE, 1908, O. V, *Passim.*

2. *Substituted service, effect of—Ground for objecting to ex-parte decree.*
See CIVIL PROCEDURE CODE, 1908 O. IX, R. 13. **42 P R 1904**

SUPERINTENDENCE AND CONTROL.

Chief Court's power of.
See PUNJAB COURTS ACT 1884, SECTION 13. **42 P R 1888**
See APPEAL—II. COMPETENCY OF.
123 P R 1876

SURETY.

1. *Execution of decree—Bond given by surety for judgment-debtor—Suit by decree-holder against surety without impleading judgment-debtor.*
See APPEAL—VI. PROCEDURE IN.
59 P R 1896

2. *Person becoming surety for the performance of an original decree.*
See CIVIL PROCEDURE CODE, 1908, SECTION 47. **99 P R 1887**

3. *Liability of surety who has given security for due performance of an appellate decree under section* 545 *to be proceeded against summarily in execution proceedings.*
See CIVIL PROCEDURE CODE, 1908, SECTION 145. **77 P R 1895**

4. *Surety, liability of, under section* 336, *Civil Procedure Code,* 1882—*Application by judgment-debtor within one month to be declared insolvent—Application returned by Court as defective—Release of surety.*

One R. D. having obtained a decree against B. S. and R. S. and having applied for the arrest and imprisonment of B. S. one T. S. offered security under section 336 of the Civil Procedure Code, which was accepted, the condition of the bond being that B. S. should apply within one month, under section 344 of the Code, to be adjudicated an insolvent otherwise the surety undertook to produce B. S. on any date fixed by the Court, or if he failed to do so, to be responsible for payment of the decree with costs. Within one month B. S. put in an application under section 344 of the Code, but the application was returned by the Court for an alleged defect and B. S. was ordered to file another application within one week. No further application having been filed and the case having been struck off, B. S. and T. S. were summoned to appear on a certain date. T. S. alone appeared on the date fixed, and offered to produce B. S. on a specified date, but as he failed to do this, the Court ordered execution to issue against T. S.'s property. T. S. applied to the Chief Court for revision, and it was

Held, that inasmuch as B. S. had applied within one month under section 344, T. S. was released from his obligation, it being no concern of the surety's that the Court returned the application of the judgment-debtor for an alleged defect therein.

I. L. R. XV Calc. 171, *I. L. R. XIII All.* 100, *I. L. R. XV All.* 183, *I. L. R. XVI All.* 37 referred to. THAKAR SINGH *v.* RAM DAS. **100 P R 1894**

5. *Execution of decree—Release of debtor after furnishing security—Right of decree-*

SURETY—*concld.*

holder to recover the decree from surety by execution—Civil Procedure Code, 1882, *section* 337 *A.*

Held, that as a person who becomes surety for the production of a judgment-debtor at a specified time does not thereby become a party to the decree, the decree-holder cannot recover the amount of the decree from the surety on his failure to carry out his agreement otherwise than by instituting a regular suit.

Imbichunni Nayar v. *Lalji Ram* (*I. L. R. XXIV Mad.* 560), *referred to.* HIRA LAL *v.* MANSA RAM. **50 P R 1905**

6. *Civil Procedure Code,* 1882, *sections* 253, 336—*Liability of surety who has given security for the appearance of a person arrested under section* 336 *to be proceeded against summarily in execution proceedings.*

Held that a surety who has given security under section 336, Civil Procedure Code, for the appearance of or payment by a person arrested in execution of a decree for money can be proceeded against summarily in execution proceedings. GURAN DITTA MAL *v.* PALA SINGH. **143 P R 1908**

7. *Under Chief Court Circular Order LVII rule* 2 (1), *for petitioner for revision to the Chief Court—Extent of liability of.*

Held, that where a man stands surety under Chief Court Circular Order LVII, rule II (*i*), for a petitioner for revision to the Chief Court, the security must be limited to the security demandable under the rules of the Court, no matter in what terms the security bond is worded and must, therefore, necessarily be confined to the performance of the order under revision.

Held therefore, that no liability could be attached to the surety in this case unless and until the decree-holder had failed to satisfy his decree by the sale of the properties attached under the order under revision.—AGIA SINGH *v.* BALLA MAL. **66 *P.* R. 1909**

SURVIVORSHIP.

1. *Grant by Government—Joint and several interests—Survivorship.*
See CONSTRUCTION OF DOCUMENT.
27 P R 1891

2. *Hindu Law—Joint undivided family—Survivorship.*
See HINDU LAW—JOINT FAMILY.
2 P R 1892
104 P R 1895

3. *Right of occupancy—Joint tenancy—Survivorship.*
See OCCUPANCY RIGHT.
9 P R 1891 Rev.
109 P R 1894 F. B

4. *Golden Temple, Amritsar—Succession of* Gaddi-nashin—*Custom as to—Survivorship.*
See RELIGIOUS INSTITUTION
49 P R 1892

T.

TALUKDARI.

See MUKARARRIDAR.

TAMBOL.

—Suit for " tambol "*—Right to maintain suit.*

Held that a suit for *tambol* is not one which a Civil Court has jurisdiction to entertain, a claim to *tambol* being matter of social and moral, but not legal, obligation. LACHMAN DAS *v.* SOHAN LAL. **141 P R 1888**

TANK—CHIEF OF.

Chief of Tank—Succession—Inheritance—Family custom—Primogeniture—Right of junior members of the family.

On the death of a Chief of Tank the question arose whether by a family custom the entire estate descended to the Chief for the time being as head of the family and by virtue of his Chiefship or devolved according to the general custom of Jat agriculturists in the Punjab to be held jointly by the sons or their issues in equal shares, each having the right to claim partition. It was proved that the succession to the Chiefship went always in the line of primogeniture except in one instance in which the eldest son was set aside on the ground of insanity and that with the Chiefship went the ownership of the land of the *ilaqa*.

Held, that the whole estate known as Tank proper belonged to the Chief for the time being who was both ruler and proprietor, and that succession devolved upon the eldest son of the Chief, the other members of the family being entitled to maintenance only. MUHAMMAD AFZAL KHAN *v.* GHULAM KASIM KHAN **67 P R 1903 P. C.**

TAWELA.

—Conversion of tawela *into* serai.

See PRE-EMPTION. 2. RIGHT OF IN TOWNS. **96 P R 1910**

TAX.

—Tax leviable by the year—When shall come into force.

See PUNJAB MUNICIPAL ACT, 1891, SECTION 45. **4 P R 1898**

TEMPLE.

See RELIGIOUS INSTITUTION.

—Suit by worshippers to restrain alteration of property belonging to temple.

See CIVIL PROCEDURE CODE, 1908, SECTION 539. **21 P R 1897**

TENANCY.

—Tenancy at will—Notice to quit or pay higher rent—Tenant holding over after tenancy—Landlord's right to demand enhanced rent.

See LANDLORD AND TENANT. **5 P R 1904**

—Tenancy for immoral purpose—Suit for rent.

See LANDLORD AND TENANT. **65 P R 1904**

TENANCY ACT

See PUNJAB TENANCY ACT.

TENANCY IN COMMON.

—Gift to several daughters without specifying share.

See GIFT. **31 P R 1909**

TENANT.

See CUSTOM I.—I ALIENATION OF OCCUPANCY RIGHTS.
ENHANCEMENT.
LANDLORD AND TENANT.
OCCUPANCY RIGHTS.
PRE-EMPTION.
PUNJAB TENANCY ACT, 1868.
PUNJAB TENANCY ACT, 1887.

—Suit for improvement by tenant.

See CUSTOM I.—F.—ALIENATION BY NON-PROPRIETOR. **75 P R 1897**

CUSTOM I.—I.—ALIENATION OF OCCUPANCY RIGHTS.

JURISDICTION OF CIVIL OR REVENUE COURT. **123 P R 1893**

TENURE

See CHUKDAR.

1. *Change from zamindari to bhayachara.*

Plaintiffs sued to have themselves declared entitled to certain shares in accordance with ancestral right ; the tenure, originally zamindari, had changed into a bhayachara tenure. *Held*, that plaintiffs could not claim to have the village replaced under its former constitution. MAHAN RAM *v.* BALKISHEN. **12 P R 1876**

TESTAMENTARY CAPACITY.

*—Of the testator—*Onus *of proving.*

See WILL. **21 P R 1911 (P. C.)**

THAN PATTI.

See CUSTOM—V. CESSES AND DUES. **40 P R 1879**

THULADARS.

*—Right of thuladars to succeed deceased childless co-proprietor—Presumption—*Onus probandi.

See CUSTOM—VIII. MAINTENANCE AND SUCCESSION—W. MISCELLANEOUS. **77 P R 1886**

TIME-BARRED DEBT.

—Widow alienating for.

See CUSTOM I.—B. ALIENATION BY WIDOW (*b*) SALES AND MORTGAGES. **129 P R 1883**

See SALES (*c*) NECESSITY. **117 P R 1884**
108 P R 1885

TIRNI.

1. *Lease of* tirni *—Suit by lessee to enforce contribution from co-lessee towards sum paid into treasury.*

See JURISDICTION OF CIVIL AND REVENUE COURTS. **33 P R 1894**

2. *Suit by lessee of Government parade ground for money due on account of grazing dues.*

See JURISDICTION OF CIVIL AND REVENUE COURTS
SMALL CAUSE COURT ACT, 1887, SCHEDULE II, ARTICLE 13. **13 P R 1895**

TIRNI—*concld.*

3. *Suit to recover moneys claimed, as due for the enjoyment of the right of pasturage over land—Tirni contractor.*

See JURISDICTION OF CIVIL AND REVENUE COURTS. **30 P R 1895**

4. *Montgomery district—Responsibility of lambardar for dues on cattle caused to be entered in his own name.*

Held, that the cattle-owning land-holders of Moosapur, in the Montgomery district, were liable to pay *tirni* or grazing dues for the year 1885-86.

The validity of the Rules relating to *tirni* considered.

Where defendant, the lambardar of the village, caused the *Tirni* Moharrir at the time of the enumeration of the cattle in the village to enter certain cattle in his own name, after declining to give the names of the real owners, *held*, that it was not open to him to deny his responsibility to pay the dues upon such cattle. JALLA *v.* SHANKAR DAS. **142 P R 1879**

TITLE.

1. *To land acquired by accretion.*
See ALLUVION AND DILUVION.

See CUSTOM—II. ALLUVION AND DILUVION.

2. *Question of.*
See JURISDICTION OF CIVIL OR REVENUE COURT. **14 P R 908**

3. *Suit for a declaration of title to, and possession in, immoveable property by a vendee in actual possession—Starting point of limitation—Right of suit.*

See LIMITATION ACT, 1877, ARTICLE 120.

See RIGHT OF SUIT. **61 P R 1903**

4. *Question of—*
See PARTITION. **104 P R 1906**

TITLE TO IMMOVEABLE PROPERTY.

—Determination of question of, by Small Cause Court.

See JURISDICTION OF SMALL CAUSE COURT.
5 P R 1882
38 P R 1882
4 P R 1883
8 P R 1885
5 P R 1886

—By adverse possession.

See LIMITATION ACT (XV OF 1877), SECTION 28. **16 P R 1886**

—Tenant who has occupied continuously for 12 years in the Delhi district.

See OCCUPANCY RIGHTS.
39 P R 1881
18 P R 1885
12 P R 1886

TITLE TO IMMOVABLE PROPERTY—*concld.*

—*Instrument creating, declaring, &c.—Registration.*
See REGISTRATION ACT (III OF 1877), SECTION 17. **30 P R 1884**
51 P R 1885
82 P R 1884

TOLLS.

See FERRY.

1. *Illegal levy of, under Act XVII of 1878—Suit for refund—Limitation.*
See LIMITATION ACT (XV OF 1877), SCHEDULE II, ARTICLE 2.
65 P R 1886
105 P R 1886

2. *Suit for share of ferry income.*
See SMALL CAUSE COURT, JURISDICTION OF. **51 P R 1887**

SMALL CAUSE COURT ACT, 1865, SECTION 6. **173 P R 1888**

3. *Suit for recovery of toll by lessee of Government ferry.*
See SMALL CAUSE COURT ACT, 1887, 2ND SCHEDULE, ARTICLE 13.

48 P R 1887
80 P R 1898

TORT.

—*Suit for damages for malicious prosecution—Cause of action accruing in Foreign State, but suit instituted in British India—Discharge of plaintiff in former proceedings—Death of defendant pending appeal—Abatement of appeal.*
See CIVIL PROCEDURE CODE, 1908, O. XXII, R. 4. **4 P R 1897**

—*Joint owners—Erection of building by one on common land—Absence of special damage to others.*
See COMMON LAND. **54 P R 1892**

—*Mortgage—Absence of covenant to pay interest after due date—Allowance of, by way of damages—Charge.*
See INTEREST.
73 P R 1892

—*Suit by mortgagee for possession against mortgagor and certain third person alleged to be trespassers.*
See MORTGAGE—POSSESSION UNDER.

1 P R 1891

TORT-FEASOR.

—*Presumption against.*
See PARTNERSHIP. **62 P R 1897**

TOWN.

—*When village becomes town.*
See VILLAGE. **26 P R 1910**

TRADE MARK.

—*Injunction—Trade mark—Right to injunction to restrain use of similar label.*
See INJUNCTION. **55 P R 1902**

TRAFFICKING IN PUBLIC OFFICE.

See CONTRACT ACT, 1872, SECTION 23.
86 P R 1893

TRANSFER.

See CIVIL PROCEDURE CODE, 1908, SECTION 24, *Passim.*

CIVIL PROCEDURE CODE, 1908, O. XLI, R. 23. **40 P R 1887**

—*Power of Judge to decide case on evidence recorded by his predecessor—Notice to parties.*
See CIVIL PROCEDURE CODE, 1908, O. XVIII, R. 15
110 P R 1886

1. *Small Cause Court suit—Munsif trying case withdrawn from Small Cause Court—Finality of order of Munsif—Civil Procedure Code, 1882, section 25.*

Plaintiff filed his suit as a Small Cause Court case in the Court of the District Judge at Hoshiarpur, with a note that it was triable by the Small Cause Court, but as the Judge of that Court was related to one of the parties it should not be sent to him. It was accordingly sent to an additional Munsif without Small Cause Court powers, by order of the District Judge. After decision by that Munsif an appeal was preferred to the District Judge and decided by him.

Held, that the action of the District Judge in sending the case to the Additional Munsif amounts to transfer within the meaning of section 25, Civil Procedure Code, the Additional Munsif must be deemed for the purposes of this suit to be a Court of Small Causes under the last clause of that section, and his decision was therefore not open to appeal.

Ram Chandra v. *Ganesh* (*I. L. R. XXIII Bom.* 382), dissented from. *Mangal Sen* v. *Rup Chand* (*I. L. R. XIII All.* 324), *Kauleshar Rai* v. *Dost Muhammad Khan* (*I. L. R. V All.* 274), *Parsick* v. *Buta Mal* (80 *P. R.* 1887), *Alla Din* v. *Mul Chand* (74 *P. R.* 1896), and *Saidhu Mal* v. *Hassu* (58 *P. R.* 1897), followed. RALLIA RAM *v.* GOKAL CHAND.
83 P R 1903

2. *Transfer of suits—Disqualification of presiding Judge—Reasonable apprehension of bias.*

In dealing with applications for transfer of cases under section 25 of the Civil Procedure Code in which there is no question of personal interest the superior Court should require the applicant to show that his apprehension is reasonable, *i.e.*, such as a man of a sound sense would regard as legitimately raising the inference of bias, but where the acts of presiding Judge

TRANSFER—*concld.*

complained of were colourless and innocent and raised no presumption one way or the other in respect of his mental attitude about the case, the apprehension must be held unreasonable.

Sergeant v. *Dale* (*L. R.* 2 *Q. B.* 558), cited *Girish Chunder Ghose* v. *Queen-Empress* (*I. L. R. XX Calc.* 857), *In re Pandurang Gobind Pujari* (*II Bom L. R.* 755), *Dupeyron* v. *Driver* (*I. L. R. XXIII Calc* 495), *Farzand Ali* v. *Hunuman Prasad* (*I. L. R. XIX All.* 64), and *The Legal Remembrancer* v. *Bhairab Chandra Chakerbutty* (*I. L. R. XXV Calc.* 727), referred to. SHER SINGH *v.* THAKAR DAS.
88 P R 1903

TRANSFER OF DECREE.

—*Application for execution by transferree.*
See LIMITATION ACT (XV OF 1877), SCHEDULE II, ARTICLE 178.
151 P R 1882

TRANSFER OF LAMBARDARSHIP.

See LAMBARDARS.
1 P R 1884 Rev.

TRANSFER OF PATWARI.

See PATWARI. **3 P R 1885 Rev.**

TRANSFER OF PROPERTY ACT, 1882.

Section 53.
See ATTACHMENT. **81 P R 1908**

Section 54.
Alienation of property pending suit relating thereto.
See LIS PENDENS, *Passim.*

Sections 67 and 99.
—*Applicability of—to cases of simple usufructuary mortgages in the Punjab.*
See MORTGAGE—II. POSSESSION UNDER.
15 P R 1911

Section 85.
See PARTIES. **64 P R 1903**

Section 103 (*f*).
—*Applicability of—where relation of landlord and tenant was settled by the Cantonments (House Accommodation Act).*
See CANTONMENTS (HOUSE ACCOMMODATION ACT). **103 P R 1910**

1. *Applicability of Transfer of Property Act to Punjab..*

Although the Transfer of Property Act is not in force in the Punjab, the Punjab Courts when deciding cases in which principles of law dealt with by the provisions of that Act are involved may adopt those provisions as embodying the law applicable to the case, especially where the law enunciated therein coincides with the principles of equity, good conscience and justice, and for which there is no statutory law applicable to the Punjab. BHAGWAN DEVI *v.* BUNYADI KHANUM.
85 P R 1902

TREES.

1. *See* DECLARATORY DECREE. **112 P R 1883**

2. *Suit for fruit of.*
See SMALL CAUSE COURT, JURISDICTION OF. **28 P R 1881** **5 P R 1882**

3. *Suit for value of.*
See SMALL CAUSE COURT, JURISDICTION OF. **4 P R 1883**

4. *Suit for possession of—Limitation.*
See LIMITATION ACT (XV OF 1877), SCHEDUDE II, ARTICLE 144. **112 P R 1884**

5. *Right to—Landlord and tenant.*
See OCCUPANCY RIGHTS. **61 P R 1881**

6. *Grown on* shamilat—*Principle of division.*
See PARTITION. **15 P R 1881**

7. *Held*, that whether the proprietors or the hereditary cultivators are entitled to trees on land in the cultivating occupancy of the latter will depend, (1) on whether they were planted by the proprietors or the cultivators, or whether they grew spontaneously during the latter's occupancy; and (2) on the custom of the country in regard to trees so planted or grown. ADALUT KHAN *v.* PEER ALI SHAH. **14 P R 1867 Rev.**

8. *Rights of hereditary cultivators.*
A proprietor has no right to enter on his hereditary tenant's cultivated land and cut trees, unless the right be secured by custom or the *wajib-ul-arz*. NIKKA *v.* LUKHA. **95 P R 1867**

9. Plaintiff, a tenant with rights of occupancy, sued the defendants, the proprietors, for the value of a tree and some grass cut and taken from the land in plaintiff's occupancy. In the *wajib-ul-arz* of the village in which the land was situated, it was recorded, that a tenant with rights of occupancy might cut down trees, with the consent of the landlord, for certain specified purposes; but there was no mention of the right of the proprietor. Apart from the *wajib-ul-arz*, there was no evidence of custom. In previous suits between the parties, the proprietors had failed to prove their asserted right to enter upon the land and cut trees, &c. *Held*, that without the consent of the plaintiff, the defendants were not entitled to enter upon the land and take therefrom trees and grass growing upon it. KALIAN DAS *v.* BUTA. **61 P R 1873**

10. The *wajib-ul-arz* expressly allowed tenants with rights of occupancy to cut trees and use them for their fields, but said nothing about the right to cut for roofing houses. *Held*, that the general custom being to allow such tenants to cut trees for roofing their dwelling-

TREES—*concld.*

houses, the *wajib-ul-arz* must be taken to be consistent with (as it did not expressly exclude) the right to cut and use trees for that purpose. SAHIBA *v.* KHUSHAL. **79 P R 1874**

11. *Held*, that the general rule is that an hereditary cultivator can only cut trees for agricultural purposes and repairs of his house, and the proprietor cannot, unless empowered so to do by the *wajib-ul-arz* or custom, cut down, without the tenant's consent, trees on the land in the occupation of the cultivator. But if the trees be under the care and consequently in the possession of the proprietor, he can appropriate them to his own use without the tenant's consent. JANI *v.* GHULAM FARID KHAN. **4 P R 1875**

12. *Rights of non-proprietors*
By the *wajib ul-arz* non-proprietors could not sell or mortgage trees, and a tenant could not, without his landlord's consent, cut a tree for the repair of his house. The parties belonged to a village in the Jullundur tahsil. The tree in suit, which was cut by the landlord (defendant), was standing in the courtyard of the house of the occupier (plaintiff). *Held*, that the plaintiff had no property in the tree and could not sue for its value. BAJA *v.* FATTEH JANG. **13 P R 1877**

TRESPASSER.

1. *Suit for recovery of land from trespasser.*
See JURISDICTION OF CIVIL AND REVENUE COURTS. **22 P R 1894**

2. *Ejectment suit—Trespasser—Construction of plaints.*
See JURISDICTION OF CIVIL AND REVENUE COURTS. **41 P R 1894**

3. *Suit for compensation for occupation of land—Mortgage by alleged widow impeached by* prima face *heirs of last holder.*
See JURISDICTION OF CIVIL AND REVENUE COURTS. **82 P R 1894**

TRUST.

1. *For public charitable purposes.*
See CIVIL PROCEDURE CODE, 1908, SECTION 92. **50 P R 1882** **76 P R 1886**

2. *Agreement by purchaser of equity of redemption to pay mortgage—Personal liability of purchaser—Trust in favour of the mortgagee.*
See MORTGAGE,—XV. REDEMPTION. **54 P R 1902**

3. *Suit to recover money spent in connection with the guardianship of a minor—Suit relating to a trust—Jurisdiction of Small Cause Court.*
See SMALL CAUSE COURT,—JURISDICTION OF. **58 P R 1903**

TRUST—*concld.*

4 *Trust—Revocation — Condition—Payment of amount due to trustee.*
The plaintiff being indebted and unable to manage his estate, made over the same to his mother by a deed of trust in order that she might manage it for him and pay off his debts, granting him maintenance at a fixed rate during the time she held the land. There was no provision as to when the trust was to terminate, Six years after the deed, but before all the debts had been paid off, plaintiff sued to redeem the property, and offered to pay the amount which might be found due from plaintiff to defendant. The lower Court dismissed the suit, holding that plaintiff could not sue till all the debts had been paid off.
Held, that there was nothing in the deed to prevent the plaintiff revoking the trust after he had satisfied the claims of the trustee. *I. L. R.* 8 *Cal.* 887, distinguished. SARDAR RANDHIR SINGH *v.* RANI LACHMAN KOUR. **133 P R 1889**

5. *Charitable trust—Oral gift of immovable property creating charitable trust—Trust of immovable property—Indian Trust Act,* 1882, *section* 5—Locus standi *of third parties to contest gift.*

Held, that a gift of immovable property creating a public charitable trust does not fall within the purview of the Trust Act, 1882, and that therefore it is not essential that it should be in writing signed by the author of the trust or the trustee and registered.
The invalidity of a trust is a matter which concerns the creator of the trust and his heirs, creditors, trustees and beneficiaries, and not those who are mere debtors of the donor; the latter can only contest the donee's title, but as soon as that is established their defence as to the *locus standi* fails.
Held, also, that where a gift does not require a writing for its validity, and is upheld by the donor in Court, third parties cannot contest the donee's title.
Kalidas Mullick v. *Kanhaya Lal Pundit* (*I. L. R. XI Calc.* 121, *P. C.*), cited. SANATAN DHARM SABHA, HOSHIARPUR, *v.* MUSSAMMAT SOBHI. **75 P R 1903**

6. *Trust and trustee—Suit by settler against trustee on failure of the object of a trust to recover trust funds for himself—Starting point of limitation.*
Held, that where the author of a trust on failure of its objects sues to recover trust property in the hands of a trustee for his own use and not for the purposes of the trust, section 10 of the Indian Limitation Act is inapplicable.
Such a suit being a suit to reconvey trust property to the settler the limitation applicable is that prescribed in article 120 and will commence to run from the date of the failure of the object of the trust. GULZARI MAL *v.* KISHAN CHAND. **132 P R 1907**

TRUSTEE.

—*Suit by minor against guardian for an account and for possession of immovable property—" Trustee"—Parties to suit—Limitation Act,* 1877, *Second Schedule, articles* 120, 132, 144, 147 *and sections* 7, 22.
See LIMITATION ACT, 1877, SECTION 7.
33 P R 1897

U.

ULTRA VIRES.

See CONTRACT ACT, 1872, SECTION 17.
117 P R 1879

See INSPECTION OF JUDICIAL RECORDS.
103 P R 1882

See JURISDICTION OF CIVIL OR REVENUE COURT. **84 P R 1884**

—*Purchase by Bank of its own shares.*
See COMPANIES ACT, 1866, SECTION 128.
38 P R 1881

UNCERTAINTY.

—*Contract void for.*
See TENANCY ACT (XXVIII OF 1868), SECTION 2.
21 P R 1884

See TENANCY ACT (XXVIII OF 1868), SECTION 8. **23 P R 1881**

UNCHASTITY OF WIDOW.

See CUSTOM—VIII. MAINTENANCE AND SUCCESSION—I. REMARRIAGE OR UNCHASTITY OF WIDOW.

UNCHASTITY OF WIFE.

See MUHAMMADAN LAW, INHERITANCE.
37 P R 1888

UNCLASSED SUIT.

See APPEAL—III. COURSE OF APPEAL.
123 P R 1889
86 P R 1896
60 P R 1900

See COURT FEES ACT, 1870, 2ND SCHEDULE, ARTICLE 17. **21 P R 1895**

See JURISDICTION OF CIVIL OR REVENUE COURTS. **40 P R 1893**

See PUNJAB COURTS ACT, 1884, SECTION 3. **20 P R 1894**

See PUNJAB COURTS ACT, 1884, SECTION 40 (2). **66 P R 1898**

UNCONSCIONABLE BARGAIN.

1. *Misjoinder of causes of action—Creditor claiming in one suit to enforce two bonds executed separately by father and son—Undue influence—Dispensing power of courts of equity—Interest—Penalty.*
See CAUSE OF ACTION—V. MISJOINDER.
32 P R 1890

2. *Interest in litigation—unconscionable bargain—Registration.*
See CHAMPERTY.
150 P R 1889

UNDER CHARGE.

—*Power to correct.*
See RAILWAY COMPANY.
94 P R 1883
99 P R 1885

UNDISCLOSED PRINCIPAL.

—*Suit by agent of.*
See PRINCIPAL AND AGENT.
64 P R 1881

UNDIVIDED HINDU FAMILY.

See CUSTOM—I. A. ALIENATION BY MALE PROPRIETOR—3. SALES AND MORTGAGES IN FAVOUR OF STRANGERS.
109 P R 1883

See HINDU LAW—II. ALIENATION.

HINDU LAW—JOINT FAMILY.

HINDU LAW—PARTITION.

HINDU LAW—WIDOW.
112 P R 1888

1. *Suit for partition—Death of defendant respondent during pendency of appeal by plaintiff—Necessity for placing divided brother or widow of deceased co-parcener on record.*
See ABATEMENT OF APPEAL.
86 P R 1886

2. *Alienation by one member of.*
See HINDU LAW—II ALIENATION.

3. *Partition—Evidence of separation.*
See HINDU LAW—VIII. JOINT FAMILY.
136 P R 1882
13 P R 1883

4. *Separation — Presumption — Partial disruption*
See HINDU LAW—VIII. JOINT FAMILY.
143 P R 1882
86 P R 1886

5. *Presumption of joint ownership—Rebuttal of presumption.*
See HINDU LAW, VIII. JOINT FAMILY.
86 P R 1886
13 P R 1883

UNDIVIDED HINDU FAMILY—*concld.*

6. *Power on managing member to give discharge binding on minor.*
See HINDU LAW—VIII. JOINT FAMILY.
63 P R 1883

7. *Payment of father's debts by one son—Liability of other sons to contribute.*
See HINDU LAW—VIII. JOINT FAMILY.
79 P R 1883

8. *Liability of sons to pay their father's debts*—Onus *of proving that the debts were incurred for immoral purposes.*
See HINDU LAW—VIII. JOINT FAMILY.
144 P R 1884

9. *Suit for debt against elder brother without impleading minor members—Absence of proof that elder brother was sued in representative capacity.*
See HINDU LAW—VIII. JOINT FAMILY.
70 P R 1883

10. *Power of manager to sue on behalf of other members.*
See LIMITATION ACT (XV OF 1877), SECTION 22. **58 P R 1882**

UNDIVIDED HOLDING.

—*Pre-emption in respect of sale of share of.*
See LIMITATION ACT (XV OF 1877), SCHEDULE II, ARTICLE 10.
10 P R 1881
48 P R 1884
68 P R 1884
61 P R 1885

—*Validity of mortgage of share in.*
See MORTGAGE—I. CONSTRUCTION.
149 P R 1884

UNDIVIDED MUHAMMADAN FAMILY.

Onus *of proving separate acquisitions.*
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—Unregistered Association — Personal liability of Secretary of Managing Committee, who was also a member thereof and a depositor in the association.
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2. *Unregistered deed of compromise—Petition to Court—Document declaring right to immovable property over Rs.* 100 *in value—Inadmissibility of whole document in evidence—Plaint disclosing cause of action irrespective of unregistered document.*
See REGISTRATION ACT, 1877, SECTIONS 17 AND 49.

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—Admissibility of, to support claim in respect of moveable property.
See REGISTRATION ACT (VIII OF 1871), SECTIONS 18, 19.
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See REGISTRATION ACT (III OF 1877), SECTION 49. **139 P R 1883**

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1. *Arising out of application to file award.*
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2. *From order of appellate Court refusing to re-admit appeal dismissed for default.*
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3. *Suit for possession of property valued at Rs.* 5,000*—Decree for property valued at Rs.* 15,000 *on payment of that sum within two months—Computation of Court fees on appeal from such decree.*
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1. *Suit for dissolution of partnership and rendition of accounts—Suits Valuation Act,* 1887, *sections* 8, 11*—Course of appeal—Punjab Courts Act,* 1884, *section* 39.
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2. *Land suit—Suit for pre-emption—Question respecting property exceeding Rs.* 250 *in value.*
See APPEAL III—COURSE OF.
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3. *Suit to declare an alienation of land to be not binding after alienor's death—Value*

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4. *Suit to declare an alienation of land to be not binding after alienor's death—Value for purpose of further appeal—Punjab Courts Act,* 1884, *section* 40 (*b*).
See APPEAL—XI. VALUATION OF.

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5. *Suit for redemption—Value for purposes of further appeal—Punjab Courts Act,* 1884, *section* 40 (*b*).
See APPEAL—XI. VALUATION OF.

28 P R 1908

6. *Valuation of suit embracing two or more distinct subjects.*
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7. *Suit for possession of house—Decree on payment of improvements—Value for purposes of appeal.*
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8. *For cancellation of mortgage.*
See COURT FEES ACT, 1870, SECTION 7 (*iv*) (*c*).
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9. *To establish right to attached property.*
See COURT FEES ACT, 1870, SECTION 7 (*iv*) (*c*). **80 P R 1886**

10. *Court Fees Act,* 1870, *section* 7 (*iv*) (*d*)*—Valuation of suit for purposes of jurisdiction and Court-fee—Suit for an injunction where no damages are claimed—Suits Valuation Act,* 1887, *sections* 8, 9.
See COURT FEES ACT, 1870, SECTION 7 (*iv*) (*d*).
63 P R 1902

11. *For pre-emption.*
See COURT FEES ACT, 1870, SECTION 7 (*v*) (*d*). **6 P R 1883**

12. *Suit for possession of fruit garden—Value of, for purposes of Court-fee.*
See COURT-FEES ACT, 1870, SECTION 7 (*v*) (*e*).
146 P R 1908

13. *To contest notice of ejectment.*
See COURT FEES ACT, 1870, SECTION 7 (*xi*) (*d*). **111 P R 1883**

14. *Application to file an award.*
See COURT FEES ACT, 1870, SCHEDULE I, ARTICLE 1.
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15. *Suit for redemption.*
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16. *Suit by reversioner for cancellation of document.*

See JURISDICTION. **198 P R 1882**
94 P R 1886
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17. *Suit for the cancellation of an auction sale of a house sold in execution of a money decree not exceeding Rs.* 100.

See JURISDICTION. **42 P R 1901**

18. *Suit to enforce a right to share in joint family property—Value for purposes of jurisdiction and Court fee.*

See PARTITION. **28 P R 1903**

19. *Valuation of suit—Suit to establish right to attached property—Value of subject-matter for purposes of jurisdiction.*

Held, that the value for purposes of jurisdiction of a suit to establish right to attached property is the value of the decree sought to be realised out of the property and not the value of the property itself.

Gulzari Lal v. *Jadaun Rai (I. L. R. 11 All.* 799), followed. BISHNU *v.* LAL SINGH. **55 P R 1906**

20. For the purposes of a further appeal the value of a suit for possession of land, assessed to land revenue on the allegation of an already completed foreclosure and vested proprietary right is the value of the land under the rules framed under section 4 of the Suits Valuation Act and not the amount of the conditional mortgage or its sale price. VIR SINGH *v.* SARMUKH SINGH. **84 P R 1906**

21. In a suit for possession of landed property by a purchaser of equity of redemption for the purposes of section 40 (1) (*b*) of the Punjab Courts Act the value of the decree sought to be appealed is the sum found by the decree appealed to be payable on redemption where that exceeds 30 years' Government revenue of the land. BADRI MAL *v.* GOPAL. **130 P R 1906**

22. *Valuation of suit—Suit to establish right to attached property—Value for purpose of jurisdiction.*

Held, that the value for purposes of jurisdiction of a suit to establish right to attached property is the amount of the decree sought to be realized out of the property and not the value of the property itself ZORAWAR SINGH *v.* DEVA. **142 P R 1906**

23. *Valuation of suit—Suit for pre-emption of land—Value of relief sought—Finding of Court exceeding its pecuniary limits of jurisdiction, effect of—Suits Valuation Act*, 1887.

A pre-emption suit was filed in the Court of a Munsiff of the first class for recovery of possession of agricultural land. Its value for purposes of jurisdiction, as laid by the rules in force under the Suits Valuation Act, was Rs. 644. The Munsiff whose jurisdiction was limited to Rs. 1,000 gave a decree on payment of Rs 4,038. On objection being taken to the jurisdiction of the Munsiff to pass a decree for that amount,

Held by the Full Bench that the actual value of the land in suit being clearly in excess of the pecuniary limits of the Munsiff's jurisdiction, he was not competent to pass a decree in the case but should have returned the plaint for presentation to a Court with jurisdiction. MUHAMMAD AFZAL KHAN *v.* NAND LAL. **16 P R 1908 F. B.**

24. *Valuation of suit—Suit for pre-emption of land—Effect of actual value exceeding the value as fixed by the Suits Valuation Act*, 1887.

Held that under the Suits Valuation Act, 1887, the value for purposes of jurisdiction in suits for possession of land, where the subject-matter is a definite portion of a revenue-paying *khata*, is thirty times such portion of the revenue as may be rateably payable in respect of that portion. FATA *v.* KHAN BAHADUR. **46 P R 1908**

25. *Jurisdiction—Valuation of suit—Suit to establish right to attached property—Claim against judgment-debtor for declaration of title—Value of subject-matter—Punjab Courts Act*, 1884, *section* 39.

Held by the Full Bench that for the purposes of jurisdiction the value of a suit of an unsuccessful claimant under section 283, Civil Procedure Code, 1882, to obtain a declaration that certain property was not liable to attachment as the property of the judgment-debtor where the latter resists the claim on the ground that the property was his is the value of the property attached and not the amount of the decree. SHER ALI SHAH *v.* LACHMAN DAS. **94 P R 1908 F. B.**

26. *Suit for redemption—Value for purposes of further appeal—Punjab Courts Act*, 1884, *section* 40 (*b*).

Held, that for purposes of section 40 (*b*) of the Punjab Courts Act, 1884, the value of the suit for redemption is the sum found by the First Court to be payable on redemption, and the fact that the lower Appellate Court on appeal had reduced that sum does not alter the value of the property involved in the decree.

Further held, that the amount found due to the mortgagee for repairs is included in the jurisdictional value of the appeal. KISHEN CHAND *v.* TAJ-UD-DIN. **23 P R 1909**

27. *Valuation of suit for possession of immovable property against tenant—Suits Valuation Act, VII of* 1887, *section* 8—*Court Fees Act, VII of* 1870, *section* 7 *XI* (*c, c*).

Held that under section 7 XI (c, c) of the Court Fees Act, VII of 1870 (as amended by Act VI of 1905) the value for purposes of Court fees of a suit for possession of immovable property by a landlord against his tenant is a year's rent, and following 50 *P. R.* 1896 (*Sohan Lal* v. *Golab Mal*) the value of the suit for purposes of jurisdiction is the same. RAM CHAND *v.* RAM SUKH DAS. **27 P R 1910**

VALUATION OF SUIT—*concld.*

28. *For purposes of appeal.*

Where the Appellate Court decreed compensation of Rs. 3,000 to plaintiffs, decree involves property of that value and further appeal lies. HAIDAR HUSSAIN *v.* MUHAMMAD HUSSAIN. **90 P R 1911**

VARIANCE BETWEEN DECREE AND JUDGMENT.

See EXECUTION OF DECREE. **46 P R 1881**
45 P R 1882
13 P R 1886

VENDEE.

—*Cannot defeat pre-emptor's claim by acquiring a status equal to plaintiff after institution of the suit.*

See PRE-EMPTION—2. RIGHT OF, IN TOWNS. **91 P R 1909 F. B.**

VENDOR AND PURCHASER.

See CONTRACTS.

ESTOPPEL.

EXECUTION OF DECREE.

MORTGAGE.

NAZUL LAND.

PRE-EMPTION.

1. *Sale by minor—Effect of such sale.*

See CONTRACT ACT, 1872, SECTION 11. **23 P R 1888**

2. *Possession of vendor after sale with consent of purchaser—Notice to public—Resale by the vendor to third party—Title of the vendee—Contract Act*, 1872, *section* 108, *exception* 1.

See CONTRACT ACT, 1872, SECTION 108. **27 P R 1902**

3. *Purchase of stolen buffalo by a* bona fide *purchaser—Sale in market overt—Title conveyed by vendor to vendee—Right of owner to reclaim from such purchaser.*

See CONTRACT ACT, 1872, SECTION 108. **2 P R 1908 Cr.**

4. *Sale of goods by sample—Vendees' power of rejection of all the goods, in case of entire contract, if some are not equal to sample.*

See CONTRACT ACT, 1872, SECTION 112. **79 P R 1888**

5. *Vendee's lien where sale was partly for necessary purposes.*

See CUSTOM—I. A. ALIENATION BY MALE PROPRIETOR—3. SALES AND MORTGAGES IN FAVOUR OF STRANGERS. **52 P R 1884**

6. *Sale of goods to firm represented by minor—Liability of assets of business.*

See MINOR. **25 P R 1886**

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VENDOR AND PURCHASER—*contd.*

7. *Merchant buying goods in a foreign market on behalf of another—Principal and agent—Fraud—Right to rescind contract—Goods ordered according to sample—Difference in goods supplied.*

See PRINCIPAL AND AGENT.

21 P R 1897

8. *Warranty.*

Where the vendor of a warranted horse sued for the price, *held*, that it was competent to the purchaser to prove the breach of warranty in reduction of the claim, and the price fixed was to be reduced by so much as the horse was diminished in value. Under the Punjab Civil Code there was an implied warranty as to latent defects in a horse. CHIRAGH SHAH *v.* MAHOMED SOOLTAN.

62 P R 1866

9. *Warranty—Sale of beer by brewer to retail dealer—Implied warranty of soundness—Warranty ceases when beer despatched—Presumption against purchaser who delays to complain—No objection can be taken after breaking bulk—Estoppel by acts of purchaser.*

Plaintiff, a Brewery Company, sold to defendants who were wine and beer merchants, a number of casks of beer, which were despatched from Murree early in February 1869, and reached the defendants at Meean Meer about the middle of March following. In April, after a dispute between the parties about the dishonoring of a bill of exchange, the defendants informed the plaintiffs that of the beer delivered 24 hogsheads and 3 kilderkins were unsaleable, and that they were in that condition when they reached Meen Meer. The defendants had advertised the consignment generally as being very superior beer. A portion of the alleged bad beer the defendants had bottled off, as not being unsound but only very indifferent, in the expectation that it would sell at least at low prices. Some of the beer so bottled was sold by the defendants, but it was returned to them by the purchasers as undrinkable. In an action for the price of the 24 hogsheads and 3 kilderkins, the defendants pleaded that the law implied in such a case a warranty that the beer should be saleable when delivered, and should remain so for a reasonable period after delivery to admit of a resale, that the beer either was bad when it was delivered, or had become so before such reasonable period had elapsed, and that on those grounds the defendants were not liable for the price *Held*, that by warranty implied by law the plaintiffs were bound to supply wholesome and merchantable beer to the defendants, but that the plaintiffs were not responsible for any deterioration in the quality of the beer that necessarily took place between the date of despatch and the date of delivery, and that there was no implied warranty that the beer should keep good for any period after delivery. *Held* also, that if a purchaser who complains of a breach of

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warranty, do not challenge the quality of the article without delay, the presumption against him is that the warranty is complied with; and that if he break bulk or make use of the article, he is barred from raising any objection to it. *Found* also, that the delay on the part of the defendants in complaining, their doing so after quarrelling with the Company, and the fact that they had advertised the consignment as of a superior quality, left them no reasonable ground for refusing to pay the price of the beer in dispute. MITCHELL *v.* THE MURREE BREWERY CO.

5 P R 1870

10. *Bona fide purchase of house from seller without title—Validity of purchaser.*

A was convicted under section 408, Indian Penal Code, and sentenced to fine and imprisonment. The Deputy Commissioner did not realize the fine by sale of *A's* movable property under section 61, Criminal Procedure Code, but ordered that all *A's* assets should be paid into the treasury, and advertised his property for sale, At the sale *B* purchased a house and garden. *Held*, that a suit by *A* against *B* for possession of the house would lie, as the Deputy Commissioner had no right to sell the house, and *B*, although a *bona fide* purchaser, could have no better title than the Deputy Commissioner had. SALIG RAM *v.* SALIG RAM.

14 P R 1871

11. A sale is complete when the purchase money is agreed to be paid. LAKHA MAL *v.* MULLAH. **21 P R 1875**

12. *Immovable propertg—Covenant for title—Caveat emptor.*

Where the purchaser of immovable property knows at the time of purchase that a third party professes to have the proprietary right, he buys the disputed title at his own risk, unless the vendor covenants to the contrary; and if the third party makes good his title and ousts the purchaser or deprives him of the benefit of his bargain, the latter cannot recover the money paid or claim relief from his vendor. The rule of *caveat emptor* applies to the purchaser of immovable property; and after the transaction is completed, the purchaser has no redress for defect of title unless the vendor has covenanted for title. HIRA NAND *v.* MAHIA.

90 P R 1876

13. *Sale—Ownership—Transfer of.*

Held, that in the absence of any intention common to both parties to a sale that the ownership shall not pass until the deed of sale has been registered and delivered to the purchaser or until possession has actually been given, the accomplishment of these conditions is not essential to the completion of the sale, and the ownership of property passes on the execution of the deed of sale. KAHNA *v.* DEWA SINGH. **62 P R 1879**

14. *Sale, suit for cancellation of deed of—Allegation of non-payment of consideration money after execution—Failure to prove allegations—Dismissal of suit brought on false statement of facts.*

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Where plaintiff brought his suit for cancellation of a deee of sale, on the allegation of a sale for Rs. 400, to be paid ten days after the execution of the deed, and a refusal to pay;

Held, that these allegations, even if proved, would not entitle plaintiff to have the sale set aside, at least without proof that it was mutually agreed that, in default of payment, the sale should be void.

Held, further, that in this particular case plaintiff had failed to prove his allegations; that as he had not revealed the real truth of the transaction, it was impossible to determine whether the plaintiff was entitled to the relief sought or to any other relief, and that, therefore, his suit must be dismissed throughout. BANNE SHAH *v.* RAJAB ALI.

85 P R 1879

15. *Possession, suit for—Transfer of property without consideration—Fraud*—Ex turpi causa non oritur actio.

Where an instrument purporting to be a transfer of property has been executed by one person in favour of another, without consideration, for a fraudulent purpose known to both, but possession has not been delivered.

Held, that the apparent purchaser cannot succeed in a suit for possession.

The rule contained in the maxim "*ex turpi causa non oritur actio*" discussed. DASONDHI *v.* SIRDAR KHAN.

114 P R 1879

16. *Suit by vendee for possession of land sold—Contract of sale—Completion of sale—Non-payment of purchase-money—Condition precedent—Presumption from terms of deed—Mortgagee in possession—Declaration of title.*

Defendant 1 executed a deed of sale in favour of plaintiff, which stated that the land mentioned therein had been sold to plaintiff, the consideration money received by the vendor, and possession delivered to the purchaser. The land was in the actual possession of defendant 2 as mortgagee. The deed was registered the same day, defendant 1 admitting receipt of the purchase-money before the Registering officer, and making over to plaintiff the receipt given by that officer for the deed. Two days afterwards the vendor petitioned that the deed might not be given to plaintiff till the purchase money was paid, but finally, when transcription of the deed in the registration books had been completed, it was delivered to plaintiff. Subsequently defendant 1 executed another sale of the same land in favour of defendant 2, the mortgagee, which was registered, and *dakhil kharij* was effected in defendant 2's favour.

The Lower Courts found as a fact that plaintiff had not paid the purchase-money, and the lower Appellate Court therefore held that the sale was incomplete, and dismissed

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plaintiff's suit for possession as owner of the land sold.

Held, that the transaction passed beyond the stage of a mere contract for sale, and that the ownership of the land passed to plaintiff, notwithstanding non-payment of the consideration money, at latest when the receipt for the deed was made over to the purchaser.

It is competent to the parties to determine in the contract for sale that ownership shall not pass until some future time or the happening of some event, but there is no rule of law that a sale of immovable property is not complete, and the ownership does not pass, till the purchase-money is paid.

The execution of a deed of sale which purports to be a present transfer of property in possession, with possession to the purchaser, for a consideration acknowledged to have been received, raises a presumption that the ownership is intended to pass immediately; and this presumption gains additional force when the vendor does at the same time every act in his power to register the deed and procure delivery of it to the purchaser.

Held, also, that plaintiff was entitled to a declaration of his title as owner, though he could not succeed in his suit for possession ainst defendant 2, a mortgagee in possesion with a prior title, whom plaintiff had t offered to redeem. ABBAS ALI SHAH *v.* R BAKHSH. **132 P R 1879**

17. *Completion of sale—Non-payment of consideration—Transfer of ownership.*

Where a deed of sale of immovable property purported to transfer the property for a consideration acknowledged to have been received, and the deed was duly registered, and the vendor applied to the revenue authorities to effect mutation of names in the purchaser's favour and there was nothing to show, although it was found that the payment of the consideration money had not been proved, that it was the intention of the parties that the ownership of the land was not to pass until after the payment of the consideration, *held*, that the transaction had passed beyond a mere contract of sale, and that as a decree for immediate possession could not be given, the property sold being a share of a joint undivided estate, the purchaser was entitled to a decree declaring that, on condition of payment of the consideration money, he is the owner of the vendor's right, title, and interest in the property described in the deed of sale. *Abbas Ali Shah* v *Pir Buksh* (*No.* 132 *P. R.* 1879), followed. SHER SHAH *v.* NATHU. **192 P R 1882**

18. *Purchaser planting crops in bona fide belief that he is lawful owner of the property—Eviction of purchaser by third party with superior title—Right to crops growing on property at time of such eviction.*

Where the right to possession of cultivated land is transferred from one person to an-

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other, and the transferee believing in good faith that he is absolutely entitled thereto has planted or sown crops on the property and is subsequently evicted therefrom by a person having a better title, he is entitled to such crops if they are growing on the property at the time of his eviction, and *a fortiori*, according to the same principle, if he has received possession of the produce of the crops before his eviction, he is entitled to retain it. BAKIR ALI *v.* BELI RAM. **36 P R 1883**

19. *Vendor's lien for unpaid purchase-money—Recital in deed of full payment—Subsequent advance on strength of deed by third party without notice of lien—Priority—Destruction of vendor's lien by acceptance of security for unpaid balance—Intention of parties.*

The general principle as to the lien of a vendor of an estate in regard to unpaid purchase-money is, that where a vendor, in compliance with the contract for the sale of an estate, executes a conveyance thereof, but the purchase-money is wholly or partially unpaid, then, notwithstanding that on the face of the conveyance it is expressed to be paid, or that a receipt for it is endorsed thereon, the vendor has a lien on the estate for the money remaining due to him. But this general principle is subject to a restriction where third persons have subsequently advanced money to the purchaser *bona fide* and without notice of the vendor's lien, on the strength of the deed of conveyance. In the latter case the vendor loses his lien so far as such third person is concerned.

The mere taking of security for the unpaid purchase-money will not destroy the vendor's lien: the question depends upon intention, which must be gathered from all the surrounding facts, the nature of the security, and the expressions and conduct of the vendor. If the security was *substituted* for the consideration money, the lien ceases to exist: but if the lien was intended to be reserved, the taking of an *additional* security would not destroy it. ALLIANCE BANK OF SIMLA *v.* WALSH. **66 P R 1883**

20. *Sale to plaintiff without notice of former sale—Refund of purchase-money—Caveat emptor—Fraud.*

Plaintiff having been deprived of some land purchased by him, at the suit of one M. who had purchased the same land more than two years before him, sued his vendors to recover the price paid.

Held, that if the vendors sold to the plaintiff keeping back from him the fact of a former sale, in which one of them took part, this would be a fraud upon the plaintiff which would render the doctrine of *caveat emptor* inapplicable, and would give the plaintiff an equitable right to recover the money obtained from him by fraud. *Hira Nand* v. *Mahia* (*No.* 90 *P. R.* 1876) distinguished. ALLA BAKHSH *v.* NABI BAKHSH. **26 P R 1884**

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21. *Rival purchasers—Suit for possession by prior purchaser—Defendant pleading* inter alia *a right of pre-emption in the property sold—Validity of such plea—Cross suit.*

Plaintiffs, who were the purchasers under a registered deed of sale of certain land of which the defendants were mortgagees, and of which they had also taken a registered deed of sale subsequent to the plaintiff's deed and containing express mention of the prior conveyance to plaintiffs, sued the vendor and the mortgagees to recover possession of the lands conveyed to them, alleging a previous tender at the proper time of the mortgage-money to the mortgagees and a refusal by them to accept the tender which allegation was not traversed. The mortgagees in their answer challenged the validity of the plaintiff's conveyance and relied upon the conveyance to themselves, and subsequently two of them raised a plea that they were entitled to a right of pre-emption over the lands conveyed at the market value.

Held, that such plea was no answer to the plaintiffs' suit, and was therefore inadmissible, the proper course being for these defendants to bring a cross suit to enforce the right claimed. *Wazira* v. *Shadi Khan* (*No.* 67 *P. R.* 1881), referred to. PERTAB SINGH *v.* RATTAN SINGH. **32 P R 1884**

22. *Contract—Fraud—Fraud between vendor and purchaser, effect of—Contract Act,* 1872, *section* 19.

The defendant, a horse-dealer, sold a mare to the plaintiff which he knew had a cracked hoof. He filled up the crack with some substance in such a way as to defy detection. Shortly after the purchase the mare having to walk a short distance was found to be lame and on enquiry being made the defect was discovered. The plaintiff brought an action to avoid the purchase on the ground of fraud and to recover damages, *held*, that he was entitled to avoid the sale and recover back the purchase-money from defendant.

Currie v. Rennick (41 *P. R.* 1886), distinguished.—ABDULLA KHAN *v.* GIRDHARI LAL. **49 P R 1904**

23. *Interest—Vendor and purchaser—Purchaser bound to pay interest on purchase-money withheld by him.*

Held, that a purchaser at a sale in insolvency proceedings of immovable property who is put into possession and fails to pay the purchase-money, is liable to pay interest to the vendor on the amount unpaid up to date of payment. SARAN AND COMPANY *v.* BASHESHAR NATH. **48 P R 1907**

24. *Vendor and purchaser—Personal covenant of indemnity against defective title—Acquisition of property by pre-emptor—Defective title—Right of pre-emptor to enforce covenant against original vendor.*

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Held, that a personal covenant of indemnity in a deed of sale under which a vendor guarantees his title in the property conveyed solely to the original vendee and in which he agrees to indemnify that vendee if disturbed by adverse claims cannot be held to enure for the benefit of a pre-emptor who succeeds in obtaining a decree for possession by pre-emption. SANDHE KHAN *v.* BHANA. **141 P R 1907**

25. *Vendor and purchaser—Agreement to sell to B—Subsequent sale to C with notice of original contract—Suit for possession by B—Priority—Penalty mentioned in contract no bar to specific performance—Specific Relief Act, 1877, sections 20, 27 (b).*

A having entered into an agreement to sell certain property to B subsequently sold it under a registered deed to C, who had notice of the original contract to sell to B. Thereupon B brought a suit for possession by specific performance of his agreement. *Held* that B was entitled to possession. And that the title of C, though based on a registered deed, was ineffective against B, and did not afford a valid defence, his purchase having been with notice of the original contract.

Held also, that in such cases a party should not be allowed to evade specific performance merely because the agreement provided a penalty to be paid on default. HUKAM CHAND *v.* NIKKA SINGH. **15 P R 1908**

26. *Vendor and purchaser—Covenant for title—Pre-emption—Decree for pre-emption against purchaser—Right of purchaser to recover from vendor the loss sustained by him in the transaction.*

The defendant sold to plaintiff a house which she had herself purchased a few months previously and covenanted for title and further contracted that "agar koi digar dawedar paida hoga to mazhara zimewar hai." Shortly after this sale one A brought a suit for pre-emption against the original vendee and the parties to the present suit and obtained a decree for possession. The plaintiff thereupon sued the defendant to recover the loss sustained by him in the transaction.

Held that the plaintiff was entitled to recover upon the covenants not only the deficiency between the price paid by him and the price decreed to be paid by the pre-emptor for the property but also the costs incurred by him in defending such suit.—KHONMON BIBI *v.* SHAH MALI. **111 P R 1908**

VERIFICATION OF PLAINT.

See APPEAL—VI. PROCEDURE IN. **48 P R 1896**

—Suit brought by an Independent prince—Recognized agent—Signing and verification of plaint.

See CIVIL PROCEDURE CODE, 1908, O. VI, R. 14. **41 P R 1902**

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VESTING ORDER.

—Effect of—under Imperial Act of Parliament.

See ADMINISTRATION OF INSOLVENT'S ESTATE. **45 P R 1910 P C**

VICINAGE.

See PRE-EMPTION—4. RIGHT OF, ON ACCOUNT OF VICINAGE OR RELATIONSHIP.

VILLAGE.

1. *Meaning of, in Punjab Laws Act.*

See PRE-EMPTION—6. RIGHT OF, IN VILLAGES. **21 P R 1906**

2. *Village—when it becomes a town—*mauza *Rori*, tahsil *Sirsa, district Hissar.*

Held, that the village Rori which is not a municipality but has a population of about 3,300 and comprises about 600 houses, is not a town, in spite of the facts that 40 or 50 of the houses are *pakka* and that 10 or 12 of the inhabitants pay income-tax.—RADHA RAM *v.* ANOKH SINGH. **26 P R 1910**

VILLAGE CESSES.

See CUSTOM—V. CESSES AND DUES, *Passim.*

JURISDICTION OF CIVIL OR REVENUE COURT. **67 P R 1905**

See SMALL CAUSE COURT ACT, 1887, 2ND SCHEDULE, ARTICLE 39.

—Kudhi kamini is a village cess within the meaning of section 77 (3) (*j*).—RAJ SARUP *v.* HARDAWARI. **95 P R 1907**

VILLAGE COMMUNITY.

—Succession of, to heirless estate.

See ESCHEAT. **2 P R 1911 Rev.**

VILLAGE HEADMAN.

See under LAMBARDARS.

VILLAGE IMMOVABLE PROPERTY.

—What it includes.

See PRE-EMPTION—16. PUNJAB PRE-EMPTION ACT, 1905, SECTION 11. **89 P R 1910**

VILLAGE MENIALS.

See CUSTOM—XII. VILLAGE MENIALS.

VILLAGE OFFICER.

See LAMBARDAR.

LAMBARDAR (ALA LAMBARDAR).

ZAILDAR.

VILLAGE PROPRIETORS.

1. *Custom — Alienation—Escheat—Right of proprietary body to contest alienation by widow of childless proprietor—Kangra District.*

See CUSTOM—I. B. ALIENATION BY WIDOW. **61 P R 1898**

2. *Custom—Succession—Right of* thuladars *to succeed deceased childless proprietor—Presumption*—Onus probandi.

See CUSTOM—VIII. MAINTENANCE AND SUCCESSION—W. MISCELLANEOUS. **77 P R 1896**

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VILLAGE PROPRIETORS—contd.

3. *Custom—Succession to childless proprietor—Exclusion of near collaterals by proprietors of village.*

See CUSTOM—VIII. MAINTENANCE AND SUCCESSION—W. MISCELLANEOUS. **68 P R 1898**

4. *Grant of land to office of ala lambardar—Suit for dispossession of such ala lambardar by proprietors.*

See JURISDICTION OF CIVIL OR REVENUE COURT. **66 P R 18993**
123 P R 1893
104 P R 1894
105 P R 1894
23 P R 1895
30 P R 1895

5. *Girths of Kangra District—Self-acquired land not situate in village of owner's origin, but in a village to which he had migrated—Gift by widow of son to her daughter's sons—Claim by descendants of a common ancestor who resided in the village of owner's origin—Custom—Burden of proof.*

The parties were Hindu Girths of the Kangra District. The land in dispute was situate in *mauza* B., and was self-acquired by one A., who had migrated from N., the village of his origin.

A.'s son K. died sonless leaving a widow who gave the land to her daughter's sons.

The plaintiffs, residents of N., were descendants of an ancestor of A., and claimed the land.

Held, that the true issue arising was whether the plaintiffs were by custom heirs to the deceased in respect of land, held by him *in a different village;* and that the burden of proof was on the plaintiffs.

No. 77 *P. R.* 1881, referred to. LOKHA *v.* HARI. **64 P R 1893**

6. *Custom—Succession—Hindu exogamous Jats of Musapur,* tahsil *Jullundur—Land vacated by death of last male descendant of donee—Suit by uncle's daughter's son—Rights of village proprietors—Burden of proof.*

The plaintiff was uncle's daughter's son of A., the last male representative of R., to whom the land in suit had originally been gifted by one of the village proprietors. The defendants (the proprietors of the village) were Jats of a different *got.* The lower Courts, finding that there was no custom embracing the issue exactly in point, gave the plaintiff a decree on the ground that he was entitled to succeed by Hindu Law.

Held, by the Chief Court, that Hindu Law was not applicable to the case, the customary rule which governs the devolution of ancestral land among Hindu exogamous Jats being well ascertained; and that the plaintiff, not being in the line of *ekjaddis* or even of *rishtedars* of the last holder, was not an heir of the deceased in respect of his land, and that the *onus*, which had not been discharged, lay upon him to show a better title than that of the village proprietors who were in possession.

VILLAGE PROPRIETORS—*concld.*

A. (the deceased owner) was a Hindu Jat, and among Hindu Jats, being exogamous, the customary rule of succession to ancestral land is well established. The land of a sonless man devolves upon his *warisan ekjaddis*—male descendants in the male line only of a common ancestor—to the exclusion of females and their issue.

No. 43 *P. R.* 1877, *No.* 136 *P. R.* 1884, and *No.* 49 *P. R.* 1886, distinguished. *No.* 12 *P. R.* 1892, referred to. BADHAWA *v.* DEWA SINGH. **141 P R 1893**

VILLAGE SITE.

—*Alienations by non-proprietary residents in.*

See COMMON LAND.
CUSTOM—I. F. ALIENATION BY NON-PROPRIETOR.
CUSTOM—VI. COMMON LAND.

VILLAGE SHAMILAT.

See COMMON LAND.
CUSTOM—VI. COMMON LAND.

VIRT.

See CUSTOM—V. CESSES AND DUES.
INJUNCTION.

VOID AGREEMENT.

See CONTRACT ACT, 1872, SECTION 17. **63 P R 1884**
See CONTRACT ACT, 1872, SECTION 23. **139 P R 1883**
See INTEREST. **40 P R 1882**
See MINOR. **165 P R 1883**
See REVISION IN CIVIL CASES. **85 P R 1898**

VOID CONTRACT.

See CONTRACT ACT, 1872, SECTIONS 11, 23
VOID AGREEMENT.

VOIDABLE CONTRACT.

See SPECIFIC RELIEF ACT, SECTIONS 39, 40.

VOLUNTARY CONVEYANCE.

Voluntary conveyance in fraud of creditors.
See CONTRACT ACT, SECTION 25. **38 P R 1899**

VOLUNTARY SETTLEMENT.

1. *Charitable trust—Voluntary settlement—Non-delivery of possession to trustee.*
See TRUST. **14 P R 1896**

2. *Trust—Revocation—Payment of amount due to trustee.*

A., being in debt and unable to manage his property, made the same over to B. in order that B. might (1) manage the lands, (2) pay off the debt and (3) during the time B. held the lands to pay A. a fixed sum as maintenance there was no provision as to when the trust should terminate.

Six years after the execution of the deed but before the debt had been paid off A. sued B. for possession on redemption of the property offering to pay B. what might be found due to B.

Held, that there was nothing in the deed

VOLUNTARY SETTLEMENT—*concld.*

to prevent A. revoking the trust after he had satisfied the claims of the trustee. *I. L. R.* 8 *Calc.* 1887 distinguished. S. RANDHIR SINGH *v.* RANI LACHMAN KOUR, ETC. **133 P R 1889**

3. *Muhammadan Law—Wakf—Settlement in perpetuity for aggrandisement of settler's family—Shiah Law.*

Held following the principle laid down by the Privy Council in *I. L. R. XXII Calc.* 619, that such a settlement, being a purely family one in perpetuity, was as invalid under the Shiah system as it would have been under the Hanafi system of law. SAYAD SULTAN MIRZA, ETC. *v.* MADAN MOHAN, ETC. **84 P R 1896**

W

WAGER LOST AND PAID.

—*Suit for.*
See RIGHT TO SUE. **89 P R 1883**

WAGERING CONTRACT.

See CONTRACT ACT, 1872, SECTION 30.

—*Wagering transaction—Written contract—Admissibility of evidence to prove that contract was void under section 30 of the Contract Act.*
See REVISION IN CIVIL CASES. **85 P R 1898**

WAGES.

See SMALL CAUSE COURT, JURISDICTION OF. **66 P R 1873**

WAIVER.

See LIMITATION ACT (XV OF 1877), SCHEDULE II, ARTICLE 75.
PRE-EMPTION—XIII. LOSS OR WAVERING OF RIGHT.

1. *Jurisdiction—Suit against Ruling Chief—Institution of suit without obtaining the consent of Governor-General in Council—Waiver by defendant of objection to consent—Effect of such waiver.*
See CIVIL PROCEDURE CODE, 1908, SECTION 86. **40 P R 1903**

2. *Custom—Alienation—Suit by reversioner to enforce his right in respect to land, on the ground that the alienation had been made without necessity, when alienation had already been challenged by his ancestor on the ground of pre-emption only—Waiver.*
See CUSTOM—I. A. ALIENATION BY MALE PROPRIETOR—5. NECESSITY. **15 P R 1903**

3. *Custom—Succession of married daughter in presence of collaterals—Muhammadan Gujars of Ludhiana District—Waiver of right.*
See CUSTOM—VIII MAINTENANCE AND SUCCESSION—K. SUCCESSION OF DAUGHTER. **146 P R 1894**

WAIVER—*concld.*

4. *Application by father who has changed his religion for guardianship of his minor sons who had been brought up, with his acquiescence, as Muhammadan—Waiver of right.*
See GUARDIAN. **84 P R 1894**

5. *Failure to pay interest under mortgage-deed—Continuing breach of contract—Waiver.*
See INTEREST. **28 P R 1897**

6. *Mortgage—Alleged waiver of right to demand interest—Stipulation that on breach of contract interest should be payable from date of execution of mortgage-deed—Penalty.*
See INTEREST. **39 P R 1899**

7. *Of objection as to parties to suit.*
See JOINDER OF PARTIES. **64 P R 1881**
104 P R 1882
151 P R 1883

8. *Of default in payment of instalments.*
See LIMITATION ACT (XV OF 1877), SCHEDULE II, ARTICLE 75. **188 P R 1883**

9. *Of default in payment of interest.*
See LIMITATION ACT (XV OF 1877), SCHEDULE II, ARTICLE 80. **10 P R 1883**

10. *Acceptance of an overdue instalment in full constitutes a waiver.*
See LIMITATION ACT, 1877, 2ND SCHEDULE, ARTICLE 75. **78 P R 1890**

11. *Rejection of plaint—Waiver by plaintiff of right to have a time for amendment fixed by the Court.*
See PLAINT, REJECTION OF. **126 P R 1888**

12. *Deed of compromise—Petition to Court—Deed evidencing waiver of right of pre-emption—Test of value of such right.*
See REGISTRATION ACT, 1877, SECTION 17. **37 P R 1888**

13. *Withdrawal of suit pending in Small Cause Court and determined by District Judge—Objection as to jurisdiction.*
See SMALL CAUSE COURT—JURISDICTION OF. **118 P R 1892**

14. *Pre-emption—Sale of property mortgaged to plaintiff—Acceptance of mortgage-money by plaintiff from vendee—Waiver.*

Held that the mere acceptance of his money by a mortgagee from the vendee, or his silence at the time to express a desire to purchase or delay in suing is not a waiver of his right to claim pre-emption and did not equitably estop him from asserting his pre-emptive right. FAZALDAD KHAN *v.* SAWAN SINGH. **37 P R 1908**

WAJIB-UL-ARZ.

See ABSENTEE.
ALLUVION AND DILUVION.
COMMON LAND.
CUSTOM—V. CESSES AND DUES.
CUSTOM—XIV. WAJIB-UL-ARZ.
OCCUPANCY RIGHTS.
PRE-EMPTION,—VII. CONSTRUCTION OF WAJIB-UL-ARZ.
SETTLEMENT RECORD.

1. *Application of, to an owner who is not specifically mentioned therein.*

Held, that the *Wajib-ul-arz* of a village should be presumed to apply to all land-owners in the village as a body unless they are specifically exempted. SAYAD RAHIM SHAH *v.* SAYAD HUSSAIN SHAH. **102 P R 1901**

2. A clause in the *Wajib-ul-arz* providing that shares in the *shamilat* are proportionate to the *khewat* lands held by each proprietor, cannot confer any rights in the common land cn the purchaser not conveyed by his deed of sale. RAM DAS *v.* AMIR SHAH. **113 P R 1901**

3. An entry in a *Wajib-ul-arz* should not be considered as conclusive evidence of a custom, especially where the custom set up is one opposed to the principles founded on universal law and justice. GHULAM MOHAY-UD-DIN *v.* FAIZ BAKHSH. **97 P R 1902**

4. An entry in a *Wajib-ul-arz* should not be considered as sufficient to establish a custom, especially when it is proved that it has never been acted upon or the right exercised in accordance therewith. RAM SARN DAS *v.* MULA SINGH. **64 P R 1903**

5. Burden of proof that any existing custom has been incorrectly stated in a record of rights rests on the person making such assertion. MAHA RAM *v.* RAM MOHAR. **65 P R 1903**

6. Burden of proof that any existing custom has been incorrectly stated in a record of rights rests on the person making such assertion, especially where such custom is not opposed to the principles founded on universal law and justice. AHMAD SHAH *v.* KHUDA BAKHSH. **33 P R 1903**

WAQF.

See MUHAMMADAN LAW—14. WAQF.
RELIGIOUS INSTITUTION.
RES JUDICATA. **89 P R 1881**

1. *Attachment of.*
See CIVIL PROCEDURE CODE, 1908, SECTION 60. **8 P R 1900**

2. *Muhammadan Law*—Wakf—*Settlement in perpetuity for aggrandisement of settler's family—Shiah law.*

By deed of settlement, dated 11th May 1871, one Mussammat U. B. settled a house in Delhi and two villages on her four sons and their issue in perpetuity with the object of obviating disputes, providing for the

WAQF—*concld.*

sons, protecting future rights, and preserving the property. She appointed one Sirdar M. trustee, or *mutawali*, with directions to divide the net income into five equal shares between herself and the four beneficiaries, and, after her death, into four shares among the beneficiaries and their heirs in accordance with Muhammadan Law. The said deed further defined the powers of the *mutawali*, provided for the appointment of a successor on the death of the said Sirdar M. and prohibited and declared invalid alienations of any kind which might be made by the beneficiaries. The parties were governed by the Shiah system of Muhammadan Law.

Held, upon the principle laid down by the Privy Council in *I. L. R. XXII Calc.* 619, that the said settlement, being a purely family one in perpetuity, was as invalid under the Shiah system as it would have been under the Hanafi system of law. SAYAD SULTAN MIRZA *v.* MADAN MOHAN. **84 P R 1896**

WARD.

See CUSTODY OF MINOR.
GUARDIAN.
GUARDIAN AND WARDS ACT, 1890.

WAREHOUSEMAN.

See RAILWAY COMPANY. **92 P R 1883**

WARRANTY.

See CONTRACT. **41 P R 1886**

See LANDLORD AND TENANT. **33 P R 1875**

See VENDOR AND PURCHASER. **62 P R 1866** **5 P R 1870**

WASTE.

—*By Hindu widow.*
See RIGHT TO SUE. **47 P R 1884**

WASTE LAND.

See COMMON LAND.

—*Dispossession from—Discontinuance of possession*—Onus probandi.
See LIMITATION ACT (XV OF 1877), SCH. II, ARTICLE 142. **49 P R 1884**

WATER.

See EASEMENTS.

1. *Right to use of water—Land suit.*
See APPEAL—II. COMPETENCY OF **1 P R 1892**

2. *Right in tank used for watering cattle and excavating earth to make bricks—Appeal—Land suit.*
See APPEAL—VIII. SECOND. **48 P R 1898**

3. *Right to use of water—Natural stream.*
See EASEMENT. **49 P R 1888** **35 P R 1895**

4. *Water-advantage rate.*
See ENHANCEMENT. **3 P R 1900**

5. *Right to use of—Perennial stream.*
See GENERAL CLAUSES ACT, 1868, SECTION 2. **11 P R 1898**

WATERCOURSE.

1. *Meaning of "water-course."*
See SMALL CAUSE COURT ACT, 1887, SECTION 15. **71 P R 1896**

2. *Custom—Right to take watercourse through another village—Construction of* Wajib-ul-arz, Mauza *Kakki, Bannu District.*

Defendant, with the previous permission of the Collector of the District, made a canal through the lands of *mauza* Kakki, and in that village through some lands belonging to plaintiff who thereupon sued for an injunction to restrain defendant from using the said canal, and for possession of the land taken up by it. The entry in the *Wajib-ul-arz* of the village was to the following effect:—" Agar kisi dusra gaun ke malik " hamare rakh men vial jadid nikalna chahen " to unse ivzanah liya jawega, aur Sarkar " ko harwakt ikhtiyar hai ke jahan chahe " hamare rakh men vial jadid nikale basharte " ke hamko ivzanah mile."

Held, that the meaning of the entry upon its proper construction was that the Collector of the District, as representing the Government, had power to give permission to the owners of another village to take a watercourse through *mauza* Kakki, the owners of the latter being entitled to claim compensation for such user from the owners of the former, and, *found*, that the said entry embodied the custom subsisting in the district.

Held, therefore that defendant having obtained the consent of the Collector was entitled to construct the watercourse in question, plaintiff being entitled to claim compensation therefor but not to stop the user of the watercourse, of which the construction had been already completed until payment of such compensation.

Held, further, that the agreement embodied in the said entry was reasonable, and probably the only one which could effectually secure the engagement of the customary rights of irrigation under the circumstances of the tract in question, and none the less so because the Collector was therein made the arbiter in such matters. DOST MUHAMMAD *v.* KHAN DURAN KHAN. **37 P R 1899**

WATER MILL.

1. *Civil and Revenue Courts—Site of water mill—Purpose subservient to agriculture—Jurisdiction.*
See JURISDICTION OF CIVIL AND REVENUE COURTS. **41 P R 1892**

2. *Suit by landlord for possession of a water mill—Purpose subservient to agriculture—Punjab Tenancy Act,* 1887, *section* 4 (1).
See JURISDICTION OF CIVIL OR REVENUE COURT. **77 P R 1904**

WATER RENT.

When plaintiff claimed water rent, and produced evidence that up to the period for which the claim was preferred he had always received the rent,—*Held*, that such evidence did not warrant the Court in passing a decree for the rent without further enquiry, and that the defendant should be allowed to dispute the plaintiff's title to demand the rent. It being admitted that the father of plaintiff's

WATER RENT—*concld.*

vendors built the wells while holding the village in farm, that he afterwards purchased two-thirds of the village, and that subsequently his sons sold to plaintiff all rights and interests in the village inherited from their father; that prior to plaintiff's purchase the vendors' father agreed in the *wajib-ul-arz* that he would not demand at the expiry of his farm anything from the village proprietors for construction of the wells; that the term of the said farm expired before the year for which water rent was claimed and that defendant was proprietor of one-third and occupied the land on which water rent was demanded; *held*, that the defendant was not liable for water rent. RAM SOOKH *v* SHEO SAHAI.
16 P R 1869

WATER, SUIT FOR HIRE OF.

—*Limitation.*
See LIMITATION ACT (XV OF 1877), SCHEDULE II, ARTICLE 115.
171 P R 1883

WATER-WAY.

Easement—Rights to water-way—Non-user for two years preceding suit—Limitation Act, XV. of 1877, section 26.

Plaintiff sued to establish his rights to use a water-way for the rain water of his roof. It was found that the roof had fallen more than two years previous to the suit, and the lower Courts therefore dismissed the claim under section 26, III (*b*) of the Limitation Act, on the ground of non-user for two years preceding the suit.

Held, per curiam, that plaintiff had not lost his right.

Per BRANDRETH, J.—Because there was no sufficient abandonment of any kind to create a non-user on plaintiff's part, nor any attempt at denial on defendant's part.

Per RATTIGAN, J.—Because mere non-user of an easement for a time, if the circumstances of the case are not such as to indicate an intentional abandonment of the former rights, is not, even if such non-user extend beyond two years, sufficient to destroy that right. CHURRUT SINGH *v.* SIMBOO.
68 P R 1880

WAY.

See EASEMENTS.

WAY—RIGHT OF.

See EASEMENT.
JOINDER OF PARTIES. **41 P R 1888**

WELLS.

1. *Suit for declaration of proprietary title to a share in a well—Land suit.*
See APPEAL—I. CIVIL. **40 P R 1893**

2. *Suit for a share in well for irrigating agricultural land—Land suit—Course of appeal.*
See APPEAL—III. COURSE OF. **62 P R 1891**

3. *See* CUSTOM—XIII. WELLS. IRRIGATION. **66 P R 1887**
168 P R 1889

WHOLE AND HALF BLOOD.

See CUSTOM—VIII. MAINTENANCE AND SUCCESSION—T. WHOLE AND HALF BLOOD.

See LAMBARDAR. **3 P R 1883 Rev.**
8 P R 1886 Rev.

WIDOW.

See CUSTOM—I. ALIENATION.

A. BY MALE PROPRIETOR.
5. NECESSITY.

7. LOCUS STANDI OF WIDOW AND REVERSIONERS.

B. BY WIDOW.

See CUSTOM—III. APPOINTMENT OF AN HEIR.

G. ADOPTION BY WIDOW.

See CUSTOM—IV. BETROTHAL AND MARRIAGE.
See CUSTOM—VIII. MAINTENANCE AND SUCCESSION.

D.—SUCCESSION OF SON'S WIDOW.

H.—SUCCESSION OF WIDOWS.

I.—REMARRIAGE OR UNCHASTITY OF WIDOW.
J.—MAINTENANCE.
See LAMBARDARS.
See SALES—H. BY WIDOW.

1. *Power of, over moveable property inherited from her husband.*
See DECLARATORY DECREE—3. REVERSIONARY RIGHTS. **144 P R 1882**

2. *Right of residence.*
See HINDU LAW—II. ALIENATION. **39 P R 1896**
See HINDU LAW—XV. WIDOW. **112 P R 1888**
10 P R 1889

3. *Right of residence in family dwelling house.*
See HINDU LAW—II. ALIENATION. **36 P R 1907**

4. *Alienation by, of self-acquired property of her husband.*
See HINDU LAW—II. ALIENATION. **114 P R 1907**

5. *Respective rights of succession of co-widow and son's widow.*
See HINDU LAW—VII. INHERITANCE. **72 P R 1888**

6. *Right of stranger in possession to plead that widow was disqualified from inheriting by reason of mental defect.*
See HINDU LAW—VII. INHERITANCE. **19 P R 1899**

7. *Maintenance of—*
See HINDU LAW—VIII. JOINT FAMILY. **71 P R 1899**

See HINDU LAW, XV. WIDOW. **72 P R 1883**
190 P R 1889
60 P R 1865

WIDOW—*contd.*

8. *Widow's right of residence in one of her husband's houses.*
See HINDU LAW—IX. MAINTENANCE. **102 P R 1910**

9. *Marriage of a minor Hindu widow by* chadar andazi*—Consent of lawful guardian to such marriage necessary—Presumption of legality of marriage—Khatris of Lahore.*
See HINDU LAW—MARRIAGE. **49 P R 1903**

10. *Duty of mortgagee when advancing money to widow.*
See HINDU LAW—XV. WIDOW. **137 P R 1892**

11. *Right of widow who has succeeded to her husband's interests in joint holding to claim partition.*
See HINDU LAW—XV. WIDOW. **60 P R 1895**

PARTITION. **11 P R 1895 Rev.**
6 P R 1896 Rev.
82 P R 1893 F. B.

12. *Succession of, to office of lambardar.*
See LAMBARDAR. **6 P R 1884 Rev.**

13. *In possession of life interest setting up adverse title against reversioners.*
See LIMITATION ACT (XV OF 1877), SECTION 28. **83 P R 1881**

14. *Mortgage by Hindu widow—Attachment in execution of decree obtained in the mortgage—Claim by collateral to attached property—Order passed against claimant to—establish his title—Limitation.*
See LIMITATION ACT (XV OF 1877), 2ND SCHEDULE, ART. 11. **32 P R 1904**

15. *Suit by adopted son to contest alienation by Hindu widow—Possession of widow adverse to the adopted son—Suit by the adopted son more than six years after interference with his rights.*
See LIMITATION ACT, ARTICLE 119. **3 P R 1904**

16. *Limitation for suit by reversioner claiming as heir after death of.*
See LIMITATION ACT (XV OF 1877), SCHEDULE II, ARTICLE 141. **15 P R 1882**
141 P R 1882

17. *Suit by reversioner on death of widow—Possession adverse to the widow, adverse to the reversioner.*
See LIMITATION ACT, 1877, ARTICLE 141. **41 P R 1903**

18. *Marriage of a Khatri widow by* Karewa or chadar andazi*—Legitimacy of children of such marriage.*
See MARRIAGE. **4 P R 1905**

WIDOW—*concld.*

19. *Alienation by a widow—Suit for declaration by reversioner against the widow and various alienees claiming under distinct titles—Misjoinder of causes of action.*
See MULTIFARIOUSNESS. **1 P R 1905**

20. *Right to separate possession.*
See MUHAMMADAN LAW.
6. GIFT. **104 P R 1881**

21. *Widow succeeds absolutely under Muhammadan Law.*
See MUHAMMADAN LAW—15. WIDOW.
3 P R 1867

22. *Right of widow to sue for pre-emption.*
See PRE-EMPTION—I. GENERAL.
87 P R 1896

23. *Decree against widow how far binding on reversioner.*
See RES JUDICATA. **139 P R 1888**

24. *Surrender of her life interest by widow of a part of her estate in favour of next reversioner—Suit by reversioner in lifetime of widow.*
See RIGHT TO SUE. **17 P R 1902**

25. *Succeeding to occupancy rights of her deceased husband.*
See PUNJAB TENANCY ACT (XXVIII OF 1868), SECTION 2. **104 P R 1885**

26. *Right of widow of a collateral to proceed with a suit instituted by her husband after the latter's death.*

Held, in a suit by a collateral to question an alienation that on the death of the plaintiff during the pendency of the suit his widow was entitled to represent her husband and to proceed with the suit instituted by him. NAWAB-UD-DIN *v.* MUSSAMMAT KAMI. **12 P R 1901**

27. The widow cannot by deed provide for the descent of property (which she has inherited from her husband) after her death in a line different from that prescribed by law either with or without the consent of reversioners. **93 P R 1909 P. C.**

WIDOW'S ESTATE.

—*Forfeiture of, on remarriage with deceased husband's brother—Sikh Jats, Ludhiana Tahsil.*

Held, that among Sikh Jats of Mauza Butahri, Tahsil and District Ludhiana, a widow does not forfeit her life estate in her deceased husband's property on marrying her husband's brother. MUSSAMMAT BASANTI *v.* PARTATA.
51 P R 1911

WIFE.

See HUSBAND AND WIFE.
—*Gift to.*
See HINDU LAW—V. GIFT.
See HINDU LAW—IX. MAINTENANCE.
See HINDU LAW—X. MARRIAGE.

1. Apostacy of a Hindu wife does not *per se* dissolve her marriage. JAMNA DEVI *v.* MULRAJ. **49 P R 1907**

2. *Decree for restitution of conjugal rights—Application by wife for stay of execution.*
See CIVIL PROCEDURE CODE, O. XLI, R. 5. **2 P R 1894**

3. *Suit by wife for dissolution of marriage.*
See CONTRACT ACT, 1872, SECTION 23.
15 P R 1900

WIFE—*concld.*

4. *Suit by husband for custody of wife.*
See CUSTODY OF WIFE, *Passim.*

5. *Alienation by sonless proprietor—Right of reversioner to contest such alienation in presence of wife and daughter-in-law.*
See CUSTOM—I. A. ALIENATION BY MALE PROPRIETORS—2. SALES AND MORTGAGES IN FAVOUR OF HEIRS AND COLLATERALS. **29 P R 1903**

6. *Bequest of entire estate to—*
See CUSTOM—I. A. ALIENATION BY MALE PROPRIETOR—7 LOCUS STANDI OF REVERSIONERS AND WIDOWS.
93 P R 1905

7. *Will leaving all property to a childless wife in the presence of sons and their descendants by another wife.*
See CUSTOM—I. A.—ALIENATION BY MALE PROPRIETOR—(1) (*i*) GIFTS AND WILLS IN FAVOUR OF WIDOWS IN PRESENCE OF A SON. **21 P R 1893**

8. *Right to succeed to wife who has inherited from her father—Ancestral Property.*
See CUSTOM—VIII. MAINTENANCE AND SUCCESSION—G. SUCCESSION OF HUSBAND. **16 P R 1903**

9. *Marriage by* chadar-andazi *between a Brahman and a* dharel *wife.*
See CUSTOM—IV. BETROTHAL, DOWER, MARRIAGE AND DIVORCE.
5 P R 1893

10. *Renunciation of wife by husband—Customary law of divorce.*
See CUSTOM—IV. BETROTHAL, DOWER—MARRIAGE AND DIVORCE.
33 P R 1896

11. *Sons by a Khatrani widow who lived with a Khatri as his* dharel *wife.*
See CUSTOM—IV. BETROTHAL, DOWER—MARRIAGE AND DIVORCE.
52 P R 1899

12. *Right of residence in family dwelling house.*
See HINDU LAW—II. ALIENATION.
36 P R 1907

WIFE'S BROTHER'S SON.

—*Adoption of*
See CUSTOM—III. APPOINTMENT OF HEIR —A. ADOPTION OF COLLATERAL.
94 P R 1907

WIFE'S KINSMAN.

—*Adoption of.*
See CUSTOM III.—APPOINTMENT OF HEIR —E. ADOPTION OF STRANGERS.
51 P R 1881
35 P R 1882
120 P R 1884
165 P R 1884

WILL.

See CUSTOM—I. ALIENATION BY MALE PROPRIETOR.—(1) WILLS AND GIFTS.
CUSTOM—III. APPOINTMENT OF AN HEIR.
MUHAMMADAN LAW, 16 WILLS.
PROBATE AND ADMINISTRATION ACT, 1881
SUCCESSION ACT, 1865.

WILL—*contd.*

1. *Court giving effect under Act XIX of* 1841 *to a disputed will—"Legal directions."*
See ACTS—ACT XIX OF 1841
66 P R 1882

2. *Administration with copy annexed of authenticated copy of will proved abroad.*
See ADMINISTRATION. **28 P R 1883**

3. *Of* parda-nashin *woman.*
See BURDEN OF PROOF.
149 P R 1882

4. *Will or gift.*
See CONSTRUCTION OF DOCUMENT.
74 P R 1904

5. *Suit for concellation of will—Limitation.*
See LIMITATION ACT, 1877, 2ND SCHEDULE, ARTICLE 120.

6. *Appointing no executor—Grant of probate to widow as universal legatee.*
See PROBATE. **106 P R 1881**

7. *Power of occupancy tenant to regulate succession by.*
See PUNJAB TENANCY ACT (XXVIII OF 1868), SECTION 2. **137 P R 1882**

8. *Construction of will.*

Illegitimate children and grand-children *held*, to be included in a devise to "children" such construction appearing from the will to represent the meaning in the vocabulary and mind of the testator. BARLOW *v.* ORDE
P R 1870 P. C.

9. *Presumption of undue influence—Bequest.*

Plaintiff sued to set aside a bequest of a house made by the widow of his deceased brother. The facts were that at the time of making the bequest the woman was eighty-four years of age, was on her death bed, and had only the defendant (in whose favour the bequest was made) near her. Defendant had for some time attended upon the old woman, and supplied her with food, &c. The lower Appellate Court (reversing the order of the Original Court) dismissed plaintiff's claim; upon which an appeal was preferred to the Chief Court on the following ground:—"that the Court of first "instance was fully justified under all the "circumstances attending the bequest, in "setting it aside at the plaintiff's instance; "the donation being voluntary, made by a "very old woman eighty-four years of age, "in her death sickness, without advice, and "in the absence of her own relatives, to "the donee who stood towards her in a "position of which undue advantage might "readily be taken." *Held*, by the Chief Court, that the case was not one in which undue influence could be presumed. KIRPA *v.* TIRUTH. **50 P R 1872**

10. *Capacity—Soundness of mind.*

R. D. on his death-bed executed a will in favour of the mohunt of a religious institution. A writer was sent for, and on his arrival R. D. was unconscious, he revived, and the writer proceeded to draft the will, R. D. dictating at the request of G. one of the bystanders, who seemed anxious that the will should be made. Before the writing

WILL—*contd.*

was finished, R. D. again fainted, but again recovered his consciousness when the dictation was proceeded with, and R. D. directed G. to affix his (R. D's) seal to the instrument; R. D. himself also sealed the will. He died shortly after this. It appeared that R. D. had not till his last moments taken any steps to make a transfer of his property for the benefit of the religious institution, but he had said that, as he was childless, he would make over his property to the mohunt and go on a pilgrimage. *Held,* that R. D. was not in a state to attend to important business, and that the will must be set aside for want of capacity. MOHUNT RADICA DAS *v.* BHUGWAN DAS. **7 P R 1874**

11. *Validity of will—Nature of proof—Testator dying shortly after will.*

In determining whether a testator was in such a mental condition as to be capable of making a valid disposition of his property by a testamentary instrument, the circumstance that he was on the verge of death is one to be considered, but the mere fact that the testator died shortly after making his will is not of itself a sufficient ground for invalidating a will otherwise valid. Proof that the testator knew what he was about, and intended to make the disposition of property contained in his will, is essential. MUSSAMMAT JISI BAI *v.* POKHUR MAL. **51 P R 1882**

12. *Construction of will—Devise to defendant if child born to testator was a daughter—Birth of male child who died the same day—Defendant's right to succeed in preference to nearest collaterals.*

In a suit by the nearest collateral heirs of a deceased occupancy tenant to obtain possession of the occupancy tenure, the defendant relied upon a will which provided that in the event of a son being born to the testator, whose wife was pregnant at the time of the execution of the will, such son would succeed as heir, but that if the child that happened to be born proved to be a daughter, the defendant in that case would succeed to the testator's occupancy rights and other property. It appeared that a male child was born alive, but that he died the same day.

Held, that the defendant was not entitled to succeed under the will, as the devise in his favour was only to take effect if no male heir was "born" to the testator: the very fact of such an heir being born alive was sufficient to vest the estate in him and to constitute him the *propositus* from whom descent should thereafter be reckoned. ALA BAKHSH *v.* MUHAMMAD SHAH. **181 P R 1882**

13. *Attestation—Revocation.*

Attestation by witnesses is not required by law in the case of a will made by a Hindu in the Punjab.

Held, that in absence of any declaration by a testator of an intention to revoke a prior will, the mere preparation by his direction of a document, which if executed would operate as a revocation, but which was never executed

WILL—*contd.*

by him, cannot be regarded as amounting to a revocation. RAM NARAIN *v.* DYA RAM. **27 P R 1883**

14. *Nuncupative will—Strong and satisfactory proof requisite.*

The party who rests his title on a nuncupative will, is bound to make out very satisfactorily (1) the execution of the will with full details of the surrounding circumstances as to place and time, and (2) to prove with the utmost precision, the exact words on which he relies. MUSSAMMAT CHUNNI *v.* JAGGAN NATH. **15 P R 1890**

15. *Muhammadan Law—Nuncupative will—Form of words—Intention.*

M. A., a Muhammadan, on various occasions said that R. S. was his son, and was *malik* and *waris* of his property, both during his life and after his death. It did not appear that on any of the occasions on which these expressions were used it was understood that M. A. was, by using these words, making a disposition of his property by way of bequest.

In a suit between the lineal descendants of M. A. regarding a house situate in Amritsar City, R. S. (who was a grandson of M. A.) contended, *inter alia,* that he was entitled to succeed to one-third of the house under Muhammadan Law in consequence of the nuncupative will made in his favour.

Held, that the alleged will was not established. An oral is as valid as a written will by the Muhammadan Law, but in both cases there must be an intention to bequeath.

If the words ascribed to M. A. had been written in a formal document, there might have been no difficulty in holding that there was a bequest, but in that case there would have been clear proof of a definite act intended to operate as a bequest. The repetition on several occasions of the words ascribed to M. A. militated against the view that he did on any one of such occasions intend to make a bequest. MUSSAMMAT NATHO BEGAM *v.* RAHIM SHAH. **55 P R 1891**

16. *Hindu will—Attestation—Indian Succession Act, 1865.*

A will made by a Hindu residing in the Punjab does not require to be executed in conformity with the provisions of section 50, Indian Succession Act, 1865: the will may be perfectly valid although not executed conformably with that section. MUSSAMMAT SUNIYA *v.* MANI RAM. **74 P R 1891**

17. *Will, construction of—Principles of construction—Bequest to Hindu widow as malik—Presumption as to nature of bequest to Hindu female.*

Although in construing a will, the Court should endeavour to gather the intention of the testator from the words actually employed by him, it is quite legitimate (subject to the express terms of the will) in construing the will of a Hindu with reference to a bequest in favour of a female to take into consideration what are known to be the ordinary notions and wishes of

WILL—*contd.*

Hindus with respect to the devolution of property. Ordinarily, their ideas are repugnant to giving a female a power of alienation over immoveable property, especially if it is ancestral and it may, therefore, be properly presumed, in the absence of clear indications to the contrary, that a devise of such property to a Hindu female does not confer an estate of inheritance, but only a life estate or a widow's estate as understood by Hindu Law. Nor is it a necessary result from the use of the term *malik* in respect of a Hindu female to whom a bequest is made that she should be considered the absolute owner of the property so bequeathed to her.

Applying the above principles of construction to the terms of the will in the present case, the Court held that, as the words used by the testator on the whole admitted of the interpretation that it was intended to give merely a life estate or a widow's estate to the female devisee such interpretation should have preference. RALLIA RAM *v.* MUSSAMMAT VED KAUR. **27 P R 1898**

18. *Guardians and Wards Act, 1890, sections 3, 7—"Will or other instrument"—Nuncupative will—Appointment of minor's heir as guardian of property.*

Held, that the provisions of section 7 of the Guardians and Wards Act, 1890, do not apply to nuncupative wills.

Held, further, that inasmuch as a minor's heir is peculiarly interested in the good management of the property to which he hopes to succeed, there is no objection to the appointment of such person as guardian of the minor's property as distinct from the minor's person. AMIN CHAND *v.* PHAGU MAL. **54 P R 1898**

19. Among Awans of the Talagang *tahsil* of the Jhelum District, the power to transfer ancestral property by will does not exist. GHULAM MUHAMMAD *v.* ABBAS KHAN. **22 P R 1899**

20. *Will—Construction—Bequest to* aulad *Meaning of the expression* aulad.

Held, that in a document like a will the word *aulad* should be construed in its popular sense, and that the plain meaning of the word comprises both male and female issue.

Mussammat Rakhi v. *Mussammat Fatima,* (89 *P. R.* 1892), distinguished. *Kirshnarao Ramchandra* v. *Benabai* (*I. L. R. XX Bom.* 571) referred to. MUSSAMMAT DHAN DEVI *v.* MUSSAMMAT MALAN. **114 P R 1900**

21. *Will—Bequest to trustees with a direction that it should be used for charitable purposes—Uncertainty of the object—Bequest void.*

Held, that a bequest of property by a Muhammadan testator for such charitable objects as the trustees should think proper or for some such purpose as that the testator should obtain eternal bliss therefrom does not create a trust as the subject-matter is not clearly or definitely indicated and the trust is therefore void by reason of uncertainty of its object. SHAHAB-UD-DIN *v.* SOHAN LAL. **75 P R 1907**

WILL—*contd.*

22. *Will—Legacy—Specific or demonstrative—Failure of funds pointed out—Non-ademption of demonstrative legacy—Succession Act, 1865, sections* 137, 140.

A bequeathed his hereditary *jagirs* to his son, and directed that out of the income of those *jagirs* his grandson would receive from the legatee Rs. 1,000 a year.

Held that the legacy to the grandson was demonstrative, and as such would not fail merely because the *jagir* was not legally chargeable with such payment.

Demonstrative legacies do not fail if the particular fund, though in existence, could not, by reason of some provision of law of which the testator was apparently in ignorance, be charged with the payment of the legacy in question. BHAGWAN DAS *v.* RAM DAS. **109 P R 1908**

23. *Will — Execution of—Testamentary capacity—Testator's illness—Undue influence—Evidence—Burden of proof.*

Held, that the *onus* of proving the testamentary capacity of the testator lies on those by whom the will is propounded.

Held also, that when the evidence produced is found to have discharged that *onus*, such evidence is not displaced by mere proof of serious illness and of general intemperance of the testator.

Held further, that circumstances of the character that there was motive and opportunity for the exercise of undue influence by the relatives who attended the testator at the time of his illness and that some of them benefited by the will to the exclusion of other relatives of equal or nearer degree sometimes suggest suspicion and would lead the Court to scrutinise with special care the evidence of those who propunded the will, but in order to set the will aside there must be clear evidence that undue influence was in fact exercised or that the illness of the testator so affected his mental faculties as to make them unequal to the task of disposing of his property.

21 P R 1911 (P. C.)

24. *Custom—Will of self-acquired property in favour of some sons to exclusion of another son—Validity of, among Arain agriculturists of* tahsil *Kasur, Lahore District*—Riwaj-i-am—Onus probandi.

Held, that plaintiff, on whom the *onus probandi* lay, had failed to prove that by custom his father, a Lahore Arain agriculturist, who had become dissatisfied with him and separated from him, giving him his share of the family estate as it then stood, was incompetent to bequeath his remaining estate with its subsequent self-acquired accretions to his other sons. KARAM BAKHSH *v.* CHIRAGH DIN. **66 P R 1911**

25. *Incompetency of Hindu adoptive father to bequeath any part of the family property after adopting a son.—Bhabra Jains of Kaithal, Karnal District—Hindu Law.*

Held, that among Bhabra Jains of Kaithal in the Karnal District the adoption of a collateral in the 4th degree is valid by custom.

Held, also, that the result of an adoption is to make the adopted son a co-parcener with

WILL—*concld.*

the adoptive father in the joint family property, and that the latter was consequently incompetent to bequeath or devise any part of that property in the presence of the adopted son. MUSSAMMAT AKI *v.* KUNDAN LAL. **74 P R 1911**

WITHDRAWAL.

See CIVIL PROCEDURE CODE, 1908 O. XXIII, R. 1. **65 P R 1875**

See CIVIL PROCEDURE CODE, 1908, O. XXIII, R. 1. **119 P R 1881**

1. *Withdrawal of a case by a Court for trial before itself—Procedure.*

See CIVIL PROCEDURE CODE, 1908, SECTION 24. **167 P R 1889**

2. *Effect of permission to one of several plaintiffs to withdraw without consent of others—Power to challenge such permission in subsequent proceeding.*

See CIVIL PROCEDURE CODE, 1908, O. XXIII, R. 1. **93 P R 1887**

3. *Without permission to sue again—Order of withdrawal passed* ultra vires*—Effect of such order—Power to challenge such order (though not appealed from) in regular suit.*

See CIVIL PROCEDURE CODE, 1908, O. XXIII, R. 1. **147 P R 1898**

WITHDRAWAL OF SUIT.

Withdrawal of suit—Withdrawal of suit without permission to sue again—Subsequent suit filed on a different title not in existence at date of former suit—Compromise—Compromise of suit by guardian ad litem *without sanction of Court—Civil Procedure Code, 1882, sections* 373, 462.

In 1898 L, a Bakhari Sayad of the Chiniot *tahsil* in the Jhang District, executed and registered a deed of adoption whereby he adopted G. Shortly after the execution L. died and his nephew S brought a suit against G. under the guardianship of his natural father N. for cancellation of the deed of adoption. This suit was subsequently compromised by the plaintiff and N. and under the compromise the plaintiff was allowed to receive a two-thirds share and G. a one-third share in the property left by L Leave of the Court had not been obtained under section 462, Civil Procedure Code, but the deed was filed in Court with an application that the suit might be consigned to the record room, which was granted. Plaintiff and N. then appealed to the Revenue authorities for mutation of names in accordance with the terms of the compromise. In the course of the proceedings N. died, and on the presentation of the widow of L., the Collector ordered the mutation in respect of the two-thirds to be effected in the name of the widow and in respect of the remaining one-third in the name of G. Subsequently the plaintiff instituted the present suit against G. and the widow of L. who was in possession of two-thirds, for possession of the entire property left by L. and in the alternative for a declaration that the deed of adoption in favour of G. was ineffectual as against his right. The widow

WITHDRAWAL OF SUIT—*concld.*

confessed judgment, but on behalf of G. it was contended—

(*i*) that the suit was barred under the provisions of section 373, Civil Procedure Code;

(*ii*) that the compromise effected by N. was not binding on the minor, inasmuch as N. had no power under Muhammadan Law to give away a large portion of the minor's property, and also because leave of the Court was not obtained to the compromise as required by section 462, Civil Procedure Code.

Held, (*i*) that the subsequent suit being clearly based in the main on the terms of the compromise and the real relief sought being possession according to its terms, was not barred by section 373 of the Code of Civil Procedure except in so far as it called in question the validity of G.'s adoption;

(*ii*) that under the Muhammadan Law N. being the natural guardian, was competent to give away a portion, as the whole of the property was in imminent danger of being lost to the minor.

Omission to obtain leave of the Court under section 462 of the Code of Civil Procedure does not make the compromise void *ab initio* but voidable at the instance of the minor if the equities of the case so require. The settlement in the present case being advantageous and for the benefit of the minor, and having been acted upon by the parties and the *restitutio in integrum* being impossible, was valid and binding on the minor.

Kali Dutt Jha v. *Abdul Ali* (*I. L. R. XVI Calc.* 627, *P. C.*) cited and followed. GHULAM ALI SHAH *v.* SHAHABAL SHAH. **3 P R 1905**

WITNESS.

1. *Non-service of some of the plaintiff's witnesses—Power to dismiss suit—Civil Procedure Code,* 1882, *section* 158.

See CIVIL PROCEDURE CODE, 1908, O. XVII, R. 2 AND 3. **9 P R 1908**

2. *Parties to suit agreeing to be bound by oath of—Refusal of witness to take the oath—Effect of such refusal.*

See OATHS ACT, 1873, SECTION 8. **31 P R 1888**

3. *Civil Procedure Code,* 1882, *sections* 159, 198—*Witness—Summoning and attendance of witnesses.*

In a suit for pre-emption where the only question to be decided was that of the price of the subject-matter of the sale, the plaintiff on the day fixed for the hearing applied for coercive process against one of the vendees who had been summoned as a witness for him, but had failed to attend, the Judge observed that as the vendee was the leading man in the district he should not be compelled to appear in Court, and that his evidence would be unnecessary and, after examining one of the vendors and hearing the arguments, recorded an order that the case was closed and that the judgment would be delivered on a certain day.

WITNESS—*contd.*

Held, that the omission to summon the vendee was a substantial error in procedure. Under the provisions of the Code of Civil Procedure the plaintiff had the absolute right of summoning any witness he named to give evidence in the Court, and that the Judge had no power to fetter the plaintiff's discretion, and was therefore bound to take coercive measures against the vendor and to give every assistance to the plaintiff for securing the attendance of his witness. PARAS RAM *v.* JOTI PARSHAD.

61 P R 1904

WOMAN.

Appointment of—as lambardar.

See LAMBARDAR. **6 P R 1894 Rev.**

WOMAN'S PROPERTY.

Hindu Law—Gift to Hindu female—Interpretation of deed of gift.

Held, following *Suraj Mani* v. *Rabi Nath Ojha* (1908), I. L. R. 30 All. 84 (P. C.) that a deed in favour of a Hindu female has to be interpreted in the same way as any other deed, and that if the wording of the deed, taken as a whole, points to an intention to confer full ownership, the full ownership is conveyed just as if the beneficiary was a man.

Held, also, that the *dictum* of their Lordships of the Privy Council must be taken as rendering obsolete the main principle on which the ruling in 27 *P. R.* 1889 was based. GURMUKH SINGH *v.* MAKHAN SINGH

61 P R 1911

WORLDLY AFFAIRS.

Abandonment of—

See ABANDONMENT OF WORLDLY AFFAIRS.

WORSHIPPER AT SHRINE.

—Suit by, to set aside alienation of shrine property.

See RIGHT TO SUE. **75 P R 1884**
27 P R 1885

WRITTEN STATEMENT.

1. *Defence must be confined to the pleas put in written statement—Evidence inconsistent to the pleas not allowed—Civil Procedure Code*, 1882, *section* 114.

See PLEADINGS. **89 P R 1905**

2. *Plea of payment in written statement—Levy of Court-fee on such written statement—Civil Procedure Code*, 1882, *section* 111.

See SET-OFF. **85 P R 1908**

WRONG-DOERS.

1. *No action for contribution between.*
See CONTRIBUTION. **32 P R 1866**

2. *Joinder of all wrong-doers as parties not essential.*
See JOINDER OF PARTIES. **72 P R 1867**

3. *Presumption against.*
See PARTNERSHIP. **62 P R 1897**

WRONGFUL DISMISSAL.

See MASTER AND SERVANT.
36 P R 1868
43 P R 1876

Y.

"YAK JADDI."

See PRE-EMPTION—1. GENERAL.
13 P R 1885

See PRE-EMPTION—6. RIGHT OF, IN VILLAGES. **39 P R 1902**

See PRE-EMPTION—7. CONSTRUCTION OF WAJIB-UL-ARZ.
69 P R 1885
35 P R 1905

Z.

ZAILDAR.

1. *Appointment—Election system.*

Held, that the rules as to appointment of Zaildars do not imply that the election system shall be followed with any precision, but it is within the Deputy Commissioner's discretion to disregard the majority of votes, if personal fitness or services to the State more than counterbalance the greater popularity or influence evidenced by such majority. KARM SINGH *v.* JOWALA SINGH.

8 P R 1880 Rev.

2. *Selection of zaildars—Votes how to be taken.*

Held by the Financial Commissioner, that, in selecting zaildars, votes should be taken not by the Tahsildar, but by the Deputy Commissioner, or by one of his Assistants specially deputed for the purpose, and as far as possible in the zail itself.

Moreover, votes should only be taken once, the practice of calling for *alternative* votes being unnecessary, and a plan which should not be resorted to. NARAIN SINGH *v.* HIRA SINGH. **6 P R 1885 Rev.**

3. *Principles governing appointment of—Tribal representation.*

On the death of the zaildar of the Madhepur zail in the Nakodar tahsil of the Jalandhar district, an election was held by the Superintendent of Settlement, under the orders of the Settlement Officer. The election resulted in the majority of the headmen of the circle voting in favour of the appellant, the son of the deceased zaildar. On this, the Settlement Officer recorded his opinion that, as the chief tribe in the circle were Rains, and the appellant, who belonged to that tribe, had obtained a majority of votes, he should be appointed. The Deputy Commissioner, however, held a second election, at which the majority of votes were given in favour of the respondent, a Hindu trader, and he was accordingly appointed zaildar by the Deputy Commissioner, whose order was upheld on appeal by the Commissioner.

Held by the Financial Commissioner, that as 28 out of the 29 villages of which the Madhepur zail is composed, are owned by Muhammadans, among whom men of the Rain tribe largely preponderate, and as one

ZAILDAR—*contd.*

of the objects of appointing zaildars is to secure, through the elected or selected zaildars, a tribal representation of the chief agricultural classes in the circle, and the appellant had, in the first instance, been chosen by a large majority of votes of the headmen to represent them, he had the best claim to the post, and was better fitted than a Hindu trader to represent the headmen of a circle composed almost entirely of men of the Rain tribe.

The appointment of zaildars is not determined by the results of the election alone in any case, but by the combined results of the votes of the headmen of the circle, the personal fitness of the candidate, and the services rendered by him to the State. ALI MUHAMMAD *v.* BURA MAL.

13 P R 1885 Rev.

4. *Succession—Grounds for determining selection—Personal fitness—Minor not eligible.*

Held by the Financial Commissioner, that the office of zaildar is not hereditary, and the holder of the post should always be able to perform the duties of the office in person and not by deputy. Personal fitness is one of the points on which stress is laid in the rules, and a minor cannot be held to be personally fit for the post. FATAH DARYA *v.* HUSAIN SHAH. **1 P R 1886 Rev.**

5. *Rules governing appointment of—Selection how to be determined.*

In a case relating to the succession to a deceased zaildar, it appeared that the result of the voting was that appellant secured 25 votes, representing a jama of Rs. 10,393; while the respondent only got 19 votes representing a jama of Rs. 7,357. The latter, notwithstanding, was appointed zaildar by the Deputy Commissioner, who considered him the more influential man of the two, though he gave no reasons for this opinion.

Held by the Financial Commissioner, that as there was a large preponderance in favour of the appellant both in the number and in the weight of the votes and he had also a far larger stake in the zail, and, further, appeared to be probably better fitted for the post than the respondent, he was entitled to be appointed as zaildar. *Karm Singh* v. *Jowala Singh No.* 8 *P. R.* 1880 *Rev.* referred to. SABHA CHAND *v.* SADHA RAM. **4 P R 1886 Rev.**

6. *Removal from office—Grounds for such removal—Succession—Rule to be adopted where votes are nearly equal.*

Held by the Financial Commissioner, that a zaildar, when once appointed should only be removed from his post for misconduct or neglect of his duties. To remove him after performing years of good service, solely on the ground of old age, or because an accident disables him from performing the duties of his post, is a very harsh measure. In such cases he should be allowed to carry on his duties by deputy.

In deciding questions of succession to zaildarships, the same rule should be applied as is applied in disposing of disputes relating to succession to chief lambardarships, *viz.*, that when votes are nearly equal, and in all other respects the rival candidates for the

ZAILDAR—*contd.*

vacant post are on a par, the preference should be given to the heir of the deceased office-holder. ANOKH SINGH *v.* SANT SINGH.

13 P R 1886 Rev

7. *Rules to be observed in appointment of.*

Held, by the 2nd Financial Commissioner, that in appointing zaildars every care should be taken to exclude men who by character and influence are not fitted to discharge properly the duties of the post, and also those who are believed to have obtained votes in an improper manner.

Though the rules which govern the appointment of zaildars do not expressly lay down that a zaildar must either reside in his circle or own land in it, or hold the office of a lambardar in it, it was the undoubted intention of Government that persons appointed to the post of zaildar should be selected from among the landowners of the zail to which they are appointed.

Selection to the post of zaildar should ordinarily be made from among the lambardars of the circle; but in exceptional cases, and for sufficient reasons, a candidate who is a landowner, though not a lambardar, may be appointed. SHER SINGH *v.* CHANDA SINGH.

15 P R 1866 Rev.

8. *Disqualification of pleader for post of zaildar.*

Held by the 2nd Financial Commissioner that the duties of the two offices of zaildar and pleader cannot with due regard to administrative convenience be properly discharged simultaneonsly by one person. GHULAM NIAZ KHAN *v.* ACHAL SINGH. **3 P R** 1887 **Rev.**

9. *Appeals in* zaildari *cases.*

Appeals in *zaildari* cases should not be encouraged, and the orders of the Deputy Commissioner should in all cases if possible be upheld.

SHANKAR *v.* KALU. **6 P R 1887 Rev.**

ZAILDAR—*contd.*

10. Appeals in *zaildari* cases should not be encouraged and the order of the Deputy Commissioner should in all cases if possible be upheld.

SANDHI *v.* BUDAN CHAND.

5 P R 1890 Rev.

11. *Zaildar—Dismissal—Opportunity of being heard.*

On a judgment of a Sessions Court the Sessions Judge recorded his opinion that a zaildar and a lambardar were unfitted for their offices; the Sessions Judge had neither of the men before him either as an accused person, witness or otherwise.

The Collector on a perusal of the judgment of the Sessions Court dismissed the two men from their respective offices, and the Commissioner upheld the order on app[eal].

Held by the Financial Commissioner that the *obiter dictum* of the Sessions Judge did not exonerate the Collector from making a separate enquiry, and giving the officials in question full opportunity of explaining or defending their conduct by evidence or otherwise. *In the matter of the* DISMISSAL OF BARKHURDAR, ZAILDAR. **11 P R** 1891 **Rev.**

12 *Zaildars—Hereditary claims, other things being equal.*

Although no right to the office of zaildar arises from the fact that the claimant is related to the former holder of the office, yet it is equally true that such relationship is no disqualification.

If among the claimants it were found that the man who was selected as having the strongest claim on the recognised grounds were also son of the late holder of the office, a Collector might very fairly feel confirmed and supported in his choice.

The *dictum* that appointments should as far as possible not be of a hereditary character disapproved.

ZAILDAR—*concld.*

Nos. 6 *P. R.* 1887 and 5 *P. R.* 1890 *Rev.* referred to. ATTAR SINGH *v* BAGHEL SINGH.

3 P R 189[2] **Rev.**

13. *Rule No.* 167 *of Rules under Punjab Land Revenue Act,* 1887—*Hereditary claims.*

Upon a vacancy occurring in the office of zaildar in a zail in which the Jats formed two-thirds and the Awans one-third of the agriculturists, it appeared that among the nineteen claimants was one R. R., the son of the late holder. It was admitted that R. R. was personally as fit as the best of the other claimants, and that he worthily represented the Jats. The Commissioner, however, appointed one A. B., an Awan to the post, on the grounds that the Jats had held the *zaildari* for many years, that as far as possible every class of the community should be given a fair chance of occupying these rural offices, and that so far from the fact of R. R. being the son of the late holder constituting a point in his favour, it should be considered as against him.

Held, following *Attar Singh* v. *Bhagel Singh* 3 *P. R.* 1892, *Rev.* that under the circumstances of the case, R. R. had a preferential right to be appointed.

Application for *zaildarships* should not be encouraged. RALLA RAM *v.* AMIR BAKHSH.

1 P R 1900 Rev.

ZATI ZARURAT

Childless proprietor — Necessity — Zati Zarurat explained.

See CUSTOM I. A.—ALIENATION BY MALE PROPRIETOR—5. NECESSITY, *Passim.* ESPECIALLY *See.* 185 **P R** 1888

"ZILLA DIWANI ADALAT"

See MORTGAGE—XVI. FORECLOSURE. **55 P R 1883**